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**GOVERNMENT OF MANITOBA**

**Report on the Status of Manitoba's Consultation Process to the  
National Energy Board**

**Manitoba Hydro: Manitoba-Minnesota Transmission Project**

May 2018

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## EXECUTIVE SUMMARY

This report is on the status of the Crown-Aboriginal consultation process that Manitoba conducted between January 2016 and May 2018 for the Manitoba Hydro: Manitoba-Minnesota Transmission Project.

A multi-departmental Steering Committee conducted an initial assessment and record of conclusion. The initial assessment assessed the proposed project, proposed Crown decisions, anticipated timelines, potential adverse affects on exercise of aboriginal and treaty rights, and identified those Indigenous communities with whom Manitoba must consult based on the established legal principles.

On July 7, 2015, Manitoba sent early project notification letters to 11 First Nations and the Manitoba Métis Federation. The notification letters included project related information, process related information, maps, and brochures that were developed by the proponent.

On September 25, 2015, Manitoba Hydro submitted the Environmental Impact Statement for the proposed transmission project. The Environmental Impact Statement included information from Manitoba Hydro's Indigenous engagement efforts and Aboriginal and Traditional Knowledge Studies funded by Manitoba Hydro.

On January 19, 2016, Manitoba formerly began its Crown consultation process with 15 Manitoba First Nations, 5 Ontario First Nations, and the Manitoba Métis Federation. The number of indigenous communities increased because Natural Resources Canada identified additional communities.

Manitoba provided a minimum of three letters and facsimiles in an attempt to engage and share information with each of the communities. Manitoba also provided telephone calls and emails in an attempt to communicate with the Indigenous communities and confirm interest in participating in the Crown consultation process.

The information contained in this report provides an overview of Manitoba's consultation process and its status. This report will also provide a list of all concerns that Manitoba has understood through its Crown consultation process without identifying which community raised which concern. The report informs that Manitoba's Crown consultation process has not yet been completed. Manitoba is waiting for the completion of the consultation plan with one community, upon completion of which the Steering Committee will prepare a final report on the Crown consultation process to the Minister of Sustainable Development, Manitoba's decision maker with respect to this project. After considering that report, the Minister may make decisions with respect to this project.

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## 1.0 INTRODUCTION

The purpose of this report is to inform the National Energy Board about the status of Manitoba's Crown consultation process that occurred in relation to Manitoba's proposed decisions for Manitoba Hydro's Manitoba-Minnesota Transmission Project.

Manitoba has not made any decisions regarding the project as it has not yet completed its Crown consultation process. Manitoba is still in the process of implementing Manitoba's duty, and in time will provide a final report on the results of the consultation process to the Minister of Sustainable Development. The Minister is required by law and policy to consider that final report in addition to the two reports that came out of Manitoba's statutory environmental review and assessment process.

With the exception of the consultation plan with the Manitoba Métis Federation, Manitoba has completed a reasonable consultation process with all other communities. Manitoba anticipates that its consultation process would be completed in early September 2018 or earlier.

## 2.0 THE PROPOSED PROJECT

The proposed Manitoba-Minnesota Transmission Project involves the construction, operation, and decommissioning of a 500 kilovolt alternating current international power line originating at the Dorsey Converter Station near Rosser, Manitoba and terminating at the United States border crossing south of Piney, Manitoba, where it will connect to what is referred to as the Great Northern Transmission Line in Minnesota.

According to the proponent, Manitoba Hydro, the purpose of the proposed transmission project is to strengthen the reliability of Manitoba's electrical supply, fulfill current export sale agreements, and increase access to international markets.

The proposed transmission line is 213 km in length and traverses approximately 158 km of private land (74%) and 55 km (26%) of Crown land. Manitoba Hydro currently holds easements (right of way) on 92 km or 43% of the entire line. Additional easements are required on approximately 85 km of private land (40%) and 36 km Crown land (17%). The easements will vary in width from 80 to 100 meters.

The project will use two existing utility corridors referred to as the Southern Loop Transmission Corridor (SLTC) and the Riel-Vivian Transmission Corridor (RVTC). The SLTC is 245 meters wide, extending from the Dorsey Converter Station near Rosser, Manitoba, traversing the Floodway on the southerly limit of the City of Winnipeg, and ending at the Riel Converter Station on the east side of the City adjacent to the Red River Floodway. The RVTC is 177 meters wide and extends east from the Riel Converter Station towards Vivian, Manitoba.

