



THOMPSON  
DORFMAN  
SWEATMAN

Writer's Name	Antoine F. Hacault
Direct Telephone	204-934-2513
E-mail Address	<a href="mailto:afh@tdslaw.com">afh@tdslaw.com</a>
Direct Fax	204-934-0530

April 14, 2022

EMAIL AND REGULAR MAIL  
[publicutilities@gov.mb.ca](mailto:publicutilities@gov.mb.ca)

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

Attention: Rachel McMillin, Associate Secretary

Dear Sirs/Mesdames:

Re: Hydro R & V Application  
Our Matter No. 0186495 AFH

The Manitoba Industrial Power Users Group ("MIPUG") is in receipt of the Manitoba Hydro ("Hydro") Review and Variance Application ("R&V Application") dated February 25, 2020, in respect of the Hydro 2021/22 Interim Rate Application ("Interim Application") and resulting Board Orders 137/21 and 9/22. This letter is provided in response to the Public Utilities Board ("Board") letter of March 31, 2022, requesting comment on the R&V Application.

In MIPUG's view, as outlined below, of the five areas Hydro requests the Board vary, one can be addressed without a need for an R&V process (precipitation forecasting) and the remaining four can be readily dismissed as not representing valid grounds for review. Notwithstanding, in order to be cooperative and accommodating, MIPUG notes that three of the four areas may benefit from clarification or revision by the Board with details provided below.

MIPUG notes that the filing of a R&V Application on an interim rates decision is unusual. A more appropriate process for relief would be to file additional information and updates as part of an application to finalize rates at a further General Rate Application ("GRA"). It is unfortunate that the Board and Intervenors now must incur the work and expense of dealing with Hydro's R&V application in this situation.



MIPUG has endeavoured to ensure its comments are succinct and practical. These comments are intended to assist the Board in its review of the R&V Application. Throughout all recent Hydro proceedings, MIPUG has sought to minimize the extent of regulatory costs and continued to encourage Hydro to approach regulation with a cooperative spirit and transparency, rather than the current unproductive and litigious approach. As a Crown monopoly, it is important for Hydro to retain sight that it, as well as the Board, both exist to serve Manitobans.

### **Background on Review and Variance Applications**

Hydro's R&V Application has been filed under section 36 of the Board's Rules of Practice and Procedure. This section establishes the following process once an application for a review is filed (subsections 36(4) and (5) of the Rules of the Rules of Practice and Procedure):

4. The Board shall determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered, or varied.
5. After determining the preliminary question under subsection 36(4) the Board may:
  - (a) Dismiss the application for review if,
    - (i) In the case where the applicant has alleged an error of law or jurisdiction or an error of fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or
    - (ii) In the case where the applicant has alleged new facts not available at the time of the Board's Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision.
  - (b) Grant the application; or
  - (c) Order a hearing or proceeding to be held.

The R&V process is a two-step process – the preliminary determination (s.36(4)), and



the subsequent determination (s. 36(5)).

It is also apparent that a R&V Application can be supported only under four headings (also see Board Order 154/03):

- Is there an error of law?
- Is there an error of fact?
- Is there a material change in circumstances?
- Has further evidence been adduced?

MIPUG's comments are structured to follow the above standards.

### **Background – Regulatory Events in 2021**

On March 26, 2021, the Consumer's Coalition filed an Application seeking an Order of the Board to convene a Status Update Hearing ("Status Update") for Hydro. This Application requested a public hearing be convened of Hydro to confirm whether Hydro's then-current rates were just and reasonable. The Consumer's Coalition submitted that such a broad review was in the public interest.

The Status Update review was justified in part by the Coalition based on Hydro's refusal to follow its previous commitments to file a full General Rate Application in late 2019<sup>1</sup>.

On May 10, 2021, the Board issued Order 53/21 requesting additional information from Hydro to determine whether a Board review should take place. Following an exchange of information, on August 17, 2021, the Board issued Order 89/21 outlining its findings and decision that it was in the public interest to convene a public process to review Hydro's rates. The Board provided an extensive list of matters that required review as, taken collectively, they constituted a substantial change in Hydro's circumstances. The list of items covered almost six pages of Order 89/21 (pages 4-9).

Throughout the pre-hearing process, during which the Consumer's Coalition sought a broad factual evidence base to support a determination of the justness and reasonableness of rates, Hydro's approach would charitably be described as resistant<sup>2</sup>. Although the opportunity existed as early as March 2021 for Hydro to adopt a cooperative and transparent approach to regulation, by filing documents in the Status Update proceeding and openly presenting Hydro's proposal for the needed trajectory of rates (including as drought conditions

---

<sup>1</sup> Board Order 69/19 pages 5-6.

