



CLEAN ENVIRONMENT COMMISSION HEARINGS ON BIPOLE III

PRESENTATION OF ANITA CAMPBELL

OCTOBER 16, 2012

Good afternoon. My name is Anita Campbell. I am a Métis person who has lived in the North for the majority of my adult life – over 31 years and currently, I live in Thompson.

I am the elected Spokesperson for the Métis Women of Manitoba, which is a part of the Manitoba Métis Federation's (MMF) overall governance structure.

I am also the MMF's Minister responsible for Manitoba Hydro. In that capacity, I am here today to present to the Commission on behalf of the MMF.

So, even though we are in Thompson, my presentation is going to focus on key issues that are relevant to my role as the MMF's Minister for Manitoba Hydro.

Other Métis presenters here today are going to speak about their more specific concerns about the impacts of Bipole III on Métis in the North, as a part of the larger Manitoba Métis community.

As a part of my presentation, I am providing the Commission a copy of the recently produced MMF Bipole III Update Report (September 2012) based on the MMF's province-wide consultations with our people.

This document provides a high-level overview of "what we heard" in our community consultations that were held in Dauphin, Swan River, Brandon, Binscarth, St. Ambrose, Thompson, Gillam, Cranberry Portage, The Pas, Mafeking, Thicket Portage and Pikwitonei as well as other internal MMF engagement activities since the Bipole III Environmental Impact Statement (EIS).

The MMF has also provided more detailed concerns to the Crown and Manitoba Hydro through direct engagement as well as through the Information Request process. Unfortunately, none of these concerns have been addressed to date.

While Manitoba Hydro "claims" to be meeting with the MMF to discuss our concerns - it is not.

We currently have no meaningful process in place with Manitoba Hydro. Recently, all Manitoba Hydro has provided to the MMF is a high-level powerpoint presentation on a “to-be-developed” Environmental Protection Plan that is inadequate and incomplete.

We also have not had a meaningful process in place with Manitoba Hydro throughout the development of the Bipole EIS, despite written commitments that we would be involved. Manitoba Hydro has consistently ignored the MMF concerns about EIS deficiencies, routing concerns and the impacts Bipole III will have on the Métis community.

We want the Commission to know this because from the MMF’s perspective Manitoba Hydro is creating a “smoke and mirrors” narrative in this hearing process that aboriginal engagement and consultation on the Bipole III EIS was significant and meaningful. It was not. It is worthy to note that all the aboriginal groups participating in the CEC process are at least united on this.

Nicely printed powerpoint presentations and thousands of pages of EIS filings cannot mask a woefully lacking engagement and consultation approach with aboriginal groups generally and Métis specifically. The MMF is participating in this hearing process to scratch underneath Manitoba Hydro’s “claims”, but also to make the Crown aware that these claims are fiction.

In my presentation, I am going to outline how Manitoba Hydro has not met its requirements under the Bipole III EIS Scoping Document. We want the Commission to know that it cannot trust or rely on Manitoba Hydro’s assertions, and that the company’s “claims” must be scrutinized in this public review.

Before I detail the MMF’s concerns, I want to raise two preliminary points about our concerns with this ongoing review. The MMF’s legal counsel raised these concerns in his opening comments, but I want to re-state them so they are in the record as evidence.

First, we want to re-state our concerns that the current EIS is deficient and does not provide the Commission or the government with sufficient information to make reasonable decisions about this project in relation to the impacts on Métis rights, interests and way of life.

More specifically, essential and required information about socio-economic impacts, addressing areas of significance to aboriginal communities, aboriginal resource use and the implementation of adequate mitigation measures is missing from the EIS.

We would note that this is not just the MMF's perspective. We want to draw the Commission's attention to the Letter from Ron Missyabit of Manitoba Conservation dated August 17, 2012, which is attached to my presentation.

In this letter, Mr. Missyabit makes a series of requests in relation to socio-economic issues and Aboriginal resource information in order for Manitoba Conservation to "complete [its] review" of the EIS. Clearly, Manitoba Conservation does not believe Manitoba Hydro's EIS is complete either.

We also want to highlight for the Commission that the information being requested by Manitoba Conservation is not specific to the Crown's duty to consult and accommodate.

If you look at the second paragraph of Mr. Missyabit's letter he is requesting this information based on the information "Manitoba Hydro committed to collecting in their Bipole III Transmission Project *Environmental Assessment Scoping Document*."

So, we ask the question --- how can the EIS be deemed by Manitoba Conservation as deficient in relation to important filing requirements under the Scoping Document on August 17th, but then deemed "sufficient" for public review on August 31st, without any acknowledgement of these outstanding information requests?

