

February 5, 2016

Mr. K. Simonsen
The Public Utilities Board
400 - 330 Portage Avenue
WINNIPEG, Manitoba
R3C 0C4

Dear Mr. Simonsen:

RE: MANITOBA HYDRO COST OF SERVICE REVIEW

Manitoba Hydro filed materials to facilitate review of its Cost of Service Study (“COSS”) methodology on December 4, 2015. On December 8, 2015, the Public Utilities Board (“PUB”) directed Manitoba Hydro file additional materials, identified in the PUB’s August 22, 2014 correspondence as Minimum Filing Requirements (MFRs), and requested Intervenors of past record provide comments regarding possible additional MFRs. Intervenors of past record, including the Consumers Association of Canada (Manitoba) and Winnipeg Harvest (“COALITION”), the City of Winnipeg (“COW”) and the Manitoba Industrial Power Users Group (“MIPUG”) each provided comments regarding additional MFRs. Manitoba Hydro filed materials in response to the PUB’s direction regarding MFRs on December 18, 2015.

On January 22, 2016, the PUB distributed process directions regarding “Manitoba Hydro’s Cost of Service Study Methodology Review Application and Rate Related Matters”. The January 22, 2016 process directions included:

- A determination that in addition to Cost of Service matters (“COS”), the PUB would also be considering rate related matters raised in MIPUG’s COS MFR submission including rate rebalancing, rate design matters and the review of terms and conditions, including service extension policies;
- Direction that Manitoba Hydro respond to COALITION and MIPUG proposed MFRs by February 5, 2016;
- Advice that the PUB had retained the law firm Hill Sokalski Walsh Olson to assist the PUB in understanding the views and position of General Service Small and Medium customers; and
- Advice that a “non-evidentiary Pre Hearing Conference” will be held Friday, February 12, 2016 with the expectation that 20 minute presentations will be made by Manitoba Hydro and Intervenors and that technical experts should be on hand to deal with issues related to the scope of the hearing.

Manitoba Hydro believes it useful to provide comments prior to the Pre Hearing Conference both with respect to the scope of the hearing and the current initiatives underway between Manitoba Hydro, the PUB and intervenors as a result of the direction provided in Order 73/15.

Manitoba Hydro anticipates filing its next General Rate Application (“GRA”) before the end of 2016 for rates effective April 1, 2017. In order to complete the review in a timely manner in advance of the next GRA, it is important to focus the scope of this process, and take into consideration the priorities and direction set by the PUB in Order 73/15 with regard to issues of Bill Affordability and other matters, and the direction on conservation rates provided by the Province of Manitoba in its policy paper “Manitoba’s Climate Change and Green Economy Action Plan” released in December 2015 .

Manitoba Hydro has assessed these matters and provides its comments in this letter.

Application vs. Review

Manitoba Hydro notes that the PUB has referenced Manitoba Hydro’s filing as an “Application”. Manitoba Hydro believes there is significance in the term “application” which has potential to impact the PUB’s flexibility regarding the review process, the outcome of the review and its ability to address desired changes to the COS in the future.

The PUB’s authority with respect to Manitoba Hydro relates to rate approval. Manitoba Hydro must file an application when seeking a change in rates and the PUB’s mandate is to approve, by order, rate changes as it considers reasonable. The PUB has broad discretion as to how it exercises its rate approval function. As noted by the PUB itself in its submission to the Manitoba Court of Appeal regarding use of the COSS when exercising its rate approval function:

45. There are no specific legislative requirements imposed on the Board which direct it to carry out this duty by any prescribed formulae. There are no prescribed accounting requirements or principles. There are no prescribed cost allocation principles. The Board has complete discretion over the methodology to be employed in any Hydro rate application.

46. Any judicial review, leading to the creation of guidelines which serve to impose court-directed limitations on the Board, would be contrary to the words and the purpose of the legislation granting the Board the power to review and approve Hydro rates.¹

The Court of Appeal fully endorsed the PUB’s position² as did Manitoba Hydro. The COSS is not a document that requires “approval” and characterizing it as such risks unnecessarily constraining the PUB’s discretion and flexibility to respond to the constantly evolving environment in which the utility and regulator operate. The Court of Appeal confirmed the PUB is not restricted by legislation as to how it uses the COSS. The COSS is similar to Manitoba Hydro documents reviewed in the course of a GRA like the Integrated Financial Forecast – it informs the PUB, but does not direct rate approvals. The PUB may ask that alternative scenarios be run, but Manitoba Hydro does not apply for approval of the IFF nor does the PUB issue

¹ Brief of Argument of The Public Utilities Board, paras 45 & 46 filed in response to MIPUG’s Motion Seeking Leave to Appeal in Consumers’ Association of Canada (Man) Inc et al. v. Manitoba Hydro Electric Board, 2005 MBCA 55

² Consumers’ Association of Canada (Man) Inc et al. v. Manitoba Hydro Electric Board, 2005 MBCA 55 at para 62

orders approving alternative versions of the IFF.

