

Order No. 100/20

**ORDER IN RESPECT OF MANITOBA HYDRO'S PROPOSED REVISED RATES FOR
FORMER FIRST NATIONS ON-RESERVE RESIDENTIAL CUSTOMERS AND
DIESEL ZONE RESIDENTIAL CUSTOMERS FOLLOWING THE MANITOBA COURT
OF APPEAL DECISION ISSUED JUNE 9, 2020**

August 12, 2020

**BEFORE: Robert Gabor, Q.C., Chair
Marilyn Kapitany, B.Sc., (Hon), M.Sc., Vice-Chair
Hugh Grant, Ph.D., Member
Shawn McCutcheon, Member
Larry Ring, Q.C., Member**

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IT IS THEREFORE ORDERED THAT: 26

1.0 Executive Summary

In Order 59/18, the Manitoba Public Utilities Board (“Board”) directed the creation of the First Nations On-Reserve Residential customer class (“FNORR class”) to help mitigate the fact that electricity rates and the resulting bills place a particularly heavy burden on First Nations communities. Order 59/18 also ordered that the rates of the FNORR class and the Diesel Zone Residential customer class be maintained at the August 1, 2017 approved Residential rate (“Directive 6”). To ensure that Manitoba Hydro would collect the 3.6% revenue increase approved by the Board in Order 59/18, other customer classes received an additional incremental increase so that Manitoba Hydro would be kept whole.

Manitoba Hydro appealed Directive 6 to the Manitoba Court of Appeal. In its decision of June 9, 2020, the Manitoba Court of Appeal allowed the appeal on the basis that the FNORR class was contrary to the uniform rates legislation applicable to grid connected customers and subsection 43(3) of the *Manitoba Hydro Act*.

In Order 69/19, the Board directed that there be no rate increase to the components of the FNORR customer class and Diesel Zone Residential class rates. The Board approved a 2.5% rate increase for most customer classes, the revenues from which were directed to the Major Capital Deferral Account as Manitoba Hydro did not demonstrate the need for increased revenues for its general operations.

By letter dated June 23, 2020, Manitoba Hydro advised the Board that, in response to the recent Manitoba Court of Appeal decision, Manitoba Hydro planned to eliminate the former FNORR class, and, effective August 1, 2020, change the rates currently being paid by the former FNORR customers and Diesel Zone Residential customers by increasing the rates 6.6% to the currently approved Residential class rate.

Section 25(1) of the *Crown Corporations Governance and Accountability Act* (“Crown Act”) requires that the Board review rates for services provided by Manitoba Hydro and provides that no change in rates or any new rates shall be implemented without the approval of the Board.

In correspondence from the Board dated July 13, 2020, the Board stated that Manitoba Hydro could not implement its intended response to the Manitoba Court of Appeal decision without Board approval. To consider the plan proposed by Manitoba Hydro, the Board stated that it required additional information from Manitoba Hydro regarding the proposed rate changes, posed questions to Manitoba Hydro, and directed Manitoba Hydro not to implement revised rate schedules effective August 1, 2020. Manitoba Hydro provided the requested additional information on July 20, 2020, following which the Board received comments from past Interveners of Record, specifically the Assembly of Manitoba Chiefs, the Consumers Coalition, the Manitoba Industrial Power Users Group, and Manitoba Keewatinowi Okimakanak.

Manitoba Hydro requested that the Board withdraw its directive to Manitoba Hydro to not implement the revised rate schedules effective August 1, 2020. By letter dated July 31, 2020, the Board denied Manitoba Hydro's request to withdraw this directive, and stated that the Board would provide its reasons for this decision in a subsequent Order.

By this Order, the Board provides its reasons for resetting rates for former First Nations On-Reserve Residential customers and requiring Manitoba Hydro to file, for Board approval, new rate schedules consistent with this Order. As a result of the Manitoba Court of Appeal's decision to set aside the Board's directive to create the former FNORR customer class, the former FNORR customers must be migrated to the Residential class. The Board determines that customer class rates, including the Residential class, must be adjusted to prevent over-collection of revenues effective September 1, 2020.

The Board determines that all currently approved customer rates excluding the Diesel Zone Residential rate should be adjusted downward by the incremental increase that was applied to these rates as a result of maintaining the 0% rate increase for former FNORR customers effective June 1, 2018. The Board directs Manitoba Hydro to file new rate schedules for all customer classes consistent with this Order. As calculated by Manitoba Hydro in its July 20, 2020 letter, the bill impact from this downward adjustment for the typical residential customer not using electric heat is 11 cents per month. The Manitoba

Industrial Power Users Group has calculated the bill impact for General Service Large customers from this downward adjustment to range from \$876.92 annually to \$30,937.50 annually for different customers in that class.

The Board notes that, effective September 1, 2020, former FNORR customers will receive an approximate 6.5% rate increase. Given the energy poverty experienced by First Nations living on-reserve, and in the context of a global pandemic and economic recession, together with the Interveners representing these customers (Assembly of Manitoba Chiefs and Manitoba Keewatinowi Okimakanak Inc.), the Board is concerned that such an increase will result in rate shock for former FNORR customers. The Board finds that, by granting rate mitigation to former FNORR customers by, for example, gradually increasing rates over a few years, the Board would effectively be treating former FNORR customers as a separate class, contrary to the decision of the Manitoba Court of Appeal. Taking into account these circumstances and the principle of reconciliation, the Board repeats its recommendation made in Order 59/18 that the provincial government introduce a comprehensive bill affordability program to address energy poverty issues faced by Manitobans.

