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November 9, 2012

VIA EMAIL ONLY

Manitoba Conservation
and Water Stewardship
Environmental Approvals Branch
123 Main Street, Suite 160
Winnipeg, MB, R3C 2P4

ATTENTION: **Tracey Braun, Director, Environmental Approval Branch**

Dear Ms. Braun:

We are counsel for the Manitoba Métis Federation (“MMF”) in relation to the Bipole III project (the “Project”). We write in response to your letter dated November 9th, 2012.

Contrary to your letter, we can assure Manitoba Conservation and Wildlife Services (“MCWS”) that my client was not “confused” in relation to your letter dated November 2nd, 2012. The MMF’s objection to your previous letter lies in the fact that MCWS has not followed the legal requirements under the *Environment Act*, C.C.S.M. c. E125 (the “Act”) in relation to “alterations” made by a proponent vis-à-vis a Class 3 development proposal. Nor has it conducted itself in a manner that maintains the honour of the Crown, as required by the Crown’s duty to consult and accommodate in relation to the Project.

More specifically, the MMF raises the following concerns in relation to MCWS’s interpretation and approach to Manitoba Hydro’s proposed alterations to the Project:

1. Manitoba Hydro’s proposed alterations are not “minor”, and therefore do not fall under section 14(2) of the Act. These alterations constitute significant changes to multiple segments of the Final Preferred Route (“FPR”). All of these proposed route changes are well outside of the “local study area” that was assessed as a part of the previously filed Environmental Impact Statement (“EIS”). Further, the importance and sensitivity of these

areas have already been emphasized by MCWS, the TAC, the public and my client. It defies logic for MCWS to classify them as “minor” when neither the proponent or the Crown has provided written reasons or any explanation on why they should be treated as “minor” instead of “major”.

2. The legal requirements of section 14(2)(b) have not been met. Firstly, MCWS is in no position to confirm that “the potential environmental effects resulting from the alteration are insignificant” since the proponent has not provided any environmental assessment on the proposed alterations for MCWS to consider. Secondly, MCWS has no confirmation that “the potential environmental effects resulting from the alteration ... will be accommodated by the ongoing assessment process,” since it is allowing the alterations to be considered by the Clean Environment Commission (“CEC”) without first requiring that Manitoba Hydro file a new or supplemental EIS with MCWS that is “sufficient for the purposes of proceeding to a hearing for ongoing public review of the process.”¹ Essentially, MCWS is leaving this to chance instead of fulfilling its statutory obligations under the Act. This is unacceptable given the potential environmental significance of these changes.
3. Since it is apparent that the proposed changes constitute “major” alterations to the Project, section 14(3) of the Act should apply. Consistent with this section, “the director or minister shall direct the proponent to seek approval for the proposed alteration as a proposal in accordance with section 10, 11 or 12, as the case may be.” In relation to this Project, section 12 of the Act requires that the proponent submit a proposal for the alterations consistent with the Project’s already approved EIS Scoping Document dated June 2010. This requires Manitoba Hydro to provide the following to MCWS: (1) an environmental assessment on the Project’s alterations, and (2) information on the public and aboriginal consultation that have taken place on the alterations consistent with section 5 of the Project’s EIS Scoping Document. Upon receipt of this alteration proposal, the Minister would then follow section 12(4) of the Act (i.e., make the alterations available for public comment, refer to CEC, etc.). It is the MMF’s position that anything less would be inconsistent with express legislative requirements and would constitute a breach of the Act.

In relation to the Crown’s constitutional obligations owing to my client, I would highlight that the MMF’s repeated requests to the Manitoba Government (written and verbally conveyed within the Crown consultation process) to being meaningfully engaged with respect to MCWS-Manitoba Hydro re-routing discussions have been consistently ignored. As you should be aware, several letters from my client to the Minister outlining Métis concerns related to Crown consultation remain unanswered. Moreover, the ongoing Crown consultation process remains incapable of meaningfully addressing the MMF’s concerns. My client will once again be writing to the Minister on these issues under a separate letter.

In closing, my client objects to MCWS’s current approach to Manitoba Hydro’s proposed alterations. The MMF believes this approach is inconsistent with the Act as well as the general principles of fairness and transparency in relation to the environmental assessment of one of the largest infrastructure projects to be constructed in Manitoba in recent years.

¹ See Letter from Tracey Braun (MCWS) to Terry Sargeant (CEC) dated August 31, 2012, para. 4.

Yours very truly,

A handwritten signature in black ink, appearing to read "JMadden". The signature is stylized with a large, sweeping initial "J" and "M".

Jason Madden

c.c. Clean Environment Commission
Parties in Bipole III Proceeding