

To the Manitoba Clean Environment Commission

IN THE MATTER OF:

The Wuskwatim Generating Station Project and Transmission Project

Public Registry File Nos. 4724 and 4725

Hereinafter referred to as "the Wuskwatim Project"

PARTICIPANT:

Pimicikamak

ORAL SUBMISSION FOR MAIN HEARING

A. Key Issues

1. The Wuskwatim proposal and this hearing have come down to 2 key issues:
 - a. Substance (the nuts and bolts): A failure or refusal by Hydro to acknowledge that WE DON'T KNOW what the current hydro system's impacts are, and thus WE CANNOT KNOW how Wuskwatim will affect these.
 - Hydro first denied that Wuskwatim would have any effect on the operations and impacts of the existing hydro system.
 - Hydro later said, after repeated urging by Pimicikamak, that there would be system impacts.
 - But Hydro then stated these impacts would be minimal, and therefore, could effectively be ignored (that is: there should be no requirement to study them or substantiate them with evidence).

- Pimicikamak challenged the accuracy of this bare assertion of “minimal”, on the basis there was and is to date is no evidence to support it, and there is something to speak against it: a long and questionable track record by Hydro. Assertions of minimal impacts were made by Hydro in the past, and turned out to be completely wrong (pencil). People, lands and waters have suffered tremendously as a result.
- Further, Pimicikamak asked: “what does minimal mean?” Wuskwatim will not operate by itself. It will be part of the existing hydro project. If you add impacts from Wuskwatim to impacts that exist and continue to grow worse, can you still claim “minimal”? How much of a kick is enough to push things over the edge?
- Pimicikamak kept asking for evidence and disclosure about such system impacts, and the economics of Wuskwatim and the system because economics drive hydro operations, which in turn determine impacts. We were repeatedly refused such information.
- Then, at the main hearing, Hydro explicitly acknowledged, because of how the hydro system works, that these impacts could well be felt more at or near Cross Lake (Pimicikamak) than anywhere else (seasonal matching). It acknowledged that export pricing is a major factor in how the system is operated and in determining how Wuskwatim could alter system operations – and thus, impacts.
- But then, brushing these admissions aside, Hydro said Wuskwatim’s impacts on the existing system would be “imperceptible” (now Hydro is saying less than minimal). The only so-called evidence it gives for this position is “25 years of experience operating the hydro system”.
- BUT – this is 25 years of operating the hydro system largely in the dark. There has been no review and comprehensive analysis of impacts from the existing system, and no environmental licence requiring monitoring and mitigation. And within these 25 years, many of Hydro’s practices have been subject to severe reprimand as a result of two independent inquiries: a judicial inquiry and an inter-church inquiry.

- Hydro might have 25 years of experience – but is it, with nothing more, valid experience we can rely on in this review? (Example of older car driver, who never learned to drive well, and keeps repeating the same mistakes).
 - We have a proposal that by Hydro's own accounting is likely marginally economically viable at best – WITHOUT taking account of potential further environmental and socioeconomic impacts in the system. Are we really still in the dark ages of thinking that any potential revenue is good for society, despite the costs? Are we really still in the age of oppression when indigenous peoples are somehow just expected to bear the burden of these costs?
- b. Procedure: A process that to date has failed the substance.
- Despite the fact that Hydro has now – finally -- acknowledged that there will be system impacts and that these could well be borne mostly in and around Cross Lake (Pimicikamak homeland), and despite the fact that Hydro offers no credible evidence to support its assertion that such impacts should be written off or ignored, this process proceeds as if all is well.
 - What do any of us think this review process is supposed to be about? Style? Such as a formal setting and schedule, and the exchange of thousands of pages of paper? Or do we think it's about substance – where truly necessary information is disclosed, subjected to critical and transparent analysis and debate, and recommendations and decisions made with full information and not in the dark?
 - Given what has happened to date, you cannot blame anyone for thinking this process is about style. There appears to be an attempt by Hydro to rush this proposal through, without anything close to proper disclosure and analysis: of system impacts, economics which drive these, and alternatives to Wuskwatim. Instead, we have Hydro justifying its own lack

of disclosure by saying such disclosure is not needed. (repeat). They call it circular argument for a reason. And no one is stopping this.

