



## Sustainable Development

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May 30, 2018

Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8

Dear Ms. Young:

**Re: Manitoba Hydro – Manitoba-Minnesota Transmission Project**  
**File OF-Fac-IPL-M180-2015-01 02**  
**Hearing Order EH-001-2017**  
**Manitoba Sustainable Development – Letter of Comment**

On December 21, 2017, the National Energy Board (“Board”) issued the Hearing Order. In that order and subsequent communications, the Board has indicated that it would seek to avoid duplication of measures taken in respect of the Manitoba-Minnesota Transmission Project (“Project”) by the province of Manitoba.

With this letter, Manitoba is providing information on the provincial processes and results or status of those processes to assist the Board in avoiding duplication. Manitoba will not be advancing any positions before the Board, as Manitoba is a decision maker pursuant to the National Energy Board Act (NEB Act). If the Board has any questions about the provincial processes, Manitoba would be pleased to provide such explanation as may be necessary to assist the Board in its deliberations.

*a) Manitoba as the “provincial regulatory agency” (NEB Act, s. 58.17 to 58.22)*

On November 6, 2013, the Lieutenant Governor in Council of the Government of Manitoba exercised its authority under section 58.17 of the National Energy Board Act and passed Order in Council 00386/2013 (Appendix 1), designating the then Minister of Conservation and Water Stewardship (now Sustainable Development) as the “provincial regulatory agency” for this project.

Manitoba understands its role and application of its provincial laws pursuant to the NEB Act with respect to the Project to be:

- Based on s. 58.21 of the NEB Act, the Minister of Sustainable Development as the “provincial regulatory agency” has the “powers and duties that it has under the laws of the province” including “a power or duty to refuse or approve any matter or thing for which the approval of the agency is required”.
- Based on s. 58.22 of the NEB Act the doctrine of federal paramountcy applies.
- Based on s. 58.2 and s. 58.18 of the NEB Act, since there is a “designated provincial agency”, the laws in force in the province apply in respect of those portions of international power lines that are within the province.
- Based on section 58.19(c) of the NEB Act a “law of a province” includes the law in relation to assessment of the project’s “impact on the environment”.
- In Manitoba, the relevant statutory provincial law for environmental review, assessment and licensing is The Environment Act.
- Manitoba also has a duty to consult and, where warranted, accommodate before the Minister of Sustainable Development may make a decision with respect to the Project.

Manitoba’s environmental review and licensing process is established under The Environment Act and is a statutory process.

Manitoba’s Crown-Aboriginal consultation process is established in accordance with the legal principles established and refined by the courts.

*b) Manitoba’s statutory environmental review and licensing process and its results*

The Minister of Sustainable Development as the “provincial regulatory agency” is required to make a decision under section 12(7) of provincial Environment Act whether to issue a Class 3 development licence for this project or refuse to issue such a licence.

To make this licensing decision, the environmental assessment and review process pursuant to The Environment Act applies. The Flowchart: Environmental Assessment and Licensing Process (Appendix 2) provides a visual presentation of the statutory process in Manitoba.

For this project, the statutory environmental assessment and licensing process resulted in two reports:

- The Environmental Approvals Branch Summary of Comments/Recommendations, October 19, 2016 (Appendix 3)
- Manitoba Clean Environment Commission Report on Public Hearing, Manitoba-Minnesota Transmission Project, September 2017 (NEB Filing A86779-1)

Both of these reports are in relation to the environmental review and assessment of the project pursuant to The Environment Act. These reports are not in relation to the Crown's duty to consult and accommodate.

*c) Manitoba's Crown-Aboriginal Consultation process and its status*

In addition to Environment Act licensing decision, the Minister of Sustainable Development also has an easement decision<sup>1</sup> to make under section 17(1)(e) of The Crown Lands Act.

In Manitoba, The Environment Act or other potentially applicable provincial legislation is silent on the Crown's duty to consult and accommodate because that duty exists as a superintending constitutional obligation in addition to any provincial regulatory requirements.

While Manitoba considers relevant information learned through other processes, including through the statutory environmental assessment process, Manitoba does not rely merely on the environmental assessment process to fulfill its constitutional duty.

