



P.O. Box 815 Stn Main • Winnipeg Manitoba Canada • R3C 2P4
Telephone / N° de téléphone : (204) 360-3414 • Fax / N° de télécopieur : (204) 360-6147
dbedford@hydro.mb.ca

February 24, 2014

The Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, MB
R3C 0C4

Attention: Mr. Hollis Singh
Executive Director and Board Secretary

Dear Mr. Singh:

RE: NFAT – Evidence of Whitfield Russell Associates dated February 12, 2014 filed by Manitoba Metis Federation/Motion to strike portions thereof

We write in reply to the letter sent to you on Friday, February 21, 2014 by Ms. Jessica Saunders. Ms. Saunders' provided a response on behalf of her client, the Manitoba Metis Federation (the 'MMF') to the motion I filed on behalf of my client by letter dated February 18, 2014.

In reply to the arguments advanced by Ms. Saunders, I observe:

1. Ms. Saunders states that the “in-scope item” that Whitfield Russell Associates were retained to address is “financial and economic risks”. It is true that “financial and economic risks” are an item described in the Terms of Reference that the Government has asked the Public Utilities Board (the “PUB”) to address. However, not “financial and economic risks” generally, but the “financial and economic risks of the Plan”. Bipole III is not one of the projects that make up the “Plan”. Simply because the Bipole III Project has its own “financial and economic risks” does not, in this indirect fashion, make it eligible to be treated now as “in-scope”. The motion I filed on behalf of my client did not ask that portions of the Whitfield Russell Associates written evidence be stricken from the record because they address “financial and economic risks”. My client asks that they be stricken from the record because they directly discuss the Bipole III Project, challenge the continuing need for it in light of the “Plan” and invite the PUB to assess the merits of the Bipole III Project going forward. All this is explicitly “out of scope”.
2. My client does not, in its motion, advance the view described by Ms. Saunders that “any mention of Bipole III, whatsoever, is out of scope.” Some aspects of Bipole III will no doubt be referenced during the NFAT hearing as they are in the NFAT

written evidence. For example, the energy that is proposed to be generated by the Keeyask Project and the Conawapa Project is to be transmitted through Bipole III. However, the fact that some references to Bipole III have been and will be made during the course of the NFAT hearing does not, in itself, compel one to conclude that “all mentions of Bipole III” must therefore now be “in-scope”.

3. Ms. Saunders recalls that certain Information Requests sought information regarding Bipole III. The PUB allowed some and did not allow others. An example of the former, cited by Ms. Saunders, is PUB – 105 (a) – (c). These particular information requests were found to be “in-scope” and relevant because they were intended to test Manitoba Hydro’s ability to deliver on its export commitments. In instructing that the Information Requests be answered, the PUB reminded the parties as follows: “The information sought is not intended to examine the merits of Bipole III, an issue the Board agrees is out of scope.” The fact that some Information Requests seeking some information about Bipole III were allowed to be answered does not mean that the Terms of Reference so far as the Bipole III Project is concerned could henceforth be ignored or were, indirectly and unwittingly, amended so as to now permit the Bipole III Project to be “tested” in the forthcoming NFAT hearing.
4. Ms. Saunders asserts that the PUB, through its approval of the MMF’s submissions regarding its requests for the funding of Whitfield Russell Associates, “has already provided its approval of the MMF’s submissions”. This is not a sound argument. The MMF did not provide, in its submissions, notice of the fact that Whitfield Russell Associates would be opining on the continuing need for Bipole III and alternative ways to meet the reliability needs of Manitoba Hydro, such as through “enhanced interconnections to, and imports from, the United States” (as Ms. Saunders’ summarizes). Accordingly, the MMF cannot treat the PUB’s approval of its funding requests as support for anything beyond what was disclosed in the funding requests. No leave was sought in the funding requests to ignore the fact that discussion and debate about the merits of the Bipole III Project are out of scope.
5. Ms. Saunders claims that Whitfield Russell Associates “do not speak to the merits of Bipole III as a project in and of itself”. On page 27 of their report, Whitfield Russell Associates opine: “There are several major flaws in Manitoba Hydro’s arguments for the reliability need for Bipole III”. They proceed to tell the reader what they think those flaws are. On page 40, they opine: “In addition, Manitoba Hydro should cancel – or at least defer – construction of Bipole III.” The foregoing are examples of Whitfield Russell Associates speaking “to the merits of Bipole III as a project in and of itself.”
6. Ms. Saunders argues that her client’s consultant’s report should be allowed to stand as it is and any impropriety in permitting this can be offset because my client

can respond to Whitfield Russell Associates' treatment of the Bipole III Project in the rebuttal, due in four days and in cross-examination during the hearing. One cannot, through the mechanisms of a written rebuttal and cross-examination make what is "out of scope" into a subject that is "in-scope". Indeed, the logic of such argument is that what has occurred is 'wrong', but the impropriety of that can be mitigated by permitting the disadvantaged party to question the evidence at a hearing. The 'wrong' here was a blatant violation of the Terms of Reference. One of the aspects of unfairness, not addressed by Ms. Saunders, was that had the public understood that the NFAT was going to entertain evidence and argument on the merits of the Bipole III Project, other parties would have sought intervention. They did not because they read the Terms of Reference and understood that the Bipole III Project was out of scope.

