

APPLICATION FOR A REVIEW OF NFAT PROCEDURAL ORDER NO. 67/13

IN THE MATTER OF:

The Public Utilities Board's "Needs for and Alternatives to (NFAT)" Review of Manitoba Hydro's Preferred Development Plan to Construct the Keeyask and Conawapa Generating Stations and Associated Transmission Facilities

FROM:

Pimicikamak

TO:

Mr. Hollis Singh, Executive Director and Board Secretary of the Public Utilities Board

CC:

Bob Peters

FACTUAL BACKGROUND:

1. This is an application from Pimicikamak asking the Public Utilities Board of Manitoba (the "PUB") to review and vary NFAT Procedural Order No. 67/13 (the "Order") as set out in this application.
2. Pimicikamak applied for Intervener Status in the PUB's "Needs For and Alternatives To" (NFAT) Review (the "NFAT Review") of Manitoba Hydro's Preferred Development Plan ("PDP"). In the Order, the PUB decided to not grant Pimicikamak Intervener Status.

Nature of Pimicikamak

3. The correct name of the Applicant for Intervener Status is Pimicikamak, not Pimicikamak at Cross Lake Manitoba as the PUB refers to in the Order.
4. Pimicikamak is an aboriginal people as referenced in section 35 of Canada's *Constitution* and is the party (ie: not the Cross Lake First Nation) that entered into Treaty 5. It is the holder of aboriginal and treaty rights.
5. Cross Lake First Nation is a band under the *Indian Act* and, under Pimicikamak laws, is subordinate to Pimicikamak, acting only as the administrator of *Indian Act* issues and federal programs and services.
6. The individuals who comprise Pimicikamak as its citizens, and those who comprise the Cross Lake First Nation as its members, are more or less the same. It is the legal capacities of each of Pimicikamak and the band that are different.

Application Process for Interveners

7. Manitoba Hydro proposes to build the Keeyask and Conawapa generating stations and associated transmission facilities.
8. On April 25, 2013, the PUB provided notice of a Pre-Hearing Conference for the NFAT Review of Manitoba Hydro's PDP and notice of requests for Intervener Status.
9. Applicants for Intervener Status were required to complete the NFAT Review Intervener Request Form found at http://www.pub.gov.mb.ca/pdf/nfat/nfat_intervenerpt1.pdf (see Schedule 'A') by May 14, 2013 (the "Request Form").
10. The PUB received nine (9) submissions for Intervener Status, including from:
 - (a) Consumers' Association of Canada ("CAC");
 - (b) Green Action Centre ("GAC");
 - (c) Manitoba Keewatinowi Okimakanak, Inc. ("MKO");
 - (d) Peguis First Nation ("Peguis");
 - (e) Pimicikamak;
 - (f) Kaweechiwasik Inninuwuk ("KI")
 - (g) Manitoba Public Interest Research Group ("MPIRG");
 - (h) Manitoba Métis Federation ("MMF"); and
 - (i) Manitoba Industrial Power Users Group ("MIPUG").

Pre-Hearing Conference

11. The Pre-Hearing Conference took place in Winnipeg on May 16, 2013 (the "Pre-Hearing Conference"), which allowed for Manitoba Hydro and Intervener applicants to make presentations in front of the PUB.
12. There was no funding provided to Intervener applicants to offset the costs to complete the Request Form or to prepare for and travel to the Pre-Hearing Conference.
13. At the Pre-Hearing Conference, the PUB permitted Manitoba Hydro to give oral submissions for approximately 90 minutes.
14. However, at the Pre-Hearing Conference, the PUB limited each of the applicants for Intervener Status to an oral presentation of only approximately ten minutes.