The Board finds that the Diesel Zone Residential rate should be maintained at the approved August 1, 2017 Residential rate pending the Board's review of a Diesel Zone-specific rate application and Diesel Zone Cost of Service Study filed by Manitoba Hydro. By way of a prior Board Directive from Order 59/18, Manitoba Hydro is to advise the Board of its intention regarding finalization of the interim Diesel Zone rates.

The Board directs Manitoba Hydro to file, within one week of the issuance of this Order, a compliance filing that calculates new customer rates and customer bill impacts to be effective September 1, 2020 to reflect the Board's decisions in this Order. Manitoba Hydro's compliance filing shall include revised rate schedules, bill impacts and proofs of revenue based on the impact on the fiscal year ending March 31, 2021 as well as on an annualized basis.

2.0 Background

Subsection 25(1) of the Crown Act requires the Board to review rates for services provided by Manitoba Hydro, and prohibits Manitoba Hydro from implementing any changes in rates for services or any new rates for service without the approval of the Board.

In Order 59/18, the Board directed the creation of the former FNORR customer class and approved a 0% rate increase for this class to help mitigate the fact that electricity rates and the resulting bills place a particularly heavy burden on First Nations communities. The Board also ordered a 0% rate increase to apply to customers in the Diesel Zone Residential class. In that same Order, the Board approved a 3.6% average revenue increase for Manitoba Hydro, and directed Manitoba Hydro to calculate the required rates to achieve this approved revenue increase. As directed in Order 59/18, Manitoba Hydro filed rate schedules that would achieve the approved revenue increase of 3.6%. Those rate schedules kept Manitoba Hydro whole because the revenue foregone from the 0% rate increase for the former FNORR customer class was factored into the level of the average general rate increase granted to all other customer classes. By Order 68/18, the Board approved these rate schedules effective June 1, 2018.

In Order 69/19, the Board approved a 2.5% rate increase for most, but not all, customer classes, effective June 1, 2019. In that Order, the Board determined that no rate increase was required for Manitoba Hydro's operations, and directed that all revenues from the 2.5% rate increases were to be placed in a deferral account for major capital projects that were currently under construction. The Board also approved a 0% rate increase for the former FNORR customer class and for customers in the Diesel Zone Residential class.

In Order 75/19, the Board approved rate schedules effective June 1, 2019 filed by Manitoba Hydro that would achieve the 2.5% rate increases for the specified customer classes.

Manitoba Hydro sought and was granted leave to appeal to the Manitoba Court of Appeal the Board's directive in Order 59/18 to create the former FNORR customer class. In its decision dated June 9, 2020, the Manitoba Court of Appeal held that Board exceeded its jurisdiction in issuing the directive and accordingly set aside the directive.

3.0 Procedural History

By letter to the Board dated June 23, 2020, Manitoba Hydro attached revised rate schedules effective August 1, 2020 for the Board's review and invited the Board to ask questions regarding the rate schedules. In its letter, Manitoba Hydro stated that consistent with the Manitoba Court of Appeal's decision to set aside the Board's directive establishing the former FNORR customer class, Manitoba Hydro would eliminate the former FNORR customer class as of August 1, 2020, and the rates for former FNORR customers and Diesel Zone Residential customers would be changed to the June 1, 2019 rates previously approved by the Board for the Residential class in Order 75/19. These adjustments would result in a 6.6% rate increase for former FNORR customers and Diesel Zone Residential customers. Manitoba Hydro stated that there was an estimated \$5.5 million of foregone revenues from the former FNORR customer class for the fiscal periods 2018/19 through to 2020/21. Manitoba Hydro advised in its letter that all rates included in the revised rate schedules were previously approved by the Board and that no rates were changing and no new rates were being proposed.

The Board responded to Manitoba Hydro by letter dated July 13, 2020, stating that it required additional information and clarification from Manitoba Hydro in order to review the revised rate schedules, and directed Manitoba Hydro not to implement the revised rate schedules on August 1, 2020. The Board set out a series of questions seeking additional information from Manitoba Hydro regarding the revised rate schedules, including calculations demonstrating that Manitoba Hydro had lost \$5.5 million of "foregone revenues" from the former FNORR and Diesel Zone Residential customer classes; Manitoba Hydro's rationale for applying the Residential rate to Diesel Zone Residential customers; Manitoba Hydro's explanation for why the proposed revised rates

for the former FNORR and Diesel Zone Residential customers did not amount to changed rates; whether Manitoba Hydro would receive additional revenue from the 6.6% rate increase for former FNORR and Diesel Zone Residential customers; and other related calculations.

In addition, the Board sought comments from past interveners of record in the 2017/18 & 2018/19 and 2019/20 General Rate Applications (“Intervenors”). The Board advised that once it received Manitoba Hydro’s responses to the Board’s questions and any comments from Intervenors, it would determine whether a further process to review the revised rate schedules was necessary.

