

M A N I T O B A
THE PUBLIC UTILITIES BOARD ACT

Order No. 67/13

June 11, 2013

Before: Régis Gosselin, B.A., M.B.A., C.G.A., Chair
Larry Soldier, Member

NFAT PROCEDURAL ORDER ON INTERVENER STATUS

THE PUBLIC UTILITIES BOARD'S "NEEDS FOR AND ALTERNATIVES TO
(NFAT)" REVIEW OF MANITOBA HYDRO'S PREFERRED DEVELOPMENT
PLAN TO CONSTRUCT THE KEEYASK AND CONAWAPA GENERATING
STATIONS AND ASSOCIATED TRANSMISSION FACILITIES

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1.0.0 EXECUTIVE SUMMARY

By this Order, the Public Utilities Board (“Board”) grants Intervener Status, with respect to the Needs For and Alternatives To (“NFAT”) Review of Manitoba Hydro’s Preferred Development Plan for the Keeyask Generating Station, Conawapa Generating Station and associated transmission and interconnection infrastructure, to the following Intervener Applicants:

- (a) Consumers’ Association of Canada (Manitoba Branch) (“CAC”);
- (b) Green Action Centre (“GAC”);
- (c) Manitoba Industrial Power Users Group (“MIPUG”);
- (d) Manitoba Keewatinowi Okimakanak Inc. (“MKO”); and
- (e) Manitoba Metis Federation (“MMF”).

The Board notes instances in the ‘Applications for Intervener Status’ where identical issues are raised by more than one approved Intervener. It is not the Board’s intention to permit duplication of evidence and process on the same issue. The Board will require Interveners to work jointly with other Interveners on common issues. Following this Order, approved Interveners are required to submit additional information to the Board, detailing the specific issues the Intervener is proposing to address, together with the specific consultants and expert witnesses proposed to be retained by that Intervener, together with the budgets proposed. The Board will not approve funding for duplication of expert evidence and retention of consultants on common issues.

While the Board did not grant Interveners Status to the Applicants listed below, the Board did provide opportunities for these Applicants to participate by permitting them to

seek a coalition with other approved Interveners to have those issues that are within the scope of this NFAT Review added to the interventions of an approved Intervener. In such coalition arrangements, each Party to the coalition will be provided the opportunity to advance their own separate final submissions to the Board, if they choose, so that the Board will hear their individual perspectives:

- (a) Peguis First Nation;
- (b) The Pimicikamak at Cross Lake;
- (c) Kaweechiwasik Inninuwuk; and
- (d) Manitoba Public Interest Research Group.

This Order also addresses other procedural matters related to the NFAT Review.

2.0.0 BACKGROUND AND PROCEDURAL HISTORY

On January 13, 2011, the Government of Manitoba notified the Manitoba Hydro-Electric Board (“Manitoba Hydro”) of its intention to carry out a public NFAT Review and assessment of the Manitoba Hydro’s proposed Preferred Development Plan (“PDP”) for major new hydro-electric generation and Canada-USA interconnection facilities using an independent body.

On November 15, 2012, the Minister of Innovation, Energy and Mines announced that the Government of Manitoba had asked the Manitoba Public Utilities Board (“PUB”) to conduct the NFAT Review for the Keeyask and Conawapa Generating Stations and their associated transmission facilities.

By Order in Council 128/2013, the Government of Manitoba assigned to the Board the responsibility to conduct an NFAT Review of specific capital projects of Manitoba Hydro in accordance with the Terms of Reference for the Review issued April 25, 2013. The Board posted Order in Council 128/13 and the Terms of Reference for the NFAT Review on its website, and directed Manitoba Hydro to publish notice of the NFAT Review and of a first Pre-Hearing Conference for consideration of intervention applications and the timetable for the Review process.

The first Pre-Hearing Conference was held before the filing of Manitoba Hydro’s NFAT Application, which is not due until August 16, 2013.

The Board is aware of the concerns expressed about the timing of the first Pre-Hearing Conference, such as finalized budgets by Intervener Applicants not being yet available.

However, due to the imposed deadlines, the Board wants to address certain preliminary matters including Intervener Applications, scoping issues, and draft timelines for the NFAT Review at this early stage.

The deadline for filing written Intervener Applications was May 14, 2013 and the pre-hearing conference was held on May 16, 2013. Nine Intervener Applicants requested status in the NFAT Review. Eight of the nine Intervener Applicants made oral submissions in respect of their applications, and Manitoba Hydro responded to all of the applications. Manitoba Hydro and all Intervener Applicants were permitted to address timetable and procedural matters generally, and in response to specific requests of the Board Panel.

Upon consideration of the submissions on process and feedback from Intervener Applicants, the Board has also considered a preliminary NFAT Review timetable.

3.0.0 INTERVENER SUBMISSIONS

3.1.0 Consumers' Association of Canada (Manitoba Branch) ("CAC")

3.1.1 *Proposed Intervention*

CAC seeks to represent the interests of Manitoba Hydro's residential ratepayers in the NFAT Review. Manitoba Hydro's Preferred Development Plan ("PDP") is expected, by CAC, to have material impact on the rates paid by residential ratepayers.

In existence for 66 years, CAC has over 400 members and donors. CAC submitted that it had contact with approximately 14,000 consumers in 2011-12, through education and consumer research. Approximately 6,000 consumers annually participate in CAC information sessions and workshops. CAC also noted that it uses focus groups with Manitoba consumers to inform CAC on specific matters, as well as an Advisory Panel which is formed to bring a range of consumer perspectives to its ongoing activities.

Further, CAC says that beyond projected rate increases the PDP may impact MH's available resources for investment in other opportunities, which are matters CAC wishes to address. CAC submits that the development is expected to have both deleterious and positive effects on the environment which affect all consumers.

