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January 31, 2012

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"Pimicikamak Comments on Scoping Document for the Environmental Assessment of the
Keeyask Generation Project," submitted by Keeyask Hydropower Limited Partnership,
December 2011

Enclosed please find Pimicikamak's comments on the above.

Thank you.

Sincerely,

Darwin Paupanakis
Secretary to the Councils
Pimicikamak Okimawin

"I now leave my beloved northlands in good hands" – Chief Albert R. Sinclair (1939)

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Comments on document:

"Scoping Document for the Environmental Assessment of the Keeyask Generation Project"
Keeyask Hydropower Limited Partnership
December 2011

Submitted by Pimicikamak Okimawin
January 2012

General Comments

Overall, the scoping document is quite generic and does not reflect the level of effort that has already been put into defining the issues and parameters that the Proponent intends to include in the EIS. This may restrict the ability of regulators to utilise the accumulated knowledge of the Proponent to develop meaningful and focused Guidelines.

It also places a much higher burden on other Aboriginal parties and the public who wish to contribute to the development of the Guidelines. Rather than providing feedback on the proposed specific scope for the EIS, other parties must attempt to develop and explain a full range of issues and concerns, including a complete list of VEC's if they expect to have these considered.

A scoping document is intended to provide information to regulators to support the development of Guidelines for the EIS. In order to be most useful, the Guidelines must provide sufficient detail about specific issues related to this project and what should be included in the EIS in order that the Proponent does not miss important elements of inquiry.

The work that has already been done on the EA is described in more detail in the Project Description provided to the MPMO. Several specific issues of concern are identified, and some preliminary conclusions offered. However it is not comprehensive and the scope of the

cumulative effects assessment in particular is not defined adequately. This is not an easy task however if the Guidelines remain vague, the key questions that people are concerned about will not likely be addressed.

Ideally scoping should define the key regional issues of importance with regards to this type of development in this particular setting, and the preliminary valued ecosystem components and key indicators. Scoping should help to determine clearly defined and reasonable boundaries for the assessment.

We have the following specific questions and concerns with this scoping document:

1. The topics of primary concern are not clearly defined. For example, project effects on sturgeon, especially spawning habitat are not specifically mentioned. This is certainly one important focus of this assessment. Is this due to an effort to take a holistic approach to the assessment?
2. VEC's have already been selected by the Proponent. Why would these not be included in the scoping document for public comment at this stage in the process? (section 3.4) The scoping document submitted describes the approach that will be taken in constructing the EIS, and a list of mostly generic elements that will be included, but not the scope of assessment in terms of this specific project. Considering the proposed schedule for completion of the EIS, and the preliminary public consultation that has already taken place, the list of VEC's that have been identified and already studied in more detail should be available at this stage.
3. The temporal and spatial study boundaries being considered for the EIS are not described in any detail that would give the reader a general understanding of the extent of the assessment expected.
4. The scope of cumulative effects assessment is only vaguely described. Pimicikamak is concerned about the incremental effects of additional large developments on wildlife populations throughout the region. It is extremely important to Pimicikamak that the EA process attempts to determine the extent to which the proposed project along with existing past and future projects will affect their treaty rights to hunt, fish, gather and travel on the land.
5. This scoping document appears less detailed in many respects than that provided for the Wuskwatim Generation Project. For example, the Wuskwatim Project EIS scoping document provided more information regarding the Proponent's approach to the

"Determination and Likelihood of Significance" and how the Proponent will apply the concept of establishing thresholds for determining significance. Yet the Clean Environment Commission found the Wuskwatim EIS to be lacking in this respect and recommendations were made that future EIS's be done to a higher standard.

6. There is no indication of how specific concerns raised by Aboriginal people or other parties have influenced the scope of assessment to date. Again, more of this information is provided in the Project Description provided to the MPMO. These two documents will certainly be considered jointly in the development of the Guidelines. It would make sense that they both be subject to public review.

Comments on Specific Sections of the Scoping Document

Study Area and Environmental Setting

The scoping document specifies that the current water regime will be described in the context of the LWR and CRD. Scoping is less clear in terms of the extent to which the EIS should attempt to describe what is known of the environmental effects of CRD and LWR on the whole study area. This should all be considered in the cumulative effects assessment however this has not always been the case in other environmental assessments. There may be a lack of technical data on pre and post LWR/CRD environmental conditions in the Keeyask area and in the river system as a whole. However, along with ATK these effects should at the very least be documented and considered to contribute to a meaningful understanding of cumulative effects.

The scoping document states that each set of VEC's are to be studied within the "relevant" or "applicable" study area. These areas remain to be determined for the various VEC's but the scoping document asks that the rationale be well explained in the EIS for the study boundaries used.

At this point Pimicikamak would like to suggest some specific questions and boundaries for cumulative effects assessment of a number of VEC's. For the most part the boundary of cumulative effects assessment should be the watersheds of the rivers that feed northern Manitoba's hydroelectric system.

Some examples of questions and assessment approaches follow. This is not a complete list.