Manitoba Hydro recommends that the PUB consider this a review (but not an “application”) that results in the PUB providing its perspectives and findings regarding Manitoba Hydro’s COS for future use in GRAs.

Proposed Process and Scope of the COS Methodology Review

The COSS Methodology Review requires the review of a number of highly technical, complex and inter-related assumptions within the cost study. Given the nature of this subject matter, such a review does not lend itself well to the traditional discovery processes of filing and responding to written information requests, or the sequential examination and cross examination of witnesses. Manitoba Hydro welcomes the opportunity to suggest an alternative process in order to more effectively and efficiently communicate COS concepts and to arrive at the most appropriate outcome for all parties involved.

In recognition of the specialized technical nature of COS subject matter, Manitoba Hydro embarked on a stakeholder engagement process in the latter half of 2014. In Manitoba Hydro’s view, this process was successful in re-familiarizing intervenor representatives and their experts to Manitoba Hydro’s COSS and the issues and alternatives that could be considered in a future public review.

Manitoba Hydro recommends an approach for this current review process which builds on the work undertaken during stakeholder meetings in the fall of 2014. Manitoba Hydro proposes that the public review be conducted by way of technical workshops where an interactive exchange of questions and ideas is facilitated by an independent PUB-appointed facilitator. These workshops would include the PUB panel members and be attended by representatives and experts from each participating party.

The workshops would focus on specific topic areas and would be structured to enable all parties to fully understand and evaluate each other’s positions, and would also enable the PUB Panel members to directly pose questions to all parties’ representatives and technical experts. The discussions in these workshops would be transcribed.

Instead of written information requests, Manitoba Hydro recommends that additional information that may be required would be identified by the PUB-appointed facilitator in the course of the workshop and a list of undertakings of Manitoba Hydro and/or other parties would be prepared. The undertakings responses would be distributed to all parties within a given period of time after the conclusion of the workshop.

Manitoba Hydro has provided a draft schedule of this proposed process as Attachment 1 to this letter. After the issuance of a procedural order setting the scope of the review, Manitoba Hydro suggests that a Process Conference be held to enable the Corporation and intervenors to come to consensus on the MFRs to be provided by parties.

The draft schedule identifies a series of three Technical Workshops, as described below.

The first would have Manitoba Hydro present its COSS and all parties in attendance would give participating parties the opportunity to ask questions of Manitoba Hydro's staff and external consultant on subject matter within the agreed upon scope of the review process. During that workshop, there may be questions posed or modeling scenarios requested by the participants. The PUB-appointed facilitator would assist in defining the undertakings to be requested of Manitoba Hydro, and the Corporation would have a pre-determined time period after the conclusion of the Technical Workshop to prepare responses and distribute them to all parties.

Once Manitoba Hydro has provided its completed undertakings, the interveners would be required to file their evidence with all parties. A second Technical Workshop would be scheduled to facilitate the examination of the interveners' evidence and COSS proposals. The PUB-appointed facilitator would also assist in defining the undertakings to be requested of interveners, and interveners would have a pre-determined time period after the conclusion of the Technical Workshop to prepare responses and distribute them to all parties.

The third Technical Workshop would be a facilitator-led discussion to record parties' positions on issues, identify areas of consensus amongst parties, and identify topic areas that remain in dispute. The PUB-appointed facilitator would then draft a public report on the positions and state of consensus or dispute with regards to the COSS. This report would be provided to the PUB Panel members and all participating parties.

The process would then provide interveners the opportunity to provide final written submissions to the PUB on the subject matter, and enable them to advocate for positions on topic areas that remain in dispute. Following those written submissions, Manitoba Hydro would provide its final written submission to the PUB.

The PUB Panel would then be in a position to assess the evidence and respective positions provided throughout the review process and provide its findings and direction in advance of Manitoba Hydro's next GRA.

Issues

In its December 4, 2015 submission to the PUB, Manitoba Hydro provided its perspectives on the COSS and included reports prepared by its expert, Christensen and Associates. While those reports represent a wide and comprehensive review of Manitoba Hydro's COSS, it is important to focus the public review of the COSS to the critical topic areas that carry the greatest overall impact in terms of the allocation of costs to customer classes.

