

## **Manitoba Wildlands Closing Argument – Keeyask Generation Station –**

### **Clean Environment Commission (CEC) Hearings Wednesday January 8, 2014**

#### **Good morning.**

I am dedicating these remarks to my aboriginal ancestors. Simply put I would not be here, therefore would not have participated in this or previous Manitoba Hydro project proceedings, without my aboriginal ancestors. As a very lucky Canadian, I can say that when your people first arrive in what we call Canada in the year 1654 that means your people were kept alive by, and mentored by Aboriginal Peoples, married by Aboriginal Persons, and that your family has benefited from traditional knowledge through the generations.

Manitoba Wildlands is a regional non profit environmental organization. We focus on research, analysis, and participation in processes regarding decisions about public lands and waters in Manitoba. Associations in these environmental activities over time have been with: World Wildlife Fund Canada, Nature Canada, Sierra Club Canada, Canadian Boreal Initiative, and Climate Action Network Canada (CANET). I (Gaile Whelan Enns) am an elected (third term) member of the national CANET board.

Our work is respected across Canada among colleagues, the media, and environmental organizations. Manitoba Wildlands website is regarded as the place to go for information about Manitoba lands and waters. Certainly 20,000 + unique visitors a month on our website and social media are an indication of the relevance of our work. The exception to this respect occurs sometimes in Manitoba.

Manitoba Wildlands has participated in Manitoba Environment Act reviews, EIS Guidelines reviews, Scoping Document reviews, and all stages of CEC proceedings and hearings regarding Hydro proposals since 2002. This includes both transmission and generation for Wuskwatim, Bipole III, and Keeyask. It also includes upcoming Hydro projects. It also includes Canadian Environment Assessment Act/Agency

reviews for certain of the same projects. For the Keeyask Generation Station this includes participation since 2009 in both federal and provincial reviews.

The Keeyask materials from Coldstream Consulting ( three experts ), Dr. Amelia Clarke, and Mr. Dan Soprovich, each a Manitoba Wildlands expert, are available on the CEC website and from our offices.

At the outset I would like to thank the CEC, Chair, Secretary and Panel members for your reasonableness and fairness towards Manitoba Wildlands in these hearings.

We also wish to thank and acknowledge the four Cree Nations who are partners in the Keeyask Generation Station undertaking with Manitoba Hydro. This is War Lake, Fox Lake, York Factory, and Tataskweyak Cree Nations. We realize you have future decisions to make about this project, and we realize that you have worked hard for years to arrive at these CEC hearings. Your environmental evaluation reports and presence here in these hearings are important for all parties, and especially important for the funded participants. You have successfully communicated your intentions, your environmental evaluations and your hopes for this projects.

Should you wonder about use of terms by participants during the hearings, you should know that some of us may be reluctant to hold you each responsible for Manitoba Hydro assessment, commitments etc. So we reference the proponent as meaning all 5 parties, or we reference your partnership to date. Again, thank you for being here, for all the steps you have taken to date.

We also want to thank the other participants. It has been good working with you.

Our closing statement today is broken into sections with headers to assist .....

**Goals for Keeyask Generation Station Hearings:**

- We aimed to continue our learning about the Keeyask projects, at each stage of regulatory review, in order to contribute in the public interest,

to the CEC proceedings and hearings, and to decision making about lands and waters in Manitoba.

- We have been training interns for 12 years, and each review, proceeding, or hearing becomes part of the training of these young environmental science and environmental policy researchers.
- Manitoba Wildlands identified environmental matters and regulatory areas of primary importance for our participation regarding Keeyask, with the aim of keeping a focus on at least these through all stages of the Keeyask Generation Station project reviews. It should be noted that over a 4 year period, and as materials became available the initial focus topics expanded.
- We always aim to assist in access to information, and support communication. For the Keeyask CEC proceedings and hearings we have maintained a chart that lists all documents, events, decisions, and the schedule since April 2013. It is posted on our website, and updated regularly. We have provided a chart of the proponent's personnel, a Who's Who chart. The research request from the CEC Panel to provide a brief on definitions of externalities was also fulfilled. Our website will hold the Keeyask materials going forward, as we have posted and maintained the Wuskwatim hearings materials online.

### **EIS and EA topics Important to Manitoba Wildlands**

- Climate change
  - Access to information
  - Water quality, management, and species
  - Quality and organization of EIS information
  - EA standards, CEA standards
  - Federal responsibility and regulatory steps
  - Provincial responsibility and regulatory steps
  - Sustainable Development principles and guidelines
  - Consistency in EA standards and reviews
  - Scoping document and EIS guidelines
  - Species and Biodiversity
  - Public Engagement
  - Hearing process, and productivity
  - Protected Areas
- 
- We aimed to inform these proceedings.
  - We aim to support the CEC and other participants in fulfilling their

roles in these proceedings and hearings.

### **Contribution to Keeyask Generation Station Hearings**

- We bring twenty years experience, and our resource centre of EA, EIS and Hydro materials to the process. We also bring a team of researchers who are keen to learn about the regulatory processes, and to review and assess the project materials.
- We bring a network of experts, and independent researchers who advise Manitoba Wildlands and support our analysis.
- With the assistance of CEC participant funding we were able to bring into the CEC hearings 5 experts, who reported and presented in 4 areas. (See later content.)

