



MANITOBA METIS FEDERATION INC.

300 - 150 Henry Avenue, Winnipeg, Manitoba R3B 0J7

Phone: (204) 586-8474 Fax: (204) 947-1816 Website: www.mmf.mb.ca

July 10, 2013

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

*****VIA EMAIL & REGULAR MAIL*****

Attention: Mr. Hollis Singh, Secretary of the Public Utilities Board

Dear Mr. Singh:

**Re: Manitoba Metis Federation Inc. ("MMF")
Application to the Public Utilities Board ("PUB") to
Review and Vary its Decision in Order 67/13 in the
Needs For and Alternatives To Review ("NFAT") of
Manitoba Hydro's Proposed Preferred Development Plan ("Plan")**

In accordance with section 36 of the PUB's Rules of Practice and Procedure ("Rules"), the MMF hereby applies to the PUB to:

- a. answer in the affirmative, the preliminary question of whether the application for review of a decision of the PUB in Order 67/13, NFAT Procedural Order on Intervener Status, June 11, 2013 ("Order") should be heard; and
- b. vary its decision in section 3.8.2 of the Order in which the PUB indicates that it expects the MMF to utilize internal resources to meet its legal requirements; and
- c. allow the MMF to proceed in applying to the PUB for costs in order to meet its legal requirements for its participation in the NFAT.¹

¹ Please be advised that the MMF interpreted the Rules as requiring a formal Application to the PUB for consideration of this matter. Particularly, the MMF interpreted the PUB's comments in section 3.8.2 as being a "decision" as the term is used in section 36 of the Rules and as a result, made the application herein on that basis. Please let us know if this matter can be addressed by other means and we will ensure we respond accordingly and at our earliest opportunity.

The sections of the Rules that the MMF is relying on are attached for ease of reference as Schedule "A".

Statement of Facts

In seeking intervenor status in the NFAT, the MMF submitted Appendix I, the Intervener Request Form, to the PUB on May 14, 2013. In section 15 of this document, the MMF indicated that it would be applying for costs under Part IV of the Rules. In section 17 of this document, the MMF provided a work plan defining the major proposed activities of all participants and estimated hours. As part of this work plan, the MMF included the participation of and comments on the estimated hours of legal counsel.

In attending the pre-hearing conference on May 16, 2013, the MMF had legal counsel appear on its behalf to speak to the matters in its application for intervenor status.

In the Order of June 11, 2013, the PUB decision at section 3.8.2 indicated that the PUB expected the MMF to utilize internal resources to meet its legal requirements. The PUB further directed, among other things, that all Interveners were to provide a draft budget for proposed expert consultants and witnesses by the deadline of June 28, 2013, which the PUB provided an extension to the MMF to do so by July 2, 2013.

Grounds for Application

The grounds for this Application are as follows:

1. The MMF did not speak directly to the criteria for the awarding of costs in Part IV of the Rules, but anticipated the opportunity to do so in filling out Appendix II, the Intervener Budget and Cost Summary Form and making submissions in accordance with sections 43 – 46 of the Rules, or as otherwise directed by the PUB;
2. The nature of the MMF's internal resources were not fully known and were not fully articulated nor inquired into at the pre-hearing conference on May 16, 2013; and
3. New facts and/or a change in circumstances, information which was not available at the time of the Board's hearing that resulted in the decision in the Order, are being put before the PUB for its consideration at this time.

Evidence Relying on in Application

In accordance with section 7 of the Rules, the MMF is submitting as Schedule "B" hereto, the Affidavit of George Desmarais sworn July 10, 2013. The attached Affidavit sets out the nature of the MMF's internal resources and additional facts and/or change in circumstances

that the MMF is relying on in support of this Application. The MMF would respectfully request that the PUB accept this evidence to assist in its consideration of this Application.

Explanation of Prejudice/Damage

As a result of the decision in section 3.8.2 of the Order, the MMF was not in a position to include as part of its draft budget for expert consultants and witnesses, an estimate as to the MMF's costs for the assistance of legal counsel for the PUB's consideration.

Without the ability to apply to the PUB for costs, the MMF will not be able to retain legal counsel to assist the MMF in this process. The MMF intends to participate in the NFAT proceedings in a responsible manner and significantly contribute in providing a better understanding of the issues within scope for the MMF. Unfortunately, without the assistance of legal counsel and the ability to apply for costs in this regard, the MMF will not be able to participate as required.

Remedy

The MMF respectfully requests that the PUB decide to review and vary its decision in 3.8.2 to remove "legal" and have the last sentence of the first paragraph on page 29 of the Order read:

The Board will expect MMF to utilize internal resources to meet its coordination requirements.

