

MANITOBA CLEAN ENVIRONMENT COMMISSION

IN THE MATTER OF:

KEYYASK GENERATION PROJECT

Pursuant to Section 6(5)(b) of the Environment Act, C.C.S.M. C. E125 and the Terms of Reference of the Minister of the Environment dated November 14, 2012.

FINAL ARGUMENTS

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TABLE OF CONTENTS

1. Introduction.....	3
2. Cumulative Effects: Challenging the False Paradigm Regarding the Scope of Impacts	4
A) Selecting VECs to Properly Assess Cumulative Effects	7
B) Limited Boundaries as an Obstacle to Cumulative Effects Assessment.....	11
3. Aboriginal Consultation and Engagement	14
4. Mapping the Cumulative effects of Hydro Development on Shorelines and Inundated Areas	18
5. Review of the Moose Strategy: Involving Peguis.....	21
6. Other Environmental Assessment Procedure Concerns	23
A) The Impact of Project Splitting on Proper Assessment	23
B) Aboriginal Representation in All Aspects of Environmental Assessment	25
7. Conclusion	29
APPENDIX: Peguis First Nation Recommendations	31

1. INTRODUCTION

The hydro electrical power harnessed in northern Manitoba is a mighty and dangerous gift.

It is a generous gift of the rivers and waters that has been plentiful, providing wealth to Manitoba Hydro, jobs for many Manitobans, and the power that flows out of the outlets into homes and businesses without most of us thinking about it much.

Peguis First Nation also sees it, however, as a gift that comes at a great cost. In the quest for hydroelectric power, we are losing a sense of respect for the rivers, for the complex workings of water and wetlands, and for the intricate web of life that water supports. This loss of respect for the interconnected working of water flows results in enormous costs to humans, animals, and the earth.

There is now some acknowledgement of these costs, by the Government of Manitoba and by Manitoba Hydro. Indeed, the partnership of four Cree Nations in the proposed Keeyask Hydro Generation Station Project (“Keeyask Generation Project”) is a demonstration that Manitoba Hydro and the Government of Manitoba recognize the historic imbalance of who benefits from, and who pays for, the impacts of hydro development. There is still not, however, a full and honest accounting that looks at the full and connected impacts of the Manitoba Hydro electric complex including the costs to the ecosystem and communities upstream.

The hydro complex, to which the proposed Keeyask Generation Project will be added, comes at enormous cost to Peguis First Nation’s people and community. Peguis deals with the painful daily reality of the changes that are happening to the waters around us. Peguis lost two thirds of their community’s home reserve and farmland to the escalating annual flooding. Families are dislocated, some of them now for years at a stretch, unable to return home. Most years now, children lose weeks of school each year. The disruption and dislocation result in escalating social costs that are taking a heavy toll on Peguis’ community.

Peguis believes that we are defined not only by what we create (like dams), but also by what we refuse to destroy. Peguis refuses to allow their lands, their community and the lives of their people to be destroyed by hydro development that does not properly consider the costs of the gift of hydroelectric power. Peguis refuses to allow their children’s lives and futures to be devastated by power projects for which there is no full and proper accounting of the true impacts and costs.

Peguis is therefore participating in the CEC's hearing into the proposed Keeyask Generation Project, to protect the future of their community and the lives of their people. Peguis' lands, people, and futures are inextricably linked to the ecosystem and the region that the Keeyask Generation Project is tied to.

To protect an ecosystem, it is necessary to think like an ecosystem. The most critical concern Peguis has about this Project, and the one recommendation that is most important of all those we make in these submissions, is the need for a full environmental audit of the true cost of hydro development on the Nelson, Churchill, and Burntwood Rivers and on Lake Winnipeg. A full regional cumulative effects assessment that covers the entire interlinked Churchill-Nelson-Lake Winnipeg Regulation ("LWR") region must be completed before ANY more hydro approvals are granted (including for the Keeyask Generation Project). Without this, the environmental assessment process continues to be fundamentally flawed by not truly accounting for the full effects of hydro development, and addressing those effects. Without this accounting and the righting of the balance, Peguis' treaty relationship with Manitoba stands on ground that is being rapidly washed away.

2. CUMULATIVE EFFECTS: CHALLENGING THE FALSE PARADIGM REGARDING THE SCOPE OF IMPACTS

Throughout the CEC Keeyask review process, Peguis has consistently raised the need for a regional cumulative effects assessment. The problem of looking at each piece of the puzzle independently is that one cannot see or avoids seeing the whole picture. The Keeyask Generation Project cannot be considered on its own. It would be part of an integrated system, and each piece of that system has had and continues to have impacts on Peguis.

The hearings heard the following examples of Peguis evidence calling for a regional cumulative effects assessment:

- Peguis brought a motion before the hearings commenced, asking that an independent regional cumulative effects assessment be completed prior to the conclusion of these

hearings, so that the evidence could inform the recommendations of the CEC panel. This motion was denied.¹

- Peguis reminded the CEC of the Southern Chiefs Organization resolution calling for a full environmental audit of Manitoba Hydro to assess the continuing environmental, cultural and economic impacts of hydro related projects.²
- Chief Hudson testified about Peguis' calls for an environmental audit, including why and how Peguis brought forward the Southern Chiefs' motion for an environmental audit and why Peguis continues to demand a regional cumulative effects assessment.³
- Councillor Mike Sutherland testified about the devastating impacts of flooding on the Peguis community which Peguis believes is related to Manitoba Hydro's water management system, and which should properly be reviewed as part of a more comprehensive regional cumulative effects assessment that looks at the impacts of the entire Manitoba Hydro water management system linked to the operation of the dams in the north.⁴

The CEC has also, previously, confirmed the need for a regional cumulative effects assessment, in the CEC's recommendation regarding the Bipole III Transmission Project. In that process, the CEC recommended to the Minister that:

13.2 Manitoba Hydro, in cooperation with the Manitoba Government, conduct a Regional Cumulative Effects Assessment for all Manitoba Hydro projects and associated infrastructure in the Nelson River sub- watershed; and that this be undertaken prior to the licensing of any additional projects in the Nelson River sub-watershed after the Bipole III Project.⁵

This recommendation echoed previous conclusions it made regarding the Wuskwatim Project. These recommendations and conclusions are about the broader audit that is needed. It is not only

¹ Notice of Motion by Peguis First Nation, filed September 9, 2013; Manitoba Clean Environment Commission, Keeyask Generation Project Hearing – Motions Hearing, Hearing Transcripts, October 17, 2013; Decision – Motion of the Peguis First Nation, by the Clean Environment Commission, November 8, 2013.

² Exhibit PFN – 006, Southern Chiefs' Resolution #9, November 18th and 19th, 2009, Supporting Demand for Environmental Audit of Manitoba Hydro.

³ Peguis First Nation, Hearing Transcripts, December 11, 2013 – *Presentation by Chief G. Hudson*, pp. 5898 (line 5) to 5900 (line 12).

⁴ Peguis First Nation, Hearing Transcripts, December 11, 2013 – *Presentation by M. Sutherland*, pp. 6029 (line 12) to 6036 (line 22).

⁵ *Report on Public Hearing, Bipole III Transmission Project*, Manitoba Clean Environment Commission, June 2013 at p. 126

about project specific assessment, but is absolutely required prior to the assessment and approval of any other individual projects.

