

M A N I T O B A
THE PUBLIC UTILITIES BOARD ACT

Order No. 21/12

February 24, 2012

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

ORDER REVIEWING AND VARYING BOARD ORDER 19/12

REGARDING

**MANITOBA HYDRO'S APPLICATION
TO REVIEW AND VARY ORDER 5/12**

AND

**MANITOBA INDUSTRIAL POWER USERS GROUP'S
APPLICATION TO REVIEW AND VARY ORDER 5/12**

1.0.0 EXECUTIVE SUMMARY

By this Order, the Public Utilities Board (Board or PUB) varies Section 4.0 (Board Findings) of Board Order 19/12 to reflect a partial dissent by the Vice-Chair on a procedural issue. This Order does not vary the actual Directives of Order 19/12.

2.0.0 BACKGROUND

On February 17, 2012, the Board issued Order 19/12, which dismissed the concurrent Applications of Manitoba Hydro (MH) and the Manitoba Industrial Power Users Group (MIPUG) to review and vary Order 5/12.

The Board's Hearing Panel determining the two Applications to review and vary consisted of the same Hearing Panel that issued Order 5/12 – the Board's Chairman and the Board's Vice-Chair.

By this Order, the Board varies Order 19/12 to reflect the partial dissenting opinion of the Vice-Chair on a procedural issue. This Order does not affect or change the Board's Directives in Order 19/12 as, in the absence of procedural agreement regarding MH's alleged ground that new facts have arisen, the Board continues to deny Manitoba Hydro's Application to review and vary Order 19/12.

Authority to vary Order 19/12 arises from section 44(3) of *The Public Utilities Board Act* (*The PUB Act*), which provides as follows:

Varying Order

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

Subsection 36(1) of the Board's Rules of Practice and Procedure further provides as follows:

36(1) The Board may, on its own initiative or on application by a person, review, rescind, change, alter or vary any decision made by it.

3.0.0 BOARD FINDINGS

In Section 4.0 of Order 19/12, the Board states that:

As for MH's ground that new facts have arisen, not available at the time of the Board's hearing, the Board is of the opinion that MH has not raised a reasonable possibility that the new facts and the changed circumstances could lead the Board to materially vary or rescind the Board's Order or decisions.

The paragraph set out above reflects the view of the Board's Chairman. Similarly, the Board's findings in Order 19/12 with respect to whether MH has raised new facts that would justify a process to consider if MH may have established grounds to review and vary Order 5/12 reflect the opinion of the Chairman. The Board's Vice-Chair would have preferred a hearing process be developed to test the new information prior to any determination of this issue by the Board.

For greater clarity, the Panel Members agree that MH's application to review and vary Order 5/12 based on alleged grounds of errors of law or jurisdiction or errors of facts should be summarily dismissed, as the Board is of the opinion that MH has not raised a substantial doubt as to the correctness of Board Order 5/12.

Both Panel Members agree that both MH's and MIPUG's Applications to review and vary the Board's decisions in Order 5/12 in respect of the Temporary Demand Billing Concessions should be dismissed as they have not raised a substantial doubt as to the correctness of the Board's order or decisions.

Board Decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*.

4.0.0 IT IS THEREFORE ORDERED THAT:

1. Order 19/12 **BE AND HEREBY IS VARIED** to reflect that the Board's Vice-Chair's partial dissent as set out in section 3.0.0 of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE CA"
Chairman

"KURT SIMONSEN P.ENG."
Acting Secretary

Certified a true copy of Order No.
21/12 issued by The Public
Utilities Board

Acting Secretary