



# ***Keeyask GS***

Closing Argument

Consumers' Association of Canada (Manitoba Branch)

Prepared by the Public Interest Law Centre

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*Our legacy should be a better one than we  
have now.*

Ramona Neckoway, December 9 at p.5522

# Worldviews

Cree Worldview

Relationships

Mino-  
pimatisiwin

Western Worldview

Individualism

Property

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- *Working as partners, Manitoba Hydro and the Keeyask Cree Nations have assessed the Project using both technical science and Aboriginal Traditional Knowledge, along with information gained through extensive public and government consultation and involvement. The Keeyask Cree Nations have also undertaken and submitted their own Project Environmental Evaluations. This integrated and collaborative approach avoids, reduces or mitigates potential adverse effects associated with a large hydroelectric development.*

Executive Summary, Response to EIS Guidelines at p.6

- *Keeyask will be the fifth generating station on the Nelson River. We can no longer live off the lands and waters in the way we used to. With this project we have a realistic hope that Keeyask can help us strengthen our identity and to improve the social and economic hardships that we struggle with daily, while being constructed and operated in an environmentally sustainable way, with appropriate mitigation and monitoring measures to ensure ongoing respect of the environment.*

Victor Spence November 6 at p. 2413

- *In short, for the first time in history finally, we are part of the process, not the object of the process. We are partners in this project because for the first time in history, this is not their project, but theirs and ours. That is the revolutionary concept. This is not to say, as we testified, for example, at this Commission's hearings on Bipole III, that we achieved all of our goals or that the terms of the limited partnership or adverse effects agreement are fully consistent with all of the things we might like to have had included; or for that matter, that all of the potential impacts on our lives will have been defended, mitigated or compensated.*

George Neepin, October 21, at p. 170

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- *... going forward for our monitoring programs, we are – we have a higher standard than what the regulators say, so that's why I say we don't discount the science because we were part of some of those studies, but I think we will have a higher standard in our monitoring programs.*

Karen Anderson, November 27, at p.4109

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- *One of our customary laws that we are exercising today is Tawinamakewin. We come here and exercise the art of listening in order to create understanding amongst ourselves. We are exercising our customary law today.*

D'Arcy Linklater, December 12 at p.6236

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- *So it was not with eagerness or absence of thought that we chose to become partners in a major hydroelectric project. Rather our pride in our history, culture and values makes us cautious and apprehensive as we approach this new phase in our history.*

George Neepin, November 6 2013 at p. 2360

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- *But then, again, it is business, right, it is business. Let's put business and our people together.*

Ivan Moose, December 9 at p.5468

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- *When we adopt people or a whole family under the customary law of wahkotowin, we become responsible for the protection and the well-being of that person or family, and everyone becomes a relation of the other.*

D'Arcy Linklater, December 12 at p. 6239-40

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- *York Factory has begun a process of reconciliation. And we have started this a couple of years ago, and we recognize that being partners with Manitoba Hydro is a step in a direction, and not everybody was on board with that. When people had an opportunity to speak about the impacts that they have felt, it was emotional for a lot of people. And not everybody agreed to move forward, but a majority of people acknowledge that there was impacts, acknowledge that this is not something that we can hold onto in our hearts. And I would absolutely think an apology would benefit and help the First Nations move forward.*

Ted Bland, November 6 at p.2270-2271

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- *MS. CRAFT: ... why is the sight and sound of rapids important to you?*
  - *MR. MASSAN: Because they sound pretty good when you are fishing along it. And then after that thing, you start hearing these humming noises now, like the rapids, the water is the sound of the rapids, and then they replace it with the sound of the power line, humming sound.*

December 11 at p.6099

# Who is CAC MB?

- Right to:
  - satisfaction of basic needs
  - safety
  - be informed
  - choose
  - be heard
  - redress
  - consumer education
  - healthy environment

# Evaluative Criteria

- Has the Proponent demonstrated that the project will not have significant adverse environmental, economic, human health and social effects?
- Has the Proponent demonstrated that the Project will make a net positive contribution to sustainability?