On the project specific side, the CEC also recommended, in the Bipole III process, that the project specific cumulative effects assessment process be strengthened in other ways:

The Commission recommends that:

11.1 Manitoba Hydro implement a cumulative effects assessment approach that goes beyond the minimal standard of the 1999 CEEA guidelines and is more in line with current “best practices.” At a minimum, this approach would:

- assess effects in close vicinity to the Project as well as in the regional context;
- assess effects during a longer period of time into the past and future;
- consider effects on VECs due to interactions with other actions, and not just the effects of the single action under review;
- in evaluating significance, consider other than just local, direct effects; and
- include all past, current and reasonable foreseeable actions.

The cumulative effects approach that was employed by the proponent – the Keeyask Hydro Limited Partnership (the “Partnership”) – in its assessment of the Keeyask Generation Project falls far short of what is needed even in the project specific context, and far short of these recommendations made by the CEC in the Bipole III process.

While there are various shortcomings in the Partnership’s approach to cumulative effects assessment for this Project that were highlighted in the hearing itself by the participants, Peguis focuses on the following two aspects here:

- The Partnership failed to adequately identify valued environmental components (VECs), resulting in an inadequate cumulative effects assessment for the Keeyask Generation Project; and

- The Partnership failed to properly assess all relevant direct and indirect effects because the Partnership favoured boundaries that excluded consideration of such effects, and this resulted in a deficient cumulative effects assessment.

In short, the Partnership failed to ask all the necessary and right questions, and this led to a deficient cumulative impacts assessment. The Partnership therefore failed to fulfil the EIS Guidelines for the Project.

A) Selecting VECs to Properly Assess Cumulative Effects

The Partnership used the Valued Environmental Components (VECs) centred approach in its environmental assessment, which we heard about in some detail during the hearing. That is, the Partnership identified certain VECs and then assessed potential effects on those components, and identified mitigation measures that the Partnership claims will sufficiently neutralize these expected effects so they are not ‘significant’.

In the case of cumulative effects, for many of the identified VECs, the Partnership concluded that there was no significant effect. The flaws in the Partnership’s assessment approach and how that affected its conclusions were already aptly summarized for the Commission by experts Dr. Jill Gunn and Dr. Bram Noble.⁶ Indeed, their ultimate conclusion was that while elements of good practice for cumulative effects assessment seemed to be present, “many of the claims and conclusions quickly became unravelled.”⁷ Drs. Gunn and Noble provided a detailed analysis of where the Partnership failed to deliver on good intentions, and noted the concern:

The Keeyask Project’s incremental effects appear to be underestimated, and in many instances dismissed, given explicit recognition in the EIS that: a) the Nelson River sub-watershed has already been substantially altered’ by past developments over the past 55 years; b) those effects persist today; and c) the Keeyask Project will cause

⁶ Consumers Association of Canada (Manitoba Branch) Cumulative Effects Presentation, Hearing Transcripts, November 12, 2013 – *Presentation by Dr. Bram Noble, Dr. J. Gunn*, pp. 2660-2724; Exhibit CAC-009, Bram Noble and Jill Gunn, *Review of KHL P’s Approach to the Keeyask Generation Project Cumulative Effects Assessment* (Presentation) [“Noble and Gunn Presentation”]; Exhibit CAC-010, Bram Noble and Jill Gunn, *Review of KHL P’s Approach to the Keeyask Generation Project Cumulative Effects Assessment* (Full Report) [“Noble and Gunn Report”].

⁷ Noble and Gunn Report, *supra* note 6 at p. 12.

additional effects to an already substantially altered environment.⁸

A primary concern, from Peguis' perspective, is how the Partnership failed to properly identify important VECs, thus leading to inaccurate conclusions about the cumulative effects and the impact of the Keeyask Generation Project.

The Keeyask Generation Project does not stand alone – it is part of a system that has had a profound impact and has transformed lands and waters in the province.⁹ The EIS documents some of the devastating impact of the combination of past hydro projects. The wide geographic scope and the integrated nature of the hydro system, built over time, means that we cannot consider the Keeyask Generation Project and its impacts on lands and waters as a single, unconnected development. Indeed, the Partnership repeatedly acknowledged the fact of the historic impacts across a wide geographical area, and how it asserts that was considered when assessing potential effects of Keeyask.¹⁰ In practice, however, the Partnership still failed to ask all the necessary questions to properly appreciate how the Keeyask Generation Project will add to this existing system with its historic and ongoing impacts.

Since dams by their very nature depend upon regulation of water flow, it seems obvious that there is a need to look at the interconnection of waterways.¹¹ Correspondingly, we need to identify the VECs that ensure a proper look (that is, an accountable and transparent review) at key impacts of a dam as part of a water control and energy generating system.

The Partnership insisted on and stated its belief that the Keeyask Generation Project will not substantially affect water levels upstream of the defined study area. However, in the absence of any identified VEC about upstream water levels or any other specific means of assessment, it is not apparent how the Partnership can be so sure that the water levels upstream will not be

⁸ *Ibid* at p. 13.

⁹ Keeyask Hydro Limited Partnership, Response to EIS Guidelines, Socio-Economic Environment, Resource Use and Heritage Resources, Section 2: Historical Context, Section 2.2.2, (pp. 2-10), June 2012.

¹⁰ Keeyask Regulatory Environmental Assessment Approach, Methods & Processes Panel, Hearing Transcripts, October 24, 2013 – *Peguis Cross-Examination by Ms. Land*, pp. 785 (lines 13-14), Keeyask Socio-Economic Environment, Resource Use and Heritage Resources Panel, Hearing Transcripts, November 5, 2013 – *Peguis Cross Examination by Ms. Guirguis*, pp. 2040 (lines 11-25).

¹¹ Noble and Gunn Report, *supra* note 6 at p. 8; Noble and Gunn Presentation, *supra* note 6 at slide 18.

affected.¹² Indeed, upon cross examination, the Partnership's engineers admitted the interconnected hydrological impacts of the hydro system, and the potential for impacts upstream in the Lake Winnipeg area.¹³ Yet, these impacts were not assessed.

What is clear is that the Keeyask Generation Project will be part of the overall integrated hydroelectric system, and the inflows that supply the Keeyask Generation Project will come from upstream, i.e. from Lake Winnipeg.¹⁴ Peguis has stated repeatedly on the record its concerns about impacts from fluctuating water levels of Lake Winnipeg, including annual and devastating flooding of its lands, which feed into the hydroelectric system.¹⁵ This all lends to the reasonable conclusion that good cumulative effects assessment on a regional basis should identify water levels upstream of the Keeyask Generation Project as a VEC. Indeed, this corresponds with one of the criticisms noted by Drs. Gunn and Noble that the spatial limits of the Partnership's cumulative effects assessment are not scoped broadly enough to capture direct *and* indirect impacts.¹⁶

Peguis is concerned about this issue not simply because of past impacts and damages, but also because of extreme concern about how future development will compound existing effects and give rise to new challenges. Peguis concerns are about the cumulative, ongoing and future adverse effect of hydroelectric developments on the entire and integrated Manitoba Hydro system, including how the Keeyask Generation Project will further compound these impacts.¹⁷

¹² Keeyask – Project Description, Hearing Transcripts, October 23, 2013 – *Peguis Cross Examination by Ms. Land*, pp. 579 (line 19) to 581 (line 1); Keeyask Regulatory Environmental Assessment Approach, Methods & Process Panel, Hearing Transcripts, October 24, 2013 – *Peguis Cross Examination by Ms. Land*, pp. 785 (line 3) to 787 (line 12), pp. 791 (line 5) to 796 (line 18); Keeyask Socio-Economic Environment, Resource Use and Heritage Resources Panel, Hearing Transcripts, November 5, 2013 – *Peguis Cross Examination by Ms. Guirguis*, pp. 2039 (line 6) to 2040 (line 10).

