

**M A N I T O B A**

**Order No. 98/12**

**THE PUBLIC UTILITIES BOARD ACT**

**August 3, 2012**

Before: Régis Gosselin, C.G.A., MBA, Chair  
Raymond Lafond, B.A., C.M.A., F.C.A.

**PROCEDURAL ORDER AND INTERVENER STATUS ORDER  
MANITOBA HYDRO GENERAL RATE APPLICATION  
FOR 2012/2013 AND 2013/2014 RATES**

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1.0.0      EXECUTIVE SUMMARY

This procedural Order relates to MH's General Rate Application (GRA) for the 2012/13 and 2013/14 test years. By this Order, the Public Utilities Board (Board):

- (a) grants intervener status to the following entities:
  - (i) Consumers' Association of Canada (Manitoba) Inc. (CAC);
  - (ii) Green Action Centre (GAC);
  - (iii) Manitoba Industrial Power Users Group (MIPUG);
  - (iv) City of Winnipeg (City); and
  - (v) Manitoba Keewatinowi Okimakanak Inc. (MKO).
- (b) establishes the scope of the proceedings for the GRA and separates the Cost of Service (COS) review from the remainder of the GRA hearing; and
- (c) fixes a timetable and process for the orderly exchange of evidence leading up to the GRA hearing.

2.0.0      LIST OF SHORT FORMS / ABBREVIATIONS

CAC	Consumers' Association of Canada (Manitoba) Inc.
City	City of Winnipeg
DSM	Demand-Side Management
GAC	Green Action Centre
GRA	General Rate Application
G.S.	Generating Station
IFRS	International Financial Reporting Standards
MH	Manitoba Hydro
MIPUG	Manitoba Industrial Power Users Group
MKO	Manitoba Keewatinowi Okimakanak Inc.
NFAAT	Needs For and Alternatives To
PHC	Pre-Hearing Conference

3.0.0        PROCEDURAL HISTORY

On June 15, 2012, MH filed its GRA for the 2012/13 and 2013/14 test years. As directed by the Board, MH published public notices in respect of that application.

On July 26, 2012, the Board held a pre-hearing conference (PHC) with prospective interveners at the Board's offices in Winnipeg. The prospective interveners indicated areas of primary interest for the GRA and the Board heard the submissions of these applicants and reply submissions of MH respecting the applications for intervener status.

The Board also heard submissions respecting the scope of the GRA process and specifically sought and received submissions regarding the possibility of establishing a separate process to consider the COS methodology for setting differential rates among different customer classes.

Further, the Board considered a timetable for the orderly exchange of evidence and scheduling of the public hearing.

Subsequent to the PHC, the Board received certain further submissions on these matters from the prospective interveners and MH to further assist the Board in making its procedural decisions herein.

4.0.0 INTERVENERS

4.1.0 Applications for Intervener Status

**4.1.1 *Consumers' Association of Canada (Manitoba) Inc. (CAC)***

CAC has long represented residential consumers at Board regulatory proceedings for the purpose of testing the fairness and impacts of MH's rate requests. At the PHC, CAC 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. Specifically, CAC intends to test MH's forecasts and their reliability, the reasonableness and prudence of costs incurred by MH, the overall revenue requirement given MH's general health and risks faced by the corporation, the proper and just allocation of costs between classes of consumers and the examination of statutory factors for the setting of just and reasonable rates.

CAC generally identified expenditure issues to be examined, including OM&A expenses, the impact of ongoing capital expenditures on revenue requirements, the recent depreciation analysis and the impact the Wusquatim G.S. coming on-line. Respecting the overall health of the corporation, CAC noted serious concerns regarding a significant drop in MH's forecast export revenues compared to the last MH GRA proceeding and a reported sharp decline in MH's key financial ratios arising from MH's initial filings. CAC also identified that along with other prospective interveners it wished to examine whether MH's expenditures, in terms of energy efficiency, were prudent and to consider MH's practices in

comparison to North American best practices. CAC also wished to bring before the Board demand side management options, to consider whether all of MH's ratepayers have meaningful access to these options.

