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ESTABLISHED 1995

Our File: 99195-003

June 23, 2011

The Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Fillmore Riley LLP
1700 – 360 Main Street
Winnipeg, MB R3C 3Z3

Attention: Hollis Singh, Associate Secretary

Attention: Robert F. Peters

Dear Mr. Singh and Mr. Peters;

**Re: Manitoba Hydro 2010/2011 & 2011/2012 General Rate Application
Written Closing Submissions**

Please find enclosed the written closing submissions submitted on behalf of Southern Chiefs' Organization Inc., intervener to the Manitoba Hydro 2010/2011 & 2011/2012 General Rate Application.

Thank you in advance,

RATH & COMPANY


Per:

 Jeffrey R.W. Rath

Enclosure

Treaty, Aboriginal Rights, Environmental Law & Litigation

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PUBLIC UTILITIES BOARD

MANITOBA HYDRO 2010/11 & 2011/12 GENERAL RATE APPLICATION

**WRITTEN SUBMISSIONS OF THE INTERVENER
SOUTHERN CHIEFS' ORGANIZATION INC.**

RATH & COMPANY
JEFFREY R.W. RATH
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**WRITTEN SUBMISSIONS OF THE INTERVENER
SOUTHERN CHIEFS' ORGANIZATION INC.**

1. Southern Chiefs' Organization Inc. ("SCO") represents the interests of 32 Southern Manitoba First Nations, who in turn represent more than 78,000 Band Members; all of which are ratepayers, consumers and clients of Manitoba Hydro ("MH").
2. MH is a Crown corporation owned by the Province of Manitoba.
3. SCO on behalf of their member First Nation communities have been trying to ensure that Southern First Nations' Aboriginal and Treaty rights and interests are considered throughout the *General Rate Application for 2010/11 and 2011/12 Rates* (the "GRA") process, hearing and decisions.
4. On December 4, 2009, MH applied to the Manitoba Public Utilities Board (the "Board") for approval of rate schedules incorporating a 2.9% average across-the-board increase effective April 1, 2010 pursuant to the *General Rate Application for 2010/11 and 2011/12 Rates* (the "GRA"). Entities and individuals were given an opportunity to submit an Intervener application to the Board to participate in the GRA process and hearing (the "Interveners").
5. On February 9, 2010, the Board delivered the *Procedural Order and Intervener Status: Manitoba Hydro General Rate Application for 2010/11 and 2011/12 Rates* (the "Order No. 17/10"). Pursuant to the Order No.17/10, any risk review of MH would be part of the GRA process and hearing, rather than a separate hearing, for the purpose of informing MH rates. As such the GRA process and hearing would include the following components:
 - a. Revenue Requirement ("RR"), Cost of Service ("COS") and Rate Design ("RD"); and
 - b. Risk review including review of risk and risk management ("Risk Review").
6. On March 18, 2010, SCO applied for Intervener status.
7. On March 26, 2010, the Board delivered the *Second Procedural Order and Intervener Status Applications of the New York Consultant and the Southern Chiefs' Organization Inc.: Manitoba Hydro General Rate Application for 2010/11 and 2011/12 Rates* (the "Order No. 30/10"). Pursuant to the Order No. 30/10 the Board granted Intervener status to SCO.
8. Pursuant to Order No. 30/10, the Board defined the scope of the Risk Review identifying the following key issues:
 - a. Are the policies and procedures in governance structures in place at MH to manage risks reasonably?

- b. Is MH's approach to risk management appropriate in the context of the objects and purposes of *The Manitoba Hydro Act*?
 - c. Does MH's decision making criterion reflect a reasonable risk/reward tolerance taking into account the consideration of the interests of its stakeholders?
9. Further, pursuant to Order No. 30/10, the Board stated that the Risk Review is not the proper forum for examination of specific allegations of liability *vis-à-vis* alleged property or other damages incurred by any First Nations. [Order No. 30/10, p.32]
10. On October 4, 2010, SCO filed Information Requests on the Risk Reports.
11. The focus of SCO's objectives in this process has been to ensure open disclosure and transparency of MH's Integrated Power System, management and operations.
12. On October 25, 2010, MH filed responses to SCO's Information Requests. SCO submits that the answers by MH to the Information Requests demonstrate anything but open disclosure and transparency. Specifically, in response to the Information Requests, MH refused to answer any questions regarding environmental impacts associated with MH operations.
13. SCO submits that the Board must not dismiss or negate claims of cumulative impacts and adverse affects on Southern Manitoba First Nations due to the on-going management, administration and operations of the Integrated Power System owned and operated by MH.
14. Also in response to the Information Requests, MH admitted that they did not consult with First Nations with respect to the price charged for GRA. [SCO MH II-8]
15. When asked whether there was a contingency fund in place, MH admitted that anticipated future mitigation payments involved in the operation of existing Integrated Power System are recorded as mitigation liability to the Consolidated Financial Statements. The liability is not referred to as a contingency fund. [SCO MH II-1]
16. The Board, MH and the Interveners cannot lose sight of the fact that the PUB hearing is not only about the GRA; it is also about an investigation into MH's risk management & risk assessment of the Integrated Power System, management and operations.
17. The classifications of water regulation sites such as Lake Winnipeg, Cedar Lake, South Indian Lake and other secondary sources such as Lake Manitoba/Lake Winnipegosis, Lake of Woods are considered "energy in storage – EIS". These are used to calculate and regulate the main reservoirs, which in turn generate revenue for MH at the expense of SCO First Nations' Aboriginal and Treaty rights and interests.
18. SCO submits that if the Board increases the rates that any increase should be set aside and earmarked for all Manitoba First Nations. The purpose of which would be to offset any compensation required to be paid as a result of the negligent operations of MH's

projects and facilities. SCO submits that this represents prudence and is just and reasonable in the circumstances.

19. SCO maintains that Aboriginal and Treaty rights and interests, although consistently and improperly ignored and neglected by MH and the Board, must be considered in rendering any decision by the Board regarding the GRA and the Risk Review.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF SOUTHERN CHIEFS' ORGANIZATION INC.

JUNE 23, 2011

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