

M A N I T O B A
THE PUBLIC UTILITIES BOARD ACT
THE MANITOBA HYDRO ACT
**THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT**

Order No. 126/09

September 4, 2009

BEFORE: Graham Lane, CA, Chair
Robert Mayer Q.C., Vice-Chair
Len Evans, LLD, Member
Kathi Avery Kinew, Ph.D., Member
Susan Proven, P.H. Ec., Member

**AN INTERIM *EX PARTE* ORDER IN RESPECT OF MANITOBA HYDRO'S
APPLICATION FOR APPROVAL OF THE IMPLEMENTATION OF
TEMPORARY BILLING DEMAND CONCESSIONS**

(I) EXECUTIVE SUMMARY

Unlike residential electricity customers, MH's customers in the General Service Large (GSL) and General Service Medium (GSM) customer classes pay a monthly demand charge that is not directly scalable with reductions in electricity consumption. So, when some of these companies have temporarily closed production facilities or have adopted a batch plant approach to production to reduce capacity due to the current global economic downturn in demand for their products, their energy bill has not been proportionately reduced.

By way of an *ex parte* application, MH seeks to provide temporary relief to such large customers to assist the firms and their workers. This will mitigate the risks of potentially larger revenue losses to MH, which would in turn, have greater impacts on the Manitoba economy, in the event of a prolonged company shut down or permanent plant closure.

By this Order, the Board approves a temporary (June 1st 2009 to, at maximum, March 31, 2010) deferral of a calculated portion of a GSL or GSM customer's energy bill, with carrying costs equivalent to MH's cost of short term debt, which includes the government guarantee fee.

The deferral of a portion of the energy bill responds to the impacts of demand billing, that is, where reductions in production mean energy is scaled back, but demand is not, leading to increased unit costs for both energy and production. The relief provided by this Order means eligible affected customers, that both apply for the relief and meet the criteria, will not be required to pay (at this time) more than their normal blended unit cost for energy plus ten percent. (The ten percent higher than normal baseline provision is intended to rule out normal variation and capture the impact of what has been a sharp and, for some firms, protracted recession.)

This approach is towards ensuring that MH's electricity rates structure does not contribute to the financial distress of these large customers. This PUB Order is to assist in reducing the probability of permanent revenue loss (to MH and the provincial economy), and a loss of jobs through permanent plant closure by large customers of MH electricity.

Further relief for qualifying GSL and GSM customers may be considered when this interim Order is brought back to the Board for finalization. By that time, the PUB expects that MH will have been able to provide actual gross and net costs of the deferral program as well as respond to various outstanding Board Directives (including the lower-income bill assistance plan for residential

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customers and the future plans for the four communities served by diesel generation of electricity).

1. APPLICATION

On August 7, 2009, Manitoba Hydro (MH or the Utility) applied to The Public Utilities Board (Board) for approval of a temporary change to allow billing demand concessions to General Service Large (GSL) and General Service Medium (GSM) customers that are experiencing reduced electrical demand directly resulting from reductions in their operations caused by the global economic downturn.

MH proposed that eligibility for a demand billing concession would be in effect for a six-month period (from June 1, 2009 to November 30, 2009), unless MH determined that the demand concession period should be extended.

MH'S PROPOSAL

During the six month period, MH's proposes demand billing concessions be given to customers who qualify, according to the stated criteria and formula as contained in its evidence. In short, the customer must establish that a) their business operation has been altered by the economic downturn, b) that their unit energy costs have been substantially increased and, c) the increase in the cost

per kW.h must be demonstrably due to economic circumstances and not due to other factors such as holiday or maintenance plant shut downs.

According to MH, customers desiring a demand billing concession under MH's proposal will be required to submit a written request with supporting evidence documenting the impact of the global economic downturn on their business. The evidence (such as weakening market demand, price reductions, etc.) would be considered when evaluating a customer's eligibility for the concession. Among the criteria for a concession, a clear indication of a change in operational behaviour would have to be demonstrated as a response to the above-described conditions in order for a customer to be eligible for a demand concession.

