

THE PUBLIC UTILITIES BOARD OF MANITOBA

IN THE MATTER OF:

Application of the Consumers Coalition
for an Order requiring a Manitoba Hydro
Status Update Hearing.

AND IN THE MATTER OF:

*The Crown Corporations Governance and
Accountability Act, CCSM c 336 at s
26(3); The Public Utilities Board Act,
CCSM c P280 at s 44; The Public Utilities
Board Rules of Practice and Procedure at
r 23.*

**REPLY OF THE CONSUMERS COALITION REGARDING ITS APPLICATION FOR
AN ORDER REQUIRING A MANITOBA HYDRO STATUS UPDATE HEARING**

PUBLIC INTEREST LAW CENTRE

200-393 Portage Avenue
Winnipeg, MB R3B 3H6

**BYRON WILLIAMS
CHRIS KLASSEN**

bywil@legalaid.mb.ca
204.985.8533

Contents

1. A Public Monopoly that has “Gone Dark” - Overview and Road Map	2
2. AMC, MIPUG and MKO Support a Status Update Review	3
3. Manitoba Hydro unjustifiably seeks to broaden the onus for a s. 26(3) process	5
4. The submissions of Manitoba Hydro are undermined by its own admissions	9
5. Adverse Inferences should be drawn from the submissions Hydro fails to address	13
6. Conclusion - If not now, when?	14

1. A Public Monopoly that has “Gone Dark” - Overview and Road Map

The Manitoba Public Utilities Board (PUB) has a mandate to set just and reasonable rates in the public interest that are fair to ratepayers and to the Crown monopoly. Recognizing the long-lived nature of Manitoba Hydro’s capital investments, the PUB approves rates on a prospective basis with a view to an appropriate inter-generational balance between the interests of current and future ratepayers and of Manitoba Hydro.

On March 26, 2021, the Consumers Coalition¹ asked the PUB to find the circumstances of Manitoba Hydro have changed substantially since *Orders 69/18* and *59/18*. It asked the PUB to order a status update hearing to determine whether hydro rates are just and reasonable.²

On April 1, 2021, the PUB outlined a process to seek comments on the status update application from participants in past Manitoba Hydro rate reviews and for reply to these comments by the Consumers Coalition.³

In this reply, the Consumers Coalition notes the Assembly of Manitoba Chiefs (AMC), Manitoba Industrial Power Users Group (MIPUG) and the Manitoba Keewatinowi Okimakanak Inc. (MKO) agree there has been a substantial change in the circumstances of Manitoba Hydro. AMC, MIPUG and MKO all support the application for a status update hearing to determine whether rates are just and reasonable. They are generally supportive of the proposed timing and information requirements for the process recommended by the Consumers Coalition.

One of the central messages flowing from the comments of organizations representing important Hydro stakeholders such as large industrial customers and First Nations citizens on reserve is that they lack the information to know whether their current rates are fair.

A five-year old Integrated Financial Forecast, operating budgets dating back to 2015, a new Corporate Strategic Plan hidden in the vaults of Manitoba Hydro and the apparent absence of a prospective cost of service study accounting for the roughly \$14 billion of new Manitoba Hydro capital projects coming into service since May of 2018 is no basis on which to decide whether rates are just and reasonable.

At the very time when important Hydro stakeholders are expressing a “lack of confidence” in the fairness of their rates, the publicly owned monopoly has “gone dark” when it comes to providing important rate setting information that reflects the substantial financial and organizational changes that it has been undergoing since *Orders 69/19* and *59/18*. Hydro’s refusal to provide this information on a timely basis only compounds the

¹ The Consumers Coalition is comprised of Harvest Manitoba, the Consumers Association of Canada (Manitoba) Inc. and the Aboriginal Council of Winnipeg.

² The Consumers Coalition Application to the PUB for a Status Update Hearing, March 26, 2021 at 6.

³ Manitoba Public Utilities Board letter of April 1, 2021 requesting comment on the Consumers Coalition application.

“information asymmetry” between the monopoly and captive ratepayers that is a well recognized phenomena of regulation.⁴

In responding to the comments of Manitoba Hydro, the Consumers Coalition observes that Hydro’s argument unjustifiably broadens the onus under s. 26(3) of the *Crown Corporations Governance and Accountability Act* (CCGAA).⁵ Hydro’s assertion that there has not been a substantial change in circumstances is undermined both by its own admissions as well as by its failure to address key aspects of the Consumers Coalition application.

