

**Outline to the Oral Submission  
of CAC Manitoba and MSOS**

**with regard to**

**the application by Manitoba Hydro for a 2.9%  
General Electricity Interim Rate Increase**



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# Our clients' preparation for this proceeding

- CAC Manitoba and MSOS;

seek to represent the interests of residential consumers;

- They do not accept the premise that:

residential customers can be simplistically grouped into a single homogeneous group in terms of their motivations or objectives;

or that:

the interests of Manitoba Hydro and its ratepayers are synonymous.

- In addition to their regular contact with members and about 11,000 annual contacts that CAC Manitoba has with consumers, they have engaged in a wide reaching dialogue with others in preparing for this interim argument. The dialogue has included:

March 3, 2011 Focus Group – Manitoba Consumers

Lengthy and ongoing consultation with NGOs (national and local) who serve low income persons or advocate for the interests of low income persons or serve urban aboriginal populations;

Ongoing contact with other NGOs.

## A Caveat Regarding the Record

- the record is far from complete

where an allegation is not yet established on the record – our clients will note

**We expect the record to demonstrate**

# The Legal Test for an Interim Rate Increase

## Just and Reasonable Rates

*The Public Utilities Board Act*

77 The board may, by order in writing after notice to, and hearing of, the parties interested, (a) fix **just and reasonable** individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates that shall be imposed, observed, and followed thereafter, by any owner of a public utility wherever the board determines that any existing individual rate, joint rate, roll, charge or schedule thereof or commutation, mileage, or other special rate is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential;

## Interim orders

*The Public Utilities Board Act*

47(2) The board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter, or for further application.<sup>1</sup>

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<sup>1</sup>See also Rule 42 of *The Public Utilities Board Rules of Practice*

# Judicial, Regulatory and Academic Consideration in Setting Just and Reasonable Interim Rates

- *CRTC v. Bell Canada*, [1989] 1 S.C.R. 1722<sup>2</sup>

At para 47 “Traditionally, such interim rate orders dealing in an interlocutory manner with issues which remain to be decided in a final decision are granted for the purpose of relieving the applicant from the deleterious effects caused by the length of the proceedings.”

At para 57 (emphasis added): “However, there should be no concern over the financial stability of regulated utility companies where one deals with the power to revisit interim rates. ***The very purpose of interim rates is to allay the prospect of financial instability which can be caused by the duration of proceedings before a regulatory tribunal.*** In fact, in this case, the respondent asked for and was granted interim rate increases on the ***basis of serious apprehended financial difficulties.*** The added flexibility provided by the power to make interim orders is meant to ***foster financial stability throughout the regulatory process.*** The power to revisit the period during which interim rates were in force is a necessary corollary of this power without which interim orders made in emergency situations may cause irreparable harm and subvert the fundamental purpose of ensuring that rates are just and reasonable.”<sup>3</sup>

- *PUB Order 18/10* (per the majority)

In circumstances,

- where the Corporation forecasts a “dramatic reduction” in forecast 2009/10 net income as compared to the previous year<sup>4</sup>; and
- where the Corporation has presented a *prima facie* justification for a 2.9% rate increase for 201/11<sup>5</sup>; and
- where the regulator anticipates a final decision to be more than 6 months from the starting point for the rate adjustment<sup>6</sup>;

an Interim rate increase might be appropriate to protect the short-term financial status of Hydro with the maintenance of adequate retained earnings<sup>7</sup>.

- At the very least, an agency will require a clear showing that the temporary rate increase prior to full hearing is required to meet an unusual financial need that demands immediate correction.<sup>8</sup>

2 *CRTC Policy* (cited in *CRTC v. Bell Canada*) – interim rate increases may be granted “where special circumstances can be demonstrated. Such circumstances would include lengthy delays in dealing with an application that could result in a serious deterioration in the financial condition of an applicant absent a general interim increase.”

3 Two interesting Alberta cases discuss other circumstances in which an interim rate might be possible. In our clients view, they are not on point with this proceeding. *Westcoast Transmission Co. v. Husky Oil*, [1980] 3 W.W.R. 313, Alberta Court of Appeal and *Coseka Resources Ltd. v. Saratoga Processing Co.*, (1980) 16 Alta. L.R. (2d) 60.

4 p. 6/14.

5 p. 5/14.

6 p. 8/14.

7 p. 8/14.

8 Goodman, *The Process of Ratemaking*, 1998.

## Applying the Statutory, Judicial and Policy Considerations

- The determination of interim rates before a regulatory proceeding is completed raises a number of complications.

Generally speaking, it rarely is desirable to rush to judgement or to preliminary judgement before the record is complete.

From the perspective of some consumers, there may be a perception that the regulator is prejudging an application before the record is complete.

While the regulator can go back and correct the ultimate number chosen, this too raises complications for consumers trying to manage their budgets to anticipated expenditures.