In regards to procedural matters, including the draft timetable and in-camera review of commercially sensitive information, CAC provided the Board with its comments. These comments were in addition to the May 14, 2013 joint procedural letter to the Board from CAC and the Green Action Centre ("GAC"), and also in addition to CAC's written Intervener request form.

3.1.2 Board Findings

CAC is a long-standing intervener before this Board on Manitoba Hydro matters and will be granted Intervener Status in the NFAT Review to represent the interests of residential electricity ratepayers.

The following issues, identified by CAC in its written application for Intervener Status are considered to be within the scope of the Terms of Reference for the NFAT Review:

- (a) Reliability of Manitoba Hydro's forecast relating to load, capital costs, export revenues, and enhanced transmission capacity;
- (b) Risk Assessments as detailed in CAC's written Application for Intervener Status;
- (c) Analytical consideration of alternatives to Manitoba Hydro's Preferred Development Plan (PDP) including risk diversification, energy efficiency and non-hydroelectric options such as natural gas and wind;
- (d) Sustainability of Manitoba Hydro's PDP and comparison to alternatives;
- (e) Rate impacts on Manitoba Hydro's domestic ratepayers – including those on fixed and low incomes;
- (f) Macro-Environmental Impacts of the PDP and alternatives;

Note: Because of CAC's extensive involvement in environmental reviews before the Clean Environmental Commission (including the Review of the Keeyask Generating Station) the Board expects CAC to clearly appreciate and respect the distinction in the NFAT Terms of Reference between the

macro–environmental issues within the NFAT scope, and those environmental issues that are outside the NFAT scope and properly within the consideration of Clean Environment Commission – see section 4.3.0 below.

- (g) Socio-Economic impacts and benefits of Manitoba Hydro’s PDP – compared to alternatives – in regards northern and aboriginal communities as well as all Manitobans.

Because it is premature for CAC, or other approved Interveners, to finalize their consultants and budgets prior to the Board’s determinations on their scope of the proposed intervention, the Board will not approve a budget for specific consultants for CAC or any other Intervener at this time. This will be a matter for another process following this Pre-Hearing Conference Order in which the Board will require details of the specific in-scope issues that CAC and other approved Interveners expect to address, together with a list of proposed consultants and their detailed budgets.

The Board notes the extensive list of issues that are within the scope of the NFAT Terms of Reference and which CAC seeks to address in the NFAT Review through expert witnesses and consultants. The Board acknowledges that CAC and its counsel will need to have adequate resources in place to ensure that the issues are properly developed, tested, and presented.

In addition to the issues identified above that are within the scope of the NFAT Terms of Reference, the Board also requests CAC, and other approved Interveners, to consider joint intervention(s) with Intervener Applicants that are not granted Intervener Status, provided that such joint interventions are limited to issues identified and approved by the Board as being within the scope of the NFAT Terms of Reference.

CAC's (and GAC's) May 14, 2013 letter to the Board details specific process concerns are detailed. CAC (and GAC) request the Board to *"recommend that the Lieutenant – Governor-in-Council amend Appendix A, page 7 of the [NFAT] Terms of Reference in..."* the manner proposed by CAC and GAC.

The Board was advised by CAC at the Pre-Hearing Conference that CAC and GAC intend to meet with representatives of the Provincial Government to directly discuss CAC and GAC's issues in respect of the NFAT Terms of Reference. The Board agrees that such direct discussion is the appropriate route for CAC and GAC to express their concerns with the NFAT Terms of Reference as issued by the Government.

All parties are aware that pursuant to the NFAT Review, there will be commercially sensitive information filed with the Board that will not be made public, as such disclosure may reasonably be expected to cause undue financial loss to Manitoba Hydro, its customers or its contractual counterparties; or to harm significantly Manitoba Hydro's, or its contractual counterparties' or domestic customers' competitive position.

The NFAT Terms of Reference include a protocol for only certain persons to gain access to such commercially sensitive information and for such commercially sensitive information to be disclosed only in in-camera proceedings.

Any change in that protocol is a matter for the Government which issued the Terms of Reference. The Board, through its Staff and Advisors is expected to work with Manitoba Hydro and Interveners in accordance with the protocol to develop procedures consistent with the protocol, for the effective review and consideration of the commercially sensitive information.

The Board also notes Manitoba Hydro's suggestion that there is probably some benefit in leaving CAC and GAC's issues (as detailed in their joint May 14, 2013 letter) for another day. Manitoba Hydro suggests the parties consider those issues once Manitoba Hydro files its NFAT Application and the parties understand the specific implications. Manitoba Hydro appears confident, that after its filing on August 16, 2013, further discussions among counsel will yield a resolution that is satisfactory to all, without having to seek involvement of the Board. The Board will leave this matter with Manitoba Hydro to address soon after it files its NFAT Application.

3.2.0 Green Action Centre ("GAC")

3.2.1 Proposed Intervention

GAC's Intervener Application states that GAC is a charitable organization governed by an elected community board. GAC's mission is to promote greener and better living by sharing practical solutions and advocating for change. Its mission is carried out through environmental education for homeowners, workplaces, schools, communities and the Province. GAC notes that its primary areas of work are green commuting, composting and water, sustainable living, resource conservation, and energy and climate change policy.

GAC seeks to intervene in the NFAT Review in the public interest for the long term benefit of all Manitobans in accordance with the matters related to its 'green' focus. Of concern, notes GAC, is Manitoba Hydro's business case for its Preferred Developmental Plan ("PDP") and related forecast and assumptions, and their related risks. In this regard, GAC seeks to consider use of Demand Side Management (DSM) and alternative energy initiatives to address the business case and risks. GAC will examine strategic proposals for enhancing DSM as an alternative or part of other

alternatives to the PDP. GAC is also seeking to explore the marginal costs of DSM and alternative energy supplies, and generally to assess marginal costs and revenues.

