

Order No. 53/21

**ORDER IN RESPECT OF THE CONSUMERS COALITION'S APPLICATION FOR A
MANITOBA HYDRO STATUS UPDATE HEARING**

May 10, 2021

BEFORE: Robert Gabor, Q.C., Chair
Marilyn Kapitany, B.Sc., (Hon), M.Sc., Vice Chair
Hugh Grant, Ph.D., Member
Shawn McCutcheon, Member
Larry Ring, Q.C., Member
Irene A. Hamilton, Q.C., Member

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1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (“Board”) directs a further process for the determination of the March 26, 2021 Application of the Consumers Coalition for an Order requiring a Manitoba Hydro status update hearing (the “Application”).

The Consumers Coalition asks the Board to find that the circumstances of Manitoba Hydro have changed substantially since Board Orders 69/19 and 59/18 and to review those Orders in a status update hearing to:

- a. examine whether current Manitoba Hydro rates are just and reasonable and costs are fairly allocated;
- b. address unfinished business from Order 69/19 in terms of the deferral account set aside to protect future Manitoba Hydro ratepayers from rate shock; and
- c. establish a process to address other unfinished directives in Orders 59/18 and 69/19.

The Application further proposes that the Board order Manitoba Hydro to provide by June 1, 2021 its current Corporate Strategic Plan, current Integrated Financial Forecast, and current Prospective Cost of Service Study, following which the Board would set a process to consider the information filed through a Pre-Hearing Conference suggested to be held on or about June 15, 2021.

Under subsection 26(3) of *The Crown Corporations Governance and Accountability Act* (the “Crown Act”), the Board must be satisfied that Manitoba Hydro’s circumstances have changed substantially before it proceeds with a review of prior Board rate Orders. The Consumers Coalition has provided information from publicly available documents and prior Board Orders to support, on a *prima facie* basis, that there may have been a change in circumstances. The Board, however, requires additional information to satisfy itself that the pre-condition to a review of Orders 69/19 and 59/18 has been met.

In this Order the Board directs Manitoba Hydro to provide financial, operational, capital expenditure, hydrology, and cost of service information currently in existence and in use in the operations and management of Manitoba Hydro within 30 days of the issuance of this Order. The Board will then determine what further process steps, if any, will be required for the adjudication of the Application.

2.0 Procedural History

The Application was filed by the Consumers Coalition on March 26, 2021.

Consistent with the process followed by the Board in determining Manitoba Hydro's request in the 2017/18 & 2018/19 General Rate Application for an interim rate increase, by letter of April 1, 2021, the Board requested that Manitoba Hydro and past Interveners of Record provide written submissions on whether the Board should consider the Application and, if so, what the process should be.

On April 12, 2021, written submissions were provided by Manitoba Hydro, the Assembly of Manitoba Chiefs, the Manitoba Industrial Power Users Group, and Manitoba Keewatinowi Okimakanak.

On April 19, 2021, the Consumers Coalition provided written Reply submissions.

3.0 The Consumers Coalition's Application

The Consumers Coalition consists of three independent organizations that together represent the interests of a broad cross-section of Manitoba consumers - Harvest Manitoba, the Consumers Association of Canada (Manitoba) Inc. and the Aboriginal Council of Winnipeg.

The Consumers Coalition seeks an order under s. 26(3) of *The Crown Corporations Governance and Accountability Act*, s. 44 of *The Public Utilities Board Act* and s. 23 of the PUB Rules of Procedure. The Consumers Coalition asserts that the circumstances of Manitoba Hydro have changed substantially since the 2017/18 & 2018/19 and 2019/20 rate decisions (Board Orders 59/18 and 69/19) and requests that the Board review those Orders in a status update hearing to:

- a. examine whether current hydro rates are just and reasonable and costs are fairly allocated;
- b. address unfinished business from Order 69/19 in terms of the deferral account set aside to protect future Manitoba Hydro ratepayers from rate shock; and
- c. establish a process to address other unfinished directives in Orders 59/18 and 69/19.

