



360 Portage Avenue (22) • Winnipeg Manitoba Canada • R3C 0G8  
Telephone / N° de téléphone: (204) 360-3257 • Fax / N° de télécopieur: (204) 360-6147 • [baczarnecki@hydro.mb.ca](mailto:baczarnecki@hydro.mb.ca)

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July 6, 2021

THE PUBLIC UTILITIES BOARD OF MANITOBA  
400-330 Portage Avenue  
Winnipeg, Manitoba  
R3C 0C4

ATTENTION: Dr. D. Christle, Board Secretary and Executive Director

Dear Dr. Christle:

**RE: Response to Intervener Comments on Manitoba Hydro's Response to Order 53/21**

On May 10, 2021, the Public Utilities Board ("PUB" or "Board") issued Order 53/21 which directed Manitoba Hydro to provide certain documents to assist the PUB in its assessment and determination on the threshold question of whether there had been a substantial change in Manitoba Hydro's financial circumstances since Orders 59/18 and 69/19. On June 9, 2021, Manitoba Hydro complied with the direction in Order 53/21 by providing current information used in the management and operations of the corporation.

By letter dated June 18, 2021, the Board provided interveners an opportunity to file written comments by June 24, 2021 to address Manitoba Hydro's submission. On June 24, 2021, the Board received written comments from the Consumers Coalition (the "Coalition"), the Manitoba Industrial Power Users Group ("MIPUG"), the Assembly of Manitoba Chiefs ("AMC"), and Manitoba Keewatinowi Okimakanak ("MKO"). By letter dated June 28, 2021, the PUB provided Manitoba Hydro the opportunity to reply to the comments filed by the above interested parties by noon on Tuesday, July 6, 2021, which is provided herein. As requested by the PUB, Manitoba Hydro is also providing comments with respect to the motion filed by the Coalition to formally enter the Hansard transcript record of the Standing Committee on Crown Corporations of June 29, 2021 into evidence in this proceeding.

**Intervener Submissions Do Not Refute that the Information Filed by Manitoba Hydro Demonstrates that its Financial Circumstances have Remained Substantially the Same**

Manitoba Hydro provided the PUB with a fulsome and current picture of its actual and most recent projected financial position as directed by the PUB. This information clearly establishes that there has not been a substantial change in Manitoba Hydro's financial circumstances

*Available in accessible formats upon request*

since Orders 59/18 and 69/19 when the PUB approved just and reasonable rates.

Although both the Coalition and MIPUG properly reiterate the actual threshold issue that is before the PUB, remarkably, neither party provided any substantive analysis on the financial information provided by Manitoba Hydro or any meaningful refutation of the conclusion that there has not been a substantial change in Manitoba Hydro's financial position relative to information provided in the hearings leading up to Orders 59/18 and 69/19. Rather, and instead of addressing the actual threshold issue before the PUB, the submissions of both parties focussed almost entirely on the fact that a long-term financial forecast was not disclosed as part of Manitoba Hydro's response. As part of this tactic, the Coalition listed the typical inputs to the long-term financial forecast that were not provided by Manitoba Hydro (i.e. Load Forecast, Power Resource Plan, Loan Act Submission and an energy price outlook) in attempt to further support its allegation that a substantive change in the circumstances of Manitoba Hydro has occurred. The Coalition then urges a finding from the PUB that Manitoba Hydro was in contempt of the PUB's direction and seeks subsequent processes to obtain this information.

This approach taken by the Coalition and MIPUG is a diversionary attack on Manitoba Hydro's credibility as they offer no substantive review of the information actually filed by Manitoba Hydro and neither offer any assistance to the Board for the determination of the threshold issue before it.

### **Manitoba Hydro is not Concealing Evidence as Alleged**

Each of the interveners make serious allegations with respect to Manitoba Hydro's compliance with Order 53/21. While ignoring the substantive information that was provided by Manitoba Hydro in compliance with the PUB's direction and offering no meaningful analysis, the parties simply accuse that Manitoba Hydro "chose not to comply", that it "universally ignores, obfuscates, challenges", "defiantly denying the Board", demonstrating a "lack of respect for the Board" and that Manitoba Hydro's submission should be considered "contemptuous". These allegations are uncalled for, unfounded, highly offensive, without any basis or merit and offer nothing to the process established by the Board to consider the threshold issue currently before it.

