

MANITOBA) **Order No. 8/08**
)
THE PUBLIC UTILITIES BOARD ACT) **February 5, 2008**

BEFORE: Graham Lane, CA, Chairman
Robert Mayer, QC, Vice-Chair
Susan Proven, P.H.Ec., Member

**MOTION BY MANITOBA INDUSTRIAL POWER USERS
GROUP – TO SEVER THE ISSUE OF THE PROPOSED
NEW INDUSTRIAL RATE FROM MANITOBA HYDRO’S
2008/09 GENERAL RATE APPLICATION**

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1.0 Introduction

By this Order, the Public Utilities Board (Board) accepts, but only in part, a motion brought before it on January 28, 2008 by Manitoba Industrial Power Users Group (MIPUG). MIPUG sought a separate Board proceeding to consider Manitoba Hydro's (MH) proposed rate and exemption criteria for new or expanded General Service Large load (GSL or large industry), rather than dealing with the matter in the upcoming hearing of MH's General Rate Application (GRA).

In MH's GRA, the Utility, among other matters, is applying to the Board for approval of a new rate schedule for General Service Large customers that would limit the application of heritage energy rates to specific annual baseline energy quantities. Beyond the specific baseline quantities, higher rates, based on marginal cost to serve the customer, would apply – unless all or part of the additional load was exempt from the new higher rate.

The proposed rate for new or expanding industry is MH's way of addressing a concern identified in Board Order 117/06, that of large, energy intensive industry being attracted to Manitoba on a scale large enough to threaten the Utility's revenue position. By way of illustration, MH indicates long-term sales of energy to such a new energy intensive customer would typically be expected to yield the Utility approximately 3.2 cents per kilowatt hour (kW.h), but the energy to serve such customers, at least in the near term, would necessarily be diverted from profitable export markets, which are estimated to yield approximately 5.39 cents per kW.h.

On a large scale, new energy intensive loads of 100 megawatts (MW) would be expected to cause a reduction of up to \$18 Million per year in MH's revenue from the level that would be forecast to develop in the absence of that new energy intensive load; to replace that revenue would require a rate increase of approximately 1.8% applied to all MH's domestic customers.

In Order 117/06, the Board requested MH provide a report and recommendations with respect to addressing the concern and risk presented by a subclass of customers with large-scale new energy intensive loads, and also provide rate design recommendations.

With respect to MIPUG's motion, the Board will not completely sever, for a separate proceeding, consideration of all of MH's proposal for a new GSL rate for new or expanding industry. Rather, and specifically, the Board will consider at the GRA whether MH's proposal is the appropriate solution to address the risk identified. The Board will also consider, the definition of the subclass to which such a rate will apply, and will also consider the calculation of baseline energy to which "heritage" rates will apply. While MH's proposals will be considered by the Board at the GRA hearing to commence March 3, 2008, the Board will not reach a conclusion in the proceeding on the basis for granting an exemption from the application of the higher rate.

While the Board is prepared to consider alternate proposals, if any, from interveners to address the concern and risk identified by MH at the GRA proceeding, the Board will not reach a conclusion on the exemption criteria. With respect to the exemption criteria, alternate proposals may also be raised by interveners at the separate proceeding to be established by the Board, and at that separate proceeding, the Board will proceed on a *de novo* basis with respect to the exemption issue.

By severing only the exemption issue related to MH's proposed new energy intensive loads, the Board will be placed in a better position to better understand, through the GRA process, the scope and magnitude of the concern raised by MH, which concern the Board shared in Order 117/06.

MIPUG's motion was not a delay tactic, but rather an effort to ensure the record of the Board's proceeding was comprehensive. However, because a final decision on all the particulars related to MH's proposed rate for new and expanding industry is now being rescheduled beyond the GRA timelines, it is only fair to MH, and to new or expanding industry, to serve notice through this Order, that should a new rate, as sought by MH, be

subsequently finalized and approved by the Board, it would attach to any qualifying new or expanded load that occurs on or after the date of the GRA Order by the Board.

New and/or expanding industry should be aware of that possibility, now.

MIPUG's motion was heard by the Board in a special session at the Board's Winnipeg office, which was also attended by MH and the registered interveners: the Consumers Association of Canada, Manitoba Society of Seniors and Winnipeg Harvest (Coalition); Manitoba Keewatinook Ininew Okimowin (MKO); Resource Conservation Manitoba/Time to Respect Earth's Ecosystems (RCM/TREE); and TransCanada Keystone Pipeline GP Ltd. (Keystone). The City of Winnipeg advised the Board that it took no position on MIPUG's motion.

