Mr. Maxime Fortin  
Committee Clerk  
Standing Senate Committee on Energy, the Environment and Natural Resources  
Senate of Canada  
Ottawa ON K1A 0A4

Dear Mr. Fortin:

On behalf of the Government of Manitoba, please accept this correspondence as our written submission to the Committee studying Bill C-69 (An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts).

Environmental assessment plays a critical role in protecting the environment and human health while providing a certain, stable planning framework for development benefiting Canadians. Since 1987, Manitoba has used its constitutional authority to regulate the natural environment through its Environment Act, which has guided the environmental assessment and licensing process for projects in Manitoba with potential environmental or human health effects. While this process has evolved over time, Manitoba’s system adheres to key principles such as full public participation, Indigenous community engagement, transparency and predictability. This ensures the process provides meaningful input to regulators and the public while minimizing uncertainty for current and potential investors.

Ongoing cooperation between the Government of Canada and the provinces and territories is also essential in ensuring that future environmental assessments do not introduce unnecessary duplication, consultation fatigue or unwarranted resource demands on proponents.

Manitoba is concerned that Bill C-69, in its current form, will increase regulatory burdens, costs, and timelines for projects, without meaningfully improving environmental outcomes. The effect of these changes ultimately will drive down investment, compound economic losses in the resource sector, and sacrifice jobs.
Proposed changes to the federal environmental assessment regime will also make it difficult, if not impossible, to develop critical infrastructure for Canada’s economic growth and competitiveness. This includes the development of pipelines, which remain the safest alternative to rail to move oil and gas; and would hamper Manitoba’s hydroelectric projects, which provide clean, reliable energy locally and to other jurisdictions. Bill C-69 also risks imposing additional costs and delays on future disaster mitigation projects to protect the health, safety, property and livelihoods of Canadians.

The Government of Manitoba has identified the following specific issues with Bill C-69, which must be addressed prior to passage of the legislation. Additional details on Manitoba’s concerns are included in the attached Appendix.

1. **Uncertainty created by the Project List and Ministerial designation:** Manitoba believes the Project List (designated projects for federal assessment) needs to reflect the scope, magnitude and national interest of its impacts. It must be clear, certain and not overstep provincial jurisdiction over natural resources, nor create unnecessary duplication in the regulatory process for development in Canada. The proposed legislation also enables the federal Minister to designate additional projects for review based on where there is the greatest potential for adverse environmental effects in areas of federal jurisdiction. Manitoba is concerned that the broad scope of this authority, without any constraints, both creates a lack of predictability for potential project proponents, and introduces the potential for political interference in evidence-based environmental assessment systems.

2. **Additional resource requirements and timelines related to the Planning Phase:** The proposed addition of a formal, planning phase will create additional challenges in achieving the principle of one project, one assessment with provincial environmental assessments. If enacted as currently proposed, project proponents would be required to complete two separate planning phases - one provincially and one federally. This risks unnecessarily increasing timelines and costs for project assessments.

3. **Lack of clarity on the incorporation of traditional knowledge, the role of Indigenous authorities and consensus thresholds in the federal environmental assessment process:** Manitoba is committed to reconciliation and supports greater Indigenous engagement through a wide range of initiatives and approaches. However, the lack of clarity on how traditional knowledge will be incorporated into the process and the interplay with scientific evaluation could increase uncertainty for proponents in this process. It also remains unclear how Indigenous authorities would be involved in federal or federal-provincial assessments within Manitoba. Bill C-69 also references the federal government’s intent to implement the United Nations Declaration on the Rights of Indigenous people, which could move well beyond established jurisprudence, without providing further details on implementation in the context of environmental assessment processes.
Further, changes to Bill C-69 need to be considered along with changes proposed in Bill C-68 (An Act to amend the Fisheries Act and other Acts in consequence). Taken together, Bills C-68 and C-69 have the potential of significantly undermining economic growth by increasing industry costs, hindering competitiveness and adding confusion regarding the roles and responsibilities of governments. The Government of Manitoba will be submitting a separate brief elaborating on concerns with Bill C-68. Manitoba’s concerns with Bill C-68 include effects on areas of respective jurisdiction over fish and fish habitat, and a lack of distinction between meaningful and insubstantial effects on fish and fish habitat, and clarity about whether a fish population is at significant risk.

Bill C-69 represents a significant change to the federal environmental assessment system. In its current form, it could contribute to an unpredictable investment climate, limiting economic growth and projects that achieve environmental objectives. The lack of clarity at this stage in the development introduces additional economic risk to proponents due to potential delays, undefined federal discretionary powers and a lack of clarity on key regulations.

To this end, it is critical that the federal government amend Bill C-69 and commit to engaging fully with Manitoba on the development of the regulations to implement this legislation to ensure as much clarity, predictability and stability for investors in the assessment process as early as possible.

Manitoba remains optimistic that a collaborative process involving ongoing and detail-specific dialogue between Manitoba and Canada, many of these concerns can be addressed prior to the legislation coming into force.

Highest regards,

Rochelle Squires  
Minister  
Sustainable Development

Blaine Pedersen  
Minister  
Growth, Enterprise and Trade

Enclosure
APPENDIX

1. **Uncertainty created by undefined project list and Ministerial designation authority**

   Environmental assessment is a critically important tool for making informed decisions regarding large-scale projects and often involves significant work. Proponents rely on publically available information, such as the Project List, to clarify which and how projects are assessed to inform economic decisions.

   The Project List is not yet available but is of particular interest to all stakeholders given that the federal government has indicated the proposed legislation is expected to expand federal environmental assessment in terms of scope of review and types of projects to be assessed. Without a detailed Project List, it will be difficult for proponents to make local investment decisions.

