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July 21, 2006

Honourable Stan Struthers
Minister of Conservation
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Ms. Tracey Braun
Director, Environmental Assessment & Licensing Branch
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Dear Minister Struthers, Ms. Braun;

Re: Appeal – Environmental Licence No. 2700 for the Construction, Operation and Maintenance of the Wuskwatim Transmission Line Project (Public Registry File #4725.00)

This letter is in response to the June 21, 2006 issuance of a licence under the Environment Act for the construction, operation and maintenance of the Wuskwatim Transmission Line Project. Please consider this letter as an official appeal of Licence No. 2700. We expect that this letter will be filed in the Public Registry File for the Wuskwatim Transmission Line Project (PR File #4725.00) and that a response to our comments will be forthcoming within two weeks of receipt of our letter.

We assume that the appeals process is a serious undertaking and that it is not merely a formality. Accordingly, we also assume that no further permits or licenses will be issued until the appeals process is complete. We assume that this also means that no activity related to road building for the Wuskwatim Generation Station will occur until the appeals have been resolved. .

Below we are providing some overarching comments pertaining to the environmental licence for the Wuskwatim Transmission Line Project that support our appeal of the license. We are also providing comments and raising concerns regarding specific clauses in Licence No. 2700.

Need for Three Transmission Line Segments

Despite the extent of the review process for the Wuskwatim projects, the proponents have yet to provide a satisfactory public explanation as to the need for all three transmission line segments that are to be constructed as part of this project. This is not surprising, given that problems related to public



access to information and disclosure have been a feature of the review of the Wuskwatim Projects EISs, however it is a serious deficiency, as it goes to the heart of the justification of the Wuskwatim Transmission Line Project. The proponents have not dispelled the argument that two of the three transmission lines that comprise the project are not essential to the operation of the Wuskwatim Generation Station and their inclusion simply allows the proponents to avoid an additional regulatory process to gain approval for their construction and operation.

Licence No. 2700 should be withheld until the proponents provide a clear explanation as to why three transmission lines are required to connect the Wuskwatim Generation Project to the Manitoba Hydro grid. Disclosure regarding any further projects which may be connected to the transmission projects for Wuskwatim is long over due and would be in the public interest.

Location of License

In the case of transmission infrastructure we are requesting clarification as to what is meant by “A copy of the license must be kept on site at the development at all times”. Which site(s) are being referred to the case of the Wuskwatim Transmission Line Project?

‘Quality of Life’

On page 2 of Licence No. 2700, prior to Clause 1, there is a reference to “requirements intended to . . . ensure that the environment is maintained in such a manner as to sustain a high quality of life, including social and economic development, recreation and leisure for present and future Manitobans.” We would ask, given that this is an **environmental** licence, why priority is not also placed on concurrently maintaining a high quality of life for species and biodiversity? This is not a frivolous question, as it goes to the heart of the purpose of an environmental licence. We would submit that the absence of such language is a fundamental flaw and should be addressed immediately.

Provincial Duties Under the *Environment Act*, Due Diligence in the Public Interest

It is our contention that the Province has not fulfilled all of its duties under the *Environment Act* and has not exercised due diligence in other respects concerning the Wuskwatim Transmission Line Project. As a result, Licence No. 2700 should not be finalized.

For instance, Section 2(1) of the Environment Act states,

The aims and objectives of the department are to protect the quality of the environment and environmental health of present and future generations of Manitobans and to provide the opportunity for all citizens to exercise influence over the quality of their living environment.

The fact that Clean Environment Commission (CEC) recommendations are not being included as specific requirements of License No. 2700 (e.g. Recommendation 7.2A) constitutes a failure of the

Province to “protect the quality of the environment and environmental health of present and future generations of Manitobans”.