¹³ Keeyask – Project Description, Hearing Transcripts, October 23, 2013 – *Peguis Cross Examination by Ms Land*, pp. 579 (line 19) to 581 (line 1).

¹⁴ Keeyask – Project Description, Hearing Transcripts, October 23, 2013 – *Peguis Cross Examination by Ms Land*, pp. 574 (line 14) to 577 (line 4).

¹⁵ Keeyask Regulatory Environmental Assessment Approach, Methods & Processes Panel, Hearing Transcripts, October 24, 2013 – *Peguis Cross Examination by Ms. Land*, pp. 801 (line 1) to 804 (line 6); Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by Chief G. Hudson*, pp. 5896 (line 11) to 5900 (line 12).

¹⁶ Noble and Gunn Report, *supra* note 6 at pp. 21-23; Noble and Gunn Presentation, *supra* note 6 at slides 17 & 18; Consumers Association of Canada (Manitoba branch) Cumulative Effects Presentation, Hearing Transcripts, November 12, 2013, *Peguis Cross Examination by Ms. Guirguis*, pp. 2905 (line 18) to 2908 (line 4), pp. 2909 (line 13) to 2911 (line 9).

¹⁷ Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by M. Sutherland*, pp. 6029 (line 12) to 6036 (line 22).

That question can't be answered unless it is actually asked and this concern is properly recognized as requiring assessment by the Partnership.

In a proponent-driven assessment process, it is challenging to ensure that a proponent fully recognizes the potential impacts that are "worthy" of being assessed. Even the partnering First Nations in the vicinity of the Keeyask Generation Project testified of their struggle to get Manitoba Hydro and governments to acknowledge the significant impacts of developments since the 1950s.¹⁸ Continuing failure to recognize the impact the hydro system in the north has on upstream water levels does not mean that these impacts do not exist.

As stated by Councillor Mike Sutherland,

"And the point I want to make in this is that we can't isolate these projects. And in order for us to move forward, and government to move forward, and Hydro, there has to be an overall assessment done, a big picture, a cumulative assessment, because we are not looking at that. I seen firsthand already the damage that was done in 2011 and 2007 for Manitoba in general, not just specifically to our communities. What is going to happen if we don't? And if we continue to put those dams in the north, is it going to be much more dramatic, much more damaging to our communities? Because we don't see any other way, we don't see anything else but negativity from all of this for our communities. And whether the Keeyask dam be in the north and Peguis in the south, we are still affected dramatically. We have shown to you that we have people in the north living up there, hunting up there. We go up there ... So in order for us to move forward, and I think Hydro has to really look at this, this whole assessment, because that's what Peguis is asking for."¹⁹

The only way to know whether there are such impacts, and whether the Keeyask Generation Project will have a further and cumulative effect, is to identify this as a valued environmental component requiring assessment and then to actually ask and answer the question of what the impacts may be.

¹⁸ Keeyask Cree Nations Panel, Hearing Transcripts, November 7, 2013 – *Peguis Cross Examination by Ms. Guirguis*, pp. 2614 (line 3) to 2618 (line 20).

¹⁹ Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by M. Sutherland*, pp. 6035 (line 16) to 6036 (line 18).

B) Limited Boundaries as an Obstacle to Cumulative Effects Assessment

A first step in good cumulative effects assessment is to properly identify the relevant VECs; a critical next step is to assess the potential effects on those VECs wherever they may take you.

The Partnership artificially limited the boundaries of effects by limiting the regional reach of its assessment. For example, the Partnership concluded that the proposed project's hydraulic zone of influence reached only to 41 kilometres upstream of where the Keeyask Generation Project will be located, and no specific monitoring for how the Keeyask Generation Project may affect hydraulics outside of this zone is planned.²⁰

In the expert testimony provided by Drs. Gunn and Noble, the concept of a maximum zone of influence was discussed, respecting how thresholds are measured. Sharing their expertise on how proper cumulative effects assessment is done, their evidence included a discussion of how to analyze thresholds: one of the steps in cumulative effects assessment is about determining how much strain a VEC can handle. For example, if an identified VEC is already in a state of extreme vulnerability – such as lake sturgeon, which in this case is already extremely vulnerable – then no further development that causes an effect on the VEC may be appropriate.²¹ Ensuring that the maximum zone of influence is properly identified is about ensuring that the review examines the maximum extent to which one can detect, understand or analyze an effect – both spatially and temporally – on that VEC. This is a concept that needs to be visited a number of times in the assessment.²²

If that zone of influence is artificially limited, then this aspect of the assessment will be inadequate. This was the case with respect to the concerns raised by Peguis.

The limits on the selection of VECs (already mentioned above) is one such artificial boundary that certainly affects the adequacy of the cumulative effects assessment, as well as the limits on the geographic reach of effects on those VECs that were identified. If best practices demands

²⁰ Keeyask Physical Environment Panel, Hearing Transcripts, October 28, 2013 – *Peguis Cross Examination by Ms. Land*, pp. 1065 (line 4) to 1067 (line 9), pp. 1071 (line 3) to 1072 (line 7).

²¹ Consumers Association of Canada (Manitoba branch) Cumulative Effects Presentation, Hearing Transcripts, November 12, 2013 – *Peguis Cross Examination by Ms. Guirguis*, pp. 2908 (line 6) to 2909 (line 12); Noble and Gunn Report, *supra* note 6 at pp. 10, 18, 25-26; Noble and Gunn Presentation, *supra* note 6 at slide 20.

²² Consumers Association of Canada (Manitoba branch) Cumulative Effects Presentation, Hearing Transcripts, November 12, 2013 – *Peguis Cross Examination by Ms. Guirguis*, pp. 2908 (line 6) to 2909 (line 12).

that the assessment process defines the zone – spatially and temporally – by the maximum extent to which one can actually detect any effect, then that necessarily requires casting a wider net when it comes to determining the reach of effects.

This is true for effects upstream of the Keeyask Generation Project, in light also of Peguis's stated concerns about hydro's role in annual flooding and impacts on Peguis' lands.²³ The impacts of flooding have a long history in Peguis, as stated by Chief Glenn Hudson:

“...We certainly have issues that our communities are impacted by. And I've seen none, throughout my seven years as Chief, none that have impacted us so much in terms of the flooding of our communities, and throughout our history, you know since this Hydro development, and certainly the projects that have proceeded since the 1960s.”²⁴

Chief Hudson went on to recall flooding from the 1970s, and how flooding continues to impact his community and other communities through the province that are connected by the waterways in this territory – the source of “all of the water that's being diverted to power these dams in the north...”²⁵

Casting a wider net is also necessary for properly considering effects on Peguis' Aboriginal and treaty rights and asserted rights. The boundaries set by the Partnership do not provide space or recognition to Peguis' traditional land use in the north, to its definition of traditional territory and to its understanding of existing treaty promises including the treaty harvesting rights which continue to be exercised in northern Manitoba by Peguis members. Prof. Niigaan Sinclair aptly provided various snapshots of these understandings in his explanation of the role of gifts (e.g. when you accept a gift, you acquiesce to the responsibilities with it), and the role of signing with doodemag and what that means in terms of representing responsibilities, obligations and defining territory (e.g. Peguis' signing with doodemag – the bear, the marten, the catfish and the snake – signified adopting settlers into these networks and meant they have responsibilities within the

²³ Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by M. Sutherland*, pp. 6029 (line 25) to 6033 (line 8); *Presentation by Chief G. Hudson*, pp. 5901 (line 2) to 5094 (line 20).