2.0 Background

Preamble

MH has filed a GRA with the Board, and the application is to be heard in a public hearing to begin March 3, 2008. The GRA will, among other matters, consider a proposal by MH to establish a new large industry subclass rate, with the rate to approximate the average rate MH expects to yield from export sales of electricity. The proposed new rate schedule would limit the availability of existing "heritage" rates to specific baseline energy quantities per year. Beyond the specific baselines, higher rates, based on "marginal cost" would apply – unless that customer qualified for an exemption. MH also proposed *exemption criteria*, which, if met, would exempt a new or expanding firm from having new load being assigned to the proposed new higher rate classification.

The proposal from MH, which arises from a Board directive in Order 117/06, raises the issue of charging "marginal cost rates" rather than a rate based on "embedded costs". On the face of the new rate request, issues to be determined include:

- (i) whether a marginal cost rate is the correct rate design to address the issue, and if it is-then;
- (ii) establishing the baseline, and also;
- (iii) establishing the exemption criteria.

In Order 117/06, while the Board expressly approved neither a new rate nor a new rate subclass, the Board did support MH's concern about energy intensive industries.

In Order 117/06, the Board stated:

“MH is to consider establishing a new energy intensive industrial class, relative to new energy loads; application to customers will be defined by MH criteria yet to be developed and accepted by the Board.”

And,

“The decision potentially has large economic consequences, and with this Board direction, MH will be in a position to determine what additional price options are available.”

And,

“Considerable discussion ensued at the hearing concerning how new large industry would be evaluated from a public interest perspective. One option advanced involved comparing the timeframe of energy requirements of the new industry with the employment prospects that would arise from it. The Board is not comfortable with attempting to delineate what level of employment, time of use, or other factors would outweigh considerations related to high on-peak energy demand at less than marginal pricing. Accordingly, the Board expects that MH will consult broadly and in particular with government and industry, prior to advancing a proposal.”

And, also by way of Order 117/06, the Board suggested MH file with the Board:

“... a proposal to establish a new class to hold new industrial customers with anticipated high annual energy consumption and demand requirements, and to provide criteria pursuant to which members of the class would be selected. The proposal should also include a proposal for a rate for this new class representative of marginal costs, reflective of ‘time-of-use’ i.e. average unit sale prices for exports.”

Finally, the Board directed MH to file:

“-a report and recommendations with respect to establishing a new energy-intensive industry class, including criteria developed after broad consultation with industry and government, and rate design recommendations.”

Pursuant to underlying legislation and the Board’s Rules of Practice and Procedure, the Board controls its own process. In the current case, an Intervener, MIPUG, brought a motion to sever an important matter from an upcoming GRA public hearing. MIPUG’s motion was supported by the other interveners and opposed by MH. In such cases, as with this one, the Board weighs the competing requests and the underlying reasons for the requests.

Requests based on claims of being truly prejudiced in presenting one’s case draw the most attention, analysis and potential relief from the Board. If the Board were to find actual prejudice to MIPUG and other Parties, not just alleged prejudice, the Board would then consider remedying the prejudice with the granting of additional time to the prejudiced party(s) by severing, for a later hearing, all or part of the proposed rate for new or expanded load from the upcoming GRA.

MIPUG’s Motion

MIPUG sought to sever the portion of the industrial rate that deals with new and expanded loads from the March GRA proceeding, on the following basis:

- a) MH failed to adhere to direction provided MH by Board Order 117/06, direction that required MH to conduct broad consultations with industry and government prior to bringing forward an application for a new large industry rate classification;
- b) In the absence of specific public policy established by government, the Board may lack the jurisdiction to approve MH's proposal to establish a special rate for large new industrial load; and
- c) MH's proposal is inadequately supported by analyses, including the implications of the proposal's approval for both industry and the Province.

MIPUG suggested that MH's proposal with respect to large industry represents a fundamental change to rate setting policy in Manitoba, and is associated with material implications.

MIPUG noted that the exemption clause proposal represents an assessment of industrial economic impact and/or economic benefit to Manitoba, a matter that has never been previously argued before the Board and, from MIPUG's perspective, one beyond the ordinary jurisdiction of the Board. Furthermore, MIPUG cited an absence of supporting evidence, such as marginal cost analyses, outside experts' reports, and pricing studies. MIPUG also noted that MH had not provided an analysis of the risks associated with its proposal, risks MIPUG submitted represented "potential pitfalls in terms of the impact on industry and development in Manitoba".

MIPUG noted that MH's proposal represents the establishment of baseline energy quota restrictions on existing customers, and suggested that this represents rate discrimination, in that MH has proposed: "... a market base rate for only one subclass of customers, while all others continue to get cost base rates".

