

11/20/2013 5:43:04

**Gaile Whelan Enns**

**Manitoba Wildlands**

[gwhelan@web.ca](mailto:gwhelan@web.ca)

Keeyask (Manitoba Hydro)

**"Communications and Consultation P1, 1.2.2 Management:**

It appears that Assessors did not determine whether Crown consultations agreements AND consultations re the KCNs fulfilled the

government of Manitoba guidelines, and the federal government requirements for Aboriginal consultations. Keeyask is a project with federal responsibilities, various.

Also the aboriginal consultation program in Manitoba, as mandated by Premier Selinger is one consultation per project. The assessment text does not appear to understand this.

The understanding of the PIP is weak, no mention of the workshops with stakeholders at each round."

**"Communication and Consultation P1, 1.2.3 Stakeholder Engagement**

References to directly affected stakeholders are confusing.

- 1) First Nations are NOT stakeholders in Canada
- 2) The KCNs are business partners in this hydro project
- 3) Other First Nations are directly affected by this project, but are not partners in the project
- 4) The proponent or developer identified the directly affected First Nations, and then identified them as both business partners and stakeholders to IHAP
- 5) Consultation language is mis used here, as Manitoba Hydro or ANY developer cannot conduct consultations with a First Nation.
- 6) Only the Crown conducts consultations with First Nations in Canada
- 7) Confusion in the language and understanding of processes is evident in assumption of who is directly affected.
- 8) Manitoba Hydro is a public utility, and therefore is owned by Manitobans. This means that we are all affected, perhaps directly given the public debt involved.

9) IHA may be ignoring Canadian realities and standards in trying to apply an international standard/assessment. Worse IHAP may be trying to apply a European standard regarding Aboriginal Peoples that is not a fit for Canada.

10) IHA appears to be endorsing processes that are NOT public.

11) There is a reference here to annual Wuskwatim Reports. There is no such thing. Fact checking would be recommended.

12) External interviewees did NOT all 'agree that feed back to other stakeholders had been thorough and timely.'

13) The assessors appear to have confused a regulatory process and requirement ( reporting on PIP) with a communications initiative.

14) It is evident from content that the assessors did not speak with Cross Lake, the Metis Federation, Or NCN."

#### **"Communication and Consultation P1, 1.2.4**

The assurance that there were no non compliance for Section 35 is in error. The regulatory authorities presumably told the assessors that as of the date of the assessment that Section 35 consultations were not completed, and that in some communities they had not begun yet. This is STILL so.

We would expect the assessors to be aware that there are more than one set of Crown consultations required for any Hydro project in northern Manitoba given the Treaty regarding hydro damages. Those consultations are not yet completed.

It appears that the assessors went on verbal information, and did not interview First Nation experts in Manitoba on these matters.

It is not at all clear what 'consultation under environmental licensing means."

#### **"Governance P2 Assessment 2.2.1**

The Canadian Environment Assessment Agency will provide a Comprehensive Review report, not the same as an environmental assessment. The sequence of regulatory events here is in accurate.

The EIS filed by the proponents is the EIS under the Environment Act. It was filed June 2012.

The 1\$ B CDN transmission line to the US is left out of the description of the PUB review.

The PUB hearings are the review. Clearly the assessors needed to be sure they understood the regulatory processes before writing the assessment.

Peer review definitions include independant review, which internal to Manitoba Hydro reviews are not.

The Crown Corporations Committee of the Manitoba Legislature gets to ask Manitoba Hydro questions once a year. The transcript is provided but materials are not public.

The assumption of partnership is in all of the language in this section The partner ship is not explicitly described. This is a 75 or 85 to 25 or 15 % arrangement. No single First Nation will hold more than 12.5 or 15% of decision making power. The 4 KCNs will hold up to 14% all together."

### **"Governance P2 Management 2.2.2**

The statement that the # company will be 'liable for all its debts' is not correct. The people of Manitoba are liable for the debt of this 'wholly owned subsidiary of Manitoba Hydro.'

The EIS was already available at the time of the assessment. This text reads as if the assessors did not know that OR did not read any of it.

The last paragraph is written as if Manitoba Hydro is not responsible to the Province of Manitoba under any future licence for all aspects of the planning, construction, operation, governance etc of the project."

### **"Governance P2, Outcomes 2.2.5**

Does IHA and the Protocol for sustainability endorse ratification votes that are not a majority of voters agreeing to the propose?

This question should be answered before this assessment is passed. The ratification votes specifics were available to the assessors but they may not have actually asked for the data.

For the JKDA to acquire legitimacy in each KCN is not the point.

Did these ratification votes acquire legitimacy in Manitoba, and do they full full for instance the requirements of the Supreme Court decision Corbiere re voting in First Nation communities in Canada?

The assessors are in error to say that it is not significant to be without a plan to manage the funds in the Partnership.

The PUB will expect this, and it should be in place."

