

MANITOBA) Order No. 43/04
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THE PUBLIC UTILITIES BOARD ACT) March 24, 2004

BEFORE: Graham F. J. Lane, CA, Chairman
R. A. Mayer, Q.C., Vice-Chairman
Dr. K. Avery Kinew, Member

**ORDER FOR A PUBLIC HEARING PROCESS REGARDING THE
APPLICATION BY MANITOBA HYDRO IN RESPECT OF:**

- I. A GENERAL RATE APPLICATION;**
 - II. AN EXTENSION OF THE TERMS AND CONDITIONS OF THE
SURPLUS ENERGY PROGRAM TO MARCH 31, 2007;**
 - III. CONFIRMATION OF INTERIM EX-PARTE ORDERS.**
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Background

The Public Utilities Board of Manitoba (the “Board”) held a Pre-Hearing Conference (“PHC”) at its offices in Winnipeg, Manitoba on Wednesday, March 17, 2004. The PHC considered applications for intervenor status and the timetable for the orderly exchange of information related to the public hearing of Manitoba Hydro’s (Hydro) application in respect of:

- I. A General Rate Application;
- II. An Extension of the Terms and Conditions of the Surplus Energy Program to March 31, 2007; and
- III. Confirmation of interim ex-parte orders.

At the PHC, a Notice of Public Hearing and the PHC, dated February 25, 2004, was filed as Exhibit #1; it described the various matters before the Board as noted above.

Application for Intervenor Status

The following parties, through attending counsel and/or advisors, made application for intervenor status:

(a) **Consumers’ Association of Canada (Manitoba) Inc./Manitoba Society of Seniors (“CAC/MSOS”)** applied to intervene stating a desire to test the proposed rate increase as to its justification. An issues list was provided, listing the following areas of interest to CAC/MSOS:

1. The prudence of Hydro’s proposed operating, maintenance and capital expenditures for the period.
2. The level of financial reserves needed by Hydro, and its financial targets.
3. The question, do average rate increases need to exceed inflation?

4. The Cost of Service Study's treatment of the Uniform rate Policy – fully paid for by residential customers.
5. Surplus Power Rates: CAC/MSOS seeks a confirmation of benefits before making the rates permanent.
6. The impact on and treatment of the Winnipeg Hydro acquisition, by Manitoba Hydro.
7. The drivers supporting the change in Hydro's financial outlook from its Integrated Financial Forecast 01-01.
8. The appropriateness of revising Revenue to Cost Coverages for two consecutive years.
9. New Demand Side Management programs: when and how will these programs be reviewed by the Board?
10. The impact on Hydro's bills to customers under the proposed rate changes.

CAC/MSOS stated it would likely call a witness to give evidence with respect to revenue requirements and cost of service matters. CAC/MSOS also advised it will be seeking an award of costs, and filed a proposed budget for their intervention including disbursements aggregating \$77,575.

Hydro indicated no objection to CAC/MSOS being granted intervenor status, but questioned their perception of a similarity of interest and approach of CAC/MSOS and MKO.

(b) **Manitoba Industrial Power Users' Group ("MIPUG")** applied to intervene, indicating it would assess the proposed Hydro rate increase and determine the need for the increase and its forecast impact on Manitoba ratepayers, particularly industrial customers. MIPUG indicated it had not determined whether it would file evidence and call witnesses, and advised it did not anticipate an application for an award of cost. Accordingly, it did not file a proposed budget for its intervention.

Hydro did not object to MIPUG being granted intervenor status.

(c) **Time to Respect Earth's Ecosystems Inc. and Resource Conservation Manitoba ("TREE")** requested intervenor status, for the primary purpose of examining the impact that Hydro's rates have on energy conservation and climate change. TREE noted that the issue of an inverted rate structure raised by TREE at the last Hydro proceeding is now the subject of a review to be conducted by Manitoba Hydro as ordered by the Board (the report is not due until the end of 2004). TREE indicated its focus at this proceeding would be on demand/energy and cost of service issues. TREE indicated it plans to call Mr. Jim Lazar, a consultant based in the U.S. who had previously appeared before the Board on behalf of TREE.

TREE stated it had no financial resources to fund its intervention and will seek an award of costs. TREE requested that as the Board awards costs only on a post hearing basis, it would appreciate early assurances an award would be made.

TREE did not provide a proposed budget for its intervention, and indicated it would do so later.

