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September 26, 2013

Mr. H. Singh
The Public Utilities Board
400 - 330 Portage Avenue
WINNIPEG, Manitoba R3C 0C4

Dear Sir:

RE: MANITOBA HYDRO NFAT
ROLE OF THE INDEPENDENT EXPERT CONSULTANTS

Manitoba Hydro is in receipt of the letter of Hill Sokalski Walsh Trippier, Counsel to the Independent Expert Consultants (IEC), dated September 24, 2013 and wishes to comment on same.

Manitoba Hydro notes that the letter begins by referencing the impending Motions day on September 30, 2013 and follows by raising three concerns of the IEC's, the first relates to the IEC's ability to file Information Requests (IR's) on Commercially Sensitive Information (CSI) material, the second is with regard to completeness of the public record and the third, La Capra Associate's request for Manitoba Hydro to file all electronic spreadsheets it used to perform the NFAT economic analysis.

Manitoba Hydro wishes to resolve all of these issues forthwith in order to allow the IEC's to do the work required to complete their reports in accordance with the NFAT timetable. The September Motions Day is not the forum to resolve these issues, both for procedural and practical reasons. Reliance on such process will only impede the timely resolution of the IEC's concerns and our ability to move quickly and efficiently.

Round I IR's - CSI

As the Board is aware, Manitoba Hydro set up its CSI Room in early July, 2013. The IEC's were not finalized until sometime later, with the Non-Disclosure Agreements required in order to access CSI being provided to Manitoba Hydro on September 11 and 12, 2013. CSI was couriered to the IEC's beginning September 12. Manitoba Hydro acknowledges that this did not provide the IEC's an opportunity to pose IR's on the CSI however given the special

access provided to Manitoba Hydro staff, Manitoba Hydro questions the need for IEC's to file IR's on CSI or any topic for that matter.

The role of the IEC's is set out in the Terms of Reference:

The independent expert consultant(s) shall provide a report(s) to be filed in evidence on the public record, which shall contain their analysis of the submissions filed by Hydro, with sufficient information to satisfy the Panel that the review was conducted with due diligence. The report(s) shall not draw conclusions as to the needs for or alternatives to the Plan, which is the role of the Panel.

The independent expert consultant(s) shall be available for cross-examination at the public hearing, and shall be available as a resource to legal counsel for registered intervenors as deemed necessary by the PUB to prepare for the cross-examination of Hydro witnesses on Commercially Sensitive Information.

The independent expert consultant(s) may also provide such advice to the Panel, and file such report(s) with the Panel *in camera*, that contain, reference, or analyse Commercially Sensitive Information in sufficient detail to satisfy the Panel. Cross-examination of the independent expert consultant(s) on such issues shall be permitted *in camera*.

There is no requirement that the IEC's prepare and file Information Requests or that they base their report on information which has been filed on the record of the NFAT hearing. The only requirement imposed by the Terms of Reference is that the IEC's report shall "*contain their analysis of the submissions filed by Hydro, with sufficient information to satisfy the Panel that the review was conducted with due diligence*".

The PUB provided the IEC's with the ability to pose IR's and Manitoba Hydro did not raise any objection. Manitoba Hydro did not however contemplate that it would receive the volume of IR's that were in fact generated by the IEC's¹, and instead expected that the vast majority of information exchanged would occur through the special direct access to Manitoba Hydro staff afforded to the IEC's. By way of comparison, in the 2010 Risk Review the Independent Consultants Kubursi and Magee were also afforded unrestricted access to MH staff and they did not file a single IR in that process.

Manitoba Hydro would observe that the ability of the IEC's to engage in discussion and pose questions directly to staff with expertise in the topic area is exceedingly more efficient in providing the IEC's with the information they require to prepare their report than is the written Information Request process. Response time is immediate as is the ability to pose follow-up questions. In addition, real time demonstrations facilitate a more in depth understanding of the processes and techniques utilized by Manitoba Hydro in reaching its

¹ Roughly 45% of the approximate 2100 First Round IR's were generated by the IEC's

conclusions which in turn enhances one's ability to test those conclusions. Manitoba Hydro is most willing to continue this process with respect to the understanding, testing and evaluation of both confidential and non-confidential material as it believes it is the process contemplated by the Terms of Reference. The IEC's can request copies of materials presented and can incorporate such materials into their reports as they deem necessary.

Completeness of the Public Record

The IEC's have identified a perceived challenge with respect to "ensuring the completeness of the public record" where information is obtained through direct interactions with Manitoba Hydro staff.