Despite Manitoba Hydro's repeated public clarifications that a long-term financial forecast (previously referred to as an Integrated Financial Forecast or an "IFF") does not exist, intervener submissions insist that a long-term financial forecast (and the various inputs that comprise a long-term financial forecast) must exist, are available and currently in use by the management for the basis of making decisions for the corporation. The simple reason that an

IFF does not exist at this time is the well-known public fact that Manitoba Hydro is in the process of developing an Enterprise-wide business plan and Integrated Resource Plan (“IRP”) analysis. Going forward, this work will allow the corporation to develop long-term financial forecasts which will be more informed and comprehensive as they will be influenced by the initiatives comprising Strategy 2040, as well as the Enterprise-wide business plan and IRP analysis.

Manitoba Hydro’s President and CEO Jay Grewal recently confirmed at the June 29, 2021 session of the Manitoba Legislative Standing Committee on Crown Corporations that a long-term financial forecast does not exist:

*“However, we cannot supply documents or projections that, quite frankly, simply do not exist.... Simply put, at this point in time we do not have a 20-year forecast. Why? The energy landscape we are operating in is changing and, by that, supply and demand, which are key components of a long-term financial plan, are in a state of change. If we were continuing status quo, if this energy landscape was not changing, absolutely we would have a long-term financial forecast in place, as we have always in the past....When we provide a long-term financial forecast, we want our customers to have confidence in our plans and to be able to make decisions based on that. Our next 20-year financial forecast is going to be informed by the new integrated resource plan which takes into account evolving energy needs and what customers value when considering their energy supply,...”*

It would be imprudent and a disservice to the PUB’s processes for Manitoba Hydro to artificially prepare and provide a long-term forecast in advance of developing the initiatives underlying Strategy 2040, the Enterprise-wide Business Plan and the IRP analysis as it would not be properly informed by the results of those processes. Completing such a superficial exercise would be inefficient and a waste of precious corporate resources while adding no additional value to Manitoba Hydro’s customers.

Manitoba Hydro appreciates that this is a new approach to long-term financial forecasting and this change is foreign and for some interveners may be difficult to comprehend and accept at this time. However, such improvements in process and planning to better align with the development of Strategy 2040 and related initiatives does not mean that a substantive change in Manitoba Hydro’s circumstances has already occurred, nor do they represent a substantive change in Manitoba Hydro’s financial circumstances in the near term. In fact, these improvements in planning and related processes are beneficial in many respects and will address previous concerns raised by interveners and the PUB regarding the lack of an adequate Corporate strategic plan and IRP to underpin a long-term financial forecast to be

filed as part of future GRAs. The next long-term financial forecast will underpin the utility's first five-year GRA at which time a prospective rate setting process would be appropriate and the PUB and all interested parties will have an opportunity to examine these changes and how they relate to future rates.

Since the filing of its June 9<sup>th</sup> Submission, Manitoba Hydro has provided Crown Services with an updated Annual Business Plan for the 2021/22 fiscal year for approval. The Annual Business Plan provides, among other important information, the line item details of Manitoba Hydro's Consolidated Statement of Net Income. As previously indicated, once approved by government, this plan will be made publicly available on Manitoba Hydro's website.

**Accepting the Interveners' Recommendations for an Additional Process is Unnecessary, Unwarranted and Would Represent an Abuse of the PUB Process**

Several parties recommend additional processes such as for the PUB to issue subpoenas to Manitoba Hydro for information that does not exist and to send in consultants (Daymark) to Manitoba Hydro's offices to search for information that does not exist. The parties also recommend that the PUB simply infer that there has in fact been a substantial change in Manitoba Hydro's circumstances and to immediately commence a status update process, akin to a full GRA process, to evaluate documents and information that simply do not exist. There is no legal or other basis to undertake such unprecedented aggressive enforcement or investigatory action in these circumstances.