The Order

15. The PUB released the Order on June 11, 2013 in which the PUB found that the following issues identified by Pimicikamak were within the scope of the NFAT Terms of Reference (the “Terms of Reference”):
 - (a) Domestic electricity rates as a consequence of Manitoba Hydro’s PDP;
 - (b) Whether Manitoba Hydro’s PDP is aligned with the Clean Energy Strategy, and Sustainable Development Principles;
 - (c) Alternate energy sources and energy conservation;
 - (d) The MISO energy market into which Manitoba Hydro exports electricity; and
 - (e) Socio-economic benefits and impacts on Manitobans, aboriginal communities and Northern communities.
16. However, the PUB rejected Pimicikamak’s application for Intervener Status for the following reasons:
 - (a) the above issues were duplicative of issues identified by other Interveners including CAC, GAC and MKO; and
 - (b) the above issues were not limited to any specific First Nation.
17. The PUB ordered that Pimicikamak could seek a coalition with an approved Intervener with regard to in-scope issues and make its own final submissions on those issues.
18. The PUB also ordered that any proposed coalition would have to be detailed and submitted to the PUB for approval in respect of the specific issues to be addressed by the coalition, the proposed consultants for those issues and their specific budgets.
19. The PUB gave a deadline of June 28, 2013 for approved Interveners to:
 - (a) provide written submissions to finalize which specific and approved issues will be addressed through retainer of expert consultants and witnesses, including the submission of a draft budget for the consultants and witnesses to be retained;
 - (b) submit a definition of “Macro-Environmental” with a list of specific items proposed to be included in their evidence on the topic; and
 - (c) submit a definition of “Socio-Economic impacts and benefits” with a list of specific items proposed to be included in their evidence on the topic.
20. In a letter dated June 17, 2013, Mr. Bob Peters, legal counsel for the PUB, wrote to Ms. Gaile Whelan Enns, a consultant for Pimicikamak, and advised that, in accordance with the Order, specific details about any coalitions to be formed with an approved Intervener must be provided to the PUB by June 28, 2013 for PUB approval.

GROUND'S OF APPLICATION:

21. Pimicikamak applies to the PUB to Review and Vary the Order denying Pimicikamak Intervener Status pursuant to section 44(3) of *The Public Utilities Board Act* and Rule 36 of the PUB's *Rules of Practice and Procedure* on the following grounds:
 - (a) The PUB committed errors of law by:
 - (i) violating the rules of procedural fairness;
 - (ii) misconceiving the nature and purpose of Pimicikamak's intervention as it relates to the Terms of Reference; and
 - (iii) granting others Intervener Status on the basis of applicants' previous experience with being an intervener before the PUB, and then finding Pimicikamak's application duplicative of those others.
 - (b) The PUB committed errors of fact or mixed fact and law as follows:
 - (i) mischaracterizing Pimicikamak's status;
 - (ii) mischaracterizing or misrepresenting Pimicikamak's application for Intervener Status and the issues it intended to raise; and
 - (iii) finding other Interveners had the capacity to speak on issues Pimicikamak in its application intended to address.
22. Pimicikamak also applies to the PUB to Review and Vary the sections of the Order which require approved Interveners and new coalitions to submit certain information to the PUB by June 28, 2013, pursuant to section 44(3) of *The Public Utilities Board Act* and Rule 36 of the *Rules of Practice and Procedure* on the following grounds:
 - (a) The June 28, 2013 deadline for written submissions does not allow sufficient time for Pimicikamak to form a coalition, seek PUB's approval of it, and for that coalition to prepare comprehensive written submissions to the PUB;
 - (b) The coalition application should be approved by the PUB first, then that approved coalition should prepare and submit to the PUB the information requested in sections 4.2.0, 4.3.0, and 4.4.0 of the Order.

