

## **Manitoba Industrial Power Users Group Comments Regarding Manitoba Hydro GRA Post-Hearing Process Matters**

Thank you for the opportunity to provide comment on process improvement used in the 2017/18 and 2018/19 General Rate Application (GRA) and considerations for the next GRA filing.

The Manitoba Industrial Power Users Group's (MIPUG) interest in the PUB application process is driven by the degree of sensitivity of member's operations to the cost of electricity. MIPUG companies face high levels of competition from both within their own companies (locations outside Manitoba) and from competitors, and electricity costs make up a substantial portion of the costs of operations. For most members, adverse movements in the cost of electricity drive very real impacts on not only the bottom line, but on future levels of investment, employment, and expansion (or contraction) in the province. The matters under consideration are important to MIPUG members and to the competitiveness of Manitoba's industrial customers, ensuring a continued beneficial and efficient hearing process in the future.

MIPUG has previously comments on process improvement following a meeting with PUB member Kapitany in November 2014 and again upon request in October 2015. Additionally, for the October 2015 process MIPUG submitted comments specific to a review on cost awards including a summary of rules for cost awards in other jurisdictions. Although dated, the summary is still relevant as none of the jurisdictions reviewed have updated their policies on cost awards in the interim. These previous submissions have been attached to this response.

### **1) Process Used in the 2017/18 and 2018/19 General Rate Application**

#### **Significant Process Improvements**

In MIPUG's view, there were significant improvements that occurred during the 2017/18 and 2018/19 GRA compared to past hearing. MIPUG acknowledges that the process remains lengthy and detailed, but attributes this in part to the scale of changes Hydro sought to make to the rate setting regime. Maintaining a number of the improved processes, as set out below, should continue to yield benefits over time, and should be continued.

Examples of the notably improved processes are as follows:

In MIPUG's experience, the previous GRA hearing reflected an improved focus on procedural fairness. This includes ensuring Review & Vary applications are reviewed according to the established criteria, and where Hydro has not met the appropriate threshold, rejection of the R&V. MIPUG also found that the Board was rigorous with all parties in time management, limiting extraneous cross-exam or excessively convoluted responses to questions, excessive advocacy or inappropriately structured redirect. This was very effective in overall improvement of the process from MIPUG's perspective.

The hearing itself is very intensive for participants and carefully managing the introduction of new evidence by parties during the hearing helps keep the entire process more manageable as well as fair. This is especially true for intervenors, who have significantly fewer support staff than Manitoba Hydro, as the amount of materials introduced throughout a hearing and the tight timeframes is difficult enough to manage without the introduction of excessive new evidence.

The process of Manitoba Hydro presenting its closing argument prior to intervenors, with Manitoba Hydro reply thereafter as needed, was an improvement in the process and consistent with administrative tribunal and court practice to have the person with the onus of proof present their final submissions first. This should be maintained for future processes.

The reduced paper approach used in the rate hearing was not only environmentally friendly but time-saving. Paper copies were still provided in some instances where required (i.e. when exhibits were walked in on the day of the hearing).

A witness qualification process was not undertaken during the hearing and it helped to save substantial time. The process of addressing witness qualifications in argument is appropriate and should continue, as long as Manitoba Hydro continues to file its final argument position first, so intervenors can respond/defend any necessary concerns raised regarding qualifications.

The recent PUB Order on the General Rate Application, Order 59/18 was well written in providing a clear structure, clear logic to support the decisions made by the Board, and was very readable. This high quality of writing is very beneficial to help direct future processes as well as communicate with external stakeholders (ratepayers, capital markets, etc.) what can be expected going forward.

The PUB should continue to hold Manitoba Hydro accountable through use of compliance filings and follow up on directives. With respect to compliance filings, previously Manitoba had been a laggard in this area. A high quality and comprehensive compliance filing (properly tested) can significantly improve future discovery processes when an established record of forecasts and methodology consistent with Board Order is provided at the close of each process. Expansion of compliance filings should include filing Integrated Financial Forecasts consistent with PUB directives. This style of compliance filing was provided at the conclusion of the 2016 Cost of Service Hearing and was very beneficial in terms of concluding the process and as a starting off point for the next time the Cost of Service Study is reviewed.

As timing between hearings can be lengthy, interim and timely follow-up on PUB directives is important. It is helpful that the PUB updates the public (including intervenors of record) with Manitoba Hydro filings regarding Board directives, as has recently been the case, such as on the PUB website. MIPUG appreciates this improvement, and recommends that continued posting of all responses to directives and follow up correspondence publicly. Previously these filings did not often get shared with intervenors or the public.

### **Intervenor Participation & Public Consultation**

In general, considering the volume of technical material, the last few GRA hearings have run with varying degrees of efficiency.

One critical area of focus was on display at the NFAT proceeding and since that time, where the PUB has been focused on managing what could have been an unmanageable number of intervenors. The rejection of some interventions (requiring the party to participate as a presenter) or required combination of intervenors has helped avoid an unworkable process outcome. However, still having up to five intervenors who fundamentally represent residential classes, or parts thereof (or no identifiable ratepayer class at all) can be time consuming.

Use of public presentations during the hearing process is one appropriate method for public consultation and should be considered as an appropriate alternative to intervention for the PUB to recommend. This has been done in the past by the PUB, including in the NFAT proceeding, where proposed intervenors had substantial overlap in customer representation. Presentations add a valuable and tangible perspective to the hearing process, which can otherwise be excessively technical and detailed in nature for easy public participation. Cross-examination of presenters by Manitoba Hydro at times became adversarial and does not appear conducive to encouraging public participation. However, questions asked of presenters by the Board help to better understand the information covered and in general understanding. Swearing in of public presenters has not traditionally been required.

Use of video streaming technology to provide public access to the hearing was valuable for increasing public awareness and participation, as well as providing a tool for intervenors to reduce costs through reduced attendance when not necessary. Video conferencing for experts who cannot be present at the hearing (with good reason) was beneficial as well. Video conferencing and streaming for technical conferences and workshops, if public in nature, would provide intervenors and participants further cost reduction opportunities.

### **Cost Awards**

MIPUG appreciates the opportunity to apply for cost awards in the last few proceedings, given their unique scope and range of issues. As has been noted in the last few process improvement filings (attached), MIPUG continues to encourage the PUB to review its Rules of Practice and Procedure Rule 43, specifically subsections 43(c) and 43(d) which limit MIPUG applying for costs. Historically, MIPUG has been the only intervenor who has been held to these rules.

MIPUG contends, and has proven in its past participation, that it broadly represented the interests of all industrial customers, and often all Manitoba ratepayers in general in its interventions. MIPUG consults with industry and other industrial groups who are not specifically members in an effort to continue to do so. Nevertheless, it is only the MIPUG member companies charged for intervention (when cost recovery is not allowed by the PUB). In addition, MIPUG members are ultimately charged their respective portions for the intervention of all other parties, including Manitoba Hydro, through the Cost of Service Study. Meanwhile, industrial customers not a part of MIPUG receive basically all the benefits of MIPUG's efforts without the added costs to cover MIPUG specific GRA expenses. In the past, companies have left MIPUG specifically for this pragmatic reason.

Additional information on this is provided in the attached 2015 MIPUG letter regarding Cost Awards Review and the Attachment comparing Canadian jurisdictions regarding industrial customer hearing cost awards.

## **Pre-Hearing Process**

It is useful for Manitoba Hydro to consult impacted parties on various issues and undertakings with in an effort to better understand customer concerns and impacts prior to finalizing its GRA. For example, the upcoming Time Of Use rate consultation process with industrial customers, where collaborative development of rates will provide benefit to customers and Manitoba Hydro and will hopefully help with future regulatory process if all parties are supportive of a resulting proposal. The Curtailable Rate Program was developed by Manitoba Hydro in collaboration with industrial customers in this manner many years ago to the resulting benefit of the utility and all customers.

After filing, the Board circulating a preliminary Issues List is useful in that it helps parties focus.

The use of issue lists prior to Manitoba Hydro's submissions may prove to be even more beneficial, so long as the list is subject to update and revision in the event Hydro's filing raises new and unanticipated areas of interest. Hydro should work to frame its application in a manner that responds to issues as noted by the PUB.

The use of Minimum Filing Requirements post-filing is a useful process. Asking parties for their input on MFR's, after the PUB's draft list of MFR's has been distributed, is useful as long as it is coupled with a parallel exchange on the scope of the hearing. In the recent hearing, MIPUG added 9 MFRs to the list, and a number of these MFRs became central to the evidence relied upon at the hearing by many parties. MFRs should not be the same as IRs – they should be basic requests for data or reports or information that Hydro has readily available and can put on the record without significant analysis or delay.

## **Hydro's Application**

Manitoba Hydro has traditionally presented its rate applications in a manner that excessively advocates for a single position. As described in previous MIPUG submissions, MIPUG views that the process of setting rates does not need to be as adversarial as is sometimes assumed, given that ratepayers and Hydro share an interest in both competitive rates and a financially healthy utility. The decision on rate increases must balance the level of financial reserves with the risks of rate instability and future costs. These are trade-offs that can be explored within a framework where Hydro acts more as a sort of honest broker of impacts and implications rather than adversarial advocate for a single outcome.

The more adversarial approach makes for a far more difficult job for intervenors, who must not only contend with getting access to good information, but also contend with excessive messaging and verification that full disclosure has occurred. Hydro has also at times tried to reject providing information that it viewed as leading to outcomes the utility did not prefer, when it had the alternative to fully disclose the information and deal with its views as part of argument.

This opportunity to approach the rate setting process is a far more realistic option in Manitoba than in many jurisdictions, where private sector utilities are required to advocate for shareholder interests that are contrary to ratepayer interests. Given the public interest focus of Hydro, this competing interest framework should not be dominant.

A procedural solution for this would be for Manitoba Hydro to set out the status quo financial forecast (that adheres to Board Directives), followed by as part of its filing, options for implementation, criteria used to establish how Manitoba Hydro arrived at its position and ultimately a recommendation to the PUB on rates and forecast methodology. Similarly, Hydro's operating budgets could be structured similar to budget scenarios reviewed in many institutions – i.e., what is the implications of no new increases, what would the impacts be to service levels, etc., and compare and contrast with the alternative of cuts or increases. These operating cost levels should be presented factually and realistically – it is of no satisfaction to ratepayers to have been disparaged or criticized for suggesting Hydro could reduce its high O&M growth over the years, to then have Hydro itself decide it could operate with 15% less staff.

### **Information Requests and Discovery Process**

As noted above, a focused use of Minimum Filing Requirements can help reduce the amount of IRs subsequently asked. In the past (for example the 2014/15 GRA), MFR responses have been staggered and even delayed past the submission of IRs which defeats this purpose. In the last GRA however, improvements were made such that most if not all MFR responses were received prior to IRs being due from intervenors. It is important to ensure this continues to be the case.

