

CLEAN ENVIRONMENT COMMISSION  
HEARING ON THE KEYASK HYDROPOWER PROJECT

MANITOBA MÉTIS FEDERATION  
OVERVIEW OF FINAL SUBMISSIONS

JANUARY 9, 2014

I. THE PROJECT SHOULD NOT BE RECOMMENDED AT THIS TIME

*"And it is incumbent upon the proponent to meet the requirements of that scoping document."<sup>1</sup>*

It is the Manitoba Métis Federation's ("MMF") position that the Keyask Project should not be recommended to the Minister of Manitoba Conservation and Water Stewardship ("MCWS") at this time because the Project's Environmental Assessment ("EA"), as it was filed and as it currently stands, does not fulfill the requirements of the Scoping Document in relation to developing and undertaking the Project's EA with the involvement of all potentially impacted Aboriginal communities (i.e., the identification of Valued Ecosystem Component ("VECs"), collecting necessary baseline data, etc.) as well as understanding, assessing and mitigating the Project's effects on Aboriginal communities other than the Keyask Cree Nations ("KCNs").

*EIS Guidelines Reference:*

6.2.1 Determination of Valued Ecosystem Components (VECs): *"The proponent shall also demonstrate how traditional Aboriginal knowledge has been integrated with western science in the identification and analysis of VECs."...* *The proponent must also indicate the specific geographical areas or ecosystems that are of particular concern to interested parties, and the relationship of these areas to the broader regional environment and economy.* *"The proponent shall also demonstrate how traditional Aboriginal knowledge has been integrated with western science in the identification and analysis of VECs."*

7.2 Aboriginal Consultation: *"The proponent will actively solicit Aboriginal concerns from groups other than the Keyask Cree Nations<sup>2</sup> during the course of the EA. The proponent will examine opportunities to mitigate the adverse effects of the Project on Aboriginal groups' current use of lands and resources for traditional purposes and other Aboriginal interests."*

9.1 Assessment Methodology. *The consideration of views from the public and Aboriginal groups, including perceived changes attributed to the Project, must be recognized and addressed in the assessment method.*

<sup>1</sup> Clean Environment Commission ("CEC") Chair Terry Sargeant, January 6, 2014, CEC Transcripts, page 6524 (lines 4-6).

<sup>2</sup> The MMF notes that contrary to the Partnership's denial that any other Aboriginal communities had presence or use in the Project's study areas, governments explicitly included direction to engage Aboriginal communities other than the KCNs in the Scoping Document.

More specifically, the Project's effects on the Métis community that lives within, uses and relies on the Project's local and regional study area have not been considered, understood or assessed. The Partnership's EA for the Project was filed on July 6, 2012. The Partnership has denied and continues to deny the existence, use and effects of the Project on other Aboriginal communities, such as the Métis community.

As a result of these unwavering and adversarial positions, the Partnership did not even arrive at an agreement with the MMF to undertake a limited scope traditional land use and socio-economic baseline study until June 21, 2013. This arrangement only happened because the Canadian Environmental Assessment Agency ("CEAA") intervened and stressed the need for the Partnership to meet the requirements of the Scoping Document.

While the capped budget and timelines proposed by the Partnership were not reasonable to the MMF, the MMF made the conscious decision that it needed to make use of the limited opportunity provided offered to it as a "starting point". Continuing to go "back-and-forth" with the Partnership about what an adequate budget and timeline for completion of this work would be could be used against the MMF and play into the Partnership's denial of the existence of other impacted Aboriginal communities and strategy of delay so decision-makers such as the CEC has no information about the Métis community before them.

Despite the MMF's best efforts to have this work completed before the end of the CEC hearing process, only a traditional land use study, based on the limited sampling provided for by funding from the Partnership, could be completed by the end of December. Notably, this study documented Métis traditional use in both the Project's study areas. Additional work, such as the compilation of available socio-economic baseline data and holding meetings with Métis community members to review the information gathered in order to discuss individual and collective effects from the Project, will be completed over the next few months.