As noted above, Manitoba Hydro anticipates filing its GRA before the end of 2016 for rates effective April 1, 2017. In Order 73/15, the PUB indicated that it wished to review the Corporation's COSS in advance of the next GRA. In order for the PUB to complete the review in advance of the next GRA, it is important to focus the scope of this process to the most critical COS matters that have the potential to materially impact Revenue Cost Coverage ratios.

Approximately 75% of Manitoba Hydro's \$1.7 billion Revenue Requirement (as identified in PCOSS14) is related to Generation and Transmission costs. The allocation of those costs affects all customer classes. The treatment of cost allocation to the Export Class and the resulting return

of Net Export Revenues to domestic customer classes is a critical issue in this context. The cost allocation treatment with respect to those issues should be the critical focus of this review, and could be undertaken in a reasonable timeline in advance of the next GRA. The review of these matters would leverage the efforts undertaken by Manitoba Hydro and interested stakeholders in the COS stakeholder engagement in the fall of 2014.

Rate Design and Rate Rebalancing Matters

In its letter of January 22nd, the PUB indicated its interest in considering various rate design matters, such as the respective levels of Basic Monthly Charges, energy charges and demand charges, and the rate design considerations for Time-of-Use Rates for General Service Large customers and conservation rates for residential class customers.

In Order 73/15, the PUB directed Manitoba Hydro to lead a collaborative process to develop a bill affordability program harmonized with Manitoba Hydro's other programs supporting low income ratepayers. In addition, Manitoba Hydro has incorporated plans for developing a conservation rate design for residential customers, as part of its future PowerSmart programming initiatives. In December 2015, the Province of Manitoba announced "Manitoba's Climate Change and Green Economy Action Plan" which requires Manitoba Hydro to develop a conservation rate structure to be brought before the PUB in its next General Rate Application.

Manitoba Hydro is currently working on both above noted initiatives. With respect to residential conservation rates, Manitoba Hydro is currently retaining an expert to prepare analysis and alternative rate options for consideration. These alternative rate option scenarios would consider appropriate levels for the Basic Monthly Charge, the level and size of the first energy block, and the level and degree of inversion for the run-off block.

Manitoba Hydro expects to engage stakeholders in the discussion of these alternative rate options later in 2016, and prior to the finalization of its next GRA filing before the PUB. Given the potential intersection of issues with respect to customer bill affordability, Manitoba Hydro expects to take advantage of its current stakeholder engagement with parties on bill affordability programming and to have those parties provide input and feedback on the various rate design alternatives that may be prepared. Upon receipt of that stakeholder feedback, Manitoba Hydro would finalize its residential conservation rate design proposal and upon direction of the Manitoba Hydro-Electric Board, incorporate that proposal into its upcoming GRA.

Manitoba Hydro believes that this order of sequence is appropriate in light of past direction of the PUB (for bill affordability programming) and the current policy impetus to develop and introduce residential conservation rates to be examined by the PUB in the next General Rate Application.

With respect to Time-of-Use rate design for the General Service Large customers served at voltage levels greater than 30 kV, Manitoba Hydro is of the view that such a proposal could be addressed at the next GRA. Should the PUB wish to examine the TOU concept in this process, it should only do so if there is sufficient time and resources available in a manner that would not detract or negatively impact the review of the COSS.

In Manitoba Hydro's view rate rebalancing is best dealt with subsequent to the review of COS, taking into account other competing factors and policy considerations in the context of a rate setting proceeding.

Terms and Conditions & Service Extension

Manitoba Hydro can provide information regarding its terms and conditions of service for the provision of power, however *The Manitoba Hydro Act* clearly places jurisdiction over the terms and conditions with the Manitoba Hydro Electric Board, which jurisdiction is, with respect to certain aspect of the terms and conditions, subject to Lieutenant Governor in Council approval:

Regulations as to supply of power

28(1) The board may, by regulation, prescribe

- (a) the terms, and conditions upon and subject to which the corporation will supply power to the users of the power supplied by it;
- (b) the standards governing the construction, installation, maintenance, repair, extension, alteration, and use of electric wiring and related facilities using or intended to use power supplied by the corporation;
- (c) such other conditions relating to the supply of power to users of that power, not inconsistent with this Act, as the corporation deems necessary for the proper carrying out of this Act and for the efficient administration thereof.

