



**PUBLIC
INTEREST
LAW
CENTRE**



**CENTRE
JURIDIQUE
DE
L'INTÉRÊT
PUBLIC**



**AN INDEPENDENT
SERVICE OF
LEGAL AID
MANITOBA
L'AIDE JURIDIQUE
DU MANITOBA**



**SUPPORTED BY
LEGAL AID MANITOBA
THE
MANITOBA LAW
FOUNDATION
AND MEMBERS
OF THE
MANITOBA
BAR
ASSOCIATION**



**200 – 393 PORTAGE AVE
WINNIPEG, MANITOBA
R3B 3H6**

TEL: 204.985.8540

FAX: 204.985.8544



E-MAIL: centre@pilc.mb.ca

Writer's direct line: (204) 985-8533
Email: bwilliams@pilc.mb.ca

September 22, 2017

The Public Utilities Board of Manitoba
Attention: Mr. Darren Christle
Executive Director and Secretary
400-330 Portage Avenue
Winnipeg, MB R3C 0C4

Dear Mr. Christle:

Re: Proposed scope of work for the Independent Experts Consultants (IECs) retained by the Public Utilities Board

Introduction

The Consumers Coalition appreciates the opportunity to comment on the proposed Scope of Work of the Independent Expert Consultants (IECs) retained by the Public Utilities Board for the purposes of the 2017/18 and 2018/19 Manitoba Hydro General Rate Application. The comments of the Consumers Association will:

- consider the role of IECs in Public Utilities Board proceedings;
- generally endorse the Scope of Work proposed for Daymark and Dr. Yatchew;
- offer proposals relating to the Scope of Work of MGF; and,
- comment on some aspects of Hydro's September 18, 2017 letter regarding the Scope of Work of MGF

IECs in the Regulatory Process

Over many years, the Manitoba Public Utilities Board (PUB) has earned the trust of Manitoba consumers, intervenors and regulated entities as a forum which allows for an efficient, evidence based and independent review of proposed rates for service.

The strength of the PUB process is its openness to a diversity of views from regulated entities and intervenors and the careful weighing of evidence by the independent tribunal. In essence, the PUB is generally viewed as being above the analytic fray as it sits in judgment on the evidence and analysis presented by others.

While clearly defensible in certain cases, the retention of IECs places some stress on the central role of the PUB as an independent trier of fact. When the PUB reviews the evidence adduced by an IEC, it is sitting in judgment on a witness that it has retained.

From the perspective of the Consumers Coalition and in the interests of

retaining long standing public confidence in the independence of the PUB, the retention of IECs should be the exception, not the rule, and should be guided by specified criteria developed by the PUB with the input of regulated entities and intervenors.

This is not to take away from the outstanding work performed by IECs such as Morrison Park and Daymark during the 2014 proceedings related to Hydro's preferred development plan. There are circumstances where the retention of an IEC is highly defensible, especially in cases where intervenors have not committed to presenting independent evidence on an important subject matter or where the scope of independent evidence contemplated by intervenors is insufficiently broad for the necessary deliberations of the PUB.

On a going forward basis, the Consumers Coalition would respectfully suggest that the PUB consider articulating the circumstances and criteria where it may consider the retention of IECs.

The Proposed Scope of Work of Daymark and Dr. Yatchew

The Consumers Coalition is supportive of the proposed Scope of Work for Daymark and Dr. Yatchew. In terms of paragraph 1 of the proposed work of Daymark, it notes that a high level review of the assumptions and methodologies of the third party consultants might be preferred to assuming them "to be reasonable and accurate."

The Proposed Scope of Work of MGF

In terms of MGF, the Consumers Coalition is of the view that the scope of work is comprehensive and agrees with the segmentation into five subject areas.¹ However, the Consumers Coalition would ask the PUB to consider whether there is merit in a more specific focus in various areas of the Scope of Work document.

Contract and Construction Management for all Projects

The Scope of Work generally calls for a review of Manitoba Hydro's (MH) design and engineering practices, its cost estimating and scheduling methodology and its tendering and contracting methodologies for all five of the projects in question. However, it may be prudent to place more concentration on an assessment of MH's Contract and Construction Project Management for all of these projects. Specifically this assessment should cover:

- staffing, training and performance management of Contract and Construction Project Management staff;
- tools, data and resources available (including predictive capability of the tools) for Contract and Construction Project Management staff; and
- capability and inclination of Contract and Construction Project Management staff to prevent poor contractor performance and to incent good contractor performance.