The current situation leaves the Métis community in an untenable and prejudiced position in this hearing. While we can appreciate that an environmental assessment process can be somewhat "iterative" in nature, we do not believe that it so iterative that it abandons the rules of fairness and common sense to the aboriginal peoples who are participating in good faith.

It is now two months since this information was formally requested from Manitoba Hydro by Manitoba Conservation; yet we still have no answers to these fundamental issues that go to the completeness of the EIS we are currently reviewing. We also have no idea when this information will be provided.

Similarly, the MMF wants it noted that we object to this public review process continuing when there may be important changes to the route in four areas that are of fundamental concern to the Métis community.

It is simply unfair and impossible to meaningfully review and test a project based on a proposed route that may ultimately change. This is not consistent with the principles of natural justice or fairness. Just because Manitoba Conservation calls the changes "minor", that does not make it so. In particular, when hundreds of kilometers of the route is in question, and the discussions on this re-routing is held behind closed doors.

The “public”, including, aboriginal groups whose traditional territories will be impacted, have a right to know what the final project route that is being reviewed actually is. Based on Manitoba Conservation’s August 31st letter, the route may change in some of the most sensitive areas of our traditional territories, but we are essentially having to “guess” where the line may end up. This is not fair. Nor is it honourable.

Again, we ask the Commission to adjourn this hearing, on its own initiative, until we receive answers to these routing and outstanding information requests. We object to a review of Bipole III being pushed through to meet Manitoba Hydro’s artificial timelines, while the public, including, aboriginal people, are left wondering what is actually being reviewed in this process.

If this is not done, it is almost a certainty that future delays will ensue because parties will be left with no other option but to seek remedies from the courts. This is not in the interest of the Commission, the Crown, Manitoba Hydro, the public or aboriginal peoples.

While we acknowledge that the Minister has discretion under the *Environment Act* and related legislation in relation to the reviews of major infrastructure projects such as Bipole III, this discretion must be exercised in a manner that ensures meaningful public review of the actual project based on a complete EIS. This is not what is happening in this process.

Moreover, in relation to the constitutional duties owing to impacted aboriginal peoples, the Minister’s discretion under the *Environment Act* and related legislation must be exercised consistent with the honour of the Crown. The current process – which leaves the aboriginal people guessing about what is actually being reviewed and with no meaningful Crown consultation process in place – fails to meet these legally enforceable duties owing to the Métis community.

With that said, I now want to talk about the MMF’s specific concerns on the Bipole III project and Manitoba Hydro’s EIS. You are going to hear a lot from the Manitoba Métis over the next few weeks on why we are urging the Commission to not recommend this project move forward based on its current form and EIS.

We ask that the Panel listen - with open minds - to the real concerns of the Métis people who will most directly be impacted by Bipole III. We may not be consultants, environmental experts or lawyers, but we have an understanding of the on-the-ground, and multi-generational impacts projects like Bipole III have on our people --- who rely on these lands for our cultural, economic and social well-being.

We respect and have faith in the independence of the Clean Environmental Commission process. We understand that you are mandated to listen to what “we” – the public – have to say. We want you to hear our collective voice --- not just the voices of Manitoba Hydro, consultants, experts and lawyers. That is why we are here.

I want to start by outlining the MMF’s overarching concerns with the EIS in relation to consultation with “aboriginal communities.” My presentation will hopefully illustrate that Manitoba Hydro’s EIS is built like a ‘house of cards’ where its initial flawed approaches essentially corrupt the environmental assessment in relation to aboriginal communities.

Just to be clear: I am talking about the consultation required under the June 2012 EIS Scoping Document – not the Crown’s duty to consult and accommodate. The MMF’s legal counsel has and will continue to make submissions on the Crown consultation issue.

I am focusing on the requirements of the June 2012 Bipole III EIS Scoping Document, wherein Manitoba Hydro was directed to obtain, collect, assess and consider information from “aboriginal communities”. Specifically, I would point to sections 5.2, 6.0, 7.2 and 7.4.3 of the Scoping Document.

Unfortunately, Manitoba Hydro has not provided any clear descriptions or detailed information within the EIS on the “aboriginal communities” it engaged, even though it was required to do so pursuant to the Scoping Document.

Moreover, the limited information that has been provided by Manitoba Hydro is confusing at best --- misleading at worst. In particular, in relation to the impacted Métis community, as represented by the MMF.

We want to provide some background information on these issues because most people’s knowledge on aboriginal issues generally is mainly about First Nations, Indian treaties and the *Indian Act*, which established Indian Bands and reserves. Information about the Métis people, our rights and our governance structures is not as well known and is often misunderstood.