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Construction will involve several stages including clearing, installation of tower foundations and anchors, assembling and erecting towers (either self-supporting or guyed wire), and stringing of the conductor and overhead ground wires. Modifications are also required to the Dorsey Converter Station, Riel Converter Station, and the Glenboro South Station, all of which are located on property owned by Manitoba Hydro.

### 3.0 MANITOBA'S DECISIONS

There are two principal decisions for Manitoba to make regarding the proposed project:

1. Class 3 licensing decision under section 12 of The Environment Act by the Minister of Sustainable Development
2. Easement decision under section 17(1)(e) of The Crown Lands Act by the Minister of Sustainable Development

As the decision maker, the Minister of Sustainable Development is required, by law and policy, to consider the results of the consultation process before making the above decisions.

### 4.0 MANITOBA'S CONSULTATION PROCESS - OVERVIEW

The Government of Manitoba has a legal duty to consult in a meaningful way with First Nations, Métis communities and other local Aboriginal communities when any proposed provincial law, regulation, decision or action may adversely affect the exercise of an Aboriginal right or treaty right of that Aboriginal community. This duty arises out of the recognition and affirmation of Aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*.

The general purpose of consultation is to provide relevant information to the communities, hear and understand their concerns and reasonably address their concerns.

#### 4.1 MANITOBA'S POLICY ON CROWN CONSULTATION

Manitoba's consultation process is guided by the Government of Manitoba's *Interim Provincial Policy for Crown Consultations with First Nations, Métis Communities and Other Aboriginal Communities* (May 2009). The objectives of this policy are:

- To ensure Manitoba informs itself and gains a proper understanding of the interests of First Nations, Métis communities and other Aboriginal communities with respect to the proposed government decisions or actions;

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- To seek ways to address and/or accommodate those interests where appropriate through a process of consultation while continuing to work towards the best interests of the citizens of Manitoba;
  - To advance the process of reconciliation between the Crown and First Nations, Métis communities and other local Aboriginal communities.

Specific details for implementation of this policy are provided to staff through *Manitoba Government Framework and Guide for Crown-Aboriginal Consultations* (February 1, 2010). Manitoba implements its policy in accordance with the refinements of the law related to the Crown's duty.

## 4.2 THE FOUR-PHASED CONSULTATION PROCESS

Manitoba implements its duty to consult, and where appropriate accommodate, in four phases as summarized below.

### **Phase I: Initial Assessment & Planning**

The first phase is to undertake the assessment and planning necessary to conduct consultation. With large scale projects Phase I often begins with the establishment of a multi-departmental Steering Committee. The goal of the Steering Committee is to bring together the appropriate staff to assess, plan, and provide guidance to the consultation team implementing the Crown's duty.

Any time the Crown is proposing an action or decision, an initial assessment is conducted to determine whether consultation is required, which communities must be consulted and the nature and scope of consultation. The level of consultation and the content of consultation with each community is assessed proportional to the significance of the proposed decision's potential adverse effects on the exercise of existing or asserted aboriginal and treaty rights of that community. Lastly, this phase involves reaching out by letter as early as possible to those communities warranting consultation to determine their interest in the proposed project and consultation process.

### **Phase II: Community Consultation Process**

The second phase is to confirm interest in the consultation process and conduct consultation by sharing information, hearing, discussing and understanding community concerns or recommendations.

Where a community's leadership has expressed interest in participating in the consultation process, Manitoba will attempt to jointly develop and then implement a mutually

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acceptable consultation work plan, including timelines, a budget and outcomes. Work plan development often occurs early on in the process through planning meetings and correspondence with leadership.

Community sessions provide opportunities for Manitoba to share information with the community, and to hear and discuss the concerns of the community. All concerns, whether related to the proposed decisions or not, are considered in Manitoba's internal analysis and evaluation of the consultation issues.

Record keeping is also part of this phase. This includes recording meeting notes that capture concerns and information shared by communities as well as producing a Record of Communication, summarizing the contents of all incoming and outgoing correspondence.

Manitoba treats information collected from specific communities in the consultation process as confidential, and does not make the information available to other communities or the public.

