

MANITOBA) **Order No. 127/13**
)
THE PUBLIC UTILITIES BOARD ACT) **October 21, 2013**

BEFORE: Régis Gosselin, B ès Arts, MBA, CGA, Chair
Larry Soldier, Member
Marilyn Kapitany, B.Sc. (Hon), M.Sc., Member

**NFAT PROCEDURAL ORDER ON MATTERS ARISING
FROM THE SEPTEMBER 4, 2013
PRE HEARING CONFERENCE**

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1.0 EXECUTIVE SUMMARY

This Order results from a second pre-hearing conference held on September 4, 2013 with respect to the Public Utilities Board's (Board or PUB) review of the Needs For and Alternatives To Manitoba Hydro's Preferred Development Plan (NFAT Review).

By this Order, the Board:

- Approves increases in Intervener funding to the Consumers' Association of Canada (Manitoba) Inc. (CAC), the Green Action Centre (GAC), and the Manitoba Métis Federation (MMF);
- Provides a list of Independent Expert Consultants (IECs) appointed by the Board;
- Establishes an IEC communication protocol;
- Establishes a revised timetable; and
- Addresses various procedural matters in respect of the NFAT Review.

2.0 BACKGROUND

On September 4, 2013, the Board convened a second Pre-Hearing Conference in respect of the Needs For and Alternatives To review (NFAT Review) of Manitoba Hydro's Preferred Development Plan.

Intervenors cautioned, in their submissions at the first Pre-Hearing Conference on May 16, 2013, that their positions, issues and budgets may be revised once those Intervenors and their consultants reviewed Manitoba Hydro's NFAT Filing, which was made on August 16, 2013.

The second Pre-Hearing Conference was convened to permit the Board to hear from the parties in respect of:

- (a) Changes proposed to the approved issues and budgets for Intervenors;
- (b) Comments and recommendations in regards to the draft timetable that was attached as Schedule "A" to Order 92/13;
- (c) Comments and recommendations in regards to conducting the oral public hearing on a "topic-by-topic" basis; and
- (d) Such other matters as the parties wanted to bring to the attention of the Board for consideration and/or adjudication.

Likewise, Manitoba Hydro was provided an opportunity to make submissions in respect of all matters raised by Intervenors.

3.0 INTERVENER REQUESTS FOR REVISIONS

3.1 Overview

One purpose of the Pre-Hearing Conference was to finalize the participation of Interveners on approved issues identified in Order 67/13. Specifically, if any Intervener proposed any changes in assignment, issues or budgets from what was approved in Orders 67/13 and 92/13, that Intervener was to seek Board approval. Requests were received from three Interveners seeking revisions to previous approvals received from the Board. These are disposed of as set out below.

3.2 Intervener Submissions

Consumers' Association of Canada (Manitoba) Inc. (CAC)

The only revision proposed by CAC to its previously approved funding budget was to seek an additional \$10,000 for two CAC consultants, namely Dr. Simpson and Mr. Stevens, to purchase data from Statistics Canada.

Additionally, CAC wanted confirmation that Interveners are permitted to manage the funding budget awarded to that Intervener, such that surpluses in one area or for one approved consultant could be used to offset shortfalls in other areas for other approved consultants.

Green Action Centre (GAC)

GAC sought revisions to its previously approved funding budget and consultants in respect of:

Demand Response Potential:

Either in a joint intervention with CAC, or on its own, GAC seeks to expand its approved issues and the funding budget to consider the demand response potential in Manitoba. Demand response potential, to GAC, includes consideration of utility load control,

customer load control, interruptible load, time-based pricing and back-up generation. GAC seeks an additional \$30,000 to \$35,000 for its already retained consultant (Mr. Dunsky) to perform the analysis and review of Manitoba's demand response potential.

Wind Energy as an Alternative:

GAC is critical of the NFAT Filing, alleging that it is deficient in a detailed analysis of wind energy as an energy source within Manitoba and for the Manitoba Hydro power grid.

GAC has proposed that it be permitted and funded, to the extent of \$177,000, to retain consultants to analyze wind as an integrated alternative energy source for Manitoba Hydro.