GAC further wishes to contribute to a consideration of long-range planning beyond the 20-year horizon. GAC suggests that the proposed formula to meet growth with continuous development of hydro-electric capacity is not sustainable in the long run, and will present alternative supply and conservation options for the NFAT Panel's consideration.

GAC is prepared to collaborate with other interveners if granted status. Discussions have commenced between GAC and other parties on climate and energy issues to determine if a joint intervention is viable. GAC notes the procedural importance of allowing for collaboration and perhaps joint participation in advancing the intervener role in the NFAT Review, while preserving the right of collaborating parties to make separate final submissions if they choose. This process would allow the individual perspectives of the participating organizations to be distinctly heard while achieving efficiency during the conduct of the Review.

GAC also addressed the proposed NFAT Review timetable and certain related procedural matters. GAC joined with CAC in registering concern over the *in camera* process set out in the Terms of Reference. GAC will be applying for a costs award, but requires more information and also more time to formulate a work plan or a draft budget for the process.

3.2.2 Board Findings

GAC, also a regular intervener in Manitoba Hydro proceedings before this Board, will be granted Intervener Status in the NFAT Review.

The following issues, identified by GAC in its written Application for Intervener Status are considered to be within the scope of the Terms of Reference of the NFAT Review:

- (a) Forecasts and risks associated with domestic load, export commitments and export pricing;
- (b) Use of Demand Side Management and alternative energy initiatives;
- (c) Marginal costs of Manitoba Hydro's Preferred Development Plan ("PDP") and alternatives including DSM; and
- (d) Alternatives to Manitoba Hydro's PDP together with integration into a diversified portfolio and consideration of such contributions to Risk Management.

The Board's findings in respect of GAC's requests, in its May 14, 2013 joint letter with CAC, are as stated in the Board's Findings related to CAC's proposed intervention.

The following issue is considered to be outside the scope of the NFAT Review:

- (a) Long-range planning beyond the capacities of Keeyask Generating Station and Conawapa Generating Station,

3.3.0 Manitoba Keewatinowi Okimakanak, Inc. ("MKO")

3.3.1 Proposed Intervention

MKO has been in existence for 32 years as a non-profit advocacy organization representing approximately 65,000 Treaty First Nation citizens in Northern Manitoba. MKO is governed by elected Chiefs of the 30 sovereign First Nations in Northern

Manitoba. MKO notes that its mission is to maintain, strengthen, enhance, lobby for and defend the interests and rights of First Nation peoples within its jurisdiction and to promote, develop and secure a standard and quality of life deemed desirable and acceptable by its member First Nations.

In relation to the NFAT Review and in accordance with MKO's written Intervener Request Form, its objectives include; providing technical assistance, consultative services, advice on all policies and statutes affecting member First Nations' people and advancing the social and economic rights of the member First Nations. Notably, MKO's objective is to work with Tribal Councils, affiliated First Nation Organizations and MKO First Nations and all MKO First Nations' citizens regardless of where they live. MKO provides technical assistance consulting services and advice on policies affecting MKO First Nations' people.

MKO indicated the Keeyask Generating Station, the Conawapa Generating Station and much of their associated domestic transmission facilities will, if approved, be constructed and operated within the ancestral and traditional territories of the MKO First Nations.

3.3.2 Board Findings

MKO will be granted Intervener Status in the NFAT Review. As an organization representing 65,000 Treaty First Nation citizens in Northern Manitoba, and as a regular intervener before this Board on Manitoba Hydro matters, MKO is well positioned to represent the interests of First Nations in the NFAT Review. The following issues, as identified by MKO and its written Application for Intervener Status are within the scope of the Terms of Reference for the NFAT Review:

- (a) The socio-economic impacts and benefits of Manitoba Hydro's Preferred Development Plan (PDP) and alternatives in respect of the MKO First Nations; and
- (b) The impact of domestic electricity rates over time, with and without the PDP and with alternatives.

Because this latter MKO issue (i.e., domestic rate impacts) is seen by the Board as identical to an issue raised by other approved Interveners, the Board will require MKO to work jointly with other Interveners on this issue. The same comment applies to all approved Interveners where their issues are identical to those identified by other approved Interveners.

For added clarity, the Board finds the following issues identified by MKO as being out of scope in respect to the Terms of Reference for the NFAT Review and MKO is not approved, as an Intervener, to address them in the NFAT Review:

- (a) Protecting, promoting and advancing all inherent Treaty and Aboriginal rights of its member First Nations;
- (b) Protecting and advancing the powers, authority and autonomy of the governments of the MKO First Nations;
- (c) Promoting, protecting and advancing the rights to establish First Nations political, economical, judicial, social, language and cultural institutions deemed necessary by the MKO First Nations' governments;

- (d) Arrangements of any MKO First Nations to plan, construct, own or operate the Keeyask and Conawapa Generating Stations in partnership with Manitoba Hydro;
- (e) The alignment of Manitoba Hydro's proposed Preferred Development Plan for major new hydro-electric generation and Canada-USA interconnection facilities to the inherent, Treaty and other rights and interests in waters, lands and resources and other interests of the Hydro-affected MKO First Nations and other MKO First Nations;
- (f) The alignment of the PDP to the Treaties and agreements entered into between the Manitoba Hydro-affected MKO First Nations, Manitoba, Manitoba Hydro, Canada and other Treaties and agreements affecting other MKO First Nations;
- (g) The alignment of the PDP to the plans, objectives and interests of the Manitoba Hydro-affected MKO First Nations and other MKO First Nations, including the free, prior and informed consent of the MKO First Nations;
- (h) To seek, as conditions of any approvals or recommendations in the Board's NFAT report:
 - (i) A high standard of protection of the Aboriginal and Treaty rights of MKO citizens, including the application of the Crown-First Nation Consultation and Accommodation process (and the free, prior and informed consent of the MKO First Nations as now recognized by the United Nations Declaration on the Rights of Indigenous peoples);

