

**MANITOBA**

**THE PUBLIC UTILITIES BOARD ACT**

**THE MANITOBA HYDRO ACT**

**THE CROWN CORPORATIONS PUBLIC  
REVIEW AND ACCOUNTABILITY ACT**

**Order No. 17/10**

**February 9, 2010**

Before:     Graham Lane, C.A., Chairman  
              Robert Mayer, Q.C., Vice-Chairman

**PROCEDURAL ORDER AND INTERVENER STATUS:  
MANITOBA HYDRO GENERAL RATE APPLICATION  
FOR 2010/2011 AND 2011/12 RATES**

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## **1.0 Executive Summary**

By this Order, the Public Utilities Board (Board) approves:

- a) interveners, to participate in the review of Manitoba Hydro's (MH) application for 2010/11 and 2011/12 rates;
- b) a process for the orderly exchange of information in relation to that application; and
- c) a timetable related thereto.

Intervener status is granted to:

- a) Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors (CAC/MSOS);
- b) Manitoba Keewatinowi Okimakanak, Inc. (MKO);
- c) Manitoba Industrial Power Users Group (MIPUG);
- d) City of Winnipeg (City); and
- e) Resource Conservation Manitoba and Time to Respect Earth's Ecosystems (RCM/TREE).

This Order follows a public process involving two Pre-Hearing Conferences, the first of which was held on December 10, 2009 and dealt specifically with issues surrounding the review of MH's risk management, with the second Pre-Hearing Conference held on December 22, 2009 and which dealt with the broader issues of MH's application. As to the latter, it followed a public notice published on December 12, 2009.

## **2.0 Risk Management Review**

In accordance with previous directives issued by the Board, MH filed in confidence with the Board documents related to its risk management assessment and practices. While the Board was pleased to have received these filings, it determined that a special process was required to appropriately deal with the confidential nature of the risk management filings.

To that end, the Board issued notice to interveners of record in prior proceeding, as well as to MH, to attend a special Pre-Hearing Conference on December 10, 2009, in order to review and discuss a process to deal with confidential material that will allow for an appropriate review of MH's risk management.

CAC/MSOS, MIPUG, the City and RCM/TREE attended the Pre-Hearing Conference to present their views; MKO indicated an intention to attend, but was unable to participate.

Prior to the Pre-Hearing Conference, Board Counsel distributed six questions for participants to consider for the risk review process, those being:

1. Please outline the process for MH risks review – should it be Part 1 of the GRA hearing and precede the regular GRA process, or should it be incorporated in the GRA itself (per the historical approach to risk review taken)?
2. Please confirm if the intervener you represent wishes to file evidence and provide oral testimony as part of the process, including expert evidence. Please advise if the intervener you represent wishes to cross-examine witnesses for other participants. If participation is not intended to be full and active, advise as to the level of participation being sought.

3. Please identify what discovery processes you recommend be implemented in the pre-oral testimony hearing phase for the process, and a proposed schedule if available. (An interrogatory (IR) process with the balance of the GRA issues, or a separate interrogatory process?)
4. Please address the issue of confidential filings and/or submissions respecting risk issues, and the process the board ought to adopt to determine what documents or portions of documents should be kept confidential by the Board and not placed on the public record. Please also identify acceptable processes to allow access to other parties upon conditions that maintain confidentiality. (*Note: please consider the Board's current Rules of Practice and Procedure regarding confidential filings.*)
5. Please address the issue of intervention and cost awards respecting the risk review process, and whether the standard rules applied by the PUB for MH GRAs should apply to the process; and if not, why not?
6. Please address the issue of whether the Board should consider engaging an independent 'risk consultant' to review all reports filed? If so, what process do you recommend be followed with that consultant's report?

## **2.1 Manitoba Hydro**

MH acknowledged that risk management was an integral process in MH's operations and that a risk management process was essential to ensure that there were no unreasonable risks that, if actualized, could or would result in undue rate impacts. However, MH was then-concerned about duplicative processes that might result from the fact that MH has engaged an external consultant to complete a quality review, a review expected to be completed and filed by the end of March 2010.

MH was also concerned with the Auditor General's indication that she would also be conducting an audit of MH's risk management process. MH opined "the timing is not appropriate for yet another stand alone review to be initiated".