CAC advised that it intended to apply for costs and has proposed a preliminary budget on the basis that certain of its experts could not be reached to verify final proposed participation and workload allocations and that CAC was continuing to work on a collaborative approach with other prospective interveners respecting the presentation of a witness on energy efficiency issues, which collaboration had not been finalized.

#### **4.1.2 Green Action Centre (GAC)**

GAC, formerly known as Resource Conservation Manitoba, advised the Board that the organization has intervened in MH GRAs for approximately a decade from the vantage point of sustainability and justice, including social justice issues and the impact on all citizens of Manitoba of electrical power development and supply. This includes considerations of basic fairness in allocating the cost of power.

GAC wishes to participate to consider the revenue requirement and proposed rate increases for MH in light of the dilemma of the ongoing cost of major capital projects leading to current expenditures by MH for projects which have not yet been justified, along with the ongoing needs of the utility which GAC intends to address. GAC also plans to continue its probe of the role MH plays respecting energy affordability for low-income consumers.

GAC noted its disappointment that MH has failed to supply a long-awaited report on the economic and environmental implications of fuel switching, and GAC intends to pursue this issue once again, subject to MH complying with the Board's existing directive.

Energy efficiency and the Power Smart program within MH remain on GAC's agenda, and GAC is one of the intervener applicants seeking to work with CAC to address this issue using a common expert witness. Finally GAC is willing, within whatever framework the Board sets, to examine and offer insights into COS under the new proposed methodology of MH.

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

GAC advised of its intention to apply for costs and, in accordance with the deadline set by the Board, has filed its budget estimate for participation.

#### **4.1.3        *Manitoba Industrial Power Users Group (MIPUG)***

MIPUG indicated an intention to examine and test the finalization of MH's April 1, 2012 interim rate increase, the merits of the proposed across-the-board 2.5% interim rate increase on currently billed rates effective September 1, 2012, and the proposed further 3.5% increase effective April 1, 2013. MIPUG submitted that the power usage in the industrial group leads to consumption of approximately 23% of the energy sold by MH to its domestic customers. MIPUG's concerns with respect to electricity costs

are stability and predictability of rates, rate regulation taking into account the major capital spending of MH as part of its future development, and ensuring that rates for all customer classes reflect the fair cost to serve the respective class.

On the issue of scope, MIPUG identified a number of matters it wishes to address, including MH's financial forecasts and its cost control efforts impacting revenue requirement, IFRS and its impact on demand side management and Power Smart, rate design matters, the future of reserves and MH's financial ratios, and the impact of bringing Wuskwatim on line and cost allocation issues arising therefrom. MIPUG is still in the process of examining the materials filed by MH and reserved its right to expand its approach when the review is complete.

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

#### **4.1.4      *City of Winnipeg (City)***

The City indicated an intention to appear to address the rate implications of the GRA for area and roadway lighting and that it will participate throughout the hearing through the testing of evidence. The City further advised an intention to present final argument. The City does not intend to call evidence and does not seek costs.

**4.1.5        *Manitoba Keewatinowi Okimakanak Inc. (MKO)***

Also a longstanding intervener at Board proceedings related to MH, MKO's application for intervener status is made on behalf of its 30 First Nation governments, those being the northernmost First Nations in Manitoba. MKO represents residential and general service customer classes as users of MH's electrical power. MKO has indicated an interest in testing the matters driving the financial forecast and revenue requirement, rate design, the impact of rates on MKO First Nation customer use and bills, and MH's supply of comprehensive and integrated energy services to customers who are citizens of MKO First Nations, including demand side management and alternative fuel options. In the latter respect, MKO's intervention is similar to that of GAC. MKO noted the special interest of MKO First Nations with respect to the provision of an affordable and efficient supply of electricity, and the issues facing low-income consumers.

MKO spoke of the intimate connection between MH and MKO's membership and wishes to examine the relationship between revenues and variability of MH's reservoir operations. This GRA process, MKO says, is the best opportunity for a detailed discussion of how the relationship is reflected in rates.

MKO also seeks to collaborate with CAC on an energy efficiency presentation of evidence through a joint expert, though the details remain under discussion. MKO assured the Board that MKO and the other

interveners were working to keep costs to a minimum as they all know that costs in the regulatory process flow through to MH's customers.