- (ii) The full implementation of the provisions of any Treaty, agreement or settlement related to existing hydro-electric and transmission projects;
- (iii) The resolution of all outstanding claims related to hydroelectric and transmission development and the related regulation and diversion of waterways;
- (iv) High standards for environmental review, environmental assessment and the mitigation of any project impacts; and
- (v) A high standard of socio-economic benefit and revenue sharing, including effective procurement, employment, training and resource equity for the citizens of the MKO First Nations, the MKO First Nations and business entities of the MKO First Nations.

The Board requests MKO to consider collaborating with Intervener Applicants which were not granted Intervener Status, but did raise issues that the Board determines to be similar, if not identical, to the above-noted issues that are within scope for MKO.

The Board accepts the position of GAC and Manitoba Hydro that collaborators in the approved interventions should be given the opportunity to make full and separate final submissions, if they chose to do so, to reflect the perspectives of their organizations in interpreting and building a case on the evidence in the NFAT Review

The Board notes that Manitoba Hydro “supports the concept of an umbrella organization [such as MKO] representing groups with a common interest, rather than multiple individual groups each advancing their own intervention...” It is also noted that Manitoba Hydro expressly supports the coalition of prospective interveners, and also permitting

the individual organizations to “raise their own voice” in final submissions and make their own final submission. The Board expects MKO to utilize its internal resources to meet its coordination requirements for the NFAT review.

3.4.0 Peguis First Nation (“Peguis”)

3.4.1 *Proposed Intervention*

The purpose of Peguis is to provide services to its members and protect Aboriginal and Treaty rights based on the Treaty and Constitution. Most Peguis members reside on the Peguis Reserve with some members living in Selkirk, Winnipeg, Brandon and other communities in Manitoba and elsewhere.

3.4.2 *Board Findings*

The Board will not grant intervener status to Peguis.

The following issues identified by Peguis are considered to be within the scope of the Terms of Reference for the NFAT Review:

- (a) Energy costs in Manitoba;
- (b) Alternative energy options such as energy efficiencies and alternate sources of generation; and
- (c) Socio-economic impacts and benefits of Manitoba Hydro’s PDP in relation to First Nations and Northern communities

However, these issues are identified by other Intervener Applicants – including CAC, GAC and MKO, all of whom have a long history of representation before the Board and have been granted Intervener status in the NFAT Review.

As the Board held in Order 17/10 where... “there is no evidence that the information which [one Intervener Applicant] proposed to bring to the Board will not be brought forward through other interventions...”, separate Intervener Status will not be granted.

Peguis should consider approaching Interveners that have been approved for the purposes of forming a coalition respecting Peguis’ issues that are within the scope of the NFAT’s Terms of Reference. Any such proposed coalition, for Peguis or any other party, would have to be detailed and submitted to the Board for approval in respect of the specific issues to be addressed, the proposed consultants for those issues, and their specific budgets.

In any coalition by Interveners, each party to the coalition would be permitted to advance their own separate final submissions should they so request.

The following issues identified by Peguis are not within the scope of the Terms of Reference of the NFAT Review:

- (a) The benefits, or lack thereof, which Peguis derives from Manitoba Hydro developments;
- (b) The need for a Province-wide energy plan that involves and responds to First Nations and other stakeholders;
- (c) Defining “green” or “renewable” energy;
- (d) Social and cultural impacts of Manitoba Hydro’s Preferred Development Plan on Peguis specifically;
- (e) Loss of economic opportunity due to Manitoba Hydro using lands Peguis wishes to acquire through Treaty Land Entitlement; and

- (f) Impacts from flooding due to Lake Winnipeg regulation.

While these issues are outside the scope of the Terms of Reference for the NFAT Review, the Board does not make any finding as to the merits or validity of such issues. There are avenues, other than the NFAT Review, for such issues to be considered.

The Board notes that Peguis was a participant in a recent Clean Environment Commission (CEC) hearings regarding Bipole III and is a funded participant in the current CEC proceedings and hearing regarding the Keeyask Generating Station.

3.5.0 The Pimicikamak at Cross Lake Manitoba (“PCL”)

3.5.1 Proposed Intervention

PCL is a party to Treaty 5 and is a remaining signatory to the Northern Flood Agreement.

PCL’s mandate is to ensure the fulfillment of Treaties and Agreements for the economic and social benefit of its members.

In addition to its written Application for Intervener Status, and oral submissions, the Board also received a letter dated May 29, 2013 from PCL’s legal counsel clarifying certain aspects and terms of PCL’s Application for Intervener Status.

3.5.2 Board Findings

The Board will not grant intervener status to PCL.

