



REPLY TO: Jessica Saunders
FILE NO.: 37462-001

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January 30, 2014

VIA Email and Regular Mail

The Public Utilities Board
400-330 Portage Ave.
Winnipeg, MB R3C 0C4

Attention: Hollis Singh, Secretary

Dear Sir:

**Re: Manitoba Metis Federation (MMF) NFAT Intervention
Proposal re: Whitfield Russell, Senior Legal Counsel
and Deadline to File MMF Evidence**

The MMF is seeking PUB approval of a proposal for further funding for the involvement of Whitfield Russell Associates ("WRA") and for the involvement of senior legal counsel, Tony Marques, to assist in the preparation of MMF's evidence. The MMF is also requesting an extension to file its proposed background evidence and to the current deadline of February 4th, 2014 for the filing of the MMF's consultant's reports. Below, we provide our comments regarding these proposals.

Overview of Proposal

As has been acknowledged in our earlier submissions to the PUB, the MMF has not intervened previously in PUB proceedings. Since the MMF's first involvement in the NFAT in May 2013, the MMF has gained a better understanding of its role as an intervener in assisting the PUB in carrying out the tasks it has been provided in the Order in Council and the Terms of Reference. The opportunity to provide a unique perspective to the PUB in the NFAT is greatly appreciated and we are of the view that our efforts in this regard have become more focused since our first involvement.

In submissions leading up to PUB Orders 67/13 and 127/13, the MMF originally proposed an intervention that could be described as “socio-economic and macro environmental focused”. Consequently, funding from the PUB in Orders 91/13 and later in 127/13 was provided for our consultants Camerado and MSES to provide evidence in these areas. Having reviewed Manitoba Hydro’s filing and participated in the first round of Information Requests (“IRs”), the MMF determined that it would proceed in filing socio-economic and macro environmental evidence but in order for the MMF to fully assist the PUB in this process, further analysis in other areas would be required.

The MMF was provided standing to call evidence in the areas of impact on domestic rates and financial and economic risk but had not proposed consultants to complete this work. Having not worked with consultants in this field before and having had the opportunity to learn more about Hydro’s filing after the first round of IRs, the MMF sought additional expertise and found that Whitfield Russell and Associates (“WRA”) would be an ideal consultant. WRA has had experience in PUB proceedings, is highly qualified in the subject matter and was able to review the filing and complete the second round of IRs without delay such that all of the MMF’s IRs were submitted by the PUB’s deadline.

When we initially advised the PUB of WRA’s involvement, we were certain of the value that would be added to the MMF’s intervention but did not have a full appreciation of the scope of work or budget that would be involved. We are providing a scope of work and budget at this time for the PUB’s consideration for the involvement of WRA and believe that this submission and any follow-up, will conclude the MMF’s submissions regarding scope of work and approval of funding for consultants. In view of the more focused and technical aspects of the MMF’s intervention since PUB Order 127/13, we are also including a budget for legal fees for the involvement of senior legal counsel.

We realize that there may be limits to rates and fees and other budgetary considerations that must be made by the PUB. We submit the proposed budget as provided by the consultant estimating the fees that would be required to provide the evidence we are proposing. Our client is aware that there is a well-established practice involved in regulatory proceedings in Manitoba. While relatively new to it, the MMF hopes to contribute to the important work being undertaken by the PUB and others involved in this process.

Whitfield Russell Associates

Initial Proposal for Involvement of WRA

The MMF first proposed the involvement of WRA in our letter to you of November 12, 2013 and by letter of the PUB dated November 20, 2013, this proposal was approved. As indicated in that proposal, funding for WRA was to be provided through the MMF’s currently approved budget amounts. Consistent with the direction of the PUB in Order 127/13 that interveners are to track, record and manage budgets and that surpluses in one consultant budget can be applied to

shortfalls in another consultant budget, the MMF set aside a surplus in the MSES budget so that a budget could be established for WRA.

