

Writer's Name            Antoine F. Hacault  
Direct Telephone        204-934-2513  
E-mail Address         afh@tdslaw.com  
Direct Fax                204-934-0530

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Sent by email

Mr. Darren Christle  
Public Utilities Board of Manitoba  
400 - 330 Portage Avenue  
Winnipeg, MB R3C 0C4

Attention: Darren Christle, Secretary and Executive Director

Dear Sirs/Mesdames:

Re:    MIPUG Response to implementation of  
      Court of Appeal decision  
      Our Matter No. 0151269 AFH

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The Manitoba Industrial Power User's Group ("MIPUG") is in receipt of:

1. Manitoba Hydro's June 23, 2020 letter to the Board with a proposal to increase the rates for former FNORR customers and Diesel Zone Residential customers by 6.6% effective August 1, 2020;
2. The Board's July 13, 2020 letter to Manitoba Hydro and past interveners of record with the Board's questions for Manitoba Hydro regarding Manitoba Hydro's proposed rate increase, and the Board's invitation for comments from interveners of past record; and
3. Manitoba Hydro's July 20, 2020 letter to the Board with responses to the Board's Questions.

MIPUG thanks the Board for this opportunity to provide comments on the issues raised in that exchange of letters.

## Rate Change

The Court of Appeal had given leave on the question of “whether the PUB exceeded its jurisdiction in creating an on-reserve class whose rate for service would be different from those customers remaining in the existing ‘residential class’”.

As identified by the Court of Appeal, this was and is a “rate for service” issue.

There has been no application to stay the implementation of the Court of Appeal opinion rendered on June 9, 2020.

In its reasons for decision the Court of Appeal held, at paragraph 98:

In accordance with section 58(5) of the *PUB Act*, which requires this Court to certify its opinion to the PUB, I am of the opinion that the PUB exceeded its jurisdiction by making a directive that breached sections 39(2.2) and 43(3) of the *Hydro Act*.

Subsection 58(5) of *The PUB Act* reads as follows:

### Inferences by court

#### [58\(5\)](#)

On the hearing of the appeal, the court may draw inferences that are not inconsistent with the facts expressly found by the board and that are necessary for determining the question, and shall certify its opinion to the board; **and the board shall thereupon make an order in accordance with that opinion.** (emphasis added)

At paragraph 51 of its reasons for decision, the Court of Appeal opined that:

I agree with Manitoba Hydro that, in enacting sections 39(2.1) and 39(2.2), the legislative intent was to equalize the price of

power charged to residential customers in various regions of the province.

The Court of Appeal also concluded at paragraph 92 of its opinion that:

This means that all other customer classes must pay more for the provision of power to account for the shortfall resulting from the zero per cent increase to prices charged to customers in the on-reserve class.

We therefore respectfully submit that the PUB is required to exercise its rate making authority based on the opinion by the Court of Appeal with respect to the legislative interpretation of the applicable sections. The PUB is required to Order MH to implement a rate schedule which is consistent with the opinions rendered by the Court of Appeal.

As it relates to the GSL classes who have members in MIPUG, the PUB should make an Order which implements the spirit of the opinion of the Court of Appeal that all other customer classes should not pay more for the provision of power to account for the shortfall resulting from the zero percent increase to prices charged to customers in the on-reserve class.

**Are the refunds immaterial?**

MIPUG disagrees with MH's assertion that 0.13% of incremental revenue is immaterial, and notes that Attachment 1 to MH's July 20, 2020 letter indicates that the 0.13% rate increase resulted in additional revenue of \$1,032,000 being collected from customers in the General Service Large rate classes in the relevant periods of 2018/19, 2019/20 and 2020/21.

The following table compares the total over collection by customer class, against the number of customers at the time of Manitoba Hydro's most recent Cost of Service Study.

Customer Class	Total additional revenue related to Order 59/18 (\$000)	2018 Unweighted Customer	Average Additional Revenue Per Customer (\$/per customer)
Residential	1,689	508,242	\$ 3.32
GSSND	453	53,751	\$ 8.43
GSSD	461	14,104	\$ 32.69
GSM	600	2,152	\$ 278.81
GSL 0-30	285	325	\$ 876.92
GSL 30-100	252	40	\$ 6,300.00
GSL >100	495	16	\$ 30,937.50
A&RL	68	1,221	\$ 55.69
Other	21		
<b>Total</b>	<b>4,323</b>	<b>579,851</b>	<b>\$ 7.46</b>

Notes:

- 1 2018 Unweighted Customer Based on Manitoba Hydro 2017/18 & 2018/19 General Rate Application, Appendix 8.1, Section 4 Schedule 4.4 (p.21 of 39)
- 2 2018 Unweighted Customer includes Residential - Seasonal and Residential - FRWH
- 3 2018 Unweighted Customer includes GSS Seasonal and GSS FRWH

Given the smaller number of GSL customers, these amounts are material at a customer level. As these amounts were ultimately found to be improperly collected, they should be returned to customers.

Failing to do so would amount to failing to implement the spirit of the opinion of the Court of Appeal.

**Method of making other classes whole**

As indicated by the Court of Appeal, at paragraphs 36 and 37 of its reasons, pursuant to subsection 44(1) of *The PUB Act*, the PUB is able to grant such further or other relief in addition to or in substitution for that applied for.

We submit that for classes where the refunds would be relatively minor, the most cost effective way to implement the Court of Appeal opinion is to Order MH to file a proposal for a negative rate rider that would return the additional revenue to customers over a reasonable period of time. With respect to the GSL classes, the amounts are significant enough that customers in those classes should be issued refund cheques. We note that this would not represent a full refund to customers who had to pay more as they will not be paid interest on the amounts by which they overpaid. However, this would result in complying with the spirit of the Court of Appeal opinion.

**Immediate ceasing of over collection**

Consistent with MIPUG's position that excess collections should be returned, MH should be ordered to revise all impacted rates downward and cease over collection. The annual ongoing cost to consumers of this rate adjustment is significant, as evidenced by the approximately \$2.05 million in additional revenues collected in the 2019/20 fiscal period. Further, the additional \$476,000 collected from General Service Large rate classes in that fiscal period are material at the customer level given the significantly smaller number of customers in these rate classes.

MIPUG urges the PUB to act expeditiously as with the recent introduction of Bill 44 legislation, ratepayers will not be assured of transparency in addressing this matter and may continue paying the incremental additional amount going forward.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per: 

Antoine F. Hacault\*

AFH

Cc Manitoba Hydro  
PUB Counsel  
Interveners of Past Record.

\*Services provided through A. F. Hacault Law Corporation