

MANITOBA)
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THE PUBLIC UTILITIES BOARD ACT)
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THE MANITOBA HYDRO ACT) **Order No. 53/02**
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THE CROWN CORPORATIONS PUBLIC) **March 26, 2002**
REVIEW AND ACCOUNTABILITY ACT)

BEFORE: G.D. Forrest, Chairman
R. Mayer, Q.C., Vice-Chairman
Dr. K. Avery-Kinew, Member

MOTIONS BY CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) INC./MANITOBA SOCIETY OF SENIORS, MANITOBA INDUSTRIAL POWER USERS' GROUP AND CANADIAN CENTRE FOR ENERGY POLICY INC. IN RESPECT OF THE FORTHCOMING HEARINGS ON THE INTEGRATION OF CENTRA GAS MANITOBA INC. WITH MANITOBA HYDRO, AND STATUS UPDATE ON RATES CHARGED BY MANITOBA HYDRO

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1.0 Appearances

K. Kalinowsky	Counsel for The Manitoba Public Utilities Board (the “Board”)
M. Murphy	Counsel for Manitoba Hydro (“Hydro”)
J. Feldschmid	Counsel for Canadian Centre for Energy Policy Inc. (“CCEP”)
B. Meronek, Q.C./B. Williams	Counsel for the Consumers’ Association of Canada (Manitoba) Inc./Manitoba Society of Seniors (“CAC/MSOS”)
T. McCaffrey	Counsel for Manitoba Industrial Power Users’ Group (“MIPUG”)
M. Buchar	Counsel for Time to Respect Earth’s Ecosystems Inc./Resource Conservation Manitoba (“TREE”)

2.0 Witnesses for Manitoba Hydro

V. Warden	Chief Financial Officer, Vice President Finance and Administration, Manitoba Hydro
L. Wray	Division Manager of Business Analysis and Regulatory Affairs, Manitoba Hydro
D. Cormie	Division Manager of Power Sales and Operations, Manitoba Hydro
R. Wiens	Manager of Rates and Policies, Manitoba Hydro
H. Surminski	Section Head for Resource Planning and the Marketing Analysis Group, Manitoba Hydro

3.0 Intervenors

- (a) CCEP
- (b) City of Winnipeg
- (c) CAC/MSOS
- (d) MIPUG

- (e) Manitoba Keewatinowi Okimakanak Inc./Natural Resources Secretariat (“MKO”)
- (f) Municipal Gas
- (g) Provincial Council of Women of Manitoba Inc. (“PCWM”)
- (h) TREE

4.0 Motions on Disclosure of Information in Status Update on Rates Charged by Manitoba Hydro

4.1 Background

The Board received various correspondence from MIPUG dated February 26, 2002, and CAC/MSOS dated February 21, 2002 and February 28, 2002 which outlined a number of Information Requests which Manitoba Hydro had declined to answer. The Board issued notice on March 8, 2002 that it would hear motions on this matter on March 19, 2002. Further correspondence on this matter was received from CAC/MSOS dated March 14, 2002 and from CCEP dated March 15, 2002.

4.2 Positions of Parties

4.2.1 CAC/MSOS

CAC/MSOS had concerns with Manitoba Hydro refusing to answer a number of its Information Requests because of commercial sensitivity. CAC/MSOS argued that this has hindered its preparation of expert evidence and the development of its case. Without this evidence from Manitoba Hydro, CAC/MSOS argued it was undermined in preparing its evidence on the appropriate financial targets, cost allocation, the Curtailable Rates Program, and the reasonableness of rates in light of financial performance.

CAC/MSOS argued that all parties should have access to all relevant information so they can prepare their case through a transparent public process. An exception to this is when disclosure may materially prejudice the utility. In this instance, Manitoba Hydro has not satisfied the onus that disclosure should be outweighed by the commercial sensitivity of the material and the harm that disclosure may cause.

With the export market comprising 40 per cent of Manitoba Hydro’s revenues, it is critical to review the assumptions about the future of this revenue stream. Therefore, a breakdown of forecast exports into types of sales, volumes, and revenue was required. Only with this information available would CAC/MSOS be able to comment on the reasonableness of future revenue forecasts. CAC/MSOS acknowledged that marginal costs are proprietary, and CAC/MSOS was not seeking disclosure.

An extension of time to file evidence was also sought in light of the fact that the motion was heard two days prior to the timetable deadline for the filing of intervenor evidence.

On March 21, 2002, after the close of the hearing, CAC/MSOS wrote to the Board noting that notwithstanding Manitoba Hydro's assertions that it does not have to file material on forecast export sales and prices in other regulatory jurisdictions, CAC/MSOS alleged that regulatory filings to the National Energy Board contain such information.

