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November 22, 2017

VIA E-MAIL

The Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Attention: Kurt Simonsen (Kurt.Simonsen@gov.mb.ca)

Dear Sir:

**Re: Budget Variance Request – Business Council of Manitoba
2017/18 2018/19 General Rate Application (the "GRA")
Our File No. 104735-1**

Pursuant to Board Order No. 70/17, it was directed that should any approved Intervener seeking an award of costs determine that its approved budget will be exceeded by 10% or more, that Intervener is to notify the Board, explain the reasons for the need to revise the budget, and propose the amount of additional funding being sought.

As you are well aware, this GRA is the first time that the Business Council of Manitoba (the "**BCM**") has applied to be and been approved as an Intervener. The issues the BCM has faced in trying to determine a reasonable budget, identifying expert witnesses and ensuring that the issues on which the BCM was approved to intervene (the "**BCM Issues**") are adequately canvassed and considered are broadly described in our September 25, 2017 letter to the Public Utilities Board (the "**PUB**") requesting the PUB to review and reconsider its decision of August 25, 2017 to deny the BCM the opportunity to retain its own experts on macro-economic impacts and bond rating considerations on the basis that such areas will be addressed by other witnesses (the "**August Decision**").

The PUB's decision dated October 16, 2017 declining to vary the August Decision has been interpreted by the BCM as a clear enunciation by the PUB that given that the experts of the other Interveners are "independent", such experts would participate and assist the BCM in having the BCM Issues (which are in scope and have been clearly identified in our correspondence to all Interveners dated September 14, 2017) put before the Board. It is on such basis that the BCM and

our office have undertaken a directed review of the GRA materials and Intervener expert reports to put forth the Information Requests submitted by the BCM on November 8, 2017.

When the BCM submitted its budget to the PUB by letter dated July 25, 2017, the BCM had only been approved to intervene approximately 3 weeks prior to such time and was not in a good position, relative to the other approved Interveners [who have participated in numerous prior general rate applications, the NFAT review, COSS review, etc. (collectively, "**Prior Proceedings**")]] to anticipate the level of involvement necessary by legal counsel and experts in preparing for and presenting arguments during the GRA. Indeed, the BCM had anticipated that it would have the benefit of an expert to review the relevant expert evidence and GRA materials with the BCM's concerns and position in mind.

The consequences of the PUB's refusal to allocate budgetary resources to the BCM to retain its own expert are set out in our letter of September 25, 2017. In addition, the result of the BCM not having been approved to retain an expert on bond rating and macroeconomics has necessarily caused legal counsel for the BCM to devote substantial amounts of time to review expert testimony on areas outside of legal issues. The BCM expects that legal counsel for other approved Interveners must undertake some review of the GRA materials and expert reports however it is noted that the other Interveners have the benefit and expertise of their own experts, who have been allocated/budgeted hundreds of hours to review the GRA materials, prepare reports, test the evidence of other witnesses and present evidence at the hearing. It is also noted that many of the expert witnesses have served as expert witnesses in Prior Proceedings and have the added benefit of familiarity with the materials, information and issues to be addressed in the course of the GRA.

While the scope of the BCM's intervention in the GRA is narrow, the PUB's decision to reduce the BCM's budget to \$62,500 on the basis that the Board expects that the BCM's participation in the hearing will be limited to between twelve and fifteen hearing days and deny the BCM the budget to retain its own experts essentially equates to a budget of 220 hours of Senior Counsel time (\$285/hr) to, among other things, review all relevant GRA materials and correspondence, review expert witness reports, draft information requests, review responses to information requests, prepare for the hearing, prepare any witnesses/presenters, attend the hearing, and prepare written and oral final arguments. Respectfully, such an expectation does not seem reasonable given that doing nothing more than attending the hearing for 15 days (at 8.5 hours a day) would amount to close to 127.50 hours of time.

At present, 130.6 hours of Senior Counsel time and 142.9 hours of Junior/Intermediate Counsel time for the period of May 11, 2017 to November 9, 2017 have been invoiced at the PUB tariff rates. Third party costs incurred and invoiced for the same time period are \$2,713.20. Accordingly, invoiced legal fees (at 75% per Board Order 70/17 at reduced hourly rates), third party costs and taxes total \$57,273.21.

Having regard to the fact that it is still necessary to review the reports of the PUB's Independent Expert Consultants, prepare and review Information Requests for such reports, prepare for and attend selected aspects of the hearing, prepare any BCM witnesses/presenters, and prepare written and oral final arguments, it is anticipated that additional legal counsel time will be required to complete the hearing which we estimate will consume 150 hours of Senior Counsel time and 150 hours of Junior/Intermediate Counsel time which would require an additional budget of \$71,250.00 of legal fees (before taxes).

Having regard to the foregoing, the BCM is requesting a budget review whereby an additional amount of \$80,512.50 (\$71,250.00 + taxes) be approved by the PUB to facilitate the BCM's continued participation in the GRA. We note that the BCM had originally proposed a budget of \$125,000 (taxes not included) for legal counsel fees on the basis that the expert witness(es) proposed to be retained by the BCM would be approved.

Thank you for your consideration and the opportunity to raise this matter with the PUB. Please do not hesitate to contact the undersigned should you require anything further at this time.

Yours truly,

TAYLOR McCAFEREY LLP

Per:



KEVIN T. WILLIAMS

KTW/vt

cc: Don Leitch, Business Council of Manitoba