

June 4, 2015

Client File No. 5750

Ms. Tracey Braun  
Environmental Approvals  
Manitoba Conservation and Water Stewardship  
Suite 160, 123 Main Street  
Winnipeg, MB R3C 1A5

Dear Ms. Braun:

**RE: MMF Comments on Draft Scoping Document for Manitoba- Minnesota  
Transmission Project**

Thank you for your correspondence dated April 13, 2015 regarding the responses to Manitoba Hydro's draft Scoping Document for the Manitoba-Minnesota Transmission Project ("MMTP" or "Project") that were posted to your Public registry on January 8, 2015. The purpose of this letter is to respond to the comments provided by the Manitoba Metis Federation ("MMF"), and more specifically to: (i) respond to the assertions made by the MMF in their correspondence dated February 11 and February 25, 2015 that the draft Scoping Document is insufficient; (ii) clarify the purpose of the Scoping Document and the related regulatory process as it is understood by Manitoba Hydro; and (iii) outline how relevant feedback will be addressed by Manitoba Hydro in the final Scoping Document and the Environmental Impact Statement (EIS). In order to address these issues we have organized this letter into the following topics:

- Draft Scoping Document and Regulatory Process;
- Manitoba Hydro Engagement with the MMF; and
- Other Specific Issues.

*Draft Scoping Document and Regulatory Process*

As indicated in the draft Scoping Document, the Province of Manitoba issued Order in Council No. 00386/2013, under section 58.17 of the *National Energy Board (NEB) Act* designating the Manitoba Minister of Conservation and Water Stewardship as the provincial regulatory agency for the international power line ("IPL") that is to be constructed as part of MMTP. At the federal level, the NEB is responsible for review of the Project pursuant to the *NEB Act* and the *Canadian Environmental Assessment Act (CEAA), 2012*.

As noted in section 1.4, Manitoba Hydro developed the draft Scoping Document to identify

the scope of information and analysis planned for the EIS. It is Manitoba Hydro's understanding that Manitoba Conservation and Water Stewardship ("MCWS") will use the final Scoping Document in developing the guidelines by which it will judge the adequacy of the Environmental Impact Statement (EIS) in accordance with the provisions of *The Environment Act*. Manitoba Hydro intends to produce one environmental assessment document to satisfy both the provincial and federal review processes, and has prepared the draft Scoping Document taking into consideration both the Provincial requirements for a Class 3 Development and associated Provincial guidance for filings (Bulletins), and applicable federal legislation (as detailed below). Contrary to the assertion made in the submission from the MMF, the Scoping Document is not intended to be a comprehensive restatement of the guidance from the province or the NEB. Rather, it serves to outline the overall contents of the EIS that will be filed for public, Aboriginal and regulatory review. As indicated in the draft Scoping Document, Manitoba Hydro has committed to following the relevant requirements in *The Environment Act*, the *NEB Act*, and the *CEAA 2012*.

Manitoba Hydro is concerned that many of MMF's comments dated February 25 are based on a mistaken understanding of the NEB requirements for a proposed International Power Line (IPL). Manitoba Hydro's responses to these comments are detailed below.

1. **Applicability of NEB Electricity Filing Manual:** Section 1.1 of the NEB Electricity Filing Manual ("Manual") provides assistance to applicants regarding the filing requirements for authorizations related to IPLs exceeding 50 kV when an applicant has made an election to have certain provisions of the *NEB Act* govern the IPL, rather than provincial law ("election certificates"). Since Manitoba Hydro has not made such an election under section 58.23 of the *NEB Act* for MMTP, the contents of the Manual are not NEB "requirements", as described by MMF, for Manitoba Hydro's NEB application. Section 5 of the NEB Electricity Regulations sets forth the requirements for the IPL application that will be filed. Nevertheless, Manitoba Hydro has chosen to use the Manual as supplementary guidance for the environmental and socio-economic assessment portion of its application (in accordance with Section 2.3 of the Manual) as indicated in the draft Scoping Document.
2. **Scope of NEB Electricity Filing Manual:** The MMF's comments indicate an inaccurate understanding of the scope of the Manual. The NEB Manual sets out the requirements for the content of an application that must be filed with NEB to construct and operate an IPL under an election certificate process, not the contents of a scoping document. There are many NEB requirements that must be included in an application, but such requirements need not all be addressed in a scoping document. Neither the *NEB Act* nor the NEB Electricity Regulations require a scoping document to be filed with NEB. However, an environmental and socio-economic assessment is one component of an application for a proposed IPL.
3. In response to the detailed comments provided in MMF's chart attached to its correspondence, Manitoba Hydro has the following comments.

**ID#2** No Project Description has been filed to date with the NEB for MMTP as the *NEB Act* and regulations do not require the filing of a Project Description prior to the filing of an application for authorization. Manitoba Hydro's NEB application that is intended to be filed later this year will contain a detailed project description. Furthermore, the draft Scoping Document that has been

posted for public comment already contains a fairly detailed project description in Section 3.3. Manitoba Hydro wishes to clarify that there is no requirement under the *NEB Act* or regulations to conduct consultations prior to developing a Project Description.