1. Cumulative effects assessment of hydroelectric development on waterfowl habitat

How has waterfowl habitat been affected by hydroelectric development throughout the region? What are the incremental effects of the proposed Keeyask project and later the

planned Conawapa project? These questions could begin to be addressed by determining the amount of staging, nesting and feeding habitat for migratory water birds that would be directly affected by the Keeyask project. Add that to the amount of such habitat that has been lost in a similar way from other past, present and future projects within northern Manitoba.

There are different ways in which habitat is affected depending on the nature of the change. Flooding may cause a direct loss of habitat, but then depending on the new hydrological regime, the characteristics of the new shorelines may represent new habitat over time, or new but degraded habitat. These various forms of habitat loss, degradation, and/or renewal should be understood and described throughout the river systems to the extent possible in a cumulative effects assessment.

2. Sturgeon Habitat Alteration and Potential

The cumulative effects of habitat alterations potentially important for sturgeon populations should be described throughout the Nelson River watershed. All sources of data and historical information including ATK to be compiled to describe the extent of habitat change to the degree possible. Focus on habitat types of specific importance to various life stages of sturgeon, and fragmentation due to barriers to movement around all dams in the river system.

3. Species Richness, Structure and Function of Riparian Habitats

Riparian habitat change due to permanent hydroelectric infrastructure, flooding, and alterations to the hydrological regimes can be described throughout the watersheds that feed the northern hydroelectric system. Habitat change and redevelopment along shorelines depends on various factors such as the type of flow alterations, the operating regimes of reservoirs. These can be described along with ATK observations of shoreline vegetation characteristics pre and post development, vegetation survey data, air photos and satellite imagery, and comparisons with reference areas unaffected by regulation.

Estimates of habitat change can be quantified only in a general way since these habitats are quite dynamic over time. At the very least a calculation could be made of the linear kilometres of shoreline that have been affected by flooding and various types of flow regulation, replacement with permanent infrastructure, armouring, or otherwise altered, throughout the region. Simple linear measurements that can give a general idea of the extent of shoreline degradation based on altering the seasonal flows. This is not difficult to do using a GIS.

4. Muskrat Habitat Alteration and Potential

The cumulative assessment of riparian wetlands can then be applied to an understanding of the extent of changes in muskrat habitat throughout the affected watersheds.

5. Loss of Sites of Cultural and Historical Significance

The incremental loss of archaeological sites, burial sites and other sites of cultural significance due to hydroelectric development should be described throughout the Nelson, Burntwood and Churchill River watersheds. These can be quantified to the extent possible based on available knowledge from other developed sites along the affected rivers, along with the linear extent of shorelines that have experienced hydrological changes of various types (flooding, ongoing erosion, other physical alteration), and disturbed inland sites for which information is available.

6. Changes in Water Quality Parameters

Using the knowledge and data available the changes in water quality throughout the regulated system could be described. Even in general terms it would provide some understanding of the spatial extent of changes and the temporal extent. For example, some areas may be stabilizing after years of increased erosion creating increased turbidity, while others are not. Methyl mercury levels have increased in some areas and then declined. A comprehensive picture of the whole system would be very helpful.

Mitigation

The Proponent does state that the EIS will describe reasonable and practical mitigation measures, include discussion of limitations and proposed monitoring and follow-up. Environmental Impact Statements will often describe mitigation measures for predicted adverse effects in an ambiguous way and still suggest optimistic results. The EIS must be required to describe mitigation measures in sufficient detail including the level of confidence in their effectiveness and the consequences to overall adverse impact predictions if they do not function well.

For measures that are experimental, this must be explained. It must also be explained why experimental measures have not been tried in other areas of the system that have already experienced similar impacts from hydroelectric development. There may be reasons for this lack of pre-testing, such as the difficulties of finding suitable reference sites with similar characteristics. This could not only help with mitigation in other areas such as Cross Lake, but also move ahead in understanding the potential effectiveness of any particular measure.

Environmental Monitoring and Management Follow-up

The Guidelines should require that the EIS describe the ways in which lessons learned from existing hydroelectric projects in northern Manitoba will be applied to the assessment and monitoring of this project.



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January 31, 2012

Darrell Ouimet, Environmental Officer
Manitoba Conservation
123 Main Street, Suite 160
Winnipeg, MB R3C 1A5

Dear Mr. Ouimet:

Re: Keyask Generation Project

On behalf of the Consumers Association of Canada (Manitoba Branch)¹, I am writing to offer its comments on the Scoping Document prepared by Manitoba Hydro with regard to the environmental assessment of the Keyask Generation Project.

Background on CAC Manitoba

CAC Manitoba is a non-profit organization with a lengthy record of public participation in regulatory matters relating to Manitoba Hydro. It regularly appears before Manitoba's Public Utilities Board on issues relating to the setting of just and reasonable rates for Manitoba Hydro. It also participated in the Manitoba Clean Environment Commission proceeding considering the Needs for and Alternatives to the Wuskwatim Hydro Electric Generating Station.

