

September 24, 2012

Honourable Gord Mackintosh  
Minister of Conservation and Water Stewardship  
330 Legislative Building  
450 Broadway Avenue  
Winnipeg, MB R3C 0V8

Tracey Braun, Director of Environmental Assessment & Licensing  
Manitoba Conservation and Water Stewardship  
Suite 160, 123 Main Street  
Winnipeg, MB R3C 1A5

**Re: Keeyask Generation Project - Environmental Impact Statement – Public  
Registry #5550.00**

Dear Minister Mackintosh & Director Braun,

Please have this letter placed in public registry file #5550.00 regarding the Environmental Impact Statement (EIS) for the proposed Manitoba Hydro/Keeyask Limited Partnership Keeyask Generation Project (Public Registry file #5550.00).

Our comments are provided in the public interest, and are intended to assist the proponents, Manitoba Hydro and Keeyask Limited Partnership, Manitoba Conservation & Water Stewardship Environmental Approvals Branch (EAB), and the Canadian Environmental Assessment Agency (CEAA) to increase the certainty, quality of assessment and decision making, and improve public and/or First Nation consultations.

We take these steps because major public works projects impacting significant areas of Manitoba's lands and waters, that also spend or borrow significant amounts of public funds must have the highest quality of planning, access to information, environmental effects assessment, public reviews, and licensing processes.

In the present case government is in essence licensing itself through a Crown Corporation and setting its own licensing and environmental assessment standards. We therefore expect an outside critique of the EIS materials is not only needed, but welcomed by the proponent and licensing authorities. While the Cree Nation Partnership is the proponent, we consider Manitoba Hydro to be the proponent in the sense that Manitoba Hydro would build this project, would finance it with public funds, would sign any export agreements regarding the energy generated, etc.

## 1. Inadequate Timeframe, Review Period & Access to EIS Reports

Unfortunately our efforts to provide adequate review have been hampered by inadequate timelines for review, inadequate or non-existent access to supporting reports, and overlapping hydro projects undergoing review.

Notice of the EIS was advertised in the Winnipeg Free Press on July 14<sup>th</sup>, 2012. Initial EIS materials were not available till late July. This original EIS material (about one-third of the materials provided thus far) carried no indication of the full volume of information involved, and no indication that only some of it was included in the initial filing, available on paper, or when the rest would be available. Any person going to a public registry (including those set up especially for the Keeyask *Environment Act* process and reviews) would assume that the material available in July was the entire EIS. Even looking at the CDs inside the binders would not provide a full picture of what would be involved in reading and reviewing the full EIS, or what other materials would be part of the EIS, *or* when these materials would be available.

Further technical reports were made available on paper in late August. The public therefore has been given at most 5 weeks (over the summer holidays it should be added), and less than a month in most cases, to review 13 voluminous binders of information. It is not clear how long it took for the EIS materials made available in late August to arrive at public registries.

Moreover, Manitoba Wildlands inquiries have revealed that the following information, and possibly other EIS contents, will be released after the comments deadline:

- Information from plant workshops with Keeyask Cree Nations;
- A final human health assessment;
- The Fox Lake Environmental Assessment Report (Scheduled for release February/March 2013);
- Additional information about monitoring and protection plans;
- And additional information expected to be filed before public hearings.

The title of the EIS “Response to EIS Guidelines” binder is also unclear, and there is no single enumeration for the 13 volumes of information. Manitoba Hydro has also not provided a guide or all in table of contents for the 13 volumes. *The volumes are also not numbered.* An ordinary Manitoban looking at the 13 binders would have great difficulty in determining where to start.

In short, the public has not been provided with the information, on a timely basis, to conduct an adequate review. The public registry under the *Environment Act* is the paper registry, with complete files at the Public Registry, 123 Main Street, Winnipeg.

***RECOMMENDATION: We urge you to extend the comments deadline for Keeyask until 90 days from when the EIS materials and binders were made available to be reviewed in late August.***

***RECOMMENDATION: EALB require Manitoba Hydro to file as much of the outstanding material in October as possible, including it in the public review of the supplemental filing, which EALB will be requesting.***

To this end we would note that the public was given 90 days to review the Bipole II EIS. Class 3 developments need to have an EIS review standard so those affected, and the interested public know what to expect in terms of *Environment Act* proceedings.

## **2. Need for NFAAT to Proceed**

The need for a project needs to be considered in a modern environmental effects assessment, and review of the proponents' filings. As yet there is no indication how the NFAAT (Needs for and Alternatives to) review for Keeyask generation and transmission projects will be conducted.