The Consumers Coalition is of the view that a status update hearing to review Orders 69/19 and 59/18 is urgently needed in light of the three year gap since the last full hearing, the substantial change in circumstances over that time, and the risk that Manitoba Hydro will not have a public rate review for many years to come.

The Consumers Coalition submits that for the purpose of the status update, the Board should direct Manitoba Hydro to file by June 1, 2021:

- a. Current Corporate Strategic Plan (or spending priorities for operating and capital programs and marketing of excess power);

- b. Current Integrated Financial Forecast (or an Exhibit MH #93 scenario which was filed at the 2017/18 & 2018/19 General Rate Application by Manitoba Hydro); and
- c. Current prospective Cost of Service Study (or a directional update as to effect of Bipole III, Manitoba Minnesota Transmission Project, and Keeyask Generating Station on Revenue-to-Cost ratios).

The Consumers Coalition also proposes that, after the above documents are filed, the Board should direct a pre-hearing conference on or about June 15, 2021 to consider the appropriate further process for the status update hearing.

The Consumers Coalition notes that the last full Manitoba Hydro General Rate Application hearing took place in 2018 and that hearing relied on an Integrated Financial Forecast (“IFF”) from 2016 with only selected updates. According to the Consumers Coalition, IFFs have served for many years as Manitoba Hydro’s primary forecast for determining the rate changes necessary to maintain a reasonable financial position while balancing the interests of current and future ratepayers. In its 2019/20 rate application, Manitoba Hydro did not file an IFF and stated in its Letter of Application that it would file a full rate application which would include IFF19. Manitoba Hydro stated that it anticipated filing the full rate application in late 2019. However, Manitoba Hydro did not file a General Rate Application or provide IFF19 in 2019 but instead received a 2.9% general rate increase effective December 1, 2020 from the Government of Manitoba through *The Budget Implementation and Tax Statutes Amendment Act*.

The Consumers Coalition’s position is that there have been significant changes since Orders 59/18 and 69/19, and the cumulative impact of these changes constitutes a substantial change in circumstances that raises serious doubts about the fairness of the current rates of Manitoba Hydro. Included in these significant changes identified by the Consumers Coalition are the following:

- major new capital projects have come into service with increased revenue requirements. Over the last three years, Manitoba Hydro has effectively doubled

the size of its assets and debts for rate setting purposes by bringing into service the Bipole III Transmission Line, the Manitoba-Minnesota Transmission Line and the first unit of the Keeyask Generating Station, with the additional units of Keeyask expected to be placed in service in the coming year;

- major new export sales have been undertaken recently, such as the multi-billion dollar export sale with SaskPower that Manitoba Hydro announced and the 125 MW system power sale agreement with Northern States Power that begins on May 1, 2021;
- Manitoba Hydro has a new corporate strategic direction in Strategy 2040 and has undertaken a corporate reorganization consistent with this plan;
- the COVID-19 pandemic has led to a material reduction in consumption by major industrial and commercial customers, which has been somewhat offset by increased consumption in the residential sector;
- interest rates on long-term bonds have sharply dropped since March 1, 2018; and
- since Orders 59/18 and 69/19, there have been important regulatory, judicial and legislative decisions with implications for all Manitoba ratepayers. These decisions include:
 - the recommended approval of Efficiency Manitoba's three-year plan by the Board in February 2020,
 - the Manitoba Court of Appeal's determination in June 2020 that the Board lacked the authority to create the First Nation On-Reserve Residential customer class,
 - the imposition of a 2.9% rate increase on almost all Manitoba Hydro customer classes effective December 1, 2020 through the enactment of *The Budget Implementation and Tax Statutes Amendment Act*,
 - rate shock level increases for First Nation residential customers on-reserve in the range of 9% since September 1, 2020, and
 - findings by the Wall Report in February 2021 that raised questions about the primary reliance on rigid debt equity financial targets for the setting of rates.

