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July 27, 2020

Dr. Darren Christle, Executive Director
Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Dear Dr. Christle:

**Re: Rate Shock in a Pandemic: The Unlawful, Unilateral Rate Increase
Proposed by Manitoba Hydro**

Overview

On behalf of the Consumers Association of Canada (Manitoba Branch) and Winnipeg Harvest (together, the Consumers Coalition), we are writing to express:

- the opinion that Manitoba Hydro's June 23, 2020 proposed unilateral rate increases on Diesel Zone residential customers and on the First Nation on Reserve Residential class (FNORR) amount to an irregular, “back door” effort to review and vary key elements of Public Utilities Board (PUB) Orders 69/18 and 59/18;
- the opinion that any unilateral rate increase by Manitoba Hydro on Diesel Zone residential customers and on the FNORR would be unlawful in the absence of a new rate application or a successful application to review and vary Public Utilities Board (PUB) Orders 69/18 and 59/18;
- the concern that the proposed rate increases of 6.6% on an essential commodity in the midst of both a pandemic and a recession constitute rate shock;
- the view that “rate shock in a pandemic” would be inconsistent with the approach taken by the Province of Manitoba, Manitoba Public Insurance (MPI) and the Manitoba PUB in enabling an urgent rate rebate for MPI customers in the midst of the COVID-19 state of emergency (Order 71/20).

The Manitoba Coalition also observes that the time frame for parties to seek leave to appeal the Manitoba Court of Appeal's decision in *Manitoba (Hydro-electric Board) v Manitoba (Public Utilities Board) et al'* has not yet expired.

Accordingly, the Manitoba Coalition recommends the PUB advise Manitoba Hydro that:

- Manitoba Hydro lacks the lawful authority to unilaterally impose rate increases on Diesel Zone residential customers and on the FNORR in the absence of a new rate application or a successful application to review and vary PUB Orders 69/18 and 59/18;
- any application to impose rate increases on Diesel Zone residential customers and on the FNORR should directly address rate shock concerns and ways to mitigate those concerns; and,
- any application to impose rate increases on Diesel Zone residential customers and on the FNORR should also address the proposed consequences for other ratepayers whose rates were increased in Order 68/18 in order to hold Manitoba Hydro whole for the zero percent rate increases for Diesel Zone residential customers and for the FNORR.

The Unilateral Rate Increase Proposal of June 23, 2020

In *Order 59/18*, the Manitoba Public Utilities Board (PUB):

- ordered a 3.6% average revenue increase effective June 1, 2018;²
- created the FNORR and provided it would receive a 0% rate increase for the 2018/19 test year;³
- indicated that a 0% rate increase would also apply to First Nations residential customers in the Diesel Zone communities;⁴
- directed Manitoba Hydro to recalculate and file, for Board approval, a schedule of rates reflecting the overall rate increase and differentiated rates effective June 1, 2018 for all customer classes.⁵

A schedule of rates reflecting Order 59/18 was approved in PUB Order 68/18. As Manitoba Hydro concedes, to achieve a 3.6% average revenue increase while exempting the FNORR and Diesel Residential customers from any rate increase, an overall average rate increase of 3.73% was applied to all other customer classes.⁶

Board Order 68/18 also noted the concern of Manitoba Hydro and the PUB that bill increases of 5% over the class average “would potentially result in significant negative bill impacts for some customers.”⁷

2 Manitoba PUB, Order 59-18, Directive 4.

3 Manitoba PUB, Order 59-18, Directive 6.

4 Manitoba PUB, Order 59-18, Directive 6.

5 Manitoba PUB, Order 59-18, Directive 8.

6 MH to Manitoba PUB, Re: Manitoba Hydro First Nation On- Reserve Residential Customer Class, July 20, 2020, Response to Questions 1 b., p. 2. See also Response to Question 1 d.i., p. 3, Response to Question 4, p. 7 and Order 68/18, p. 1.

7 Manitoba PUB, Order 68/18, p. 3. At this time, the Board accepts Manitoba Hydro’s use of the 2% bill impact constraint as the 5% constraint would potentially result in significant negative bill impacts for some customers.

