
Manitoba-Minnesota Transmission Project

Closing argument

Consumer's Association of Canada (Manitoba Branch)

Prepared by the Public Interest Law Centre

June 5th, 2017



Roadmap

- Brief overview and main arguments
- Discussion of Six Main Themes:
 - Acknowledgement that Best practice EA is always evolving and that regulatory compliance is not sufficient
 - Transparency and inclusiveness of consumers in decision making, monitoring and follow up
 - Recognition of and Planning for Uncertainty
 - Silos within Manitoba Hydro and the Manitoba Regulatory Process Itself
 - Coordination and Cooperation among Provincial, Federal and Indigenous Jurisdictions
 - Relationship with Indigenous nations and people
- Proposed Recommendations and Findings

Overview of main arguments

- The CEC plays an important role in establishing best practice environmental assessment in Manitoba
- Environmental practices and standards have continued to evolve and improve and will necessarily continue to change
- MMTP offers an opportunity to the CEC to enhance its reputation and make recommendations which will exceed past standards and practices
- Careful consideration required in light of Manitoba Hydro's economic uncertainties

We ask the CEC

- To give significant weight to the evidence of Dr. Fitzpatrick
- To expressly find that she is well qualified, reliable and provided compelling evidence
- To accept all the recommendations proposed by Dr. Fitzpatrick as license recommendations

Best Practice EA is always evolving, regulatory compliance is not sufficient

- Consumers care about good practice environmental assessments as it :
 - Allows us to exercise our rights to education and information
 - Provides us with a voice in the marketplace
 - Forces governments to publicly consider all elements of the environment before making decisions for the future.
 - In the case of a monopoly such as Manitoba Hydro, it forms a part of the proxy for our right to choice
 - Is the only way we can learn about potential impacts to the environment including people, animals, plant species, lands etc.
 - It is good for the environment.

Best Practice EA is always evolving, regulatory compliance is not sufficient (cont.)

- Based on what we know now, good practice EA includes such elements as:
 - a broad definition of the environment
 - public involvement
 - monitoring and follow up
 - adaptive management
 - respect for indigenous legal traditions and worldviews

Best Practice EA is always evolving, regulatory compliance is not sufficient (cont.)

Two main elements at the foundation of environmental assessment:

1. Legislative requirements which are enshrined in law such as the Environment Act; and
2. Learning from past experiences (also known as process components).