There are ample grounds to conclude there has been a substantial change in circumstances with a potential implication on rates and that a status update hearing to determine whether rates are just and reasonable is appropriate.

In the submissions that follow, s. 2 responds to the comments of AMC, MIPUG and MKO. Section 3 addresses the attempt by Manitoba Hydro to unjustifiably broaden the onus under s. 26(3). Section 4 highlights how Hydro’s admissions undermine its ultimate position. Section 5 comments on the inferences to be drawn from Hydro’s failure to address certain aspects of the Consumers Coalition application. Section 6 provides the concluding remarks of the Consumers Coalition.

2. AMC, MIPUG and MKO Support a Status Update Review

The Consumers Coalition notes that AMC, MIPUG and MKO all support an order initiating a status update hearing to determine whether rates are just and reasonable based upon a finding that the circumstances of Manitoba Hydro have changed substantially.⁶

The Consumers Coalition readily concedes that it has “understated the facts in its presentation of evidence”. It accepts the submissions of MIPUG and MKO in terms of additional grounds supporting a finding of a substantial change.⁷ In particular, it agrees with MIPUG that recent operating cost cuts (in 2020 in response to the pandemic) further support a finding of a substantial change in circumstances.⁸

The Consumers Coalition agrees with MIPUG that an “independent, open, and transparent review of the Crown Corporation, including long-term forecasts, is well overdue” in light of the fact that there has been a “material change in circumstances”. While it appears to differ from MIPUG in the recommended baseline for a finding of

⁴ Marie-Anne Frison-Roche, “Asymmetry: Asymmetric Regulation / Asymmetry of Information”, Compliance and Regulation Law Glossary, Journal of Regulation & Compliance, available online: <<https://thejournalofregulation.com/en/article/asymetrie-regulation-asymetrie-dinform/>>.

⁵ CCSM c C336. [CCGAA]

⁶ MIPUG letter to PUB, April 12, 2021 at 2, 7 [MIPUG Submission]; MKO submission to PUB, April 21, 2021 at paras 1-2 [MKO Submission]; AMC Submission to PUB, April 12, 2021 at 1 [AMC Submission].

⁷ MIPUG Submission at 2, 3; MKO Submission at para 5.

⁸ MIPUG Submission at 3.

substantial change,⁹ the Consumers Coalition accepts the submission of MIPUG that “MB Hydro has not had a true comprehensive rate review for 4 - 6 years”.¹⁰

The Consumers Coalition also agrees with the submissions of MKO that the PUB has the authority to initiate a status update hearing to consider whether the current Hydro rates are just and reasonable notwithstanding any Bill currently being considered by the Manitoba legislature.¹¹ Similarly, it agrees with MKO that it is open to the PUB to reference the 2.9 percent rate increase imposed by the Legislature in December of 2020 as one of many factors to be considered in addressing whether there has been a substantial change in circumstances.¹²

The Consumers Coalition shares the concerns of AMC that First Nations ratepayers have been “left in the dark” about the impact of recent changes¹³ and of MIPUG that industry is “presently operating with an unprecedented lack of confidence”.¹⁴ From the perspective of residential ratepayers, it concurs with the MIPUG submission that “routine and transparent regulation, overseen by an independent regulator, is the only way to achieve ratepayer confidence.”¹⁵

Although it has no independent knowledge of whether an updated long-term (20 year) Integrated Financial Forecast and long-term Capital Expenditure Forecast for Manitoba Hydro actually exist, the Consumers Coalition agrees with MIPUG that “such materials are required for a proper review” and are “of important internal value to MB Hydro for ensuring prudent and prioritized investments and appropriate management of Corporate borrowing (e.g. terms and maturity)”.¹⁶

⁹ The Consumers Coalition says the baseline for a finding of a substantial change is *Order 69/19* and *59/18*. MIPUG appears to suggest the baseline should date to the 2015-2017 GRA. See MIPUG Submission at 2, 3.

¹⁰ MIPUG Submission at 2, 7.

¹¹ MKO Submission at paras 14 – 20.

