

*THERE CAN BE CHANGE  
IF THERE IS THE WILL:*

*LWR, QUIESCENT LICENSING AND  
EVOLVING CONSUMER VALUES*

Presented by Public Interest Law Centre  
on behalf of the  
Consumer Association of Canada (Manitoba Branch)

# QUIESCENT:

IN A STATE OR PERIOD OF INACTIVITY OR DORMANCY - OXFORD DICTIONARY ONLINE

MARKED BY INACTIVITY OR REPOSE - MERRIAM  
DICTIONARY ONLINE

QUIET, INACTIVE, OR DORMANT - COLLINS DICTIONARY ONLINE

# QUIESCENT LICENSING

- ✿ A 39 year old interim WPA license
- ✿ no additional environmental adjustments
- ✿ No environmental assessment conducted or planned
- ✿ **In the face of significant and evolving effects, quiescent licensing invites community non-confidence.**

# HISTORY- AN INVITATION TO SADNESS AND CYNICISM

- ✿ 1967: *The communities of native people that exist throughout Manitoba - and this equally true of all parts of Canada - **have no future** and...the interest of the native people of the total community will be gravely prejudiced if those resources of money and creative thought are not dedicated to solving **the problem** of the remote Indian settlement and the Indian reservation* (emphasis added) -  
*Letter from H.P. Daniel Van Ginkel and Ralph Hedlin to Dr. B. Kristjanson (May 15 1967) found in Ginkel Associates and Hedlin, Menzies and Associates Ltd., Transition in the North - The Churchill River Diversion and the People of South Indian Lake, prepared for Manitoba Development Authority, Winnipeg (Manitoba, 1967) n.p. cited in "Known History" [KH] at p 33*
- ✿ 1968-1976: *Notable, neither Kuiper (1968) nor his successors examined the interests of those who lived and worked beyond the outlet of Lake Winnipeg, thus **ignoring the impacts** that regulation would have on the people and environment immediately **downstream** from the control structure.* (emphasis added) -  
*ibid at p 31.*

# HISTORY- AN INVITATION TO SADNESS AND CYNICISM

- ✿ 1974: *The Northern residents are not in a position to compromise on their basic position; **they wish to retain their lands in the form unaffected by any Hydro development*** - (emphasis added) KH citing Letter from Charles R Huband to Premier Edward Schreyer, dated July 5, 1974 (PAM Records of the Commission of Inquiry into Manitoba Hydro, A0064, GR 2022, B-14-5-19)
- ✿ 1974-1975: *Whenever possible, the provincial government **tried to bypass or dismiss the legitimacy of the NFC** as the voices of affected First Nations communities.* - (emphasis added) ibid at p 56.

# HISTORY- AN INVITATION TO SADNESS AND CYNICISM

\* 1979:

- \* *Hydro has often **failed** to provide timely and **accurate information***
- \* *[Manitoba had] a right to disclosure of all the facts - **not just 'good news.'*** (emphasis added) - ibid at p 61 citing Tritschler, Government of Manitoba. Commission of Inquiry into Manitoba Hydro. Final Report, December 1979 (Winnipeg: Government of Manitoba, 1979) at pp 409-10.

# PLATITUDES OR REALITY?

- ✿ 1969: *Today, there is a greatly increased sensitivity to the need to preserve the natural environment, to respect the rights, particularly of Indian communities, and to develop resources together in a planned and integrated fashion.* - (emphasis added) ibid at p 35 citing David Cass-Beggs, The Proposed Churchill River Diversion and Associated Problems, report to the Minister of Mines and Natural Resources, Government of Manitoba, September 9 1969:6.
- ✿ **Forty six years later: Are these words real or just platitudes?**

# MODERN MALAISE- A VIRTUALLY EMPTY ROOM

- ✿ *We all began with the understanding that Lake Winnipeg is vital to Manitoba, that Lake Winnipeg Regulation is a serious, often controversial project, and yet I find myself sitting here for four weeks in a city where half the population of the province lives, with respect to a lake and a project, and with respect to the lake I am told that I believe that a good half of the population of Manitoba has personal connections to the lake, people keep telling us that. And yet the room is **virtually empty** at this hearing in Winnipeg day after day. Do I draw the conclusion that, in fact, **it's not entirely accurate to say that Manitobans care a lot about the lake** and that they are seriously interested in Lake Winnipeg Regulation, when they don't bother to come, when the local media seems to ignore this hearing for four entire weeks?* - Doug Bedford, LWR Hearing, April 8 2015 at pp 2021-2.