The Board finds the following issues identified by PCL to be within the scope of the NFAT Terms of Reference:

- (a) Domestic electricity rates as a consequence of Manitoba Hydro's Preferred Development Plan (PDP);
- (b) Whether Manitoba Hydro's PDP is aligned with the Clean Energy Strategy, and Sustainable Development Principles;
- (c) Alternate energy sources and energy conservation;
- (d) The MISO energy market into which Manitoba Hydro exports electricity; and
- (e) Socio-economic benefits and impacts on Manitobans, aboriginal communities and Northern communities;

However, these issues are duplicitous of issues identified by other Interveners including CAC, GAC and MKO and are not limited to any specific First Nation. Accordingly, for the same reasons Intervener Status was denied to Peguis, the Board will not grant PCL Intervener Status. PCL will be able to seek a coalition with approved Interveners as to in-scope issues and make its own final submissions on those issues. Any such proposed Coalition, for PCL or any other party, would have to be detailed and submitted to the Board for approval in respect of the specific issues to be addressed, the proposed consultants for those issues, and their specific budgets.

The following issues identified by PCL are not within the scope of the Terms of Reference of the NFAT Review:

- (a) PCL's access to new alternative energy sources;
- (b) Effects of hydro-electric generating stations on PCL's lands and waters;

- (c) Whether Manitoba Hydro's Preferred Development Plan (PDP) reduces economic opportunities for PCL members;
- (d) Whether lack of disclosure and lack of accurate information about Hydro development in Manitoba has affected PCL;
- (e) Effects of previous development of generating stations on PCL's culture, social and economic conditions; and
- (f) Definition of "new green energy" for export sales.

While these issues are outside the scope of the NFAT Terms of Reference, the Board does not make any finding as to the validity or the merits of such issues. There may be avenues, other than the NFAT Review for consideration of these issues.

Manitoba Hydro advises that impacts of the development on specific First Nations (whether PCL or other First Nations) and mitigation of these impacts will not be included in Manitoba Hydro's NFAT Application. Rather, Manitoba Hydro indicates those issues will be addressed either through the Clean Environment Commission (CEC) process in the Environmental Impact Statement or in Section 35 consultations by the Federal Government and the Provincial Government as it relates to specific projects. Likewise, Manitoba Hydro advises that Lake Winnipeg Regulation is also the subject of a CEC review.

3.6.0 Kaweechiwasik Inninuwuk (“KI”) (also known as York Landing)

3.6.1 Proposed Intervention

KI’s ancestral and traditional lands encompass the area where the Conawapa Generating Station is proposed to be built.

KI’s objective is to capture the opportunities and benefits from existing and future hydroelectric developments within its ancestral and traditional territories.

KI’s reason for proposed intervention in the NFAT Review is that Manitoba Hydro did not fully engage the Cree at York Factory First Nation.

3.6.2 Board Findings

As no issues identified by KI are within the scope of the Terms of Reference from the NFAT Review, KI will not be granted Intervener Status in the NFAT Review.

Specifically, the Board finds the following issues identified by KI are not within the scope of the Terms of Reference of the NFAT Review:

- (a) The impacts of Manitoba Hydro’s Preferred Development Plan (PDP) on KI’s livelihood, harvesting, cultural and spiritual rights and existing Treaty entitlement parcels, areas of potential future selection and the York Factory Resource Management Area;
- (b) For KI to examine and test scientific studies by Manitoba Hydro;

- (c) The effects of Manitoba Hydro's development on the Lower Nelson, including the Nelson River Estuary;
- (d) The engineering design of the proposed generating stations; and
- (e) The effects of Manitoba Hydro's development on caribou, sturgeon, and other fish species;

That said, and as noted by Manitoba Hydro, many of the issues raised by KI are the subject of Manitoba Hydro's Environmental Impact Statement which is its core document in the Clean Environment Commission hearing. Manitoba Hydro also advises that KI is participating at the CEC.

Should KI have issues that the Board determines are within the scope of the NFAT Review for other Interveners and KI wants to seek a coalition with such Intervener(s), such as MKO, Board approval would need to be sought. This would be consistent with KI's stated expectation to work jointly with other First Nations in its Northern communities. Any such proposed Coalition, for KI or any other party, would have to be detailed and submitted to the Board for approval in respect of the specific issues to be addressed, the proposed consultants for those issues, and their specific budgets.

3.7.0 Manitoba Public Interest Research Group ("MPIRG")

3.7.1 *Proposed Intervention*

MPIRG was organized a month prior to the Pre-Hearing Conference by 12 university-based researchers. MPIRG seeks to inform public policy and public debate while acknowledging the importance that indigenous Manitobans have within the Province and the value of respecting Aboriginal and Treaty rights and indigenous cultures.

3.7.2 Board Findings

As no issues identified by MPIRG are within the scope of the Terms of Reference from the NFAT Review, MPIRG will not be granted Intervener Status in the NFAT Review.

Specifically, the Board finds that the following issues identified by MPIRG are not within the scope of the Terms of Reference of the NFAT Review:

- (a) The environmental and social and cultural consequences of Manitoba Hydro's Preferred Development Plan (PDP) on specific communities;
- (b) The economic arrangements between First Nations and Manitoba Hydro; whether best practices were followed or creative alternatives to such economic arrangements exist;
- (c) The impacts of the PDP on Aboriginal and Treaty rights;
- (d) Culture;
- (e) Traditional knowledge in the planning and management of the proposed PDP;
- (f) The impacts of past Manitoba Hydro developments; and
- (g) Intangible cultural heritage issues.

While such issues are not within the scope of the NFAT Review, the Board makes no findings in respect of the validity, merits or importance of such issues. The NFAT Review is not the forum to examine these issues. Members of the MPIRG have testified before the Clean Environment Commission, so MPIRG is familiar with the scope of issues before the environmental regulator.

Based on MPIRG's oral comments, it appears as though the issues closest to MPIRG's interests for seeking to intervene are the socio-economic impacts and benefits to Northern and Aboriginal communities and all Manitobans, together with the macro-environmental impact of the PDP compared to alternatives. These issues, which are within the scope of the NFAT Review, are not unique to MPIRG. There is no evidence that the information which MPIRG proposes to bring to the Board will not be brought forward through other interventions – especially those of CAC and MKO. Therefore, MPIRG will not be granted Intervener Status but as with others, may seek to form a coalition with approved Interveners. If MPIRG proposes to enter such a coalition, Board approval of the scope, consultants and budgets will be required.

