

August 27, 2018

Mr. D. Christle
Secretary and Executive Director
Public Utilities Board
400-330 Portage Avenue
Winnipeg, Manitoba
R3C 0C4

Dear Mr. Christle:

RE: MANITOBA HYDRO GRA POST-HEARING PROCESS MATTERS

Manitoba Hydro is in receipt of correspondence from the Public Utilities Board (“PUB”) dated July 20, 2018 requesting comments on the process utilized in the most recent Manitoba Hydro 2017/18 & 2018/19 General Rate Application (“GRA”) as well as process considerations for the next GRA filing. The PUB has also requested comments on the scope of the issues provided in the draft Preliminary Issues List which was attached to the PUB’s letter and has advised that they may issue an interim Order with the Issues List and that a final Issues List would be issued following the Pre-Hearing Conference.

As a statutory tribunal, the PUB only has the powers granted to it by its enabling statute, in particular, section 2(5) of *The Public Utilities Board Act* (the “PUB Act”). The PUB is legally required to comply with and has no authority to exceed this legislative scheme. *The Crown Corporations Governance and Accountability Act* is part of this legislative scheme and Part 4 grants the PUB its jurisdiction over the review of Manitoba Hydro’s rates.

In Manitoba Hydro’s view it is critically important that regulation pursuant to this legislative regime be effective, efficient and meets the objectives of regulation as dictated by the legislature. In order to achieve this objective, the PUB must employ efficient and effective processes and have access to the expertise necessary to understand the multi-faceted and continually evolving complexities associated with Manitoba Hydro’s business. The PUB and regulated entities must together strive for regulatory processes that achieve good outcomes while not being so onerous, costly and unnecessarily intrusive that they interfere with the management and forward progress of the regulated entity itself. In Manitoba Hydro’s submission, the last GRA provided a clear example of this balancing having been compromised.

Available in accessible formats upon request

Over the last number of GRA's, the PUB has required and retained expertise in a number of areas related to Manitoba Hydro's business, including risk management, depreciation, cost of service, capital expenditures, load forecast, and exports markets. It is necessary for Manitoba Hydro to employ individuals who essentially devote their careers specializing in each of these topic areas in order to effectively operate its business. The cost of the PUB retaining external expertise with respect to each of these topic areas is not inconsequential - over \$6.1 million since 2010. In the recent Order 59/18, the PUB advised that they intend on hosting a technical conference by Board Staff or an external consultant appointed by the PUB. Manitoba Hydro fully supports the retention of an independent external consultant with demonstrated and wide ranging industry experience and expertise for the purposes of the PUB's technical conference to review minimum retained earnings and other financial targets.

Manitoba Hydro further observes that, in addition to consultant specialists, the cost of PUB external advisors and counsel was approximately \$2.4 million for the 2017/18 & 2018/19 GRA. In the main, this group has advised the PUB in each Manitoba Hydro regulatory process for many years. From a cost efficiency standpoint, Manitoba Hydro encourages the PUB to consider, as is commonplace with regulators in other jurisdictions, enhanced "in-house" capabilities to assist PUB panel members with the recurrent and predictable financial, technical and legal issues common to each GRA for both Manitoba Hydro and other regulated entities. These and other issues may require a more broad based discussion. Manitoba Hydro views an opportunity and a path forward which includes a discussion occurring with the PUB, regulated entities and the government to ensure that regulation is most efficiently meeting the PUB's legislative scheme.

As further elaborated upon in the balance of this letter, Manitoba Hydro submits that the following changes are critically important to improving regulatory effectiveness:

- Minimum Filing Requirements should be limited to matters directly identified in governing legislation as relevant and which are expected to be routinely updated and filed in any General Rate Application;
- Intervenor Request Forms should be amended to include information regarding the make-up of the organization, clearly identify who the organization represents and how the organization formulates their positions;
- Joint Interventions should be required unless it can be shown that parties' perspectives are different or unique. Consideration should be given to investigating the creation of an independent consumer's advocate to present various groups' concerns or to requiring Intervenor to pay a portion of their costs to incent efficiency and ensure the intervention is consistent with the organization's mandate
- Intervenor should be required to clearly set forth their positions on key issues as part of their requests for Intervenor Status or during the Pre-Hearing Conference in order to enable the PUB and Manitoba Hydro to adequately test those positions during the course of the hearing;