# THE PILC RESPONSE TO MR. BEDFORD

- ✿ Three central messages from our April 8th oral submissions:
- ✿ We are failing in our stewardship duties
- ✿ There is broad support in this process for law reform and governance reform
- ✿ Reform is possible - it has been done
- ✿ ***There can be change if there is the will.***

# GOOD WILL, GOOD GOVERNANCE AND LAW REFORM

- ✿ CAC Manitoba's response to Mr. Bedford:
  - ✿ Manitoba consumers care deeply about affordable, reliable electricity that is ethically produced in a sustainable manner
  - ✿ There is a significant level of distrust and cynicism towards existing governance and licensing
  - ✿ Effective engagement requires multiple tools for participation
  - ✿ Through good will, good governance and law reform, we have an unprecedented opportunity to:
    - ✿ address cynicism and
    - ✿ chart a course toward a more equitable balance between economic, social and ecological values

# CAC MANITOBA

- ❖ Since 1947
- ❖ An independent, non-profit, volunteer organization working to inform and empower consumers and to represent the consumer interest in Manitoba

# CONSUMERS AND LAKE WINNIPEG

- ✿ Consumers experience the Lake in many different ways including:
- ✿ food source
- ✿ cottages
- ✿ recreation
- ✿ power production



# WHAT WE HEARD - SPEAKS TO FUNDAMENTAL CONSUMER RIGHTS

- \* Goods and services to meet our basic needs, including food, shelter, public utilities, water and sanitation
- \* Protection against production processes that are hazardous to our health or life
- \* Choice - a good variety of quality products and services
- \* Facts and information to help us choose the best product
- \* Opportunities to get the knowledge and skills we need to be an informed consumer
- \* A role in making government policies for the marketplace
- \* The right to redress- to receive a fair settlement of just claims
- \* A healthy environment now and in the future

# THE CONSUMER INTEREST AND EVOLVING ETHICAL VALUES

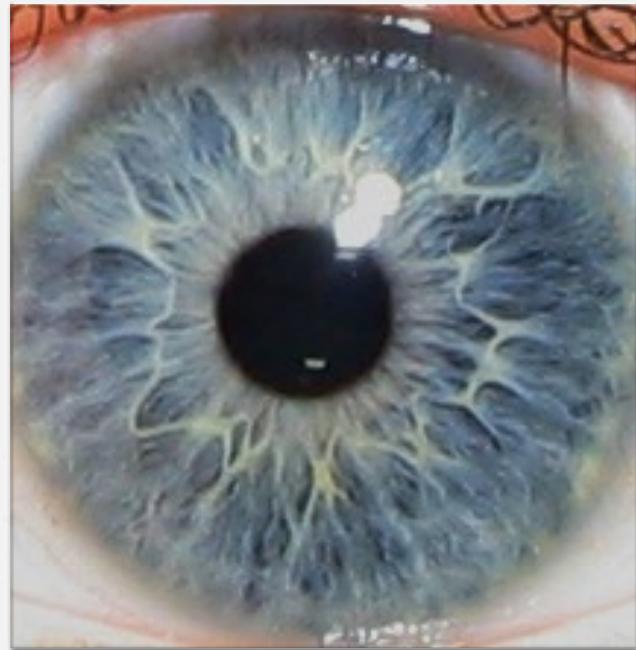
- ✿ Essential principles - value for money, affordability and equity
- ✿ Consumer interests continue to evolve
- ✿ Increased emphasis on ethical (socially responsible) purchasing
- ✿ Consumers are not homogeneous
  - ✿ for many, affordability is, and must be, primary concern
  - ✿ for many others, ripple effect of purchases is important
- ✿ Responsibility to have eyes wide open to consequences of production

# CONSUMERS AND ETHICAL ELECTRICITY CHOICES

- ✿ Manitoba reality - electricity monopoly
- ✿ Cannot choose product that is certified less harmful
- ✿ Consumer through monthly bills fund hydro-electric development and reap benefits and impacts
  - ✿ economic, reliability and low GhG benefits
  - ✿ social and environmental impacts
- ✿ **CEC Hearings proxy for *the right to choose***