- ID#3** The draft Scoping Document is not being used by Manitoba Hydro as a “substitute for an NEB specific Project Description”. A project description conforming to the requirements of the NEB Electricity Regulations, and using the Manual as guidance, will be contained in Manitoba Hydro’s application to NEB. Nevertheless, the project description contained in the draft Scoping Document fulfills most of these requirements based on the design details available at the time of filing.
- ID#4** As indicated earlier, the NEB Electricity Filing Manual may be used as guidance for applications where an election has not been made, but is not required. Furthermore, only specific sections of the Manual would apply to a scoping document.
- ID#5** Contrary to MMF’s assertion, Manitoba’s designation of a provincial regulatory agency does make some provisions of the *NEB Act* inapplicable to this Project. It is not clear which “NEB requirements” the MMF is referencing.
- ID#6** Contrary to the MMFs assertion, SOR/97-130 is not “outdated”. These regulations are currently in effect and have not yet been amended by Canada to include references to CEAA, 2012.
- ID#7** NEB Permit EP-196 is not an incorrect reference, nor did it become “outdated as of 2012”. There is no legal basis for this statement.
- ID#8** Section 22 of *CEAA, 2012* only requires that a responsible authority, such as the NEB, must ensure that an environmental assessment of the project is conducted, not that it be conducted separately from a provincial assessment. Moreover, the NEB has a statutory duty pursuant to Section 58.14(2) of the *NEB Act* to seek to avoid the duplication of measures taken by an applicant and a provincial government when assessing an IPL application. It is also to be noted that a draft scoping document is not an “environmental assessment” as defined by CEAA, 2012. The scoping document merely proposes the scope of the assessment that will be conducted.
- ID#9** Manitoba Hydro intends to include a Project Description in its application to the NEB as required by *NEB Act* regulations. As indicated earlier, the draft Scoping Document already contains a detailed project description in Section 3.3.
- ID#11** Manitoba Hydro is not “project splitting”. The referenced modifications will all be included in the EIS as evidenced by their inclusion in the scope of the Project.

## *Manitoba Hydro Engagement with the MMF*

The MMF presents, in Appendix A of their letter dated February 25, a “Preliminary List of Metis Value Components for MMTP Environmental Assessment”. Manitoba Hydro is appreciative of this input, and will be continuing to discuss these matters with the MMF

The MMF alleges that it was not consulted during the NFAT review of Manitoba Hydro’s Preferred Development Plan. The MMF participated as an intervener in that NFAT review.

The various MMF correspondences contain criticism of the consultation process to date. Crown consultation is the responsibility of the Province of Manitoba and no aspects of this duty to consult have been delegated to Manitoba Hydro. However, Manitoba Hydro does have responsibility for engagement on this project as it pertains to First Nations and Metis peoples under provincial and federal legislation. The Corporation’s first attempt to engage the MMF on the Project was in August 2013, well in advance of defining a route for the Project. Manitoba Hydro continues to work towards the development of an MMF Traditional Land Use Knowledge Study (TLUKS), but notes that timelines for the Project are progressing and this input, based on discussions with the MMF, will be incorporated at whatever stage it is received. The following paragraphs describe the ongoing engagement efforts with the MMF. (Please see Appendix A for a more detailed list of activities).

### Pre-Engagement

- Manitoba Hydro began its efforts to engage the MMF in the Pre-Engagement Round in August 2013 by sending a letter informing them of the Project and requesting a meeting to share information, answer any questions and identify the best way to engage with the MMF for the Project. The MMF responded by letter on August 19, 2013 indicating they would be pleased to entertain discussions about the Project in the near future. Manitoba Hydro followed up by letter and email on August 29, 2013 proposing potential dates for the meeting. In late 2013 and 2014, Manitoba Hydro and the MMF continued to correspond and meet about the St. Vital Transmission Complex and Pointe Du Bois Transmission Projects. On September 26, 2013, the MMF sent an email indicating that they would like to hold a meeting specific to the Pointe Du Bois Transmission Project and St. Vital Transmission Complex on October 2, 2013 and that after that meeting they would be able to further schedule a meeting to discuss MMTP. On October 10, 2013, the MMF sent an email indicating that November 6, 2013 was the first available date for the MMF to discuss MMTP.