Although it is not a requirement under the Environment Act, we argue that it is an egregious failure of Licence No. 2700 that it did not take into account those CEC recommendations where both the CEC and public participants were in agreement and ensure that those recommendations were explicitly and unequivocally included in the licence. (for examples, see http://manitobawildlands.org/pdfs/MW_CECWuskRecs.pdf)

Further, Section 11(8) implies the duty of government departments to review and comment on proposals (environmental impact statements – EIS) filed under the Environment Act in stating that,

Upon receipt of a proposal for a Class 2 development under this section, the director shall within such time as may be specified by the regulation . . . (b) file a copy of the proposal with the Interdepartmental Planning Board and other departments as may be affected by the development, for their review and comment;

It has been policy to make departmental review comments publicly available to assist the regulators and the public and to allow for transparency in the EIS review and comment process. This did not happen in the case of the Wuskwatim Projects. Both Manitoba Wildlands interrogatories, and ministerial correspondence reflect our efforts to access the extensive review of the EIS done by government branches, both for our review and on behalf of public participants. These were not made public, despite a pattern in previous and similar reviews of access during review periods.

We also believe that due diligence on the part of the Province was lacking in that:

- the Province did not conduct an independent species assessment with respect to impacts from the proposed Wuskwatim Transmission Line Project
- the Province did not conduct an independent hydrological assessment with respect to impacts from the proposed Wuskwatim Transmission Line Project
- the Province did not conduct independent archeological studies with respect to impacts from the proposed Wuskwatim Transmission Line Project
- the Province did not apply Heritage Act provisions to sites identified as sacred sites or site of cultural significance

Woodland Caribou

Clauses 14 & 15 of Licence No. 2700 refer indirectly and directly to woodland caribou requirements. As the species is newly listed within Manitoba’s Endangered Species legislation, we would like to know how the provisions of the Endangered Species Act (ESA) will apply to the Wuskwatim Project. This must be an explicit requirement of Licence No. 2700.

All information concerning effects/impacts, research, monitoring, etc. of woodland caribou must also be publicly available (see comments below re: **Public Accountability and Transparency**).

We would also like to see confirmation and specific language in the provincial environmental licence to indicate that requirements concerning woodland caribou as per the federal comprehensive study report will be upheld, and that all information will be made public – and be available to affected communities.

Aboriginal Issues/Compensation

The constitutionally required consultations with Aboriginal peoples regarding the impacts of transmission corridors of the Wuskwatim Transmission Line Project (Section 35 of the Canadian Constitution) are not yet complete. It is inconceivable that the Wuskwatim Transmission Line Project should be allowed to proceed prior to the completion of these consultations. By issuing the environmental licence for the project, the Manitoba government is prejudging the outcome of consultations and is diminishing the importance of constitutionally required consultations. Surely Manitoba does not intend to take on such a risk. The environmental licence for the Wuskwatim Transmission Line Project should not be finalized until consultations as per Section 35 of the Canadian Constitution are concluded. Review of our comments on this issue should include public verification as to whether Section 9(a) Northern Flood Agreement consultations have actually been completed.

We are also appealing the environmental licence for the Wuskwatim Transmission Line Project on the grounds that the licence should not be issued in light of Manitoba Hydro's failure to fully compensate individuals for damages (past and ongoing) from hydro development in the project area, and in particular provide compensation to those individuals impacted who are or were members of the Nelson House First Nation. The Clean Environment Commission also made a recommendation in its 2004 report to the Minister of Conservation on the Wuskwatim hearings concerning the need for Manitoba Hydro to resolve outstanding issue related to previous hydro development. Recommendation 7.6 states,

The Clean Environment Commission recommends that:

The Government of Manitoba require Manitoba Hydro to resolve all outstanding issues with regard to the Churchill River Diversion, the Augmented Flow Program and Lake Winnipeg Regulation. Following resolution of these issues, Manitoba Hydro should apply for the appropriate final licences for these three operations under The Environment Act and The Water Power Act as soon as possible.

Ms. Braun has asserted in her June 22, 2006 letter to the CEC (including chart of CEC recommendations not being included in the licenses) that the resolution of outstanding past issues is beyond the purview of the Environment Act, and that the matter has been referred to other government departments.

Notwithstanding this argument, we suggest that the Minister in fact has the political power to carry out CEC Recommendation 7.6 in that the licencing of the Wuskwatim Transmission Line Project could simply be delayed until these outstanding issues have been resolved, similar to the way the Minister delayed licencing decisions on the Wuskwatim projects until the vote concerning the Wuskwatim Project Development Agreement had taken place.

