

CLEAN ENVIRONMENT COMMISSION

IN THE MATTER OF:

SECTION 12(1) OF *THE ENVIRONMENT ACT*, C.C.S.M. c. E125

– and –

**MANITOBA HYDRO'S APPLICATION FOR A LICENCE FOR A PROPOSED
CLASS 3 DEVELOPMENT KNOWN AS THE
MANITOBA-MINNESOTA TRANSMISSION PROJECT**

**OUTLINE OF CLOSING SUBMISSIONS OF
THE SOUTHEAST STAKEHOLDERS COALITION**

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PART I
LIST OF DOCUMENTS TO BE RELIED ON

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PART III
OVERVIEW

1. Manitoba Hydro seeks a licence pursuant to section 12 of the *Environment Act* for the proposed Class 3 development known as the Manitoba-Minnesota Transmission Project (the “MMTP”). The Minister of Sustainable Development (the “Minister”) has asked the Clean Environment Commission (the “Commission”) to hold public hearings and provide recommendations to her.
2. The Southeast Stakeholders Coalition (the “Coalition”) is a group of residents of Southeastern Manitoba directed affected by or otherwise concerned about Manitoba Hydro’s proposed final preferred route for the MMTP (the “FPR”).
3. During the course of the Commission’s hearings into the MMTP, it has become clear that:
 - (a) Manitoba Hydro used a flawed routing methodology to select the FPR;
 - (b) Manitoba Hydro failed to properly apply the flawed routing methodology when selecting the FPR, including but not limited to Manitoba Hydro’s discounting of the concerns of private landowners and failing to properly incorporate First Nations and Metis concerns when selecting the FPR;
 - (c) the flawed routing methodology and its application resulted in the selection of an inappropriate FPR based on a route that had been repeatedly eliminated as being unsuitable due to poor scores;
 - (d) a more appropriate route alternative that more appropriately balances the concerns of private landowners, First Nations and Metis is available but requires additional study and engagement; and
 - (e) the commencement of surveying, home purchases and the payment of large sums of money to landowners for easements for a project it has no right to construct on those lands illustrate Manitoba Hydro’s profound disrespect for the Commission and the process mandated by the Minister.

4. The Coalition therefore respectfully submits that the Commission should:
 - (a) decline to recommend that the Minister issue the licence requested by Manitoba Hydro until such time as:
 - (i) Manitoba Hydro has developed a more appropriate alternative route for the MMTP;
 - (ii) such route has been recommended to the Minister by the Commission following further public hearings;
 - (b) alternatively, recommend that the Minister:
 - (i) issue preliminary and/or staged licences pursuant to section 13 of the *Environment Act* for the non-contentious aspects of the FPR (Dorsey to Anola and south of the Watson P. Davidson Wildlife Management Area to the Piney border crossing);
 - (ii) decline to issue a license for the remainder of the MMTP until such time as Manitoba Hydro has developed a more appropriate alternative route for the MMTP, and such route has been recommended by the Commission following further public hearings; and
 - (c) In the (further) alternative, make a number of licensing and non-licensing recommendations to the Minister for the purposes of mitigating the adverse consequences of the MMTP on Southeastern Manitoba and to avoid the damage to be caused to Manitobans if future Manitoba Hydro transmission projects use the same flawed routing methodology.

PART IV
LIST OF POINTS TO BE ARGUED

5. The points to be argued in this matter are:
- (a) an overview of the flaws in Manitoba Hydro's routing methodology;
 - (b) an overview of the flaws in Manitoba Hydro's application of the flawed routing methodology;
 - (c) an overview of the flaws in the FPR;
 - (d) an overview of the more appropriate alternative route; and
 - (e) the Commission recommendations that the Coalition suggests be made to the Minister.

PART V
ARGUMENT¹

(a) Flawed Routing Methodology

6. Manitoba Hydro began assessing and ultimately selected the EPRI-GTC routing methodology prior to the Commission's Bipole III Report.² The EPRI-GTC routing methodology violates the recommendations made by the Commission in that report and is vulnerable to the same criticisms levelled against the process followed to select the route for Bipole III.

7. One such criticism was false precision. As stated by Bob Berrien in his report:

The process of evaluating routing factors, by assigning weights and percentages to multiple criteria will generate "results" in the form of a mathematical score. With the E-G model, the lowest score, or least cost, is said to represent the lowest impact. But a review of that scoring and weighting process shows that there could be wildly different results

¹ All references to Information Requests (IRs) that follow are to Manitoba Hydro's response to those IRs.

² SSC-IR-009 and SSC-IR-011 [TAB 1]. The Bipole III Report was sent to the Minister of June 18, 2013.

depending upon the myriad of basically subjective, and unrelated series of sequential decisions made during the process that generated those inputs.

