April 11, 2019

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 Manitoba Hydro, please accept this correspondence as our written submission to the Standing Senate Committee on Energy, the Environment and Natural Resources with respect to 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).

As a provincial Crown Corporation and the sole supplier of electricity to retail customers in the Province, Manitoba Hydro has a mandate to provide for the energy needs of Manitobans in an efficient and economical manner. We achieve this mandate through a cost recovery model; the costs incurred by the utility are paid for by our customers via the rates they pay. We have extensive experience in the planning, construction, operation and maintenance of electric generation, transmission and distribution facilities. This includes several interprovincial power lines and four international power lines (IPLs), with a fifth in the regulatory approval stage. We are thus here advocating for changes to Bill C-69 in five (5) key areas.

(1) Need for certainty of process and timelines under the Canadian Energy Regulator Act (CER Act)

Manitoba Hydro takes our responsibility to provide for the energy needs of our customers seriously. When doing so, timing and certainty matters - we need to know the maximum time for approval of a project in order to achieve timely project in-service.

Manitoba Hydro is concerned that there are no fixed deadlines for approvals for IPL applications. In fact, there is no deadline at all for a decision to be reached on a permit application. Although certificate applications have specified deadlines, a proponent cannot elect to proceed by way of certificate if it wants provincial law to apply to the land acquisition process for the project. Moreover, the deadlines for issuing a certificate can be indefinitely extended under the proposed legislation.

Recommendation 1: The time period for issuing decisions on permit and certificate applications under the CER Act should have fixed maximum limits. For both types of applications, if an extension is granted under sections 262(7) or 262(9) of the CER Act, such extension(s) should have a reasonable
fixed time limit as well. In order to achieve this objective, section 262(12), which allows the Governor in Council to disregard time limits, should be deleted.

(2) Proportionality of process to complexity of project

Manitoba Hydro shares the Canadian Electricity Association’s (CEA) view that the degree of regulatory review required for a project should be proportional to the complexity of the project. The CER Act does not contain any provisions assuring proponents that simple modifications (like those involving no additional land acquisition or changes of voltage) to existing IPLs would not be put through the same complexity of process as constructing a new IPL - which is currently the case. We have seen nothing concrete in the amendments to the proposed legislation to date to suggest anything other than the same rigor of process applying to simple modifications as to new projects. While Manitoba Hydro believes that the introduction of designated officers to perform certain functions is a step in the right direction, there are a number of uncertainties about whether such officers would be permitted to process applications for modifications to existing IPLs. Section 54 of the CER Act only permits designated officers to perform confined functions and is dependent on future regulations that are still unknown.

Recommendation 2: Clarify the role of designated officers in the CER Act by adding a specific provision to allow designated officers to assess and approve applications for modifications to existing IPLs under certain circumstances, including those where no additional land rights would be acquired and the voltage of the line remains unchanged. A simplified process for this type of application should also be prescribed by regulations.

(3) Treatment of interprovincial transmission lines

The CER Act has not clarified under what conditions or at what point in time an IPL may be designated as requiring regulation (and therefore approval) under the Act. This leaves considerable uncertainty for proponents of such projects who may have spent a significant amount of time and costs meeting provincial assessment requirements and are then faced with having to obtain an additional federal authorization prior to commencing construction. Unknown and unplanned steps in a process put into jeopardy both the cost and timeline of achieving a project for customer needs.

Recommendation 3: Delete section 261(1) of the CER Act and make conforming amendments.

(4) Certainty of Cost and Timelines within the Impact Assessment Act

We are concerned with the financial implications and uncertainty of the IAA. We agree with the CHA’s proposal on cost recovery. Manitoba Hydro is also concerned with the latitude provided to the Agency and review panel to require proponents to conduct studies and collect information as set out in sections 26(2), 38, and 52(2) of the IAA. As currently drafted, those sections of the IAA create unpredictability, both from a financial perspective and a timeline perspective, for proponents. Accordingly, Manitoba Hydro recommends inserting a process by which the Agency or
review panel and the proponent work together to determine the need and scope for the proponent to conduct additional studies and collect additional information.

Manitoba Hydro also supports less ministerial discretion for timeline extensions throughout the IAA.

**Recommendation 4:** Amendments to sections 26(2), 38, and 52(2) of the IAA to include a process to include the proponent in the decision making when determining that a proponent conduct additional studies and collect additional information.

**Recommendation 5:** CEA’s recent recommendations to the Senate Committee on amendments to the IAA to ensure predictability of timelines, in particular, its proposed inclusion of a new section 62.1 and the removal of section 65(6), be adopted.

(5) **Navigable Waters**

As the Canadian Navigable Waters Act is currently drafted, it may be difficult to maintain repair or rebuild structures expeditiously. The process for obtaining approvals for work on existing facilities requires amendment. We recommend including a simplified process for the approval of alterations or rebuilding of existing structures. Such a process should be less restrictive and time consuming than that for new structures. In this regard, Manitoba Hydro agrees with the recommendation of the Canadian Hydropower Association (now WaterPower Canada) [CHA] on this matter. Manitoba Hydro also agrees with the CHA’s recommendations on amending the definition of major works so to ensure that works that are located on a secondary channel are not captured by the definition.

**Recommendation 6:** We recommend revision to section 48 (new section 5) of the Canadian Navigable Waters Act to allow for the provision of a simplified process for the approval of alterations or rebuilding of existing structures.

**Recommendation 7:** We also recommend amending the definition of major works in Canadian Navigable Waters Act as detailed in CHA’s recommendations.

**Conclusion**

Manitoba Hydro appreciates and acknowledges the complexity and challenges when recrafting legislation on topics of such significance. When finalizing Bill C-69, we urge the adoption of our recommendations put forward today. It is critical that all parties have certainty of process and timelines, and that the process is proportional to the complexity of a project. Just as important, ensuing regulations must be developed in meaningful collaboration with interested parties to ensure the legislation itself is effective. To this end, we urge collaboration on drafting of regulations with
all interested parties, including proponents like Manitoba Hydro who seek a clear, predictable and cost-effective assessment process for IPLs and projects.

Yours truly,

MANITOBA HYDRO LEGAL SERVICES
Per:

[Signature]

GRAINNE GRANDE
Barrister & Solicitor