

CANADIAN ENERGY REGULATOR

IN THE MATTER OF the *Canadian Energy Regulator Act*, SC 2019, c. 28, s. 10, as amended, and the regulations made thereunder;

AND IN THE MATTER OF a November 1, 2015, Blanket Electricity Export Permit EPE-404 issued to the Manitoba Hydro-Electric Board;

AND IN THE MATTER OF a Complaint by NorthPoint Energy Solutions Inc. pursuant to sections 355, 359(2), 363 and 366(1) of the *Canadian Energy Regulator Act*.

**MANITOBA HYDRO-ELECTRIC BOARD
REPLY TO COMPLAINT BY NORTHPOINT ENERGY SOLUTIONS INC. PURSUANT
TO THE CANADIAN ENERGY REGULATOR ACT**

To: Ramona Sladic, Secretary
Canadian Energy Regulator
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8

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CER File No. 3430456

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I. SUMMARY OF MANITOBA HYDRO'S POSITION

1. Manitoba Hydro-Electricity Board (“**Manitoba Hydro**”) requests that the Canada Energy Regulator (“**CER**”) dismiss the Complaint filed by NorthPoint Energy Solutions Inc. (“**NorthPoint**”). NorthPoint is incorporated under the laws of the Province of Saskatchewan and is a wholly owned subsidiary of provincially owned Saskatchewan Power Corporation (collectively referred to hereinafter as “**SaskPower**”). Accordingly, no further process steps should be set out by the CER.

2. The principle of fair market access (“**FMA**”) does not obligate Manitoba Hydro to provide a different class of electricity service at the same price. It is not a breach of the FMA principle by Manitoba Hydro if SaskPower is not willing to accept the same quantities and classes accepted by the Midcontinent Independent System Operator, Inc. (“**MISO**”). Nor is it a breach of the FMA principle by Manitoba Hydro if price differentiation occurs on different classes of service.

3. In any event, Manitoba Hydro satisfies the FMA requirements for energy offered on a day-ahead basis to MISO as this is a competitive market with trading occurring between an array of buyers and sellers, including SaskPower. In the hours SaskPower is interested in purchasing day-ahead energy from Manitoba Hydro, SaskPower has access to the MISO market and, as a market participant, has the same opportunity to purchase any quantities of energy offered by Manitoba Hydro to MISO, at or near the same market clearing price and under the same terms and conditions, as all other MISO market participants.

4. Pursuant to the CER’s letter dated December 8, 2023,¹ this document constitutes Manitoba Hydro’s comments on item (ii) of the “Initial Relief” requested by SaskPower in the complaint filed with the CER under Sections 355, 359(2), 363 and 366(1) of the Canadian Energy Regulator Act (“**CERA**”) on November 9, 2023 and supplemental erratum filed on November 23, 2023 (“**Complaint**”).² The Cover Letter of this document constitutes Manitoba Hydro’s comments on item (i) of the “Initial Relief” requested by SaskPower.

II. INTRODUCTION

5. Manitoba Hydro is a Crown Corporation of the province of Manitoba that is authorized to export electricity pursuant to Province of Manitoba Order in Council No. 437/1996 and a blanket CER electricity export permit numbered EPE-404 expiring on October 31, 2025 (“**Blanket Export Permit**”).³ Manitoba Hydro is statutorily mandated to engage in and to promote economy and efficiency in the development, generation, transmission, distribution, supply and end-use of power,⁴ and, when selling outside of Manitoba, needs to market and supply power to persons outside the province on terms and conditions acceptable to the board.⁵

¹ CER Letter, December 8, 2023, C27601-1, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/4424526>>

² *National Energy Board Rules of Practice and Procedure*, 1995, SOR/95-208

³ CER Permit EPE-404, Manitoba Hydro-Electric Board, July 30, 2015, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/2809333>>

⁴ *The Manitoba Hydro Act*, CCSM c H190, s.2 & 15(1.2); Manitoba Hydro-Electric Board terms of reference, online: <https://www.hydro.mb.ca/corporate/leadership/mheb_terms/>

⁵ *The Manitoba Hydro Act*, CCSM c H190, s.2(1)(b) & 15(1.2).

6. Manitoba Hydro's primary U.S. export market for the sale of power that is surplus to the needs of Manitobans is the energy market operated by MISO.⁶ MISO is a Regional Transmission Organization spanning 15 states in the Midwest U.S. and several North American Electric Reliability Corporation ("NERC") regions. The energy market operated by MISO includes day-ahead and real-time energy markets, a market for operating reserves and a market for capacity sales.

7. Other U.S. export markets that Manitoba Hydro may participate in include Southwest Power Pool's day-ahead and real-time energy market.⁷

8. SaskPower is a crown corporation of the Province of Saskatchewan, that is authorized to export electricity pursuant to a blanket CER electricity export permit numbered EPE-408 expiring on March 14, 2026.⁸ SaskPower reported a \$172 million net loss for the fiscal year 2022-2023, a return on equity of negative 6.3% and total debt growing by over \$700 million.⁹

9. NorthPoint has the rights to 150 MW of Saskatchewan long-term firm transmission service in both directions to and from the United States.¹⁰

10. NorthPoint provides SaskPower with generation and load management services and electricity export and import functions (including transmission scheduling) related to the generation assets of SaskPower. NorthPoint carries on its electricity marketing business in MISO, the Western Electricity Coordinating Council, Independent Electricity System Operator, PJM Interconnection, L.L.C. and the Southwest Power Pool.¹¹

11. NorthPoint exports and electricity trading revenues were \$139 million in fiscal year 2022-23. The average export sales price was \$149 per megawatt hour (MWh). Export sales volumes, primarily to Alberta and the Southwest Power Pool, were 932 GWh.¹²

12. On October 19, 2015, SaskPower applied through NorthPoint Energy Solutions Inc. to the CER for a Blanket Electricity Export Permit. As part of this application, SaskPower provided a description on how it intended to offer FMA:

The electricity that NorthPoint will market for export will be available to any person who has demonstrated an intention to buy electricity for consumption in Canada, within a reasonable time after being so informed, under as favourable terms and conditions as the export.