### **Highlights of the Keeyask Hearings**

Manitoba Wildlands sees the affected community participant from Fox Lake and York Factory as important. You informed the hearings and everyone in the room. We also appreciate the range of experts which the participants brought to the hearings. The expertise, independent analysis, and advice to the proponents provided will contribute to the CEC Panel's deliberations. Overall the Aboriginal presence in these hearings, from the contributions of the Partnership communities to the First Nations among the participants, is perhaps the most important aspect of these hearings. The First Nation panels were effective and informative.

### **Thanks to Manitoba Hydro Personnel**

- We would like to thank Ryan Kustra for his accessibility over the years, and his project manager contribution to the Keeyask Generation Project. We have missed him in these hearings. We would also like to thank Ed Wojczynski for his role in the Keeyask Generation Station project. His ethic, and ability to see the whole picture are attributes important to any public, large undertaking. Their knowledge and civility are missed.

### **Observations for Manitoba Hydro**

- You have a ways to go still in understanding or being able to work with civil society. This is unfortunate because I thought 12 years ago that Manitoba Hydro was well on its way to being able to work with civil society. While the Keeyask Generation Station workshops, especially

round 1 & 2 were well handled, these hearings have a tinge of self interest, and an aggressiveness or arrogance about them that is not appropriate for our utility.

- It is also possible you have a long way to go before fully engaging First Nations, especially those who are not business partners with the utility!
- Here is a suggested exercise, one which our utility was engaged in ten years ago. Imagine having four environmental organizations as participants in these hearings.

What would happen? How many experts would they bring in to the hearings? How would Manitoba Hydro staff, managers, and consultants function? Would you be open to listening and learning?

- It seems Manitoba Hydro needs still to be reminded: Manitobans own you; Manitobans are your shareholders; Manitobans carry your debt; Manitobans are your primary customers; and sometimes Manitobans benefit – though that is decreasing, and is now a risk factor .
- The CEC procedures for civility and respect are important. We work to maintain and support the hearing procedures. Or so I thought. Not this time. It is a waste of time and paper to identify what we have seen and heard in this room and the hallways during these hearings. This time there has been a lot of things that will turn up on your videos, but not necessarily on your audio files. At the least everyone representing or providing services to our utility needs to be able to hear and see themselves and understand how they look and sound to others.

### **Recommendations re Keeyask Generation Project:**

- ATK, and methods, should be used to develop environmental assessment studies and assessment - no two track. This has been recommended by participant community panels and also by participant experts. An ATK standard, as discussed by other participants, signed onto by First Nations for use in EA and EIS would go a long way.

- All sources of information used to draft the EIS materials; scientific, technical, etc, should be made available to the public to assist with review of EIS materials, in a timely fashion.

- **The environmental protection program should be in a single document**, complete with a set of guidelines and reference procedures that bridge with one another, rather than individual documents that do not have a bearing on other environmental protection plans. Each

environmental protection plan should be included, with full details as to monitoring plans. This whole should be accessible, used as a guide through construction and operation phases of the project, posted publicly, and updated regularly.

- Environmental monitoring reports should be scheduled and the schedule posted so that the public, communities and stakeholders know before hand what is being monitored, when reports will be available etc.

- **Environmental monitoring activities should be conducted for the lifespan of the project**, and consistently for all VECs and Supporting Topics. Monitoring Advisory Committee sub committees should be put in place for significant topics or VECs early in the construction or operation phases of the project. Given the 100 year life span of the project mechanisms to update VECs, add VECs, and change the methods, frequency, or type of monitoring for both environmental and social VECs need to be put in place within the first year should a licence be issued.

- Independent experts should be available to the Monitoring Advisory Committee.

- **Study areas should be comparable between VECs and Supporting Topics** to allow for large-scale analysis and comparison. Monitoring should not be limited to the project footprint, or single zones etc.

- **Study areas should be consistent between EIS materials and technical reports.** All study areas should be mapped, listed, and explained in one place in the EIS. As this has not been done it should be required in the first year of a licence should a licence be issued.

- **An overarching guideline should be developed** from which all study areas are derived, that includes scientific justification, control areas, proxy areas, benchmark areas, etc. This guideline should be reviewed every 3 – 5 years in relation to results of monitoring, and ongoing technical studies and reports.

- **The EIS materials need to accurately represent the information derived from the technical reports.** This is not so for the technical

reports for Keeyask Generation Station. Identification of these gaps or variances is needed before construction would start under a licence, should a licence be issued. Decisions and a plan as to how to have a living, working set of technical reports, and monitoring reports with consistent standards, terminology, methodology, and reporting processes are needed before a licence is issued.

