

2020 05 11

Chief Doreen Spence
doreenspence@tataskweyak.com

Chief Betsy Kennedy
bvkennedy@gmail.com

Chief Leroy Constant
leroyconstant@gmail.com

Chief Billy Beardy
chiefbeardy@foxlakecreenation.com

Dear Chiefs:

RE: Manitoba Hydro Plans to Resume Regular Shift Rotation at Keeyask

The following is in response to your letter dated May 7, 2020 that I received on May 8, 2020 regarding your concerns with respect to the Keeyask pandemic plan.

I want to assure you that Manitoba Hydro takes very seriously its responsibility for the safety and well-being of all workers at the Keeyask site, and the potential for ongoing project construction to introduce COVID-19 into northern Manitoba. We have been meeting regularly with public health officials to confirm that Keeyask pandemic plans continue to align with the most current recommendations and advice.

Manitoba Hydro has made considerable efforts to discuss our plans with the Keeyask Cree Nations and will continue to do so as our plans evolve. I understand that you were provided with the worker rotation plan on May 1, 2020 and that staff have met with you twice since that time to review these plans. I also understand that efforts are being made to address the concerns raised during these meetings, as well as the new concerns raised in your letter received May 8, 2020.

Many of the concerns raised require further discussion with public health officials, the Allied Hydro Council and/or others before they can be resolved. Those working on addressing these matters do require time to have these conversations and to undertake the appropriate review and analysis for a practical solution. I can assure you this work is taking place. I think it's reasonable for our team to be given the opportunity to undertake this work and then to review these solutions with you without the media and others engaged. When this does not happen, it makes it challenging for us to have meaningful dialogue with your First Nations.

2020 05 11

Page 2

I have asked Dave Bowen, Vicky Cole and Brenda Froese to schedule a special Chief's meeting with you this week to discuss the specific efforts underway to address your concerns. They are better suited to discuss the details of these plans and to respond to any further issues or concerns that may arise as a result of these discussions.

Regards,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a series of loops and a horizontal line at the bottom.

JG/tc

- c: Honourable Eileen Clarke, Minister of Indigenous and Northern Relations, Manitoba
- Honourable Jeff Wharton, Minister of Crown Services, Manitoba
- Honourable Cameron Friesen, Minister of Health, Seniors and Active Living, Manitoba
- Dr. Brent Roussin, Chief Public Officer, Manitoba
- Jeffrey Betker, Vice President, External, Indigenous Relations and Communications, MH
- Vicky Cole, Director, Indigenous and Community Relations, MH
- Dave Bowen, Director, Keeyask Project, MH
- Brenda Froese, Manager, Partnership Implementation, MH



May 7, 2020

Jay Grewal
President and CEO, Manitoba Hydro
360 Portage Avenue
Winnipeg, MB R3C 0G8

Re: URGENT – Manitoba Hydro Plans to Resume Regular Shift Rotation at Keeyask

On behalf of the Keeyask Cree Nations (KCNs), we are writing to you directly to formally request an urgent and immediate call in regard to matters of grave concern to our four First Nations, your partners in the Keeyask project. Manitoba Hydro's response to the COVID-19 pandemic in relation to the Keeyask Project, and its intention and unilateral plan to return to regular shift rotations at the Keeyask construction camp, without the input or consultation with its partners, the Keeyask Cree Nations is unacceptable.

Despite our long-term relationship, our well-developed understandings and agreements, and our commitment to work together to address Keeyask related issues, we are currently at risk of suffering potentially devastating consequences resulting from our lack of inclusion in the development of the pandemic response. Despite the fact that the greatest potential impacts from this situation would occur in our communities, Manitoba Hydro has unilaterally issued rules and processes with no consultation or engagement of their partners. This is both disrespectful and short-sighted.

We have attempted to address these grave concerns with Manitoba Hydro representatives, but it has become increasingly apparent that our reasonable concerns are not being considered or addressed. We have been left no recourse but to contact you directly and demand immediate engagement.

First Nations are one of the most vulnerable populations when it comes to COVID-19. With inadequate housing, overcrowding, many elders and members with health conditions, First Nation communities are especially susceptible to an outbreak, the impact of which is more devastating due to remote location and limited infrastructure. After declaring a state of emergency on March 20, 2020, the Government of Manitoba recognized the unique vulnerability of Northern and First Nation communities by further prohibiting travel to Northern Manitoba on April 16, 2020, a restriction which remains in place today. Our

communities have had to put in place enhanced measures including check stops and security to keep our members safe.