⁶ Application for EPE-404, Manitoba Hydro-Electric Board, May 29, 2015, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/2787012>>

⁷ Ibid.

⁸ CER Permit EPE-408, NorthPoint Energy Solutions Inc., December 17, 2015, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/2897788>>

⁹ SaskPower, Annual Report 2022-2023, pg 2, online: <<https://www.saskpower.com/-/media/SaskPower/About-Us/Reports/Report-AnnualReport-2022-23.ashx>>

¹⁰ Application for EPE-408, NorthPoint Energy Solutions Inc., October 19, 2015, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/2839923>>

¹¹ Ibid.

¹² SaskPower, Annual Report 2022-2023, pg 36, online: <<https://www.saskpower.com/-/media/SaskPower/About-Us/Reports/Report-AnnualReport-2022-23.ashx>>

13. As both entities participate in several of the same markets, including the MISO market, SaskPower is a competitor to Manitoba Hydro.

14. SaskPower and Manitoba Hydro's transmission networks are interconnected at five separate locations along the Manitoba and Saskatchewan border. The physical ability to flow electrons over those points of interconnection is limited by two long term power purchase agreements recently entered into between the parties which consume much of the available transfer capability ("ATC") over the interconnections.

15. ATC is a measure of the transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses.¹³

16. SaskPower has entered into two (2) long-term power purchase agreements for renewable energy and capacity with Manitoba Hydro that spans the period from 2020 up to 2052.¹⁴

17. The first agreement, the 2020-2040 System Power Sale Agreement is a 100 MW capacity and energy sale from Manitoba Hydro to SaskPower that started on June 1, 2020 and will continue through May 31, 2040.

18. The second agreement, the 215 MW System Power Sale Agreement provides up to 215 MW capacity and energy sale from Manitoba Hydro to SaskPower that started June 1, 2022 and will continue up to May 31, 2052.

19. With these two agreements in place, the Firm Transmission Service, which is the highest quality (priority) service offered to customers under a filed rate schedule that anticipates no planned interruption from Manitoba to Saskatchewan,¹⁵ is fully utilized in the majority of hours. On occasion, the SaskPower and/or Manitoba Hydro transmission providers may release, on an hourly basis, limited amounts (typically 35 MWs or less) of additional ATC as Non-Firm Transmission Service, which is transmission service that is reserved on an as-available basis and is more susceptible to curtailment or interruption.¹⁶

20. It is important to note that Manitoba Hydro maintains Standards of Conduct¹⁷ which restrict the interaction between Manitoba Hydro's transmission function employees, who are responsible for such things as administrating Manitoba Hydro's Open Access Transmission Tariff ("OATT"), determining ATC, and establishing rates for the use of Manitoba Hydro's transmission system, and Manitoba Hydro's market function employees, who, among other things, are responsible for negotiating the terms and conditions under which Manitoba Hydro

¹³ NERC, Glossary of Terms Used in NERC Reliability Standards, December 1, 2023, at pg 5, online: <https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf>

¹⁴ Manitoba Hydro, Power sale arrangements, consulted on December 18, 2023, online: <https://www.hydro.mb.ca/corporate/electricity_exports/power_sale_arrangements/>

¹⁵ NERC, Glossary of Terms Used in NERC Reliability Standards, December 1, 2023, at pg 14, online: <https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf>

¹⁶ NERC, Glossary of Terms Used in NERC Reliability Standards, December 1, 2023, at pg 20, online: <https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf>

¹⁷ Manitoba Hydro, Standards of Conduct, consulted on December 20, 2023, online: <https://www.hydro.mb.ca/regulatory_affairs/standards_of_conduct/>

sells its surplus energy to neighbouring customers and ensuring fair market access is provided thereto.

III. FAIR MARKET ACCESS

A. What is fair market access?

21. FMA has been described as follows:¹⁸

FMA is meant to provide Canadian purchasers, who have demonstrated an intention to purchase electricity for consumption in Canada, an opportunity to purchase electricity on terms and conditions, including price, as favourable as those offered to export customers. The Board is not prescriptive in determining the procedures that exporters undertake. The onus is on both the exporter and the domestic buyer to keep each other informed about intentions to sell and purchase electricity and to bargain in good faith.

22. Over 300 permits have been issued since the CERA (formerly the *National Energy Board Act*) incorporated the concept of FMA from the 1988 Canadian Electricity Policy (“**Electricity Export Policy**”).¹⁹ The Electricity Export Policy sets out a FMA guideline:²⁰

1. Export applications may be designated for licensing if Canadians wishing to purchase electricity to satisfy the requirements of their own domestic service area (as opposed to purchases for re-sale outside of their own domestic service area) have not been given fair market access to the electricity that the exporter is making available to external markets.

2. Fair market access is a reciprocal concept: it entails certain responsibilities for the Canadian buyer and certain responsibilities for the exporter.

3. Exporters must ensure that potential Canadian buyers are kept informed about the electricity available for sale to external markets. Canadian buyers should be advised of the classes of service available, the quantities available and the period for which the quantities are available; however, while negotiations with export customers are underway, price information may remain privileged.

4. The Canadian buyer must then demonstrate a serious intent to purchase by, for example, telling the exporter the class of service it is interested in buying, the quantities it is interested in buying, and the period of the proposed purchase.

¹⁸ CER Letter Decision, Manitoba Hydro-Electric Board Application for Permit EPE-387, File OF-EI-Elec-M180-2013-01 01, October 28, 2013, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/1057248>>

¹⁹ CER, FAQ about Fair Market Access, August 18, 2009, online: <<https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/electricity-export-applications/frequently-asked-questions-faqs-about-fair-market-access.html>>

²⁰ CER Reasons for Decision EHW-1-92, The Manitoba Hydro-Electric Board, Application dated 27 August 1991 for permits to export shortterm firm capacity and energy and interruptible energy, February 1993, at Appendix II, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/94304>>

5. When a Canadian purchaser (i) is interested in buying electricity to satisfy the requirements of its own domestic service area, and (ii) has demonstrated a willingness to negotiate the purchase of a class of service that is similar to that being considered by an exporter for sale to an export customer, then the exporter should ensure that the Canadian has an opportunity to negotiate terms and conditions (including price) no less favourable than those being offered to export customers.