Manitoba Hydro challenged the lawful authority of the PUB to create the FNORR. On June 5, 2020, the Manitoba Court of Appeal (MB CA) issued a decision in the matter of *Manitoba (Hydro-electric Board) v Manitoba (Public Utilities Board) et al.* The MB CA expressly found that the PUB did not have the authority to create the FNORR.⁸

The MB CA did not make a determination on whether the Manitoba PUB acted correctly in relieving Diesel Zone residential consumers who are not subject to the Uniform Rates legislation from a rate increase. The MB CA did not offer any guidance on addressing the impact of its decision on the other customer classes whose rates were increased by 3.73% to keep Manitoba Hydro whole.

On June 23, 2020, Manitoba Hydro wrote to the PUB, advising that it was unilaterally imposing a 6.6% rate increase on Diesel Zone residential customers and FNORR beginning with the August 2020 billing cycle.⁹

Manitoba Hydro did not file its long awaited Diesel Cost of Service study to underpin any proposed change to the diesel rate. It did not file its long awaited Integrated Financial Forecast to suggest an urgent need to impose a rate shock level increase on disproportionately vulnerable communities.

In fact, Manitoba Hydro did not seek PUB approval. It did not bring a review and vary application with regard to Orders 59/18 and 68/18 to:

- address the appropriate treatment of Diesel Zone residential customers including whether a rate increase was justified;
- consider the treatment of other classes of customers whose rates were increased to keep Manitoba Hydro whole, and
- consider ways to mitigate the “rate shock” implications of its plan.

While Manitoba Hydro relied on the 2020 *Manitoba (Hydro-electric Board) v Manitoba (Public Utilities Board) et al* decision, it did not address the silence of the decision regarding the lawfulness of Diesel Zone residential rates or on the implications for other classes.

Manitoba Hydro did not acknowledge that its unilateral approach amounts to a “back door” variance of the decisions in Order 59/18 and 68/18 to:

- exempt Diesel Zone residential customers from any proposed increase in 2018/19 rates; and

⁸ 2020 MBCA 60, paras 11-12, 54, 55, 97-98.

⁹ MH to Manitoba PUB, Re: Manitoba Hydro First Nation On- Reserve Residential Customer Class, June 23, 2020, p. 1.

- increase the rates of all other customers to keep Manitoba Hydro role for the exemption from rate increases of Diesel Zone residential customers and the FNORR.

Ducking fundamental issues - the July 20 Submissions of Manitoba Hydro

On July 20, 2020, Manitoba Hydro filed a response to certain PUB questions. It did not file a review and vary application for Order 59/18 and Order 68/18. Buried in its responses are:

- a request for “continued approval” by the PUB “to apply the residential grid rate to Diesel residential customers”;¹⁰ and,
- an argument that the bill impacts of reducing a typical residential customer's rates by 0.13% were not material.¹¹

But Manitoba Hydro never grappled with the heart of the PUB concern in Order 59/18 in terms of Diesel Zone residential bill affordability. Nor did it address the question of mitigating rate shock impacts on the former FNORR including by lowering overall rates for residential consumers.

Rate Shock and Pandemics

Rate shock is a valid consideration at all times in rate setting. As the MB CA has noted, “bill affordability is an issue of social policy. It forms part of the PUB's concerns when dealing with a rate application . . .”¹²

Considerations of rate shock includes paying due attention to the pace at which rates change. Rate shock is a long standing and well established regulatory consideration which has continued to evolve in the light of current low inflation circumstances.

In the context of Manitoba Hydro, Board Order 68/18 noted the concern of Manitoba Hydro and the PUB that bill increases of 5% over the class average “would potentially result in significant negative bill impacts for some customers.”¹³

In the case of MPI, the Crown has expressed the view as recently as 2017 that a rate increase of 3% or more would constitute “rate shock.”¹⁴ The 2019 MPI Capital Management Plan which has been provisionally approved by the PUB for a two year period includes the “imposition of a judgmentally selected 5% cap on the combination

10 MH to Manitoba PUB, Re: Manitoba Hydro First Nation On- Reserve Residential Customer Class, July 20, 2020, Response to Questions 2 a. And b., p. 5.