In response to the COVID-19 crisis, and the elevated risk potential for the spread of the virus in remote work camps and Northern and First Nation communities, the Keeyask Cree Nation Partners called for the immediate shut down of construction at the Keeyask construction camp until the threat of the virus could be appropriately mitigated. Instead, Manitoba Hydro reduced its workforce at the Keeyask construction camp, and cancelled normal shift rotations for an 8 week commitment from workers at the camp. The result of this effort was no cases of COVID-19 at the worksite and, as such, a reduced potential for the spread of COVID-19 to KCN members working at the camp, and reduced potential for them or others to subsequently bring the virus home to their families and our communities.

Our priority remains with protecting Keeyask employees and the health and well-being of our communities, and those surrounding the Keeyask Project area. This is the basis of our concern with movement of personnel, some from outside Manitoba, to and from the camp, which clearly increases the risk of the virus entering our communities. The result of COVID-19 entering our communities would undoubtedly be disastrous.

Despite the Northern travel ban and the relative success to date of limiting the threat of COVID-19 at the Keeyask construction camp, Manitoba Hydro is now planning for a return to regular shift changes, the return to and rotation of a full workforce, and the continued operations of the largest work camp in Manitoba, as early as May 19, 2020. It is our understanding that the intention is to not only replace the 600-700 workers that have been segregated at the camp for the last 8 weeks, but to bring the total workforce present at the camp back to 1200-1300 workers. In the absence of a comprehensive plan and protocol, this poses an unacceptable risk to those at camp and to our communities.

Manitoba Hydro promised the KCN Partners a comprehensive plan and protocol, approved by Public Health, which would protect our communities from an outbreak of COVID-19. This plan, which was set out in the document “Future Measures Plan - Keeyask Returning to Regular Rotations”, was received on May 1, 2020. It was developed solely by Manitoba Hydro, without the participation or input of your partners in this project, the KCN communities, who stand to suffer the most in the event of an outbreak.

Upon a review of the plan, it is the KCN’s position that it contains several glaring deficiencies, that it would be irresponsible to return to regular shift rotations at this time, and that the plan should not be approved by Public Health due to the following:

- The plan shows a complete disregard to the risk posed to Northern communities. The plan completely omits any mention of the KCN partners in the project or concern for the communities involved in and surrounding Keeyask. It does not provide measures that will be put into place to ensure that the virus does not enter our communities.
- The plan is completely focused on non-local workers, coming from the South, workers from out of province, and potentially from out of the country, and not on any local KCN members working onsite. KCN Partners are especially concerned

with and opposed to workers arriving from outside of the country or outside of the Province of Manitoba, where larger outbreaks of COVID-19 have occurred.

- While it is a promising step that all workers may get tested and will require a negative result before flying North or going to work on the site, there is no on-site rapid testing for workers arriving, working at, or becoming ill on-site and leaving the Keeyask site. Other companies in the North, such as Agnico Eagle Mines in Nunavut, have managed to successfully work with Provincial, Territorial, and Federal Governments to arrange for onsite rapid testing of workers. With an appropriate allocation of resources, there is no reason why Manitoba Hydro cannot do the same. Workers leaving the site must be tested before leaving, especially those KCN members returning home to our communities.
- There are still no assurances that members working at the site will get paid while in isolation or awaiting test results. Workers should not be penalized financially for the additional safety steps they need to take to keep everyone safe.
- There is no requirement for those driving to the site that they are to drive directly to the site and not stop in Thompson, Gillam, or any Northern or KCN community along the way. These workers are only given a verbal survey questionnaire before leaving and are not tested until they arrive at Keeyask. This must be corrected.
- We have not been provided a plan for workers arriving by charter plane. Workers arriving by plane should at no point in time enter the Gillam Airport or the community. Best practice would be for workers to exit the plane and immediately board a bus or shuttle that is brought onto the tarmac. This bus or shuttle should then proceed directly to the camp. At no point should the bus or shuttle enter or stop in the Town of Gillam. The drivers transporting workers from outside the region should not be KCN members or a Gillam resident that lives and commutes daily to their home community.
- There is no clear plan to separate workers from outside the Northern region from workers from KCN communities. In fact, Manitoba Hydro has reopened the fitness facility, the dining room, and plans to reopen the lounge.