23. Only “domestic buyers”²¹ are eligible for FMA provided that such buyers have access to the wholesale transmission system within Canada and have the legal ability to effect a purchase.²² FMA cannot be assessed at the time of application for a blanket electricity permit since no contracts are yet in place. To address this issue, the CER developed a standard condition that obligates both Manitoba Hydro and SaskPower to provide FMA throughout the term of the permit, which states as follows:²³

5. For sales transfers, Manitoba Hydro shall not export energy hereunder, without first:

- i. informing those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes available for sale; and
- ii. giving an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions which apply to the proposed exports, to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada.

24. FMA places an onus on both the exporter and prospective Canadian purchasers to bargain in good faith and work out for themselves mutually acceptable and appropriate fair market access procedures.²⁴

25. The CER does not prescribe the procedures for providing FMA. Procedures are expected to vary based on the circumstances surrounding the proposed sale, such as the dynamics of the electricity market and market participants, the sales contract term length, volumes available, and whether the electricity available is interruptible or firm.²⁵

²¹ “Domestic buyers” refers to parties purchasing electricity for consumption in Canada: CER, FAQ about Fair Market Access, August 18, 2009.

²² CER Letter Decision, British Columbia Power Exchange Corporation, 6200-B095-2-1, September 13, 1996, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/555834>> - Retail or end use customers are not entitled to receive wholesale service, thus FMA does not apply to distribution connected loads, for example.

²³ Permit EPE-404, s.5; Permit EPE-408, s.5; CER, FAQ about Fair Market Access; CER Reasons for Decision, Hydro-Quebec, Application dated 24 May 1994 for a permit to export firm and interruptible electricity, December 1994, at pgs 11-12 online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/94264>>

²⁴ Hydro-Quebec, December 1994, at pgs 11-12.

²⁵ CER, FAQ about Fair Market Access

B. Manitoba Hydro prima facie provides fair market access

26. On May 29, 2015, Manitoba Hydro applied to the CER for the Blanket Electricity Export Permit. The same day, Manitoba Hydro served a copy of the notice of application and direction on procedure on SaskPower. As part of the Blanket Export Permit application, Manitoba Hydro provided a description on how it intended to offer FMA:

Manitoba Hydro offers fair market access to accessible Canadian markets by ensuring that : i) it informs those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes available for sale; and ii) it gives an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions which apply to the proposed exports, to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada.

Manitoba Hydro operates a real time trading desk on an around the clock basis as well as term sales desks at which those persons who declare an interest in buying electricity for consumption in Canada can be informed of the quantities and classes of electricity available for sale and provided with an opportunity to purchase electricity on terms and conditions as favourable as the proposed exports.

27. SaskPower did not intervene or provide any comments in respect of the Blanket Export Permit application.

28. Manitoba Hydro provided an identical description on how it intended to offer FMA in its application for authorization to export electricity, for firm power and firm and interruptible energy, in accordance with the electricity transfer agreement between Manitoba Hydro and Great River Energy dated 26 July 2013. In the approval of Manitoba Hydro's application, the CER assessed and determined that Manitoba Hydro's operation of trading and sales desks meet the FMA requirement.²⁶

Manitoba Hydro submits that maintenance of a real time trading desk on an around the clock basis, a term sales desk by which Manitoba Hydro's surplus electricity is made available to domestic buyers, and regular conversations with personnel from neighbouring provinces' electricity organizations meets FMA requirements. Further, no prospective domestic energy purchasers made any FMA submissions to the Board during the application comment period. As a result, **the Board is satisfied that the FMA requirement has been met.**

29. Manitoba Hydro energy traders are in regular communication with SaskPower and provide price quotes when requested and when energy is available.

30. Thus, in approving both the Great River Energy permit and the Blanket Export Permit, prima facie the CER ruled that Manitoba Hydro exports electricity on a FMA basis. While Manitoba Hydro acknowledges it has an ongoing obligation to provide FMA, Manitoba Hydro

²⁶ CER Letter Decision, Manitoba Hydro-Electric Board Application for Permit EPE-387, File OF-EI-Elec-M180-2013-01 01, October 28, 2013, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/1057248>>

submits that the onus lies with SaskPower to demonstrate that it did not provide FMA. SaskPower has not discharged this burden.

C. Summary of fair market access principles

31. Considering the above, FMA can be distilled down to the following concepts:
- a) FMA only applies to exports of electricity.
 - b) FMA must be provided throughout the term of a blanket export permit.
 - c) Only domestic buyers that have access to the transmission system within Canada and have the legal ability to effect a purchase are eligible for FMA.
 - d) Exporters must inform those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes available for sale.
 - e) Exporters must give an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions which apply to the proposed exports.
 - f) Third parties must demonstrate an intention to buy electricity for consumption in Canada within a reasonable time after being informed.
 - g) There is no prescribed procedure for providing FMA and procedures for FMA can vary in the circumstances. Parties must bargain in good faith.
 - h) Purchases must be made to satisfy the requirements of the Canadian purchaser's own domestic service area, as opposed to purchases for re-sale outside of their own domestic service area.
 - i) An approved export permit holder prima facie provides FMA.
32. Manitoba Hydro submits that only FMA concepts (c), (d), (e) and (g) are at issue in this proceeding, which will be discussed further below.

IV. RESPONSE TO FAIR MARKET ACCESS COMPLAINT

33. Manitoba Hydro submits that in order for the CER to make a finding that Manitoba Hydro failed or refused to provide FMA to SaskPower, it must analyze which concept of FMA has been breached by Manitoba Hydro, if any.