# Findings

- The past record of development and resulting regional environmental disturbance seriously challenge the notions that the Project will not contribute to processes of adverse cumulative environmental change already in motion and that the incremental effects of the Project will not be cumulatively significant.

# Findings

- Given the highly disturbed state of the region, the KHLP place too much confidence in the proposed mitigation of the direct effects

# Findings

- There is ample evidence from the record to conclude that the incremental adverse effects of the Project are cumulatively significant

# Recommendations

- I. The final licensing recommendation by the CEC and the licensing decision of the Minister should be deferred until there has been the opportunity for an independent and publicly transparent consideration of:
  - A regional Cumulative Effects Assessment
  - An operational review as proposed by the CEC during the Wuskwatim NFAT
  - The NFAT considering the Hydro Preferred Plan

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- *The terms of Treaty 5, adherence to Treaty 5 established a solemn promise that the lands within our ancestral lands and traditional territories would be shared forever between the Treaty nations and the Crown and with the settlers and others entering into our traditional lands.*

D'Arcy Linklater, December 12 at p. 6241

# Recommendations

2. The Province of Manitoba should take steps towards the equitable sharing of the resources flowing from Hydro development by dedicating a designated percentage of the water rental fees associated with hydroelectric activity to those communities who share the resources and whose treaty and aboriginal rights may be affected by the use of the Nelson River for hydroelectric development

# Evaluative Criteria

- Has the Proponent demonstrated that the project will not have significant adverse environmental, economic, human health and social effects?
- Has the Proponent demonstrated that the Project will make a net positive contribution to sustainability?

# Rationale for Evaluative Criteria

- Statutory guidance
- Good regulatory practice
- Response to the EIS guidelines focused on an assessment of residual significant adverse effects

# Cumulative and ongoing effects

- Substantial
- Considerable in quantity
- Significant within the every day common meaning of the word
- A major change
- Considerably disruptive
- Changing a way of life forever

# Cumulative and ongoing effects

- The EIS identifies adverse effects to aquatic environments:
  - *The aquatic environment in the lower Nelson River, including the area to be affected by the Project, has been **substantially altered** by past hydroelectric development and **continues to experience** those effects today. (EIS, ch. 7, at p. 7-16)*
  - *The aquatic environment of the Nelson River where the Project will be constructed has been **substantially altered** by hydroelectric developments, in particular the Churchill River Diversion (CRD) and Lake Winnipeg Regulation (LWR), and the construction of the Kettle GS. Effects of the Project will be **super-imposed** on this disrupted environment. (EIS ch. 6, at p. 6-54)*
  - *The Keeyask Project will affect open water levels for about 41 km upstream... [and] about 45 km<sup>2</sup> of initial flooding is predicted. This inundation, along with ongoing erosion, will **affect water quality** and terrestrial aquatic habitat. (EIS ch. 7, at p. 7-4)*

# Cumulative and ongoing effects

- The EIS identifies adverse effects to terrestrial environments:
  - *The terrestrial environment in the area to be affected by the Project has been **substantially altered** by past hydroelectric developments, linear developments (including transmission lines, highways, and rail lines), forestry and mining exploration, and other agents of change, and **continues to experience** those effects today. (EIS ch. 7, at p. 7-23)*
  - *Priority habitat types that tend to occur along the Nelson River were also **disproportionately affected** by hydroelectric development, which flooded some reaches of the Nelson River and altered water regimes along its remaining length. (EIS ch. 7, at pp. 7-23, 7-24)*

# Cumulative and ongoing effects

- The EIS identifies adverse effects to socio-economic environments:
  - *The socio-economic environment in the area to be affected by the Project has been **substantially changed** by past hydroelectric developments, linear developments (including transmission lines, highways, and rail lines), forestry and mining exploration, and other agents of change, and **continues to experience** those effects today. (EIS ch. 7, at p. 7-37)*
  - *The Project is located close to **communities that have been greatly affected** by past hydroelectric and other developments. Each of the Keeyask Cree Nations has documented the history of its people, and the profound effect that hydroelectric development over the past 55 years has had on its relationships with the environment, changing its way of life and culture. (EIS Executive Summary, at p. 37)*