- While a regulatory discretion exists to set interim rates, that discretion can only reasonably be exercised in circumstances where the Board determines that the current rate is not just and reasonable but it is not yet possible to make a final order that sets a just and reasonable rate;
- Some considerations which might appropriately be taken into account in replacing the existing rates with interim rates are:

has the tribunal concluded that a lengthy delay in the regulatory proceedings is likely to take place;

has the tribunal reached the conclusion that such a rate is necessary to allay the prospect of financial instability or serious apprehended financial difficulties which can be caused by the duration of proceedings;

has the Corporation established and the tribunal concluded, on a *prima facie* basis, that the proposed interim rates are just and reasonable.

- Put more succinctly, “at the very least, an agency will require a clear showing that the temporary rate increase prior to full hearing is required to meet an unusual financial need that demands immediate correction”.<sup>9</sup>
- While our clients did not concur with the Board's decision, they concede that the Board's findings in *Order 18/10* can be related to the *ratio* of *CRTC v. Bell Canada* in that the Board implicitly found on an interim basis that:

given the dramatic reduction in forecast 2009/10 net income and the potential for a significant procedural delay, the existing rate was not just and reasonable; and

based on the forecasts available at the time, the Corporation presented a *prima facie* justification that a 2.9% rate increase was just and reasonable in order to protect the short-term financial status of the Corporation and to allay the prospect of financial instability

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<sup>9</sup> Goodman, *The Process of Ratemaking*, 1998.

## **Ostensibly competing themes in the Panel's Comments of January 26, 2011 (pp. 2478 – 2489)**

“On the one hand and after looking at Hydro's application and projections for the two (2) test years, it appears there is a possible case for not proceeding with a rate increase for April 1<sup>st</sup> 2011.”<sup>10</sup>

“... When one does look deeper . . . and considers . . . the prospects of future years, are there a) contrary indications with respect to Hydro's position and prospects, and b) could those contrary indications be interpreted as suggestive of a need for another rate increase, one to take effect April 1<sup>st</sup>, 2011?”<sup>11</sup>

Implicit in the Panel's comments are two competing scenarios:

Assuming Hydro's vision of the future is likely to unfold and given its improved prospects since IFF-09-01, is there any need for a rate increase?

### *Versus*

Given the uncertainty associated with the Era of Expenditure<sup>12</sup> – is not a rate increase dictated in order to protect Hydro (as well as its ratepayers) against itself?

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10 Tr. 2478, lines 7 – 9.

11 Tr. 2479, lines 16 – 22.

12 The question expressly asked by the Panel at p. 2486 was:

Are the parties concerned about the prospects related to the planned decade of investment?

## **A hearing that has raised more questions than it has answered?**

Typically when one has underwent 12 hearing days in a single month, one would expect a clear outline of the ultimate hearing direction to have emerged

Looking more carefully at the Panel's comments of January 26, 2011, it is clear that the record as of January 26, 2011 (not to mention the record after an additional 8 hearing days in February) has raised more questions than it has answered

please turn to Competing Themes Table on the next page



# Competing themes in the Panel's Comments of January 26, 2011 (pp. 2477 – 2489)

The Immediate Future Looks Materially Improved from prior forecasts	Will the Preferred Development Sequence Proceed at all and if so, will it proceed within the Time Frame Currently Contemplated by Manitoba Hydro?	Negative indications or other uncertainties related to the IFF?	Questions which might be better and more fully addressed apart from the interim rate application
<ul style="list-style-type: none"> <li>• strongest fiscal position in history (p. 2478);</li> <li>• corporation's 2009/10 results above forecast (p. 2478);</li> <li>• projections for 2010/11 and 2011/12 improved over the last set of estimates (p. 2478);</li> <li>• good water flow conditions combined and domestic rate increases combined with lower than anticipated finance costs assisted by lower interest rates and a higher Canadian dollar have helped the Corporation endure a period of lower than expected average export rates (p. 2748).</li> </ul>	<p><u>The business case for the MP and WSP sales appears to have deteriorated since the signing of the term sheets</u></p> <ul style="list-style-type: none"> <li>• construction cost estimates continue to move upwards – with some much higher than forecast at the time the 2 outstanding terms sheets were entered into (p. 2480);</li> <li>• economically extractable shale gas, reserve estimate increases and actual production gains, have driven down natural gas prices (pp. 2481);</li> <li>• the advent of carbon pricing appears no closer at hand (pp. 2482);</li> <li>• Wuskwatim has not worked out as expected at the Clean Environment Needs and Justification review (p. 2485/86);</li> </ul> <p><u>Will the Contracts be Signed and if so When?</u></p> <ul style="list-style-type: none"> <li>• there has been no definitive indication as to when the term sheets will be finalized (pp. 2481);</li> </ul>	<ul style="list-style-type: none"> <li>• the Corporation projects capital expenditures in excess of \$17 Billion over the next decade (p. 2479);</li> <li>• export revenues have been lower than forecast (2480);</li> <li>• export prices very low averaging below 4 cents with apparently no immediate expectation for a significant improvement (pp. 2480);</li> <li>• considerable uncertainty in terms of the current all-in projection for Bi-Pole III and whether the projections are reflected in the current IFF (2480);</li> <li>• expenditures related to the new construction continue to be incurred and deferred (p. 2480);</li> <li>• Hydro's O, M and A gross expenditures continue to increase (p. 2482);</li> <li>• close to 25 percent of Hydro's asset base is now represented in construction in progress, deferred, intangible and regulatory costs (p. 2482)*;</li> </ul>	<p><u>Determining and Interpreting the present Debt/Equity target</u></p> <ul style="list-style-type: none"> <li>• should AOCI be included as part of the equity component for rate setting (p. 2483)?</li> <li>• what about the recognition and characterization of what may be a significant gap between present mark to market pension obligations and all-in and pension assets (p. 2484)?</li> <li>• should contributions in aid of construction be a component of equity for rate setting purposes (p. 2484)?</li> <li>• should the target range for the debt and equity relationship be reset or left (p. 2484)?</li> <li>• To what degree, should the debt-equity ratio play a role in the determination and setting of the rates of any particular time (p. 2485)?</li> </ul> <p><u>Is Manitoba Hydro speculating on</u></p>