We would also like to note that Manitoba Hydro has failed to clearly articulate, as a crown corporation, its fiduciary responsibilities with respect to Wuskwatim. Manitoba Hydro and the Manitoba Government have also failed to fulfill the Northern Flood Agreement in advance of the Wuskwatim projects. Also benefits to Aboriginal people resulting from the logging to be done to clear the right-of-way for transmission corridors are not ensured by Licence No. 2700. All of these issues add to our grounds for appeal of the environmental licence for the Wuskwatim Transmission Line Project.

Trapline Issues

The Wuskwatim Transmission Line Project impacts 61 trapline holders. The Wuskwatim Projects proponents acknowledge this fact and have included provisions to compensate trapline holders for impacts as a result of the project. However, details regarding the extent of impacts to individual trapline holders have not been available (as the on the ground siting and decisions at the fine scale for exact route of the corridors has not yet occurred). More disconcerting still is the fact that the level of compensation and criteria of decision-making regarding compensation to individual trapline holders has also not yet been disclosed. This leaves affected trappers with significant uncertainty and no guarantee or level of comfort that fair and equitable compensation will be provided. This situation is unacceptable and must be resolved prior to the finalization of the environmental licence for the Wuskwatim Transmission Line Project.

No less serious is the lack of public access to information regarding changes to the siting of the intended corridor for the transmission lines, which have been made since the close of the Wuskwatim hearings. The public has a right to know if changes have been made, as different trapline holders may be affected by the revised routing of the transmission lines. In addition, trapline holders that have subsequently become potentially affected by the project will have been denied the right to participate in the EIS review and hearings process, have therefore have been denied due process, and will have potentially been denied the opportunity to participate fully in information sessions and the regulatory process as an affected public participant. The failure to provide access to information regarding changes in the siting/routing of the Wuskwatim transmission lines and the resultant change in parties potentially affected by the transmission lines are also grounds for appeal of the Wuskwatim Transmission Line Project environmental licence.

EIS Guidelines & Public Policy

The EIS guidelines for the Wuskwatim Transmission Line Project were not fulfilled by either the EIS itself, or the information presented as part of the review and hearings process. The EIS in fact was



notable for failing to clearly address all aspects of the EIS Guidelines in the EIS. In addition, the Clean Environment Commission (CEC) report and recommendations and the requirements of environmental licence No. 2700 are both silent as to indicating how each aspect of the EIS guidelines have or will be addressed by the proponents in the construction, operation and maintenance of the Wuskwatim Transmission Line Project. This deficiency is a reflection of the overall need to review for consistency and upgrade the stages of environmental assessment and public review under Manitoba's Environment Act.

As part of our June 2003 review, Manitoba Wildlands included a "Summary of Deficiencies as per Environmental Impact Statement (EIS) Guidelines: Wuskwatim Transmission Project EIS". This part of the EIS Review was not covered in the proponent's Supplemental Filing. Moreover, the issues raised with respect to aspects of the EIS guidelines not being fulfilled were not addressed sufficiently as part of the hearings process, nor do the requirements outlined in environmental licence No 2700 acknowledge aspects of the EIS guidelines that remain unaddressed or require the proponents to take steps to fulfill gaps. In our estimation, for instance, Licence No. 2700 should reiterate the requirement for the proponents to adhere to the public policy standards that are in the EIS Guidelines and comprehensively reference each policy in the license. Below is a selective listing of some of these sections of the EIS guidelines for the Wuskwatim Transmission Project (<http://www.gov.mb.ca/conservation/envapprovals/archive/archive01/summaries/wuskwatim/wuskwatimtrans-guidelines.html>) that we are concerned have not been fulfilled as part of the EIS review and where the licence does not address the issue:

Section 2.3.1 Intent

*It is intended that the Environmental Impact Statement for the Wuskwatim Transmission Project shall incorporate and reflect the **Principles of Sustainable Development** as contained in **Towards a Sustainable Development Strategy for Manitobans** and the policies under **The Land and Water Strategy**.*