Even though the greatest risk to our communities is the continued operations of Manitoba Hydro in our region, the plan includes nothing to protect our communities. There are no plans to support our communities with the increased costs incurred as a result of the enhanced risk to our communities as a result of the operations of Manitoba Hydro. This includes the establishment and implementation of check stops, and the establishment, outfitting, and operation of isolation units in preparation for cases of COVID-19. As the largest employer, and our partner, in our territory this is a complete lack of good corporate citizenship.

The Keeyask Cree Nations will not accept a lack of meaningful engagement on this issue, and are requesting an immediate response to the issues detailed in this letter. We expect to be able to discuss our concerns with you directly by teleconference no later than Monday, May 11, 2020, with the hope that Manitoba Hydro will work with its partners to address the glaring deficiencies of the current plan, and the planned ramp up to a full workforce, to which we remain opposed. We are optimistic that the potential for devastation in our communities is sufficient reasoning for Manitoba Hydro to reconsider its current approach.

Please contact us as soon as possible in order to arrange a call to discuss this urgent matter. We look forward to your prompt response.

Sincerely,

FOX LAKE CREE NATION

Per: __ORIGINAL SIGNED BY____
Chief Billy Beardy

TATASKWEYAK CREE NATION

Per: __ORIGINAL SIGNED BY____
Chief Doreen Spence

YORK FACTORY FIRST NATION

Per: __ORIGINAL SIGNED BY____
Chief Leroy Constant

WAR LAKE FIRST NATION

Per: ____ORIGINAL SIGNED BY____
Chief Betsy Kennedy

cc:

Hon. Jeff Wharton, Minister Crown Services

Hon. Cameron Friesen, Minister of Health, Seniors and Active Living

Dr. Brent Roussin, Chief Public Health Officer, Manitoba

14

File No. 20-01-27182

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

5900345 MANITOBA LTD. and the MANITOBA HYDRO-ELECTRIC BOARD

plaintiffs/applicants,

QUEEN'S BENCH

MAY 18 2020

- and -

LAW COURTS

**TATASKWEYAK CREE NATION, LEONARD CHORNOBY, JOSEPHINE KEEPER,
MICHAEL KIRKNESS, NORMAN McIVER, NATHAN NECKOWAY, CHIEF DOREEN
SPENCE, ROBERT SPENCE, PERCY SPENCE, JOHN DOE, JANE DOE and
PERSONS UNKNOWN**

defendants/respondents.

ORDER

Osler, Hoskin & Harcourt LLP
TC Energy Tower
Suite 2500, 450 1 ST SW
Calgary, AB T2P 5H1

Attn: Maureen Killoran, QC /
Sean Sutherland
Tel: 403-260-7003/403-355-7458
Fax: 403-260-7024
Email: mkilloran@osler.com/
ssutherland@osler.com
File No.: 1207112

Manitoba Hydro Legal Department
22nd Floor – 360 Portage Ave.
Winnipeg, MB R3C 0G8

Attn: Douglas Bedford /
Joe Langan
Tel: (204) 360-3414/(204) 360-4539
Fax: (204) 360-6147
Email: dbedford@hydro.mb.ca/
jmlangan@hydro.mb.ca

THE HONOURABLE JUSTICE) May 18, 2020
VICTOR E. TOEWS)
)

1. This motion may be heard on short leave.

2. The Defendants, and any other person having notice of this Order, are hereby restrained and enjoined from:
 - (a) physically obstructing, impeding or otherwise preventing access by Manitoba Hydro, its contractors, employees or agents, to, or work in, the Keeyask Generating Station Project (the "**Project**"); and
 - (b) physically obstructing, impeding or otherwise preventing access by Manitoba Hydro, its contractors, employees or agents, from access to any of the roads identified and labelled in the map attached hereto as **Schedule "A"**.
3. Any police officer is hereby authorized to arrest and remove any person who the police officer has reasonable and probable grounds to believe is contravening or knowingly has contravened the provisions of this Order. For the sake of clarity, such police officer retains their operational discretion as to whether or not to arrest or remove any person pursuant to this Order.
4. Any police officer who arrests and removes any person pursuant to this Order is hereby authorized to:
 - (a) release that person from arrest upon the police officer being satisfied that the person will no longer contravene the provisions of this Order;
 - (b) release that person from arrest upon the person agreeing in writing to not breach this Order and to appear before this Court at such a time and place as may be fixed for the purpose of being proceeded against for contempt of court or for fixing a date for such a proceeding;
 - (c) where such a person has refused to give a written undertaking pursuant to paragraph 4(b) above, or where in the circumstances the police officer considers it appropriate, to bring forthwith such person before the Court of Queen's Bench of Manitoba in any such manner as the Court may direct for the purpose of being proceeded against for contempt of court, or for fixing a time for such proceedings; or
 - (d) detain such person until such time until they can be brought before this Court.
5. A police officer is entitled to detain and transport any person in order to give effect to paragraph 4(c) above.
6. Manitoba Hydro shall cause copies of this Order to be posted on or around the Project.
7. Notice of this Order may be given to the Defendants by any of the following:
 - (a) posting this Order in the fashion described in paragraph 6 of this Order; or