<ul style="list-style-type: none"> <li>we are unaware of whether there is progress with American regulators or if there has been at least tentative action as to planning and preparing for counterparty investment in transmission (pp. 2481);</li> </ul> <p><u>What if any impact will the decrease in load forecast have?</u></p> <ul style="list-style-type: none"> <li>Hydro's load forecasts have been lowered with reduced industrial demand a major driver (p. 2481).</li> </ul>	<ul style="list-style-type: none"> <li>volatility experienced in annual net income (p. 2483);</li> <li>unresolved questions related to IFRS and rate setting (p. 2483);</li> <li>is it possible that the rate increases may be required to be higher (p. 2487)?</li> </ul>	<p><u>behalf of its current and future ratepayers with its financial forecasts?</u><sup>2</sup></p> <ul style="list-style-type: none"> <li>should the present generation share in the risk of at least some of the planned capital investments, either not proceeding or proceeding at less than a net present value return than originally and even currently expected? (p. 2485)</li> <li>how should the upside of Hydro's position be seen? How symmetrical is the risk (p. 2487)?</li> </ul>
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<sup>1</sup> The Chairperson suggests that Hydro has on its book of accounts "2 billion in construction in progress and a . . . further 300 million in regulated assets and intangible assets."  
<sup>2</sup> P. 2486.

## **Are all the questions raised by the Panel appropriately dealt with in the context of an Interim Rate Application?**

While one might be tempted to weep at the broad and often competing demands posed by the Chairperson's comments, it is helpful to recall his own words of caution in terms of some of the questions raised

These and other questions have not been resolved or thoroughly tested to date in recent hearings? (p. 2484)

**Many of the Issues raised by the Panel require enriched deliberations. It is not possible to reach an interim decision on them based on the current state of the record.**

**Indeed given the questions raised, it may be that many of the questions raised cannot be satisfactorily addressed in the current proceeding.**

- enhanced US transmission construction (MVP) sought pursuant to the MP and WPS contracts will be considered by MISO in the summer 2011 (hearing March 7, 2011);
- actual Bi-Pole III route is likely to be determined by the results of the Provincial Election of October 4, 2011;
- it is uncertain when or if the MP and WPS contracts will be signed – it may be a function of the MISO marketplace and the Manitoba political dynamic

## **Before making a firm directional judgement – it may be prudent to wait for additional information**

- What are the Updated Estimates of Bi-Pole III Costs on the West Side (perhaps available after March 14, 2011 – per Hydro March 7, 2011)?
- What is the outcome of the MISO MVP transmission deliberations (the summer of 2011)?
- Will the export contracts with MP and WPS actually be signed?
- Is the US economic recovery on pace as ICF projects or at all?
- Will the Provincial Government in place after October 4, 2011 still propose to build Bi-Pole III down the West Side?
- Will the Provincial Government in place after October 4, 2011 still propose to proceed with Keeyask?
- For which projects will Hydro seek environmental approval in the near future?

## **Reconciling the Competing Themes in the Context of the Interim Rate Application**

Rather than responding prematurely to an incomplete evidentiary record, the Panel has been afforded the luxury of allowing a more complete record to develop

### **There is a Breathing Space Afforded by the Improved Financial Results**

in the context of an interim rate application, only a more limited series of questions need be addressed

## Suggested Interim Rate Considerations

Flowing from :

*CRTC v. Bell Canada*, [1989] 1 S.C.R. 1722

*PUB Order 18/10* (per the majority)

- is a lengthy delay in the regulatory proceedings likely to take place?
- as a consequence of the delay is the existing rate unjust and unreasonable?
- is the proposed interim rate necessary to allay the prospect of financial instability or serious apprehended financial difficulties which can be caused by the duration of proceedings?
- has the Corporation established, on a *prima facie* basis, that the proposed interim rates are just and reasonable?