In further support of its argument, MIPUG noted MH's forecasts of new revenues

expected to arise from the proposed rate for new or expanding industry to be \$31 million over the next two years, \$60 million over the next ten years and a cumulative \$460 million over the thirteen-year period of MH integrated financial forecast.

MIPUG suggested that MH's proposed new industrial rate could "... discourage one to two terawatt hours of load growth ... equating to roughly two Manitoba-based operations (of) the size of INCO ... lost to the Province in favour of exports".

MIPUG suggested that MH's consultations, which were held prior to its proposal to the Board, were very deficient, and that the consultations with industry amounted to: "... essentially one-sided presentations by the Utility over a half-day sessions, which informed select groups of what ... Manitoba Hydro wanted to do for a new industrial rate".

MIPUG recommended that the Board remove MH's proposal with respect to with new and expanded electricity loads from consideration at the upcoming GRA, and proceed with the rest of the GRA in the context of "reviewing rates" rather than considering a "whole" new proposal requiring additional research and consultation. The other interveners supported MIPUG's recommendation, and called for further consultation and research prior to dealing with the issue.

On the issue of the Board's jurisdiction, MIPUG submitted that exemption criteria should be established, not by the Board, but by a public policy enunciated by the government, because, as MIPUG submitted, the proposed criteria "... hinges on a measure of economic benefit to the Province of Manitoba", and MIPUG claimed that setting public policy represented "new territory before this Board".

MIPUG suggested that the Board seek a reference to the Court of Appeal, bringing an application under Section 58.4 of *The Public Utilities Board Act* with respect to that issue, and opined that deferral of the new rate issue to a special proceeding "... would allow MH to (conduct) meaningful and appropriate consultation, given the magnitude of

this issue, with stakeholders (and) with the province”. MIPUG also recommended that the Board provide MH with instructions to guide MH further consultations and research.

MIPUG held that the Board “... should not be put in a position where it's asked to approve a rate in a policy vacuum”, and opined that the Board “ ... (needs) to hear from our policymakers, from our elected officials, who are accountable to the public for developing policy and (should want) to hear what society has to say about the development of a new industrial rate”. MIPUG suggested the Board’s credibility would be at risk in the absence of “(conducting) a proper review” of MH’s new rate proposal.

Citing a Nova Scotia Power case, where the Nova Scotia regulator was asked to approve a rate assistance program for low-income consumers, MIPUG noted that the regulator “... declined to do so on the basis that its constituting legislation required that rates be charged equally for persons in substantially similar circumstances and conditions in respective of service”. MIPUG acknowledged that Nova Scotia’s enabling legislation for its regulator is different from Manitoba’s, though considered the following quote from the Nova Scotia’s Court’s decision quoting the Nova Scotia regulator relevant:

"The Board's duty is to follow public policy decisions made by legislature and expressed in statutes. The Board does not have jurisdiction to establish public policy. That is the role of elected officials who are accountable to the public for this function."

MIPUG concluded that the Board and interveners had been prejudiced due to the “inadequacy” of MH’s the filing, that inadequacy related not only to what was filed but the lateness of the filings, submitting MH’s filing with the Board was inadequate given the “magnitude of issues”.

MKO, RCM/TREE and the Coalition all, as previously indicated, supported MIPUG’s motion to sever the new industrial rate proposal from the upcoming GRA, noting that they had not been consulted by MH, though the Board, by Order 117/06, had asked MH to consult widely on the issues.

3.0 Discussion

In determining whether to include or exclude the proposed new LGS rate and exemption criteria in the GRA, or to sever the issues or a segment of the case from the GRA for subsequent consideration in a separate proceeding, the Board considered and reflected on a number of factors and the evidence before it.

The following section provides an overview of the areas covered by the Board's consideration in determining whether to consider MH's proposed new industrial rate as part of the GRA, or alternatively, to sever it to be dealt with in a separate proceeding to follow the GRA.

Financial Impacts

GRA

If the Board were to consider the proposed new rate within the GRA hearing, the Board would have all rate-related financial issues before it prior to rendering a decision on the GRA. MH is a large, complex and important operation, and a thorough understanding of all salient elements of its financial position and prospects are important to the Board making proper determinations as to the Utility's rates.

Separate Proceeding

If the Board were to breakout the proposed new rate from the GRA, the GRA proceeding would be affected, as all rate and resulting revenue issues would not be included in one proceeding.