¹² A 2.9% rate increase would produce annual revenues in the order of \$50 million for MH and have a present value to the Manitoba economy of approximately \$1 billion (assuming a 5% social discount rate). See also paras 9 – 12 of the MKO Submission where MKO ultimately concludes that “a budget provision like section 233 cannot indefinitely suspend operation of parts of *The Manitoba Hydro Act* or *The Crown Corporations Governance and Accountability Act*. If the Legislature had intended that result, it would have passed a provision expressly saying so.”

¹³ AMC Submission at 1.

¹⁴ MIPUG Submission at 5. MIPUG observes that: “The failure of MB Hydro to produce an appropriate IFF since 2016, combined with presentations of limited short-term forecasts (e.g., the proceeding leading to *Order 69/19*) and a lack of transparency regarding the most recent rate and regulatory changes imposed by the legislature, means that industry in Manitoba is presently **operating with an unprecedented lack of confidence**. Conditions related to rate competitiveness in Manitoba are **opaque** and important decisions regarding capital investment by industry and post-pandemic production scheduling are already beginning to direct critical resources elsewhere.” [emphasis added]

¹⁵ MIPUG Submission at 5.

¹⁶ MIPUG Submission at 7.

3. Manitoba Hydro unjustifiably seeks to broaden the onus for a s. 26(3) process

There is no express or necessarily implicit onus on the Consumers Coalition to establish that rates are unjust or unreasonable

Manitoba Hydro's comments materially mischaracterize the onus on the Consumer Coalition in making an application under s. 26(3) of the CCGAA.

Hydro appears to admit the PUB has the authority under s. 26(3) of the CCGAA to review prior orders.¹⁷ However, Hydro mistakenly asserts the onus is on the Consumers Coalition to demonstrate both that circumstances have substantially changed and that "existing rates" "are no longer just and reasonable."¹⁸

Manitoba Hydro offers no statutory analysis, learned literature or case law in support of its novel proposition that captive ratepayers with imperfect information bear the onus under s. 26(3) of establishing that Hydro's rates are no longer just and reasonable.

Hydro does not even attempt to distinguish a directly contrary conclusion reached by the PUB during the 2002/03 status update proceeding. In that hearing, once the PUB held that a status update hearing should be held, it determined Manitoba Hydro bore the onus of establishing rates were just and reasonable.¹⁹

The Consumers Coalition acknowledges its onus as an "interested person" bringing an application under s. 26(3) to persuade the PUB that Hydro's circumstances have changed substantially since *Orders 69/18* and *59/18*. It denies it bears the onus to show that rates are not just and reasonable.

The Supreme Court of Canada has stated that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."²⁰

In terms of the statutory scheme, s. 26(3) must be understood as an integral element of the PUB rate review and approval authority set out in Part 4 of the CCGAA.²¹ The legislative choice to authorize an independent regulator to review and approve hydro rates is reflective of wide-spread understanding among legislators, regulators and

¹⁷ Manitoba Hydro Submission to PUB, April 12, 2021 at 3 [*MH Submission*].

¹⁸ *MH Submission* at 2, 3. [emphasis added]

¹⁹ PUB Order 9/02 at 3.

²⁰ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para 21, quoting E. Driedger, *Construction of Statutes* (2nd ed. 1983), at 87, cited in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 117.

²¹ CCGAA, *supra* note 5 at ss 25(1), (3), (4). The legislative scheme under the CCGAA must be read in conjunction with related provisions under *The Public Utilities Board Act*, C.C.S.M. c. P280 and *The Manitoba Hydro Act*, C.C.S.M. c. H190.

academics that monopoly, in the absence of corrective market forces, can lead to profound power and information imbalances (asymmetries) and the risk of abuse.²²

By enshrining transparent, independent rate regulation, legislators in many North American jurisdictions have sought to provide checks and balances on the power of monopolies and to protect captive ratepayers.²³ Recognizing the legislative intent to protect the “public interest” in the context of Manitoba Hydro, the Manitoba Court of Appeal has stated “the PUB has two concerns when dealing with a rate application; the interests of the utility’s ratepayers, and the financial health of the utility.”²⁴

Under s. 26(1) of the CCGAA, crown monopolies such as Hydro have the right to bring forward rate applications for PUB review if they conclude their current rates are not just and reasonable. But the right to review prior rate orders is not within the exclusive province of the Hydro monopoly.

Section 26(3) contemplates a wider spectrum of entities who can seek the Board’s permission to initiate a rate review provided they meet a threshold test under the CCGAA. It enables the PUB, Hydro or an “interested person” to seek a review of a prior order made under section 26 if they can establish that the “circumstances” of the “corporation have changed substantially”.