ARGUMENT:

1. REVIEW OF DECISION TO DENY INTERVENER STATUS TO PIMICIKAMAK

A. Errors of Law

(I) THE PUB DENIED PIMICIKAMAK PROCEDURAL FAIRNESS

23. The Request Form did not provide sufficient space for Pimicikamak to effectively describe the issues it would seek to cover in an intervention, what evidence it would present, the perspective it would bring to the issues, the reasons for the proposed intervention, and why these issues fit within the scope of the NFAT Review (see the Request Form (see Schedule A)).
24. Only section 14(c) of the Request Form regarding listing proposed witnesses allowed applicants to use separate pages if necessary (see Schedule A).
25. PUB's counsel stated that oral submissions were meant to expand on written submissions or advance areas of interest in addition to written submissions. Pimicikamak was only given ten minutes to make its oral presentation (in contrast to Manitoba Hydro's 90 minute submission). As a result, Pimicikamak's oral submissions were not comprehensive or exhaustive of all of the issues Pimicikamak intended to address as an Intervener.
26. The limited space and time for Pimicikamak's application for Intervener Status was unfair given that the NFAT Review for Manitoba Hydro is a unique process that has never been done before by the PUB. It is also particularly unfair given that this NFAT Review is of seminal importance to Manitoba and all the peoples and persons therein including Pimicikamak and other aboriginal peoples. This NFAT Review is supposed to determine whether the PDP is required and the best alternatives for energy supply. The PDP involves issues about further development of large hydro for sale to the US, and these are issues which relate to Manitoba's energy reliability, security, economy, sustainability, and much more. Procedural fairness in this context mandates that the Intervener applicants have sufficient opportunity, in written and oral submission, to adequately explain why they ought to be granted Intervener Status. Only with sufficient time and space could the PUB properly assess the applications for this unique and highly important review process.
27. Further, Pimicikamak was denied the opportunity to reply to Manitoba Hydro's response to its application. One of Pimicikamak's representatives, Gaile Whelen Enns asked PUB's lawyer, Bob Peters, if Pimicikamak could reply to Manitoba Hydro's response, she was told that Pimicikamak would not be given that opportunity.
28. The Order shows that Manitoba Hydro misrepresented and the PUB misunderstood what Pimicikamak is and its unique perspective. By denying Pimicikamak the opportunity to respond to Manitoba Hydro, the PUB denied Pimicikamak the opportunity to clarify

these misconceptions about the nature of Pimicikamak and its perspectives, which turned out to be fatal to Pimicikamak's application for Intervener Status.

29. The time given to prepare for the Pre-Hearing Conference was also inadequate and amounted to a denial of procedural fairness. Pimicikamak was only given thirteen (13) business days within which to prepare a comprehensive application for Intervener Status and to prepare for the Pre-Hearing Conference. Preparation required:
 - (a) obtaining advice from legal counsel and technical consultants on the scope of the NFAT Review and Pimicikamak's application for intervention;
 - (b) a meeting of the Pimicikamak Executive Council to decide what issues within the Terms of Reference Pimicikamak wanted to address;
 - (c) seeking expert witnesses and clarifying what they would provide evidence on;
 - (d) procuring assistance from Whelan Enns Associates Inc. to complete the Request Form; and
 - (e) preparing a presentation for the Pre-Hearing Conference.
30. In addition, the PUB did not provide Pimicikamak with any funding to prepare its submission for and to travel to attend the Pre-Hearing Conference. As a result, Pimicikamak was not able to have legal counsel or other necessary advisors attend to provide oral submissions.
31. Therefore, procedural unfairness in this instance was compounded and cumulatively made worse by:
 - (a) The inadequate opportunity for written submissions (lack of space in the Request Form);
 - (b) The inadequate opportunity for oral submissions (lack of time and opportunity to correct misrepresentations and misunderstandings);
 - (c) The lack of time to prepare for the Pre-Hearing Conference;
 - (d) The lack of funding to cover costs to allow the necessary representatives to attend and make submissions at the Pre-Hearing Conference; and
 - (e) The uniqueness and seminal importance of this NFAT Review, which should demand the opposite of the narrowing approach taken by the PUB, and which should ensure that all proper care is taken to get such an important proceeding right.
32. The NFAT Review is not just a rate hearing. It is a special and important proceeding. The PUB is required to, in accordance with its mandate and the Terms of Reference, ensure that it takes the steps necessary to get before it all necessary and relevant evidence and submissions – especially from interveners who are the parties who will test the evidence and submissions from Manitoba Hydro – in order for it to render the best decision

possible. That was not done in this case, as the violations of procedural fairness prevented this.