Hydro indicated no objection to the granting of intervenor status to TREE, but requested that TREE be mindful of the Board's Guidelines for an Award of Costs, particularly, the requirement for co-operation with others on overlapping issues.

TREE stated that its organization has expertise related to conservation and pricing, and that this expertise may be unique and allow its focus to be different from that other intervenors. However, Tree stated that where it found its issues to be shared with other intervenors, it would cooperate with the other intervenors in its intervention.

(d) **Canadian Centre for Energy Policy ("CCEP")** applied to intervene to represent the interests of small commercial and non residential ratepayers of Manitoba Hydro, particularly within the General Service Small (GSS) and, to some extent, General Service Medium (GSM) customer ratepayer classes.

CCEP stated that its primary effort would be to test Hydro's rate application, to determine whether these classes of ratepayers are contributing a fair and reasonable amount of revenue toward Hydro's operations in relation to the cost of serving them. CCEP further stated it would test whether Hydro's overall revenue requirement is such that the proposed rate increases for the GSS and GSM classes could be reduced or eliminated. CCEP indicated that in the last proceeding it successfully intervened, and was provided an award of costs.

CCEP indicated it did not expect to call a witness, but it would apply for costs. The Board sought a completed Intervenor Request Form, with a list of directors and members. Subsequent to the PHC, CCEP submitted these lists, and a proposed budget of \$54,150.

At the PHC, while Hydro did not indicate an objection to the granting of intervenor status to CCEP, per se, it reserved the right to provide further comments upon the receipt of the organization's membership list and proposed budget. CCEP provided Hydro with this information following the PHC, and, subsequently. Hydro suggested to the Board that it would be more efficient for CCEP "... to advance its views by means of presentation rather than intervention." Hydro submitted that CCEP's membership was not representative of the GSS and GSM rate classes, and that it was unlikely CCEP would add to the understanding of either the revenue requirement or cost of service issues. Hydro stated that it would object to any application by CCEP for an award of costs

(e) **International Brotherhood of Electrical Workers (Local 2034) ("IBEW")** indicated it had a membership of 2350 Hydro field employees, all ratepayers of Hydro. IBEW stated it was supportive of the General Rate Application, and that its concerns were with respect to cost of living increases and external factors affecting the operation of Manitoba Hydro, such as NAFTA.

IBEW indicated it would appear at the hearing as much as possible, cross-examine witnesses and provide closing argument. IBEW stated no intention to call a witness, and that it would not be applying for costs.

IBEW expressed concern about the impact cost awards have on the operations of Hydro. IBEW filed an Intervenor Request Form.

Hydro indicated no objection to IBEW assuming a monitoring role, as an intervenor with a right to make a presentation to the Board.

(f) **Manitoba Keewatinook Ininew Okimowin (MKO)** described its organization and the substantial interest of First Nations in the outcome of the rate hearing proceeding, both at the PHC and by a subsequent letter. MKO listed its areas of interest to be:

- Examine and test matters driving or influencing Hydro's financial forecast as reflected in Hydro's revenue requirement;
- Examine and test the proposed rate design, suggesting alternative approaches as appropriate;
- Determine the impact of the proposed rates on customer use and rates.
- Examine Hydro's comprehensive integrated energy services approach to its I customers who are citizens of the MKO First Nations, including DSM, supply options and multi-fuel options; and
- Address the special interests of the MKO First Nations in respect of the provision of an adequate and affordable supply of electricity by Hydro and in respect of the relationship between Hydro and its customers who are citizens of the MKO First Nations.

MKO indicated an intention to appear throughout the hearing, test evidence, call a witness, and present final argument. MKO advised it would be applying for costs, and provided a proposed budget of \$114,367.50.

At the PHC, Hydro opined that the issues identified by MKO were very similar to the issues to be canvassed by CAC/MSOS, and that the interests represented by MKO are adequately represented by CAC/MSOS. Hydro recommended that the Board join these organizations for the purpose of intervenor status. Subsequently, following the PHC, Hydro advised the Board that "... it is unlikely that MKO will add to the understanding of rate related issues beyond that which CAC/MSOS brings to the proceedings."

Hydro further opined that MKO's identified concerns could be adequately communicated by presentation rather than intervention.

In response to Hydro's comments, by letter MKO disagreed with Hydro's view that MKO and CAC/MSOS have identical interests. MKO stated in part that "The MKO First Nations customers of Manitoba Hydro represent a distinct set of customer interests that include culture and language, Aboriginal and Treaty Rights, social and economic demographics, relative isolation and the inter-fuel mixes available to provide overall energy services."

