

File No. A113-30-08030

IN THE COURT OF APPEAL

IN THE MATTER OF: *The Public Utilities Board Act, CCSM, c P280*

AND IN THE MATTER OF: The Public Utilities Board's "Needs for and Alternatives To (NFAT)" Review of Manitoba Hydro's Preferred Development Plan to Construct the Keeyask and Conawapa Generating Stations and Associated Transmission Facilities

AND IN THE MATTER OF: An intended appeal from Order No. 67/13 of the Public Utilities Board of Manitoba dated June 11, 2013, and Order No. 91/13 of the Public Utilities Board dated August 9, 2013, which reconsidered Order No. 67/13.

BETWEEN:

MANITOBA HYDRO-ELECTRIC BOARD

(Applicant) Respondent,

-and-

THE PUBLIC UTILITIES BOARD OF MANITOBA

Respondent

-and-

CONSUMERS' ASSOCIATION OF CANADA (MANITOBA BRANCH), GREEN ACTION CENTRE, MANITOBA INDUSTRIAL POWER USERS GROUP, MANITOBA KEEWATINOWI OKIMAKANAK INC., MANITOBA METIS FEDERATION

(Interveners) Respondents,

-and-

PIMICIKAMAK

(Applicant Intervener) Applicant

AFFIDAVIT OF DARWIN PAUPANAKIS

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(Interveners) Respondents,

-and-

PIMICIKAMAK

(Applicant Intervener) Applicant

AFFIDAVIT OF DARWIN PAUPANAKIS

I, DARWIN PAUPANAKIS, of Cross Lake, in the Province of Manitoba, Secretary to the Four Councils of Pimicikamak Okimawin, MAKE OATH AND SAY (or AFFIRM) THAT:

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1. I am the Secretary to the Four Councils of Pimicikamak Okimawin, which is Pimicikamak's government. As such, I am the holder of Pimicikamak laws.
2. I was appointed by the Executive Council of Pimicikamak Okimawin to oversee Pimicikamak's intervention into the Public Utility Board's (the "PUB") "Needs for and Alternatives To" Review of Manitoba Hydro's Preferred Development Plan to Construct the Keeyask and Conawapa Generating Stations and Associated Transmission Facilities (the "NFAT Review").
3. As such I have knowledge of the matters hereinafter deposed to, except where specifically expressed to be on the basis of information and belief, in which case I believe them to be true.

Nature of Pimicikamak

4. The correct name of the Applicant for Leave to Appeal is Pimicikamak, not Pimicikamak at Cross Lake Manitoba as the PUB refers to us in its Order 67/13.
5. Pimicikamak is an aboriginal people as referenced in section 35 of Canada's *Constitution* and is the party that entered into Treaty 5. It is the holder of aboriginal and treaty rights.

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6. Pimicikamak remains a signatory to the Northern Flood Agreement.
7. Many of Pimicikamak's citizens live in and around Cross Lake, Manitoba. But our traditional territory extends throughout the Nelson River system, and includes the areas of the proposed Keeyask and Conawapa Generation Stations, which are part of Manitoba Hydro's Preferred Development Plan being reviewed by the PUB in the NFAT Review.
8. Cross Lake First Nation is a band under the *Indian Act* and, under Pimicikamak laws, is subordinate to Pimicikamak, acting only as the administrator of *Indian Act* issues and federal programs and services.
9. The individuals who comprise Pimicikamak as its citizens, and those who comprise the Cross Lake First Nation as its members, are more or less the same. It is the legal capacities of each of Pimicikamak and the band that are different.

Pimicikamak's Unique Perspective and Evidence

10. Pimicikamak and its citizens have been profoundly impacted by the existing hydro development that has occurred in Northern Manitoba and on Lake Winnipeg. The effects of the existing hydro development

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on the environment and Pimicikamak are ongoing and are far reaching in our territory.

11. The ways that Pimicikamak and Pimicikamak citizens have been impacted by the existing hydro development include:

- (a) The water levels in our territory fluctuate, which causes erosion throughout our territory and makes travelling through our territory dangerous;
- (b) The water fluctuates at the times that Pimicikamak citizens want to use the land the most, for example during duck, goose, and moose hunting seasons, which then disrupts our ability to use the land and our traditional way of life;
- (c) Many of our young people do not go out on the land and exercise their inherent rights by fishing, hunting, and trapping today because it is not worthwhile given the risk of loss of life if we go out on the land and our fear of the environment. Our land has gone from clean and usable before the hydro development to scary and unusable today; and
- (d) This disruption to the use of our land has a ripple effect on the state of our people. The value we get when we exercise our

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inherent rights has been diminished. Many of our people also have post-traumatic stress disorder because of the impacts and destruction caused by the hydro development that we witness every day.