### **Phase III: Analysis, Recommendations & Decision Making**

In this phase, information generated through the consultation process is reviewed and Manitoba determines how concerns may reasonably be addressed. At this stage a final report on the results of the consultation process is prepared for the Crown decision makers, which includes an outline of the process undertaken, concerns identified, and potential measures to address concerns for the consideration of the decision makers.

Where accommodation is appropriate, it can take on many forms such as a change to the project plan, conditions of licences or approvals, or other reasonable measures to address concerns.

The Crown decision maker makes a decision at the conclusion of this phase after having considered the final report.

### **Phase IV: External Communications**

In the final phase, Manitoba sends a final communication to each community that participated in the consultation process. The final communication may be in the form of a detailed report or relatively simple letter, depending on the contents and activities of each consultation. Regardless of the form, the external communication will notify the community about Manitoba's decisions and identify whether and how the community's concerns were addressed.

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## 5.0 MANITOBA'S CONSULTATION – PROCESS & RESULTS

### 5.1 STEERING COMMITTEE (PART OF PHASE I)

Manitoba initiated the planning phase of this Crown consultation process in 2014 with the establishment of a Steering Committee to direct the consultation process. The Steering Committee included representatives from the departments responsible for the proposed Crown decisions and those that could contribute to the overall management and implementation of the consultation process. The committee includes representation from Sustainable Development, Indigenous and Northern Relations, Justice, and Finance. The Steering Committee provided guidance and assistance to ensure that this consultation process was in accordance with Manitoba's policy and established legal principles.

The Steering Committee selected a Consultation Team to lead all community-based discussions and develop community consultation work plans, implement the consultation process for each community, and draft the results of the process. The Lands Branch of Sustainable Development was the consultation lead with coordination support from Indigenous and Northern Relation's Agreements Management and Coordination Branch.

### 5.2 INITIAL ASSESSMENT AND RECORD OF CONCLUSION (PART OF PHASE I)

The Steering Committee reviewed project information, identified proposed Crown decisions, assessed proponent engagement efforts, identified the First Nation, Métis community or other Aboriginal community with whom Manitoba must consult, and determined level and scope of consultation with each of the identified communities. Manitoba then made initial contacts with the communities.

To determine which communities to contact, information considered by Manitoba included:

- Manitoba Hydro's Scoping Documents submitted under the environmental assessment process
- Proximity to the project area
- Recognized or asserted traditional territory or harvesting area is within the project area
- Known community use and exercise of aboriginal and treaty rights within the project area
- Treaty areas overlapping and adjacent to the proposed project
- Potential interest in the project
- Expressed desire from the community to be part of consultations
- Participation in previous Crown consultations in the area
- Canada's Aboriginal and Treaty Rights Information System
- Knowledge of Manitoba's regional staff about communities' uses of the area for exercise of rights

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In 2015, the Steering Committee initially concluded that Manitoba had a duty to consult with twelve (12) communities. This conclusion was before Manitoba Hydro had submitted its Environmental Impact Statement (EIS) pursuant to *The Environment Act*.

1. Black River First Nation
2. Brokenhead Ojibway Nation
3. Buffalo Point First Nation
4. Dakota Plains Wahpeton First Nation
5. Dakota Tipi First Nation
6. Long Plain First Nation
7. The Manitoba Métis Community
8. Peguis First Nation
9. Roseau River Anishinabe First Nation
10. Sagkeeng First Nation
11. Sandy Bay First Nation
12. Swan Lake First Nation

On July 15, 2015, Manitoba sent early project notification letters to these twelve (12) communities. The letters stated Manitoba's understanding that Manitoba Hydro had been engaging with First Nations, Métis communities, and other Aboriginal communities located in the vicinity of the proposed project and Manitoba encouraged continued participation of the communities in that process.