In a July 6, 2012 letter to Tracey Braun, Director of Environmental Assessment & Licensing, K.R.F. Adams, President of the Keeyask Hydropower Limited Partnership bluntly states:

“For the purpose of Manitoba’s review, we would expect that “needs for and alternatives to” will not form part of Manitoba’s review as the government has advised that this issue will be dealt with by a separate panel in a separate process.”

Planning for the Keeyask hydroelectric generating station has been underway for years. Former Deputy Premier Rosann Wowchuk indicated January 13, 2011 that “an independent body” would carry out an NFAAT assessment of future hydro projects.

Twenty-one months later, no one, including Manitoba Hydro, is aware of when this NFAAT process will begin, who will be charged with the responsibility of carrying out this NFAAT review, what the terms of reference will be, or any of the other pertinent details required for the NFAAT review process to begin. Manitobans, including stakeholders, affected communities, and those that wish to participate in the NFAAT review, need to know what the NFAAT process will be.

In our February 3, 2012 comments on the Keeyask Scoping Document we highlighted the need for clarity in the NFAAT process. We would strongly recommend that the PUB or CEC NFAAT review of Keeyask, Conawapa, export sales and related transmission projects be put in place, with participant funding, immediately.

***RECOMMENDATION: Manitoba Wildlands recommends that once a proposal is filed under the Environment Act, reviews not be considered complete until after a public NFAAT review and analysis has been undertaken,, with test methods and recommendations reports available..***

***RECOMMENDATION: Manitoba Wildlands further recommends that the NFAAT review take place by way of tribunal or an existing administrative body, whereby affected parties and individuals, interested organizations and the public, are able to seek funding and test the technical information and NFAAT evidence put forward by the Keeyask Cree Nation Partners/Manitoba Hydro.***

### **3. Staged Licensing: Transmission and Generation Should be Subject to Combined Review**

We would remind that Wuskwatim Generation Station and Transmission projects were subject to same Environment Act proposal filing, EIS filing, reviews, and CEC proceedings. All Environment Act and CEC deadlines, processes, and hearings were about both projects. The Wuskwatim generation station is contained in a PDA, was subject to community referenda, and involves similar if not the same steps by Manitoba Hydro regarding project partnership and joint proponent status with Manitoba Hydro by a First Nation as does Keeyask. The Wuskwatim transmission project was not. Why would Manitoba Hydro then delay and separate the filing of the Keeyask Transmission project? Why would Manitoba Conservation agree to this exaggerated process of staged licensing for Keeyask?

The July 6, 2012 letter to Tracey Braun, Director of Environmental Assessment & Licensing, K.R.F. Adams, President of the Keeyask Hydropower Limited Partnership also states:

“It is our understanding that the Keeyask Transmission Project, which is a Manitoba Hydro Project as opposed to a [Keeyask Cree Nation] Partnership Project, will be evaluated separately by the department as a Class 2 Development once the EIS for that project has been completed and filed.” (Quote from same July 6, 2012 letter.)

It appears that Mr. Adams wishes to avoid public reviews, hearings, and a full EIS proceeding for the Keeyask transmission line projects. There was no problem with the Wuskwatim Environment Act and CEC proceedings including the transmission line for the dam, even with it being a Manitoba Hydro project only.

***RECOMMENDATION: Manitoba Wildlands recommends that the Keeyask Generation and Transmission projects be evaluated together as a single project during both the environmental assessment and NFAAT processes.***

The fact that Manitoba Hydro has established several separate corporate entities, including the Keeyask Cree Nation Partnership, with local First Nations, does not negate the fact that generation and transmission are two parts of the same project. One cannot be built without the other, and thus they need to be, reviewed assessed, and analysed together.

The Keeyask projects pattern is troubling, as there will be several licenses in total, while only the generation plant will receive public review, and proceedings. This is the most extreme pattern of staged licensing to date in Manitoba.

#### **4. Consultation with Aboriginal and First Nation Peoples Before Reviews/ Hearings**

We would also urge the government to start consultation with affected First Nations before the start of the environmental review process for Keeyask. The fact that aboriginal consultation projects for the Bipole III Transmission Project will not be completed until after the conclusion of the Clean Environment Commission (CEC) hearings on Bipole III has created distrust among Manitoba First Nations, and created difficulties for the CEC.

To avoid these problems we recommend that consultation with First Nations proceed ahead of the full environmental review process. While it is heartening to see Mr. Bedford of Manitoba Hydro indicate there are as many as 45 Aboriginal communities potentially affected by Bipole III – there is concern that an artificial lowering of the number of Aboriginal communities potentially affected by Keeyask projects could create real problems for the utility and the government. Keeyask, for instance requires Northern Flood Agreement (NFA) consultations also. It should be noted that our offices have heard nothing about the NFA consultations regarding BiPole III.