The E-G process has, in my view, the inherent flaw of false precision. The models may yield accurate mathematical results, but if, for example, the weighting for costs, as assigned by MH senior management in the Preference Determination step, was 25%, rather than the 40% that they chose independent of any stakeholder input, the results of each route score would be totally different. The foregoing problem of false precision may be found in yet another component of the E-G model.³

8. Berrien also identifies the importance of avoiding methodologies that involve false precision: “A method that has false precision is subject to manipulation, review. It’s weak, it’s not going to provide you with the best outcome.”⁴

9. The Usain Bolt and Andre De Grasse analogy presented during the Coalition’s opening statement and Berrien’s analysis of the minimal differences between Routes BMX, BMY and BOB illustrates how the EPRI-GTC methodology magnifies and ultimately distorts minor differences between virtually indistinguishable routes.⁵

10. The EPRI-GTC methodology results in potentially viable routes being eliminated unnecessarily. For example, Manitoba Hydro’s unprecedented and unnecessary use of the methodology to select the border crossing resulted in several potentially viable route alternatives being lost.⁶

11. The EPRI-GTC methodology allows important criteria to be overwhelmed and diluted. One stage of the application of this routing methodology involved 132 separate factors.⁷ During his testimony, Berrien stated:

... you’ve got 3 and a half percent of the decision making accorded to the most important criteria across Canada. That’s effectively meaningless, Mr. Chairman, it’s effectively meaningless. In my view, that is an exceedingly important factor in deciding the reliability of this methodology. ... The result of that is that the process that ignores those landowner views and the Canada-wide views lacks credibility. And I don’t think the

³ Berrien Report, pp. 32 – 33; May 31 Transcript, p. 3321 – 3327.

⁴ May 31 Transcript, p. 3327.

⁵ May 8 Transcript, pp. 68 – 69; Berrien Report, pp. 35 – 37; May 31 Transcript, pp. 3331 - 3336

⁶ May 10, 2017 Transcript, p. 675; Berrien Report, p. 39; May 31 Transcript, p. 3341

⁷ Berrien Report, p. 40; May 31 Transcript, pp. 3347 - 3349

board can put a lot of judgment and a lot of faith in a route that flow from that kind of methodology. ...⁸

12. Virtually all of the routes generated by the EPRI-GTC are nonsensical or, in the words of James Matthewson, “not all of the routes are logical”.⁹ Mr. Glasgow went further and admitted that “virtually all of those 750,000 routes that were generated were similarly garbage routes”.¹⁰

13. The EPRI-GTC methodology also suffers from the vice of subjectivity and ease of manipulation.¹¹ The repeated elimination of an unsuitable route known as SIL and its repeated revival as if it was a movie zombie that won’t stay dead is discussed in more detail below.

(b) Flawed Application

14. The primary flaws of Manitoba Hydro’s application of the flawed routing methodology are:

- (a) Failure to adjust the methodology for Southeastern Manitoba;
- (b) Manitoba Hydro’s reliance on four engineers to select the criteria and weightings of those criteria in the Preference Determination Model;
- (c) Discounting of landowner concerns;
- (d) Double counting some types of pre-licensing delay while excluding post-licensing delay; and
- (e) Failure to properly incorporate First Nations and Metis concerns.

⁸ May 31 Transcript, pp. 3348 – 3349

⁹ May 10 Transcript, p. 519.

¹⁰ May 10 Transcript, p. 709 – 710.

¹¹ Berrien Report, p. 37 and 40

Failure to Adjust for Southeastern Manitoba

15. Manitoba Hydro relied on a routing consultant with no prior experience in Manitoba¹² and uncritically adopted the EPRI-GTC methodology. Available steps to modify it for Southeastern Manitoba were not taken. In addition to the criticisms outlined below, Manitoba Hydro could and should have modified the 1/3, 1/3, 1/3 perspective approach (as was done in Kentucky).¹³

The Four Engineers

16. The individuals at Manitoba Hydro involved in selecting the criteria and the weighting of those criteria for use in the Preference Determination model were neither diverse nor multidisciplinary. Instead:

- (a) Each of them was an engineer;
- (b) Two of the engineers had civil engineering backgrounds, while the other two had electrical engineering backgrounds;
- (c) Each of them had spent their entire career at Manitoba Hydro; and
- (d) None of them sought input from others within Manitoba Hydro in the course of selecting the criteria and the weighting of those criteria.¹⁴

17. The Preference Determination model involved five criteria. Three of those criteria can properly be characterized as “engineering” criteria: Cost (40%), System Reliability (10%) and Schedule Risks (5%). The total weighting attributed to those three engineering criteria is 55%.¹⁵ The Engineering Environment Corridor on Map 5-9 vividly illustrates how strongly preferring engineering criteria ultimately results in the FPR being selected.¹⁶

¹² SSC-IR-265 [TAB 2].

¹³ Berrien Report, p. 33.

¹⁴ May 8 Transcript, pp. 148 – 152; SSC-IR-112 and SSC-IR-113 [TAB 3]

¹⁵ EIS, Table 5-9 and Appendix 5A.5 [TAB 4].

¹⁶ May 10, 2017 Transcript, pp. 680 – 681.

Discounting Landowner Concerns

18. Manitoba Hydro's disregard for the concerns of landowners was proudly displayed by Manitoba Hydro during the lengthy flyover video played at the very outset of this hearing. The majestic music playing in the background cannot disguise that Manitoba Hydro left out virtually every single residence along the FPR. Manitoba Hydro's disabling of the public comment section for this video on Youtube speaks volumes.¹⁷

19. Manitoba Hydro's response to SSC-IR-076 is a key example of how Manitoba Hydro discounted landowner concerns throughout the routing process.¹⁸ Manitoba Hydro slashed the importance of the Relocated Residences, Potential Relocated Residences and Proximity to Residences criteria.