<sup>2</sup> See, specifically, Hydro's submissions of April 12, 2021; June 9, 2021; July 6, 2021; August 24, 2021; October 15, 2021.



evolved), Hydro spent its efforts increasing costs and time delays through filing of incomplete information, obstructive commentary on process, and extensive comments on why the current level of rates was sufficient and why there had not been a substantial change in circumstances.

The above Status Update process was, in effect, brought to a halt on September 29, 2021, when Hydro's official position pivoted from there being no substantial change in circumstances supporting the need for a full regulatory review, to there being a need for "immediate financial relief"<sup>3</sup> requiring "expedited PUB approval"<sup>4</sup>, which was later clarified to mean having "the PUB rule upon this matter in an expedited fashion" without any opportunity for the PUB or Intervenors to even request any additional information from Hydro or any further process<sup>5</sup>.

Wisely, the Board rejected the entirely cursory approach proposed by Hydro, and adopted instead a minimalist process solely to address the interim rate increase, which Hydro asserted was immediately needed. In an unprecedented narrow and truncated Board process, the Hydro Application of November 15, 2021, received rate approvals by December 24, 2021.

The process for review of Hydro's rates was still exceedingly compromised, as follows:

- In response to Hydro's requests, the Board imposed a very narrow scope of items that were permitted for review. The Board exerted further controls on this narrowness by clearly noting that "any party posing Information Requests that are not in-scope is prohibited from seeking cost awards for the research and preparation of such out-of-scope Information Requests"<sup>6</sup>.
- The scope of items included for review in the Interim Application failed to include a wide range of items considered to require review as per Order 89/21.
- Parties to the proceeding were permitted to draft Information Requests for discovery, but these were screened by the Board prior to being issued to Hydro to further limit the scope of the proceeding. Only a limited number of written requests were permitted.
- No party other than Hydro was permitted to file any evidence whatsoever. MIPUG's final submission (Exhibit MIPUG-9) highlighted how this constraint meant that errors, inconsistencies, inappropriate comparisons to other utilities, etc. were rampant under such an expedited process.

---

<sup>3</sup> Manitoba Hydro September 29, 2021 letter to the Board, page 1

<sup>4</sup> Manitoba Hydro September 29, 2021 letter to the Board, page 2

<sup>5</sup> Manitoba Hydro Cover Letter to the 2021/22 Interim Rate Application, November 15, 2021.

<sup>6</sup> Board Order 128/21 page 15.



The Board provided an expeditious response to Hydro, including interim Order 137/21 followed by further reasons comprising some 96 pages in Order 9/22. The summary of the Board's deliberations on the issue of an interim rate increase are detailed and extensive.

MIPUG's comments on the R&V Application reflect the reality of the Interim Application proceeding by way of an inferior and truncated process, caused explicitly by the actions of Hydro to undermine the opportunity for a full and transparent review dating back to early 2021, and before that to unfulfilled commitments to file a full GRA in 2019.

### **R&V Application**

Hydro's R&V Application ultimately seeks five revisions to Order 9/22. These are noted as follows:

- 1) Additional Rationale Supporting the Board Determination of Rate Increases
- 2) Directive 4 – Provide Long-Term Financial Forecast
- 3) Directive 6 – Demonstrate Business Operations Capital Reductions
- 4) Directive 7 – Demonstrate Operating and Administrative Expense Reductions
- 5) Enhancements to Long-Term Precipitation Forecasting Capabilities

Each of the above must be assessed in light of two overriding considerations, which are described in greater detail below:

- The Board process respecting an Interim Rate Application was based on an expedited and incomplete record, which lacked the usual General Rate Application information. It also truncated the fundamental right of Interveners to adduce evidence. Interim Rates will at some point need to be finalized, either at the same level or at a different level, in light of a proper and fair evidentiary record and hearing process.
- Even ignoring that Hydro is the explicit cause and beneficiary of the current incomplete record, Hydro still has the opportunity to put proper and fulsome evidence before the Board to seek remedies different than those awarded in Orders 137/21 and 9/22, when it finally comes forward with a transparent application that reflects the public interest.
- There is a further need to rein in the excessive, self-serving, and ill-advised litigious strategy being pursued by Hydro that drives excessive regulatory costs and divisiveness. Since 2017, when Hydro sought to overturn the then-existing regulatory conventions and protocols, and drive excessive costs and inefficiencies, the Board has yet to have the opportunity to receive a transparent



and efficient Hydro rate application.

