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Mr. Rory Grewar
Commission Secretary
Manitoba Clean Environment Commission
304 - 155 Carlton Street
Winnipeg, MB
R3C 3HB

July 31, 2003

Dear Sir:

**Re: Wuskwatim Pre-hearing Schedule
Proposal by Pimicikamak (PCN) to Defer Setting a Pre-hearing Schedule
Comments Regarding the Procedure for Hearing the PCN Motion dated
July 24, 2003**

Thank you for the opportunity to provide further comments regarding the pre-hearing schedule for the CEC hearing relating to Wuskwatim. On behalf of CAC/MSOS, I will also be making brief comments on the proposal by PCN to defer setting a pre-hearing schedule and regarding the procedure for hearing the PCN motion dated July 24th, 2003.

I The Pre-hearing Schedule

At the July 28, 2003 conference, CAC/MSOS presented their views on the inadequacy of the schedule proposed by Hydro and offered an alternative schedule which would enable a thorough but efficient review of the Hydro filing.

CAC/MSOS believe their representations of July 28, 2003 stand on their own merits but they do wish to provide additional comments on a few matters which arose on that date.

In their view, the recommendations which follow assist in the twin goals of providing adequate disclosure while enabling the hearing process to be as efficient and cost effective as possible.

a) The supplemental filing is not a surrogate for a round of interrogatories.

In the course of the Hydro submissions, a suggestion was made that the supplemental file would be, in effect, a surrogate for a round of interrogatories. CAC/MSOS do not accept that proposition.

As the Commission will be aware, given the absence of participant funding at the time of the June 30th deadline for comments on the initial filing, participants such as CAC/MSOS were not in a position to make a material investment in the deficiency process. As a result, the

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scope of the inquiry embarked upon by CAC/MSOS was materially less than it would have undertaken in a funded process. Likewise, the disclosure obtained through the supplementary/deficiency filing is expected to be little more than a pale echo of what one would hope to obtain through interrogatories.

In terms of the interrogatories necessary to provide a foundation for their evidence, CAC/MSOS will essentially be starting afresh following the supplementary filing.

b) A formal procedure for requests for disclosure, further disclosure and clarification should be instituted

As a number of the participants in the pre-hearing conference remarked, the hearing process is a nascent work in progress. An important example of this reality is the proposed filing by Manitoba Hydro of responses to: a) formal information requests through the interrogatory process (formal requests); as well as, b) informal information requests flowing from both the technical conference and the technical meetings which Hydro has held with parties such as CAC/MSOS and others (informal requests).

While Hydro is to be congratulated on the openness it has shown to sharing information with participants through its technical meetings, there can be little doubt that there is likely to be controversy in terms of some of its response to the formal and informal requests. It may well be that Hydro will refuse to answer certain questions or that it will provide answers that are incomplete or confusing. This is especially the case given the absence of a 2nd round of interrogatories which might serve to encourage the proponents to be as complete as possible in their responses in order to discourage a barrage of second round interrogatories.

For these reasons, CAC/MSOS have proposed that the Commission adopt a procedure often used by the Canadian Radio-television and Telecommunications Commission (CRTC) in proceedings where there is only one round of interrogatories. In these cases, the CRTC often makes provision for follow up questions which are restricted to requests for further disclosure. In light of the time constraints under which these hearings are often conducted, tight time limits are set out both for the request for further disclosure and the response.

In the view of CAC/MSOS, the CRTC process offers the Commission the opportunity to enjoy the best of all regulatory worlds. The Commission achieves its objective of regulatory efficiency by having only one full round of interrogatories while the Proponents' incentive to fully answer all relevant and material questions is encouraged by a formal process to compel those answers. At the same time, while participants have only one kick at the cat in terms of interrogatories, they can be assured that the Proponents cannot sidestep regulatory oversight by dodging relevant and material interrogatories.

