

This is in response to **Undertaking No. MC-74** as outlined on Page No. 5209, Volume 22, of the transcript of the May 11, 2004 proceedings of the Manitoba Clean Environment Commission concerning the proposed Wuskwatim Generation and Transmission Project. The requested undertaking is outlined below:

“Advise what the circumstances are in the regulations when a licence is issued and what modifications can be made.”

This Undertaking relates to questions about how a licence under *The Water Power Act* may be amended after it is issued.

Section 39 of the Water Power Regulation specifically addresses the amendment of an Interim Licence under *The Water Power Act*.

Amending interim licence

39 Subject to this regulation the terms of any interim licence may be amended by a supplementary licence entered into between the minister and the interim licensee, and plans and specifications previously approved may be amended with the consent in writing of the minister, but any such amendment shall affect only the portion specifically covered in such supplementary licence or writing, and shall in no case operate to alter or amend or in any way whatsoever be a waiver of any other part, condition or provision of the original interim licence.

There is no similar specific provision of the Water Power Regulation to address amendments of a final licence. However, Manitoba Water Stewardship considers that applying the Regulation as a whole, there may be amendments to a final licence where required and where the amendment is accepted by the Licensee. For example, there have been two amendments to the Final Licence for the Kelsey Site (initially issued in 1966) – one in 1971 to provide for a sixth turbine and one in 1983 to provide for a seventh turbine.

Also, changes to a water power undertaking licensed by a final licence may be made under a specific interim licence relating to the changes, and once the change is complete and in operation a final licence may be issued for the change. The form of this may be to incorporate the change into the existing final licence. This was the process used for the 1971 amendment to the final licence for the Kelsey site.

We also note that section 20 and section 44 of the Water Power Regulation authorize the inclusion of conditions in a final licence as determined by the minister.

20 Every interim or final licence shall be deemed to incorporate and shall be subject to the provisions of the regulation in force at the time of the issue of the interim or final licence and to such other stipulations, provisos and condition, as the minister may impose

44 The final licence shall embody the terms which were set out in the interim licence for incorporation into such final licence, and such other terms and conditions, as the minister may impose, including insofar as applicable, the following particulars:

...

These provisions may allow for conditions to be included in a final licence as to the process for amending the final licence.