These issues are not just relevant because of the EIS, they are also relevant because this Commission has already indicated that it will consider the impacts of Bipole III on aboriginal rights. Specifically, the Chair acknowledged this at a pre-hearing conference.

As such, the MMF believes that a general understanding of those rights --- and who holds them will be of assistance and is required.

A helpful starting point is to look at what our Constitution actually says about Aboriginal peoples. Specifically, s. 35 of the *Constitution Act, 1982* states:

(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

It’s important to highlight that the term “aboriginal” is inclusive of Indian (First Nation), Inuit and Métis peoples. “Aboriginal” is essentially a ‘term of art’ that includes First Nations, Inuit communities and Métis communities under it.

However, s. 35 does not support an interpretation that it creates a new “aboriginal peoples” or new “aboriginal communities.” The term “aboriginal” in section 35 simply recognizes that already existing Indian, Inuit and Métis peoples (and Indian, Inuit and Métis communities respectively) are “aboriginal”.

So, for example, while a First Nation or a Métis community can be correctly described as an “aboriginal community”, the plain text of s. 35 does not support the proposition that simply combining First Nation and Métis individuals together creates a new “aboriginal people” or “aboriginal community.” Moreover, judicial decisions on s. 35 do not support such an interpretation either.

Unfortunately, this is exactly what Manitoba Hydro attempts to do through the definition of “aboriginal community” it uses within its EIS. Specifically, the EIS states that an “aboriginal community” is “[a] community where most of the residents are Aboriginal (i.e. Indian, Metis or Inuit) and that has a separate form of government, provides some level of service to its residents, and has clear community boundaries.”

This definition flies in the face of the Constitution, the law and common sense. It also does not reflect the perspective of Métis. The use of this definition results in information about “aboriginal communities” being purportedly collected, assessed and incorporated into the EIS, but it is not from actually impacted “aboriginal communities”.

So, you may be asking why is this issue important to the Commission’s role?

It goes back to my ‘house of cards’ analogy. Instead of engaging directly with or waiting for the self-directed Aboriginal Traditional Knowledge (“ATK”) studies from actual First Nation and Métis communities in order to integrate into the Site Selection Environmental Assessment (SSEA) process and use in the EIS, ATK information from various Manitoba Hydro-created “aboriginal communities” that include a hodge podge of aboriginal individuals who are paid to participate in various workshops is used.

This ATK information is not from methodologically sound and representative samplings of rights-bearing First Nations and Métis communities that will be impacted by Bipole III. It is from random interviews with individuals who may be First Nations, Métis or non-aboriginal, which is then passed off as legitimate ATK from rights-bearing communities. Nothing could be further from the truth.

So, while Manitoba Hydro makes it sound all wonderful about how ATK was collected and integrated into the SSEA and the EIS. It is a fallacy, and the 'house of cards' quickly falls apart when you scrutinize the information that is passed off as ATK for impacted First Nations and Métis communities.

Again, we would highlight that its not just the MMF who takes this position. I would like to go back to Mr. Missyabit's August 17th letter. You will note that he is asking Manitoba Hydro for ATK information from First Nations and Métis --- not amorphous "aboriginal communities" created by Manitoba Hydro. We would submit that this is why Manitoba Hydro is having such a problem and delay in responding to these outstanding information requests.

With respect to actually collecting ATK information from the impacted Métis community, the MMF began to engage with Manitoba Hydro in 2009. We had hoped the company was sincere in changing the way it dealt with the Manitoba Métis --- or lack thereof.

We assumed this new willingness came from the Manitoba Provincial Court's decision in Goodon and direction from the government --- not any real desire to work with Métis, since Manitoba Hydro's history with the Métis is one of neglect and indifference.

In May 2009, Manitoba Hydro entered into a workplan with the MMF to engage on Bipole III and undertake a self-directed ATK study. The MMF called its ATK study a Traditional Land Use and Knowledge Study --- or "TLUKS" for short.

Unfortunately, contrary to the rosy picture put forward by Manitoba Hydro's presenters, the MMF wants the Commission to know that the spirit and intent of the workplan was not achieved. Nor were many of the commitments in the executed workplan.

Specifically, the following workplan objectives have not been fulfilled --- despite repeated requests from the MMF for engagement on these issues:

- Establish and maintain an ongoing working relationship between the MMF and Manitoba Hydro with respect to the Project;

- Support the MMF in engaging Métis in relation to the Project in order to identify issues, concerns, and opportunities related to the Project;
- Provide a collaborative process for MMF and Manitoba Hydro to work together to attempt to identify, share and address issues and concerns related to impacts and opportunities associated with the Project;
- Create a process between the MMF and Manitoba Hydro in order to develop an ongoing, respectful and mutually beneficial relationship on the Project.
- Identification of issues arising from the SSEA process, the TK Study and the MMF Community Engagement Process and discussion of measures, if any, required to address these issues;
- Discussion and identification of economic opportunities for Métis arising from the Project.