34. Manitoba Hydro has categorized the key assertions in SaskPower's Complaint into the relevant concepts of FMA. For the reasons that follow, Manitoba Hydro submits that it provided, and continues to provide, SaskPower with FMA.

35. At the outset, Manitoba Hydro wants to address SaskPower's assertion that it is an irrational actor who is "...selling low-cost, low-emitting power to the United States to the exclusion of a Canadian jurisdiction, for no discernible benefit to Manitoba Hydro."²⁷ This statement is untrue, inflammatory and runs directly contrary to the statutory mandate of Manitoba Hydro to promote the "economy and efficiency" in the development, generation, transmission, distribution, supply and end-use of power. Manitoba Hydro is a sophisticated energy market participant that is mandated to create value for Manitobans.

²⁷ Affidavit of Lain Lovelace at para 21.

A. SaskPower is unwilling or unable to accept the quantities and classes available for sale (FMA Concepts (d) and (e))

36. Under section 5(i) of the Blanket Export Permit, FMA requires Manitoba Hydro to inform those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes available for sale. If SaskPower is unwilling to purchase the same class of service and quantities, then there is no need to proceed to the second stage and negotiate terms and conditions (including price) no less favourable than those being offered to MISO on that class of service.

37. SaskPower appears to be conflating the distinct concepts of “quantities and classes available for sale” and the “terms and conditions” offered to MISO on those quantities and classes. The Complaint by SaskPower is entirely focused on the second stage of this analysis and discusses at length how payments made to Manitoba Hydro were under “premium” terms and conditions. However, the Complaint does not establish how SaskPower is willing to purchase a class of service that is the same as that being sold to MISO by Manitoba Hydro.

38. In fact, Exhibit E to the Affidavit of Dean Jones acknowledges that the class of service desired by SaskPower is not the same as that of MISO. Mr. Jones explicitly states that SaskPower operates on a “fixed schedule flowing to [SaskPower]” whereas MISO operates a “real time market to economically manage [Day-Ahead] commitments in real time”.²⁸ This statement alone should be dispositive of the Complaint.

39. MISO operates a market-based platform allowing Manitoba Hydro scheduling flexibility in both buying and selling into the day-ahead market and in the real-time market to avoid running its higher cost generating units to meet internal load requirements or other operational needs. Given the number of market participants buying and selling energy in the MISO Market, Manitoba Hydro is able to settle energy quantities with MISO every 15 minutes in real-time including reducing the physical schedule, at Manitoba Hydro’s sole discretion.

40. Currently, SaskPower does not operate an electricity market and SaskPower cannot offer the same market-based class of service as MISO.²⁹

41. This is a fundamental difference in the class of service. MISO offers transactions with an array of sellers and purchasers whereas transactions with SaskPower are done on a bilateral basis. Commercial risks and pricing signals in each of these situations are different.

42. The table below compares the key differences between: (a) the class of service with MISO; and (b) the class of service SaskPower is willing to accept.

Table 1: Fundamental differences between MISO and Saskatchewan classes of service

	MISO	SaskPower
1	<i>Market</i>	<i>Non-Market</i>

²⁸ Affidavit of Dean Jones, November 2, 2023, at Exhibit E.

²⁹ *Power Corporation Act*, RSS 1978, c P-19, s.38.

	<p>MISO is an independent, not-for-profit, member-based organization focused on managing the flow of high-voltage electricity across its region, facilitating one of the world’s largest energy markets, and planning the grid of the future.³⁰</p> <p>The market contains many physical and financial products and market mechanisms to manage electricity systems.</p>	<p>SaskPower does not operate a market. Only bi-lateral transactions are possible.³¹</p> <p>Transactions impacting SaskPower’s generation and load are facilitated by SaskPower.</p>
2	<p><i>Unrestricted Adjustments to Day-Ahead Transactions</i></p> <p>Contrary to the erroneous assertions in para. 31(a) and 35(b) of the Affidavit of Dean Jones, Day-Ahead schedules can be adjusted in the MISO Market at Manitoba Hydro’s sole discretion. Day-Ahead transactions can be adjusted after the market clearing, the cleared MW will be used in the Day-Ahead Energy and Operating Reserve Market and the adjusted MW schedule will be used in the Real-Time Energy and Operating Reserve Market as requested by the Purchase Selling Entity.³²</p> <p>This affords Manitoba Hydro the ability to make adjustments to both the price and quantity of energy available for export to MISO, including the ability to not export any energy at all, until 20 minutes before such export occurs.</p>	<p><i>Restricted Adjustments to Day-Ahead Transactions</i></p> <p>Day-Ahead bilateral transactions cannot be adjusted at Manitoba Hydro’s sole discretion. SaskPower identified that Manitoba Hydro could curtail Day-Ahead transactions “in real time, prior to running any natural gas units.”³³</p> <p>When Manitoba Hydro sells energy to Saskatchewan and subsequently decides to remove or adjust the schedule, the sale to Saskatchewan cannot be curtailed. Instead of curtailing to meet local demand, Manitoba Hydro would be required to purchase shortfalls from MISO to meet the contracted amounts with SaskPower.</p> <p>Price and energy quantities are fixed a day ahead of the export. Once fixed, the ability to vary the price and quantities of energy before the export occurs is limited, not subject to changing energy market dynamics and would need to be directly negotiated.</p>
3	<p><i>Flexible Scheduling</i></p>	<p><i>Inflexible Scheduling</i></p>

³⁰ MISO, About MISO, consulted on December 18, 2023, online: <<https://www.misoenergy.org/meet-miso/about-miso/>>

³¹ *Power Corporation Act*, RSS 1978, c P-19, s.38.

³² MISO, Physical Scheduling Business Practices Manual – Physical Scheduling, BPM-007-r24, April 20, 2023, s.5.1 online: <<https://www.misoenergy.org/legal/rules-manuals-and-agreements/business-practice-manuals/>>

³³ Affidavit of Cheryl Sanclemente at Exhibit A.

