
NEEDS FOR AND ALTERNATIVES TO (NFAT)

Manitoba Hydro Undertaking #142

Manitoba Hydro to point to the section they are relying on in saying the contract will terminate.

Manitoba Hydro (“MH”) has indicated in its evidence that if Keeyask does not proceed or if it is delayed beyond more than two (2) years, the Minnesota Power 250 MW System Participation Power Sale Agreement dated May 19, 2011 (the “Agreement”) would terminate.

Response:

The commencement of construction of Keeyask is a condition precedent in the Agreement in favour of Manitoba Hydro.¹ There is no condition precedent in the Agreement in favour of Minnesota Power (“MP”) relating to the construction of Keeyask. There is no explicit termination provision in the Agreement in favour of MP should MH choose to not proceed with Keeyask.

MH and MP share the understanding that if construction of Keeyask does not commence by June 1, 2016, the Agreement will terminate and no interconnection will be built. MH’s use of its condition precedent, to exercise its right to not proceed with the construction of Keeyask after holding out Keeyask as part of its plans and still require MP to proceed with the transaction in the absence of Keeyask, was not a situation considered by the parties in negotiating the Agreement.

To support this understanding there are references throughout the Agreement that link the contractual energy deliveries and associated environment attributes to new hydraulic energy produced from [REDACTED]. To the extent that the environmental attributes from [REDACTED] are insufficient to fulfill MH’s environmental attribute obligation, energy from [REDACTED] MH hydraulic generating stations will be allocated to MP.²

In addition to the Agreement, MH and MP are also signatories to the Energy Exchange Agreement dated May 19, 2011 (“EEA”). The EEA was negotiated in conjunction with and signed contemporaneously with the Agreement. The third preamble in the EEA confirms both parties understanding that MH will be constructing new hydraulic generation as part of its development plans. That preamble reads as follows;

¹ Section 13.2(a) of the Agreement

² See Section 9.2(2)

“AND WHEREAS, MP is developing significant wind resources and desires to pump and store wind energy, in conjunction with the construction of a new transmission interconnection between MP and MH and MH’s proposed new hydraulic generation development;”

References to the linkage between the construction of Keeyask and these agreements with MP are not only contained in the agreements themselves, but since 2007 MH has represented:

- a) in meetings, northern tours, correspondence and in negotiations with MP,
- b) in meetings and northern tours with the Minnesota Public Utilities Commission (“MPUC”),
- c) in meetings and northern tours with the Minnesota Department of Commerce, and
- d) in meetings, joint studies and northern tours with MISO,

that MH’s development plans included the construction of new hydraulic generation stations in part to ensure that MH had the capacity and dependable energy to meet the requirements of the Agreement.

With regard to the new interconnection, MH has represented to MP that the need for the new major transmission to the US was based on increased amounts of exports of surplus capacity and energy destined for the MISO market resulting from the construction of Keeyask and Conawapa. MH’s representation has been echoed by MP in its Certificate of Need (“CON”) filing and its ongoing proceedings for the Great Northern Transmission Line with the MPUC. The CON identified MH’s plans for major new hydraulic generation as justification for a 750 MW interconnection. Furthermore, the CON has identified Keeyask as being needed for the supply of power under the Agreement.

Part of the benefits MP has identified in the CON filing for the 750 MW interconnection are the result of increased imports to Minnesota associated with a large increase in hydraulic energy production from new generation at Keeyask and Conawapa in the form of:

- a) additional environmental attributes;
- b) significant wind synergy benefits to MP, other Minnesota utilities, and regional MISO load as indicated in the MISO-MH Wind Synergy Study; and
- c) lower Locational Marginal Prices at the MP-MISO pricing nodes.

It is MH’s view that MP would demand renegotiation or termination of the Agreement and would discontinue all Great Northern Transmission Line development activities, if the benefits they have been lead to believe, especially those related to wind synergies resulting from the construction of new hydraulic generation, are no longer available. Without the promised wind synergy benefits MH’s believes MP would not continue its development relationship with MH.

There have been suggestions that MH has the option of serving MP's capacity and energy needs as outlined in the Agreement from surplus hydro energy, freed up as a result of increased DSM efforts. MH believes this would not be an acceptable alternative to MP as increased DSM does not provide new wind synergy benefits associated with the construction of new hydraulic generation.

To some extent, expanded DSM does provide a marginal improvement in the area of LMPs and the availability of surplus Environment Attributes. The benefit is that both don't continue to deteriorate as the MB load grows. This benefit is different than the step function increases that would occur if both Keeyask and Conawapa are built. However only new storage at Keeyask and Conawapa makes the Manitoba Hydro storage battery bigger and the loss of the associated benefits from wind hydro synergy would be a very significant issue. The loss of wind synergy would also be important to the state and to MISO as new storage leverages many more MW's of potential wind development in the US.

It is MH's view that regulatory approval of MP's CON filing is at significant risk if Keeyask does not proceed given that:

- a) a majority of the Minnesota benefits of MH's Preferred Development Plan identified by MP in the CON filing would not be realized; and
- b) the MPUC expects MH to be constructing new hydraulic generating facilities and in that regard had ordered both MP and Northern States Power to submit annual filings that provide an update on various significant milestones achieved regarding MH's new hydraulic generating facilities.
- c) The Minnesota statutory "need" justification to build new transmission would no longer be satisfied as the existing Manitoba-US interconnection has adequate capacity to manage MH's current surplus energy supplies.

In theory a new relationship with MP could be established over time around a development plan based upon freed up resources as a result of expanded DSM. However MP needs new resources to serve its load in 2020, and it is MH's view that if Keeyask does not proceed prior to June 1, 2016, MP will chart a different course to meet its 2020 load requirements without MH.