- **Manitoba Hydro should be required to conduct a full-scale environmental assessment at various time-points throughout the project life**, with monitoring activities and reports between environmental assessments part of the pattern. Any results different from what is projected in the EIS would be adjusted. Public comments and external independent review of these outcomes is recommended. The challenge is one we have never met before – how to handle 100 years life span of a project.
- **Selected VECs and Supporting Topics should include all species at risk** within the northern Hydro region, not just a select few identified by the utility.
- **Manitoba Hydro should be required to conduct a complete Life Cycle Assessment**, based on the full suite of international standards. It should be made public, as a guide for ongoing assessment and monitoring of the materials, and emissions from the project areas, infrastructure, reservoir, etc. through the life of the project.
- **The CEC could consider commissioning a 1:50,000 land and water change/shoreline inundation study** of the hydro region in northern Manitoba, to build on the 1:250,000 study presented to the hearings, by a participant. The products should be public, and could be used as a reference for the RCEA.
- **Ecosystem functions and ecosystem services** studies needs to be conducted for Keeyask project and future projects. Given the life span of this project and the current international research and models for valuating ecosystem services and natural capital, **Manitoba Hydro should be required** to conduct research with the aim of incorporating these methods into the Keeyask Generation Project, should it be licenced, and into future projects. See Stats Canada fall 2013 report.

- **Greater attention needs to be paid to the long term health impacts to individuals** living near hydro electric generation stations, both environmental and social impacts. It is not evident how Manitoba Hydro intends to keep up with the science, analysis, social issues, and future methodologies with respect to human health, and social impacts from this or other generation projects.
  
- The assumed application by the proponent of the **precautionary approach** to Keeyask Generation Project should be reviewed and compared to other hydro electric and energy, mining etc developments. **Manitoba Hydro should be required** to research, study, and update its methods, and application of the precautionary principle to this project, should it be licensed, and to any future project.
  
- **Disclosure of Manitoba Hydro's 50 year and 100 year development plan is needed** so that regulators, stakeholders, affected communities, and Manitobans can determine what is intended, and participate in the discussion for energy planning in our province.
  
- **Sturgeon monitoring and studies need to incorporate all ATK and scientific data available** in Manitoba and also relevant areas/ for projects... independent of whether the findings agree or disagree with hydro objectives.
  
- **The literature reviews** provided in the EIS materials need to identify literature that contradicts hydro's findings, so as to provide an objective review of the science, rather than only research and literature that agrees with Manitoba Hydro findings.
  
- **Fire history and fire predictions** or trends as provided in the EIS need to be reviewed, updated and widened. No clear predictions were provided. Climate change was dismissed as a factor in fire history, or future fire trends. **We request the CEC** to require an independent assessment of fire trends, risks, history and projections in the RSA, LSA, along the Nelson River corridor, and in the project RSA, LSA etc.



## **Recommendations to the CEC – Hearings**

**First it is our hope that Manitoba Conservation, licensing branch, realizes that transparent and strict requirements for the filing of any EIS for a Class 2 or 3 project, under the Environment Act, must be put in place. Currently proponents generally assume they can file in whatever format, whatever order, and whatever level of accessibility they wish to provide. Certain of our recommendations apply to the Manitoba regulator, and are also a request for recommendation from the CEC. Given there is no Environmental Assessment regulation in Manitoba, it is incumbent on the Department to put in place standards that will assist the environment and the public interest.**

- There are literally dozens of reports, materials and sources which were only referenced verbally, have still not been completed and provided, or were provided late and used by the proponent as if they are part of the EIS. When asked early in the hearings, the project manager simply said late reports were to inform the EIS. We would observe that they have been used for much more.

These late materials include the curious decision to not make available any of the technical reports for the Keeyask GS EIS for the public reviews, and to only make these reports available upon request once the CEC proceedings began.

**Manitoba Wildlands recommends** to the CEC that you ignore any proponent materials not received by Round 2 IRs, in your recommendations. Ideally only spring 2013 supplemental filings, the late set of technical reports and public/ Technical Advisory Committee comments and IRs would be relevant in your reviews.

- For the first time ever in a CEC hearing we had multiple proponent lawyers present in the hearing room. We achieved a single day record of ten lawyers for the proponent. These lawyers did not always identify themselves or their client when they spoke. We had at least one lawyer who was never identified. And there were some lengthy polemics. **We ask the CEC** to consider how best to put procedures in place about legal counsel for the proponent that will improve the process for all those also present in the room.

- **We suggest to the CEC** that any future Environment Act proposal for a Hydro project could be workshopped and discussed with stakeholders and affected communities before the EIS is worked up. The question is what are the ways to front end the EIS process so that it will be informed and understandable when released for public review? What changes are feasible?
  
- Manitoba Hydro / proponents lawyers used various documents in examining expert witnesses provided by the participants. These documents were not provided to the participants, or legal counsel for participants – despite ongoing preparation for examining those same experts. We note that all of a sudden this happened on January 7. **We ask the CEC to:**
  - require the Manitoba Hydro project manager to provide all of these documents to each participant in the room immediately
  - to put specific directions into the hearing procedures in this regard.
  
- Undertakings identified and listed during the hearings are best in a common listing. This saves duplication of effort by different parties, and ensures accuracy. **We ask the CEC** to make sure that all parties and participants have the same list of undertakings in future hearings.
  
- Manitoba Hydro staff, all three who were sent Manitoba Wildlands IRs, lost track of 26 IRs. That essentially meant our office was dealing with IRs from May through August. **We request the CEC** put in place a requirement for the proponent to confirm receipt of all IRs by participant source, so that any glitches are identified immediately.
  