- Funding should only be available to parties when limited financial resources may hinder the ability of an intervenor to participate effectively in hearings;
- The PUB should strictly enforce its hourly rates set forth in the PUB's Policy and Billing Rates for Advisory Services. Consideration should be given to establishing ranges of recoverable rates and a criteria to assess the rate to be applied;
- Steps should be taken to reduce the number of Information Requests - either through PUB screening or placing limits on the number of questions a party may pose;
- CSI process should be streamlined such that only confidential or commercially sensitive information which is of concern to parties requires the filing of a motion;
- Pre-filed Evidence of Consultants should include a summary of the consultants experience and expertise by issue. In order to be considered part of the evidentiary record, footnoted materials must be included as an attachment to the Pre-Filed Evidence;
- Books of Documents should not be used to introduce new material onto the public record. Except in exceptional circumstances, aids to question witnesses during cross examination should be filed as part of parties' evidence;
- Views and opinions expressed during public presentations should not be accepted as evidence unless processes are established that allow for adequate testing of the information presented;
- Consideration of performance measures delves beyond the PUB's jurisdiction over the setting of rates into the responsibilities of management.

Draft Preliminary Issues List, Scoping of Issues and Content of Application

In its letter of July 20, 2018, the PUB advised that in order to streamline its procedure for Manitoba Hydro's next GRA filing, it was advancing a draft Preliminary Issues List and following receipt of comments, the PUB may issue an interim order with an issues list.

Manitoba Hydro submits that advancing an issues list for comment as well as requesting comments on the content of an application that has not yet been filed, is premature and procedurally unfair. The application filed by the utility, and in particular the nature of the approvals sought, must be set forth by the utility and should be the starting point for any issues list that is developed. Each application should be reviewed on its own merits and as such, only once an application is filed, should the PUB and parties review the reasons for the application and subsequently determine the issues to be reviewed that arise from that particular application. Requesting comments on the content of an application and creating a preliminary issues list prior to the filing of an application (which list includes issues to be considered within the scope of the not-yet-filed GRA and issues which the PUB pre-determines will be out of scope), improperly restricts and fetters the right of Manitoba Hydro, as an applicant, to put forward its case supporting an application. In addition, a preliminary issues list which is prepared prior to the filing of an application, may ultimately include issues that are not relevant to the specific rate relief requested, may have no impact on the reasons for a specific request and result in an inefficient, cumbersome, and extremely costly process.

Moreover, while Manitoba Hydro applauds efforts at innovation and efficiency, it submits that establishing a preliminary issues list in advance of receipt of an actual application will subvert the PUB's stated purpose of efficiency gains. The receipt of comments by parties on issues to be determined for a future proceeding, assumes that those parties offering comments will be participating during the future proceeding and have an understanding of their scope of intervention. In accordance with Rule 27 of the PUB's Rules of Practice and Procedure, any interested party or organization needs to file a written request to participate in a process. Typically interventions are assessed at a Pre-Hearing Conference related to the filing of each and every application. Acknowledging that there exist parties who consistently seek to participate in Manitoba Hydro's regulatory proceedings on every issue from the outset, the PUB should nevertheless not presuppose that an intervenor will register and be approved as an Intervenor. As addressed below, parties should only be afforded intervenor status where they have justified their participation having regard to the specific issues being dealt with in an application.

Further, the issuance of an interim order setting out an issues list for Manitoba Hydro's next GRA as proposed by the PUB in its July 20, 2018 correspondence is inconsistent with the powers afforded the PUB pursuant to the PUB Act. The PUB Act does not contemplate the issuance of an interim order outside of the review process which is commenced by means of an application:

Power to order partial or other relief

44(1) Upon any application to it, the board may 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.

Interim order

47(2) The board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter, or for further application.

The ability of the PUB to issue orders relating to any application is clearly linked to the filing of that application for review by the PUB.

Manitoba Hydro understands that the PUB's intent in attempting to establish an issues list at this juncture is to streamline the procedure for Manitoba Hydro's next rate application. However, Manitoba Hydro submits that the PUB's process used in the 2017/18 & 2018/19 GRA (wherein it requested all parties to meet following the filing of an application to create a preliminary issues list for consideration by the PUB panel), properly allows Manitoba Hydro, as the applicant, the opportunity to provide its reasons for the application and permits Intervenor to firstly review the application and determine what, if any, issues each intends to test during the course of the process prior to the Pre-Hearing Conference.

As Manitoba Hydro has not formulated a plan for, or otherwise developed its next GRA, it is not in a position to comment on what the reasons for a future application will be. The reasons will be set forth clearly in its application and will be based on the circumstances impacting the Corporation at the time the application is filed as approved by the Manitoba Hydro-Electric Board. Manitoba Hydro therefore reserves the right to comment on an issues list following the filing of an application for review by the PUB.

