PEGUIS FIRST NATION POSITION ON BILL C-69

Submitted on April 12, 2019 at Winnipeg Manitoba
Contrary to the inclusiveness policy of the Federal Government, the Peguis First Nation was not included in the list of presenters to the hearings at Winnipeg for input into Bill C-69. Despite this oversight, Peguis First Nation would take this opportunity to include our input into this process.

At first glance, there appears to be improvements in the environmental and indigenous aspect of reviewing energy related projects in Canada. The Canadian Environmental Assessment Act is being replaced by the Impact Assessment Act and the National Energy Board is being replaced by the Canadian Energy Regulator.

Under the proposed IAA (Impact Assessment Act) the new legislation purports to go beyond environmental issues to a wider range of effects that include impacts to health, gender, climate change, the economy, and the rights of indigenous peoples. The IAA is required to consult with Indigenous Peoples that are affected by the project. The scope of the consultations are not clearly defined. It should be noted however, that the consultation must not be confined or restricted to the near proximity of the project. This would offend mobility rights, harvesting rights, and rights to traditional lands by Indigenous Peoples. The Federal Crown has the duty to consult and accommodate First Nation People and it is presumed that IAA or the Impact Assessment Agency would be the crown agency to discharge that duty. The Impact Assessment Agency must have one indigenous person on the agency. The Agency will establish a research or advisory body with one indigenous person on that body.

Under the Canadian Energy Act (CER) at least one board of director must be Indigenous and one full time commissioner under this board be also Indigenous.

Peguis First Nation takes the position that these new Acts and following regulations are an improvement to the existing regime on energy, environmental, and indigenous concerns.

In concluding our remarks, it should be noted that:

1. The articles found in UNDRIP must be incorporated into these Acts and regulations.
2. The duty to consult must be meaningful and be at the high level.
3. The duty to accommodate must always go hand in hand with the duty to consult.
4. The Acts must be proactive in protecting TLE lands and traditional territories.
5. Projects must not jeopardize the rights of Indigenous Peoples to Aboriginal Title.
6. The Acts must allow or past damages to aboriginal peoples’ health, land, and dispossessions.

All of which is respectfully submitted.
March 30, 2018

Thomas Bigalow
Clerk of the Standing Committee
Environment & Sustainable Development
Ottawa On Canada

Dear Mr Bigalow,

Good day, my name is Mike Sutherland and I am the Director of the Consultation & Special Projects unit of Peguis First Nation located in the Interlake Region in the Province of Manitoba.

First off let me give a bit of history on Peguis First Nation, we are of Ojibway and some Cree decent, our original home land was and still is on the banks of the Red River just north of Winnipeg Mb.

We are just over 12000 strong in membership and steadily growing, we have approximately 5000 Residence on our main reserve in the heart of the Interlake Region in Mb and around 5000 more spread throughout Winnipeg, Selkirk and various parts of Southern Mb. The rest are spread out throughout Canada and North America.

Peguis First Nation has one of the biggest traditional territories in central Canada and our history shows that our migration route was from the Red River Region Just North of Winnipeg, Mb to Red lake Minnesota, to Garden River Ont. and Peguis has family trees connecting them to these communities. Peguis himself would also travel from the Red River region in Mb North to Hudson Bay to trade on the ships that would anchor in Churchill back in the 1800’s.
Peguis is also signatory to the signing of Treaty 1, but even before treaty 1, Chief Peguis himself sign the Selkirk treaty of 1817. We have along history of treaty relationship here in Mb and we were also very influential in Mb becoming a part of confederation.

Peguis is also a Treaty Land Entitlement community with the ability to add another 166,000 acres to its total land base. We are in the process of examining how Bill C-69 will affect our ability to continue to acquire crown and private land, given the opportunity to present we will have a full report by then.

I will now move forward as to why we are presenting this report to the standing committee in regards to this whole process.

Peguis applied for and received the opportunity to provide a presentation to the Panel that was travelling through out Canada just over 18 months ago hearing presentations and the CEAA 2012 changes and the Modernization of the NEB.