The participation of CAC Manitoba in this public process is guided by reference to three basic consumer rights:

The right to a safe and healthy environment;²

The right to basic needs;³

The right to participation.⁴

CAC Manitoba's comments with regard to Manitoba Hydro's Scoping Document also are informed by Manitoba's *Guidelines for Sustainable Development* which outline the importance of public participation, access to information and integrated decision making and planning.⁵ Excerpts from the Guidelines can be found in Attachment A to this document.

1 Also known as CAC Manitoba.

2 Access to products and services that are less environmentally harmful and more sustainable.

3 Access to goods and services which meet your basic needs, including food, clothing and shelter.

4 A role in making government policies for the marketplace.

A highly integrated series of projects with an emphasis on sales to the American marketplace

If it is built, Keeyask will be part of a highly integrated series of new projects focused on the generation of power from the Nelson River system and the transmission of that power both to southern Manitoba and to the United States. A recent decision by Manitoba's Public Utilities Board highlights the central role played by Keeyask and related projects such as Bi-Pole III and Conawapa⁶ in Manitoba Hydro's plans to enhance sales to the US marketplace.⁷

In or around 2007, Manitoba Hydro entered into term sheets that envisioned a significant volume of firm power sales to American utilities such as Northern States Power, Wisconsin Public Service and Minnesota Power. At the time the term sheets were signed, it was expected that the first of these sales would begin in 2015 with other sales commencing in 2018 and 2020.⁸

As the Board notes⁹:

MH's Business Plan seeks to achieve about 40% of foreseeable future total corporate revenues from the export market. To do this, it is deemed essential by MH that the following projects proceed within the next 10-15 years:

- Bipole III (circa 2018/19)¹⁰
- Keeyask G.S. (circa 2018/19)
- Conawapa G.S. (circa 2023/24)¹¹

Hydro's 2009/10 Power Resource Plan suggests that these projects are to be undertaken along with other significant capital expenditures such as:

- 5 Schedule B to the *Sustainable Development Act - Guidelines for Sustainable Development*. Integrated decision making and planning is defined to mean encouraging and facilitating decision making and planning processes that are efficient, timely, accountable and cross-sectoral and which incorporate an Inter-generational perspective of future needs and consequences.
- 6 The projected 500 kV line from Dorsey to the US Border also appears linked to these projects. PUB Order 5/12, pages 35 and 57 of 232.
- 7 See also "State approves deal with Hydro, Time to build a dam is now: Selinger" *Winnipeg Free Press*, January 28, 2012.
- 8 PUB Order 5/12, pages 35 of 232. When the term sheets were entered into, it was expected the first of these would begin in 2015. Recently, Hydro has advised of changes to its plans, most notably the recognition of a reduction in the WPS commitment from 500 MW to 100 MS, with the 15 year agreement being pushed back to 2021. PUB Order 5/12, pages 35 and 36 of 232.
- 9 PUB Board Order 5/12, page 58/232.
- 10 MH holds that Bipole III is required for domestic system reliability, and that the significant costs that would be expended on its construction, including the cost of converter stations, should not be attributed to any degree to either the planned new generation projects on the lower Nelson River (Keeyask G.S. and Conawapa G.S.) or to export customers. PUB Board Order 5/12, page 124/232.
- 11 This new recommended development plan was deemed necessary by MH to service its pending and/or projected Term Sheet sales of 500 MW to WPS and 250 MW to MP (which is the same scenario as was contained within MH's 2008/09 PRP). PUB Board Order 5/12, page 35/232. Conawapa is generally considered to be a more economically efficient generating station than Keeyask. See PUB Board Order 5/12, page 51/232.. It also may be considered to be less environmentally intrusive than Keeyask by some observers.

- a 500 KV USA Interconnection; and,
- additional north-south AC transmission capacity in Manitoba.¹²

Hydro takes the position that "Keeyask G.S. cannot proceed without Bipole III in place to transmit the full Keeyask plant capacity when water levels are well above dependable flow levels."¹³ Like other generating stations on the Nelson River, hydraulic generation at Keeyask will be highly dependent on water flows from Lake Winnipeg and the Churchill River Diversion (CRD).¹⁴

A Patchwork Quilt of Regulatory Proceedings

Hydro acknowledges that the Keeyask "Project will be connected to Manitoba Hydro's integrated system; however, the system is not part of the Project for which regulatory approval is being sought."¹⁵

As detailed in Attachment B to this document, the Keeyask EIS will be considered over the same general time period as a number of regulatory proceedings addressing other key aspects of Manitoba Hydro's plans to expand its Nelson River generation capacity and its ability to transmit its power to southern Manitoba and to the United States.