   Given the projected timelines for coming into force, the Government of Manitoba is concerned that there will be insufficient time for the federal government to complete a review of the Project List with input from provinces and territories. The Government of Manitoba holds the view that a thorough and complete review of the Project List is essential prior to passing the legislation.

   Clear criteria are required to inform what projects may be subject to federal assessment. Given the potential cumulative and indirect nature of environmental effects of a project, the Government of Manitoba is concerned that this leaves open the possibility for imposing federal assessments on countless smaller projects, whether or not this is the intention of the federal government. For example, an intraprovincial transmission line traversing, a federal waterway may be interpreted to affect an “area of federal jurisdiction” and could unnecessarily trigger a more cumbersome assessment process. Bill C-69 also leaves open the possibility of requiring federal assessment of projects contained on private or provincial Crown land if there is any link to a federal interest no matter the context. This could substantially increase duplication, increase cost and uncertainty for investors without added environmental benefits.

   Bill C-69 proposes to provide the Minister with authority to designate non-listed projects, based on various considerations including effects on areas of federal jurisdiction, Indigenous rights or public concerns. This creates significant uncertainty as without clear parameters on how this authority could be used, there will be ongoing unpredictability for investors potentially delaying future development in Manitoba due to political decisions or potential use of the system for non-environmental issues. For instance, the Manitoba-Minnesota Hydro Transmission Project, which was assessed under the current *(Canadian Environmental Assessment Act 2012)* process, was delayed due to additional engagement required by the National Energy Board, contrary to previous assurances. Such last-minute additional engagement requirements could become much more frequent if the Minister is given designation authority under Bill C-69.
RECOMMENDATION: The Government of Manitoba requests removing or constraining the Minister’s authority to designate projects to minimize unpredictability, and that a thorough and complete review of the Project List be undertaken with provinces and territories prior to passing the legislation.

2. **Additional resource requirements and timeline related to the Planning Phase**

A significant change to the federal assessment process itself is the addition of the formal Planning Phase that includes a formal federal review phase of the proponent’s initial project description and federal engagement with Indigenous groups to determine if an impact assessment is required.

The Government of Manitoba is supportive of good planning and history has demonstrated that projects with early planning and engagement generally experience shorter overall timelines and improve public trust. Manitoba’s environmental assessment process expects proponents to lead and conduct their own planning and pre-engagement processes with stakeholders and to develop their own project descriptions based on the feedback received and in consideration of the proponent’s own corporate vision and needs. In Manitoba’s experience, this approach has worked well in allowing the proponent to scale the level of engagement according to factors such as the project risk and community concern.

Proponents who are familiar with the federal and provincial assessment processes often commence planning and engagement activities well in advance of the submission of the final project description to the federal government. Further, in many cases the Government of Manitoba is engaged with proponents in the planning and project description phase through provincial processes, either formally or informally, and well in advance of engagement with the federal government processes. Manitoba is concerned that the addition of a formal federal Planning Phase with prescribed timelines could introduce a process that is duplicative of this proponent-led planning engagement, increasing resource requirements and timelines for proponents without providing value to the assessment process. It is Manitoba’s experience that proponents seeking authority to develop major projects such as hydroelectric dams, transmission lines or pipelines begin public engagement well in advance of formally approaching government to begin the environmental assessment process.

RECOMMENDATION: The Government of Manitoba requests re-examining the need for a formal federal Initial Project Description development phase with prescribed timelines. Government cooperation is important and the legislation should allow the federal government to work efficiently with proponents and provinces and territories so as not to duplicate efforts. In lieu, it is recommended that federal government-led consultation be done in parallel with any proponent engagement and allow the federal government to include proponent engagement documentation reviews towards meeting this requirement, allowing allow the federal government to focus additional engagement on filing any information gaps that might be required.
3. **Lack of clarity on the incorporation of traditional knowledge, the role of Indigenous authorities and consensus thresholds in the federal environmental assessment process**

The Government of Manitoba, through the *Path to Reconciliation* Act, has formalized its commitment to reconciliation. These efforts are guided by the calls to action of the Truth and Reconciliation Commission and the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples. Manitoba has established a minister responsible for reconciliation and is taking concrete action across many sectors including in natural resource development and as part of the overall environmental assessment process. It has been Manitoba’s experience that traditional Indigenous knowledge and feedback received from affected Indigenous communities is essential in developing an understanding of the potential effects of a project.

Manitoba believes more need to be done to clarify for proponents how traditional knowledge is defined and what information is required. Greater clarity is also needed on how any dissenting opinions between science and traditional knowledge will be reconciled.

Bill C-69 alludes to expanding the definition of ‘jurisdiction’ to provide Indigenous governments with an opportunity to take on powers to conduct assessment activities throughout treaty settlement lands beyond Indigenous-owned lands. This would represent a significant change in the federal assessment process with implications for provincial Crown land. Further, adding additional parties to undertake assessments will make it increasingly difficult to meet the goal of a streamlined ‘one project, one assessment’ process. The Government of Manitoba is concerned there is little information available on how Indigenous jurisdictional involvement would be incorporated into a federal-only or cooperative processes within Manitoba.

The Government of Manitoba is also concerned with the commitment in Bill C-69 to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which appears to go beyond Section 35 consultation to consent, without engagement of provinces and territories. Moreover it is unclear of how UNDRIP’s principle of free, prior and informed consent (FPIC) will be interpreted in the context of environmental assessment processes and how the federal government plans to integrate this into its decision-making process. The Government of Manitoba therefore urges amendments to the legislation to clarify FPIC for the purposes under the Act.

**RECOMMENDATION:** The Government of Manitoba recommends amending the legislation to provide clarity on traditional knowledge requirements; how science and traditional knowledge are assessed in the assessment process; how Indigenous authorities would be involved in assessments; and to clarify FPIC in the context of this bill.