Process Considerations - Generally

GRAs are expensive and time consuming proceedings and their scope and costs have increased exponentially over the past number of years. Increased regulatory costs are of great concern to Manitoba Hydro, particularly considering that these costs are ultimately borne by Manitoba Hydro customers. During the course of a complete review process, Manitoba Hydro has filed an increasing amount of information (including the application, responses to minimum filing requirements, responses to IRs, rebuttal evidence, and exhibits). During the 2015 GRA, Manitoba Hydro filed over 8,000 pages of information and at the most recent 2017/18 & 2018/19 GRA, Manitoba Hydro filed over 34,700 pages of information. In Manitoba Hydro's view, more information on the record does not equate to better information or increased value for the PUB panel in its review or the customers of Manitoba Hydro.

Additional Intervenor groups are now participating in regulatory proceedings, and place incremental demands on the applicant and the process overall. There are a number of Intervenors who represent similar interests and the same customer classes. Intervenors however, have rarely been required to form joint interventions and there has been no commensurate reduction in the scope of similar intervention or in the costs associated with similar interventions. In fact, regardless of whether Intervenors are representing the same customer class or represent similar interests, budgets proposed by Intervenors are typically approved or are modified only slightly regardless of the overlap in interventions.

An increased amount of information is continuously being requested during the course of proceedings that is not germane to the issues included in an application or at a level of detail not necessary in order for the PUB to exercise and fulfil its legislative mandate. This has resulted in significant internal staff time and resources, including and particularly management time, being diverted from necessary business operations to the regulatory process. To be clear, Manitoba Hydro appreciates the importance of the regulatory process, but diverting resources to that process beyond that which is reasonably required increases the costs to be recovered from ratepayers, negatively impacts business operations and is not in the best short or long term interests of customers.

With these concerns in mind, Manitoba Hydro's comments on process improvements are focused on providing for better regulatory outcomes at lower overall cost.

Minimum Filing Requirements

Minimum Filing Requirements (“MFR’s”) constitute a relatively new process to Manitoba Hydro, having been introduced in the 2015 GRA. MFRs, in all regulatory environments, are intended to provide clarity regarding information to be filed with an application and typically, show that the applicant has complied with applicable legislation and regulatory requirements. MFRs should only be developed in direct association with that which is specifically required by the applicable legislative scheme or the regulations enacted thereto.

In the case of Manitoba Hydro’s regulatory environment, the applicable legislation is *The Crown Corporation’s Governance and Accountability Act* which sets out the PUB’s jurisdiction with respect to Manitoba Hydro (rates for service) and the factors the PUB may take into consideration in reaching a decision (which includes operating, maintenance and administration expenses; interest and expenses incurred on debt incurred; reserves; liabilities for pension benefits and other employee benefit programs; and payments required to be made out of the revenue). It is reasonable in the case of Manitoba Hydro to require the Corporation to consistently file baseline information which relate to these subject matters. If an application raises issues or incorporates discussions in its reasons that go beyond these factors, those should be appropriately addressed through the information request (“IR”) process.

As with the premature creation of an issues list, anticipating issues and prescribing MFRs related to non-routine informational items prior to Manitoba Hydro submitting its application once again pre-determines the issues that will be reviewed and fetters the ability of the Corporation to put forward its case. Historically, Manitoba Hydro has provided additional details and information in support of the reasons for rate increases by expanding sections of its Application to support its case. To require Manitoba Hydro to file material on matters that have not yet been determined to be in scope for an application is effectively pre-judging matters to be dealt with at the Pre-Hearing Conference. It increases the probability of wasting time and resources if a matter is ultimately deemed not in scope.

One outcome of the filing of MFRs should be to reduce the number of IRs filed by each party. The PUB appears to have concurred with this view when it stated that “MFRs were to identify information that should be included in Manitoba Hydro’s GRA filings, with a corresponding benefit of reducing Information Requests of Manitoba Hydro.”¹ Unfortunately, recent experience proves the opposite. For example, in the 2017/18 & 2018/19 GRA, after responding to 220 MFRs, Manitoba Hydro was asked a further 308 IRs relating to the 220 MFRs already filed. The responses to the 220 MFRs by Manitoba Hydro had no impact on reducing the number of IRs. To the contrary, Manitoba Hydro experienced an increase in the number of IRs asked by other parties as they sought further information with respect to that contained in the MFR response. In effect, MFRs introduce a third round of IRs to the already cumbersome process.