	<p>All Interchange Schedules must begin and end on the top, quarter past, half, or quarter till the hour. Corrections to MISO information on Pending schedules must be submitted no later than 20 minutes prior to the start time of the request.³⁴ Schedules can be increased or reduced within this framework at the market participant’s sole discretion.</p>	<p>When transacting with SaskPower, Manitoba Hydro would only have "the ability to reduce the non-firm product sold to NorthPoint in the real time, prior to running any natural gas units."³⁵</p> <p>SaskPower believes that Manitoba Hydro should rely on the MISO market to achieve the flexibility that SaskPower cannot or will not provide. SaskPower’s position is “Whether MH sells DA to SP or to MISO, MH can manage their net physical position in the RT using the MISO market”.³⁶</p>
4	<p><i>Promotes Competitive Behaviour</i></p> <p>No sharing of confidential market intelligence in advance, in strict compliance with its obligations as a participant in the MISO market.³⁷</p>	<p><i>Enables Non-Competitive Behaviour</i></p> <p>SaskPower is seeking advanced sharing of market intelligence (e.g., sellers, pricing and quantity), despite being a competitor to Manitoba Hydro in the MISO market.³⁸</p>
5	<p><i>Market Based Pricing</i></p> <p>Market prices determined through market-wide power flow models which, in part, aim to co-optimize energy pricing.</p> <p>MISO operates the Day-Ahead Energy and Operating Reserve Market via Security Constrained Unit Commitment (“SCUC”), Security Constrained Economic Dispatch (“SCED”) and SCED-Pricing algorithms to develop commitment schedules and Day-Ahead Schedules of operation for each</p>	<p><i>Bilateral Pricing</i></p> <p>The parties must directly negotiate a price for every hour energy is made available.</p>

³⁴ MISO, Physical Scheduling Business Practices Manual – Physical Scheduling, BPM-007-r24, April 20, 2023, s.5.3 online: <<https://www.misoenergy.org/legal/rules-manuals-and-agreements/business-practice-manuals/>>

³⁵ Affidavit of Cheryl Sanclemente at Exhibit A.

³⁶ Affidavit of Cheryl Sanclemente at Exhibit A.

³⁷ Sharing Manitoba Hydro’s price/quantity bid/offer strategy for the MISO market with SaskPower (a competitor in the MISO market) can be viewed as a form of price fixing, which is anti-competitive and could result in energy market manipulation (SaskPower can easily adjust their bids/offers in the MISO market knowing what Manitoba Hydro’s strategy), which is prohibited by FERC. The MISO tariff which employs an independent market monitor that is obligated to notify FERC of instances of suspected market manipulations.

³⁸ Affidavit of Dean Jones at Exhibit E: “We have enquired about the availability of receiving the same Day-Ahead (“DA”) offers MH shows to the MISO market and have stated we are willing to pay the MISO DA clearing price for all such mutually accepted schedules.”

	<p>Market Participant (“MP”). The Day-Ahead Energy and Operating Reserve Market is a forward market in which hourly Ex Ante and Ex Post LMP values and hourly Ex Ante and Ex Post MCP values are calculated on a simultaneously co-optimized basis for each hour of the next Operating Day based on MP Offers and Bids for Energy and Offers for the sale of Operating Reserve and other reserve products.³⁹</p>	
6	<p><i>Transmission Curtailment Protection - Selling Day-Ahead and Purchasing Real-Time on The Same Interface</i></p> <p>A Real-Time reduction to a Day-Ahead sale on the same interface (MISO) is accomplished by reducing the Day-Ahead schedule.⁴⁰ Because there is no need to create a separate Real-Time schedule (in the opposite direction) there is no risk of the Real-Time transaction being curtailed.</p>	<p><i>No Transmission Curtailment Protection - Selling Day-Ahead on One Interface and Purchasing Real-Time on a Different Interface</i></p> <p>SaskPower’s position is “Whether MH sells DA to SP or to MISO, MH can manage their net physical position in the RT using the MISO market”.⁴¹</p> <p>Transactions with SaskPower flow on a distinctly different interface than transactions with MISO which creates transmission curtailment risk. For example, if the Day-Ahead sale at one interface (SaskPower) is not reduced, and a Real-Time schedule on a second interface (MISO) is created, any curtailment to the transaction on the MISO interface would create a mismatch in the transactions making Manitoba Hydro susceptible to financial and operational risk.</p>

43. The Affidavit of Dean Jones also acknowledges that Manitoba Hydro has attempted to explain, on numerous occasions, to SaskPower that it is not requesting the same class of service as MISO.⁴²

³⁹ MISO, Physical Scheduling Business Practices Manual – Energy and Operating Reserves Markets, BPM-002-r24, September 30, 2022, s.7.2 online: <<https://www.misoenergy.org/legal/rules-manuals-and-agreements/business-practice-manuals/>>

⁴⁰ MISO, Physical Scheduling Business Practices Manual – Physical Scheduling, BPM-007-r24, April 20, 2023, s.5.1 online: <<https://www.misoenergy.org/legal/rules-manuals-and-agreements/business-practice-manuals/>>

⁴¹ Affidavit of Cheryl Sanclemente at Exhibit A.

⁴² Affidavit of Dean Jones at paras 14, 25, 26, 27, 28, 32, 34, 35 and 36.

44. For example, even if Manitoba Hydro’s energy offer clears the MISO day-ahead market, Manitoba Hydro has the ability, on a quarter hour basis, to partially or completely reduce the scheduled export at any time until 20 minutes before the actual export occurs. Thus, despite accepting terms for the export many hours (between 10 – 34) in advance of the start of the actual export, Manitoba Hydro only truly knows how much, if any, energy it will export 20 minutes ahead of the export occurring. Manitoba Hydro is not required to offer FMA in instances where no export occurs. Further, when Manitoba Hydro does adjust the quantity after the day-ahead market clears but before the scheduled export occurs, the MISO market adjusts the terms, conditions and price of that adjusted export (which is now governed by the MISO real-time market) in a manner SaskPower cannot or will not replicate. Even if SaskPower were to accept such adjustments, negotiating price and quantity adjustments under a bilateral agreement with a single counterparty cannot adequately replicate the ability to do so in a competitive market.