4.2.2 MIPUG

MIPUG argued that Manitoba Hydro has failed to respond to a number of questions addressing key issues including:

- Information on actual or forecast marginal costs and exports that has been provided in the past but is now considered to be commercially sensitive;
- Information that is necessary based on the proposed changes to the Cost of Service Study; and
- Various other questions.

MIPUG argued that Manitoba Hydro's claim for confidentiality was not justified in all instances. The Board needs to balance the competing interests of Manitoba Hydro asserting confidentiality with the public interest in having the information disclosed and tested in a public forum. MIPUG stated that various Information Requests were vital to its active participation, and disclosure would not undermine the significant benefits derived from export sales.

MIPUG also argued that any confidential information, if filed with the Board in confidence, not be relied upon by the Board in making its decision because such confidential information was not fully and publicly tested. Furthermore, should Manitoba Hydro not be required to provide the marginal cost forecasts in the Cost of Service Study, then the previous Board approved Cost of Service Study should be reverted to.

An extension of time was also sought to file intervenor evidence pending the Board's decision on the motion.

4.2.3 CCEP

CCEP also sought to have Manitoba Hydro respond to its Information Requests which had not been answered due to commercial sensitivity. CCEP sought disclosure of marginal costs, arguing that as an integral component of a cost of service study, marginal costs should be disclosed and the cost of service study viewed in its entirety as a package.

CCEP argued that if the Board made a finding of commercial sensitivity, then in camera proceedings could be instituted amongst the intervenors and the Board to ensure confidentiality from competitors yet allow intervenors to test the evidence.

4.2.4 Manitoba Hydro

Manitoba Hydro argued that it had provided all relevant material which it can without prejudicing its commercial operations in the export market including some information provided in aggregated form. Disclosure of detailed information on the export market will cause harm to Manitoba Hydro. The release of commercially sensitive information would result in fewer or lower priced long-term export sales, and would significantly diminish Manitoba Hydro's revenues from the sale of long-term high valued power – which could result in hundreds of millions of dollars of lost revenue.

Affidavit evidence was provided stating that by divulging price information, customers and competitors may be able to disaggregate the information to the point where they would be able to predict Manitoba Hydro's behaviour in future transactions and negotiations, thereby putting the success of future export sales at risk. Also, given the nature of the transactions and the sheer size, often there is only one transaction, and hence, it cannot be disaggregated. Irreparable harm could arise if competitors and customers gain access to the pricing information and use it to their advantage against Manitoba Hydro. Prices could be determined resulting in Manitoba Hydro losing its competitive advantage, confidentiality clauses could be breached, and information could be used by competitors and those opposed to Manitoba Hydro's participation in the U.S. export market.

To other Information Requests, Manitoba Hydro stated it was unable to respond on the basis of time constraints in some cases. General information or rough calculations were provided. However, the time and resources required to respond to some questions would be prohibitive.

In a letter dated March 22, 2002 Manitoba Hydro stated that its filings to the National Energy Board were on historical sales and did not disclose Manitoba Hydro's long-term firm price nor Manitoba Hydro's view of its future export market, nor its future mix of firm and spot export sales. Furthermore, such information has not been filed on the public record with the Minnesota Public Utilities Commission nor the Mid Continent Area Power Pool.

4.3 Board Findings

4.3.1 Information Requests on the Export Market

After weighing the balance between the public interest in needing to test the evidence in a public forum and the commercial sensitivity of disclosing such information, the Board concludes that the possible harm that may result from such disclosure is significant. A loss of a major sale or the undermining of Manitoba Hydro's commercial reputation may adversely affect export revenue, and would not be in the public interest. In respect of all information requests on export markets for which Manitoba Hydro has not provided a response citing the reason of commercial sensitivity, the Board will accept Manitoba Hydro's reasoning.

The Board is of the belief that the parties have sufficient information on the record already to prepare their evidence, and test the evidence of Manitoba Hydro, on all matters in respect of the review of whether domestic rates are just and reasonable. The export market is notoriously volatile, and a further breakdown of the forecast relating to the export markets will only nominally assist the Board in reviewing the current domestic rates of Manitoba Hydro.

Accordingly, the motions by MIPUG, CAC/MSOS, and CCEP in which production of responses to export market information requests, including marginal costs, was sought, will be denied, subject to the following comments.

The Board reviewed the materials filed after the hearing by CAC/MSOS and the responses by Manitoba Hydro. The Board notes that the National Energy Board filings are retrospective, rather than prospective, and accordingly, do not assist in establishing any further information on Manitoba Hydro's future export sales, prices, or view of the market. The Minnesota Public Utilities Commission has not required disclosure on its public record and the Mid-Continent Area Power Pool filings deal with transmission matters under its open access transmission tariff. The Board expects that any information provided to other regulators and on their public record, whether actual or forecast, also be disclosed to the Board and the intervenors. In general, the Board expects such disclosure by Manitoba Hydro to this Board, to be no less than that to any other regulator. Should CAC/MSOS wish to make use of any of the information on the public record of another regulatory body, it can do so in its filed evidence.