MIPUG also criticizes Manitoba Hydro for the format of its response, stating that its submissions and the attached documentation are not "evidence". With respect, MIPUG ignores sections 24(2), 24(6) and 41 of *The Public Utilities Board Act* and the long history of the PUB accepting information in this fashion. Each of the parties routinely provide submissions and evidence to the PUB through legal counsel. None of the parties have advanced any reasonable basis for departing from the past practice of the PUB to accept evidence in this format.

MIPUG further suggests that Manitoba Hydro's June 9<sup>th</sup> submission cannot be relied upon as it is "only submissions from counsel". In addition to it being a routine and acceptable practice of receiving parties' submissions directly from legal counsel, legal counsel are also subject to professional ethical standards and the implication that Manitoba Hydro's legal counsel would breach those obligations by intentionally misleading, misrepresenting or concealing evidence from the PUB is highly offensive.

Contrary to the interveners' positions that Manitoba Hydro should have and did not advance

a Review and Vary (“R&V”) Application, Manitoba Hydro specifically requested the PUB to treat its initial submission as a R&V Application if the PUB determined that Manitoba Hydro was not strictly compliant with the spirit, intent and direction of Order 53/21:

*“To the extent that the PUB may find that this submission and the enclosed information does not fully satisfy Order 53/21, Manitoba Hydro requests that the PUB accordingly vary Order 53/21 in accordance with section 36 of the Public Utilities Board Rules of Practice and Procedure.”*

Manitoba Hydro submits that this request ought to be considered by the PUB before consideration of or taking any unwarranted investigatory or enforcement action for the reasons set out above.

### **Response to the Coalition’s Motion to Introduce the Standing Committee Transcript as Evidence**

On July 2, 2021, the Coalition made a motion seeking leave of the PUB to submit the Hansard transcript record of the June 29, 2021 sitting of the Standing Committee on Crown Corporations as new evidence to the Coalition’s Application. On that same day, the PUB requested Manitoba Hydro to include a response to the motion in this reply.

To assist with the efficiency of this process, Manitoba Hydro does not object to the June 29<sup>th</sup> transcript being placed before the Board as evidence and is confident that the PUB will use its judgement and discretion in affording the appropriate weight to the transcript in its deliberations on the actual substantial change threshold issue before it.

As part of its motion, the Coalition argues that the comments of Ms. Grewal relating to an August 2020 Treasury Board submission and future rate assumptions therein implies that rates currently being charged by Manitoba Hydro are no longer just and reasonable as they may not be sufficient for the Corporation to meet its financial targets. The Coalition also argues that by not providing Manitoba Hydro’s annual business plan proposed to and currently being reviewed by government, Manitoba Hydro is not compliant with Order 53/21. The Coalition finally submits that Ms. Grewal’s comments are determinative of the threshold question constituting that Manitoba Hydro’s circumstances have substantially changed.

Manitoba Hydro submits that any rate increases assumed by Manitoba Hydro beyond the 2019/20 fiscal period should not be considered “new” information that had not previously been provided to and considered by the PUB in setting existing just and reasonable rates in Orders 59/18 and 69/19. Notably, the assumed 3.5% rate increase is less than the 3.57%

annual rate increases assumed in Exhibit 93 (from Manitoba Hydro's 2017 GRA) for every year starting with 2018/19 and ending in 2035/36. The PUB previously noted that the rate increases assumed in Exhibit 93 are directionally consistent with their findings and on page 8 of Order 69/19, the PUB stated:

*"In Order 59/18, the Board approved a 3.6% overall rate increase effective June 1, 2018. In that Order, the Board commented that the Integrated Financial Forecast ("IFF") scenario filed in the proceeding as Manitoba Hydro Exhibit 93 supported the Board's decision on the level of the overall rate increase. ... The Exhibit 93 scenario resulted in equal annual rate increases of 3.57%, beginning in 2018/19."*

As stated by Ms. Grewal and as consistent with the Exhibit 93 scenario, the assumed 3.5% is "prudent", "important" and required to set the trajectory to achieve the current 75-25 debt-equity target in 20 years. This fact was considered by the PUB in Orders 59/18 and 69/19. The assumption of annual rate increases of 3.5% is not evidence of a substantial change in the circumstances of Manitoba Hydro. Rather that assumption is consistent with the evidence that was before the PUB in the last two rate applications.