11 MH to Manitoba PUB, Re: Manitoba Hydro First Nation On- Reserve Residential Customer Class, July 20, 2020, Response to Questions 4 a. b., p. 7.

12 *Manitoba (Hydro-electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60, para 83.

13 Order 68/18, p. 3. At this time, the Board accepts Manitoba Hydro's use of the 2% bill impact constraint as the 5% constraint would potentially result in significant negative bill impacts for some customers.

14 Order 130/17 at 15.

of the overall Basic rate indication and any Capital Build provision."¹⁵

Effective August 1st, 2020, Manitoba Hydro seeks to unilaterally impose a 6.6% rate increase on some of Manitoba's most vulnerable consumers. From the perspective of the Consumers Coalition, this is rate shock at its worst in the context of:

- a commodity that is essential for home heating and lighting;
- a time of deflation or near zero inflation;
- a significant pandemic influenced recession that is straining the capacity of many individuals to meet their basic needs;
- the disproportionate reliance of residents in rural and remote First Nations on electricity to heat their homes;
- the disproportionate financial marginalization of many on reserve First Nation residents; and,
- the absence of any IFF presented by Manitoba Hydro suggesting it is in acute financial need.

Such an approach is contrary to the approach adopted by the Province of Manitoba, MPI and the Manitoba PUB in the MPI application for an emergency rate rebate to provide economic relief to Manitobans experiencing hardship in the pandemic.¹⁶

In the view of the Consumers Coalition and absent emergency circumstances, increases of the magnitude proposed by Manitoba Hydro are highly unlikely to be just and reasonable at any time but especially not in a pandemic with winter coming.

Conclusion – Options for An Appropriate Process

The Consumers Coalition recommends the PUB advise Manitoba Hydro that:

- it lacks the lawful authority to unilaterally impose rate increases on Diesel Zone residential customers and on the FNORR in the absence of a new rate application or a successful application to review and vary Public Utilities Board (PUB) Orders 69/18 and 59/18;
- any application to impose rate increases on Diesel Zone residential customers and on the FNORR should directly address rate shock concerns and ways to mitigate those concerns; and,

¹⁵ Order 176/19 at p 55. See the two year approval of the Capital Management Plan by the PUB at p. 61.

¹⁶ Order 71/20, p. 8. MPI stated that the Application resulted from the announcement on April 23, 2020 by the Minister of Crown Services that MPI provide economic relief to its customers during the COVID-19 pandemic.

- any application to impose rate increases on Diesel Zone residential customers and on the FNORR should also address the proposed consequences for other ratepayers whose rates were increased in Order 68/18 in order to hold Manitoba Hydro whole.

In the view of the Consumers Coalition, there are at least three possible approaches Manitoba Hydro could take in response to that direction:

- Manitoba Hydro could proceed only with an application to increase the former FNORR rate with due consideration to rate shock, the interests of other consumers and the health of Manitoba Hydro. Any such application could possibly be dealt with in a written process;
- Manitoba Hydro could proceed with an application to increase both the Diesel Zone residential rate and the former FNORR rate with due consideration to a Diesel Zone cost of service study, rate shock, the interests of other consumers and the health of Manitoba Hydro. Such an application would best be dealt with in an expedited oral process; and,
- Manitoba Hydro could initiate the long awaited General Rate Application for the 2020-21 year with due consideration to an IFF, an update on capital projects, rate shock, the interests of other consumers and the health of Manitoba Hydro. Such an application would best be dealt with in a full General Rate Application.

Thank you for your consideration of these comments. If you have any questions or concerns, please feel welcome to contact me at (204) 985-8533 or bywil@legalaid.mb.ca.

Yours truly,



Byron Williams
Director
Public Interest Law Centre

cc Manitoba Hydro
PUB Counsel
Intervenors of Past Record