²⁴ Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by Chief G. Hudson*, pp. 5901 (line 12) to 5901 (line 16).

²⁵ Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by Chief G. Hudson*, pp. 5902 (line 20).

territory).²⁶ Territory is defined and described in relation to waterways and the way in which people travelled, as demonstrated by the maps and drawings provided through Prof. Sinclair's testimony.²⁷ Prof. Sinclair further explained territory in relation to relationships with others:

“So that Peguis traditional territories, our territorial claims involve any lands in relationship with doodemag. And that, lands in relationship with doodemag. And that, therefore, the Lord Selkirk Treaty refers to all of those lands. It refers to the traditional territories within that doodemag marking of all those territories that I just listed on all of those maps.”²⁸

A fulsome and adequate determination of the reach of cumulative effects – one that ought to have been incorporated into the cumulative effects assessment for the Keeyask Generation Project and that Peguis urges must take place before further hydro development goes ahead in Manitoba – would ensure space for these understandings and concepts. Particularly, such an assessment would take the first step of asking and answering the question of what impacts are there upstream from the Keeyask Generation Project, and the integrated water management system.

Recommendations:

- **That the CEC recommend to the Minister that the Keeyask Generation Project not be approved until a thorough and independent regional cumulative effects assessment of the Nelson River and Churchill River watersheds, and Lake Winnipeg (including a full and transparent review of the hydroelectric system) is completed**
- **That, in the alternative, the CEC recommend to the Minister that as a condition of the approval of the Keeyask Generation Project:**

²⁶ Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by Dr. N. Sinclair*, pp. 5933 (line 15) to 5937 (line 3), pp. 5944 (line 25) to 5960 (line 3).

²⁷ Exhibit PFN-007, Presentation to the CEC on Keeyask Generation Hydro Project, Dr. Niigaanwewidam James Sinclair, *History of Peguis First Nation: Treaty Promises and Relationships to Territory and Project Area and Linked Upstream Areas*, slides 22-24.

²⁸ Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by Dr. N. Sinclair*, pp. 5962 (lines 17-24).

- **Such regional cumulative effects assessment of the Nelson River and Churchill River watersheds is completed; and**
- **The shortcomings in the cumulative effects assessment done for the Keeyask Generation Project be rectified through completion of a study about the impacts of the hydroelectric system in the north on water flows, levels and quality in the south, including its contribution to the annual flooding of Peguis' lands.**

3. ABORIGINAL CONSULTATION AND ENGAGEMENT

Peguis First Nation is affected by the Keeyask Generation Project in a number of ways, including:

- The cumulative effects of this Project, as one more component of the northern Manitoba hydro infrastructure which links hydro projects and controlled water flows on the Nelson, Churchill, and Burntwood river systems to the water flow upstream in Lake Winnipeg (where Peguis' main reserve is located).
- The impact of the Project on harvesting and cultural rights which are actively exercised by Peguis members in northern Manitoba in areas where Peguis has historical ties and continuing treaty rights.
- The impact of the associated infrastructure (transmission lines and converter stations) on which this Project relies and which this Project is being built to service, and which are located on traditional Peguis lands and Peguis' TLE notice areas.
- The impacts of the Project on the ability of Peguis to select Treaty Land Entitlement lands, which it is entitled to select anywhere in the Province.

Peguis has consistently raised concerns about these impacts, but Manitoba Hydro has refused to properly engage with Peguis to address Peguis concerns.

Indeed, in the hearings, the proponent made the following admissions:

- Peguis was not invited to attend any public participation process until the Round Three Workshops, which occurred in Spring 2013, eight years after the public participation process commenced.²⁹
- In the proponent's 916-page *Public Involvement* volume of the EIS, Peguis First Nation is not mentioned once.³⁰
- Manitoba Hydro knew or should have known that Peguis had expressed serious concerns about future hydro development, as these concerns had been expressed in forums such as the CEC's Bipole III Hearings in 2012, and in a statement to the United Nations General Assembly in 2011 (which was widely covered in Manitoba media).³¹

There was confusion throughout the course of the CEC's Keeyask hearing regarding the interplay between the Aboriginal consultation process conducted by the Crown, and the CEC's process for which the Terms of Reference explicitly excluded Aboriginal consultation:

While the eventual licensing decision pursuant to The Act will consider the results of the consultation process, Crown-Aboriginal consultation is a distinct process from the public review process, including hearings to be conducted by the Commission. As such, the Commission is not being called on to conduct a Crown-Aboriginal consultation process or to consider the appropriateness or adequacy of the consultation process for the Project. The Commission also need not assess whether identified impacts may constitute an effect on the exercise of Aboriginal or treaty rights.³²

Peguis respects these Terms of Reference and the CEC's ruling in the Bipole III hearings that the CEC is not making a determination about the Crown's constitutional obligation to consult Peguis on impacted Treaty and Aboriginal rights, finding:

²⁹ Keeyask Regulatory Environmental Assessment Approach, Methods & Processes Panel, Hearing Transcripts, October 24, 2013 – *Peguis Cross Examination by Ms. Land*, pp. 786 (line 5) to 787 (line 24); pp. 786 (line 23) to page 800 (line 14).

³⁰ Exhibit KHL-005: *Keeyask Generation Project, Environmental Impact Statement, Supporting Volume - Public Involvement. June 2012, Keeyask Hydropower Limited Partnership.*

³¹ Keeyask Regulatory Environmental Assessment Approach, Methods & Processes Panel, Hearing Transcripts, October 24, 2013 – *Cross Examination by Ms. Land*, pp. 801 (line 1) to 803 (line 15).

³² Exhibit CEC – 002: *Terms of Reference for the Clean Environment Commission, the Keeyask Generation Project.*

...this is a matter that falls outside of the responsibilities of the Commission. It is not the Commission's job to tell the Crown how to conduct its business. This includes the content, the process and the timing of the Crown's consultations.³³

Confusion in the CEC's Keeyask hearings, regarding the interplay between a separate Aboriginal consultation process for this Project and the CEC's hearing, is understandable given the overlap of issues. The environmental assessment and Crown Aboriginal consultation processes are two different but substantially overlapping processes. The two processes focus on arguably different but overlapping goals (sustainable development on the one hand, and protection of constitutionally-protected Aboriginal and treaty rights on the other). Both use similar procedures (community engagement), both collect information on impacts (evidence of effects of development on activities such as harvesting and land uses), and both have the goal of addressing harmful effects (through "mitigation" in the case of environmental assessment and "accommodation" in the case of Aboriginal consultation).