Addressing the six questions raised by the Board, in the order as expressed above:

1. MH opined that the focus of the GRA should be on the impact of risk in the test years and that the review of risks should be part of the normal rate review process.
2. MH did not address this question, which was directed to interveners.
3. MH recommends two rounds of IRs, as contained in a draft schedule that was circulated prior to the December 10, 2009 conference.
4. MH stressed the importance of confidentiality with respect to certain contract terms, including pricing information and cyber and physical security issues. MH agreed to work with the parties to provide a level of disclosure that satisfies their needs without having to resort to filing information in confidence.
5. MH opined that the Board should continue to follow its normal practices with respect to awarding of costs.
6. MH advised that the Utility saw no need for an independent risk consultant to be hired by the Board but, should the Board decide to proceed to engage such a consultant, MH expected that any evidence that may ensue would be presented to the interveners and to MH, to review and test the information during the hearing process.

## **2.2. Interveners**

### **2.2.1 CAC/MSOS**

CAC/MSOS began by expressing its opinion that “the time is right within the context of the general rate application” to address MH risk issues, noting that while MH had reported having attained its retained earning that level of retained earning “should not be acting as a crutch for imprudent management activities”.

Addressing the six questions raised by the Board, again in the order set out above:

1. CAC/MSOS opined that a third component of the GRA should be added to the normal review of revenue requirements and cost of service, namely one dealing specifically with risk. Giving credit to MIPUG, CAC/MSOS also suggested an alternative which would see the traditional application deal only with 2010/11 rates followed by a fall session which would delve more thoroughly into the risk analysis as part of the 2011/12 GRA.
2. CAC/MSOS intends to participate fully in whatever processes established including the engagements of the Messrs. Harper and Matwichuk to bring evidence on all issues that it intends to address including risk management.
3. CAC/MSOS was not prepared to specifically address issues related to the schedule but were concerned about the IR process in that much of the information had not yet been filed, especially related to risk.
4. CAC/MSOS was of the strong view that confidential filings should be shared with all interveners with agreements of confidentiality signed by each of those interveners and their consultants, which would preclude their releasing of any information publically but

which would allow them to review and test any information upon which the Board might base its decisions.

5. With respect to award of costs, CAC/MSOS suggested some latitude might be considered by the Board in relation to interveners who might not normally be funded where they are bringing risk analysis expertise to the table to assist in informing the Board in that regard.
6. CAC/MSOS sees the value of an independent consultant but is concerned that engagement solely by the Board might compromise the Board's independence on the issue. CAC/MSOS suggested that such an external expert should work cooperatively with all the interveners and be subject to testing and cross examination, should the Board proceed with that option.

### **2.2.2 MIPUG**

MIPUG representatives opened with the caution that the intervener had not yet had an opportunity to consult with all of its members, and then presented positions based on MIPUG's "traditionally held" approaches.

With respect to the six questions:

1. MIPUG opined that the review is most appropriate in light of the fact that the information has not been made available and the fact that there has been a public concern expressed over MH's risk management practices. MIPUG was concerned that dealing with the risk issue as part of the GRA might put undue focus on this aspect of the application to the detriment of other considerations. MIPUG reiterated CAC/MSOS' alternative proposal to deal with 2010/11 rates, without risk management issues and to have a special process initiated in the fall of 2010 to deal with the 2011/12 rates and thorough assessment of risk management in that process.



2. MIPUG representatives had yet to consult with their members to determine the level of involvement it needed to consider the issue of costs related to any additional process resulting from risk review.
3. MIPUG supported a separate IR process to deal with risk issues.
4. MIPUG believed that it was better to err on the side of making sure documents relied on in decision making are made public and noted CAC/MSOS' proposal with respect to binding participants to confidentiality.
5. MIPUG encouraged the Board to consider relaxing its cost rules for unique processes such as a risk review, in order to allow all to participate and inform the Board more thoroughly.
6. MIPUG did not support the Board's engagement of an independent risk consultant expressing concern that it would lead to testing the Board's evidence as opposed to the applicants' evidence.

### **2.2.3 RCM/TREE**

Addressing the Board's six questions:

1. RCM/TREE held that the risk management review of MH should be integrated into the review of the GRA.
2. RCM/TREE intends to participate in the filing of evidence and the provision of oral testimony but with respect to an independent consultant, sees an opportunity for efficiency as discussed in response to question 6 below.
3. RCM/TREE supports the normal course of information requests process.

