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February 20, 2014

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York Factory First Nation
York Landing MB R0B 2B0

ATTN: Chief Walter Spence - Fox Lake Cree Nation
Chief Louisa Constant, York Factory First Nation
Robert Roddick, Q.C.

**Re: NFAT Review of Manitoba Hydro's Preferred Development Plan
Socio-Economic Matters**

The Public Utilities Board of Manitoba ("PUB") is in receipt of the following correspondence with respect to the review of socio-economic matters at the Needs For and Alternative To ("NFAT") review of Manitoba Hydro's Preferred Development Plan:

1. Letter dated February 12, 2014 from Chief Walter Spence on behalf of the Fox Lake Cree Nation seeking full Intervener status in the NFAT;
2. Letter dated February 14, 2014 from Robert F. Roddick on behalf the Cree Nation Partners seeking full intervener status for the Cree Nation Partners in the NFAT and a disqualification of the Consumers Association of Canada Manitoba Inc's ("CAC") expert witnesses Dr. Buckland and Dr. O'Gorman;
3. Letter dated February 18, 2014 from Chief Louisa Constant on behalf of the York Factory First Nation seeking full Intervener status in the NFAT and a disqualification of CAC expert witnesses Dr. Buckland and O'Gorman; and
4. Letter dated February 19, 2014 from Manitoba Hydro supporting Intervener status for the Cree Nation Partners, the Fox Lake First Nation and the York Factory First Nation.

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The matters will be dealt with jointly in this letter.

Requests for Intervener Status

Manitoba Hydro's Preferred Development Plan ("PDP") consists, among other things, of two generating stations, namely the Keeyask Generating Station ("Keeyask G.S.") and Conawapa Generating Station ("Conawapa G.S."). The Keeyask G.S. is advanced by a partnership known as the Keeyask Hydropower Limited Partnership ("KHLP"), consisting of Manitoba Hydro, the Tataskweyak and War Lake First Nations (acting as the Cree Nation Partners), York Factory First Nation, and Fox Lake First Nation. Accordingly, all four First Nations seeking Intervener status for the NFAT are project proponents with respect to the Keeyask G.S.

The Keeyask G.S. has recently undergone an environmental assessment before the Manitoba Clean Environment Commission in which KHLP acted as the applicant for a licence under *The Environment Act*. CAC was an Intervener in that hearing.

Unlike the environmental assessment hearing, there is no applicant in the NFAT, as the NFAT is conducted pursuant to Terms of Reference issued by the Province of Manitoba. However, the subject of the NFAT hearing is Manitoba Hydro's PDP. The Keeyask G.S. project forms part of the PDP.

The NFAT Terms of Reference require the PUB to take into consideration:

- h. The socio-economic impacts and benefits of the Plan and alternatives to northern and aboriginal communities.

The four First Nation partners in KHLP were properly served with a public notice of the NFAT hearing, and the fifth partner (Manitoba Hydro) has a central role in the NFAT.

The Board notes that the requests for Intervener status from the four First Nation partners were filed only after the PUB approved CAC to adduce additional evidence with respect to socio-economic matters. However, CAC's evidence will not be the only evidence with respect to socio-economic issues. In particular:

1. Manitoba Hydro expects to field a "socio-economic and macro environmental" panel of witnesses that is currently allotted three full days of hearing time;
2. Manitoba Keewatinowi Okimakanak, Inc. ("MKO") is a funded Intervener in the NFAT. MKO is an umbrella organization of which all four First Nations partners in KHLP are members. MKO has been approved to speak to socio-economic issues;
3. The Manitoba Métis Federation ("MMF") is also a funded Intervener adducing evidence with respect to socio-economic issues; and
4. The PUB has selected Typlan as an Independent Expert Consultant, as permitted by the Terms of Reference, to provide a report on socio-economic matters.

In the PUB's view, the approval of CAC to lead additional evidence with respect to socio-economic matters does not justify the granting of Intervener status to the four First Nations partners in KHLP. CAC does not purport to speak on behalf of the First Nations partners, and will provide just one of several perspectives, as set out above, for the NFAT panel to consider.

While the PUB would welcome the perspective of the four First Nations partners in the NFAT and encourages them to bring their perspective forward, such evidence could be adduced either through inclusion of representatives of the First Nations partners on Manitoba Hydro's panel on socio-economic matters, or through a coalition with MKO, of which the First Nations partners are members.

As indicated in the PUB's January 21, 2014 letter to Fox Lake First Nation's legal counsel and January 28, 2014 letter to counsel for the Tataskweyak Cree Nation, War Lake First Nation, and York Factory First Nation, the Board's Rules of Practice and Procedure allow for parties to seek Presenter status and make a submission to the PUB. Although the deadline for seeking Presenter status has passed, the PUB recognizes the value of hearing from Manitoba Hydro's First Nations partners and would be prepared to entertain a registration for Presenter status. The PUB notes that Presentations are currently scheduled for February 27, 2014. Given sufficient interest, the PUB would be prepared to schedule another session for Presenters.

Accordingly, the PUB denies the requests for Intervener status from the Cree Nation Partners, Fox Lake First Nation, and York Factory First Nation.

Disqualification of Dr. Buckland and Dr. O'Gorman

Both the Cree Nation Partners and the York Factory First Nation are seeking a disqualification of CAC witnesses Drs. Buckland and O'Gorman based on their testimony before the Clean Environment Commission with respect to the environmental assessment of the Keeyask G.S. These parties are further seeking that an independent expert witness be appointed.

The Board notes that an Independent Expert Consultant, namely Typlan, has in fact been appointed for the NFAT and has rendered a report which is publicly available and will be tested during the NFAT. Furthermore, as noted above, CAC is just one of several parties planning to adduce socio-economic evidence.

To date, the evidence of Drs. Buckland and O'Gorman has not been filed. The PUB is not prepared to disqualify Drs. Buckland and O'Gorman based on prior testimony before a different tribunal. CAC does not purport to speak on behalf of the First Nations partners in the KHLP, nor on behalf of the PUB or Manitoba Hydro.

The evidence of Drs. Buckland and O’Gorman will be tested in the NFAT hearing, and both witnesses will be subject to cross-examination by Board Counsel, Manitoba Hydro, and MKO. The PUB will expect Manitoba Hydro to ask any questions on behalf of its partners. The PUB will weigh the evidence of these witnesses and consider it in the context of all evidence received on socio-economic matters.

As such, the request for pre-emptive disqualification of these witnesses is denied.

Yours truly,

“Original Signed By”

H. M. Singh
Secretary

cc : Robert F. Peters/Sven T. Hombach - Board Counsel
Bradley D. Regehr - Counsel to York Factory First Nation
Jack London, Q.C. - Counsel to Fox Lake Cree Nation
Doug Bedford - Counsel to Manitoba Hydro
All Parties