In light of these considerations, MIPUG offers the following comments:

### **1) Additional Rationale Supporting the Board Determination of Rate Increases**

Hydro seeks more detailed discussion regarding the reasons the Board arrived at its rate determination. Hydro indicates that Order 9/22 “fails to establish the rationale for how the PUB ultimately determined the essential element of the decision – that 3.6% was the appropriate interim rate increase”<sup>7</sup>. Hydro requests that the Board set out more detailed reasons for the decision.

Hydro does not set out the specific grounds for review, but based on the submission, it appears Hydro is alleging an error in law. The test for remedies based on an error in law, pursuant to Board Rule 36(5) is whether “the applicant has raised a substantial doubt as to the correctness of the Board’s order or decision”.

MIPUG submits that the Board should dismiss this aspect of the R&V Application.

First, there is the matter of whether Hydro is indeed owed detailed reasons beyond that set out in Order 9/22, with respect to a quantitative finding. MIPUG provides Appendix A to this submission to review the legal framework for regulatory decisions, particularly interim decisions.

Second, Hydro ignores in its entire R&V Application on this matter that the decision is an interim finding of the Board, developed on an incomplete and expedited record. The interim rate is explicitly only a measure of what customers will pay, for now, and subject to revision to any other level at the time Hydro brings proper and fulsome evidence to finalize rates.

Finally, Hydro appears to ignore that the last long-term financial forecast submitted by Hydro to the Board (Exhibit MH-93 from the 2017/18 GRA) set out a long-term pathway of 3.6% annual rate increases, and this pathway was in fact relied upon in 2018 to set rates. Further, the Board had evidence from MFR-15 in this proceeding that Hydro had provided long-term forecasts to credit rating agencies (but not the Board) regarding the progress that could be made with 3.5% rate increases.

In short, a fulsome rationale for a Board decision on rates can only be reasonably expected to arise from a fulsome record of evidence, but the substantive reasoning for 3.6% is well established. The appropriate remedy for Hydro to address what it may consider an inferior decision of the Board on interim rates is to file a complete record of evidence in

---

<sup>7</sup> Hydro R&V Application, page 3.



support a final rate request.

## 2) Directive 4 – Long Term Financial Forecast

Hydro's second matter for the R&V Application is Directive 4, which Hydro requests be varied in two ways. The Directive indicates as follows:

*4. Manitoba Hydro include in its 2022/23 General Rate Application its long-term financial forecast of at least 20 years together with its underlying assumptions.*

Hydro appears to request two changes, though oddly only one is explained. First Hydro seeks to change "its" to "a" in terms of the description of the financial forecast. Second, and unexplained, Hydro seeks to omit "together with its underlying assumptions".

Hydro acknowledges that a long-term financial forecast is among the tools used by the Board to set rates, and that the Board "may direct the utility to prepare documents to assist in discharging its rate-setting mandate"<sup>8</sup>.

Hydro appears to base its request on the idea that, while it can and will produce a 20-year forecast, Hydro will not in fact use that forecast in management of the utility. MIPUG notes the clearly concerning signals arising from a hydro utility management who reject the idea that a long-term financial forecast is useful and essential for internal management.

Hydro's grounds for review appear to be an allegation of an error in law, in that the Board exceeded its jurisdiction by requiring production of a document "to be used in the current management of the business"<sup>9</sup>. Hydro appears to provide no grounds for review to delete the text "together with its underlying assumptions".

MIPUG submits that the Board has grounds to dismiss this aspect of the R&V Application, as the alleged error in law does not meet any test of substantial doubt. This is particularly true as the Board has not directed that the specific requested financial forecast in question be used by management. The Board has solely expressed its view that long term financial forecasts "are of value in the prudent management of Manitoba Hydro's business"<sup>10</sup>. A rejection of the R&V Application on this matter is merited, and this is the MIPUG preferred approach.

Alternatively, although there are solid grounds to dismiss the R&V Application, MIPUG

---

<sup>8</sup> Hydro R&V application, page 6, citing the Manitoba Court of Appeal

<sup>9</sup> Hydro R&V application, page 6.