As justification for holding a status update hearing, the Consumers Coalition asserts that the costs of independent regulation are relatively low for ratepayers and are greatly outweighed by the benefits. According to a study cited by the Consumers Coalition, over the past three years, the cost of the regulatory process has averaged less than 0.25% of Manitoba Hydro's anticipated annual domestic revenues. Further, every one percent increase in Manitoba Hydro rates has a direct impact to the Manitoba economy of between \$370 to \$430 million in present value terms. The Consumers Coalition states that 17% to 18% of each dollar of Manitoba Hydro revenue is directed annually by Manitoba Hydro to the Province of Manitoba.

4.0 Submissions Regarding Consumers Coalition's Application

Manitoba Hydro

Manitoba Hydro submits that the Board should dismiss the Application. Manitoba Hydro takes the position that the Consumers Coalition has failed to establish that there has been a substantial change in circumstances since the issuance of Orders 59/18 and 69/19 and that the existing rates are no longer just and reasonable.

Manitoba Hydro submits that the Board has no jurisdiction to review and evaluate Manitoba Hydro's ongoing planning, management and operations as a Crown Corporation, and that the Board's mandate is limited to the approval of rate changes sought in the fiscal test years as applied for by the Utility. Manitoba Hydro asserts that the Consumers Coalition's Application attempts to expand the Board's jurisdiction to include general supervisory powers over Hydro, which Manitoba Hydro says is inconsistent with the Board's overall legislative framework.

Manitoba Hydro disagrees with the Consumers Coalition that electricity rates have not been subject to a full review by the Board in three years. A full rate proceeding was commenced in late 2018 and concluded in Order 69/19. The Board approved just and reasonable rates based on the complete application and evidence submitted by Manitoba Hydro. Manitoba Hydro argues that the mere passage of time since the last Board Order

does not give rise to a substantial change in circumstances or render those rates unjust or unreasonable.

Manitoba Hydro also notes that the Board's determination of whether the circumstances of Manitoba Hydro have substantially changed should not be influenced by the risk that Manitoba Hydro will not have a public rate review for many years to come. According to Manitoba Hydro, any prospective legislative change is speculative and should not be considered by the Board.

With respect to the changes in circumstances cited by the Coalition, Manitoba Hydro takes the position these circumstances do not individually or collectively constitute a "substantial change in circumstances" of Manitoba Hydro. Rather, each of these "changes" was anticipated and reasonably forecasted at the time of Orders 59/18, 69/19, 100/20, and 110/20. While Manitoba Hydro indicates these changes are likely to result in future rate impacts, no such changes have yet materialized to render existing rates unjust or unreasonable. Manitoba Hydro submits:

- the revenue requirement impacts of the major capital projects referred to by the Consumers Coalition have been fully considered in several rate applications over the past decade, including most recently in Orders 59/18 and 69/19;
- Strategy 2040 represents the ongoing strategic business planning of Manitoba Hydro and does not currently have an impact on rates. Any attempts to speculate as to how Strategy 2040 and the corporate re-organization will impact rates in the future is entirely premature at this time;
- the 215 MW export sale to SaskPower does not impact Manitoba Hydro's revenue until 2022;
- the increase in opportunity export sales following the in-service of the Keeyask generating station was anticipated and included in IFF16 in Manitoba Hydro's 2017/18 and 2018/19 GRA;
- the recent increase in Manitoba Hydro's short-term borrowing capacity has yet to be activated and therefore no change has resulted yet for Manitoba Hydro. As

such, changing interest rates within the financial markets does not constitute a substantial change in circumstances;

- that, although Manitoba Hydro acknowledges that there have been regulatory, judicial and legislative developments since Order 69/19, it submits such developments are not unusual and occur in the normal course. The necessary rate adjustments resulting from the Manitoba Court of Appeal decision were recently approved by the Board. Further, the 2.9% legislated rate increase is not subject to review by the Board and it is inappropriate for the Board to consider this rate increase at all in determining whether there is a “substantial change” in circumstances; and
- that updates to its financial position and business plans will be publicly submitted in due course. Manitoba Hydro has shared information with Manitoba ratepayers through numerous avenues, including presentations before the Standing Committee on Crown Corporations in June 2020, publication of quarterly financial reports and the annual public meeting held in February 2021. Manitoba Hydro has submitted its 2021/22 Annual Business Plan for review by the Minister and is in the process of preparing its year end financial statements and annual report for the 2020/21 fiscal year to be provided to the Minister.