While GAC's proposed consultants (Resource Insight Inc. and Power Advisory LLC.) would develop models to analyze wind scenarios, GAC also expects Manitoba Hydro run Manitoba Hydro's models to test GAC's results.

Manitoba Métis Federation (MMF)

In addition to its August 30, 2013 written submission, MMF was permitted to file a supplementary submission on September 13, 2013 detailing its proposed revised scope of work and budgets. Manitoba Hydro responded on September 18, 2013.

From the initially approved funding levels indicated in Order 92/13, MMF seeks to revise the funding levels for its experts as follows:

- MSES to \$92,820;
- Camerado Consulting to \$49,000;
- Community Power Opportunities to \$26,500; and
- Legal counsel to \$214,625.

3.3 Board Findings

The Board will approve an additional \$10,000 for CAC disbursements related to Statistics Canada data to be used by CAC's consultants.

The Board confirms CAC's understanding that Interveners are expected to track, report and manage their individual approved funding budgets. Surpluses for one consultant can be applied to shortfalls in funding for a different consultant.

The Board will approve an additional \$30,000 of funding for GAC (either alone or in a joint intervention with CAC) to engage Mr. Dunsky for the analysis of Manitoba's demand response potential.

The Board will approve additional funding for GAC's consultants, Power Advisory LLC and Resource Insight Inc., in the respective amounts of \$40,000 and \$20,000, to review and analyze wind energy being integrated as an alternative energy source for Manitoba Hydro. While the issue raised by GAC requires review and analysis, the Board expects one of the Independent Expert Consultants (La Capra Associates together with EnerNex) to also review and analyze wind energy alternatives, such that duplication by GAC's consultants is not required. Rather, through consultation, GAC's intervention should supplement the work being performed by the Independent Expert Consultants appointed by the Board within the revised budget approved, without requiring duplication of analysis and modeling.

MMF's revised funding for its consultants (MSES - \$92,820) and (Camerado Consulting - \$49,000) will be approved as requested.

The Board is not convinced of the merits or relevance of MMF filing evidence in the NFAT on Community Power Opportunities and will therefore not approve funding on this topic for the proposed consultants. Rather, MMF may wish to provide a presentation to the NFAT panel on this topic.

The Board will accept MMF's offer to file a written document, two weeks before Intervener evidence is due to be filed, in which document MMF plans to set out information that will provide a better understanding of the Manitoba Métis Community. The Board will review the document submitted by MMF to determine whether such information is to be received as evidence by MMF or alternatively, as a presentation by MMF. No funding has been approved for the preparation and filing of the proposed document.

As for MMF's request for funding of legal fees, the Board recognizes (as it did in Order 91/13) that MMF will engage external legal counsel.

The Board agrees with MH that the budget for MMF's "junior counsel" appears reasonable. Recognizing the increased funding for MMF consultants, the reduced scope of issues approved, and as the Board is unaware of the supervision and extra support required from "senior counsel", the legal fees for MMF have been reduced, but approved at \$150,000.

4.0 INDEPENDENT EXPERT CONSULTANTS

4.1 List of Independent Expert Consultants

In addition to the expert witnesses and consultants engaged by Interveners, the NFAT Terms of Reference provide that the Board may engage Independent Expert Consultants to assist in the NFAT Review.

The Board has retained the following Independent Expert Consultants:

- **Knight Piésold** (to assist in the review of construction management and capital cost matters);
- **POWER Engineers** (to assist in the review of transmission matters);
- **Elenchus Research Associates Inc.** (to assist in the review of load forecasting and demand-side management and energy efficiency matters);
- **Potomac Economics** (to assist in the review of Midcontinent Independent System Operator market matters);
- **MNP** (to assist in the review of macro-environmental matters);
- **TYPLAN Consulting Ltd.** (to assist in the review of socio-economic matters);
- **Morrison Park Advisors** (to assist in the review of financial analysis and public sector finance matters);
- **La Capra Associates** (to assist in the review of power resource planning and economic evaluations together with business case and risk assessment matters); and
- **EnerNex** (to assist in the review of wind matters, as a subcontractor to La Capra Associates).

Mr. Christian Monnin of the law firm Hill, Sokalski, Walsh, Trippier has been appointed Independent Legal Counsel, representing the Independent Expert Consultants.