Information Requests are a good method for receiving information that is technical in nature. At the same time, MIPUG shares Hydro's concerns about excessive use of IRs by some hearing participants and the Board. MIPUG encourages the Board to be clear about information that it intends to need on a normal basis so that Hydro can produce this information before needing to use the IR stage. MIPUG also is concerned that the excessive number of IRs can undermine the quality of responses. All parties should be encouraged to be reasonable, but recourse should not be sought against all parties when the issues arise with respect to only a subset of participants.

The limited use of Pre-Asks in the past (requested prior to or at the onset of cross-examination) has helped supplement information where required, with Manitoba Hydro often courteously accommodating these requests where it may not have been necessarily required.

### **Technical conferences or workshops**

As MIPUG has previously submitted, technical conferences and workshops are beneficial when focused on specific issues that arise and are complicated in nature, for example the upcoming review on financial targets and minimum retained earnings. The approach of a technical conference should be presented methodologically and in an unbiased fashion - presenting the issues, approach, options, potential outcomes and proposed solution with rationale. Hydro may have a proposed solution; however, it works best if all participants understand all options and outcomes before Hydro begins excessively advocating for its position.

Rate hearings can be undertaken more efficiently if certain complex and detailed issues are explored separately outside of a hearing process through use of technical conference or workshops. These types of processes should not be the norm in every GRA but should occur as required for discrete topic matters.

Processes run by Independent Expert Consultants or Board Advisors serve intervenors in ensuring information is provided in an unbiased way.

## **Expert Reports**

Circulating the Terms of Reference prior to Independent Expert Consultant (IEC) review for participants to review and provide comments has been helpful to reduce duplication in process. Especially where confidential information is concerned, it is helpful for MIPUG to be able to weigh in on the focus of IEC review since experts rely upon information MIPUG will not be reviewing.

In general, the process has mostly benefitted from expert reports provided by both Manitoba Hydro and the PUB where access to the expert during the hearing has been available for IRs and cross-examination. Where Hydro's experts are not available to speak to their work, limited value, if any, should be placed on these materials.

## **Confidential Information**

On the issue of confidential information, if the disclosure continues to be limited to mainly the PUB, it is very important that intervenors have access to IECs and that the PUB properly and fully tests the information and positions. For example, there is sometimes little alternative without an independent party who can have Hydro run its models to consider varying CSI inputs.

## **Hearing Process**

MIPUG appreciates that during the length of the hearing, scheduled weekdays are set aside where the hearing does not take place. This allows for preparations which results in efficiencies for cross-examination and hearing participation in general. Going forward, hearing schedules should continue to account for the work that needs to occur outside of the hearing room for preparations and follow-up.

PUB Counsel cross-examination occurring before all other cross-examination is beneficial to the overall process. PUB Counsel's cross examination in Manitoba is of high quality, and early filing of its book of documents grouped by relevant issues was also helpful to preparations for MIPUG Counsel. The approach PUB Counsel takes, primarily focusing on canvassing broad areas lays a solid foundation on the hearing record and allows for parties to be efficient and eliminate duplication.

The approach to scheduling Manitoba Hydro witnesses on panels broken out by specific topic areas is helpful for preparing for cross-examinations and in managing participation efficiently. Grouping intervenor witnesses by topic, where possible, is also helpful for continuance of topic matters.

There have been good recent examples of successful collaboration with other intervenors, for example between MIPUG and the Consumer's Coalition, in an effort to efficiently cover a topic of mutual importance. This approach should continue to be encouraged. However, it should be noted that if intervenors identify the same issue as important to address in the GRA it does not mean that intervenors share the same opinion on the topic. There should remain room in the process for multiple points of view to be tested on the same subject matter.

Regarding final argument, ensuring sufficient time from the end of testimony and the close of the evidentiary phase (including production of all undertakings) to provide for preparation of final argument is of importance. Not only will this assist the parties to prepare effective closing

submissions (oral and written), but the submissions can be developed with a higher quality (more succinct, more fully referenced to the full evidentiary record) which benefits the PUB in their deliberations when preparing their decision on the matter.

## **2) Process Considerations for the next GRA Filing**

The PUB included in its request for process improvement comments, Schedule A: a draft preliminary issues list for the next GRA filing. The Schedule is broken into four categories, addressed separately below.

Regarding the Board's consideration for performance measurements in future GRA's and benchmarking performance against a baseline MIPUG recommends this should occur in the areas of operating and maintenance (especially in reviewing the results of Hydro's employee reduction taking place over the period of the last GRA), DSM spending, sustaining capital expenditures and capital expenditures in general. The latter three areas were specifically referenced in the Boston Consulting Group report in the last GRA as areas where Manitoba Hydro could implement cost reductions.

### **Topics within the Scope of the 2019/20 GRA in the Normal Course**

MIPUG does not have any recommended changes to this area for normal review in the 2019/20 GRA at this time. However, MIPUG appreciates the opportunity to review this scope again after Hydro has filed in the course of a pre-hearing conference to discuss topics in scope as well as for more detailed consideration and out of scope topics.

### **Topics Requiring more Detailed Consideration in the 2019/20 GRA**

On macro-economic impacts, this issue may or may not prove necessary. The level of attention to these matters will likely be dependent on the magnitude of Manitoba Hydro's proposed rate increases and their justification. This issues largely became main topics in the last GRA as a result of the substantially changed and higher rate increases being proposed Manitoba Hydro. Additionally, if being reviewed, likely the topic of elasticities, as it relates to Manitoba Hydro's load forecast, is of relevance.

The other listed topics in this category appear reasonable.

In addition to Bipole III being in-service, the majority of borrowings for Keeyask will be complete at this time. A more detailed review of the anticipated evolution of Hydro's debt management strategy could be beneficial in understanding Hydro's actual and expected financial position and for purposes of rate setting over the longer-term.

### **Topics that may be deferred past the 2019/20 GRA or Subject to a Separate Process**

Inclusion of the 'Risk and uncertainty analysis and Order 59/18 Directive 9' as a topic to be deferred is curious given the upcoming review of financial targets and Hydro's minimum required retained earnings. MIPUG is supportive of the Board focusing on managing the challenging

environment of the next few years without being too focused on the very long-term financial targets. However, properly structured the issue of near-term risk assessment and minimum retained earnings is intended as tool for that very purpose.

**Topics Out of Scope in the 2019/20 GRA**

MIPUG finds the out of scope list useful. The only concern is that it may be too early in the process to definitively rule out some of these topics. For example, the issue of marginal costs may be required in support of a specific rate proposals (such as Time of Use rates). Marginal cost calculation methods related to the Cost of Service Study are suitably out of scope.

# **Manitoba Industrial Power Users Group**

c/o 500-280 Smith Street, Winnipeg MB R3C 1K2

October 2, 2015

Manitoba Public Utilities Board  
Room 400, 330 Portage Avenue  
Winnipeg, MB R3C 0C4

## **Re: Continuous Hearing Improvements by the Public Utilities Board**

This document is in response to the correspondence from Public Utilities Board Counsel, Robert Peters, on September 4, 2015 seeking comments and recommendations in respect of further process improvements for PUB hearings.

MIPUG's interest in the PUB application process is driven by the degree of sensitivity of member's operations to the cost of electricity. MIPUG companies face high levels of competition from both within their own companies (locations outside Manitoba) and from competitors, and electricity costs make up a substantial portion of the costs of operations. For most members, adverse movements in the cost of electricity drive very real impacts on not only the bottom line, but on future levels of investment, employment, and expansion (or contraction) in the province.

The Manitoba Industrial Power Users Group (MIPUG) submitted comments on process improvement following a meeting with PUB member Kapitany in 2014. Those comments are attached and referred to for more detail in sections of this response.

MIPUG has in the past primarily participated in applications regarding Manitoba Hydro (and on occasion the subsidiary Centra Gas as it relates to sharing of costs with Hydro), so comments are specific to Hydro.

### **1) Application Content**

Application content as filed by Manitoba Hydro for rate applications should not only initially set out the requested approvals for the PUB but also highlight any material changes to Hydro's forecast and methods, including rationale for the change and magnitude of impact, in an effort to improve forecast transparency. See also comments below on Minimum Filing Requirements.

Hydro's applications should include all reports directed by the PUB (including the sustaining capital and OM&A quarterly reports directed out of the Board Order 73/15), with redactions if required. Hydro's application should also specifically address pacing and prioritization of sustaining capital expenditures.

## **2) Minimum Filing Requirements (MFR)**

The PUB prepared a list of Minimum Filing Requirements to Manitoba Hydro during the 2015/16 General Rate Application that covered a wide variety of information for Hydro to provide. The contents of the MFR was useful. With respect to the MFR process, Hydro provided responses to the MFR's throughout the initial application review process and both rounds of Information Requests such that MIPUG advisers were still receiving and reviewing MFR responses at the beginning of the hearing. While the Board made positive steps to ensure Hydro's filing was complete before the IR process, there are a few processes that could be implemented to improve efficiency.

For MIPUG, MFRs can be a useful part of the process. It is the opinion of MIPUG that the list of MFRs needed should be completed by the Board for each application after a brief review of the initial application filing by the Board and interveners, with provision for interveners to provide brief comments to the Board on areas that may merit MFR treatment. In this way, MFRs could be targeted and used to help fill missing items from Hydro's initial application (including, for example, specific information on pacing and prioritization of capital spending).

If this process was implemented, Hydro would be given the time they determine is needed to respond to the MFRs, at which point the PUB could file a declaration of completion. Once the PUB declares that Hydro's application filing is complete, normal prehearing steps can resume, including setting a hearing timetable with deadlines to file IRs. This is done in other jurisdictions and other types of hearings (e.g., facility applications and environmental review) and ensures the basic application is complete and all parties are on the same page before the timeline is set, the IR process starts, and that all information from the applicant is transparent and accounted for before the other hearing processes begin. It could also reduce IRs since all parties would have a chance to review information and recommend MFRs beforehand. More is provided on this in the attached document on page 7.

## **3) Hearing Timetable**

As discussed above, the hearing timetable, including IR submission dates, should not be set until the PUB signs off on the completeness of Hydro's application. This will ensure that a relevant and necessary base of information is on the record before IRs are asked and answered.

For setting the hearing process, MIPUG recommends that hearing days be restricted to four days a week maximum where possible. This implementation would help participants to properly prepare for direct and cross examination and review all materials that are filed throughout the hearing process. This could also help reduce time spent in the hearing.

Additionally, it is critical to ensure that there is sufficient time from the end of testimony and the close of the evidentiary phase (including production of all undertakings) to provide for preparation of final argument. Not only will this assist the parties to prepare effective closing submissions, but the submissions can be developed with a higher quality (more succinct, more fully referenced to the full evidentiary record) that would benefit of the PUB in their deliberations when preparing their decision

on the matter. Generally a week since the last day of the evidentiary phase would be considered the minimum adequate time for preparing final argument.