By conservative count, there are at least six and potentially seven ongoing, pending or expected regulatory proceedings intimately related to Manitoba Hydro's \$17 billion to \$20 billion decade of expenditure:¹⁶

- the proposed licensing under the *Environment Act* of the BI-Pole III Transmission line. This licensing procedure will involve a public hearing before Manitoba's Clean Environment Commission for the purposes of providing recommendations to the Minister. A extremely modest Need for and Alternatives analysis coupled with a more robust EIS will be considered. It does not appear that a schedule for these proceedings has been made publicly available;
- the proposed licensing under the *Environment Act* of the Keeyask Hydro Electric Generating Station and related projects. It is expected that consideration of the Keeyask EIS will involve a public hearing before Manitoba's Clean Environment

12 PUB Order 5/12, pages 35 of 232. Hydro's 2009/10 PRP includes a 1,000 MW export Inter-connection for 2018/19 and a 750 MW import inter-connection for 2018/19. In the 2010/11 Power Resource Plan, the export inter-connection was set back by one year. PUB Order 5/12, pages 36 of 232. The PUB indicates that "MH has also suggested that an additional 208 to 838 MW of transmission capacity would be required once Keeyask is in service to match total generation capacity and provide system reserves." PUB Board Order 5/12, page 45/232.

13 PUB Board Order 5/12, page 45/232.

14 PUB Order 5/12, pages 131 and 132 of 232.

15 Attachment F, page F-1.

16 PUB Board Order 5/12, page 25/232. The PUB estimates the "decade of investment" or "decade of development" to be in the range of \$20 billion. Hydro's estimates may be lower.

Commission for the purposes of providing recommendations to the Minister. It does not appear that a schedule for these proceedings has been made publicly available;

- a potential licensing under the *Environment Act* of the Conawapa Hydro Electric Generating Station and related projects. It is expected that consideration of the Conawapa EIS will involve a public hearing before Manitoba's Clean Environment Commission for the purposes of providing recommendations to the Minister. To our client's knowledge, no application is currently before Manitoba Conservation;
- an independent assessment of the Need for and Alternative to Keeyask as promised by former Finance Minister Wowchuk. It is not clear which tribunal will be designated to hear this matter or what process of public participation is contemplated.¹⁷ While the Public Utilities Board has recommended a hearing of this issue at the earliest possible date, no timetable is presently available¹⁸;
- an independent assessment of the Need for and Alternative to Conawapa as promised by former Finance Minister Wowchuk. It is not clear which tribunal will be designated to hear this matter or what process of public participation is contemplated. No timetable is presently available for this proceeding¹⁹;
- an application to grant a final licence for Lake Winnipeg Regulation under the *Water Powers Act*, which for decades has been operating on the basis of interim licensing. Under the limited terms of reference from the Minister, the Clean Environment Commission will hold a public hearing for the purposes of providing recommendations. No timetable is presently available for this proceeding;
- an application to grant a final licence for the Churchill River Diversion under the *Water Powers Act*, which for decades has been operating on the basis of interim licensing. It does not appear a public process is contemplated for this proceeding.

17 Notwithstanding the intimate connection between Keeyask and BI-Pole III, Manitoba does not appear prepared to include an assessment of the Need for and Alternatives to BI-Pole III in this process.

18 In the Board's view, MH's apparent decision to proceed with the Keeyask G.S. to serve the 125 MW (NSP)/250 MW (MP)/100 MW (WPS) additional export sales instead of proceeding with Conawapa G.S. is a significant departure from both MH's Recommended Development Plan and MH's Alternative Development Sequence. It would appear to contemplate a power resource scenario that leaves out Conawapa G.S. if the additional 400 MW (WPS) contract is not achieved. As such, the full benefits of Bipole III would not be realized. With the considerable escalation of project costs – each successive update of MH's capital expenditure plans has shown material increases in the forecast cost of expansion - the Board is looking for MH to justify, and an independent tribunal to comprehensively review, each of the projects on a net present value basis within an NFAAT (while the Board Chairman would prefer Bipole III be included in the NFAAT review, the Vice-Chair would not). PUB Board Order 5/12, page 51/232.

19 It is not clear whether the Keeyask and Conawapa NFAATs will be held at the same time. Given the time sensitive status of the Keeyask application, it is not clear whether the Conawapa NFAAT will be sufficiently advanced to hear at the same time.

It is unclear how the insight gained from the myriad of regulatory proceedings will be integrated into the Keeyask EIS. It is not clear how the public can be expected to have a meaningful opportunity to participate in this daunting list of proceedings.

Factors Potentially Affecting Cumulative Effects Assessment

In Attachment E to the Keeyask Generation Project Scoping Document, Manitoba Hydro identifies a series of "past and current (i.e., ongoing) projects and activities to be considered in the cumulative effects and assessment."²⁰ It also identifies a number of future projects to be considered in the cumulative effects assessment including Bipole III Transmission, Keeyask Transmission Projects and Conawapa Generation Project.²¹ It appears that the Keeyask Transmission Project will be responsible for the transmission of power produced at Keeyask to Hydro's integrated power system.²²

The Public Utilities Board also has suggested that additional AC transmission or associated stations related to north/south transmission as well as additional facilities to facilitate the interconnection between Manitoba and other jurisdictions may be necessary to allow Keeyask-generated power to be delivered to export markets.²³

However, based on our client's brief review of the Scoping Document, it does not appear that the cumulative effects assessment will address these future projects which may be necessary to bring Keeyask's power to its United States destination.