<sup>10</sup> Manitoba Hydro R&V Application, page 5.



recognizes that the Hydro request for a variation could likely be accommodated, in part, to help alleviate the Hydro concerns. MIPUG suggests that if the Board is amenable to variation, MIPUG recommends that the Board make clear that Hydro file “a” 20-year financial forecast prepared by Hydro, which represents Hydro’s best effort to project future conditions, and be tested on this forecast under oath. To the extent Hydro conveys concern or uncertainty regarding future conditions (i.e., in backing away from ownership of this being “its” forecast), Hydro should be prepared to model and provide alternative scenarios of potential futures, including those arising from other parties to the proceeding. In presenting the forecast, MIPUG can see no reason to omit the wording “together with its underlying assumptions”.

In short, MIPUG submits that, without further process, the Board could approve a revision to Directive 4, as follows:

4. *Manitoba Hydro include in its 2022/23 General Rate Application a long-term financial forecast of at least 20 years together with its underlying assumptions. For the purposes of analyzing uncertainties in the forecast, Hydro may elect to file multiple scenarios, along with the assumptions and estimated probabilities of the alternative scenarios arising.*

MIPUG also submits it should be made clear to Hydro that modelling of alternative scenarios will be welcomed and expected, including those positioned by intervenors arising from testing during the proceeding.

### **3) Directive 6 – Business Operations Capital Reductions**

### **4) Directive 7 – Operating and Administrative Expense Reductions**

The above two directives are being addressed together, as the MIPUG positions on both are identical. The directives are comparable in that they both direct Hydro to “demonstrate the savings ... that are found” in the respective areas (capital and operating costs) when Hydro files its application to finalize the interim rates. Hydro proposes that each directive be re-written to say that Hydro should only provide “a narrative explanation of its processes for assessing and optimizing” the respective cost area – capital or operating costs - along with a comparison to the forecasts “included in the 2021/22 Interim Rate Application.”<sup>11</sup>

Manitoba Hydro submits that the Board erred in law regarding these matters, by exceeding its jurisdiction in directing cuts to both capital and operating budgets.

With respect, Hydro overstates the directives in question.

---

<sup>11</sup> Manitoba Hydro R&V Application, pages 14 and 18.



The Board has a clear jurisdiction with regard to the rates of Manitoba Hydro. In assessing these rates, the Board must take into account the requirements regarding the prices payable for power, as set out in *The Manitoba Hydro Act* s.39(1). In particular, subsection 39(1) makes clear that only the “necessary” costs of operating, maintaining, repairing, etc. the system are to be included in rates. The Board’s directives on the above two matters clearly link to this requirement – that the Board test whether expenditures are necessary in determining whether to include them in rates. Subsection 39(10)(d), which is to be read as part of s. 39 as a whole, provides the Board with broad discretion as to the information it may request of Hydro in setting rates. It allows a request for “such further information incidental thereto as The Public Utilities Board may reasonably require”.

On an interim basis, the Board has effectively made a finding that the full forecast expenditures in these two areas are not necessary in light of the drought conditions. The Board has provided Hydro the opportunity to provide evidence on how it has responded to this finding at the time an application to finalize rates is filed.

Of course, Hydro is welcome to file information that no savings were found, and the reasons why. An open and transparent review of rates as part of finalizing the interim rate increase can then adjudicate on this submission. Should the Board, at that time, require specific cuts to capital or operating costs, beyond the Board’s jurisdiction to assess the necessity of spending levels, any error of law would only occur at that time. The Board has not at this time so directed any specific cuts to individual capital programs or operating areas, nor any quantification of a level of cuts to be achieved, nor even dictated adverse outcomes it would impose on Hydro in the event that this general pressure for cuts are not achieved. MIPUG acknowledges that such future findings by the Board, in respect of requiring individual cuts where the Board supplants management’s discretion for its own, could prove to be an error in law. However, issuing a Review and Variance based on the potential for a future error in law is not justified.

As such, it is not apparent that there is any prima facie case that the Board erred on issuing the directives.

On these directives, two other matters require comment:

First, Manitoba Hydro’s submission is grossly inappropriate when it asserts that “the only evidence on this matter” was contradicted by the Board’s finding (page 13). As Hydro is intensely aware, the only evidence on all matters at this proceeding was Hydro’s evidence, because Hydro so demanded. Indulging Hydro’s demands that only its evidence be reviewed cannot be the basis to then cite that no contrary evidence was presented.

Second, Hydro provides alternative text for the directive for each of the two above areas (Capital and Operating). The Hydro text is not inherently offensive or inappropriate, and



MIPUG makes no objection if the noted text is added to the Directive, for clarity. Indeed, even if the existing text were revised to add the words “if any” after “demonstrate the savings” in the original directive, MIPUG does not feel the spirit of the original Order would be offended, so long as the Board’s messaging is clear that failure to achieve savings will make it highly challenging for Hydro to demonstrate that all amounts spent were necessary in the spirit of *The Manitoba Hydro Act*, s.39(1).