In MH's Application, consumption patterns in each billing period from June-November 2009 would be compared against historical behaviour in a 24-month billing period commencing in September 2006 and concluding in August 2008. This information would then be used to determine whether changes in the customer's load factor, (the ratio of energy utilization), have negatively impacted the per unit cost of energy. Per unit energy costs would have to have increased by a minimum of 10% relative to historic levels in order for the customer to be eligible for demand concessions.

2. **EX PARTE APPLICATION**

As previously indicated, MH filed its Application on an *ex parte* basis (which would have the Board consider the Application without giving notice to, or hearing from, other parties) due to the MH's apprehension of an urgency of financial circumstances facing a number of the Utility's GSL and GSM customers.

MH submits that for the type of relief being proposed, it must be provided on a timely basis and that coordinating the schedules of multiple parties, on short notice during these summer months, would almost certainly result in delays. MH suggests that should the Board issue an *ex parte* Order, the release of the Order could be followed by a paper-based hearing process that would provide other interested parties a reasonable opportunity to participate.

The Utility reported that current global economic conditions have reduced the demand for some of Manitoba's export products and commodities - such that some companies have responded by temporarily closing high cost production facilities or by adopting a 'batch plant approach' to production to reduce capacity and to adjust to lower product demand.

However, some of the customers' fixed cost components are not entirely scalable with changes in production, such that the targeted electricity cost relief is not being fully achieved.

MH's proposed demand charge concession could provide short-term assistance to customers that are reducing production and temporarily reducing their demand requirements. MH acknowledges that many eligible customers will have already experienced months of reduced operations for which no relief will be provided.

The *ex parte* relief being sought is intended to mitigate the risk of larger potential revenue losses to MH and the greater impacts on Manitoba economy in the event of a prolonged company shut down or closure.

3. FINANCIAL IMPLICATIONS

Of MH's 307 GSL and 1,882 GSM customers (MH's overall customer base exceeds 500,000) the Utility, in its Application, estimates (based on an examination of the consumption patterns in the six month period of January 2009 to June 2009), that only approximately 27 GSL and 104 GSM customers would be eligible for billing demand concessions in at least two of the six months the Utility proposes relief be granted. An additional 21 GSL and 130 GSM accounts

have been flagged for monitoring based on apparent eligibility in one month of the six-month examination period identified above

MH estimates the aggregate amount of the proposed billing concessions, over the six month period ending November 2009, may be \$400,000 per month for the GSL customer class and \$100,000 per month for the GSM customer class. MH also indicates that this financial impact may be mitigated by increased electrical energy exports, although such an offset has not been estimated.

4. BOARD FINDINGS

PUB JURISDICTION

Pursuant to the legislation, no change in rates for MH's services, and no new rates for MH's services, shall be introduced without the approval of the Board. MH's application to reduce the electricity prices charged, whether through "demand billing concessions" or otherwise, with respect to the provision of power to some of MH's GSL and GSM customers, requires the approval of this Board.

EX PARTE PROCESS

While the Board has legislated jurisdiction over its processes, the Board must weigh the competing interests as presented by the circumstances of the Application to determine whether proceeding *ex parte* is required.

In the case of the present Application by MH, and considering all of the circumstances and factors, including the stated urgency, the Board concludes that proceeding *ex parte* is required and in the public interest.

Also, recognizing that the nature of the relief granted by this Order is interim only, the Board will benefit from consideration of the submissions of other parties when finalization of this Order is sought. Through the finalization process that will follow the issuance of this Order, the relief granted through this Order potentially could be made into a permanent “concession” (for some or all firms receiving the partial billing deferral), confirmed, repealed or otherwise substantially modified.

The Board’s statutory jurisdiction permits the Board to make an Order “... *granting the whole or part only of the application or may grant such further or other relief in addition to or in substitution for that applied for as fully and in all respects as if the application had been for such partial, further, or other relief*”.