For this reason, the original seminal decisions on Aboriginal consultation (*Haida* and *Taku River*)³⁴ recognized that procedural aspects of Aboriginal consultation can be integrated into environmental assessment processes, as a function delegated from the Crown to the relevant tribunal (although the final obligation for ensuring that consultation occurs, at the end of the day, rests with the Crown). Indeed, this is the approach taken by most regulatory tribunals (such as the National Energy Board and various provincial tribunals) that conduct environmental assessments for projects that affect Aboriginal groups. Integration of environmental assessment and Crown Aboriginal consultation process allows for more fully informed decision making, which is both more effective and efficient.

Manitoba has chosen, however, to deal with Aboriginal consultation in a completely separate process for the Keeyask Generation Project. This decision to create a separate, parallel (and duplicating) process for engagement with Aboriginal groups does not, however, replace environmental assessment obligations regarding public consultation. The existence of a separate Aboriginal consultation process does not negate the environmental assessment obligations to measure and address impacts of development on affected groups that include First Nations,

³³ Decision of the Clean Environment Commission on the Motion of Peguis First Nation, August 31, 2012.

³⁴ *Haida Nation v. British Columbia*, 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia*, 2004 SCC 74.

including impacts on harvesting and land rights that also happen to be constitutionally protected (and thus subject to the additional constitutional protections of section 35, and resulting Aboriginal consultation obligations).

The lack of any substantive engagement by the Partnership with Peguis means that the review of impacts of the Keyask Generation Project was flawed, as the process insufficiently addressed concerns such as:

- The identification of Valued Environmental Components to fully capture the impacts of the Project including upstream in the Lake Winnipeg area;
- The linked and cumulative hydrological impacts of the Project upstream;
- The impacts of the Project on harvesting activities of other Aboriginal harvesters in the region (including Peguis First Nation members), beyond members of the four partner Cree Nations;³⁵ and
- The impacts of the Project on the ability of Peguis First Nation members to exercise its protected Aboriginal and/or treaty rights.

These concerns are addressed by the previously listed recommendations regarding the suggested non-approval for the Project given the failure to fully and properly assess the scope of the Project's impacts, and regarding the need for a proper independent regional cumulative effects assessment.

³⁵ Evidence provided by Peguis during the hearings demonstrated the continued harvesting activities of Peguis members in northern Manitoba. See for example:

- Exhibit PFN – 009: *Peguis First Nation Community Survey and Mapping. Preliminary Sample Results. Presentation Jared Whelan. 11 December 2013.*
- Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by Dr. N. Sinclair*, pp. 5911 (line 18) to 5913 (line 6).
- Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by Chief Hudson*, pp. 6015 (line 11) to 6016 (line 4).
- Peguis First Nation Panel, Hearing Transcripts, December 11, 2013 – *Presentation by M. Sutherland*, pp. 6017 (line 23) to 6018 (line 3), and p. 6030 (line 12 – 17).

4. MAPPING THE CUMULATIVE EFFECTS OF HYDRO DEVELOPMENT ON SHORELINES AND INUNDATED AREAS

The evolution of Geographic Information System (GIS) technology, which allows the user to produce and interact with many types of maps, provides a powerful tool to analyze past, present and predicted environmental scenarios. GIS mapping of changes to water bodies over time is an increasingly important tool for cumulative environmental effects assessment, particularly.

Peguis First Nation retained David Flanders to provide the Clean Environment Commission with a demonstration of the utility of historic mapping of changes to shorelines and inundated and dewatered areas over time. Flanders demonstrated to the CEC how historical maps of river and lake systems in the region can be integrated into a modern GIS system using a georeferencing technique that relies on the known surveying methods and technologies used to create historic topographical maps. Once in a GIS, historic shorelines can be delineated with reasonable accuracy and compared to maps of current shorelines. In this way, changes to shorelines (and inundated and dewatered areas) can be tracked over time.

This kind of analysis is necessary because it is now clear that Manitoba Hydro's hydro infrastructure development is so systemic, linked and incremental that the impact of any one development or project must be considered in the context of numerous others that are part of the same hydro system and the same interlinked disturbed water bodies. The Keeyask Generation Project is not a discrete piece of infrastructure whose impacts can be adequately assessed in isolation. A system-wide analysis provides a view of systemic impacts occurring to linked, manipulated water bodies.

Flanders' report described how water body shorelines have changed over the last century in his Study Area as a result of hydroelectric infrastructure and projects in parts of Northern Manitoba. In the Project Area studied, Flanders' report demonstrated that, based on a conservative analysis, at least 1,350 km² has been inundated and 10km² dewatered by the existing Manitoba hydro infrastructure.

The analysis provides insight into some of the changes that have already occurred to the water system up and downstream of the proposed Keeyask Generation Project. Additionally, the analysis shows how decades of incremental changes caused by Manitoba Hydro's energy projects throughout the connected water courses including the Churchill, Burntwood and Nelson

Rivers, have resulted in system-wide, cumulative inundation (and in some areas, dewatering).³⁶ This provides a more fulsome picture of the impacts to date of hydro development in the region, compared to the limited mapping provided in the Partnership's EIS which did not show shoreline changes over time across the EIS's entire study area.

Flanders' analysis was constrained by the unwillingness of the proponent to share data, including:

- The proponent's refusal to share GIS shape files with more detailed data regarding known topographical features of the area in the immediate vicinity of the proposed Keeyask Project, thus preventing peer review of the proponent's mapping of hydrological effects³⁷;
- The proponent's refusal to respond fulsomely to requests to verify CAN VEC data regarding hydro infrastructure, instead providing paper maps and data already publically available, thus preventing Flanders' ability to verify some of the map information; and
- Manitoba Hydro's general delays and resistance in providing requested information, resulting in extra energy used to reproduce information already in Manitoba Hydro's possession, and reducing the amount of work that could be done to analyze changes to shorelines over time.

The limited time and budget for the study also prevented an analysis of the historic changes to shorelines for the larger geographic region of the entire interconnected Nelson River, Burntwood River, Churchill River and Lake Winnipeg waterways, and the use of even more detailed historical topographical maps. Additional time and resources would allow more detailed topographical maps to be used to pinpoint shoreline changes with increasing specificity in correlation with the more detailed scale of maps.³⁸

³⁶ Exhibit PFN – 003: *Identifying Shoreline Changes Over Time in Northern Manitoba Using Historic and Current National Topographic System Maps (Report to the Clean Environment Commission)*, David Flanders, November 25, 2013.

³⁷ Peguis First Nation Shoreline Modelling, Hearing Transcripts, November 27, 2013 – *Evidence of David Flanders*, pp. 3948 (line 5) to 3950 (line 15).

³⁸ See Exhibit PFN – 003: *Identifying Shoreline Changes Over Time in Northern Manitoba Using Historic and Current National Topographic System Maps (Report to the Clean Environment Commission)*, David Flanders, November 25, 2013 at p. 26; and Exhibit PFN-004: *Identifying Shoreline Changes Over Time in Northern Manitoba*

This type of GIS analysis and mapping could be used to establish a defensible baseline study to monitor and analyze shoreline changes over time linked to hydro and other developments that affect water bodies.³⁹ It would also be useful in a regional cumulative effects assessment that considers and reviews the hydro system in Manitoba.