The nature of the relationship between hydro-electric exports to the United States and the import of coal and natural gas generated power from the United States

A relatively unexplored area of Manitoba Hydro's business model relates to the import at certain periods of time of coal or natural gas generated power from the United States. The recent Public Utilities Board decision adverted to the issue of importing coal generated power especially during times of drought:

A further concern of the Board is that MH may be routinely selling hydraulic energy and purchasing mostly coal-generated energy in the same year. When MH accesses the MISO market for the lowest-price energy, coal energy would, in off-peak periods, be the most likely source. This effectively negates the benefits of restricting the operation of the Brandon Coal Plant. The Board understands that under the WCC initiatives, the coal-fired imports would be assigned to MH.²⁴

In drought years the CO₂ emissions could be much higher. 2003/04 saw an emission

20 Attachment E, page E-1

21 Attachment E, page E-1

22 Attachment F, page F-1.

23 PUB Board Order 5/12, page 41/232. For example, Capital Expenditure Forecasts for 2008 and onward identify a 500KV Dorsey to US border intertie. PUB Board Order 5/12, page 62/232.

24 PUB Board Order 5/12, pages 51 and 52/232.

level of 9.5 million tonnes of CO₂. Most of the imports in that year apparently came from coal-fired generation, which was the lowest cost off-peak supply.²⁵

Our clients are not certain what, if any, effect the construction of Keeyask will have on the magnitude of Manitoba's Hydro's reliance on coal generated power during drought or average flow years.

Based on our client's brief review of the Scoping Document, it does not appear to address the impact, if any, of the construction of the Keeyask Generation Station on Manitoba Hydro's import on coal generated power.

The public is not well served by a piecemeal approach to the regulation of hydro-electric projects

In our clients' view, the Scoping Document prepared by Manitoba Hydro is not consistent with the expectations set out in *the Sustainable Development Act*.

The *Guidelines for Sustainable Development* speak to the need for "encouraging and facilitating decision making and planning processes that are efficient, timely, accountable and cross-sectoral and which incorporate an inter-generational perspective of future needs and consequences." They recognize that meaningful public participation is only possible in forums that provide due process, prior notification and equal and timely access to information for all persons potentially affected by major developments.

Over the next decade, Manitoba Hydro contemplates a highly integrated series of projects focused on the generation of Manitoba hydro electric power and its transmission to southern Manitoba and beyond. This \$20 billion "decade of development" is likely to have profound social, environmental and economic effects which will likely leave a "century long legacy".

Unfortunately, it appears this highly integrated and carefully conceived series of projects will be examined in a piecemeal fashion by a variety of different authorities operating with different mandates and under different statutes.

Currently, there are at least six major regulatory proceedings either contemplated or underway. There is no integrated schedule available to the public setting out when these proceedings will occur; there is no pathway document available to the public demonstrating how the insight gained in any one of these proceedings will be fed into a cumulative assessment of the overall effect of these intimately related projects. In certain cases such as the Keeyask and Conawapa NFAATs, there is not even an indication of which tribunal will be considering the merits of these projects.

Hydro's Scoping Document fails to adequately address the larger regulatory, social, environmental and economic perspective. To rely on Hydro's Scoping Document for the purposes of developing EIS Guidelines would be to risk missing the forest for the trees.

²⁵ PUB Board Order 5/12, page 47/232.

Other Potential Deficiencies

Our client believes there are two other matters which may require examination in the consideration of the cumulative effects of the Keeyask Generating Station.

The first is the effect of the construction of any additional capacity required to bring Keeyask's power to its American marketplace. Our client's preliminary view is that the 500kV line from Dorsey to the United States border and any enhancements of intertie capacity at the border should be examined as part of the cumulative effects analysis of Keeyask.

The second issue relates to the relatively unexplored issue of Manitoba Hydro's import of coal generated power during average flow years but especially during times of drought. Our client's preliminary view is that Conservation may wish to examine the impact, if any, of Keeyask and related US export sales on the magnitude of coal and natural gas generated electricity imports from other jurisdictions.

Conclusion

Our clients have not taken a position on whether any of the above mentioned applications should be approved. The concerns are related to the process which will allow for a full and fair consideration of hydro related licencing in the best interests of Manitoba consumers

Thank you for your consideration of these comments.

Yours truly,


for BYRON WILLIAMS
DIRECTOR

BW/sk

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cc. CAC Manitoba
Canadian Environmental Assessment Agency, Mr. Jim Morrell, Project Manager
Manitoba Hydro, Mr. Doug Bedford

Attachment A
Excerpt from the Sustainable Development Guidelines

2 Public Participation - which means

- (a) establishing forums which encourage and provide opportunity for consultation and meaningful participation in decision making processes by Manitobans;
- (b) endeavouring to provide due process, prior notification and appropriate and timely redress for those adversely affected by decisions and actions; and
- (c) striving to achieve consensus amongst citizens with regard to decisions affecting them.

