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January 31, 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 – Proposal of CAC to present socio-economic evidence**

We have reviewed Ms. Meghan Menzies' letter to you of January 28, 2014 in which she describes the evidence and witnesses her client proposes to call on the subject of socio-economic impacts during the forthcoming NFAT hearing.

All of the evidence in question was introduced during the course of the Clean Environment Commission's review of the Keeyask Environmental Impact Statement and the same witnesses Ms. Menzies proposes to call were questioned, at length, during that hearing.

Specifically, both Dr. O'Gorman and Dr. Buckland testified before the Clean Environment Commission on precisely the matters that Ms. Menzies offers to have them address in the NFAT hearing. Dr. Orenstein and Dr. Lee work together, as Ms. Menzies' letter affirms. They co-authored the report filed before the Clean Environment Commission and Dr. Lee was questioned on it. Ms. Menzie's proposal does not explain why the need for the same witnesses, speaking on exactly the same subjects heard by the Clean Environment Commission using, presumably, updated versions of the same reports, must be heard also by the Public Utilities Board.

A number of aboriginal elders testified before the Clean Environment Commission, at length, about the Cree World View, their perspectives on the history of hydro-electric development in Manitoba and, particularly, their views on the potential impacts on aboriginal harvesters and on the traditional use of land by aboriginal peoples in Northern Manitoba of hydro-electric developments. The elders in question came from a number of First Nations which included the four First Nations who are partners in the Keeyask Project as well as First Nations which are not, including Shamattawa First Nation, the Nisichawayasihk Cree Nation, Pimicikamak Cree Nation and Peguis First Nation. Those who spoke frequently identified themselves as supporters of the Keeyask Project or opponents of the Project or, occasionally, as neither. Ms. Menzies does not identify which elders her client proposes to call but, presumably, they will

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be drawn from those who spoke before the Clean Environment Commission as they are now known to Ms. Menzies' client and are known to be willing to address a public body. Ms. Menzies does not explain why it is necessary for this evidence to be heard a second time by a second public tribunal charged with providing recommendations to the same government that is to receive recommendations from the Clean Environment Commission. The fact that many found the testimony of many of the aboriginal elders to be "compelling" is not, in itself, a persuasive reason to hear it a second time.

The hearing before the Clean Environment Commission provided an opportunity for those members of the four First Nations who oppose the Keeyask Project and those who have supported the Project to testify about their reasons for opposing, or supporting, the Project and to be questioned thereon. It is the obligation of the Clean Environment Commission, having heard this testimony, to report to the Government of the Province of Manitoba what it heard and to provide whatever assessment, and recommendations it thinks appropriate with respect to this evidence. If the Public Utilities Board of Manitoba decides to take the unanticipated step of hearing the same evidence of aboriginal elders again, there will be an intense desire on the part of each of the four First Nations who are partners in the Project to ensure that "both sides" of the debate within each of their respective communities is heard in evidence before the Public Utilities Board. Had it been made known in the spring of 2013 that the Public Utilities Board would allow for this type of evidence to be introduced at its hearing, no doubt each of the First Nations in question would have sought, and likely been granted, standing to participate in the NFAT hearing. Ms. Menzies' letter is silent on how this is to be accomplished within the time frame and mandate with which the Public Utilities Board must now work and using the identified participants in the NFAT hearing.

With all counsel, clients and PUB Board members working five days a week, there is no time to read, assess and respond to evidence Ms. Menzies proposes filing on March 14, 2014. I note she does not propose a date for the hearing of this evidence. I note that she overlooks that the filing of this evidence would result in my client bringing forward a new panel to respond to it and, again, there is presently no time in the schedule to accommodate the presentations and questioning of all of this evidence.

The mandate of the PUB with respect to socio-economic impacts and benefits does not call for a second review of the Keeyask Project as measured against the "World Bank good practice framework", a second survey of the various community health issues that arise through the influx of a large work force to a remote region and the increase of mercury levels in fish as a consequence of flooding land heavy in peat, nor the personal testimony, again, of aboriginal elders who have lived through past hydro-electric developments. The mandate of the PUB with respect to this subject is narrow, and distinct from that of the Clean Environment Commission. It is to consider the socio-economic impacts and benefits **"of the Plan" "and alternatives"** to both "northern" and "aboriginal communities". The Clean Environment Commission heard during the course of reviewing the Keeyask Project extensive evidence on the socio-economic impacts and health issues associated with the Keeyask Generation Station Project and, in addition, the cumulative adverse effects of the Keeyask

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Generation Project in combination with the proposed Keeyask Transmission Project, the Bipole III Transmission Project, the Conawapa Generation Project and the Gillam Redevelopment Project. As stated, the extensive evidence in question included the reports and testimony of Dr. O’Gorman, Dr. Buckland, Dr. Lee and Dr. Orenstein.

The mandate of the Public Utilities Board specifically excludes the “environmental reviews of the proposed projects that are part of the Plan”. The Keeyask Generation Station project is a proposed project that is part of the Plan. It has just gone through a public “environmental review” that included all of the evidence and the witnesses that Ms. Menzies now wants to call at the NFAT hearing. This is excluded from the mandate of the Public Utilities Board.

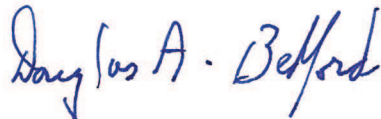
When one compares the mandate given to the Public Utilities Board with the mandate given to the Clean Environment Commission, it is apparent that some sensible effort was made to ensure that each tribunal did not hear witnesses and testimony that duplicated what the other heard. This was sound thinking, given that the purpose of each hearing is to make recommendations to the Government of the Province of Manitoba. If the Public Utilities Board is now to hear some of the same evidence from the same witnesses as were heard by five Commissioners of the Clean Environment Commission and also to assess this evidence and make recommendations to the same government with respect to it, whose recommendations on identical evidence are to take precedence where they differ? The mandates are silent on this dilemma. Ms. Menzies is silent on this dilemma. It would not be sensible to create this dilemma by giving the same witnesses the opportunity to speak on the same evidence a second time.

On behalf of my client, I respectfully submit that Ms. Menzies’ proposal be rejected.

Yours truly,

**MANITOBA HYDRO LAW DEPARTMENT**

Per:



**DOUGLAS A. BEDFORD**

Barrister and Solicitor

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cc. Ms. Meghan Menzies