20. As pointed out by Berrien in his report, Manitoba Hydro's discounting of landowner concerns resulted in homesite avoidance routing criteria receiving a weighting of 3.5% in the alternative route evaluation model.¹⁹ Berrien also points out that Manitoba Hydro has used the EPRI-GTC routing methodology in a way that minimizes or ignores the key routing criteria used elsewhere in Canada: the avoidance of homesites and the use of existing linear disturbances to avoid new impacts.²⁰

21. Manitoba Hydro's removal of the buffer around residences after the alternative corridor evaluation model is a further example of how landowner concerns were ignored. Small 50 metre buffers were placed around residences during the development of corridors.²¹ Manitoba Hydro failed to consider using larger and more appropriate buffers.²²

22. The composite corridors developed by Manitoba Hydro have a "pretty significant effect" on where route segments are drawn but they are not dispositive.²³ The small 50

¹⁷ <https://www.youtube.com/watch?v=ZAeNL4JpRKs&rel=0&html5=1> (accessed June 4, 2017)

¹⁸ SSC-IR-076 [TAB 5].

¹⁹ Berrien Report, p. 41.

²⁰ Berrien Report, p. 26; May 31, Transcript, p. 3311.

²¹ May 10 Transcript, p. 686.

²² May 10 Transcript, p. 689 – 690.

²³ May 10 Transcript, p. 707 – 708.

metre buffers around residences were removed during the alternative route evaluation model with the result that routes could be drawn directly over a residence.²⁴

23. There is no technical impediment to the use of buffers – including buffers larger than the small 50 metre buffer used by Manitoba Hydro during the alternative corridor evaluation model²⁵ – once the routing process proceeds to segment drawing and route evaluation.²⁶ There is also no technical impediment to larger buffers being used when developing corridors.²⁷

24. In addition to discounting landowner concerns, the unseemly acrobatics attempted by Manitoba Hydro to justify and explain the incorrect statements regarding centennial farms contained in sections 6.3.2 and 12.4 of the EIS undermines each and every conclusion in the EIS.²⁸ The Fournier Farm is a centennial farm and that status can be easily verified by anyone (except, of course, Manitoba Hydro). When confronted with an easily corrected error in the centennial farm data set provided by the Province, the responsible consultant merely re-examined his own data set. Unsurprisingly, the faulty data set was still faulty. The consultant failed to review the Manitoba Historical Society's website, which would have indicated that his data set was faulty.²⁹

25. Rather than concede it had made a mistake in the EIS, Manitoba Hydro instead took the position in this hearing that centennial farms do not include land (notwithstanding one of their witnesses, an agricultural expert, confirming that farms do in fact include land). None of the participants were provided with sufficient funding to explore the extent to which Manitoba Hydro's efforts to conceal the impacts of the FPR on this centennial farm infect the remainder of the EIS, but the sheer number of errors identified to date suggest that many of the conclusions contained in the EIS result not

²⁴ May 10 Transcript, p. 717.

²⁵ For example, Manitoba Hydro policy provides for buy outs of owners living within 75 metres: see SSC-IR-225 [TAB 6]

²⁶ May 20 Transcript, p. 729 – 730.

²⁷ May 10 Transcript, p. 687.

²⁸ SSC-IR-217, 360 [TAB 7]

²⁹ May 17, 2017 Transcript, p.1736 – 1744.

from appropriate analysis but from defining adverse impacts out of existence through the use of unnatural, narrow, restrictive or otherwise technical definitions.³⁰

26. Manitoba Hydro's conduct in this hearing is further evidence of the disregard shown to landowner concerns. For example, much of Manitoba Hydro's questioning of Berrien was focused on a failed attempt to establish that landowner concerns such as the avoidance of home sites are not important routing criteria elsewhere in Canada.³¹

27. If an additional example of Manitoba Hydro's disdain for landowner concerns was necessary, on the final day that the Commission heard evidence Ms. Bratland used the word "receptor" to describe landowners.³² It should come as no surprise to the Commission that many landowners feel like they are "receptors" when dealing with Manitoba Hydro, although not necessarily in the sense meant by Ms. Bratland.

Delay

28. The entire timetable for the MMTP's construction along the FPR depends on the Pallister government taking two unlikely steps:

- (a) First, the Pallister government will refuse to suspend any Class 3 license granted by the Minister until such time as legal challenges to it have been exhausted; and
- (b) Second, the Pallister government will invoke the discredited power abused by the defeated Selinger government that is contained in section 9(8) of the *Expropriation Act* to strip landowners of the ability to object to proposed expropriations.³³

29. It is therefore unsurprising that Manitoba Hydro double counted certain types of pre-licensing delay and failed to account for other types of post-licensing delay.³⁴

³⁰ May 17, 2017 Transcript, p. 1744 – 1752.

³¹ May 31, 2017 Transcript, pp. 3427 – 3436.

³² June 1 Transcript, p. 3683 – 3684.

