

Learning from Wuskwatim – Important Precedents

By Gaile Whelan Enns

It is eight years since the Wuskwatim projects environmental hearings – both transmission and generation station/dam. Right now Manitobans and affected communities are seeing the start of public reviews, hearings, and possible licensing for several Manitoba Hydro projects.

Churchill River Diversion closed meetings started in 2010. The scoping for Bi Pole III started in 2010, with the Environment Impact Statement currently under public review until March 16, 2012. Premier Selinger promised public hearings regarding Lake Winnipeg regulation at the beginning of 2011. These hearings now appear to be pushed back into late 2013. In the meantime the Keeyask scoping for environmental standards review ended January 31, 2012. The Manitoba government has signed an export agreement, which includes a transmission line to Wisconsin. Conawapa generation station is part of the same negotiations as Keeyask.

Important precedents happened during the Wuskwatim proceedings, which started in winter 2001-2002. These precedents acknowledged affected communities, and showed that Manitobans were being listened to.

1) The Clean Environment Commission (CEC) asked Manitobans, and affected communities what environmental standards were needed for Wuskwatim. The recommendations from CEC public meetings were included in the requirements for Manitoba Hydro regarding Wuskwatim – both transmission and generation stations.

2) The Wuskwatim generation station is low head, low impact for flooding, and based on decisions by Nisichawayasihk Cree Nation.

3) A schedule was issued in 2002 by regulators, and updated regularly, to let all parties know what would happen during reviews and when; where the province's Environment Act proceedings started and ended, where the Clean Environment Commission (CEC) hearings process started and ended.

4) An email list serv was put in place so that all parties to the Clean Environment Commission process had access to documents, each other, and received updates at every step. (It should be noted this list serv was turned off when the hearings started, which means an improvement in electronic document access will be needed for the next CEC proceedings.)

5) Pre hearing conferences were held by the CEC with all parties, including both funded participants, and any other hearing participant who wished to attend. These started 8 months before the hearings, and assisted in planning, preparation, and technical steps.

6) The Manitoba government decided that Manitoba Hydro would provide \$1,000,000 participant funding so affected communities, non profit organizations, and environmental organizations would be able to participate in the CEC proceedings. Each of the upcoming Hydro reviews/hearings/licensing processes should have at least this amount of funding – with applications, decisions, and funds administered independent of the CEC.

7) Manitoba Hydro held thorough open houses in Winnipeg about the Wuskwatim projects, including question and answer sessions, displays of materials, and attendance by engineers, consultants, and experts who worked for Manitoba Hydro on the projects.

8) With hearings held in The Pas, Thompson and Winnipeg the CEC Wuskwatim hearings were well attended. Over 9 weeks of hearings the CEC hearings room was occupied by at least 50% Aboriginal people. Evenings the room was often over 75% Aboriginal people attending.

9) When the CEC hearings room was over full a second viewing area was set up at the Radisson in Winnipeg, with sound and close circuit television provided. Students, elders, community members from North Flood Agreement First Nations were able to sit in.

10) Manitoba Wildlands set up an information centre in the hotel where hearings

were held, so media could contact presenters and expert witnesses, elders could rest, and public participants could meet and talk.

11) A web site was also set up to post evidence, reports, motions, transcripts and reports from the utility, and regulators. Those are still posted on Energy Manitoba today, in a Wuskwatim archives page.

12) A wide range of expert witnesses participated at little or no cost to Manitobans, including on topics ranging from wind energy, alternatives to the generation station itself, effects of transmission corridors on woodland caribou, migratory birds and a range of other species. The economic factors need for and alternatives to the projects were combined in the same proceeding.

13) The CEC made sure public registry information about previous generation stations and transmission projects in Manitoba was available to participants for research purposes.

14) Manitoba Hydro made sure both paper and digital versions of its Environmental Impact Statements were available to any participant, funded or not. Requests for information were handled quickly, in good faith. Requests for extra maps, CDs when needed, etc. were respected and responded to.

15) Manitoba Conservation made sure Manitoba Hydro filed a supplemental filing, after review of the Wuskwatim EIS. This means deficiencies and gaps in the EIS were answered and filed by the utility. The supplemental filing was also reviewed, with public comments.

16) The CEC held important motions hearings when significant issues about the project areas, and Manitoba Hydro's failure to disclose information needed resolution before the hearings.

17) The CEC made sure First Nation panelists participated on the panel for its hearings, and honoured requests from Elders during the hearings.

18) The CEC made sure that transcripts from each day's hearing sessions were widely available the next day.

19) The CEC issued a report (which took some time to be released by the Manitoba government) with a solid, wide ranging set of recommendations about both Wuskwatim projects, and any future Hydro projects – including environmental standards for new generation stations, hearings, and outstanding legacy issues regarding the Churchill River Diversion.

There are other outstanding matters from the Wuskwatim processes, which may require comment in a future article for The Drum.

Meaningful Aboriginal consultations for Bi Pole III and Keeyask are essential. There are 26 First Nations, plus the Métis communities, affected by Bi Pole III. Some of these communities are funded with respect to consultation and accommodation about impacts from Bi Pole III. Some First Nations are being assisted by Manitoba Hydro to document traditional knowledge about the preferred corridor for Bi Pole III. Currently there is little indication of the Crown's intention with respect to consultation, accommodation and compensation with regard to Bi Pole III. The set of precedents identified above from Wuskwatim may well be at risk, as Manitoba moves into the next set of steps for Bi Pole III review and licensing.

One simple test – access to Manitoba Hydro EIS materials – shows a dramatic failure, compared to the Wuskwatim process. As we approach the end of the Bi Pole III EIS review many affected communities and potential participants do not have a copy of the materials. Requests for a copy of the electronic copies or paper versions (essential for use of maps and charts) have consistently taken weeks to fill. Errors in Manitoba Hydro's first set of materials have meant replacement materials are required, with further delays in access to the updated EIS materials. Each of the precedents listed above are a test of the status of Manitoba Hydro project reviews, proceedings under the Environment Act, and CEC proceedings. They are also tests of the Crown. Both Manitoba and Canada need to show the honour of the Crowns in all aspects of each Manitoba Hydro project.

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