MKO indicated its intention to participate throughout the hearing, produce and test evidence and present final argument. MKO has provided a budget. Finally MKO sought once again to have the Board reconsider its rules regarding costs reimbursement, citing the fact that its in-house resources have not been capable of reimbursement in the past as impacting MKO's ability to fully participate.

#### 4.2.0 Manitoba Hydro's Submissions

MH did not object to the intervention of any of the intervener applicants. MH did, however, argue that some of the possible issues identified by intervener applicants, including energy efficiency, capital development plans, low-income consumer issues and affordability, are matters not properly before the Board. MH submitted that the Board's focus and the scope of the hearing process should be limited to matters raised by MH in its application.

MH noted significant concerns about the length and cost of regulatory proceedings and the internal resources of the utility required to be drawn upon to support discovery processes such as Information Requests, which by sheer numbers have continued to mount for several years. MH is also concerned about the potential length of the hearing itself. MH requested that the parties not stray into irrelevant matters, but focus on the

information it says will allow the Board to properly consider the rate increases requested for the test years 2012/13 and 2013/14.

With respect to MKO's proposed budget, MH submitted that it did not contain sufficient details to allow MH to understand the scope of MKO's intervention, and that the budget neither stated who MKO's legal counsel would be, nor who MKO's expert witness would be and the scope of his or her involvement.

With respect to CAC's budget, MH expressed concern about CAC's estimated number of hearing days, indicating that CAC estimated 15-20 hearing days, while the average number of GRA hearing days since 1991 had been 12 days. MH also expressed concern with the number of hours proposed for CAC's expert consultants, indicating that the total expert hours exceed the total hours budgeted for CAC's legal counsel, and that CAC's experts have traditionally generated a large number of information requests. To that extent, MH reiterated its request for a focused and cost-efficient process.

With respect to GAC's budget, MH also expressed concerns about the proposed number of hours for GAC's consultants exceeding the number of hours budgeted for legal counsel. MH commented that traditionally, GAC charged out supporting personnel in addition to the experts, and suggested that supporting personnel should be billed at a lower hourly rate, with an adjustment to be made to reduce duplication. With respect to the 300-500 hours proposed for Mr. Dunskey, one of GAC's expert witnesses, MH

suggested that the amount was excessive and would relate, at least in part, to matters outside the scope of the hearing. MH also expressed concern that because this witness was to be partially financed by each of GAC, CAC and MKO, there might be an over-claiming of hours.

MH also expressed concern about CAC, GAC and MKO's desire to review MH's energy efficiency programs, arguing that while it was prepared to present a witness to deal with demand-side management (DSM) expenditures, it did not believe that a review of alternative DSM programming should fall within the scope of the GRA. It argued that this issue had already been canvassed in the 2004 and 2008 GRAs, and had also been addressed through the report of Mr. Dunsky in the 2010 GRA. Lastly, MH argued that this issue would be raised as part of the Needs for and Alternatives To ("NFAAT") hearing for MH's major new generation projects.

MH also requested that interveners coordinate their efforts to avoid duplication, and to be mindful of MH's submissions regarding cost and efficiency of the rate process.

All in all, MH indicated that it did not wish to delay the process and that the Board should issue its decision based on materials filed to date. If updated budgets are presented, MH requests the ability to provide further comments.

5.0.0 COST OF SERVICE REVIEW PROCESS

The Board requested that MH and the prospective interveners respond to the possibility of a separate hearing process for review of the MH's Cost of Service (COS) methodology.

CAC and MKO supported a separate process for the COS review. GAC left it to the Board to make what it considers to be the correct procedural decision, with the City not taking any position.

MIPUG and MH both oppose a separate process. MIPUG submitted that COS is an integral part of the rate-setting process, that except for one instance in 2006 it has always been dealt with as part of the GRA process, that a single hearing would avoid unnecessary duplication, and that a separate COS hearing would give rise to uncertainty and unnecessary rate adjustments. MIPUG drew to the Board's attention that as the only intervener paying its own hearing costs, it was uniquely concerned about cost escalations. As an alternative to dealing with COS as part of the GRA, MIPUG suggested holding the GRA in two sequential parts, but dealing with the matter by way of a single Order. As a precedent, MIPUG cited the 2002 MH Status Update hearing.