45. Importantly, SaskPower, as a MISO market participant, has the ability to receive the class of service offered to MISO by Manitoba Hydro by simply offering to purchase the desired quantities of energy from the MISO market. Doing so would ensure SaskPower receives access to Manitoba Hydro’s surplus energy under the same terms and conditions, and for the same price available to all MISO market participants.

46. Yet, SaskPower has been clear that the class of service offered to MISO by Manitoba Hydro, and which could be purchased from MISO by SaskPower, is not acceptable. SaskPower wants a different class of service with different terms and conditions, but the same price, as what is available to MISO market participants.⁴³ This is not a breach of the FMA principle by Manitoba Hydro.

47. FMA does not require Manitoba Hydro to provide a new or different class of service at the same price. SaskPower cannot pick and choose what aspects of the class of service it likes and discard the other aspects it does not like. SaskPower’s proposal for Manitoba Hydro to provide Saskatchewan with market risk protections, disclose market intelligence in advance and subsidize ratepayers in Saskatchewan for transmission service in Manitoba (to the detriment of Manitoba Hydro ratepayers) is not in the public interest.

48. Manitoba Hydro has discharged its FMA obligations. The class of service sought by SaskPower is not equivalent to that of MISO.

B. Manitoba Hydro went far beyond its FMA obligations (FMA Concept (g))

49. To date, SaskPower has not been willing to accept the same class of service as MISO. Manitoba Hydro is only obligated under section 6(i) of its Blanket Export Permit, for sales transfers of less than one month (which necessarily includes the MISO Day-Ahead and Real-Time markets), to inform all accessible Canadian purchasers, upon request, of the terms and conditions of the export subsequent to the export taking place.

⁴³ Affidavit of Dean Jones at Exhibit E states that “We have enquired about the availability of receiving the same Day-Ahead (“DA”) offers MH shows to the MISO market and have stated we are willing to pay the MISO DA clearing price for all such mutually accepted schedules.”

50. As noted in paragraph 29, Manitoba Hydro energy traders are in regular communication with SaskPower and provide price quotes when requested and when energy is available.

51. While Manitoba Hydro's FMA obligations are discharged at this point, Manitoba Hydro went further and attempted to negotiate a new class of service for SaskPower.

52. On November 7, 2022, Manitoba Hydro provided the following "Day Ahead Arrangement" to SaskPower. Since Saskatchewan does not have an electricity market, the intention of this offer was to mimic the MISO class of service by imposing market conditions while still retaining the necessary operational flexibility for Manitoba Hydro.⁴⁴

- a) On the day prior to the delivery day (between 6:00 am and 7:30 am CPT), SaskPower may contact Manitoba Hydro and indicate their desired purchase energy volumes, specific hours and price. Manitoba Hydro will determine if surplus energy is available on its system to accommodate the request.
- b) For hours when Manitoba Hydro has surplus energy available that would be expected to clear in a market, Manitoba Hydro will determine a projected lost opportunity cost of selling to markets and system conditions,⁴⁵ plus a risk premium to reflect additional risks of a SaskPower sale that are identified in entries 2, 3, 5 and 6 in Table 1 above.
- c) For hours that energy is expected to be served out of resources that would not be anticipated to clear in a market (i.e., gas fired generation, hydraulic resources based on future pricing, etc.), Manitoba Hydro will calculate the projected resource cost or future opportunity cost plus a risk premium that may include, but not limited to, profit margin, natural gas and transport price uncertainty, reduced flexibility and other risks.
- d) If the calculated energy price plus Manitoba Hydro transmission charges (as per the Manitoba Hydro tariff) is lower than the price that SaskPower has quoted, Manitoba Hydro will inform SaskPower of the sale price and quantity available.
- e) As with all Manitoba Hydro short-term sales to SaskPower, the sale is immediately curtailable upon Manitoba Hydro incurring a generation outage on its system or a transmission outage on the Manitoba-Saskatchewan interface.
- f) Manitoba Hydro would require a reciprocal arrangement when Manitoba Hydro is interested in purchasing energy from SaskPower.

53. As noted above, this arrangement was not acceptable to SaskPower.

54. The impasse on negotiations appears to be that SaskPower desires a class of service that delivers price, schedule and quantity certainty, whereas Manitoba Hydro desires flexibility on price, schedule and quantity that is offered by the class of service with MISO. The composition

⁴⁴ Affidavit of Cheryl Sanclemente.

⁴⁵ Markets may include, but are not limited to, MISO, SPP, IESO, AESO and bilateral arrangements. Manitoba Hydro offer prices can be based on projected prices that can be achieved in other hours, days or weeks in the future.

of Manitoba Hydro's generation assets requires a degree of flexibility of operations to ensure Manitobans have reliable service.

55. Historical prices offered to SaskPower that differed from Manitoba Hydro's day-ahead offer price to MISO reflected the economic differences between market based offers and bilateral agreements, which differences include SaskPower's inflexibility on price, schedule and quantity. SaskPower's desire to have certainty on price, schedule and quantity constitutes a different class of service that requires a different price to cover supply and price risk associated with the SaskPower transaction. Again, if SaskPower covets the MISO class of service it has access to the MISO market to purchase that service under the same terms and conditions and for the same price as is available to all MISO market participants.

56. Contrary to the assertions of SaskPower, Manitoba Hydro has bargained in good faith, but the parties were unable to work out for themselves a mutually acceptable alternative class of service. An impasse in contractual negotiations on a new class of service is not a breach of the FMA principle by Manitoba Hydro.