This would be particularly useful where there are uncertainties regarding the scope of anticipated inundation and dewatering, as baseline studies could be used to compare and evaluate actual changes to shorelines over time.⁴⁰ This is particularly relevant where there are significant discrepancies between predictions of western science and Aboriginal traditional knowledge regarding the scope of anticipated flooding, and where the proponent proposes, as mitigation, to ‘monitor’ to see what actually happens.⁴¹

Recommendations:

- **That the CEC recommend to the Minister that, as a condition of the approval of the Keeyask Project, a more extensive GIS-based mapping analysis be completed to document historic changes to shorelines – including cumulative inundated and dewatered areas – for the entire interconnected Churchill River Diversion (CRD), Nelson River and LWR areas, in order to provide baseline data against which to measure and monitor changes as a result of the Keeyask Project.**
- **That the CEC recommend to the Minister that, for any future hydro projects, GIS-based analysis and maps be completed documenting the historic changes to shorelines, in order to provide baseline data against which to measure and monitor changes, including cumulative changes in the interconnected CRD, Nelson and LWR areas.**

Using Historic and Current National Topographic System Maps (November 27, 2013 Presentation), David Flanders, at slides 46 and 58 - 59.

³⁹ See Exhibit PFN – 003: *Identifying Shoreline Changes Over Time in Northern Manitoba Using Historic and Current National Topographic System Maps (Report to the Clean Environment Commission)*, David Flanders, November 25, 2013 at page 26; and Exhibit PFN-004: *Identifying Shoreline Changes Over Time in Northern Manitoba Using Historic and Current National Topographic System Maps* (November 27, 2013 Presentation), David Flanders, at slide 57 - 58.

⁴⁰ Exhibit PFN-004: *Identifying Shoreline Changes Over Time in Northern Manitoba Using Historic and Current National Topographic System Maps* (November 27, 2013 Presentation), David Flanders, at slide 58.

⁴¹ For instance, there was extensive evidence of the differences in the conclusions of Aboriginal traditional knowledge and western science regarding how much additional flooding could be anticipated in the Split Lake area. The proponent proposes to deal with this discrepancy by monitoring to see what happens, and whether the Aboriginal traditional knowledge or western science predictions are accurate.

- **That, for future projects, there be an expectation that the proponent will fully cooperate in sharing map data and data when requested by affected parties, to allow for proper peer review of map data, methodology and analysis.**

5. REVIEW OF THE MOOSE STRATEGY: INVOLVING PEGUIS

A key game species which Peguis First Nation members harvest and rely upon for food, cultural and ceremonial purposes, is moose. Peguis is concerned that the assessment of the Project's impacts on moose was not adequate, as the cumulative effects models ignored key pressures (such as relocation of harvesting activities from the many now-closed game hunting areas in southern Manitoba, and the effects over time of climate change) on moose populations. Peguis is also concerned about the constraints that are imposed on proper assessment of moose impacts due to the lack of a province-wide moose management plan that addresses population pressures and changes over a larger geographic area than the individual Resource Management Areas (RMAs) and Game Hunting Areas (GHAs). These individual RMAs and GHAs do not constitute a proper and integrated moose management system.

The Commission was provided with evidence of Peguis community members indicating regular patterns of moose harvesting in northern Manitoba.⁴² The CEC will also recall that, in the Bipole III hearings, Peguis First Nation and others raised a number of concerns regarding moose impacts from hydro projects, which the CEC commented on in its final report.⁴³ The evidence in Bipole III included information about the closure of game harvesting areas and steep declines in moose populations in parts of Manitoba, associated in part with over-harvesting in these areas, including by American hunters.

During the evidence presented by the Partnership's Aquatic and Terrestrial Environment Panel, experts for the Partnership admitted that:

⁴² Exhibit PFN – 009: *Peguis First Nation Community Survey and Mapping. Preliminary Sample Results* (December 11, 2013 Presentation), Jared Whelan, at p. 63.

⁴³ Clean Environment Commission, *Report on the Public Hearing for the BiPole III Transmission Project*, June 2013, at pp. 55 – 57.

- The proponent was aware of the evidence in Bipole III regarding rapidly declining moose populations in parts of Manitoba.⁴⁴
- The moose population model used by the proponent for assessing cumulative effects on moose populations should have (but did not) include an analysis of these additional pressures on moose populations in the Project area as a result of moose population crashes elsewhere.⁴⁵
- No province-wide moose management plan currently exists to assess moose management needs on a broader geographic basis than the current resource management areas and game hunting areas, although capability now exists to integrate management and harvesting decisions at a provincial level.⁴⁶
- The EIS did not assess the implications of climate change on VECs, including the effects of climate change on moose populations and the habitat they depend on, although that should be part of future moose population modeling.⁴⁷

Recommendations:

- **That the CEC recommend to the Minister that, as a condition for the license for the Keeyask Generation Project, the Manitoba Government and Manitoba Hydro should establish a joint monitoring (and if necessary, mitigation) program to assess the impacts, if any, of increased moose harvesting in the Keeyask Generation Project Regional and Local Study Areas as a result of declining moose populations elsewhere in Manitoba.**
- **That the CEC recommend to the Minister that the Manitoba government establish a province-wide moose**

⁴⁴ Keeask Aquatic & Terrestrial Environment Panel, Hearing Transcripts, October 31, 2013 – *Cross Examination by Ms. Land*, pp. 1750 (line 19) to 1751 (line 1).

⁴⁵ Keeask Aquatic & Terrestrial Environment Panel, Hearing Transcripts, October 31, 2013 – *Cross Examination by Ms. Land*, pp. 1751 (line 12) to 1753 (line 14).

⁴⁶ Keeask Aquatic & Terrestrial Environment Panel, Hearing Transcripts, October 31, 2013 – *Cross Examination by Ms. Land*, pp. 1755 (line 5) to 1757 (line 10).

⁴⁷ Keeask Aquatic & Terrestrial Environment Panel, Hearing Transcripts, October 31, 2013 – *Cross Examination by Ms. Land*, pp. 1758 (line 22) to 1762 (line 1).

monitoring program to monitor, assess and manage moose population health on a province-wide basis.

- **That the CEC recommend to the Minister that an assessment of the impacts of climate change upon Valued Environmental Components (including moose, where appropriate) be part of the assessment of the cumulative impacts for any future projects reviewed under the *Environment Act*.**
- **That the CEC recommend to the Minister that independent monitoring of moose populations, health, mortality, habitat and sustainability (including of their habitat) in relation to the Keeyask Generation Project be put in place, led by First Nations who hunt in the region where Keeyask Generation Project would be located.**

6. OTHER ENVIRONMENTAL ASSESSMENT PROCEDURE CONCERNS

A) The Impact of Project Splitting on Proper Assessment

Peguis encourages the CEC to continue its efforts to advise the Minister on processes and mechanisms which strengthen environmental assessment in Manitoba. Peguis commends the CEC on efforts (and recommendations) made in the CEC's processes and reports on the recent Bipole III hearings to strengthen environmental review processes.

The CEC derives its authority and role from the provisions of the Manitoba *Environment Act*. Its functions are informed by not only the specific duties assigned to the CEC under the Act, but also by the principles of this governing statute.

The primary intent of the Act (which is also an umbrella principle for the work of the CEC) is the goal of sustainability:

1(1) The intent of this Act is to develop and maintain an environmental protection and management system in Manitoba which will ensure that the environment is protected and maintained in such a manner as to sustain a

high quality of life, including social and economic development, recreation and leisure for this and future generations.⁴⁸

An integrated environmental assessment process more fulsomely incorporates the principle of sustainability and provides a better framework for assessment of cumulative effects. The scope of good environmental assessment must be comprehensive and wide-ranging enough to be truly able to act as a sustainability tool.

