

**MANITOBA**  
**THE PUBLIC UTILITIES BOARD ACT**

**Order No. 18/10**

**February 9, 2010**

Before: Graham Lane, C.A., Chairman  
Robert Mayer, Q.C., Vice-Chair  
Dr. Kathi Avery Kinew, Member

**INTERIM RATES FOR MANITOBA HYDRO**  
**EFFECTIVE APRIL 1, 2010**

## **1.0 Executive Summary**

In this Order, the majority of Public Utilities Board (Board) Members, that heard submissions on January 19, 2010 from Manitoba Hydro (MH) and Interveners, grant Board approval for an average 2.9% interim rate increase across all customers classes (except Area and Roadway Lighting), effective April 1, 2010.

In addition to the majority decision of the Board, which approves an interim rate increase, there is a minority or dissenting decision by a Board Member who was not satisfied that an interim rate adjustment should be made prior to the conclusion of the complete public hearing process.

## **2.0 Background**

On December 1, 2009 MH filed its General Rate Application (GRA) seeking across-the-board 2.9% average rate increases in General Consumer rates effective both April 1, 2010, and also April 1, 2011.

On December 10, 2009 and December 22, 2009, the Board held Pre-hearing Conferences to consider which Interveners should be approved for participation in the GRA public process; whether and how to incorporate a review of MH's risks and risk management into the GRA process; and a timetable for the orderly exchange of evidence leading up to public hearings in mid 2010.

The Board has granted Intervener status to Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors (CAC/MSOS); Manitoba Industrial Power Users Group (MIPUG); Manitoba Keewatinowi Okimakanak, Inc. (MKO) Resources Conservation Manitoba and Time to Respect Earth's Ecosystems (RCM/TREE) and City of Winnipeg (City), (collectively referred to as the "Interveners").

At the Pre-hearing Conferences in December 2009, when various timetables for the orderly exchange of evidence were presented and discussed, it became clear to the Board that there would be no agreement on the timetable that would facilitate April 1, 2010 rate adjustments, should any be so ordered by the Board.

The Board therefore accepted the recommendation by RCM/TREE, and supported by MH, that the rate increase request for April 1, 2010 be considered on an interim basis, pending completion of the GRA process. The Board held an Interim Rate Consideration

Hearing January 19, 2010 to hear submissions from MH and Interveners as to any interim rate adjustments that should be made effective April 1, 2010, pending completion of the GRA hearing process.

It now appears to the Board that the oral evidentiary public hearing will not begin before June 1, 2010, to consider MH's risks and risk management; revenue requirements; cost of service study and rate design. Conclusion of the hearings is not anticipated until the fall of 2010.

Prior to, and related to, the Interim Rate Consideration Hearing the Board reviewed correspondence from MH, MIPUG, CAC/MSOS, City, and RCM/TREE. At the January 19, 2010 Interim Rate Consideration Hearing, the Board heard from MH and also from all Interveners, except MKO. Cogent submissions were advanced on each side of the issue of whether or not to grant an interim rate increase.

### **3.0 Board Findings by Majority of Board Members**

All Board Members at the Interim Rate Consideration Hearing find that the Board has the jurisdiction to approve interim rate adjustments for MH. There is however, no unanimity among the Board Members as to whether the Board ought to exercise such jurisdiction in the present MH case.

While there is not unanimity among the Board Members as to the final decision, all Members fully respect the ability of a Board Member to disagree with the majority decision and provide a dissenting minority opinion. The public interest is best protected by having all Board Members contribute their independent deliberations, even if a unanimous position is not achieved.

Having considered all the filings and submissions, the majority of the Board's Hearing Panel finds that MH's written GRA filings (5 volumes) and submissions provide *prima facie* justification and support for an interim 2.9% average rate increase, across all rate classes, for MH's customers, effective April 1, 2010.

MH's forecast net income for fiscal 2010 of \$121 Million, from electricity operations, is a drop of \$167 Million from the previous year. Such a dramatic reduction in net income, when water conditions are above average, is due to decreases in both domestic and export sales revenues. While reduced domestic demand has made more electricity available for export, the increase in export volume has been more than offset by lower export prices for MH's short term and spot export market sales.

While the decreased demand for electricity, both domestically and internationally, may be as a result of economic conditions, it appears MH's projected expenses are "relatively stable" between the last two Integrated Financial Forecasts filed with the Board.

Until the GRA unfolds further, the majority of the Board sees MH's current GRA filings in a similar light to its prior GRA filing – that is, replete with issues and concerns with the numerous risk factors set out in prior Orders (including drought protection; IFRS; illiquid equity; extensive capital plans and capitalizations; export prices; to mention but a few).

The Board appreciates that MH's revenues and expenses have not yet been fully tested, and that the GRA process, now underway, will afford the Board and Interveners with the full opportunity to do so.

However, the timing of the GRA process will be extended from the usual duration of past experience, primarily due to the Board's review of MH's risk and risk management issues, as indicated in a number of Orders, including Orders 32/09 and 116/08.

MH has proposed hearing schedules that would commence one month, and also two months, earlier than now scheduled. However, to allow the Board and Interveners a full opportunity to review MH's risk issues in conjunction with the GRA issues, additional time is required by all Parties and their consultants: that leads to a June 1, 2010 public hearing.

MH ought not to be penalized financially, for not being able to present and defend its rate increase requests in a timely manner, when the cause of delay was not foreseen or planned by MH. Similarly, the Board does not see the extended timelines required by Interveners to be an attempt to deliberately delay what might be proven to be 'just and reasonable rate increases'. The extended timeline is to ensure all issues will be properly explored, thereby protecting the public interest in the long term.

