



THOMPSON DORFMAN SWEATMAN LLP

THE PUBLIC UTILITIES  
BOARD OF MANITOBA

MAY 27 2013

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May 24, 2013

**VIA E-MAIL AND REGULAR MAIL**

Public Utilities Board  
Room 400, 330 Portage Avenue  
Winnipeg, MB R3C 0C4

Attention: Mr. Hollis Singh, Secretary

Dear Mr. Singh:

Re: Pre-hearing Conference  
Our Matter No. 0110409 AFH

We hereby incorporate the response of Manitoba Industrial Power Users Group to the three matters raised by the Chair of the Board at the May 16, 2013 pre-hearing conference. As indicated at the pre-hearing conference, we are also providing a copy of this response to Manitoba Hydro.

**MIPUG RESPONSE TO INTERVENOR STATUS AND COST AWARDS REGARDING  
THE NFAT REVIEW**

The Manitoba Industrial Power Users Group (MIPUG) submits the following comments for PUB review and consideration in relation to the May 16, 2013 Pre-Hearing Conference in regards to Manitoba Hydro's Needs for and Alternatives To (NFAT) Review.

At the May 16 Pre-Hearing Conference, in an exchange with the Public Utilities Board (PUB) Chair three items were noted which were to be addressed through a follow up letter:

- 1) Whether MIPUG does, or could for this hearing, either (a) represent the interests of a broader group of General Service (GS) customers, or (b) act as liaison or seek the input of a broader group of GS users (transcript page 179-182).
- 2) Whether MIPUG would be seeking recovery of costs, and whether that was to be addressed by way of a request for a preliminary determination under the PUB Rules of Practice and Procedures 43(c) and (d) regarding MIPUG's potential eligibility for costs.



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- 3) Whether MIPUG could indicate how its representation for this hearing is expected to work, and whether there are any issues of conflict.

Each of these matters is addressed below.

### **1. General Service Interests**

MIPUG's intervention in PUB hearings related to the broad public interest (e.g., the 1990 Major Capital Projects Hearing, the 1999 Centra Gas Purchase hearing) has focused on issues of primary concern to ratepayers broadly, linked to long-term rate levels and risks. These interests are expected to be common to commercial operations in Manitoba who are concerned about the level of rates over long horizons. While the issues are particularly acute for MIPUG members, for whom electricity costs make up a substantial portion of their overall cost structure, they would be similar for any long-term commercial operation.

MIPUG members represent over 5 TW.h of energy purchases a year. This is over 80% of the power consumed in the GS Large >100 kV and 30-100 kV classes overall, and over 1/3 of the total GS consumption. In addition to direct use, MIPUG companies support an extensive network of upstream and downstream businesses in Manitoba whose livelihood is heavily dependent, if not entirely tied, to the MIPUG customer operations. For example, there is a large component of steel goods manufacturing in southern Manitoba that is effectively entirely dependent on the operations of Gerdau Long Steel's Selkirk mill. These manufacturing operations are not direct members of MIPUG and are not included in the 5 TW.h of MIPUG consumption, but do represent an important additional component of Manitoba's overall General Service load. Further details on these linkages are set out in the MIPUG Economic Impact study which was filed in the 2012/14 General Rate Application (GRA) (IR: PUB/MIPUG-1).

MIPUG is an informal association. The only appointee the group has is Bill Turner, who serves as interim Chair. There is no standing budget, no standard membership fee, no office and no staff. Any new members are assessed an allocation of ongoing costs. This makes incurring substantial costs via the group an impediment to broader membership. The group operates on an effective consensus basis. Where consensus has been difficult to reach, common MIPUG positions are put forward by the group with any individual member who has unique interests or special circumstances providing their own supplemental submission to the Board. For example, in the 2008 EIIR hearing, the MIPUG group had a common objection to Hydro's proposal, but one member who was still in the development stages and was therefore acutely affected by the EIIR made its own supplemental submission on certain key motions.

MIPUG does not anticipate forming any form of formal coalition with other GS customer groups for the purposes of the NFAT hearing. However, MIPUG has been in touch with some related groups which represent other portions of the GS customer classes, and has agreed to explore options for information sharing and cooperation. In particular, MIPUG is exploring



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whether some industry associations are interested in setting up a consultation and input process with respect to their concerns. MIPUG will update the Board in regard to these efforts as they unfold, and prior to the August 30, 2013 Participant Status Application deadline.

## **2. Recovery of Costs**

MIPUG will not make a formal determination as to whether it will request cost recovery until cost submissions are due (typically at the end of the hearing). At that time, MIPUG expects cost submissions to be assessed based on the contribution of MIPUG as an intervenor.