### 5.3 COORDINATION WITH CANADA (PART OF PHASE I)

As the federal Crown also had a decision with respect to the project, Manitoba engaged in discussions with Natural Resources Canada's Major Projects Management Office (MPMO) about communities that Canada might consult in relation to Canada's decision. Canada informed Manitoba that in addition to the above twelve (12) communities, Canada might also consult with the following nine (9) communities:

- |                                       |                                  |
|---------------------------------------|----------------------------------|
| Animakee Wa Zhing #37 (ON)            | Northwest Angle No. 33 (ON)      |
| Anishinaabeg of Naongashiing (ON)     | Shoal Lake 40 First Nation (ON)  |
| Birdtail Sioux First Nation           | Sioux Valley Dakota First Nation |
| Canupawakpa Dakota First Nation       | Waywayseecapo First Nation       |
| Iskatewizaagegan 39 First Nation (ON) |                                  |

In the Steering Committee assessment, Manitoba did not have a legal duty to consult these additional communities, but included them in Manitoba's process in part to help coordinate Crown consultation efforts between the federal and provincial governments and to minimize additional burden placed on communities.

As a result of the discussions with MPMO, Manitoba also developed a draft Terms of Reference for Coordination of Crown Consultations (**Appendix A**), which was intended to provide an understanding of the responsibilities and expectations of the coordinated efforts, including community information sharing and reporting. The draft was never finalized, and although not all of the terms were followed, Manitoba's Steering Committee approached the consultation process with the intention of sharing the results of Manitoba's Crown consultation process with MPMO to assist Canada in meeting its duty.

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## 5.4 THE LEVELS OF CONSULTATION (PART OF PHASE I)

Based on the significance of the potential adverse effects on the exercise of existing or asserted aboriginal or treaty rights, the Steering Committee assessed the level of consultation for each community. Three levels of consultation were identified with three proposed processes as the starting point.

### **Low level – Consultation in written format (12 communities):**

1. Animakee Wa Zhing #37
2. Anishnaabeg of Naongashiing
3. Birdtail Sioux First Nation
4. Canupawakpa Dakota First Nation
5. Dakota Plains Wahpeton First Nation
6. Dakota Tipi First Nation
7. Iskatewizaagegan 39 First Nation
8. Northwest Angle No. 33
9. Sandy Bay Ojibway First Nation
10. Shoal Lake 40 First Nation
11. Sioux Valley Dakota First Nation
12. Waywayseecappo First Nation

### **Low Level – Community session as required (3 communities):**

13. Black River First Nation
14. Long Plain First Nation
15. Swan Lake First Nation

### **Moderate Level – Community sessions (6 communities)**

16. Brokenhead Ojibway Nation
17. Buffalo Point First Nation
18. Peguis First Nation
19. Roseau River Anishinabe First Nation
20. Sagkeeng First Nation
21. The Manitoba Métis Community

For the levels with community sessions, the Steering Committee developed proposed guidelines, including Draft Consultation Work Plans and Budgets (**Appendix B**).

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## 5.5 INITIATING THE CONSULTATION PROCESS (PART OF PHASE II)

In all, Manitoba initiated a Crown consultation process with 21 communities: 15 First Nations in Manitoba, five in Ontario, and the Manitoba Métis Community, as represented by the Manitoba Métis Federation.

The 12 communities originally scoped into the consultation process in Manitoba's early assessment, received early project notifications on July 15, 2015. The letters informed them about the project and the upcoming Crown consultation process. The letters also encouraged their continued participation in the proponent's engagement activities.

On January 19, 2016, Manitoba formally initiated the Crown consultation process by sending a letter and an information package to each of the 21 communities. The information package included an overview of the project; roles of Manitoba Hydro, Canada, and Manitoba; outlined the Crown consultation process; identified the assessed potential adverse effects on the exercise of existing or asserted aboriginal and treaty rights; a map of the proposed project, a plain language summary of the EIS, links to the EIS, and a USB with the EIS. Manitoba also included a copy of Canada's initial Crown consultation letter at the request of Natural Resources Canada MPMO (**Appendix C**).

## 5.6 THE COMMUNITY CONSULTATION PROCESS – DESCRIPTION AND STATUS (PART OF PHASE II)

Manitoba met with leadership or representatives of 11 of the 21 communities. In these meetings with leadership, Manitoba's Consultation Team provided information about the proposed project, the Crown consultation process, and any other information the community required prior to confirming their interest and participation in a community-based consultation process.

Where there was interest in a community process, Manitoba strove to mutually develop consultation work plans and budgets with each individual community.

With some communities, consultations were implemented according to mutual plans and budget. However, mutual plans were not always possible. In those cases, Manitoba undertook consultations according to a reasonable plan and timeline communicated to the communities.