³³ SSC-IR-324 and letter to Premier Pallister and Crown Minister Schuler dated February 3, 2017 [TAB

8].

³⁴ May 10 Transcript, pp. 753 – 766; SSC-IR-079, 080, 116, 117 [TAB 9]

30. Notwithstanding the protests of Manitoba Hydro's witnesses,³⁵ the meeting notes from the Round 2 routing workshop clearly indicate that pre-licensing delay arising from the Crown consultation process was considered in both the Schedule Risks and Community criteria.³⁶ Manitoba Hydro's response to SSC-IR-148 admits as much.

31. Manitoba Hydro failed to take the following types of delay affecting the issuance of the requested Class 3 license into account:

- (a) Appeals of the Minister's decision to grant the requested Class 3 license pursuant to section 28 of the *Environment Act*,³⁷
- (b) The Minister's suspension of the Class 3 license pending the outcome of the appeal to the provincial Cabinet pursuant to section 30 of the *Environment Act*,
- (c) Proceedings commenced in the Court of Queen's Bench seeking judicial review of the provincial Cabinet's decision regarding the Minister's granting of the Class 3 license;
- (d) Proceedings commenced in the Manitoba Court of Appeal seeking to overturn the decision of the Court of Queen's Bench; and
- (e) Proceedings commenced in the Supreme Court of Canada seeking to overturn the decision of the Manitoba Court of Appeal.

32. Manitoba Hydro also failed to take the following types of post-licensing delay into account:

- (a) The refusal of the provincial cabinet to invoke the power contained in section 9(8) of the *Expropriation Act* to strip landowners of their ability to object to proposed expropriations;³⁸

³⁵ See, for example, May 9 Transcript, p. 442.

³⁶ EIS, Appendix 5D **[TAB 10]**, Community Breakout Group (pp. 24 – 28) and Built Breakout Group (p. 33)

³⁷ Appeals of the Class 3 license for the Keeyask Generating Station were commenced in July 2014. Those appeals were dismissed on November 9, 2016 (Manitoba Order in Council 386/2016 **[TAB 11]** (See also Manitoba Order in Council 495/2014 **[TAB 12]**).

- (b) Proceedings to set aside easement agreements entered into with landowners along the FPR;
- (c) Proceedings in the Court of Queen's Bench seeking judicial review of the provincial Cabinet's decision to invoke the power contained in section 9(8) of the *Expropriation Act* to strip landowners of their ability to object to proposed expropriations;
- (d) Proceedings commenced in the Manitoba Court of Appeal seeking to overturn the decision of the Court of Queen's Bench;
- (e) Proceedings commenced in the Supreme Court of Canada seeking to overturn the decision of the Manitoba Court of Appeal;
- (f) Proceedings before inquiry officers regarding proposed expropriations;³⁹
- (g) Proceedings in the Court of Queen's Bench seeking judicial review of the provincial Cabinet's decision to confirm declarations of expropriation following inquiries;
- (h) Proceedings commenced in the Manitoba Court of Appeal seeking to overturn the decision of the Court of Queen's Bench; and
- (i) Proceedings commenced in the Supreme Court of Canada seeking to overturn the decision of the Manitoba Court of Appeal.

33. The failure to take these types of post-licensing delay are a symptom of Manitoba Hydro's disregard for the concern of landowners and the disrespectful assumption that the Commission and the Minister are mere rubber stamps on the road to obtaining environmental licenses.

³⁸ May 11, 2017 Transcript, p. 788. See also SSC-IR-078 [TAB 13]

³⁹ Approximately 8 landowners have indicated that expropriation will be necessary: see SSC-IR-342 [TAB 14].

Failure to Properly Incorporate First Nation and Metis Concerns

34. One of this Commission's non-licensing recommendations in the Bipole III Report was that Manitoba Hydro should make "more use of quantitative data".⁴⁰ Manitoba Hydro has repeatedly referred to this recommendation during the course of these public hearings, but failed to properly follow that recommendation as it relates to quantitative data concerning First Nation and Metis use of lands and waters affected by the FPR.

35. One of Manitoba Hydro's witnesses stated during her testimony that "each chapter of the EIS notes the ATK study or other reference it draws upon when it references that information". The Reference section for Chapter 5 of the EIS vividly illustrates how little impact the quantitative data available reflecting First Nations and Metis concerns and usage influenced the routing process.⁴¹

36. In a different context, the Supreme Court of Canada has held that the duty to consult extends to "strategic, higher level decisions" and "high-level management decisions".⁴² During his testimony, Grand Chief Daniels stated that:

However, there is still more work to be done. Indigenous knowledge needs to be incorporated at a much earlier stage in the process. ...

... However, there is still room for improvement. Engagement needs to start earlier. ATK needs to be incorporated into the routing process. ... Changes in the route mean that First Nations ATK studies remained incomplete. Projects should be delayed until these studies are completed.⁴³

37. Manitoba Hydro made numerous high level and strategic routing decisions prior to obtaining quantitative data that could and should have influenced the routing process.⁴⁴ For example, the Areas of Least Preference used in the alternative corridor evaluation model⁴⁵ could have included the following types of quantitative data:

⁴⁰ Bipole III Report, p. 36, Non-licensing Recommendation 7.1.