Manitoba Wildlands has consistently raised the issue of Wuskwatim's compliance with existing public policies and legislation. We have never received a comprehensive response as to how the Wuskwatim projects reflect the spirit and intent of various Manitoba government policies and legislation. The same query of course also applies to Manitoba Hydro in this and other projects. Such information was not part of the EIS or the hearings. Currently, Licence No. 2700 does not include a provision to ensure that the Wuskwatim Transmission Line Project is in keeping with the policies that are included in the above mentioned strategies. A requirement to report annually on public policy relevant to the Wuskwatim Transmission Line Project should be included as a separate Clause in the licence.



Section 3. Regulatory Framework

The same comments as above apply here.

Section 6.1 Physical Environment & Section 8. Environmental and Socio-Economic Effects and Mitigation

Section 6.2 states that “The environmental impact statement shall describe: general climate conditions with sufficient data provided to predict the effect of the project on climate and the potential effects of climate on the project”

Section 8. states that “The environmental, socio-economic and cultural effects and associated mitigation shall relate to each phase of the project including site preparation, construction and post construction, operation, maintenance and eventual decommissioning and should assess all components of the environment in the context of section 6. DESCRIPTION OF THE EXISTING ENVIRONMENT”

The analysis of impacts of the project on climate change and of climate change on the Wuskwatim projects was one of the weakest elements of the Wuskwatim EIS and review.

Consequently it was a significant element in the CEC hearings. This was more than noted in the presentation by Elizabeth May during the Wuskwatim hearings. These deficiencies were not addressed as part of the review, accordingly, Licence No. 2700 should include a public reporting mechanism concerning climate change impacts and greenhouse gas emissions and monitoring of climate change impacts on and of the project. We note this would be a significant precedent for Manitoba, given our province’s clear pro Kyoto stance. Currently Canada’s green house gas inventory shows Manitoba Hydro emissions as private. This needs to change with the licence for Wuskwatim.

Section 6.4.1 Land and Water Use & Section 8. Environmental and Socio-Economic Effects and Mitigation

Section 6.4.1 states that “The environmental impact statement shall provide: . . . identification of any existing areas or areas under consideration for protected area status under Manitoba’s Protected Areas Initiative.”

Manitoba Wildlands commented on the deficiencies concerning information in the EIS regarding protected lands and the assessment of effects and mitigation of effects resulting from the Wuskwatim projects. These deficiencies were never satisfactorily addressed, the information was never augmented, and Licence No. 2700 does nothing to ensure accountability (through reporting) or ensure public scrutiny of possible impacts on existing protected areas or the ability to establish future protected areas. This omission is in contradiction of previous environmental licences issued under Manitoba’s Environment Act in the same regions which the Wuskwatim transmission segments will traverse.

Manitoba Hydro Technical Reports

During the hearings process, there were several Manitoba Hydro technical reports that were never provided to public participants, the CEC, or Manitoba Conservation, despite repeated requests to the proponents for these to be made available. The requests span more than a one-year period. As a result, the ability of public participants and the CEC to assess the full extent of the risks of environmental impacts, and the ability to possess sufficient information to arrive at a complete set of recommendations (on the part of the CEC) was impaired. The proponents should be required to file and make publicly available all the technical reports requested as part of the regulatory review process prior to the finalization of an environmental license. In addition, these technical reports are a part of a wider body of information and documents that were not accessible or made available during the Environment Act regulatory review of the Wuskwatim Transmission Line Project. These information gaps should be filled and their implications assessed and publicly reviewed prior to the finalization of environmental licence No. 2700.