In addition, Manitoba Hydro asserts that its immediate regulatory focus for 2021 is to complete regulatory proceedings that have been commenced by Centra Gas Manitoba Inc (“Centra”). Centra submitted a Rate Re-bundling Application in March 2021 and is currently working towards filing a Cost of Service Methodology review before the summer. Manitoba Hydro is currently planning to file in the winter of 2022/23 a comprehensive electric and gas general rate application that will then include a complete long-term forecast that reflects Strategy 2040, updated integrated resource planning analysis, as well as provincial energy policy direction. Manitoba Hydro is concerned that any status update proceeding will interrupt its ongoing work on these initiatives, and that the Consumers Coalition’s proposed schedule and timing for a status update process is unrealistic given these regulatory processes.

Assembly of Manitoba Chiefs (“AMC”)

AMC submits that the Board should grant the Application. AMC agrees with the Consumers Coalition that the circumstances of Manitoba Hydro have changed substantially since Orders 59/18 and 69/19 and that a status update hearing as proposed by the Consumers Coalition should be held. The status update hearing should also address whether Manitoba Hydro’s rate classifications are just and reasonable, a matter determined to be within the Board’s jurisdiction in the recent Manitoba Court of Appeal decision.

AMC notes that, since September 1, 2020, most First Nations on-reserve residential ratepayers have faced an approximately 9% rate increase without full regulatory review by the Board. In AMC’s view, this has exacerbated the energy poverty faced by these ratepayers during a time of economic recession and the significant negative effects of the COVID-19 pandemic. The three-year gap since the last rate hearing has been detrimental for First Nations ratepayers in Manitoba who do not have clarity about the impact of recent changes to Manitoba Hydro.

AMC takes the position that, since the Board did not hold a full hearing for the 2019/20 year in anticipation that Manitoba Hydro would file a full rate application in late 2019, the Board should now hold a full hearing. AMC also submits that to accommodate COVID-19 precautionary measures, as well as to reduce costs, the hearing process should be as flexible as possible. The Board should direct that a pre-hearing conference be held by videoconference and should consider holding a non-evidentiary technical conference.

Manitoba Industrial Power Users Group (“MIPUG”)

MIPUG submits that the Board should grant the Application and proceed as proposed by the Consumers Coalition. MIPUG concurs with the Consumers Coalition that there has been a “substantial change in circumstances” of Manitoba Hydro but states that the Consumer Coalition underestimated the facts in its presentation supporting its claim.

Further, MIPUG submits that Manitoba Hydro has not had a true comprehensive rate review for 4 to 6 years and that, absent action on the Application, a transparent review of Manitoba Hydro rates will likely not occur for a number of years. MIPUG emphasizes that “a transparent and independent regulatory process is the best approach to establishing oversight for Manitoba Hydro”.

MIPUG points out that an intervener-initiated review of Manitoba Hydro is not without precedent and notes that a review of electricity rates in Manitoba in 1986/87 started with a filing from Consumers’ Association and that a Manitoba Hydro “status update” in 2002 was also commenced by interveners.

MIPUG agrees with Consumers Coalition that Manitoba Hydro’s assets have doubled during the last three years through completion of Bipole III, Manitoba-Minnesota Transmission Line Project, and with Keeyask Generating Station coming fully into commercial service by April 2021. However, MIPUG is of the view that the appropriate timeline for assessment has been six years, given that the last full rate filing and review, including a full consideration of operating and maintenance budgets, was undertaken in January 2015, over six years ago. Although the 2017/18 and 2018/19 General Rate Application was an extensive proceeding, its primary focus was on the proposed 7.9% annual rate increases and little time was made available during the proceeding for many normal and traditional rate review topics. Further, an updated IFF was never filed and the hearing produced only a general baseline financial forecast.