4.2 Communications Protocol for Independent Expert Consultants

All parties to the NFAT Review are to follow the communications protocol attached as Appendix "A" to this Order.

4.3 Intervener Access to Independent Expert Consultants

The Board recognizes that Interveners or their expert consultants or legal counsel may, from time to time, need to speak to one or more of the Independent Expert Consultants to coordinate their own approaches, seek clarification, or eliminate unnecessary duplication in the Intervener evidence. The Board is generally prepared to allow such communications. However, any requests, by Interveners, for access to Independent Expert Consultants shall be made through the Independent Legal Counsel, who shall determine the appropriateness of the request for access.

Interveners are not to request the Independent Expert Consultants to perform any work for them or expand their work for the Board.

The Board further notes that the Terms of Reference provide as follows:

The independent expert consultant(s) shall be available for cross-examination at the public hearing, and shall be available as a resource to legal counsel for registered intervenors as deemed necessary by the PUB to prepare for the cross-examination of Hydro witnesses on Commercially Sensitive Information.

However, the Terms of Reference make access by legal counsel for Interveners contingent upon such counsel first providing an undertaking with respect to Commercially Sensitive Information to the Board:

2. Legal counsel of record of the Board and counsel for registered intervenors may review Commercially Sensitive Information and participate in the in camera process upon execution of an undertaking to the Panel in a form agreeable to the Panel and Hydro.

To date, no legal counsel for Interveners has provided the Board with a signed undertaking. Independent Expert Consultants shall not divulge any Commercially Sensitive Information to legal counsel for any registered Interveners unless such counsel have first delivered a signed undertaking to the Board.

5.0 REVISED TIMETABLE AND PROCEDURAL ISSUES

5.1 Timetable for Pre-Hearing Steps and the Oral Hearing

In Order 92/13 the Board attached the most recent draft of the Timetable for conducting the NFAT.

Since then, issues have arisen that have impacted the timetable and its components, necessitating revisions.

Based on comments received from the participants in the NFAT Review, the Board is hereby establishing the timetable attached as Appendix "B" to this Order for the NFAT Review.

5.2 Specific Procedural Issues

Presenter Deadlines

The Board will not enforce August 30, 2013 as a deadline for Presentations to be filed. Rather, the Board will remain flexible and available to hear presentations from the public in respect of NFAT issues. The Board does encourage written Presentations of any length - with oral Presentations being limited to approximately 15 minutes. Persons or organizations wanting to make presentations are encouraged to contact the Board at the following address:

*The Public Utilities Board
400-330 Portage Avenue
Winnipeg, Manitoba R3C 0C4*

*Phone: (204) 945-2638
Toll Free: 1-866-854-3698 (in Manitoba)
Fax: (204) 945-2643*

*Email: publicutilities@gov.mb.ca
Attn: Hollis Singh, Executive Director*

Community Consultation Hearings for Presenters

The Board intends to hold, at minimum, a community consultation session in Winnipeg at which Presenters can deliver their oral 15-minute Presentations to the Board.

The Board is also available for community consultations in communities with a demonstrated significant interest in providing oral Presentations to the Board. The dates and locations for such community consultations will be finalized closer to the date the oral evidentiary hearing is to be held.

As a result of various issues, the timetable has been revised as attached in Appendix “B”.

Motion Days to Deal with Information Request Disputes

On September 30, 2013, the Board held a one-day “motion day” to deal with disputes over Round 1 Information Request directed to Manitoba Hydro. As a result of that motion day, the Board released Order 119/13.

In subsequent discussions between Board Counsel, counsel for Manitoba Hydro, Independent Legal Counsel, and counsel for the Interveners, the parties reached a consensus that further pre-scheduled formal motion days would not be necessary, as any further disputes regarding Information Requests could be dealt with firstly through informal discussions among counsel or, if those discussions failed, by way of written motion to the Board. Accordingly, the timetable set out in Appendix “B” no longer provides for any further motion days.

Scope of Round 2 Information Requests

The Board’s Rules of Practice and Procedure do not stipulate the scope of Round 2 Information Request. Specifically, they provide no guidance as to whether parties may ask for new information in a Round 2 Information Requests or whether Round 2 Information Requests are to be used purely to clarify responses received in answer to a Round 1 Information Request.