The MMF is of the view that this remedy would allow the MMF to apply to the PUB for costs in retaining legal counsel to assist the MMF in its participation in the NFAT proceedings. The MMF will apply for these costs in the normal course in filling out Appendix II, Intervener Budget and Cost Summary Form by the deadline of August 30, 2013.

Alternatively, if the relief sought is not required in order to address the MMF's concerns as brought forward in this Application, the MMF would ask that the PUB indicate to the MMF in writing whether or not it will, notwithstanding its decision in 3.8.2, allow the MMF to apply for costs in order to meet its legal requirements.

For the PUB's further consideration, the MMF has attached as Schedule "C" hereto, a draft outline and budget for MMF's legal representation in the NFAT.

Contact Information

The contact information for the MMF remains the same as was provided in Appendix I, the Intervener Request Form and as indicated in the List of Registered Interveners. For ease of reference, that information is as follows:

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July 10, 2013

President David Chartrand
300-150 Henry Ave.
Winnipeg, MB R3B 0J7
dchartrand@mmf.mb.ca

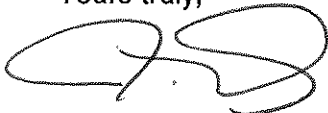
Jessica Saunders
" "
Tel: (204) 586-8474 x204
Fax: (204) 947-1816
jessica.saunders@mmf.mb.ca

Marci Riel
" "
Tel: (204) 586-8474x 303
Fax: (204) 947-1816
marci.riel@mmf.mb.ca

Conclusion

If there is any further information that the PUB requires in considering this Application, or if you would like to discuss this further, please contact me at your earliest opportunity.

Yours truly,



Jessica Saunders
MMF Corporate Legal Counsel

cc. R.F. Peters, Fillmore Riley LLP, Board Counsel
Patricia J. Ramage & Marla D. Boyd, Manitoba Hydro
Registered Interveners

Attachments:

Schedule "A": Sections of Rules – Section 7 Affidavits, Section 36 Review, Section 43-46 re:
Awarding of Costs

Schedule "B": Affidavit of George Desmarais

Schedule "C": Draft Outline and Budget for MMF Legal Representation in NFAT

Schedule "A"

- (2) A document may only be served by electronic means if the person being served has the information technology, equipment, software and processes for receiving or retrieving the document. Where a person expresses a preference to be served electronically in accordance with Rule 27(1)(d) or otherwise, that person may register that preference with the Board and service in accordance with such preference shall be deemed effective unless notice to the contrary is given to the Board.
- (3) The date of service of a document is the day on which the person being served receives the document unless it is received after 5 o'clock in the afternoon Central Standard Time, in which case the date of service is deemed to be the next business day. Where a document is served by ordinary mail, the date of service shall be five days after placing it in the mail.
- (4) The Board may require a person to file an affidavit of service setting out on whom a document was served and the means taken to effect service.
- (5) When an oral hearing or electronic hearing is in progress, a party entering a document as an exhibit shall provide copies of the document to the Board, the Board staff attending the hearing and the other parties.
- (6) The Board may serve, or direct the applicant to serve, a notice issued by the Board either in accordance with this section or by public advertisement in a daily or weekly newspaper in circulation in the community affected by the proceeding as determined by the Board.
- (7) Any document required to be served on a party under these Rules may be served on the party's representative.

Filing With the Board

6. (1) Filing of any document with the Board may be effected by personal delivery, registered mail, telefacsimile, electronic means or otherwise as the Board may direct.
- (2) Where any document is required to be filed with the Board, the date of filing shall be the date of actual receipt by the Secretary or anyone authorized by the Secretary to receive such documents; but when a hearing is in progress, any document which is required to be filed shall be filed with the Secretary at the hearing and with the Interveners of record.

Affidavits

7. (1) The Board may, in its discretion, accept and act upon evidence by Affidavit which evidence shall be filed with the Secretary.
- (2) Where an Affidavit is made on the basis of information and belief, the source of the information and the grounds of belief shall be set out therein.

Verification

8. (1) The Board may, at any time and on notice, require the whole or any part of any document filed with the Board to be verified by Affidavit or oral testimony.
- (2) Unless the Board otherwise directs, if the notice given under Subsection (1) is not complied with, the document in question, or any part thereof not verified in accordance with the notice, shall be struck from the record.

Failure to Comply

9. Where a party to a proceeding has not complied with any requirement of these Rules or any direction of procedure or order issued by the Board, the Board may stay the proceedings until satisfied that such requirement has been complied with or take such other steps as it considers just and reasonable, including the withdrawal of status of any Intervener in the proceeding.