Focusing on the specific language of s. 26(3),²⁵ the Consumers Coalition notes the provision contemplates a two-step process involving two distinct PUB activities with two distinct legal questions and a shifting onus:

- a determination of whether the “circumstances of a corporation have changed substantially”; and, if a substantial change is found,

²² Ontario Energy Board, “Why do we regulate?”, available online: < <https://www.oeb.ca/about-us/mission-and-mandate/why-do-we-regulate>>. See also See Bonbright et al, *Principles of Public Utility Regulation*, Public Utility Reports Inc., 2nd edition, 1988. See also Robert Balwin, Martin Cave, Martin Lodge, *Understanding Regulation: Theory, Strategy, Practice*, Oxford Scholarship Online (2011), available online: < <https://oxford.universitypressscholarship.com/view/10.1093/acprof:osobl/9780199576081.001.0001/acprof-9780199576081>>. See also Marie-Anne Frison-Roche, *supra* note 4.

²³ See Bonbright et al, *Principles of Public Utility Regulation*, Public Utility Reports Inc., 2nd edition, 1988. See also for example, *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44. As written by the Ontario Energy Board, “regulation is a way to address the natural monopoly position of energy utilities. The laws, rules and requirements that the Ontario Energy Board enforces act as a substitute for the economic forces that would provide the checks and balances if these utilities operated in a competitive market. In this way, regulation protects the interests of consumers.” Ontario Energy Board, “Why do we regulate?”, available online: < <https://www.oeb.ca/about-us/mission-and-mandate/why-do-we-regulate>>. <

²⁴ *Consumers' Association of Canada (Man.) Inc. et al. v. Manitoba Hydro, Electric Board*, 2005 MBCA 55 at para 65. “

²⁵ 26(3) Where The Public Utilities Board is satisfied that the circumstances of a corporation have changed substantially, The Public Utilities Board may, of its own motion or on the application of the corporation or an interested person, review an order made pursuant to this section and modify the order in any manner that The Public Utilities Board considers reasonable and justified in the circumstances.

- a review and modification of the prior order in any manner the PUB considers “reasonable and justified”.

Section 26(3) only requires the PUB to be satisfied that the “circumstances” of Manitoba Hydro “have changed substantially” before undertaking a review of a prior order. Necessarily implicit in the language of s. 26(3), given the rate approval mandate of the PUB, is the need to establish that the substantial change may potentially affect overall rates or the fair allocation of costs between different classes of consumers or may affect an order related to the rate approval process.

Read in its ordinary, grammatical sense, the term “substantially” denotes a change that is of “considerable importance, size, or worth”.²⁶

The “circumstances” of the Corporation must be understood in the context of the PUB role in reviewing just and reasonable rates with consideration for the general principles of rate regulation as well as for the factors expressly enumerated for its consideration by legislators under s. 25(4) of the CCGAA. For example, a change in circumstances of “considerable importance, size, or worth” affecting operating costs, capital expenditures or interest costs certainly would meet the statutory test necessary under s. 26(3) to initiate the review of a prior order.

Under the first stage of the analysis, the onus rests with the applicant to establish that circumstances have changed substantially. Once the threshold test of substantial change has been met and a prior order is being reviewed, the onus shifts to the crown monopoly to demonstrate that its rates are just and reasonable.

There is neither an express or necessarily implicit requirement at the second stage of the s. 26(3) for an “interested person” to prove that Hydro’s rates are not just and reasonable. As the PUB noted in the 2002/03 Status Update hearing, it is Manitoba Hydro that has “the onus to demonstrate that the rates currently charged and proposed” are just and reasonable.²⁷

Manitoba Hydro proposes an impossible onus given ongoing and material information asymmetry

Any suggestion by Manitoba Hydro that the Consumers Coalition bears the onus under s. 26(3) of establishing that rates are unjust and unreasonable is analytically illogical and contrary to prior PUB precedent. It is fundamentally out of step with the regulatory reality that information “asymmetry is a key concept of regulation” and that transparent regulation is needed to “combat information asymmetries”.²⁸

²⁶ Oxford English Dictionary, <https://www.lexico.com/definition/substantial>.