4.0 Manitoba Hydro’s Response to the Board’s Request for Information and Comments from Intervenors

Manitoba Hydro

The Board received Manitoba Hydro’s responses to its questions by letter dated July 20, 2020, as well as further written comments from Manitoba Hydro dated July 28, 2020. Manitoba Hydro clarified that an estimated \$5.5 million of additional revenues from the former FNORR and Diesel Zone Residential customer classes for the fiscal periods 2018/19 through to 2020/21 were not foregone to Manitoba Hydro, but that former FNORR and Diesel Zone Residential customers paid \$5.5 million less than they would have paid if they had been charged the approved Residential class rate.

Manitoba Hydro confirmed that as a result of the 0% rate increases for the former FNORR and Diesel Zone Residential customers effective June 1, 2018, rates to all other classes were increased by 0.13% effective June 1, 2018 in order to maintain the 3.6% general revenue increase approved by the Board in Order 59/18 (the “0.13% Additional Incremental Increase”). With respect to the rate increase of 2.5% approved by the Board in Order 69/19, Manitoba Hydro noted that no incremental rate increases were applied to the other customer classes to generate revenue equivalent to what would what been

generated by applying the 2.5% rate increase to the former FNORR and Diesel Zone Residential customer classes.

Manitoba Hydro stated that its plan of transitioning the former FNORR and Diesel Zone Residential classes to the June 1, 2019 Residential rate without a corresponding decrease to all other rates would result in additional revenue to Manitoba Hydro of approximately \$2 million dollars annually. Manitoba Hydro asserted that this additional revenue does not constitute a material change in circumstance, is well within normal revenue variation from load and weather fluctuations, and that the resulting customer bill impacts from reducing rates by 0.13% are also not material. If the 0.13% Additional Incremental Increase is maintained, Manitoba Hydro stated that 11 cents per month would continue to be paid by residential customers without electric heat using an average of 1,000 kWh per month, or 21 cents per month for electrically-heated customers using 2,000 kWh per month.

Manitoba Hydro asserted that the revised rate schedules effective August 1, 2020 do not change the rates applicable to the former FNORR customer class, and do not constitute a substantial change in circumstances which would trigger a rate review. In Manitoba Hydro's view, as a result of the Court of Appeal's decision to strike down the Board's directive creating the former FNORR class, former FNORR customers now fall within the Residential rate class and are subject to the Residential rate. The decision of the Court of the Appeal did not remit the issue of the applicable rate for former FNORR customers to the Board for further review and consideration.

With respect to the Diesel Zone Residential customer class, Manitoba Hydro stated that it was requesting the Board to approve the application of the Residential rate to the Diesel Zone Residential customers on the basis that the Court of Appeal struck down the Board's directive that a 0% rate increase was to be applied to the Diesel Zone Residential customer class, that the Board had directed Manitoba Hydro to maintain Diesel Zone Residential rates at the same level as Residential grid rates in past Orders, and that there

was no cost-based reason to apply a lower rate to the Diesel Zone Residential customer class.

In the alternative, Manitoba Hydro submitted that the current rate for the Diesel Zone Residential customer class should remain in effect pending further review.

Manitoba Hydro requested that the Board withdraw its directive not to implement the revised rate schedules on August 1, 2020 to allow Manitoba Hydro to charge the current Residential Class rate to the former FNORR customers and Diesel Zone Residential customers effective August 1, 2020.

Consumers Coalition

The Consumers Coalition is comprised of the Consumers' Association of Canada (Manitoba Branch) and Winnipeg Harvest ("Consumers Coalition"). Winnipeg Harvest is a non-profit, community-based organization committed to providing food to people who struggle to feed themselves and their families. More than 63,000 Manitobans receive food from food banks each month. Winnipeg Harvest shares food through the Manitoba Association of Food Banks and through partnerships with nearly 400 agencies (including soup kitchens, food banks and youth programs) to distribute surplus food to hungry families all over Manitoba.

The Manitoba Branch of the Consumers' Association of Canada has over 400 members and donors. Through its consumer education and information centre, as well as its research, the Manitoba Branch of the Consumers' Association of Canada interacts with roughly 14,000 consumers annually. Approximately 6,000 Manitoba consumers attend annual information sessions and workshops held by the Manitoba Branch of the Consumers' Association of Canada.

The Consumers Coalition asserted that Manitoba Hydro's proposed rate increases for former FNORR and Diesel Zone Residential customers amount to a "backdoor" effort to review and vary key elements of Orders 59/18 and 68/18 (namely to approve a 0% rate increase for Diesel Zone Residential customers and to increase the rates of all other

customers to keep Manitoba Hydro whole for the 0% rate increases for former FNORR and Diesel Zone Residential customers). In the Consumers Coalition's view, these proposed rate increases would be unlawful in the absence of a new rate application or a successful application to review and vary Orders 59/18 and 68/18.

The Consumers Coalition further submitted that the proposed rate increases of 6.6% in the midst of both a pandemic and a recession constitute rate shock, which is a valid consideration at all times in rate setting, in addition to bill affordability. In the view of the Consumers Coalition, rate shock is inconsistent with the positions taken by the province of Manitoba, Manitoba Public Insurance ("MPI"), and the Board in enabling a rate rebate for MPI customers during the COVID-19 state of emergency.

