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KEEYASK GENERATION PROJECT

PUBLIC HEARING

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20 Advise re government department and 6310
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1 Thursday, December 12, 2013

2 Upon commencing at 9:30 a.m.

3 THE CHAIRMAN: Okay. Good morning.

4 Welcome to our sauna this morning, deep freeze
5 other days this week. Probably by the end of the
6 day, our last day here, they will have it figured
7 out and we will be comfortable.

8 This morning we have Consumers
9 Association presentation on adaptive management.
10 Ms. Craft, over to you.

11 MS. CRAFT: Thank you, Mr. Chair.

12 Good morning panel members. We have
13 Drs. Diduck and Fitzpatrick here this morning with
14 us. Could I ask that you introduce yourselves and
15 the commission secretary will swear you in this
16 morning?

17 DR. DIDUCK: I'm Alan Diduck.

18 DR. FITZPATRICK: I'm Patricia

19 Alan Diduck: Sworn

20 Patricia Fitzpatrick: Sworn.

21 MS. CRAFT: We are going to start this
22 morning talking very briefly about your
23 qualifications, and we filed a curriculum vitae
24 for both of you, Drs. Diduck and Fitzpatrick.

25 Dr. Diduck, I would like to start with

1 you. In terms of your area of expertise, would
2 you agree with me that your expertise is in public
3 involvement, social learning and adaptive capacity
4 in resource and environmental management?

5 DR. DIDUCK: Yes.

6 MS. CRAFT: And you are a currently an
7 associate professor in the Department of
8 Environmental Studies and Sciences at the
9 University of Winnipeg; is that correct?

10 DR. DIDUCK: I am.

11 MS. CRAFT: And you have a PhD in
12 geography from the University of Waterloo?

13 DR. DIDUCK: Yes, correct.

14 MS. CRAFT: We have included here a
15 selection of your publications that is peer
16 reviewed, and I would like to walk through a few
17 of them with you. You are the author of the 2013
18 piece, along with some of your colleagues, on
19 Perceptions of Impacts, Public Participation and
20 Learning in the Planning, Assessment and
21 Mitigation of two hydroelectric projects in --

22 DR. DIDUCK: Uttarakhand.

23 MS. CRAFT: -- in India, yes.

24 And can you tell us a bit about that
25 research?

1 DR. DIDUCK: Yes, I have been doing
2 work there since 2003, and the work has dealt with
3 community participation in the planning and
4 assessment of dam developments high in the
5 mountains. And that's just the latest piece that
6 we wrote that dealt with how people perceived the
7 impacts of two particular dams, the extent to
8 which they participated in the planning and
9 assessment of those dams, and the learning
10 implications of their perceptions and their
11 participation to examine what they learned about
12 the environment, themselves, their communities,
13 and sustainability.

14 MS. CRAFT: Thank you.

15 And in 2010, you were the author of
16 The Learning Dimension of Adaptive Capacity
17 Untangling Multi Level Connections, and this was
18 in a publication called Adaptive Capacity
19 Building, Environmental Governance in an Age of
20 Uncertainty. Is that correct?

21 DR. DIDUCK: That is correct.

22 MS. CRAFT: Can you please describe a
23 bit of that work to us?

24 DR. DIDUCK: That's an extension of
25 work that I have done for years. It builds on

1 looking at adaptive capacity in environmental
2 impact assessment, which could be parsed up in a
3 number of ways, including what small groups of
4 people learn in participating in environmental
5 impact assessment, what an organization learns,
6 and scaling it up to what a communities learn.
7 And so that piece sort of built on that earlier
8 work and tried to examine the interconnections
9 among the learning at the various different
10 levels. So what are the linkages among learning
11 by small groups and organizations and communities?
12 And to be maybe too ambitious, what societies can
13 learn, what that means if a society learns changes
14 in institutions and things like that.

15 MS. CRAFT: You also have, and I think
16 this was related to the piece that you were just
17 talking to us about, in 2009, a publication with
18 many of your colleagues on adaptive co-management
19 for socio-ecological complexity?

20 DR. DIDUCK: Yes, right. So that was
21 an output of a SSHRC grant, I was collaborator on
22 a SSHRC grant that tried to examine adaptive
23 management and co-management, and how those things
24 can be brought together into a new model of
25 governance of resources called adaptive

1 co-management. So a collaborative approach to
2 adaptive management. So that was an output of a
3 workshop where we all got together and brought
4 these ideas together, and that was one of the
5 papers that was produced from that.

6 MS. CRAFT: Dr. Diduck, I will just
7 note in the external granting portion of the brief
8 statement of qualifications that we have handed
9 out here, that you are currently holding, as a
10 co-investigator, a SSHRC grant related to common
11 ground research forum of cross cultural platform
12 for resource sharing. Is that correct?

13 DR. DIDUCK: Yes, that's correct.

14 MS. CRAFT: Thank you.

15 Turning now to Dr. Fitzpatrick, would
16 you agree with me, Dr. Fitzpatrick, that your area
17 of expertise is the changing nature of resource
18 management within Canada, focusing on the links
19 between governance and sustainability?

20 DR. FITZPATRICK: That's correct.

21 MS. CRAFT: And you are currently an
22 associate professor in the Department of Geography
23 at the University of Winnipeg?

24 DR. FITZPATRICK: That's also correct.

25 MS. CRAFT: And you also have a PhD in

1 geography, also from the University of Waterloo?

2 DR. FITZPATRICK: That's correct.

3 MS. CRAFT: Your current professional
4 memberships would be with the Canadian Association
5 of Geographers and the International Association
6 for Impact Assessment; is that correct?

7 DR. FITZPATRICK: That is correct.

8 MS. CRAFT: And turning now to your
9 publications again, we have done a brief selection
10 of some of your peer reviewed publications. And
11 the first that I'm going to point to is a recent
12 publication, from 2013, on Government and
13 Voluntary Policy Making for Sustainability in
14 Mining Towns, A Longitudinal Analysis, again, of
15 Itabera?

16 DR. FITZPATRICK: Itabera, Brazil.

17 MS. CRAFT: Can you describe the work
18 to us?

19 DR. FITZPATRICK: This is one of the
20 papers that stems from my SSHRC, Social Sciences
21 and Humanities Research Council of Canada funded
22 research. And that research grant considers
23 understanding the governance landscape. And by
24 governance landscape, I mean the relationship
25 between government regulation and corporate

1 voluntary initiatives, and how there are some
2 changing platforms that way. So we are interested
3 in finding out how those two groups of policies,
4 or directed at sustainability impact on site
5 operations, and from that we are interested in
6 identifying lessons learned and best practices
7 from different sites.

8 It predominantly focuses on Canadian
9 sites, but the article that you referenced was
10 done in a case study in Brazil. And the reason
11 why we went to Brazil is because we were studying
12 a number of Vale, and just V-A-L-E sites in
13 Canada. And so we were interested in finding out
14 what was happening at Vale's first operating mine
15 in Brazil. It dates back to the 1940s.

16 So, again, that paper considered what
17 was happening at that mine site in terms of
18 changing operational procedures, what was directed
19 by government regulation and what was done
20 voluntarily by the company, how that changed what
21 was happening in the community of Itabera, and
22 what other areas people wanted addressed to lead
23 them towards a trajectory of more sustainable
24 development.

25 MS. CRAFT: Now I'm going to take you

1 to a busy year, you have a few publications in
2 2008, and two of them in particular I would like
3 to discuss with you. The first is "Deliberative
4 Democracy in Canada's North, the MacKenzie
5 Resource Management Act." and this is a
6 publication in the environmental management
7 journal?

8 DR. FITZPATRICK: That's correct.

9 MS. CRAFT: And the second piece is
10 "Towards a Community Based Monitoring in the Hog
11 Industry in Manitoba," and this was a paper that
12 was submitted to the Manitoba Clean Environment
13 Commission, is that correct?

14 DR. FITZPATRICK: The report was
15 submitted to the Clean Environment Commission, and
16 then the paper listed on the abbreviated statement
17 of qualifications stems from that paper.

18 MS. CRAFT: And that's a publication
19 in the Canadian Public Administration Journal?

20 DR. FITZPATRICK: That's correct.

21 MS. CRAFT: Can you describe that work
22 to us?

23 MS. FITZPARTICK: The monitoring work?

24 MS. CRAFT: Yes.

25 DR. FITZPATRICK: So the genesis of

1 looking at monitoring actually comes from -- part
2 of my PhD dissertation, I studied the Wuskwatim
3 Environmental Assessment, and there was some
4 questions and dialogue about oversight,
5 independent oversight that arose during the
6 transcripts. That was outside of what I was
7 looking at for my PhD, but I thought it was an
8 interesting question.

9 So the 2008 report, which I did with
10 Alan Diduck and Joanne Moyer, in reverse order,
11 looked at, considered the role of, the potential
12 role of monitoring with the focus on community
13 based management, community based monitoring
14 models for the hog industry. And then that, of
15 course, lead to SSHRC funded project where I
16 started to look at different models of independent
17 oversight, and some of the findings from that
18 research were submitted in Alan and my report last
19 year for the Bipole III project.

20 MS. CRAFT: And that actually takes me
21 to what I was going to point to next, which is to
22 ask you if you have, if you would agree with me, I
23 know you will, that you have co-authored a report
24 in the environmental proceeding on Bipole III
25 entitled "Guidance from Adaptive Environmental

1 Management Monitoring, An Independent Oversight
2 for Manitoba Hydro's Upcoming Development
3 Proposals," and you are co-authors?

4 DR. DIDUCK: Correct.

5 MS. FITZPARTICK: Along with Jim
6 Robson.

7 MS. CRAFT: And doctors, I understand
8 that you have a powerpoint presentation to share
9 with us, and I may stop you at a few points just
10 for questions of clarification, but I invite you
11 to go through that and share that with the
12 Commission today.

13 DR. FITZPATRICK: Excellent. So I get
14 to start off. Good morning. First on behalf of
15 Alan and myself, we would like to thank the Chair,
16 the Commissioners and the hearing participants for
17 the opportunity to speak with you today.

18 We developed this presentation based
19 on the report we prepared for the Manitoba Branch
20 of the Consumers Association of Canada, which has
21 been filed on the record.

22 I will start by reviewing some of the
23 core features of adaptive management. Alan will
24 then discuss the framework that we used for
25 understanding the information in the impact

1 statement, the framework and the probative
2 questions. And then we will review some of the
3 key findings in the report.

4 So, again, we are starting with the
5 conceptual framework of adaptive management.
6 Uncertainty is something that's often referenced
7 in the world, and so if you think back, some time
8 in your life you might have said, well, I should
9 do it because I might die tomorrow. It is an
10 illustration of uncertainty and how we don't know
11 what is coming next. I think the youth are using
12 the phrase yolo, you only live once -- there you
13 go, I'm learning texting language.

14 So uncertainty is something that
15 people deal with or recognize in their daily life.
16 Uncertainty is also something that's a concept or
17 inherent in resource management. But there seems
18 to be a disconnect between a general public
19 understanding of uncertainty and the framework
20 that resource managers use to understand and deal
21 with uncertainty in environmental issues.
22 Probably the most concise definition of
23 uncertainty, and you are going to have to excuse
24 me, I have to bring the page up here, was
25 something said by Donald Rumsfeld. He said:

1 "There are known knowns, these are
2 things that we know that we know.
3 There are known unknowns, that is to
4 say there are things that we now know
5 we don't know. But there are also
6 unknown unknowns, there are things
7 that we don't know we don't know."

8 But that's basically the situation. And that's
9 what Donald Rumsfeld said.

10 That's actually a very concise
11 definition of how resource managers deal with
12 uncertainty. The public reaction to his press
13 conference where he said that is entertaining, if
14 anybody wants to take a look at youtube, you can
15 see how he was mocked by the public. And that's
16 what lead me to think that perhaps how the general
17 person uses, understands the concept of
18 uncertainty is very different than how people,
19 resource managers try to deal with uncertainty.

20 So, again, it is true, there are
21 things that we know, there are things that we know
22 that we don't know, and there are things that we
23 don't know that we don't know. And by framing
24 uncertainty in this way, we can try and address
25 and bridge the gap in a more consistent fashion.

1 So building on this definition, in
2 resource management specifically, there is
3 significant variability in the system. And those
4 stem from the environment and how different
5 components of the environment interact with each
6 other, human impact on the environment, and lack
7 of full knowledge about all of those things in the
8 system, among others.

9 So, uncertainty is a reality when it
10 comes to managing systems. Basically people must
11 make decisions with the best available information
12 they have on hand.

13 So, adaptive management is designed to
14 deal with uncertainty. Adaptive management, and
15 here I'm going to have an abridged quote from
16 Manitoba Hydro's impact statement, is:

17 "...the implementation of new or
18 modified mitigation measures over a
19 project to address unanticipated
20 environmental effects."

21 So, what it is, it is a way to deal
22 with uncertainty. You need to adapt to changes.

23 With adaptive management it is very
24 important to articulate the processes that you are
25 going to use to make those changes, so that you

1 decrease the number of things that are uncertain.
2 So from this we have identified, and the
3 literature identifies some core features of
4 adaptive management, and they are on the east side
5 of the screen. I'm a geographer, so east and
6 west.

7 So on the east side, a core feature is
8 that adaptive management is iterative, meaning
9 that the decisions should be reviewed and assessed
10 on a regular basis. It includes ongoing
11 experimentation, and I'm going to leave it at that
12 right now, because the next slide deals with that.
13 Adaptive management focuses on system monitoring,
14 so you are observing and evaluating changes in the
15 environment caused by the project and by ongoing
16 experimentation. And it really emphasizes
17 feedback as a way to minimize the known unknowns,
18 and the unknown unknowns.

19 So this can be broken down into four
20 stages or phases, and that's illustrated on the
21 west part of the plan. And this is the figure we
22 used in our report, but it reflects the model that
23 was presented by the panel on moving forward.

24 So in adaptive management you plan and
25 hypothesize about the changes. You do, and

1 monitor what the implications of your actions are.
2 You evaluate, and learn from what you've done.
3 And you adjust as necessary.

4 So, again, it is a cyclical process,
5 it is iterative. Adaptive management focuses on
6 linking the results from monitoring into decision
7 making. And this should be done in a way that's
8 purposeful, which means that there are careful
9 tests to ensure institutions are really learning
10 by doing.

11 This slide focuses on the concept of
12 experimentation. In adaptive management
13 experimentation is important, but perhaps less
14 well implemented. Experimentation involves
15 treating human interventions in the natural
16 systems as experimental probes. So what that
17 means is that the management decisions should be
18 designed to test hypothesis and work with, again,
19 new and best available information at the time.
20 There are two types of experimentation. Passive
21 experiments on the east side, and active
22 experimentation is illustrated on the west side of
23 the screen.

24 For passive experiments you use
25 baseline and historical data to frame a single

1 best idea or hypothesis assumed to be correct. So
2 managers respond with what they think is best,
3 given the objective, and make adjustments if the
4 outcome is not correct.