At times it is problematic to determine what is - and what is not - part of the scope of a “project” for the purpose of environmental assessment. As a general principle, however, it is assumed that it is both ineffective and inefficient to separately assess the many individual components of a large development, even if developers apply for these components separately. For this reason, effective environmental assessment pays attention to the risks of “project splitting” (particularly when reviewing the impacts of large development projects). To assess individual parts of an interconnected set of infrastructure or system risks missing the impacts bigger picture, by failing to recognize impacts related to scale and combined effects of the separate parts. This is particularly a concern when a series of large and individual but connected structures link over a wide region with dispersed and cumulative impacts as a result of how they function as a whole, such as in the case of the enormous Manitoba Hydro dam, water diversion and water control system.

Peguis is concerned that it is not possible to adequately assess cumulative effects of the overall impact of the proposed Keeyask Generation Project – as a new component in this large interconnected hydro dam and water management system – given the manner in which licensing for various linked and dependent components are proceeding separately. Manitoba has chosen to sever key but linked components of the same overall Project into separate processes. The CEC is currently considering, in this hearing, only the impacts of the proposed Keeyask Generation Project. The assessment of the transmission and convertor stations upon which this project will rely (and which, in turn, depend on this Project for their viability) has been assessed (and

⁴⁸ *Environment Act*, C.C.S.M. c. E125, s. 1(1).

licensed) separately, based on assumptions regarding the outcomes of this hearing (i.e. that approval will be granted) before the completion of these hearings.

Even more questionably, the assessment of whether this Project is even needed in the first place, and whether alternatives to the proposed Keeyask Generation Project exist which could have more benign impacts, has been severed and is being dealt with in a separate “Needs For and Alternatives To” process. The need for this Project, and how it could be alternatively structured to minimize or mitigate impacts, should be the first and integrated part of an effective environmental assessment, not a separate process which duplicates evidence and which occurs after a recommendation potentially for the environmental approval is already given.

Recommendation:

- **That the CEC recommend to the Minister that, for any future projects, the “Needs For And Alternatives To” assessment and all interdependent aspects of a project be assessed in a combined cumulative effects assessment process that reviews and analyzes all key aspects of a project which interact in causing impacts.**
- **That the CEC recommend to the Minister that no approval be given for the Keeyask Generation Station until the outcome of the Public Utilities Board hearings regarding the need for this generation station are reported and responded to by the Manitoba government, noting that the need for the Keeyask Generation Project may be refused or modified by the Public Utilities Board review.**
- **That the CEC recommend to the Minister that, for any future projects, all related transmission and convertor stations and any other related projects be considered, reviewed and assessed in connection with one another.**

B) Aboriginal Representation in All Aspects of Environmental Assessment

Manitoba Hydro’s system of interlinked dams, water diversion, floodway and water control systems cover a significant portion of Manitoba. The combined effect of this system is experienced throughout the Nelson, Churchill, Burntwood and Lake Winnipeg waterways. As

detailed above, it is Peguis' position that this larger interlinked regional area should properly be the focus of regional cumulative effects assessment for hydro projects in this system. This larger area affected by the interconnected hydro system includes many Aboriginal groups (not just those in the immediate vicinity of one or another individual generating stations or other individual components of this larger interlinked system). Affected First Nations should be considered to include both those First Nations in the immediate vicinity of a specific proposed hydro infrastructure component, as well as those First Nations that are directly and indirectly affected downstream and upstream of this coordinated and linked water system.

It is generally agreed that, in regions with significant Aboriginal populations, there ought to be greater Aboriginal representation in environmental decision-making forums such as those associated with environmental assessment. This issue has become increasingly important with regard to the potential impacts resource development projects have on Aboriginal rights, lands and ability to sustain their livelihoods.

Peguis asserts that it is key that Manitoba acknowledge the government-to-government nature of its relationship with First Nations, and not view First Nations as simply "stakeholders" (or partners) in resource development. Recognition of the nation-to-nation relationship is consistent with the treaty relationship which makes Manitoba's very existence possible. This intergovernmental relationship means that, where First Nations lands and interests are significantly impacted, First Nations should be involved in the cooperatively setting up the appropriate environmental review structure. To achieve cultural relevancy and to effectively address Aboriginal communities' needs and concerns, alternative environmental assessment process models suggested by First Nations must be considered.

Peguis recognizes that the CEC and the Manitoba government, and Manitoba Hydro, have taken steps to address some perceived deficiencies in the environmental assessment process for hydro projects. For instance, Peguis commends the CEC and Manitoba Hydro for ensuring that better cumulative effects assessment happened for the Keeyask Generation Project compared to past projects. (Peguis still maintains, however, that the cumulative effects assessment was deficient on a number of counts – the key being the geographic area assessed, as it did not include the entire interlinked water management system that this project will be part of). Peguis also respects Manitoba Hydro's admission that it was woefully negligent in the past in considering

impacts on Aboriginal communities and the need to involve Aboriginal communities in proper assessment of project impacts. The participation of the four Cree Nations as partners in the Project has provided for some opportunities for better Aboriginal involvement, but Peguis asserts that more must be done to properly include Aboriginal communities in the decision-making about Projects such as the Keeyask Generation Project.

Aboriginal groups should be involved early and thoroughly in the assessment process. At the point when Project design alternatives are being considered, or even the need for the Project at all, there must be engagement with affected Aboriginal groups. Similarly, when thought is being given to how to structure the environmental assessment process in the first place – to ensure that the structure which is developed will properly address Aboriginal concerns – Manitoba should be engaging with First Nations. Inviting First Nations to “respond” after the terms for review have already been established, is too late in the process.

For this reason, environmental assessments of large infrastructure projects with significant impact on Aboriginal groups have increasingly involved Aboriginal participation in the process of establishing the appropriate panel mechanism and review structure from the initial stages. For instance, in recent reviews of the Voisey’s Bay nickel mine, the McKenzie Valley Pipeline and the Lower Churchill Hydro Project, Aboriginal groups participated in nominating members of the review panel and in establishing Scoping and Terms of Reference for those reviews. Aboriginal groups should be engaged and actively involved at all stages, from the normative (what should be done), strategic (what can be done) and operational (what will be done) stages for assessment.

Recommendation:

- **That the CEC recommend to the Minister that the Manitoba Government consider how the environmental assessment process should evolve to reflect the government to government relationship between Manitoba and First Nations by, for instance:**
 - **Ensuring Aboriginal participation in determining the appropriate model used for environmental assessment;**
 - **Nominating panel members for assessment bodies;**
 - **Involving First Nations in the initial processes of the scoping of, and development of Terms of**

Reference for, environmental assessment reviews; and

- **Involving First Nations in the process of identifying the basis and contents of environmental reports, technical reports, and all requirements of the proponent**

7. CONCLUSION

The Keeyask Generation Project should not be approved, because of:

- the direct and indirect adverse effects that the Project will have on the environment and on the people;
- the shortcomings in the assessment process (including the failure to adequately assess potential environmental and social impacts, and overreliance on proposed monitoring and follow up);
- the failure to do a proper and adequate cumulative effects assessment; and
- the shortcomings for consultation with and involvement of concerned rights-holders and stakeholders.