⁴¹ May 9, 2017 Transcript, p. 293 – 294; EIS, p. 5-126 [TAB 14].

⁴² *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 S.C.R. 650 at paras. 44 and 47 [TAB A].

⁴³ May 29, 2017 Transcript, pp. 3028 and 3030.

⁴⁴ See, for example, May 10, 2017 Transcript, pp. 657 – 659 (See: Maps 11-4, 11-5, 11-6, SCO Map, ATKS Map Zones 1 – 4 [TAB 15])

⁴⁵ EIS, pp. 5-19 – 5-20 [TAB 16] (See: Map 5-18 [TAB 17]).

- (a) The gathering data obtained by Peguis First Nation and contained in the “Plant Harvesting” Map 11-4;
- (b) The hunting and trapping data obtained by Peguis First Nation and contained in “Hunting and Trapping” Map 11-5;
- (c) The archaeology and cultural site data obtained by Peguis First Nation and contained in “Cultural Sites” Map 11-6;
- (d) The archeological discovery, berry, camp site and medicine plant data contained in the “Some SCO MMTP Traditional Knowledge Study Data” map;
- (e) The data contained in the maps of Zones 1 – 4 contained in the ATKS Community Report (pages 11 – 15 and 67 - 71); and
- (f) The over 3,134 use sites referred to in the Metis Land Use and Occupancy Study.

38. Similar to the buffers mentioned above, Manitoba Hydro could have applied and respected appropriate buffers to ensure that those involved in drawing route segments avoided these sites. The corridors and routes that would have been developed had Manitoba Hydro incorporate this type of quantitative data into early routing decisions would have had a profound impact on subsequent routing decisions.

39. As suggested by Berrien, Manitoba Hydro could and should have used this quantitative data to develop criteria for use in the alternative route evaluation model. Berrien’s preliminary efforts resulted in five criteria being selected for the purposes of comparing Routes SIL, AY and BZG.⁴⁶

40. The Diminished Preference Zones mentioned during the Calliou Group’s presentation could and should have been explored as possible routing opportunities

⁴⁶ EIS, Table 5-6 [TAB 18]; Berrien Report, pp. 53 – 54 [TAB 19].

through and/or near areas of use.⁴⁷ For example, most or all of the thin strip of land between the rail line and Provincial Road 404 along the eastern boundary of the Watson P. Davidson Wildlife Management Area may be a Diminished Preference Zone.

41. With respect, Manitoba Hydro failed to properly incorporate First Nations concerns and data into the routing process. The use of Crown land as a proxy for both Crown consultation delays and the types of lands used by First Nations and Metis, and the reliance on Manitoba Hydro employees to convey concerns raised during the FNMEP as part of the subjective Community criteria during the Preference Determination model, falls far short of the standard to which Manitoba Hydro should be held by the Commission, the Minister and all Manitobans.

(c) Flawed FPR

42. Manitoba Hydro's FPR is based on Route SIL from Round 2. In the words of Bob Berrien, Route SIL "is so poor, and violates so many routing principles, that it should never have seen the light of day".⁴⁸ It is therefore unsurprising that Route SIL was repeatedly eliminated as being unsuitable due to poor scores.

43. Route SIL was eliminated twice during the Round 2 Routing Workshop. The first elimination occurred on the first day. SIL was the third ranked route in the Simple Average category. The top ranked route in that category, SGZ, advanced to Preference Determination. The top ranked routes in the other categories were URQ (Natural), URV (Engineering) and AY (Built). The meeting notes found at page 10 of Appendix 5D state:

DECISION: Routes URQ, URV, AY and SGZ will move on to expert judgment.⁴⁹

44. The next day, SIL was revived at the suggestion of Shannon Johnson and it became the fifth route to be considered as part of the Preference Determination model. After considerable discussion and analysis, URV came in first, AY came in second and

⁴⁷ Calliou Report, p.14; May 30 Transcript (page numbers missing), "100 metres from railway lines, two kilometres from primary roads and 100 metres from secondary roads".

⁴⁸ Berrien Report, p. 39.

⁴⁹ EIS, Appendix 5D, p. 10 [TAB 10]

SIL was again third. This decision is reflected on page 14 of the meeting notes where it is stated:

Based on the inputs to the expert judgment model, URV is the preferred route.⁵⁰

45. Displeased that their own “expert judgment” had eliminated their superiors’ preferred route, the Manitoba Hydro employees present revived SIL again and began to re-score the routes to ensure its success. Changing the cost scores of the five routes achieved the desired result and “SIL becomes the winner”.⁵¹

46. It is currently unknown whether Manitoba Hydro relied on faulty data when selecting SIL over other superior alternatives, such as Route AY. Until March 11, 2017, Manitoba Hydro took the position that Table 5-27 of the EIS contains the route statistics for the four route finalists in Round 2, plus the properly eliminated SIL that was revived at the request of Shannon Johnson.⁵²

47. On March 11, 2017, Manitoba Hydro responded to SSC-IR-251 and stated that the original Table 5-27 was an “editing error”.⁵³ As noted by Bob Berrien:

Given that the statistics applicable to the selected routes are the basis for any comparative process, including the E-G one employed by MH, it is imperative they be reliable. However, **it is extremely unsettling to note that a cross check of the statistics provided in Chapter 5, pages 85, 86 and 87, with the data in the Reply to SSG-IR-251 shows virtually no agreement. For the SIL route exactly 1 out of 22 parameters is the same on both tables. For the AY route, 19 of 22 are different.** While I laud MH for setting the record straight, it is more than disconcerting to see many of the values off by large percentages. It must also raise a very serious question about the capacity of the workshop participants back in February 2014 to do their job when they had such faulty data. The reliability of the expert’s opinions rests on the reliability of their data. Here, there is no such reliability and it is impossible for the CEC to rely on a number based routing process when the base numbers are uncertain. **A**

⁵⁰ EIS, Appendix 5D, p. 14 [TAB 10].