3 Access to Information - which means

- (a) encouraging and facilitating the improvement and refinement of economic, environmental, human health and social information; and
- (b) promoting the opportunity for equal and timely access to information by all Manitobans.

4 Integrated Decision Making and Planning - which means encouraging and facilitating decision making and planning processes that are efficient, timely, accountable and cross-sectoral and which incorporate an inter-generational perspective of future needs and consequences.

January 31, 2012

Canadian Environmental Assessment Agency
Prairie Region
101-167 Lombard Avenue
Winnipeg, MB R3B 0T8

Attention: Wendy Botkin, Crown Consultation Co-ordinator

Dear Madam:

Please be advised that I am legal counsel for the Nisichawayasihk Cree Nation ("NCN"). I have reviewed the draft Scoping document for the Keeyask Generation Project dated December 2011 with my clients and we provide the following comments for your consideration. NCN, through its wholly owned corporation, Taskinigahp Power Corporation ("TPC") and Manitoba Hydro are limited partners in the Wuskwatim Power Limited Partnership. Attachment E to the draft Scoping Guidelines indicates that the Wuskwatim Generating Station will form part of the cumulative effects assessment. Furthermore, in the Background Information Document issues by CEAA, NCN is listed as a Nation who has been contacted in relation to the Keeyask Project.

NCN notes that the draft scoping guidelines are similar to the guidelines issued in relation to the Wuskwatim Project. However, based on our review and experience with the Wuskwatim Project, we provide the following specific comments on the draft guidelines for your consideration:

1. **Aboriginal Traditional Knowledge** – NCN is pleased that section 3.2 recognizes the importance of Aboriginal Traditional Knowledge. However, NCN wants to ensure that a broad definition of Traditional Knowledge (or *Ethinesewin*) will be utilized consistent with its submissions in February 2002 at the Manitoba Clean Environment Commission hearing held in Nelson House in relation to the Wuskwatim Scoping Guidelines. Following that hearing, NCN and Manitoba Hydro requested that a broad definition of

traditional knowledge be used in the EIS Guidelines to describe aboriginal knowledge that is relevant with respect to an aboriginal community. NCN considers *Ethinesewin* (traditional knowledge, including the collective wisdom of *Nisichawayasihk Nehethowuk*), to come from Elders and others, both traditional and modern, and to include:

- The observation and experience of the land; a
- Aboriginal law regarding how the environment works;
- The understanding of NCN's place in the world – how things are connected, including spirituality and the relationship to the land;
- The goals and aspirations of NCN;
- The outlook on the proposed project (concerns; acceptability);
- NCN's identity and culture;
- The stewardship of the land;
- A base for natural resource management

NCN entered into a Project Development Agreement with Manitoba Hydro and others in June 2006. Schedule 2-1 to that Agreement outlines the *Nisichawayasihk Nehethowuk* customary law principles, a copy of which are enclosed for your reference.

NCN requests that section 3.4 in relation to valued environmental components (VECs) be selected not only on the basis of criteria amenable to western scientific study, but also by considering *Ethinesewin*. Similarly, NCN requests that sections 3.4.1 and 5.1.1 specifically reference the importance of considering *Ethinesewin* when considering cumulative effects and determining the significance of residual adverse environmental effects on each VEC. For example, the Wuskwatim Guidelines indicated that "the Assessment shall consider scientific analysis of ecosystem effects, along with TEK, local knowledge and available experience in determining the significance of potential effects.

It is also important to note that the teachings of each Nation may give rise to divergent views which according to customary law principles require discussion and reconciliation. Therefore, NCN also requests

that section 3.7 of the Guidelines be amended to recognize that Nations may come to different conclusions based on their traditional knowledge and the EIS should present differing Aboriginal points of view if they differ from the Proponents and where they cannot be reconciled in accordance with customary law principles, further monitoring activities should be considered.

2. Socio-economic Environment – NCN has found this issue to be one of the most contentious throughout the construction of the Wuskwatim Project given the number of out of province personnel hired to construct the generating station project in particular. NCN notes that Section 3.1 indicates that the hiring preferences in the Burntwood-Nelson collective agreement are to be described in relation to how they influence and mitigate the effects of the Project. However, section 3.1 does not refer to the direct hiring provisions of the BNA or contractors practices and the anticipated impacts on Aboriginal employment of direct hiring versus preferential hiring and the impacts of particular contractor practices, such as transportation to the worksite for Aboriginal versus other workers. Further, section 4.2 does not reference the socio-economic impacts that will flow from this analysis.