For purposes of the NFAT Review, the Board will not specifically limit Round 2 Information Requests to clarifications of responses from Round 1 Information Requests. Parties will be able to ask relevant questions addressing findings or conclusions that can be legitimately made or inferred on the basis of available evidence. Parties are encouraged to resolve disputes surrounding the scope of Round 2 Information Requests through informal discussions as an avenue of first recourse. If such disputes cannot be resolved, a party objecting to a specific Information Request directed to that party may set out its position in accordance with Rule 16 of the Board's Rules of Practice and Procedure, and any party aggrieved by a refusal to respond may seek a ruling from the Board.

Oral Hearing Processes

The Board canvassed the parties as to whether conducting the oral hearing on a "topic-by-topic" basis was a desired approach.

Questioning the efficiencies of a new approach, the parties, including Manitoba Hydro, preferred a more traditional approach whereby Manitoba Hydro would produce a series of witness panels (each of which would address multiple topics) for their direct evidence and cross examination before Interveners or Independent Expert Consultants provide evidence on the same topics.

In light of the fact that Manitoba Hydro's witnesses have not yet been conclusively determined, and the Board is not yet in a position to assess the efficiencies, if any, to be gained by a topic-by-topic approach, the Board will defer this decision, to be dealt with by way of a further procedural order at a later date.

Hearing Duration

As of the date of this Order, it remains unclear how many hearing days will be needed, and whether it will be possible to adjourn the hearing for the duration of spring break, being the week of March 31, 2014. Until Manitoba Hydro has tentatively selected and finalized its hearing panels, the Board will not be in a position to make a final decision in that regard.

On a tentative basis, the Board notes that the timetable as attached as Appendix "B" envisions the hearing to start of March 3, 2014 and, with the exception of breaking for Good Friday and Easter Monday, continuing five days a week until Friday, May 2, 2014, for a total of 44 hearing days. While the Board is cautiously optimistic that this will be sufficient, it is by no means certain that the hearing can be meaningfully shortened. Since there will be little, if any, possibility of expanding the hearing beyond 44 days, the Board expects to carefully manage the hearing days and enforce time limits, if necessary. The Board expects to issue a further procedural order with respect to actual hearing days closer to the hearing.

6.0 IT IS THEREFORE ORDERED THAT:

1. Additional funding for CAC in the amount of \$10,000, to be used to purchase Statistics Canada data, **BE AND IS HEREBY APPROVED;**
2. Additional funding for GAC, in the amount of \$30,000, to be used for Mr. Dunsky's analysis of Manitoba's Demand Response Potential, **BE AND IS HEREBY APPROVED;**
3. Additional funding for GAC, in the amounts of \$40,000 and \$20,000, to be used respectively for Power Advisory LLC., and Resource Insight Inc., to supplement IEC review and analysis of wind energy alternatives, **BE AND IS HEREBY APPROVED;**
4. Revised funding for MMF's consultants MSES (\$92,820) and Camerado Consulting (\$49,000) **BE AND IS HEREBY APPROVED;**
5. Funding for MMF to engage consultants on Community Power Opportunities **BE AND IS HEREBY DENIED;**
6. Funding for MMF's legal counsel in the amount of \$150,000 **BE AND IS HEREBY APPROVED;**
7. The Board establishes the communications protocol attached as Appendix "A" to this Order; and
8. The Board establishes the pre-hearing timetable attached as Appendix "B" to this Order until further Order of the Board.

Board decisions may be appealed in accordance with the provisions of Section 58 of The Public Utilities Board Act, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure.

THE PUBLIC UTILITIES BOARD

"RÉGIS GOSSELIN, B ès Arts, MBA, CGA"
Chairman

"HOLLIS SINGH"
Secretary

Certified a true copy of Order No. 127/13
issued by The Public Utilities Board

Secretary

APPENDIX “A”
COMMUNICATIONS PROTOCOL FOR INDEPENDENT EXPERT CONSULTANTS

1. Independent Expert Consultants (“**IEC**”s) appointed by the Public Utilities Board’s (“**PUB**”) NFAT Review Panel for purposes of the NFAT Review have been appointed to provide an impartial, independent review of the matters assigned to them in their respective Scope of Work document.

