

**MANITOBA** ) **Order No. 117/11**  
 )  
**THE PUBLIC UTILITIES BOARD ACT** ) **September 12, 2011**

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

**MANITOBA HYDRO'S APPLICATION  
TO REVIEW AND VARY ORDER 99/11**

## **1.0 Executive Summary**

By this Order, The Public Utilities Board (Board or PUB) dismisses Manitoba Hydro's (MH) Application to Review and Vary Order 99/11.

## **2.0 Background**

On August 29, 2011, Manitoba Hydro (MH) applied to The Public Utilities Board (Board or PUB) to Review and Vary Order 99/11 so as to approve on a final basis the following:

1. 2.9 % general rate increase effective April 1, 2010 which Order 33/10 approved on an interim basis;
2. 2.0 % general rate increase effective April 1, 2011 which Order 40/11 approved on an interim basis;
3. 0.9 % general rate increase, effective forthwith following the issuance of the PUB's Order with respect to this application; or in the alternative, denial of Manitoba Hydro's application for a further rate increase;
4. Interim ex parte orders related to the Surplus Energy Program;
5. Ex parte orders related to the Curtailable Rate Program; and
6. Order 126/09 related to Temporary Billing Demand Concessions.

The grounds cited by MH in its Application for the Board to Review and Vary Order 99/11 are:

- A. The Additional Information (i.e. export contracts, alternative scenarios and updated Integrated Financial Forecasts) requested is beyond the jurisdiction of the PUB;
- B. The Additional Information is not relevant to the 2010 and 2011 test years; and
- C. The PUB had sufficient evidence in the extensive record associated with this proceeding upon which to base its decision; and

- D. In numerous instances, the PUB misunderstood or misinterpreted the evidence and relied on information and analysis not on the evidentiary record of the proceeding which the PUB created itself, and which has not been tested and is flawed.

### 3. PUB Act and PUB Rules of Practice.

MH's Application to Review and Vary Order 99/11 is made pursuant to *The Public Utilities Board Act* (Act) and the Board's Rules of Practice (Rules). The legislation, in section 44 provides:

#### ORDERS OF THE BOARD

##### **Power to order partial or other relief**

44(1) Upon any application to it, the board may make an order granting the whole or part only of the application or may grant such further or other relief in addition to or in substitution for that applied for, as fully and in all respects as if the application had been for such partial, further or other relief.

##### **Review of orders**

44(2) The board may require a re-hearing of an application before making any decision thereon.

##### **Varying order**

44(3) The board may review, rescind, change, alter, or vary any decision or order made by it.

The Board's Rules of Practice pertaining to Applications to Review and Vary include Rule 36 as follows:

#### ***Review***

36. (1) *The Board may, on its own initiative or on application by a person, review, rescind, change, alter or vary any decision or order by it.*
- (2) *An application for a review under subsection (1) must be in writing and contain the following:*
- a) *a clear and concise statement of facts relevant to the application;*

- b) *the grounds on which the application is made;*
  - c) *a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction;*
  - d) *a brief description of the remedy sought; and*
  - e) *the applicant's name, address in Manitoba, telephone number, fax number and, if available, e-mail address.*
- (3) *An application for a review must be filed and served on the parties to the proceeding for which the order or decision of the Board was made within 30 days of the date of the order or decision.*
- (4) *The Board shall determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.*
- (5) *After determining the preliminary question under subsection (4), the Board may:*
- a) *dismiss the application for review if,*
    - i) *in the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or*
    - ii) *in the case where the applicant has alleged new facts not available at the time of the Board's Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision;*
- or*
- b) *grant the application; or*
  - c) *order a hearing or proceeding be held.*

- (6) *If the Board orders a hearing be held under subsection (5), it shall issue a Notice of Review, and a new hearing or proceeding will be held in accordance with these rules as determined by the Board.*
- (7) *A notice of review under subsection (6) must contain the same information as is contained in a notice of hearing.*
- (8) *No application for review may be made in respect of:*
  - a) *a decision or order made by the Board as a result of a review under this section; or*
  - b) *a decision or order of the Board which has been appealed to the Court of Appeal.*
- (9) *The Board may at any time, without a hearing or notice of review correct typographical errors, errors of calculation and similar errors made in any of its orders or decisions.*

#### **4. Board Findings**

Following consideration of MH's Application to Review and Vary Order 99/11, and in accordance with the Act and Rules, the Board has determined Order 99/11 should not be reviewed and there is no reason to believe Order 99/11 should be rescinded, changed, altered or varied.

MH has not raised new facts or a change in circumstances that could lead the Board to materially vary the Board's Order as requested.

MH's alleged errors of law, jurisdiction or fact do not raise a substantial doubt as to the correctness of the Board's Order.

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).

**5. IT IS THEREFORE ORDERED THAT:**

1. MH's Application to Review and Vary Order 99/11 BE AND IS HEREBY DISMISSED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE CA"

Chairman

"HOLLIS SINGH"

Secretary

Certified a true copy of Order No.  
117/11 issued by The Public Utilities  
Board

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Secretary