Formulation of Issues

10. In any proceeding,
 - a) where the documents filed with the Board do not sufficiently address the matters at issue in the proceeding; or
 - b) where it would assist the Board in the conduct of the proceeding; or
 - c) where it would assist parties to participate more effectively in the proceeding;

the Board may formulate issues which shall be considered by it in the proceeding and, for this purpose, may direct parties to propose issues which, if not agreed to by all parties, shall be settled by the Board.

Conferences on the Receipt of an Application

Review

36. (1) The Board may, on its own initiative or on application by a person, review, rescind, change, alter or vary any decision or order by it.
- (2) An application for a review under subsection (1) must be in writing and contain the following:
- a) a clear and concise statement of facts relevant to the application;
 - b) the grounds on which the application is made;
 - c) a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction;
 - d) a brief description of the remedy sought; and
 - e) the applicant's name, address in Manitoba, telephone number, fax number and, if available, e-mail address.
- (3) An application for a review must be filed and served on the parties to the proceeding for which the order or decision of the Board was made within 30 days of the date of the order or decision.
- (4) The Board shall determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.
- (5) After determining the preliminary question under subsection (4), the Board may:
- a) dismiss the application for review if,
 - i) in the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision; or
 - ii) in the case where the applicant has alleged new facts not available at the time of the Board's Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the

Board to materially vary or rescind the Board's order or decision;

or

- b) grant the application; or
 - c) order a hearing or proceeding be held.
- (6) If the Board orders a hearing be held under subsection (5), it shall issue a Notice of Review, and a new hearing or proceeding will be held in accordance with these rules as determined by the Board.
- (7) A notice of review under subsection (6) must contain the same information as is contained in a notice of hearing.
- (8) No application for review may be made in respect of:
- a) a decision or order made by the Board as a result of a review under this section; or
 - b) a decision or order of the Board which has been appealed to the Court of Appeal.
- (9) The Board may at any time, without a hearing or notice of review correct typographical errors, errors of calculation and similar errors made in any of its orders or decisions.

**PART IV
AWARDING OF COSTS**

Criteria

43. In any proceeding the Board may award costs to be paid to any Intervener who has:
- a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;
 - b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
 - c) insufficient financial resources to present the case adequately without an award of costs; and
 - d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.
44. In determining the amount of costs to be awarded to a intervener, the Board may consider whether the intervener did one or more of the following:
- a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another intervener;
 - b) made reasonable efforts to ensure that the intervener's evidence was not unduly repetitive of evidence presented by another intervener;
 - c) made reasonable efforts to cooperate with other interveners to reduce the duplication of evidence and questions or to combine the intervener's submission with that of similarly interested interveners;
 - d) presented in oral evidence significant new evidence that was available to the intervener at the time that intervener pre-filed its written evidence but was not filed at that time;
 - e) failed to comply with a direction of the Board, including a direction on the filing of the evidence;
 - f) submitted evidence and argument on issues that were not relevant to the proceeding;

- g) needed legal or technical assistance to take part in the proceeding;
- h) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
- i) the intervener took part in the proceeding for the sole purpose of protecting the intervener's business interests; or
- j) such other factor(s) as the Board considers relevant.

Costs

45. (1) Costs awarded under this section:
- a) may include the fees of consultants, expert witnesses and counsel associated with the intervention but shall not include indirect expenses relating to an Intervener's own time, such as wages lost by attendance at the hearing;
 - b) may include disbursements, the amounts allowed under the Manitoba Government employee rates, approved from time to time, for travel, meals and accommodation. Consideration will be given to providing for different amounts if they can be justified; and
 - c) shall be at the sole discretion of the Board.
- (2) The Board may award only a portion of the costs being sought by an Intervener.

Procedures

46. (1) For purposes of awarding costs to any party, the Board may establish a tariff of fees and disbursements.
- (2) A party applying for costs shall so inform the Board when filing the form requesting to intervene, as in Appendix I.
- (3) An intervener seeking an award of costs should attend any pre-hearing conference to confer with other interveners and avoid duplication of intervention as referred to under Rule 4(2).
- (4) The Board may hear submissions regarding the awarding of costs to interveners during final argument, or may direct such submissions to be

made in writing following final argument.