Instead, Manitoba has developed a comprehensive Crown consultation process that is separate and distinct from the environmental assessment process. Manitoba's Crown consultation process has been established in accordance with the legal principles pronounced by the Supreme Court of Canada and is reflected in the *Interim Provincial Policy for Crown Consultations with First Nations, Métis Communities and Other Aboriginal Communities* (Appendix 4). Manitoba's staff have internal to government guidelines and may work with legal counsel from Manitoba Justice to ensure that the implementation of the Crown's duty in relation to a particular decision is in accordance with those legal principles, as refined over time.

Manitoba has designed its Crown consultation process so as to directly consult with indigenous communities whose existing or asserted aboriginal or treaty rights might be affected by the Crown's proposed decisions or actions. Manitoba does this by providing all relevant information directly to the potentially affected communities. Depending on the scope of consultation, Manitoba either conducts consultations through face-to-face meetings or in written format to hear, discuss and understand communities' concerns. Manitoba's decision maker then considers all of the concerns and addresses them where reasonable. After the decision is made, Manitoba informs the communities about the decision and whether and how the communities' concerns were addressed.

For this project, in accordance with Manitoba's consultation policy and internal guidelines, a multi-departmental Steering Committee was established, including legal counsel from Manitoba Justice, to implement the Crown's duty. This committee is still in the process of implementing Manitoba's duty, and in time will provide a final report on the results of the Crown consultation process to the Minister of Sustainable Development.

Manitoba intends to share a similar report with Natural Resource Canada, Major Projects Management Office, as had been discussed early in the consultation process with that office.

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<sup>1</sup> The proposed transmission line is approximately 213 km in length (158 km / 74% private land and 55 km /26% Crown land). Manitoba Hydro already has existing easements on approximately 92 km of the proposed route, including on 19 km of Crown administered land. Manitoba Hydro requires additional easements across approximately 36 km Crown land, which easement may vary in width ranging between 80 to 100 meters and cover both occupied (6 km), unoccupied, and designated Crown land.

The Steering Committee reasonably anticipates completion of its final report in early September 2018 or earlier. The committee is waiting for the completion of the consultation plan with the Manitoba Metis Federation, which is reasonably anticipated to be completed by the end of August 2018 or earlier. By that date, Manitoba should have any other information that the Manitoba Metis Federation has not yet shared through any other processes. Manitoba already has and will consider the information provided through Manitoba's statutory environmental assessment process including the information provided to the Clean Environment Commission.

Once the Steering Committee has prepared and submitted its final report to the Minister, the Minister is required by law and policy to consider that report in addition to the two reports that came out of Manitoba's statutory environmental review and assessment process.

After the Minister has made a decision, the Steering Committee will inform each community about the decision and whether and how their concerns were addressed. Manitoba uses all tools available to it to address concerns where appropriate. Some concerns might be addressed through licence conditions; others might be responded with reasons.

It is Manitoba's practice, and the communities' common expectation from Manitoba, that Manitoba treats the information gathered from the communities as confidential. For this reason, Manitoba has prepared a report to the Board on the status of Manitoba's Crown consultation process in a general way (Appendix 5).

Later this week or early next week, Manitoba's Steering Committee will be sharing a more detailed record of communication directly with each community.

*d) Manitoba's decisions – pending*

Manitoba has not made any decisions as it has not yet completed its Crown consultation process.

The Environmental Approvals Branch has prepared a draft licence with terms and conditions (Appendix 6) based on the results of the statutory environmental review and licensing process. Results of the Crown consultation process are not reflected in the licence as that process has yet to be completed.

The draft licence reflects in yellow highlights conditions that the Clean Environment Commission had recommended. The draft licence does not reflect Clean Environment Commission licensing recommendation 9.4, which stated:

*"Manitoba Hydro offer to residents to plant shrubs or trees in order to screen the view of the project from residences in close proximity to the ROW."*

This recommendation was not included as a licence condition as it would not be logically possible to screen the view of the transmission line from the view of residences along the 213 km of its length and given the 50-60 m height of the towers. Manitoba Hydro's attempts to avoid impacts to residents during the routing process, as described in the Environmental Impact Statement, and the commitment they made during the public hearings to make efforts to reduce visual impacts to residences when determining the tower locations, are considered sufficient.

Manitoba hopes that this letter and the package of information will assist the Board in understanding Manitoba's processes and their results or status. If the Board requires any further clarifications, Manitoba would be pleased to assist as necessary.

Yours sincerely,



Tracey Braun  
Director

Att.

cc: Ms. K. Jennifer Moroz and Ms. Janet Mayor, Manitoba Hydro Law Division  
Public Registries