¹ PUB Correspondence dated January 15, 2015, related to Manitoba Hydro’s 2015 GRA

To ensure that overall regulatory efficiency and effectiveness is enhanced, MFRs should be limited to relevant and basic information that is directly required by the governing legislation and which is expected to be routinely updated and filed in any GRA. Over time, a separate MFR process should not be required as, if the process is properly established and managed, the vast majority of the information that is now sought by way of MFRs would simply be incorporated into the GRA filing. MFRs should not be developed to prematurely address anticipated or specific issues which relate to specific applications – these questions are properly addressed through the IR process once the application has been filed and properly considered.

Finally, certain MFRs have sought updates to Manitoba Hydro activities by Business Unit or Division. Recent restructuring efforts at Manitoba Hydro have resulted in the elimination of a number of Business Units, with the work of those former Business Units being subsumed within a new divisional structure. While Manitoba Hydro understands the preference to compare consistent and static MFR responses over separate GRAs, the new divisions are not directly comparable to the previous Business Units and providing updates which are comparable to previous responses may not be possible. Manitoba Hydro recommends that a reasonable approach would be to clarify the types of activities being performed by the new divisional structures, instead of simply attempting to compare activities to previous years in order to determine whether there has been a change. There is no or limited value in performing the latter.

Interventions

The purpose of an intervention is to provide additional perspectives and in order to inform and assist the PUB panel. Undeniably, Intervenors are advocates for the interests of the constituencies they represent. It is thus important for the PUB to be cognizant of the make-up of an intervenor organization, who they purport to represent, their mandate and how they formulate their positions.

To this end and consistent with the practice in other jurisdictions, Intervenor request forms should include, with every request to intervene, an informational document that includes a description of the organization's mandate and objectives; a description of membership, number of members, membership processes and constituency represented; and the types of programs and/or activities it carries out.² This will allow for the PUB to better assess the interventions, and level of same, at each GRA, thereby allowing Manitoba Hydro to submit more detailed comments or concerns regarding interventions from the outset of the process.

Intervenors should not simply be approved because they have intervened in the past. Intervenors should justify their participation in light of the specific issues and the relief sought within each application. Manitoba Hydro encourages the PUB to consider the well-established process used by

² A similar list of criteria is found in the British Columbia Utilities Commission Rules of Practice and Procedure Order G-1-16 section 9 and the Ontario Energy Board Rules of Practice and Procedure, Rule 22. Newfoundland and Labrador Regulation 39/96 requires that intervenors provide a list of information and supporting documents that may be useful in explaining the intervenors representation

the NEB which places an onus on those interested parties seeking status to intervene or participate in an application to clearly demonstrate in writing how they are directly affected and whether they have relevant information or expertise to provide to the defined in-scope issues list of the proceeding. This process greatly assists with the refining of roles and expectations from the commencement of the process, including the mandating of joint interventions, which ultimately leads to a more focussed and efficient hearing process including less IRs and fewer or no oral hearing days.

Manitoba Hydro notes that there are now additional Intervenor groups participating in electric GRAs some of whom represent the same classes of customers whose issues and concerns are identical. For example, a number of Intervenors represent customers in the residential class. A number of Intervenors also represents the interests of small commercial customers. Parties that represent similar interests should be required to apply for a joint intervention unless the Intervenor can show that their perspective is different or unique that the other perspectives being offered. In Manitoba Hydro's view, where a party is approved to intervene in the proceedings, the scope of intervention and associated costs of existing Intervenors with similar interests and representing the same class should be reduced accordingly.

Consideration should be given to investigating the creation of an independent consumer's advocate to present various groups' concerns. Such a model exists in Alberta and Manitoba Hydro understands it has the effect of reducing overlap, streamlining the number and content of IRs and reducing overall costs. Currently there is no effective incentive for Intervenors in Manitoba to minimize their costs as the utility is responsible for the full payment of approved costs. It is essential that all Intervenors pay at least a nominal percentage of their costs as an incentive to ensure their intervention is efficient and a priority consistent with their mandate.

Intervenor Positions and Order of Proceedings

Present processes do not require Intervenors to disclose their positions on key issues until they make their presentations in final argument. In the 2017 GRA, past practice was revised and Manitoba Hydro was required to submit its final argument prior to Intervenors. Such process is not in keeping with the purpose of Interventions and is procedurally unfair to the applicant especially when, and unlike other jurisdictions, intervenors in Manitoba are not required to provide or adopt their own pre-filed evidence on behalf of their organization, but rather, are permitted to exclusively introduce pre-filed written evidence from expert witnesses, leaving all to guess until the moment of final argument what the Intervenors actual position is on the application. This leaves the applicant, other Intervenors and the PUB itself, without an opportunity to test the Intervenor's position (not just that of their experts) through IRs and cross-examination.