## Recommended Findings

- it is reasonable to expect that the hearing will conclude in June 2011 – leaving open the possibility that a final rate decision can be issued effective August 1, 2011;
- the Corporation has failed to discharge its onus that the existing rates are unjust and unreasonable. The existing rate is not unjust or unreasonable given the improved and better than forecast recent results of the corporation;
- the Corporation's materially improved financial results as compared to IFF-09-01 do not support the conclusion that financial instability or serious apprehended financial difficulties are likely to flow from a rate determination made effective August 1, 2011 as compared to April 1, 2011;
- the Corporation has failed to discharge its onus that a 2.9% interim rate interim increase is just and reasonable;
- the interim rate decrease should be denied.

## **Top 5 Reasons why the Interim Rate Application Should be Denied**

- The Short Term Future is Much Improved from Prior Forecasts
- It would be premature to take actions to partially pre-fund the Preferred Development plan until there is greater certainty it will proceed
- Hydro has missed the opportunity to comply with its regulatory obligations
- There is a material risk that Hydro and the Province will draw the wrong inference from approval of the rate sought
- Manitoba Consumers are Vulnerable

# The Short Term Future is Much Improved from Prior Forecasts

## SUMMARY

- The original GRA Application (which requested 2.9% rates increases for 2010/11 and 2011/12) was based on IFF09-1. In its forecast, Manitoba Hydro stated it would need \$33M and \$69M in 2011 and 2012, respectively (Volume 1, Tab 2, Table 2.1.1). Based on current rates in place, the \$69M is unnecessary – certainly at this point. The forecasts were simply overly pessimistic relative to actual results.
- Since then the following information has become available:
  - 2009/10 Actual Results
  - Updated Forecasts for 2010/11 and 2011/12 (IFF10)
  - 3<sup>rd</sup> Quarter Actual Results for 2010/11.
- All three pieces of information suggest that the results, in terms of overall retained earnings and debt ratio, for 2011/12 will be better than initially forecast:
  - 2009/2010 Actual results exceeded the forecast used in the GRA application
  - The current outlooks (IFF10) for 2010/11 and 2011/12 in terms of net income, year end retained earnings and debt ratio are both better than foreseen in IFF09
  - The most recent actual results for the first 9 months of 2010/2011 suggest that the financial results will be better than forecast in IFF10.
- Even without any rate increase in 2011/12:
  - the Electric Operations Retained Earnings at the end of 2011/12



- should be higher than those forecast in IFF09
- the Electric Operations Debt level at the end of 2011/12 should be lower than that forecast in IFF09
- The net effect is that the debt ratio will be lower.

## The Short Term Future is Much Improved from Prior Forecasts

**Table 1 - Financial Outlook at Time of GRA Application**

	<b>Income Statement - Electric Operations (\$M)</b>					
	Actual <u>2008/09</u>	Forecast ->				
	<u>2009/10</u>	<u>2010/11</u>	<u>2011/12</u>	<u>2012/13</u>	<u>2013/14</u>	
<b>Revenue</b>						
General Consumers	1127	1160	1192	1246	1304	1365
Export	623	414	383	554	583	615
Other	<u>16</u>	<u>7</u>	<u>7</u>	<u>8</u>	<u>8</u>	<u>8</u>
Total	1766	1581	1584	1808	1895	1987
<b>Expenses</b>						
O&A	360	372	380	403	411	420
Finance	401	417	413	468	525	527
Depreciation	346	368	386	407	435	446
Water Rentals	123	120	110	111	113	114
Fuel & Purchases	176	103	132	248	250	260
Taxes	64	73	76	77	80	85
Corporate Allocation	8	8	9	9	9	9
Total	1478	1460	1505	1723	1824	1860
Non-Controlling Interest	0	0	0	1	1	-2
Net Income	288	121	78	87	72	125
Rate Increases	-	-	2.90%	2.90%	3.50%	3.50%
<b>Balance Sheet - Electric Operations (\$M)</b>						
LT Debt - Electr	7520	7800	8596	9054	8769	10349
Retained Earnings - Electr	2084	2183	2261	2331	2403	2528
Retained Earnings - Consol	2120	2227	2315	2396	2479	2616
Debt Ratio - Electric	77%					
Debt Ratio - Consolid	77%	74%	75%	76%	76%	78%

