

September 25, 2007

Honourable Stan Struthers
Minister of Conservation
Room 330 Legislative Building
450 Broadway
Winnipeg, Manitoba
R3C 0V8

Ms Tracy Braun
Director, Environmental Assessment & Licensing Branch
Manitoba Conservation
Suite 160, 123 Main Street
Winnipeg, Manitoba
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Dear Minister and Director;

RE: Comments - Manitoba Hydro July 2007 Pointe du Bois Modernization Project – Environment Act Proposal and Environmental Assessment Draft Scoping Document (PR File #5283.00)

We are writing to provide comments on Manitoba Hydro's submission under the *Environment Act* regarding the proposed Pointe du Bois Modernization project – the *Environment Act* Proposal and the Environmental Assessment (EA) Draft Scoping Document ("Scoping Document"). Please place our comments, along with all other public comments and comments from Manitoba Government Departments, in the Public Registry file for this project. Similarly, we expect that all public and Departmental comments on Manitoba Hydro's Scoping Document will also be posted on the Environmental Assessment and Licensing Branch webpage for the proposed Pointe du Bois project.

For ease of reference, each topic for which we have comments is numbered below.

1. Environmental Review Process – Sequence

The filing of a Scoping Document to accompany a project proposal under the Environment Act is a new process that has only occurred once prior – for the OlyWest project. It represents a significant departure from established environmental review policy and practice in Manitoba. The rationale for this shift in process has not been provided (and was not provided when it occurred with OlyWest either). Notice to the public, identification of such a change and the rationale for it is appropriate in any public hearing, public participation or administrative law undertaking. There appears to be no public information about content for Scoping Documents, and there has been no explanation of steps to identify the contents of the scoping document a proponent writes that may have occurred behind closed doors.

In particular, the Scoping Document sequence raises several questions regarding transparency. Who decided what information was required as part of the Scoping Document? What was the nature and extent of communication between the proponent and Manitoba Conservation? Is the Scoping Document intended to replace or bypass the EIS Guidelines process? If so, the proponent must be required to respond to and address public comments formally (including placement of all comments, responses, additional information in the Public Registry Files (see comments in #5 below re: physical and electronic Public Registries) for this project. Further, the process by which the framework for the Scoping Document was developed (i.e. interdepartmental communication and communication with the proponent) should also be made public.

Manitoba Conservation, and its Minister – as responsible authorities under Manitoba’s Environment Act – are the agents to decide EIS contents, in consideration of public input. A Scoping Document from the proponent, without any standards or clarity as to the steps taken and to be taken, suggests that Manitoba Hydro is making these decisions.

This Scoping Document also includes significantly less information and fewer requirements in comparison to the Wuskwatim Generation Station project EIS Guidelines – which were arrived at with the assistance of the Clean Environment Commission, and the communities of interest. An explanation should be provided as to why the same EIS Guidelines were not used, or provided for public comment in relation to the Pointe du Bois project.

We wish to formally object to any process that determines content and standards for an EIS that does not include opportunity for public involvement (whether it is the framework for a Scoping Document or establishment of EIS Guidelines).

2. Environmental Review Process – General Standards

Given the overall time and resources expended in the environmental review of the Wuskwatim projects and the precedents set in terms of policies and standards as a result, it is reasonable to expect the standard for assessment, EIS guidelines, technical work and contents for Pointe du Bois to be at least to Wuskwatim standards. To date this does not appear to be occurring. These standards include both the process and the contents of the stages of assessment information. The Pointe du Bois project is comparable to the Wuskwatim project, given the decision to build a new dam, cost of the project, and forecasted energy production.

Manitoba Hydro itself acknowledges the need to consider precedents set in the Wuskwatim process, “The Draft Scoping Document for the Project has been developed with consideration of recent approval, licencing, and guidance matters related to the following: Wuskwatim Generating Station;” (page 1 of Scoping Document), As such, the suggestions and points we are making in sections 1 – 7 of this set of comments demand a response in the name of public accountability and efficiency – that is also acknowledged by the proponent itself.

In addition, under the Canada – Manitoba agreement regarding environmental assessment cooperation, where there is federal responsibility, it is customary for there to be a schedule, a technical advisory committee (TAC), and public information as to the schedule for all stages in the project assessment, review, etc. Please advise and make public these sets of information. There is clear federal responsibility with respect to all generation stations.