After the first round of IRs, the MMF determined that the scope of work for MSES would be revised so that MSES would assist as consultants reviewing socio-economic and macro environmental matters – completing IRs, assisting the MMF in collaboration with other interveners in these areas and assisting in the preparation of MMF’s evidence with respect to these matters – but not submitting reports and not testifying as witnesses providing evidence on behalf of the MMF in the NFAT. This allowed for a budget to be established for WRA so that the MMF was in a position to provide more consideration to the approved areas of impact on domestic rates and economic and financial risk. In consultation with MSES, it was determined that \$50,662.00 from the MSES budget would be applied to WRA’s budget. Further to the draft hearing schedule provided by PUB counsel, we will write to inform of our proposed witnesses Mr. Hendriks and Mr. Whitfield Russell.

Scope of Work

When this amount was established, a scope of work for WRA was not yet available. The MMF worked with WRA in mid November 2013 to early January of 2014 and found that the areas of impact on domestic rates and financial and economic risk required due consideration by the MMF. In consultation with WRA, the scope of work for WRA’s assistance in these areas, has been finalized and we anticipate that the MMF’s contribution to the PUB’s consideration of these matters will be substantial. We confirm that there will not be duplication with the evidence of Mr. Hendriks, other interveners’ experts and to the extent possible, the PUB’s Independent Expert Consultants (IECs). We have submitted at Schedule “A”, a scope of work for WRA for your consideration.

Budget

In our November 12, 2013 letter, we also indicated that we would advise the PUB if there were any concerns with the fees for WRA exceeding the amount budgeted. Further, that we would provide a proposal on how to address such concerns. I can confirm that all efforts to internally manage these concerns have been made. Specifically, we have reviewed our budget amounts and any surpluses that could have been applied to the WRA budget have been applied. We have also confirmed that the MMF does not have the resources to assist in funding WRA and that the only way that the MMF could secure WRA’s assistance in the NFAT is if funding is provided by the PUB. As a result, for your consideration, we have attached at Schedule “A”, a budget that outlines the estimated fees required for WRA’s involvement.

Submission of WRA Evidence

We realize that it is extremely unusual for evidence to be prepared and filed in advance of the approval of the budget for that evidence, particularly for an intervener like the MMF that requires funding in order to participate in these proceedings. We suggest that the reasons outlined in the overview of our proposal, speak to the unique circumstances for why this has occurred and why

it is unlikely that this will occur in the future. Having recently completed the review of and IRs on IEC evidence, we are aware of the limitations in the current budget for WRA. The MMF would respectfully place a caveat on the submission of WRA evidence as budgetary considerations that arose solely as a result of the MMF's late inclusion of WRA's involvement in its intervention, may have an impact on our ability to proceed in calling this evidence.

Senior Legal Counsel

In Order 127/13, the PUB approved funding for junior legal counsel in the amount of \$150,000.00. In our submissions regarding matters dealt with in Order 127/13, we originally proposed that legal fees for both senior and junior counsel would amount to \$214,625.00. The PUB wrote that due to the increased funding for MMF consultants, the reduced scope of issues approved (our proposal for Community Power Opportunities evidence was not accepted) and in view of the fact that the PUB was unaware of the supervision and extra support required for senior counsel, the amount for junior legal counsel would be approved at \$150,000.00.

We agree that this amount will be sufficient to cover the fees for junior legal counsel. However, as we are preparing for the submission of MMF's evidence and the preparation of MMF's consultants to provide evidence, we are of the view that the assistance of senior counsel will be required. Senior counsel will assist in preparing and conducting the evidence of WRA in the areas of impact on domestic rates and financial and economic risk and in developing the MMF's case in these more technical aspects of the NFAT.

As the involvement of senior counsel is being proposed for part of the preparation and presentation of MMF's evidence, we have estimated that we will need an additional amount of \$46,000.00 (230 hours x \$200 hourly rate for senior counsel) in addition to the currently approved amount for legal fees. Attached as Schedule "B", we have provided a scope of work and proposed budget amount for the involvement of senior legal counsel.