5 And in my methods class when I'm
6 trying to explain this to the students, I have an
7 example. So, I'm sorry if you don't like my
8 example, but it is a coffee example. I read that
9 coffee is best brewed at 96 degrees Fahrenheit, so
10 I brew coffee in my bodum, and I try that out, I
11 boil the water to 96 degrees, and test or monitor.
12 If this was not the best brew of coffee, I adjust
13 to another temperature and then try again. Mind
14 you, this approach is appropriate if temperature
15 is the only factor influencing what makes the best
16 brew. But was it temperature? Was it the method
17 of brewing the coffee? Perhaps bodums are not the
18 way to go? Was it brand of coffee I used? Or
19 maybe, perhaps, I'm just not a coffee drinker. At
20 this point my students laugh because I always have
21 a cup of coffee with me.

22 A passive approach involves
23 experimentation and it involves a change to try
24 and get the best management outcome.

25 An active experimentation, again on

1 the west side of the screen, is designed to
2 address some of the limitations in the passive
3 approach. In active experimentation there are
4 concurrent experiments which are designed to see
5 what outcome will meet the best management
6 objectives.

7 So, for this example not only would I
8 have different temperatures of coffee, I would
9 have different brands, I would probably have
10 different taste testers, I would have different
11 methods of brewing, et cetera.

12 So experimentation is an important
13 element of adaptive management, both active and
14 passive experiments include and involve iterative
15 decision making, ensuring there is feedback in the
16 system, and that feedback should go to trying to
17 ensure there are best management decisions. Both
18 work to address uncertainties. But the key
19 difference between the two is that, I like to
20 think of it as passive experimentation is one at a
21 time, whereas active experimentation allows you to
22 test multiple things.

23 MS. CRAFT: Dr. Fitzpatrick, before
24 you move away from this slide, the concept of
25 active management, I'm wondering if active

1 management is always required, or if in some cases
2 passive adaptive management might be sufficient in
3 some circumstances?

4 DR. FITZPATRICK: That's a good
5 question. In adaptive management, both passive
6 and active experimentation are useful. The main
7 way, or some of the things that you consider when
8 trying to think about what kind of experimentation
9 you are going to do is what is the difference
10 between the ideal, and what is optimal? We don't
11 live in an ideal world, and nobody suggests that
12 we -- not nobody -- we are not suggesting that
13 everything should be done in an ideal world. When
14 you are looking at designing experimentation in
15 the monitoring phase through adaptive management,
16 you should consider what is optimal and take
17 things into account such as financial capacity,
18 human resource capacity, palatability by the
19 people involved in the outcome.

20 In this particular case, we would
21 expect that an important consideration in deciding
22 between forms of active experimentation and
23 passive experimentation would be all the work
24 that's been done in the valued ecosystem
25 components.

1 For high priority management
2 decisions, where there is more uncertainty, there
3 may be more opportunity for active
4 experimentation. So in this case you would want
5 to go with optimal design, so considering the VECs
6 and the implications, the human resources, the
7 financial resources, the palatability.

8 Alan, do you have anything you want to
9 add on that?

10 DR. DIDUCK: I don't have anything.

11 DR. FITZPATRICK: So those are some of
12 the considerations in identifying and selecting
13 experimentation.

14 Now I'm passing this on to Alan.

15 DR. DIDUCK: Excuse me. Thank you,
16 Patricia.

17 So this slide is packed with
18 information. So this gives a bit of a reminder,
19 or a sample of the criteria or questions that we
20 used to examine each phase of the adaptive
21 management process.

22 This is not a complete set of the
23 criteria, as you may recall. Table 1, page 5 of
24 the report sets out the questions which we then
25 sort of thought in our minds as being criteria for

1 assessment. The questions that we used in the
2 report were derived from the lit review that we
3 did for the Bipole III assessment last year. As I
4 mentioned, this is just a summary of some of the
5 criteria.

6 So, as well as presenting a summary of
7 each phase of the adaptive management process, the
8 list here also is a reflection of our position
9 that a collaboration should be viewed as a
10 cross-cutting theme that touches each phase of the
11 cycle.

12 So I'll just run through some of the
13 criteria, just to give you a reminder of what we
14 had discussed in the report.

15 Under the plan phase, bullet number 1
16 refers to a question that looks at the degree or
17 the extent to which the adaptive management
18 program or plan recognizes and accepts uncertainty
19 of various types.

20 Bullet number 2 refers to a question
21 about the degree to which the plan reflects a
22 long-term view, a multi-scale view, a view that
23 takes into account those impacts at a local scale
24 those impacts at a regional scale, and scaling up
25 from there. So we looked for evidence about the

1 degree to which the plan reflected a multi-scale
2 view.

3 Also that bullet encompasses a
4 question that we looked at about the degree of
5 integration that was reflected in the AM plan, or
6 the various parts of the ecosystem viewed as an
7 integrated whole, does the plan also look at
8 economic considerations and social considerations
9 et cetera, so an integrated type of perspective.

10 The third bullet refers to the
11 question of the degree to which the design of the
12 undertaking, its implementation, and the AM plan
13 itself are flexible enough to make adjustments in
14 response to lessons learned because of the
15 evaluation of the monitoring results.

16 The fourth bullet deals with this
17 cross-cutting theme of collaboration. And the
18 bullet point that's up there is transparent, but
19 that's sort of a code for transparency and
20 openness and the degree to which the AM plan is
21 designed to encourage thoughtful and constructive
22 debate. So it is sort of a code or reflection of
23 the degree of collaboration that's built into the
24 planning phase.

25 Now, as I mentioned, we view

1 collaboration as a cross-cutting theme, so
2 transparency also appears under the do phase, the
3 evaluate phase, and the final phase, the
4 adjustment phase.

5 Openness and transparency, we view as
6 a critical component of collaboration, because it
7 provides an opportunity to learn the nuances and
8 the details about each phase of the adaptive
9 management program. It provides an opportunity
10 for people who are doing a review of the program
11 to learn about each phase. So we view this as an
12 essential component for the Commission to be able
13 to get an understanding of each of the mechanisms
14 and processes and nuances at each phase of the
15 cycle.

16 If we turn to the do phase, in
17 addition to transparency and openness, the first
18 bullet deals with a related question: Are the
19 right people involved in the doing, the
20 monitoring, so that we can have an effective job
21 of monitoring for the full range of economic and
22 social and cultural and environmental impacts?
23 Are the right people involved?

24 Again, like transparency, this
25 question is bit of a recurring criterion. It is

1 also very important for the evaluating and the
2 learning and adjustment phases, but I will talk
3 more about that in the next component of the
4 presentation.

5 The second bullet pertains to whether
6 the time lines to obtain results from monitoring
7 are compatible with decision making points by
8 management. So can the results be fed into a
9 decision process that will actually have an effect
10 on improving the mitigation or monitoring of the
11 project?

12 The fourth bullet, effects based,
13 that's sort of a bit of a code word for a question
14 that looks at whether the monitoring has been
15 established in such a way that the managers will
16 be able to differentiate among different
17 hypothesized outcomes if, in fact, an active
18 experimentation approach is used.

19 Move on to the third phase, evaluate
20 and learn. So, in addition to transparency, and
21 there is a question about whether the right people
22 are involved, we asked whether suitable approaches
23 to evaluation are being used, given the nature of
24 the VEC that's being examined or monitored, the
25 need for transparency, and the involvement of the

1 right people.

2 Evaluation is an essential component
3 of the phase, because this is the opportunity to
4 do a careful assessment and review of the
5 monitoring results to make a decision as to
6 whether certain key thresholds have been passed,
7 so that a decision can be made to make an
8 adjustment to the monitoring or mitigation.

9 Having the right people involved is
10 particularly important, because evaluating
11 monitoring results, and making that decision about
12 whether an adjustment is necessary or not, can
13 often involve value judgments, can often involve a
14 trade-off between an economic consideration and
15 environmental consideration, or various types of
16 values associated with different parts of the
17 ecosystem.

18 So having the right people, the "right
19 people" involved is essential to have -- well, a
20 balanced and an equitable and a well-informed
21 evaluation process.

22 Finally, the last phase, the
23 adjustment phase, we have the transparency
24 criterion here again, but as -- but here we sort
25 of wanted to have a focus on the transparency of

1 the decision making about adjustments. As well
2 one refers to a question about the capacity for
3 making adjustments. Are the organizational
4 structures and routines and skills and resources
5 in place so that adjustments can be made if it is
6 determined, based on the evaluation, that an
7 adjustment is desired or necessary.

8 Bullet two sort of is a follow-up,
9 processes for adjustment refers to how exactly
10 will the decision made about adjustments, what is
11 the decision making process?

12 MS. CRAFT: Dr. Diduck, I have a
13 question for you on this. In terms of the best
14 practice model that you have illustrated at table
15 1, and here in part on the slide, does this differ
16 materially from the best practices for adaptive
17 management that you suggested in your Bipole III
18 report?

19 DR. DIDUCK: Well, it is consistent,
20 definitely. In the Bipole III report we used six
21 principles for best practices as our framework to
22 do an assessment of the degree to which the AM
23 plan in the Bipole III report is consistent with
24 those principles. In doing the review that lead
25 to the choice of that framework, we developed an

1 extensive list of questions that we offered to the
2 Commission and to the proponent, that would allow
3 a proponent or a regulator to inquire into each of
4 these four phases. So, we thought we would like
5 to take that approach in this case, because that
6 allowed us a framework to examine each phase, as
7 opposed to six key principles which were a little
8 bit broad. So then we took those 36 questions and
9 we thought, we need to make this a little bit more
10 manageable, a little bit more elegant, a little
11 bit more of use to the Commission. So we
12 distilled those 36 questions to a smaller set,
13 which we presented in table 1 of the report, and
14 this slide is just a reflection of a smaller set,
15 just to sort of give a bit of a taste, a reminder
16 to the Commission about what we did. But it is,
17 yes, these questions are certainly consistent with
18 the principles for best practices that we adopted
19 in the Bipole III report.

20 MS. CRAFT: Okay. And is this what
21 you are suggesting, both in Bipole III and here,
22 is this a new model that you've come up with?

23 DR. DIDUCK: Well, the list of
24 questions that we developed were gathered from the
25 literature, so that list of questions in the

1 Bipole III report. This list -- this new list of
2 questions is more refined, shall we say, it has
3 been distilled. We presented it to the experts
4 that were retained by the Consumers Association,
5 and we asked for their feedback on these criteria,
6 and we received some and we made some adjustments
7 based on their feedback.

8 MS. CRAFT: Thank you.

9 DR. DIDUCK: So, it is still me, isn't
10 it? It is. My apologies.

11 So that's a bit of an overview, I'm
12 sorry if it was a bit too lengthy, of the criteria
13 that we used.

14 The next few slides we will go through
15 some of the key results of the assessment. Of
16 course more particulars, more details can be found
17 in the report.

18 Slide 8 -- no, slide 7, my apologies,
19 this slide presents a summary of some of what we
20 viewed as important strengths with regards to the
21 proponent's recognition of uncertainty and its
22 approach to adaptive management. In some
23 respects, what we might have seen in this case,
24 relative to the Bipole III case, is learning based
25 on experience. We don't really know if that

1 occurred, but this might be a manifestation of
2 learning. Because in our view, relative to the
3 Bipole III assessment, the adaptive management
4 plan or program presented here was more, was
5 better developed in some respects, was clearer,
6 was more transparent. We had more information at
7 our disposal with regards to the adaptive
8 management plan in this case than we did in the
9 last case.

10 Another strength, we found at least
11 some evidence regarding each phase of the cycle,
12 certainly more evidence regarding the plan phase
13 and the monitoring phase than evaluate/learning
14 and adjusting, but we will speak more about that
15 later.

16 The proponent's description and model
17 of adaptive management that it adopted is
18 certainly consistent with current literature. The
19 materials that we reviewed are certainly -- gives
20 full recognition of the various forms of
21 uncertainty, the need for experimentation, it gave
22 examples of pre-determined adaptive management, so
23 it is showing a considerable forethought as to
24 potential impacts and the potential adjustments
25 that can be made. The documentation presented

1 some general opportunities for active
2 experimentation, the more ambitious approach. As
3 well, we found evidence of extensive research and
4 development being funded by Hydro. And even
5 though that might be being done outside of the
6 adaptive management plan, again, it shows an
7 interest in doing research to fill gaps and
8 reducing uncertainty. So we certainly viewed
9 those as strengths.

10 That being said, this next slide
11 presents in bullet form some flaws or gaps in the
12 information provided with respect to the adaptive
13 management plan or program, and with respect to
14 how uncertainty is being addressed. So there were
15 strengths, things seem to have advanced, but at
16 the same time we still found things that we would
17 have liked to have seen, that would have made our
18 jobs -- I guess that's not the important things,
19 our jobs -- it would have made perhaps the job of
20 the Commission a little bit easier with respect to
21 doing an assessment of the AM plan.

22 First, my understanding still is that
23 several environmental protection program documents
24 remain outstanding, the vegetation rehabilitation
25 plan, the terrestrial mitigation implementation

1 plan, and the three ATK monitoring plans. And in
2 our view, given the integrated nature of
3 environmental impact assessment and adaptive
4 management, we view these gaps as a shortcoming.

5 A second type of gap relates to
6 documenting the organizational learning from the
7 extensive research that I just described. The
8 main question here is, what is being done with the
9 research results? We were not able to explicitly
10 connect the research program with high priority
11 scientific or management uncertainties, or gaps in
12 the baseline data. In fact, those connections
13 might be there, but we didn't find evidence of
14 that. And we thought that for the Commission it
15 would have been good to have been able to see how
16 the research and development is contributing to
17 organizational learning on behalf of Hydro in this
18 case.

19 Third, another gap comes from lack of
20 access to the most recent environmental management
21 system compliance audit. Again, it is a bit
22 outside of the scope of adaptive management, but
23 the audit would have been helpful in our analysis
24 in getting a little bit better of an understanding
25 on the culture at Hydro, the processes at Hydro,

1 the procedures and the mechanisms for planning,
2 doing, evaluating, adjusting at a macro level.

3 That would have shed light on those
4 same processes, procedures and mechanisms for
5 evaluating and adjusting in the context of the
6 adaptive management program.

7 In general, the proponent should be
8 encouraged to document its organizational learning
9 outcomes and the ensuing management adjustments,
10 if there are any, whether these are from an AM,
11 whether these are from an adaptive management
12 program in an EA such as this case, the external
13 research that it funds, or within the context of
14 the environmental management system. A lot can be
15 learned in Manitoba from the experiences of Hydro
16 with respect to how it deals with these issues,
17 how it deals with evaluation and adjusting and
18 monitoring and learning.

19 From here I will pass it over to my
20 colleague.

21 DR. FITZPATRICK: This slide is about
22 the monitoring advisory committee, and our report
23 touches on this in a number of places, and so we
24 have tried to synthesize some of the feedback that
25 we have about the monitoring advisory committee in

1 one slide.

2 So, as some of you may recall and as
3 was introduced during our expertise discussion,
4 the report we prepared for Bipole III had an
5 extensive section on independent oversight. And
6 the critique was based on the literature. It
7 examined eleven different models of oversight
8 agencies, and had five in-depth case studies. It
9 considered things like the legal foundation of the
10 organization, the mandate, the composition.

11 Overall, the research suggested there are seven
12 elements of effective oversight, and I'm not going
13 to go over all seven, it is in the Bipole III
14 report. But some of the -- four, I will pick.

15 One is that the committee should have
16 a clear mandate, because oversight committees can
17 serve many functions, and being expressly clear
18 about what the committee is supposed to do is
19 critically important for ensuring there is not a
20 mismatch between expectations and what the
21 committee is mandated to do.

