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May 12, 2015

Public Interest Law Centre  
200-393 Portage Avenue  
Winnipeg, MB R3B 3H6

**Attention: Byron Williams**

Dear Mr. Williams:

**Re: April 28, 2015 Consumer Coalition Budget Amendment Request  
2014/15 and 2015/16 General Rate Application**

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The Public Utilities Board ("Board") is in receipt of your correspondence on behalf of the Consumer Coalition ("Coalition") requesting a budget amendment in respect of the Coalition's intervener participation in Manitoba Hydro's 2014/15 and 2015/16 General Rate Application ("GRA").

In its correspondence, the Coalition asked the Board to consider the following:

- reduce the proposed budget for La Capra from approximately \$97,000 (Cdn) to about \$53,000 (Cdn) for a proposed downward revision of \$44,000 on the grounds that written evidence will not be presented;
- eliminate the budget requirement for Mr. Stevens for a proposed downward revision of roughly \$2,000 on the grounds that Mr. Stevens' insight was not requested by Mr. Colton;
- eliminate the proposed budget for Dr. Booth for a proposed downward revision of \$26,700 on the grounds that written evidence will not be presented; and,
- insert a new budget line for the depreciation expert Ms Lee for a proposed increase in the budget of roughly \$26,000 (Cdn) on the grounds that her written evidence is necessary to assist the deliberations in this proceeding.

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In response to the Coalition's correspondence, the Board received written submissions from Manitoba Hydro and the Manitoba Industrial Power Users Group ("MIPUG"), dated May 6, 2015 and May 8, 2015, respectively. On May 11, 2015, the Board also received a reply submission from the Coalition responding to the submission of Manitoba Hydro.

### **The Board's Disposition**

The Board will accept the requested budget amendments set out above. However, the Board notes that in order to obtain any cost award following the GRA hearing, the Coalition will have to demonstrate that its intervention has met the criteria set out in rules 43 and 44 of the Board's Rules of Practice and Procedure. As such, the Board's acceptance of the budget does not constitute a guarantee that the Coalition will be entitled to a cost award in the full amount of its budget, or at all.

The Board rules as follows with respect to the issues raised in the submissions of the parties:

#### **1. Requested Dismissal of the Coalition's Correspondence as an Abuse of Process**

The Coalition submitted that its planned reduction to La Capra Associates' ("La Capra") budget was primarily due to the Coalition's choice not to call any La Capra evidence. According to the Coalition, this decision was motivated by deficiencies in Round 1 Information Requests and a non-robust disclosure in the hearing process that hampered La Capra's participation. The Coalition's submission appended two documents offering suggestions as to what a robust disclosure process might look like. The first document was the Ontario Energy Board Filing Requirements for Electricity Transmission and Distribution Applications approved on March 28, 2013. The second document was a study commissioned by the Canadian Electricity Association and prepared by Deloitte entitled "Asset Health Indices – A utility industry necessity." The Coalition's submission also provided a link to a recent Ontario Energy Board Filing made by PowerStream, an Ontario utility.

Manitoba Hydro submitted that the Coalition's package constituted an abuse of process and that the Coalition is improperly adducing evidence on the public record. Manitoba Hydro also states that to the extent the Coalition is taking the position that La Capra's work was hampered by a lack of access to electronic models, the Board has already rendered a ruling in Order 33/15 that working copies of electronic models need not be provided at this time, which ruling the Coalition did not apply to review and vary.

The Coalition, in its reply submission, stated that there is a distinction between evidence being adduced on the record and procedural submissions, and that the Coalition's submission is procedural in nature.

In the Board's view, the Coalition's April 28, 2015 package is a procedural submission. It is not evidence in the substantive hearing process. While it is the Board's practice to

assign exhibit numbers to correspondence, this practice is undertaken to ensure a completeness of the hearing record, and does not change the nature of the underlying document.

The Board does not consider the Coalition's submission to be an abuse of process, but rather an expression of one party's view of the reasons for a proposed budget amendment. All parties were able to comment with respect to the Coalition's proposal. As such, any parties not sharing the Coalition's view were able to make responding submissions to the Board, which the Board has taken into consideration.