With respect to hearing process, it is MIPUG's view that the sequence of events should reflect the basic principle that the onus is on Hydro to make its case to justify the requested approvals. It is typical in other jurisdictions to require the applicant to submit an argument-in-chief that clearly sets out the requested approvals, including any adjustments and revisions that arose during the course of the hearing, and the main points in support of the case. Intervener arguments would follow. Hydro would then be able to submit a limited rebuttal argument, responding only to new points brought up by interveners in their argument. The result is improved fairness, clarity of issues, and positions for all parties, and can help reduce hearing and preparation time. This is discussed further on page 4-5 of the attached MIPUG response from last year.

#### **4) Application Overview Workshop**

Advisers for MIPUG attended the Application Overview Workshop hosted by Manitoba Hydro prior to the last GRA. This workshop went through Hydro's pending application including some preliminary forecast results and a presentation by Hydro on the rationale behind Hydro's request for rate increases. The result was that the workshop in effect became an additional informal opening statement or Hydro testimony advocating for the application, and it was not ultimately very helpful.

If another workshop takes place in the future, it would be most helpful if the focus was on the more substantive aspects of the application, and independently managed by someone other than a Manitoba Hydro representative, focusing on how and why forecasts and requests changed, and not just the high level conclusions. Workshops should be aimed at the participants in the process, who want a detailed explanation and understanding, not just high level overview.

#### **5) Technical Conferences**

Technical conferences could be beneficial if focused on specific issues that arise and are complicated in nature, for example the pending financial targets review. The approach of a technical conference, if undertaken, would be most effective if presented methodologically and unbiased: presenting the issue, approach, options, potential outcomes and proposed solution with rationale. Hydro may have a proposed solution; however it works best if all participants understand all options and outcomes before Hydro makes its recommendation for technical issues.

#### **6) Intervener Responsibilities**

MIPUG has no comments or recommendations regarding changes to this initiative. There have been good recent examples of successful collaboration with other interveners where appropriate and mutually beneficial. This approach should continue. However, it should be noted that if interveners identify the same issue as important to address in the GRA it does not mean that interveners share the same opinion on the topic. There should be room in the process for multiple points of view to be tested on the same subject matter in the hearing process.

## **7) Information Request Template and Process for Adjudication of Disputes**

The electronic IR template provided by the PUB in the last GRA was adequate and MIPUG has no comment.

The adjudication process in the last GRA ended up being an excessive list of objections by Hydro, and took up substantial time of the MIPUG team. Ultimately, from MIPUG's list, almost every objection by Hydro was not supported by the Board and MIPUG received the information it requested. This is appropriate for a discovery phase of a hearing, so long as questions posed are reasonably on-topic for a GRA. If this objection process is to be continued, Manitoba Hydro must apply a far tighter standard for what it chooses to challenge, and should have to more thoroughly justify why a response should not be provided due to a narrow range of rationale more limited to an inability to provide or inability to provide publically. Additionally, Hydro should propose an alternative response for interveners where possible.

## **8) Electronic Models and Spreadsheets**

MIPUG has no comment on the inclusion of Hydro's electronic models and spreadsheets with formulae intact.

## **9) Concurrent Expert Evidence**

MIPUG is not opposed to concurrent expert evidence in theory; however it may be hard to implement due to the interrelated nature of a majority of topics covered in Hydro's GRA filings. It is recommended that this process should be considered on a case by case basis and only for topics that are narrow in scope. Additionally, Hydro's experts should be included in this process if it does occur.

## **10) Cost Awards**

This is addressed in a separate filing by MIPUG to the PUB.

## **11) Other Matters**

Other matters, including MIPUG concerns with the current process, the PUB's legislative mandate, training and preparation time for PUB appointees, simplification of the hearing process, hearing scope and approach for Board and interveners, and interim rate approvals are addressed in the attached response from last year, and remains the opinion of MIPUG.

MIPUG appreciates the opportunity to participate in this review. The matters under consideration are important to our members and to the competitiveness of Manitoba's industrial customers, ensuring a continued beneficial and efficient hearing process in the future.

Yours truly,

A handwritten signature in cursive script that reads "Bill Turner".

Bill Turner  
Chair of Manitoba Industrial Power Users Group



# Manitoba Industrial Power Users Group

c/o 500-280 Smith Street, Winnipeg MB R3C 1K2

October 2, 2015

Mr. Darren Christie, Secretary and Executive Director  
Manitoba Public Utilities Board  
Room 400 - 330 Portage Avenue  
Winnipeg, MB R3C 0C4

## **Re: Cost Awards Review**

Thank you for letting the Manitoba Industrial Power Users Group (MIPUG) participate in the review of cost awards, including eligibility and the criteria used to assess cost awards for intervener participation in public hearings before the Public Utilities Board. This submission focuses solely on the issues that pertain to MIPUG, mainly regarding eligibility for cost awards. MIPUG does not have any comments or recommendations regarding the current criteria for determining the amount of costs to be awarded, current cost award procedures or the quantum of allowable costs at this time.

MIPUG's concerns specifically relate to Section 43(c) and to a much lesser extent, Section 43(d) of the Rules of Practice and Procedure which state:

*c) insufficient financial resources to present the case adequately without an award of costs;  
and*

*d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.*

Eliminating Section 43(c) from the cost award eligibility requirements would allow MIPUG to apply for cost recovery if it otherwise meets the PUB criteria to do so. Currently the situation in Manitoba, where industrial customers are not eligible for cost recovery under Section 43(c) of the Rules of Practice and Procedure, means that it is only the companies who are committed to participation in MIPUG that must cover all costs. MIPUG members are additionally charged for the intervention of other parties who are awarded costs through electricity rates.

Industrial companies in Manitoba, who choose not to participate, receive basically all of the benefits of MIPUG's intervention but without bearing the costs. As a result, there can be a disincentive to individual members to continue to participate in MIPUG if they can receive much the same rate benefits despite not financially participating in the intervention.

MIPUG's interventions in Manitoba Hydro hearings often are to the benefit of all Hydro ratepayers (for example, on topics of revenue requirement, reserves, risk) or to all industrial customers (for example in cost of service matters), not just MIPUG members. Were cost recovery to be provided to MIPUG, a reasonable option would be for the Board to allocate these costs to the industrial (GSL) customer class in Hydro's Cost of Service Study. This would ensure all industrial customers that benefit from the intervention are allocated a share of the costs when assessing GSL costs of service.

As set out in the attached information, the utility board rules in other jurisdictions frequently permit the awarding of costs to industrial customers. Only four Canadian jurisdictions fail to provide for industrial hearing cost recovery with three of four not providing any cost recovery for any customer group interventions, not just industry. This information was provided to the PUB previously, but has been updated to reflect current jurisdiction practices and rules/guidelines.

In MIPUG's view, the Board can revise its Rules to permit cost recovery by MIPUG without causing other new issues or requiring other amendments. The Board already has existing strong and reasonable controls to ensure that only appropriately representative groups are granted intervener status on specific issues. These controls are appropriate and need not be amended. Further, as the Board's rules effectively only currently prohibit industrial cost recovery, MIPUG does not see any credible risk of any flood of new classes of interveners pursuing cost recovery if the rules were changed to eliminate Section 43(c) which has been interpreted prohibit industrials from recovering their costs.

Section 43(d) provides an ambiguous requirement in that it does not provide what constitutes a substantial number of ratepayers. For example, while MIPUG represents approximately 20% of domestic customer energy usage, it is a small number of customers. Ambiguity also exists for other interveners such as Green Action Centre, where it is uncertain the number of customers represented in their intervention. As a suggestion, removal of the second 'substantial' in Section 43(d) would help alleviate the confusion of this eligibility criteria moving forward.

On behalf of MIPUG, we very much appreciate the opportunity to present our views on this important matter.

Yours truly,



Bill Turner  
Chair of Manitoba Industrial Power Users Group

## **ATTACHMENT: CANADIAN JURISDICTIONAL COMPARISON FOR INDUSTRIAL CUSTOMER HEARING COST AWARDS**

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Within Canada, there are 11 jurisdictions which maintain a quasi-judicial regulatory model for setting aspects of utility rates, and two jurisdictions which do not maintain a quasi-judicial model (Nunavut and Saskatchewan).

Across most quasi-judicial jurisdictions the regulator is empowered with the ability to provide for cost recovery by interveners at the conclusion of a regulatory proceeding<sup>1</sup>. In most cases, costs are at the discretion of the Board and determined according to tests specified in the Board's Rules of Practice and Procedure or equivalent documents. Tests typically relate to the nature or value of the intervention, the responsible behavior of the intervener, or the type of costs incurred.

Eligibility for costs awards generally is based on a party having a "substantial interest" in the matter. This typically means the intervener must represent a specific ratepayer group (e.g., not a business competitor to the applicant utility, or a political party, or other special interests not linked to rates); however, some jurisdictions have more specific qualifications/allowances related to eligibility for cost awards and may specifically exclude certain parties from eligibility.

Under the Manitoba Public Utilities Board current Rules of Practice and Procedure, costs can be awarded subject to Section 43 which states that:

"In any proceeding the Board may award costs to be paid to any intervener who has: a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board, b) participated in the hearing in a responsible manner and cooperated with other interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention, c) insufficient financial resources to present the case adequately without an award of costs, and d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers."

Sections (c) and (d) have generally been the rationale for why industrial customer interveners (including MIPUG) are typically not eligible for cost awards<sup>2</sup>.

Jurisdictions reviewed for the allowance of cost awards for industrials include all of the quasi-judicial jurisdictions in Canada: Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Yukon.

Table 1 below summarizes which jurisdictions allow for commercial and industrial intervener cost claims. As detailed in Table 1 below only Alberta uses the same model as Manitoba, in that on a normal basis

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<sup>1</sup> Broad authority to issue costs is typically provided in the regulator's constituent legislation.

<sup>2</sup> Note that British Columbia and Ontario both have criteria for insufficient financial resources but industrial ratepayer groups are not specifically disallowed.

industrial groups are not eligible for costs while other parties are eligible for costs. Comparatively, Nova Scotia, New Brunswick and PEI do not generally allow cost awards for any party on a regular basis (including non-profits, consumer and industrial groups). All other jurisdictions allow for industrial cost claims, specifically British Columbia, Ontario, Newfoundland and Labrador, Quebec, Yukon and Northwest Territories.

Utility Boards in other jurisdictions have reviewed standards and methods for cost awards in the past including the Régie de L'Énergie<sup>3</sup> and the BCUC<sup>4</sup> confirming these approaches.

