

**MANITOBA**  
**THE PUBLIC UTILITIES BOARD ACT**  
**THE MANITOBA HYDRO ACT**  
**THE CROWN CORPORATIONS PUBLIC**  
**REVIEW AND ACCOUNTABILITY ACT**

**Order No. 136/07**

**October 26, 2007**

Before:     Graham Lane, C.A., Chairman  
              Robert Mayer, Q.C., Vice-Chairman  
              Len Evans, LLD, Member

**EXTENSION OF APPROVALS FOR SURPLUS ENERGY PROGRAM  
AND EXISTING INTERIM RATES,  
AND  
PROCEDURAL ORDER AND INTERVENER STATUS:  
MANITOBA HYDRO GENERAL RATE  
APPLICATION FOR 2007/2008 AND 2008/2009 RATES**

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## **1.0 Executive Summary**

By this Order, The Public Utilities Board (Board):

- a) provides conditional approval to Manitoba Hydro (MH) to extend the Surplus Energy Program (SEP) until April 30, 2009, unless amended or extended by a further Order of the Board;
- b) extends the interim rate increase approval granted MH under Order 20/07, until an Order is issued in relation to the 2007/08 and 2008/09 General Rate Application (GRA);
- c) grants intervener status to a number of interested parties; and
- d) establishes a timetable and process for the orderly exchange of evidence leading up to the public hearing of MH's GRA.

Herein, Intervener status is provided to:

- a) Consumers' Association of Canada (Manitoba) Inc., Manitoba Society of Seniors and Winnipeg Harvest (hereinafter referred to as the COALITION);
- b) Manitoba Keewatinook Ininew Okimowin (MKO);
- c) Manitoba Industry Power Users Group (MIPUG);
- d) City of Winnipeg (CITY); and
- e) Resource Conservation Manitoba and Time to Respect Earth's Ecosystems (RCM/TREE).

For reasons stated below, the Board herein denies intervener status to Allan Ciekiewicz while indicating the availability of information to him and inviting him to make his presentation to the Board at the hearing.

By a Public Notice published October 6, 2007, the Board advised of MH's application to confirm existing interim rates, for new 2008/09 rates, and for an extension to SEP. At the Pre-hearing Conference (PHC) held October 15, 2007, MH requested that, given the notice period required if SEP were to be terminated, the Board extend its approval of SEP such as to allow sufficient time for a proper review to be conducted within the GRA process.

Also at the PHC held at Board offices in Winnipeg, wherein prospective interveners indicated areas of primary interest for the GRA, the Board heard applications for intervener status and considered a timetable for the orderly exchange of evidence and scheduling of the public hearing.

## **2.0 EXTENSION OF SURPLUS ENERGY PROGRAM**

SEP is the mechanism by which MH prices electricity generated in excess of its immediate requirements, for potential sale to its large Manitoba customers. Average spot market prices for SEP are determined weekly, using Board-approved methodology and involving the issuance of interim Board Orders.

SEP provides large Manitoba commercial customers additional access to electricity on an interruptible basis, with pricing established similar to that offered by MH to "opportunity" export sales customers or, in the case where MH expects to import power, at a price reflective of MH's cost plus a surcharge. When MH has surplus energy and is not importing power, SEP benefits large customers able to make use of additional electricity.

Under SEP, participating customers accept or decline electricity delivery at the prices offered. SEP participants are responsible for meeting any service interruption by means of their own back-up generation. SEP net revenues result from sales pursuant to the program, and these are net of related imputed costs - costs represented by after-the-fact wholesale spot energy market pricing.

Essentially, SEP provides MH revenue from domestic industry that it would otherwise realize by selling of its excess generation to the Midwest Independent System Operators (MISO) market (basically American utilities). SEP is expected to “break-even” on an annual basis, that is, return to MH what it would have received if it had exported the electricity.

By Board Order 173/06, the Board approved an extension of the SEP to the earlier of October 31, 2007 or a further Board Order to result from an application to extend SEP by MH. By Order 173/06, MH was directed to include a review of SEP in its GRA filing.

MH has now filed its rate application, and it encompasses a review of the SEP. However, as the GRA hearing will not take place until March 2008, MH noted that a twelve month notice to terminate SEP was required for its customers according to a previous Board Order, and requested the Board approve the extension of SEP to October 31, 2008, to allow for appropriate deliberation within the upcoming GRA proceeding. Interveners present at the PHC were canvassed, and none objected to an extension being approved.

On deliberation, the Board has determined that it would be appropriate to provide MH an eighteen month extension of SEP, concluding April 30, 2009, in recognition of the required twelve month notice period in the event of the termination of the program and the fact that the results of the GRA, to come in the form of a Board Order, would not be known until April 2008 at the earliest.