4.3.2 All Other Information Requests

For all other information requests intervenors sought to disclose, the Board will deal with each on an individual basis as set out below.

Information Request	Topic of Information Request	Board Direction
MIPUG I-8b	Capacity sales	Do not answer – commercially sensitive
MIPUG I-16a, b	Avoided costs	Do not answer – commercially sensitive
MIPUG I-30b	Allocation to reserves	Answer at a high level, if possible, otherwise do not answer
MIPUG I-42 c	Summer capacity	Do not answer – commercially sensitive
MIPUG I-26d	Impact of PCOSS changes in prior years	Answered for 2002, further details not required
MIPUG I-26f	Refile PCOSS using previous methodology	Answered, further details not required
MIPUG I-32a	Marginal costs	Do not answer – commercially sensitive
MIPUG I-32 e	Marginal costs	Partially answered – balance to remain unanswered due to commercial sensitivity
MIPUG I-32f	Impact of increased gas costs	Do not answer - Board is not convinced of merits and relevance
MIPUG I-32g	Impact of increased gas costs	Do not answer – Board is not convinced of merits and relevance
MIPUG I-33 l	Coincident peaks	Do not answer – Board not convinced of merits and relevance
MIPUG I-37	Winnipeg Hydro revenue	Do not answer – Board not convinced of merits and relevance

MIPUG I-2fii	Time of Use rates	Answer response removing customer information - no commercial sensitivity shown
MIPUG I-3a	Comparison of electrical heating by market	Do not answer. Board is not convinced of merits and relevance
MIPUG I-8a	Export market	Partially answered – remainder to remain unanswered due to commercial sensitivity
MIPUG I-8g	Export market	Do not answer – Board is not convinced of merits and relevance
MIPUG I-8h	Export market	Partially answered – remainder to remain unanswered due to commercial sensitivity
MIPUG I-12c	Export market	Do not answer – commercially sensitive
MIPUG I-19d v, vi, vii	Extend IFF to 2018	Do not answer – Unreasonable request
MIPUG I-32c ii	-	Unidentified request
CAC/MSOS II-15	Subsidiaries	Already answered
CAC/MSOS II-34	Water flow conditions	Already answered
CAC/MSOS II-46a	Curtable service program	Already answered
CAC/MSOS II-48	Curtable service program	Already answered
CCEP I-2	Marginal costs	Do not answer – commercially sensitive
CCEP I-20	Review of general service customers	Answered partially – remainder to remain unanswered due to commercial sensitivity

On the issue of the avoided cost study, the Board directs it to be filed with the Board. However, this filing should be in confidence since it is commercially sensitive. The Board wants to review the study, especially in light of its importance in the cost of service study, to ensure that rates are just and reasonable. Accordingly, arrangements are to be made to file the avoided cost study with the Board in confidence.

The Board has amended the timetable, attached as Appendix A, for the orderly exchange of information prior to the commencement of the status update hearing on the rates charged by Manitoba Hydro.

5.0 Motions on Centra Integration Update Matters

5.1 Background

Included in the notice issued by the Board on March 8, 2002 were various matters in respect of the upcoming hearing on the integration of Centra Gas Manitoba Inc. with Manitoba Hydro. These concerns were set out in correspondence of CAC/MSOS dated February 21, 2002, March 14, 2002 and March 18, 2002 and from MIPUG dated February 26, 2002. The motions were also heard on March 19, 2002.

5.2 Position of Parties

5.2.1 CAC/MSOS

CAC/MSOS which sought an Order of the Board for the production of those Information Requests which have not been produced, including requests of the Board, and an extension of time to file expert evidence. The Information Requests are on numerous subject areas and are argued to be necessary for the purposes of adjudicating on the integration of Centra and Manitoba Hydro.

5.2.2 MIPUG

MIPUG put forward a motion to compel disclosure of all information which addresses material one-time issues with respect to Centra which would be properly included within the scope of a generic integration review, and in particular, fall within the scope of integration matters set out in Board Orders 146/99 and 14/01. Information Requests were not answered on the following issues which have the ability to materially impact electricity ratepayers in addition to gas ratepayers: treatment of disallowed assets, write-up of Centra's assets, regulatory treatment of acquisition costs, and the need to maintain Centra's rate increases on a status quo basis prior to achieving suitable financial targets.