(II) THE PUB MISCONCEIVED THE NATURE AND PURPOSE OF INTERVENTIONS

33. The PUB misconstrued the purpose of the NFAT Review and the expected results, and therefore, misconstrued the PUB's role and the role of the Interveners in reaching its decision.
34. Just because other applicants for Intervener Status mentioned a subject that Pimicikamak also intended to cover in its submissions, does not mean that the submissions would be duplicative.
35. Under Rule 27(5) of the PUB's *Rules of Practice and Procedure*, Interveners are to avoid duplication of evidence. However, the PUB misapplied this Rule and instead found that Interveners are not allowed to touch on the same issue, even if their submissions would be from completely different perspectives and they would present completely different evidence.
36. The PUB ought to have looked at the different perspectives each applicant would bring to these issues. It should have looked at the knowledge and experience of each applicant and chose all the perspectives which would ensure the decision the PUB has to make is an informed one.
37. The PUB should have also applied the precautionary principle, which dictates that the PUB should allow an Intervener even if there could be a duplication. This is particularly important in the context of this NFAT Review, which is unique before the PUB and which is extremely important in setting the long term path for Manitoba.
38. Pimicikamak is in a unique position and it is in the best position to speak to a number of the issues it raised that are within the scope of the Terms of Reference.
39. For example, of the Northern communities in Manitoba, Pimicikamak is likely the most impacted by Manitoba Hydro's existing Hydro Project, something which Manitoba Hydro has recognized in other forums, and as a result it can uniquely speak to many issues that pertain to the need for and alternatives to large hydro developments.
40. Pimicikamak has also conducted an extensive education campaign in Manitoba, throughout Canada, and in the United States regarding Manitoba Hydro's project in northern Manitoba, the need for it, and its alternatives. It has delivered and received a wealth of information about the US market and its perspectives on its need for imports of electricity from large hydro developments. Pimicikamak, therefore, has extensive expertise and knowledge that should be informing this NFAT Review.
41. The PUB failed to look at the different perspectives and evidence Pimicikamak would bring in considering Pimicikamak's application for Intervener Status and this failure was an error of law.
42. Again, the PUB is required, in accordance with its mandate and the Terms of Reference, to ensure that it takes the steps necessary to get before it all necessary and relevant

evidence and submissions – especially from interveners who will test the evidence and submissions from Manitoba Hydro – in order for it to render the best decision possible. That was not done in this case, as the PUB misconstrued the purpose of the NFAT Review and the role of interveners, the purpose of their interventions, and how the intervention applications should be assessed.

(III) THE PUB WRONGLY CONSIDERED PAST PUB INTERVENTIONS AS A REASON TO GRANT OR DENY INTERVENER STATUS TO AN APPLICANT

43. The PUB put undue weight on the fact that MKO, CAC, GAC, and MIPUG have been interveners at the PUB in granting them Intervener Status to cover issues, at the expense of Pimicikamak. That is, the PUB denied Intervener Status to Pimicikamak largely because it found that Pimicikamak's application was duplicative of other applications (those to which it granted Intervener Status). As we submit, this finding of duplication was wrong and an error of law (see Part A(II) above)
44. Whether or not an applicant has been an Intervener before at the PUB is not a relevant consideration under the PUB's *Rules of Practice and Procedure*, and it is particularly irrelevant in the circumstances here where the PUB is undertaking a NFAT Review, which it has never done before. This is not another rate hearing.
45. Whether or not an applicant has been an Intervener at the PUB before is an irrelevant consideration to deciding whether the applicant ought to be granted Intervener Status for the NFAT Review. It was an error for the PUB to place weight on the fact that MKO, CAC, GAC, and MIPUG have been Interveners at the PUB before in approving them to be Interveners over Pimicikamak.