MH argued that its COS study was relatively straightforward and integral to the main proceeding and that efficiency should dictate that all of the matters proceed in one hearing. On August 1, 2012, it further filed a written submission supporting MIPUG in its argument that COS should be

addressed as part of the GRA process, but arguing that MIPUG's alternative proposal to bifurcate the GRA hearing into two sequential parts would still result in additional hearing days, reduced efficiencies and increased costs.

6.0.0        BOARD FINDINGS

6.1.0        Intervener Status and Intervener Costs

The Board accepts all applications for intervener status. 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. As such, while the Board is mindful of MH's comments with respect to the applications for intervener status as reflected in section 4.2.0 above, it is satisfied that the interveners have met the requirements of subsection 27(2) of the Board's Rules of Practice and Procedure, is prepared to grant intervener status to all proposed interveners.

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 in that respect is available from Board staff.

The Board notes MH's concern with respect to the potential redundancy of interventions and resultant excess cost awards, and cautions all parties to

avoid redundancies so as to constrain regulatory cost and provide for an effective GRA proceeding. The Board expects to take any excessive redundancy into account in making cost awards.

Finally, with respect to MKO, the Board agrees with MH's submission that MKO's provisional proposed budget does not provide sufficient detail to allow the Board to assess how the money will be spent. In particular, the provisional proposed budget provides neither the identity of MKO's legal counsel or "Expert 1", nor the scope of their involvement. The Board notes that 170 hours are set aside for legal counsel, without the extent and duration of legal counsel's participation in the hearing being made clear. The Board accordingly directs MKO to submit an updated budget by August 31, 2012.

#### 6.2.0 Scope of the GRA

The Board is not prepared to accept MH's submissions respecting its proposed very narrow scope of issues for the determination of rates pursuant to its application. The Board has jurisdiction to set rates that are just and reasonable and in the public interest. The Board has wide latitude to consider the factors that it determines are relevant as well as the policy considerations involved in fixing rates. As was the case with prior Board panels who were charged with carrying out of this mandate, this Board panel seeks a transparent examination of all of the relevant inputs into the rates requested by MH and diligent testing and examination of the current financial circumstances of MH. Balancing MH's financial position with

consumer issues and concerns, and specifically those issues identified as matters to be explored by the interveners, are part of the responsibilities of the Board in discharging its rate-setting mandate. These consumer issues remain relevant and are within scope.

As a result, the Board sees no need to deviate in scope from the general issues it has examined in recent GRA processes. However, the extensive examination of risk as part of the last GRA will not be repeated. The extent to which the various subject areas will be reviewed may be impacted by the depth to which the matters were examined in the last GRA and the extent to which additional information sought from MH relates to a change of circumstance in the current period.

The Board encourages all parties to use the pre-hearing discovery process in an efficient manner to obtain relevant information without placing an undue burden on MH. The Board agrees with MH that a mere general interest in a subject matter is not a sufficient basis for inquiry if the subject matter does not have a demonstrable nexus to the Board's mandate of fixing just and reasonable rates.

#### 6.3.0 Cost of Service Review

The Board has determined that it will review MH's COS methodology by way of a separate process. Separate COS reviews have been carried out by this Board in the past, and the subject is certainly capable of being segregated so as to avoid overlap of evidence and loss of regulatory

efficiency. The Board accepts submissions of those interveners who note that the time frames for all other matters in the GRA may be more achievable if COS is not included.

The Board agrees with MIPUG's comments that a COS review is part of the rate-setting process and cannot be ignored, and cognizant of the comments from both MH and MIPUG that a separation of the COS review could lead to an increase in costs. Nonetheless, the Board wants to ensure that COS is provided with the attention that it deserves, and it is the Board's view that this will be best accomplished by a bifurcated process that sets aside time for a hearing on COS issues subsequent to the GRA hearing. The Board also notes that MH's current application, as filed, seeks across-the board rate increases at the same percentage for all customer classes, which facilitates the separation of the COS review from the remainder of the GRA process.