# CONSUMER EYES ARE OPEN

- ✿ *My people continue to suffer while the south continues to benefit.* - Chief Cathy Merrick, LWR Hearing, April 2015 at p 1754.
- ✿ *I hope they hear us, I hope they open their ears and hope they open their eyes to see, and their heart to know what's happening to us.* - Elder Martha Spence, LWR Hearing, March 26 2015 at pp 2-5
- ✿ CAC Manitoba eyes wide open now
- ✿ cannot return to the marketplace complacency of the 70s
- ✿ cannot endorse quiescent licensing
- ✿ Can the Hydro Status Quo Endure? (see diagram)



# HYDRO STATUS QUO ELEMENT ONE- RELIABILITY, ECONOMY AND EFFICIENCY

- ✿ *Hydro development has produced an economic, dependable and renewable electricity supply for the Province. And continued control of river flows has been key for further Northern Hydro development, such as is now occurring at Keeyask.*
  - Dave Cormie, LWR Hearing, March 10 2015 at p 33.
- ✿ Lights stay on - homes stay warm
- ✿ Low GhG
- ✿ Historically relatively affordable
- ✿ Economic stimulus (investment, debt trade-off)
- ✿ **Manitoba consumers value these contributions**

# ELEMENT TWO - OPAQUE, LIGHT HANDED AND EXCLUSIONARY REGULATION OF LEGACY PROJECTS

- ✿ Capstone elements of system with significant, ongoing effects  
**escape environmental assessment** (LWR and CRD)
- ✿ **39 year old interim** licenses (WPA)
- ✿ Regulatory **decision making** primarily driven by **Hydro / Province dialogue**
- ✿ **Opaque** basis for licensing non-decisions and decision
- ✿ **Light handed regulation is a double (or triple) edged sword**

# ELEMENT THREE: ECOLOGICAL CONSIDERATIONS SUBORDINATE

- ✿ ***Operations** under existing license conditions are focused primarily on providing **flood and drought control** upstream, and regulation water flow to maximize the **production** of electricity and revenue at the large generating stations along the lower Nelson River.* - Annette Luttermann (2015) "Submission to the Manitoba Clean Environment Commission Review of the Lake Winnipeg Regulation and Jenpeg Final Licence Applications, Pimicikamak Okinawin" at p 3
- ✿ ***Changes** in the **timing**, magnitude, frequency, duration and **rate of change** of downstream **water flows** are the result, and are the **main driver** of **adverse physical and biological effects**.* -Annette Luttermann (2015) "Submission to the Manitoba Clean Environment Commission Review of the Lake Winnipeg Regulation and Jenpeg Final Licence Applications, Pimicikamak Okinawin" at p 6

## ELEMENT FOUR - A FRACTURED BUT EVOLVING RELATIONSHIP WITH INDIGENOUS PEOPLE

- ✿ Inadequate or non-existent consultation on legacy projects
- ✿ Significant and often adverse effects of LWR, CRD, Nelson River Projects
- ✿ Efforts to reconcile:
  - ✿ new Nelson Projects
  - ✿ apology to PCN (2014)
- ✿ Ongoing sense of exclusion LWR and CRD

# ELEMENT FIVE: LIMITED INTEGRATED WATER RESOURCE MANAGEMENT AND RESOURCE PLANNING

## \* **IWRM:**

- \* *A process which promotes the coordinated development and management of water, land and related resources in order to maximize economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems.* -Global Water Partnership online

# ELEMENT FIVE: LIMITED INTEGRATED WATER RESOURCE MANAGEMENT

- \* **Hydro has not demonstrated that it has the process or the tools for modern IWRM:**
  - \* Where is consideration of a broad suite of values and interests in the development of operating objectives?
  - \* Where is analysis of the cumulative impacts of flow alteration, climate change, and other stressors on riverine habitat, fish for commercial or cultural value, shoreline erosion, or biodiversity in the Netley-Libau Marsh?
  - \* Where is a watershed approach to understanding and managing inflows to the lake, or robust consideration of how those inflows could change under future climate or development scenarios?
  - \* Where is a multi-stakeholder approach to evaluation of current water conditions, objective setting or development of strategies to achieve water management goals?
  - \* Where is development of implementation of appropriate tools (such as basic hydrologic, pollutant loading or digital elevation models) for evaluation of different watershed management scenarios (e.g land use, climate change, water taking) that are now common throughout the world, and would adequately simulate the dynamic response of water systems to weather, intake, and outflow conditions?

