

February 18, 2014

The Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, MB
R3C 0C4

Attention: Mr. Hollis Singh
Executive Director and Board Secretary

Dear Mr. Singh:

RE: NFAT – Evidence of Whitfield Russell Associates dated February 12, 2014 filed by Manitoba Metis Federation

Please treat this letter as a motion to strike from the written evidence of Whitfield Russell Associates dated February 12, 2014 and filed by the Manitoba Metis Federation (the “MMF”), page 3, lines 12 to 16; page 16, end of line 7 through line 24 inclusive; pages 17 to 21 (exclusive of lines 26 to 28 on page 19, end of line 11 to line 17 on page 20 and lines 23 to 31 on page 21); page 25 through page 39, line 8 (excluding lines 2 to 12 on page 26, lines 13 to 25 on page 28, lines 1 to 5 on page 29, lines 10 to 29 on page 30, lines 1 to 5 and 14 to 36 on page 31, lines 1 to 4 on page 32, lines 19 to 25 on page 37 and page 38); and lines 7 to 10 on page 40.

The grounds for the motion are:

1. The Terms of Reference for the NFAT explicitly, on page 4, state that “the Bipole III transmission line and converter station” “are not in the scope of the NFAT”. The portions of the Whitfield Russell Associates written evidence cited above deal explicitly with the Bipole III transmission line, associated converter stations and the requirement of that line and converter stations to ensure the reliability of Manitoba Hydro’s transmission system. Accordingly, the evidence is ‘out of scope’. Allowing it to remain, effectively permits it to be heard, expanded upon and questioned.
2. The Terms of Reference for the NFAT do not permit one participant, unilaterally, to ignore, or to ‘amend’ the Terms of Reference so as to include matters that were explicitly excluded. I note that in its application to intervene in the NFAT, the MMF did not advise that it would be soliciting a report on the Bipole III transmission line and converter station with a view to challenging the need for that Project for reliability purposes or to argue that it should be cancelled or postponed. Neither of the MMF’s

submissions with respect to the retainer of Whitfield Russell Associates (November 12, 2013 and January 30, 2014) revealed that these subjects would take up a substantial amount of the report. In its letter to MMF counsel dated November 20, 2013, the Board approved MMF's engagement of the services of Whitfield Russell Associates to assist the MMF "on issues that have been determined to be in-scope for MMF in Order 67/13". The Bipole III Project and its treatment in the foregoing Whitfield Russell Associates' evidence is **not** one of the issues that the Board determined was in-scope for the MMF. In granting an increase of funding through its letter of February 5, 2014, the Board did not state that the funds could be used to explore and present evidence that is out of scope.

3. The appropriate procedure for an Intervenor who seeks to introduce evidence on matters that have been explicitly excluded from the NFAT is to seek leave of the Public Utilities Board to bring forward such evidence. Further, in light of the fact that the mandate in question was set by the Minister of Innovation, Energy and Mines, had the Public Utilities Board received such a request for leave, it, in turn, would be obligated to seek leave of the Minister in question to alter the Terms of Reference. No such leave was sought.
4. Given that the Terms of Reference are explicit regarding the fact that the Bipole III Transmission line and associated converter stations are out of scope, it would be unfair to the Proponent at the NFAT hearing, and to other participants interested in this matter, to allow only one Intervenor to bring forward, without notice or authorization, evidence on the merits of the Bipole III transmission line and converter stations and whether they are the best choice to meet Manitoba Hydro's reliability needs. Moreover, it is unfair to the public, generally, to allow, at this time and in contravention of the Terms of Reference, evidence of this nature regarding the Bipole III transmission line. Had it been understood, in the spring of 2013, that parties could apply for intervention in the NFAT for the purpose of re-visiting the need for the Bipole III transmission line, other organizations and individuals may well have applied to intervene, particularly those who participated in the Clean Environment Commission hearings in 2012 and 2013 when both the environmental studies of Bipole III were reviewed as well as the need for Bipole III for reliability and whether there exist preferable alternatives to meeting Manitoba Hydro's reliability needs.
5. The Clean Environment Commission, in 2012 and 2013, invited the introduction of detailed evidence regarding the need for the Bipole III Transmission line to traverse southern Manitoba farm land and heard testimony from an expert panel of witnesses who presented evidence that the line, as proposed by Manitoba Hydro, was not the most desirable proposal. Manitoba Hydro questioned this evidence and led evidence of its own that challenged it. Further, the Clean Environment Commission reviewed detailed reports and heard extensive evidence on the probabilities of failure of key components of the existing transmission system, the viability of replacing the critical

supply for domestic load through imports as well as the choice of location of the two new converter stations associated with Bipole III.