B. Errors of Mixed Fact and Law

(I) THE PUB MISCHARACTERIZED OR MISREPRESENTED PIMICIKAMAK'S APPLICATION FOR INTERVENER STATUS AND THE ISSUES IT INTENDED TO RAISE

46. The PUB mischaracterized the issues Pimicikamak sought to raise and, therefore, mistakenly found that those issues are outside of the scope of the Terms of Reference and duplicative of other Interveners.
47. The PUB misstated in the Order the issues Pimicikamak sought to raise if it was granted Intervener Status. The PUB appears to have extrapolated the issues Pimicikamak wanted to raise from part 11 of the Request Form, which asks "To what extent are the members of your organization affected by the outcome of this review?". Pimicikamak's answer to this question was not meant to be considered a list of issues Pimicikamak wanted to cover, yet the PUB lists them in the Order as such. Instead, the PUB should have referenced issues raised in Part 12 of the Request Form.
48. In addition, the PUB mischaracterized some of the issues Pimicikamak raised in part 12 of its Request Form.
49. The PUB made several errors:

- (a) The PUB mischaracterized the issues Pimicikamak raised;
- (b) The PUB incorrectly found certain issues to be outside the scope of the Terms of Reference;
- (c) The PUB wrongly found certain issues to be duplicative of other applicants (and thereby denied Pimicikamak Intervener Status)

(a) Mischaracterization of Pimicikamak's Issues

50. The PUB mischaracterized in the Order the following issues Pimicikamak raised in its application:

- (a) Pimicikamak Issue: **Ensuring that there is public, credible data and information before the PUB concerning the new generating stations and that there is a solid scientific and economic basis for the decision making regarding the PDP.**
 - (i) The PUB mischaracterized this issue as “whether lack of disclosure and lack of accurate information about Hydro development in Manitoba has affected [Pimicikamak]”.
 - (ii) Pimicikamak made it clear in its Request Form and in oral submissions that it did not seek to narrow this issue to just the impacts on Pimicikamak.
- (b) Pimicikamak Issue: **Defining “new green energy” for export sales and for inside Manitoba, especially in relation to northern and aboriginal communities.**
 - (i) The PUB wrongly limited this issue in the Order to only the “definition of “new green energy” for export sales”, before finding it was outside the scope of the Terms of Reference.
 - (ii) In its Request Form, this issue is clearly articulated as also looking at the definition inside Manitoba as well as the US.
- (c) Pimicikamak Issue: **Analysis of the regulatory, economic, and energy systems in the American States who would purchase Manitoba energy as a basis for NFAT Review.**
 - (i) The PUB made an error in the Order by narrowing this issue to “the MISO energy market into which Manitoba Hydro exports electricity”.
 - (ii) Pimicikamak’s Request Form and oral submissions made it clear that it wanted to present its extensive evidence on the regulatory, economic, and energy systems in the areas of the US that may buy power from Manitoba Hydro.

(b) Incorrectly found Pimicikamak's issues to be outside the scope of the Terms of Reference

51. The PUB compounded its error in mischaracterizing the issues above, by then also failing to find that the following issues, as correctly characterized, were properly within the scope of the Terms of Reference:
- (a) **Ensuring that there is public, credible data and information before the PUB concerning the new generating stations and that there is a solid scientific and economic basis for the decision making regarding the PDP.**
 - (i) This PUB mischaracterized this issue in the Order, but as properly characterized above, it is clearly within the scope of the NFAT Review as it relates to sections 1(d) and 2(a) of the Terms of Reference.
 - (b) **Defining “new green energy” for export sales and for inside Manitoba, especially in relation to northern and aboriginal communities.**
 - (i) Again, the PUB mischaracterized this issue in the Order, but as properly characterized it relates to sections 1(b), 2(b), 2(c) and 2(e) of the Terms of Reference and is, therefore, within the scope of the NFAT Review.