## **2. Admissibility of Appendices and Documents Attached to an Information Requests to Patrick Bowman**

With respect to the information requests addressed to Mr. Patrick Bowman, Manitoba Hydro impugns two documents – firstly, the same copy of the Ontario Energy Board's filing requirements as appended to the Coalition's letter, and secondly, a newspaper article from the Wall Street Journal entitled "Utilities Profit Recipe: Spend More". Manitoba Hydro considers the addition of these articles to an information request to be an improper introduction of evidence. The Coalition states that Mr. Bowman is asked to comment on the documents from a policy perspective, a practice that it permissible and has been followed by various parties in the past, including the Board.

The Board does not consider the Ontario Energy Board document to constitute substantive evidence but rather a procedural rule-making document issued by another Canadian utility regulator, akin to the Board's Rules of Practice and Procedure. The Board sees nothing untoward in asking an expert witness an opinion with respect to the document, provided the document is within the expert's area of expertise.

With respect to the Wall Street Journal article, the Board notes that the document is not being adduced for the truth of its contents or to establish a material fact with respect to the GRA hearing. The article does not refer to Manitoba Hydro nor, for that matter, to any Canadian utility. It is being provided to elicit Mr. Bowman's opinion as to the concepts discussed in the article, which is not inappropriate.

## **3. La Capra's Retainer**

### **(a) Alleged Conflict**

Manitoba Hydro submits that it is inappropriate for La Capra individuals Alex Cochis and Dimitrios Kordonis to be involved in the GRA hearing process on behalf of an intervener. According to Manitoba Hydro, the Board only approved the retainer of La Capra by the Coalition based on the Coalition's representation that the La Capra witnesses who appeared during the Board's recent NFAT Review are not the La Capra witnesses assisting the Coalition in the GRA Hearing. Manitoba Hydro states that although Messrs. Cochis and Kordonis were not witnesses at the NFAT Review, they did play an active role in the preparation of evidence.

In its reply submission, the Coalition indicates that Mr. Kordonis worked on transmission issues at the NFAT Review while Mr. Cochis reviewed export contracts, neither of which relate to issues of sustaining capital spending for which La Capra has now been retained. The Coalition further states that both individuals confirmed to the Coalition that they did not rely on confidential information and that they understand that they are bound by confidentiality agreements they signed in the NFAT Review.

The Board notes that in Order 18/15, it approved La Capra's retainer by the Coalition, stating that:

The Board does not agree with Manitoba Hydro's submission that the Consumer Coalition's retainer of La Capra Associates is improper. The Consumer Coalition has advised that the proposed witnesses will not be the same as those who appeared during the recent NFAT Review. In any event, the Board does not accept the premise that La Capra would rely on or disclose any confidential information it obtained during that proceeding. Accordingly, the Board approves La Capra as an expert consultant for the Consumer Coalition in principle...

Manitoba Hydro did not bring a motion to Review and Vary this decision, but the Board accepts that until the April 28, 2015 budget of the Coalition was received, Manitoba Hydro was not aware of the identity of the individuals at La Capra assisting the Coalition and therefore not in a position to object. As such, it is appropriate for Manitoba Hydro to voice any concerns at this time.

Nonetheless, the Board is not convinced by Manitoba Hydro's submissions that Messrs Cochis and Kordonis are in a position of conflict, as neither is being retained with respect to issues they addressed in the NFAT Review and both are subject to non-disclosure agreements. As such, the Board's reasoning remains the same as in Order 18/15.

#### **(b) Blended Rates**

Manitoba Hydro submits that the Board should not approve blended rates for La Capra experts, and that each individual should be held to the Board's tariff. Manitoba Hydro states that in its experience, blended rates can result in one or more individuals being paid above tariff rates.

The Coalition submits that a blended fee approach is appropriate and allows a consultant to dispense optimal advice. The Coalition also notes that the Board has approved a blended-fee model in the past.