The 2.9% "across the board" rate increase sought by MH for all classes, (except only for a proposed 1% rate increase for the Area and Roadway Lighting customer class), was initially forecast by MH to raise \$31 Million of additional revenues for the Utility for the 2008/09 fiscal year. Within the overall package, GSL rates are proposed to go up 2.9%, the increase forecast to yield from those customers, additional revenue of \$4.76 million, independent of the financial implications associated with the proposed new rate for

energy intensive industry. With respect to the proposed new rate, revenues generated from the adoption of the proposal would be incremental to the 2.9% overall revenue increase sought in the GRA.

That said, from a review of the evidence, the Board is of the view that there may not be any financial impact in 2007/08 on MH if the new rate issue was to be considered in a separate proceeding. The Board understands that the revenue forecast contained in MH's filings for the GRA employed the export market as a proxy for the proposed new revenues. Thus, with an assumption that if neither firms nor load were placed in the new rate subclass in fiscal 2007/08, and neither new firms nor new material load developed, the available energy would be sold on the export market, with the projection of sales related thereto being \$4.2M for fiscal 2007/08, as per the current MH forecast.

4.0 Significance of New Subclass and/or Rate

GRA:

MH submitted that an additional hearing, which would involve additional regulatory costs as well as time delays in the Board reaching a conclusion on the matter, would be avoided if the issues were considered in the GRA, as filed by the Utility.

The Board has no doubt that having a separate hearing for the issue would involve both regulatory costs and, likely, delays in reaching a final decision, and that the delays could impact MH's revenues if major additional GSL load was to be added prior the determination. The Board also accepts that industry prefers certainty, and the sooner "certainty" is available, the better for industry planning.

Separate Proceeding:

MIPUG and Keystone forecast the additional annual impact of a new rate for new or expanded loads, as proposed by MH, at \$12.2 million, equating the significance as representing 30% of the total additional revenues sought in the GRA.

MIPUG considered the additional revenue expected from the new rate would be in addition to the GRA's proposed overall 2.9% increase, and submitted the magnitude of the additional costs to industrial customers as also being supportive factors for the Board concluding a separate process is required.

5.0 Has Manitoba Hydro done all that was required of the Utility?

GRA:

MH suggested that the Utility has done all that was required of it by the Board, that though it consulted as required in Order 117/06, it was unable to reach a consensus with those industry parties it consulted with.

In all GRA proceedings, the onus of proof falls to MH, and if the proposed new rate and rate class was dealt with at the GRA, and MH did not provide enough evidence to convince the Board that its consultation efforts had been adequate, it would risk its application for a new rate and subclass failing; even with this risk, MH indicated a desire to proceed.

Separate Proceeding:

MIPUG and the other interveners claimed MH had not consulted as broadly as required by Order 117/06, and claimed that government has not "been at the discussion table".

MIPUG provided a recommended Minimum Filing Requirements schedule, that it proposed MH be obliged to meet before the issues are heard, preferably in a separate proceeding. MH, by way of a letter of January 30, 2008, reported that it has complied with most of the suggested steps, if such steps were to be required by the Board.

MIPUG and RCM/TREE provided the Board with examples of other consultative processes, followed in other jurisdictions, for the Board to consider.

MIPUG also noted that MH has not filed a Marginal Cost Study, on which new marginal cost rates should be based, and that such a study should be required for filing in advance of a separate proceeding.

6.0 Procedural Prejudice by Manitoba Hydro?

GRA:

MH acknowledged that some of its filings with respect to its new rate and subclass were late; in particular, MH did not file the proposed exemption criteria until December 17, 2008, that after the deadline for second round Information Requests (IRs) had passed.

As well, MH only recently filed with the Board its 16-page 'Discussion Paper', a paper which formed a part of its consultation process with industry.

Separate Proceeding:

Intervenors alleged varying degrees of non-compliance from MH, as both the exemption criteria and the discussion paper were, as admitted by MH, filed late.

Given a separate proceeding, the intervenors would seek additional time to pose questions on the late evidence, along with other questions, having claimed that they are entitled to know the case being put forward by MH.

Intervenors also request the opportunity to provide evidence to the Board on the issues raised by the new rate proposal that they had expected MH to address, but which they submitted MH had not addressed. Additional time was requested to provide such evidence.

7.0 Procedural Fairness to Interveners?

GRA:

MH noted that interveners have known since August 1, 2007 that MH was seeking a new industrial rate for GSL, and that the interveners had the opportunity to be ready to file evidence with the Board by February 1, 2008, ahead of the GRA hearing.

As well, Order 117/06 was issued on August 2, 2006; comments and directions from that Order bear directly on the subject of MIPUG's motion and are reported herein.