(c) Wrongly found Pimicikamak's issues to be duplicative of other Interveners

52. The PUB also committed an error by finding that there was duplication between the following of Pimicikamak's issues and other Interveners and therefore, rejecting Pimicikamak's application for Intervener Status:
- (a) **Whether the PDP is aligned with the Clean Energy Strategy and Sustainable Development Principles.**
 - (i) This issue fits squarely under s. 1(b) and 2(b) of the Terms of References and none of the approved Intervener's propose to address this issue.
 - (b) **Analysis of the regulatory, economic, and energy systems in the American States who would purchase Manitoba energy as a basis for NFAT Review.**
 - (i) As set out above, the PUB incorrectly limited this to considering MISO, yet none of the approved Intervener's propose to address this issue, either as wrongly characterized by the PUB or as properly characterized (see paragraph 50(c) above).
 - (c) **Ensuring that there is public, credible data and information before the PUB concerning the new generating stations and that there is a solid scientific and economic basis for the decision making regarding the PDP.**
 - (i) None of the approved Interveners have been approved to deal with this issue, which relates to sections 1(d) and 2(a) of the Terms of Reference.

(d) **Defining “new green energy” for export sales and for inside Manitoba, especially in relation to northern and aboriginal communities.**

- (i) This issue relates to sections 1(b), 2(b), 2(c) and 2(e) of the Terms of Reference and none of the approved Interveners have been approved to deal with this issue.

(II) THE PUB MISCHARACTERIZED PIMICIKAMAK’S STATUS

53. It was apparent at the hearing that the PUB was confused about what Pimicikamak is. Pimicikamak is an aboriginal people holding aboriginal and treaty rights recognized and affirmed by section 35 of the Canadian constitution.
54. Pimicikamak is legally separate and distinct from Cross Lake First Nation, which is a band under the *Indian Act*. Cross Lake First Nation is an *Indian Act* entity, Pimicikamak is not. Cross Lake First Nation is only the holder of *Indian Act* rights and obligations, whereas Pimicikamak is 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 like an administrative arm (administering *Indian Act* matters) of the Pimicikamak government.
55. Pimicikamak is not a member of MKO and MKO does not represent Pimicikamak’s rights or interests.

(III) THE PUB APPROVED OTHER INTERVENERS TO SPEAK ON BEHALF OF ISSUES PIMICIKAMAK INTENDED TO ADDRESS

56. Where duplication was found, the PUB erred by allowing other interveners to speak on an issue instead of Pimicikamak, despite Pimicikamak’s extensive experience, knowledge, and evidence on these issues.
57. For example, the PUB will not hear Pimicikamak’s necessary perspectives and unique evidence on the following issues because it chose to allow other Interveners to speak on these issues and not Pimicikamak:
- (a) For the issue, **consideration of alternatives to the PDP, including energy efficiency and non-hydroelectric options, like natural gas and wind**, the PUB only approved GAC, CAC and MIPUG to speak on this issue, not Pimicikamak. As a result the PUB will not hear an aboriginal perspective or the perspective of any northern communities on this issue, especially from the northern aboriginal community that Manitoba Hydro has acknowledged has likely been the most impacted by the Hydro Project.
- (b) For **socio-economic impacts and benefits on Manitobans, aboriginal communities and Northern communities**, the PUB only approved the CAC, MKO, and MMF to speak on this issue. As a result of denying Pimicikamak the opportunity to intervene on this issue, the PUB will not hear Pimicikamak’s unique cultural perspective nor receive Pimicikamak’s unique evidence on this subject compiled from years of dealing with the Hydro Project and conducting education activities on this subject. The PUB will also not hear the perspective of

a northern aboriginal community on this issue. (Pimicikamak is the only northern, aboriginal community who applied for Intervener status; MKO and MMF are not communities).