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<sup>3</sup> D-99-124, Decision with respect to the Intervenor Costs Payment Guide, R-3412-98, July 22, 1999. Available online: <http://www.regie-energie.qc.ca/audiences/decisions/d-99-124a.pdf>

<sup>4</sup> British Columbia Utilities Commission, Order G-72-07 in the Matter of the Utilities Commission Act, R.S.B.C. 1996, Chapter 473 and Participant Assistance/Cost Award Guidelines, July 5, 2007. Available online: [http://www.b cuc.com/Documents/Guidelines/2011/DOC\\_5014\\_G-72-07\\_PACA\\_2007\\_Guidelines.pdf](http://www.b cuc.com/Documents/Guidelines/2011/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf)

**Table 1: Summary of Jurisdiction Hearing Cost Recovery Rules**

<b>Jurisdiction</b>	<b>Cost Awards Allowed for Industrial Customers</b>	<b>Examples</b>
<b>Jurisdictions That Award Costs To All</b>		
British Columbia Utilities Commission	Yes	BC Hydro and Power Authority F2012 – F2014 Revenue Requirement Application: The Commercial Energy Consumers of BC (CEC) and the Association of Major Power Customers of BC (AMPC).
Newfoundland Board of Commissioners of Public Utilities	Yes	Newfoundland and Labrador Hydro application for final approval of the Rate Stabilization Plan rules in 2014: Island Industrial Customers group as well as Vale Canada (an individual industrial customer).
Northwest Territories Public Utilities Board	Yes	Northwest Territories Power Corporation 1995-1998 General Rate Application: Miramar mine.
Ontario Energy Board	Yes	Hydro One application for rates effective January 1, 2013: Association of Major Power Consumers in Ontario and the Canadian Manufacturers and Exporters
Quebec – Régie de L’Energie	Yes	Gaz Métro Terms of Service and Rates for October 1, 2013 hearing: The Association of Industrial Gas Users (ACIG)
Yukon Utilities Board	Yes	1996/97 YEC/YECL rate hearing: Anvil Range Mining Corporation
<b>Jurisdictions That Award Costs But Disallow Industry</b>		
Alberta Utilities Commission	No	n/a
<b>Jurisdictions That Do Not Normally Award Costs To Any Party</b>		
New Brunswick Energy & Utilities Board	No	n/a
Nova Scotia Utility and Review Board	No	n/a
Prince Edward Island Regulatory and Appeals Commission	No	n/a

## **APPENDIX A: BACKGROUND INFORMATION ON COST AWARDS FOR CANADIAN JURISDICTIONS**

### **A-1 ALBERTA UTILITIES COMMISSION**

The *Alberta Utilities Commission Act* outlines the Board's jurisdiction to award costs under subsection 21(1) which provides that "the Commission may order by whom and to whom its costs and any other costs of or incidental to any hearing or other proceeding of the Commission are to be paid." Subsection 21(2) notes the Commission may make rules respecting the payment of costs to an intervener (other than a local intervener referred to in section 22)<sup>5</sup>.

Sections 3 and 4 of the Alberta Utilities Commission cost rules outline the eligible and ineligible interveners for collecting costs. The Commission may award costs to an intervener with a substantial interest in the subject matter of a hearing or other proceeding and who does not have the means to raise sufficient financial resources to enable the intervener to present its interest adequately in the hearing or other proceeding. Section 4(d) outlines that business, commercial, institutional, or industrial entities, including associations of these entities, as ineligible to claim costs unless the Commission orders otherwise<sup>6</sup>.

### **A-2 BRITISH COLUMBIA UTILITIES COMMISSION**

The Commission Panel may award costs for participation under Section 118 of the *BC Utilities Commission Act*<sup>7</sup>. The Cost Award Guidelines set out eligibility based on whether the participant has a substantial interest in a substantial issue in the proceeding noting that:

Except in limited circumstances, it is expected that only ratepayer groups will establish a "substantial interest in a substantial issue" so as to be eligible for an award in a revenue requirements proceeding. For the purposes of this section, the principal interest of "ratepayer groups" will be the rate impacts of the revenue requirement to be paid by the ratepayer Participants. The Commission Panel will also consider other characteristics of the Participant, including the scope and significance of the principal concerns of the Participant<sup>8</sup>.

The Commission also considers the following questions outlined in the Cost Award Guidelines when awarding costs:

- Will the Participant be affected by the outcome?

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<sup>5</sup> Alberta Utilities Commission Act. Statutes of Alberta, 2007 Chapter A-37.S, Current as of June 12, 2013. Part 2: Hearings and Other Proceedings Section 21 and 22, page 14. Available online:

[http://www.qp.alberta.ca/1266.cfm?page=A37P2.cfm&leg\\_type=Acts&isbncln=9780779746651](http://www.qp.alberta.ca/1266.cfm?page=A37P2.cfm&leg_type=Acts&isbncln=9780779746651)

<sup>6</sup> Rule 022: Rules on Intervener Costs in Utility Rate Proceedings for the Alberta Utilities Commission, effective January 1, 2015.

Available online: <http://www.auc.ab.ca/acts-regulations-and-auc-rules/rules/Documents/Rule022.pdf>

<sup>7</sup> Utilities Commission Act RSBC 1996, Chapter 473, Current to September 9, 2015. Part 9: General, Section 118: Participant Costs.

Available online: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96473\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96473_01)

<sup>8</sup> British Columbia Utilities Commission, Participant Assistance/Cost Award Guidelines in the Matter of the Utilities Commission Act, R.S.B.C. 1996, Chapter 473. Dated July 5, 2007, Approved in Order G-72-07, Appendix A. Section 1: Participant Eligibility, page 1.

Available online: [http://www.bcuc.com/Documents/Guidelines/2011/DOC\\_5014\\_G-72-07\\_PACA\\_2007\\_Guidelines.pdf](http://www.bcuc.com/Documents/Guidelines/2011/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf)

- Has the Participant contributed to a better understanding of the issues by the Commission?
- Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?
- Has the Participant joined with other groups with similar interests to reduce costs?
- Has the Participant engaged in any conduct that tended to unnecessarily lengthen the duration of the proceeding? This criterion will not, by itself, disqualify a Participant for pursuing a relevant position in good faith and with reasonable diligence.
- Any other matters appropriate in the circumstances.

The Guidelines note that if considered appropriate, the Commission Panel may consider the Participant's ability to participate in the proceeding without an award. No parties are explicitly excluded from applying for cost awards within the Act or the Guidelines.

The Commercial Energy Consumers of BC (CEC) and the Association of Major Power Customers of BC (AMPC) both received cost awards during the BC Hydro and Power Authority F2012 – F2014 Revenue Requirement Application<sup>9</sup> and in the British Columbia Utilities Commission (BCUC) Generic Cost of Capital Proceeding in 2013<sup>10</sup>.

The BCUC website, <http://www.bcuc.com/OrderIndex.aspx> has many participant assistance/cost award orders categorized by year and by utility, labelled under order type 'F' for Participant Funding.

### **A-3 NEW BRUNSWICK ENERGY & UTILITIES BOARD**

New Brunswick is different from other provinces in that cost awards are not common for any intervener as the interests of the general public are currently represented by the appointment of a Public Intervener whose costs are ultimately paid by the utility<sup>11</sup>. The New Brunswick Energy & Utilities Board does not have formal guidelines for awarding costs to hearing participants. However, during the course of a natural gas rate hearing in 2001 the Board decided that the matter of cost awards should be dealt with through a written process.

Through this process the Board was satisfied that it has complete discretion with respect to the exercise of its jurisdiction to award costs, deciding to exercise its discretion to award costs sparingly, considering the specific interests of the party requesting costs as well as the interests of the customers who will ultimately be required to pay those costs through rates. Applications for costs are dealt with on an individual basis by the following broad guidelines<sup>12</sup>:

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<sup>9</sup> British Columbia Utilities Commission, Order F-22-12, dated October 10, 2012. Available online:

[http://www.bcuc.com/Documents/Orders/2012/DOC\\_32869\\_F-22-12\\_BCH-F2012-14-RevenueRequirements.pdf](http://www.bcuc.com/Documents/Orders/2012/DOC_32869_F-22-12_BCH-F2012-14-RevenueRequirements.pdf)

<sup>10</sup> British Columbia Utilities Commission, Order F-17-13, dated June 13, 2013. Available online: [http://www.bcuc.com/Documents/Orders/2013/DOC\\_34915\\_F-17-13-BCUC-GCOC-Stage%201-PACA.pdf](http://www.bcuc.com/Documents/Orders/2013/DOC_34915_F-17-13-BCUC-GCOC-Stage%201-PACA.pdf)

<sup>11</sup> The New Brunswick Energy Regulatory Framework Options for Improvement. June 15, 2010. Section on Intervenor Costs, Page 5. Available online: <http://www.gnb.ca/promos/eub/optionsE.pdf>

<sup>12</sup>Board of Commissioners of Public Utilities of New Brunswick, in the Matter of an application by Enbridge Gas New Brunswick Inc. for approval of its rates and tariffs, Decision on Costs, April 26, 2001. Available online:

<http://142.166.3.251/Documents/Decisions/NG/E/Decision%20on%20Costs%20Apr%2019%2001.pdf>

1. When applying for a cost award the applicant should demonstrate how it made a material contribution to a better understanding of the issues by the Board.
2. Any party who submits an application for costs should attempt to justify the request for costs on the basis of the public interest. This justification is most important where:
  - The intervention was not to protect a direct or pecuniary interest,
  - The intervener has funding from other sources, or could have been reasonably expected to obtain funding from other sources,
  - The intervener failed to make reasonable efforts to negotiate, and
  - The costs of intervention requested are incremental to the normal operating costs of the intervener.

Since the guidelines were established cost claims have been considered by the Board twice for the natural gas sector (both times for the Union of New Brunswick Indians (UNBI) for participation in a rate and tariff hearing and a permit to construct hearing). In both cases the Board concluded that UNBI's participation did not make a material contribution to a better understanding of the issues and denied support for the cost claims<sup>13</sup>.

Industry and other commercial interveners have participated in hearings but have not applied for cost awards.

#### **A-4 NEWFOUNDLAND BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

Section 90(2) of the Newfoundland and Labrador *Public Utilities Act* states that all expenses in connection with inquiries held by the Board, including costs of counsel, engineers, valuers, stenographers, accountants and other assistants employed by the Board as well as the salaries and expenses of the members of the board while employed in and about the inquiry shall, where the Board so orders, be paid by the public utilities concerned in the inquiry<sup>14</sup>.

The Act gives the Board the authority and full discretion to award costs in a proceeding where the participation is considered to have contributed to the Board's understanding of the issues and does not appear to be under the direction of a specific cost award guideline. Industry and other commercial customers are not prohibited from applying for costs.

There is a long history of industrial intervention and cost recovery in Newfoundland<sup>15</sup>. Recently the Island Industrial Customers group and separately Vale Canada both applied for and were granted cost

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<sup>13</sup>Decision on motion dated January 29, 2002 by Union of New Brunswick Indians for the award of costs incurred as an intervener in the applications by Enbridge Gas New Brunswick Inc. for approval of its rates and tariffs and permit to construct by the New Brunswick Board of Commissioners of Public Utilities, June 11, 2003. Available online: <http://142.166.3.251/Documents/Decisions/NG/E/D--UNBI%20Costs%20Jun%2003%20E.pdf>

<sup>14</sup> Newfoundland and Labrador Public Utilities Act RSNL 1990, Chapter P-47: An Act Relation to Public Utilities. Section 90: Costs. Available online: <http://www.assembly.nl.ca/legislation/sr/statutes/p47.htm#1>

<sup>15</sup> The last finalized General Rate Application, occurred in 2006 with rates left interim. However, Industrial Customers received an award of costs in Order P.U. 8 (2007). Available online, page 63-64: <http://www.pub.nf.ca/orders/order2007/pu/pu8-2007.pdf>

recoveries in the Newfoundland and Labrador Hydro application for final approval of the Rate Stabilization Plan rules in 2014<sup>16</sup> and in the 2015 Interim Rate Application for Newfoundland and Labrador Hydro<sup>17</sup>.