### **5) Long Term Precipitation Forecasting Capability**

Hydro takes issue with text from page 87 of Order 9/22 where the Board sets out that it desires to receive expert evidence on additional drought forecasting options. Hydro indicates the text is not clear with regard to who would produce such evidence. It is not apparent what grounds for review Hydro relies upon in its submission. If anything, the submission appears to more appropriately follow the Board Rules, subsection 36(9), where the Board can correct minor errors.

In issuing a correction, the Board should make clear that this is indeed a directive to Hydro, that such evidence should be provided by Hydro, and to file expert opinion on what additional drought forecasting options (if any) would have had a beneficial impact on the matter at hand – “to mitigate Manitoba Hydro’s drought risk”.



THOMPSON  
DORFMAN  
SWEATMAN

It is MIPUG's expectation that few if any such precipitation forecasting options would credibly reduce Hydro's drought risk, but testable expert evidence from Hydro on this matter should help alleviate the Board's concerns.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:

Antoine F. Hacault\*

AFH/av

cc: Board Counsel  
Manitoba Hydro  
CAC  
Manitoba Keewatinowi Okimakanak Inc.  
Assembly of Manitoba Chiefs

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

## **Schedule A**

1. In its request for the Public Utilities Board (“Board”) to review and vary its decision with respect to reasons for decision, Hydro requests that the Board “provide and include the specific reasons, basis and rationale supporting its ultimate finding to award a 3.6% interim rate increase as opposed to the 5.0% interim rate increase requested within the Application.”

2. For the reasons which follow, and the factual reasons set out in the letter to which this schedule is attached, this attack on the 96 page reasons for decision is entirely void of any merit.

### **Test applied in approving an interim rate increase**

3. There is no suggestion that the Board misstated or misunderstood the test it had to apply in approving an interim rate increase which Hydro sought on an emergency basis pending the filing of a full General Rate Application.

4. Neither the position of Hydro or of the Interveners on the appropriate interim rate was accepted by the Board.

5. No issue of law or of jurisdiction has been raised at pages 2 to 4 of Hydro’s request with respect to the exercise by the Board of its broad discretion to approve a temporary rate pending a full hearing on an appropriate just and reasonable rate based on a full General Rate Application.

### **Sufficiency of reasons with respect to an interim rate increase**

6. Hydro quotes from *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (“*Vavilov*”) in support of its position that the reasons are insufficient.

7. The duty to provide reasons for decision arises from procedural fairness (para. 76) and that duty is “inherently flexible and context specific” (para. 77).

8. Thus, for example, written reasons may not be required depending on “the nature of the decision being made and the process followed in making it” (para. 77).

9. Consider that Hydro took advantage of this flexible and context specific concept of procedural fairness by suggesting a truncated expedited hearing where interveners were precluded from adducing evidence and in which the discovery and hearing process was extremely limited – all because we were only dealing with an expedited emergency interim rate increase.

10. A higher standard of procedural fairness will apply with respect to Manitoba Hydro’s request for a final order on an appropriate rate increase at the upcoming GRA.

11. Hydro acknowledged this at page 4 of 51 of its interim rate application as follows: “interim rate applications are not subject to the same rigor and standards of a final rate application.” However, Hydro quotes tests from *Vavilov* applicable to final decisions.

12. Hydro has benefitted from a relaxed rule of procedural fairness for a truncated process. Given that the requirement for reasons for decision also arise out of the same concept of procedural fairness it would be inconsistent to impose relaxed standards for all aspects of the interim hearing except the aspect which applies to reasons for decision.

### **Dealing with evidence**

13. There is no basis to suggest that the Board fundamentally misapprehended or failed to take into account the evidence before it or relied on irrelevant evidence (*Vavilov* para. 126).

### **Dealing with submissions**

14. The principles of justification and transparency require that the Board meaningfully account for the central issues and concerns raised by the parties (*Vavilov* para. 127).

15. This being said, courts do not expect the Board to “respond to every argument or line of possible analysis” or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (*Vavilov* para. 128).

16. At page 1 para. 1.1 of its application, Hydro requested: “1) Approval, on an interim basis, of rate schedules incorporating an overall increase in General Consumers Revenue of 5.0% effective January 1, 2022;”

17. Historically the Board has weighed all the evidence before it and all the relevant regulatory criteria and come up with a rate increase.