### **3.0 EXTENSION OF INTERIM RATES**

By Board Order 20/07, dated February 28, 2007, MH was granted a 2.25% interim rate increase, which was to remain in force until December 31, 2007 or until a further Order of the Board.

In recognition of the timetable established herein to review the GRA, the Board grants an extension of the interim rate increases which shall now remain in force until an Order is issued with respect to the GRA.

### **4.0 APPLICATIONS FOR INTERVENER STATUS**

#### **Consumers' Association of Canada (Manitoba) Inc., Manitoba Society of Seniors and Winnipeg Harvest (COALITION)**

Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors (CAC/MSOS) have long represented general consumer and seniors' issues at Board regulatory proceedings. At the PHC, CAC/MSOS indicated that it was applying for intervener status in conjunction with Winnipeg Harvest, and that, provided the details of the association were worked out, it will form a 'coalition' expressing an interest in all issues pertaining to MH's application.

The COALITION indicated its interest to appear throughout the hearing, test evidence, and make final argument, and that it planned to engage expert witnesses with respect to GRA matters. The COALITION advised it intended to apply for costs and proposed a hearing budget of \$138,595.

#### **Manitoba Keewatinook Ininew Okimowin (MKO)**

Also a longstanding intervener at Board proceedings related to MH, MKO's application for intervener status indicated interests in the areas of financial forecasts, rate design, the impact of rates on MKO First Nation customer use and bills, and MH supply of comprehensive and

integrated energy services to customers who are citizens of MKO First Nation. MKO noted special interests of MKO First Nations with respect to the provision of an adequate and affordable supply of electricity.

MKO indicated its intention to participate throughout the hearing, produce and test evidence, and present final argument. While MKO indicated its intent to engage and call a witness, and to apply to the Board for costs, MKO advised it was not in a position to provide a budget at the PHC.

Manitoba Industry Power Users Group (MIPUG)

MIPUG indicated an intention to examine and test MH's proposed across-the-board 2.9% rate increase for all rate classes, and the MH proposed new large industrial rate for new and expanding loads.

MIPUG advised it would appear throughout the hearing, produce and test evidence and present final argument. MIPUG noted an intention to engage and call witnesses, and that it will not seek a cost award from the Board.

City of Winnipeg (CITY)

The CITY indicated an intention to appear concerning the rates for area and roadway lighting, and that it will participate throughout the hearing through the production and testing of evidence. The CITY further advised an intention to present final argument, and noted neither an intention to call a witness nor to seek costs.

Resource Conservation Manitoba and Time to Respect Earth's Ecosystems (RCM/TREE)

RCM/TREE indicated an interest in examining issues associated with the implementation of the new cost of service study, the potential application of marginal costing including reference to

market and environmental values, the determination of rate structures, the allocation of export earnings to the various customer classes or alternative measures Demand Side Management (DSM) programming and funding, including special low income programs, and other issues related to the application of principles of sustainability, social justice and economic optimization.

RCM/TREE indicated an intention to appear throughout the hearing, produce and test evidence, engage and call a witness, and present final argument.

RCM/TREE advised of its intention to apply for costs, and proposed a budget of \$87,685.

Allan Ciekiewicz

Mr. Ciekiewicz, an individual MH customer representing his own interests, requested intervener status. He advised that, as he was not an intervener for the previous GRA proceeding, he may have missed receipt of some information, and, thus, he seeks intervener status so as to ensure he obtains proceeding information from the outset of the upcoming proceeding. Mr. Ciekiewicz advised of his intention to address various MH issues, including MH's debt:equity ratio and level of retained earnings, thermal generating stations, water flow forecasts, and the impact of rates on residences dependent upon electrical service for space heating.

Mr. Ciekiewicz indicated an interest in appearing throughout the hearing, provided he is available, and advised an intention to participate in the testing of evidence and the presentation of final argument. He advised of neither an intention to engage witnesses, nor to seek an award of costs.

Subsequent to attending the PHC, Mr. Ciekiewicz provided the Board and other parties present at the PHC with a letter dated October 22, 2007. In his letter, Mr. Ciekiewicz elaborated on the points he made before the Board and responded to various matters cited in MH's oral and written objection to his being granted intervener status.

## **5.0 MANITOBA HYDRO'S COMMENTS**

With the exception of an objection to Mr. Ciekiewicz's application for intervener status, MH expressed no objections to the applications, though the Corporation expressed a right to comment either on budgets yet to be filed or amended, or pending a detailed examination of budgets filed at the PHC.

MH expressed a general concern over its perspective of a potential redundancy in the evidence to be produced by the various witnesses being proposed by the applicants for intervener status, and sought assurance that the evidence to be provided by these witnesses would provide unique points of view while avoiding duplication.