The Consumers Coalition took the position that the Board should direct Manitoba Hydro that any application by Manitoba Hydro to impose rate increases on former FNORR and Diesel Zone Residential customers should directly address rate shock concerns and ways to mitigate those concerns, as well as whether a rate increase for Diesel Zone Residential customers is justified. The Board should further direct Manitoba Hydro that any application to impose rate increases should also address the consequences for other ratepayers whose rates were increased in Order 68/18 to hold Manitoba Hydro whole on account of the 0% rate increases approved for the former FNORR and Diesel Zone Residential customers.

In the Consumers Coalition's view, based on these directions by the Board, there are at least three possible approaches that Manitoba Hydro could take in response. First, Manitoba Hydro could proceed with an application to increase only the former FNORR customer class rate, taking into account rate shock, the interests of other consumers and the financial health of Manitoba Hydro. This application could be dealt with in a written process. Second, Manitoba Hydro could proceed with an application to increase both the rates for the former FNORR customer class and Diesel Zone Residential customer class, which would include a Diesel Zone Cost of Service Study and would address rate shock, the interests of other consumers, and the financial health of Manitoba Hydro. This

application would best be dealt with in an expedited oral process. Lastly, Manitoba Hydro could file a General Rate Application (“GRA”) for the 2020/21 year, which would include an Integrated Financial Forecast, an update on capital projects, and consideration of rate shock, the interests of other consumers, and the financial health of Manitoba Hydro.

Assembly of Manitoba Chiefs

Assembly of Manitoba Chiefs (“AMC”) is the political, advocacy and technical coordinating body that represents 62 of 63 First Nations in Manitoba and includes approximately 130,000 people. The AMC member First Nations are reserve communities under the federal Indian Act. AMC represents residential and general service ratepayers, as well as institutions subject to the First Nation Education rate in the Diesel Zone. AMC addresses issues of common concern to the member First Nations.

AMC argued that Manitoba Hydro’s proposed rate increase for former FNORR customers constitutes a rate change that must be approved by the Board pursuant to subsection 25(1) of the Crown Act, which necessitates a hearing before the Board. AMC took the position that the proposed rate increase for former FNORR customers amounts to a change to the rate charged to a specific class of customers whose composition as a whole was not considered by the Board when it set the current Residential rate.

In AMC’s view, Manitoba Hydro’s proposed rate change for former FNORR customers fails to take into account its broader implications on the former FNORR class and within the Residential customer class as a whole. The proposed rate change does not account for the fact that the Residential customer class rate was set to offset the revenues Manitoba Hydro would lose from the creation and maintenance of the former FNORR customer class. In addition, the proposed rate change, which will take effect during the COVID-19 pandemic, will exacerbate energy poverty on-reserve and is not consistent with the principle of reconciliation. In the alternative, if the proposed rate change is approved by the Board, AMC submitted that it should be implemented gradually over several years with sufficient notice to former FNORR customers, particularly in light of the COVID-19 pandemic, which has had significant economic impacts on First Nations. AMC

asserted that Manitoba Hydro has provided insufficient notice of the impending 6.6% rate change to former FNORR customers, which is heavy-handed and not in the spirit of reconciliation.

AMC further argued that Manitoba Hydro's proposed rate change is inconsistent with the decision of the Manitoba Court of Appeal, as the decision merely set aside the directive to create the former FNORR class and did not state that Manitoba Hydro could create a new class of customers by charging former FNORR customers the rate of the existing Residential class without review by the Board. The Manitoba Court of Appeal's decision does not prevent the Board from considering whether the current rate for the Residential customer class as a whole is just and reasonable in view of the factors of energy poverty and bill affordability.

AMC also asserted that, in Order 69/19, the Board determined that increases to Manitoba Hydro's revenues were not currently necessary to maintain Manitoba Hydro's financial health. Manitoba Hydro's proposed rate change extends far beyond its costs for service and allows Manitoba Hydro to profit to the detriment of some of the most vulnerable ratepayers in the province. In AMC's view, Manitoba Hydro must demonstrate that it is just and reasonable for Manitoba Hydro to collect additional revenues from former FNORR customers, as well as the 0.13% Additional Incremental Increase that Manitoba Hydro continues to collect from all other customer classes.

AMC advanced the position that a hearing before the Board is necessary to determine what is a just and reasonable rate for the new composition of the Residential customer class. In AMC's view, the current process, which is being conducted only in writing and on an expedited timeline, will not provide the Board with enough time or evidence to evaluate Manitoba Hydro's requested rate change, and is insufficient to assess the long-term and far-reaching effect the rate change will have on vulnerable ratepayers, particularly in light of the COVID-19 pandemic. AMC argued that interveners should have the opportunity to submit expert and/or ratepayer evidence in the hearing before the Board.

AMC is of the view that the period by which parties may seek leave to appeal to the Supreme Court of Canada has not yet closed, and that Manitoba Hydro's intent to implement the proposed rate change as of August 1, 2020 is premature.

AMC submitted that it should be awarded costs for its participation in this process.

Manitoba Keewatinowi Okimakanak

Manitoba Keewatinowi Okimakanak ("MKO") represents more than 65,000 treaty First Nation citizens in 30 First Nations communities in northern Manitoba. It has operated for more than 33 years as a non-profit advocacy organization. The citizens are residential ratepayers of Manitoba Hydro and the First Nations governments and businesses are General Service ratepayers.