- (c) For **domestic electricity rates as a consequence of Manitoba Hydro's PDP**, the PUB approved CAC, MKO, MMF and MIPUG to speak on this issue, but not Pimicikamak. Again, the PUB will not hear Pimicikamak's extensive knowledge and evidence on this issue. Sales to the United States may enable lower domestic rates. Domestic rates are also a function of internal costs. Pimicikamak has unique and valuable evidence for the PUB on these issues from its daily experience with the costs of the project and its evidence from its extensive American education campaigns.
58. As a result of preferring other Interveners over Pimicikamak, the PUB will not have a rich, deep set of evidence and information before it to make the necessary assessments and recommendations as part of this NFAT Review.
59. In addition, Pimicikamak is a government. It is inappropriate and disrespectful (no doubt unintentional) of the PUB to suggest that a tribal council, like MKO, which mainly provides support services, or any other Intervener that is not of Pimicikamak's unique culture and perspective could adequately represent the issues raised by Pimicikamak. It is like saying that the Red Cross can speak on behalf of Canada.

Conclusion on Issue:

60. In summary, the following issues raised by Pimicikamak are properly within the scope of the Terms of Reference:
- (a) Domestic electricity rates as a consequence of Manitoba Hydro's PDP;
 - (b) Whether Manitoba Hydro's PDP is aligned with the Clean Energy Strategy, and Sustainable Development Principles;
 - (c) Consideration of alternatives to the PDP, including energy efficiency and non-hydroelectric options, like natural gas and wind;
 - (d) Analysis of the regulatory, economic, and energy systems in the American States who would purchase Manitoba energy as a basis for NFAT Review;
 - (e) Socio-economic benefits and impacts on Manitobans, aboriginal communities and Northern communities;
 - (f) Ensuring there is public, credible data and information before the PUB concerning the new generating stations and that there is a solid scientific and economic basis for the decision making regarding the PDP; and
 - (g) Defining "new green energy" for export sales and for inside Manitoba, especially in relation to Northern and aboriginal communities.

61. Of the above issues that are within the scope of the Terms of Reference, none of the approved Interveners are considering the following issues, therefore, it was an error for the PUB to find that there was any duplication:
- (a) Whether Manitoba Hydro's PDP is aligned with the Clean Energy Strategy, and Sustainable Development Principles;
 - (b) Analysis of the regulatory, economic, and energy systems in the American States who would purchase Manitoba energy as a basis for NFAT Review;
 - (c) Ensuring there is public, credible data and information before the PUB concerning the new generating stations and that there is a solid scientific and economic basis for the decision making regarding the PDP; and
 - (d) Defining "new green energy" for export sales and for inside Manitoba, especially in relation to Northern and aboriginal communities.
62. The PUB also committed an error by finding that because other Interveners planned to speak on the following within-scope issues, Pimicikamak was denied the right to intervene on those issues even though it would bring a different perspective and evidence:
- (a) Domestic electricity rates as a consequence of Manitoba Hydro's PDP;
 - (b) Consideration of alternatives to the PDP, including energy efficiency and non-hydroelectric options, like natural gas and wind; and
 - (c) Socio-economic benefits and impacts on Manitobans, aboriginal communities and Northern communities.
63. As set out above, had adequate time and space been given to Pimicikamak for its application for Intervener Status to explain the issues it sought to raise and the evidence it would present, perhaps the PUB would not have made the errors detailed above.

2. REVIEW OF DECISION TO REQUIRE COMPLETION OF NEXT STEP BY JUNE 28, 2013

Insufficient Time for Next Steps

64. The PUB has only provided thirteen (13) business days, until June 28, 2013, for approved Interveners, including any coalitions with approved Interveners, to prepare:
- (a) written submissions and a draft budget for retaining expert consultants and witnesses; and
 - (b) definitions of "Macro-Environmental" and "Socio-Economic impacts and benefits" along with a list of specific items proposed to be included in their evidence on the topic.