3. Environmental Review Process – EIS Guidelines

EIS Guidelines for this class of development are the usual practice under the *Environment Act* in Manitoba. An explanation as to why no EIS Guidelines are in place to date, and why this scoping document is out for review instead is required. Please see comments above and provide information as to how the Scoping Document came into existence.

The absence of EIS Guidelines for this project is a decrease in public notification and oversight and creates the perception that Manitoba Conservation is failing to make best use of lessons learned and process established as part of the Wuskwatim review. Further, a significant amount of Manitoban money, time and expertise were expended as part of the Wuskwatim assessment and review, including for the establishment Wuskwatim EIS

Guidelines. The Guidelines should either be used again (with public comment process) or a public explanation should be made.

4. Environmental Review Process – No Staged Licencing

The standard set in Wuskwatim was for both transmission lines and dam to be assessed, with EIS filed for both projects, and reviewed at the same time. This standard must be met for this first of several Winnipeg River undertakings also. In particular, clear project area information, detail as to the existing transmission system, and intended changes to the transmission system connected to this dam are required. There are currently various proposals that have and have not yet been filed under the *Environment Act* by Manitoba Hydro that relate to the project area and proposal for this project, including the Slave Falls Tramway project (Environment Act proposal filed), transmission line improvements (referenced in Scoping Document, but no proposal filed yet), and renovations or rebuilding at the Dorsey Station (not referenced in Scoping Document, no proposal filed).

It is a matter of public policy that the Manitoba government does not undertake staged licensing, and includes whole projects and associated projects in proposals and in public information. This approach was taken with Wuskwatim. Please direct Manitoba Hydro to disclose when the transmission line improvement proposal and the proposal for renovations/upgrades to the Dorsey Station will be filed. We are formally asking the Minister to make sure that these projects, and their relationship to each other be made clear and become part of the assessment and review materials for Pointe du Bois generation station. We are also formally asking that these proposals be synchronized so that information which affects other decisions, technical study and public review be available together.

Separating transmission lines from the generation station; the tramway upgrade from the generation station; avoiding providing Dorsey Station proposal information, while the public and media wait for clarity on the power sale agreement with Ontario which involves an upgrade the southern corridor, are all omissions that could be interpreted as bad faith on the part of the utility and Manitoba Conservation. This separation of associated ‘projects’ appears to be a clear administrative law question – and one about which we request the Minister to ask advice of Manitoba Justice.

At a bare minimum, the Pointe du Bois Modernization project, the Slave Falls Tramway project, and related transmission infrastructure improvements must be assessed concurrently and their cumulative impacts considered together.

5. Environmental Review Process – Access to Information

We consider the following to be absolutely essential standards with respect to public access to information: (These are also usual practice in Manitoba under the Environment Act.)

- Public review comments posted in Public Registries (both physical and online)
- Requirements for proponent to provide responses to all public comments, with responses filed in Public Registries, as above
- All Departmental comments and responses to proponent filings, including review of scoping document, also filed in Public Registries
- Provision of public explanation as to basis for Scoping Document, provision of original communication to determine content for Scoping Document
- Immediate amendment to information on the Environmental Assessment and Licensing Branch online Public Registry index to indicate what materials will be posted online and indication that physical and online Public Registries will contain the same material – as a guarantee of equal access to information, in particular for individuals who do not have internet access
- Schedule available for all steps and parties to associated projects.
- All steps noted above to be done on a timely basis.

As this will be a lengthy *Environment Act* process it is essential that all parties have complete and accurate information throughout. The current selective approach as to what is posted on line, without explanation as to the contents of paper registries and no cross referencing between them requires attention, and in no way fulfills COSDI recommendations regarding public registry contents and access to information. Past practice has included notification of participants when any materials are filed.

6. Environmental Review Process – Information Management

Technical reports, studies, and basis for maps and statistics for this project will need to be public. These steps were not fully realized in the Wuskwatim assessment and review. Manitoba Hydro in fact refused to provide its technical studies through the Wuskwatim assessment and review. Only interpretative summaries of technical work were provided for review. There were several instances where requests for technical materials, including by

the Clean Environment Commission, were refused by the utility. An opportunity to significantly improve in these areas exists and the regulatory agency in government and the utility needs to act.