MKO asserted that Manitoba Hydro is attempting to "push through" a rate increase without a proper evidentiary record. MKO's view is that Manitoba Hydro has not met its onus to justify a rate increase.

MKO submitted that any rate adjustment to the former FNORR and Diesel Zone Residential customer classes should require an adjustment to all other rates so that the adjusted rates recover only the Board-approved revenue requirement. MKO asserted that Manitoba Hydro did not lose any revenue as a result of the 0% rate increase approved for the former FNORR and Diesel Zone Residential customer classes in Order 59/18 and Order 69/19. MKO noted that the 0.13% Additional Incremental Increase to the other customer classes kept Manitoba Hydro whole, and that the Board found that for the 2019/20 fiscal year, Manitoba Hydro did not require an increase to its revenues and the 2.5% rate increase was to be placed in a deferral account. MKO took the position that the proposed rate increase, if approved, would result in additional revenues to Manitoba Hydro, which Order 69/19 found was not necessary.

MKO further submitted that there is no evidence to indicate that Manitoba Hydro has paid any regard to rate-setting principles of rate stability or rate smoothing. MKO is concerned that the proposed rate increase, if approved, will result in significant rate shock for

customers within the former FNORR and Diesel Zone Residential customer classes. MKO is particularly concerned with the timing of Manitoba Hydro's proposed rate increase during an unprecedented global pandemic with an economic downturn. MKO asserted that any method of implementing the Manitoba Court of Appeal's decision that results in Manitoba Hydro changing rates for services to customers without approval of the Board contravenes subsection 25(1) of the Crown Act.

In addition, MKO agreed with AMC that Manitoba Hydro's proposed rate increase is premature, as the appeal period regarding the Manitoba Court of Appeal's decision has not yet lapsed.

With respect to the Diesel Zone Residential class specifically, MKO argued that the Manitoba Court of Appeal did not consider or make any determination regarding the rates applicable to Diesel Zone Residential customers, and that Manitoba Hydro has not justified an increase in rates to Diesel Zone Residential customers.

MKO further submitted that the Board should order Manitoba Hydro to file a GRA, with a new Integrated Financial Forecast and a new Prospective Cost of Service Study. In the alternative, MKO asserted that the Board should implement some form of hearing process, with either oral or written submissions from interveners, before determining the appropriateness of Manitoba Hydro's proposed rate increase and the most appropriate method of implementing the Court of Appeal's decision to eliminate the former FNORR customer class.

Manitoba Industrial Power Users Group

Manitoba Industrial Power Users Group ("MIPUG") is an association of companies which are substantial users of power in the General Service Large customer class (including all three subclasses). This customer class represents approximately 8,000 GWh of power purchases (about 35% of Manitoba Hydro's domestic energy sales).

MIPUG asserted that the Manitoba Court of Appeal certified its decision in accordance with subsection 58(5) of the Board Act, which requires the Board to make an order in

accordance with that decision. MIPUG submitted that the Board is required to direct Manitoba Hydro to implement a rate schedule that is consistent with the Manitoba Court of Appeal's decision that all other customer classes should not pay more as result of the 0% increase charged to former FNORR customers.

MIPUG disagreed with Manitoba Hydro's assertion that the 0.13% Additional Incremental Increase is immaterial. MIPUG noted that this rate increase resulted in \$1,032,000 being collected from customers in the General Service Large ("GSL") customer classes in 2018/19, 2019/20 and 2020/21, which given the small number of GSL customers, constitute material amounts at the customer level. MIPUG is of the view that as these amounts were ultimately found to be improperly collected, they should be returned to customers.

MIPUG further submitted that, for classes where the refunds are relatively minor, the most cost-effective way to implement the Manitoba Court of Appeal decision is for the Board to direct Manitoba Hydro to file a proposal for a negative rate rider that would return the additional revenue to customers over a reasonable period of time. With respect to the GSL classes, MIPUG argued that the amounts are significant enough that customers in those classes should be issued refund cheques.

MIPUG also asserted that Manitoba Hydro should be ordered to revise all affected rates downward, as the annual ongoing cost to consumers is significant, particularly for the GSL classes.

5.0 Board Findings

Summary

Given that the Board is implementing the Court of Appeal's decision by this Order, the Board finds that a further process is not required to make the necessary determinations regarding Manitoba Hydro's proposed revised rates pursuant to subsection 25(1) of the Crown Act based on the written materials before it. The written materials filed in this matter are publicly available on the Board's website.

As will be discussed in greater detail below, as a result of the Manitoba Court of Appeal's decision to set aside the Board's directive to create the former FNORR customer class, the former FNORR customers must be migrated to the Residential class and charged the Residential class rate in effect as of September 1, 2020, in accordance with this Board Order. The Board determines, however, that the Diesel Zone Residential rate should remain at the August 1, 2017 approved Residential rate pending Manitoba Hydro's filing of a Diesel Zone specific rate application and Diesel Zone Cost of Service Study.