22 Another element of effective oversight
23 involves independent authority. So once the
24 mandate is struck, the oversight body should be
25 free to implement their mandate how they see fit.

1 True independent authority would come
2 from the mechanism for the oversight body to
3 pursue its own interests, including matters of
4 conflict resolution, outside of the signatories of
5 an agreement that creates that body. So rather
6 than having to resolve disputes by going back to
7 the partners in the project, or the different
8 stakeholders, and having to get them to pursue
9 dispute resolution, if an independent oversight
10 body has access to dispute resolution, it is more
11 effective, according to the research and the
12 literature in the field.

13 Another element is independent
14 composition. More successful oversight bodies are
15 comprised of representatives of local and
16 Aboriginal governments and local non-governmental
17 organizations, rather than being heavily stacked
18 by government and the proponent.

19 And the fourth one that I will
20 highlight out of the seven is adequate long-term
21 funding. So funding is something that all
22 oversight committees or agencies struggle with.
23 And people that I spoke with, and as discussed in
24 the literature, having adequate funding to achieve
25 the mandate is important. But equally so are --

1 it is twofold. One, so you need a secure -- a
2 strong budget line, but you also need to know that
3 the budget line will meet your mandate, and you
4 also need to know that the budget line will
5 continue. And so more successful oversight
6 committees have a budget line in place for three
7 years or five years, rather than it being an
8 annual or every two year negotiation.

9 So, again that research identified
10 seven elements of effective oversight, and I have
11 just given you four. The other remaining ones you
12 can read in the Bipole III report.

13 I want to start by saying that the
14 existence of the Monitoring Advisory Committee is
15 a very positive feature of this proposal. The MAC
16 will create opportunities for ongoing ATK in the
17 monitoring programs, and to guide the partners.
18 And I think that that is consistent with moving
19 towards best practice.

20 I particularly like the description by
21 Ms. Northover from the transcripts dated
22 November 25th. And I apparently like to read
23 things into the transcript, so it is from page
24 3522. And what she said is that:

25 "It is anticipated that MAC will

1 improve an understanding of respect
2 among the partners, foster an
3 environment of sharing and
4 collaboration in undertaking
5 environmental stewardship activities,
6 and will lead to the implementation of
7 a more robust environmental protection
8 program."

9 Those are very impressive goals, and
10 that in part is why the MAC is such a strong
11 feature and positive feature of the project
12 design.

13 However, our report also identifies
14 how the structure of the MAC has left some missed
15 opportunities for oversight within -- for this
16 project for monitoring. And so I'm highlighting
17 just a few bullets on this slide. There is again
18 more detail in our report.

19 But the first one is the mandate. The
20 mandate of the MAC is very broad comparative to
21 other oversight committees or agencies that we
22 looked at. The MAC is responsible for
23 communication with communities, it is responsible
24 for reviewing monitoring results, and it is
25 responsible for providing guidance and advice with

1 respect to those results to the development of
2 plans and to the integration of ATK.

3 And so that's a lot to do, as I'm sure
4 the Commission knows. That's a very broad mandate
5 for the MAC.

6 And I don't want to suggest that it is
7 not achievable, because it is, and certainly other
8 oversight agencies that we studied in the last
9 round, some of them had such a broad mandate, but
10 it came with a significant budget envelope. And
11 so when you are asking the MAC to take
12 responsibility or be involved in so many things,
13 for that committee to be effective, they need
14 significant funding.

15 That leads me to the next point. The
16 MAC does not have a budget for engaging outside
17 experts. And to be clear, we understand that the
18 CFNs will have a budget line for technical
19 advisors, but the MAC itself does not have a
20 budget for technical advisors as a whole.

21 So what would they use this budget
22 line for? They could use it to fund independent
23 research, or to provide alternative
24 interpretations of the monitoring results sent to
25 MAC for review, or the budget could be used to

1 help fund activities directed at communication,
2 which is also part of their budget mandate. And
3 so if the MAC itself had a budget line, that would
4 strengthen its ability to function.

5 And I was trying to think about why
6 this is important as I was coming to the hearing
7 today, but the Commission is a panel, and you all
8 bring your different expertise and your different
9 experiences, and you have some technical experts.
10 But imagine if you each had your own technical
11 expert, but as a whole you didn't have technical
12 expertise. Say, for example, Mr. Sargeant wanted
13 to know about -- I'm trying to think of a very
14 safe example -- sustainability and sustainable
15 development in the province, but that was outside
16 the scope of his technical expert. Without one
17 for the CEC as a whole, it makes it more
18 challenging.

19 So, again, the lack of budget for
20 outside experts for the MAC as a whole may create
21 a missed opportunity for ensuring that MAC can
22 achieve its broad mandate.

23 The third point that we wanted to talk
24 about is with respect to missed opportunities, and
25 involves the authority of the MAC, and it is the

1 opportunity to resolve issues. We canvassed in
2 the information requests whether or not there were
3 mechanisms for dispute resolution. And as
4 structured right now, dispute resolution is among
5 the partners and doesn't involve the MAC.

6 Why we care about this is twofold. So
7 the MAC is meant to provide technical advice and
8 guidance to the partners and the board, but they
9 are not required to accept that guidance, given
10 the structure. But then if people on the MAC are
11 unsatisfied, or if the MAC as a whole is
12 unsatisfied with the outcome, they then have to go
13 to the partners on the JDKA for any dispute
14 resolution. So if you allowed dispute resolution
15 or mechanisms for resolving conflicts at a lower
16 level, you don't have to bring it up to the next
17 notch, which becomes very difficult to do for
18 independent oversight that's documented in the
19 literature and through some of the case studies
20 that we examined.

21 So those are sort of three areas where
22 we found that there were missed opportunities.
23 But, again, I want to highlight that we found the
24 MAC, the creation of the MAC to be a very positive
25 feature of this proposal.

1 MS. CRAFT: Dr. Fitzpatrick, before
2 you leave this slide, given the positive features
3 of the MAC that you described, do you think it can
4 achieve independent oversight?

5 MS. FITZPARTICK: The MAC is not
6 designed to achieve independent oversight, as
7 noted in the response to CEC round two, CAC 164,
8 which is quoted on the slide. It is not an entity
9 charged with a duty to challenge or oppose
10 decisions that are the responsibility of those
11 advisors. So it is not as designed, and with that
12 mandate, it is not independent oversight.

13 The next slide points to integration.
14 And others, and more experienced and knowledgeable
15 people have submitted evidence about the
16 relationship between ATK and technical science.
17 Our analysis focuses on this during the monitoring
18 period. And as noted in this slide and in the
19 report, there is recognition of integration
20 between some monitoring programs and the roles of
21 the resource managing plan, and the MAC itself,
22 for coordinating information between those two
23 bodies of information which are to be treated
24 equally.

25 So, for example, the terrestrial

1 environmental management plan, or TEMP, commits
2 MAC, where possible, to promote coherence and
3 complementarities between ATK and technical
4 science.

5 What is absent and what we would have
6 liked to see is more information on how potential
7 discrepancies will be resolved. So, what is the
8 process for reconciling if the two bodies of
9 knowledge have different findings? And so that's
10 an oversight or a missed opportunity and something
11 that would be important in moving forward. What
12 happens if there are differences, different
13 answers?

14 MS. CRAFT: Dr. Fitzpatrick, can you
15 describe what kind of process you could foresee
16 for resolving difference between ATK and technical
17 science?

18 DR. FITZPATRICK: In general, there
19 are different bodies that have some experience
20 working on this, particularly in the Northwest
21 Territories. And so I want to have the caveat
22 that I think, I support the notion of a placed
23 based approach, so something that takes into
24 consideration the nuances and the needs of
25 specific communities and cultures involved, and

1 the design of the project itself. But,
2 nonetheless, you could get a basic outline of a
3 process from other similar situations that you
4 could say, this is the model and we will modify it
5 as necessary. So there are lessons to be drawn
6 from other -- there is lessons to be drawn from
7 other locations, particularly in northern Canada.

8 So one of the examples that always
9 comes to mind when -- and I use, when I talk about
10 ATK with my students, relates to the independent
11 environmental monitoring agency that was created
12 and struck for the BHP Ekati Mine project. So it
13 has been in operation since 1997, and there are
14 more details in the Bipole III report.

15 But when I go up north and talk to
16 people, this is a frequent example that they use
17 about how different types of information come --
18 answers come to the table, and they need to work
19 together to find the best resolution.

20 So the story that I'm telling you, I
21 will use some words from how it was told to me,
22 and some words based on what you can see
23 documented in the reports of the independent
24 monitoring agency. But BHP is a mine and they
25 have to build haul roads, so they started building

1 haul roads when they developed the mine, and some
2 of the elders were explaining, after construction
3 started, that the caribou had broken legs. The
4 word that they used in the annual reports is that
5 they were limping.

6 So I think we can all get the concept
7 that the elders were saying that after the caribou
8 crossed the site, there was an impact on their
9 mobility is the key thing. And so what unfolds
10 over the course of seven to eight years of the
11 annual reports of the independent monitoring
12 agency is trying to resolve this concern. And so
13 ultimately there was back and forth, because the
14 technical science said they hadn't broken their
15 legs. There is -- the carcass has no broken leg.
16 And the elders said no.

17 So ultimately what they did in the
18 process that they started to create is they took
19 the elders to the mine site during migration, and
20 sure enough, what they found is that when the
21 caribou went up, before they went up the road,
22 their mobility was fine. And when they came down
23 the other side there was limping. Not a broken
24 leg, but limping nonetheless. From there what
25 they did is they created a working group on

1 caribou to try and address ways to avoid, have the
2 caribou avoid the haul roads. And what I heard
3 but what I cannot find in the independent, I can't
4 find documented in the literature, but was told to
5 me in the interviews was the key thing was the
6 size that they were using for, the granular size
7 of the haul roads. And when they changed that it
8 made all of the difference. But, again, that last
9 part of the story I haven't been able to
10 triangulate in the findings.

11 So there are examples where the two
12 bodies of the information have different findings.
13 And it would strengthen the report to identify a
14 base process that can be adapted as necessary.
15 But what will be done when the two bodies of
16 information have different results? What is the
17 process for resolving discrepancies?

18 Now I pass the baton to Alan.

19 DR. DIDUCK: I just have a couple of
20 slides and they both deal with an issue of the
21 extent of development of the adaptive management
22 plan, or the transparency of the plan in the
23 second half the AM process, the evaluation phase
24 and the adjustment phase.

25 So, this slide pertains to the

1 particulars, the mechanisms, the processes, the
2 procedures, and the availability of resources for
3 conducting evaluations of monitoring results, and
4 for making decisions about adjustments which flow
5 from those evaluations.

6 So here we found both strengths and
7 shortcomings. First a couple of strings. Well,
8 there is four that I have noted here, but I will
9 go through them briefly.

10 So we found clear contemplation,
11 anticipation of the commitment to adjustments. Of
12 course, that's basic, but that's clear and that's
13 good, the extent to which the commitment is there
14 to adjust the monitoring and mitigation as a
15 result of evaluation.

16 We learned about some of the players
17 who will be involved in the evaluation process, in
18 particular the MAC. So we know that the MAC will
19 review the monitoring results, and there will be
20 other evaluation processes, I trust.

21 There is some discussion of thresholds
22 that may trigger an adjustment. We learned of the
23 existence of a contingency fund to support
24 evaluation and adjusting. So this is essential,
25 so this is an essential feature that provides the

1 capacity to adjust in response to lessons learned
2 from evaluation.

3 With all of that said, where we
4 thought the plan was underdeveloped was with
5 regards to the, as I said, processes, mechanisms,
6 and procedures for evaluation, or even evaluation
7 frameworks. So there was little information on
8 that. And from the documentation that we
9 examined, it was hard for us to parse or discern
10 distinctions between evaluation and learning on
11 one hand and adjusting on the other hand. So
12 learning a little bit more about that, providing
13 more transparency I think would have provided the
14 Commission with essential information. So it is
15 kind of hard for us to discern the difference. We
16 see a commitment to the full cycle, but we didn't
17 see much information provided to us with details
18 about the distinction between valuation, learning
19 and adjusting.

20 So some questions come up. What is
21 the process for making adjustments and for adding
22 capacity for monitoring and mitigation? How will
23 the decisions be made? We know a little bit about
24 who will be involved. We know the MAC will be
25 involved, and experts, or scientific experts, I'm

1 sorry -- how trade-offs be negotiated among
2 competing values and goals of the people who are
3 involved in the evaluation and decision processes
4 for adjustments. How much is the contingency
5 fund? For how long is the fund in effect? How is
6 the fund apportioned among operational periods?

7 So we know more about the intricacies
8 of the planning and the doing part of the cycle
9 than we do about the evaluating and the adjusting
10 part. Generally, the process, we thought, for
11 adjustments and evaluations is a bit of a black
12 box still.

13 And there are examples of adaptive
14 management plans and programs, and actual
15 experiences that can be found in the literature,
16 that are a little bit more transparent on the
17 evaluation and adjusting processes of the cycle.

18 Again, turning to experiences in the
19 north, in the Northwest Territories there is a
20 land and water board, the Wek'eezhii, a land and
21 water board that has established a draft framework
22 that links monitoring results and actions that are
23 required. So they have established connections
24 between various levels of environmental change and
25 various levels of adaptations that should be put in

1 place in response to the change. So they have
2 made thresholds a little bit more transparent.

3 Another example can be found in the
4 Canadian Environmental Assessment Agency's
5 operating procedures for adaptive management in
6 the context of Environmental Impact Assessment,
7 the Vancouver Port case offers a fairly well
8 developed framework that articulates the
9 considerations that should be taken into account
10 in evaluating monitoring results and establishes a
11 framework of thresholds that will trigger
12 adaptations.

13 So, like Patricia, we are of the same
14 mind, that we recognize that whatever frameworks
15 are developed for this particular case need to be
16 place based, they really need to come from the
17 partners with guidance from the Commission. We
18 certainly know that. But, as she mentioned,
19 experiences from other jurisdictions can be used
20 to provide guidance with regards to developing
21 frameworks for evaluation and decision making.

22 And just lastly, the literature
23 presenting the results of peer reviewed research
24 of success stories of adaptive management can also
25 provide guidance. Because we can find literature

1 on both failures and successes in attempts to
2 implement adaptive management. But a lot of those
3 stories discuss the evaluation processes and what
4 goes on, and what types of models are used to help
5 the decision makers make decisions about
6 adjustments. So there is literature on that.

7 My last slide follows up on this theme
8 of the black box, if you will. So this slide
9 deals with the cross-cutting theme of
10 collaboration in a lot of ways. So it has a focus
11 on transparency and public engagement in the
12 adaptive management process. Again, we found
13 strengths and shortcomings. A strength is that
14 the environmental protection program materials
15 revealed a relatively high degree of transparency
16 and engagement in the front end of the adaptive
17 management process, the planning stage. As well
18 there were clear mechanisms for communicating to
19 the public changes to monitoring and mitigation.
20 And of course, government officials will, of
21 course, play a role, they will receive monitoring
22 results and be involved in evaluation and making
23 decisions about adjustments.

24 Further, as noted, the MAC will be
25 playing a role in reviewing monitoring results and

1 advising on desired or necessary adjustments.