- On January 7, 2014 the proponent indicated in a presentation the Keeyask website would be maintained for the life of the project. There have also been acknowledgements that intended posting of reports, and technical materials for the Keeyask project will be more timely, accessible, and complete than for the Wuskwatim project. **We request that the CEC** recommend specific requirements of this manner in any licence for the project, should the CEC recommend a licence.
  
- Information Requests (IRs) are a selective process, with what we see as an improved, but still needing improvement in level of response from

the proponent. Unfortunately the proponent appears to assume that any answer to an IR that is not challenged is correct and complete. While this is helpful in the instances where the proponent provided information that should have been in the EIS in the first place, it is not justifiable in a blanket assumption. **We request the CEC** consider how its procedures could clarify that participants and the CEC have to be selective in the areas or topics for IR content, and then selective again in identifying which IR responses are relevant to use resources for a Round 2 request.

- EIS organization continues to appear to benefit the proponent, and ignore the accessibility, organization and structural steps that would greatly improve the ability of experts, participants and perhaps the CEC, to do their jobs.

**We recommend to the CEC** that they indicate that an EIS for a complex Class Three project of this sort should include: ( These probably also apply to any EIS which is referred to hearings. )

- an all in glossary with cross references
  - a listing with location of all maps
  - an all in Reference or Literature Cited listing
  - an all in Table of Contents that is easy to find
  - any listing of technical reports or technical products to be alpha, and chronologically listed, with updated date on each version issued
  - a standard for production of DVD that guarantees that DVDs will be useable when they arrive.
  - (We realize there may be other steps in organizing EIS materials which participants and the CEC identify as improvements.)
- Another precedent was set with these hearings. We have audio and video recording of all presentations, cross exams, and the whole hearing. As a public venue and public proceeding this is appropriate. As a public utility with a project in a public hearing we suggest that Manitoba Hydro should make its audio files and videos public also. **We request the CEC** require Manitoba Hydro to provide all of these materials and recordings to the CEC for your archives. Certainly if they can provide 25 sound and video feeds to advisors, legal counsel, staff, consulting firms, other rooms in the hotel, etc they can provide a set of these materials to the CEC.

- The questioning of Manitoba Hydro/proponent panels and experts in these hearings has been somewhat different than in the Bipole III hearings. **We suggest to the CEC** you consider providing a half day workshop or orientation for new participants, and for those participants without legal counsel, in advance of the next Class 3 or Class 2 CEC proceedings and hearings. This step could support both participants and the CEC requirements.
- Also, in contrast to recent CEC hearings, the topics/content/number of presenters and advisors for Manitoba Hydro/proponent Panels regarding Keeyask Generation Station increased significantly. We had panels with as many as 15 – 20 persons in the front row and the back up row.

The CEC and participants were not informed in advance of the sequence, or topics in relation to the EIS for each panel. We were not provided with identification of who would be presenting in advance either. The document that was provided October 18, on the Friday before the Monday hearings start in Winnipeg was simply inadequate and not identified as to source, or project etc. Content re panels was incomplete.

**We suggest to the CEC** that your procedures could stipulate this information be provided to all parties on the 14 day rule or even earlier. This step would make better use of the public funds that go to participants because it would support preparation for the proponent panels. Certainty and predictability are important in any business undertaking. We suggest that these qualities also assist in the quality of participant preparation and analysis for hearings.

We are left with the questions – Why would Manitoba Hydro withhold this information? Does Manitoba Hydro think it is its prerogative to not provide the line up of its panels in advance of the hearings? Where, in what regulatory system, would any private corporation be able to or want to take this approach?

**We recommend that the CEC** panel review The Manitoba Planning Act with respect to Manitoba Hydro when considering the Keeyask EIS commitment and discussion about redevelopment of Gillam. **We also recommend** that the Interpretation Act of Manitoba, with respect to

Aboriginal rights, be considered in your recommendations about this project. The Tritschler Report of 1979, made public in 1982, is the result of an inquiry into Manitoba Hydro projects built in the 1970s, especially the Churchill River Diversion. A summary of that report is posted on our website.

**We recommend to the CEC** panel some consideration of the issues which prompted the Tritschler commission being appointed. The main question is whether the issues then, including cost over runs, and level of environmental damage, are relevant in your Keeyask Generation Station considerations.

Also there is the question of whether or not Manitoba Hydro consultants are lobbyists. **We request the CEC** to review Manitoba's regulatory framework and registration process and consider whether consultants or advisors to our utility may need to register as lobbyists. This question arose when I heard one of the consultant/experts discuss the current thinking at the Legislature about Keeyask, based on a recent meeting or discussion. One was reporting to the other, and the other was a Partner in Keeyask.

### **Sustainability Assessment of Keeyask GS**

Vice President Ken Adams provided some opening statements for Manitoba Hydro and the proponents for the Keeyask Generation Station, on the first day of Winnipeg hearings (October 21, 2013). Mr. Adams used the opportunity to brag about: The International Hydro Association sustainability assessment of Keeyask Generation Station, planning phase, based on the new IHA Sustainability Protocol.

Manitoba Wildlands asked the Keeyask Generation project manager, when the results of the Keeyask sustainability assessment were posted for comment, whether the utility intended to use this assessment in the Keeyask hearings. We received no answer to that message. But Mr. Adams brought it in, and there were spoken references through the hearings, most importantly by legal counsel for Manitoba Hydro.