February 4th Deadline to File Evidence

Background Evidence

In Order 127/13, the PUB accepted the MMF's offer to file a document that would set out information to provide a better understanding of the Manitoba Metis Community. The PUB indicated that it would review the document submitted by MMF to determine whether the information would be received in evidence by MMF or alternatively, as a presentation by MMF. We had originally proposed that this document be provided in advance of the filing of MMF's evidence.

The MMF is preparing this document and is mindful that it may be included as either evidence in hearings or as a presentation. As a result, there are maps and other details involved in the preparation of this document that we are still in the process of finalizing and we are requesting to submit this document at the same time the evidence from MMF's consultants is submitted. In the

event our proposals on the deadlines for this document and the submission of our consultant's reports are accepted, this document would be submitted **February 12th, 2014**.

Consultant Reports

We appreciate that the time for Hydro to respond to IRs on its evidence has been extended to the start of oral hearings on March 3, 2014, in order to allow parties to have the benefit of these responses. However, there has been some delay in responses to MMF IRs and to other IRs that MMF has an interest in reviewing and incorporating into our analysis in our evidence. There is information that we would have liked to have had prior to the preparation of our reports that will not be available to us.

Further, our consultants advise that when responses have been provided, they are not of a certain quality and that often, there is some additional work required to go behind what is being provided in order to understand the information being provided. Our consultants have been primarily focused on the preparation of our evidence and while we have not yet had the opportunity to discuss this with Hydro, this has nevertheless caused some delay in the consultants' preparation of our evidence. As a result of these delays and the preparation required as part of this process, the MMF is requesting that the time for filing of its consultants' reports be extended.

The MMF is requesting an extension to the current deadline of February 4th, 2014, to file:

- Rick Hendriks' report on macro environmental matters; and
- WRA's report on matters dealing with impact on domestic rates and financial and economic risk by **February 12th, 2014**.

When Mr. Hendriks first committed to assisting the MMF in the intervention his participation in another hearing was scheduled to conclude by the end of December 2013. That hearing schedule experienced some delays and was not concluded as expected, having some impact on the time Mr. Hendriks had anticipated spending in preparing the evidence for these proceedings. Notwithstanding, Mr. Hendriks has indicated that he will be prepared to submit his macro-environmental evidence by February 12th, 2014 but that additional time to submit his socio-economic evidence would be fully utilized and appreciated. We would ask that the PUB consider extending the deadline to file:

- Mr. Hendriks' report on socio-economic matters by **February 20th, 2014**, or alternatively at some date after the current deadline of February 4th, 2014.

Conclusion

We realize there is a great deal of work being done by all parties as evidence is filed and preparations are made for the commencement of oral hearings and we thank you for your consideration of this proposal. Please let us know if you require any other information or if you have any questions and we will be sure to respond promptly.

Yours truly,

MYERS WENBERG LLP

Per: "Sent Electronically"

JESSICA SAUNDERS

JMS/ra

cc. R.F. Peters and Sven T. Hombach, Board Counsel, Fillmore Riley LLP
Patricia J. Ramage and Marla D. Boyd, Manitoba Hydro

att. Schedule "A": Scope of Work and Budget for WRA
Schedule "B": Scope of Work and Budget for Senior Legal Counsel

Schedule "A"

Scope of Work and Proposed Budget for WRA

Scope of Work

The evidence of WRA in the in-scope areas of impact on domestic rates and financial and economic risk will consist of:

1. Analysis of the PDP and the Alternatives considering the potential to avoid costs related to the PDP or the Alternatives, including costs related to transmission system integration (MMF in-scope item 2(f) of the Terms of Reference);
2. Analysis of the risks associated with electricity exports from the PDP and the Alternatives (2(g));
3. Analysis of the determination of delivered energy costs from the PDP and the Alternatives, and the potential risks of higher than anticipated costs (2(g)); and
4. Analysis of the existing and potential future transmission system capability and reliability in the context of the PDP and the Alternatives (transmission and 2(f), (g)).