MIPUG asserts that since the last full rate filing and review in 2015, there have been various changes in Manitoba Hydro’s circumstances, such as multiple rounds of operating cuts imposed by government directives, changes to Manitoba Hydro subsidiaries, the operation of the Manitoba-Minnesota Transmission Project and an evolution of export market pricing. MIPUG also references the need for forward-looking information about the level of rates and related risks that Manitoba Hydro will face today and into the future.

Another changed circumstance according to MIPUG is the finding by the Wall Commission in its Report that Manitoba Hydro’s ratepayers should not bear the risk

associated with new generation projects that will be used for exports for an extended period of time and are not needed to serve domestic demand. As the government benefits from these new generational projects through capital taxes, water rental charges and debt guarantee fees, the government, and not the ratepayer, should bear the risks of such projects.

MIPUG's view is that the failure of Manitoba Hydro to produce an appropriate IFF since 2016, combined with presentations of limited short-term forecasts (for example, the 2019/20 GRA) and a lack of transparency regarding the most recent rate and regulatory changes imposed by the legislature, has resulted in industry in Manitoba presently operating with an unprecedented lack of confidence in electricity rates.

From the list of materials that the Consumers Coalition recommends the Board direct Manitoba Hydro to file, MIPUG considers the Corporate Strategic Plan, the long-term Capital Expenditure Forecast and the long-term (20-year) IFF to be of critical importance for the public record. MIPUG asserts that as each of these items are of important internal value to Manitoba Hydro for ensuring prudent and prioritized investments and appropriate management of corporate borrowing, it should be understood that such forecasts currently exist.

Manitoba Keewatinowi Okimakanak (“MKO”)

MKO submits that the Board should grant the Application. MKO agrees with the Consumers Coalition that there has been a substantial change in circumstances of Manitoba Hydro justifying a status update hearing into current electricity rates.

Specifically with respect to former First Nations on-reserve customers, MKO submits that these customers face rate shock in the range of 9%. MKO notes that former First Nations on-reserve customers experienced the same 2.9% general electricity rate that all Manitobans experienced on December 1, 2020. Former First Nations on-reserve customers also face a 6.5% increase in electricity rates as a result of the Manitoba Court of Appeal's decision eliminating the First Nation On-Reserve Residential (“FNORR”)

customer class. MKO asserts that this 9% rate increase on former FNORR customers, some of the most vulnerable people in the Province, during a pandemic constitutes on its own a substantial change in circumstances that warrants the Board directing a status update hearing.

MKO agrees with the Consumers Coalition that there have been substantial changes since the partial GRA hearings that gave rise to Board Orders 59/18 and 69/19 that still govern electricity rates.

With respect to the Board's jurisdiction to direct a status update hearing, MKO notes that the 2.9% rate increase that was enacted by *The Budget Implementation and Tax Statutes Amendment Act* does not suspend the Board's ability to review electricity rates. Although the Board has no jurisdiction to review the 2.9% rate increase on its own, the Board can consider this rate increase as a substantial change in circumstance.

Further, MKO submits that Bill 35, *The Public Utilities Ratepayer Protection and Regulatory Reform Act*, is presently before the Legislative Assembly but has not been passed. Accordingly, Bill 35 is not law. The legislative regime that exists today is all that is relevant for the Board's determination regarding whether to hold a status update hearing.

Reply by the Consumers Coalition

The Consumers Coalition asserts that Manitoba Hydro mistakenly states that the onus is on the Consumers Coalition to demonstrate both that circumstances have substantially changed and that existing rates are no longer just and reasonable. Although the Consumers Coalition acknowledges that it bears the burden of showing that Manitoba Hydro's circumstances have changed substantially since Orders 69/19 and 59/18, once the threshold test of substantial change has been met, the onus shifts to Manitoba Hydro to demonstrate that its rates are just and reasonable. Given that Manitoba Hydro has control over important rate approval information and documents, imposing an onus on the

Consumers Coalition to establish that rates are not just and reasonable would erect an impassable practical barrier because of the information asymmetry.

