



Justice

Civil Legal Services SOA
Room 730 Woodsworth Building
405 Broadway
Winnipeg MB R3C 3L6

In reply, please refer to:

Sean Boyd
Crown Counsel

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File No: EN0100(27)

November 17, 2006

COPY

Manitoba Hydro
820 Taylor Avenue
Winnipeg MB R3M 3T1

Attention: Douglas Bedford

Dear Sir:

Re: Wuskwatim (Generating Station) – Appeal to Cabinet

I am writing in response to our telephone conversation of November 16, 2006. You asked about letters our office sent the Appellants on October 24, 2006 concerning their inquiries about the procedures for this appeal. Following is a summary of the information we gave the Appellants in response to their questions (in no particular order):

- What are the procedures for this appeal and what were the procedures for past Class III appeals?

We advised that the procedures were generally outlined in a letter of September 29, 2006 and are essentially the same as those followed for the Red River Floodway Appeal, the most recent Class III license appeal under *The Environment Act*.

- What are the timelines for this appeal? How long will the entire procedure take?

We advised that, as described in a letter of October 6, 2006, we are asking the parties to provide their submissions within set periods of time. Appellants will be advised of the timelines for the Licensee to provide a response after we have received the Appellants' submissions.

Once we have received the response from the licensee it will be provided to the Appellants and they will be given you an opportunity to reply to anything new and relevant raised by the licensee (likely given 10 to 15 days to do so). When this process is complete the appeal will be scheduled to be heard at a meeting of Cabinet. At this point, we cannot anticipate Cabinet's schedule and cannot give a clear indication of when the appeal will be heard. Our expectation is that this could be done within a month or so after all submissions are received, subject to the intervention of particular circumstances (for example an election being called).

- Who else will be included in the process besides the Appellants and the Licensee?

We advised that the Licensee is the only respondent; only it and the two Appellants will be involved in this appeal.

- What ministers are being excluded from the hearing of this appeal?

We advised that certain ministers will not participate in hearing and deciding the appeal. Most notably the Minister of Conservation and the Minister responsible for Hydro will not participate. We also understand that there are a number of ministers who have a conflict due to personal relationships with persons involved in the project. We can advise which ministers are not participating in advance of the hearing, if you wish.

- What funding is available to Appellants?

We advised that there has not typically been funding for these types of appeals and to my knowledge there are no plans to provide funding to any parties to this appeal.

- Will there be an oral hearing?

We advised that the appeal will be a written hearing only. This is typical of these types of appeals and follows the practice in the Red River Floodway appeal.

- What is the administrative law basis for the "Appeal Book"?

We advised that the "Appeal Book" is simply a collection of documents relevant to the Minister's licensing decision and includes the two appeal letters. Its role is somewhat analogous to a "record" in regular administrative proceedings. It is designed to bring together some of the information that Cabinet will be considering on this appeal, though the parties are certainly entitled to provide any additional material they feel is relevant in addition to their submissions.

- Are the materials for the appeal publicly available?

We advised that the material and documentation provided by the parties that comprise the Appeal Book, other than the two individual letters of appeal, is available on the Department of Conservation website.

- Is the appeal hearing open to the public?

We advised that Cabinet will consider this appeal at one of its regular cabinet meetings which will not be open to the public.

- Has a stay of the license been granted?

We advised that to our knowledge no stay of the license has been granted. Under section 30 of *The Environment Act*, it appears that any request of this nature should be directed to the Minister of Conservation.

Please confirm the service list for the appeal.

Documents relating to this appeal will be sent to:

- 1) Manitoba Wildlands
1000 -191 Lombard Avenue
Winnipeg MB R3B 0X1
- 2) Mr. McIvor at:
525 – 555 St. Mary's Avenue
Winnipeg MB R3C 3X4
- 3) Wuskwatim Power Limited Partnership
c/o Manitoba Hydro
Attn: Ms. Joy Kovnats
Manager, Future Generation Impact Analysis & Monitoring
820 Taylor Avenue (4)
Winnipeg MB R3M 3T1

With copies to:

Doug Bedford (Hydro)
Sherly Rosenberg (Thompson Dorfman Sweatman LLP)
Elliott Leven (Cherniack Smith LLP)

I have also copied the two Appellants with this letter and would like to take this opportunity to advise all parties that we intend to share future correspondence we receive concerning the appeal with all parties, unless there is a specific reason to do otherwise.

Yours truly,

ORIGINAL SIGNED BY
Sean D. Boyd

Sean Boyd
Crown Counsel

SDB/tlv

cc. Don Cook, Department of Conservation
Sheryl Rosenberg, Thompson Dorfman Sweatman LLP
Elliott Leven/Valerie Matthews Lemieux, Cherniack Smith LLP
Joy Kovnats, Wuskwatim Power Limited Partnership
Gaile Whelan Enns, Manitoba Wildlands
Greg McIvor, Trap Line 18