2 On the flip side, just three points I
3 would like to make. One, it appears that based on
4 the materials that we reviewed that the public
5 will play a very limited role in the back end of
6 the process, evaluating, learning and adjusting.
7 In general, the transparency and openness of the
8 AM process beyond the planned stage is relatively
9 underdeveloped, and we thought shedding a little
10 bit more light on that back end would have put the
11 Commission in a better position to provide
12 guidance and make decisions with regards to the
13 adaptive management program.

14 I'll pass the torch back to my
15 colleague.

16 DR. FITZPATRICK: I get to summarize
17 our presentation today. So, I will try to be
18 briefer than I have been in my other discussions
19 for different slides.

20 Basically, we can categorize our
21 analysis of the impact statement in three ways,
22 strengths, missed opportunities, and areas that
23 are a little, a black box, to use Alan's words.

24 So in strengths we found that the
25 documentation and materials submitted shows a

1 marked improvement in monitoring and adaptive
2 management from the Bipole III project. And Alan
3 spoke about this with respect to our access to
4 information, and that may be illustrative of, or
5 demonstrative of learning from that process, but
6 we found that adaptive management was better
7 canvassed in this report than the last. And so
8 that's a very positive feature.

9 In terms of missed opportunities, we
10 found that there are some areas that could be
11 strengthened. There is elements of the monitoring
12 advisory committee that lead us to have some
13 questions about process. And for them to fulfill
14 their mandate, some of the processes, and I want
15 to use the word bylaws but that sounds very
16 technical. Some of the processes that MAC will
17 use could be strengthened to improve their ability
18 to achieve its mandate.

19 There are some missed opportunities
20 with respect to identifying potential, or
21 processes for reconciling potential discrepancy in
22 different bodies of information.

23 And then in terms of what is more of a
24 black box and more unknowns, we spoke today about
25 the last two phases, the evaluate and adjust as

1 necessary. Learning more about the processes for
2 adjustment would have strengthened the adaptive
3 management presented in this impact statement.
4 And ensuring that there is transparency in the
5 next stages, again, is another element that would
6 have strengthened the adaptive management in this
7 impact statement.

8 So, again, there are strengths, there
9 are some missed opportunities, and there are some
10 areas that the information is in a black box.

11 Do you have anything to add?

12 Thank you very much.

13 MS. CRAFT: Thank you, Drs. Diduck and
14 Fitzpatrick.

15 These two witnesses are certainly
16 available for cross-examination. I want to thank
17 them for their presentation today and for their
18 report that has been filed.

19 THE CHAIRMAN: Thank you, Ms. Craft.
20 Proponent? Ms. Mayor?

21 DR. FITZPATRICK: Could we take a five
22 minute break?

23 THE CHAIRMAN: Okay.

24 DR. FITZPATRICK: Would that be
25 acceptable?

1 THE CHAIRMAN: Sure, let's take a
2 morning break now for about 15 minutes, and
3 come back at 11:00 o'clock. Yes. Thank you very
4 much.

5 (Proceedings recessed at 10:46 a.m.
6 and reconvened at 11:00 a.m.)

7 THE CHAIRMAN: Ms. Mayor, over to you.

8 MS. MAYOR: Thank you.

9 So Dr. Diduck, during the earlier part
10 of the hearing when Ms. Cole, next to me, was
11 testifying, Mr. Williams took her on a trip down
12 memory lane to India. And although I realize that
13 you too have spent much time in India, I'm not
14 going to take you down that trip. I'm going to
15 take you to instead just a year ago when we were
16 together then, I think we were at the Convention
17 Centre by the time that you two got to testify.
18 So I'm just going to take you back to there for a
19 little bit.

20 And you had indicated in your Bipole
21 III report that you had found both strengths and
22 weaknesses in the approach of Manitoba Hydro to
23 adaptive management at that time.

24 Is that an accurate assessment of your
25 report?

1 DR. DIDUCK: Yes, that's accurate.

2 MS. MAYOR: At the Clean Environment
3 Commission hearing last fall, you also provided
4 some testimony. And again it was a bit of a trip,
5 because you took us on a bicycle ride, if you
6 might remember. And I'm going to quote your
7 evidence from that time, and you had said:

8 "I am an instructor, I'm a professor,
9 I grade. So in one meeting, a meeting
10 of the team, I was on my bicycle and I
11 knew that they were going to ask, so
12 what is your view? So I'm on my
13 bicycle, I'm riding. Well, at this
14 stage I give them a C. I give them a
15 C on this, it is good, you know, it is
16 a C. I will admit up front as I
17 learned more, as I delved more into
18 the evidence, the next time the team
19 met, okay, the grade went up, C plus.
20 So I learned more, they are actually
21 trying some things that are very
22 interesting, so I don't know where it
23 stands now, but as I learned more, I
24 was a little bit more impressed.
25 There were more strengths that came to

1 light."

2 Do you recall that evidence?

3 DR. DIDUCK: I do recall that. That
4 was a very interesting story.

5 MS. MAYOR: So, ultimately, the grade
6 or mark that you gave the Bipole III project in
7 the end was at least a C plus, and perhaps even in
8 the B range. Is that fair to say?

9 DR. DIDUCK: I forget the final
10 assessment, but I think that that is accurate.

11 MS. MAYOR: And in your report and
12 your evidence today, you have stated that this
13 project is a marked improvement over the approach
14 used in the Bipole III environmental assessment.
15 You found there to be a strong commitment to
16 adaptive management, and you made a number of
17 other positive comments. Is that fair?

18 DR. DIDUCK: That is fair.

19 MS. MAYOR: So dare I ask you, it is a
20 marked improvement? If I don't, one of the
21 commissioners is going to.

22 DR. DIDUCK: I would say it is not in
23 the excellent range, but it is an improvement over
24 the articulation of various components of the
25 plan, still with some underdevelopment or lack of

1 transparency with regards to other developments,
2 or other aspects, I'm sorry.

3 MS. MAYOR: Now, prior to preparing
4 your report on the Bipole III project and
5 ultimately testifying, you took the time to meet
6 with two members of Manitoba Hydro's environmental
7 team. Do you recall meeting with them?

8 DR. DIDUCK: Of course, yes.

9 MS. MAYOR: And you made reference to
10 that when you testified, you made the following
11 statement, and again I'm quoting:

12 "That interview certainly shed more
13 light on the intentions of the
14 proponent which helped us get a better
15 sense of the adaptive plans."

16 On a similar vein you also testified, and I quote
17 again:

18 "My opinion with regards to the merits
19 of advocacy type of approach deriving
20 a truth are not relevant for this
21 Commission. But to be frank with you,
22 I'm not really a big fan of the valued
23 experts type of approach. That is why
24 I really appreciated the opportunity
25 to meet with Ms. Johnson and her staff

1 to get a little bit more information
2 that we could use to do the assessment
3 that we did. So I think that that
4 approach is more reflective of a
5 collaborative type of an approach to
6 environmental impact assessment, which
7 I think is a good thing."

8 Do you recall giving that testimony?

9 DR. DIDUCK: I do.

10 MS. MAYOR: And you would agree with
11 me that not every example, every piece of
12 information, every bit of relevant information can
13 be included in an environmental impact statement,
14 as the volume of information is just too immense?

15 DR. DIDUCK: Well, I think it is
16 impossible to include all of the information that
17 is available to the proponent in an EIS and isn't
18 a desirable. But I do think that essential
19 elements and key ingredients of an EIS, including
20 the environmental protection program, need to be
21 articulated in the EIS materials.

22 MS. MAYOR: You would agree, though,
23 that meetings, such as the one held with the
24 Bipole III team, can provide external parties with
25 invaluable information on the intentions and plans

1 for monitoring and adaptive management?

2 DR. DIDUCK: I'm a researcher, and
3 part of what I do is trying to use more than one
4 source of information to get at an aspect of
5 "truth". So in my work I like to use three
6 different methods. In a perfect world, in an
7 ideal world, you would use more than one method to
8 get at the discovery of some element of truth. We
9 don't live in a perfect world, so in this
10 particular case we tried to take an optimal
11 approach, the best we can under the time
12 constraints and the resource constraints. Hence,
13 we were limited to using one method, and that's a
14 review of the materials. Do the best we can with
15 the resources that we have available to us.

16 MS. MAYOR: Do you recall in the
17 beginning of June of this year, the Partnership
18 offered to you, through legal counsel from the
19 Consumers Association, to have its experts on
20 adaptive management and monitoring meet with you?

21 DR. DIDUCK: There were -- I recall
22 discussions about that, yes, indeed.

23 MS. MAYOR: And in September you
24 declined that offer?

25 DR. DIDUCK: Pardon me?

1 MS. MAYOR: And in September you
2 declined that offer through your counsel?

3 DR. DIDUCK: It would have been
4 because of lack of availability of time, I would
5 think. Well, I know for a fact that's what it
6 was. Do you want to hear back facts about that
7 or -- various responsibilities at work, et cetera,
8 so, yeah, the beginning of term, accepting an
9 acting director position. So we did the best we
10 can.

11 MS. MAYOR: So, fair enough. So an
12 offer was made to you, though, in June and it was
13 ultimately declined?

14 DR. DIDUCK: We couldn't take
15 advantage of the opportunity to meet with Ms. Cole
16 and her staff.

17 MS. MAYOR: And you indicate in your
18 report that there was a lack of evidence or
19 incomplete information to be able to answer
20 certain of the questions or criteria you were
21 using. And I think in one or two instances you
22 even made statements to the effect:

23 "As a consequence we are forced to
24 conclude this criteria has not been
25 met."

1 DR. DIDUCK: Yes. So we would have
2 been in the same position as the Commission doing
3 a review of the materials that we had at hand.

4 MS. MAYOR: And you would agree that
5 had you chosen to meet or arrange a video
6 conference, or even a conference call, you may
7 have been able to discuss and obtain and fill some
8 of the gaps that you have talked about?

9 DR. DIDUCK: That could have been a
10 possibility, indeed. We weren't sure how fruitful
11 the meetings would have been. They certainly
12 could have been, yes, I don't rule that out.

13 MS. MAYOR: And in fact, your
14 experience from the Bipole III experience was that
15 it provided an abundance of information additional
16 to what was filed?

17 DR. DIDUCK: It was helpful, yes,
18 indeed.

19 MS. MAYOR: Now, there is, I think you
20 made reference and there is reference in your
21 report to the Canadian Environmental Assessment
22 Agency's operational policy statement on adaptive
23 management measures that have been created under
24 the Canadian Environmental Assessment Act?

25 DR. DIDUCK: Yes.

1 MS. MAYOR: Would you agree that
2 following that operational policy statement would
3 represent a level of good practice that has been
4 established by Federal regulators for
5 implementation across Canada?

6 DR. DIDUCK: I think it does provide
7 sound guidance for the development of an adaptive
8 management plan, yes.

9 MS. MAYOR: So it would be a
10 reasonable approach then for the Partnership to
11 have modelled its adaptive management practices
12 for this project to that operational statement?

13 DR. DIDUCK: If that is in fact what
14 they did, and I know that they purport to have
15 done that, then kudos to them.

16 MS. MAYOR: Now, in your report you
17 state at page 21, it is just a brief quote, if you
18 want to turn to it, that's fine, but I will read
19 it to you. It says:

20 "Although changes to monitoring will
21 be communicated to the public, which
22 is a positive feature, members of the
23 public beyond the MAC will not be
24 involved in evaluating and making
25 decisions about changes to monitoring

1 plans."

2 Would you agree that the information
3 collected through the monitoring plans should
4 include information that is relevant to those most
5 affected?

6 DR. DIDUCK: Could you restate that,
7 please? That was a bit lengthy.

8 MS. MAYOR: I sure can.

9 Would you agree that the information
10 collected through the various monitoring plans
11 should include information that is most relevant
12 to those directly affected?

13 DR. DIDUCK: Directly affected and
14 beyond, yes, indeed. Others who may have an
15 interest, who may not be viewed as directly
16 affected.

17 MS. MAYOR: Certainly the involvement
18 of the public from the First Nations Partners is
19 extremely important?

20 DR. DIDUCK: Certainly is.

21 MS. MAYOR: Government regulators are
22 specifically charged with managing resources for
23 the public good, are they not?

24 DR. DIDUCK: Some are, yes, indeed.

25 MS. MAYOR: And those regulators

1 ultimately report to officials elected by the
2 public?

3 DR. DIDUCK: Some do indeed, yes. Not
4 all, but some.

5 MS. MAYOR: Were you aware that for
6 this project, the more significant changes that
7 will be made to the monitoring programs will be
8 made in consultation with those government
9 regulators?

10 DR. DIDUCK: I was aware of that, yes,
11 indeed.

12 MS. MAYOR: And for this project those
13 regulators are actually at two levels, both the
14 Federal and Provincial level?

15 DR. DIDUCK: Yes, very good.

16 MS. MAYOR: So, in fact, the public is
17 represented both at MAC through the partner
18 communities and through reporting and consultation
19 with government regulators?

20 DR. DIDUCK: I'm a firm believer in
21 going beyond representative forms of governance or
22 democracy to more of a broad based participatory
23 form of involvement in governance.

24 MS. MAYOR: Now, you would agree that
25 the monitoring program designed by this

1 partnership is project specific and has been
2 designed to determine if the predictions made in
3 the Environmental Impact Statement are correct?

4 DR. DIDUCK: That's an important goal
5 of the program, yes.

6 MS. MAYOR: And it is also designed to
7 determine if the mitigation measures implemented
8 are working as anticipated to protect the health
9 of each valued environmental component or VEC?

10 DR. DIDUCK: Yes, certainly that's an
11 important part of it. You know, and in some
12 cases, in some respects we actually saw
13 forethought given to the efficacy of different
14 mitigation schemes. And so that is all to the
15 good, it sort of reflects more of an active
16 approach. I think what we would like to see is
17 the bar raised a little bit more and the
18 proponents taking advantage of further
19 opportunities to adopt an active approach, and
20 that would be given forethought to which
21 mitigation approaches would be more effective, and
22 if there is uncertainty with respect to that
23 answer, then you do a little bit of an experiment
24 to determine which mitigation scheme would be more
25 effective. Although we do recognize that there

1 was some consideration given by the proponents to
2 taking a so-called active approach. But -- so
3 that's good, it is not excellent. So if we strive
4 for excellence, and not ideal, not perfect, but
5 strive for excellence, let's take advantage of
6 further opportunities, raise the bar, do a better
7 job. That would be my position.

8 MS. MAYOR: Dr. Fitzpatrick, you spoke
9 much today about independent oversight. However,
10 in your report, what you figure -- what you place
11 more prominence on was your recommendation for an
12 external publicly available audit of the project,
13 five years and ten years post construction, to
14 increase the level of transparency during the
15 adjustment phase. And I think your recommendation
16 is that an audit be done at those time frames for
17 all monitoring plans, regardless of the VEC
18 involved. Is that correct?

19 DR. FITZPATRICK: The recommendation
20 that we focused on in the report is the one that
21 was presented by the Commission for Bipole III.
22 And so in the IRs, the information requests, there
23 was some back and forth about whether or not there
24 would be an external audit, post hoc evaluation.
25 And so in our report we noted that the information

1 request suggested that, no, there wouldn't be.

2 MS. MAYOR: And in terms the
3 recommendation, though, your recommendation was
4 that an audit be done at the five and ten year
5 post construction time frames for all monitoring
6 plans, regardless of the VEC?