With respect to the rate increase made to other rate classes as a result of the creation of the former FNORR customer class, the Board finds that currently approved rates for all classes other than the Diesel Zone Residential rate should be adjusted downward. Specifically, the Board directs a downward adjustment equal to the amount of the incremental increase that was ordered in 59/18 to customer class rates in order to keep Manitoba Hydro whole when the 0% rate increase was applied to the former FNORR customers effective June 1, 2018.

Finally, the Board notes that as a result of the elimination of the former FNORR customer class, former FNORR customers are subject to an approximate 6.5% rate increase. Given the energy poverty experienced by First Nations, and in the context of a global pandemic and economic recession, the Board is concerned that such an increase will result in rate shock. Taking into account these circumstances and the principle of reconciliation, the Board repeats its recommendation made in Order 59/18 that the provincial government

introduce a comprehensive bill affordability program to address energy poverty issues faced by Manitobans.

The Rate to Be Charged to Former FNORR Customers

As a result of the Manitoba Court of Appeal's decision to set aside the directive to create the former FNORR customer class, these customers no longer occupy a separate customer class and instead fall within the class in which they were previously included prior to Order 59/18, the Residential class. Accordingly, former FNORR customers will be charged the reset Residential class rate that is to be effective September 1, 2020.

Increases Made to Other Rates as a Result of the Creation of the Former FNORR Class

In Order 59/18, the Board stated that, despite the 0% rate increases approved for former FNORR and Diesel Zone Residential customers, "Manitoba Hydro is kept whole because the cost of the 0% rate increase for this new customer class has been factored into the level of the average general rate increase granted for the Test Year [3.6%] to all other customer classes". In Order 68/18, the Board approved customer class rate schedules that included the 0.13% Additional Incremental Increase, such that the approved rates were designed to allow Manitoba Hydro to recover the 3.6% revenue increase granted by the Board. In addition, the Manitoba Court of Appeal noted in its decision that establishing the former FNORR customer class meant that "All other customer classes must pay more for the provision of power to account for the shortfall resulting from the zero per cent increase to prices charged to the FNORR customer class".

In its initial letter to the Board regarding the implementation of the Court of Appeal's decision, Manitoba Hydro stated that the 0% rate increases applied to the former FNORR customer class and Diesel Zone Residential customers had resulted in \$5.5 million of "foregone revenues" for the fiscal periods 2018/19 through to 2020/21. In response to the Board's questions, Manitoba Hydro clarified that these \$5.5 million of "foregone revenues" were not revenues foregone to Manitoba Hydro, but rather that former FNORR and the

Diesel Zone Residential customers have paid approximately \$5.5 million less than what they otherwise would have paid if they had been charged the approved Residential class rates effective June 1, 2018 and June 1, 2019.

In addition, Manitoba Hydro accepted in its July 20, 2020 correspondence that rates to other classes were increased as a result of maintaining the 0% rate increases for former FNORR and the Diesel Zone Residential customers effective June 1, 2018, and that accordingly Manitoba Hydro was kept whole for those 0% rate increases. Manitoba Hydro noted that, to generate the additional revenues from the 3.6% general revenue increase approved in Order 59/18, as well as the revenues that would have otherwise been collected from the former FNORR and the Diesel Zone Residential customers had they not received a 0% rate increase effective June 1, 2018, the overall average rate increase applied to all other customer classes was 3.73%. Manitoba Hydro acknowledged that rates to all other classes were increased by 0.13% effective June 1, 2018 as a result of the 0% rate increases approved for the former FNORR and the Diesel Zone Residential customers.

The Board does not accept Manitoba Hydro's argument that the 0.13% Additional Incremental Increase made to other rates on account of the creation of the former FNORR customer class should be maintained in customer rates. This rate increase is embedded within rates, which means that ratepayers continue to pay this amount indefinitely, even though the justification for this increase no longer applies. As indicated above, as a result of the Manitoba Court of Appeal's decision, the former FNORR customer class was eliminated. Accordingly, the Board finds that the increase that was made to other rates on account of the creation of the former FNORR customer class must be removed. Ratepayers should not continue to subsidize a customer class that no longer exists. In addition, specifically with respect to former FNORR customers which are migrated to the Residential class, it would be not be fair for these ratepayers to pay a rate that has been incrementally increased due to the creation of a customer class that has been eliminated.

The Board also does not accept Manitoba Hydro's assertion that the increase made to other rates on account of the creation of the former FNORR customer class is *de minimis* to ratepayers. Although the typical residential customer may pay only between an additional 11 to 21 cents per month (depending on whether that customer uses electricity for space heating purposes) as a result of the 0.13% Additional Incremental Increase, as noted above, this amount is embedded within the rate, and as such, the ratepayer continues to pay this amount into the future. Furthermore, MIPUG noted that this rate increase resulted in additional revenue of \$1,032,000 being collected from customers in the General Service Large customer classes in 2018/19, 2019/20 and 2020/21. Given the smaller number of General Service Large customers, these amounts are material at a customer level. For example, for the General Service Large >100 kV class, the rate increase resulted in average additional revenue to Manitoba Hydro of \$30,937.50 per customer.

