

IN THE PUBLIC UTILITIES BOARD OF MANITOBA

IN THE MATTER OF:) MANITOBA HYDRO'S
) 2023/24 AND 2024/25
) GENERAL RATE APPLICATION.

Opening statement of Manitoba Keewatinowi Okimakanak Inc.
(May 15, 2023)

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(File no. 10146-10)

OPENING STATEMENT OF
MANITOBA KEEWATINOWI OKIMAKANAK INC.

Good afternoon, Mr. Chair Gabor, Madam Vice-Chair Kapitany, and panel members Bass, Bellringer, and Sy:

1. My name is Markus Bucharth. I am a member of the Manitoba law firm of Jerch Law. We are honoured to represent again the intervener Manitoba Keewatinowi Okimakanak Inc. (“MKO” for short) before this Board in this Manitoba Hydro general rate application proceeding. I am pleased to have this opportunity to make an opening statement to the Board. I intend to be brief.

2. MKO is the organization of Chiefs that represents the citizens of 25 First Nations in northern Manitoba who are signatories to Treaties 4, 5, 6, and 10. MKO therefore provides the collective voice for about 65,000 treaty First Nation citizens who reside in northern Manitoba. MKO seeks to achieve three objectives in this proceeding.

3. Firstly, MKO will make the legal argument that the Board still has authority for this last general rate application under the former version of *The Manitoba Hydro Act* to make recommendations to the Government of Manitoba under its repealed section 39(11) because of the transitional provisions in the statute which enacted the current version of *The Manitoba Hydro Act*. The Board expressed a contrary opinion in Board Order 130/22 in the last paragraph of section 3.2.2. MKO will make this argument to fortify the Board’s power, which it expressly acknowledged it has in the same paragraph of Order 130/22 that I just cited, for making recommendations to the Government as part of an order in a general rate application.

4. Secondly, MKO will make the argument that the Board should recommend to the Government of Manitoba that it amend *The Manitoba Hydro Act* to restore, or to permit this Board to restore, the First Nation On-Reserve Residential rate class which the Board had created in Board Order 59/18 but which the Manitoba Court of Appeal struck down as *ultra vires* the Board's powers in *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60. MKO will try to persuade the Board to make such a recommendation in three ways: on the basis of answers which Manitoba Hydro has provided to MKO's and the Assembly of Manitoba Chiefs' information requests; on the basis of answers that Manitoba Hydro may yet provide to MKO's cross-examination questions; and on the legal bases of the crown's duty to Aboriginal people under its treaties with First Nations and the crown's overriding general duty to them under the doctrine of the honour of the crown.

5. Thirdly, MKO intends to satisfy the Board that the Diesel Agreement between MKO, its four member First Nations that comprise the so-called "Diesel communities", Manitoba Hydro, and the Government of Canada has been fully executed. The Diesel Agreement was an initiative that MKO supported and was indeed largely brokered by the efforts of Mr. Michael Anderson, Research Director of MKO's Natural Resources Secretariat. Somehow, the Diesel Agreement seems to have not been properly filed despite its ratification until this proceeding. MKO intends to complete the Board record about the Diesel Agreement as a house-keeping matter, as unfinished business arising from previous general rate applications. MKO does *not* intend to say anything specifically about Diesel Zone electricity rates in this proceeding as Manitoba Hydro has not applied for any rate increase for this class. Once the fact of the execution of the Diesel Agreement is updated, MKO and other potential applicants would be in a position to bring a Diesel Zone application, none having been entertained by the Board since 2011.

6. I thank the Board for its attention. We look forward to contributing to the Board's deliberations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

May 15, 2023

JERCH LAW

Per:



MARKUS BUCHART

Lawyers for the intervener

MANITOBA KEEWATINOWI

OKIMAKANAK INC.