Re: Clause 13. of Licence No. 2700

Licence No. 2700 should be declared null and void on the grounds that the Director of Environmental Assessment and Licencing has failed to adequately fulfill her duty under Section 11(13) of the Environment Act which states (emphasis added):

*Where the minister has requested a public hearing on a proposal and subsequently advice and recommendations are presented to the minister, and the recommendations of the commission are not included in the environmental licence, or refusal, **the director shall provide written documentation of the reasons for the decision** to the proponent, the minister, the commission and the files of the central registry at the time of notifying the proponent of the decision.*

In regards to Clean Environment Commission recommendation 7.2A with respect to the Environmental Protection Plan requirements for the Wuskwatim Transmission Line Project, the Director has indicated in her communication of June 22, 2006 to the CEC that the “Transmission Licence requires preparation of an EPP in consideration of the CEC recommendations, however does not stipulate specific requirements recommended by the CEC. The Licence provides flexibility so that the proponent can prepare the plan in consideration of CEC recommendations on EPP requirements.”

Requiring a proponent to only ‘consider’ the CEC’s recommendations with the sole reason for doing so being to allow ‘flexibility’ for a proponent is not a valid reason for allowing the proponent to avoid carrying out the requirements outlined in CEC Recommendation 7.2A. Weakening the CEC’s recommendations is not in the public interest, nor is in the best interest of the environment. A Director whose duty and portfolio exists in order to act in both the public and environmental interest should not



fail to do so. Further, failing to act in the interest of the public and the environment and instead relaxing requirements in the interests of the proponent, the Director of Environmental Assessment and Licencing, as a representative of the Department of Conservation and the Minister, has indicated bias in favour of the proponents. As the letter and chart to explain reasons for not incorporating CEC recommendations is exactly the same for the Wuskwatim Generation Station licence, it is safe to assume that the Minister of Conservation is indicating similar bias in favour of the proponents. In our view, the Director of Environmental Assessment and Licencing and the Minister of Conservation have not fulfilled their duty under the *Environment Act* (Section 11(13)) and environmental licence No. 2700 has been issued in error.

Failing to require the proponent to adhere specifically to the requirements of CEC Recommendation 7.2A and include this in the licence also fails to guarantee public access and review of annual reports on the implementation of environmental protection plans. CEC Recommendation 7.2A Part 4 states,

Manitoba Hydro and Nisichawayasihk Cree Nation should be required to:

- *report on the implementation of environmental protection plans annually and to ensure that such reports are readily and easily accessible to stakeholders and to the general public.*

Public access to these reports will increase transparency and allow for third-party review and monitoring as to how the proponents are fulfilling licence requirements. Licence No. 2700 should specify where such implementation reports will be filed in both paper and electronic format and how the proponents will ensure that the implementation reports are ‘readily and easily accessible’. (This also applies to our comments below re: **Public Accountability and Transparency**)

Similarly, failing to require the proponent to adhere specifically to the requirements of CEC Recommendation 7.2A means that all direction re species, VECs, use of TEK, thresholds, integrity of protected areas, effects on woodland caribou, greenhouse gas emissions, public access requirements so clearly articulated by the CEC in Recommendation 7.2A are diminished in importance and rigour because the Minister has directed the proponent only to ‘consider’ CEC recommendations concerning Environmental Protection Plans. This would make most members of the public wonder who is making the decisions, and why environmental assessment, review and hearings occurred.

Another concern, which also contributes to the grounds for appeal of the environmental licence for the Wuskwatim Transmission Line Project, is the lack of public access to the environmental protection plan(s) (EnvPPs) for the three transmission segments prior to the issuance of an environmental licence for the project. Environmental licence No. 2700 is written as if EnvPPs have not yet been written; however there has been conflicting information on this point. Ministerial correspondence appears to confirm that these EnvPPs are already written. EnvPPs should be publicly accessible (both on paper and filed in the Public Registry File and posted on the internet) and available as soon as they are made

available to Manitoba Conservation officials. A process should also be in place to allow for public comment and input to the EnvPPs for the Wuskwatim Transmission Line Project.

We challenge the Director of Environmental Assessment and Licencing to review the record for Wuskwatim concerning discussions, queries, commitments, recommendations regarding Environmental Protection Plans (EnvPPs). This would include EIS review comments, interrogatories, interrogatory responses, supplemental filings, the record of the hearings and closing statements, and the 2004 CEC report to note the importance and reflect upon the detail that was ultimately recommended by the CEC in Recommendation 7.2A regarding EnvPPs. Licence No. 2700 must require the proponent to adhere to the specific conditions outlined by the CEC.