¹ Keeyask Project; 2) Bipole III Converter Stations; 3) Bipole III Transmission Line; 4) Manitoba - Minnesota and Manitoba - Saskatchewan Transmission Projects; and 5) the Great Northern Transmission Line

Keeyask Project

At Tab 5 of the pre-filed evidence (pages 45 and 46), it is indicated that MH, along with the General Civil Contractor, developed “the Keeyask Recovery Plan” in the Fall/Winter of 2016/2017 to improve project performance. It is claimed that this plan resulted in various outcomes such as improved processes, an improved “work culture”, new Key Performance Indicators, more construction work supervision and contractor incentives. In the respectful view of the Consumers Coalition, there would be material value in a detailed review and assessment of “the Keeyask Recovery Plan”. Such a review and assessment should include but not be limited to:

- any additional costs associated with the implementation of this plan;
- the specific improvements that occurred, when they occurred, how they were measured, the likelihood of these improvements persisting throughout the project as a result of this plan and how these improvements directly affected the estimated cost and schedule for this project; and
- any additional plans for further improvements in this project as a result of “the Keeyask Recovery Plan”.

In Clause 8, the Scope of Work states:

Identify aspects of the updated cost estimate and schedule that are at heightened levels of risk and recommend risk mitigation strategies that Manitoba Hydro should use.

There may be merit in augmenting this clause with a further breakdown of the possible risk elements:

- for the General Civil Contract where MH is at risk due to the type of Cost Reimbursable Contracts that are in place (NFAT Knight Piesold Report Jan/2014, page 42), specifically indicate: 1) the ramifications in extra costs and extended schedule to date that have occurred due to this risk exposure; 2) the ramifications in extra costs and extended schedule that are projected to occur due to the continued risk exposure before this contract is completed; and 3) the risk mitigation that has been put in place as a result of this risk exposure along with the current effectiveness and projected continued effectiveness of this mitigation;
- in relation to the problems that have occurred due to geotechnical and geological issues (Tab 5, page 23) and where MH is at risk, specifically indicate: 1) the ramifications in extra costs and extended schedule to date that have occurred due to this risk exposure; 2) the ramifications in extra costs and extended schedule that are projected to occur due to the continued risk exposure before this contract is completed; and 3) the risk mitigation that has been put in place as a result of this risk exposure along with the

current effectiveness and projected continued effectiveness of this mitigation; and

- in relation to the problems that have occurred due to labour productivity issues (Tab 5, page 23) and where MH is at risk, specifically indicate: 1) the ramifications in extra costs and extended schedule to date that have occurred due to this risk exposure; 2) the ramifications in extra costs and extended schedule that are projected to occur due to the continued risk exposure before this contract is completed; and 3) the risk mitigation that has been put in place as a result of this risk exposure along with the current effectiveness and projected continued effectiveness of this mitigation.

Bipole III Converter Stations

Clause 14 of the Scope of Work states:

Identify reasons why HVDC converter equipment bidders proposed LCC technology and not VSC. Quantify and explain the impact of this on the converter station costs

Consideration could be given to enhancing this clause with a further breakdown of the impact of this technology. For instance:

- since the use of Line Commutation Conversion (LCC) technology requires the incorporation of significant reactive power sources (usually provided by synchronous condensers) which can elevate the fault level on the HVAC power system (e.g. at Riel or Dorsey Stations), please detail the impact of these increased fault currents as to 1) increased costs for the purchase and installation of new higher rated equipment and 2) increased costs as a result of the need to re-design and re-configure station layouts and equipment arrangements at various system locations.

Bipole III Transmission line

Clause 22 of the Scope of Work states:

Identify aspects of the updated cost estimate and schedule that are at heightened levels of risk and recommend risk mitigation strategies that Manitoba Hydro should use.

Consideration could be given to augmenting this clause. For example:

- as to risks associated with weather issues, route changes, infrastructure improvements (Tab 5, page 24) specifically indicate: 1) the ramifications in extra costs and extended schedule to date that have occurred due to this risk exposure; 2) the ramifications in extra costs and extended schedule that are projected to occur due to this continued risk exposure before this contract is completed; and 3) the risk mitigation that has been put in place as a result of the exposure along with the effectiveness and the projected

continued effectiveness of this mitigation; and

- in relation to the problems that have occurred due to tower foundation issues, tower erection and line stringing concerns as well as any supply chain issues or material shortages (Tab 5, page 24) where MH is at risk, specifically indicate: 1) the ramifications in extra costs and extended schedule to date that have occurred due to this risk exposure; 2) the ramifications in extra costs and extended schedule that are projected to occur due to this continued risk exposure before this contract is completed; and 3) the risk mitigation that has been put in place as a result of the exposure along with the effectiveness and the continued projected effectiveness of this mitigation.

Manitoba - Minnesota and Manitoba - Saskatchewan Transmission Projects

Clause 27 of the Scope of Work states:

Assess Manitoba Hydro's updated capital cost estimates for reasonableness, including whether appropriate contingencies and reserves have been provisioned.

Consideration could be given to further details related to this clause. For instance:

- since it is stated in the pre-filed evidence (Tab 5, page 24) that the Manitoba Hydro-Electric Board approved a revised estimate for the Manitoba - Minnesota Transmission Project from \$354 million to \$453 million to reflect updated costs for transmission line construction, licensing, environmental assessment work, station improvements and contingency including management reserve and funding for Indigenous opportunities, provide a breakdown and allocation to these categories of the updated additional cost elements to account for the \$99 million difference.
- since it is also stated in the pre-filed evidence (Tab 5.4, page 15) that the cost estimate for the Manitoba - Minnesota Transmission Project includes work at Dorsey and Riel Stations for circuit breakers, transformers, reactors, capacitors and associated control equipment, specifically state whether this work is included in the \$453 million revised cost estimate or whether this is a separate additional budget item.