- Why such a push to get speedy approval? It's not as if the lights are going to go out if it takes longer to properly review Wuskwatim. In fact, it's not as if the lights are going to go out if Wuskwatim is not approved at all. By Hydro's own account, Manitoba will not need Wuskwatim until 2020. And that is even questionable.
- What is Hydro afraid of from a full review? Why have time and resources not been made available to ensure a fair and full review?
- Pimicikamak stated back in the motion hearing of Sept 30 that unless the issues of substance were dealt with, this process might turn out to a rubber-stamp sham. Is this a process that will simply add to the store of things over which the public is cynical, or can the CEC still effect a difference?

B. Substance: No Information on System Impacts

1. There are core issues relevant and necessary to determining whether Wuskwatim should be approved or not, and if so, under what conditions.
2. Information about such issues has not yet been disclosed. As long as it remains undisclosed and hidden from public and CEC scrutiny, any conclusions made will be made in the dark.
3. These issues are: system impacts (how adding Wuskwatim to the existing hydro project will affect system/project operations and impacts); and economics (economics are the driver of system impacts, and will largely determine to what extent, where and how any impacts will be felt).

4. There is a system (project), and it is the Churchill River Diversion (CRD), Lake Winnipeg Regulation (LWR), Nelson River works and operations. By its very name, one can see that this system comprises a large integrated industrial complex. Wuskwatim would become a part of, and affect, this system.
5. System impacts are not separate and apart from Wuskwatim. They are not some peripheral issue. They cannot be. Wuskwatim will be added to and affect current system impacts. *The key problem is that we do not know how and to what extent Wuskwatim will affect existing impacts of the project (and thus how good or bad Wuskwatim might be, or how to manage it and all its associated impacts).*
6. There is no conceivable way that understanding system impacts would not be relevant (and likely of core relevance) to approval of a project that was to be added to the system and affect existing operations and impacts of the system.
7. System impacts have not been deleted from the Wuskwatim proposal. Evidence from Chris Goodwin, former head of system planning at Hydro, at the September 30 motion hearing, confirms that the reason that impacts will be more minimal than originally designed, in the immediate area of Wuskwatim, is because they have been *transferred* to other parts of the system, including and especially to Cross Lake and Jenpeg (where Pimicikamak is). The alteration of Wuskwatim's operational design from its original has resulted in a transfer – not a deletion -- of impacts.
8. Why does this proceeding carry on as if this evidence had never been given, and as if Pimicikamak was not most likely to be affected? We aren't looking at system impacts at all.

9. Without a cumulative effects assessment, how is it possible to conclude that there will be no material impacts as a result of Wuskwatim? How is it possible to determine whether changes to something might be “material”, if you do not consider how seriously affected that thing already is (if this is but a small kick, is it a kick to an already seriously wounded environment or people). Bald assertions remain bald unless they are tested. Bald assertions should not be allowed to “justify” themselves by the failure to test them.
10. It's not as if we shouldn't know better. While likely no one knows the extent to which each impact of the system interacts with others and the ecosystems, we do know enough to know that such impacts have been devastating. The inter-church inquiry report of December 2001 stated that the hydro project constitutes “an ongoing ecological, social and moral catastrophe”.
11. These are ONGOING catastrophic effects. This is not in the past, as Chief Jerry Primrose said. This is today, tomorrow and many tomorrows to come until we start doing our job of assessing and understanding the hydro project as a whole. Until we start manging the impacts from the hydro project as a whole. Wuskwatim would become yet another part of this whole, as would Conawapa, Gull and many other proposed additions.
12. These are CATASTROPHIC effects.
13. Why does this proceeding carry on as if Hydro's marketing propaganda of “clean, green, renewable” is factually correct? Since when is renewable defined as ongoing catastrophic effects? (repeat) When

have we ever just blindly accepted an ad campaign as the truth, without challenging it and demanding evidence to support it?