Budget

Discipline	Personnel	Rate	Hours	Cost Subtotal			
Review NFAT Business Plan	Whitfield Russell	\$350	20	\$7,000			
	Geneva Looker	\$150	40	\$6,000			
	Subcontractors	\$225	20	\$4,500			
Review Round I and II IRs, Prepare IRs on IEC and Intervener Evidence	Whitfield Russell	\$350	40	\$14,000			
	Antoine Gamarra	\$200	15	\$3,000			
	Geneva Looker	\$150	40	\$6,000			
	Subcontractors	\$225	20	\$4,500			
Prepare Evidence and Review IEC and Intervener Evidence	Whitfield Russell	\$350	200	\$70,000			
	Antoine Gamarra	\$200	75	\$15,000			
	Geneva Looker	\$150	150	\$22,500			
	Subcontractors	\$225	100	\$22,500			
Review and provide responses to any IRs on Evidence	Whitfield Russell	\$350	50	\$17,500			
	Antoine Gamarra	\$200	30	\$6,000			
	Geneva Looker	\$150	30	\$4,500			
	Subcontractors	\$225	30	\$6,750			
Hearing Preparation	Whitfield Russell	\$350	75	\$26,250			
	Geneva Looker	\$150	50	\$7,500			
	Subcontractors	\$225	50	\$11,250			
Hearing Attendance	Whitfield Russell	\$350	40	\$14,000			
Total Travel Expenses-PUB Hearings				\$5,000			
Total				<u>\$273,750</u>			
WRA subcontractors are Harrison Clark and Thomas Besich							

Note:

- The amount of \$273,750 above represents the total budget proposed for Whitfield Russell Associates.
- The amount of \$50,662.00 currently budgeted for WRA, has not been accounted for in this budget.
- Once this amount is applied to the above budget, there remains an outstanding amount of \$223,088.00.

Schedule “B”

Scope of Work and Budget for Senior Legal Counsel

Junior counsel budget approved at \$150,000 to complete the following:

1. Development of approach for MMF participation for those items in-scope for MMF as set out in Order 67/13, and further refined by Order 92/13 (“in-scope items for MMF”);
2. Research of relevant legislation, literature reviews, and further research on in-scope items for MMF;
3. Retain expert consultants to review the Plan and Alternatives (Hydro’s Filing) and work with experts to prepare and provide evidence on in-scope items for MMF;
4. Work with other counsel and Intervener experts in collaborating on common issues;
5. Review Hydro’s Filing and all other materials to be provided by Hydro;
6. Review evidence and other materials to be provided by other Interveners, the PUB/PUB’s Independent Expert Consultants;
7. Prepare MMF Budget and Invoices;
8. Prepare MMF’s direct examination of witnesses on in-scope items for MMF;
9. Prepare MMF’s cross examination of witnesses on in-scope items for MMF;
10. Attend second Pre-Hearing Conference;
11. Review transcripts and materials from first Technical Conference and attend second Technical Conference;
12. Complete information requests (IRs) to other parties and review other parties’ information requests (inclusive of round 1 and 2 IRs of Hydro and IRs to other Interveners and PUB Independent Expert Consultants);
13. Review and complete IRs from other parties;
14. Prepare for and attend hearings;
15. Prepare and provide MMF’s closing argument;
16. Complete all tasks required of legal counsel in MMF’s intervention;

Senior legal counsel will assist in approximately 30% of the above outlined tasks, which can further summarize as assisting in:

1. Review of MMF's evidence prior to submission;
2. Review of junior counsel preparation of cross-examination of Hydro, IEC and other intervener witnesses;
3. Review of junior counsel preparation of direct examination of MMF's witnesses;
4. Preparation for and attendance at a portion of the hearing days;
5. Preparation of cross-examination and direct on some witnesses;
6. Conduct cross-examination and direct on some witnesses;
7. Review of relevant materials in order to prepare for/conduct certain cross-examination and direct examination;
8. Review and assist in preparation of MMF's final written and oral argument.

To complete all of the above tasks we estimate would require approximately 230 hours x \$200.00 hourly rate for senior legal counsel = **\$46,000.00**