The purpose of an intervention is to assist the regulator in reaching its decision. PUB hearings and interventions therein are not for the purpose of enabling Intervenors to determine if they wish to

support or object to a particular proposal.³ If Intervenors do not have a perspective or established position to offer with respect to a particular issue at the outset of the process, they ought not to be approved as Intervenors on that issue. Intervenors should clearly set forth their positions on key issues as part of their requests for Intervenor Status or during the Pre-Hearing Conference. Such approach is consistent with Rule 27 of the PUB's Rules of Practice and Procedure where it states that before determining whether to award intervenor status to any person, the Board will review the written request for intervention to determine "any relevant information that may be useful in explaining or supporting the views of the person requesting intervention". The PUB's Rules clearly contemplate that as part of a request for intervention, the party should provide information with respect to their position on the application.

Positions should be clearly identified and set forth in order to enable the PUB and Manitoba Hydro to adequately test those positions during the course of the hearing and to allow Manitoba Hydro adequate time to present relevant testimony during its direct evidence. It is procedurally unfair for Manitoba Hydro as the applicant to be blindly guessing during the course of the proceedings and as part of closing arguments, what positions Intervenors may ultimately argue. In the event that evidence raised during the course of the proceeding results in a party modifying its position or identifying an additional issue to be addressed, that party should advise all parties immediately of the new issue or change in position.

The PUB and Manitoba Hydro should be afforded the opportunity to ask policy questions of an Intervenor representative in order for both the PUB and the Applicant to better understand the position of the organization being represented. This would also assist Manitoba Hydro in properly addressing arguments in final submission.

Cost Awards

Section 43 of the PUB Rules of Practice and Procedure sets forth the criteria for an Intervenor to be eligible for costs, including the requirement that a party has insufficient resources on its own to present the case adequately without an award of costs (Section 43(c)). This requirement is consistent with the criteria used in a number of Canadian jurisdictions, such as the British Columbia Utilities Commission and the Nova Scotia Utility & Review Board, whereby cost awards are available to parties when limited financial resources may hinder their ability to participate effectively in hearings. More recently, the PUB has been prepared to fund some existing Intervenors that have not historically been eligible for cost awards in the past. The table below provides the total Intervenor costs paid by Manitoba Hydro for each electric General Rate Application since 2008/09:

³ See National Energy Board Hearing EH-001-2017 at transcript para 7119 – 7123 – the NEB rejected Consumers Association of Canada's argument that it be allowed to examine a witness for the purpose of determining whether it would be recommending the project proceed or not stating that "I appreciate your interest in determining whether to not your client is interested in supporting, or not, the project. But that's really not the purpose of this hearing."

Intervenor Costs by Electric proceeding since 2004/05

Proceeding	Intervenor Costs
2016/17 & 2017/18 Electric GRA	\$2,163,085
2014/15 & 2015/16 Electric GRA	\$533,546
2012/13 & 2013/14 Electric GRA	\$441,700
2010/11 & 2011/12 Electric GRA and Risk Review	\$838,772*
2008/09 & 2009/10 Electric GRA	\$318,211

* The 2010/11 & 2011/12 GRA occurred over the course of 2 years and included additional processes following filing of the application

Manitoba Hydro recommends that the PUB establish Funding Guidelines, similar to those utilized in CEC and NEB hearings. Under the CEC's Funding Guidelines, for-profit organizations, those who have a direct commercial interest in the project, or local governments are not eligible for funding for their participation in CEC proceedings. Similarly, the NEB's Funding Guidelines do not permit funding for municipal, provincial or federal governments, organizations in the energy industry, for profit companies and landowners with a business that can reasonably be assumed to have the means to participate. Applications for funding are dealt with separately from applications to intervene. While the PUB should continue to approve a specific budget amount for each Intervenor, any budget amount approved should be a maximum budget that is available and Intervenors should be held responsible to stay within the approved amount.

Manitoba Hydro also recommends that the PUB strictly enforce the hourly rates as set forth in the PUB's Policy and Billing Rates. It is challenging for Manitoba Hydro to assess the appropriateness of budgets and subsequently costs when there is inconsistency with respect to the hourly rates being charged and approved by the PUB. If different hourly rates are going to be applied to similar consultants it may be useful for the PUB to set forth a range for each category. Concurrently the PUB would establish criteria for assessing where within the range each witness' hourly rate will be set so as to avoid all witnesses suddenly jumping to the top of the range. In addition to years of experience, criteria could include factors such as demonstrated practical industry experience, special designations and hourly rate accepted by regulators in other jurisdictions for similar work by that witness. For consistency with current practices, only in exceptional circumstances should a witness exceed the mid-range or other specified amount. In addition, it would be useful for the PUB to specify, in its Procedural Orders, what hourly rates are being approved per individual and whether the approved budget includes or excludes taxes. This would allow Manitoba Hydro to more appropriately identify the maximum amount being approved for a regulatory process.

