

**FILE NO.:** SCT-4002-12  
**DATE:** 20170313

**SPECIFIC CLAIMS TRIBUNAL  
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

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|--|---|---|
| <b>BETWEEN:</b>                          | ) |   |
|  | ) |   |
| BROKENHEAD OJIBWAY FIRST                 | ) |   |
| NATION                                   | ) | Sheryl A. Manychief, for the Claimant     |
|  | ) |   |
|  | ) |   |
| Claimant                                 | ) |   |
|  | ) |   |
| <b>– and –</b>                           | ) |   |
|  | ) |   |
| HER MAJESTY THE QUEEN IN RIGHT           | ) |   |
| OF CANADA                                | ) | Paul Anderson and Jean-Daniel Boulet, for |
| As represented by the Minister of Indian | ) | the Respondent                            |
| Affairs and Northern Development         | ) |   |
|  | ) |   |
|  | ) |   |
| Respondent                               | ) |   |
|  | ) |   |
|  | ) |   |
|  | ) | <b>HEARD:</b> March 7, 2017               |

**ENDORSEMENT**

**Honourable W.L. Whalen**

A Case Management Conference (CMC) was held by teleconference on March 7, 2017, at 11:00 A.M., Eastern Time (Ottawa).

[1] The Claimant reported that its expert has been away and involved in other matters and so has been unavailable. The expert report has been completed, but the Claimant is trying to reach the expert to obtain previously unproduced documents identified as part of the report. It expects

to produce the report and related documents to the Respondent in the near future. The Respondent will then decide whether it requires a responding expert report.

[2] The Claimant reported that it had not responded to the Respondent's draft Agreed Statement of Facts because of questions about the source of some of the information stated in the draft. The Claimant had requested citation of documentary authority to the Respondent who is in the process of preparing a response. Progress will be reviewed at the next CMC.

[3] The Respondent has delivered a draft Agreed Statement of Issues that the Claimant is requested to respond to.

[4] The Respondent confirmed that it had provided clarification of the questions it had to the Claimant arising from the oral history testimony. Essentially, the Respondent wants to know whether the Claimant will acknowledge or not, based on the testimony, that the Hydro transmission lines in question had provided an incidental benefit to the Band. The Respondent indicated that it sought an admission of the Claimant as a factual matter in relation to its potential compensation set-off position (not whether the Claimant agreed that a set-off was proper here, if an incidental benefit did arise). If the Claimant is not prepared to provide the admission the Respondent seeks, the Respondent indicated that it may call a witness from Manitoba Hydro. If so, the Claimant will want to cross-examine the witness. The matter will be reviewed at the next CMC.

[5] In view of the Claimant's position and supporting law expressed in its CMC brief, the Tribunal thought it prudent to have a fuller hearing by formal Application if the Respondent intends to seek bifurcation. It is probably premature to consider the matter until expert reports have been delivered. The Tribunal also expressed interest in the Parties' approaches to damages, in particular the method and result of calculating historical value. The Tribunal also expressed interest in how the Parties proposed to calculate compensation should the matter proceed that far, and particularly how they proposed to bring historical value forward to present value. The Respondent is granted leave to bring an Application for bifurcation as and when it deems necessary.

[6] The next CMC will be held by teleconference on **May 8, 2017**, at 12:00 P.M., Eastern Time (Ottawa).

W.L. WHALEN

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Honourable W.L. Whalen