It is unclear how consultation with affected communities about the generation station can proceed without full information and content about the transmission line. Or how they could proceed without complete EIS materials.

Given Mr. Adams' content in his Keeyask EIS transfer memo regarding First Nations issues it would be helpful for the Minister and the director of licensing to confirm that First Nation review of the EIS, review comments, and analysis of the Keeyask EIS are encouraged and considered valid. Certainly it would be unfortunate if Mr. Adams or any other Manitoba Hydro or Manitoba Conservation executive were to give the impression that First Nations analysis is only relevant and will only be re considered with respect to rights.

***RECOMMENDATION: Manitoba Wildlands recommends that aboriginal and First Nations consultations regarding the proposed Keeyask Generation and Transmission Project proceed ahead of the environmental review process, and that outcomes from these consultations be available before any licensing decision.***

## 5. Further Concerns, Recommendations, and Requested Clarifications

The inadequate access to materials, short time frame for EIS review provided, and the fact Wildlands efforts, along with other interested and affected parties, are being directed to the on going Bipole III proceedings has limited our ability to provide as thorough a review of the initial EIS documentation. Please see our recommendation above to extend the time frame for review of the EIS, to commence with the NFAAT review, and First Nations consultations immediately and before the next stages of the environmental reviews and proceedings.

Please note because of the above-mentioned deficiencies in the review process the comments below do not constitute a full review of the 13 binders of EIS materials for the Keeyask Generation project, rather some concerns are included below:

- Section “4.6.3 Reservoir Clearing” states: “Selected locations will not be cleared if they are deemed to provide environmentally sensitive habitat.”
  - **Question:** If these non-cleared areas of “environmentally sensitive habitat” are inside the reservoir area, will they not eventually be flooded?
- Section “4.7.3 Vegetation and Debris Management” states: “...some shoreline areas will disintegrate after initial flooding, adding approximately 7 to 8 km<sup>2</sup> to the reservoir area in the first 30 years after it is created.”
  - **Question:** Of the total reservoir area, both initially and subsequently as the reservoir expands over decades, what percentage of flooded area will be peatlands/muskeg vs. what percentage will be forested lands, etc.?
  - **Question:** Full information as to the project and potential flood areas are required.

***RECOMMENDATION: Manitoba Wildlands recommends that once TAC comments on the EIS are completed and public that EALB file a thorough supplemental filing requirement for Manitoba Hydro to file, with a stated deadline of 30 days, and public review of those additional EIS materials for Keeyask.***

## 6. Federal Responsibility: Keeyask

The EIS transmittal letter from Vice President Adams omits a primary issue. Acknowledgement of federal responsibility under CEAA for proceedings that began two years ago and continue under that CEAA Act are missing from his letter. This is a concern and begs the question whether Manitoba Hydro seeks to avoid federal responsibility and regulatory framework for the Keeyask projects. We would recommend, as we have in the past, that a joint panel be established for the hearings for the Keeyask projects.

On the same basis, the lack of reference to: the Scoping Document for Keeyask Generation Station, and requirement to fulfil the CEAA EIS Guidelines for Keeyask are

of real concern to Manitoba Wildlands. Appropriate response and fulfilment of the federal requirements regarding Keeyask should also be contained in Mr. Adams' letter.

***RECOMMENDATION: Manitoba Wildland recommends that Manitoba Conservation EALB make sure that both or the Scoping Document for Keeyask Generation Station and the CEAA EIS Guidelines for the project are fulfilled – including via additional EIS materials being filed.***

We presume that both the Scoping Document and CEAA EIS Guidelines are in the public registry file for Keeyask Generation Station. If not they should be added to the file immediately.

Sincerely,

Gaile Whelan Enns, Director  
Manitoba Wildlands

cc: Jim Morrell, Canadian Environmental Assessment Agency Project Manager  
Hon Dave Chomiak, Minister Responsible for Manitoba Hydro.

***Attachments:***

Manitoba Wildlands comments Draft CEAA EIS Guidelines for Keeyask  
<http://manitobawildlands.org/pdfs/KeeyaskCEAASubmission-FINAL.pdf>

Manitoba Wildlands comments Manitoba Hydro Keeyask Scoping Document about Keeyask Generation Station  
<http://manitobawildlands.org/pdfs/MBCon-KeeyaskScopDocSubmission-FINAL.pdf>