With respect to the COALITION, MH noted a proposed substantial increase in costs compared to previous awards to CAC/MSOS, and encouraged the Board to ensure that any redundancies are avoided.

By a letter dated October 18, 2007, MH indicated an intention to object to the admission of evidence and/or an award of costs related to any intervener evidence focused on the creation or modification of DSM or other MH programs.

MH suggested it was ... "concerned that the parties may be seeking to submit evidence on matters outside (sic) the scope of the GRA." MH also suggested that the Board's jurisdiction to review MH's revenue requirements does not enable the Board to approve, reject or vary MH's DSM programs.

And, with respect to the application for intervener status by Mr. Ciekiewicz, both at the PHC and by its October 18, 2007 letter to the Board, MH expressed concern, citing that Mr. Ciekiewicz

did not represent a group, and suggesting that the interests of individual consumers would be represented by the COALITION. MH suggested that Mr. Ciekiewicz's status at the GRA would be more appropriately that of a presenter, rather than as an intervener.

## **6.0 BOARD FINDINGS**

The Board accepts all applications for intervener status, with the exception of Mr. Ciekiewicz. The Board notes that all interveners to be accepted by this Order have participated responsibly in previous Board proceedings and expects this will continue to be the case.

The Board notes MH's concern with respect to potential redundancy of witness evidence and potentially excess cost awards, and cautions all parties to avoid, through cooperation with each other, redundancies, so as to constrain regulatory costs and ensure an effective and efficient GRA proceeding.

As noted by MH, CAC/MSOS intends to call two experts, and RCM/TREE one expert, to examine MH's DSM programming, perhaps with a focus on low-income and "hard to reach" consumers. While the Board agrees with MH that this would be an area where interveners should co-operate to avoid duplication, the Board disagrees with MH that the Board lacks jurisdiction to approve, reject or vary DSM programs included in the GRA.

As indicated in the Public Notice, upon any application to it, the Board may issue an Order approving, in whole or in part, the application, or, the Board may grant such further or other relief in addition to, or in substitution for, that applied for, as it considers in the public interest, as if the application had been for such further or other relief.

The Board reserves its discretion as to accepting and subsequently providing cost awards to interveners. The granting of a cost award by the Board is discretionary and dependent on the Board's view of how such an award would serve the public interest. Criteria used by the Board

in its assessment of cost award applications, though not binding on the Board, are set out in the Board's Rules of Practice and Procedure, which may be found on the Board's website at [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca). In addition to the criteria, the Board reminds interveners as to limits on reimbursements with respect to the hourly rates charged by professionals and other assisting parties; guidance is available from Board staff.

As to the application by Mr. Ciekiewicz, and after considering his submissions made both before the Board and by his October 22, 2007 letter, the Board will deny him intervener status; the Board agrees with MH's assessment and concerns.

Approving intervener status for an individual representing only his/her own interests risks extraordinary regulatory costs and time commitments (for the Board, MH and other Parties) for this and future hearings, not considered to be in the public interest. The areas of concern to Mr. Ciekiewicz are similar to the areas of concern of the COALITION. In an effort to avoid duplication, Mr. Ciekiewicz should provide his specific issues to counsel for the COALITION, for consideration in the information requests advanced.

That said, the Board will grant Mr. Ciekiewicz Presenter status, and will also ensure that all publicly available information related to the application is available to Mr. Ciekiewicz for his review, which may take place at either the Board's offices or those of MH and at a time or times mutually convenient and on proper notice. Through a presentation at the GRA, aided by preparation assisted by access to information, the Board is confident that Mr. Ciekiewicz will be able to express his concerns and present his areas of interest to the Board.

## **7.0 TIMETABLE**

Board Counsel met with prospective interveners, and, through a consultative process, proposed a timetable agreeable to the Board, as reflected in Schedule "A" attached to this Order.

**8.0 IT IS THEREFORE ORDERED THAT:**

1. The Surplus Energy Program approval IS HEREBY extended to April 30, 2009 on an interim basis, unless amended or extended by a further Order of the Board.
2. The interim rate increases granted Manitoba Hydro in Orders 20/07 and 21/07 ARE HEREBY extended until superseded by an Order to arise from the General Rate Application.
3. Schedule "A" as attached shall be the Timetable for the orderly exchange of information by the participating parties for the General Rate Application.
4. Schedule "B" as attached shall apply with respect to the hearing of Manitoba Hydro's Application.
5. Interveners to the hearing shall be:
  - a) a COALITION consisting of the Consumers' Association of Canada (Manitoba) Inc., Manitoba Society of Seniors and Winnipeg Harvest;
  - b) Manitoba Keewatinook Ininew Okimowin;
  - c) Manitoba Industry Power Users Group;
  - d) City of Winnipeg; and
  - e) Resource Conservation Manitoba and Time to Respect Earth's Ecosystems.
6. Application for intervener status by Mr. Ciekiewicz is HEREBY denied.