### **"Governance P3, Scoring Summary 2.3**

It appears the assessors are only interested in internal to the Keeyask partnership reporting. Manitoba Hydro is not known in Manitoba for ' a high level of public reporting and disclosure.' In fact in the Wuskwatim CEC proceedings there was a motions hearings due to the refusal to provide requested and cited EIS reports, and to disclosure information the CEC participants were requesting. In the current Keeyask CEC proceedings a variety of similar problems are occurring now.

Perhaps the assessors did not ask any questions, or did not ask anyone outside of the utility and the government."

### **"Demonstrated Need and Strategic Fit P3, Background Information 3.1**

The first paragraph is a shock to an involved stakeholder who has participated in Manitoba Hydro and energy proceedings in our province for almost 20 years. What 'strategic planning exercise for

both water and energy sectors'? Is it secret ? Does IHAP endorse secret processes ? A simple online search will show you that there is no strategic plan for water and energy and no IWRM strategy for Manitoba.

The reference to a long line of hydro power projects is odd. Manitoba did NOT build any hydro projects for 20years before Wuskwatim, and the Limestone project was stopped in the 1970s after the Trischler Commission investigation was set up.

It is inaccurate to state that the minister responsible for Manitoba Hydro is the minister for the Energy Division in this department. The Minister responsible for Manitoba Hydro can be any minister in cabinet, and has over the last 12 years mostly NOT been in the ministry mentioned.

Did the assessors ask about the materials they identify as

'Clean Energy Strategy' and 'Tomorrow Now' Did they read them ? Did they compare them to what the Manitoba government uses in the US in promotion of energy sales? Did they ask how the contents were arrived at ? Whether there was any consultation ?

Any public review ?

The statement of 1,000 mg of wind power being technically feasible is in error. This is the promise from our government from 10 years ago. There is no public or independant study of what is technically feasible in wind energy in Manitoba. There are over 10 environment licences issued for wind projects which Manitoba Hydro does not agree with."

"Demonstrated Need and Fit P3, 3.2 Detailed Topic Evaluation

None of the information or materials uses as the basis for the assessment are public, or included in the EIS. They may not be in the filings for the PUB review either.

The statement that the EIS responds to the Sustainable Development Act mis states our regulatory framework. The EIS guidelines and the terms of reference for the CEC proceedings, reviews, and hearings require the proponent and the CEC to fulfill their responsibilities including in relation to the Sustainable Development Act, Principles, and Guidelines.

Foreseeing the national energy strategy is odd. Who says what wil be in it. The GHG footprint of the Keeyask project would presumably be the basis for assessment. Canada's electrical sector includes several hydro electric utilities. Perhaps comparing to them would be a basis for assessment.

The bottom of pg 23 is an odd statement.

Unless IHA is assessing the various public policy intentions of the Manitoba government it is hard to know what is sustainability based. These initials, and the new Act are years away.

### **"Demonstrated Need and Strategic Fit P3, 3.2.2 Stakeholder Engagement**

The PUB process does NOT include public consultation. A quick look at their website would confirm this. It remains to be seen how public the PUB process will be, as we have never conducted a NFAT review of a Hydro development plan before. ( only small single project NFAT reviews)

#### 3.2.3 Outcomes

There is no public review of PUB NFAT materials.

The CEC hearings put the EIS to the test - which was still being filed in September 2013 !"

### **"Siting and Design 4, Stakeholder Engagement 4.2.3**

The first statement repeats the earlier error. The KCN are business partners who are also rights holders. They are not the only Aboriginal rights holders affected by this project. They are no stakeholders. This simply is another description of internal to the Partnership processes. Is this criteria about business discussions?

If it is about stakeholder engagement then the assessors needed to interview beyond the KCNs."

### **"Environmental and social impact management P5, Background Information 5.1**

Access to information about Hydro projects in our province is difficult. An obvious example is that our government and the utility do NOT make available the information they use in the US, do not post reporting and various reports to MISO, do not discuss the technical partnerships regarding wind energy, transmission, security etc that are available about our utility in the US.

Why does everything in this assessment assume a licence will be issued ? It is incorrect to state that a licence for Keeyask will not be issued before the resolution of the PUB process. Our regulatory system does not require this.

Commentary about human rights being better in Canada ignores the reality of First Nation and Aboriginal Rights in Canada. We suggest that a conversation with the UN Rapporteur, and a review of his reports on Canada would be in order.

The rights of First Nations who are NOT KCNs must be upheld also. Those consultations are not complete yet either.

The statement that ' baseline data are well documented' is odd also. There has been little study of the upstream and downstream section of the Nelson River where Keeyask would be built. This has been acknowledged by Manitoba Hydro in the CEC hearings.

None of the studies ( there were references to 70 different studies in the CEC hearings) are online. The utility should be making the historic studies and their range of studies available. Commitments in the BP3 hearings were made to do this.

**"Environmental and social.....P 5, 5.3 Scoring Summary**

The statement that the project followed Canadian and international best practices....is one that the assessors and IHAP have to be able to verify.

The CEC hearings will have 3 weeks of presentations from independant experts who in their areas of expertise, will dispute this statement."