Information Requests

The table below provides the total number of Information Requests by General Rate Application since 2004/05. As shown below, the corporation was asked to respond to over 2000 IRs in the last Electric GRA, which coincidentally has become the standard amount in recent years.

Number of IRs by General Rate Application

Proceeding	# of IRs
2016/17 & 2017/18 Electric GRA	2,139
2014/15 & 2015/16 Electric GRA	2,047
2012/13 & 2013/14 Electric GRA	2,185
2010/11 & 2011/12 Electric GRA and Risk Review	4,442
2008/09 & 2009/10 Electric GRA	1,953
2004/05 & 2005/06 Electric GRA	1,178

Number of MFRs by General Rate Application

Proceeding	# of IRs
2016/17 & 2017/18 Electric GRA	220
2014/15 & 2015/16 Electric GRA	71

The number of IRs as shown in the above chart is excessive. The clearest evidence available of the lack of value being extracted from the IR process is the infrequency at which IR responses appear in oral hearings or final arguments. Simply not exceeding the level of IRs of past proceedings does not provide any meaningful measure of whether the Intervenor has been effective in or adequately constrained in asking relevant, significant and reasonable inquiries.

Manitoba Hydro is of the view that IRs should be assessed on the basis of their relevance, significance and reasonableness of the requested information to the particular case. The same criteria are used by other regulators in determining what specific information is required and necessary to make a decision in a particular case. This is also consistent with the Section 14 of the PUB's Rules of Practice and Procedure whereby the PUB permits IRs for the purpose of a "satisfactory understanding of the matters to be considered". The IR process is not intended to mirror an audit function or provide for a microscopic analysis.

It is essential in administrative law that the discovery process maintains the principles of proportionality and efficiency at the least cost. Proportionality is used to tailor procedures to the matters at issue, by particular reference to the value of the matter. It is for an intervening party to clearly demonstrate and persuade the PUB why the information sought from Manitoba Hydro is both relevant and significant to the issues before it. Most importantly, the information sought must also be within the scope of the issues identified by the PUB in its procedural Orders and that the effort required in providing the information is proportional to the probative value it will provide to the hearing. IRs should not be intended as a means for parties to obtain information that may be of interest; that may assist parties in other proceedings; in furthering an agenda of regulatory reform; or to deal with issues which may be more properly addressed outside of the hearing process. In addition, posing questions with the hope of discovering information (i.e. fishing expeditions) is equally not appropriate. The appropriate question to be asked when determining whether a request is proper is whether the information is required in order for the PUB to arrive at its decision.

With respect to IRs, Manitoba Hydro submits that the PUB should strive towards a consistent and disciplined application of the criteria noted above. Given the volume of IRs and time pressures in place for Manitoba Hydro to respond to IRs, it is neither feasible nor efficient for Manitoba Hydro to conduct an evaluation of each IR to assess relevance and reasonableness and thereafter reach out to Intervenors in an effort to reach a compromise. The time to undertake such efforts diverts time from responding to other IRs and simply increases the time pressures and the ability for Manitoba Hydro to provide satisfactory responses to IRs.

Manitoba Hydro proposes that Intervenor IRs be screened by the PUB to ensure that Intervenors are focusing their efforts on material information and that the information requested is reasonable, relevant and significant to the case. Manitoba Hydro submits that doing so would result in a reduction in the number of IRs, as Intervenors would be required to pause to consider the IR being posed. More importantly however, this screening would improve the quality and the essence (as opposed to the quantity) of the information ultimately before the panel members of the PUB.

If the PUB does not have the capacity to undertake effective screening, a reasonable alternative is to impose limits on the number of questions a party may pose and allow the party to set its own priorities. Such process is consistent with the processes adopted by the PUB with respect to the length of oral submissions and those of the courts with respect to the length of written and oral argument. Manitoba Hydro notes that while staging amongst the largest and most broad-based interventions of any group, the Manitoba Industrial Power Users Group ("MIPUG") was able to satisfy its information needs with 163 IRs across two rounds representing just under 8% of IRs. Manitoba Hydro would submit that this is a standard of focus and discipline that all Intervenors ought to be held to.

