

Consumers' Association of Canada Association des consommateurs du Canada Manitoba

2016-12-20

Expert Panel Review of Environmental Assessment Processes

Dear Panel Members:

Thank you so much for the opportunity to respond to the questions you asked when I spoke with you on November 16th in Winnipeg.

Regional Cumulative Effects Assessment in Manitoba

As I mentioned in response to your question, a regional cumulative effects assessment (RCEA) of the Nelson River watershed is currently being conducted jointly by the Province of Manitoba and Manitoba Hydro. I believe I said that the requirement to conduct the RCEA was in the license for Bipole III, but it is actually in the Minister's covering letter that accompanied the license. Here is the link to the Government of Manitoba website: <http://www.gov.mb.ca/sd/eal/registries/5433bipole/cover-letter-aug14.pdf>

Consumers or the General Public

I believe I answered this question rather poorly when we spoke in person on the 16th. Consumers, in their various consumer roles (purchasing, investing, and paying taxes, to name a few), pay for the cost of all projects that receive environmental assessment. They are the largest single policy community in number, and as I mentioned, often the EA review process is their only proxy for their right to choose. CAC Manitoba believes that the word *consumer* conveys that important role in a way that the phrase *general public* never could.

Manitoba Clean Environment Commission versus the Manitoba Public Utilities Board

Let me begin by stating that one major difference between the Clean Environment Commission (CEC) and the Public Utilities Board (PUB) is that while the CEC's mandate allows them to make recommendations to the Minister of Conservation, they do not have the power to issue orders directly to the proponent (such as licenses, etc.). The PUB is a regulator that does make orders on matters relating to rates, which sometimes includes an environmental component (in the case of demand-side management, for example). However, when it comes to capital projects (and a few other topics), the PUB makes recommendations to Cabinet, rather than orders to the proponent.

With that in mind, I will answer your question regarding a comparison of the Clean Environment Commission (CEC) and the Public Utilities Board (PUB) with respect to two distinct forms of consumer participation:

- The funded intervention of organizations representing the consumer interest, like CAC Manitoba
- The participation of individual consumers representing their own concerns

Individual Consumer Participation

I will compare the two tribunals, with respect to individual consumer participation, on the following:

- Provision of notice that the proceeding is taking place
- Timing and scheduling of oral presentations
- Resources available for consumer presenters
- Assistance available to help consumers prepare to make effective presentations
- Submitting written comments
- Consumers as expert witnesses

Providing Notice: Both the CEC and the PUB require the proponent to place an ad in the Winnipeg Free Press indicating that a proceeding is taking place, what will be addressed, and more recently, when and how individual consumers can participate. Unfortunately, in my opinion, neither tribunal does this in a manner that is likely to attract a large number of consumers. Notices are printed in largely technical language that leads the reader to look past them. The heading of notices does not let the average consumer know that this information is for them. Plain language notices, printed in the news section of the paper, would be more useful.

Notices of upcoming proceedings appear on the websites of both tribunals, and often on the websites of the proponents. Unfortunately, consumers do not usually canvass these sites on a regular basis unless they know something is coming up and they are watching for it.

Timing and scheduling: Due in part to the way in which notices are printed and their location, consumers usually find out about a proceeding when the media picks it up. That might be when the proponent issues a news release in advance of a pre-hearing conference or meeting, or when an intervenor like CAC Manitoba issues a release in advance of the first day of the proceeding. Unfortunately, the deadlines for consumers to register their intention to make a presentation is long past by the first day of the hearing. Both the CEC and the PUB suffer from this problem. The deadline to make a presentation should be during the proceeding, or preferably near the end of the proceeding, enabling the consumer to hear about it, attend it to find out what the issues are that will impact them, and THEN sign up to make a presentation or provide comments.

To the credit of both tribunals, I will note that although they have early deadlines for participation, they rarely refuse any consumer who wishes to make a presentation at any point.

The timing of available slots for presenters is an issue for some consumers. The CEC is more likely to plan for evening and day slots, while the PUB usually schedules presenters during daytime hours. Attending during daytime hours is possible for some consumers, but not for all.

Resources available for consumer presenters: There are usually no financial resources available for consumer presenters, but both the CEC and the PUB offer photocopying services and access to projection and other forms of presentation technology. The CEC offers French and English translation. The PUB offers hearing devices for those with hearing impairment. Both hold their proceedings in physically accessible locations.

Assistance for consumers preparing comments and presentations: Neither tribunal provides assistance for those consumers who wish to make presentations, but may not have the knowledge or skills to do so. Both post information filed by the proponent (such as the environmental impact statement) on their site, but in a province where 40% of consumers lack sufficient English language literacy skills to function fully in the marketplace, and where these are often the most vulnerable and most affected consumers with regards to a particular project, this is not sufficient.

Occasionally the PUB will put consumers in touch with CAC Manitoba, or our legal counsel, for some background information or some guidance in developing a presentation. Prior to the CEC review of Bipole III, CAC Manitoba and the Green Action Centre conducted workshops in Manitoba to assist potential participants with background information and some basic guidelines for making presentations. These workshops were evaluated positively by participants, and we believe increased the number of consumers prepared to make presentations.