14. But we do seem to just accept these words as magic, and either fail or refuse to understand what is really going on. We seem to accept the marketing words that Wuskwatim itself is environmentally friendly because it doesn't flood much, and it's low head. When are we going to start getting it, that flooding is by far not the most important measure of impacts in this system. When are we going to start getting it, that Wuskwatim would feed off the current project and the catastrophic harms that are already there and growing worse. When? When we demand full information from Hydro about what all the impacts are, so we can then and only then understand how to best mitigate and manage them as more and more development is added to this single integrated system.
15. While the CEC and others might wish to just take Hydro at its word, through bitter experience, some of which was revealed in the Tritschler Judicial Inquiry, Pimicikamak is of the opinion that blind acceptance of Hydro's assertions is imprudent. Further, this entire proceeding is about not blindly accepting anything, but ensuring there is sufficient testing of all assertions and information.
16. Since this proceeding is not challenging Hydro's bare assertions about the pencil effect, Hydro's assertions have been allowed to date to govern this entire proceeding. This is entirely contrary to the very purpose of this sort of review. Now, because core issues of substance have been brushed aside, Pimicikamak is faced with a proposal that could make a very bad situation worse in ways or degrees that Hydro refuses to consider and disclose.

C. Procedure

17. This CEC proceeding has failed to date to address core issues of substance: system impacts and their economic drivers. Participants have not been given the information required to test the assertions by Hydro that we can just brush aside system impacts. How has this happened?
 - a. Manitoba Hydro has itself defined what is relevant and important, and what is not (and then disclosed what it deems it should, based on this definition).
 - b. Neither the heavily papered interrogatory process nor anything in this main hearing to date has resulted in disclosure and analysis of system impacts and their economic drivers. Instead, we get circular argument after circular argument that amounts to Hydro saying it isn't important because we say it isn't important, and since we say this, we don't have to disclose anything to prove it.
 - c. The interrogatory process was largely a significant waste of time and money, since core relevant information was not disclosed, despite great attempts by participants to get it. Our written submission to the main hearing outlines Pimicikamak's attempts to get at this core information about system impacts and economic drivers, and Hydro's refusals to provide it.
 - d. We now have lots of witnesses and cross examination in the main hearing, but none of it is able to get at the core issue of system impacts because, simply, Hydro refuses to reveal or deal with these. All this procedure might LOOK good, but that's because we're dancing on the surface, when the real stuff about the big

system which Wuskwatim would be added to and affect, much of which is not at all pretty, has been kept hidden down below.

- e. We're not just skimming the surface, we're racing over it on some fast track to somewhere. Pimicikamak and other participants have not been given the information or resources to check this race. And because of this, it is likely to be a race right into a dark tunnel.
- f. We are virtually no further ahead than when this proceeding started, and certainly further behind in terms of resources. It appears more and more likely that if any conclusions are made as a result of this proceeding, they will be made in the dark.

13. In what might be an attempt to deflect attention from the CEC proceeding, Hydro raised in its rebuttal other processes in which Pimicikamak was or is involved, suggesting that Hydro was prepared to offer information but Pimicikamak didn't take it, or accepted it as wholly sufficient.

- a. First, the public information process. Hydro said it wasn't allowed into Cross Lake to bring information to the citizens there. People at Cross Lake are traumatized by what has been happening to them as a result of the existing hydro project. They are traumatized by the false story of the pencil. Before allowing Hydro in to hold up another pencil again, Pimicikamak needed to make sure that this time, the pencil story was the truth. Pimicikamak of course has received no information to substantiate this.
- b. Second, the consultation process under Article 9 of the NFA. Hydro submitted meeting notes from George Rempel

of Tetrus, as if these were approved and accepted by Pimicikamak as minutes of this Article 9 meeting. Pimicikamak and its counsel had never seen these notes before they were submitted to the CEC. They are notes with Hydro's spin on things. They do not accurately reflect Pimicikamak's repeated attempts in this process as well, to get core information about system impacts and their economic drivers, disclosed. What they do reflect to some degree is Hydro's refusal to provide such information. Pimicikamak's decision to accept what information it could get, in no way indicates that Pimicikamak accepts the merit of providing less than is necessary. It appears that Pimicikamak will likely have to reply on s. 35 of the Constitution to seek and get such necessary information.

- c. Third, consultation under s. 35 of the Constitution. It is the federal and provincial Crowns' responsibility to ensure that if Wuskwatim goes ahead, it does so in such a way as will minimize adverse impacts on Pimicikamak and other affected aboriginal peoples. This process has been proceeding very slowly, and has not yet produced the necessary information. But it is still moving ahead. We are happy to hear that Hydro (through Ed Wojczynski) has confirmed that no licences will be issued for Wuskwayim until s. 35 consultations are complete. We remind the Commission that we suggested back in our motion heard Sept 30, that it made sense to apply the disclosure standards required under s. 35, in this CEC process, to ensure consistency and that the CEC process would not be a waste of time.