Separate Proceeding:

MIPUG advised that it was expecting considerably more information from MH in support of the Utility's case, and only after receiving the exemption criteria on December 17, 2007 did it realize MH was not accepting some of its suggestions, which were made during MH's consultations.

Accordingly, MIPUG advised that it wanted to call evidence on "economic benefits", and it expects the Board to require new evidence to determine whether "...new GSL loads or load expansions provide sufficient provincial economic benefit to merit exemption" from the new rate. MIPUG advised it has retained one expert, who is unavailable until July 2008, to testify on this topic, and that another expert is being sought but has yet to be retained.

Coalition supported MIPUG's request for additional time for a separate process, on the basis that the "record is light" and more of an evidentiary base is warranted for such an important issue.

Keystone also wanted the issue severed and held over to a separate proceeding so that it could engage experts on the issues of Board jurisdiction, unduly discriminatory rates, and

develop alternative rate designs to accomplish various MH goals “(that would) not (be) at the expense of only a handful of customers”. Keystone also advised that it needed more time to be in a position to adequately participate in the review of MH’s proposal.

MKO supported severance of the issue and a separate proceeding, and advised that it seeks more time for consultation between MH and First Nations, as well as towards obtaining the position of the Crown. RCM/TREE also supported severance of the issue and a separate proceeding, to allow for procedural issues to be addressed, including the undertaking of MH consultations with RCM/TREE.

8.0 Is a Court of Appeal Reference Needed?

GRA:

Opposed to MIPUG’s request that the Board seek a Court of Appeal reference as to its jurisdiction, MH submitted no reference to the Court is required and that the Board has the necessary jurisdiction to deal with the GRA.

Separate Proceeding:

MIPUG and Coalition suggested a Court of Appeal reference to settle in advance whether the Board can approve a policy that determines whether a certain industry provides sufficient economic benefits to Manitoba. MKO observed that the government could direct the Board to make an inquiry into the issue, and report back to government.

9.0 Credibility of PUB and PUB Process?

GRA:

MH says the process should continue, and that the Board can adjust the process to address concerns with respect to certain matters, as and if needed.

Separate Proceeding:

MIPUG and Coalition raised a concern about the credibility of the Board and its process if accommodations were not to be made to allow interveners extra time to call evidence deemed by the interveners to be required.

10.0 Options

From consideration of the above issues, there appear to be three viable options:

Option #1 - GRA Continues as Planned:

Continuing the GRA as planned was requested by MH, though it can be argued that MH has not given full and timely disclosure of all information, with certain material filed late in the process.

Intervenors have criticized MH's actions, particularly lack of consultation with Government, RCM/TREE and First Nations; however, MH has responded that the Utility has done enough and has no current plans to do any more on the issue. This being the case, it would appear intervenors would have to rely on 'consulting' through the Board's GRA hearing process, in an attempt to advance their interests and positions – and, among other things, this may add time and regulatory costs to the upcoming GRA hearing.

If the Board were to decide that the GRA should proceed with MH's proposals, as is, it is likely intervenors will ask the Board for additional opportunities to pose IRs to MH on the newly filed evidence, and this may disrupt and lengthen the process. Intervenors may also request special concessions for filing evidence on the issue, claiming insufficient time has been provided.

The Board concludes that it is "fruitless" and of no merit to "play the blame game", as there are valid points on each side. However, the Board could indicate a willingness to accommodate intervenors with time extensions, as best as may be possible.

Coalition has suggested that there will not be enough time in the days set aside for the GRA to hear the GRA if the GSL rate issue is included, and this concern implicitly supports a separate process be established for the new rate issue.

With respect to the risk of criticism of the Board on the grounds of credibility – if the Board proceeds with the GRA as filed by MH, some may suggest that the Board is not being “open-minded”. That said, it is available to the Board to hear the GRA as filed, and then determine at the end of the proceeding whether additional evidence is needed on the exemption criteria and/or industry baseloads, etc.

Option #2- Sever the Entire Issue of the Proposed Rate for New or Expanded Load:

Severance of the entire proposal from the filed GRA would require a new process and timeline to be established.

MIPUG suggested that the Board write each party and ask for their suggestions as what issues and procedures should be established to allow for a full and separate hearing on the issue. The Board can decide if it will direct MH to do anything further. On this point, MH’s letter to the Board of January 30, 2008 sets out what MH has done and what may still be left to do if the Board accepts MIPUG’s Minimum Filing Requirements.

As for more or additional consultations, the Board will have to decide if the “horse has left the barn” on this issue. While MIPUG, RCM/TREE and MKO are calling for more consultations, MH says it sees no more merit in any further consultations.