- (5) Any intervener applying for an award of costs under subsection 45(1) shall provide the Board with a breakdown of costs, reasonably and necessarily incurred, within 30 days of the last day of the hearing and in the form of the attached Appendix II, "Budget and Cost Summary Sheet", and serve a copy on the applicant.
- (6) The applicant may forward any comments or objections for costs, as set out on the "Budget and Cost Summary Sheet" form, to the respective Intervener and to the Board within 10 working days after receipt thereof.
- (7) The intervener seeking costs shall have a further period of 10 working days, after receipt of any comments by the applicant under Subsection (6), to submit a response to the Board with a copy to the applicant.
- (8) The Board shall issue an order in response to each application for costs, and if costs are awarded, the party ordered to pay the costs shall pay such costs within 15 days of the Board's cost order.

Originally Adopted June 1, 2006
Revised March 14, 2007

Schedule "B"

MANITOBA PUBLIC UTILITIES BOARD

**NEEDS FOR AND ALTERNATIVES TO REVIEW (NFAT) OF MANITOBA HYDRO'S
PROPOSED PREFERRED DEVELOPMENT PLAN (PLAN) TO CONSTRUCT THE KEEYASK
AND CONAWAPA GENERATION STATIONS, THEIR ASSOCIATED TRANSMISSION
FACILITIES AND A NEW CANADA-UNITED STATES OF AMERICA TRANSMISSION
INTERCONNECTION**

IN THE MATTER OF: *The Public Utilities Board Act, C.C.S.M. c. P280*

IN THE MATTER OF: An Application by the Manitoba Metis Federation Inc. for a review of the Public Utilities Board decision in Order 67/13, NFAT Procedural Order on Intervener Status, June 11, 2013 and request to vary section 3.8.2 therein.

**AFFIDAVIT OF GEORGE DESMARAIS
Sworn/Affirmed July 10, 2013**

**Manitoba Metis Federation Inc.
150 Henry Ave.
Winnipeg, MB R3B 0J7**

**Jessica Saunders
Phone: (204) 586-8474 ext. 204
Fax: (204) 947-1816**

MANITOBA PUBLIC UTILITIES BOARD

**NEEDS FOR AND ALTERNATIVES TO REVIEW (NFAT)
OF MANITOBA HYDRO'S PLAN**

IN THE MATTER OF: *The Public Utilities Board Act, C.C.S.M. c. P280*

IN THE MATTER OF: An Application by the Manitoba Metis Federation Inc. for a review of the Public Utilities Board Decision in Order 67/13, NFAT Procedural Order on Intervener Status, June 11, 2013 and request to vary section 3.8.2 therein.

AFFIDAVIT OF GEORGE DESMARAIS

I, George Desmarais, of the City of Winnipeg, in the Province of Manitoba, Executive Director,

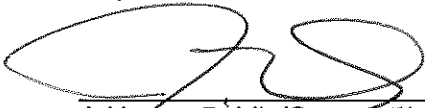
MAKE OATH AND SAY THAT:

1. I am the Executive Director of the Manitoba Metis Federation Inc. (MMF) and as such have personal knowledge of the facts and matters hereinafter deposed to by me, except where same are expressly stated to be founded upon information and belief, in which case I do verily believe same to be true.
2. Ms. Jessica Saunders was hired by the MMF as corporate legal counsel, for a term position commencing on May 8, 2013 and ending on July 31, 2013. She has not previously served as corporate legal counsel.
3. The MMF has no other in-house legal counsel. The MMF retains outside legal counsel from time to time as may be required.
4. On May 14, 2013, the MMF submitted a written application for intervener status in the NFAT to the Public Utilities Board (PUB). On May 16, 2013, Ms. Saunders and Ms. Marci Riel, the MMF's Manitoba Hydro Liaison Officer, attended the PUB NFAT pre-hearing conference on behalf of the MMF.
5. I am advised by Ms. Saunders, and do verily believe, that while she indicated she was appearing at the pre-hearing conference on behalf of the MMF, that further details regarding her term position and MMF's internal legal resources were not articulated to the PUB at that time.