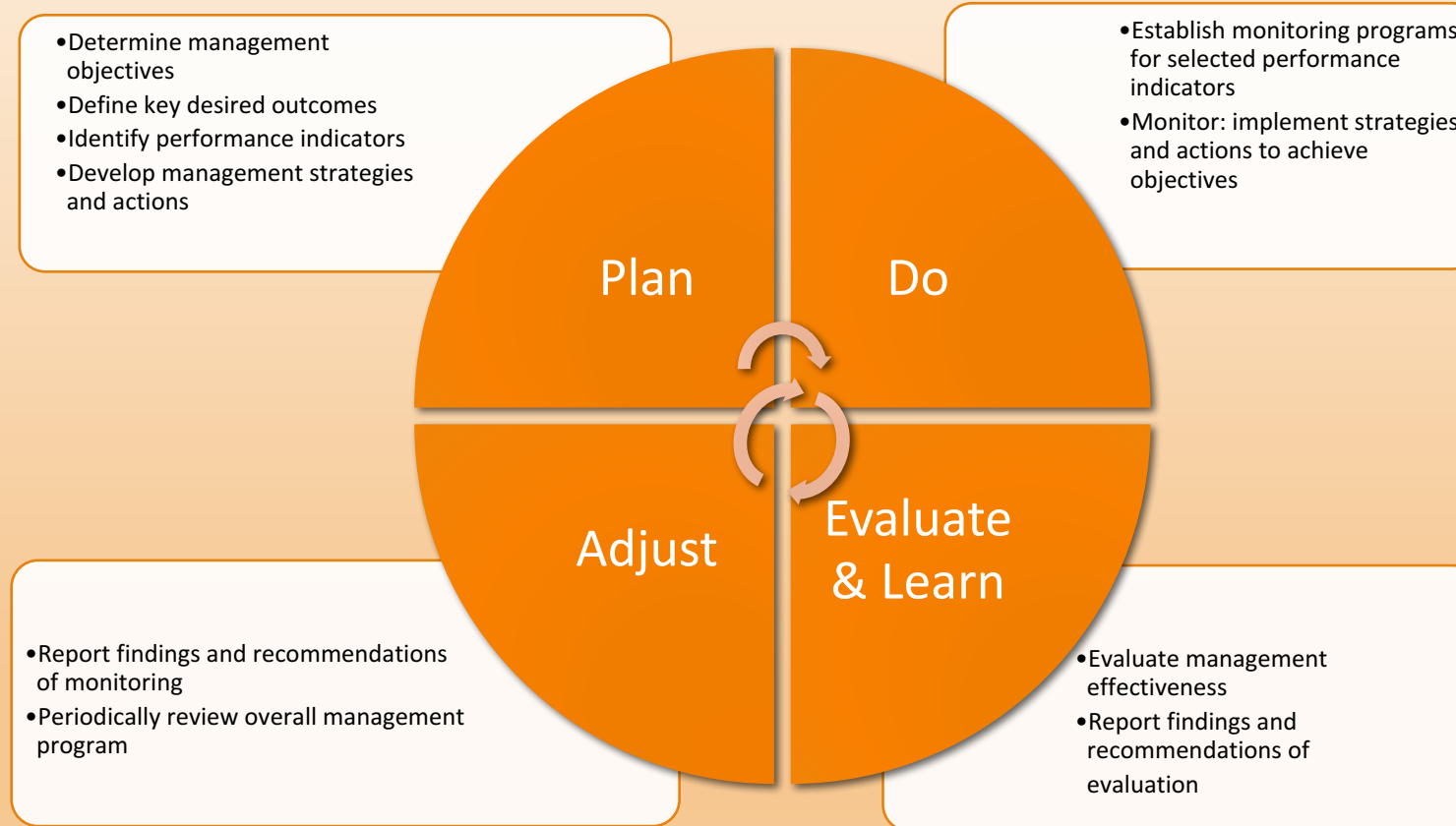
Good practice environmental assessment must be guided by principles of:

- transparency; inclusivity; informed deliberations and meaningful consumer participation

Best Practice EA is always evolving, regulatory compliance is not sufficient (cont.)

- Best practice environmental assessment must include monitoring, follow up and adaptive management
- Best practice monitoring and follow-up can include:
 - compliance
 - monitoring
 - auditing
 - ex-post or post-hoc evaluation

Best Practice Adaptive Management



Manitoba Hydro's role in best practice EA

- *“And I certainly hope that Manitoba Hydro has been in a position or is in a position of being and creating best practice.”*

(Matthewson, May 23 2017 at p 2142)

Transparency of process, inclusiveness and meaningful engagement of consumers in decision making, monitoring and follow-up

- According to the CEAA Report:

“[transparency] restore[s] trust and confidence in assessment processes, people must be able to see and understand how the process is being applied, how assessments are being undertaken and how decisions are being made. Without this transparency, no process will be trusted.”

(Expert Panel Review of Environmental Assessment Processes, p 13)

- Public participation is project specific
- Meaningful engagement is about long term relationships

Manitoba Hydro's Approach to transparency, inclusiveness and meaningful engagement

- Pre-construction phase
- Post-construction phase

Recognition of and planning for uncertainty

- Uncertainty with respect to monitoring and follow up
- Uncertainty with respect to the roles and responsibilities of Manitoba Hydro staff
- Planning for uncertainty through an ecosystem services approach
- Uncertainty with respect to the financial circumstances of Manitoba Hydro and the reliability of financial information

Silos within Manitoba Hydro and the Manitoba regulatory process

- Organizational learning refers to :
 - the process by which knowledge is transferred from the individual level to the organizational level and it involves utilizing knowledge from external and internal sources, communicating and disseminating knowledge as well as learning from past and present practices.

Silos within Manitoba Hydro and the Manitoba regulatory process (cont.)