18. It did so again from pages 14 to 70 of Order 9/22 by taking into account, *inter alia*, the “central issues” of drought, the financial forecast information and the major capital projects entering commercial service.

19. In its Application, Hydro summarized the main drivers leading to its request for a 5% increase. Hydro explained what it weighed in coming to its conclusion.

20. Interveners also explained what they weighed in coming to their conclusion. Each conclusion was different.

21. With respect to each “central issue” raised, the Board summarized the evidence, the positions and its relevant findings.

22. It also assisted Hydro in setting out issues which should be dealt with in further detail in the GRA to be filed:

- (a) P. 25 reservoir management;
- (b) P. 27 hedging strategy;
- (c) P. 31 information on efforts to control costs with respect to Business Operations Capital to mitigate impact of drought;
- (d) P. 34 information on efforts to reduce its O&A expenses;
- (e) P. 40 the merits of a proposed new metric of Cash Sufficiency/Deficiency to Fund Core Business Operations;
- (f) P. 48 information on water levels in 2022 prior to the filing of the GRA;
- (g) P. 48 & 52 “a long-term financial forecast” (emphasis added) so as to allow it to better consider and balance “the interests of ratepayers with the financial health of Manitoba Hydro”;
- (h) P. 54 amortization of Major Capital Projects Deferral Account;
- (i) P. 63 steps taken to manage O&A expenses;

**Insufficient evidence to divide awarded increase**

23. The Board made a finding of fact that “In this Interim Application, the Board did not find sufficient evidence to allow it to divide the awarded increase into separate categories of “drought rate increase” and “base operations rate increase” (p. 68 of Order 9/22).

24. Given the truncated hearing and deficiency of the evidentiary record, this was a finding of fact which the Board was entitled to make.

25. Having chosen not to provide long term forecasts for regulatory purposes and given the importance of the long term forecasts in rate setting, Hydro is disingenuous in then criticizing the Board for not making specific allocations in arriving at an overall rate increase of 3.6%. It was Hydro's choice to file limited evidence in a truncated expedited process.

26. Hydro bears the responsibility of adducing sufficient evidence. The Board found it did not do so.

27. Given the finding of the Board of the importance of long-term forecasts in exercising its discretion to balance customer interests with the financial health of the utility and given the choice of Hydro not to honour its commitment to file an IFF in 2019 (p. 48 of Order 9/22), Hydro is also disingenuous in criticizing the Board reasons as having "no specific Board findings related to the interest of ratepayers".

28. In fact, it continues to surprise MIPUG that a business of the size and importance of Hydro does not have or rely on an Integrated Long-Term Financial Forecast, which gets updated from time to time. Apparently, the best Hydro can do is supply long term forecasts for the rating agencies, which it says are good enough for those rating agencies but not good enough for regulatory purposes.

### **Alleged prejudice**

29. Hydro asserts at page 4 of its Review and Vary letter that it: "does not have an appropriate starting point or basis in attempting to understand the Board's rationale from which to properly plan and develop the next General Rate Application."

30. Hydro has the onus to prove its case in a final rate request.

31. Although Hydro may not like Board directives related to filing relevant information such as an IFF, information on cost cutting efforts and other items specifically identified by the Board, Hydro certainly knows what issues are of concern to the Board and to the Intervenors as result of the requests made by the Board and the Intervenors in this interim expedited process.

32. If anything, the interim process should have given Hydro more insight on the concerns of the Board and the concerns of Intervenors and provided advance notice on contentious issues it needs to address in its upcoming GRA. The Board reasons and the interim process have been beneficial – not prejudicial.

#### **Looking to the record as a whole**

33. Considering the record as a whole, including the noted deficiency of information, the Board has set out the applicable test for an interim rate increase. It has dealt with the limited issues it decided would be addressed in this expedited truncated process. It has sufficiently summarized the positions of the parties and the evidence in its preliminary reasons followed by lengthy reasons on its interim rate increase decision.

34. We submit that brief reasons in Order 137/21, as further detailed in the 96 page reasons for decision in Order 9/22, meet or exceed the test at para. 86 in *Vavilov*. When read with the record as a whole the reasons are “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrained the decision maker.”

35. After considering the record, both the reasoning process and the outcome of the decision are reasonable in the context of an interim process which will be subject to a full hearing in the fall of 2022.

**Conclusion**

36. No additional specific reasons, basis or rationale are required to be provided by the Board. Hydro's requested Remedy is without merit and ought to be rejected.