4. RCM/TREE supports the practice of providing confidential information to all participants under a confidentiality agreement.
5. RCM/TREE suggested that the Board consider cost awards for interveners that might not otherwise receive same, if those interveners were dealing with a special issue with the intent of informing the Board.
6. With respect to the Board hiring an independent risk consultant, RCM/TREE saw a potential for efficiencies in such an approach provided that the external consultant be made available to all interveners to ensure that all risk management interests of all parties are fully addressed. RCM/TREE acknowledged the complexity of risk management issues, and saw the advantage of having one independent expert brought by other than MH, rather than the duplicity of experts dealing with the issue.

#### **2.2.4 City**

Because of the City of Winnipeg's chosen limited scope of interest in attending the GRA, the City remains focused on Area and Roadway (street) Lighting (ARL) rate issues. Accordingly, the City did not offer responses to the six questions other than supporting both the notion of a risk management review and the concept of having one non-MH engaged risk consultant hired, to achieve efficiencies.

### **3.0 Applications for Intervener Status**

Applications for intervener status were submitted for the Pre-Hearing Conference of December 22, 2009. Arising from that conference, the Board will grant intervener status to CAC/MSOS, MKO, MIPUG, City of Winnipeg and RCM/TREE.

All of these interveners have appeared before the Board in past matters concerning MH electricity rates and have made valuable contributions, and the areas the interveners have

indicated an interest in addressing are appropriate. The Board anticipates that the information resulting from intervener participation will prove valuable to the Board in making its final determinations.

All of the above interveners have indicated their intention to produce and test evidence. MIPUG and the City of Winnipeg indicated that they would not be seeking cost awards although, the Board will reserve judgment on the potential awarding of costs to MIPUG for their participation on risk management issues.

With respect to Mr. Ciekiewicz's written application for intervener status, he did not appear at either of the pre-hearing conferences, the Board notes that while Mr. Ciekiewicz purports to represent a large segment of customers there is no evidence that the information which he proposes to bring to the Board will not be brought forward through other interventions, especially that of CAC/MSOS.

So, the Board encourages Mr. Ciekiewicz, who has taken a significant interest in matters related to MH in this and past years, to collaborate with CAC/MSOS to ensure that his concerns are addressed during the course of the hearing. And, of course, the Board has and will review his concerns through its deliberations.

The Board reiterates its previous concerns with respect to interveners' potential costs to the process, if, indeed, their participation is at risk of being redundant. Intervener participation results in time being spent by all parties and adds cost to the GRA process, a cost that, ultimately, is generally borne by MH's Manitoba customers.

For these reasons, the Board will deny Mr. Ciekiewicz's intervener application, but will, once again, grant Mr. Ciekiewicz's presenter status. As well, the Board will ensure that all publicly available information related to the application is available to Mr. Ciekiewicz for his review.

#### **4.0 Risk Review**

Having considered the views of all parties present at both the December 10 and December 22, 2009 Pre-Hearing Conferences, the Board concludes that a detailed risk and risk management review will proceed as part of the GRA. Such a risk review should occur at the beginning of the oral evidentiary hearing, so as to inform the rest of the proceeding, and thus will proceed as scheduled by the Board.

A review of the risks faced by MH will proceed as an integral part of the Board's rate review and rate setting jurisdiction. There are a multitude of risks faced by MH as part of its business activities and plans. While detailed in previous Board Orders, those risks include drought, export markets, interest and exchange rates, labour issues, catastrophic loss of system supply, and changes in accounting standards (IFRS – International Financial Reporting Standards).

The Board must satisfy itself that these and other risks to MH are being appropriately managed by the Utility, as part of the Board's rate approval mandate. The Board also needs to be assured that there are no unreasonable risks "lurking" in the future that, if actualized, are likely to result in undue rate implications for the Utility's Manitoba consumers.

The Board is also mindful of the media reports on matters of risk that MH has: a) reported on and, b) indicated an interest in having addressed in the most expeditious and effective way. The reputation of MH and the confidence of all stakeholders in the Utility is of utmost importance to the Utility and the general public interest.

MH suggested that the review of matters referred to in the media be left to other agencies and not "duplicated" by this Board. However, because of this Board's statutory jurisdiction and prior investigations into MH's risk issues, this Board is resourced and prepared to review all risk

issues relating to MH as part of the General Rate Application process for MH, which is already underway.