12. Pimicikamak is likely the group that has been the most effected by hydro development in Northern Manitoba. As a result, we have a unique perspective on and first-hand experience with the costs of hydro development, which we would bring to the PUB in the NFAT Review.
13. I am hearing from Pimicikamak citizens that they are very concerned about the potential impacts of the proposed Keeyask and Conawapa Generation Stations. Pimicikamak citizens are very scared because our ecosystem is so delicate given the impacts that have already occurred from hydro development. Our citizens are telling me that they are worried that any impacts caused by new hydro development, no matter how little, have the potential to cause a chain reaction in our delicate ecosystem. They are scared that even a minor impact with kill off what little is left of our environment.
14. Since hydro development began in Northern Manitoba, Pimicikamak has been collecting evidence obtained by:

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- (a) observing the effects of hydro development in our territory;
- (b) engaging with experts on issues related to hydro development, and
- (c) participating in education campaigns in Manitoba and the United States on the impacts of hydro development.

This evidence would inform our submissions to the PUB in the NFAT Review.

15. We are in a unique position compared with other interveners in the NFAT Review because we are an Aboriginal Nation and a community that has been profoundly impacted by hydro development.

Manitoba Keewatinowi Okimakanak Inc.

16. Pimicikamak is not a member of Manitoba Keewatinowi Okimakanak Inc. ("MKO"). At the Pre-Hearing Conference, issue was made about whether or not Pimicikamak is a member of MKO. Michael Anderson, of MKO, clarified at the Pre-Hearing Conference that Pimicikamak is not a member of MKO.
17. Pimicikamak is a distinct people with a unique culture and perspective. Pimicikamak is also the holder of inherent aboriginal and

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treaty rights. MKO does not and cannot represent the rights, interests, or views of Pimicikamak.

18. I have reviewed the membership list of MKO, which is available on MKO's website. Attached to this my affidavit and marked as Exhibit "A" is a copy of MKO's membership list.
19. The members of MKO include the four First Nations who are partners in the Keeyask Generation Station project, Tataskweyak Cree Nation, War Lake First Nation, Fox Lake First Nation and York Factory First Nation.
20. I am concerned with the capacity of MKO to participate in the NFAT Review because I understand that four of MKO's senior staff members are on paid leave while a review and audit is conducted of the organization.

Application for Intervention in the NFAT Review

21. Sometime on or after April 25, 2013, I received a copy of the PUB's notice for a pre-hearing conference to be held on May 16, 2013 (the "Pre-Hearing Conference") for the NFAT Review (the "Notice"). The Notice also stated that any interested groups would have to submit an

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application for intervener status in the NFAT Review by May 14, 2013.

22. After receiving the Notice, Pimicikamak had to prepare our application for intervener status and prepare our oral presentation for the Pre-Hearing Conference. This preparation included:

- (a) obtaining advice from legal counsel and technical consultants on the scope of the NFAT Review and our application for intervention;
- (b) a meeting of Pimicikamak's Executive Council to decide what issues in the Terms of Reference we wanted to address;
- (c) seeking expert witnesses and clarifying what they would provide evidence on;
- (d) getting assistance from Whelan Enns Associates Inc. to complete the application for intervener status; and
- (e) preparing an oral presentation for the Pre-Hearing Conference.

23. Pimicikamak has minimal resources to put towards the NFAT Review process. To date, Pimicikamak has not received funding from Manitoba, Manitoba Hydro or the PUB to prepare its application to

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intervene in the NFAT Review. Pimicikamak has asked Manitoba Hydro to contribute to some of our costs incurred related to the NFAT Review, but to date Manitoba Hydro has refused to pay those costs.

24. The application form the PUB supplied to applicants for intervener status did not contain sufficient space to allow us to set out all of the issues we intended to cover if granted intervener status in the NFAT Review and why we should be granted intervener status.
25. Pimicikamak submitted an application for intervener status in the NFAT Review on the supplied form to the PUB. I understand that a copy of our application will form part of the PUB's record in this case.
26. I attended the Pre-Hearing Conference and made an oral presentation, along with Pimicikamak's consultant, Gaile Whelan Enns.
27. The PUB gave Manitoba Hydro about 90 minutes to make its oral presentation. But, the PUB only gave Pimicikamak 10 minutes to make our oral presentation in support of our application. Because we only had 10 minutes, my submissions at the Pre-Hearing Conference did not cover all of the issues Pimicikamak intended to address as an Intervener. I also did not have enough time to explain in detail why

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Pimicikamak would present unique and useful evidence and perspectives to the PUB.