In the interim, it would be of significant benefit to MIPUG to have an indication of the Board's view of MIPUG's cost eligibility in regard to section 43(c) and (d) of the Board's Rules of Practice and Procedure. As noted at the Pre-hearing conference, this determination would be expected to turn on the Board's view of MIPUG's financial resources as an association, and whether it is reasonable to expect the association or its members to solely shoulder the costs of an adequate intervention in a board policy-oriented hearing such as an NFAT. In particular, unlike GRAs where rate decisions will affect the finances of intervening parties immediately, the NFAT decisions may have large financial effects many of which may not be felt for decades.

In addition, it is important to note that as ratepayers of Manitoba Hydro, the MIPUG members' rates in future will be set to recover the costs of this hearing, including participation in the NFAT by all intervening parties, including MIPUG's costs if so awarded. However, that cost recovery will occur over a lengthy period of time as the NFAT costs and associated capital projects are amortized over their useful life, and not incurred as a one-time cost. This profile of cost allocation better matches the financial horizon of the NFAT review.

MIPUG has committed to the Board that it does not intend to incur unnecessary costs. For example, MIPUG does not anticipate participating in in-camera sessions if those sessions are largely of a "fact-confirming" role and form a minority of the hearing. MIPUG also has yet to determine if it will need to call any highly specialized expertise on individual items of the NFAT scope, but the preference for narrow highly specialized matters will be to rely upon on examination of subject-specific experts that are expected to be called by other parties and the Board.

## **3. MIPUG Representation**

As noted at the Pre-Hearing Conference, MIPUG has a standing relationship with both InterGroup Consultants Ltd. and with Thompson Dorfman Sweatman (TDS) as counsel.

InterGroup plays two roles with respect to MIPUG. First, InterGroup serves as a secretariat for the group - organizing meetings, administrative support, and compiling and forwarding invoices based on the group's agreed upon allocation method. Second, InterGroup also



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has provided, when requested by MIPUG, independent expert witnesses to testify before the PUB. Those witnesses have been retained to provide their individual expert opinions and not an advocacy of MIPUG's perspectives. InterGroup is not the only witness that MIPUG has retained.

TDS serves as MIPUG's advocate on PUB issues.

Each of TDS and InterGroup are also engaged by Manitoba Hydro on other matters.

In InterGroup's case, the company has worked for both MIPUG and Hydro basically continuously since MIPUG was created 25 years ago, and both clients are aware of the work for the other party. InterGroup's engagements with Hydro that are of relevance to the Keeyask and Conawapa projects relate to the provision of independent expert evidence and testimony on the impacts of Hydro's proposed generating stations on the socio-economic environment and the Public Involvement Program. These services include testimony for Hydro before the Clean Environment Commission panel. InterGroup also provides advice from time to time on environmental regulatory matters (such as Federal Environmental Assessment requirements, etc.). On these environmental files, InterGroup is not retained as an advocate for Hydro, but an independent expert evaluating the noted matters. While these matters are related to the PUB's scope in regards to NFAT Terms 2(h) and 2(i) (and to some extent 2(j)), these topics are not matters that MIPUG expects to address as part of the NFAT review. In addition, none of the InterGroup staff providing expert evidence at the PUB hearings are engaged on Manitoba Hydro assignments.

TDS similarly has other files relating to Hydro which are tangentially related to the NFAT terms of reference, but are not part of MIPUG's intervention in this proceeding. The other files relate to most of the issues which are specifically identified at pages 4 and 5 of the NFAT terms of reference as not being in the scope of the NFAT (the "Excluded Matters"). It is noted that TDS has its electronic information, files and documents on those Excluded Matters specifically segregated from electronic information, files and documents generally accessible by TDS lawyers and staff. Mr. Hacault and his assistant do not have access to the electronic information, files and documents on those Excluded Matters.

In the NFAT, TDS will represent MIPUG in accordance with its instructions. Based on the current instructions and the review by TDS of the NFAT terms of reference and the items specifically identified as not in the scope of NFAT, TDS does not expect a conflict of interest to arise.



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In the event an issue does arise during the conduct of the proceeding, MIPUG counsel has noted (Pre-Hearing Conference transcript from May 16, 2013, page 192) that MIPUG would immediately notify the Board and address the matter with the Board and Hydro.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:

A handwritten signature in blue ink, reading "Antoine F. Hacault".

Antoine F. Hacault\*

AFH/ab

cc: Manitoba Hydro  
Attention: Ms. Patti Ramage

Fillmore Riley LLP  
Attention: Mr. Bob Peters

\*Services provided through Antoine F. Hacault Law Corporation