



28 Hawthorn Avenue
Toronto, Ontario
Canada M4W 2Z2
Tel: 416.945.7958
Fax: 416.981.3162
www.jtmlaw.ca

Jason T. Madden
Direct: 416.276.2560
E-mail: jason@jtmlaw.ca

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VIA EMAIL

Clean Energy Commission
Bipole III Hearing Panel
305-155 Carlton Street
Winnipeg, MB, R3C 3H8

ATTENTION: Cathy Johnson, Secretary to Panel

Dear Ms. Johnson:

RE: FILING OF MANITOBA MÉTIS FEDERATION MOTION

We are counsel for the Manitoba Métis Federation (“MMF”) in the Bipole III hearing process currently before the Clean Environment Commission (“CEC”). I would ask that you provide a copy of this letter to the Panel conducting the Bipole III hearing.

We had intended to file a motion with CEC today, but are not be in a position to do so. Upon my return from holidays, I have now had the opportunity to review the submissions of Manitoba Hydro and the Manitoba Government with respect to Peguis First Nation’s motion for an adjournment based on the duty to consult and accommodate. In light of these submissions, the MMF has determined that its motion with respect to the application of the Crown’s duty in the context of the Bipole III hearing must be more detailed and extensive in relation to the state of the law with respect to the duty in order to assist the CEC in its consideration of this issue.

We will be in a position to file our motion on or before Monday, August 27th, 2012. Due to this delay in filing, we recognize that the current scheduled hearing date of Thursday, August 30th, 2012 will not provide the proponent or other participants sufficient time to review and reply to the MMF’s motion. As such, we would ask that the current hearing date for the MMF’s motion be rescheduled for either September 5th, 6th or 7th or the following week in September. We apologize for any inconvenience this may cause for the CEC and other participants.

We would note that even with this delay, the MMF's motion will still be filed with the CEC well in advance of the start of the hearings (regardless of whether the CEC grants the adjournment requests brought forward by several parties).¹ As well, we do not believe that this should delay the CEC in ruling on Peguis First Nation's motion, but we would ask that any determinations on that motion be without prejudice to the MMF's motion to be filed.

As previously indicated, the relief sought by the MMF in its upcoming motion will not be the same to that of Peguis First Nation. We understand Peguis First Nation's motion to rely on the Crown's duty for its adjournment request. The MMF's motion will seek the following relief based on the Crown's duty:

1. That the CEC allow the MMF to lead evidence and make argument about the impacts of the proposed project on Métis claims, rights and way of life, and that those issues be considered as a part of the CEC's deliberations on whether to recommend the project to the Minister, along with any mitigation measures (if the project is ultimately recommended);
2. That the CEC allow the MMF to lead evidence and make argument about the Crown consultation/proponent engagement process to date which has effectively precluded strategic-level consideration of alternatives to the Bipole III project as well as alternative routings to avoid already over-developed and stressed portions of the Manitoba Métis community's traditional territory and key areas where Métis rights are exercised;
3. That the CEC consider the sufficiency of the Crown's consultation with aboriginal communities in making its final to the Minister in relation to the Bipole III project, along with any mitigation measures (if the project is ultimately recommended).

Clearly, the relief being sought by the MMF in relation to the Crown's duty will not be a "show stopper" motion, so we believe our delay in filing this motion does not prejudice any of the parties. Further, this is an important issue that needs to be meaningfully canvassed and considered since it has the potential to require the MMF to consider legal remedies, if the processes established by the Crown continue to prove to be incapable of meaningfully addressing the MMF's concerns as well as the adverse impacts of the Bipole III project on Métis rights, interests and way of life.²

Further, the MMF would like to once again raise its concerns about the reasonableness of the timelines being set by the CEC for the filing of the second round of IRs, filing of hearing reports, hearing dates, etc., as these dates relate to the ability of participants and the public to meaningfully participate in this important hearing process.

¹ As previously indicated, the MMF supports the request for adjournments made by several parties.

² *Rio Tinto v. Carrier Sekani*, [2010] 2 S.C.R. 650 at [75].

While it appears that Manitoba Hydro is able to fail to meet the deadlines set by the CEC with little to no consequence (i.e. Manitoba Hydro's delays in responding to the first round of IRs, remaining first round IR responses being provided 2 days before the second round IR deadline, etc.), participants - with limited resources in comparison to the Crown's agent - are being forced to adhere to a timetable that does not allow for robust and fair public participation, which is the *modus operandi* for the CEC.

For example, the MMF's experts will not have a chance to provide any second round IRs because of the unworkable August 24th deadline. This deadline is simply not realistic because Manitoba Hydro's late IR responses (which include hundreds of pages and extensive references to other IRs and parts of the EIS) were only provided to the MMF a mere seven days ago.³ The MMF believes that Manitoba Hydro's should not be able to benefit from its delays in responding to IRs. This is prejudicial and unfair to the MMF as well as other participants. As such, the MMF once again requests that the deadline for the second round of IRs be extended until September 7th, 2012.

Further, the MMF want to have it on the record that if the CEC refuses to grant an adjournment to the hearing commencement date, the MMF's experts will simply not be able to meet the September 17th, 2012 filing date for participant submissions. It would be truly unfortunate that a proponent's delays and lack of responsiveness within the first round of IRs would essentially be beneficial to them by funded participants not being able to file expert reports in the condensed timeframes. Again, this is prejudicial and unfair to the MMF as well as other participants.

The MMF emphasizes that the CEC's timelines should not be built around Manitoba Hydro's desires and unproven claims with respect to the absolute need to have an approval of this project by early 2013. The CEC's timelines should be built around how to ensure robust and fair public participation in the hearing process. In the MMF's opinion, if the current timelines are not reasonably adjusted the CEC runs that risk of compromising meaningful public participation.

Yours very truly,



Jason Madden

c.c. Parties in Bipole III Proceeding

³ We note that other parties only received response to their IRs today, which leaves only 2 days to review and provide subsequent IRs.