My presentation at the time consisted of certain areas of concern Peguis had in dealing with Sec 35 consultations and Environmental hearings such as Provincial CEC and Federal NEB hearings and a couple of myths that directly affect how consultations do not do our first nations communities just in these processes.

You see more times then we wanted to see the Govts of the day usually provided us with the opportunity for a Sec 35 consultations after the Environmental hearings were complete? This we believe is not a fair process, as the Environmental Hearings are done in order for the CEC or NEB board to see if projects had any environmental affects or affected the aboriginal populations that utilized project areas.

If Sec 35 was done after the CEC or NEB hearings are over how do the reports that come out of a Sec 35 Consultation come into play in the decision making process the CEC or NEB boards have to consider if no Sec 35 till after the fact?

Sec 35 consultation will provide the community with insight of the project and will give the opportunity for the community to respond to industry and government as to how the project will affect their use of the land. This in turn can be used as information for CEC or NEB boards to hear after an Environmental hearing is complete if the Sec 35 consultation is done before an Environmental hearing.
We also feel that if TLU’s (Traditional Land Use Studies) are offered to local Aboriginal communities before a project gets under way and even before a Sec 35 process is initiated then even more pertinent and in-depth information plus mapping information can be gathered which will provide much more information to utilize in the consideration of project approvals.

“The Myths”

Another area of concern we had and presented to the panel was “Proximity”, many times Aboriginal Communities have been left out of Sec 35 Consultations and Environment hearings because they we not close to project area? This is totally wrong in its perception by Government, Industry, and Regulatory bodies.

For eg. Trans-Canada Pipeline in its route though MB, as it passed in to Mb from its eastern point passes directly at the southern tip of the Whiteshell Provincial Park. The park itself is an area of historical significance for First Nations people throughout Manitoba and central Canada. There are approximately 9 Petro-glifs in the Whiteshell region of Mb and most are approximately 10,000 years old or older.

Each of these sights are sacred to the Anishinabe people here in MB or as our people call this Manitoahbe (Centre of Creation). These sites have been spiritual gathering sites for our people for the last 10,000 years and are still used extensively today.

This whole region which is the edge of the Precambrian Shield is also a wild rice harvesting area and has been for thousands of years. In the Trans-Canada Pipeline process approximately 20 plus First nations in Mb were notified of the Pipeline project coming through? In reality every one of the 63 First Nation Community in Mb and North Western Ontario should have been notified as every FN community with in these Provinces would have or still travel to this region for ceremonial or rice harvesting purposes. Yet most were left out because many of the communities are great distances away? My point in question “Proximity is a myth”

The second area of concern regarding myths is “Private land”, you see Govt, Industry, Regulatory bodies think that private land does not come into play with First Nations rights, histories, or customs. In fact nothing can be further from the truth, first of all many private land owners recognize that they land they possess was once traditional territory for one for First Nation or another and still allow our people to practice their traditional pursuits on their land.
The other very important factor are the treaties, Treaty 1 and Treaty 4 more so speak about the "Depth of the Plow", which means this is all our fore-fathers ceded in negotiating their treaties. This means, for example that all the pipelines that lay in the ground through-out Canada lay in Traditional Territory of one or several First Nations Communities.

These issues I presented on when the panel that was travelling through-out Canada came to Winnipeg last year.

With the second round being offered I would like to include another area that is subject to a lot of conversation and opinion when it comes to looking at the pros and cons and benefits of a major project.

What I am referring to is "Socio & Economic Impacts of a project"? Unless a first nation community has an IBA or an Accommodation measure with the proponent there are no real benefits for any First Nations communities in a project area.

In fact every one else will benefit from a project except the First Nations peoples that have Aboriginal Title to the lands affected by a project. And yes There maybe a few Aboriginal jobs or a procurement process maybe in place, but when the project has come and gone there is usually no significant changes to First Nations communities affected by a project? There is still high unemployment rates and their socio & economic conditions haven’t really improved. In fact 60-80% of the local First nations people and families living in those communities will be under the national poverty line.