This Board sees no benefit to either Manitobans or Manitoba Hydro to leave the public concerns surrounding MH's risk and risk management practices to some future proceeding by another review agency. Rather, this Board believes it is in the public interest for the Public Utilities Board to review all of the matters that MH has suggested should be reviewed by other agencies.

That said, this Board is prepared to cooperate with the Manitoba Ombudsman, Office of the Auditor General and other review agencies referred to by MH, to ensure that all requested issues are investigated and reviewed by this Board. Towards this end, the Board will expect and require the cooperation of all parties to conduct a comprehensive review of Manitoba Hydro's risks and risk management practices.

The Board is also mindful of the timing of various reports on risk issues, especially the risk review being conducted by a consultant on behalf of MH, the report not expected to be available for review until March 31, 2010. Additionally, on November 6, 2009, MH filed approximately 26 reports with the Board in response to the Board's Directive in Order 32/09 that MH ... *"file all internally and externally prepared reports, since the 2003-04 drought, that address any and all of the energy supply and other risks faced by MH."*

Some of the information filed was filed in confidence by MH, which urged the Board that no use be made of confidential information until an appropriate process has been established. The Pre-Hearing Conferences held in December 2009 provided the Parties with an opportunity to address the issue of confidential filings and the process the Board ought to adopt to determine what documents or portions of documents should be kept confidential by the Board and not placed on the public record.

Mindful that transparency is seen as central to both procedural fairness and also to public confidence in the Board's process, the Board's Rules contain the default premise that where a document is filed with the Board by a party to a proceeding that document should be placed on the public record unless there are demonstrated compelling reasons for the document (or part of the document) not to be publicly disclosed.

At the December 10, 2009 PHC, MH indicated it has and will continue to request confidentiality with respect to certain contract terms (i.e. export contract pricing information) as well as with respect to cyber and physical security issues. That said, MH also supported transparency and indicated a preference to keep the filing of confidential information to a minimum. MH offered to work with the Parties to provide a level of disclosure that satisfies their needs without resorting to filing information with the Board in confidence.

CAC/MSOS has also provided suggestions to ensure maximum disclosure, as well as to how confidential information is shared in other jurisdictions.

Accordingly, the Board will permit MH an opportunity to provide the level of disclosure with respect to the risk reports that satisfies the requests of Interveners, failing which a contested motion will be heard by the Board. As for the risk reports not authored by MH, but for which there may be confidentiality issues, the Board will request Board Counsel to seek the cooperation of the author(s) to place the information on the public record.

The Board will include in its review of MH's risks and risk management, as much information as will be made available to it. The Board recognizes that flexibility in procedures will be required and is prepared to consider all suggested processes, as the circumstances arise and as permitted under the Board's jurisdiction. The Board will also invite the full participation of all parties that can assist the Board in its review of MH's risks and risk management.

Parties are to work cooperatively to propose a schedule for the testing of the risk reports, if more than a second round Information Request stage is required.

The Board is determined to proceed as expeditiously as possible to deal with risk and risk management issues and, in doing so, will seek to engage the good will of all participants to ensure that matters are thoroughly reviewed within the GRA process for both 2010/11 and 2011/12 rates.

The Board's hearings and investigations are governed by the rules adopted by the Board. The Board is not bound by the technical rules of evidence, and may change various procedures and timetables should circumstances require change. Parties will be asked to work in concert with Board Counsel to develop an effective information exchange process, including the unique identification of information requests, dealing specifically with risk issues.

The very concerns raised about confidentiality, including when and whether claims of confidentiality may be invoked, have led the Board to conclude that it is in the public interest to provide resources for an independent expert to assist the Board and all parties to this process with an independent analysis of the risk reports, methodologies and risk management employed by, and recommended for, Manitoba Hydro.

The Board is mindful of the concerns raised by Interveners that the independent expert not be seen as a 'Board witness', but rather as a resource for all the parties to the GRA. The Board expects economies and efficiencies will result with an independent expert witness that is available to all Parties. It is expected that the independent expert will have the full cooperation of all Parties and their consultants to be able to analyze the methodologies and rationale utilized in the risk assessments.

There is no expectation that the independent expert will divulge or seek to profit from whatever commercially sensitive information is provided in the analyses performed. The independent

expert will be asked to work cooperatively with all the Parties, prepare report(s) and be subject to cross examination by any and all Parties, including MH and the Board.