Any second Round IRs must be limited to seeking clarification or further information arising from IRs posed during the first round. Second round IRs should not be used to raise new issues which were not raised during the first Round. If parties require additional time to review Manitoba Hydro's application to ensure that first round IRs are focused and contain all questions regarding the approved issues list, a schedule could be developed to provide additional time to Intervenors at the beginning of the process.

While every GRA proceeding will vary in scope in terms of the issues that would need to be considered, a reasonable limit on the number of IRs (either by Intervenor or by Issues) could foster a more efficient and focused regulatory process.

Treatment of Confidential Information

As has been noted a number of times in previous proceedings, Manitoba Hydro is committed to conducting GRA processes in the most transparent means possible. Manitoba Hydro attempts to keep claims to Confidential or Commercially Sensitive Information ("CSI") to a minimum and only where absolutely necessary. Responses to MFRs and IRs avoid referring to CSI wherever possible and techniques such as aggregating information and averaging are used to avoid disclosing CSI. Manitoba

Hydro submits that in most cases aggregating and averaging CSI information will provide sufficient information to enable the understanding of a matter. There will however be times where the PUB orders Manitoba Hydro to file CSI or it is necessary to disclose CSI in order to be responsive to a request for information.

Manitoba Hydro expects that Intervenors will, as they have in the past, advocate for access to CSI following execution of a Non-Disclosure Agreement. The PUB rejected this argument during the previous GRA process and should continue to do so for the reasons articulated in its CSI Motion Reply Submission dated October 6, 2017.

As noted by Manitoba Hydro in the 2017/2018 GRA CSI process, the membership of some Intervenor groups includes individuals or entities who actively oppose Manitoba Hydro's plans and operations. It would be unacceptable to turn over CSI in these circumstances as even the most well intentioned individuals could be replaced or over-ruled by their membership. There also exists varying degrees of experience in handling information with this degree of sensitivity as between Intervenor groups. Lay persons may not be adequately informed as to the significance of the information and may not be in a position to ascertain whether the information is in fact CSI. Some Intervenors, legal counsel and advisors actively participate in other regulatory processes and once the CSI is seen, it cannot be unlearned or erased. Insights regarding the business affairs of adverse parties will inevitably be remembered and carried over into other proceedings at other times.

Manitoba Hydro is of the view that the criteria used for the identification of CSI at the 2017/18 & 2018/19 GRA were appropriate. The process for filing unredacted CSI materials with the PUB by way of motion was however resource intensive, cumbersome and not consistent with the PUB's Rules of Practice and Procedure.

Pursuant to Rule 15, the PUB may receive information in confidence on any terms it considers appropriate and in the public interest taking into account loss or harm to an applicant. The Rules do not require a motion be filed prior to the PUB receiving confidential information. The Rules go on to state that where disclosure of a document is refused due to a claim for confidentiality (i.e. by Manitoba Hydro) and a claim for public disclosure is made (i.e. by an Intervenor), the claim shall be brought by way of motion. The PUB's process permits the filing of confidential information and a motion is required where a party seeks production of that document. By following the process outlined in the Rules, only CSI redactions which are of concern to parties would become the focus of a motion.

Pre-filed Evidence of Consultants

The PUB's Rules permit Intervenors to retain the services of consultants in order to assist them and provide written and oral evidence on issues that are in the area of expertise of the consultant.

The written evidence of consultants typically includes names, general qualifications and experience, and the specific information on which the consultant's evidence is based. Manitoba Hydro submits

that it would also be useful for the written evidence of consultants to break down the consultant's expertise by issue, including the relevant educational and professional experience in respect of each issue in the proceeding to which the consultant's evidence relates.

Manitoba Hydro further submits that all documents to be relied upon by the consultant during the course of a proceeding should be filed as an attachment to the consultant reports. It is typical for consultant reports to include footnotes to materials as a general reference to documents. Those materials have then been used to cross examine parties, used in the direct oral testimony of the consultants or used as part of Intervenor arguments. It is unreasonable for parties to review every single footnote which references multiple documents and anticipate which footnotes are going to be relied upon by a consultant. If materials are to be relied upon, the document should be included as an attachment to the consultant report in order to allow parties to understand the full evidence being presented.

Oral Hearing

Manitoba Hydro appreciates the efforts that the PUB has taken in terms of ensuring that oral hearings are efficient. The addition of time estimates and limitations on each party's presentations and cross examinations have ensured that the oral hearings remain on schedule as set forth by the PUB. In order to ensure continued efforts at fairness during the hearing, Manitoba Hydro offers the following comments on issues which have previously arisen during the course of an oral hearing.