Assuming there will be no revenue loss to the Utility in the current fiscal year if the entire issue is deferred to a separate hearing, and noting MIPUG’s assertion of a lack of urgency because there is no imminent load to which the new rate would apply, the timeline for a separate proceeding would still have to fit the Board’s availability; the Board’s schedule for 2008 and 2009 may be quite full, leading to delays.

Keystone has indicated that it plans a 2009 construction period, followed by a 2010 expansion of its pipeline, to lead to expected annual electricity consumption of \$10 million of MH power at existing rates or \$20 million/year of purchased power if MH's proposal is adopted as filed. If a separate proceeding is to be established, and the timeline of that proceeding is such that the new rates that may develop following that hearing cannot be implemented until well into 2009, MH's revenues could be affected, either by the Keystone development or another industry development, ahead of the issues being concluded on.

MH has requested that any severance be accompanied with notice that a new rate has been requested and its approval is pending before the Board – so that existing or prospective GSL customers do not plan expansions or new load assuming current rates will apply when a new rate may be applied to the new load.

In Order 117/06, the Board invited rate design recommendations; Keystone, which was not an intervener in the proceeding that led to Order 117/06, suggests it would bring an expert to provide alternatives to the Board.

Option #3 Hybrid/Compromise: By Hearing MH'S Case for a New Rate- But Severing the Exemption Criteria and Any Alternative Options Posed by Interveners, for Consideration at a Subsequent Hearing:

Adoption of this option or a similar option would require careful implementation to ensure the scope of what is going forward to the separate proceeding is clear to all parties.

This option would allow the Board to hear evidence as to reasons for the new rate sub-class/rate, allow the interveners to challenge the premise and perhaps propose alternatives before any final and specific decision is made by the Board.

Because all the terms and conditions would not be finalized in a severed GRA proceeding, even if the quantum of the rate itself were to be finalized, no revenue would

“flow” until the entire rate package, including exemptions, were accepted and approved in the subsequent proceeding. Furthermore, the exemption criteria now before the Board from MH’s late December 2007 filing would be subject to possible amendment, and this could materially affect the projections of additional revenue anticipated from Manitoba industry.

Under this option, it may be possible for the Board to approve a complete rate package—save for new load where there is no possible exemption – but again, this would require evidence as to what such a load would be. And, MH may not want to bifurcate its application on this issue, as it would allow parties additional time after MH has put forward its case to come back with new evidence and other proposals.

The Board may not want to approve even the concept of a new rate until all other aspects are adjudicated. Parties may provide alternatives (other than a marginal cost rate for new load) that addresses the concern raised by MH (and supported by the Board in Order 117/06), but that will not be known until after interveners file their evidence.

A split process, with a separate proceeding to follow the GRA, would allow the Board the opportunity to direct MH and/or interveners to provide additional evidence on some matters that arise in the GRA related to this issue.

Existing and new customers would need to be made aware that a new rate proposal is pending before the PUB and that may impact their business plans.

11.0 Board Findings

After a careful review of the history and the evidence before it, and considerable deliberation, the Board opts for a compromise option. The Board recognizes the legitimacy of MH’s proposal to establish marginal cost based rates for industrial load above baselines, and in the absence of meeting (also to-be-established) exemption criteria, and the concerns of interveners with respect to the process to-date.

The Board expects MH to defend its proposals at the upcoming GRA, though a special hearing will be established to, at minimum, assist in the Board's determinations with respect to the exemption criteria. The Board and interveners should and will have every opportunity during the GRA to cross-examine MH's witnesses on the Utility's full proposal.

Though such cross examination of MH's witnesses will occur at the GRA, the Board accepts that interveners, having not had a full opportunity to address the issue of the exemption criteria at the GRA, will also pursue that matter at the special hearing to follow the GRA. At that hearing, interveners may, if they so wish, bring new evidence forward on that matter, as the Board will not conclude on the exemption criteria, at minimum, ahead of that separate yet linked process.

At the hearing of the motion on January 28, 2007, parties quoted selectively from Order 117/06, an Order that commented on and provided direction to MH related to the Corporation's concerns about industrial electricity rates.

Below are the Board's selected extracts from the Order, indicating the Board's then-views with respect to potential marginal (market) rates for new or expanded industry electricity load:

" ... (MH has identified) ... a risk associated with large energy-dependent multi-national firms with high-energy use/low employment ratios seeking out jurisdictions with low electricity rates, Manitoba reportedly being the lowest electricity rate jurisdiction in North America. MH has expressed a concern that... new or expanded high-energy dependent industries will lead to rate increases, or, in the absence of higher rates, lower aggregate revenues and net income and a higher debt:equity ratio (through the displacement of export sales at higher rates and possible new generation requirements for industry paying lower rates).