Sources: IFF09-1  
CAC/MSOS/MH I-4 a)  
PUB/MH I-1  
PUB/MH I-27

# The Short Term Future is Much Improved from Prior Forecasts

**Table 2**

**Income Statement - Electric Operations**

	<b><u>Actual</u></b> <b><u>2008/09</u></b>	<b><u>Forecast</u></b> <b><u>2009/10</u></b>	<b><u>Actual</u></b> <b><u>2009/10</u></b>
<b><u>Revenue</u></b>			
General Consumers	1127	1160	1145
Export	623	414	427
Other	<u>16</u>	<u>7</u>	<u>6</u>
Total	1766	1581	1578
<b><u>Expenses</u></b>			
O&A	360	372	378
Finance	401	417	373
Depreciation	346	368	358
Water Rentals	123	120	121
Fuel & Purchases	176	103	104
Taxes	64	73	76
Corporate Allocation	8	8	8
Total	1478	1460	1418
Non-Controlling Interest	0	0	0
Net Income	288	121	160

**Balance Sheet - Electric Operations (\$M)**

Retained Earnings - Electr	2084	2183	2206
Retained Earnings - Consol	2120	2227	2239
Debt Ratio - Electric	77%		
Debt Ratio - Consolid	77%	74%	73%

Sources: IFF09-1  
Manitoba Hydro's 2009/10 Annual Report (page 98)  
PUB/MH/PRE-ASK-9

# The Short Term Future is Much Improved from Prior Forecasts

**Table 3**

**Comparison of IFF09 and IFF10**

**Income Statement - Electric Operations (\$M)**

	IFF 09-1				IFF 10-1		
	Actual 2008/09	Forecast ->			Actual 2009/10	Forecast ->	
		2009/10	2010/11	2011/12	2009/10	2010/11	2011/12
<b>Revenue</b>							
General Consumers	1127	1160	1192	1246	1145	1194	1265
Export	623	414	383	554	427	444	461
Other	16	7	7	8	6	7	7
Total	1766	1581	1584	1808	1578	1645	1732
<b>Expenses</b>							
O&A	360	372	380	403	378	398	402
Finance	401	417	413	468	373	393	411
Depreciation	346	368	386	407	358	374	405
Water Rentals	123	120	110	111	121	121	115
Fuel & Purchases	176	103	132	248	104	121	187
Taxes	64	73	76	77	76	81	82
Corporate Allocation	8	8	9	9	8	9	9
Total	1478	1460	1505	1723	1418	1496	1612
Non-Controlling Interest	0	0	0	1	0	0	4
Net Income	288	121	78	87	160	149	125
Rate Increases	-	-	2.90%	2.90%		2.80%	2.90%

**Balance Sheet - Electric Operations (\$M)**

LT Debt - Electr	7520	7800	8596	9054		8507	8927
Retained Earnings - Electr	2084	2183	2261	2331	2206	2354	2479
Retained Earnings - Consol	2120	2227	2315	2396	2239	2398	2531
Debt Ratio - Electric	77%						
Debt Ratio - Consolid	77%	74%	75%	76%	73%	74%	74%

Sources: IFF09-1  
 Manitoba Hydro's 2009/10 Annual Report, page 98  
 PUB/MH/PRE-ASK - 9  
 PUB/MH I-27  
 IFF10-1

# The Short Term Future is Much Improved from Prior Forecasts

## Third Quarter 2010/11 Financial Results

<b>(M\$)</b>	<b>Electric Operations</b>		<b>Consolidated</b>	
	2010	2009	2010	2009
Nine Months to Dec 31 <sup>st</sup>				
Revenue	1,173	1,149	1,260	1,237
Expenses	1,111	1,099	1,213	2,203
Net Income	62	50	47	34

## **There is little on the record to suggest the improved financial performance is the result of more cost effective management by Manitoba Hydro**

- rather the record would appear to demonstrate that the two major drivers of the materially improved performance since IFF-09 are

consumer rate increases

and positive variations from forecast such as finance costs

- over the past few years, rate increases and subpar forecasting would appear to have been significant drivers of Hydro's improved performance as compared to forecasting

# **There is a substantial body of evidence suggesting that Manitoba Hydro's continues to experience material challenges with some parts of its forecasts**

- the evidence of Mr. McCormick suggests that:

IFF-09 significantly overstated finance costs

- the evidence of Mr. Matwichuk suggests that:

Manitoba Hydro experiences asymmetric challenges with its export revenue forecasts

- it is expected that the record of this hearing will demonstrate that in terms of Wuskwatim:

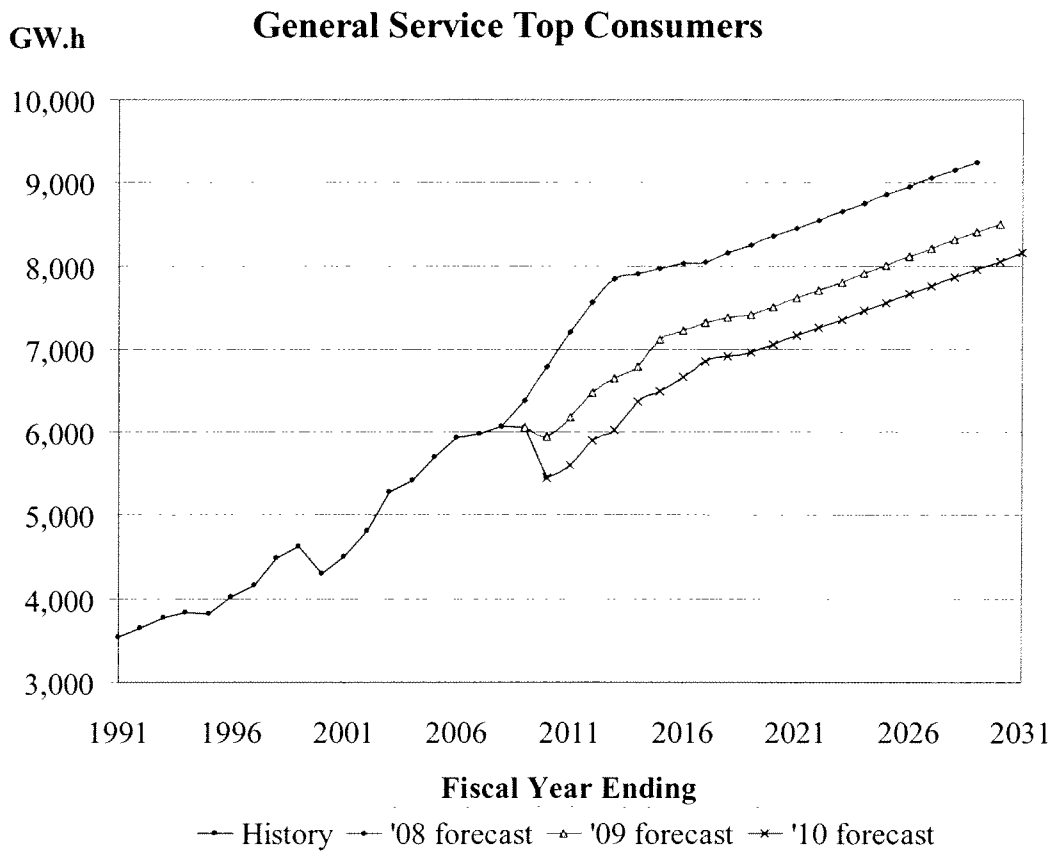
Manitoba Hydro has experienced challenges with its export price forecasts

Manitoba Hydro has experienced challenges with its construction cost forecasts

- as demonstrated on the next page, (Hydro Exhibit 38) the top 25 industrial consumer forecasts has been subject to material downward revision over the past 3 IFFs

Manitoba Hydro Undertaking #29

Refile figure 7 – showing the top consumers forecasts for 3 different load forecasts all in same graph : 1) May 2008 load forecast; 2) May 2009 load forecast; and 3) Aug 2010 load forecast. Provide data points for each year similar to the middle column on Table 8, pg. 28 of the August 2010 load forecast.



## **It would be premature to take actions for higher than sought rate increases to partially pre-fund the Preferred Development plan until there is greater certainty it will proceed?**

our clients concur that

based on the current record of this proceeding to date

### **The promised Era of Expenditure is characterized by Significant Elements of Uncertainty**

- Notwithstanding the fact that the evidence of ICF and Mr. Cormie seems to suggest that lessons have been learned from the 2003/04 drought and that some elements of drought risk have been mitigated either by changes within the MISO market or in terms of new Hydro contracts or the proposed MP and WPS term sheets (Tr. 3017 – 3042) (Exhibit 51, pp. 57 and 59)
- the uncertainty associated with the era of expenditure has only been reinforced by the candid admission by ICF that:
  - forecast natural gas prices are significantly lower than in 2009 (Tr. 2959) (Exhibit 51, p. 15);
  - forecasts of the value of carbon emission allowances have been significantly downgraded both in terms of their time frame (Tr. 2960) and their magnitude (40% - 60%) (Tr. 2960. 3009) (Exhibit 51, p. 17);
  - notwithstanding the impacts of significant administrative control actions on the pace of anticipated of coal plant retirements (as measured in GW), the 2010 estimates of ICF should be lowered



given lower anticipated CO2 emission rates (Tr. 2986, 2993, 2994, 3017) (Exhibit 51, p. 18)

- despite its eye watering \$2.6 to \$2.8 Million dollar price tag – the KPMG report has done less than expected to allay this uncertainty – while the KPMG report may have satisfactorily addressed some of the more eye popping suggestions by the NYC – the nature of the KPMG project has done less than might have been expected to address the business case underlying the preferred development scenario (see March 7, 2011 cross of Manitoba Hydro by Board Counsel)