6. The Bipole III Project has now been licensed. Entertaining evidence in the next two months whose purpose is to convince those hearing the evidence that “there is no standalone reliability function of Bipole III” and that “[m]uch could undoubtedly be saved by cancelling it or deferring its in-service date” constitutes a waste of time on the part of all parties who are participating in the NFAT. Given the mandate for the NFAT, the Government of Manitoba has explicitly stated that it does not want advice or recommendations from the Public Utilities Board on whether the Bipole III Project meets Manitoba Hydro’s reliability needs nor does it seek recommendations from the Public Utilities Board on whether or not the Bipole III Project should be cancelled or deferred.

The evidence of Whitfield Russell Associates is brought forward by the MMF. The MMF participated in the Clean Environment Commission hearing of the Bipole III Project. The MMF opposed the granting of a license for the Bipole III Project. It continues to do so. Its motives for urging Whitfield Russell Associates to revisit Bipole III, in spite of a clear injunction in the NFAT mandate, are partisan. No hearing before the Public Utilities Board, including the NFAT, should be exploited as a forum to advance positions that have no relevance to the work of the Board.

If Whitfield Russell Associates are to be allowed to maintain the evidence in question, then those parts of it that are superficial and which overlook the detailed evidence heard by the Clean Environment Commission will in some fashion have to be heard. If the Public Utilities Board is going to wade into whether the Bipole III Project meets Manitoba Hydro’s reliability needs, it at least should hear the “whole story”. For example, what are the probabilities of an extreme weather event damaging all three bipoles? How close did the June 22, 2007 tornado that destroyed much of Elie, Manitoba come to the Dorsey converter station? Are converter stations able to withstand tornadoes? If they cannot, how long would Dorsey be out of service? How old is the equipment in the Dorsey station? What is the cost to replace it? Will the equipment in the new Riel and Keewatinoow converter stations be compatible with that in existing converter stations? What is the cost to put a transmission line underground? What problems are associated with building new transmission to the American border for the purpose of importing energy, as opposed to exporting it? What guarantees are there that American utilities would have the energy to replace lost Manitoba supply in the event that a tornado destroyed the Dorsey converter station? What is the Riel Conversion Project? Does the siting of the Riel Conversion Project have anything to do with the Riel Converter Station? Does it have anything to do with the demand for electricity within the City of Winnipeg? All of these questions were examined before the Clean Environment Commission. None of them are explored in a balanced way by Whitfield Russell Associates and some of them are entirely ignored.

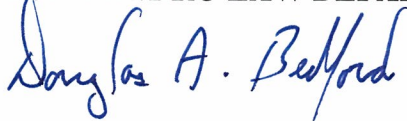
Canadians often hear that we are governed by the 'rule of law'. What does that mean? In the circumstance of a Public Utilities Board that has been given explicit terms of reference by a Minister of the Crown, it means the Board and all participants must respect the terms of reference. It means that last minute efforts to ignore the terms of reference and the Board's letter of November 20, 2013 must not be tolerated, particularly when there is no room here for the MMF or its consultant to plead "mistake", "misunderstanding" or "simple ignorance" of the Terms of Reference or the rule of law.

In addition to striking this evidence from the record, I submit on behalf of my client that there should be some additional sanction. No one should be paid for doing what was clearly out of scope for what are patently partisan objectives.

Yours truly,

MANITOBA HYDRO LAW DEPARTMENT

Per:

A handwritten signature in blue ink that reads "Douglas A. Bedford". The signature is written in a cursive, flowing style.

DOUGLAS A. BEDFORD

Barrister and Solicitor

DB

cc. Ms. Jessica Saunders