Instead of meaningfully engaging with the MMF, Manitoba Hydro developed its EIS in isolation. It did not respond to the MMF's requests to be meaningfully involved in aspects of the EIS such as the identification of heritage and archaeological sites. Nor did it even meet with the MMF during the SSEA process.

Essentially, all Manitoba Hydro did was simply append the MMF's TLUKS to the EIS. It did not "integrate" our TLUKS findings into the Final Preferred Route selection, as it was required to do pursuant to the Scoping Document. In fact, Manitoba Hydro did not even have any TLUKS information from the Métis community until *after* the Final Preferred Route was selected.

Manitoba Hydro representatives openly admitted this in their testimony already provided to the Commission. So, essentially no Métis traditional knowledge or land use information was incorporated into SSEA. Again, we want to emphasize that Manitoba Hydro has no verification or credibility that the "Métis" individuals it interviewed as a part of its ATK study were actually Métis or a part of a contemporary rights-bearing Métis community.

The MMF also wants to stress the point of its TLUKS was not designed to show specific impacts from routing. It was designed to generally show land use patterns and areas of importance to the Manitoba Métis that could then be "integrated" into the SSEA process.

Unlike First Nations with concentrated populations of a few hundred to thousands of people who live on common reserve lands, the Manitoba Métis constitutes on large and expansive community of tens of thousands of people spanning throughout Bipole III's study area.

The geographic extent of this Métis community, along with the MMF's mandate to represent this rights-bearing Métis community, has been recognized by the Manitoba courts in a case called *R. v. Goodon* as well as more recently in the signed MMF-Manitoba Government Harvesting Agreement.

For the Commission's information, I am attaching a copy of the *Goodon* decision as well as our harvesting agreement. We believe these documents will be helpful in relation to understanding the rights and governance structures of the impacted Métis community.

So, we designed a TLUKS that fit our unique community, and would require further discussions and collaborative work with Manitoba Hydro in order to truly integrate our knowledge and use into the SSEA process.

Of course, this was not done because Manitoba Hydro had selected the route before it even considered or received the MMF's TLUKS. We would note that this is similar to what Manitoba Hydro did with most of the self-directed studies from other rights-bearing aboriginal communities for that matter.

Based on all of this, we believe Manitoba Hydro's claims that it integrated ATK into the SSEA process are false. Manitoba Hydro does not get to make up its own definitions of "aboriginal communities" to serve its purpose, and then attempt to portray it met the requirements of the Scoping Document in relation to integrating ATK into the SSEA and EIS.

We ask this Commission to reject Manitoba Hydro's attempts to pass off its ATK information from unknown "aboriginal communities" as a legitimate substitute for actual ATK information from the impacted First Nations and Métis communities. We say Manitoba Hydro's approach does not meet the requirements of the EIS Scoping Document.

It is the MMF's opinion that Manitoba Hydro must be directed to go back and consider its current routing based on the actual traditional knowledge of impacted First Nations and Métis communities in the study area.

As the MMF will continue to raise in more detail throughout this hearing process, the current preferred route threatens the meaningful exercise of Métis harvesting rights in the name of avoiding land owners or increasing costs for the company.

This is unacceptable and Manitoba Métis won't accept their rights being sacrificed because Manitoba Hydro did not do what the Scoping Document directed it to do.

Similarly, the MMF wants to raise other deficiency concerns about the EIS. For example, Manitoba Hydro did not consider the Manitoba Métis - as a distinct aboriginal community - for the purposes of its socio-economic impact analysis. It did not include our input in relation to its archaeological and heritage site analysis. It did not consider our rights-based claims in areas that Bipole III will impact, such as our land claims within the 'old postage stamp province of Manitoba' that is currently before the Supreme Court of Canada.

Collectively, the result of this is an EIS that is deficient as it relates to obtaining and assessing information from the Manitoba Métis specifically as well as other aboriginal communities. For these reasons alone, the MMF believes the project should not be recommended in its current form.

Even more troubling than the glaring deficiencies on Aboriginal consultation in relation to the Scoping Document is the fact that Manitoba Hydro's multitude of "mitigation measures", "promises" and "commitments" throughout the EIS are inconsistent, incomplete and lack the required baseline and scientific evidence to effectively monitor mitigation.