Manitoba Wildlands counsel to Manitoba Hydro since 1999 has been consistent with this and other elements in these review comments.

7. Clean Environment Commission Recommendations

We request that the Minister indicate whether Clean Environment Commission (CEC) recommendations from its report on the Wuskwatim projects were reviewed and used in relation to the proposal under the *Environment Act* for Pointe du Bois. The public is also entitled to information from Manitoba Hydro and Manitoba Conservation as to how they have responded to CEC recommendations contained in the Wuskwatim review report and how these will be reflected in technical work, submissions and process for the Pointe du Bois projects. With respect to Manitoba Hydro, these CEC recommendations concern (for instance) addressing past impacts, deficiencies in their EIS products and information provided overall.

We note that the Point du Bois generation station project is similar in both cost and amount of electricity to the Wuskwatim generation project. It is also part of a larger project for six generation stations. CEC recommendations pertain to this first step with respect to the proposal for Point du Bois under the Environment Act.

In the case of Manitoba Conservation, the CEC has made specific recommendations concerning standards and procedures to improve the environmental review process. In particular, we would appreciate receiving documentation to indicate how following CEC Recommendations have been acted upon:

(Note: the following are excerpted verbatim from 'Wuskwatim Generation and Transmission Projects – Report on Public Hearings' – September 2004,

http://www.cecmanitoba.ca/Reports/PDF/Wuskwatim_final_report.pdf)

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Recommendation 6.1

The Clean Environment Commission recommends that:

Any future Manitoba Hydro “Need for and Alternatives To” filings for major hydroelectric

projects be required to include an analysis of all risks, including business risks, and, where possible, the risks should be quantified.

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Recommendation 7.6

The Clean Environment Commission recommends that:

The Government of Manitoba require Manitoba Hydro to resolve all outstanding issues with regard to the Churchill River Diversion, the Augmented Flow Program and Lake Winnipeg Regulation. Following resolution of these issues, Manitoba Hydro should apply for the appropriate final licences for these three operations under The Environment Act and The Water Power Act as soon as possible.

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Recommendation 7.8

The Clean Environment Commission recommends that:

The practice of environmental assessment in Manitoba be enhanced by requiring higher standards of performance. In this regard, the Government of Manitoba should

- enact environmental assessment legislation,
- provide guidance for proponents, consultants and practitioners,
- establish protocols for best professional practice that includes cumulative-effects assessment.

The process should include use of traditional scientific knowledge, selection of appropriate Valued Environmental Components (VECs), establishment of baseline conditions, and establishment of thresholds in the conduct of environmental assessments. The protocols should reduce uncertainty, enhance effectiveness and improve predictability of future environmental assessments.

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Recommendation 7.9

The Clean Environment Commission recommends that:

Manitoba Hydro develop a climate-change policy consistent with provincial and national climate change policies and guidance, and apply the policy in the assessment of future hydroelectric developments. Preparation of a sustainable-development strategy in accordance with provisions of The Sustainable Development Act would be an essential element of such a policy.

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Recommendation 7.10

The Clean Environment Commission recommends that:

Future environmental impact statement submissions for large-scale hydroelectric developments should directly address the Government of Manitoba's Sustainable Development Code and its Financial Management Guidelines. The submissions should also develop appropriate sustainability indicators for use in identifying and assessing environmental effects, and conducting environmental monitoring.

If the proponent and Manitoba Conservation do not respond to Clean Environment Commission recommendations from Wuskwatim hearings, this would raise some serious questions as to the meaningfulness of the CEC's role in the environmental review process and in turn the government's commitment to public involvement and third-party oversight overall - as the CEC's recommendations applied to future filings for licenses, future projects, and future assessments of hydro electric projects.

It is also a matter of public record that the Minister's response to the CEC Wuskwatim recommendations was significantly delayed, and insufficient. This proposal, and review is the opportunity to respond productively.

8. Economic Justification and Assessment

Manitoba Hydro must provide full details as to the basis for a decision to build a new dam, rather than upgrading versus renovating the existing dam infrastructure. To spend \$800 million in 2007 dollars over the next decade, with likely increases in cost, for 120 MW of power is a startling expenditure. It is in sync with Wuskwatim where \$1.3 Billion is being spent for 200 MW. Both of these costs are significantly higher than previous costs for hydro-electric projects in the province, and significantly higher than the cost for wind energy. (Also significantly greater than the cost of energy efficiency programs.) We note that not including the cost of the transmission line in these figures means that it is feasible that Manitobans could pay in the realm of \$1 billion for energy from a new Pointe du Bois generation station.

