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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

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**THE QUEEN'S BENCH
WINNIPEG CENTRE**

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

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.

ORDER

THIS MOTION, made by 5900345 Manitoba Ltd. and the Manitoba Hydro-Electric Board (together, "**Manitoba Hydro**"), for an interlocutory injunction, was heard by the Honourable Justice V. Toews by teleconference on May 18, 2020, at 3:00PM.

ON READING the Notice of Motion, Statement of Claim, the Affidavit of Doug Lofto, sworn May 17, 2020, the Affidavit of David Bowen, sworn May 18, 2020, the Affidavit of Gregg Epp, affirmed May 17, 2020, the Affidavit of Dr. Brent Roussin, sworn May 17, 2020, the Affidavit of Service of Amanda Carnahan, sworn May 18, 2020, the Affidavit of Service of Doug Lofto, affirmed May 18, 2020, and on hearing the submissions of counsel for the Plaintiffs, and on Denis Guénette appearing for Manitoba Justice, and no one appearing for the Defendants,

THIS COURT ORDERS that:

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

AR 

Honourable Justice V. Toews

SCHEDULE "A"