## **A-5 NORTHWEST TERRITORIES PUBLIC UTILITIES BOARD**

The NWT Public Utilities Board has authority to award costs under Section 26 of the NWT *Public Utilities Act*<sup>18</sup>. More specifically, Section 32(2) of the NWT *Public Utilities Act Rules of Practice and Procedure* provides that the Board can award costs to interveners who:

- had a substantial interest in the outcome of the proceeding and represented the interests of a substantial number of ratepayers,
- made a significant contribution which was relevant to the proceeding and lead to a better understanding by all parties of the issues before the Board, and
- Participated in a responsible manner avoiding duplication and made a reasonable effort to secure alternative funding where such funding was available to the intervener<sup>19</sup>.

No parties are specifically excluded from intervener cost awards.

In NWT, Miramar mine applied for costs in the Northwest Territories Power Corporation 1995-1998 General Rate Application noting that its intervention raised issues of benefit to all rate payers. The Board only awarded a portion of the costs (approximately a third of costs) applied for as Miramar did not physically appear in the hearing<sup>20</sup>. There have been no applications for cost awards by an industrial customer since as no industrial customers have since intervened in a hearing process.

## **A-6 NOVA SCOTIA UTILITY AND REVIEW BOARD**

Section 28(1) of the Nova Scotia *Utility and Review Board Act* allows that “costs of and incidental to a proceeding before the Board are in the discretion of the Board and may be fixed at a sum certain or may

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<sup>16</sup> Costs for Industrial Customers and Vale were approved originally in Order 29 (2013), available online: <http://www.pub.nf.ca/orders/order2013/pu/pu29-2013.pdf> with the final costs awarded in Order P.U. 12 (2014) for the Island Industrial Customers, available online: <http://www.pub.nf.ca/orders/order2014/pu/pu12-2014.pdf> and Order P.U. 1 (2014) for Vale, Available online: <http://www.pub.nf.ca/orders/order2014/pu/pu1-2014.pdf>

<sup>17</sup> Costs for Industrial Customers and Vale Canada were approved originally in Order P.U. 14(2015), available online: <http://www.pub.nl.ca/orders/order2015/pu/pu14-2015.pdf> with final costs awarded in P.U. 16(2015) for Vale Newfoundland & Labrador Limited, available online: <http://www.pub.nl.ca/orders/order2015/pu/pu16-2015.pdf> and in Order P.U. 22(2015) for the Industrial Customer Group, available online: <http://www.pub.nl.ca/orders/order2015/pu/pu22-2015.pdf>

<sup>18</sup> Public Utilities Act, R.S.N.W.T. 1988, c. 24(Supp.), Jurisdiction and Powers of the Board, Section 26: Costs of Proceedings, page 13. Available online: <https://www.justice.gov.nt.ca/en/files/legislation/public-utilities/public-utilities.a.pdf>

<sup>19</sup> *Public Utilities Act* Rules of Practice and Procedure R-047-96 Including Amendments made by R-003-2006. Part III Intervener Costs, Awarding Costs, Page 18. Available online: <https://www.justice.gov.nt.ca/en/files/legislation/public-utilities/public-utilities.r8.pdf>

<sup>20</sup> The Public Utilities Board of Northwest Territories, Decision 15-97. Dated August 14, 1997. Available online: <http://www.nwtpublicutilitiesboard.ca/pdf/15-97%20DECISION%20NTPC%201995-98%20GRA%20Miramar%20Con%20Mine%20Cost.pdf>

be taxed<sup>21</sup>. Additionally Section 12 of the Act states that the Board may make rules respecting practice and procedure in relation to matters coming before it<sup>22</sup>.

Section 6 of the Costs Rules governs an award of costs by the Board, with Section 6(1) stating that the Board has no power to order intervener funding or security for costs. Section 6(2) of the Costs Rules outline that the Board may consider awarding costs against a utility to non-profit, public interest interveners with limited financial resources who<sup>23</sup>:

- have a substantial interest in the proceeding;
- will be affected by the proceeding;
- participate in the hearing in a responsible way; and
- contribute to a better understanding of the issues by the Board.

Except under extraordinary circumstances ratepayers are represented only by a government-appointed Consumers' Advocate and a Small Business Advocate in hearings before the Board, including rate cases and other proceedings<sup>24</sup>.

In very limited examples costs have been awarded outside of the appointed representatives; however examples could not be found of industrial and commercial groups specifically receiving cost awards even if they qualify for the non-profit status<sup>25</sup>.

## A-7 ONTARIO ENERGY BOARD

Section 30(1) of the *Ontario Energy Board Act* provides that the Board may order a person to pay all or part of a person's costs of participating in a proceeding before the Board, a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board<sup>26</sup>.

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<sup>21</sup> Utility and Review Board Act, Chapter 11 of the Acts of 1992, Section 28: Costs and Witness Fees. Available online: <http://nslegislature.ca/legc/statutes/utility.htm>

<sup>22</sup> Ibid. Section 12: Rules of Practice and Procedure.

<sup>23</sup> Nova Scotia Utility and Review Board Regulatory Rules and Regulations, Costs Rules, made under Sections 12 and 28 of the *Utility and Review Board Act S.N.S 1992*, c. 11 N.S. Reg. 131/96 (July 17, 1996). Last updated 2013-10-18. Available online: <http://www.novascotia.ca/just/regulations/regs/URBcosts.htm>

<sup>24</sup> As noted by the Board in an email addressed to Participants in the Nova Scotia Power Maritime Link (NSPML) Application for Approval of the Maritime Link Project Compliance Filing regarding the Cost Recovery application of Lower Power Rates Alliance in Nova Scotia, a non-profit organization. Costs were awarded as submitted by the Commission but only because it was deemed to be an extraordinary matter. From the Chair and Vice-Chair of the Nova Scotia Utility and Review Board, dated December 20, 2013. Available online: [http://nsuarb.novascotia.ca/sites/default/files/PDFs/m05419\\_decision\\_letter\\_dec.20.13.pdf](http://nsuarb.novascotia.ca/sites/default/files/PDFs/m05419_decision_letter_dec.20.13.pdf)

<sup>25</sup> For example, in the 2005 Negotiated Rate Settlement Agreement proceeding, while the Canadian Manufacturers and Exporters participated, only the Ecology Action Centre (EAC) and the Dalhousie Legal Aid Service (DLAS) requested and were given permission to file for cost claims, as per Section 9.3 Non-Profit Intervenor Costs of Nova Scotia Utility and Review Board Decision NSUARB-NSPI-P-881, dated March 31, 2005. Available online: <http://www.canlii.org/en/ns/nsuarb/doc/2005/2005nsuarb27/2005nsuarb27.html?searchUrlHash=AAAAAQASImNvc3RzIHJ1bGVzIiBvYXRlIAAAAAAE>. Additionally in the 2013 NSPML Application for Approval of the Maritime Link Project Compliance Filing, where the Lower Power Rates Alliance (LPRAs) of Nova Scotia was awarded costs. However, the LPRAs was awarded only a portion of the applied amount and the Board cautioned the group that for future proceedings the Board viewed that the CA and SBA largely served the same purpose for intervening in rate cases and other proceedings. As explained in Board Decision on October 4, 2013: [http://nsuarb.novascotia.ca/sites/default/files/documents/muskratfalls/External/supplemental\\_decision.pdf](http://nsuarb.novascotia.ca/sites/default/files/documents/muskratfalls/External/supplemental_decision.pdf). The Industrial Group participated but did not submit for costs.

<sup>26</sup> Ontario Energy Board Act, 1998. S.O. 1998, Chapter 15, Schedule B, Part II The Board. Section 30. Costs. Available online: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_98o15\\_e.htm#BK59](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98o15_e.htm#BK59)

The Practice Direction on Cost Awards outlines that a party in a Board process is eligible to apply for a cost award if the party primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services; the party primarily represents a public interest relevant to the Board's mandate; or the party is a person with an interest in land that is affected by the process<sup>27</sup>.

The following are ineligible for cost claims in Ontario<sup>28</sup>:

- a) an applicant;
- b) an electricity transmitter, wholesaler, generator, distributor, retailer, and unit sub-meter provider, either individually or in a group;
- c) a gas transmitter, gas distributor, gas marketer and storage company, either individually or in a group;
- d) the Independent Electricity System Operator;
- e) the Ontario Power Authority;
- f) the Smart Metering Entity;
- g) the government of Canada (including a department), and any agency, Crown corporation or special operating agency listed in a schedule to the Financial Administration Act (Canada) that has not at the relevant time been privatized;
- h) the government of Ontario (including a ministry), and any public body or Commission public body listed in Table 1 of Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies – Definitions) made under the Public Service of Ontario Act, 2006 (Ontario);
- i) a municipality in Ontario, individually or in a group;
- j) a conservation authority established by or under the Conservation Authorities Act (Ontario) or a predecessor of that Act, individually or in a group;
- k) a corporation, with or without share capital, owned or controlled by the government of Canada, the government of Ontario or a municipality in Ontario; and
- l) a person that owns or has a controlling interest in a person listed in (a), (b) or (c) above.

Commercial and industrial parties are not excluded unless they are owned or controlled by the federal, provincial or municipal government.

The Association of Major Power Consumers (AMPCO), Canadian Federation of Independent Business, Canadian Manufacturers & Exporters (CME), Industrial Gas Users Association and other commercial/industrial groups have collected cost awards in rate hearings and other proceedings before the Board in the past few years. As an example, AMPCO and CME were recently awarded costs in the Hydro One application for rates effective January 1, 2013<sup>29</sup>.

More information on recent cost awards by Intervener by the Ontario Energy Board is reported and available online at the following website:

[http://www.ontarioenergyboard.ca/html/costawards/costawards\\_intervenor\\_2013.cfm](http://www.ontarioenergyboard.ca/html/costawards/costawards_intervenor_2013.cfm)

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<sup>27</sup>Ontario Energy Board Practice Direction on Cost Awards, Revised April 24, 2014, Section 3.03 in Cost Eligibility, page 3. Available online: [http://www.ontarioenergyboard.ca/oeb/Documents/Regulatory/Practice\\_Direction\\_on\\_Cost\\_Awards.pdf](http://www.ontarioenergyboard.ca/oeb/Documents/Regulatory/Practice_Direction_on_Cost_Awards.pdf)

<sup>28</sup> Ibid, Section 3.05 in Cost Eligibility, page 4.