We are formally requesting the Minister to provide the economic justification for this project. Also we recommend that there be immediate information as to whether the Public Utilities Board will hold hearings regarding this project. The public and affected communities are entitled to know the details and schedule of the process.

In terms of the assessment of the economic justification and viability, the scoping document is unclear as to process. Please provide information to indicate whether we will be returning to a separate process under the Public Utilities Board or whether, as in the case of Wuskwatim, the environmental and economic reviews will both be conducted as part of CEC public hearings.

9. Project Area Definition

Neither the definition of the project area nor how that definition will be arrived at is clear in the Scoping Document. We expect the proponent to be directed as to how to define the study area. Where the study area changes in accordance with effect being assessed, there will be clear justification for each variation and appropriately detailed maps to represent the overall study area and study areas pertaining to specific impacts.

The project area must be defined and the EIS conducted so as to include impacts on the whole river.

Given there are clear public statements by Manitoba Hydro about its intentions to review, upgrade or rebuild six dams on the Winnipeg River, it has become essential for the context for this first project to be outlined so it is part of the review and assessment of this and future related projects on the same river. These intentions to rebuild the other dams and impacts from these other dams and on the river ecosystem as a whole must be disclosed and assessed as part of the regulatory process for the Pointe du Bois ‘modernization’ project.

The assessment of Pointe du Bois under the Environment Act as if it is a single proposal without discussing how it fits into plans to upgrade or rebuild other dams on the river is akin to showing a customer the front end and hood of a car (and asking \$1 billion for it), and indicating the rest of the car will be available in 5 stages (at \$1 billion or more for each installment) over a time frame of several years - making sure of course not to disclose details or costs for the whole car.

10. Definition of Baseline

If statements in the scoping document regarding cumulative impacts assessment are meant in good faith then these must relate to status of the ecosystem and the river / shoreline / fishery ecosystems etc. *before* the dam at Pointe du Bois was built. The EIS should acknowledge the fact that the baseline has already been altered and the project should be assessed in the context of how the additional effects of the Pointe du Bois Modernization project will interact with impacts to date – i.e. the baseline should be the ecological baseline that does not incorporate previous effects of the Pointe du Bois dam and control structures – or any of the other hydro-electric projects on the river.

The idea that “The effects assessment will consider the existing environment without the Project, as the baseline condition against which changes caused by the Project will be assessed and measured” (page 10 of the Manitoba Hydro Scoping Document) is simply inadequate. Further, this definition of baseline will in fact creates extra work in the assessment process because requirements for cumulative assessment already demand consideration of the impacts of past projects. As is commonly noted in CEAA EA training sessions, ‘Cumulative Effects Assessment is simply EA done well’.

Manitoba Hydro actually acknowledges the need for an ecological baseline in its statement, “The effects assessment approach will embrace the following principles: . . . That an understanding is required of how other past and potential future human activities have and continue to affect the environment and how these activities may interact with the Project;” (page 10 of Scoping Document) We note that it is obvious that an ecological baseline for this project is based on the status of the environment before the existing infrastructure.

Now that we are in the twenty-first century it is feasible to compile data and map and/or graph information about the river, the dams, and the shorelines etc. to show the ecological, geographic and hydrological baselines before each dam, or any specific dam. Essential elements in the EIS can be portrayed at different points in time, including to provide cumulative assessment of the impacts of the Point du Bois dam currently in place. We would note that more specifics are needed as to the impacts of the construction, of new, and demolition of old structures also.

We are sure that Manitoba Hydro has the expertise to conduct this kind of assessment, and recommend that it be required before any of these six dams are rebuilt, and as a required element in the assessment for Point du Bois. We recommend the utility be required to undertake to provide this information and analysis – dating back to 1900 – and ensure the data used, and all products are made publicly available.

The interactions and relationships of impacts between the dams on this river is part of assessment for this project, and this demands a wide definition (both in time and the environment) of both project area and baseline for this project.