28. At the Pre-Hearing Conference, the PUB gave Manitoba Hydro the opportunity to respond to our application for intervention in the NFAT Review. However, the PUB did not give Gaile Whelan Enns or me an opportunity to reply to Manitoba Hydro's response.
29. Following the Pre-Hearing Conference, Pimicikamak instructed our legal counsel, Kate Kempton, to write a letter to the PUB setting out Pimicikamak's concerns with the intervener application process and the Pre-Hearing Conference and to provide the PUB with more information on Pimicikamak because there was confusion at the Pre-Hearing Conference about who we are. I understand that a copy of the May 29, 2013 letter Kate Kempton sent to Hollis Singh, the Executive Director and Board Secretary of the PUB, will be part of the PUB's record in this case.
30. Kate Kempton's May 29, 2013 letter to Hollis Singh set out the information contained in paragraphs 4-11 of my affidavit.

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31. Following the Pre-Hearing Conference, the PUB issued Order No. 67/13. I received a copy of Order No. 67/13 from Josee Lemoine, of the PUB, via email on or about June 11, 2013.

Reconsideration Application

32. Pimicikamak decided to apply to the PUB and ask it to review and vary its Order No. 67/13 (the "Reconsideration Application"). We submitted our Reconsideration Application to the PUB on or about June 25, 2013. I understand that our Reconsideration Application will form part of the PUB's record in this case.
33. On August 27, 2013, Pimicikamak's legal counsel, Stephanie Kearns, advised me that she had learned, after calling the PUB's lawyer that day, that the PUB had issued Order 91/13 back on August 9, 2013, which dismissed Pimicikamak's Reconsideration Application. I had not been served with Order No. 91/13.
34. After August 27, 2013, Pimicikamak's newly elected Executive Council decided to seek leave to appeal Order No. 67/13 and Order No. 91/13. Pimicikamak has continued to want to appeal those orders since that decision was made.

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SWORN before me at the Town of
Cross Lake, in the Province of
Manitoba, on the 25 day of
September, 2013.

Christie Scott

Commissioner of Oaths
(or as may be)

CHRISTIE SCOTT Scott
A Commissioner for Oaths
In and For The Province of Manitoba

My Commission Expires: April 27, 2014

Darwin Paupanakis

DARWIN PAUPANAKIS

Manitoba Keewatinowi Okimakanak (MKO)

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We'd love to hear from you... **SEND US YOUR FEEDBACK!****MANITOBA KEEWATINOWI OKIMAKANAK INC.**

MKO Grand Chief: David Harper - MKO Executive Director: David Monias
Head Office Administration Office Winnipeg Office
 Nisichawayasihk Cree Nation 200 - 701 Thompson Drive 6th Floor, 338 Broadway Avenue
 Nelson House, MB R0B 1A0 Thompson, MB R8N 2A3 Winnipeg, MB R3C 0T2

Toll Free: 1-800-442-0488 Phone: (204) 677-1600 Phone: (204) 927-7500
Fax: (204) 778-7655 Fax: (204) 927-7509
Toll Free: 1-800-442-0488 Toll Free: 1-800-442-0488

MKO Member First Nations & Tribal Council Affiliations**Independent First Nations**

		Phone	Fax
* Chief Jerry Primrose	NISICHAWAYASIHK CREE NATION	Nelson House, MB R0B 1A0	(204) 484-2332(204) 484
* Chief Ron Evans	NORWAY HOUSE CREE NATION	Norway House, MB R0B 1B0	(204) 359-6786(204) 359
* Chief Garrison Settee	PIMICIKAMAK CREE NATION	Cross Lake, MB R0B OJO	(204) 676-2218(204) 676
* Chief Jack Dysart	O-PIPON-NA-PIWIN	Box 25, South Indian Lake, MB R0B 1N0	(204) 374-2271(204) 374