The process envisioned by CAC/MSOS would work as follows:

- i) If the Proponents choose not to answer or not to fully answer either a formal or informal information request, they should set out their grounds of refusal (i.e. the information is irrelevant, immaterial or commercially sensitive);
- ii) Upon receipt of the Company's responses, participants would have a limited period of time

(3 to 5 working days) to identify any responses which are inadequate or incomplete and to make a request for further disclosure. Such a request should be worded so as to establish the relevance and materiality of the information requested or the basis on which the claim for commercial confidentiality should be rejected;

iii) The Proponents would have a limited period of time (3 to 5 days) to respond either by providing additional information or by identifying why further disclosure should not be required;

iv) The Commission could make its determination based upon the written comments of the Proponents or if it chose, after hearing oral argument.

It is my clients' experience that the tight time frames serve to focus the energies of parties and discourage them from using this process as a back door way to attempt second round interrogatories.

C. Information Requests to Participants

As the Commission is no doubt aware, participants such as CAC/MSOS, TREE, CNF and PCN are proposing to assist the Commission in its deliberations by providing a wealth of expert evidence. Given this reality, CAC/MSOS believe that it is important both for purposes of clarity and for efficiency to make some provision for the posing of information requests to participants.

Experience in other regulatory proceedings has shown that pre-hearing information requests are helpful in understanding the evidence provided by other participants and in making the best use of scarce hearing time. As TREE has pointed out, this may entail an additional cost to participants in terms of pre-hearing expenditures. However, it is also likely to reduce the number of inquiries undertaken during the course of the hearing. Just as importantly, better information through the pre-hearing process is likely to lead to a better debate and to better recommendations by the Commission.

D. Filing in the Public Registry

If CAC/MSOS correctly followed the debate on this issue on Monday (which is not guaranteed), it appears that gaps may arise between the information filed with the Commission and information put on the public registry. Their understanding is that these gaps might arise in cases where participants provided information to the Commission but not to the Public Registry. Based upon Mr. Grewar's comments, it appears that it is up to participants not the Commission to ensure that their material appears in both locations.

While CAC/MSOS recognize that the filing of material on the public registry is not within the Commission's purview, they would certainly be open to the Commission encouraging all parties to file their materials both with the Commission and with the Public Registry. Presumably, this could be achieved by copying the Conservation Branch.

II Proposal by PCN to Defer Setting a Pre-hearing Schedule

On July 28, 2003, PCN argued that the Commission should defer setting a pre-hearing schedule because setting the schedule prior to hearing the PCN motion would suggest the Commission had already pre-determined the outcome of the PCN motion;

Without commenting on the merits of the PCN motion, CAC/MSOS would like to offer brief comments on their view of the legal and practical realities surrounding setting a pre-hearing schedule prior to determining the merits of the PCN motion.

Based upon a brief review of the issue, CAC/MSOS do not agree that setting a pre-hearing schedule prior to determining the merits of the PCN motion would invariably lead to an appearance of bias. In the respectful view of CAC/MSOS, as long as the Commission makes it clear that it is not expressing an opinion on the merits of the PCN motion and that the schedule will change if the PCN motion is accepted, it is open for the Commission to establish a pre-hearing process prior to ruling on the merits of the PCN motion.

Practically speaking, CAC/MSOS would note that provided the PCN motion can be heard and decided and a pre-hearing schedule established prior to August 31, 2003, they do not object to a deferral of the setting of the schedule until after the determination of the merits of the motion. If the Commission does not believe that it possible, CAC/MSOS would recommend a hearing schedule be set with the understanding that it may be amended depending upon the outcome of that process.

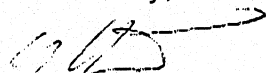
III. Comments Regarding the Procedure for Hearing the PCN Motion dated July 24, 2003

In terms of the PCN motion, CAC/MSOS would recommend that the Commission provide the Proponents and participants who so wish with an opportunity to provide a written brief which would be followed by oral argument.

Due to economic and time constraints, CAC/MSOS are unlikely to be in a position to present both oral and pre-filed written comments. They would hope to review the briefs filed and to offer their advice to the Commission through oral submissions. In terms of scheduling, CAC/MSOS would note that counsel will be working in Toronto from September 1st through September 5, 2003 and in Thompson from September 22 through September 24, 2003.

Thank you for your consideration of these comments.

Yours truly,



Byron Williams

Attorney

Public Interest Law Centre