7. Ms. Saunders provides some quotations from the transcript of proceedings before the Clean Environment Commission in its review of the Bipole III Project. The quotations are an exchange that took place on September 11, 2012. This was before the hearing of evidence began. In December 2012, the Clean Environment Commission revisited its views on the scope of the jurisdiction given it and asked my client a number of direct questions, in writing, regarding the need for the Bipole III Transmission line to traverse southern Manitoba farmland. Further, in March 2013, it allowed one of the participants in that hearing to present a special panel of expert witnesses to explore, in detail, the need for the Bipole III Project to cross southern Manitoba farmland and alternatives. The Clean Environment Commission's report on the Bipole III Project was delivered to the Minister of Conservation in June 2013. Had the Government shared the concerns of Ms. Saunders' client, it would have revised the Terms of Reference given to the PUB and directed that it wanted recommendations on the merits of the Bipole III Project. It was the right of the Government to scope both the Clean Environment Commission review of the Bipole III Project and the NFAT review by the PUB. Ms. Saunders' client may not be happy with that scoping. Ms. Saunders' client asserts that as a result of the scoping Manitoba Hydro's claims regarding the "reliability need" for Bipole III "have been left untested". Accordingly, her client would like to see that done at the NFAT hearing. This does not result in giving the PUB a 'new' mandate to ignore the scoping nor does it give the MMF a right to test the "reliability need" for or the merits of the Bipole III Project at the NFAT hearing. The party with the right to set the scoping is the Government. We must all respect its decisions in that regard.
8. On pages 29 - 30 of its written evidence, Whitfield Russell Associates informs a reader that "the MMF has repeatedly raised concerns about the need for Bipole III, its selected route down the west side of the Province that dissects the Manitoba Metis Community's 'breadbasket' as well as the project's non-mitigable impacts on the Metis community's rights, culture, economy and way of life" and adds that "Manitoba Hydro did not and has not engaged in meaningful discussions with the

MMF about mitigation of the impact of, or Metis benefit from Keeyask and/or Conawapa despite their being inextricably linked to and dependent upon Bipole III.” Whitfield Russell Associates do not set forth credentials that suggest expertise in analyzing the impacts of projects on the “Metis community” or that support a conclusion that they have expertise in giving evidence on the social and environmental impacts of transmission and generation projects. The CV advises that their expertise is in utility system planning, rate making and bulk power contracts. Whitfield Russell Associates have played no part in the discussions over the last ten years that Manitoba Hydro has had with the MMF regarding Bipole III, Keeyask and Conawapa. Whitfield Russell Associates’ source for the foregoing statements is a final argument filed by counsel for the MMF in the Bipole III hearing, an affidavit filed in the Bipole III hearing sworn by the President of the MMF and the fact that the MMF is presently appealing the issuance of the Bipole III license. For those reasons, the foregoing statements are an example of partisan writing that goes well beyond the purview of these experts. The statements have nothing to do with the “financial and economic risks of the Plan”.

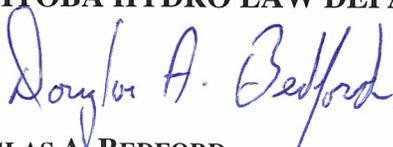
9. Finally, with respect to the statement that Manitoba Hydro has no “ability” “to seek to avoid paying” costs, but can make a submission about the 30% holdback, Part IV of the PUB’s Rules of Practice and Procedure make clear that the criteria for an award of costs is based on a retrospective view of a Party’s contribution to the proceeding. Rule 44 (2) specifies that the amount of the award may include consideration of whether the Party “submitted evidence and argument on issues that were not relevant to the proceeding”. Approval of a proposed budget or the advance of a portion of costs claimed prior to the conclusion of a hearing does not serve to pre-judge the reasonableness of the costs nor does it preclude the PUB from exercising its discretion to deny all or a portion of the costs being sought by an Intervenor on the grounds that what appears to be about half of the time spent researching and writing a report was devoted to matters that were known to be explicitly out of scope.

On behalf of my client, I ask that the relief sought in the motion filed February 18, 2014 be granted.

Yours truly,

MANITOBA HYDRO LAW DEPARTMENT

Per:



DOUGLAS A. BEDFORD

Barrister and Solicitor

DB

Page 5

cc. Ms. Jessica Saunders, counsel to MMF

Mr. R.F. Peters and Mr. Sven T. Hombach, counsel to PUB