Alternatively, should MPIRG choose to be a Presenter – or offer a series of Presenters – the Board would be interested in hearing such presentation(s). The Board notes that Presenters do not have to be identified until after Manitoba Hydro files its NFAT Application.

3.8.0 Manitoba Metis Federation (“MMF”)

3.8.1 *Proposed Intervention*

MMF applies for Intervener status as the official democratic and self-governing political representative for the Metis people of Manitoba, province-wide. As stated, the mandate of the MMF is to promote the social and economic interests of its members and to participate in the consideration of issues that affect its members. The MMF seeks to provide the Metis perspective in examining the needs for and identifying the alternatives to Manitoba Hydro's Preferred Development Plan (PDP).

MMF has identified all issues within Section 2 of the Terms of Reference for the NFAT Review as being of interest. These issues focus on the assessment of whether Manitoba Hydro's PDP is superior to alternatives that could fulfill the same need.

While MMF indicated it would be prepared to collaborate with approved Interveners on factors (a) through (e) of Section 2 of the NFAT Terms of Reference, the main focus and interest of MMF is in respect of:

- (a) The impact on domestic rates;
- (b) Financial and economic risks;
- (c) Socio-economic impacts and benefits of Manitoba Hydro's Preferred Development Plan and alternatives to Northern and Aboriginal communities;
- (d) Macro-environmental Impacts of the PDP compared to alternatives; and
- (e) Whether the PDP is the highest level of overall socio-economic benefit to Manitobans.

3.8.2 Board Findings

It is only the five issues set out in section 3.8.1 above that are within the scope of the NFAT Review and on which MMF will be granted Intervener Status to represent the interests of the 100,000 Metis people of Manitoba.

The Board will not approve MMF's consultants or budgets at this time. MMF along with other approved Interveners will need to refine their intended scope of participation, which will be constrained by the issues approved by the Board for MMF as well as the

requirement for avoidance of duplication with other Interveners. The resulting proposed consultants and budgets must be revised and resubmitted for Board review and approval. The Board will expect MMF to utilize internal resources to meet its coordination and legal requirements.

As some issues identified by MMF are in duplication of issues identified by other Interveners, the Board will expect and require collaboration with such Interveners.

Even through collaboration and joint participation, the Board intends to offer the separate organizations the opportunity to make separate final submissions, should they so choose, to reflect the perspectives of their organizations in interpreting and building a case on the collective evidence in the NFAT Review.

The Board finds the following issues and topics proposed in MMF's Intervener Application are not within the scope of the NFAT Terms of Reference:

- (a) Evidence on the Metis way of life and the MMF's efforts in advocating for the protection of the rights of the Manitoba Metis Community;
- (b) History of the relations between the Manitoba Metis Community and Manitoba Hydro;
- (c) The work of the MMF Hydro Department and the relationship between MMF and Manitoba Hydro;
- (d) The Metis Traditional Knowledge Way of Life;
- (e) Resource allocation issues; and

- (f) The evidence prepared by MMF for its involvement in the Clean Environment Commission hearings, in which MMF has been accepted as a participant.

While these issues are not within the scope of the NFAT Terms of Reference, the Board makes no findings as to the merits and validity of such issues but expects them to be addressed in another forum.

3.9.0 Manitoba Industrial Power Users Group (MIPUG)

3.9.1 *Proposed Intervention*

MIPUG has 11 members who are among the largest electricity consumers in the Province. Collectively, MIPUG members purchase in excess of 5,000 GWh per year of electricity, which approximates 25% of Manitoba Hydro's domestic sales.

MIPUG members have a long track record of operation and investment in Manitoba. MIPUG works on electricity supply and rate issues for its members. MIPUG's key concerns related to electricity costs are stability and predictability of rates, ongoing transparent regulation and Manitoba Hydro's major capital spending.

3.9.2 *Board Findings*

The Board will grant Intervener Status to MIPUG with the following issues the Board finds to be within the scope of the NFAT Review:

- (a) Impact on domestic rates, including long term impacts;
- (b) Risks to domestic customers through Manitoba Hydro's investment in subsidiaries, export ventures and new Programs;

- (c) Alternatives to Manitoba Hydro's Preferred Development Plan including demand side management programs; and
- (d) Risks including long term financial and economic risks and the financial liability of Manitoba Hydro.

While MIPUG does not, at this time, propose a joint intervention, it will be required to reassess its issues in conjunction with other approved Interveners so as to avoid duplication of efforts, positions, and costs.

MIPUG is known to the Board as a responsible, sophisticated and valuable intervener before the Board on electricity rate-setting matters. In those rate hearings, MIPUG funds its own interventions as it does not meet all of the criteria in the Board's Rules to be eligible for intervener funding.

The NFAT is not a rate setting hearing.

At the Pre-Hearing Conference in general terms, and more specifically in a letter dated May 25, 2013, MIPUG set out its request for the Board to provide an advance indication as to whether MIPUG would be eligible for a cost award in the "Board policy-oriented hearing such as an NFAT".

While MIPUG's individual members may have the financial resources to fund an intervention, MIPUG seeks the Board's determination as to whether it is reasonable to expect the association or its individual members to solely shoulder the costs of an adequate intervention in the NFAT Review.

