

# FillmoreRiley

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**BY E-MAIL**

Thompson Dorfman Sweatman LLP  
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2200-201 Portage Avenue  
Winnipeg, MB R3B 3L3

**Attention: Antoine F. Hacault**

Dear Sirs:

**Re: Manitoba Hydro GRA 2010/11 and 2011/12**

On behalf of the Public Utilities Board (PUB), we have been instructed to respond to your letter of objection (that on behalf of MIPUG and dated May 26 2011) which has been filed on the record of the above noted GRA as part of MIPUG's filings of May 26th. We confirm that your letter was also circulated by email to all interveners and email recipients on May 26 2011.

As you are aware, PUB has jurisdiction to control its own procedure in the conduct of any proceedings before it. Nothing in the PUB's procedural orders in this MH GRA limits its power to control the process at any stage of the hearing. Indeed, PUB is required to be flexible in its process in order to meet its mandate for all matters within its jurisdiction.

Section 48 of *The PUB Act* does not make the administrative process "adversarial", and MIPUG is not a party adverse in interest to any other participant in the GRA (as that term is understood in civil litigation). Further, Section 48 of the *Act* has no application to this ongoing public GRA process, which has been public and participatory from its commencement. MH remains the applicant, and MIPUG is an intervener by PUB order. MIPUG has been a full participant from the beginning and will remain so, with all of the rights afforded interveners in the PUB process.

In all regulatory matters, PUB routinely poses its own questions throughout any given hearing process on its mandate, this towards being well informed, so as to allow for the issuing of a proper decision in the application before it. PUB's direction to its counsel in this process to pose certain additional questions in writing to the independent experts KM is in accord with PUB's intention to be fully informed.

For further clarification, please also note that the PUB hearing panel is not confined in its timing to question witnesses at the oral hearing stage, either by direct questioning or through Board counsel. PUB is an administrative tribunal tasked in this case with rate

setting in the public interest. The process is not akin to civil litigation in court, which operates with a different rationale directed to the determination of private law disputes between parties (and which is governed by different rules of procedure as a result).

We confirm that upon PUB's instructions, pre-ask questions for KM were sent by email to counsel for KM, counsel for the interveners and all other email recipients on April 25 2011 by Board counsel. Further, and also on PUB's instructions, new undertakings 1 to 25 for KM were sent by email to counsel for KM, counsel for the interveners and all other email recipients on May 17 2011 by Board counsel.

A full review of the GRA hearing transcript of May 6<sup>th</sup> allows for consideration of the conditions regarding KM responses to the PUB pre-asks, as enumerated by counsel for PUB as well as counsel for MH and KM. KM's response procedure to the PUB pre-asks were outlined therein. MIPUG raised no objection on May 6<sup>th</sup>, and its counsel at the hearing (Mr. Hacault) did not address the issues on the record. Further, counsel for PUB and PUB's Chairman both noted in the closing comments of May 6<sup>th</sup> that such further undertaking questions were pending and would be issued before the resumption of the hearing on May 26<sup>th</sup>.

Subsequently, Board counsel's review of the transcript of May 6<sup>th</sup> did not result in a need to "consult counsel", as the conditions of response were clearly specified and recorded. When PUB counsel issued the request for responses of KM to the pre-asks and the new undertakings on May 17<sup>th</sup>, KM were specifically asked to respond in accordance with the May 6<sup>th</sup> conditions as directed by the panel. No objections to process on this issue (consultation) were received by PUB counsel from counsel for MIPUG, counsel for KM, MH, or any intervener upon circulation of the email request for responses from KM.

Mr. Hacault contacted PUB counsel by telephone upon receipt of the May 17<sup>th</sup> email, to raise the issue of scope and relevance of the new PUB undertaking questions, and as to process respecting the right of cross examination of MIPUG in the remainder of the hearing process. A discussion on these points occurred. No further follow up by MIPUG counsel was received and no other requests for consultation were sought, until the letter of objection was tabled with PUB on May 26, 2011.

Your client recognizes that KM were appointed by PUB as independent experts. MIPUG has consulted with KM, as have all of the other interveners, and MH. The record of KM consultations has been tabled by KM in its testimony. Broad consultation and access to KM was envisioned by PUB when it set the terms of reference for KM. KM also has its own counsel, who is in a position to represent the position of these experts in the process and has done so consistently.

MIPUG has the opportunity to cross examine KM, the same opportunity as afforded other interveners of record, and MIPUG is currently conducting cross examination of KM. The opportunity to do so results from PUB's decision to allow MIPUG to intervene, in order to assist PUB in its consideration of issues under review in the current MH GRA proceeding and to bring MIPUG's important perspective to the merits of the matters under review.

MIPUG's objections as contained in its May 26<sup>th</sup> letter are now tabled in the proceeding.

We trust that this reply offers clarity on the process issues raised.


PUB invites MIPUG to address the relevance of any evidence, or the weight, if any, to be given to any written evidence or testimony of any witnesses, including experts in this process as part of its closing submissions.

This reply will be tabled in the hearing on May 31, 2011 as a PUB Exhibit. It is being copied to all counsel and all GRA email recipients.

Yours truly,

**FILLMORE RILEY LLP**

Per:



**ANITA L. SOUTHALL \***

- cc. PUB – by e-mail
- cc. Manitoba Hydro Legal Department – by e-mail
- cc. Gavin Wood, Counsel for KM – by e-mail
- cc. Registered Interveners and Counsel – by e-mail

\*Services provided by Anita L. Southall Law Corporation