Great Northern Transmission Line

Clause 29 of the Scope of Work states:

Review and assess the Facilities Construction Agreement and the Project Development Agreement between Minnesota Power and Manitoba Hydro's subsidiary for reasonableness, identifying whether the agreements follow best practices or have short-comings.

Consideration could be given to additional detail and specifically:

- since it is stated in the NFAT Final Report (page 49) that the new proposed 750 MW, 500 kV AC Great Northern Transmission Line is being developed by Minnesota Power and that Manitoba Hydro plans to have a 49% ownership stake in the line as well as fund a portion of the operating expenses, have there been any changes in the partnership arrangements since 2014 and if so what are the changes and why have they been proposed?

Manitoba Hydro's letter of September 18, 2017

In its letter to the PUB dated September 18, 2017, Manitoba Hydro (MH) proposed to significantly restrict the MFG Scope of Work. The Crown monopoly argues that:

- the MFG scope of work is extremely broad and cannot be accommodated by an extension of time to complete its report;²
- extensions of time cannot be accommodated within the hearing schedule because natural justice dictates the information must be available for review and discovery prior to the hearing schedule;³
- inquiries into why a specific technology was chosen when the project is near completion and there is no possibility of reviewing the decision should not be allowed to derail a meaningful review of factors impacting rates;⁴ and
- MGF should be focused on what has changed since the NFAT or last major control budget relied upon by the PUB.⁵

In terms of Keeyask, Hydro appears to be recommending that no review of the design and engineering be carried out⁶ and no review of any contracts or contracting methodologies be carried out if the contracts were let before 2014.⁷

Notwithstanding the material change in estimates relating to Bipole III that were made public shortly after the NFAT proceedings had closed, Hydro seeks to foreclose consideration of the nearly \$1.5 Billion change in converter station estimates between 2010 and 2014.⁸

With respect, the Consumers Coalition does not find the reasons put forward by MH compelling. This is particularly the case given that the mandate of the PUB in determining whether rates are just and reasonable includes a consideration both of the reliability of forecasts as well as a determination of whether current and projected costs were reasonably

2 17 09 18 letter of Hydro, p. 4

3 *Ibid*

4 *Ibid*, p. 5

5 *Ibid*

6 *Ibid*, p. 7

7 *Ibid*, p. 8

8 *Ibid*, p. 9

and necessarily incurred.⁹

Manitoba consumers are the primary risk bearers of the decisions and judgements made by Manitoba Hydro on Keeyask and Bipole III. The actions of Manitoba Hydro in terms of its major capital projects are relevant to determinations by the PUB of:

- whether Hydro's forecasts can be reasonably relied;
- whether the costs incurred by Hydro with regard to major capital projects are reasonably and necessarily incurred; and
- whether Hydro is credible

In particular the Consumers Coalition would note,

- there is a great deal of information available now that was not in place at the time of the 2014 NFAT including core information relevant to the costs of Bipole III; and
- consideration of the Corporation's conduct with regard to Bipole III converter station estimates are highly relevant to determinations related to its forecasting reliability, prudence and credibility

While Hydro appears to be attempting to sidestep a substantive review of its approach to the Manitoba Minnesota Transmission Project,¹⁰ the significant cost overruns of over 20 percent are likely to provide important insight into the credibility of Hydro's forecasts and the prudence of its conduct.

Challenges to the Schedule

Subject to clarification by the IECs' legal counsel, the Consumers Coalition agrees with Manitoba Hydro that there is a significant risk that the scope of the MFG work makes it unlikely that its evidence will be available by November 1, 2017.

From the perspective of Consumers Coalition the remedy for that challenge is not to erase clearly relevant issues from the scope of work of MFG. Rather the solution is to craft an alternative schedule that allows the evidence to be properly developed and fairly tested by all parties. As an example of how flexible the regulatory process can be, it should be noted that during the NFAT proceedings, Manitoba Hydro materially amended its evidence only a few weeks before the hearing began and yet, parties were able to adjust. The Consumers Coalition would expect that Manitoba Hydro will be able to demonstrate this same level of flexibility in the interests of regulatory efficiency.

Accordingly, the Consumers Coalition would recommend that the PUB canvass with legal

⁹ PUB 5/12, p. 26/27

¹⁰ *Ibid*, p 13

counsel for the IECs when they expect their evidence to be ready. Once the date for receipt of the evidence is clarified, parties can be asked for their advice on how to best accommodate the need for appropriate discovery and if necessary response.

Yours truly,



BYRON WILLIAMS
DIRECTOR

BW/kd

cc: Board Counsel
Consumers Coalition
Manitoba Hydro
All Interveners