The Board envisions most of the hearing days in June 2010 being devoted to issues related to MH's risk and risk management, with any surplus hearing days being used for

revenue requirement issues. The Board considers it highly likely that public hearings will carry over to the fall of 2010, thereby delaying a final decision more than six months from when MH requested the effective date of any rate adjustments.

Without having the benefit of the full GRA, the Board does not accept MH's premise that ratepayers may well be better off with two "relatively modest increases a year apart, rather than one in the late fall of 2010, possibly greater than 2.9%, followed quickly by another 2.9% (in early 2011)".

However, MH's submission is illustrative of the point that if the Board is convinced of MH's revenue requirements following the full GRA, the rate increase required to recover the additional revenues would mathematically need to be higher than 2.9% to recover the additional revenues in the remaining months of MH's fiscal year 2010/11. The Board has previously stated its disapproval of "retroactive" rates or rate riders.

By this interim rate approval, the Board is protecting the short-term financial status of MH with the maintenance of adequate retained earnings. If, after hearing all of the evidence and submissions in the GRA, the Board concludes that the facts do not justify the imposition of a rate increase as sought by MH, the Board will adjust the rates in the final GRA Order. Any amount collected found to be in excess of the rate in the final



Order may be refunded/credited back to domestic customers, this to ensure consumers are protected in the longer term.

This interim award by the majority of the Board does not bind the Board, in any way, in making its final GRA rulings and directives. MH still bears the onus in its GRA to show that any such interim rate increase, and overall requested rate increases are just and reasonable.

The Board expects all Interveners to collectively explore and test fully all rate increase issues in the GRA, together with all cost of service and rate design issues. The interim rate adjustment is to have no prejudicial affect on the ability of Interveners to argue, at the full GRA hearing, that a rate increase and/or rate design, quite different from that awarded, ought to be approved by the Board in its final rate Order(s).

As to issues of rate design related to this interim rate for residential customers, MH is directed to apply this average 2.9% rate increase to the Energy Charge portion of rates, to increase the inversion (or incline) on the second block/tier rather than reduce basic monthly charges as proposed.

There has been no rate increase to the Area and Roadway (street) Lighting (ARL) class since April 1, 2005. Until the Board gains further understanding of the costs and cost of service issues for this class, there will be no rate increases - interim or otherwise.

Other than the above noted exceptions, on an interim basis only, the majority of the Board is prepared to approve the other rate schedules proposed by MH. New interim rate schedules including those for residential customers and ARL, are to be filed by MH, for Board approval.

#### **4.0 Dissenting/Minority Decision and Findings**

Having read the majority decision and findings by my fellow Board Members, and with respect to their decisions, I cannot support an interim rate increase to MH, in any amount, at this time.

While I also find that the Board has jurisdiction to award interim rates, I would decline to approve an interim rate increase for MH in any amount, at this time.

I accept the timeline for the completion of this GRA will be extended past usual guidelines. However, it is the obligation of the Applicant (in this case MH) to prepare its

filing and make its Application in a timely way that anticipates and respects a timetable that will allow for a detailed review of all GRA issues.

As has been demonstrated by the Interveners, MH has repeatedly missed filing deadlines set in past Board Orders, and has not yet placed its full GRA filing before the Board, all of which is a major cause for the delays that now are inherent in the GRA process. MH is the author of its own misfortunes with respects to the timetable that now exists.

While on a prima facie basis, I can accept that MH's net income will be significantly lower than initially forecasted for 2010, I do not see that as justification for an interim award effective April 1, 2010.

This Board has repeatedly indicated that the financial health of the Utility is a factor to be considered in the Board's deliberations as to setting rates that are in the public interest. To the credit of all Interveners, they too value and support rates to sustain a financially solid Utility. Though it has been represented that MH has recently achieved a level of financial strength that the Board has recommended, the claim is yet to be tested during the GRA.

The interest of consumers is another factor that the Board must take into consideration in assessing the public interest. The economic conditions of the past year and now have resulted in trying times and challenges for consumers. That weighs heavier for me than bolstering the revenues of an already reportedly profitable Utility. And, the Board awaits MH's report on viable options that address lower income consumers and their needs.

While financial challenges lie ahead for MH, with its ambitious capital plans, those challenges and issues need to be reviewed taking into account the long term and such a review has yet to be held. Yet, and despite prior Board Directives, MH has not pursued the required review of its capital plans and export intentions, all of which impact domestic rates.

I share the concerns of the majority of my Panel Members with respect to the risks facing MH. Rather than making an interim award to protect the short term financial strength of the Utility, I would prefer to hear all the GRA evidence before reaching a final decision, even if that final decision is rendered late in 2010. In the interim, it would be incumbent on MH to find through internal savings the revenue that it would forgo as a result of no interim rate increases at this time.

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 at [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca).

**5.0 IT IS THEREFORE ORDERED THAT:**

1. MH's request for a 2.9% average rate increase, for all domestic customer classes (except Area and Roadway Lighting) served by MH, effective April 1, 2010, BE AND IS HEREBY APPROVED ON AN INTERIM BASIS;
2. MH to refile new interim rate tariffs, for Board approval, consistent with the directives of the majority of the Board, as detailed in this Order; and
3. This Order shall remain interim until confirmed, varied or otherwise dealt with by further Order of the Board.

THE PUBLIC UTILITIES BOARD

FOR THE MAJORITY:

"GRAHAM LANE, CA"  
Chairman

"ROBERT MAYER, QC"  
Vice-Chair

FOR THE MINORITY:

"DR. KATHI AVERY KINEW"  
Member

"GRAHAM LANE, CA"  
Chairman

"KRISTINE SHIELDS"  
Acting Secretary

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Acting Secretary