# ELEMENT FIVE: LIMITED INTEGRATED RESOURCE PLANNING

## \* IRP

- \* The purpose of an integrated resource plan (IRP) is to determine analytically **what resource is in the best interest of consumers** by examining a **full spectrum** of possible **supply-side and demand-side** options and measuring them against a collective set of objectives and criteria. - (emphasis added) NFAT at p 91
- \* This **contrasts with traditional methods of utility resource planning**, which **emphasize supply-side options** such as building new generation, transmission, and distribution facilities. Integrated resource planning also, tends to be more transparent than traditional resource planning. - (emphasis added) NFAT at p 91
- \* By **failing to offer** an analysis of conservation measures as a stand-alone energy resource competitive with other generation resources, Manitoba Hydro presented an **analysis of conservation measures** that was **neither complete, accurate, thorough, reasonable nor sound**. - (emphasis added) NFAT at p 33
- \* **If we use less, will we build less and avoid further impacts?**

# AN ENVIRONMENT FOR CHANGE- THINGS ARE NOT STABILIZING

- ✿ *In fact, we are telling you **it's getting worse**. The environment is constantly changing.* - (emphasis added) Chief Ted Bland, LWR Hearing,

March 26 2015 at pp 1663-4.

- ✿ *Many **riverine ecosystems** are under increasing threat from anthropogenic activities, both in terms of consumptive (e.g. irrigation) and non-consumptive (e.g. **hydroelectric**) uses. Increasing societal demands for water have led to substantial flow alterations of rivers in Canada. Such **flow alteration** can be **directly linked to impacts** on the physical attributes of rivers and cause subsequent ecological changes.* - (emphasis added) Canadian Science Advisory Secretariat,

“Framework for Assessing the Ecological Flow Requirements to Support Fisheries in Canada” (2003) at p 3.

# ENVIRONMENT FOR CHANGE-SUPPORTIVE TRIBUNALS

- ✿ Manitoba Hydro, in cooperation with the Manitoba Government, conduct a **Regional Cumulative Effects Assessment** for all Manitoba Hydro projects and associated infrastructure in the Nelson River subwatershed. - (emphasis added) CEC, BP3, Recommendations 13.2 at p 126
- ✿ **Manitoba requires a new commitment to a clean energy future**...It is now time to determine and build a more diversified resource portfolio. **To achieve this future, Manitoba must invest in new planning tools.** Integrated resource planning is a best practice in many jurisdictions. - (emphasis added) NFAT at p 253
- ✿ The Panel recommends that integrated resource planning become a **cornerstone of a new clean energy strategy** for the Province of Manitoba. - (emphasis added) NFAT at p 253

# ENVIRONMENT FOR CHANGE - ROBUST LAW

- ✿ *Environment Act*  
Reviews



# ENVIRONMENT FOR CHANGE- CHANGING VALUES OFFER ETHICAL AND FINANCIAL INCENTIVE

- ✿ The Wisconsin legislation Act 34 only allow a Wisconsin utility to count a **power purchase** from Manitoba Hydro **as renewable** once the Lake Winnipeg and Churchill River Diversion final licenses had been issued. - (emphasis added) Cormie, LWR Hearing, March 12 2015 at p 516
- ✿ The world around us is evolving and we are learning new things, our **social license** to continue to operate as if we were still back in the 1970s **is changing**, the standards are changing, and I think this is a great opportunity to review all of that. - (emphasis added) Cormie, LWR Hearing, March 12 2015 at p 602
- ✿ An **environmental assessment** must begin sooner rather than later that will need to deal with **overlapping effects** of multiple projects. - (emphasis added) Lutterman (2015) at p 34

# MANITOBA IS NOT ALONE

## \* Operationally

- \* Glen Canyon  
(ecological flows)
- \* Grand River  
(ecological flows)
- \* Lake Ontario 2014  
(lake level variation)