RELIEF GRANTED

The Board agrees with MH that short term assistance to GSL and GSM customers that are reducing production as a result of the global economic downturn will assist in ensuring that MH's electricity rate structure does not contribute to the financial distress of these large customers, and that such temporary relief will assist in reducing the probability of permanent revenue loss through permanent plant closure.

However, the Board is concerned that MH's demand billing concession proposal is premised on assumptions that cannot be verified until after MH's proposal is implemented and runs its course. For example, the information used by the Utility to quantify forecast average monthly demand concessions for certain industry sectors appears to indicate that the amount of July 2009 concessions could be significantly higher than MH initially forecast.

MH acknowledges that the forecasts it developed to support its Application, which were based on six months of historical behaviour through June 2009, may not be accurate indicators of the economic conditions actually faced by MH's customers. And, as such, it is difficult, MH further acknowledges, if not impossible to project

actual customer energy reductions and concession amounts pursuant to its proposal. With that uncertainty, MH's proposal exposes the Utility, and all of its customers - not just those that qualify for the proposed concessions - to uncertain financial risk.

The quantum of revenue loss to MH is unknown, and, from a qualifying customer's perspective there will be uncertainty as to whether any interim order will be confirmed or varied, with the potential of requiring the repayment of any concessions when it comes time to finalize the Order.

Therefore, rather than approving MH's proposed "demand billing concessions", that would expose qualifying customers to the risk of full repayment being required upon finalization, this at a later date, the Board finds that it is in the public interest to provide for immediate "cash flow" relief to qualifying customers, and, subsequently, to examine and determine whether the relief should be altered or made permanent (ie. deferred amounts written off by MH) when this interim Order is finalized.

Under this Order, and based on MH's calculation as proposed in its Application, there would be an immediate deferral of a portion of the qualifying customers electricity bills, to be carried at the equivalent of MH's cost of short-term

borrowing as interest on that deferral. MH's cost of short-term borrowing was recently forecast at the 2009/10 Centra Gas General Rate Application as being approximately 1.5% (0.5% plus the 1.0% provincial debt guarantee fee).

Through such approved relief, the cash flow positions of recession-affected qualifying customers will be enhanced while still protecting MH's overall revenue base (and reducing the risk to qualifying firms that, on finalization of this Order, repayment would be required). With cash retained, rather than being required to meet MH's full electricity bills, qualifying firms will have more funds to maintain payrolls and other expenses while awaiting the recovery of their businesses.

Any such firms reporting taxable income would also gain from the Board's approved deferral, as the full cost of electricity billing, including the deferred portion with interest, should be deductible for tax purposes. In the case of a loss, a firm may be able to carry back losses to prior periods and recover past paid income taxes.

Unless determined to be "forgiven" or "written off by MH" at the hearing to finalize this Order, the Board approved deferred payments would become payable at a to-be-defined future date, which may be dependent upon either an overall "end" to the recession or the "recovery" of the firms that qualify for the deferral.

By deferring a portion of the qualifying customer's electricity bill, the customer is in essentially the same position as if an interim demand billing concession, as proposed by MH, is granted. The interim relief to the customer would not, pursuant to MH's proposal, be finalized until a later date and therefore such relief could be rescinded and made repayable in whole or in part. Likewise, the Board ordered deferral of a portion of the energy bill is subject to finalization and perhaps future "forgiveness", at a later date when additional information will be available to the Board, MH, and other interested parties.

Some of the additional information that the Board may consider for finalization of this Order includes:

- (a) will/should there be a requirement for a qualifying customer to file, or have reviewed, its financial information? In short, there is no "income test" in MH's proposal or formula. Rather, MH has focused on the impact of its rate structure on GSM and GSL customers' 'per unit cost of energy' as a result of changes in operational behaviour. Customers able to reduce their peak billing demand in relation to reduced levels of energy consumption will not experience an increase in the average per unit cost of energy and will, therefore, not qualify for relief. It remains an open question as to

whether a firm that is still profitable in this time of economic downturn should qualify for any forgiveness of the amount deferred.