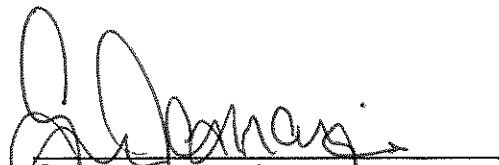
- 6. On June 11, 2013, the PUB in Order 67/13 NFAT Procedural Order on Intervener Status (Order) decided in section 3.8.2 under the heading "Board Findings" on Page 29 that the MMF is expected to utilize internal resources to meet its coordination and legal requirements.
- 7. The MMF does not have internal resources to meet its anticipated legal requirements for participating as an intervener in the NFAT. The MMF provides for the salaries of employees such as Ms. Saunders, where appropriate, through the MMF's involvement in certain programs and participation in processes such as the NFAT. There are no core funds or other funding sources dedicated to fund Ms. Saunders' position. There are no core funds or other funding sources which MMF currently has which will allow it to meet the anticipated legal requirements necessary to fully participate as an intervener in the NFAT.
- 8. After the expiration of Ms. Saunders' term contract on July 31, 2013, there is no guarantee that the MMF will be in a position to hire corporate legal counsel and, if it is so able, it is uncertain as to the length of time for which such corporate legal counsel can be hired.
- 9. I am advised by Ms. Saunders, and do verily believe, that the MMF is seeking to retain legal counsel to represent the MMF in the NFAT. The MMF will only be able to do so provided funding is made available by order of the PUB.
- 10. I make this Affidavit *bona fide* in support of MMF's application for a review of the PUB decision in Order 67/13 to vary section 3.8.2 therein.

SWORN/AFFIRMED before me at
 the City of Winnipeg, in the Province
 of Manitoba this 10th day of
 July, 2013.

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A Notary Public/Commissioner of Oaths
 in and for the Province of Manitoba



George Desmarais

My Commission expires: _____

Schedule "C"

Draft Outline and Budget for MMF's Legal Representation in the NFAT

To date, the MMF has required legal counsel for the following:

1. Prepare Intervener Request Form and attend pre-hearing conference;
2. Prepare response to Order 67/13;
3. Prepare application for review of decision in Order 67/13;
4. Search for expert consultants and witnesses and have initial discussions with proposed expert consultants and witnesses;

The MMF is seeking to retain legal counsel for the following:

5. Development of approach and coordination of MMF participation in NFAT hearing based on the Terms of Reference;
6. Research relevant legislation, literature review and further research on items (f) through (j);
7. Retain expert consultants to review Plan and alternatives and work with experts to prepare and provide evidence on items (h), (i) and (j) of the Terms of Reference;
8. Review Plan and alternatives, and all other materials to be provided by the Applicant;
9. Review evidence and other materials to be provided by other Interveners;
10. Review all materials to be provided by the PUB;
11. Prepare Appendix II Intervener Budget and Cost Summary Form;
12. Prepare MMF's direct examination of witnesses for items (h), (i) and (j), and other approved areas;
13. Prepare MMF's cross examination of witnesses for items (f) through (j);
14. Work with MMF to identify and prepare panelists for participation in item (f);
15. Attend technical conferences;
16. Ensure the completion of information requests and review other information requests;
17. Prepare briefing notes to client and receive instructions from client;
18. Attend PUB hearings;
19. Attend community hearings;
20. Prepare and provide MMF's closing argument.

Legal Representation				
Discipline	Personnel	Rate	Hours	Cost Subtotal
Intervener Application, Response to Order, Application for Review (1-4 above)	Jessica Saunders	\$125	25	\$3,125
Senior Counsel preparation for hearings	TBD	\$200	225	\$45,000
Junior Counsel preparation for hearings	TBD	\$125	225	\$28,125
Senior Counsel attendance at hearings (30 days)	TBD	\$200	240	\$48,000
Junior Counsel attendance at hearings (30 days)	TBD	\$125	240	\$30,000
Senior Counsel review of evidence	TBD	\$200	150	\$30,000
Junior Counsel review of evidence	TBD	\$125	150	\$18,750
Senior Counsel preparation and collaboration with consultants retained by the MMF, other Interveners and reporting to and instructions from the MMF	TBD	\$200	100	\$20,000
Junior Counsel preparation and collaboration with consultants retained by the MMF, other Interveners and reporting to and instructions from the MMF	TBD	\$125	100	\$12,500
Sub-total				\$235,500
Disbursements (printing, etc.)				\$3,500
Community Hearing Travel Expenses (*Appropriate rates and actual amount to be finalized once details regarding these hearings are confirmed)				TBD
Total Cost Estimate				TBD
NOTE:				
Total Cost Estimate, based available info above				\$239,000
Total Cost Estimate, submitted by MMF to date (with \$180,790 for other expert consultants/witnesses				\$419,790

PLEASE NOTE: this budget and outline is subject to change pending the filing of the Applicant's materials and the finalization of the hearing schedule. Additionally, a number of matters are currently in discussion and final decisions/directions have not yet been provided by the PUB. If, for instance, the scope of "Socio-Economic impacts" and "Macro Environmental" as used in the Terms of Reference is revised in any way and/or if more alternatives to the Plan are added, this budget and outline would need to be reviewed and adjusted accordingly.