Peguis' most critical concern about the assessment of the Keeyask Generation Project is that this process is proceeding without a regional cumulative effects assessment to properly examine the impact of the Project as part of a large integrated hydro system with enormous impacts over time and over a broad geographic area beyond the Project Area. The CEC should recommend that Manitoba Hydro conduct a regional cumulative effects assessment – echoing its similar recommendation in the Bipole III Report – with specific attention to:

- looking at the entire integrated system, meaning that an adequate cumulative effects assessment would look at the entire watershed system; and
- impacts of hydro's integrated system in the north upstream in Southern Manitoba, to assess what connection there is to annual flooding plaguing lands in the south.

In addition, the CEC should recommend that the assessment process be more inclusive from the outset of Aboriginal peoples in the province, as this is the only way to ensure that the right questions are being asked and concerns about potential impacts – such as those highlighted by Peguis including wildlife, lands and waters – are being addressed.

What is needed is a more critical and cautious approach to assessing proposed hydroelectric development, including the Keeyask Generation Project. That approach needs to consider all potential direct and indirect impacts of not just the newly proposed Keeyask Generation Project, but of how adding that to the existing network effects the entire system. Peguis urges the CEC to

make the recommendations suggested in these submissions as part of a step towards that cautious and critical approach.

That approach would better honour past promises and obligations made to Peguis, that are held sacred and made binding through treaty and the giving of gifts. It is these promises and obligations that need to be remembered as we go forward. The potential destruction to these promises and obligations is what needs to be avoided before we go ahead to accept the gift of hydro.

But what I would say is that a dam is a gift, a dam is a gift to creation. And what kind of gift is it? It is the kind of gift that we saw, unfortunately, is illustrated in many of the presentations that my relations here have given on this today. It involves the video [of the flooding of Peguis' community]. That we watched which was very difficult. Even someone who comes from these areas, it is very difficult to watch that. Because that is the gift that, as I said before, That is the type of gifts that are given and they are also given back. And what we saw, the flooding, is the way in which those dams give back. And unfortunately, that results in destruction, and ultimately the damaging of relationships, so that we are not living under the vision and the hopes of what the best of us can be in those treaties that we signed alongside one another and that we all inherit. That is, unfortunately, the foundational relationships that were very hopeful at the time in those Treaties, in 1817 and 1871, that are not being fulfilled, have never been fulfilled, and it is in large part due to projects like damming.⁴⁹

⁴⁹ Peguis First Nation, Hearing Transcript, December 11, 2013 – *Presentation of N. Sinclair (Cross-Examination by Concerned Fox Lake Grassroots Citizens)*, pp. 6066 (line 2) to 6067 (line 1).

APPENDIX: PEGUIS FIRST NATION RECOMMENDATIONS

Recommendations About:

- **CUMULATIVE EFFECTS: CHALLENGING THE FALSE PARADIGM REGARDING THE SCOPE OF IMPACTS / ABORIGINAL CONSULTATION AND ENGAGEMENT**
 - That the CEC recommend to the Minister that the Keeyask Generation Project not be approved until a thorough and independent regional cumulative effects assessment of the Nelson River and Churchill River watersheds, and Lake Winnipeg (including a full and transparent review of the hydroelectric system) is completed
 - That, in the alternative, the CEC recommend to the Minister that as a condition of the approval of the Keeyask Generation Project:
 - Such regional cumulative effects assessment of the Nelson River and Churchill River watersheds is completed; and
 - The shortcomings in the cumulative effects assessment done for the Keeyask Generation Project be rectified through completion of a study about the impacts of the hydroelectric system in the north on water flows, levels and quality in the south, including its contribution to the annual flooding of Peguis' lands.

- **MAPPING THE CUMULATIVE EFFECTS OF HYDRO DEVELOPMENT ON SHORELINES AND INUNDATED AREAS**

- That the CEC recommend to the Minister that, as a condition of the approval of the Keeyask Project, a more extensive GIS-based mapping analysis be completed to document historic changes to shorelines – including cumulative inundated and dewatered areas – for the entire interconnected Churchill River Diversion (CRD), Nelson River and LWR areas, in order to provide baseline data against which to measure and monitor changes as a result of the Keeyask Project.
- That the CEC recommend to the Minister that, for any future hydro projects, GIS-based analysis and maps be completed documenting the historic changes to shorelines, in order to provide baseline data against which to measure and monitor changes, including cumulative changes in the interconnected CRD, Nelson and LWR areas.
- That, for future projects, there be an expectation that the proponent will fully cooperate in sharing map data and data when requested by affected parties, to allow for proper peer review of map data, methodology and analysis.

- **REVIEW OF THE MOOSE STRATEGY: INVOLVING PEGUIS**

- That the CEC recommend to the Minister that, as a condition for the license for the Keeyask Generation Project, the Manitoba Government and Manitoba Hydro should establish a joint monitoring (and if necessary, mitigation) program to assess the impacts, if any, of increased moose harvesting in the Keeyask Generation Project Regional and Local Study Areas as a result of declining moose populations elsewhere in Manitoba.
- That the CEC recommend to the Minister that the Manitoba government establish a province-wide moose monitoring program to monitor, assess and manage moose population health on a province-wide basis.
- That the CEC recommend to the Minister that an assessment of the impacts of climate change upon Valued Environmental Components (including moose, where appropriate) be part of the assessment of the cumulative impacts for any future projects reviewed under the *Environment Act*.

- That the CEC recommend to the Minister that independent monitoring of moose populations, health, mortality, habitat and sustainability (including of their habitat) in relation to the Keeyask Generation Project be put in place, led by First Nations who hunt in the region where Keeyask Generation Project would be located.

- **OTHER ENVIRONMENTAL ASSESSMENT PROCEDURE CONCERNS: THE IMPACT OF PROJECT SPLITTING ON PROPER ASSESSMENT**
 - That the CEC recommend to the Minister that, for any future projects, the “Needs For And Alternatives To” assessment and all interdependent aspects of a project be assessed in a combined cumulative effects assessment process that reviews and analyzes all key aspects of a project which interact in causing impacts.
 - That the CEC recommend to the Minister that no approval be given for the Keeyask Generation Station until the outcome of the Public Utilities Board hearings regarding the need for this generation station are reported and responded to by the Manitoba government, noting that the need for the Keeyask Generation Station may be refused or modified by the Public Utilities Board review.
 - That the CEC recommend to the Minister that, for any future projects, all related transmission and convertor stations and any other related projects be considered, reviewed and assessed in connection with one another.

- **OTHER ENVIRONMENTAL ASSESSMENT PROCEDURE CONCERNS: ABORIGINAL REPRESENTATION IN ALL ASPECTS OF ENVIRONMENTAL ASSESSMENT**
 - That the CEC recommend to the Minister that the Manitoba Government consider how the environmental assessment process should evolve to reflect the government to government relationship between Manitoba and First Nations by, for instance:

- Ensuring Aboriginal participation in determining the appropriate model used for environmental assessment;
- Nominating panel members for assessment bodies;
- Involving First Nations in the initial processes of the scoping of, and development of Terms of Reference for, environmental assessment reviews; and
- Involving First Nations in the process of identifying the basis and contents of environmental reports, technical reports, and all requirements of the proponent.