- (b) the total gross and net financial impact of this bill deferral offering on MH and its customers. The total amounts of the billing deferrals are unknown until customers apply and are approved. While MH's six-month historic data supports a forecast of a monthly average concession of \$14,274 for the Primary Metals Sector, the actual concession calculated for the one month of July 2009 appears to be \$64,472. And, for the Pulp & Paper Sector, while the forecast average monthly concession based on six months of historical data would be \$25,410, the actual one-month concession for July 2009 appears to be \$219,020.

Clearly and understandably, the financial impact of the current economic downturn on MH's total revenues has not been fully quantified. However, recently released financial results for MH's first quarter of fiscal 2009/10 show a significant reduction in export revenues and net income compared to the first quarter of the prior fiscal year. Contributing to that reduction in revenue is that energy consumption for the above identified 131 GSM and GSL customers has gradually declined over the first six months of 2009,

with MH reporting total usage down approximately 40 GW.h, or 35%, in June 2009.

The revenue impact that the economic downturn will have on MH will be significant. Many of MH's costs are, by their nature, 'fixed' (i.e. property, plant and equipment). Recovery of MH's fixed costs from its customers is partially accomplished through the demand charges levied to high consumption customers. So while there may be temporary demand billing relief for some GSL and GSM customers, MH must still attend to its fixed costs.

MH undertakes a detailed and complex Cost of Service Study (COSS) as a method of allocating its costs, as approved by the PUB, among the various classes of customers that the Utility serves. The purpose of the COSS is to determine a fair sharing of the approved costs among the customer classes. The objective for MH is to select the method of allocation that best represents cost causation and the equitable sharing of costs among the customer rate classes. The results of the COSS indicate the degree to which the rate class/subclass revenue recovers allocated costs. Generally, the results of the COSS indicate the GSL class

(excepting the GSL 0-30kV subclass) fully recover allocated costs, whereas the Residential Class under recovers its allocated costs.

The 'energy costs' are the costs associated with the consumption of electricity over a period of time by customers. The 'demand costs' are costs associated with the maximum rate of flow of electricity demanded at one point in time and the maximum size (capacity) of facilities required to serve the demands of the customers.

According to MH's revised 2008 COSS:

Customer Class	Class Revenues (\$M)	Total Allocated Costs (\$M)	April 2, 2009 Rates Demand Revenue (\$M)	Pre-export credit allocated demand costs (\$M)
Residential	433.1	471.6	0	184.9
GSS - ND	92.9	95.7	0	37.3
GSS - D	112.2	108.5	17.7	48.3
GSM	144.2	150.4	67.2	66.8

GSL<30	65.9	77.1	27.1	33.0
GSL 30-100	35.4	34.0	12.8	9.4
GSL>100	<u>164.0</u>	<u>152.4</u>	<u>46.4</u>	<u>29.6</u>
Total GSL	265.3	263.5	86.3	72.0

Assuming equal monthly demand billings of \$5.5M/mo in the year, the GSM's \$66.8M of allocated demand costs are recovered.

For the GSL class, again assuming equal monthly demand billings, MH receives \$7.2M/mo of revenue from demand charges. These calculations can be compared to MH's proposed demand concessions totalling \$100,000/mo for GSM and \$400,000/mo for GSL.

MH suggests that much of the energy not sold to domestic customers during periods of temporary shut down will be available to be sold in the export market – however, the amount of any such offset has not been determined.

Based on publicly available information including National Energy Board data and Surplus Energy Program Orders, it is difficult to foresee MH recovering as much value on the export market for its additional surplus energy as it is foregoing when large domestic customers temporarily shut down or reduce their plant production levels.

As a result of the economic downturn, which has reduced the demand for electricity in export markets and reduced the cost of natural gas fired

electricity generation, short term opportunity electricity export prices (both short term contract and real time markets) appears down over 50% from last year.