<sup>29</sup> As decided in OEB Case No. EB-2012-0136 dated April 26, 2013. Available online: <http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/394260/view/>

## A-8 PRINCE EDWARD ISLAND –REGULATORY AND APPEALS COMMISSION

Pursuant to Section 31 of the Prince Edward Island *Electric Power Act* the Commission has power to award costs (to be recovered by the utility) incurred only by those retained and employed by the commission. Therefore interveners are not eligible to recover costs in a proceeding<sup>30</sup>.

## A-9 QUEBEC – RÉGIE DE L'ÉNERGIE

Pursuant to section 36 of *An Act Respecting the Régie de L' Énergie*, the Régie may order the electric power carrier or any electric power or natural gas distributor or, when holding hearings under Chapter VI.2, any energy distributor to pay all or part of the expenses, including expert fees, of any person whose participation in Régie proceedings is considered useful by the Régie. Where it is warranted by the public interest, the Régie may pay the expenses of groups formed to take part in its public hearings<sup>31</sup>.

The Régie de L' Énergie revised the Intervenor Cost Payment Guide effective since 2003<sup>32</sup> in 2008 with the work of a committee specially created for this purpose, with the proposals submitted subject to various groups including intervenors and other participants. The changes made to the guide were made to simplify while maintaining a flexible framework with the objective of promoting and awarding participation fees to active and targeted intervention<sup>33</sup>. Intervenor Costs and Payment Guide does not outline eligible or ineligible participants for cost awards and states that the Guide does not restrict the Régie's discretionary power to determine usefulness of intervenor contributions to its deliberations, or whether the costs incurred are reasonable and necessary. The Régie may waive all or part of the Guide, and establishing standards and scales as it deems appropriate<sup>34</sup>. To determine the amount of costs for reimbursement the Régie will consider the usefulness of the participation including whether the intervention was active, focused, structured and limited to issues identified by the Board for consideration, the intervention offers distinct perspective, the expertise, and that the intervenor acted responsibly in the process <sup>35</sup>.

The Association of Industrial Gas Users (ACIG) was awarded costs for participation recently in the Gaz Métro Terms of Service and Rates hearing, effective October 1, 2013<sup>36</sup>.

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<sup>30</sup>Chapter E-4 Electric Power Act of Prince Edward Island, Section 31, page 17. Available online: <http://www.gov.pe.ca/law/statutes/pdf/e-04.pdf>

<sup>31</sup>An Act Respecting the Régie de L' Énergie. Chapter R-6.01, Updated to 1 September 2015, Chapter III: Functions and Powers, Division I: Jurisdiction, Section 36. Available online: [http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/R\\_6\\_01/R6\\_01\\_A.html](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/R_6_01/R6_01_A.html)

<sup>32</sup> The 2003 Régie de L' Énergie Intervenor Costs Payment Guide D-2003-183, R-3500-2002, dated October 2, 2003, available online: [http://www.regie-energie.qc.ca/en/regie/IntervenorCostsPaymentGuide\\_2003.pdf](http://www.regie-energie.qc.ca/en/regie/IntervenorCostsPaymentGuide_2003.pdf)

<sup>33</sup> As outlined to the participants in the work of the Régie, in a letter introducing the 2009 Intervenor Costs Payment Guide D-2009-079 (available only in French), dated June 25, 2009, available online: [http://www.regie-energie.qc.ca/regie/FraisInterv/LtrGuidePaiementFrais\\_25juin09.pdf](http://www.regie-energie.qc.ca/regie/FraisInterv/LtrGuidePaiementFrais_25juin09.pdf)

<sup>34</sup> Régie de L' Énergie Intervenor Costs Payment Guide 2009, effective June 2009 (available only in French), available online: [http://www.regie-energie.qc.ca/regie/FraisInterv/GuidePaiementFrais\\_25juin09.pdf](http://www.regie-energie.qc.ca/regie/FraisInterv/GuidePaiementFrais_25juin09.pdf)

<sup>35</sup> Ibid. page 3.

<sup>36</sup> Régie de L' Énergie Decision D-2013-111 R-3837-2013 Phases 1 et 3, July 19, 2013. Available online (in French only): [http://publicsde.regie-energie.qc.ca/projets/210/DocPrj/R-3837-2013-A-0009-Dec-Dec-2013\\_07\\_19.pdf](http://publicsde.regie-energie.qc.ca/projets/210/DocPrj/R-3837-2013-A-0009-Dec-Dec-2013_07_19.pdf)

## A-10 YUKON UTILITIES BOARD

Under Section 56 of the Yukon *Public Utilities Act* “the board may order to whom or by whom any costs incidental to any proceeding before the board are to be paid, and may set the costs to be paid”<sup>37</sup>. Section 32 of the Yukon Utilities Board Rules of Practice provides no limitations or exclusions for the awarding of intervener cost awards<sup>38</sup>.

Schedule 1: Scale of Costs to the Rules of Practice provides guidelines for awarding costs as follows<sup>39</sup>:

6.1 In exercising its discretion to award costs, the Board may award costs, in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:

- (a) the costs are reasonable, prudent, and directly and necessarily related to the proceeding, and
- (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

6.2 In determining the amount of costs to be awarded to a participant, the Board may consider whether the participant did one or more of the following:

- (a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by the relevant witness;
- (b) made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by another participant;
- (c) made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine its submission with that of similarly interested participants;
- (d) presented in oral evidence significant new evidence that was available to it at the time it filed documentary evidence but was not filed at that time;
- (e) failed to comply with a direction of the Board, including a direction on the filing of evidence;
- (f) submitted evidence and argument on issues that were not relevant;

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<sup>37</sup> Public Utilities Act, Revised Statutes of the Yukon 2002, Part 4: Administration and Enforcement, Hearings, Section 56, Page 28-29. Available online: [http://yukonutilitiesboard.yk.ca/pdf/General/149\\_pua.pdf](http://yukonutilitiesboard.yk.ca/pdf/General/149_pua.pdf)

<sup>38</sup> Yukon Utilities Board Rules of Practice – Approved by Board Order 2012-09, October 17, 2012. Section 32. Costs, page 12. Available online:

[http://yukonutilitiesboard.yk.ca/pdf/Rules%20of%20Practice%20and%20Policy/1516\\_YUB%20Rules%20of%20Practice%20-%20FINAL.pdf](http://yukonutilitiesboard.yk.ca/pdf/Rules%20of%20Practice%20and%20Policy/1516_YUB%20Rules%20of%20Practice%20-%20FINAL.pdf)

<sup>39</sup> Yukon Utilities Board Scale of Costs – Approved by Board Order 2012-09, October 17, 2012. Schedule 1 to the Yukon Utilities Board Rules of Practice. Section 6. Cost Awards, page 4 – 5. Available online:

[http://yukonutilitiesboard.yk.ca/pdf/Rules%20of%20Practice%20and%20Policy/1517\\_YUB%20Scale%20of%20Costs%20-%20FINAL.pdf](http://yukonutilitiesboard.yk.ca/pdf/Rules%20of%20Practice%20and%20Policy/1517_YUB%20Scale%20of%20Costs%20-%20FINAL.pdf)

- (g) needed legal or technical assistance to take part in the proceeding;
- (h) engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to other participants; and
- (i) failed to comply with the Rules of Practice.

The Anvil Range Mining Corporation was awarded costs for participation in the 1996/97 Yukon Energy Corporation and the Yukon Electrical Corporation (YEC/YECL) hearing<sup>40</sup>. There have been no applications for cost awards by an industrial customer since as no industrial customers have since intervened in a hearing process.

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<sup>40</sup> Awarded by the Yukon Utilities Board in Decision 1996-10, dated November 25, 1996. Available online: [http://yukonutilitiesboard.yk.ca/pdf/Board%20Orders%201990/56\\_boardorder1996\\_10.pdf](http://yukonutilitiesboard.yk.ca/pdf/Board%20Orders%201990/56_boardorder1996_10.pdf)

**Table A-1: Sources Used for Determination of Eligible and Ineligible Interveners for Cost Awards**

	People/Entities Eligible	People/Entities Ineligible	Sources of Information
Manitoba Public Utilities Board	<p>a) Made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board.</p> <p>b) Participated in the hearing in a responsible manner and cooperated with other interveners who have common objectives in the outcome of the proceedings to avoid a duplicate intervention.</p> <p>c) Insufficient financial resources to present the case adequately without an award of costs.</p> <p>d) A substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.</p>		<a href="http://www.pub.gov.mb.ca/pdf/pandp/rules_pandp_mar07.pdf">http://www.pub.gov.mb.ca/pdf/pandp/rules_pandp_mar07.pdf</a>
Alberta Utilities Commission	<p>3(1) The Commission may award costs to an intervener who has, or represents a group of utility customers that have a substantial interest in the subject matter of a hearing or other proceeding and who does not have the means to raise sufficient financial resources to enable the intervener to present its interest adequately in the hearing or other proceeding.</p>	<p>4. Unless the Commission orders otherwise, the following types or classes of interveners are ineligible to claim costs:</p> <p>a) An out-of-province utility.</p> <p>b) Electric generators, including associations representing electric generators.</p> <p>c) A utility intervening in another utility's application.</p> <p>d) Business, commercial, institutional, or industrial entities including associations of these entities.</p> <p>e) Municipalities including associations of municipalities.</p> <p>f) Rural electrification associations including associations of rural electrification associations.</p> <p>g) Rural gas co-ops and associations of rural gas co-ops.</p>	<a href="http://www.auc.ab.ca/acts-regulations-and-auc-rules/rules/Documents/Rule022.pdf">http://www.auc.ab.ca/acts-regulations-and-auc-rules/rules/Documents/Rule022.pdf</a>
British Columbia Utilities Commission	<p>Except in limited circumstances, it is expected that only ratepayer groups will establish a "substantial interest in a substantial issue" so as to be eligible for an award in a revenue requirement proceeding.</p> <p>The Commission Panel will also consider other characteristics of the Participant, including the scope and significance of the principal concerns of the Participant.</p>		<a href="http://www.bcuc.com/Documents/Guidelines/2007/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf">http://www.bcuc.com/Documents/Guidelines/2007/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf</a>
New Brunswick Energy and Utilities Board	<p>1. When applying for a cost award the applicant should demonstrate how it made a material contribution to a better understanding of the issues by the Board.</p> <p>2. Any party who submits an application for costs should attempt to justify the request for costs on the basis of the public interest. This justification is most important where:</p> <p>a) The intervention was not to protect a direct or pecuniary interest,</p> <p>b) The intervener has funding from other sources, or could have been reasonably expected to obtain funding from other sources,</p> <p>c) The intervener failed to make reasonable efforts to negotiate, and</p> <p>d) The costs of intervention requested are incremental to the normal operating costs of the intervener.</p>		<a href="http://142.166.3.251/Documents/Decisions/NG/E/Decision%20on%20Costs%20Apr%2019%2001.pdf">http://142.166.3.251/Documents/Decisions/NG/E/Decision%20on%20Costs%20Apr%2019%2001.pdf</a>
Newfoundland Board of Commissioners of Public Utilities		No exclusions	
NWT Public Utilities Board	<p>32(2) The Board may award costs to an intervener who:</p> <p>a) made a significant contribution which was relevant to the proceeding and which lead to a better understanding by all parties of the issues before the Board;</p> <p>b) Participated in the hearing in a responsible manner and cooperated with other interveners who have common objectives in the outcome of the proceedings to avoid a duplicate intervention;</p> <p>c) made a reasonable effort to secure alternative funding where such funding was available to the intervener;</p> <p>d) had a substantial interest in the outcome of the proceeding and represented the interests of a substantial number of ratepayers; and</p> <p>e) has made an application for costs under rule 33.</p>		<a href="https://www.justice.gov.nt.ca/en/files/legislation/public-utilities/public-utilities_r8.pdf">https://www.justice.gov.nt.ca/en/files/legislation/public-utilities/public-utilities_r8.pdf</a>