7 DR. FITZPATRICK: Our recommendations,
8 we tried to craft it so it was comparable to what
9 the Bipole III report recommended. And I'm not
10 100 per cent sure of the wording.

11 MS. MAYOR: Now, are you aware that
12 virtually all of the monitoring programs for this
13 project that have been designed by the Partnership
14 are evaluated on an ongoing basis?

15 DR. FITZPATRICK: Yes, I'm aware there
16 is evaluation.

17 MS. MAYOR: And are you aware that
18 virtually all of the monitoring programs have a
19 larger evaluation at key project milestones that
20 are linked to anticipated project effects?

21 DR. FITZPATRICK: I'm aware that's a
22 design feature for internal evaluation, yes.

23 MS. MAYOR: And some of the examples
24 are the human health risk assessment, which is to
25 be done every five years.

1 DR. FITZPATRICK: Yes, internally.

2 Strong design feature, very important.

3 MS. MAYOR: And the physical
4 environment monitoring program is re-evaluated
5 three years and five years post construction?

6 DR. FITZPATRICK: Internally, yes.
7 Strong feature.

8 MS. MAYOR: The aquatic effects
9 monitoring plan evaluated ten years into the
10 operation to determine if it is still relevant and
11 appropriate?

12 DR. FITZPATRICK: Subject to check, I
13 take the time period, yes, internal evaluation,
14 strong feature.

15 MS. MAYOR: Given the project specific
16 nature of the overall monitoring program, and its
17 focus on both the actual effects of the project
18 and the efficacy of the proposed mitigation
19 measures, given all of that, wouldn't you agree
20 that the approach planned by the Partnership to
21 assess its monitoring programs based on the
22 anticipated timing of effects on each VEC is more
23 appropriate in this situation than a generic time
24 frame like five or ten years post construction for
25 all VECs?

1 DR. FITZPATRICK: I think that the
2 evaluations add different types of information.
3 So I would concede that a VE specific time frame
4 for internal evaluation is a best practice. I
5 would also then have a comma, that an internal --
6 sorry, pardon me, that best practice also includes
7 an external audit. If the reason why our report
8 indicates five years is for comparability purposes
9 with what was recommended with the last
10 assessment, but should there be an argument for a
11 different time frame, then great, I would like
12 to -- that could be decided by the Commission,
13 what time frame is most appropriate. And again,
14 we suggested the five-year time frame so that
15 there would be comparability between projects.

16 MS. MAYOR: Now, monitoring and
17 mitigation undertaken for the project will be
18 reviewed on a regular basis by the Partnership
19 through MAC, which you've talked about. And it
20 consists of five Hydro representatives, five
21 Partner First Nation representatives, and four
22 Partner First Nation advisors, as well as various
23 experts that are required. You are aware of that?

24 DR. FITZPATRICK: I am aware of the
25 committee being composed of in total ten voting

1 members, although I assume that the Chair, who is
2 a Hydro representative, is a non-voting member, if
3 we are following Robert's rules, that wasn't
4 clear. And then the technical advisors can come
5 to the meetings should there advisee be present.

6 MS. MAYOR: And you would agree that
7 MAC is certainly one forum for thoughtful debate
8 and collaboration that -- and I can't recall who
9 actually said that this morning, that one of you
10 spoke of this morning.

11 DR. FITZPATRICK: MAC can certainly be
12 one forum for thoughtful debate and collaboration
13 amongst the members of MAC, yes.

14 MS. MAYOR: And I believe you both had
15 indicated in your reports that you have read the
16 environmental assessment reports prepared by the
17 Partner First Nations?

18 DR. FITZPATRICK: I did, yes.

19 MS. MAYOR: And you would agree that
20 those First Nations are committed to environmental
21 stewardship?

22 DR. FITZPATRICK: That's what was
23 articulated in the reports, yes.

24 MS. MAYOR: And they have said, both
25 in their reports and in their testimony, that it

1 is their responsibility to take care of the land
2 and to protect Aski. And you are aware that this
3 is certainly how those Partnership community
4 representatives feel?

5 DR. FITZPATRICK: As articulated in
6 the documentation, that was articulated, yes.

7 MS. MAYOR: And in addition to their
8 participation on the MAC, those stewards of the
9 land and water are also undertaking their own ATK
10 monitoring programs; correct?

11 DR. FITZPATRICK: Yes, they are
12 developing, I read in the transcripts they are at
13 different stages of development, yes.

14 MS. MAYOR: And as they've indicated,
15 both in their reports and in their evidence
16 throughout this hearing, they will closely be
17 watching and monitoring program outcomes, because
18 this aspect of the project is of such great
19 importance to their communities?

20 DR. FITZPATRICK: That has been the
21 evidence in the hearings and in the reports, yes.

22 MS. MAYOR: Now, you gave us an
23 example this morning about the caribou and their
24 hoofs being harmed by the gravel?

25 DR. FITZPATRICK: In the BHP Ekati

1 mine, yes.

2 MS. MAYOR: And that was a situation
3 where that advisory committee couldn't, or hadn't
4 known in advance that there was going to be this
5 issue, but they were able, through development of
6 a committee and some work, to be flexible and
7 figure it out and ultimately resolve the problem?

8 DR. FITZPATRICK: The independent
9 environmental monitoring agency, or EMA, was
10 facilitating the interaction and dialogue between
11 the elders and the proponent to have resolution of
12 the issue. And in that particular issue, the
13 processes and the resolution was an ongoing
14 iterative learning outcome that took some years to
15 negotiate amongst the two, negotiate between the
16 two groups is how, yes, I tried to articulate it.
17 I hope that came across.

18 MS. MAYOR: As you indicated, they
19 facilitated and brought together the elders and
20 the project proponent to be able to discuss and
21 resolve issues of discrepancies between western
22 science and ATK?

23 DR. FITZPATRICK: That was the
24 process, the model that was used to help resolve
25 this issue with subsequent iterations. So it is a

1 good example of how there are base processes out
2 there, and if we have more detail on what those
3 processes would be, we would have a little bit
4 more comfort level, we would be moving away from a
5 black box, so, yes.

6 MS. MAYOR: And in fact, that's the
7 exact role that MAC has been designed to play, to
8 bring together all of the information from the
9 communities, from their monitoring programs, bring
10 them together with western science, the experts on
11 both sides, bring them all together and discuss
12 how to deal with these problems that arise if they
13 haven't already been anticipated?

14 DR. FITZPATRICK: Yes. And that's why
15 MAC is such a positive feature. But we brought
16 forward that example because that was a long
17 learning process to resolve an issue that the
18 elders identified very quickly in the process.
19 And resolution is still ongoing from the last
20 independent monitoring agency report. And so if
21 there is a clearer process, a base process in
22 place that can then be modified to be specific to
23 this, it would shed some light on how outstanding
24 issues would be resolved. How will -- should the
25 information between two bodies of knowledge or

1 different communities have differing outcomes,
2 what will be done to resolve that? Just a base
3 process, that can be modified, and hopefully not
4 take as long as it took the parties in the
5 Northwest Territories. Hopefully we can learn
6 from them so that we can achieve it in a more
7 expeditious fashion.

8 MS. MAYOR: And the process followed
9 in that particular example wasn't pre-determined,
10 they learned as they went along the way, they were
11 flexible, they adapted?

12 DR. FITZPATRICK: They certainly
13 learned as they went along and it was certainly --
14 it took a long time and there were a lot of bumps
15 on the road. And given the proponent's
16 experiences to date, it would just be great if
17 there was a process in place so there weren't so
18 many bumps in road. And if we knew the process,
19 if they could learn from that, it would be
20 smoother, and that we think would reduce the
21 potential for dysfunction to arise. And I'm not
22 saying that dysfunction is going to arise, but we
23 just want to reduce the potential.

24 MS. MAYOR: In fact, this partnership
25 has already worked together for ten years to

1 resolve many of those types of issues. And we
2 have heard much evidence about tears and debate
3 and discussion, but they have had ten years of
4 experience already.

5 DR. FITZPATRICK: Excellent. So what
6 would have been really helpful was to clearly
7 communicate what was learned over the ten years
8 and what process might be suggested to the
9 monitoring advising committee, not to say they
10 would have to adopt it, but this is what has been
11 working so far. And if that was clearly
12 articulated, that would have increased our
13 understanding that the process that the parties
14 found to be the most successful.

15 MS. MAYOR: Now, were you aware that
16 both MAC and the ATK monitoring will be funded and
17 implemented for the life of the project?

18 DR. FITZPATRICK: Yes. We are aware
19 that there is a budget line. We are not -- we
20 don't have information about the budget line
21 itself, or there is recognition, and we don't have
22 recognition or understanding of how the budget
23 line changes over time. Because there is clear
24 documentation, which is appropriate, that efforts
25 will -- there will be peaks in terms of monitoring

1 the outcomes. So we are aware there is a budget
2 line, but there is not detail on how that budget
3 line pocket is going to change over time.

4 MS. MAYOR: And you are aware that
5 that funding will include external experts as
6 required, not just internal experts?

7 DR. FITZPATRICK: It is my
8 understanding that that budget line includes
9 external experts for the First Nation Partners,
10 according to the schedule, I want to say three,
11 but it might be four of the JDKA. Is that
12 correct?

13 MS. MAYOR: Now, you would agree that
14 this letter of oversight by virtue of having such
15 four Cree Nation Partners, who are so committed to
16 the environment, watching, is quite a bit
17 different than that anticipated for the Bipole III
18 project?

19 DR. FITZPATRICK: Yes, we find that
20 the existence of the MAC is a strength of the
21 project.

22 MS. MAYOR: Perhaps this is to
23 Dr. Diduck, I'm trying to remember who did what
24 part, but on an annual basis the Partnership will
25 be submitting detailed monitoring reports to

1 regulators, and these will be reviewed in detail
2 by those regulators. You were aware of this?

3 DR. DIDUCK: I know that government
4 officials will be playing a role in the evaluation
5 of results, yes, indeed.

6 MS. MAYOR: Were you also aware that
7 the monitoring results, as opposed to summaries
8 that were provided in the past for Wuskwatim and
9 other projects, will be made publicly available on
10 the Partnership's website for review by interested
11 parties and the general public?

12 DR. DIDUCK: I seem to recall reading
13 about that, yes.

14 MS. MAYOR: In fact, it actually
15 provides an opportunity for public comment and
16 questions on its website, and those are reviewed
17 and responded to in a timely fashion?

18 DR. DIDUCK: Websites can be a good
19 form of dissemination of information, and in the
20 past in some cases have been effective in
21 collecting information from the public. It is
22 sort of a basic type of a model of input and
23 output of information, and nowhere near any type
24 of a high level discussion, or public engagement,
25 or a deliberative process of any type. So it

1 depends on what one's goal is. If one was to sort
2 of establish a website for basic type of
3 interactions, output of information, yeah, it is a
4 model that's worked.

5 MS. MAYOR: And it is another means of
6 ensuring transparency?

7 DR. DIDUCK: Another means, yeah, it
8 does shed light for the public on the monitoring
9 results. So, yes, indeed.

10 MS. MAYOR: And you just spoke of
11 public engagement. In fact, would you be aware
12 that the Partnership is undertaking public
13 engagement programs on the outcomes of monitoring
14 in each of the Partnership communities on an
15 annual basis?

16 DR. DIDUCK: They intend to, is that
17 the case?

18 MS. MAYOR: Yes.

19 DR. DIDUCK: You say they are, but
20 they intend to down the road engage in a public
21 engagement to have a discussion with regards to
22 monitoring results, that's the case. I didn't
23 find a record of that, so...

24 MS. MAYOR: Ms. Cole is quoting me
25 sections of the EIS, so we won't go down that

1 road.

2 That type of public engagement would
3 again allow for public input on monitoring and,
4 again, promote transparency. You would agree?

5 DR. DIDUCK: I think it depends on the
6 agenda or the intentions of the engagement
7 mechanisms. If the intention is to present the
8 results at an open house so people can hear the
9 results, then that's sort of more of an outflow of
10 information. If it is sort of to enter into a
11 critical discussion and ask where people from the
12 public, from the community, may be able to
13 identify ways to improve a monitoring scheme, you
14 know, then that's a different matter. So,
15 different mechanisms used for different purposes.

16 MS. MAYOR: Now, Tataskweyak Cree
17 Nation will be implementing a moose harvest
18 sustainability plan for the Split Lake resource
19 management area that includes monitoring. The
20 results of that program will provided on an annual
21 basis to regulators through the Split Lake
22 resource management board.

23 Would you agree with me that this is
24 yet another way in which monitoring for a VEC,
25 such as moose, is scrutinized more broadly?

1 DR. DIDUCK: Scrutinized, yes, it is
2 not a broad level by the community, but sort of by
3 an organization or an institution that's been
4 established under a legislative scheme. So there
5 is sort of, again, could be a bit of a gap between
6 the decisions by the board and what the board
7 knows, and what the constituents, if you want to
8 use that term, know and learn about the
9 monitoring. So there certainly could be a gap,
10 that's what I'm saying, between the board and the
11 constituents.

12 MS. MAYOR: Now, there are also
13 similar monitoring and reporting through the
14 resource management boards, and this is required
15 for all of the resource based programs in each of
16 the adverse effects agreements that have been
17 established with the Partner First Nations. Were
18 you aware of that additional layer of reporting
19 and transparency?

20 DR. DIDUCK: Yes, I was. But we
21 didn't give it consideration in terms of the
22 context of this report. So if those governance
23 mechanisms are at play, then that certainly can
24 improve the decentralization, if you will, of the
25 decision making to some degree and the

1 dissemination of information.

2 MS. MAYOR: And you are aware that
3 those management boards are comprised of
4 individuals from both government and First Nation
5 communities?

6 DR. DIDUCK: Yes.

7 MS. MAYOR: And that type of scrutiny
8 with so many layers of accountability and
9 oversight simply wasn't in place for the Bipole
10 III project, at least in part because there aren't
11 partners on that project; is that fair?

12 DR. DIDUCK: Yes, I think so. And
13 that's very interesting, that's going to introduce
14 a new level of complexity, the coordination of the
15 information flows among the various boards, so it
16 sort of makes the job of the Partners, in this
17 case, a little bit more difficult in some
18 respects. But that level of decentralization, no,
19 that was not seen in terms of the First Nations
20 and the relations with government, with the Crown
21 I don't think were seen in the Bipole III case.

22 MS. MAYOR: And the end result is a
23 more transparent process and a better developed
24 adaptive management and monitoring program?

25 DR. DIDUCK: As I mentioned right at

1 the beginning of our talk, yeah, I think that
2 there certainly has been an increase in the level
3 of detail, and the plan, and improvement in the
4 contingents articulated in the program.

5 MS. MAYOR: Thank you, doctors, I have
6 no further questions.

7 DR. DIDUCK: Thank you.

8 THE CHAIRMAN: Thank you, Ms. Mayor.
9 Any of the participants groups? Fox Lake
10 Citizens, do you any questions for these
11 witnesses?