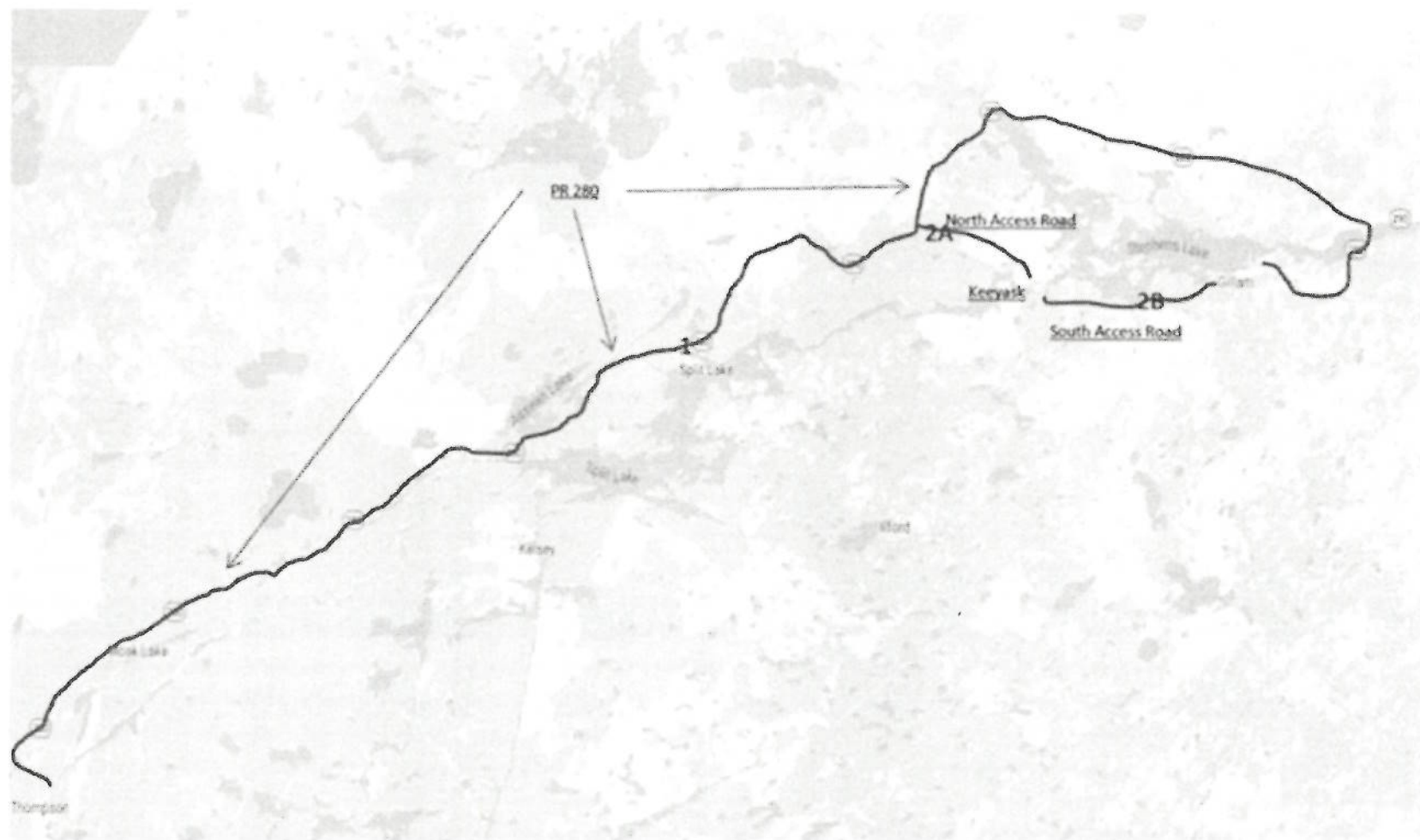
- (b) this Order is read to them, including but not limited to being read over an amplification system.
8. Without limiting paragraphs 3 or 7 of this Order, for the purposes of enforcing this Order, any person, regardless of whether they are in breach of this Order, shall be deemed to have knowledge and notice of this Order if a copy of this Order is shown to them or read to them (including but not limited to being read over an amplification system), and they are provided an opportunity to comply with this Order.
 9. Without limiting the foregoing and further to paragraph 8 above, any person who breaches this Order will be arrested in accordance with the RCMP's "five step process" which is:
 - (a) ask the individual to cease the unlawful act;
 - (b) inform the individual their action is unlawful;
 - (c) caution the individual that if they continue to act unlawfully they will be arrested and could face charges;
 - (d) confirm the individual is aware they will be arrested and could face charges; and
 - (e) arrest the individual in accordance with appropriate Charter obligations.
 10. This Order shall not apply to persons acting in the course of or in the exercise of a statutory duty, power, or authority.
 11. Provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in peaceful, lawful, and safe protest.
 12. 5900345 Manitoba Ltd. and the Manitoba Hydro-Electric Board undertake to this Court that they will abide by any Order of this Court as to damages payable by them to the Defendants named or subsequently named in this Action as a result of the granting of this Order, or as otherwise ordered by this Court.
 13. This Order is in effect for 10 days.
 14. The Plaintiffs' must contact the Court of Queen's Bench Registry to schedule a return date for a hearing of the Notice of Motion, within 10 days of this Order, and provide notice of that return date to the Defendants.