MIPUG also sought an Order of the Board to clarify all one-time issues arising as a result of the purchase of Centra Gas are within the scope of the Centra Integration hearing including:

- Requirements to maintain Centra Gas distribution rate increase on the status quo ownership basis, and how this baseline can be measured;
- Continued use of rate base/rate of return methodology for Centra Gas;
- Treatment of the debt issued to purchase the shares of Centra Gas, including the allocation of the debt between electricity and gas customers;

- Accounting and regulatory treatment of the one-time costs arising as a result of the acquisition;
- Impact of Centra Gas on the financial targets of Manitoba Hydro;
- Treatment of Centra's assets that are disallowed from rate base, and means to ensure electricity ratepayers are protected from the costs of these assets;
- Means to ensure the benefits of the purchase are not allocated in the form of lower rates prior to adequate financial targets being achieved;
- Approach to be used to allocate benefits of the purchase once adequate financial targets have been achieved.

An extension of time to file evidence was also requested.

5.2.3 Manitoba Hydro

Manitoba Hydro noted that a number of Information Requests were more appropriate for a general rate application rather than the subject of the integration hearing and accordingly, should be deferred to the general rate application. Some of the Information Requests could not be responded to due to time and resource constraints.

With respect to the request for clarification of the scope of the hearing, Manitoba Hydro argued that this sought to re-address issues around the acquisition of Centra, in addition to addressing issues more appropriate to a general rate application.

Manitoba Hydro also noted that it will be responding to approximately 35 Information Requests in just a few days after the hearing of this motion.

5.3 Board Findings

MIPUG has requested the Board clarify the scope of the upcoming hearing and, in particular, find that a list of issues are to be dealt with at the upcoming integration hearing. The Board states that all one-time issues arising as a result of the purchase of Centra by Manitoba Hydro be within the scope of the upcoming integration hearing, but will not deal with the list of issues on an issue by issue basis. The Board will, however, deal with the particular information requests on an individual basis as set out below. The Board has found that several of the information requests are more appropriately dealt with at a general rate application. This should provide guidance as to what are appropriate issues to be heard at the upcoming integration hearing.

The Board has amended the timetable, as attached Appendix B, for the orderly exchange of information prior to the commencement of the review of the integration of Centra Gas Manitoba Inc. with Manitoba Hydro.

5.3.1 All Other Information Requests

Information Request	Topic of Information Request	Board Direction
MIPUG I-7a	KPMG Report	Do not answer – already dealt with at acquisition hearing
CAC/MSOS I-47	Electronic Filing	Provide filing electronically of portions in electronic existence already
CAC/MSOS I-1b	Pension obligation	Answer financial information without identifying individual
CAC/MSOS II-44	Depreciation Study	File study
CAC/MSOS II-53	Customer service	Do not answer – matter is more appropriate for a GRA
CAC/MSOS I-12	Net income summary schedules	Already answered – no further answer required
CAC/MSOS I-20	Safety reports to Board of Directors	Do not answer - safety issues can be asked of senior management in cross examination

CAC/MSOS I-55	Enlogix	Do not answer – matter is more appropriate for a GRA
CAC/MSOS I-74	Enlogix	Do not answer – matter is more appropriate for a GRA
PUB II-20a	IT systems comparison	File comparison

6.0 IT IS THEREFORE ORDERED THAT:

1. The motions to disclose all information requests on the export market and marginal costs that Manitoba Hydro declined to answer on the basis of commercial sensitivity BE AND ARE HEREBY DENIED to the extent that such information is not disclosed on the public record in other regulatory proceedings.
2. The avoided cost study be filed in confidence with the Board.
3. The motions to disclose other information requests are to be dealt with as set out under Board Direction in sections 4.3.2 and 5.3.1 of this Order.

THE PUBLIC UTILITIES BOARD

“G. D. FORREST”
Chairman

“G. O. BARRON”
Secretary

Certified a true copy of Order No. 53/02 issued
by The Public Utilities Board

Secretary

APPENDIX A

**AMENDED TIMETABLE FOR THE
STATUS UPDATE ON RATES CHARGED BY MANITOBA HYDRO**

Manitoba Hydro to file responses to Information Requests	March 28, 2002
Intervenors to file evidence	April 5, 2002
Parties to file Information Requests on intervenor evidence	April 11, 2002
Intervenors to file responses to Information Requests	April 17, 2002
Manitoba Hydro to file rebuttal evidence	April 30, 2002

APPENDIX B

**AMENDED TIMETABLE FOR THE
CENTRA INTEGRATION HEARING**

Intervenors to file evidence	March 26, 2002
Parties to file Information Requests on intervenor evidence	April 3, 2002
Intervenors to file responses to Information Requests	April 8, 2002
Manitoba Hydro to file rebuttal evidence	April 12, 2002
Hearing to Commence	April 15, 2002