Public Utilities Board — Régie des services publics

Order No. 35/25

MANITOBA HYDRO

INTERIM *EX PARTE* ORDER APPROVING THE REVALUATION OF THE JOINT KEEYASK DEVELOPMENT AGREEMENT (JKDA) PREFERRED DISTRIBUTIONS DEFERRAL ACCOUNT

March 7, 2025

BEFORE: Robert Gabor, K.C., Board Chair
Marilyn Kapitany, B.Sc. (Hon.), M.Sc., Vice Chair
Carol Bellringer, FCPA, FCA, Member
Jim Hrichishen, B.A. (Hon.), M.A., Member
Kurt Simonsen, B.Sc., M.N.R.M., Member

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1.0 EXECUTIVE SUMMARY

This order, made on an interim *ex parte* basis, authorizes Manitoba Hydro to revalue the Joint Keeyask Development Agreement (JKDA) Preferred Distributions Deferral Account approved in Order 60/24. The deferral account relates to payments to First Nations that Manitoba Hydro is required to make under the agreement.

The Keeyask Generating Station was developed under a "shared equity" model of Indigenous participation, using a limited partnership structure in which four First Nations collectively known as the Keeyask Cree Nations hold a preferred equity stake. Under the terms of the JKDA, Manitoba Hydro is required to make annual preferred distribution payments to the Keeyask Cree Nations while the agreement remains in force. International Financial Reporting Standards ("IFRS") require the net present value of the payment stream to be recognized in the current fiscal year unless the regulator approves a deferral account. The Public Utilities Board ("Board") approved such an account in Order 60/24.

Manitoba Hydro has applied to the Board for interim *ex parte* approval to revalue the balance in the JKDA Preferred Distributions Deferral Account for the 2024/25 fiscal year in accordance with IFRS requirements. The Board is approving the request and intends to review the deferral account and its amortization in Manitoba Hydro's upcoming General Rate Application.

2.0 BACKGROUND

2.1 The Joint Keeyask Development Agreement

The Keeyask Generating Station ("Keeyask") is Manitoba Hydro's most recently constructed hydroelectric generating station. It has a nameplate capacity of 695 MW and cost approximately $8.2 billion. Manitoba Hydro developed Keeyask through a shared equity model with partial First Nations ownership. This involved a limited partnership structure in which the following entities, collectively known as the "Keeyask Cree Nations", are limited partners in addition to Manitoba Hydro:

- Tataskweyak Cree Nation and War Lake First Nation operating as Cree Nation Partners;
- York Factory First Nation; and
- Fox Lake Cree Nation.

The Joint Keeyask Development Agreement ("JKDA") was signed on May 29, 2009. On July 31, 2023, the signatories executed a restated and amended agreement as a result of the erosion of the anticipated long-term economic benefits to the Keeyask Cree Nations and a subsequent renegotiation of the terms of the agreement.

The JKDA, in both its original and its restated and amended form, enabled the Keeyask Cree Nations to elect either a common equity stake or a preferred equity stake following final closing in 2023. All four entities have elected a preferred equity stake.

Under the terms of the agreement, Manitoba Hydro is required to pay an annual preferred share distribution to the Keeyask Cree Nations. The amount varies from year to year and consists of a minimum guaranteed amount as well as a variable portion. In the most recent general rate application ("GRA"), Manitoba Hydro advised that for rate-setting purposes, it includes the preferred share distributions to the Keeyask Cree Nations in the "Water Rentals and Assessments" expense category of its integrated financial forecast.

2.2 The Joint Keeyask Development Agreement Deferral Account

On May 16, 2024, the Board issued Order 60/24. That order approved, on an interim *ex parte* basis, the establishment of a regulatory deferral account for the net present value of the JKDA preferred distribution payment stream. Manitoba Hydro applied for approval of such an account after it was advised by its auditor that, under IFRS 32 *Financial Instruments: Presentation*, the net present value of this crystallized payment obligation would have to be recognized during the 2023/24 fiscal year unless the Board approved a regulatory deferral account.

Under Directive 1 of the Order, the Board limited the amount to be included in the deferral account to the amount of the liability reflected on Manitoba Hydro's 2023/24 financial statements. Directive 2 required Manitoba Hydro to include in its next GRA the amount of the deferral and how it is determined, confirmation of whether Manitoba Hydro seeks final approval of the established deferral, and the proposed amortization period.