⁵¹ EIS, Appendix 5D, p. 15 [TAB 10].

⁵² EIS, p. 5-81 [TAB 20].

⁵³ SSC-IR-251, p. 2 [TAB 21].

true example of a garbage in – garbage out analysis. [emphasis added]⁵⁴

48. What is even more unsettling is the prospect that there is a third set of data in existence that further undermines Route SIL's suitability and the integrity of the routing process. During the testimony of Mr. Block, he stated that "Route SIL has seven crossings and Route AY has three."⁵⁵ The original Table 5-27 states that AY has 10 and SIL has 29, while the revised table states that AY has 14 and SIL has 27. As a result, this Commission can and should have no confidence in the decisions made by Manitoba Hydro on the repeatedly shifting statistics used to justify the selection of a route that is as unsuitable as Route SIL.

49. The red-green chart prepared by Berrien clearly illustrates the unsuitability of Route SIL when compared to Route AY.⁵⁶

(d) More Appropriate Alternative

50. Berrien's red-green chart also illustrates that Route AY is a far more suitable candidate for the MMTP route. As Ms Bratland acknowledged during her testimony:

The most preferred route, based on public feedback, would be AY. It avoids farmland, it's more distant from residences, and had strong support through the public engagement process and it was recommended through that process.⁵⁷

51. In the Final Recommendation section of his report, Berrien states:

It is hard to call anything a win, that involves placing an HVTL near a site that someone values, but AY may be termed a win-win in terms of balancing impacts between the two largest stakeholder communities.

If the CEC sees the routing application before them in the same light as I do, they can seek more information on the central part of the FPR. I especially see the AY as a suitable routing. Meanwhile, the ends can be given a recommendation for approval, so as not to seriously impact the

⁵⁴ Berrien Report, p. 52; May 31 Transcript, pp. 3361 – 3366

⁵⁵ May 18, 2017 Transcript, p. 2040.

⁵⁶ Berrien Report, p. 54.

⁵⁷ May 10 Transcript, p. 577.

time table. The CEC's options should not be limited by arbitrary deadlines or applications that compromise good routing principles.⁵⁸

52. Berrien's red-green chart contains several criteria that he developed that are intended to incorporate First Nations and Metis quantitative data.⁵⁹ In his testimony, Berrien stated that:

- (a) These "issues ... were left off completely from the final statistics that were included in the EIS that applied to the final preferred route",⁶⁰
- (b) "That's just scratching the surface of what is probably available";⁶¹
- (c) "And that's one of the reasons, by the way, that I felt that I needed to add something, because there was a hole in the evidence. I haven't filled that hole, by any means, but I recognize that there is one";⁶² and
- (d) "I would've thought that it would have been obvious to you that the absence of that data was a glaring hole that should be filled. And I've called attention to that hole ... I didn't have the data to do it. But I recognize that it is a glaring hole".⁶³

53. The Coalition acknowledges that Route AY's path alongside the eastern boundary of the Watson P. Davidson Wildlife Management Area is a cause for concern to some. However:

- (a) There are virtually no concerns or quantitative data affecting the northern portion of Route AY as it travels east towards Vivian and then south towards Marchand;
- (b) Route AY was eliminated by Manitoba Hydro for reasons other than its suitability for the MMTP route (which, as noted above, is superior to SIL);

⁵⁸ Berrien Report, p. 58

⁵⁹ May 31 Transcript, p. 3367 – 3369, 3384

⁶⁰ May 31 Transcript, p. 3369

⁶¹ May 31 Transcript, p. 3480 - 3481

⁶² May 31 Transcript, p. 3489

⁶³ May 31 Transcript, p. 3514

- (c) The area to the east of the WMA was not adequately studied prior to or during the routing process;
- (d) A railway line runs along the immediate eastern boundary of much of the WMA (and through the northeast corner of the WMA);
- (e) Just to the east of the railway line is Provincial Road 404;
- (f) These two pre-existing linear disturbances present an opportunity to route the MMTP through the area while generating primarily incremental as opposed to new impacts.⁶⁴ Rail companies prefer a buffer between their tracks and transmission lines of 1 kilometre and the Coalition acknowledges that additional engagement with the affected railway would be required;⁶⁵
- (g) Maps 16-100-3 and 16-100-4 indicate that areas to the east of the Watson P. Davidson WMA – including along the eastern boundary – were part of Manitoba’s Timber Sales Plan 2010 – 2015;
- (h) Dr. Cizek confirmed that much of the area further to the east has recently been clear cut;⁶⁶
- (i) Many of the concerns and use sites are to the east of Provincial Road 404; and
- (j) Further study and engagement may resolve many of the concerns raised about a HVTL to the immediate east of the WMA.⁶⁷

54. The Coalition acknowledges and agrees that additional study and engagement would be necessary to develop a final route based on Route AY: namely, the same

⁶⁴ May 31 Transcript, p. 3478

⁶⁵ SSC-IR-181 and 182 **[TAB 22]**

⁶⁶ Cizek Report, Map 11 **[TAB 23]**.