MH reinforced these concerns related to energy-intensive industry using electricity as feedstock, by reporting that large firms using considerable electricity have increased their aggregate electricity consumption from 564 GW to 1,661 GW over the past five years. These concerns may be mitigated if the additional use is concentrated in the off-peak periods. (Quebec limits assured energy supply for energy-intensive firms, requiring special consideration of appropriate rates for such firms.)”

“... the Board accepts MH’s contention that a fundamental change has occurred to its operations and prospects with the advent of higher unit export prices brought about partly as a result of revised export trading rules and a concurrent new ability to undertake arbitrage sales. The Board also shares MH’s concern that low-priced electricity consumption in Manitoba may displace higher export sales opportunities as well as lead to higher customer bills while inhibiting potential carbon dioxide (CO₂) emissions reductions on a more global basis.”

“No intervener denied MH’s assertion that a fundamental change had occurred in MH’s situation and environment, and that the change related to the increased unit sales price of exports. All parties accepted that with the advent of the new MAPP/MISO trading rules and arbitrage opportunities, export revenue has increased dramatically improving MH’s annual net income prospects and providing increased support to low domestic rates.”

“New export market rules provide for export prices based on the marginal costs of production of MH’s American export customer members of the Mid-Continent Area Power Pool (MAPP) and the Midwest Independent System Operator system (MISO). As a result ... for the first time average export prices exceeded the average rate charged to Manitoba customers. When export prices exceed domestic rates, increased Manitoba consumption reduces MH’s export sales opportunities, net export revenues and MH’s net income.”

“Linkages between export potential, Manitoba consumption, and average industrial rates below average export prices prompted MH to express concern related to large energy-intensive firms, particularly those using energy as a feedstock for industrial processes. By this Order, the Board directs MH to engage in public consultations and propose a new industrial class for new high consumption firm customers with to-be-defined characteristics and rates.”

“Establishing a new industry class to potentially receive market-based electricity pricing is a significant public policy issue, and one extending beyond the regular scope of the Board’s regulatory oversight. Considerations should include economic and social issues, and thus require the input of society including, in particular, government and industry.”

“Without substantial export sales, there would be no net export revenue to benefit domestic customer classes through below-market rate levels. In the absence of export profits, the annual revenue requirement would have to account for domestic costs and ensure adequate retained earnings. Without substantial net export revenues to be allocated to domestic customer classes, a fair rate setting approach for the various customer classes would be easier to design, though rates would be higher.”

“Electricity is a vital supply in today’s world, and Manitoba’s economy relies on secure, adequate and affordable power. Industry has located in Manitoba and expanded with “low cost based” electricity as one of the factors in the decision, a primary factor for some.”

“The Board confirms its public interest mandate, and will provide directions to MH based on the Board’s perspective of the public interest. The Board’s interests extend beyond arithmetically driven formulaic approaches to evaluating customer class rates and rate setting. The Board intends to consider information on environmental matters, marginal costs, energy efficiency, the plight of low-income customers, those customers damaged by MH’s plants and operations, intergenerational equity and the financial strength of Manitoba’s largest utility.”

Order 117/06, which was, as previously indicated, released on August 2, 2006, almost eighteen months ago, indicates the Board's understanding that:

- a) exports are an integral component of MH's operations and planning;
- b) rates for Manitoba large industry are considerably lower than rates that could be secured from export markets, particularly in peak periods;
- c) the Board shares MH's concern that new and/or expanded industry load may deleteriously affect MH's annual financial results, rates and planning, while not providing sufficient economic benefits for Manitoba to justify the rates charged industry under the present rate schedule; and
- d) the Board will set rates that, though influenced by MH's costs, will not be solely determined by cost.

New generation and transmission assets of MH will come at per MW cost much higher than was the case in the past or at present. Present costs per MW are based on historical costs, and those costs were largely incurred twenty and more years ago, when construction costs were a fraction of today's levels. MH currently has projects in the planning phase that if proceeded with will more than double the Utility's investment in plant and debt, and the costs per kW.h of new generation will likely exceed by more than a factor of two the present rate charged GSL customers.

MH's average export price has been roughly twice the current price MH charges large industry in Manitoba. That said, existing large industry constructed their plants partially, or largely, based on the expectation of low electricity prices for their expected electricity load, and a cost-based rate schedule for domestic Manitoba customers. Accordingly, the Board has, in past orders, shown no interest in changing the "rules" for existing industry, at least in the absence of stated government policy.

The export market that MH sells into largely prices its imports at the marginal costs of production of the importing utilities, and that marginal cost, and MH's average export price has been roughly twice the current price MH charges large industry in Manitoba.

