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October 2, 2013

Mr. H. Singh
The Public Utilities Board
400 - 330 Portage Avenue
WINNIPEG, Manitoba R3C 0C4

Dear Sir:

RE: MANITOBA HYDRO NFAT
ROLE OF THE INDEPENDENT EXPERT CONSULTANTS

By letter dated September 24, 2013, Counsel for the Independent Expert Consultants (IEC) sought to have a number of matters addressed by way of motion at the September 30 Motions Day, including the possibility of the IECs posing additional first round Information Requests (IR) with respect to CSI and the IEC's role in ensuring the completeness of the public record. Manitoba Hydro provided its comments with respect to these concerns by way of letter dated September 26, 2013. All Parties were provided the opportunity to provide oral comments during the hearing of the September 30 motion. The IECs seek to Reply to Manitoba Hydro's proposed means of dealing with the concern as articulated during the September 30, 2013 motions day. Counsel for PUB advised Manitoba Hydro that if it had further comments, same should be submitted forthwith, that is by the morning of October 2, 2013.

The IECs Reply seeks further direction from the PUB regarding the framework for their report if the MH information upon which they rely is not on the public record in the form of a response to an IR. Manitoba Hydro would note that the Terms of Reference are quite explicit in this regard. The reports are to be prepared with sufficient information and detail to satisfy the Board that they have been prepared with due diligence. As noted during its submission, Manitoba Hydro expects that to such extent information supplied by the Corporation, be it charts, data or explanations, is relied upon by the IECs in their reports, the information will be reproduced or summarized in the report. Obviously the IECs will rely on the information in Manitoba Hydro's submission however a considerable amount of any "new" information, charts or data is Commercially Sensitive Information (CSI). This information cannot be the subject of a public IR. There is no need or requirement to document information exchanged in the form of an IR.

Counsel for the IECs has noted a concern that if there is no longer an IR process, it will result in more on site time for the IECs which will ultimately be more time consuming. Manitoba

Hydro emphatically disagrees with this suggestion. It is a far more efficient and effective process to provide information by way of real time discussion and on an ongoing basis as this allows for the understanding of a concept or topic which can then be followed up with additional discussion and exchange of information as necessary. The IECs need not attend on site in order to exchange information. Teleconferences and video conferences are also available, depending on the IEC's preference.

The use of IRs is unsuitable for the role of the IECs in the NFAT as it is a weak method of communicating complex concepts and is time consuming for both the IECs and Manitoba Hydro. The process of IECs drafting IRs, Manitoba Hydro interpreting the IR and preparing a response, the IECs waiting on responses, then once received contemplating whether the response addresses the request as desired, the IECs posing clarifying second round IRs and again waiting for responses before incorporating the information into their analysis is cumbersome and is subject to misunderstandings without the benefit of immediate discussion and clarification.

The IECs raise the concern that informal meetings do not afford "the assurance of accuracy of information" provided. The standard practice when third parties (eg. consultants, auditors) rely upon Manitoba Hydro sourced information in production of a report is that, prior to finalization and release, Manitoba Hydro reviews the report for the purpose of identifying errors, misunderstandings or misperceptions. Once identified and brought to their attention, it is for the third party consultant to determine whether it wishes to amend its report or alter its conclusions. As with all processes undertaken in the NFAT, Manitoba Hydro is concerned with the time required to complete this task however, it is of note that it is already necessary that Manitoba Hydro review the IEC's reports to ensure that any CSI is removed prior to their public release. Hence, a relatively small amount of incremental time will be required to review the reports for accuracy.

This process was used in the Risk Review prior to the release of the Independent Consultants' report in that matter. Manitoba Hydro documented its concerns in the form of correspondence to the Independent Consultants and this correspondence was subsequently placed on the public record. With the exception of the redaction of CSI (which was mandatory), it was for the Independent Consultants to determine if a concern was accepted (and the report amended accordingly), rejected, or further clarification regarding the assumption or conclusion was sought. Manitoba Hydro notes that in order to facilitate more immediate feedback, the Independent Consultants in that process did not wait to provide the report in its entirety prior to submitting same for review, but rather provided portions as they became available.