Manitoba participated in open community sessions with a total of 6 communities. Each community session was tailored to suit the preferences of the community as communicated to Manitoba in the prior meetings and discussions with leadership.

All of the community sessions for this project lasted between four and seven hours. Manitoba typically set up the meeting room with hardcopy maps of the final preferred route, storyboards, a screen showing a projection of the route on Google Earth, and placed pens and

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paper pads on all tables. Manitoba welcomed questions and comments throughout the presentations, one-on-one during breaks, or in writing on the maps and paper pads provided.

Early in the process, Manitoba was made aware that some communities were interested in hearing directly from specialists on certain topics. As a result, representatives from Manitoba's Technical Advisory Committee, which is a committee established for the purpose of Manitoba's environmental assessment process, also attended all community sessions. Manitoba's presentations to communities included the following topics:

- Manitoba-Minnesota Transmission Project Summary
- Summary of General Concerns Heard from Indigenous Communities to date
- Manitoba's Consultation Process, Crown Decisions and the Environmental Approval Process
- Historic Resources Branch and the process that occurs if an artifact or item of significance is found during construction of the project
- Concerns and mitigation measures related to biosecurity
- Technical Advisory Committee's review of the EIS Wildlife component and how concerns were mitigated through routing (elk, deer, golden winged warbler, eastern tiger salamander and tall grass prairie)

The Consultation Team received positive feedback from individuals in the communities.

Information recorded during meetings or community sessions was shared with the community. Manitoba requested a review and revisions from the communities in all instances.

Manitoba has a complete record of consultation for all communities. The communities expect Manitoba to keep the contents of their discussions confidential. For that reason, Manitoba is sharing with the National Energy Board the Record of Communication with each community without describing the contents discussed (**Appendix D**). Manitoba is also sharing a list of concerns and comments without identifying the community that communicated the concern (**Appendix E**).

Manitoba intends to share the results of its consultation process with MPMO at the conclusion of Manitoba's consultation process.

## 5.7 REVIEW AND ANALYSIS OF CONSULTATION INFORMATION (PART OF PHASE III)

With the assistance of the Steering Committee, the Consultation Team reviewed the information gathered in the second phase. The Steering Committee also reviewed and considered the information available through Manitoba's Environmental Assessment process (Public Registry) and the Clean Environment Commission Process. These two other processes included relevant information related to aboriginal or treaty rights or interests and information provided by indigenous groups.

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To date, the Steering Committee has considered over 500 concerns or comments communicated through Manitoba's direct Crown consultation process or through the Environmental Assessment Process (Public Registry) and the Clean Environment Commission. Many of the concerns or comments are similar but voiced by different communities. A list of the concerns and comments without identifying the community is provided as **Appendix E**.

The review and analysis phase is not yet complete as Manitoba is waiting for the completion of the consultation plan with the Manitoba Métis Federation, which is anticipated by the end of August 2018 or earlier.

After completing review and analysis, the Steering Committee will prepare a final report on the results of the consultation process to the Crown decision maker, the Minister of Sustainable Development.

## 5.8 DECISION AND EXTERNAL COMMUNICATION

Once the final report is submitted to the Minister of Sustainable Development (anticipated in early September 2018 or earlier), Manitoba's policy and legal principles require the decision maker to consider that final report before making a decision.

The Minister of Sustainable Development may then make a decision whether to issue a Class 3 Licence under section 12 of *The Environment Act* and an easement under section 7(1)(e) of *The Crown Lands Act* for the project.

Following the Minister's decision, Manitoba will complete the final phase of this consultation process by communicating the outcomes of the process back to the communities.

## 6.0 CONCLUSION

This report provides an update on the status of Manitoba's Crown consultation process, provides a description of the process undertaken with each community and a list of concerns that Manitoba has gathered through its consultation process. Manitoba will also consider information concerns communicated through Manitoba's environmental assessment process including the Clean Environment Commission process, where information is relevant to the Crown's duty to consult, where warranted, accommodate.

Manitoba has completed its Crown consultation process with all communities except with the Manitoba Métis Community through the Manitoba Métis Federation. Manitoba anticipates completion of the consultation plan with that community by the end of August 2018 or earlier. The Steering Committee will then prepare a final report on the results of consultation for the consideration of the decision maker, the Minister of Sustainable Development.