**From my clients perspective, from the the Record of this proceeding it is still unclear whether:**

**the MP and WPS contracts will proceed;**

**whether an updated analysis of preferred scenario including the Keeyask advancement is materially more favourable to rate payers as compared to the existing alternative scenario especially in the context of the overall revenue requirement**

**whether the timing of expenditures under the alternative scenario is still on course given the moving target of load forecasts (especially as related to the Top 25 large industrials)**

- reinforces view, it may be prudent to await further developments

## **It would be premature to assume a write off of Keeyask Development Costs**

- hearing room on March 7, 2011 was noticeably chilled by recognition that in the event Keeyask does not proceed Hydro may have stranded as much as \$400 M in development costs that will have to be recovered;
- however, it is premature to conclude that Keeyask is unlikely to proceed;
- Hydro has expressed the opinion that the negotiations with regard to MP and WPS are proceeding relatively favourably (March 7 Transcript);
- Hydro has suggested that important developments in terms of improved access to US transmission may take place as soon as the summer of 2011 (MVP);
- reinforces view, it may be prudent to await further developments

# Hydro has missed the opportunity to comply with its regulatory obligations

Board Order 32/09, pp. 47/48

MH to file by September 30, 2009, for Board approval, a conceptual outline for an in-depth and independent study of all the operational and business risks facing the corporation. The study to be a thorough and quantified Risk Analysis, including probabilities of all identified operational and business risks. This report should consider the implications of planned capital spending taking into account export revenue growth, variable interest rates, drought, inflation experience and risk, and potential currency fluctuation.

## The \$2.7 Million Missed Opportunity

Despite being originally part of the approximately \$2.7 M KPMG terms of retainer, the in-depth study was subsequently excluded from the KPMG terms of retainer the resulting analysis that focused primarily on the allegations of the New York Consultant (Tr. 3518, 3520, 3524-3526)

MR. BYRON WILLIAMS:

And when we look to  
10 your document, to the KPMG document, it would be fair to  
11 say that this is not a study of all the operational and  
12 business risks facing the Corporation, would that be  
13 fair?

14

15

(BRIEF PAUSE)

16

17

MR. WILL LIPSON:

Sorry for the delay.

18 Yes. I believe you're correct.

Our assignment in no way

19 should be interpreted as having assessed all business

20 risks of Manitoba Hydro, and have, you know, in -- in one

21 (1) fashion or another been a comprehensive risk

22 assessment. (Tr. 3525) (emphasis added)

# **There is a material risk that Hydro and the Province of Manitoba will draw the wrong inference from approval of the 2.9% rate increase?**

- While a significant interim rate increase might be intended to convey the message that:

we are providing you with this significant rate increase to protect ratepayers from the very real risk that you are both:

underestimating the risks associated with your proposed era of expenditure; and

overstating the likely returns of your decade of returns.

In other words, we are giving you the money but listen to our advice

- There is a very real risk that the interim rate increase will be taken as an endorsement of Hydro's scenarios as laid out in IFF-09 and IFF-10 (notwithstanding the Corporation's apparent failure to comply with Directive 4 of Board Order 32/09);
- To the extent that the Board might be tempted to provide an interim rate increase coupled with an admonition of emerging risks

**There is a very real risk that Hydro will take the money but not take the advice**

## Manitoba Hydro is Vulnerable

- Our clients often disagree with Mr. Warden but they believe that he had something important to say on the first day of the hearing

Tr. 399

Mr. Vince Warden:

I think its a realization by Manitoba Hydro that **we are vulnerable**, our image, our reputation is vulnerable to any whistleblower that might come forward. And we have to do a better job of communicating our message to - - to our ratepayers as to what our position is and what our - - what our - - how we're going forward on - - on so many important issues that affect ratepayers. We probably haven't done as good a job as communicating that as we - - as we should, and I - - we think by – improving on that communication plan, we'll be less vulnerable to attack, so as to speak, by - - those so inclined.  
(emphasis added)

## **Manitoba Consumers are Vulnerable**

Our clients concur with Mr. Warden

**that Manitoba Hydro is Vulnerable**

However, our clients take the position that

**the vulnerability of Manitoba Hydro is more than just a failure to communicate**

**it is a reflection of the incremental impact of a series of rate increases since 2003/04 drought**

**and a product of decreased confidence of certain consumers in the motivation and capacity of traditional institutions such as Hydro to deliver as they have promised**

## **Manitoba Consumers are Vulnerable**

**Since the 2003/04 drought**

**there has been a relatively HIGH FLOW of rate increases as compared to inflation**

**Inflation vs. MH Rate Increases  
Per PUB/MH 1-2 a) – with Inflation Update**

<u>Year</u>	<u>Man Infl</u>	<u>MH Rate Incr.</u>
2003/04		
2004/05	2.70%	5.00%
2005/06	2.40%	2.25%
2006/07	2.00%	2.25%
2007/08	1.90%	0.00%
2008/09	2.20%	5.00%
2009/10	0.70%	2.90%
2010/11	1.60%	2.80%