The Terms of Reference clearly outline the IEC's role which is to produce a report that contains "sufficient information" to satisfy the panel that the review was conducted with due diligence. There is no mention in the Terms of Reference of a requirement that all information viewed or relied upon be placed on the public record nor is there any suggestion that it is the role of the IEC's to ensure completeness of the public record. Parties have been afforded the right of discovery with respect to these reports and are free to request information forming the basis for the analysis and conclusions contained therein. The IEC role as it relates to Intervenor is outlined in the Terms of Reference as follows:

The independent expert consultant(s) shall be available for cross-examination at the public hearing and shall be available as a resource to legal counsel for registered intervenors as deemed necessary by the PUB to prepare for the cross-examination of Hydro witnesses on Commercially Sensitive Information.

The discovery and examination processes afforded the parties on all materials filed is the means by which the public record is created. It is the IEC's role to prepare a report for the public record that contains "sufficient information". Sufficient information clearly does not mean all information that the IEC's viewed or relied upon, nor does it suggest a role in creating a public record of materials. The timeline for the NFAT, which cannot accommodate the large number of detailed written IR responses that such process would entail, further demonstrates that a role in compiling a public record of materials was not contemplated by government. If the PUB has any doubts in this regard, Manitoba Hydro respectfully suggests it refer the issue to government for clarification.

Excel Spreadsheets

Counsel for the IEC's indicates that La Capra Associates is not able to fully evaluate the NFAT economic analysis unless provided with a copy of the economic model in native Excel spreadsheet format.

With the benefit of the discussions with La Capra, Manitoba Hydro has developed a three level classification which it believes will assist in parties' understanding of its various models and spreadsheets.

Level I models are complex custom programs coded in computer language. These are not spreadsheets and can only be run by persons with specific expertise in the topic area being modeled and who possess extensive training in operating the model. SPLASH and FINFOR are examples of Level I models.

Level II models involve complex spreadsheets which are linked with other complex spreadsheets. Similar to Level I models, only those with topic expertise and training in the models' structures and operations can reasonably run these models. By way of example, Manitoba Hydro's Engineering Economic Evaluations fall into this classification.

The Level III classification is applied to data in a standard Excel spreadsheet, typically involving supplemental analysis of the outputs of other models. Level III spreadsheets do not require specialized training beyond an advanced level of knowledge of Excel.

Manitoba Hydro can report that its staff met with representatives of La Capra on September 24 and 25, 2013 which meetings facilitated a much better understanding of what was needed and what could be provided. Following a presentation and discussion of the operation and capabilities of the SPLASH model (a Level I model), Manitoba Hydro understands that La Capra accepts that this model is a complex custom program that cannot be taken away and operated by a third party. Manitoba Hydro will support the efforts of La Capra to review Manitoba Hydro's complex models through explanations and demonstrations either in-person or through long distance communications.

With respect to Manitoba Hydro's Engineering Economic Evaluations (which fall into the Level II category), as complex spreadsheets, such models do not lend themselves to being filed or manipulated by those unfamiliar with their structures and operations. Based on the IEC's Scope of Work as presently drafted, La Capra representatives indicated to Manitoba Hydro that they consider it necessary to directly examine the inputs, operation and outputs of the model. Manitoba Hydro acknowledges La Capra's reasoning and is willing to make personnel available in order to attend and walk through the model at Manitoba Hydro's office.

Manitoba Hydro can advise that in order to accommodate La Capra Associate's request for access to certain CSI (which Manitoba Hydro would classify as Level III), it is creating a separate secure SharePoint site for CSI which IEC's will be able to access upon receipt of an invitation by Manitoba Hydro and entering the required login information. Manitoba Hydro will post on this site information such as more detailed information related to the cashflows provided in Appendix 9.3 and a probability sensitivity spreadsheet which will allow the IEC to manipulate and test the outputs of the Engineering Economic Evaluations with respect to expected values and percentile values (10th, 25th, 75th and 90th) in a manner similar to that found in Appendix 9.3, Figure 2.7.1.

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The progress made on this front is representative of what can be accomplished through direct interaction and explanation. There is ample opportunity to achieve further efficiencies in the process provided the PUB issues clear direction that it will rely on the IECs' professional judgment as to what information ought to be included in their reports to satisfy the requirements of the Terms of Reference, that it is not necessary to document information obtained from Manitoba Hydro in the form of an IR and that existing IR's may be withdrawn where the information is provided through other means.

Yours truly,

MANITOBA HYDRO LAW DIVISION

Per:

A handwritten signature in black ink, appearing to read 'P. Ramage', written over a horizontal line.

PATRICIA J. RAMAGE
Barrister & Solicitor