Regulations

52 For the purpose of carrying out the provisions of this Act according to their intent, the board, with the approval of the Lieutenant Governor in Council, may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the board, with the approval of the Lieutenant Governor in Council, may make regulations and orders:

- (a) requiring the owner of any power plant or works to furnish to the board any information required by the board regarding
 - (i) his plant and works including the capacity, output, cost, and use thereof;
 - (ii) his assets, liabilities, revenues, expenses, and operations;
 - (iii) the supply of power by him to other persons including particulars of quantities, prices, terms, conditions, points of delivery and use;
- (b) requiring any person to furnish to the board information regarding the supply of power to him, including particulars of quantities, prices, terms, conditions, points of delivery, use, and by whom supplied;
- (c) providing for the entry upon, and inspection of property, plant and works including the making of inventories and valuations thereof, the examination of books, accounts, records, and documents relating thereto, and generally the obtaining of information in connection therewith;
- (d) providing for the discontinuance of the supply of power to any customer who is in default in payment of any account for power or any monthly charge levied under the on-meter efficiency improvements

program under *The Energy Savings Act*, providing for the removal of the meters, wires, facilities and equipment of the corporation from the premises of the customer and providing for the allocation of, or exemption from, liability for losses, costs, damages or expenses resulting from such discontinuance or removal;

(e) providing for the allocation of, or exemption from, liability for any loss, costs, damages or expenses incurred by a customer or any other person resulting from any fluctuation, interruption, reduction or failure in the supply of power;

but no regulation or order made under this section shall relieve the corporation from liability for negligent acts or omissions.

Had the legislature intended terms and conditions be subject to PUB approval, it would not have given Manitoba Hydro the power to pass regulations. Regulations are a form of legislation and can only be amended in accordance with *The Statutes and Regulations Act*. The PUB does not possess the jurisdiction to establish or change Manitoba Hydro's regulations.

Manitoba Hydro can also provide the PUB with information regarding its service extension practices to such extent they are related to the COS review. Manitoba Hydro notes, however that *The Manitoba Hydro Act* clearly places jurisdiction over the terms and conditions upon which service extensions will be made solely with Manitoba Hydro:

Terms and conditions of service extensions

49.1 The extension or enhancement of the supply of power by the corporation to any customer shall be on terms and conditions, which may include a contribution to, or payment for, capital expenditures, acceptable to the corporation.

Unlike s.39 (2) which makes the Corporation's authority to fix the price for power subject to PUB approval, s. 49.1 contains no such requirement with respect to obtaining contributions related to extending or enhancing the system in order to allow for the supply of power to commence. There exist two distinct concepts – s. 49.1 deals with the terms and contributions collected to recover the cost of connecting to the system in order to be in a position to receive power; s. 39 deals with the price payable for the power itself. Capital contributions collected under the service extension policy deal with incremental costs that a new customer/load imposes on the system and are not part of the price for power regulated by the PUB.

Minimum Filing Requirements

The PUB directed Manitoba Hydro respond to a number of additional filing requirements proposed by the interveners COALITION and MIPUG, by February 5, 2016. In addition Manitoba Hydro was directed to develop a rudimentary working model of PCOSS14 that could be provided to Intervenors. Manitoba Hydro had expected that MFRs would be set after the scope of the review was determined at the Pre-Hearing Conference, and that it would be able to comment on same, both in terms of relevance and its ability to prepare and/or supply within the timeframes of the review process.

Manitoba Hydro remains concerned that providing a COS model and planning and conducting training sessions will consume a substantial amount of time, particularly to analyze and understand changes made to the model by other parties and their potential impacts. Instead, Manitoba Hydro proposes that having the Corporation undertake to model alternative assumptions and then present the results as part of the COS review would be a more efficient approach.

With respect to the information requested in MIPUG's MFRs, much of what has been requested is not information Manitoba Hydro has available in a form suitable for immediate filing. The MFRs proposed by MIPUG require the assembly of data, analysis, review and internal approval prior to being submitted as evidence in a public forum. As such, it was not possible to accomplish this by February 5, 2016. Manitoba Hydro has compiled some of the information requested that is readily available and has included this information as Attachments to this letter. As the scope of the COS review has not yet been finalized, Manitoba Hydro is not in a position to assess whether these documents fall within the scope.

With respect to COALITION's request for a copy of the Diesel Settlement Agreement, Manitoba Hydro can advise that it does not have an executed copy in its possession and while Manitoba Hydro has no objection to the release of the document, there remain possible legal issues if the Corporation were to voluntarily file an unsigned copy. If the PUB believes this an important document in the COSS review it may be necessary to compel MKO to produce the fully executed agreement or alternatively Manitoba Hydro to provide the partially signed version it has in its possession.