Keewatin Tribal Council Members

		Phone	Fax
Chief Leo Dettanikkeaze	NORTHLANDS FIRST NATION	Lac Brochet, MB R0B 2E0	(204) 337-2270(204) 337
Chief Louisa Constant	YORK FACTORY FIRST NATION	York Landing, MB R0B 2B0	(204) 341-2180(204) 341
Chief Timothy Muskego	BUNIBONIBEE CREE NATION	Oxford House, MB R0B 1C0	(204) 538-2727(204) 538
Chief Michael Sewap	BARREN LANDS FIRST NATION	Brochet, MB R0B 0B0	(204) 323-2300(204) 323
* Chief Gilbert Andrews	GOD'S LAKE FIRST NATION	God's Lake Narrows, MB R0B 0M0	(204) 335-2130(204) 335
Chief Michael Yellowback	MANTO SIPI CREE NATION	God's River, MB R0B 0N0	(204) 366-2011(204) 366
Chief Walter Spence	FOX LAKE CREE NATION	Box 369, Gillam, MB R0B 0L0	(204) 486-2463(204) 486
Chief William Miles	SHAMATTAWA FIRST NATION	Shamattawa, MB R0B 1K0	(204) 565-2041(204) 565
Chief Michael D. Garson	TATASKWEYAK CREE NATION	Split Lake, MB R0B 1P0	(204) 342-2045(204) 342
Chief Betsy Kennedy	WAR LAKE FIRST NATION	Ilford, MB R0B 0S0	(204) 288-4315(204) 288
Chief Peter Thorassie Jr.	SAYISI DENE DENESULINE NATION	Tadoule Lake, MB R0B 2C0	(204) 684-2084(204) 684

Swampy Cree Tribal Council Members

		Phone	Fax
Chief Harold Turner	MISIPAWISTIK CREE NATION	Box 500, Grand Rapids, MB R0C 1E0	(204) 639-2485(204) 639
Chief Nelson Genaille	SAPOTAWAYAK CREE NATION	Pelican Rapids, MB R0B 1L0	(204) 587-2012(204) 587
* Chief Arlen Dumas	MATHIAS COLOMB CREE NATION	Pukatawagan, MB R0B 1G0	(204) 553-2090(204) 553
Chief Andrew Colomb	MARCEL COLOMB FIRST NATION	Lynn Lake, MB R0B 0W0	(204) 356-2439(204) 356
Chief Michael Constant	OPASKWAYAK CREE NATION	Box 10880, Opaskwayak, MB R0B 2J0	(204) 627-7100(204) 627
Chief Albina Brass	WUSKWI SIPIHK CREE NATION	Box 65, Birch River, MB R0B 0E0	(204) 236-4201(204) 236
Chief Clarence Easter	CHEMA WAWIN CREE NATION	Easterville, MB R0C 0V0	(204) 329-2161(204) 329
Chief Phillip Buck	MOSAKAHIKEN FIRST NATION	Moose Lake, MB R0B 0Y0	(204) 678-2157(204) 678

Island Lake Tribal Council Members

		Phone	Fax
Chief Alex McDougall	WASAGAMACK FIRST NATION	Wasagamack, MB R0B 1Z0	(204) 457-2337(204) 457
Chief Buddy Brass	GARDEN HILL FIRST NATION	Island Lake, MB R0B 0T0	(204) 456-2085(204) 456
* Chief Eugene Wood	ST. THERESA POINT FIRST NATION	St. Theresa Point, MB R0B 1J0	(204) 462-2535(204) 462
Chief Les Harper	RED SUCKER LAKE FIRST NATION	Red Sucker Lake, MB R0B 1H0	(204) 469-5041(204) 469

Recognized by the MKO Chiefs in Assembly as a First Nation and as a Member of MKO

		Phone	Fax
Headman Gordon Bighetty Sr.	PICKEREL NARROWS CREE NATION	Box 672, Leaf Rapids, MB R0B 1W0	(204) 473-2492(204) 473
Headman Mathew Morin	WHITE WATER RESERVE	Box 130, Sandy Bay, SK S0P 0G0	(306) 754-2165(306) 754
Headman Floyd North	SHERRIDON FIRST NATION	Sheridon, Manitoba R0B 1L0	(204) 468-2136

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THIS IS EXHIBIT A TO THE
AFFIDAVIT OF Darwin Paukanakis
SWORN Sept 25 2013

Christie Scott
A COMMISSIONER ETC.

CHRISTIE SCOTT *used*
 A Commissioner for Oaths
 In and For The Province of Manitoba
 My Commission Expires: April 27, 2014

Manitoba Keewatinowj Okimakanak (MKO)

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MKO territory, including First Nations & Tribal Councils
Treaties
History

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