However, living up to that "commitment" does not have to mean that MH is to be directed to "lose money" (based on alternative export markets) on large new additions to industry load, at least not without a strong argument that the overall economic benefits to be enjoyed by Manitoba will justify "under-charging" new industrial load.

Obliging MH to under-charge (considering market price levels for energy) not only existing large industry electricity load but also new industrial load, whether from new industry coming into the Province or by existing industry expanding operations, would be to penalize domestic residential, commercial and institutional customers to benefit large industry; the "penalty" would even extend to existing large industry and would come in the form of higher rates.

The Board's view as expressed in Order 117/06 was that MH's revenue base, financial situation and plans, and its existing customers, need to be afforded protection against the risk that new or materially expanded current industry requires new electricity load at prices which would drive the prices for all customers higher, as well as the risk of advanced construction dates for new projects with potentially damaging financial implications. MH sells electricity to large industry at rates below the rates it could obtain from sales to export markets, and at rates below those offered by other North American jurisdictions.

The gap between cost-based rates employing historic costs and marginal costs or market rates has grown such that new industrial load needs to be evaluated to include the overall economic value to Manitoba before being priced according to the current rate schedule.

In the hearing that led to Order 117/06, MH alerted the Board to the risks and proposed that a new industrial rate be established and that rate represent marginal rather than

historical costs. The Board agreed with MH, though leavened the approach by directing MH to recognize the differences between existing industry and industry load and new or expanded industry and load.

The Board then-further directed that MH consult with government and industry over the development of a new rate, and with respect to the provision of an exemption from the new rate for new load (whether new industry or expanding existing industry) when the new load was associated with material economic benefits for Manitoba.

MH did consult with industry, the evidence provided at the motions hearing was clear on that point, and the Board agrees with MH that consultation does not mean that the proposal arising out of the consultation need reflect the desires of the parties consulted, only that MH is to consider the views of industry in developing its proposal.

As to consulting with government, the Board accepts MH contention that government is aware of MH's proposal, and notes that it has been the position of the Board that it will not establish public policy when there is stated government policy; in this case, the Board can only be left to infer that government is comfortable with the Board determining policy on the matter brought before it by way of MH's proposal. If government is unhappy with the Board approving a new rate structure and exemption criteria for new or expanded large industry load, the Board is confident government will make its views publicly known.

While the Board may be "uncomfortable" with delineating certain aspects of the proposed new rate, the Board is satisfied it has the jurisdiction to approve the type of rate, together with the terms and conditions of the baseline and exemption criteria, that is being requested by MH.

In setting and approving new rates for service, to be charged by MH, the Board may take into consideration the factors listed in *The Crown Corporations Public Review and Accountability Act*. Those factors include any compelling policy considerations that the

Board considers relevant. It also includes any other factors that the Board considers relevant to the matter.

However, the Board accepts that MH has failed to meet Order 117/06's request for "wide consultations" with non-industry society, including residential consumers, environmentalists and First Nations. That said, the Board concludes that those parties will not be damaged by the Board addressing the proposals of MH at the upcoming General Rate Application (GRA), given the opportunity for a careful review of the proposals provided by the GRA process and the Board's determination to hold a separate process to conclude with respect to exemption criteria and any other options presented.

That said, the Board concludes the fairest approach is to have the GRA proceed with the filings that have been made, and those to come in responses to cross-examination and in support of witness evidence. A separate proceeding to follow will investigate and reach a final determination of the exemption criteria and any other matter the Board concludes requires further examination.

This approach provides the Board the greatest opportunity to inform itself of the issues and the implications, and allows the Board the opportunity to direct the parties on such matters as it determines are required to be further tested at the separate proceeding to follow.

The GRA hearing will provide opportunities for all parties to test evidence and advance positions and interests, the same will be the case at the separate proceeding to be directed to be held to follow the GRA. Parties to these proceedings may be assured that the Board understands its mandate and will determine the public interest, taking into account the evidence that will come before the proceedings to follow. The Board fully comprehends the significance of the subject of MIPUG's motion.

12.0 It is Therefore Ordered That:

The proceeding to hear Manitoba Hydro's General Rate Application shall proceed, though a separate proceeding will follow to, at minimum, examine and conclude on the exemption criteria related to Manitoba Hydro's proposal for a new rate schedule for General Service Large customers that would limit the application of heritage energy rates to specific baseline energy quantities per year.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"

Chairman

"G. GAUDREAU, C.M.A."

Secretary

Certified a true copy of Order No. 8/08
issued by The Public Utilities Board

Secretary