⁶⁷ The Coalition fundamentally disagrees with the suggestion made by Mr. Valdron during his questioning that all the data necessary to properly assess Route AY and any potential modifications to it is already available and/or on the record. See, for example, May 31 Transcript, pp. 3495 – 3496 and 3516

additional study and engagement that should have been conducted by Manitoba Hydro years ago.

55. Manitoba Hydro's opposition to Route AY is founded on two key points: first, the importance of the 10 km buffer; and, second, First Nations and Metis concerns about a HVTL being routed to the east of the Watson P. Davidson Wildlife Management Area.

56. Dr. Swatek confirmed that the NERC standards he referred to only require "Manitoba Hydro to both assess risk and take steps to mitigate those risks". The NERC standards do not require a 10 km buffer.⁶⁸ The buffer is simply Manitoba Hydro's preferred method of mitigation, notwithstanding that it only deals with one of the three of the tornadic elements that can impact transmission lines: wind speed, path width and path length.⁶⁹ Manitoba Hydro's last minute reliance on this buffer and the NERC standards that do not require it are undermined by the following:

- (a) The partial buffer was requested prior to the licensing of Bipole III, which itself is intended to supply HVDC power to southern Manitoba in the event of service interruptions affecting one or both of Bipole I and II;⁷⁰
- (b) M602F has not been damaged by a tornado since it began operation in 1979, which exceeds the return period relied upon by Manitoba Hydro;⁷¹
- (c) Manitoba Hydro does not have a contingency plan to address the suspension or termination of any license it may receive to construct and operate the MMTP.⁷² Heightened public and regulatory scrutiny of Manitoba Hydro's operations means that government action is far more likely to result in a simultaneous service interruption of both M602F and MMTP than a tornado once those transmission lines depart the Riel to Vivian Transmission Corridor;
- (d) The primary purpose of the MMTP is to export power;

⁶⁸ May 8 Transcript, p. 123.

⁶⁹ May 8 Transcript, p. 127.

⁷⁰ SSC-IR-061 [TAB 24]; May 8 Transcript, p. 137 – 138.

⁷¹ May 8 Transcript, p. 126.

⁷² May 23 Transcript pp. 2276 – 2277.

- (e) Other mitigation options are available, such as expanding Manitoba Hydro's weather monitoring system and maintenance crews stationed in Steinbach and Lac du Bonnet;⁷³ and
- (f) Ms. Bratland confirmed that a portion of the FPR's new right of way falls within the 10 km buffer.⁷⁴

57. With respect, Manitoba Hydro should not be permitted to rely on its failure to properly incorporate First Nations and Metis concerns and data into the routing process to argue against Route AY forming the basis for the MMTP's final route to the international border. Had Manitoba Hydro ensured that the ATK process was completed before beginning the routing process, the reasons for Route AY's elimination would not have existed and the quantitative data that would assist in routing the MMTP through this area would already exist and be available for analysis.

58. A modified version of Route AY has the additional benefit of avoiding the lengthy legal delays that will arise if the FPR is recommended to the Minister and she grants a Class 3 license to permit Manitoba Hydro to construct the MMTP along that flawed route. The Commission should not recommend that the Minister approve transmission lines that will be caught up in years of legal proceedings when more suitable alternatives without those legal issues exist.

(e) Proposed Recommendations to the Minister

59. The Commission should decline to recommend that the Minister grant the Class 3 license requested by Manitoba Hydro because:

- (a) Manitoba Hydro used a flawed routing methodology to select the FPR;
- (b) Manitoba Hydro failed to properly apply the flawed routing methodology when selecting the FPR, including but not limited to Manitoba Hydro's discounting of the concerns of private landowners and failing to properly incorporate First Nations and Metis concerns when selecting the FPR;

⁷³ May 8 Transcript, pp. 133 – 136.

⁷⁴ June 1, 2017 Transcript, p. 3709.

- (c) The flawed routing methodology and its application resulted in the selection of an inappropriate FPR based on a route that had been repeatedly eliminated as being unsuitable due to poor scores;
- (d) A more appropriate route alternative that more appropriately balances the concerns of private landowners, First Nations and Metis is available but requires additional study and engagement; and
- (e) The commencement of surveying, home purchases and the payment of large sums of money to landowners for easements for a project it has no right to construct on those lands illustrate Manitoba Hydro's profound disrespect for the Commission and the process mandated by the Minister.