The Board has on occasion allowed blended rates in the past and notes that Manitoba Hydro's concerns are at least in part addressed by the requirement to obtain an accepted budget. As such, the Board is not prepared to pre-emptively disallow a

blended rate at this time. However, the Board notes that as part of any post-hearing cost award, it is the Board's practice to require a disclosure of hours billed and the Board retains discretion to disallow any unreasonable claims.

**(c) Access to Electronic Models**

While both the Coalition and Manitoba Hydro cite the Board's ruling in Order 33/15 with respect to the disclosure of electronic models to La Capra, the Board notes that there is no application or motion before the Board to review and vary Order 33/15, nor has any party brought a motion to compel productions. The Board takes notice of the Coalition's perspective on the impact that the Board's decision had on its proposed budget revision.

**4. Elimination of Budgets for Mr. Stevens and Dr. Booth**

The Board takes notice of the Coalition's explanation for the elimination of a budget for Mr. Stevens and Dr. Booth; this elimination was not contested by any of the parties.

**5. Appearance of Patricia Lee as a Witness**

MIPUG has retained Patricia Lee as an expert witness on depreciation. While Ms. Lee was retained late in the process, her evidence was filed at the same time as other intervenor evidence. MIPUG has not indicated an intention to apply for costs in respect of Ms. Lee's retainer, but has made it clear that MIPUG's budget does not allow MIPUG to fly Ms. Lee to Winnipeg to testify. To that extent, the Coalition has suggested that part of its budget be used to allow Ms. Lee to testify at the GRA hearing.

Manitoba Hydro objects on two grounds. Firstly, it submits that any cost implications with respect to Ms. Lee should have been presented at the Pre-Hearing Conference. Secondly, it submits that Ms. Lee does not have the necessary qualifications to appear as an expert witness. Furthermore, Manitoba Hydro voiced significant concerns about intervenors advising the Board and Manitoba Hydro about their intentions with respect to the retainer of consultants less than a month before the hearing.

MIPUG indicated, in its response, that Ms. Lee is a Certified Depreciation Professional and has been one of the editors of the NARUC manual on utility depreciation. As such, MIPUG submits that she is sufficiently qualified to provide expert evidence.

The Board does not make a ruling as to Ms. Lee's expert qualifications at this time, as she has not yet been properly qualified through oral examination and cross-examination. However, *prima facie*, Ms. Lee appears to have sufficient credentials not to pre-emptively disallow her testimony.

In the Board's view, it would have been preferable for MIPUG to advise of Ms. Lee's planned retainer at the Pre-Hearing Conference. It is difficult to prepare for a hearing and allocate staffing resources appropriately if parties are advised of proposed witnesses late in the hearing process. However, MIPUG did indicate, at the Pre-Hearing

Conference, that it might want to retain an expert witness on depreciation, and Ms. Lee's evidence was filed together with the evidence of other witnesses. As such, no actual prejudice has arisen and the Board is not prepared to disallow the evidence on procedural grounds.

With respect to the hybrid funding model proposed by the Coalition, the Board reminds all parties that it is the role of interveners and experts retained by such interveners to assist the Board. Unless an intervener does not apply for or receive a cost award, the cost of intervener experts are borne by ratepayers, regardless of whose budget notionally pays for the expert's fees. This means that the Board's foremost concern is whether testimony by Ms. Lee would assist the Board in making the required decisions in the GRA hearing and, as such, bring sufficient value to the proceeding to justify her presence.

In the Board's view, Ms. Lee's testimony is likely to assist the Board to understand the issues, and the Board considers it preferable for a witness who filed evidence to be available for cross-examination by the parties and questioning by the Panel. The Board is therefore prepared to notionally allocate the requested \$26,000 budget to the Coalition in respect of Ms. Lee.

The Board notes that CAC raised the possibility of contributing with MIPUG on depreciation issues in its intervener application, stating as follows:

In the event MIPUG chooses to call an expert witness on issues related to depreciation including the proposed approach to ELG and ASL, CAC Manitoba and Winnipeg Harvest will support MIPUG as may be requested.

Yours truly,

*"Original Signed By:"*

Kurt Simonsen  
Assistant Secretary

Cc: Board Counsel  
Interveners of Record