C. The Manitoba – Saskatchewan interties do not have available firm capacity (FMA Concept (c))

57. One of the requirements of FMA is that SaskPower must have access to the wholesale transmission system within Canada and have the legal ability to effect a purchase.

58. Manitoba Hydro and SaskPower have fully contracted the interties between the provinces under the long-term System Power Sale Agreements for renewable energy and capacity with Manitoba Hydro that spans the period from 2020 up to 2052.⁴⁶ Put simply, in the majority of hours there is no Firm Transmission Service available for SaskPower to effect a purchase of day-ahead energy from Manitoba Hydro or MISO.

59. As noted in paragraph 19 above, Non-Firm Transmission Service is available from time to time. Non-Firm Transmission Service is reserved on an as-available basis and is more susceptible than Firm Transmission Service to curtailment or interruption. However, the ATC for Non-Firm Transmission Service is typically not significant, predictable or available regularly.

60. Regardless, as will be discussed further below, SaskPower can access the MISO day-ahead and real-time markets directly by utilizing any remaining ATC.

V. OTHER RESPONSES TO THE COMPLAINT

A. How SaskPower meets emissions targets is not relevant to FMA analysis

61. The Affidavit of Lain Lovelace appears to suggest that Manitoba Hydro is somehow contributing to Saskatchewan's difficulties in meeting federal emissions targets under applicable legislation. This assertion is entirely without merit and must be rejected outright by the CER.

⁴⁶ Manitoba Hydro, Power sale arrangements, consulted on December 18, 2023, online: <https://www.hydro.mb.ca/corporate/electricity_exports/power_sale_arrangements/>

62. First, if not specifically contracted for, energy exported by Manitoba Hydro does not include any environmental attributes and there are no guarantees that exported electrical energy is coming from renewable resources. Additionally, MISO Day-Ahead transactions do not require, and Manitoba Hydro does not offer, such guarantees with respect to the exports subject to the Complaint. This is another indication that SaskPower is seeking a different class of service.

63. Thus, it is unclear to Manitoba Hydro how Mr. Lovelace can claim that the importation of more energy from Manitoba will accelerate Saskatchewan's emissions reductions nor why such claims are relevant to satisfying Manitoba Hydro's FMA obligations.⁴⁷

64. Manitoba Hydro sees two additional flaws with SaskPower's reasoning:

- a) SaskPower's FMA proposed arrangement in Table 1, row 2 above would require Manitoba Hydro to purchase shortfalls from MISO to meet the contracted amounts with SaskPower, a market that consists of approximately 77% of coal and natural gas generation; and
- b) Hydroelectric facilities operate as baseload generation for Manitoba with generation capacities fluctuating depending on natural conditions. Natural gas and/or petroleum generation facilities may be required to supplement and meet the incremental electricity demands of SaskPower since they cannot be easily curtailed (row 2 in Table 1).

65. Second, SaskPower is attempting to cast its Complaint as having a benevolent environmental purpose. However, SaskPower is frequently exporting Manitoba Hydro's electricity, or SaskPower's electricity displaced by the Manitoba Hydro import, to Alberta and the Southwest Power Pool (SaskPower exported 932 GWh in their fiscal year 2022-23 primarily to Alberta and Southwest Power Pool).⁴⁸

66. Third, Mr. Lovelace asserts that Federal Greenhouse Gas Pollution Acts and Output-Based Pricing Regulations impose carbon pricing on SaskPower emissions.⁴⁹ However, beginning January 1, 2024, SaskPower will remove the carbon tax from electric home heating.⁵⁰

67. Finally, it is not entirely clear that the CER has the jurisdiction to consider this issue. Section 92A(1)(c) of the *Constitution Act, 1867* is clear that provincial legislatures may exclusively make laws in relation to development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.⁵¹ How SaskPower intends to manage its generation and production of electrical energy to meet federal emissions targets is not clearly within federal jurisdiction and may be outside the purview of the CER.

⁴⁷ Affidavit of Lain Lovelace at para 21

⁴⁸ SaskPower, Annual Report 2022-2023, pg 36, online: <<https://www.saskpower.com/-/media/SaskPower/About-Us/Reports/Report-AnnualReport-2022-23.ashx>>

⁴⁹ Affidavit of Lain Lovelace at para 14.

⁵⁰ Saskatchewan Government, Government Directs SaskPower to Remove Federal Carbon Tax From Electric Home Heating, December 4, 2023, online: <<https://www.saskatchewan.ca/government/news-and-media/2023/december/04/government-directs-saskpower-to-remove-federal-carbon-tax-from-electric-home-heating>>

⁵¹ *The Constitution Act, 1867*, 30 & 31 Vict, c 3

Should the CER determine that this aspect of the complaint has any merit, it should seek submissions from the parties on this jurisdictional issue.

B. Manitoba Hydro does not offer automatic generation control service to the MISO Day-Ahead Market

68. The Affidavit of Dean Jones asserts that Manitoba Hydro’s refusal to provide automatic generation control (“AGC”)⁵² service to SaskPower amounts to a breach of the FMA principle.⁵³ Manitoba Hydro disagrees. This assertion ignores the factual history relating to AGC. For example, on February 2, 2022 and May 12, 2022, Manitoba Hydro advised SaskPower that AGC service was not available.⁵⁴

69. AGC is a Balancing Authority function, which falls under the Transmission Function of both Manitoba Hydro and SaskPower Corporation. Neither the Manitoba Hydro nor SaskPower tariffs include AGC for load following between Manitoba and Saskatchewan. It is not a product marketing arms can develop.

70. It is not clear to Manitoba Hydro what relevance AGC service has to SaskPower’s FMA complaint. Manitoba Hydro does not offer this service (Regulating Reserves), and has not offered this service since 2019, in the MISO Day-Ahead Market, additionally the service is not a sales transfer subject to FMA.⁵⁵

C. Even if the interties had capacity SaskPower can obtain day-ahead service from MISO

71. Through NorthPoint, SaskPower states that it carries on its electricity marketing business in the MISO. SaskPower has authorizations from United States Department of Energy Export Permit to allow for electrical energy removal from the United States of America and the United States Federal Energy Review Commission Power Marketers Authorization to allow for electrical energy transactions at market based rates in the United States of America.⁵⁶

72. Manitoba Hydro’s OATT specifies the terms and conditions for using the transmission system to transfer power into, through and out of the province of Manitoba.⁵⁷ The OATT ensures all transmission customers have fair and open access to transmission service in Manitoba.