**Table A-1 Cont'd: Sources Used for Determination of Eligible and Ineligible Interveners for Cost Awards**

	People/Entities Eligible	People/Entities Ineligible	Sources of Information
Nova Scotia Utility and Review Board	6(2) The Board may consider awarding costs against a utility to non-profit, public interest intervenors with limited financial resources who  (a) have a substantial interest in the proceeding; (b) will be affected by the proceeding; (c) participate in the hearing in a responsible way; and (d) contribute to a better understanding of issues by the Board.		<a href="http://www.novascotia.ca/just/regulations/regs/URBcosts.htm">http://www.novascotia.ca/just/regulations/regs/URBcosts.htm</a>
Ontario Energy Board	3.03 A party in a Board process is eligible to apply for a cost award where the party:  (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services  (b) is a person with an interest in land that is affected by the process.  (c) primarily represents a public interest relevant to the Board's mandate	3.05 Despite section 3.03, the following parties are not eligible for a cost award: (a) applicants before the Board; (b) an electricity transmitter, wholesaler, generator, distributor, retailer, and unit sub-meter provider, either individually or in a group; (c) a gas transmitter, gas distributor, gas marketer and storage company, either individually or in a group; (d) the IESO;  (e) the Ontario Power Authority; (f) the Smart Metering Entity; (g) the government of Canada (including a department), and any agency, Crown corporation or special operating agency listed in a schedule to the Financial Administration Act (Canada) that has not at the relevant time been privatized;  (h) the government of Ontario (including a ministry), and any public body or Commission public body listed in Table 1 of Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies - Definitions) made under the Public Service of Ontario Act, 2006 (Ontario); (i) a municipality in Ontario, individually or in a group; (j) a conservation authority established by or under the Conservation Authorities Act (Ontario) or a predecessor of that Act, individually or in a group; (k) a corporation, with or without share capital, owned or controlled by the government of Canada, the government of Ontario or a municipality in Ontario; and (l) a person that owns or has a controlling interest in a person listed in (a), (b) or (c) above.	<a href="http://www.ontarioenergyboard.ca/oeb/Documents/Regulatory/Practice_Direction_on_Cost_Awards.pdf">http://www.ontarioenergyboard.ca/oeb/Documents/Regulatory/Practice_Direction_on_Cost_Awards.pdf</a>
PEI Regulatory and Appeals Commission	31. (1) When an inquiry or investigation is made under this Act, upon complaint or otherwise, the Commission may order that all expenses in connection therewith, including costs and expenses of counsel, engineers, valuers, auditors, clerks, stenographers and other assistants, retained and employed by the Commission, as well as the expenses of the Commissioners while employed in and about the making of the inquiry or investigation, shall be paid by the public utility whose affairs are being inquired into or whose assets or property are the subject of such inquiry or investigation; and the Commission may in its discretion order that the payments by the public utility be entered as current operating expenses or as a charge to capital account or to be amortized and retired over a period of time; but if as a result of the inquiry or investigation it is found that the rates charged by the public utility have been excessive or that the inquiry or investigation has been rendered necessary by some act, neglect or omission on the part of the public utility, the Commission may order that the payments by the public utility shall be deducted from the amount which, otherwise, the public utility would be entitled to earn as a just and reasonable return upon its undertaking.		<a href="http://www.gov.pe.ca/law/statutes/pdf/e-04.pdf">http://www.gov.pe.ca/law/statutes/pdf/e-04.pdf</a>
Quebec: Regie de l'energie		No exclusions	<a href="http://www.regie-energie.qc.ca/regie/FraisInterv/GuidePaiementFrais_25juin09.pdf">http://www.regie-energie.qc.ca/regie/FraisInterv/GuidePaiementFrais_25juin09.pdf</a>
Yukon Utilities Board	6.1 In exercising its discretion to award costs, the Board may award costs, in accordance with the Scale of Costs, to a participant if the Board is of the opinion that: (a) the costs are reasonable, prudent, and directly and necessarily related to the proceeding, and (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.		<a href="http://yukonutilitiesboard.yk.ca/pdf/Rules%20of%20Practice%20and%20Policy/1517_YUB%20Scale%20of%20Costs%20-%20FINAL.pdf">http://yukonutilitiesboard.yk.ca/pdf/Rules%20of%20Practice%20and%20Policy/1517_YUB%20Scale%20of%20Costs%20-%20FINAL.pdf</a>

## **Manitoba Industrial Power Users Group**

c/o 500-280 Smith Street, Winnipeg MB R3C 1K2

November 27, 2014

Marilyn Kapitany, Board Member  
Manitoba Public Utilities Board  
Room 400, 330 Portage Avenue  
Winnipeg, MB R3C 0C4

Dear Board Member Kapitany,

### **Re: MIPUG Comments on Manitoba PUB Regulatory Process**

In response to the Chair's letter of November 3, 2014 and our meeting with you on November 17, 2014, The Manitoba Industrial Power Users Group (MIPUG) appreciates the opportunity to participate in this process, to identify the issues that the PUB should address when considering rate applications from regulated utilities. We also thank you for sharing with us that the PUB is gathering this information in the context of ongoing strategic planning with respect to various issues such as:

- 1) Excellence in the provision of regulatory decisions;
- 2) Effective communications and relations;
- 3) Interim rate setting;
- 4) Technology; and
- 5) Consistent regulatory approach.

As a follow up to our meeting, MIPUG offers the following comments.

MIPUG has in the past primarily participated in applications regarding Manitoba Hydro (and on occasion the subsidiary Centra Gas as it relates to sharing of costs with Hydro), so comments are specific to Hydro.

MIPUG's interest in the PUB application process is driven by the degree of sensitivity of member's operations to the cost of electricity. MIPUG companies face high levels of competition from both within their own companies (locations outside Manitoba) and from competitors, and electricity costs make up a substantial portion of the costs of operations. For most members, adverse movements in

the cost of electricity drive very real impacts on not only the bottom line, but on future levels of investment, employment, and expansion (or contraction) in the province.

### **MIPUG Concerns with Current Process**

The PUB is the only body governing power rates in Manitoba. On the matter of rates, the PUB has exclusive authority and jurisdiction, and customers are entirely dependent upon a fair and open process before the PUB to ensure that their rates are set at a proper level consistent with good regulatory practice (i.e., that rates are fair, just and reasonable). Customers are captive clients of Hydro by legislation (they can pursue no other supplier for their electricity) and there is effectively no other recourse available to the customers in regard to any unfair or prejudicial treatment of customers by Hydro. In all respects, in carrying out its mandate and responsibilities, this fact must remain central to the PUB's decisions on the scope it will consider and the processes it will use.

In many cases since approximately 2004, issues that have been brought before the PUB that are not within the above core scope. This scope expansion is problematic in that:

- 1) These items are the primary responsibility of others within the Government of Manitoba, such as energy efficiency targets and strategy which are explicitly developed in consultation with the Minister under the *Energy Savings Act*, and matters to alleviate overall economic burdens on vulnerable populations, which are within the purview of a vast array of Government departments (federal, provincial and municipal) as well as numerous social service agencies.
- 2) The items are not within the core scope of the PUB's mandate, instead being caught only by the generic subsections (viii) and (ix) under section 26(4)(a) of the *Crown Corporations Public Review and Accountability Act* which provides only for general, expansive considerations that the Board may consider.

These other issues have been allotted substantial time in hearings and effectively limited or crowded out matters that are central and exclusive to the Board's mandate, including the relative fairness of rates. As an example, effectively all rate changes for major customer classes since 2002/03 have only been implemented on an across-the-board basis with no consideration of the normal regulatory tests of fairness (i.e., which classes are responsible for driving the individual categories of Hydro's overall costs to serve load).

This is not to say that the Board should be entirely insulated from understanding the impacts of its decisions on individual customer classes. On the contrary, MIPUG has strongly endorsed the PUB receiving information on the impact on customers of such things as proposals to build up what are essentially ratepayer-funded reserves in Manitoba Hydro at the expense of ratepayers, particularly where there are arguments that these reserves may exceed levels that could still allow for viable operation of a Crown-owned, monopoly utility in what is a near co-operative financial model. Knowing what these proposals mean for industrials, businesses, residences, low income customers, etc. is critical to the Board's understanding of the issues and this has been the reason MIPUG members have supported and participated in the "presentation" components of the GRA hearings.

MIPUG also notes that since 2004, the costs of participating in the regulatory process have typically grown substantially, although in the recent GRA hearings this has begun to improve somewhat. In general, hearings have increased in scope, length, and in complexity. It has become increasingly difficult for MIPUG to participate in a meaningful manner given the cost escalations.

One feature that appears to be driving some degree of the increase in hearing scope and magnitude since 2004 is that relationships between the PUB and Hydro (as well as at times between Hydro and intervenors) have been strained. It appears to MIPUG that this has led to increases in the degree to which the PUB (and at times intervenors) must delve into the extreme detail of Hydro's filings on a broad range of topics, and a concurrent response by Hydro leading to the rate applications being not presented in a neutral and transparent manner. In the end, Hydro's role is less of an "honest broker" of information in its possession, and more of an adversarial defender of a doctrinaire position. In addition, as part of this extremely detailed testing, some intervenors become pressured to retain multiple narrow subject matter specialists, rather than rely on generalist utility experts who contribute more broadly to the PUB's understanding and the hearing in general. This overall evolution has created a process that is much more adversarial, time consuming, inefficient and costly for all parties including the utility and utility ratepayers who ultimately have to fund these costs through the rates imposed.

### **MIPUG Proposed Solutions for Issues with Current Process**

There are six different ways to help address concerns with the current process:

#### **1) Legislative Mandate**

There needs to be clarity in the role that the PUB fulfills. The current legislation is dated, overlapping and contradictory, is excessively broad in some areas and excessively constrained in others (e.g., no reviews of Manitoba Hydro capital spending). The 3 relevant Acts (Hydro Act, PUB Act, and CCPRAA) have different defined legislative objectives and as such are not well framed to work together for a clear cohesive legislated mandate. MIPUG recognizes that this is not a matter that the PUB can address on its own, but rather an item for the legislature.