The Consumers Coalition disagrees with Manitoba Hydro that the request for a status update hearing falls outside the Board's jurisdiction. The purpose of the status update hearing is to determine whether Manitoba Hydro's rates are just and reasonable recognizing the fundamental change in Manitoba Hydro's circumstances over recent years that potentially have material implications for rates. That question, according to the Consumers Coalition, falls squarely within the Board's authority under Part 4 of the Crown Act.

In its reply submissions, the Consumers Coalition argues that Manitoba Hydro's assertion that there has not been a substantial change in circumstances is undermined by the Utility's own admissions. Manitoba Hydro admits that it has a new corporate strategic plan and that its corporate reorganization is underway, that it expects all units of Keeyask will be in-service by April 2022, and it concedes that the major export sale to SaskPower will result in a new revenue source in 2022. According to the Consumers Coalition, these are clearly substantial and material changes in circumstances that are directly relevant to the purposes of a status update to consider whether rates are just and reasonable.

With respect to Manitoba Hydro's submission that the revenue requirement impacts of bringing major capital projects into service have been fully considered over the past decade, the Consumers Coalition notes that it is only the integrated financial picture, as produced in an IFF, that enables a reliable forecast of revenue requirements and rate impacts. The Consumers Coalition says that an analysis grounded in IFF16 cannot provide sufficient insight into a major transmission project coming online in 2018, a complete business unit restructuring in 2019, and a massive new generating station with all units coming into service by April 2022.

The Consumers Coalition also replies that Manitoba Hydro's new Corporate Strategic Plan shows that its business unit organization was fundamentally altered and that substantial changes have been made to Manitoba Hydro's corporate structure. According

to the Consumers Coalition, these changes can be expected to materially impact spending decisions by Manitoba Hydro.

The Consumers Coalition takes the position that the Board should draw adverse inferences from Manitoba Hydro's failure to address the following key aspects of the Application:

- That electricity rates are based on outdated information;
- That a status update hearing is necessary to determine how the major capital project deferral account will be brought into Manitoba Hydro's operating revenues at a future GRA;
- The sharp drop in yields on long-term debt since March 1, 2018 may have critical implications for ratepayers given expected borrowings of over \$8 billion between 2019 and 2026; and
- The Board's regulatory costs have averaged less than 0.25% of Hydro's anticipated annual domestic revenues over the past three years while annually 17% to 18% of each dollar of Manitoba Hydro revenue is directed to the Province of Manitoba.

With respect to Manitoba Hydro's argument that a status update hearing is premature and the timing of the status update process is unrealistic, the Consumers Coalition is of the view that the unprecedented lack of confidence in Manitoba Hydro's rates, as expressed by long-standing regulatory stakeholders, requires an urgent and respectful response by Manitoba Hydro and that there is no time for further delay.

The Consumers Coalition accepts the submissions of MIPUG and MKO in terms of additional grounds identified by those parties supporting a finding of substantial change. In particular, it agrees with MIPUG that recent operating cost cuts in response to the pandemic further support a finding of a substantial change in circumstances. As well, from the perspective of residential ratepayers, the Consumers Coalition concurs with MIPUG that "routine and transparent regulation, overseen by an independent regulator, is the only way to achieve ratepayer confidence".

5.0 Board Findings

As detailed below, the Board finds that additional information is required for the Board to further consider and determine whether there has been a substantial change in Manitoba Hydro's circumstances such that Orders 59/18 and 69/19 should be reviewed.

Subsection 26(3) of the Crown Corporations Governance and Accountability Act ("Crown Act") provides:

Where The Public Utilities Board is satisfied that the circumstances of a corporation have changed substantially, The Public Utilities Board may, of its own motion or on the application of the corporation or an interested person, review an order made pursuant to this section and modify the order in any manner that The Public Utilities Board considers reasonable and justified in the circumstances. (underline added)

Therefore, the threshold question in this Application is whether the circumstances of Manitoba Hydro have changed substantially. The Board can review a prior Order under s. 26(3) of the Crown Act only after the Board is satisfied that requirement has been met.