11. Climate Change

The Scoping Document is very vague in terms of the assessment approach regarding climate change. There are only two references in the Scoping Document to the issue of

climate change (both on page 6) – one that indicates the EIS will provide information on climate change (page 6) and another that indicates that the discussion of the existing environment will include a section on climate change effects on the water regime. We suggest the utility and Manitoba Conservation staff review all of the public commitments from the Manitoba government, stemming from the 2001 Climate Change Task Force report (recommendations which Premier Doer publicly stated are operational).

It is particularly important that climate change impacts *on this project, and from this project* be explicitly required and included in the assessment – in relation to the ecological baseline, the rest of the river and other dams. In particular, this scoping document is in contradiction to public policy for the government of Manitoba, which is to include climate change impacts both on and from the project. If staff need assistance identifying these public policies our office is available to assist. Manitoba Hydro's own policies and public role with regard to climate change in our province also dictate that a consistent approach be taken, so that the same policies and public role are reflected in environmental proposals for all Manitoba Hydro projects.

It should be noted that climate change content, review comments, interrogatories, cross examination, and questions from the CEC Panel were all essential elements in the Wuskwatim Environment Act processes. Again, nothing less should occur for Pointe du Bois. See comments regarding CEC climate change recommendations above.

12. Linkages to Future Development Intentions

As there have been public statements from the CEO of Manitoba Hydro regarding the intention to rebuild all 6 dams on the Winnipeg River, information about future development intentions must be included in this filing. Details as to the rest of the dams on Winnipeg River, with intended schedule for public open houses, options, and timelines should be made available at this time. A public utility is accountable to the public, especially those affected by intended projects. The parties affected by Point du Bois are also those affected by all of the hydro projects current and intended on the Winnipeg River

13. Consultation Standards

Manitoba Hydro briefly outlines its plans for 'Environmental Assessment Consultation' in its Scoping Document. We note, however, that there is no reference to specific consultation standards for affected Aboriginal communities. Many Aboriginal communities in Manitoba have developed their own consultation standards and procedures that all proponents must

adhere to in order to be considered meaningful. Manitoba Hydro needs to explicitly acknowledge and assert that Aboriginal communities' requirements for meaningful engagement and involvement will be respected and that its consultation process will be adapted accordingly.

We are not aware of what Manitoba Hydro's Aboriginal consultation standards are. We are formally requesting the Minister to ensure that the utility makes its standards public.

Manitoba Hydro's proposal for the Pointe du Bois Modernization project also invokes the Crown's fiduciary duty to consult with Aboriginal peoples respecting land use decisions that may affect aboriginal and treaty rights protected under Section 35 of the Constitution Act, 1982. As Manitoba Hydro notes (page 3 of the Scoping Document), "The consultation program in this scoping document does not include consultation pursuant to section 35 of *The Constitution Act.*" What are unclear as to the meaning of this statement. Does it indicate that Manitoba Hydro has decided that it does not need to talk to affected First Nations? We wonder whether Manitoba Justice, and the Minister for Manitoba Hydro agree.

Also – we note that no Winnipeg Open House was held in February 2007 regarding the Pointe du Bois options. This is another significant reduction from the approach taken for Wuskwatim. Essentially Manitoba Hydro has determined its preferred option for Pointe du Bois without asking its shareholders, most of whom live in Winnipeg. Worse, Manitoba Hydro has chosen not to notify its shareholders of its project intentions along the Winnipeg River.

Section 3. of the Scoping Document calls the Open Houses held in February 2007 at two locations *consultations*. No civil society or administrative law definition of consultations includes open houses where there is no independent record of what is asked and answered, and no ability for all present to hear the answer. We formally request the Minister to confirm that this approach, taken to date for Pointe du Bois, is adequate and actually fulfills a definition for consultation.

SUMMARY

In summary, Manitoba Wildlands is disappointed in the Scoping Document for the Pointe du Bois project. It appears to be based on a secret directive to Manitoba Hydro, and falls far short of the standards set by Manitoba for the recent Wuskwatim Environment Act proposal and process. It also ignores Clean Environment Commission recommendations.



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We are formally asking the Minister to correct and respond to certain aspects of our review comments and this Scoping Document.

Yours truly,

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Director, Manitoba Wildlands

Copy to:
Hon G Selinger, Minister for Manitoba Hydro