- **“In part, that's because of how we're organized. So certainly 16 Indigenous Relations, we have currently had a restructuring, so now we are a separate group.** Prior to this, we fit under the title of Corporate Relations. And so when it comes to specifically designing environmental assessment and undertaking specific projects, those are generally undertaken by other parts of the company. And Indigenous Relations would intersect with those processes in different ways. Sometimes it would be assisting in the engagement; sometimes it would be in more specific conversations.” **(emphasis added)**

(Zebrowski, May 9 2017 at pp 477-478)

- “the interactions between decisions seem opaque to me” “I am particularly concerned that members of the indigenous relations division were not involved in the selection of the VC” “Important to have members of the indigenous relations department involved in these critical components of the monitoring program”

(Fitzpatrick, May 29 2017 at pp 2867-2868)

Coordination and cooperation among Provincial, Federal and Indigenous jurisdictions

- Coordination and cooperation among jurisdictions can:
 - Provide more opportunities for meaningful engagement
 - Create fail-safe mechanisms which allows one jurisdiction to address potential errors and oversights of another.
 - Increases the decision-maker's ability to look at the whole system of impacts which can be missed when on jurisdiction is excluded
 - Avoids duplication and prevents the creation of major gaps

Relationship between Manitoba Hydro and Indigenous nations and people

- Overall relationship
- Treatment of Indigenous worldviews and legal orders by Manitoba Hydro
 - TRC Calls to Action:
 - 45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:
 - iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.
 - 50. In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada
 - 92. We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:
 - i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.
 - ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.
 - iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills based training in intercultural competency, conflict resolution, human rights, and anti-racism
- Involvement of Indigenous people in monitoring

Conclusion – Licensing Recommendations

1. Manitoba Hydro develop and implement an Organizational Learning Policy
2. Manitoba Hydro modify its objectives of the monitoring program to add a reference to adaptive management and remove the reference to baseline information.
3. Manitoba Hydro commit to developing a more standardized monitoring format across projects.
4. Manitoba Hydro maintain a project website for the life of the Project which contains all the information committed to by the Proponent in the EIS.
5. Manitoba Hydro undertake a third-party environmental audit.
6. Manitoba Hydro work with policy communities to create an independent oversight committee for the MMTP.
7. Manitoba Hydro create monitoring plans for:
 - a) the three endangered fish species which are found in the ROW (bigmouth buffalo, mapleleaf mussel and lake sturgeon);
 - b) medicinal and traditional plants;
8. Manitoba Hydro create in collaboration with Indigenous nations and organizations, an Indigenous Community Monitoring Committee.
9. Manitoba Hydro develop in collaboration with Grandmothers, Indigenous Elders, Knowledge Holders a Proclamation or express policy statement on its commitment to respecting Indigenous worldviews and legal orders which includes Manitoba Hydro's understanding of its responsibilities flowing from this commitment.

Conclusion – Non-Licensing Recommendations

1. The Minister support the long-standing indigenous institutions in Indigenous communities and incorporate a circle of *Ke nocominank* (Grandmothers) with a mission to oversee safeguarding the environment
2. The Indigenous relations department of Manitoba Hydro and any other department engagement with Indigenous people undertake training by Grandmothers, Indigenous knowledge holders and Elders who are the experts in Indigenous worldviews and legal traditions

Express Findings

- Policy communities were not meaningfully engaged sufficiently early in the preliminary planning process when fundamental decisions were being made.
- Despite past recommendations of the CEC, Manitoba Hydro has failed to incorporate a standard for coordination and elimination of silos.
- Uncertainty must always be a factor in the selection of valued components by Manitoba Hydro.
- Manitoba Hydro has responsibilities flowing from the Truth and Reconciliation Commission Report which require concrete action by the Corporation
- In accordance with best practice, a full cumulative effects assessment for each project must always be undertaken
- The ecosystem services approach can be problematic and should not be employed by Manitoba Hydro
- Significant caution should be given to the conclusion of the witness who presented on behalf of Manitoba Wildlands on ecosystem services given the challenges in her evidence revealed during cross examination.