MKO further advised that its "... special interests also arise from the fact that all of the large hydroelectric projects constructed by Manitoba Hydro are located within the MKO region, as is most of Manitoba Hydro's major transmission system..

In this way, Manitoba Hydro power production operations interact in a direct and often very personal way with many members of the MKO First Nations who are also Manitoba Hydro customers.”

Manitoba Hydro General Comments

At the PHC, having heard the interest areas of the applicants for intervenor status, Hydro expressed concern about its perception of a significant overlap of issues identified by the applicants, and strongly encouraged the parties to form joint interventions and participate in a co-operative manner. Hydro indicated that it wanted the intervenors to be mindful of the Board’s jurisdiction as to rates.

At the PHC, CAC/MSOS and MKO responded by indicating past extensive co-operation among the parties and indicating that each party acts singularly when it perceives differences in positions from the other. CAC/MSOS agreed to explore areas of potential cooperation, but opined that conflicts of interest and differences of view between them do exist and arise, requiring flexibility of approach

Timetable

By way of an earlier letter forwarded by Hydro to known interested parties, a draft timetable (marked as Exhibit #2 at the PHC), was pre-circulated. At the PHC, various intervenor applicants expressed views and preferences for the timing of the exchanges of information leading up to the date for the commencement of the public hearing.

In particular, TREE advised that because of prior commitments its witness would be unavailable to TREE until well into the process, and TREE would likely be unable to meet the March 22, 2004 filing date for information requests. TREE asked if it could file late, perhaps with the information requests due April 26, 2004.

The Board's counsel indicated, as noted on the timetable, that all filing dates are "by no later than" dates, and requests should be filed as soon as possible. And, if required filings are not filed by March 22, 2004, Hydro may treat such requests as second round information requests and respond on May 17, 2004.

Board Comments and Findings

While TREE's Intervenor Request Form has not been submitted as of the date of this Order, in the interests of timeliness the Board decided to rule now on all applications for intervenor status.

This is only Hydro's second rate proceeding since 1996, and the first since the update proceeding recently held. Except for IBEW, all parties are repeat applicants for intervenor status.

The Board is prepared to grant intervenor status to:

- a) CAC/MSOS;
- b) MIPUG;
- c) TREE;
- d) CCEP;
- e) IBEW; and
- f) MKO.

While accepting the application for intervenor status of CCEP, the Board is not convinced that CCEP significantly represents the interests of the largest commercial ratepayer class of Manitoba Hydro, namely the GSS and GSM classes. As Hydro has pointed out in its submission with respect to CCEP, the organization's membership list comprises less than sixty members in very few industry categories. While the members of CCEP are customers of Hydro, the Board understands there to be approximately 45,000 small business accounts in a wide range of industries.

While the Board has considerable reservations with respect to this matter, and suggests that CCEP may wish to consider a presenter status rather than that of an intervenor, it acknowledges that the customer classes represented as being served by CCEP deserve an opportunity to be heard. Accordingly, the Board will grant intervenor status to the organization if it does not accept the suggestion to present rather than intervene. That being said, the Board advises CCEP that it expects it to cooperate with the other intervenors towards best ensuring an efficient and effective hearing, and that the Board's membership and representation concerns with respect to CCEP will be a consideration if CCEP seeks an award of cost.

While TREE has been accepted as an intervenor, it has yet to file an Intervenor Request Form, including a proposed budget. TREE has indicated an intention to call a witness that has previously appeared before the Board. The Board expects that if this witness is called, the evidence to be presented would be different from previous testimony and be related to the matter at hand.

With respect to CAC/MSOS and MKO, the Board has concerns with respect to the magnitude of the proposed budgets, and notes some potential for duplication of efforts. The Board continues its request of the parties to cooperate with each other and the other intervenors, to further the efficiency and cost effectiveness of the hearing.

The Board notes that neither MIPUG nor IBEW have indicated an intention to apply for costs, and that both organizations have indicated a willingness to cooperate with the other intervenors.