Presently, it appears MH has surplus on-peak energy available that is not being sold on the export market at prices equal to or greater than firm export contract prices, and its off-peak sales are at prices below domestic rates. As a result, all of MH's current long-term export contract prices are higher than current opportunity sale prices.

The Board notes that water flows on the Nelson River have exceeded generating station capacity since May 12, 2009, requiring the 'spillage' of water rather than flowing it through the turbines to generate electricity. High river flows are the result of above average runoff in 2009 due to high precipitation levels since the fall of 2008, especially from the Red and Winnipeg River basins. The level of Lake Winnipeg, the controlling reservoir for the Nelson River, rose in response to the high inflows, reaching the maximum level for power production purposes of 715 feet above sea level on May 15, 2009. At this level, MH is required under its Water Power Licence to release the maximum outflow.

As a result of maximum outflows from Lake Winnipeg, combined with local runoff from downstream tributaries and the Churchill River Diversion, the Nelson River peaked at the Kettle generating Station at 225,000 cubic feet per second (cfs) water flow, compared to the generating station capacity of 165,000 cfs. While river flows have since declined somewhat since then, they remain above station capacity, as Lake Winnipeg outflows remain at maximum as required by MH's Licence.

In light of the foregoing, the approximate 40 GW.h per month reduction in energy usage by GSL and GSM customers will, depending on the generating and transmission capability in MH's interconnected system, be either exported or spilled. MH is currently preparing an estimate of the impacts on exports, both retrospectively and on a go forward basis, to be provided to the Board as soon as it is available.

The extent to which the financial impact on MH is mitigated by increased electrical energy exports is an important factor to be quantified for the Board's consideration when MH seeks to finalize this Order.

- (c) the further duration and impact of the current recession on MH's customers.

- (d) the specifics of the financial assistance strategy that, according to MH, the Province has announced for resource-based companies in Northern Manitoba:

The provincial “Financial Assistance Strategy” targeted at companies in Northern Manitoba, as announced in the November 2008 Speech from the Throne, has three main facets: loans and loan guarantees; investment tax credits; and worker training and retention. MH suggests that its proposed concessions compliment the provincial initiatives by assisting customers who are struggling with economic downturn by reducing their operating costs as they reduce production, which supports these businesses so the longer term strategy of the government has an opportunity to be successful.

MH’s proposed concessions are intended to assist these Manitoba-based operations in remaining lowcost producers of products and services. When combined with the productivity improvements made by these companies through, in part, access to loans or loan guarantees or the additional equity encouraged through the provincial investment tax credit, and the increased number of trained and skilled workers, it is expected

that these companies will be in a better position to ramp up production when their market conditions improve.

- (e) consideration of the existence or non-existence of any similar concessions being granted by other Canadian electricity utilities in jurisdictions where Manitoba-made goods and services compete. Presently the Board is not aware of any similar relief program for large energy consumption customers in any other jurisdiction. Indeed, MH has regularly maintained that the rates charged for electricity in Manitoba are among the lowest, if not the lowest, in North America.

MH recognizes that its current proposal is unique and, at least at first glance could be considered at odds with its recent Energy Intensive Industry Rate Applications. However, MH maintains that both the current and the prior EIIR Applications are intended to support domestic industrial customers' viability - albeit the current application is intended to address short-term issues whereas the EIIR addressed long-term issues.

- (f) consideration of the many significant reports that the Board directed MH to file – including the lower-income bill assistance plan as well as the plans for the four communities served by diesel generation.

Additionally, while the Board has accepted that many of MH's GSL and GSM customers have been negatively impacted by the recession, there have also been negative impacts for other customers such as those in the service industry, residential and government related. While perhaps of little comfort now, history has recorded that economic cycles involve both 'heady' periods of prosperity as well as the lows of recessions. (The Board notes that the Bank of Canada recently "declared" the recession to be "over" in Canada.)