Re: Clause 14 of Licence No. 2700

Notably absent from Clause 14 of Licence No. 2700 is the inclusion of (an) individual(s) in the list of those the proponent must initiate discussions to provide a voice to speak strictly with the interests of biodiversity and public policy concerning species. It is important to discuss baseline monitoring and ecosystem research programs with those parties with a vested interest in its use, but it is important for ecosystem interests themselves be represented by a ‘neutral’ third party. This step is long over due under Manitoba Environment Act licences.

Re: Clause 15 of Licence No. 2700

The advisory committee to be formed as per Clause 15 to provide direction on research and monitoring activities outlined in Clause 14 also appears to be lacking in representation for ecosystem interests and requirements for its activities, decisions, reports to be public are absent from the licence. This requires correcting, as it is in contradiction to the spirit and intent of CEC recommendations concerning the importance of public access to information. We would respectfully challenge the usefulness of research and monitoring activities if they are to be kept secret.

Re: Clause 19 of Licence No. 2700

Clause 19 of Licence No. 2700 appears to apply only to the construction phase of the project. However, avoidance of potential impacts to migratory birds, caribou in critical seasons also applies to the operations phase of the project (i.e. when performing maintenance, repairs, inspections etc.). This is an oversight and Licence No. 2700 needs to be adjusted to be applicable during all project phases.

Re: Clause 26 of Licence No. 2700

With respect to Clause 26 of Licence No. 2700, we would again point out that discussion and consultation with the Department regarding the protection of a) vulnerable, threatened, or endangered species or ecosystems; b) threatened or sensitive habitats; c) protected areas; d) furbearers; and e) medicinal plants leave the public in the dark and provide no mechanism of accountability on these issues to affected parties or the public. These discussions and consultations should be expanded to

allow for public input. The list of issues in Clause 26 is also incomplete; the list should include *future* protected areas, and *future* species concerns as well.

Public Accountability and Transparency

Manitoba Hydro is a Crown Corporation and is accountable to the people of Manitoba. To ensure public accountability and transparency, all reports (especially Environmental Protection Plans), monitoring data, committee minutes, decisions related to the requirements and fulfillment of Licence No. 2700 must be made available and filed in the Public Registry for the Wuskwatim Transmission Line Project. Monitoring reports and data are of little use in terms of adaptive management, learning or accountability if they are not publicly available. The CEC has acknowledged the need for information to be publicly available in its 2004 Report on the Public Hearings for the Wuskwatim Projects. License No. 2700 is written as if discussions, motions and recommendations concerning public access had never occurred.

Reports / monitoring data / committee minutes, decisions related to the requirements and fulfillment of Licence No. 2700 that should be explicitly required to be made public include:

- Access Management Plans (as per Clause 10 of Licence No. 2700)
- Oil Containment Assessment (as per Clause 11 of Licence No. 2700)
- Environmental Protection Plan(s) (as per Clause 13 of Licence No. 2700)
- Details, record of discussions, decisions, reports related to Baseline Monitoring and Ecosystem Research Programs (as per Clause 14 of Licence No. 2700)
- Details, record of discussions, decisions, activities, report of the Advisory Committee (as per Clause 15 of Licence No. 2700)
- Data collected in the course of monitoring or research activities pursuant to Clause 14 (as per Clause 16 of Licence No. 2700)
- Report on Monitoring Programs (as per Clause 17 of Licence No. 2700)
- Annual Report on Results of Monitoring Programs Re: the Environmental Protection Plan(s) (as per Clause 18 of Licence No. 2700)
- Results of Erosion Monitoring (as per Clause 23 of Licence No. 2700)



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We appreciate the opportunity to participate in this appeals process and we trust that our comments will be considered carefully. We look forward to receiving a response to our appeal letter that includes acknowledgement of our appeal and detailed responses to each of the concerns raised in the above paragraphs.

Yours truly,

Gaile Whelan Enns
Director, Manitoba Wildlands