Source: Rate Increases – PUB/MH 1-2 a)  
Inflation – Appendix 51, page 5

**We expect that the record will show that since the 2003/04 drought, rate increases have been between 40 and 45% higher than the inflation rate**

## **Manitoba Consumers are Vulnerable**

From our client's perspective, Hydro's increased vulnerability is in part

a reflection of the ongoing struggles that many Manitoba consumers are facing in the light of:

economic uncertainty including employment uncertainty;

wage settlements that are not keeping pace with inflation;

the increasing pressure that Hydro rates among other cost pressures are putting on budgets that are already stretched thin

in the words of Board Member Avery Kinew's dissent in Order 18/10

The economic conditions of the past year and now have resulted in trying times and challenges for consumers (p. 12)



## **Manitoba Consumers are Vulnerable**

Our clients are of the view that:

many Manitoba consumers are beginning to note that

while their wages are either

not going up or

not matching inflation

incremental rate increases over the past six years have added up to a larger monthly jolt especially during winter

and that even when they do everything right

they turn off their lights,

they unplug their appliances,

their bills still go up

## A Double Whammy for Vulnerable Consumers

Our clients also are of the view that

many Manitoba consumers are well aware  
that every rate increase imposes a

double whammy on them

not just their own rates

but the costs of many of the goods  
they buy

- Given improved financial performance and the existing vulnerability of Manitoba consumerism

our clients are of the view that it would be prudent to

**Slow the flow** of rate increases

## Decreased Confidence in Traditional Institutions

our clients are aware that a number of consumers are less trusting of the motivation and capacity of traditional institutions to deliver

our clients are of the view that a number of Manitoba consumers may be of the view that:

“Manitoba Hydro is not motivated to save money”

or that

“the new skyscraper says enough” about the state of its cost saving motivation

## **Hydro's vulnerability may well be exacerbated by the magnitude of proposed future rate increases**

our clients are alive to the reality that the pressures put on rates by the era of expenditure are likely to exacerbate consumer and and as a result Hydro vulnerability

especially as Manitoba Hydro seeks to

**GROW THE FLOW** of rate increases as compared to inflation

### Manitoba Inflation versus Forecast Manitoba Hydro Rate Increases

<u>Manitoba Inflation</u>	<u>Rates IFF09</u>	
<u>Year</u>	<u>Annual Rate</u>	<u>Annual Increase</u>
2009/10	-	-
2010/11	1.60%	2.80%
2011/12	1.90%	2.90%
2012/13	2.20%	3.50%
2013/14	2.10%	3.50%
2014/15	2.10%	3.50%
2015/16	2.10%	3.50%
2016/17	2.10%	3.50%
2017/18	2.10%	3.50%
2018/19	2.10%	3.50%
2019/20	2.10%	3.50%

Sources: Inflation – Appendix 51, page 3

Rate Increases – Appendix 5.2, page 34

Note: 2010/11 Increase reflects approved interim increase

## Manitoba Consumers are Vulnerable

We expect the record will show that rate increases over the next eight years beyond 2011/12, will be approximately 67% higher than inflation

In effect, imposing a significant **development surcharge** on already struggling consumers

There is a very real possibility that to the extent that Hydro is vulnerable today, that vulnerability will only increase in light of a growing disconnect between rate growth and the expected growth of inflation

## Serious Challenges in selling the decade of returns

Our clients are increasingly of the view

- that while it might be relatively easy in the context of this rapidly greying hearing room to sell the concept of a decade of returns to the Limestone Generation
- it has to be remembered that the current experience of many consumers with significant generation projects is materially different
- this is the Wuskwatim Generation – a generation with a significantly different experience from its predecessors
- a generation that quite rightly asked:

will the promised returns ever materialize

and if they do

where's the guarantee that there will not be another major expenditure that will eat up them up

## Conclusion

Considering the record as a whole, including the myriad and often countervailing questions raised and the vulnerability of today's consumers,

the Board should take opportunity for sober reflection offered by the Corporation's improved financial performance to slow the flow of rate increases

by rejecting the interim application of Manitoba Hydro

In doing so, our clients would recommend that the Board expressly find that:

- it is reasonable to expect that the hearing will conclude in June 2011 – leaving open the possibility that a final rate decision can be issued effective August 1, 2011;
- the Corporation has failed to discharge its onus to demonstrate that the existing rates are unjust and unreasonable. The existing rate is not unjust or unreasonable given the improved and better than forecast recent results of the corporation;
- the Corporation's materially improved financial results as compared to IFF-09-01 do not support the conclusion that financial instability or serious apprehended financial difficulties are likely to flow from a rate determination made effective August 1, 2011 as compared to April 1, 2011;
- the Corporation has failed to discharge its onus to demonstrate that a 2.9% interim rate interim increase is just and reasonable