### **So a few facts:**

- this is an assessment of the planning phase only of Keeyask Generation Station, conducted in January 2013

- it was conducted by a team of six persons from Europe, the US and other countries
- it is the first assessment using this protocol in North America
- only two civil society interviews were conducted, despite the pages and pages listing interviews with 'stakeholders' listed in the back of the report
- those two interviews were myself, Gaile Whelan Enns, Manitoba Wildlands director and Peter Miller, Green Action Centre, whose activity regarding Manitoba Hydro is in PUB hearings
- I agreed to an interview based on my respect for the project leader inside our utility – and my interest in sustainability
- three assessors were involved in my interview. They arrived at three different times, and they argued with each other through the interview. Two Manitoba Hydro staff were also present. One of the assessors not allowed to pose the questions they wished to ask of me. I was refused a copy of the notes from the interview.
- the lead assessor tried to acquire agreement on EIS elements from me, ( caribou, sturgeon, water quality, reservoir etc) and that was not why I was there. He also indicated in a cavalier manner that they knew we had lost *some shoreline* when building dams in the past...
- Imagine 6 people who know little about Manitoba, little about our utility, spending two weeks interviewing Manitoba Hydro staff, and government staff, and concluding that Keeyask Generation Station is sustainable!
- there were also visits to northern First Nation communities. My assumption is these were only with the Partnership First Nations, and with selected individuals.
- the CEC panel may choose to ignore all of this, but if you or others are interested, we posted comments regarding this sustainability assessment report which Manitoba Hydro has to respond to by January 20. Our comments, and their response will both be posted. And adjustments may be needed to the assessment.
- it did take some time to actually receive confirmation of the comments Manitoba Wildlands posted, and to receive a copy of those comments.
- One main observation: the standards in this assessment for sustainability come nowhere close to those identified in these hearings by Dr. Amelia Clarke, and Dr. Bob Gibson, both from

Waterloo University, both experts brought in by participants. We do not think the sustainability protocol would fulfill Manitoba's Sustainable Development principles and guidelines either.

Common international concerns about the IHA Sustainability Protocol process include: that it focuses on process, and plans, not outcomes. All information is from the proponent. Fact checking or ground trothing are not part of the process. Short time spans are allowed for the on the ground assessment.

Nature.com has this to say: "The protocol is designed to be applied one dam at a time, missing cumulative impacts of development as well as opportunities to identify the best sites and coordinate energy production across an entire river system."

### **World Commission on Dams (WCD) Claim**

The second claim Vice President Adams made on day one in the Winnipeg hearings was to say that Keeyask Generation Station would fulfill the WCD recommendations and standards. I had one opportunity to ask a lead consultant a question about one of those standards. I was met with a complete blank, from the entire panel, front and back row.

The World Commission on Dams was a voluntary, independently funded commission whose global report and work have guided community advocacy, research, and standards regarding dams. All their materials are currently housed on the International Rivers Network website. We were surprised to hear VP Adams make this claim, as Manitoba Wildlands brought the former Secretary to the World Commission on Dams into the Wuskwatin hearings as a presenter.

The following list illustrates key WCD principles that are *not required* in the IHA draft Sustainability Protocol:

- Access to information and legal support for stakeholders.
- Legally enforceable, negotiated agreements with affected people covering both mitigation measures and benefit sharing arrangements.
- Benefits provided first to adversely affected people in all project areas.
- The free, prior, and informed consent of affected indigenous peoples.
- Land-for-land compensation for affected people.

- A comprehensive, participatory assessment of development needs and options to meet those needs - where environmental and social concerns are given the same significance as other factors - that influences the decision to proceed with a particular water or energy project.
- Time-bound license periods for dams and license renewal only after outstanding issues have been identified and addressed.
- A basin-wide approach to decision-making on water and energy projects.
- The delineation of certain areas of high conservation value as off-limits to big dams.
- A clear compliance framework, subject to independent review, that includes both sanctions and incentives with necessary costs built into the project budget.
- Negotiations amongst riparian states before the construction of a dam on a shared river.

“Measuring respect for rights is not the same as respecting rights. This is the key difference between the WCD and the draft Protocol and the reason the Protocol is unlikely to lead to improved social and environmental performance of large dams.” (International Rivers Network)

### **Absence, Presence and Not Identified – Ecological Principle**

All of us, hopefully, have learned what Dr. Bill Pruitt would have called an ecological principle. I first heard about the field work, and inventory standard that indicates not identifying a species does not *prove it is absent* from Dr. Pruitt years ago when I was editing one of his ecological newspaper articles. Yet we have listened to weeks of panel presentations that conclude there are no significant environmental effects from the Keeyask Generation Station (due to mitigation mostly.) The EIS, presentations, answers to questions, assumptions about monitoring programs and reporting may all be based on the false assumption that *not identifying a species* during limited aerial study, or desk reviews of technical literature, or from existing data, means absence of the species.



Thanks to Dr. Gibson, Dr. McLaughlan, Dr. Schaefer and others for confirming this ecological principle during the hearings. **We ask the CEC** to consider the risks from this principle being ignored or misused. **We recommend** that standards for monitoring, reporting, environmental management, and all future analysis re species be based on this principle.