²⁷ PUB Order 9/02 at 3. [emphasis added]

²⁸ See Marie-Anne Frison-Roche, *supra* note 4: “asymmetry is a key concept of regulation. . . information asymmetry offers managers an “information rent” that allows them to offer many benefits and transfer risks to others. Regulators . . . are needed to combat information asymmetry. Transparency is one of the procedural means to combat this asymmetry. Asymmetry may not be temporary but definitive, when inequality between operators, regardless of merit, does not come from a context of liberalization but from

In the context of the current application, such a suggestion is unfair given Hydro's failure to share current and highly relevant rate setting information with the PUB and ratepayers. Imposing such an onus on captive ratepayers would only incentivize the ongoing failure of Manitoba Hydro to provide the information that the PUB and stakeholders need to determine if their rates are just and reasonable.

The PUB has a mandate to set just and reasonable rates in the public interest that are fair to ratepayers and to the crown monopoly. Recognizing the long-lived nature of Manitoba Hydro capital investments, the PUB approves rates on a prospective basis with a view to an appropriate inter-generational balance between the interests of current and future ratepayers and of Manitoba Hydro.

Under the modified Cost of Service analysis employed by the PUB for over thirty years, the PUB considers not only near-term test year(s) but also medium-term to long-term forecasts to make informed judgements on how the proposed rate increases impact the long-term financial outlook and rate trajectory for Hydro.

In making its rate approval determination, the PUB practice has been to rely upon a number of documents critical to rate setting processes including the Corporate Strategic Plan (CSP), Integrated Financial Forecast (IFF), Capital Expenditure Forecast (CEF) and Prospective Cost of Service Study (PCOSS) to examine the implications of proposed rates on the near, medium and long term.

Forward looking documents such as the CSP, IFF, CEF and PCOSS are so important to the rate setting process of Manitoba Hydro that they have become established Minimum Filing Requirements (MFR) over the last three decades of PUB regulation.²⁹ As part of well established regulatory practice, they have been presented by Hydro to justify its rate proposals in the context of corporate priorities and spending plans or requested by the PUB and Intervenors to evaluate Hydro's rate proposals and determine just and reasonable rates.

In asserting the Consumers Coalition must establish that rates are not just and reasonable to meet its onus under s. 26(3), Manitoba Hydro sets an impossible task based upon an analytical tautology. It fails to acknowledge it has deprived Manitoba ratepayers of the very information they require to know whether they are paying fair rates.

One of the central messages flowing from the comments of organizations representing important Hydro stakeholders such as large industrial customers, First Nations citizens on reserve and residential ratepayers is that they lack the information to know whether their current rates are fair.

A five-year old IFF, operating budgets dating back to 2015, a new CSP hidden in the vaults of Manitoba Hydro and the apparent absence of a PCOSS study accounting for the

a structural failure of the market . . . ([ie] pipes where gas or electricity circulate) . . . which belong to a single operator because they constitute economically natural monopolies." [emphasis added]

²⁹ Other critical documents that are part of the MFR include the Load Forecast (LF), Net Export Revenues (NER) and Debt Management Strategy (DMS).

roughly \$14 billion of new Manitoba Hydro capital since May of 2018 is no basis on which to make a determination of whether rates are just and reasonable.³⁰

The Consumers Coalition is not seeking to embark on the status update process to unilaterally extend the “supervisory” authority of the PUB or because of the “passage of time” or as a mere fishing expedition to put information into the public domain.³¹

As the Consumers Coalition made clear in its application, the purpose of the status update hearing is to determine whether Hydro’s rates are just and reasonable recognizing the fundamental change in the financial and corporate circumstances of Manitoba Hydro over recent years that have potentially material implications for rates. That question is squarely within the authority of the PUB under Part 4 of the CCGAA.

Unfortunately, at the very time when Manitobans need to understand the implications of this substantial change on their rates over the near, medium and long term, the publicly owned monopoly has “gone dark”. Hydro continues to decline to provide the timely information necessary to determine whether rates are just and reasonable. After promising a full General Rate Application based upon IFF19, it now seeks to defer a rate application another two years down the line to the winter of 2022/23.³²

Unless the regulator steps in, Hydro’s control over important rate approval information leaves interested persons such as the Consumers Coalition, MIPUG, AMC and MKO with no way of knowing whether their rates are just and reasonable.