Intervener Costs

Manitoba Hydro is concerned with the PUB's stated intention that it does not intend to consider the sufficiency of financial resources as a criterion in awarding intervener costs. Given that ratepayers fund intervener cost awards, Manitoba Hydro would appreciate the opportunity to understand the rationale behind the PUB's decision to waive its established Rules of Practice and Procedure in the context of the COSS Review.

General Service Small and Medium Class Representation

In this process the PUB has appointed legal counsel to represent the General Service Small and Medium Class. Manitoba Hydro recognizes that these classes have not been formally represented in PUB processes for a number of years. Manitoba Hydro views representation of all

customer classes as a laudable objective of the regulatory process but has concerns whether the appointment of counsel, without a client to provide class perspective or to instruct counsel, achieves this objective. Manitoba Hydro would appreciate the opportunity to gain a better understanding of how representation will be achieved.

Conclusion

Manitoba Hydro recognizes that a number of parties, including the utility itself, believe a review of the COSS is overdue. High priority work such as the NFAT and GRAs have necessitated the deferral of the review of COS. This is an important topic for Manitoba Hydro as fair allocation of costs clearly impacts the Corporation's mandate to provide service in an efficient manner. Manitoba Hydro sees it important that the COS review focus on the critical topic areas that carry the greatest overall impact in terms of the allocation of costs to customer classes.

Manitoba Hydro appreciates the PUB's recognition of the advantages of addressing this subject matter through an alternative review process and encourages the PUB to give consideration to the process proposed herein.

Yours truly,

MANITOBA HYDRO LAW DIVISION

Per:



PATRICIA J. RAMAGE

Barrister and Solicitor

PJR/

cc: Bob Peters

Proposed Cost of Service Review Process & Timelines

Item	Purpose	Due Dates
Pre-Hearing Conference	Discuss Issues in Scope, Proposed Interventions and Process Timelines Present: MH, Interveners, PUB Panel and Staff (All Parties)	Friday, February 12, 2016
Receipt of PUB Procedural Order		Wednesday, February 24, 2016
Process Conference	Develop List of MFRs based on the established Scope. Present: MH, Interveners and PUB Staff.	Friday, March 04, 2016
MH to File MFRs		Wednesday, March 30, 2016
Technical Workshop #1 (MH Model and Assumptions)	MH presents its COSS, assumptions and cost treatments, and respond to questions from All Parties. Present: All Parties.	April 11-12, 2016
MH to File Responses to Undertakings from Technical Workshop #1		Tuesday, May 03, 2016
Interveners to File COS Proposals	Interveners to file their COSS proposals and assumptions	Tuesday, May 17, 2016
Technical Workshop #2 (Interveners Models and Assumptions)	Interveners present their COSS proposals and assumptions, and respond to questions from All Parties. Present: All Parties	May 24-25, 2016
Interveners to File Responses to Undertakings from Technical Workshop #2		Wednesday, June 15, 2016
Technical Workshop #3 (Facilitator-led Discussion)	Facilitator-led Concurrent Evidence Session to Record Parties' Positions on Issues, Identify Areas of Consensus and Dispute. Present: All Parties	Wednesday, June 22, 2016
Facilitator Issues Draft Report to MH and Interveners	The Report Identifies Areas of Consensus and Areas of Dispute that Require PUB Resolution	Wednesday, July 13, 2016
MH and Interveners to Provide Comments on Draft Report		Wednesday, July 27, 2016
Facilitator Issues Final Report to PUB		Wednesday, August 03, 2016
Interveners Provide Written Final Submissions	Final Written Submissions Outlining Interveners Positions.	Wednesday, August 10, 2016
MH Provide Written Final Reply Submission	Final Written Reply Submission Outlining MH Positions.	Wednesday, August 17, 2016
PUB Issues Findings and Directions	PUB Assess Written Submission and Issue Findings	August-September 2016

Noted Dates:
Louis Riel Day: Monday, February 15, 2015
Good Friday: Friday, March 25, 2016
Victoria Day: Monday, May 23, 2016
Canada Day: Friday, July 1, 2016
Civic Holiday: Monday, August 1, 2016
Labour Day: Monday, September 5, 2016
Thanksgiving: Monday, October 10, 2016

Attachments:

- MIPUG MFR 11, which requests the resumes for all consultants/external contributors who participated in the preparation of Manitoba Hydro's study and Christensen Associates review;
- PUB MFR 16, Information Requests on the Rate Related Matters (as identified in the PUB's letter of January 22, 2016) that were filed during the last three GRAs;
- PUB MFR 17, Documentation provided at the 2014 stakeholder consultation sessions with respect to Cost of Service.