12 MS. PAWLOWSKA: Good morning
13 Drs. Fitzpatrick and Diduck. Thank you for your
14 presentation.

15 I just have about two questions.

16 How would you say adaptive management
17 fits in with co-management?

18 THE CHAIRMAN: I'm sorry, could you
19 introduce yourself. They don't know you. The
20 rest of us do but --

21 MS. PAWLOWSKA: Sure. My name is
22 Agnes Pawlowska-Mainville, I'm with the Concerned
23 Fox Lake Grassroots Citizens.

24 So if you could perhaps speak a little
25 bit how adaptive management ties in or

1 differentiates between co-management, between
2 Aboriginal traditional knowledge and positivist
3 knowledge?

4 DR. DIDUCK: I will try to be really
5 brief. There is a literature on this that's
6 developing, and it is very interesting, and people
7 are really starting to articulate the distinctions
8 and the integration of these two forms of
9 management.

10 In brief, adaptive management was
11 developed as a highly scientific approach to
12 reducing adverse impacts on the environment from a
13 development initiative of some type. And as
14 people started to realize that the complexity of
15 the social, ecological interactions make things
16 very uncertain, we need more forms of knowledge in
17 the discussion. We need people with different
18 ways of knowing about the complexities of human
19 environmental interactions. So people started to
20 think, well, we need more collaboration in
21 adaptive management. We need more parties to
22 participate.

23 And so while that is going on,
24 co-management or collaborative management was
25 being developed as sort of a form of partnership

1 between indigenous communities, for the most part,
2 and state agencies, right. So that became known
3 as co-management, but it was collaborative
4 management as well. Right? So then people
5 started to bring these ideas together, so that now
6 what is viewed by some as sort of state of the art
7 is this notion of adaptive co-management, where
8 you get a high degree of participation and
9 collaboration by groups and people with interests
10 in the management of resources. And sometimes
11 that will include a management board such as the
12 ones that we were just discussing, or sometimes it
13 includes a broader array of people and groups in
14 the community who may have an interest.

15 Adaptive co-management, at the same
16 time, could be applied as a vehicle or mechanism
17 by a co-management board, if a co-management board
18 had been established between an indigenous
19 community First Nation say, or a state agency,
20 they have a structure, they have a mini
21 constitution, et cetera, et cetera. And then
22 adaptive co-management could be applied as a
23 vehicle to reduce the adverse effects and reduce
24 the uncertainty of the impacts on the environment
25 of an initiative, done in a collaborative way. Is

1 that too long and convoluted?

2 MS. PAWLOWSKA: No, that's fine.

3 Thank you.

4 The second question relates a little
5 bit to co-management or adaptive co-management,
6 and in many cases and much of the scholarship
7 discusses how ATK is often overshadowed by western
8 positivist knowledge. Could you perhaps, either
9 of you or both of you, speak to what are the best
10 mechanisms that you can have, or certain
11 guidelines that you could recommend for something
12 like this not to happen?

13 DR. FITZPATRICK: I will go first.

14 I think that is outside my area of
15 expertise, but I think I have read, and I would
16 point anyone interested in the direction of the
17 Mackenzie Valley Environmental Impact Review Board
18 who have guidelines that they have created. But,
19 again, that's outside my -- there are people
20 better qualified to talk about how to give
21 different types of knowledge equal weight. But
22 there is guidance available, particularly from the
23 Northwest Territories and Nunavut, given the
24 structure and timing of their resource
25 development.

1 DR. DIDUCK: I don't think I have very
2 much more to add. I mean, I find this very
3 fascinating and I find it a challenge of our time,
4 a challenge in Manitoba and Canada and elsewhere
5 in the world, a challenge on how to come to grips
6 with integration, or whether people even want
7 integration about trying to bring together
8 different ways of understanding human relations
9 and the world at large. So it is way beyond my
10 field of expertise. I have read about it, I find
11 it very fascinating. One small step, I think,
12 would be the articulation of basic elements of
13 different worldviews. But, no, I don't even want
14 to go there. I have read about it, I find it very
15 interesting, but...

16 MS. PAWLOWSKA: Thank you.

17 Can I ask a follow-up question then?
18 Would you recommend then that perhaps guidelines
19 or certain protocols are set in place prior to
20 establishing a monitoring board, so that those
21 differences and those up and coming, perhaps,
22 overshadowing and power struggles can be resolved
23 prior to starting up some kind of monitoring
24 mechanism, monitoring plan I guess you can call
25 it?

1 DR. DIDUCK: That is consistent with
2 the recommendation of a paper that I read for
3 these proceedings that we do cite in our report.
4 It is a report done for the Federal Government for
5 CEAA dealing with articulating framework for the
6 integration of ATK and technical science for
7 adaptive management in the environmental impact
8 assessment. I could give you a citation, or
9 perhaps you have read it?

10 MS. PAWLOWSKA: I have read it. Thank
11 you very much. That's all of the questions that I
12 have.

13 THE CHAIRMAN: Thank you
14 Ms. Pawlowska-Mainville.

15 MMF, do you have some questions?
16 Okay. Again, please introduce yourself for the
17 witnesses' benefit, please?

18 MS. SAUNDERS: Yes, of course.
19 Jessica Saunders with the Manitoba Metis
20 Federation.

21 Good morning, doctors. I just have
22 one question. Conceptually, and not in particular
23 to any effects or impacts here, but I'm interested
24 in hearing from you on this. Are there some
25 effects or impacts that are so profound that they

1 can not be managed or mitigated?

2 DR. DIDUCK: Well, there is no doubt,
3 thinking of an example in the -- well, I'm trying
4 to think of an example in this case. But there
5 could be impacts from the normative design of a
6 project, the basic design of a project, and
7 because the basic design can't be adapted, if
8 there -- so, yes, I think there could be some
9 impacts that come from the basic design, not sort
10 of modifying things around the edges of a project,
11 but from the basic design of a project, a mega
12 project, perhaps like the one in this case, that
13 if you can't adapt those key features, if there
14 are adverse effects that flow from those features
15 and you can't adapt them, so adaptive management
16 can't be used. Sort of a vague example, but I
17 can -- yes, I certainly think there are some
18 effects that, you know, are so profound that they
19 can't be dealt with through adaptive management.

20 MS. SAUNDERS: Thank you.

21 THE CHAIRMAN: Thank you,
22 Ms. Saunders. Ms. Whelan Enns?

23 MS. WHELAN ENNS: Good morning, I'm
24 Gaile Whelan-Enns from Manitoba Wildlands. Thank
25 you for your work and your presentation this

1 morning.

2 My apologies, I think I am going to
3 have to get my slides, Mr. Chair.

4 With attempts to be sure who spoke to
5 which slide, but please correct if necessary.

6 On page 5, there is a reference in
7 this best practice slide under doing the
8 monitoring and then, again, under evaluate, there
9 is a reference to the right people. So would you
10 tell us who the right people are to do the
11 monitoring?

12 DR. DIDUCK: I can give you types of
13 people.

14 MS. WHELAN ENNS: Sure.

15 DR. DIDUCK: Well, people with
16 expertise from both a technical science and an
17 Aboriginal science, indigenous science point of
18 view with regards to each aspect of various types
19 of impacts of the project. So technical
20 scientific experts, indigenous science experts,
21 resource users, the proponent, tag team approach,
22 and regulators who are experts on, or who use, or
23 have an interest in environmental, social,
24 cultural and economic components of the whole
25 environment, both from monitoring and from an

1 evaluation point of view. Because as I mentioned,
2 I think that evaluation and the learning that
3 comes from it is key and should -- can have a big
4 impact on the weight that's given to certain types
5 of results that are derived from monitoring
6 schemes, in broad brush strokes.

7 Patricia, do you have anything?

8 MS. WHELAN ENNS: Did we just hear you
9 include the regulators in your answer in terms of
10 who would do or participate in the monitoring?

11 DR. DIDUCK: Yes.

12 MS. WHELAN ENNS: Thank you.

13 Slide seven and eight, I think. Okay.

14 Is it accurate then that we are still all in the
15 planning stage for Keeyask Generation Station,
16 that the materials that you have reviewed, your
17 assessment, your report, all relate to the
18 planning stage?

19 DR. DIDUCK: For the generating part
20 of the overall project, I believe so.

21 DR. FITZPATRICK: There are elements
22 of the project that are under development, so
23 that's a good articulation of the answer.

24 MS. WHELAN ENNS: And there are --
25 well, there is more than one Keeyask project

1 itself, so that's the challenge and the question,
2 yes, thank you.

3 The lack of a compliance audit then is
4 referenced in your slide eight. Do you suggest or
5 recommend that compliance audits should be part of
6 your recommendations generally in terms of more
7 transparency, and independent experts?

8 DR. DIDUCK: Well, we haven't made a
9 recommendation to that effect. My opinion and I
10 believe that -- I won't speak for Patricia -- but
11 I believe that having access to those audits sheds
12 more light on the potential for the adaptive
13 management plan to actually be effective. So if
14 we actually knew about how one of the main
15 partners in the Partnership deals with learning
16 from experience, and whether they have the
17 mechanisms in place for their so-called continuous
18 improvement, that would have shed some light on
19 this and would have shed some light on the
20 situation for the Commission.

21 MS. WHELAN ENNS: Are either of you
22 aware of any instances where Manitoba Hydro's
23 research technical papers products in advance of
24 filing an EIS appear in journals or go through a
25 peer review process?

1 DR. DIDUCK: I can't think of examples
2 off the top of my head. I wouldn't be surprised
3 if there were some, I wouldn't be surprised if
4 there weren't a lot, but I -- I am sorry.

5 DR. FITZPATRICK: Yes, the same
6 answer.

7 MS. WHELAN ENNS: Thank you. All
8 right.

9 Would you, as experts in your specific
10 areas that you are doing the analysis on, would
11 you recommend -- would you prefer if Manitoba
12 Hydro was disclosing research that it funds, that
13 could have any bearing on, for instance, a future
14 EIS?

15 DR. FITZPATRICK: Well, I believe, and
16 I don't recall the exact number, we asked Manitoba
17 Hydro to list research that they fund, and they
18 gave us an extensive list in round two of the
19 information requests.

20 DR. DIDUCK: And my view was that if
21 we would have been able to pinpoint the
22 connections between that research that's been done
23 and why it has been done, what is being done with
24 the results and how they connected to -- they
25 certainly may be, but we just don't know how they

1 are connected to uncertainties from a scientific
2 or management point of view, that would have been
3 helpful.

4 MS. WHELAN ENNS: Thank you.

5 Slide nine, the monitoring advisory
6 committee also currently has one identified sub
7 committee and, of course, over, you know, the
8 first 30 years, which a lot of the material that
9 we are viewing and assessing is about, or the life
10 of the project, which is 100 years, there could
11 well be other sub committees. So, would you, and
12 I guess this is probably a question for each of
13 you -- are your recommendations and suggestions,
14 the results of your research and your comments
15 this morning, do they also then apply to sub
16 committees of the MAC?

17 DR. FITZPATRICK: I would think that
18 they would apply to sub committees of the MAC,
19 depending upon how the MAC itself ultimately is
20 structured.

21 DR. DIDUCK: Yeah, I don't think that
22 I have much more to add. What I would think would
23 be of help is, in one instance at least, the
24 development of, and use of some forethought in the
25 development of a framework for an evaluation. We

1 know that the MAC is playing a role, and we have
2 learned that MAC, I think in some instances has
3 the authority to communicate the results of
4 monitoring to members in the community through the
5 chair, I believe. But MAC has some potential to
6 help with regards to communication transparency,
7 and they will be playing a role in the review.
8 But what I would have liked to have seen is some
9 type of framework at least for how the evaluations
10 will take place and what will trigger an
11 adjustment and that sort thing.

12 MS. WHELAN ENNS: Dr. Diduck, you made
13 a reference to complexity, and that with the
14 potential that goes with the MAC and this approach
15 in terms of intended monitoring, that it is
16 complex. So does the likelihood of sub
17 committees, again, over this is a long time, add
18 much to the complexity concern that you voiced?

19 DR. DIDUCK: I mean, it all depends on
20 the governance arrangements that are established,
21 but I certainly see from my point of view here how
22 sub committees could be of assistance actually, if
23 special sub areas of expertise are required to
24 fulfill the mandate of the committee.

25 MS. WHELAN ENNS: Thank you.

1 On slide nine there is -- there were
2 comments what you said verbally about outside
3 experts again. And I would like to ask you both
4 what that means, as in our outside experts,
5 individuals with expertise relevant to monitoring,
6 for instance, as a fair focus this morning in your
7 presentation of monitoring, who did not
8 participate in initially preparing the EIS, or
9 participate in the arrival at the contents in the
10 JKDA, or the adverse effects agreements, how
11 outside do you mean?

12 DR. FITZPATRICK: We referred to
13 technical expertise or advisors for -- that the
14 MAC as a whole. And what we were speaking of is,
15 depending upon which element of the mandate the
16 MAC felt that it required expertise, they would be
17 able to engage outside expertise and wouldn't
18 strictly rely upon the MAC members. So that's
19 what we meant by outside expertise. And in terms
20 of the CV or expertise of those outside experts,
21 it would be subject to the needs and desires of
22 the MAC, particularly considering which element of
23 the mandate they would like outside assistance in
24 achieving.

25 MS. WHELAN ENNS: Thank you.

1 Have either of you assessed or advised
2 or participated in an AM process, adaptive
3 management process for a project that has this
4 kind of life line? We are talking 100 years.

5 DR. DIDUCK: Well, no, not as a
6 practitioner, no.

7 DR. FITZPATRICK: Not as a
8 practitioner.

9 MS. WHELAN ENNS: Would you have any
10 suggestions or recommendations in terms of how to
11 maintain and grow the learning assets that you are
12 referring to in your presentation, the technical
13 knowledge, the transparency on records, including
14 the records for decision making?

15 DR. DIDUCK: Well, I don't want to
16 bore the Commission with an organizational
17 learning, but, yeah, there is some clear ideas
18 from the literature that have proven to be
19 effective to ensure that lessons learned by an
20 organization are, I hate to use buzz words,
21 entrenched in the memory of the organization so
22 that they outlive a champion of an initiative, or
23 they outlive the individuals who may work for the
24 organization at that point in time. So, yeah,
25 there is a literature on that. And not knowing

1 what is in place at Hydro now with regards to say,
2 for example, the learning that is derived from the
3 EMS, I'm not sure what recommendations I would
4 make. I would have to know a little bit more
5 about what is going on at the corporation right
6 now.

7 MS. WHELAN ENNS: Thank you.

8 It stands to reason then, I will try
9 to avoid a statement here, does it stand to reason
10 that in this kind of time line for a project,
11 where it is multiple generations and they are
12 having questions about this being multiple
13 generations within the Partnership communities,
14 does it stand to reason that perhaps we aren't
15 seeing anything so far, we are in the planning
16 stage here, but we are not seeing anything here so
17 far about succession planning, given how unusual
18 and unique this generation station project is with
19 the Partners, how many adaptive management and/or
20 aimed for improvements there are in the EIS, do
21 you see anything that has any content in it that
22 is actually succession planning? This goes to my
23 previous question.

24 DR. DIDUCK: Not using that explicit
25 phrase. But, I mean, I think there are some

1 aspects of the environmental protection program as
2 a whole that certainly lend themselves to
3 succession planning and the development of
4 organizational learning over the long haul, like
5 the development of the website that was discussed,
6 or I'm not sure -- the development of databases
7 that will be established and put in place. So
8 those are the various tools that could be used to
9 develop long-term stability and knowledge about
10 the project. So I think we certainly did learn
11 about some tools that could be applied for
12 successional planning purposes.