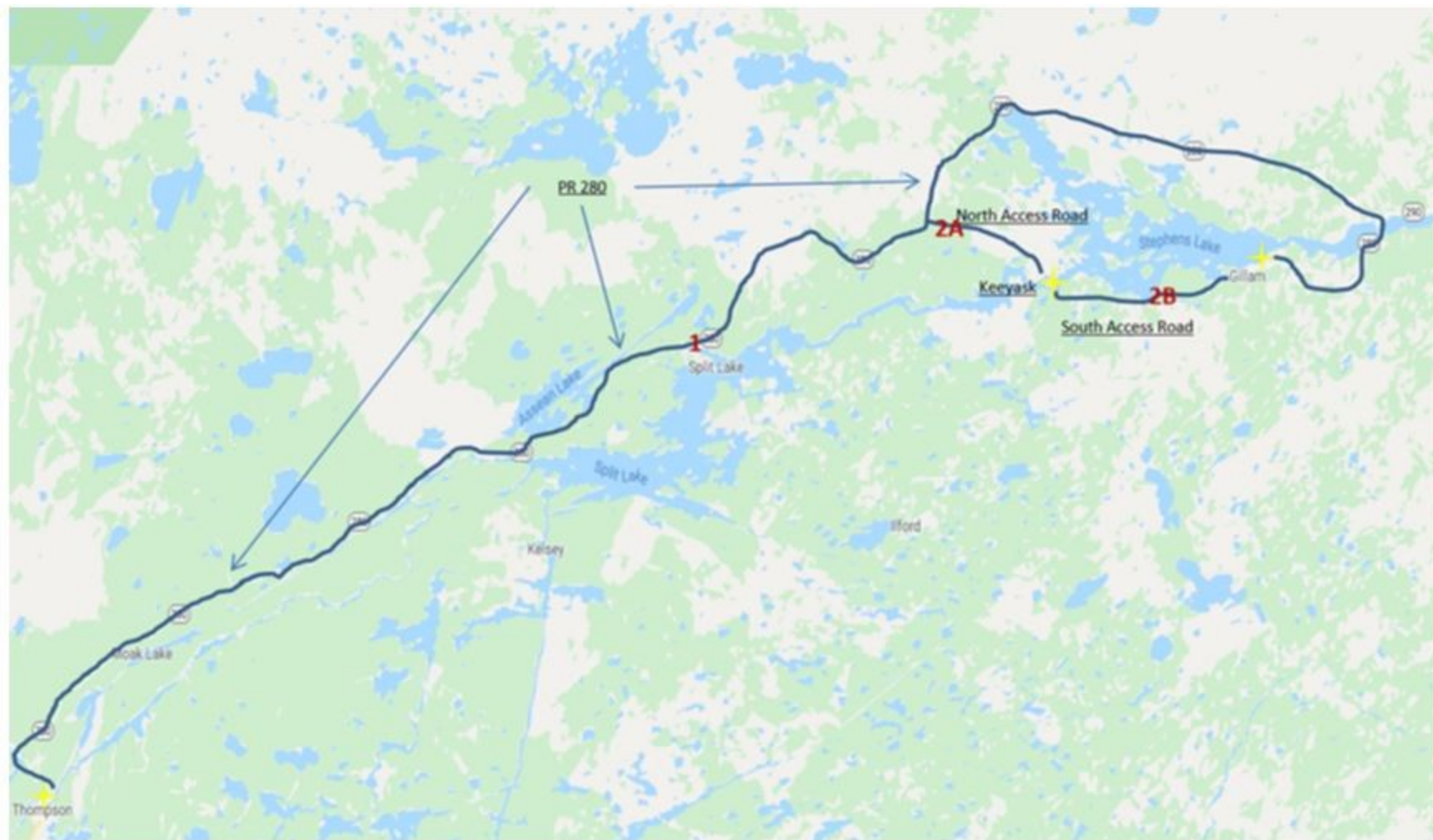
15.5900345 Manitoba Ltd. and the Manitoba Hydro-Electric Board are at liberty to apply to vary the terms of this Order. Any person affected by this Order shall have the liberty to apply to set aside or vary this order on not less than 48 hours' notice to Manitoba Hydro.