#### **2) PUB training and adequate preparation time**

There is a substantial and complicated professional area of practice related to the economic regulation of utilities. Over a century of history and legal precedent, many longstanding literature publications, and an active ongoing evolution and innovation in regulation underpins the field. It is of course not realistic that the PUB members each be experts in this entire area before they can undertake their role, but MIPUG encourages and support as much professional training and support as can be provided to the members as they undertake this challenging position. This should also include the appropriate preparation time and compensation for members to be fully versed as needed to fulfill their role.

### 3) Simplification of hearing processes

MIPUG is concerned that the GRA hearings have excessively moved towards topics that are at best tangentially related to a GRA and the application of appropriate regulatory standards. In addressing matters such as approving intervenor applications, intervenor budgets, hearing time allocation, expectations regarding witnesses, etc., the Board's primary concern has to be issues that are exclusive to PUB and are not reviewed by any other public body:

- Is Hydro's spending (capital and operating) reasonable?
- What costs are incurred to serve each customer class?
- How should these costs be recovered in rates (e.g., this year or deferred)?
- How much reserves should ratepayers be expected to fund today for their own benefit in terms of stable rates in the future?
- What rates are required to fairly recover those costs and reserves from each class?
- How should class rates be designed to recover the measured cost level, and to appropriately reflect matters such as the Bonbright criteria (as described on P 383-384 Second Edition in Principles of Public Utility Regulation) and encouragement of conservation?

No other body in Manitoba has any role doing this job. The PUB must make this its prime function.

A second area of hearing process improvement advocated by MIPUG relates to truly placing the onus on Hydro to make its case including the clear restating of all requested approvals. The implicit environment in Manitoba today, as reflected in hearing practice, is effectively one of acquiescence to Hydro's request unless an intervenor can make a case to deny Hydro some requested approval (with onus on the intervenor). A major example is the approach to Argument – in Manitoba, Hydro does not submit argument-in-chief. The intervenors are forced to argue their position first, to which Hydro offers its response and intervenors are not given the opportunity to rebut Hydro's arguments. The natural image is that the "case" being made is by the intervenors and Hydro just has to argue that they failed to meet their "onus" of proof. In other non-inquisitorial hearing environments (e.g., court, many other administrative tribunals including other PUBs), at the end of a hearing, the Applicant makes its final argument setting out clearly and with finality what it is asking for, and what points it is relying upon (from all of the submitted evidence) to support that case. Then, the intervenors submit their arguments to challenge the utility, and the utility's reply is limited to new points raised in the arguments by the intervenors. The focus then is not testing the intervenor position; it's testing the utility position.

Such clarification of the onus would also provide simplification benefits to the PUB and intervenors with respect to overall hearing clarity. In the unfolding of regulatory hearings, there is a tendency for the applicant's case on any individual issue to be made fuzzy during the course of a hearing – Hydro may start with the justification set out in the GRA filing, but then adjust or take other positions, focus

evidence on other facts or perspectives, change their grounds of support, or even change their requested approvals during cross-examination. Intervenors are not always aware of which of these positions Hydro is in fact going to use to justify its case when intervenors are preparing their argument, and Hydro can effectively always revert to any of these in its argument (a sort of practice of keeping its powder dry to rebut intervenor arguments). If Hydro had to argue first, the Board would have an outline of Hydro's updated and firm view of what it is basing its case on, and all parties would know what case of Hydro's they are seeking to test and challenge in their own submissions. Rather than wading through mounds of evidence, the Board would have clear outlines of the decisions that are being requested, and the competing views on those items. Under the procedure which is now followed, the PUB is not given the benefit of hearing the full and complete view of the intervenors on Hydro's argument. Intervenors have to make an educated guess at what Hydro's submissions will be and if they have missed something, they have no opportunity to fill the gaps which they may have missed. A solution to this issue is straight-forward – Hydro should be required to submit argument-in-chief before intervenors prepare their arguments and Hydro prepares its reply.

#### **4) Hearing Scoping**

There is a need for clarity in the issues that should be examined by the Board when arriving at its decisions:

- Issues of importance derive from making sure that Manitoba Hydro's costs included in revenue requirement for a given year are proven to be "used and useful" for that year to avoid intergenerational equity issues, and that costs are incorporated at a level that reflects "prudent investment".
- Proper use of reserves and net income need to be reflected in rates such that serious risks to ratepayers are avoided (and stable rates for the future are likely) while not overpaying.
- Assets should be depreciated at a rate which reflects a fair balance between today's customers and future customers.
- For cost of service matters, a fair allocation of Hydro's approved costs to the various classes needs to be based on a consistent set of principles, allocating costs based on the appropriate level for each customer class as outlined by the usage and demand requirements of each customer class.
- Issues of provincial policy for which many other departments are routinely engaged should not be the Board's priority. For example, if the right rate to recover costs for residential ratepayers is calculated (given the COS results), there are many agencies and bodies who are enabled to deal with the implication for these costs for special groups, like low income, rural consumers, First Nations, municipal governments, recipients of social assistance, etc.

- The Board can and should receive evidence on the implications of rate increases from advocates for these groups, but this evidence should go to helping balance the need for funds in Hydro, versus in ratepayer hands. That is the balance the Board must consider. The Board must be cautious in deciding to reallocate from some customers to intentionally pay what is effectively a tax above costs, so others can receive subsidies to pay below costs as a result of some characteristics not related to their use of power, on matters that are the purview of the provincial or federal government.
- Matters that are already determined by provincial regulations/directives should not be the focus of the Board, such as:
  - Hydro's DSM level, which is already required to be reviewed and approved by the Minister under the provisions of the Energy Savings Act. There would remain a role for the Board ensuring that the DSM programs are prudently managed with how they spend ratepayer dollars (e.g., management effectiveness and efficiency).
  - Hydro's capital plans, when not enabled by the Lieutenant-Governor-in-Council (e.g., in a GRA outside an NFAT) – many hours were spent on these topics in about 2008-2011 period despite the Board having no jurisdiction. At the same time, major other topics that are entirely the Board's legislative responsibility (like making sure rates for each class reflect the actual cost to provide that class with service) were ignored.
- Anything that is a rate needs to be completely and actively within the scope of the Board's review. This would include the usual rates for things such as demand, energy and customer charges etc., plus matters such as interruptible and curtailable rates, and the charges imposed for service extensions to new customers (how much it will be paid by customers to extend a new or expanded connection). Hydro has avoided having service extensions terms and costs reviewed as a "rate" and has not had these approved by the Board. Various counsel (including MIPUG's) and the members of the Board have indicated they view these as a rate that is properly under the PUB's mandate.

MIPUG encourages the Board to help define priority issues early in the hearing process, in order that intervenors know the case they have to meet and that the efforts of all are focused. This should assist in enhancing the quality and efficiency of hearings.

MIPUG also encourages the enhancement of the fundamental filing requirements by specifically determining minimum filing requirements in a GRA. By way of example, as it presently stands, there appear to be a number of IR's which are routinely asked by PUB advisors and some intervenors in the first round to better understand what is driving the numbers underlying the requested rate increase. MIPUG views this as leading to inefficiencies and an inordinately high number of IR's. It would also be beneficial to know, when applicable, the options considered by Hydro on various issues leading to a particular choice or policy as it relates to fundamental rate making principles.

## **5) Provide direction to Board members, staff, advisors; also guidance to intervenors to help focus time and energy**

First and foremost, time and effort has to be focused on reviewing Hydro's case. The onus is on the applicant to make their case. If there's not enough information to assess the case, then the PUB should either reject the application outright, or send Hydro back with a list of minimum filing requirements to which they need to fulfill before the case will be moved to IRs and other pre-hearing stages. If this not done, then an insufficient filing is instead met with 1000s of IRs, which are far more time consuming, costly, and distracting for all parties. The disjointed nature of IR responses also makes it extremely difficult for the Board to undertake an effective, meaningful and cogent review of the entire record to generate an appropriate decision.

Second, in some cases, more iterative processes to facilitate discussion and transfer of useful information would ensure perspectives of all parties are heard and considered. Examples include encouraging Hydro to meet with intervenors and board advisors as needed to go over any IRs that have been asked that may seem to require excessive effort to answer, on something that perhaps can be done much simpler and still satisfy the intervenor objective. MIPUG and Hydro have had some initial success with this type of engagement, but it has so far only been applied on a very limited range of questions. Note however that these methods require a degree of trust between the parties.

Some specific items that must guide analysis:

- Appropriate economic concepts for determining who pays for hydro assets (much more valuable later in their life in dollar terms, due to inflation and other factors, so one must be diligent in ensuring that they are not being overly levied on the current ratepayers)
- Reserves need to be set aside at a level that helps fully address the need for ratepayers to have stable rates. Ratepayers generally and industrial companies specifically cannot absorb large rate increases just because of a year with less rain. There is a need to have reserves and rates at a level that is durable in good times and bad. At the same time, there is no reason for ratepayers to pay rates to fund reserve levels that are higher than needed to meet this purpose.
- Tools must focus on this being a Crown utility with no direction or purpose to pay profits to government. The hearing is not about normal accounting or issues like achieving a fair Net Income for the "investor". The system is intended as a closed loop – all costs that are accepted by the PUB will be paid by ratepayers, it's just a question of when. There are real and substantial downsides to this occurring both "too soon" and "too late". Accounting standards are only one relevant factor that can inform this major issue of timing, but must be balanced with other perspectives as well, and no single factor should not drive all.
- Operating and Maintenance expense - how to encourage/ensure efficiency? What levels of control does the PUB really have? Over a decade of concerns from the PUB that Hydro has

added too many staff on O&M (over 1000) and grown budgets too fast, but what is the consequence before the PUB if this continues?

- How to deal with assets that aren't yet in service (like costs for Capital Taxes on Keeyask) or that are in their adverse early stages of their life (like Wuskwatim). This is particularly a key focus in Cost of Service – who pays for these as yet unused costs?

## **6) Interim rate approvals**

There have recently been a number of interim rate approvals. Until approximately 2008 Hydro had never had access to this form of rate change. For MIPUG members this is undesirable and contrary to the spirit of the legislation. It creates uncertainty in one of their significant costs of production, and causes a number of challenges in budgeting and other business decisions. MIPUG has made its views known that, absent emergencies, the rate approval process should follow the prescribed GRA process. Its position has been more fully set out in its written submissions responding to interim rate applications. If transparent, complete and non-adversarial GRA's are filed in a timely way by Hydro, the need to resort to a request for an interim rate increase should be rare. Interim approvals should not be a substitute for obligations on Hydro to complete its regulatory filings in a timely way.

## **Conclusion**

MIPUG appreciates the opportunity to participate in this review. The matters under consideration are important to our members and to the competitiveness of Manitoba's industrial customers. Thank you for taking the time to speak with us.

If you have any questions, please contact me at [williet@wcgwave.ca](mailto:williet@wcgwave.ca) or 204-728-0388 home or 204-724-4694 cellular.

Yours truly,



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