What weight, if any, the Board ascribes to the evidence of the independent expert will be determined by the Board following the hearing of all the evidence and the submissions of the Parties. Parties will be notified as to the person(s) engaged as an independent witness, provided a copy of the resume(s), and afforded the opportunity to communicate with the independent witness as they determine.

## **5.0 Timetable**

Parties are reminded that the timetable attached as Schedule “A” of this Order is subject to change and the Board may change the Timetable without reissuing this procedural Order, but will provide electronic notification to the approved participants on the Board’s Distribution List. The Board also points out that the timetable will be maintained on the Board’s calendar available over the internet through the Board’s website. Parties are cautioned to access that calendar periodically to ensure their effective and timely participation.

The Board has not included consideration of any new Diesel Zone Rates Application or Energy Intensive Industrial Rates Application by MH within the scope of the GRA proceeding. No new Applications have been received by the Board following MH’s Board of Directors’ meeting of January 21, 2010. The Board awaits further information from MH as to its intentions respecting these matters, and presently is of the view that any new Applications are best reviewed in separate proceedings. Should MH advance consideration of either or both these matters, a separate timetable will be required. In the interim, the Board may reconsider Order 1/10, dated January 5, 2010.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board’s Rules of Practice



and Procedure (Rules). The Board's Rules may be viewed on the Board's website at [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca).

**6.0 IT IS THEREFORE ORDERED THAT:**

1. Manitoba Hydro's General Rate Application for 2010/11 and 2011/12 rates will include an in depth review of risk and risk management issues as a third discrete component of the GRA process, supplementing the revenue requirement and cost of service components reviewed in a General Rate Application.
2. Interveners to the hearing shall be:
  - a) Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors;
  - b) Manitoba Keewatinowi Okimakanak, Inc.
  - c) Manitoba Industrial Power Users Group;
  - d) City of Winnipeg; and
  - e) Resource Conservation Manitoba and Time to Respect Earth's Ecosystem.
3. Application for intervener status by Mr. Ciekiewicz is hereby denied; he may participate as a Presenter.
4. Schedule "A" attached hereto shall be the Timetable for exchange of orderly information by the participating parties for the general rate application, subject to change without notice.

5. Schedule "B" as attached shall apply with respect to the hearing of Manitoba Hydro's application for procedures to be followed. Parties are to note that the Board may revise the procedures and notice will be provided electronically to all parties on the Board's Distribution List.

THE PUBLIC UTILITIES BOARD  
"GRAHAM LANE, CA"  
\_\_\_\_\_  
Chairman

"KRISTINE SHIELDS"  
\_\_\_\_\_  
Acting Secretary

Certified a true copy of Order No. 17/10  
issued by The Public Utilities Board

\_\_\_\_\_  
Acting Secretary

## SCHEDULE "A"

### MANITOBA HYDRO 2010/2011 AND 2011/2012 RATES

#### TIMETABLE

File Application	November 30, 2009
PUB Approval of Notice	December 7, 2009
Publish Notice in Daily/Weekly Newspapers	December 12 –December 18, 2009
Pre-Hearing Conferences	December 10 and 22 2009
Interested Parties to register with the PUB for Intervenor Status	December 21, 2009
MH to be in receipt of 1 <sup>st</sup> Round Information Requests (all parties)	February 3, 2010
MH's Responses to 1 <sup>st</sup> Round Information Requests	February 26, 2010
IFRS Workshop	TBA
MH to be in receipt of 2 <sup>nd</sup> Round Information Requests	March 11, 2010
MH to File Responses to 2 <sup>nd</sup> Round Information Requests	April 8, 2010
All Parties to be in receipt of Intervenors Evidence	April 22, 2010
File Information Request of Intervenor Evidence	May 6, 2010
Intervenors Response to Information Requests	May 20, 2010
Rebuttal Evidence	May 28, 2010
2010/11 GRA Hearing Commences	Tuesday June 1, 2010 (further Hearing schedule to follow)

## **SCHEDULE "B"**

### **PROCEDURES TO BE FOLLOWED AT THE MANITOBA HYDRO 2010/2011 AND 2011/2012 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 Tuesday June 1, 2010 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 June 1, 2010 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 oral direct testimony.
  
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: [www.publicutilities@gov.mb.ca](mailto:www.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, and must not restrict the readers' ability to copy extracts from the filings.