Under the Crown Act, the Board must set the rates paid by consumers of electricity to Manitoba Hydro, which has a monopoly on the sale of electricity in the Province of Manitoba.

The electricity rates approved by the Board to be charged by Manitoba Hydro to its ratepayers must be just and reasonable and in the public interest. In setting those rates, as confirmed by the Manitoba Court of Appeal, the Board balances the interests of Manitoba Hydro's ratepayers and the financial health of Manitoba Hydro. Together, and in the broadest interpretation, these interests represent the general public interest.

Achieving the Board's mandate of setting for a monopoly just and reasonable rates that are in the public interest requires ratepayer trust and confidence. In order to achieve public trust, there must be transparency in the Board's processes. A transparent process

allows the public to have access to information regarding the basis for the rates charged for electricity, and to trust that the monopoly utility is being regulated in the public interest. Against the above background, the Board notes the concerns in the submissions of MIPUG, as supported by other stakeholders, that:

The failure of MB Hydro to produce an appropriate IFF since 2016, combined with presentations of limited short-term forecasts (e.g., the proceeding leading to Order 69/19) and a lack of transparency regarding the most recent rate and regulatory changes imposed by the legislature, means that industry in Manitoba is presently operating with an unprecedented lack of confidence. Conditions related to rate competitiveness in Manitoba are opaque and important decisions regarding capital investment by industry and post-pandemic production scheduling are already beginning to direct critical resources elsewhere. If allowed to continue, opportunities for Manitoba-based operations will inevitably be lost.

While MB Hydro does not appear to share a mutual understanding of the importance that this information holds for MIPUG members and industry generally (failing to treat sharing of its long-term forecast information with ratepayers as a high priority), it is of utmost importance to the public interest. This information is particularly relevant to businesses as it seeks to rebound from the difficult economic conditions of a pandemic. Routine and transparent regulation, overseen by an independent regulator, is the only way to achieve ratepayer confidence.

For context, the Board notes that MIPUG is an association of major industrial companies operating in Manitoba that are customers in the General Service Large rate classes. As of the 2019/20 rate application process, the General Service Large rate classes purchased approximately 35% of annual domestic energy sales by Manitoba Hydro.

In this Application, the Consumers Coalition has provided submissions premised on various publicly available documents, information, and prior Board Orders. Information has similarly been provided in the submissions by MIPUG, AMC and MKO, while Manitoba Hydro provided written argument. As a result, the Board does not have any current information before it regarding Manitoba Hydro's circumstances, including its current and projected financial health as it relates to consumer rates. The Board has therefore determined that, in the circumstances of this Application, it requires more information to determine the threshold question under s. 26(3) of the Crown Act. The Board needs to do so in an open and transparent process, consistent with the Board's mandate as an independent and evidence-based decision maker.

The information before the Board suggests *prima facie* that there have been changes in Manitoba Hydro's circumstances. However, the Board is being asked to rely for its decision on outdated evidence as well as unsubstantiated representations and publicly available documents that have never been subjected to scrutiny by the Board.

The Board notes and accepts the submissions that there is 'information asymmetry', which the Board understands from the submissions to mean that current relevant documentation related to rates is held by Manitoba Hydro and is not available to ratepayers or stakeholders. The Board finds that additional information from Manitoba Hydro is required for the Board to determine whether there has been a substantial change in Manitoba Hydro's circumstances. On matters within the Board's jurisdiction, the Board is empowered by *The Public Utilities Board Act* (the "PUB Act"), including ss. 27(2), 28(1), 33, and 78(1), to direct that Manitoba Hydro provide documents and other evidence. As determination of whether there has been a substantial change of circumstances is a matter expressly within the Board's jurisdiction under the Crown Act, the Board can exercise the powers granted to it under the PUB Act. The Manitoba Court of Appeal has confirmed that the provisions of the PUB Act authorizing the Board to do so apply to Manitoba Hydro:

The limitation on the PUB's authority found in section 2(5) of the PUB Act specifies that it is subject to Part 4 of the Crown Act. Section 25(3) of the

Crown Act specifically allows for the application of the PUB Act “with any necessary changes” to a review of the rates charged by Manitoba Hydro. I disagree with the suggestion made by Manitoba Hydro that section 25(3) of the Crown Act is limited to process only. There is nothing in section 25(3) that would limit its application to matters of procedure before the PUB.

