

Manitoba



Justice


Civil Legal Services
SOA

Room 730
Woodsworth Building
405 Broadway
Winnipeg MB R3C 3L6

Phone: (204) 945-0242
Fax: (204) 948-2826
ghannon@gov.mb.ca
File No: WS0200 (283)-3
In reply, please refer to:
Gordon Hannon
Crown Counsel

July 20, 2004

Merrell-Ann S. Phare
Executive Director/
Legal Counsel
Centre for Indigenous Environmental Resources
3rd Floor, 256 McDermot Avenue
Winnipeg MB R3B 0S6

EXHIBIT # MC-1012
WUSKWATIM GENERATION
& TRANSMISSION PROJECT

CLEAN ENVIRONMENT COMMISSION

Dear Ms Phare:

**Re: Public Hearing - Manitoba Hydro - Wuskwatim Generating Station and
Transmission Project, Undertaking MWS-78**

I am replying to your inquiry about the response by Steve Topping and me to undertaking MWS-78 contained in my letter to the Clean Environment Commission dated June 8, 2004. The undertaking was made by Mr. Topping during the appearance by Mr. Topping and me before the Manitoba Clean Environment Commission on May 11, 2004.

Undertaking MWS-78 is described in the transcript as

MWS-78: Advise position whether Manitoba Hydro is meeting requirements of Missi Falls licence regime on a regular basis.

Mr. Topping and I understood the undertaking to relate to the water regime under the Interim Licence for Churchill River Diversion under *The Water Power Act* and not to the Environment Act licence for the Churchill River Weir.

The questions preceding the making of the undertaking related to paragraph 12 of the Interim Licence for Churchill River Diversion. Paragraph 12 provides for the releases from the Missi Falls Control Structure as part of the operation of the Churchill River Diversion. *The Water Power Act* licence is administered by Manitoba Water Stewardship and therefore Mr. Topping, as Director of the Water Branch of that Department, is in a position to speak to issues relating to that licence because of his

official responsibilities. Mr. Topping appeared before the Commission in order to provide information about the process of licensing of undertakings under *The Water Power Act*. Manitoba Water Stewardship does not administer licences under *The Environment Act*, so Mr. Topping is not in a position to advise authoritatively about compliance with licences issued under that *Act*, including the Churchill River Weir Licence.

However, Manitoba Water Stewardship has contacted the Environmental Approvals Branch of Manitoba Conservation to obtain additional information that may assist in addressing your inquiry.

It is our understanding that *Environment Act* Licence No. 2327 was issued to Manitoba Hydro on May 15, 1998 for the construction and operation of the Churchill River Weir. Clause 23 of that licence reads as follows:

“The Licencee shall, at all times following construction of the Development, maintain releases from the Missi Falls Control Structure on the Churchill River Diversion such that these flows are not less than those maintained under the existing Churchill River Diversion operation flow regime for the period 1986 to the date of this Licence.”

We understand that this clause was inserted in the Licence to ensure that the flow regime in the Churchill River between the Missi Falls structure and the Churchill River Weir was not reduced below the regime that had been maintained in years previous to the construction of the weir. The wording of this clause was developed in cooperation with Manitoba Hydro. Manitoba Hydro suggested the period from 1986 to the date of the Licence, which was deemed acceptable as a reference period. Manitoba Conservation has been in contact with Manitoba Hydro with respect to compliance with this condition and has not found it necessary to conduct an analysis.

Yours truly,

Sent by e-mail

Gordon E. Hannon
Crown Counsel

GEH/ps

cc. Rory Grewar, Secretary, Manitoba Clean Environment Commission
Steve Topping, Director, Water Branch, Manitoba Water Stewardship