Having been through this process before, Manitoba Hydro is perplexed by the suggestion an expert would ever be called upon to cite "conversation" as a source of information. The issue has simply not arisen in the past. Manitoba Hydro is committed to the process and expects to provide sufficient information for the IECs to perform their due diligence in the preparation of their report. In this regard, Manitoba Hydro notes the evidence of Dr. Kubursi in the Risk Review:

DR KUBURSI: ... The -- the -- I came five (5) times, and I -- I would like to put for the record that all the parties we talked to were open, helpful and forthcoming. I met extensively with many staff from Manitoba Hydro, and many times, several times, even on the same issues. I came one (1) time in February alone, and then I came with Lonnie another time. We came and attended the conference. Manitoba Hydro has been always forthcoming. They spend quite a bit of time. There wasn't a single person we wanted to see that Ms. Ramage was not able to deliver on it, and when we had some particular issues, I recognized that Mr. Cormie had come all the way to Burlington to meet with us to explain these things...

....

MR. GAVIN WOOD: Well, but let me -- let me ask you another question, though: What about material sets and such? How did you -- what did you receive? How did you assemble that material and -- and work with it?

DR. ATIF KUBURSI: There was a process and we respected it. We went first through you and then to Ms. Ramage, and we got most of the things we want. Once in a while, you know, we got a bit of surprise. We discovered some model that we didn't know about, but it - - it turned out it was not so important. But we -- and I'm sure our colleagues at Manitoba Hydro would tell you we did not leave a stone unturned. We wanted to know, and we probed as much as we can, and we got quite a bit of cooperation. (Risk Review, May 4, 2011, tr. p. 5880 - 5881)

To such extent documentation is required to produce their reports, it will be provided directly to the IECs (without the added layer of transferring information through Counsel as was the process in the Risk Review). The IR issue is not a documentation issue; it is an efficiency and time management issue.

The significance of the Risk Review cannot be minimized. That process was extremely complex, time consuming (the largest in the Corporation's history both in terms of time devoted and information exchanged) and of great importance to the Corporation. The Risk Review tested the fundamentals upon which the NFAT is based. The Independent Consultants had a very comparable role to the NFAT IECs. In both hearings, experts have been assigned topic areas to review and are directed to test Manitoba Hydro's methodologies or results and provide the PUB with their conclusions. The Terms of Reference specify that the IECs are not to opine on the ultimate question, that is the need for or alternatives to the Preferred Development Plan. The Independent Experts in both cases play an important role in providing the PUB with their advice and opinion on the areas examined. There is no need for a different process in this hearing.

Manitoba Hydro's seeks to ensure the IECs have the information which they require to produce their reports. It is for the IECs to make the assessment whether this has been achieved and it is not for Manitoba Hydro to make this judgment. Given the special access to Manitoba Hydro staff afforded the IECs, Manitoba Hydro does not see a need to satisfy this information exchange through the labour intensive IR process. However, Manitoba Hydro is willing to work with the IECs and identify the IRs as they have been satisfied or determined to be no longer required, if that is a process the IECs believe they need to go through to satisfy

themselves that they have sufficient information to produce their reports.

Manitoba Hydro did not intend to impose upon the IECs the role of documenting IR responses. To the contrary Manitoba Hydro does not see any need to enter these IRs on the public record nor document how the IR was dealt with (tr. p. 189). However in response to Mr. Monnin's suggestion that there is benefit in "putting pen to paper and crystallizing what information is being sought and how that information is gathered" (tr. p. 199), Manitoba Hydro's position was that, if this is to be done, it ought to be done by the party who is made the assessment that the IR has been dealt with satisfactorily (for example because sufficient information has been provided or the information is no longer required).


Finally Manitoba Hydro wishes to reiterate its concern with the process being used to address the issues raised by the IECs. As noted in Manitoba Hydro's September 26, 2013 correspondence, a motions day is not the best means to resolve these issues for both procedural and practical reasons. Procedurally, having chosen to use a motion as the vehicle to advance the issues, one would expect submissions with respect to the matter to have been at an end at the conclusion of the motion. It is unusual to make further submissions after argument on the matter has closed. More importantly, the role of the counsel for the IECs is to raise concerns on behalf of the IECs and seek direction from the PUB. There should be no need for, nor should counsel for the IECs be advocating a particular position. Unfortunately, by its nature, a motion invites advocacy. Manitoba Hydro is concerned with the position that this has placed the Corporation in vis-à-vis the IECs.

Practically, Manitoba Hydro believes that the best way means to resolve this issue is to forgo the IR process on the understanding that there is nothing preventing an IEC from requesting documentation for the purpose of including same in their report or to facilitate further testing of the information as is being done with the spreadsheets provided on the SharePoint Site. Manitoba Hydro is confident that given its past track record and the professionalism that has been exhibited by the IECs, sufficient documentation will be provided to allow the IECs to demonstrate that they have performed their function with due diligence.

Yours truly,

MANITOBA HYDRO LAW DIVISION

Per:



PATRICIA J. RAMAGE

Barrister & Solicitor