THE PUBLIC UTILITIES BOARD  
"GRAHAM LANE, CA"  
Chairman

"GERRY GAUDREAU, CMA"  
Secretary

Certified a true copy of Order No. 136/07  
issued by The Public Utilities Board

\_\_\_\_\_  
Secretary

## SCHEDULE "A"

### MANITOBA HYDRO 2007/2008 AND 2008/2009 RATES

#### TIMETABLE

Item	Date (no later than)
Pre-Hearing Conference	October 15
MH to be in receipt of 1 <sup>st</sup> Round Information Requests (all parties)	November 9 (by noon)
MH to file responses to 1 <sup>st</sup> Round Information Requests	December 5
MH to be in receipt of 2 <sup>nd</sup> Round Information Requests (Note: Integrated Financial Forecast due to be filed by MH ≈ November 23)	December 14 (by noon)
MH to file responses to 2 <sup>nd</sup> Round Information Requests	January 18 (by noon)
All Parties to be in receipt of Intervener Evidence	February 1 (by noon)
All Parties to file Information Requests of Interveners	February 8 (by noon)
Interveners to file responses to Information Requests	February 20
MH to file Rebuttal Evidence	February 27
Board to hear Motions, if any, brought on proper notice to Parties	February 29
2007/8 and 2008/9 GRA public hearing commences	March 3 and following

## **SCHEDULE "B"**

### **PROCEDURES TO BE FOLLOWED AT THE MANITOBA HYDRO 2007/2008 AND 2008/2009 RATES**

1. Hearing and Rural Meetings:
  - a) Winnipeg hearing will be held at the Board's office, 4<sup>th</sup> floor, 330 Portage Avenue, Winnipeg, commencing on March 3, 2008 at 9:00 a.m. and continuing thereafter as necessary.
  - b) Rural Meetings (if necessary) - time, location and place to be identified.
  
2. Hearing Times Each Day: 9:00 a.m. to 12:00 Noon  
1:15 p.m. to 4:00 p.m.  
(amendments may be made by the Board at the hearing)
  
3. Assigned Sittings: Presenters will be heard commencing at 1:15 p.m., on Monday, March 3, 2008, and at 7:00 p.m. if necessary.
  
4. Opening Statements by Board Counsel, by Counsel for MH and other Counsel or representatives of registered interveners.
  
5.
  - (a) MH to file their application and supporting evidence.
  - (b) MH to introduce witnesses. Board Counsel and interveners to cross-examine the Corporation's witnesses (order to be determined).
  
6.
  - (a) Leading of testimony by witnesses for interveners, if any, will be in alphabetical order by name of interveners and updated as necessary.
  - (b) Witnesses to be available for cross-examination by all parties following each presentation.
  
7. All interrogatories are to be filed and responded to using the prefixes as assigned by the Board when interveners are registered (set out in the body of the Order). The party requesting information is to use firstly their prefix followed by the prefix of the party being asked e.g. PUB(MH), etc. Interrogatories are to be numbered sequentially through 1st and 2nd rounds

8. All pre-filed evidentiary material to be filed at the commencement of the hearing by Board Counsel using assigned prefixes.
9. All witnesses to highlight their evidence.
10. All witnesses to be sworn or affirmed.
11. Daily transcripts will be available. Parties to make arrangements with the Reporter. Transcripts can be found at [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca) at no charge.
12. It is the Board's request that all motions be dealt with pursuant to the Board's Timetable.
13. The Board's Rules of Practice and Procedure (available on the Board's website) dealing with the Awarding of Costs will apply to all matters before the Board.
14. The Board indicates its willingness to be available for any problems that may arise during the exchange of information at any time, such time to be arranged through Board Counsel.
15. Seven (7) copies of material are to be submitted to the Board's offices and three (3) copies are to be submitted to Board Counsel at the following address: Attention: R. F. Peters, Fillmore Riley, 1700 – 360 Main Street, Winnipeg, Manitoba, R3C 3Z3.
16. Except for all material required to be filed by MH, as previously arranged by MH, electronic copies of all material including the evidence of parties, are required to be submitted to the Board's e-mail address: [publicutilities@gov.mb.ca](mailto:publicutilities@gov.mb.ca). Where schedules accompany an electronic file, that filing must be discrete and include only the item and schedules to which each refers. The electronic files shall be named in accordance with their parties prefix as per #7. All electronic filings shall be in Adobe Acrobat format, without protection securities that might preclude them from being included in one Multiple Files Document.