NCN submits that the Guidelines ought to be modified to require the Proponents to provide a detailed analysis of the basis for their projections in relation to employment and the other factors which may influence the ability of the partnership to mitigate project impacts through employment benefits (wage rates, anticipated major project construction impacts on the Manitoba labour market, collective agreement and contractor rules which may impact local employment opportunities, and how the ongoing training deficit will be managed to ensure local employment benefits materialize). The Guidelines should be amended to require the Proponents to provide a cumulative effects assessment which outlines how Aboriginal workers trained and/or employed on prior Hydro projects will be employed on future projects.

Section 7 should be modified to ensure that employment predictions made during the assessment process can be measured on a continuous basis using a consistent methodology during construction.

Section 4.2 should also be amended to require the Proponents to outline the anticipated impacts on housing in regional centres such as Thompson from sustained hydro development. Mitigatory measures to

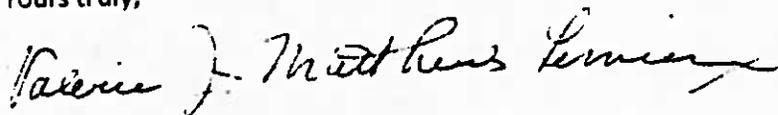
address potential impacts on the existing local population who could be displaced due to higher rents and a tighter housing market should also be outlined.

Section 4.2.5 should be amended to ensure that Aboriginal Traditional Knowledge and preferred methodologies will be utilized in determining the location of heritage resources (for example, ground truthing with Elders) and to further ensure that the precautionary principle is applied to provincial records about the location of heritage resources, where there may be an indication in a previous study done for a different purpose that there are no known heritage resources in a particular area.

3. Study Area – The Scoping Document should clearly define the study area as this term is referenced throughout the Guidelines. NCN wants to ensure that system effects from the operation of the Wuskwatim Project and the proposed Keeyask Project are outlined and that NCN's views in relation to these matters are considered. It is unclear how the study area is being defined so NCN reserves its right to provide additional comments on this issue.
4. Residual Effects – The Guidelines should be amended to require the Proponents to provide a detailed plan for responding to any known or predicted residual effects and to identify procedures for ongoing identification of effects and adaptive management processes for responding to effects that were not predicted or foreseen, similar to the requirements in the Wuskwatim Guidelines.

We look forward to receiving a copy of the Final Guidelines for preparation of the EIS in due course.

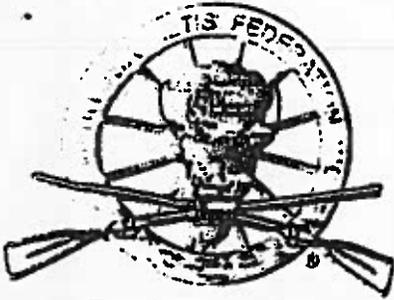
Yours truly,



Valerie Matthews Lemieux

Cc File

NCN Chief and Council
Norman Linklater – Manager Wuskwatim Implementation Office
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JAN 27 2012

January 24, 2012

Manitoba Conservation
Darrell Ouimet, Environmental Officer
123 Main Street, Suite 160
Winnipeg MB R3C 1A5

RE: Environmental Assessment of the Proposed Keeyask Generation Project

Dear Mr. Ouimet:

This letter is in response to the Canadian Environmental Assessment Agency's letter dated December 15, 2011, to Mr. David Chartrand, President of the Manitoba Metis Federation in which the Manitoba Metis Federation was invited to prepare an application for funding to assist the participation of the Metis in consultation activities throughout the environmental assessment of the Keeyask Generation Project.

The letter indicated that although environmental assessment activities and consultation activities associated with the federal and provincial processes will be coordinated to the extent possible, comments on the scoping document should be forwarded to your attention for inclusion in the project file. The Manitoba Metis Federation has reviewed the scoping document prepared by the Keeyask Hydropower Limited Partnership on the proposal to construct and operate the Keeyask Generation Project and offers the following information as our comment on the document.

The MMF asserts it represents a rights-bearing Metis community consistent with *R. v. Powley*, [2003] 2 S.C.R. 207, whose members live throughout, use and rely on a traditional territory in and around the proposed Project. Members of this Metis community hunt, fish, trap, gather and pursue traditional pursuits connected to the land throughout the region surrounding the Project. These Metis customs, practices and traditions are constitutionally protected rights in Canada's Constitution. The Project's potential impacts on these rights trigger the Crown's duty to consult and accommodate the rights-bearing Metis community, consistent with *Haida Nation v. British Columbia* [2004] 3 S.C.R. 511 and *Taku River Tlingit First Nation v. British Columbia* [2004] 3 S.C.R. 550.

The northeast region of the Manitoba Metis Community is called the Thompson Region. The MMF represents over 3,400 adult Metis individually and collectively in the Thompson Region, as the democratic self-government representative of the Metis people in Manitoba. The Metis living in this region are the continuation of the historic rights-bearing Metis collective that lived, used and relied

on the lands within the Thompson Region as well as the rest of what is now known as the province of Manitoba and the historic Northwest. The locations and settlements where Metis historically lived in the region were connected to each other as well as other locations, settlements and Metis people throughout Manitoba and the historic Northwest through seasonal rounds, trade, mobility and kinship. These realities fostered a regional cohesion between the Metis living in what is now known as northeastern Manitoba that continues today through ongoing cultural and social activities, harvesting, family connections and mobility. Further, this regional collective was and remains an indivisible part of the Manitoba Metis Community, as represented by the Manitoba Metis Federation.