73. Even if the Manitoba-Saskatchewan interties were not fully utilized, SaskPower can already directly realize the same exact same day-ahead energy price from MISO, at the exact

⁵² AGC service acts to match total system generation to total system load (including transmission losses) and helps correct variations in power system frequency. This service corrects for short-term changes in electricity use that might affect the stability of the power system: See IESO, Ancillary Services – Regulation Service, online: <<https://www.ieso.ca/ancillary-services>>

⁵³ Affidavit of Dean Jones at para 33.

⁵⁴ Affidavit of Cheryl Sanclemente.

⁵⁵ Affidavit of Cheryl Sanclemente.

⁵⁶ Application for Permit EPE-408, online: <<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/2839923>>

⁵⁷ Manitoba Hydro, Tariffs, online:

<https://www.hydro.mb.ca/accounts_and_services/generating_your_own_electricity/tariffs/>

same terms and conditions as other MISO market participants, by purchasing from MISO directly and wheeling power through the Province of Manitoba.

D. Anticompetitive Behavior of SaskPower

74. Manitoba Hydro is concerned about the anticompetitive behaviour of SaskPower mandating advanced sharing of MISO market intelligence. The Affidavit of Dean Jones at Exhibit E states that “We have enquired about the availability of receiving the same Day-Ahead (“DA”) offers MH shows to the MISO market and have stated we are willing to pay the MISO DA clearing price for all such mutually accepted schedules.” SaskPower is requesting Manitoba Hydro provide its MISO offer information and (if acceptable to SaskPower) energy to SaskPower at the MISO Day-Ahead interface price.

75. This proposed practice would result in a competitive advantage for SaskPower in the MISO market. After receiving this information SaskPower could elect not to take any, or a portion, of Manitoba Hydro’s surplus energy and use this information to offer or bid into the MISO market knowing Manitoba Hydro’s offer price for that same surplus energy.

76. Manitoba Hydro is concerned that MISO may view this practice of colluding on Manitoba Hydro’s MISO Day-Ahead offers as anti-competitive and refer the case to the Federal Energy Regulatory Commission (“**FERC**”) for further investigation.⁵⁸

2.4 Referral of Anti-Competitive Behavior to FERC

Actions or transactions that do not have a legitimate business purpose and that could manipulate market prices, market conditions, or market rules for electric energy or electricity products are prohibited and may in certain cases be referred to FERC by the Independent Market Monitor (“IMM”). Actions or transactions undertaken by an MP that are explicitly contemplated in the Tariff (such as virtual supply or Load bidding) or that are taken at the direction of MISO do not violate this provision.

If the IMM identifies a potential Tariff violation for which a Penalty Charge is provided (as defined in Section 65.3 of the Tariff), it is required that the IMM make recommendations to MISO for potential sanction per Section 65.3.2. For potential Market Violations the IMM will refer the issue to FERC (see Section 8.2 below). FERC will then exercise its judgment as to whether the Tariff or an applicable regulation has been violated and the extent of any associated Penalty Charge or sanction that may be appropriate. [Emphasis added]

⁵⁸ MISO, Business Practices Manual – Market Monitoring and Mitigation, Manual No. 009, August 31, 2023, BPM-009-r22; See also MISO FERC Electric Tariff Module D, Market Monitoring and Mitigation Measures, November 19, 2013 at s.52.3(a)(iii); See also Code of Federal Regulations, Title 18, Chapter I, Subchapter A, Part 1c, § 1c.2 Prohibition of electric energy market manipulation.

77. If Manitoba Hydro is found to have engaged in anti-competitive behavior, MISO or FERC could impose significant financial penalties.⁵⁹ Manitoba is not willing to and FMA does not obligate Manitoba Hydro to take this risk.

VI. NOTICES

78. Communications in respect of this Complaint should be directed to:

Manitoba Hydro-Electricity Board

Michael Douglas
Legal Counsel
360 Portage Avenue, 22nd Floor
Winnipeg, Manitoba
R3C 0G8
Telephone: 204.360.4332
Email: midouglas@hydro.mb.ca

AND TO:

Borden Ladner Gervais LLP

Colm Boyle / John Vellone
Bay Adelaide Centre, East Tower,
22 Adelaide St. W,
Toronto, Ontario
M5H 4E3
Telephone: 416.367.7273 / 416.367.6730
Email: CBoyle@blg.com / JVellone@blg.com

VII. MANITOBA HYDRO REQUEST FOR RELIEF

79. For the reasons outlined above, Manitoba Hydro is requesting that the CER not exercise its authority under section 68 of the *Canadian Energy Regulator Act* to investigate whether Manitoba Hydro has failed or refused to provide FMA to SaskPower. Therefore, Manitoba Hydro requests that the Complaint be dismissed by the CER.

80. In the alternative, Manitoba Hydro is requesting that the CER establish a written public proceeding pursuant to Section 32 of the CERA and Section 22 of the Rules to allow Manitoba Hydro to fulsomely respond to the Complaint.

⁵⁹ FERC, Revised Policy Statement on Penalty Guidelines, September 17, 2010, online: <<https://www.ferc.gov/sites/default/files/2020-08/September16-2010-Modified-Penalty-Guidelines-for-enforcement-cases.pdf>>

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22TH DAY OF DECEMBER, 2023

BORDEN LADNER GERVAIS LLP

Per:

A handwritten signature in black ink, appearing to read "Colm Boyle". The signature is written in a cursive, flowing style.

Colm Boyle
Counsel to Manitoba Hydro-Electricity
Board