60. Manitoba Hydro's disrespect towards the Commission and this process has been expressed in many ways throughout the process, but some key examples are as follows:

- (a) In the absence of any legal authority to construct the MMTP, Manitoba Hydro has hired and deployed land surveyors to begin surveying the proposed right of way. It is currently unknown whether these land surveyors are operating outside the scope of the authority granted to them pursuant to section 63(1)(d) of the *Land Surveyors Act*,⁷⁵
- (b) On May 15, 2017, and in the absence of any legal authority to construct the MMTP, Manitoba Hydro confirmed it had obtained easements from 50 of the 126 landowners along the FPR.⁷⁶ Manitoba Hydro has also confirmed that the large sums of money paid to obtain these easements do not need to be returned when the FPR is rejected. It is currently unclear whether Manitoba Hydro is intentionally wasting public resources to generate "momentum" to avoid political scrutiny of their poor decisions,

⁷⁵ SSC-IR-246 [TAB 25].

⁷⁶ May 15, 2017 Transcript, p. 1024. Several homes have also been purchased: see SSC-IR-368, 394 [TAB 26].

or if the waste is simply inadvertent and negligent, but the unfortunate example of Bipole III suggests the former;

- (c) Manitoba Hydro is not prepared to suspend discussions with landowners pending the decision of this Commission and the Minister on whether or not Manitoba Hydro will obtain legal authority to construct the MMTP.⁷⁷ The refusal to do so is deeply disrespectful and borders on arrogance. The refusal also undermines Manitoba Hydro's denials to the questions asked by the Coalition in SSC-IR-361.⁷⁸

61. The Coalition therefore respectfully submits that the Commission should:

- (a) decline to recommend that the Minister issue the licence requested by Manitoba Hydro until such time as:
 - (i) Manitoba Hydro has developed a more appropriate alternative route for the MMTP;
 - (ii) such route has been recommended to the Minister by the Commission following further public hearings;

62. In the alternative, the Commission should recommend that the Minister only license the non-contentious components of the MMTP (Dorsey to Anola and south of the Watson P. Davidson Wildlife Management Area to the Piney border crossing) while a more appropriate route alternative is developed for the contentious component.

63. Section 13 of the *Environment Act* provides the Minister with the authority to issue less than a full Class 3 license, and it reads as follows:

Issue of licence in stages

13(1) The director or minister, as the case may be, may issue a licence referred to in subsection 10(1), 11(1) or 12(1) as one of a series of licences, each of which is issued in respect of a specified stage in the construction, alteration or operation of a development and,

⁷⁷ May 15, 2017 Transcript, p. 1071.

⁷⁸ SSC-IR-361 [TAB 27].

notwithstanding subsections 10(1), 11(1) and 12(1), a licence so issued authorizes only the stage in the construction, alteration or operation specified in the licence.

Licensing of preliminary steps

13(2) Notwithstanding anything to the contrary in this Act, the minister or director may, in advance of approval of any stage in the construction, alteration, operation or setting into operation of the development, issue the first of a series of licences referred to in subsection 10(1), 11(1) or 12(1) authorizing such preliminary steps to be taken with respect to the construction or alteration of the development as are specified in the licence, if

(a) in the opinion of the director or minister, the environmental impact of those preliminary steps is known and is either insignificant or capable of being mitigated with known technology; and

(b) the director or minister has complied with clause 10(4)(a), 11(8)(a) or 12(4)(a), as the case may be.

Effect of issue of licences in series

13(3) Where the minister or director issues a licence as one of a series, the minister or director is not thereby obliged to issue any subsequent licence in the series.

64. In both his report and his testimony, Berrien described recent examples of a similar approach taken in Alberta.⁷⁹

65. Manitoba Hydro is able to commence construction of the MMTP from Dorsey to Anola without starting construction along the new right of way necessary to reach the international border.⁸⁰ Manitoba Hydro has budgeted sufficient time in their construction schedule to allow time for a more appropriate route to be developed.⁸¹

66. Finally, and in the (further) alternative, the Coalition respectfully requests that the Commission make the following licensing recommendations to the Minister⁸²:

⁷⁹ Berrien Report, p. 49; May 31 Transcript, pp. 3355 – 3356, 3380 - 3382

⁸⁰ May 15, 2017 Transcript, p. 1035.

⁸¹ May 15, 2017 Transcript, p. 1058.

⁸² See: The Environment Act Licence No. 3055 dated August 14, 2013 [TAB 28]

- (a) Mandatory notification to residents and provincial government of any violations of licensing conditions;
- (b) Expanding restrictions on slash burning near communities and places frequented by people that go beyond the minimal restrictions contained in Condition 44 of the Bipole III License;
- (c) Pre-construction measuring and post-construction monitoring of EMFs upon request by residents within certain vicinity of the right of way;
- (d) Monitoring studies of the health effects of EMFs and the provision of that information to potentially affected residents along with MMTP's route;⁸³
- (e) Mandatory resolution of EMF-related complaints about interference with radio, tv, wifi and so on (similar to Article 8 of the GNTP Presidential Permit);
- (f) Development of protocols if the Class 3 license is suspended or termination due to non-compliance with licensing conditions; and
- (g) Requirement to use self-supporting towers in agricultural and residential areas unless requested by affected landowner(s).

June 5, 2017

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⁸³ May 17, 2017 Transcript, p. 1724; see also SSC-IR-232 [TAB 29].