While the residential rate structure does not include an explicit demand component, and the Residential customer's unit energy costs have not increased as a result of the recession, there are customers in that class that face financial hardships - perhaps due to being laid off or by having their hours of employment reduced by the very companies to which this Order relates. That said, the Board is aware that MH already has provisions in place for Residential customers who are experiencing difficulty paying their electric bills. (The Board is also awaiting MH's report and/or proposal with respect to a Lower Income Bill Assistance Plan.)

- (g) the specific details, including financial, of all other bill reductions and concessions granted by MH, together with the rationale for such concessions.

- (h) the desirability of the “retroactive” nature of the deferrals being granted back to June of 2009. MH advises that much of Manitoba’s manufacturing and processing industry has been facing recessionary conditions since late 2008, and even with the proposed June 1, 2009 retroactive commencement of the qualifying period, many eligible customers will have already experienced months of operations reductions for which no relief will be provided.

- (i) the submissions of any interested party which are unknown during this *ex parte* proceeding.

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 (Rules). The Board’s Rules may be viewed on the Board’s website, www.pub.gov.mb.ca.

5. IT IS THEREFORE ORDERED THAT:

1. Manitoba Hydro BE AND IS HEREBY AUTHORIZED AND APPROVED to offer and implement a partial bill payment deferral program for qualifying GSL and GSM customers according to the following criteria:
 - (a) The GSL or GSM customer will apply, in writing, to MH on the basis that their operation has been altered by the current economic downturn and that their load factor has deteriorated such that their unit energy costs have substantially increased. The increase in cost per kW.h must be demonstrably due to economic circumstances and not due to other factors such as holiday or maintenance shut downs.
 - (b) MH is to review the customer's request and verify the customer's operation has been negatively affected by the current economic downturn, and calculate the amount, if any, of the energy bill deferral in the following manner for each month in which the deferral is to be applied:

- (i) calculate the customer's normal load factor based on the actual usage during the 24 month period ended August 2008 (or other period due to exceptional circumstances).
 - (ii) calculate unit cost per kW.h during the 24 month period based on normal load factor ("Baseline Normal Unit Costs") at current rates.
 - (iii) determine the unit cost per kW.h in each month of the deferral period based on standard bill calculation.
 - (iv) if the unit cost per kW.h determined in (iii) is at least 10% higher than Baseline Normal Unit Cost, an electricity bill deferral will be provided to reduce unit cost to Baseline Normal Unit Cost plus 10%. The amount of bill deferral will be carried at MH's short-term borrowing rate (that rate recently considered to be in the range of approximately 1.5% (0.5% plus the 1.0% Provincial Debt Guarantee Fee).
- (c) GSL and GSM customers will be eligible for a partial energy bill deferral (as calculated above) during the six-month billing period

from June 2009 to November 30, 2009, though MH may, in its discretion, extend the concession to no later than March 31, 2010. Should MH or its GSL and GSM customers seek to extend the period of energy bill deferrals beyond March 31, 2010, they are to make further application to this Board.

- (d) Any aggrieved GSL or GSM customer can appeal any MH decision related to this deferral program, to this Board.
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- 2) MH shall provide monthly reports on the impacts of this Order to the Board, containing the number of customers that are eligible for the within relief, the number of customers accepting the within relief, as well as the calculation of the energy reductions and demand billings deferred;
 - 3) MH shall advise the Board, by November 15, 2009, as to whether MH will extend the deferral period to March 31, 2010, and, if MH intends to extend the deferral period, MH is to provide the Board with a forecast of: i) the amounts anticipated to be deferred between June 1, 2009 and November 30, 2010; and, (ii) the amounts anticipated to be deferred between December 1, 2009 and March 31, 2010;

4. MH shall seek to finalize, confirm or otherwise vary this interim Order no later than as part of, or concurrent with, its next General Rate Application – which is scheduled to be filed in late 2009, unless otherwise ordered by the Board.

THE PUBLIC UTILITIES BOARD

“GRAHAM F. J. LANE, C.A.”

Chairman

“H.M. SINGH”

Secretary

**Certified a true copy of Order No.
126/09 issued by THE PUBLIC
UTILITIES BOARD**

Secretary