Given information asymmetries, imposing an onus on the Consumers Coalition to establish that rates are not just and reasonable would erect an impassable practical barrier that is inconsistent with the legislative language, scheme and underlying statutory intent.

4. The submissions of Manitoba Hydro are undermined by its own admissions

The frail assertions by Manitoba Hydro that there has not been a substantial change in circumstances are undermined by its own admissions.

³⁰ While Hydro cites the financial and operational information available to the public from annual and quarterly financial reports as well as quarterly major capital plan and operating reports to the PUB, these reports are governed by accounting standards and not rate setting principles. As Hydro well knows, they are not a substitute for the specialized, forward looking and detailed information that has been used in the past 3 decades to test revenue requirements, cost allocations and ultimately set rates.

³¹ Please see MH Submission at 1-2, 6 where Hydro variously suggests that the Consumers Coalition is submitting its status update application in order to have the PUB to exercise a general supervisory power over Hydro or because of the “mere passage of time” or that its “primary goal” is to make information public about Manitoba Hydro.

³² MH Submission at 6-7.

Hydro acknowledges the core element of the substantial change application

Manitoba Hydro admits it has a new corporate strategic plan and that its corporate reorganization is underway.³³ It states that it expects all units of Keeyask to be in-service by April 2022 and does not challenge the fact the first unit came into service in February of 2021.³⁴ It concedes the major export sale to Saskpower will result in a new revenue source in 2022 although it fails to note that the 125 MW system power sale agreement with Northern State Power begins on May 1, 2021.³⁵

Recognizing the prospective nature of rate setting for a capital-intensive crown with long lived assets, these admissions are central to a finding that Hydro's circumstances have changed substantially and that a status update hearing is needed to determine whether rates are just and reasonable for the current year as well as for the 2022/23 year.

For the purposes of the Consumers Coalition Application, the substantive changes in circumstances that are being asserted are either already implemented (re-organization of Hydro business units), significantly underway (adopting a new CSP, divestiture of subsidiaries) or will materially impact the 2021/22 current test-year and the near-term test year of 2022/23 (new confirmed export sale and Keeyask in-service).

These are clearly substantial and material changes in circumstances within the meaning of the prospective rate-setting framework that has long been applied by the PUB to determine Hydro's rates.³⁶ These changes are directly germane to the purposes of a status update to consider whether rates are just and reasonable for the 2021/22 and 2022/23 test years.

The Consumers Coalition asks the PUB to make an express finding of fact that individually and collectively these changes in circumstances are of "considerable importance, size, or worth" in terms of their implications for Manitoba Hydro's financial statements including its expenses, revenues, assets and liabilities.

³³ MH Submission at 3.

³⁴ MH Submission at 5.

³⁵ MH Submission at 4. See also Xcel Energy letter to the Minnesota Public Utilities Commission, April 7, 2021, available online:

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={20A7AD78-0000-C117-86A8-FFE1A3528113}&documentTitle=20214-172653-01>>.

³⁶ At p. 1 of its comments, Hydro mistakenly suggests the Manitoba Court of Appeal decision in *Public Utilities Board v Manitoba Public Insurance*, 2011 MBCA 88 stands for the proposition that Crown Corporations' long-term plans are not relevant to the PUB's statutory responsibilities. Instead, this case simply affirms the PUB's authority to require the disclosure of information necessary for it to fulfil its mandate. At issue in that proceeding was the PUB authority to require production of actual and projected information related to lines of business that were not expressly regulated for rate setting purposes. In the present circumstances, the PUB does possess rate-setting authority over rates that are products of the information sought. In particular, please see paras 34 and 43 of the decision.

This is not your grandmother's Manitoba Hydro – the business unit restructuring of 2019

While Hydro's April 12, 2021 comment tries to minimize the current implications of the CSP on its operations,³⁷ its claims are undermined by statements made in its 2019/20 Annual Report where its President admits the results of the review "led to a complete restructure of our executive leadership and business units."³⁸

The best illustration of the substantive change necessary to align with the imperatives contained in Hydro's new strategic direction flows from a comparison of the 2018/19 and the 2019/20 Annual Reports.