### **Rights Holders + Four Partner First Nations**

- We wonder if there is anywhere else in Canada where the only affected First Nations happen to be business partners in an energy project. We continue to wonder how communities who are business partners to the project can also be stakeholders.
- **We urge the CEC** to consider all Aboriginal rights holders in the Keeyask RSA, LSA and project area. They are all potentially affected by this project.

We heard from **Shamattawa First Nation** about their hunting, travel, and traditional activities on the Nelson River, and north of the River in this project's region. We heard from **Pimicikamak** about its history, rights, and concerns about this project and the entire Nelson River/CRD Hydro system. We heard from **Peguis First Nation** about its history of travel, land use, hunting, and forming family alliances in the project region. They included a firm reminder about Treaty One putting their First Nation on a different footing regarding province wide rights, compared to the other numbered treaties. We heard from the **Metis Federation** about the rights and activities of its hunters, and fishers in the Keeyask region.

How many others are there? Are not all Northern Flood Agreement First Nations potentially rights holders? Elder Darcy Linklater, of Nelson House, presenting for York Factory concerned citizens, confirmed in answer to a question, that his people are also hold rights in the Keeyask regions.

He also told us, "We are all related."

We continue to worry whether Aboriginal rights will actually be upheld, and worry that constitutional and treaty, and Northern Flood Agreement rights are at risk from this project.

## **Public Ownership – Expectations**

I confess a bias. Like many Manitobans, and people from the province west of here like myself, I prefer public ownership for primary services. We have high expectations of Manitoba Public Insurance, and Manitoba Hydro, for instance. We both love and hate our crown corporations.

None of this changes the facts. Publicly owned corporations, crown corporations if you will, must be accountable and responsible. They must provide us with the highest quality possible of environmental effects assessment, planning, and financial management. They must be open to scrutiny, dissent, and criticism. They must deliver under the best and worst of conditions, to all Manitobans. In today's world with electronic communications (here's a throw away – how about a search engine on the Manitoba Hydro press releases – what are you worried about anyway?) Manitoba Hydro must post more materials immediately. A good start would be all of its reports and presentations to the US regulator, and other utilities in the US.

In particular a crown corporation must also have a **social licence to operate**. This means that from a community, shareholder, stakeholder, affected community, and societal perspective, our utility must have our approval. This is an overall, encompassing licence to operate. Intangible, not part of the regulatory process, but essential.

It is sad but I do not think our utility today understands this part of its obligations. Or it does and is intent on ignoring what it must have.

“The concept of an informal ‘social’ license is comfortably compatible with legal norms in countries that operate under the principles of common law. The Social License has been defined as existing when a project has the ongoing approval within the local community and other stakeholders, ongoing approval or broad social acceptance and, most frequently, as ongoing acceptance.” SocialLicence.com

A variety of tools, and publications are available at the website source above.

## **Cumulative Effects Assessment**

### **- Regional/Historic Cumulative Effects Assessment.**

- Manitoba Wildlands continues to support the September 2013 motions regarding the regional cumulative effects assessment for the hydro system and region in northern Manitoba. **We request the CEC panel** consider the support from participants for this and other CEC recommendations in the Wuskwatim, Bipole III reports. Certain of these are relevant in your deliberations. Participants agree with many of the CEC recommendations and share the frustration over repeat recommendations not acted on.

- Our favourite recommendation from the Wuskwatim report is the recommendation for a Climate Change plan and strategy. Nothing to a sufficient standard has been provided since 2004. Our efforts will continue until we see Manitoba Hydro paying attention to, planning for, and acknowledging the climate change effects already happening in the regions where our hydro system is located.

- **The 1985 Limestone EIS report told us then:**

- **4.3 Implementation of Comprehensive Biophysical Monitoring**

- "It was also agreed that a comprehensive monitoring program would lay the basis for systematic evaluation of the biophysical implications of further hydro development on the Nelson River."
- A set of requirements for pre and post development monitoring plans were laid out in the Limestone EIS
- Monitoring programs were to be annual, and " should respond to testable hypotheses".
- 4 pages of conditions for monitoring brook trout follow ( 4.4)
- "While the data to be generated are important.....Limestone related impacts, they are of equal value in assisting pre development planning viz the proposed Conawapa and other generation stations downstream."

- Does anyone know if the Limestone generation station monitoring was conducted as per the EIS ? Was any of the information and data collected used in the Keeyask Generation Station EIS ? Do we keep track of VECs or their equivalent both in monitoring results and in methodologies for our hydro generation

stations ?

Do we actually follow through on what is required in EIS and licences ? How do we expect to get the regional cumulative effects assessment for Keeyask, and the hydro system right ? Is any of this information public ?

### **Scoping Document/ EIS Guidelines/ Regulators**

The 2007 Canada-Manitoba Agreement on Environmental Assessment Cooperation covers projects which require a review under both federal and provincial legislation, and which will undergo a single, cooperative assessment, meeting the legal requirements of both governments. The CEEA website contains a notice that indicates that the Keeyask Generation Scoping Document was used to form joint guidelines for the Environmental Impact Statement ( EIS ) for the project.

Tracey Braun, director of environmental licensing for the Manitoba government, indicated in her October 21 presentation to these hearings ( pg 222, line 13) that the Scoping Document was deemed equivalent to EIS Guidelines because they had the same content and review process.

