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DELIVERED VIA EMAIL AND FAX (204) 945 2643

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: Manitoba Hydro's Needs For and Alternatives To (NFAT) Pre-Hearing Conference

I am writing on behalf of my client Pimicikamak, which has applied to be an intervenor in the above-noted proceedings. Pimicikamak aims to assist the NFAT process by sharing its valuable knowledge and experience, in both the international and domestic realms, with large hydroelectric generation projects. I have reviewed the transcript of the May 16 pre-hearing conference and there are three major concerns in comments made by others that warrant correction.

First, there seems to be confusion as to what Pimicikamak is. It is an aboriginal people as referenced in section 35 of Canada's constitution, holding aboriginal and treaty rights under Canadian and international law. It has existed as a people since time immemorial and is the party (not the band) that entered into Treaty 5. A band under the *Indian Act* – Cross Lake First Nation – was later created by the federal legislative regime and imposed on Pimicikamak. Pimicikamak is governed by its own traditional customary law, adapted to modern times. Five such laws are now written. Canada, Manitoba, and Manitoba Hydro have acknowledged the government of Pimicikamak. In fact, in several consultation processes such Crown Parties engage in, they do so with Pimicikamak and not the band.

The individuals who comprise the citizenry of Pimicikamak are currently more or less the same individuals who also comprise the membership of the band. It is thus not their composition, but rather their legal capacities, that distinguish the two. The band is an *Indian Act* entity, Pimicikamak is not; the band is the holder of *Indian Act* rights and obligations, Pimicikamak the holder of inherent and treaty rights. Pursuant to Pimicikamak law, the band is a subset of and subordinate to the Pimicikamak government, being more of an administrative arm (administering *Indian Act* matters) of the Pimicikamak government.

Pimicikamak is not now and never has been a member or constituent of MKO.

Second, Manitoba Hydro appears to be calling for all aboriginal parties seeking intervenor status to group together to form one intervenor entity. Such a suggestion unfortunately rings of pan-Indianism. It is wholly incorrect to assume aboriginal peoples as essentially the same or having essentially the same interests. Such a view, in other fora at least, has also tended to "quantify" and over-simplify aboriginal peoples as not much more than subsistence hunters, fishers and gatherers, without understanding or acknowledging the often complex economic and social structures and issues that exist.

Third, and related to the above, is the suggestion by Manitoba Hydro that the bases on which Pimicikamak and other proposed aboriginal applicants seek to intervene are outside the scope of these NFAT proceedings, essentially mischaracterizing such bases as "environmental impacts" – impacts on subsistence hunting, fishing and gathering (Manitoba Hydro appears to reduce aboriginal and treaty rights to these activities). It is true that Pimicikamak is in a unique position to speak to the need for and alternatives to the Plan, as compared to non-aboriginal applicants – but not because of such harvesting activities. Rather, Pimicikamak's unique position is due to its unique relationship with large hydro, including the types of elements in the Plan. This special relationship, and the perspectives, knowledge and experience it has fostered, is founded in a very unfortunate fact – that much of large hydro in Manitoba is to service people in the southern part of the province and into the US, whereas the brunt of the economic and social impacts are felt in the north. These northern issues are magnified with Pimicikamak because of the location of its primary residential community (Cross Lake) in relation to large hydro, the size and location of its traditional territory, the fact that it is the only aboriginal party to the Northern Flood Agreement that retains full NFA rights (and such rights very much concern economic and social issues related to large hydro).

Due to all this, Pimicikamak undertook an extensive and intensive education campaign in both the US and Canada and developed a great deal of knowledge about the need for and alternatives to large hydro. Information about US markets, to which the energy from the Plan might be exported, is essential to these proceedings. Pimicikamak's selection of Synapse Energy as a consultant is appropriate in this regard and will prove to be of great assistance to the Public Utilities Board in these proceedings.

The socio-economic impacts and benefits of the Plan and alternatives to northern and aboriginal communities is squarely within the scope of these NFAT proceedings. So too are the objectives of Manitoba's Clean Energy Strategy, which include providing affordable energy to those in low income, remote or vulnerable situations and producing sustainable energy in ways that do not degrade the world, all of which Pimicikamak can speak to. The NFAT proceedings must also align with the Principles of Sustainable Development outlined in *The Sustainable Development Act*, in which economic decisions are expected to reflect environmental, human health and social effects, and stewardship of the same for future generations is of significant importance. According to the Strategy and *Act*, Aboriginal communities should be engaged in developing projects from the onset and differing economic and social views, values, traditions and aspirations should be understood and respected. All of these considerations call for the inclusion of Pimicikamak as an intervenor in the NFAT process.

I hope the above helps clarify and correct what appear to have been misunderstandings. Thank you for your attention.

Yours truly,

OLTHUIS, KLEER, TOWNSHEND LLP

A handwritten signature in black ink, appearing to read 'Kate Kempton', with a stylized flourish at the end.

Kate Kempton

KK/rh

cc. Bob Peters

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