13 MS. WHELAN ENNS: Thank you.

14 On slide nine in the answer to IR 164,
15 again, this answer begs a couple of questions.

16 Do either of you, do you consider that
17 is clear that who the MAC advises, whether the MAC
18 is advising the Partnership limited board, whether
19 the MAC is advising the regulators, or whether
20 that's just collaboration, whether the MAC would,
21 in fact, end up perhaps advising the Manitoba
22 Hydro board?

23 DR. FITZPATRICK: It is my
24 understanding that the MAC advises the Partnership
25 board, but also the MAC does provide advice to

1 those in charge of doing the monitoring as well.

2 So it is my understanding.

3 MS. WHELAN ENNS: Thank you.

4 You've both commented on aspects to do
5 with transparency and access to information
6 overall for best decisions and adaptive management
7 and monitoring.

8 Should the Keeyask Partnership,
9 especially the majority shareholder, and that goes
10 to costs and resources and capacity, be required
11 to maintain public access to its monitoring
12 reports and its outcomes over time? Is this
13 consistent with your transparency and access to
14 information recommendations?

15 DR. DIDUCK: Certainly it is
16 consistent with my conception of full transparency
17 and creating the potential for long-term
18 deliberations and learning.

19 DR. FITZPATRICK: Subject to any
20 information that is confidential to resource
21 users, of course.

22 MS. WHELAN ENNS: Absolutely. Thank
23 you.

24 The terms of reference for these
25 proceedings and then these hearings for the CEC

1 include then the standards that are in the
2 sustainable development principles and guidelines
3 for Manitoba. This may not have been part of what
4 you were asked to look at, but I would appreciate,
5 we would appreciate knowing whether the adaptive
6 management standards and then the application of
7 that to monitoring that you've provided in your
8 report and this morning, whether you were
9 considering fulfilment of those principles and
10 guidelines?

11 DR. DIDUCK: Yes. I think important
12 parts of a robust and well-developed and
13 transparent adaptive management plan are there.
14 It is, as we discussed at length, we still think
15 there are certain gaps and the program or the plan
16 could be more developed, more robust, more
17 transparent. It is a tough call as to extent to
18 which the development of this plan is consistent
19 with those principles. It depends if you want to
20 sort of take an idealistic type of view. But I'm
21 not sure I have a bottom line assessment.

22 DR. FITZPATRICK: I defer to
23 Dr. Diduck, and probably Dr. Gibson from a few
24 weeks back.

25 MS. WHELAN ENNS: Well, then I won't

1 ask about Dr. Gibson's recommendations.

2 DR. FITZPATRICK: Like I say, I defer
3 to Bob.

4 DR. DIDUCK: If there was not a plan,
5 then I certainly would have said the EIS is not
6 fully, in that one dimension, is not consistent
7 with taking a precautionary approach, and it is
8 not fully consistent with the key principles of
9 sustainable development. The plan here is good,
10 it is not full, but it is good. So it is a tough
11 call.

12 MS. WHELAN ENNS: Thank you.

13 Quick moment, Mr. Chair.

14 Is it evident to you again in your
15 research and your assessment whether the reports
16 from monitoring that were referenced in the
17 questions from Manitoba Hydro, whether those
18 reports to regulators, presumably also then with
19 outcomes, are also going to be transparent, and
20 whether they are the same reports as would be
21 posted by the Partnership on their website?

22 DR. DIDUCK: I don't think that I have
23 the information to answer that. My assumption, if
24 I was to make an assumption, I would say that
25 those reports would not be the same.

1 MS. WHELAN ENNS: We also heard then
2 in the questions from Manitoba Hydro this morning
3 a reference to the fact that these reports,
4 monitoring reports would go to the resource, the
5 RMA boards, resource management area boards. And
6 again, have you, either of you in your technical
7 work, your academic work, your volunteer lives,
8 have either of you had any interaction with, or
9 done assessment or reports for any of the RMA
10 boards, the five of them in the province?

11 DR. FITZPATRICK: I have not done work
12 for those boards.

13 DR. DIDUCK: No, I have not done work
14 for those boards either.

15 MS. WHELAN ENNS: Thank you.

16 DR. FITZPATRICK: Just to go back to
17 the last question, there was a question, round two
18 CAC 166, that was posed, that asked if Manitoba
19 Hydro would commit to a publicly available
20 database. And the response was that project has a
21 website and the reports will be posted in a timely
22 manner on that database. So going back to the
23 previous question, I think it is my understanding
24 that the reports will be available.

25 DR. DIDUCK: Yes, certainly. I just

1 didn't, if I was planning it, I'm not sure I would
2 put the same reports up for the public as I
3 provided to the regulators. You may have to take
4 into account special considerations, and the needs
5 of the audiences that one is preparing a report
6 for, but...

7 MS. WHELAN ENNS: There is also, of
8 course, issues, perhaps, concerning data, there is
9 also ways to provide data that does not in any way
10 constrain or conflict. So, thank you.

11 On the RMA boards then, are you aware
12 that they are not transparent?

13 DR. DIDUCK: I do not have an opinion
14 on that, sorry.

15 MS. WHELAN ENNS: Okay, finished.
16 Thank you both again.

17 THE CHAIRMAN: Thank you, Ms. Whelan
18 Enns. Panel members, any questions? Mr. Yee.

19 MR. YEE: Thank you, Mr. Chair.

20 There has been a fair amount of
21 discussion about timing in your report, as well as
22 in your presentation today. And I happen to have
23 noticed in your report there was an information
24 request to Manitoba Hydro regarding their general
25 approach to timing between obtaining monitoring

1 results and making adjustments.

2 My question to you, and I'm not sure
3 who is best to answer this, but in regards to the
4 monitoring advisory committee, Manitoba Hydro has
5 indicated they are currently proposing that the
6 monitoring advisory committee meet once every two
7 months. I just wondered if you have a comment on
8 that in terms of, do you feel that's sufficient
9 timing to address and make adjustments to
10 monitoring results?

11 DR. FITZPATRICK: In answer to your
12 specific question, again, we would support that it
13 would be dependent upon the specific VEC whether
14 or not that was sufficient timing. In terms of
15 the meeting every two months overall, the MAC has
16 a very ambitious agenda, and if they can meet
17 every two months, particularly at the outset of
18 the project to get that done, that would be
19 incredible. They have a lot to do, there is a lot
20 on their plate, and meeting every two months --
21 yeah, a lot on their plate.

22 MR. YEE: Thank you.

23 THE CHAIRMAN: Thank you. Do you have
24 any re-direct?

25 MS. CRAFT: No, Mr. Chair.

1 THE CHAIRMAN: Thank you.

2 Well, thank you again to both of you
3 for coming here today. We bumped you a few weeks
4 back, so I'm glad we were able to accommodate your
5 schedule, and you were able to accommodate ours.
6 So thanks for your papers and your presentation
7 here today.

8 Now, given the time, it is 10 after
9 12:00. It doesn't make much sense to start with
10 the next presentation at this time and break it in
11 about 20 minutes.

12 Well, how long -- Mr. Anderson, could
13 you give us an idea about how long your
14 presentation is?

15 MR. DOLINSKY: Mr. Chairman, my name
16 is Dolinsky, D-O-L-I-N-S-K-Y, from Taylor
17 McCaffrey. And I'm working with the elders and
18 with Mr. Anderson, and assisting them with their
19 presentation.

20 It is believed, subject to the usual
21 vagaries of evidence, that their presentation
22 would be in the range of one and a half to, as
23 much as one and a half to two hours.

24 THE CHAIRMAN: Okay. That's for all
25 of the --

1 MR. DOLINSKY: That is for a
2 presentation made by the elders, by Elder Flora
3 Beardy speaking for the elders, by D'Arcy
4 Linklater, and also by Dr. Terry Dick.

5 THE CHAIRMAN: Okay. Thank you.

6 In that case then I don't think that
7 we will start that presentation before lunch. But
8 what I would ask is, we normally come back at
9 1:30, some of us have a little bit of trouble
10 because we have served lunches brought to our
11 meeting rooms, and sometimes we can't control the
12 timing of the Fort Garry serving the lunch. But I
13 hate to lose some time. So what I'm going to ask
14 is that we make best efforts to be back here at
15 1:15, and we will commence then.

16 We have a busy schedule, we have
17 others after you that we have to get to today. So
18 if we come back at 1:15 we will start off with
19 your presentation.

20 MR. DOLINSKY: Thank you,
21 Mr. Chairman.

22 THE CHAIRMAN: Thank you.

23 (Proceedings recessed at 12:12 and
24 reconvened at 1:15 p.m.)

25 MR. DOLINSKY: Mr. Chairman, thank

1 you, as I mentioned before the lunch break, my
2 name is Dolinsky, Ken Dolinsky, from the law firm
3 Taylor McCaffrey, and with me here at the table is
4 Mr. Michael Anderson, of the MKO Natural Resources
5 secretary, and he is acting in a technical
6 advisory capacity, and he will also be assisting
7 today. And we are here today with Kaweechiwasihk
8 Kay-tay-a-ti-suk Inc., and at the front table is
9 Elder Flora Beardy, and beside her is Dr. Terry
10 Dick, who will also be making a presentation. And
11 to my immediate left of Dr. Dick is D'Arcy
12 Linklater who will be making a presentation as
13 well, and also seated at front is Mr. Edwin
14 Beardy. And by way of note, our table, I will
15 refer to it is at the KK table, is also elders
16 Elizabeth Beardy, Doreen Saunders, and Stella
17 Chapman.

18 THE CHAIRMAN: Thank you.

19 MR. DOLINSKY: Now, before beginning
20 with the presentations and the swearing in of the
21 presenters, Elder Flora Beardy has requested the
22 opportunity to commence the presentation with a
23 prayer. And she is prepared to do that now with
24 the board's permission.

25 (Prayer)

1 MR. DOLINSKY: I'm not sure if the
2 board wishes to proceed with affirming the
3 witnesses?

4 THE CHAIRMAN: We will.

5 Flora Beardy, sworn

6 Terry Dick, sworn

7 D'arcy Linklater, sworn

8 Edwin Beardy, sworn

9 MR. DOLINSKY: Now, Mr. Chairman
10 members of the Commission, housekeeping matter, we
11 asked that reference be made or note be taken of
12 the filings that were made on behalf of KK for
13 this matter, there was on December 5th an
14 electronically submitted number of documents
15 and -- in three parts regarding the presentations
16 on behalf of the elders, on behalf of Dr. Dick,
17 and of Mr. Linklater, and there is some additional
18 illustrative material that we will be referring to
19 that Mr. Anderson has at a hand.

20 THE CHAIRMAN: It has just been handed
21 out.

22 MR. DOLINSKY: Mr. Chair, if I might
23 ask during the course of the proceedings if we
24 just describe the document we wish to refer to and
25 there is no need to make further reference to them

1 at this point.

2 THE CHAIRMAN: That's correct.

3 MR. DOLINSKY: And as a guide for the
4 initial presentation by Elder Flora Beardy, there
5 was a document with the electronic filings which
6 would have been referred to as 3.1 and an email of
7 December 5th, and there was a -- this is a summary
8 of presentations. And the actual date on it is
9 September 26, 2013. And that may be a useful
10 guide in terms of Elder Beardy's presentation.
11 And when you are ready to proceed.

12 THE CHAIRMAN: Okay. If you could
13 just perhaps give us a better idea of what --is it
14 in this package? Okay. Proceed.

15 MR. DOLINSKY: Thank you.

16 MS. BEARDY: Tansi everybody. Good
17 afternoon, good afternoon to the Commission, to
18 the rest of our panel and everyone else that's
19 here. I'm really proud to be here. I'm glad that
20 we have this opportunity to present some of our
21 concerns. We were called the Kaweechiwasihk
22 Kay-tay-a-ti-suk, and it is a group of elders from
23 York Landing that got together and talked with all
24 of the concerns that we are going to present
25 today.

1 First I will talk a bit about
2 aboriginal traditional knowledge.
3 Enninesewin, that's the Cree word for aboriginal
4 traditional knowledge. We are the Inninuwuk, the
5 people of Aski who speak the Cree language. Aski
6 means everything that's part of mother earth. All
7 Aboriginal people are known as
8 okanawaynichidaywak, that's a Cree word that means
9 keepers of the earth or stewards. The elders are
10 keepers of Eninesewin, which means our traditional
11 knowledge and wisdom about everything concerning
12 Aski, the land. The Eninesewin shares
13 observations and experiences of everything on
14 Aski. The Eninesewin also shares any changes that
15 happen on Aski. Their Eninesewin is passed down
16 from generation to generation. This Eninesewin
17 becomes broader with each new observation and
18 experience.

19 We are the Kaweechiwasihk
20 Kay-tay-a-ti-suk, meaning the elders at York
21 Landing. Our Eninesewin also comes from a
22 worldview that's reflected in our language and in
23 our customary laws. Our Eninesewin is guided by
24 our spiritual beliefs. Our Eninesewin is routed
25 in our cultural practices and in our ceremonies.

1 We, the Kaweechiwasihk Kay-tay-a-ti-suk, believe
2 that everything on Aski is interconnected and
3 alive. We believe that everything and every
4 living thing has a purpose on Aski. We do not
5 take from Aski without giving back.

6 When one part is changed or destroyed
7 or damaged, Aski is off balance. There is a word
8 in our culture that we do not use very lightly or
9 often. It is called ochenewin, that's a Cree
10 word, and it means that what you do to Aski will
11 affect you, your family, your extended family, and
12 your community, your nation, and the children yet
13 unborn. And this way every person has an
14 obligation to care for Aski and care for
15 everything on Aski. That's a word that we use,
16 ochenewin, to look after Aski.

17 We believe that every Inninu and all
18 Inninuwuk have an obligation to carry out their
19 role as Okanawaynichikaywak. We believe that
20 every Inninu and all Inninuwuk have an obligation
21 to do everything possible to achieve
22 Kwayaskonikiwn, which means to restore balance.
23 We must take every step we can to achieve
24 Kwayaskonikiwin, whenever Aski is changed or
25 destroyed or damaged or out of balance. We, as

1 Okanawyanichikaywuk, have a responsibility to be
2 the voices for everything on Aski, and to find
3 ways to make things better. We are, as
4 Okanawyanichikaywuk, have to do everything we can
5 to achieve Kwayaskonikiwin. Where there is a
6 disturbance and where Aski is out of balance, the
7 future of all Inninuwuk depends on achieving
8 Kwayaskonikiwin.

9 We, the Kaweechiwasihk
10 Kay-tay-a-ti-suk, recommend that before any
11 projects begin, that elders be consulted. We
12 recommend that our eninesewin be treated with
13 equal value and importance. This input from the
14 elders is very important.

15 So by meeting and counselling with the
16 elders and by treating Aboriginal tradition
17 knowledge of equal value importance, Aboriginal
18 traditional knowledge and western science can
19 result in a true partnership. Eninesewin and
20 western science can work together.

21 Unfortunately at times we are not
22 consulted regarding various projects. At times
23 our eninesewin is not treated with equal value and
24 importance with western science. In these times
25 we are not able to work together to identify

1 changes to Aski. In these times we are not able
2 to work together to achieve Kwayaskonikiwin.