Books of documents typically contain documents that have already been filed on the record of the proceeding which are to be used during cross examination. The benefit of a book of documents is that it allows all parties to easily follow the cross examination without having to continuously attempt to work through various binders to find the material being referenced. Books of documents should not however, include material which has not been placed on the record of the proceedings or documents which may have formed part of a previous proceeding but has not been included in the material of a current proceeding before the PUB. Those types of documents and materials should be kept separate and be designated as exhibits only after being presented to witnesses. A party should not be permitted to rely upon a document or refer to a document through-out the course of a proceeding or in final argument unless that document has been filed and tested during the course of the proceeding.

Manitoba Hydro further submits that except in exceptional circumstances, all documents that a party intends to rely upon during the oral evidentiary process should be identified prior to the close of the written evidentiary process. Where a party intends to present information not already on the record, the party should be required to provide a reasonable explanation as to why it was not previously filed prior to being authorized to use same. If the documents are in excess of five pages, the party being examined should be given a minimum of five clear days to familiarize him or herself with the document. All aids used to question witnesses during cross examinations should be provided no less than 24 hours before the witness is to be questioned on the aid and passages being used or intended to be used in cross examination should be highlighted.

With respect to the order of cross examination, and similar to the practice in other jurisdictions, consideration may be given to allowing all Intervenor to cross examine the utility first followed by whatever technical or clarifying questions PUB counsel may then seek to address. This may reduce the amount of time required by PUB counsel for cross examination and provide better focus for the PUB on which issues are actually being contested by the Intervenor to the application.

Public Participation, Public Presentations and Consultation Enhancements

The PUB has consistently sought to encourage public participation in its regulatory hearings and has permitted the public to make presentations during the course of an oral hearing. This is consistent with Rule 28 of the PUB's Rules of practice and procedure which provide that individuals who wish to make their views regarding the application known to the PUB, may provide their views in writing to the Board in advance of the public hearing or may appear during a portion of the public hearing that has been set aside by the PUB to hear the views of presenters. Manitoba Hydro fully supports this process as a means of giving the general public a voice and the PUB a sense of the public's reaction to a particular proposal.

Nonetheless, acceptance of such views and opinions as evidence is not appropriate or fair to the applicant. Typically, if an individual is filing a presentation, a copy of the presentation is not provided until immediately before the individual is scheduled to present. This does not permit Manitoba Hydro, as an applicant, sufficient time to review the information presented in order to effectively test it. In addition, on many occasions where no presentation is offered, statements of fact and opinion are provided without supporting evidence to support those statements. It is particularly important to adhere to the rules of procedural fairness with respect to organized presentations (i.e. those arranged through counsel and/or assisted by a party already participating in the hearing process) so as to ensure that such presentations are not used as a means of slipping in untested conclusions which due to the professional and organized manner of delivery, may inadvertently may be given more weight than they ought to be.

Performance Measurements

The PUB advised in its letter that it would also consider performance measurements in future GRAs, measuring Manitoba Hydro's performance from previous years as well as comparing proposed outcomes to realized outcomes and has invited parties to include in their comments specific areas where Manitoba Hydro's performance should be measured against a baseline, even if such a baseline does not currently exist.

Manitoba Hydro respectfully submits that the consideration of performance measurements delves beyond the PUB's jurisdiction over the setting of rates into the realm of managing the utility. Responsibility for the management of Manitoba Hydro lies with the Manitoba Hydro Electric Board ("MHEB").

Section 14 of *The Manitoba Hydro Act* provides for the general powers of the MHEB

The board on behalf of the corporation may perform, execute and carry out, all the duties powers and functions imposed or conferred upon it or upon the corporation by this Act; and for that purpose the board may do all and any acts and things that are necessary for or incidental to the performance, execution or carrying out of any such duty, power, or function including the passing of such bylaws and resolutions as the board may deem advisable.

In contrast, *The Crown Corporations Governance and Accountability Act* does not reflect any intention that the PUB should have jurisdiction over the manner in which the board of Manitoba Hydro manages its affairs. It also does not confer the power to direct Manitoba Hydro in how its business is to be conducted.

Manitoba Hydro appreciates the opportunity to provide comments and recommendations on hearing process improvements. As an applicant, Manitoba Hydro will be impacted by any changes to the regulatory process that occur as a result of this review. Manitoba Hydro would appreciate the opportunity to obtain copies of all Intervenor and PUB submissions regarding hearing process improvements and meet with the PUB to discuss recommendations and implications. If you have any questions or comments with respect to this submission, please contact the writer at 204-360-3946 or Liz Carriere at 204-360-3591.

Yours truly,

MANITOBA HYDRO LEGAL SERVICES DIVISION

Per:



PATRICIA J. RAMAGE
Barrister & Solicitor