The 2018/19 Annual Report reflects the business unit organization that had existed for over thirty years. It centred around the traditional utility functions of Generation and Wholesale, Transmission and Marketing and Customer Service.³⁹

The 2019/20 report shows how this structure was fundamentally altered. In that year, the business unit structure of "old" Hydro was replaced by the new business units of Operations & Asset Planning & Delivery, Customer Solutions & Experience and Digital & Transformation.⁴⁰

In terms of corporate structure, this is not your grandmother's or your father's Manitoba Hydro. These substantial changes have taken place over the last two years. Complete restructures are not intended as merely academic exercises. From a prospective rate setting perspective, they can be expected to material impact spending decisions over the near, medium and long term.

Hydro's prior assertions impeach its claims regarding major capital projects

While Hydro makes the confounding assertion that the revenue requirement impacts of bringing major capital projects into service have been fully considered over the past decade,⁴¹ its claims cannot be reconciled with its view in prior proceedings.

As Hydro has argued in the past⁴² and as the PUB found in *Order 69/19*,⁴³ it is only the integrated financial picture, as produced in an IFF, that enables a reliable forecast of

³⁷ MH Submission at 3-4.

³⁸ Jay Grewal, "Navigating change and challenges with action: President and CEO's Letter to Customers", Manitoba Hydro-Electric Board 69th Annual Report for the year ended March 31, 2020 at 8, available online: <https://www.hydro.mb.ca/corporate/ar/pdf/annual_report_2019_20.pdf>. [emphasis added]

³⁹ Manitoba Hydro-Electric Board 68th Annual Report for the year ended March 31, 2019 11, available online: <https://www.hydro.mb.ca/corporate/ar/pdf/annual_report_2018_19.pdf>.

⁴⁰ Manitoba Hydro-Electric Board 69th Annual Report for the year ended March 31, 2020, *supra* note 26 at 13.

⁴¹ MH Submission at 4.

⁴² Please see the prefiled evidence of Mr. Darren Rainkie in the proceedings leading to *Order 69/19* at s. 5.2, p. 48-49 (Exhibit CC-7-1 in the MH 2019/20 Rate Application).

⁴³ PUB Order 69/19 at 19: "In the absence of a long-term financial forecast, the Board is challenged in its ability to assess the appropriate level of a rate increase in the 2019/20 test year to reduce the likelihood of future rate shock to consumers. . . the Board expects that it will be necessary to assess future rates in the context of a long-term financial forecast given the expected in-service for Keeyask."

revenue requirements and rate impacts. Hydro has been particularly vehement in its views that the stand-alone and incremental revenue requirement calculations requested by the PUB advisors in proceedings such as those leading to *Order 69/19* have significant limitations.⁴⁴

The necessity of examining the reasonableness of rates in a status update hearing becomes especially important in light of the aged nature of IFF16 with its attendant uncertainty in terms of major capital project timing and final project costs. It is well established on the record of the 2019/20 rate hearing that Hydro's IFFs are subject to significant changes when updated for more current information and planning assumptions.⁴⁵ This reality would only be exacerbated by a new CSP and associated spending priorities.

It strains credulity to assert that an analysis grounded in IFF16 provides sufficient insight into a major transmission project coming on-line in 2018, a complete business unit restructuring in 2019 and a massive new generating station with all units coming into service by April 2022.

Hydro's prior assertions impeach its claims about the rate review proceeding in 2019

While Hydro alleges a "full rate review" took place in the proceedings leading to order *69/19 Order*, such a bald claim is undermined by Hydro's characterization of the proceeding in its November 2018 letter to the PUB and by the ultimate PUB order.

It is a fact on the public record that a full rate review did not occur as part of the 2019/20 rate application. There was no IFF, PCOSS, Debt Management Strategy, or detailed operating budgets. There were no filings of the expected MFRs and no actual responses to PUB directives – other than a cursory update on status.

Manitoba Hydro acknowledged many of these shortcomings in its November 2018 letter to the PUB.⁴⁶

The PUB clearly accepted these filing shortcomings out of its concern with rate stability given the impending in-service dates of the Major Capital Projects. It did so after a pledge by Hydro to file both a full GRA based on IFF19 as well as a meaningful response to directives.⁴⁷

⁴⁴ Please see PUB/MH I-9 (Updated) from the 2019-20 GRA where Hydro argued "The type of analysis requested in this IR is limited by virtue of treating individual projects on an incremental cost basis. While costs such as Depreciation Expense, Water Rentals, and Operating & Administrative Expenses may be estimated and may be directly attributable to a Major New Generation and Transmission asset, other costs such as Finance Expense, capital taxes and benefits are not readily estimated on an incremental basis."