65. Also, according to Mr. Peters letter to Ms. Whelan Enns, any proposed coalition must submit the required details of any proposed coalition to the PUB prior to June 28, 2013 for approval.
66. To form a coalition in order to participate in the NFAT Review, Pimicikamak has to select and approach an approved Intervener and convince that Intervener to work with Pimicikamak. That coalition then has to obtain the approval of the PUB. Then it must work together to prepare the material for the PUB, described above at paragraph 64, before June 28, 2013.
67. This is not enough time. It is unreasonable and unfair to Pimicikamak for the PUB to expect Pimicikamak to be able to form a coalition, submit materials to the PUB for the approval of the coalition, and work with the new coalition to prepare the required material all by June 28, 2013.
68. The coalition application should be approved by the PUB before the submissions set out in paragraph 64 above are prepared and submitted and sufficient time should be allowed for both steps. It would be unfair to Pimicikamak if it misses the opportunity to participate in preparing the submissions set out at paragraph 64 above because it has not formed a coalition and had it approved before the too-tight deadline of June 28, 2013.

REMEDY

69. Pimicikamak requests that the PUB suspend the June 28, 2013 deadline in the Order for:
 - (a) applications for coalitions of Interveners; and
 - (b) for the information in sections 4.2.0, 4.3.0, and 4.4.0 of the Orderuntil the PUB makes a decision with respect to the remedy sought in paragraphs 72 and 73 below.
70. In the alternative, Pimicikamak requests that the PUB suspend the June 28, 2013 deadline for the information in paragraph 69 (a) and (b) for Pimicikamak and any Interveners who seek to form a coalition with Pimicikamak (could by any approved Intervener) until the PUB makes a decision with respect to the remedy sought in paragraphs 72 and 73 below.
71. Given the looming deadline, **Pimicikamak asks that the PUB make a decision with respect to the remedy sought in paragraphs 69 and 70 by end of day Wednesday June 26, 2013.**
72. Pimicikamak requests that the PUB Review and Vary the Order and grant Pimicikamak Intervener Status in the NFAT Review.
73. If the PUB grants Pimicikamak Intervener Status, Pimicikamak asks that the PUB grant it status to intervene on all of the in-scope issues listed above at paragraph 61.

74. If the PUB on reconsideration grants Pimicikamak Intervener Status, Pimicikamak requests that the PUB allows Pimicikamak to file the information in sections 4.2.0, 4.3.0, and 4.4.0 of the Order 30 days following such decision.
75. If the PUB on reconsideration denies Pimicikamak Intervener Status, Pimicikamak requests that the PUB:
- (a) give Pimicikamak 15 days following such decision to obtain approval of the PUB for a proposed coalition with an approved Intervener; and
 - (b) give that coalition an additional 15 days after PUB approval to file the information in sections 4.2.0, 4.3.0, and 4.4.0 of the Order.
76. This NFAT Review concerns the future of the province, communities, government and inhabitants. It will impact what the north will look like in the future, the security of the north, and its sustainability. These issues are highly important. A NFAT Review of Manitoba Hydro's plans has never been done by the PUB before. It is therefore particularly important that it be done right. The PUB and those who should participate in this review need adequate time to make sure the PUB gets this right. The PUB should not be taking shortcuts; it should err on the side of inclusiveness and not exclusiveness.

CONTACT INFORMATION

77. Communication related to this Application should be addressed to Pimicikamak and its legal counsel in the following fashion:

Attention: Darwin Paupanakis
Pimicikamak Okimawin
c/o Cross Lake First Nation
PO Box 10
Cross Lake, MB R0B 0J0

Telephone No: (204) 676-2218
Facsimile No: (204) 676-3155

Attention: Kate Kempton
Olthuis, Kleer, Townshend LLP
229 College Street, 3rd Floor
Toronto, ON M5T 1R4

Telephone No: (204) 416-981-9374
Facsimile No: (204) 416-981-9350
E-Mail: kkempton@oktlaw.com