The MMF submits that the Partnership should not be able to benefit from delaying engagement with the Métis community. The current EA is deficient in relation to assessing effects on other Aboriginal communities that live in, use and rely on the Project's study areas. As such, a recommendation from the CEC with respect to the Minister licensing the Project should be withheld until the requirements of the Scoping Document are met. More specifically, this would require the following to be completed prior to issuing a license:

1. Allow the MMF to complete the preliminary baseline and effects assessment work identified within the agreement executed June 21, 2013 within a reasonable time frame (i.e., by end of March 2014);

2. If the results of this work identify effects or indicate impacts are possible, a further impacts assessment process be completed consistent with the processes used for the KCNs and set out in the Scoping Document (s. 7.2);
3. Once a more fulsome impact assessment is complete, a MMF-Partnership agreement or arrangement be negotiated in order to address Métis-specific mitigation measures as well as Métis participation in future monitoring in relation to the Project.

**II. IF THE PROJECT IS RECOMMENDED, THE FOLLOWING LICENSING AND NON-LICENSING RECOMMENDATIONS SHOULD BE MADE**

Non-Licensing Recommendations

1. The Manitoba Government identify the relevant Aboriginal groups (i.e., First Nations and/or the MMF) a proponent should engage with in undertaking their environment assessment as well as assessing potential project effects as required in a Scoping Document. This identification of relevant Aboriginal communities should occur during or before the finalization of a Scoping Document. The determination of what Aboriginal groups a proponent should engage with should not continue to be left to proponents without guidance from the Manitoba Government. This type of identification process will provide greater clarity to proponents as well as focus any potential disputes between Aboriginal groups (who feel they should be engaged) with the Manitoba Government – not an Aboriginal group and a proponent.
2. The Manitoba Government should ensure its previous acceptance of the recommendation set out in Article 4.1 of the Aboriginal Justice Inquiry Implementation Committee Report is met. Upholding these types of government commitments to Aboriginal communities is important to all Manitobans as well as in building sustainable communities and protecting the environment.
3. Based on recent court decisions on Métis issues and ongoing discussions between the MMF and the Manitoba Government under the MMF-Manitoba Government Points of Agreement on Métis Harvesting, the Manitoba Government should evaluate and consider the implications of the ongoing exclusion of the Métis, as a distinct Aboriginal community, from the Northern Flood Agreement with a view to potentially identifying alternative processes to address Métis issues, concerns and outstanding claims.

4. The Manitoba Government should ensure its obligations under section 18.3 of the Northern Flood Agreement, which seeks to avoid creating inequities within any settlement amongst Status Indians, Non-Status Indians and Métis be considered in relation to the construction and operation of the Project.

#### Licensing Recommendations

1. Prior to construction, the Partnership shall address the issues, concerns and effects of the Project with other willing Aboriginal communities, including, the MMF, who live within and use the Nelson watershed with a view to arriving at mutually agreeable agreements or arrangements that set out processes that address necessary Aboriginal community specific mitigation measures, provide opportunities for participation in monitoring relevant to an Aboriginal community's traditional use and culture, present ongoing information in relation to the Project's construction and operation. Reasonable costs associated with the negotiation of these agreements or arrangements shall be borne by the Partnership. If a mutually agreeable arrangement or agreement is not reached with a willing Aboriginal community, including, the MMF, who live within and use the Nelson watershed within a reasonable period, the Partnership shall provide a report outlining its efforts and reasons an agreement or arrangement could not be reached to the Director who may determine that this licensing condition has been met through best efforts.
2. The Partnership shall establish an ongoing advisory committee comprised of the KCNs, along with other willing proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed for the purpose of providing guidance on the research and monitoring activities set out in any Project license. Reasonable costs associated with the participation of each Aboriginal community in this advisory committee shall be borne by the Partnership based on an annual or multi-year workplan.<sup>3</sup> (This participation may be addressed in the arrangement or agreement reached in the licensing recommendation set out above).
3. Prior to construction, the Project's Moose Sustainability Plan be updated to include and address any additional information related to the harvesting of moose by other proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed.

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<sup>3</sup> This License Condition recommendation is similar to the Wustwatim Power Limited Partnership Environment Act License No. 2699, Clause 14.

4. Prior to construction, an independent regional cumulative effects assessment be completed in relation to the Nelson watershed. The scope and content of this assessment shall be developed in consultation with willing proximate Aboriginal communities, including, the MMF, who live within and use the Nelson watershed. Costs associated with this assessment shall be borne by Manitoba Hydro.