In addition, the Board notes that Manitoba Hydro states that the incremental revenue collected from this rate increase is well within normal revenue variation from load and weather fluctuations, and thus indicates that this revenue is *de minimis* to Manitoba Hydro. Given this acknowledgement by Manitoba Hydro, there appears to be no justification at all for Manitoba Hydro's assertion that it should be permitted to recover these revenues on an ongoing basis from ratepayers. The Board further notes its conclusions in Order 69/19 that Manitoba Hydro did not require any additional revenues for its general operations. Manitoba Hydro has not presented any evidence to indicate that its circumstances have changed since Order 69/19.

In conclusion, the Board directs that as of September 1, 2020, currently approved customer class rates (except for the Diesel Zone Residential customer rates) are to be decreased by the incremental increase (approximately 0.13%) that was applied to these rates to keep Manitoba Hydro whole while maintaining the 0% rate increase for former FNORR customers effective June 1, 2018. As the August 1, 2017 rate for Diesel Zone Residential customers remains in effect, the incremental increase that was applied to rates as a result of maintaining the 0% rate increase for Diesel Zone Residential

customers effective June 1, 2018 is not to be incorporated into this rate decrease. The Board expects Manitoba Hydro to confirm in its compliance filing the exact increase that was applied to other rate classes on account of maintaining the 0% rate increase for former FNORR customers effective June 1, 2018.

The 6.5% Rate Increase for Former FNORR Customers

As former FNORR customers are to be charged the Residential rate that results from this Order, these ratepayers will be subject to an approximate 6.5% rate increase effective September 1, 2020. As noted by Manitoba Hydro, this rate increase will result in former FNORR customers using 1,000 kWh of electricity monthly being charged approximately an additional \$6 per month, with former FNORR customers using 2,500 kWh of electricity monthly being charged nearly an additional \$15 per month.

The Board shares the concern of AMC, MKO, and the Consumers Coalition that the 6.5% rate increase may constitute rate shock for the former FNORR customers. Rate shock refers to sudden and substantial increases in electricity rates beyond the tolerance level of customers. The Board notes the substantial evidence from the 2017/18 & 2018/19 General Rate Application proceeding that First Nations on-reserve customers experience significant energy poverty. Energy poverty has been defined by the Bill Affordability Working Group as “circumstances in which a household is required to make sacrifices or trade-offs that would be considered unacceptable by most Manitobans in order to procure sufficient energy from Manitoba Hydro”. The Bill Affordability Working Group, which was formed in response to a directive by the Board in Order 73/15, found that a household was energy poor if it spends more than 6% or 10% of pre-tax income on energy and also has a level of income lower than 125% of the current Statistics Canada Low Income Cut-off (“LICO 125”).

The evidence before the Board in the 2017/18 & 2018/19 General Rate Application was that 96% of First Nations live in poverty, and the reserves in Manitoba have the highest rates of child poverty in Canada. In Order 59/18, the Board noted that the President and CEO of Manitoba Hydro acknowledged that housing conditions on First Nations reserves

are “abysmal”, and that these poor housing conditions result in higher energy consumption and higher utility bills for on-reserve First Nations compared to other residential ratepayers. Furthermore, the vast majority of on-reserve First Nations residential customers have no access to the more economical option of natural gas for heating. The Board finds that a rate increase of 6.5% during a global pandemic and economic recession, with winter only several months away, would likely exacerbate energy poverty on First Nations reserves and constitute rate shock. As the Board stated in Order 5/12, in Manitoba, adequate energy for heating is a necessity of life. As such, it should be both abundantly available and affordable.

In addition, Manitoba Hydro has indicated, and the Board agrees, that the additional revenues recovered from the 6.5% rate increase for former FNORR customers would be *de minimis* to Manitoba Hydro. The revenues collected from the 0.13% Additional Incremental Increase represent only approximately \$2 million out of Manitoba Hydro’s \$1.7 billion total domestic revenues. Accordingly, the approximately \$3 million additional revenue that Manitoba Hydro will receive on an annual basis due to the 6.5% rate increase to former FNORR customers must also be understood to be *de minimis* to Manitoba Hydro.

The Board also notes that, in March 2020, Manitoba Hydro’s subsidiary utility Centra Gas Manitoba Inc. (“Centra”) expressly recognized the hardship that will result to ratepayers from rate increases during the COVID-19 pandemic. As a result, Centra withdrew its application to the Board to discontinue the Furnace Replacement Program refund, which would have resulted in an increase to customer bills of approximately \$5 million from April to October 2020, on the basis that such an increase would not be appropriate during the COVID-19 pandemic.

While the Board is concerned about rate shock for First Nations on-reserve customers, the Board notes that the Manitoba Court of Appeal determined that the Board lacked jurisdiction to direct the creation of the former FNORR customer class, as this class contravened the uniform rates legislation and subsection 43(3) of *The Manitoba Hydro*

Act. The Board finds that, by granting rate mitigation to former FNORR customers by, for example, gradually increasing rates over a few years, the Board would effectively be treating former FNORR customers as a separate class, contrary to the decision of the Manitoba Court of Appeal.

In Order 59/18, the Board stated that:

The Board recommends that the provincial government introduce a comprehensive bill affordability program run by a government department to address energy poverty issues faced by Manitobans throughout the province. The Board heard evidence that there is a long-standing need to address this issue and the provincial government is best situated to do so in a comprehensive fashion, given its social program infrastructure that is already in place.