2. As independent, arm’s-length experts, IECs **will not**:
 - (a) Receive direct instruction from the NFAT Review Panel, other than with respect to additions to the Scope of Work as may be ordered by the NFAT Review Panel;
 - (b) Be represented by the PUB’s legal counsel (“**Board Counsel**”) or receive advice from Board Counsel;
 - (c) Be subject to legal privilege or a duty of confidentiality between the IEC’s and
 - (i) The NFAT Review Panel, including Régis Gosselin, Marilyn Kapitany and Larry Soldier and other members as may be appointed by the Province of Manitoba;
 - (ii) PUB Staff, including Hollis Singh, Kurt Simonsen and Margaret Smith;
 - (iii) Board Counsel, including Bob Peters, Sven Hombach and Anita Southall;
 - (iv) PUB Technical Advisors, including Roger Cathcart, Larry Buhr, Jan Carr and Wally Koschik; and
 - (v) The NFAT Project Manager Josée Lemoine.
(collectively, the “**PUB Team**”).
 - (d) Be expected to submit draft reports to the PUB Team.

3. As independent arm's-length experts, IEC's **will**:
 - (a) Be represented by Christian Monnin, who has been appointed as independent legal counsel to the IECs ("**IEC Counsel**");
 - (b) See their expert reports filed as evidence even if the NFAT Review Panel disagrees with their findings and conclusions;
 - (c) Be subject to disclosure of any correspondence and discussions with external parties including the PUB Team;
 - (d) Be subject to information request ("IR"s) from the PUB Team, Manitoba Hydro and other registered interveners;
 - (e) Provide direct evidence during the hearings on their report through their legal counsel, and
 - (f) Be subject to cross-examination by Board Counsel, Manitoba Hydro and other approved interveners.

4. To protect the independence of the IECs, the following communication protocol is established:
 - (a) Any inquiries between IECs and the PUB Team, other than those of a purely administrative nature, are to be routed through IEC Counsel, unless direct communication is specifically authorized:
 - (i) In the case of the PUB Team, by Board Counsel; and
 - (ii) In the case of the IECs, by IEC Counsel.
 - (b) The PUB Team shall not participate in any of the weekly conference calls between IECs and IEC Counsel unless IEC Counsel specifically authorizes such participation, nor shall the PUB Team receive copies of any minutes from such conference calls.
 - (c) The PUB Team shall not be copied on internal correspondence passing between IECs themselves or IECs and IEC Counsel.
 - (d) Any instructions with respect to changes in the Scope of Work of any of the IECs are to be communicated through Board Counsel to Christian Monnin only. No member of the PUB Team shall provide direct instructions to any of the IECs regarding areas of suggested inquiry or Scope of Work.
 - (e) IECs are not to share draft reports with the PUB Team.

- (f) Any Interveners or their legal counsel or consultants seeking to discuss any matters with IECs are to request such discussion through IEC Counsel. Interveners are not to request the IECs to perform any work for them. IECs are not to discuss any Commercially Sensitive Information with Intervener legal counsel unless and until such Intervener legal counsel has provided an undertaking with respect to Commercially Sensitive Information to the Board as stipulated by the Terms of Reference governing the NFAT Review.
- 5. Any IRs prepared by IECs are to be filed and served through IEC Counsel Christian Monnin.

APPENDIX “B”
REVISED NFAT REVIEW TIMETABLE

Hearing Step	Date/Deadline
Answers to Round 1 Information Requests	November 8, 2013
Round 2 Information Requests	November 20, 2013
Answers to Round 2 Information Requests	December 13, 2013
Independent Expert Consultant Evidence	January 13, 2014
Information Requests on Independent Expert Consultant Evidence	January 24, 2014
Independent Expert Consultant Answers to Information Requests	February 20, 2014
Intervener Evidence	February 4, 2014
Information Requests on Intervener Evidence	February 12, 2014
Intervener Answers to Information Requests	February 20, 2014
Manitoba Hydro Rebuttal	February 28, 2014
Hearing Commences	March 3, 2014