There has to be forms of revenue sharing processes brought into place, as everyone else makes money on a project but the people that are directly affected and further to that they loose opportunity to continue to practice their traditional pursuits on the land. In some instances the land or sources of water are destroyed and not available to provide sustenance to the local FN peoples after the project is complete and long gone.

"The Bills"
The bills that are being passed under Bill C-69 need to be further examined and more extensive consultation has to happen? Government, Industry, and regulatory bodies especially decision makers with in these organizations need to become educated on how these legislations will affect our people and what we will lose from a project when it comes to the use of the land, water and environment.
The Navigable Waters act, will definitely have a negative affect for First Nation communities here in Manitoba, the Harper Govt made changes to DFO prior to the CEAA 2012 changes and as it is still today the Feds only have the responsibility of 2 bodies of water in Mb and 2 major rivers and these are: Lake Manitoba, Lake Winnipeg, the Churchill River and Nelson River.

There are 100,000 lakes in Mb not counting all the rivers and streams, First Nations in Mb do not have a good working relationship with the Province when it comes to “First Nations Rights to Water”. In fact First Nations never gave up the right to fresh water and you will not find that in any of the numbered treaties here in MB where we extinguished our right to water, yet the Provincial Government does not recognize our right to water.

With the province having full jurisdiction over water here in Mb how can our people be sure that right will ever be recognized by the Province with the changes to these acts?

Here are a couple of Provincial Legislations that have negative affects on our rights to water.

The “Winnipeg Act” gives the Province the ability to annually dump raw sewage from the city treatment plants without being treated directly into the Red River letting the effluents flow down river into the water tables north of the City of Winnipeg directly into Lake Winnipeg? Peguis home land is just north of Winnipeg and we still have a huge population living on the banks of the Red River.

The “Shoal lake act” of 1908 was passed to to give the city of Winnipeg to access water from Shoal Lake and to regulate the flow of water from Shoal lake to the city of Winnipeg, as you see Shoal lake is Winnipeg’s source of drinking water. From what we have been told that the flow rate under the environmental license the city of Winnipeg has to access water from Shoal lake has never been followed.

There are Channels to be built in MB which can result in Lake Manitoba and Lake St Martin becoming reservoirs for Lake Winnipeg and MB Hydro? Yet the guise that is being used to build these channels are supposed to eliminate flooding in non-aboriginal communities? Yet the first channel built in 2011 resulted in many first nations communities flooding more extensively before the emergency channel was built?
You see just this one legislative change will have a more detrimental affect on the lives of Aboriginal people and their communities here in Mb because the Provincial Government does not recognize our rights to water.

Peguis would like to be sure that there are more extensive consultations to take place before the changes reflected in Bill C-69 happen.

There are many major projects that happen throughout Canada and there are extensive processes in place that happen before a project is started ie. TLU (if a FN community Lucky) Sec 35 Consultation, Environ Assessments (Which never include First Nations) CEC hearing, and NEB hearings, but from a First Nation Perspective these processes are never done in an order that would benefit First nation communities? Accommodations measures are more often never afforded to a FN community let alone an IBA unless done through the courts.

First Nations or Aboriginal Participation of a project needs to become common place, maybe one of the best ways to eliminate the myths I spoke about and to ensure that the processes that have to occur before a project happens and are done in a proper order is to have an Aboriginal Environmental Committee at the Ministers level?

They can have input right from the onset from the Cabinet minute that sets the project moving forward? This committee can give direction to FN involvement, level of consultation, Give specifics about project areas, historical sites, extensive use areas, bodies of water etc.

If Peguis is given the opportunity to Present before the standing committee it will bring to the table prime examples of how these legislative changes will have more of a negative affect to our people, our traditional territory, and Treaty Land Entitlement opportunities.

We will also draft recommendations we hope will be considered as this whole process moves fwd.
This report was drafted by Mike Sutherland who is the director of the Peguis Consultation and special projects unit.

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