The Manitoba Metis Federation believes that consultation must take place through the democratically elected representative government of the affected Metis people – the MMF. More specifically, consultation must occur with the MMF and its governance structures at the local, regional and provincial levels, which have the jurisdiction and authority to deal with the collective interests of the potentially affected Metis community.

Please note that the Manitoba Provincial Court's decision in *R. v. Goodon*, [2009] M.J. No 3 (M.P.C.), rejected the Manitoba Crown's narrow approach to the identification of the historic and contemporary rights-bearing Metis communities as discrete, physical settlements in Manitoba. Instead, the court recognized a vibrant, regional rights bearing Metis community that is represented by the MMF, which encompasses southwestern Manitoba and extends into central and northern Manitoba, the United States and Saskatchewan.

Since the Manitoba Government chose not to appeal this case, the MMF expects that the Manitoba Government and its Ministries will respect the direction of the Manitoba courts on Metis rights issues (i.e., Metis communities are regional in size and scope). It is the opinion of the Manitoba Metis Federation that similar to how Metis rights were established in the *Goodon* case, Metis rights could be established in the region in and around the Project, as an indivisible part of the Manitoba Metis Community.

We stress that the underlying purpose of the Crown's duty to consult is to avoid forcing Aboriginal groups as well as governments into time consuming and expensive litigation when there are credible Aboriginal rights claims and Crown actions being taken that have the potential to negatively affect those rights. This situation is exactly what was contemplated by the Supreme Court of Canada in the *Haida Nation* and *Taku River* cases and requires pro-active consultation and accommodation with the potentially affected Metis community.

In support of this credible rights assertion, the MMF would like to remind you that the Government of Canada has commissioned historic research on this region, which evidences the historic presence of a Metis population throughout the region from the early 1800s. Moreover, the MMF's ongoing research and current Metis membership and registration work evidences the continuation of the historic Metis families who lived, moved and harvested throughout this region in the early 1800s, continuing to live in, move throughout and rely on this region today. In the MMF's opinion, the Manitoba Government not only has constructive knowledge of credible Metis rights claims in this region – it has actual knowledge.

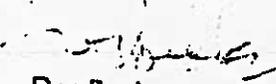
The traditional territory of the potentially affected rights-bearing Metis community is shared with First Nations located in the northeast portion of Manitoba. As Manitoba Hydro has already implicitly recognized, through negotiating and reaching accommodation agreements with First Nations in the region, this Project will affect the rights, interests and way of life of the Aboriginal peoples who live

near the Project and who rely on the lands in and around the Project for hunting, fishing, trapping, gathering and traditional pursuits. While the potentially affected rights-bearing First Nations in and around the Project appear to have been intimately involved in the development of the Project's Environmental Assessment and some have even reached "adverse effects agreements" with the proponent, the potentially affected rights-bearing Metis community has been largely excluded to date. More specifically, the rights-bearing Metis community that is potentially affected by the Project has not been meaningfully engaged in the development of the Project's EA. Further, the impact of the Project on Metis rights, interests, way of life and traditional uses in the region have not been considered or addressed in the EA or through other processes. Therefore, the Manitoba Metis Federation is of the position that the EA, in its current form, is deficient because it fails to even consider the unique rights, interests and perspectives of the Metis community, as a distinct Aboriginal people whose rights are equal to those of First Nations in the region.

The Manitoba Metis Federation welcomes the opportunity to be involved in the environmental process by reviewing and providing comments at each stage of the process. The scoping document provided by the Keeyask Hydropower Limited Partnership makes mention of the Metis only in so far as to indicate that consultation will take place. The document clearly outlines the responsibilities of the Proponent as to ensuring consultation of Aboriginal people however it is instead focused on the First Nations who form the partnership itself. The document outlines a variety of potential impacts on the way in which those who use the land in the project area may be affected however it does not indicate any measures that will be put in place specifically for the Metis. For the record, the Manitoba Metis Federation requests a Metis specific Crown Consultation to ensure that the views, comments and concerns of the rights bearing Metis community who will be affected by the Keeyask Project are included in the assessment.

If you have any questions about the comments we have provided on the Keeyask Generation Project's scoping document, please contact Will Goodon at 586-8474 or via email to wgoodon@mmtf.mb.ca.

Mcq-wetch,


Don Roulette
Executive Director
Manitoba Metis Federation

cc. David Chartrand, Manitoba Metis Federation
Will Goodon, Manitoba Metis Federation
Julyda Lagimodiere, Manitoba Metis Federation
Anita Campbell, Manitoba Metis Federation
Jason Madden, JTM LAW
Wendy Botkin, Canadian Environmental Assessment Agency