Ms Vicky Cole, project manager, October 24, ( pg 741, line 22):

“The items identified in the scoping document are effectively the same and virtually identical to what has ended up in the final EIS guidelines. And the final EIS Guidelines issued by the regulator are the guidelines we followed in undertaking the assessment.”

“...we are seeking to meet all of the requirements provided to the partnership under the Canadian Environmental Assessment Act under the EIS Guidelines. So in doing so, at the same time, we are meeting all of the requirements that are included within the scoping document that was developed by the partnership and put out by the provincial government for review and comment.” (V.Cole)

Manitoba Wildlands agrees with the Chair’s comments that both the EIS Guidelines and the Scoping document are part of the regulatory process and requirements. Manitoba Wildlands assumes that all elements in the EIS Guidelines and the Scoping Document for the Keeyask Generation Station are relevant in terms of CEC’s deliberations, and recommendations you may make.

## **EIS Guidelines: Keeyask Generation Station**

**We request the CEC** to review and consider the following sections of the EIS Guidelines in making your recommendations regarding this project:

### 4.1 Proponent

- see requirements for EA implementation

### 4.4 Regulatory framework and Role of Government

- see what the EIS should identify

### 6.2.1 VECs

- Identifies need to select VECs and have the selection undergo public review

### 6.2.2

#### Spatial Boundaries

- justification and rationale for ALL boundaries required
- see standards, range of scales for baseline descriptions etc

### 6.2.3 Temporal Boundaries

- see inclusion of decommission plan, reclamation, seasonal and annual variations for VECs, all phases of the project.

### 7.1 Public Participation

- see effort made to distribute project information to public

## 8. Existing Environment

- see sufficient detail requirements
- see requirements for follow up testing of predictions made in the EIS

### 8.1 Physical Environment: Land

- see permafrost conditions description required
- see peatland and shoreline characteristics requirements

### 8.2.2 Terrestrial Environment: Fire

- see requirement re ecosystem functions, and fire regime parameters

### 8.2.2 Terrestrial Environment: Species-conservation concern

- see requirement to include movement corridors, seasonal movement, life history of species, and need to identify all species in Schedule 1 of SARA, and all species at risk under COSEWIC

### 8.3.4 Land and Resource Use

- see requirement to include Aboriginal Groups who use the land and resources, land and water access by Aboriginal People, water and ice usage etc.

### 9.1 Environmental Effects Assessment: Methodology

- see requirement for all studies to be transparent and reproducible with degrees of uncertainty, reliability and sensitivity provided.
- model calibration should be available for independent review and assessment
- modeling methods and equations should be described and include calculations of margins of error or confidence limits
- all information should be substantiated.
- see references to review of all appropriate literature, and public availability of all works consulted.

### **Missing Panels**

Manitoba Wildlands agrees with the comment about the proponent panel structure and the missing panels. Cumulative Assessment information was either missing from the EIS or spread among multiple volumes of the EIS. We needed a panel on cumulative assessment, a panel on the public engagement process, and perhaps a combined panel about ATK, the Cree World View, and Heritage.

**We ask the CEC** to consider what the panel structure and information exchange in relation to the EIS could have and should have been for these hearings, for the Keeyask project, and to make recommendations.

### **Data, Shape files, Data Requests**

The Keeyask Generation Station project manager directed Manitoba Wildlands to put all requests for data, maps, shape files etc into IRs. That step was taken, despite the obvious potential delay in receipt of information. No data, shapefiles, data bases or LCA data were provided.

IR responses to these requests consistently note that the data is available in the EIS. Sometimes there are numbers in charts, and some data that could be assessed, but mostly the data is not there in the EIS.

Perhaps we should have taken the first in person response as the reality. We were told at the Round 3 workshop in Winnipeg, that we would not be provided any data. 'No, you can't have any data.' Then the instruction to put these requests into IRs occurred.

### **Sustainability & Sustainable Development**

**We ask the CEC** to consider the Sustainability Framework which Dr. Amelia Clarke brought to the hearings. Apply it to this EIS, and your deliberations. One question would be whether aspects of the presentations, EIS, and commitments from the proponent contribute to sustainability and sustainable development. Or how many of the EIS elements are looking and sounding like compliance only- on the left side of the Sustainability Framework Chart vs the right side column where sustainability and sustainable development happen.

Dr. Clarke agreed with Dr. Gibson's observation that sustainability means improving, doing no more damage, and restoring both the environmental and social environment for a project being assessed. We have asked other participants' experts if they also agreed with this approach to sustainability and the answers have consistently been yes.

Dr. Gibson's set of sustainability assessment criteria are light years ahead of the approach which Manitoba Hydro / the proponent took for this EIS. **We would ask the CEC** to consider carefully the advice and expertise Dr. Gibson and Dr. Clarke brought to the Keeyask hearings.

Manitoba Wildlands does not think that what we have heard, read, questioned, etc fulfills the sustainable development principles and guidelines as per the Terms of Reference for these CEC hearings.

