

August 30, 2021

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

Via Email: publicutilities@gov.mb.ca

Attention: Rachel McMillin, Associate Secretary

RE: Hydro's Request for Clarification Regarding Order 89/21

The following sets out the submissions of the Assembly of Manitoba Chiefs (the "AMC") in response to the Public Utilities Board (the "Board") letter dated August 25, 2021, wherein the Board requested that Past Interveners file submissions in response to Manitoba Hydro's request for clarification of Order 89/21.

In Order 89/21, the Board determined that the circumstances of Manitoba Hydro have changed substantially since the Board adjudicated General Rate Applications in 2018 and 2019 through Orders 59/18 and 69/19. The Board determined that additional evidence was required to assist the Board in its determination of whether Manitoba Hydro's rates are just and reasonable and its costs fairly allocated among the customer classes.

On August 24, 2021, Manitoba Hydro sent a letter to the Board seeking clarification of:

1. the intended scope of the public process and identification of the specific issues, which shall be considered by the Board in this proceeding;
2. the process to be followed by Manitoba Hydro as non-applicant; and
3. the treatment of costs in this proceeding.

INTENDED SCOPE OF PUBLIC PROCESS & IDENTIFICATION OF ISSUES

The AMC supports the Consumers Coalition's characterization of the scope of the hearing. The primary and overarching issue to be determined is whether Manitoba Hydro's current rates are just and reasonable and costs fairly allocated between customer classes.

The basis for the status update hearing is that the circumstances of Manitoba Hydro have substantially changed since Orders 69/18 and 59/18. The issues of, *inter alia*,

- The current electricity rates;
- Orders 100/20 and Orders 110/20;

- The disposition of the major capital deferral account created in accordance with Order 69/19;
- All directives from Orders 59/18 and 69/19; and
- The facts outlined on pages 37-42 of Order 89/21

are relevant to the determination of whether Manitoba Hydro's rates are just and reasonable.

On the matter of *The Budget Implementation and Tax Statutes Amendment Act, 2020*, SM 2020, c. 21 (the "*Budget Act*"), Manitoba Hydro's characterization of that legislation as establishing current electricity rates is misleading. Current rates are a result of numerous past rate increases, including the rate increase approved by section 233(1) of the *Budget Act*.

The *Budget Act* stipulates that the increase required is not subject to section 39 of *The Manitoba Hydro Act*, except subsections (2.1) and (2.2), or Part 4 of *The Crown Corporations Governance and Accountability Act*. That increase is now, however, part of the customer rates charged by Manitoba Hydro.

While the PUB cannot review the fact of the 2.9% rate increase approved for December 1, 2020, it must still review all related financial information of Manitoba Hydro, including the revenue received through rates generally, in the context of determining whether Manitoba Hydro's rates are just and reasonable. As stated by the MKO in its submission of April 12, 2020:

...the December rate increase is now a fact - one of many since 2018-19 - that the Board may consider in deciding to hold a status update hearing, and if a hearing is held, to consider in the course of the hearing.

PROCESS TO BE FOLLOWED BY MANITOBA HYDRO

The AMC refers to its submissions regarding the process dated April 12, 2021. In addition, guidance may be taken from the process that resulted in Board Order 7/03.

In its submissions of April 12, 2021, the AMC stated its position that the Board should hold a full hearing to determine whether Manitoba Hydro's rates are just and reasonable and its costs fairly allocated between customer classes. The Board should order a flexible hearing process consisting of submissions preceded by the provision of information and evidence that combines the processes identified in the definitions of "Oral Hearing" and "Electronic Hearing" set out in the *Public Utilities Board Rules of Practice and Procedure* (the "*Rules*").¹

Following the finalization of minimum filing requirements, scheduling of the hearing process should reflect sufficient time for the parties to fully participate in the hearing, including time to:

- apply to intervene under Rule 27;
- retain experts or consultants;

¹ *Public Utilities Board Rules of Practice and Procedure* (the "*Rules*") at 2(i), 2(h) and 2(m).



- review the information provided by Manitoba Hydro and for intervener and Board experts to prepare written evidence;
- make and respond to information requests under Rule 14 and 15;
- present evidence;
- cross-examine representatives of Manitoba Hydro;
- cross-examine experts; and
- make written and oral arguments under Rule 31.

Time should also be allotted for public presentations under Rule 28, to allow for more fulsome public participation.

The process resulting in Board Order 7/03 may also help assist the Board in setting the process for the current status update. In that instance, Manitoba Hydro filed information, including its financial results, forecasts, methodologies, processes and events that had transformed the electricity industry over the last few years. A public hearing was held.

TREATMENT OF COSTS IN THIS PROCEEDING

Costs should be available to interveners for their participation in the status update process pursuant to Part IV of the *Rules*, including costs for consultants, expert witnesses, and counsel fees.² The usual costs process applying to hearings before the Board should apply. In addition, due to the success of the Consumers Coalition’s Application for a Manitoba Hydro Status Update Hearing, the costs of the interveners to date should be included in an award of costs following the status update proceeding.

The Board has broad discretion to award costs under its guiding legislation. Under section 56 of the *Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding before the Board. The Board may order “by whom, and to whom, any costs are to be paid, and by whom the costs are to be allowed”.³ The *Rules* further provide that in any proceeding the Board may award costs to be paid to an Intervener who meets the requirements of Rule 43. The term “proceeding” is defined as “a process to decide a matter brought before the Board, including a matter commenced by application.”

The AMC proposes that the procedure regarding costs for the status update hearing follow the usual procedure of the Board, as set out in the *Rules* and *Interim Intervener Costs Policy*, with any adaptations necessary to ensure interveners are awarded costs for their participation in the process to date. The Rules set out the criteria that must be met for an award of costs to be granted and the procedures that must be followed.⁴ This includes awarding costs based on a tariff of rates.

² *Rules* at s. 45.

³ *The Public Utilities Board Act*, CCSM, c. P280 at s. 56.

⁴ *Rules* at 43-46; Note that similar criteria are set out in the *Interim Intervener Costs Policy*.



CONCLUSION

The AMC supports the establishment of a fulsome public hearing process to determine whether Manitoba Hydro's rates are just and reasonable. Regular hearing processes, including the processes related to intervener costs, should be followed.

Sincerely,



FOX FRASER LLP

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Emily Guglielmin, Associate

cc:

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