In addition to the above, and as noted by Ms. Grewal, the 3.5% rate increase is only an assumption (consistent with previous forecasts provided to the PUB) in an unapproved annual business plan for fiscal 2021/22 before the Minister in accordance with *The Crown Corporations Governance and Accountability Act*. The annual business plan and the financial forecasting and analysis which informs that plan is not equivalent to a long-term financial plan. The Coalition's assumption that an annual business plan must have involved long-term financial forecasting is incorrect.

Manitoba Hydro notes that at page 70 of the transcript, Ms. Grewal provided additional clarification on the type of information that was provided to Treasury Board as part of the last budget process:

*"But I believe we provided detailed financial forecasts and capital for the current fiscal that we are in. I am not aware that we shared longer dated information, particularly anything that we do not have or did not have at the time we submitted our budget and - to Treasury Board and responded to the questions there."*

When reviewing all of Ms. Grewal's comments as a whole, they are entirely consistent with Manitoba Hydro's evidence in this proceeding. The transcript does not in any way indicate that Manitoba Hydro was non-compliant with Order 53/21 or that the circumstances of Manitoba Hydro have changed substantially as now alleged by the Coalition.

Manitoba Hydro has not applied for a rate increase in 2021 and has no direction or intention to do so at this time. An assumption of future near-term rate increases that has not yet been formally approved is not an indicator that current rates are unjust and unreasonable.

Overall, the Coalition's desperate last hour attempt to present the transcript as new ground-breaking evidence purporting to validate their Application actually provides further support to Manitoba Hydro's position in this Application and reinforces its compliance with Order 53/21. As such, the Coalition's motion does nothing to change the conclusion that no substantive change in circumstances has occurred. Manitoba Hydro has been forthcoming with providing the actual and approved financial information that it has and that is currently being used in the management of the utility as was directed by the PUB.

### **Conclusion**

Manitoba Hydro reiterates that the information it provided in response to the direction of the PUB in Order 53/21 clearly establishes that the financial circumstances of Manitoba Hydro have remained substantially the same. Manitoba Hydro submits that the Coalition as Applicant, and all interveners, have failed in their collective efforts to establish on any factual basis that there has been a substantial change in Manitoba Hydro's circumstances such to warrant the relief requested by the Coalition of having the PUB commence a status update hearing process, to immediately review existing rates as recently established as just and reasonable in Orders 59/18 and 69/19. Accordingly, the Coalition's Application should be dismissed outright by the PUB.

Manitoba Hydro has a strong interest in building a collaborative relationship with interveners and the PUB, but the lack of trust and the adversarial and unfounded attacks launched on Manitoba Hydro as a contemptuous utility by certain interveners do not promote or lend itself to good faith collaboration.

Even if the Coalition established a legal basis for the PUB to immediately commence and conduct a Status Update process as demanded, doing so would not be in the best interests of Manitoba Hydro's customers at this time. Customers' interests would be best served by allowing Manitoba Hydro to continue with its focus on developing the various initiatives underlying Strategy 2040, to build out its Enterprise-wide business plan and to engage with stakeholders on the development of an IRP so as to be in position to develop a more comprehensive and informed long-term forecast that will underpin Manitoba Hydro's next GRA. Disrupting and replacing Manitoba Hydro's plan and related processes to complete this critical work with an unwarranted status update process is not in the public interest.

Should you have any questions with respect to this submission, please contact the writer at 204-360-3257 or Darryl Martin at 204-360-4487.

Yours truly,

**MANITOBA HYDRO LEGAL SERVICES DIVISION**

Per:

A handwritten signature in blue ink, appearing to read "Brent A. Czarnecki". The signature is stylized with a large initial "B" and a long horizontal stroke.

**BRENT A. CZARNECKI**  
Barrister & Solicitor