# Cumulative and ongoing effects

- The EIS identifies adverse effects to traditional use & culture
  - A sizeable portion of CNP's major waterways in their homeland ecosystem are **no longer able to sustain** their traditional ways due to alterations from hydroelectric development. (EIS ch. 6, at p. 6-20)
  - ...more than 35 major generation, conversion and transmission projects have been undertaken by Manitoba Hydro in northeastern Manitoba **affecting the traditional territories** of the KCNs, their communities and members. (EIS ch. 6, at p. 6-12)
  - The most detailed information is provided for the hydroelectric development era between 1957 and the present in order to depict how the construction and operation of these northern hydroelectric projects resulted in **life-altering changes** to the water, land and traditional way of life for First Nations members living in the Keeyask area. (EIS ch. 6, at p. 6-7)
  - Particularly influential have been construction and operation of the four generating stations and the substantial water management projects of the LWR and CRD noted above, which taken together, have **substantially adversely affected** the land, water and traditional way of life of the KCNs. (EIS ch. 6, at p. 6-13)

# Are we at a tipping point for cumulative effects?

- Important current threats to survival:
  - Habitat degradation resulting from the presence of dams/ impoundments and other barriers
  - Mortality, injury or reduced survival resulting from fishing
  - Population fragmentation resulting from the presence of dams/impoundments and other barriers

Fisheries and Oceans Canada, "Recovery Potential Assessment of Lake Sturgeon: Nelson River Populations" (Designatable Unit 3), November 2010



There are **NO** anticipated cumulative effects despite a highly disturbed region?

# Are we at a tipping point for cumulative effects?

- The environment has **already been significantly altered** by previous development;
- It **continues to be affected** today;  
AND
- The Keeyask (and other future projects) will be superimposed on an **already stressed** environment.

# Are the Partners too Confident in their Conclusions?

- *Significance may appear to decrease as the perceived effectiveness of mitigation measures increases.*

Hegman et al., 1999

- *Is too much confidence placed in proposed mitigation of direct effects, given highly disturbed state of the region?*

Noble and Gunn, Keeyask EIS powerpoint presentation, at p. 32

# Are the Partners too Confident in their Conclusions?

- With respect to caribou habitat availability, core areas, and regional intactness:
  - *I am not fully convinced, however, by these conclusions, nor by their certainty. I sum up my conclusions with two points:*  
*The Project is being assessed in the face of two major uncertainties...*

Schaefer, Keeyask EIS Report, at p. 12



# Net positive contribution to sustainability

1. Key strengths

2. Key barriers

# I. Positive elements

- Meaningful voice
- Enhanced capacity
- Skills and jobs
- Revenue streams
- Synergistic benefits with Conawapa project
- Potential for more positive health outcomes
- Enhanced cultural and socio-economic practices
- Reconciliation

## 2. Core challenges, risks and uncertainties

- Risks to jobs and revenues
- Uncertain results in terms of equity
- Loss

# Why should the licensing decision be deferred?

## I. Regional cumulative effects

- *...in order to fully understand the impact of proposed future projects, it will be necessary to understand the impact of past and current projects in addition to new impacts. A regional cumulative effects assessment is needed for all Manitoba Hydro projects and associated infrastructure in the Nelson River sub-watershed.*

Bipole III Transmission Project, June 2013, 13.4 at p. 126

# Why should the licensing decision be deferred?

## 2. Operational review

- *The Clean Environment Commission recommends that:*

*The application for the approval of final licences for Churchill River Diversion, Augmented Flow Program and Lake Winnipeg Regulation should include a review of the terms and conditions, an operational review and any required environmental impact assessments. Clear guidelines should be developed with respect to what constitutes conformance to and/or violation of the terms of the licences.*

Wuskatim Generation and Transmission Projects, September 2004, recommendation 7.6, at p.127

# Why should the licensing decision be deferred?

- *...certainly all over North America and in other regions...They are looking at, how can we change the operations of dams in order to create a better balance between the habitat quality and the needs.*

Lutterman, December 5, at pp 5298- 5300

# Conclusion