Therefore, the provisions in the PUB Act that authorize the Board to require that documents and evidence be provided on matters within its jurisdiction apply where the Board is determining whether there has been a substantial change of circumstances under subsection 26(3) of the Crown Act.

To assess the question of substantial change of circumstances, the Board requires additional information that will provide an accurate picture of Manitoba Hydro’s financial health, including financial forecast, hydrology, and capital forecast documents, as well as how Manitoba Hydro’s current costs, including those for major new capital projects, are being borne by the different customer classes.

Further to the risks noted by MIPUG and supported by other stakeholders, the Board has found in previous Board Orders, including Order 59/18, that one of the greatest risks for Manitoba Hydro involves hydrology. The Board therefore requires hydrology information, including actual water flow and reservoir conditions and the expected inflows during the current and next fiscal year, to assess next steps.

The Board does not agree with the Consumers Coalition that the Strategy 2040 document is necessary for the Board to determine the threshold question under s. 26(3), particularly as any shifts in costs resulting from the business reorganization will be reflected in the financial forecast.

As noted in the submissions to the Board, documents such as the Capital Expenditure Forecast and Integrated Financial Forecast are of internal value to Manitoba Hydro and the Board expects that such forecasting would be used internally for ensuring prudent investments and appropriate management of corporate borrowings.

Manitoba Hydro is directed to provide, within 30 days of the date of the issuance of this Order, the versions of the following documents, or form of the following documents containing substantially the same information as would be provided in general rate application filings before the Board, that are currently in use in the management and operations of Manitoba Hydro:

1. the Integrated Financial Forecast;
2. the Capital Expenditure Forecast;
3. the Prospective Cost of Service Study; and
4. the 2021/22 and 2022/23 forecast of net export revenue and net income for each of the possible water flow conditions, in a form similar to the table and graph provided in response to 2019/20 GRA PUB/MH I-29(b) and (c). The forecast of net export revenue and net income should incorporate water flow conditions updated to at least March 15, 2021. This is to be filed along with an explanation as to the probabilities of droughts (defined as below average hydraulic generation) in each of 2021/22 and 2022/23.

On receipt of the above documents, the Board will determine the next steps in the process for consideration of the Application filed by the Consumers Coalition, including whether it would assist the Board to have further submissions from the parties on the question of substantial change in circumstances.

6.0 IT IS THEREFORE ORDERED THAT:

1. Manitoba Hydro is directed to provide within 30 days of the issuance of this Order the versions of the following documents that are currently in use in the operations and management of Manitoba Hydro:
 - a. Integrated Financial Forecast;
 - b. Capital Expenditure Forecast;
 - c. Prospective Cost of Service Study; and
 - d. the 2021/22 and 2022/23 forecast of net export revenue and net income for each of the possible water flow conditions, in a form similar to the table and graph provided in response to 2019/20 GRA PUB/MH I-29(b) and (c). The forecast of net export revenue and net income should incorporate water flow conditions updated to at least March 15, 2021. This is to be filed along with an explanation as to the probabilities of droughts (defined as below average hydraulic generation) in each of 2021/22 and 2022/23.

If the versions currently in use in the operations and management of Manitoba Hydro are not in the form typically provided to the Board in General Rate Applications, the form of documents containing substantially the same information that are currently in use in the operations and management of Manitoba Hydro may be provided to satisfy this Directive.

The information provided must include the vintage of the documents and underlying data.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

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Secretary

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