May 18, 2020

For 
Honourable Justice V. Toews

SCHEDULE "A"





File No. _____

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

**5900345 MANITOBA LTD. and the
MANITOBA HYDRO-ELECTRIC BOARD**

plaintiffs/applicants,

- and -

**TATASKWEYAK CREE NATION, LEONARD CHORNOBY, JOSEPHINE
KEEPER, MICHAEL KIRKNESS, NORMAN McIVER, NATHAN NECKOWAY,
CHIEF DOREEN SPENCE, ROBERT SPENCE, PERCY SPENCE, JOHN DOE,
JANE DOE and PERSONS UNKNOWN,**

defendants/respondents.

**AFFIDAVIT OF DAVID BOWEN
SWORN MAY 17, 2020**

I, David Bowen, of the City of Winnipeg, in the Province of Manitoba, SWEAR
THAT

1. I am the Director of the Keeyask Generation Project (the “**Project**”) for the Plaintiff, the Manitoba Hydro-Electric Board (“**Manitoba Hydro**”). I have been in this role since June 2014. As such, I have personal knowledge of the facts and matters contained in this affidavit, except where stated to be based on information and belief, in which case I believe the same to be true.

2. I am authorized by 5900345 Manitoba Ltd. (the “**Company**”) and Manitoba Hydro to swear this Affidavit in support of their Motion for, among other things, an injunction restraining the Defendants, all or some of whom are members of the Defendant, Tataskweyak Cree Nation (“**TCN**”), from obstructing roads

cases of COVID-19 at the Project site, and consultations with regional and provincial health authorities, Manitoba Hydro has decided to resume a pre-pandemic work schedule, while maintaining a reduced workforce of approximately 1000 workers.

13. This requires that Manitoba Hydro implement a shift change or rotation to bring in returning workers that have not been on the Project construction site for several weeks (the “**Rotation**”, as defined above).

14. Given that much of the construction work requires that workers possess highly specialized training that is in short supply in Manitoba, Manitoba Hydro must rely on a labour force from across Canada and, in some cases, internationally.

15. At any given time, around 200 non-Manitobans have been employed on the Project. For example, there are a group of generator “winders” from Quebec working for Voith (Manitoba Hydro’s Turbine and Generator contractor) that are specialists in this work, which is specific to large hydroelectric utility installations and is not common across Canada. Due to Hydro Quebec’s large presence in the Canadian market, it has a near monopoly on this skill set.

16. Manitoba Hydro also requires heavy duty mechanics that work for Bechtel-Barnard-Ellis Don, Manitoba Hydro’s general civil contractor for its large earth moving equipment. These tradespeople are specialists in the largest types of construction equipment, typically used in mega projects and in the oil sands of Alberta. The Manitoba construction industry does not always have the specialized skill set for this equipment and Manitobans are already deployed to neighboring provinces due to high demand relative to supply.