### **Climate Change – Deniers ?**

Manitoba Hydro's external experts have acknowledged that models for habitat and species for this EIS do not take climate change into account. Mr. Ehnes tells us: ( Oct 31, page 1759)

“These effects (climate change) are going to happen over a very very

long period of time. So certainly over the course of that very long period of time moose and moose management certainly may change.”  
“The EIS does not assess the effects of climate change on VECs, it is assessing the effects of how the project may affect those VECs’ ability to adapt to climate change.”  
“Climate has been changing for.... millions of years....And this assessment is not assessing how that future climate change, whatever it will be, is going to affect those ecosystems and species..”

Manitoba Wildlands asked a series of questions about the effects of one degree increase in temperature in the Keeyask region. None of the answers even acknowledged that the temperature in this part of Canada has likely already increased this amount, and that this region is identified as being highly likely to experience, as is much of Canada, temperature increases higher than global averages.

**We ask the CEC** to consider whether climate change content in the EIS fulfills the Guidelines or not. **And we ask the CEC** to consider recommendations that would require Manitoba Hydro to provide a climate change strategy and plan, with monitoring for the Keeyask region, in relation to climate change itself, and the effects of climate change on the VECs, on the region, habitat, etc. Certainly the same will be required for any Cumulative Effects Assessment for the Region. It would start with climate before hydro development!

We wonder some days what the Elders among the Cree Partners Nations have informed Manitoba Hydro experts about climate change in the region. First Nation and Aboriginal Elders across Canada have been discussing these changes for the last 10 years or more. This is our experience in Manitoba also.

There are similar comments in the transcript regarding the fire regime in this region. The Manitoba Hydro expert may be the only scientist in Canada who does not think fire frequency, size and intensity has been increasing in the boreal regions over the last 40 years.

We will leave it to others to conclude whether Manitoba Hydro is using climate change deniers as experts. The Suzuki Foundation website contains information, definitions about climate deniers.



## **Modelling, Species, Monitoring, Valuing Ecosystems**

Mr. Dan Soprovich reviewed VEC content in the EIS, including method of selection. He also provided analysis regarding Habitat Quality Models, and certain Species At Risk.

We have provided a rebuttal set of questions in the transcript for the Manitoba Hydro response to our analysis of Beaver as a VEC, and EIS contents. (See January 7, 2014.)

We have also reviewed the situation as to VECs, listed bird species and the EIS Guidelines. There are five other bird species present in the Keeyask region, and listed by COSEWIC, SARA, or/and MESA. Why were they not included in VECs or sub topics? How was the olive sided fly-catcher selected?

Ms Alyson McHugh advised the CEC about the standards for monitoring, and valuing ecosystem services and functions that are being applied elsewhere. She provided an over view of the methods, and best practice which we hope the CEC Panel will apply to questions in its deliberations.

## **Life Cycle Assessment**

Manitoba Hydro has now provided partial life cycle assessment reports, for three different projects. All were done by the same organization – based we are sure on what they were contracted to do.

Manitoba Wildlands brought Coldstream Consulting to the hearings with a Primer about how to do a life cycle assessment of this generation station project, what standards to use, and which data would be required. We ask the CEC to consider steps that could be taken almost immediately to conduct a complete life cycle assessment for this project. Once in place that LCA could serve as the basis for long term monitoring, and updating of data, regarding materials use and emissions. **We also ask the CEC** to recommend that such monitoring should be a requirement of this or any other potential generation project. (It should be noted that this approach was taken due to all our attempts to collaborate having failed.

## **Closing**

Like the CEC, we are still waiting for action on the recommendations made after the Wuskatim hearings. CEC recommendations are based on a range of input and information. That range includes the work of participants and their expert witnesses. Given the failure of our utility to obtain and exercise its social licence to operate, and failure to do enough beyond compliance with respect to environmental licences and permits, we cannot recommend that a licence be issued for the Keeyask Generation Project.

There are also areas in the EIS, presentations, and technical information that do not fulfill Scoping Document or EIS Guidelines. Much work remains. Currently, steps to fulfill the licence conditions to start construction on Bipole III emerge, and we prepare for the Appeal to Cabinet of the Bipole III licence. At this time we would urge the Chair and the Panel to act on the Chair's early comments. Please, should you recommend a licence despite participants' recommendations, experts and panels contribution to these proceedings and hearings, **make more of your recommendations regulatory.**

The January 6, 2014 bragging about the Regional Cumulative Effects Assessment by the proponent's team and project managers makes the point. Our utility thinks they can assess their own projects, without independent or peer review experts. It is an open question whether they simply thought their role in these hearings was to disagree with anything a participant said, or an independent witness suggested.

There is no public process or hint of what the RCEA (Regional Cumulative Effects Assessment) will be, yet our utility is sure when it will be done ! This is the same thinking that assumes all in-service dates are a go, including for a generation station that has no regulatory process started at all. This same thinking assumes it is fine to have the general contract tenders awarded for the Keeyask Generation Station – with the process going on during IRs. Such assumptions with no licences!

Quiet and firm consideration of what 10 years and \$ 100 M\* have provided for the Keeyask EIS and agreements is now the CEC's task. (\* Figure from IHA Keeyask sustainability assessment report.)

The most common comment I hear from those outside this room, concerned Manitobans all, about the Manitoba Hydro development plan is 'hubris'. I will leave that for consideration and for some to look up !

Gaile Whelan Enns  
January 8, 2014  
Winnipeg, Manitoba  
CEC Hearings  
Keeyask Generation Station.