With respect to the awarding of costs, the Board is mindful that costs awarded by it to intervenors are, in the end, expenditures of Hydro, and are distributed between the various rate classifications and ratepayers. As well, while rate setting is clearly of importance to both Hydro and its ratepayers, the process itself represents significant costs to Hydro and it is incumbent on all parties to the process to act in an effective and efficient manner. Hydro's costs are not only with respect to responding to interrogatories but also in preparing for and participating in the hearing. This process involves direct and indirect personnel and advisor costs, and requires a considerable time investment by Hydro.

The awarding of intervenor status by the Board does not imply that all or any of the costs incurred by intervenors will be awarded by the Board. In making a decision to award cost the Board follows four criteria, which are set out in the Board's Rules of Practice and Procedure.

Criteria:

In any proceeding the Board may award costs to be paid to any intervenor that has:

- a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding by all parties of the issues before the Board;
- b) participated in the hearing in a responsible manner and cooperated with other intervenors who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
- c) insufficient financial resources to present the case adequately without an award of costs; and
- d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.

Following the hearing, the Board will ask Hydro for its view on each application for costs, and then take the issue of the awarding of costs under consideration and make its decisions.

The Board stresses that even if in its view the tests it has set for the awarding of costs are met, it is not obliged to award costs or, if costs are awarded, to meet the total request. Along with the criteria for an award of cost, the Board is also concerned with such matters as billing rates, time, disbursements, etc.

As well, the Board expects that:

- a) the efforts and expenditures incurred by intervenors will be commensurate with the fact that a recent review of Hydro has taken place; and
- b) a high degree of cooperation between the intervenors will occur, to reduce the occurrence of unnecessary overlap.

The Board will not award costs with respect to an intervenor's learning curve.

As the Board will not determine whether costs will be awarded, in whole or in part, until after the hearing, intervenors, particularly new intervenors, may wish to consult with Board staff in advance of incurring costs and making commitments to intended witnesses and advisors with respect to their intended approach to their intervention.

Board staff will, on request, work with intervenors on a without prejudice basis. This, in an effort to reduce the chance of failed expectations with respect to the awarding of costs. This approach is similar to the practice followed by the Canada Customs and Revenue Agency, where agents provide informal views not binding on the Minister.

The Board is also of the opinion that both Hydro and the intervenors must work cooperatively to ensure that the process is efficient and cost effective.

That being said, the Board advises that intervenors may follow a course of action consistent with the scope of matters before the Board, in accordance with their own assessment of their interests, though the awarding of costs remains the Board's prerogative. The Board understands that its ability to represent the public interest is enhanced by the contribution intervenors make to a better understanding of the issues.

In summary, cost awards represent a cost of business to Hydro, and reasonable efforts should be made by intervenors to ensure reasonable regulatory efficiencies, while testing and commenting upon the General Rate Application filed by Hydro.

The Board has no ability to provide awards of costs in advance of the hearing, yet understands the uncertainty and risk that this poses for intervenors. As such, it has provided the opportunity for intervenors to consult with Board staff, though its decisions will not be fettered by such consultations and do not bind the Board.

All intervenors intending to seek an award of costs should file a proposed budget, and provide the Board updates in a timely fashion.

IT IS THEREFORE ORDERED THAT:

1. Intervenor status is awarded to the following applicants:
 - (a) Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors (CAC/MSOS);
 - (b) Manitoba Industrial Power Users' Group (MIPUG);

SCHEDULE "A"

TIMETABLE

MANITOBA HYDRO GENERAL RATE APPLICATION

| ITEM | By No Later Than Dates (all 2004 dates) |
|---|--|
| File Application | January 30 |
| Publish Notice in Daily/Weekly Newspapers | March 6 – 12 |
| Pre-Hearing Conference | March 17 |
| Receipt of 1 st Round Information Requests | March 22 |
| File Responses to 1 st Round Information Requests | April 19 |
| Receipt of 2 nd Round Information Requests | April 26 |
| Publish Reminder Notice | May 8 – 14 |
| File Responses to 2 nd Round Information Requests | May 17 |
| All Parties to be in Receipt of Intervenor Evidence | May 28 |
| All Parties to be in Receipt of Information Requests of Intervenor Evidence | June 2 |
| Intervenors to file Responses to Information Requests | June 7 |
| File Rebuttal Evidence | June 11 (Noon) |
| Hearing Dates, as necessary | June 14, 15, 16, 21, 22, 23, 28, 29, 30 |
| Possible Order Date | July 28 for August Bill Cycle |

Key Dates:

Good Friday, April 9
Easter Monday, April 12
CAMPUT Conference May 9 - 12
Victoria Day, May 24