It is intimidating enough for a consumer, who does not make public presentations on a regular basis, to courageously step in front of a panel of very well informed tribunal members and make a presentation. Insufficient background information and lack of experience in public speaking can make it completely overwhelming.

CAC Manitoba believes that some type of educational resources to assist consumers who wish to participate, or learn more about, an upcoming proceeding would greatly enhance the quality and number of individual consumers who would be prepared exercise their right to a voice on these issues.

Submitting written comments: Both the CEC and the PUB accept written comments from participants. While there may be deadlines for these, the practice has been for both tribunals to accept them until a proceeding is adjourned. These are made available to all participants.

Consumers as expert witnesses: Consumers across the board have one expertise that could be useful to both the CEC and the PUB during many proceedings, and that is their knowledge of how a project, change in plan, or issue affects their own lives and that of their families. In the last two years, the PUB has allowed CAC Manitoba, working with partner organizations, to call two panels of consumers as expert witnesses, one on payday loans (which I recognize is not an EA issue, but I use it as illustration), and one on potential increases to electricity rates during the Need For and Alternatives To hearing on Keeyask. This was a new experience for the PUB when the first panel presented at the NFAT, but CAC Manitoba believes that the information gained from these expert witnesses was much more valuable to the PUB than any number of 10 to 15 minute presentations would have been. Consumers on the panel were prepared to discuss their personal situations in depth, and with dignity.

Participation of organizations representing the consumer interest

The CEC and the PUB each have their own set of rules of practice which differ in some ways, including the provision for cross-examination of witnesses, for pre-ask questions (interrogatories), etc. I will compare the CEC and the PUB, with respect to the participation of organizations like CAC Manitoba, on the following:

- Opportunity for input on scope of the proceeding
- Funding of non-profit organization participation
- Which voices are heard

Input on scope: The CEC, or rather the Minister of Conservation, offers the opportunity, on some proceedings, for input on the scope of a proceeding. However, by the time potential participant organizations learn about the proceeding, the deadline for comments on scope is usually long past. Once again, proper and accessible notice is vital to our participation.

The PUB does not have the same scoping input process, but does discuss the scope of a particular proceeding at the schedule pre-hearing conference. Only those parties who have applied for status as intervenors are invited to this conference.

The opportunity to have input on the scope of a proceeding is a very important aspect of participation and policy community engagement.

Funding of non-profit organization participation: Both the PUB and the CEC offer funding to non-profit organizations representing different policy communities, who apply for status as intervenors (PUB) or Participants (CEC). This is vital to groups like CAC Manitoba making a valuable, effective contribution to the proceeding, and levels the playing field between proponents and intervenors, enabling fairness and balanced representation.

The PUB asks for a budget at or after the pre-hearing conference from those intervenors who have already been granted status. Then they evaluate the value of that group's participation and input into the proceeding, and decide if they will pay all or part of the organization's costs. The downside of this, for groups like CAC Manitoba, is that all experts and legal counsel who work for us must be prepared to work on contingency that they may not be paid at all, or may not be paid in full. The PUB has just recently begun to offer interim funding, so that experts and legal counsel can receive partial payment prior to the end of the proceeding.

The PUB has a maximum hourly rate for experts, and another for legal counsel.

The CEC asks for a budget right in the Participant application form. In our experience, the CEC has sometimes suggested informal caps (per group) on funding, which we assume is dependent on the total amount of funding available for a proceeding (based on the discretion of the provincial Minister of Conservation), and the number of groups they think will participate. In our experience, these caps are not usually adjusted, regardless of the quality of input or research submitted. Organizations that are granted funding sign a contract with the Province, more similar to grant funding than a cost award

system used by the PUB. The CEC contract gives the Minister of Conservation the right to deny payment upon certain conditions, such as failure to complete the work outlined in the agreement.

Which voices are heard: Both the PUB and the CEC often have to make difficult decisions about which groups receive funding, and can therefore make a credible representation of their groups' interest, and which groups do not. As I mentioned on the 16th, a group's experience, past record in funded proceedings, and the research plan in their application should be key to decision-making, in CAC Manitoba's view. However, the other component I mentioned, which is that all relevant voices should be heard, is also very important. Often, we have seen both tribunals try to encourage coalitions of groups. Sometimes this is reasonable. Sometimes a coalition between two groups can mute the important voice of one group or another, to the detriment of the, proceeding for all participants.

In closing, I would like to note that CAC Manitoba feels grateful for the quality of transparent, meaningful, public processes, both before the PUB and the CEC, which we have in Manitoba, when we hear from our colleagues in other provinces. While there may be aspects of both processes that we would like to see improve, we are mindful of the fact that organizations like ours can access the information, financial resources, and expertise to make a meaningful contribution in Manitoba, bringing the consumer voice to the decisions of these tribunals.

I have attached a copy of my comments from the 16th for your convenience.

On behalf of CAC Manitoba, I would like to thank you for the opportunity to respond to your helpful questions, and to share some comments with you in person last November. For organizations like ours, and for individual consumers, the opportunity to speak directly to decision-makers, or those who have the ear of decision-makers, is a rare and highly-valued privilege.

Sincerely,

Gloria Desorcy
Executive Director
CAC Manitoba