### Round 1:

- On October 31, 2013, Manitoba Hydro sent a letter describing the alternative route and border crossing determination process and indicating that Manitoba Hydro was looking forward to meeting with the MMF to discuss the Project further. Manitoba Hydro initially met with the MMF on November 8, 2013 to discuss its engagement in the Project including conducting a Traditional Land Use and Knowledge Study. During the meeting, Manitoba Hydro provided a presentation that described the route selection process for the Project. On December 4, 2013, Manitoba Hydro sent an email to the MMF indicating that they would like to work with the MMF to develop an engagement plan for the Manitoba-Minnesota Transmission Project. On December 5, 2013, Manitoba Hydro sent a follow-up letter indicating that an initial selection of alternative routes and Canada/US border crossing for the Project was anticipated as

early as the end of January 2014 and requested input into the route selection process before this date. The letter requested a meeting with the MMF at its convenience to discuss how Manitoba Hydro could incorporate the MMF's input and comments into the Project and discuss the development of an engagement plan for the MMF for the Project. On December 20, 2013, the MMF sent an email indicating that they would be pleased to meet to discuss the MMF's engagement in the Project. A meeting was set up for January 13, 2014.

- During the January 13, 2014 meeting, the MMF indicated that they would be willing to develop a work plan for MMTP; however, there are concerns that Manitoba Hydro and the MMF have not yet moved forward on work plans associated with other transmission projects including the Pointe Du Bois Transmission Project and the St. Vital Transmission Complex. The MMF indicated that it would be willing to develop a work plan for MMTP and indicated an interest in combining Traditional Land Use and Knowledge Study (TLUKS) studies for the St. Vital Transmission Complex and MMTP. Manitoba Hydro followed-up after the meeting to clarify that it wanted to keep the two studies separate. On February 28, 2014, Manitoba Hydro sent a letter indicating that after careful consideration, it would prefer to have separate proposals because of the different regulatory timelines and scope for these projects.

#### Round 2:

- On April 1, 2014, Manitoba Hydro sent a letter indicating that a preferred border crossing area had been determined and that alternative routes had been refined. It included a map and list of open houses and suggested a meeting to obtain preliminary feedback. The letter indicated that while Manitoba Hydro and the MMF continue discussions regarding the MMF conducting a self-directed Traditional Land Use and Knowledge Study, Manitoba Hydro would also like to meet with the MMF and obtain the MMF's preliminary commentary on the Project. On April 8, 2014, the MMF sent a letter to Manitoba Hydro in response to Manitoba Hydro's April 1, 2014 letter. The letter expressed concerns about engagement to date and indicated that the MMF would welcome another opportunity to discuss a work plan and budget. Manitoba Hydro sent emails and/or phoned in May, June, August, October and November 2014 to follow-up on the status of the TLUKS proposal. On May 5, 2014, the MMF confirmed by phone that Manitoba Hydro should receive a work plan and budget for the Project by May 16, 2014. On May 30, 2014, Manitoba Hydro left a message asking when they would receive the work plan and budget for MMTP. On June 27, 2014, Manitoba Hydro called again to see when the MMF would be submitting a work plan and budget for the Project. During the call, the MMF indicated that they would send the work plan soon. On August 7, 2014, Manitoba Hydro followed up by email asking when they could anticipate a work plan and budget for the Project. Manitoba Hydro did not receive a response to this email. Further discussions were held with regard to the MMF's interest in undertaking a TLUKS for the Project. In October 2014, the MMF indicated that it anticipated providing Manitoba Hydro with a proposal (including work plan and budget) by November 7. This proposal was received on December 18, 2014. After reviewing the work plan, Manitoba Hydro responded on January 30 2015 requesting clarification on a number of items.

#### Round 3:

- On January 16, 2015, Manitoba Hydro sent a letter to the MMF outlining the aims of Round 3 Engagement and a description of the final proposed route. The MMF proposals provided on December 18, 2014 were subsequently withdrawn by the MMF in March 2015. The most recent proposals were received April 1, 2015.
- On April 30, 2015 MH staff met with the MMF and legal counsel to discuss the most recent proposals. These discussions are ongoing.

The MMF notes that “the Scope of the Assessment section does not state that it will address Aboriginal, or more specifically Métis rights ...” Section 4.0 of the draft Scoping Document, entitled “Scope of the Assessment” specifies that the scope of the assessment includes “potential effects of the Project on First Nation and Métis and traditional land uses;”.

#### *Other Specific Issues*

There are a number of other specific issues raised by the MMF that can be readily addressed. The MMF notes that it is unclear whether the converter stations are part of the scope. Their inclusion as part of the Project is described in several locations in the draft Scoping Document, including Section 1.2 (Project Overview). The MMF asserts that the Environmental Protection Plan (EnvPP) is “an inappropriate vehicle to outline a follow-up and monitoring approach. . .” as it does not have to be approved until Project approval is in place. As per direction from MCWS, Manitoba Hydro will be filing a biophysical monitoring plan, access management plan and an EnvPP as part of the EIS. Finally, the MMF notes that there is a lack of detail on the scope of the cumulative effects assessment and various descriptions of baseline conditions necessary for Metis use of the area. These details are not typically included in scoping documents or EIS guidelines and will be determined during the development of the EIS. The MMF will have an opportunity to review and provide comments on the EIS once it is submitted.

Should you have any questions or require further clarification of our comments please do not hesitate to contact me at 204-360-4394.

Regards,

***Original signed by Shannon Johnson***

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