The Board recognizes that the COS review will have to take place in a timely manner and expects to issue procedural directions with respect to the COS review in due course.

7.0.0        TIMETABLE

Intervener applicants and MH were given the opportunity to provide feedback on the timetable proposed by MH. The Board considered all comments provided and has set the timetable as contained in Schedule A herein. The Board reminds all participants that the ability to run an efficient process is met in large part by all parties adhering to the schedule.

8.0.0        IT IS THEREFORE ORDERED THAT:

1.     The review of MH's Cost of Service (COS) methodology in respect of MH's 2012/13 and 2013/14 GRA be separated from the hearing of the remainder of the GRA, to become subject to a separate procedural Order by the Board in due course.
2.     Schedule "A" as attached shall be the Timetable for the orderly exchange of information by the participating parties for the GRA.
3.     Schedule "B" as attached shall apply with respect to the hearing of MH's GRA.
4.     Interveners to the GRA shall be the following entities:
  - (a)    Consumers' Association of Canada (Manitoba) Inc.;
  - (b)    Green Action Centre;
  - (c)    Manitoba Industrial Power Users Group;
  - (d)    City of Winnipeg; and
  - (e)    Manitoba Keewatinowi Okimakanak Inc.
5.     MKO is to file an updated budget with the Board no later than August 31, 2012. Such updated budget shall, at minimum, disclose the scope and extent of the planned involvement of MKO's legal counsel in the hearing process, the identity of MKO's proposed legal counsel and

expert witness, if known, and a general indication as to the scope of the expert witness's involvement.

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

THE PUBLIC UTILITIES BOARD

"RÉGIS GOSSELIN, CGA, MBA"  
Chair

"HOLLIS SINGH"  
Secretary

Certified a true copy of Order No. 98/12  
issued by The Public Utilities Board

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Secretary

**SCHEDULE “A” - TIMETABLE**

Action Item	Due
MH File Volume I Application & Draft Public Notice with PUB	Tuesday June 15, 2012
MH File Volume II Application	Friday, July 6, 2012
PUB Approval of the Public Notice	Monday, July 9, 2012
Publish Public Notice in Daily/Weekly Newspapers	July 14-20, 2012
Additional Information Filed	Friday, July 20, 2012
Interested Parties to Register for Intervenor Status	Tuesday, July 24, 2012
Pre-Hearing Conference	Thursday, July 26, 2012
Intervenor Submissions- Proposed September 1 Interim	Wednesday, August 8, 2012
MH Written Reply Submission- Proposed September 1 Interim	Wednesday, August 15, 2012
MH in Receipt of Round 1 Information Requests	Friday, August 24, 2012
MH to File April 1, 2013 Rate Schedules (subject to MHEB approval)	Friday, August 31, 2012
Implementation Date of Proposed Interim Rate Increase	Saturday, September 1, 2012
MH to File Responses to Round 1 Information Requests	Friday, September 21, 2012
MH in Receipt of Round 2 Information Requests	Friday, October 5, 2012
MH to File Response to Round 2 Information Requests	Friday, October 26, 2012
All Parties in Receipt of Intervenor Evidence	Friday, November 9, 2012
All parties file information requests of Intervenor Evidence	Friday, November 16, 2012
Intervenors to File Responses to Information Requests	Friday, November 30, 2012
Manitoba Hydro to File Rebuttal Evidence	Friday, December 7, 2012
2012/13 & 2013/14 Electric GRA Hearing Commences	Monday, December 10, 2012
Implementation Date of 2013/14 Test Year Rate Change	Monday, April 1, 2013

**SCHEDULE "B"**

**PROCEDURES TO BE FOLLOWED AT THE  
MANITOBA HYDRO  
2012/2013 AND 2013/2014 GENERAL RATE APPLICATION**

1. Hearing: Hearing will be held at the Board's office, 4<sup>th</sup> floor, 330 Portage Avenue, Winnipeg, commencing on December 10, 2012, at 9:00 a.m. and continuing thereafter as necessary.
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 December 10, 2012.
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' 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.