## \* Legislatively

- \* FERC
- \* BC
- \* NWT
- \* Oregon
- \* Yukon
- \* Australian States

# WHAT MIGHT CHANGE TO STATUS QUO LOOK LIKE?

- \* (See Diagram)
- \* Reliability, economy and efficiency in a sustainable manner
- \* Inclusive stewardship approach to existing and planned projects
- \* Transparent and balanced planning and operational decision making
- \* Reconciliation with Indigenous People
- \* Integrated Water Resource Management and Resource Planning
- \* Adaptive Management

# CONSUMERS RECOGNIZE THERE WILL BE CONSEQUENCES TO CHANGING THE STATUS QUO



Consumers want the **information** and the **voice** to make **informed policy choices**.

# WILL IS THE CRITICAL ISSUE

✿ “*I’m just concerned that there might not be the political will in the future to tread in those murky waters, so to speak.*”

- Board Member Harden, April 8 2015, LWR

Hearing at p 2033

# ELEMENT OF WILL

- ✿ To initiate a candid, inclusive and two way conversation
- ✿ To undertake transparent, independent research
- ✿ To listen - upstream, downstream, Hydro and licensors
- ✿ To avoid treating as a PR exercise
- ✿ To be candid about our values, tradeoffs and choices

# ELEMENT OF WILL

- ✿ Not to delay
- ✿ Not to treat Hydro-electric generation as sacrosanct
- ✿ To move towards stewardship and past quiescent licensing roles
- ✿ To move beyond silos and towards integrated water resource management and integrated resource planning
- ✿ To move forward while acknowledging historic and current effects

# WHAT NEXT?

- ✿ *Wouldn't it make sense to have some sort of cooperative body or board comprising of key stakeholders that would work jointly together to develop mutually acceptable options and develop an EIS on a water management plan together?* - Board Member

Yee, April 8 2015, LWR Hearing at p 2027

CAC Recommendations							
	9 months to 1 year	1 year	2 years	2 – 3 years	3 years	5 – 7 years	7 years

### Short Term Recommendations

Engagement on the CEC Recommendations  
(completed by fall or early winter 2015)

Clarify roles and responsibilities for licensing and assessment in Manitoba

Public statement on whether Manitoba Hydro has complied with LWR interim license and clear expectations for future

Host a public workshop on ecological flow assessment

Establish a Multi-Party Task Force on Water Governance

Articulate the role and connections between s.35 consultations and the *Environment Act* and the *Water Power Act* & recognize and reaffirm treaty and Aboriginal rights

Instruct Manitoba Hydro to initiate an open, transparent process to further develop its planning models

### Medium Term Recommendations

Regulate LWR Under the *Environment Act*

### Long term Recommendations

Province assume responsibility for shoreline management policies and legislation

Establish an Environment Auditor

Reform Manitoba's Regulatory framework for water governance

Meaningful ongoing engagement

Manage adaptively

# PRINCIPLES OF SUSTAINABLE DEVELOPMENT SUPPORT RECOMMENDATIONS

## \* **Principles**

- \* 3(1) acknowledge responsibility for sustainability
- \* 3(4) facilitate equitable management of Manitoba's common resources.
- \* 5(a) maintain ecological processes
- \* 6(a) endeavour to repair degradation of the environment

## \* **Guidelines**

- \* 4. Facilitate decision making and planning that is efficient, timely, accountable and cross-sectoral

# INTENT OF ENVIRONMENT ACT SUPPORTS RECOMMENDATIONS

- ✿ *Environment Act*
- ✿ 1(1)(b) provide for the environmental assessment of projects which are likely to have significant effects on the environment
- ✿ **When it comes to Hydro legacy Projects, are the SDA and EA more than platitudes?**

# IS THIS ACCURATE?

- \* *The licensing process continues to react to evolving societal expectations regarding issues of stewardship of the resource and equity issues for both locally impacted residents and Manitobans as a whole.* -Water Stewardship online

# THE HEARING RECORD IS NOT ROBUST

- ✿ Not robust hearing (downstream impacts, potential upstream effects, climate change or impacts human development)
- ✿ Limited hydro filing
- ✿ Participant support not robust
- ✿ Care should be taken in making factual findings

# THANK YOU!

- ✿ CEC Staff
- ✿ Participant Status
- ✿ Effort to Make Process Meaningful