The Board reiterates the recommendation in the NFAT Report that the provincial government should use some of the revenues it receives from Keeyask to fund a comprehensive bill affordability program.

As acknowledged by the Board in Order 59/18, although Manitoba Hydro's rates are among the lowest in North America, this does not mean that all Manitoba ratepayers can equally afford to pay their electricity bills. In the 2017/18 & 2018/19 General Rate Application proceeding, the Board heard evidence from residential ratepayers who had to make sacrifices in their day-to-day lives in order to be able to pay their electricity bills, which included reduced food budgets, restricted social activities, and limited opportunities for saving. In particular, as indicated above, there was substantial evidence in that proceeding that on-reserve First Nations residential customers experience significant levels of energy poverty. During this proceeding, Manitoba Hydro's President and Chief Executive Officer stated his recognition that the matter of bill affordability will become increasingly important to resolve as Manitoba Hydro proceeds with higher rate increases and therefore there is a need to find solutions to the issue.

Taking into account these circumstances and the principle of reconciliation, the Board repeats its recommendation made in Order 59/18 that the provincial government introduce a comprehensive bill affordability program to address energy poverty issues faced by Manitobans.

The Diesel Zone Residential Class Rate

In its initial letter to the Board, Manitoba Hydro asserted that charging Diesel Zone Residential customers the currently approved Residential rate did not amount to a rate change for these customers that would require the Board's approval. In response to the Board's questions, Manitoba Hydro clarified that it was requesting that the Board approve the application of the Residential rate to Diesel Zone Residential customers, apparently accepting that this revised rate would constitute a rate change. In support of this request, Manitoba Hydro stated that the Court of Appeal struck down the directive that included the 0% rate increase for Diesel Zone Residential customers, and noted "the PUB's long-standing direction to maintain the Diesel residential rates at the same level as residential grid rates" and the "absence of any cost-based reason to apply a lower rate to the Diesel customer class". In the alternative, Manitoba Hydro asserted that the Board should direct that the current rates for Diesel Zone Residential customers remain in effect pending further review.

The Board notes that Manitoba Hydro did not seek leave to appeal the Board's determination in Order 59/18 that a 0% rate increase be applied to the Diesel Zone Residential class. The Court of Appeal granted leave to appeal on the question of "whether the PUB exceeded its jurisdiction in creating a First Nations On-Reserve class whose rate for service would be different from those customers remaining in the existing 'residential class'". The Court of Appeal's decision set aside the Board's directive to create the former FNORR class, and made no mention of the Diesel Zone Residential class.

The Board notes that the last Diesel Zone Cost of Service Study was filed in 2011. In addition, in Order 59/18, the Board directed Manitoba Hydro to advise the Board of its intention regarding finalization of the interim Diesel Zone rates. The Board finds that, if

Manitoba Hydro seeks to change the rates for Diesel Zone Residential customers, Manitoba Hydro should file a Diesel Zone-specific rate application and that a hearing to review this application should be held. The Board determines that in order for the Board to review the Diesel Zone Residential rate, Manitoba Hydro must file a Diesel Zone-specific rate application that includes a Diesel Zone Cost of Service Study, and an evidentiary hearing must be held. Accordingly, the Board directs that the August 1, 2017 rate for Diesel Zone Residential customers remain in effect pending Manitoba Hydro's filing of a Diesel Zone-specific rate application, including a Diesel Zone Cost of Service Study, and the Board's review of this application.

Implementation of Revised Rates Effective September 1, 2020

The Board acknowledges that several Interveners have submitted that as the time frame for parties to seek leave to appeal the Court of Appeal's decision has not yet expired, the implementation of revised rates in response to this decision is premature. The Board notes that if Interveners are concerned about the implementation of revised rates effective September 1, 2020, there are processes under the Board Act and the Board's Rules of Practice and Procedure which may be available to address the timing of the implementation of the revised rates.

IT IS THEREFORE ORDERED THAT:

1. Manitoba Hydro's request that the Board withdraw its directive to Manitoba Hydro to not implement the June 23, 2020 revised rate schedules effective August 1, 2020 **BE AND IS HEREBY DENIED.**
2. Former FNORR customers are to be migrated to the Residential class effective September 1, 2020 and to be charged the Residential class rate that comes into effect on September 1, 2020.
3. Manitoba Hydro's request that the Diesel Zone Residential class be charged the Residential rate effective August 1, 2020 **BE AND IS HEREBY DENIED.**
4. The Diesel Zone Residential class rate is to be maintained at the August 1, 2017 approved rate pending Manitoba Hydro filing a Diesel Zone-specific rate application, including a Diesel Zone Cost of Service Study, and the Board's review of that application.
5. Effective September 1, 2020, currently approved rates for all classes except the Diesel Zone Residential class are to be decreased by the amount of the incremental increase that was applied to these rates as a result of maintaining the 0% rate increase for former FNORR customers effective June 1, 2018.
6. Manitoba Hydro is to calculate and file for Board approval revised rate schedules to be effective September 1, 2020 together with bill impacts and proofs of revenue that reflect the decisions in this Order.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."

Chair

"Darren Christle, PhD, CCLP, P.Log., MCIT"

Secretary

Certified a true copy of Order No. 100/20
issued by The Public Utilities Board



Secretary