As the Commission has already recognized in its recent letter to Manitoba Hydro dated September 28, 2012, there are inconsistencies between these "mitigation measures", "promises" and "commitments" throughout the EIS and in the technical reports.

We are concerned that Manitoba Hydro will rely on this confusion in the EIS in the future in order to not follow through on these commitments. It is also troubling to the MMF that Manitoba Hydro is asking this Commission to recommend one of the largest infrastructure projects in Manitoba's history based on a lot of "promises", but no concrete plans on how all these "promises" will be achieved.

Essentially, Manitoba Hydro is asking this Commission, the Métis community and all Manitobans to "trust them" that they will follow through on all of their EIS commitments. While we cannot speak for others, we do not "trust" Manitoba Hydro to follow through on its promises.

The broken promises in our existing Bipole III workplan with Manitoba Hydro demonstrates to the MMF that Manitoba Hydro's commitments are not worth much --- even when they are in writing.

The MMF want to make this point very clear to the Commission. If we don't have a legally enforceable, meaningful and cost-effective way to hold Manitoba Hydro to account for the multitude of EIS "promises" it makes in order to get its approvals --- those "promises" will essentially be meaningless.

Simply put, in future battles to get Manitoba Hydro to uphold those "promises", the company will always win against aboriginal communities with limited capacity, internal environmental expertise and funding. This reality should not be able to be used as an advantage for a Crown agent such as Manitoba Hydro.

While it is the MMF's position that the current Bipole III project should not be recommended in its current form, throughout this hearing we will also be making suggestions for the Commission to consider, if it does recommend the project.

For example, we believe that prior to granting a license Manitoba Hydro must provide concrete plans on how it will put its various "mitigation measures", "promises" and "commitments" in place.

In order to achieve these "commitments" Manitoba Hydro must be directed to enter legally binding contractual arrangements with impacted aboriginal communities in relation to mitigation measures.

These agreements must be in place prior to Crown authorization or construction. This is the only way the MMF will be provided certainty that it can hold Manitoba Hydro to account.

We also want to stress that including various "commitments" in a provincial license is not sufficient because the MMF will then have to rely on the Manitoba Government to enforce these commitments.

Increasingly, Manitoba Conservation does not appear to have the desire or internal capacity to monitor and enforce these licensing conditions, so proponents such as Manitoba Hydro end up self-policing themselves and ignoring interventions and efforts from impacted aboriginal communities such as the MMF.

As the MMF will outline in greater detail in MMF President David Chartrand's presentation, these commitments to aboriginal communities in provincial licenses have proven to be worthless. Specifically, the MMF's recent experience with respect to the Victory Nickel Mine is just one example.

We also believe that if a license is ultimately to be granted to Manitoba Hydro, it must be a "conditional" or "staggered" license.

This means that while Manitoba Hydro will be allowed to proceed with some of the initial stages of Bipole III it will be required to have certain approved plans, re-routing, negotiated agreements or other conditions in place before it can begin to move to subsequent stages of Bipole III's construction.

The MMF notes that Manitoba Hydro has acknowledged that it will not begin construction on all parts of Bipole III at the same time, so this type of licensing approach would be consistent with Manitoba Hydro's overall plan.

More importantly, instead of giving Manitoba Hydro "carte blanche" with respect to Bipole III and hoping Manitoba Conservation has adequate capacity to monitor the protect aboriginal interests, a meaningful "check and balances" could be put in place through a "conditional" or "staggered" license.

So, for example, if Manitoba Hydro did not put into place an access management plan or adverse effects agreement with the MMF prior to beginning construction on the west side corridor, Manitoba Hydro could not proceed with that phase of the project.

Similarly, if Manitoba Hydro had not completed agreements with Métis and First Nations in the North prior to construction, the project would not be authorized to proceed.

In the MMF's opinion, these types of conditions are the only way to ensure that Manitoba Hydro fulfills its "commitments" as set out in the EIS. From the MMF's perspective, when it come to Manitoba Hydro the saying 'fool me once shame on me, fool me twice shame on you' is apt. Unfortunately, from the MMF experience the 'fooling' of our community on the part of Manitoba Hydro has continued for generations.

We ask the Panel to assist us by recommending that we have the necessary tools in order to make sure Bipole III doesn't become one more chapter in Manitoba Hydro's long history of broken promises to aboriginal people generally and the Métis people specifically.

I want to thank the Commission for the opportunity to speak to you today. You play a fundamental role in this process and we are here to make full use of the opportunity. We hope you truly hear our concerns and stop Bipole III from being one more chapter in the long history of Manitoba Hydro's neglect and indifference to the Métis people in this province.

Thank you.