- d. In summary, the Commission should not accept in any way that other processes or consultations have to date been adequate to reveal and analyse the information necessary to knowing whether or not Wuskwatim should be approved, and if so, under what conditions so as to minimize adverse impacts. The legal standards required in s. 35 consultation should get at this information, but it is not yet disclosed.
- e. Regardless of any other process pertaining to Wuskwatim, the Commission has its own legal mandates and duties, which Pimicikamak has submitted from Day One require information and analyse of system impacts and their economic drivers, and how Wuskwatim will alter these. The Commission cannot skirt or shelve its own duty on the basis that some other process might do this job.

14. There is yet another “process” that has been the focus of some attention and cross examination in this hearing, being Pimicikamak’s US campaign of truth. We are happy to hear so much attention being given to it, even in regard to witnesses who were not here on Pimicikamak’s behalf in any capacity. It was mischaracterized as against the purchase of hydro power – it is against continuing unchecked devastation wrought by impacts from the production of this hydro power, and appeal to clean up and mitigate and find cleaner and safer solutions. Most campaigns are started by people who feel that other avenues for solutions are failing or not working well. This certainly seems to be bearing out. The fact that Pimicikamak, a nation struggling to survive on so many fronts, felt forced to undertake such campaigns should indicate the extent to which rights have not been honoured through other means. And the fact that people in the US and Canada and

internationally are paying attention, even in some instances in hostile ways, indicates that the issues Pimicikamak is raising are very important to many. We ought to wake up and deal with them, and not brush them under the carpet. They won't go away, and neither will Pimicikamak.

*where they
should be
dealt with -
including at
this proceeding!*

15. If THIS proceeding does not address the core issues repeatedly and consistently raised by Pimicikamak, this will be a failure that might well affect all Manitobans and others. It will be a failure that we have heard is likely to affect Pimicikamak most. History repeats. It doesn't have to.

D. Remedy

16. Pimicikamak proposed the following remedy in its written submission to the main hearing: For the CEC to clearly state that this proceeding requires full information on existing system impacts, and how Wuskwatim might alter these, without any assumptions or bald assertions (of what will or will not be affected, and how much) being allowed to limit this. "Full information" would include what is known, and what can be learned through different modeling and other reasonable and not onerous "research" techniques. The proceeding would have to be adjourned until all such information was disclosed and until sufficient resources are allocated (to the CEC and the participants) to test the information that is disclosed.

17. It is true that it is always difficult to assess cumulative effects. But this is no reason to not do so when cumulative effects are the very essence of what is relevant to a process analyzing a proposed development that would be added to one big integrated complex. There is no way around it – we must start by understanding what is there already, so

we can understand what each new addition will do to that, and we can manage the thing for what it is – one integrated whole. **If what happens with this hydro project is guided by what SHOULD happen (what is in the best interests of the public and the environment) then in this case, we must start with an understanding of existing impacts. This understanding will no doubt help determine ways in which the system should and should not develop. It will help determine what is working and what is not, and thus where it is feasible to go and not. This will be the start of developing the holistic picture of hydro development (now and in the future) in Manitoba that is sorely lacking now, but could still be acquired. Only such a picture will allow Manitobans to rationally make determinations about whether anything should be added or changed, and if so, what, when, how, and how it should be managed (environmentally, socially and economically).**

18. If the above steps are not taken, and the CEC proceeds to make substantive recommendations, it is likely that Wuskwatim will be approved in the dark, further perpetuating the lack of knowledge and understanding and thus the failure to set conditions to ensure appropriate environmental management. As Wuskwatim is the first of a number of new hydro developments being proposed, the ramifications of this darkness loom exponentially larger the more we look into the future.
19. If the above steps *are* taken -- if there is sufficient knowledge and understanding of the existing impacts, and how this one development, Wuskwatim, might affect the system – then this will guide how to conduct a cumulative effects assessment of Wuskwatim in combination

with other future developments. Light shed here and now will in turn have exponential effects well into the future.

20. If the Commission feels it cannot take the above steps now, then the Commission would effectively be in the position of approving a pig in a poke. Pimicikamak submits that the Commission should submit its report to the Minister making it clear, that as a result of Hydro's failure to disclose core necessary information, and as a result of resources required to analyse this, the Commission is not in a position to make recommendations.
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