2.3 Need to Revalue the Deferral Account

On February 27, 2025, Manitoba Hydro wrote to the Board to request interim *ex parte* approval to adjust the JKDA Preferred Distributions Deferral Account to include any revaluation adjustment for the 2024/25 fiscal year.

According to Manitoba Hydro, under IFRS 9 *Financial Instruments*, the utility is required to revalue the liability to account for the time value of money and to reflect changes in expected cash flow while maintaining the existing interest rate. The preferred distribution payment stream can fluctuate due to changes in projected domestic rate increases, projected export prices, and the operating costs of the Keeyask Generating Station, as these factors influence the calculation of the preferred distributions based on the preferred distribution formula outlined in the amended JKDA. The carrying amount of the liability is adjusted prospectively to reflect the revised expected cash flows, with any resulting revaluation differences recognized immediately in profit or loss in accordance with IFRS accounting guidance.

Manitoba Hydro anticipates the revaluation of the obligation for fiscal 2024/25 to range between $20 million and $45 million, subject to final planning assumptions. Manitoba Hydro emphasizes that the request is consistent with the Board's findings in Order 60/24 that recording the difference in valuation of the present value of the preferred distributions "is consistent with good regulatory practices and the principle of intergenerational equity".

3.0 BOARD FINDINGS

The Board approves Manitoba Hydro's request on an interim *ex parte* basis.

Section 24(2) of the Board's *Rules of Practice and Procedure* allows the Board to determine an application on an *ex parte* basis where there is urgency or where such an order is justified for purposes of efficiency, if the applicant has provided full disclosure as to why the application should proceed *ex parte*. The Board finds that this threshold has been met because a ruling is required before Manitoba Hydro's fiscal year end so that it can comply with its reporting requirements, there are no immediate rate implications of the decision, and interveners will have an opportunity to explore the issue further at the next general rate application.

With the threshold test having been met, the Board is prepared to approve the adjustment of the JKDA Preferred Distributions Deferral Account to include any revaluation adjustment for the 2024/25 fiscal year on an interim *ex parte* basis. In the Board's view, this request is consistent with the Board's ruling in Order 60/24. The revaluation is consistent with good regulatory practices and the principle of intergenerational equity. As mentioned in Order 60/24, the JKDA requires Manitoba Hydro to make the preferred distributions on an annual basis. Notionally, those distributions are made out of the revenues generated by Keeyask, which reflects the spirit of the "shared equity" model of project development. At the 2023/24 and 2024/25 GRA, Manitoba Hydro assumed that the annual distributions would form part of the utility's revenue requirement in each year and provided evidence as to the estimated amounts of those distributions. It is just and reasonable for ratepayers to have to pay for such distributions in the year in which they are made, and a deferral account is the most practical manner of continuing such treatment. The revaluation adjustment for the 2024/25 fiscal year is consistent with these principles.

As discussed in Order 60/24, the Board notes that the actual amount to be included in the JKDA Preferred Distributions Deferral Account is subject to a number of assumptions, including the applicable discount rate, the length of the on-going payment obligation, and the annual amount to be paid in future years. These issues require further deliberation at the next GRA, as does the appropriate amortization period over which the account is recovered through rates. For the purposes of the interim *ex parte* approval given in this order, the Board authorizes Manitoba Hydro to revalue the amount in the deferral account to equal the liability recorded on account of the future preferred distribution payment stream under the JKDA for the 2024/25 fiscal year. The balance in the account is not to be amortized until the Board makes a ruling on that issue in the next GRA.

IT IS THEREFORE ORDERED THAT:

1. Manitoba Hydro is authorized, on an interim *ex parte* basis, to revalue the Joint Keeyask Development Agreement (JKDA) Preferred Distributions Deferral Account. The revalued amount is to be limited to the amount of the liability reflected on Manitoba Hydro's 2024/25 financial statements on account of the net present value of the preferred distributions to be made under the Joint Keeyask Development Agreement.

2. Directive 2 of Order 60/24 remains in effect.

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, K.C."
Board Chair

"Rachel McMillin, B.Sc., MPA"
Associate Secretary

Certified a true copy of Order No. 35/25
issued by The Public Utilities Board

R McMillin
Associate Secretary