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**DELIVERED**

March 2, 2007

File No. 40498/1

Manitoba Justice  
Civil Legal Services SOA  
730 - 405 Broadway  
Winnipeg, MB R3C 3L6

**Attention: Sean Boyd, Crown Counsel**

Dear Sirs:

**Re: Wuskwatim (Generating Station) - Appeal to Cabinet by Trapline 18**

Enclosed please find the text of our reply submission respecting the above appeal. In conjunction with the original submission and this reply submission, we formally request a hearing of this appeal by Cabinet as follows:

1. up to one hour to present the essence of the submission and reply in an efficient and effective way;
2. the essence of the submission and reply presented will include the following aspects:
  - the Hydro/Cook memo about the "underground river" would be pointed out and highlighted;
  - NTS map 1971 relied on in the Hydro/Cook memo will be displayed;
  - Hydro video surveillance sample photo showing drought conditions will be displayed;
  - Trapline 18 video surveillance photo during normal Notigi release conditions will be displayed as a comparative to Hydro video photo in drought conditions;
  - highlights of Foster opinion done for Trapline 18 showing plausibility of Trapline 18 concept of north/south water flows;
  - Google Earth demonstration on a screen illustrating universal availability of elevation data in the Notigi affected areas; and

- Cizek satellite images and interpretations highlighted to illustrate the importance and value of engaging independent expertise to graphically demonstrate the dramatically changed water flow situations in the Notigi release affected areas.

All of the computer equipment and screen, etc. necessary to make this presentation could be set up before the hearing takes place to ensure it is functioning properly and that there are no delays or technical glitches in the one hour time period. The intent would be to complete the presentation within 45 minutes and then to invite questions or comments and failing that, to permit an oral closing argument by legal counsel for Trapline 18.

We understand that this is the first Cabinet appeal to ever be conducted in Manitoba pursuant to the *Environment Act*. We submit that it is important to create a precedent for which all governments in the future will be accountable for not following. A high standard of process now will set that example. Whichever government makes the decision pursuant to the process will be accountable for the decision in a substantive way. Reasons for the decision or the authentic reasons for decision may never be disclosed. However, the decision will be disclosed as soon as it is made. What is important in addition to this, is to have a standard of process which is perceived by all interested participants, direct and indirect, as being fair and reasonable. We respectfully submit that having written submissions on an agenda behind closed doors with no knowledge as to whether the content was ever read or treated seriously, is an unacceptably low standard. It is respectfully submitted that an acceptable standard to Trapline 18 will be to have the above requested due process opportunity.

Yours truly,

**PITBLADO LLP**

per:

**David G. Newman, Q.C.**  
DGN/ep

Encl.