Manitoba Hydro was provided an opportunity to respond to MIPUG's request and did so in Manitoba Hydro's May 29, 2013 letter to the Board. Manitoba Hydro indicated it does

not object to the PUB providing direction to MIPUG on two of the criteria for assessing eligibility to a cost award – specifically the availability of financial resources and representation of a substantial number of ratepayers. While Manitoba Hydro takes no position on the financial resources test, Manitoba Hydro does acknowledge that MIPUG should be taken as representing the interests of a substantial number of ratepayers.

Manitoba Hydro is of the view that an intervener should represent only the opinions of its membership and not to assume such interests are shared with other customers generally. Manitoba Hydro suggests it is for the Board to evaluate the positions taken by the intervener and assess whether and to what extent such views are shared by the broader ratepayer base.

The Panel has determined that PUB Rules 46(c) (re: *insufficient financial resources*) and Rule 43(d) (re: *must represent a substantial number of rate payers*) will not be criteria considered in determining MIPUG's eligibility for an award of costs. The remaining criteria will be considered in respect of MIPUG when cost submissions are due. This decision will not be viewed as a precedent for future GRA cost orders.

In addition to advancing and reviewing, in the NFAT proceedings, the express concerns raised by MIPUG members, the Board will also require MIPUG to identify and advance the general interests of all General Service Customers of Manitoba Hydro.

The Board appreciates that MIPUG does not anticipate forming any coalition with other General Service customer groups. However, the Board expects the interests of MIPUG to be common to all commercial operations in Manitoba that are concerned about electricity rates over long time horizons. To the extent MIPUG can better inform itself of the other General Service customer concerns, those concerns should also be represented at the NFAT Review. MIPUG is to notify the Board where its interests

diverge from the interests of other commercial operations. Likewise, MIPUG's work plan to become educated on such other General Service customer issues is to be provided to the Board, including the listing of such issues.

MIPUG's relationship with its principal advisor and consultants at InterGroup Consultants Ltd. is a matter of long standing. InterGroup is engaged to provide individual expert opinions and are not advocates of MIPUG's perspective. MIPUG engages its legal counsel to advocate on PUB issues. While both InterGroup and MIPUG legal counsel's firm handle various matters for Manitoba Hydro, they are not involved in matters MIPUG expects to address as part of the NFAT Review. The Board is advised that none of the InterGroup staff providing expert evidence at the PUB Hearings are engaged on Manitoba Hydro assignments. The Board expects that internal protocols at InterGroup will ensure a separation of all issues and information related to the NFAT Review.

Similarly, based on current instructions and the NFAT Terms of Reference, MIPUG's legal counsel does not expect any conflict of interest to arise.

Should any conflict of interest for either MIPUG's consultant or counsel arise, the Board will expect to be notified as to how the matter was addressed.

Lastly, as to process, the Board notes that even though the NFAT Terms of Reference provide for *in camera* reviews, MIPUG expects that as much information as possible will be discussed in the non-confidential portions of the NFAT Review. The Board likewise will have the same expectation of Manitoba Hydro.

MIPUG expects the *in camera* proceedings to serve as a "cross-check" on the information otherwise disclosed publicly – such as confirming data; confirming that the

terms of contracts indeed provide for provisions consistent with Manitoba Hydro's public portrayal of the terms.

According to MIPUG, the *in camera* portion of the NFAT Review ought not become the main forum for deliberation of substantive facts, to the exclusion of the public. If Manitoba Hydro takes a different view, they are to immediately advise the Board and the approved Interveners.

4.0.0 NEXT STEPS

The Board appreciates and thanks all Intervener Applicants for their expressed interests in the NFAT Review. In order to continue to prepare for the NFAT Review, the Board suggests the following.

4.1.0 Coalitions

Those parties to whom Intervener Status was not granted but who identified issues that the Board determined to be within the scope of the NFAT Review may want to consider approaching parties for whom Intervener Status was granted to determine whether a coalition or joint participation is considered feasible.

4.2.0 Finalization of Issues and Experts

Those parties to whom Intervener Status was granted on specific issues that the Board determined to be within the scope of the NFAT Review need to finalize their intentions as to which specific and approved issues they will address (either solely or in a coalition with others) through their intended retainer of an expert consultant and witness.

Each issue must be directly referenced to the Terms of Reference of the NFAT Review.

For any and all intended expert consultants and witnesses, the Interveners will need to seek Board approval of a draft budget, based on the Terms of Reference, as Manitoba Hydro's NFAT Application is not expected until August 16, 2013.

The Board will eliminate duplication of expert evidence and retention of consultants on the same issue, through the Board's review and approval of draft budgets. To permit Parties to discuss possible coalitions or joint presentations of expert evidence on

specific issues, the Board will require written submissions from all Interveners to address the above matters by June 28, 2013.

4.3.0 Scoping Out the Meaning of ‘Macro-Environmental’ Impact

By June 28, 2013, the Board requires Manitoba Hydro and any approved Intervener that intends to address:

“2(i) the Macro-Environmental impact of the plan compared to alternatives”

to submit their definition of “Macro-Environmental” together with a detailed list of all the specific items proposed to be included in their evidence on the topic. While this topic was briefly discussed during the Pre-Hearing Conference process, the Board will clarify the interpretation to be given to this factor.

4.4.0 Scoping Out the Meaning of ‘Socio-Economic’ Impact

Likewise and also by June 28, 2013, the Board requires Manitoba Hydro and any approved Intervener that intends to address:

“2 (h) the Socio-Economic impacts and benefits of the plan and alternatives to northern and aboriginal communities”

and/or

“2 (j) if the plan has been justified to provide the highest level of overall socio-economic benefit to Manitobans, and is justified to be the preferable long term electricity development option for Manitoba when compared to alternatives;”

to submit their definition of “Socio-Economic impacts and benefits” together with a detailed list of all the specific items proposed to be included in the evidence on this topic. The Board will clarify the interpretation to be given to this factor.