⁴⁵ Please see the prefiled evidence of Mr. Darren Rainkie in the proceedings leading to Order 69/19 at s. 5.2, p. 48-49 (Exhibit CC-7-1 in the MH 2019/20 Rate Application). Please also see footnote 44.

⁴⁶ Please see 2019/20 Manitoba Hydro General Rate Application, Exhibit MH-1: Manitoba Hydro Letter to the PUB, (November 12, 2018) as well as the Consumer Coalition Application of March 26, 2021 at 9 -11.

⁴⁷ 2019/20 Manitoba Hydro General Rate Application, Exhibit MH-1: Manitoba Hydro Letter to the PUB, (November 12, 2018).

Manitoba Hydro similarly claims that its existing rates were found to be just and reasonable by the PUB in August of 2020. But such an assertion does a bold disservice to the purpose of *Orders 100/20* and *110/20* which were for the specific purpose of addressing the Manitoba Court of Appeal's decision disallowing the First Nation on Reserve Residential class.

5. Adverse Inferences should be drawn from the submissions Hydro fails to address

The admissions found in Hydro's April 12, 2021 comments and prior statements are fateful to its claim that there has not been a substantial change in circumstances. But it is equally notable that Hydro fails to address numerous substantive arguments presented in the application for a status update hearing by the Consumers Coalition. Manitoba Hydro:

- does not challenge the assertion that electricity rates are based on outdated information;
- does not address the submission that a status update hearing is necessary to determine how the major capital project deferral account will be brought into Manitoba Hydro's operating revenues at a future GRA;
- does not address the submission that the sharp drop in yields on long term debt since March 1, 2018 may have critical implications for ratepayers given expected borrowings of over \$8 billion between 2019 and 2026; and,
- does not deny the Consumers Coalition's assertion that the cost of the PUB regulatory process has averaged less than 0.25% of Hydro's anticipated annual domestic revenues over the past three years.

Adverse inferences can and should be drawn from Hydro's failure to address these substantive elements of the Consumers Coalition application.

Manitoba Hydro does argue that a status update hearing is premature given that it presently contemplates a rate application at some point in the winter of 2022/23. Despite the agreement by AMC, MIPUG and MKO that the recommended schedule of the Consumers Coalition is doable, Hydro also suggests that the timing of the status update process is unrealistic because of the Centra rate-rebundling application in March and its ongoing efforts towards a Centra Cost of Service methodology review application.⁴⁸

But Hydro never directly addresses the fundamental concern expressed in the Consumers Coalition application that:

- Hydro broke its pledge to bring forward a timely rate application based upon IFF19;
- Hydro broke its pledge to address the outstanding directives of the PUB on a timely basis, and, as a consequence,

⁴⁸ MH Submission at 6-7.

- rate payer confidence in the fairness of their rates has been fundamentally weakened.

It is no answer for Manitoba Hydro to continue to dishonour its pledge from 2018 and 2019 or to seek an additional two-year delay in meeting PUB and ratepayer regulatory priorities.

The unprecedented “lack of confidence” in Hydro’s rates as expressed by long standing regulatory stakeholders demands an urgent and respectful response by Manitoba Hydro. This is not the time for further delay.

6. Conclusion - If not now, when?

This is a time of fundamental change for Manitoba Hydro. The crown monopoly:

- has undertaken a significant business unit reorganization and is taking concrete steps to implement a new strategic direction;
- is dealing with the recent and near-term in-service of two of the largest capital projects in the history of the corporation – at a collective cost of \$14 billion – with corresponding challenges both to its financial outlook and fair allocation of costs to customer classes;
- has a significant new export sale that will produce significant export revenue in the near-term test year;
- is dealing with the impacts of a global pandemic – and associated impacts on load, interest rates and its general economic outlook – without a financial plan/strategy (IFF) or review of its Debt Management Strategy for rate making purposes; and,
- has seen important regulatory, judicial and legislative developments including a rate shock that has exacerbated the energy poverty for First Nation residential customers on reserve.

Individually, these factors each suggest a finding of substantial change.

Collectively, they constitute an overwhelming case for a finding there has been a substantial change in circumstances and that a status update hearing to review Manitoba Hydro’s rates is both reasonable and justified.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of April, 2021.



Byron Williams, Director

Chris Klassen, Attorney

Public Interest Law Centre