

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

Order No. 97/10

September 27, 2010

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

MANITOBA HYDRO REDACTIONS
REVIEW AND VARY ORDER

1.0 Background

By Order 95/10, the Public Utilities Board (Board) approved certain proposed redactions by Manitoba Hydro (MH) and the New York Consultant (NYC) to be found in the KPMG report and appendices and certain Manitoba Hydro risk reports. Certain of MH's proposed redactions under its specified criterion number 7 were not allowed by the Board.

Category 7 information contains, as submitted by MH:

“Manitoba Hydro's estimate of economic and financial benefits (e.g. NPV, retained earning calculations) from term sheets currently under negotiation or for sale agreements that have similar time frames as those which are still under negotiation or those sale agreements which have not received regulatory approval.”

Order 95/10 was made public and circulated on September 20, 2010 to all interested parties or their counsel. Only MH and NYC were provided with copies (on disc) of the approved redactions, on September 20, 2010, with the redacted reports as approved by the Board to be tabled seven (7) days later, that is on Monday September 27, 2010.

MH reviewed the redactions and, on September 23, 2010, provided the Board with a further submission seeking to have the Board review Order 95/10 and approve some of MH's specific redactions that the Board had rejected, and which originally fell within category 7.

The Board set an initial motions process respecting the redactions, which process included intervener submissions with respect to the proposed redactions including redactions which are a subset of category number 7. The Board initially found, after review of the submissions of all participants in the motions process, and upon its examination of the unredacted reports, that MH had provided insufficient support for its claim that category 7 information, if made public, would reasonably be expected to cause the Utility commercial and/or financial harm.

The Board remains satisfied that it properly comprehends the initial arguments raised by the interveners in respect of their opposition to MH's redactions under category 7. And, MH's subsequent review submission has provided further factual support to assist the Board in making its determination as to redactions as a subset of the original category 7 redactions.

MH's submission raised no new category of confidentiality, but does contain specific detailed rationale for the distinctions between information in this category that can be made public and other confidential information that would likely cause harm to MH's commercial interests if made public.

The Board has further determined that it does not need to seek reply submissions from interveners before making its determinations on MH's review request. Indeed, it was envisioned by the Board in Order 95/10 that such a request may be made within the 7 day advance notice period.

2.0 Review Request of MH dated September 23 2010

MH sought to have the Board review and vary its initial redactions order, by allowing certain of the category 7 redactions to be permitted. MH submits that the nature of the information it sought to be protected by its category 7 redactions is the forecast incremental value to MH of proceeding with export sale transactions contemplated in Term Sheets (Term Sheets represent the status of electricity exports sales in progress.)

MH asserts that a party's estimate of the incremental value of the net benefit of the transaction, in this case its estimate, is a closely guarded commercial secret, particularly prior to the finalization of a contract.

MH has made a detailed submission outlining a real risk of financial harm to the Utility of making the specific category 7 information public. The eight (8) page submission was made in confidence, with a redacted version of it made available for public record. All but two sentences of the submission are to be placed on the public record, and the redacted submission is being circulated to all of the GRA participants, or their counsel, concurrently with this Order for information.

3.0 MH's Submission

MH submitted that disclosure of specific category 7 information outlined in its review submission would negate its ability to sustain a negotiating position towards maximizing the benefit under the transaction(s). MH characterizes the long-term electricity market as illiquid in comparison to short-term electricity market sales. MH advised that the majority of bilateral transactions in the long-term market are executed on trade terms that remain confidential between the parties. MH claims that it is economically necessary to avoid public disclosure in such circumstances.

Further, MH suggests that because the financial terms of transactions are not identical as between parties, public disclosure of those terms may cause parties to reconsider their position, to the detriment of MH. MH's submission provides a detailed explanation of the specific category 7 redactions being sought, and the causal connection in each case to the negative consequences of publication.

4.0 Intervener Submissions on Initial MH Motion

In Order 95/10, the Board summarized the submissions of the interveners on MH's initial proposed redactions, which included category 7.

In essence, the interveners which participated in the redactions motions process all took the position that public disclosure of all of the risk reports under review is needed for transparency, for procedural fairness, and to ensure public confidence in the Board's process. The interveners argued that the onus is clearly on parties seeking to maintain confidential filing of information, those being MH and the NYC, to demonstrate a reasonable expectation of undue financial loss or significant harm.

CAC/MSOS also provided a detailed appendix with its submission challenging particular MH redactions, which it claims impairs the intervener's ability to fully participate in the risk review portion of the GRA. RCM/TREE and MIPUG, also interveners, also made submissions challenging certain specific redactions as proposed by MH.

The Board accepts in principle the value of transparency and outlined its position in this regard in Order 95/10. The Board is required in this case to exercise its discretion in balancing the requirements of best assuring the financial viability of the Utility and the potential threat of this disclosure against the benefit of making this specific detail publicly available in this process.

5.0 Board Findings

The Board has considered MH's review request and has determined that the request is a proper case for review within its Rules. The Board confirms that it will vary Order 95/10 to permit the additional specific category 7 redactions outlined in MH's September 23, 2010 review submission.

The Board accepts the further rationale outlined by MH, that being as to the need to protect this information.

The Board finds that this particular subset of information has been kept confidential by MH, and that, if disclosed, is likely to cause MH harm. The public interest in protecting this information and, by so doing, avoiding the negative consequences to the Utility outweighs the benefit to be gained by disclosing it for the purpose of review and consideration in this GRA proceeding.

6.0 Conclusion

MH request for review is granted, and the Board permits certain additional category 7 redactions, which have been incorporated into the final set of approved board redactions in the risk reports.

These reports are being tabled today and are being provided to the interveners for their use in the ongoing GRA process. MH's September 23, 2010 submission is also being provided to all interveners, in redacted form.

7.0 IT IS THEREFORE ORDERED THAT

1. Manitoba Hydro's review and vary request is granted, and the additional specific redactions under category 7 of its confidentiality criteria of certain information in the MH and KPMG risk reports ARE HEREBY allowed; and
2. The copies of MH, NYC and KPMG risk reports, with all redactions as approved by the Board are placed on the Board's public record of Manitoba Hydro's 2010/11 and 2011/12 General Rate Application concurrently with this Order. For purposes of the Record these risk reports are contained in the following Appendices:

- Appendix A: The NYC's June 30, 2010 'Public Document';
- Appendix B: MH's March 2007 Comments on the NYC's December 4, 2006 Report;
- Appendix C: MH's May 2007 Comments on the NYC's December 4, 2006 Report;
- Appendix D: MH's October 2008 Middle Office Review of the NYC's Reports;
- Appendix E: MH's October 2008 Middle Office Comments on the NYC's Long Term Contracts Risk Report;
- Appendix F: MH's May 2008 Review of the NYC's January 2008 and December 2006 Reports;
- Appendix G: MH's December 2008 Export Power Sales Risk Management Issues;
- Appendix H: KPMG's April 2010 Report and Appendices;

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"KRISTINE SHIELDS"
Acting Secretary

Certified a true copy of Order No. 97/10
issued by The Public Utilities Board

Acting Secretary