4.5.0 Alternate Scenario

- (A) The Board appreciates Manitoba Hydro’s Presentation at the Pre-Hearing Conference to explain Manitoba Hydro’s efforts and plans for bringing forward its NFAT Application. By necessity, the presentation did not fully explain each and every development plan, scenario, and case that Manitoba Hydro has or will be considering for inclusion in its NFAT filing.

While Manitoba Hydro did run through its Preferred Development Plan as well as six alternative development plans, it appears that a development plan that is premised on natural gas and wind, in various combinations, did not make the final cut as to a plan to be vigorously tested by Manitoba Hydro and included in the alternatives to be presented in Manitoba Hydro’s NFAT Application.

The Board expects Manitoba Hydro to include an alternative plan that is premised on incorporating more wind energy in conjunction with a combined cycle gas turbine. This scenario should examine various options, including the option of up to 1,000 MW of wind in conjunction with an efficient combined cycle gas turbine that uses the best available technology for optimization of intermittent generation resources.

While Manitoba Hydro appears to have evaluated a “Wind 2022+ with Gas (capacity support) 2025+” plan using a reference scenario, the Board is not clear

as to why a more in-depth wind/gas plan does not appear in the alternate development plans.

It is expected that with this advance request, Manitoba Hydro will be able to develop, evaluate and present an alternative plan that is premised on wind and natural gas.

- (B) Furthermore, the Board expects Manitoba Hydro to address, as part of its Preferred Development Plan and all alternative plans, the consequences of deferring or delaying the implementation of each Plan.
- (C) Manitoba Hydro is to include in its Plan and Scenario analyses the detailed calculations of the Operating Statement 'In-Service Energy Costs and Revenues' for each added generation source. Additionally, the detailed calculations of the 'Marginal Costs and Marginal Revenues' for each added generation source are to be included in Manitoba Hydro's NFAT Application for review by the Board.
- (D) The Board also requires Manitoba Hydro to provide the Integrated Financial Forecasts ("IFF") (in a form similar to that used by Manitoba Hydro in the General Rate Applications) and all underlying IFF assumptions and inputs for each Plan and Scenario. This will assist the Board in its NFAT Review.
- (E) Manitoba Hydro must also include in its NFAT Application a "Decision Matrix" that compares and contrasts all plans and scenarios by the factors utilized by Manitoba Hydro. The factors, the weighting of such factors and Manitoba Hydro's explanation for such weightings and resulting assessments by Manitoba Hydro need to be provided for the Board's review.

There may be further alternative plans and scenarios that the Board, independent experts, or intervenor consultants will request be evaluated, and Manitoba Hydro will be expected to cooperate with its analysis.

4.6.0 Documents

Manitoba Hydro advised that certain documents and reports related to its NFAT filing have already been prepared. The Board will require Manitoba Hydro to provide copies to the Board of all such documents as soon as possible following the issuance of this Order.

4.7.0 Technical Conference

The Board accepts Manitoba Hydro's offer to host a Technical Conference on its intended NFAT Application for the Board, its Staff and Advisors, independent experts, intervenors and their advisors and consultants. The dates of July 15 and July 17, 2013 appear workable. Manitoba Hydro should determine whether it can have an audio/video link for interested persons who do not attend in person, together with advance distribution of written materials.

The Board agrees with Interveners that a further Technical Conference, after Manitoba Hydro files its NFAT Application, would be worthwhile and reduce the volume of Information Requests. Manitoba Hydro is to propose alternative dates for such a Technical Conference – to be scheduled soon after Manitoba Hydro files its NFAT Application.

4.8.0 Timetable

The NFAT Timetable was circulated in draft form and another version was circulated by MIPUG. The essential difference between the two drafts was the requirement for Independent Experts to file their evidence and be interrogated on it, before Interveners Experts file their evidence. While several Parties supported the MIPUG draft Timetable in principle, there were timing issues identified. The Board intends to circulate a further revised Timetable for consideration and approval at the Pre-Hearing Conference that follows the August 16, 2013 filing of Manitoba Hydro's NFAT Application.

The Board reminds approved interveners of the government's deadline for the submission of the PUB's report. This will require all participants to adhere to the deadline dates set out in the finalized review schedule.

5.0.0 **IT IS THEREFORE ORDERED THAT:**

1. Intervener Status is granted to:
 - (a) Consumers' Association of Canada (Manitoba Branch) ("CAC");
 - (b) Green Action Centre ("GAC");
 - (c) Manitoba Industrial Power Users Group ("MIPUG");
 - (d) Manitoba Keewatinowi Okimakanak Inc. ("MKO"); and
 - (e) Manitoba Metis Federation ("MMF").

2. Intervener Status is not granted to:
 - (a) Peguis First Nation;
 - (b) The Pimicikamak at Cross Lake;
 - (c) Kaweechiwasik Inninuwuk; and
 - (d) Manitoba Public Interest Research Group.

3. Manitoba Hydro provide the Board with copies of all currently available documents and reports related to the NFAT Review. This will include export contracts, load forecast and power resource plans.

4. Manitoba Hydro is to host a Technical Conference on its NFAT Application on July 15 and 17, 2013.

5. Written submissions from Manitoba Hydro and Interveners, as detailed in this Order, are to be filed with the Board on or before June 28, 2013.

THE PUBLIC UTILITIES BOARD

“RÉGIS GOSSELIN, B.A., M.B.A., C.G.A.”
Chairman

“HOLLIS SINGH”
Secretary

Certified a true copy of Order No. 67/13
issued by The Public Utilities Board

Secretary