3 We are very concerned that our voices
4 have not been heard. We are concerned that our
5 eninesewin is not being treated with equal value
6 and importance with western science. We are very
7 concerned that more imbalances on Aski will
8 happen. We are concerned that we will not be able
9 to work together to achieve Kwayaskonikiwin.

10 There is more comments from 3.1
11 "Treating Traditional Scientific Knowledge with
12 Equal Value and Importance: The Traditional
13 Scientific Knowledge and the Keeyask Generation
14 Project." That's working draft 1.0.

15 I can share two examples here. Na May
16 O is a Cree word for sturgeon. This is a very
17 clean fish. When their present habitat is
18 polluted or changed, the fish will leave the area.
19 Even when ashes fall on the river from a forest
20 fire, the fish leave the area. We have tried to
21 share our eninesewin about Na May O. We are
22 concerned that Aboriginal traditional knowledge
23 and western science have not been combined to
24 achieve Kwayaskonikiwin for the things that make
25 Na May O out of balance.

1 We, the Kaweechiwasihk
2 Kay-tay-a-ti-suk recommend that the restoration of
3 the former seasonal fish passage at the Kelsey
4 generating station be considered. If it can be
5 done, it should be done. We also recommend
6 building a structure in the river to make a more
7 natural flow of water at the discharge of the
8 Kelsey generating station to improve habitat for
9 Na May O and other fish.

10 There is more comments again from 3.3
11 "Innovative Measures to Mitigate Impacts on Lake
12 Sturgeon, and Enhance Sturgeon Habitat in the area
13 of the Keeyask Project in the Nelson River" of the
14 September 26, 2013 document Kaweechiwasihk
15 Kay-tay-a-ti-suk's summary of presentations.

16 We have tried to share our eninesewin
17 about the four groups of caribou. We have names
18 for each of the groups. There are the Noschimik
19 Atikok, which means caribou that stay in the bush.
20 There are the Wapanik Atikok which means the
21 caribou that comes from the east, which we refer
22 to as the Pen Island herd. There are Mantayosipi
23 Atikok, which are the Cape Churchill herd. And
24 then there is the Pasko Atikok herd which are the
25 caribou that stay where there is no trees, and we

1 refer to these as usually the Beverly herd.

2 But we are concerned about the
3 Noschimik Atikok herd. We, the Kaweechiwasihk
4 Kay-tay-a-ti-suk, recommend that the Noschimik
5 Atikok to be recognized as a distinct group of
6 resident caribou that are near the Keeyask
7 project. We also recommend that Aboriginal
8 traditional knowledge and western science work
9 together to recognize and protect the Noschimik
10 Atikok.

11 And again there is more comments from
12 3.4, Recognizing and Protecting Noschimik Atikok:
13 Resident Woodland Caribou in the area of the
14 Keeyask Generation Project, as presented on
15 September 26.

16 And that ends my presentation.

17 THE CHAIRMAN: Thank you, Elder
18 Beardy. Carry on.

19 MR. DOLINSKY: Just a question about
20 Noschimik Atikok. How are you aware of this herd,
21 the caribou that stay in the bush?

22 MS. BEARDY: I have seen them. I have
23 seen the Woodland caribou when we lived in
24 Churchill, and the elders talk about seeing
25 caribou in the Keeyask area, elders from

1 Tataskweyak and York Landing.

2 MR. DOLINSKY: The particular name,
3 Noschimik Atikok, are you aware how long the name
4 for that particular herd has been around?

5 MS. BEARDY: They have been around as
6 long as I can remember, and probably my parents
7 and grandparents time.

8 MR. DOLINSKY: Thank you. It would
9 be, subject to Commission's pleasure, we would
10 carry on with our next part of the presentation.
11 D'Arcy Linklater, and --

12 THE CHAIRMAN: Can you identify
13 what --

14 MR. DOLINSKY: Mr. Anderson will be
15 referring the Commission to some particular
16 documents from the filings. He is the person with
17 the technical expertise here. Okay.

18 THE CHAIRMAN: Will Mr. Anderson be
19 giving evidence or just assisting?

20 MR. DOLINSKY: Mr. Anderson is not
21 giving evidence, he is assisting in bringing up
22 relevant documents and --

23 THE CHAIRMAN: Thank you.

24 MR. LINKLATER: (Cree spoken). I
25 would like to introduce myself in my language. I

1 love my language and introduce myself and my
2 spiritual name, Spirit Walker. And also my clan,
3 I come from the White Wolf Clan. And I come from
4 Northern Manitoba, a place where three rivers
5 meet, my people, the native people call it
6 Nisicawaysihk, that's where the three rivers meet.
7 And my language is (Cree spoken). And I'm so
8 proud of my language, so happy that the creator
9 sent me here to be with you.

10 And I would like to acknowledge the
11 elder for her blessing, before we speak, and I'm
12 thankful to be here today with you in this
13 ancestral land, Anishinabe nation, Treaty 1.

14 I'm so honoured that I have been asked
15 by Kaweechiwasihk Kay-tay-a-ti-suk to make these
16 comments today. And I'm here, I want to say I'm
17 not here to oppose anything, I'm here to share,
18 and to participate in these proceedings, as an
19 individual, and as a citizen of Treaty 5 nation.

20 As I sit here today my thoughts are in
21 South Africa today. Ever since December 5th, I
22 think of this man who was bringing common humanity
23 together. And I also think of another man as I
24 sit here, his name was Martin Luther King. And I
25 would like to share with you a quote from Martin

1 Luther King junior; "Never be afraid to do what is
2 is right. Especially if the well-being of a
3 person or animal is at stake. Society's
4 punishments are small compared to the wounds we
5 inflict on our soul when we look the other way."

6 As leaders and citizens of treaty
7 nations, governments, corporations and regulatory
8 bodies and all citizens of Canada and Manitoba, we
9 must continue to work together. (Cree spoken).
10 We must continue to work together tirelessly, to
11 reinforce and give life to our Treaty
12 relationship, and our Majesty the Queen. We must
13 all continue to work together to ensure that the
14 Crown honours the treaty relationship, and that
15 the Treaty promises will benefit Treaty First
16 Nations citizens. (Cree Spoken).

17 These words are what our ancestors
18 used at that time; as long as the sun shines, the
19 grass grows and the waters flow.

20 My people, Nisicawaysihk people, they
21 live traditionally by reference to the great
22 binding law. We call it Kihche'othasowewin, the
23 great binding law of the creator. And underneath
24 that great binding law it is underpinned by our
25 spiritual and philosophical beliefs, values,

1 principles and goals. The customary law of the
2 Nisichawayasihk Nehethawuk is the sum total of all
3 of these beliefs and values. (Cree Spoken).

4 And we continue to occupy and inhabit
5 our ancestral land, we have for at least the past
6 ten thousand years, we have been in our land,
7 N'tuskenan. And for all of this time our strength
8 and peace and well-being has come from our belief
9 in the creator, it comes from our sense of
10 community, our stewardship of the lands, the
11 waters and resources within our traditional lands
12 N'tuskenan.

13 Our survival -- I have survived so
14 many things in our land, has been guided by
15 collective knowledge of our ancestors, our elders
16 and our citizens, passed on from generation to
17 generation, growing and becoming more valuable
18 with each new experience. (Cree Spoken).

19 We share this with you; the role of
20 Treaty 5 began in 1763. But I go beyond that. I
21 have been in -- the creator sent me to England
22 last month to be there and commemorate the Royal
23 Proclamation, 200 years. And I heard from my
24 Treaty partners that this all started in 1215,
25 when they wrote their land of the law. And

1 underneath they call it their Magna Carta. And in
2 that Magna Carta there is a chapter 39, which says
3 that they will never take anybody's land without
4 consulting with them. And they took that, and
5 they put it in the Royal Proclamation, 1763, and
6 that proclamation is in the Canadian constitution.

7 My late father always reminded me, he
8 was a political leader and a spiritual leader, he
9 used to tell me, son, don't ever forget what King
10 George promised us with respect to the land.

11 (Cree Spoken). I didn't know what he was talking
12 about until I started to go to school and finished
13 high school. But I understand that it was some
14 Crown policy to reconcile our Aboriginal title
15 before opening up indigenous land to settlement.
16 The Treaty making process recognized our status as
17 sovereign nations, and rightful holders of the
18 titles to the lands which our people in Nehethowuk
19 continuously exercised stewardship for several
20 thousand years before the first arrival of
21 European fur traders.

22 And I use that number, 10,000 years, I
23 use it because that was the number they came up
24 with when they carbon dated one of our ancestors
25 remains. My late father told me about this, one

1 of these days these remains are going to show up
2 and they don't show up for nothing. They show up
3 for a purpose. So our people have been there in
4 N'tuskenan for even before Christopher Columbus
5 was conceived, even before Jesus Christ was born,
6 our people were there with our own laws looking
7 after the land. (Cree Spoken).

8 When the adhesion to Treaty 5 was
9 made, the combined ancestral and traditional
10 territorial and homeland of Nisichawayasihk
11 Nehethowuk people included a vast area what is now
12 north central Manitoba. By providing our consent
13 and by promising to strictly uphold the honour of
14 the Crown and the terms of the Treaty, our leaders
15 and His Majesty intended to ensure there would be
16 peace and goodwill into the future. (Cree
17 Spoken).

18 Chief Pierre Moose was the leader at
19 that time, and he was my great grandfather. And
20 he entered into the Treaty circle on July 30,
21 1908, over 100 years ago. (Cree Spoken).

22 My late grandfather was a traditional
23 man. He travelled freely throughout our land,
24 guided and protected by his spirit helpers. He
25 kept his Tipithimisown, his sovereignty, as a

1 Nehetho person. (Cree Spoken).

2 Before the Treaty was made, my
3 grandfather, my great grandfather did not allow a
4 person who was not from our nation or our
5 territory to step out of their canoe unless he had
6 provided his consent. According to our customary
7 law, people must announce themselves and request
8 permission before stepping into our land on to our
9 land, or before traveling through our territory.
10 After the nation -- after our nation and our
11 neighbours obtained rifles from Hudson Bay
12 company, it was the custom for visitors to fire a
13 shot into the air to announce themselves before
14 approaching our camps or our villages. And these
15 practices reflect the customary principle of
16 Kistethichikwin, respect, tawinamakewin, which
17 means that the person seeking access acts with
18 respect by requesting access and by obtaining
19 prior consent. Tawinamakewin also means that the
20 person granting access has the duty to consider a
21 request for access, including consideration of the
22 well-being of the person requesting access.

23 When we gave our consent to a person,
24 persons taking access to our land, there was
25 always an exchange of gifts with the Nehetho

1 people making the first gift. And we still
2 continue that practice today. In my community
3 they call me the gift man. Whenever a stranger
4 comes there, visitors come there, I am asked to
5 present a gift.

6 My great grandfather saw the Treaty
7 making process as being consistent with our
8 customary law principle of Tawinamakewin. The
9 words of Treaty 5 reflect our custom law
10 principles of Tawinamakewin. Also the Treaty
11 states it was necessary for his Majesty the King
12 to obtain the consent of our nation to open up our
13 land for settlement and immigration by his other
14 subjects. One of our customary laws that we are
15 exercising today in Tawinamakewin. We come here
16 and exercise the art of listening in order to
17 create understanding amongst ourselves. We are
18 exercising our customary law today.

19 The Treaty terms also speak of
20 ensuring the mutual well-being of Nehethowuk, our
21 the people, and his Majesty, and the exchange of
22 gifts and support. In saying, and I quote, "So
23 that there may be peace and goodwill between them
24 and Her Majesty, and that they may know and be
25 assured of what allowances they are to come upon

1 and to receive from Her Majesty's bounty and
2 benevolence."

3 My late great grandfather believed in
4 himself as Nehetho, as a spiritual person, and he
5 saw the making of our Treaty as a sacred process
6 guided by our spiritual practice and values and by
7 our customary law. My ancestors conducted the
8 sacred pipe ceremony before the Treaty discussions
9 began, and considered the Treaty process as the
10 making of a covenant between three parties. (Cree
11 Spoken). His majesty, Nisichawayasihk Nehethowuk
12 and the creator. That's why they call it Sacred
13 Treaty, because we used the pipe, and we continue
14 to use the pipe today. And that pipe has been of
15 spiritual significance to our people since time
16 immemorial. (Cree Spoken). The pipe has always
17 had spiritual significance, and it always will.

18 His Majesty's Treaty commissioners
19 described the meaning of treaty by using spiritual
20 terms of the greatest importance to my grandfather
21 and to my relatives, Nisichawayasihk nehethawuk.
22 The Commissioner said that Treaty would bind our
23 nations in peace and friendship for as long as the
24 sun shines, the grass grows, and the waters flow.
25 These are the sacred elements that our elders keep

1 reminding us, those three sacred elements that our
2 ancestors use. And these are powerful spiritual
3 words that were spoken by the Commissioner that
4 created a sacred bond between His Majesty and our
5 people. The sun and the grass and the waters were
6 the three sacred elements making life on mother
7 earth. And the fourth sacred element that
8 balances the medicine wheel is the creator.

9 My grandfather, my great grandfather
10 very clearly understood that the winds of change
11 were blowing in our territory. And he knew that
12 His Majesty's government looked hungrily at our
13 sacred lands. (Cree Spoken). And he listened
14 carefully when the Treaty commissioners promised
15 to share the land. You see, our ancestors knew
16 that the foreigners were coming, the newcomers
17 were coming to our land. The creator prepared
18 them through prayers, dreams and ceremonies. Our
19 customary law of sharing, puhkwenamakewin, which
20 means to share amongst what we have ourselves,
21 this means that everything is shared whether in
22 times of plenty or in times of want. That is why
23 we have give away ceremonies today, as part of
24 puhkwenamakewin is the customary law of
25 nesohkumakewin. It means helping others, or to

1 help and support others, practising the customary
2 law of nesohkumakewin is when we provide food and
3 firewood and support to our elders, to our widows
4 with children or to those who are not well, or to
5 those who are injured. (Cree Spoken).

6 Nesohkumakewin also refers to
7 providing spiritual support for those that are
8 suffering or are grieving the loss of a family
9 member or a relative. Nesohkumakewin also refers
10 to the sharing to help those that are not in
11 harmony with themselves or their health or their
12 community.

13 In exchange for my late grandfather,
14 great grandfather and my ancestors' acceptance of
15 Treaty terms, His Majesty promised to share
16 Nisichawayasikh nehethawuk in accordance with our
17 customary law of puhkwenamakewin and
18 nesohkumakewin.

19 The customary law of Wahkotowin or
20 adoption is very important to us. Under this
21 customary law, when we entered into a Treaty with
22 another indigenous nation, we adopted each other's
23 families of that nation, as our families. When we
24 adopt people or a whole family under the customary
25 law of wahkotowin, we become responsible for the

1 protection and the well-being of that person or
2 family, and everyone becomes a relation of the
3 other. (Cree Spoken).

4 As an example of wahkotowin or
5 adoption, prior to Treaty being made, my great
6 grandfather adopted the first non-aboriginal child
7 born in our land, in N'tuskenan, her name was
8 Irene Gaudin, daughter of missionaries. And my
9 great grandfather gave her a spiritual name, he
10 named her Little White Swan. After that she was
11 also given the gift of our language. She was
12 given this gift so she had could speak with us and
13 understand us. And I heard when she went to
14 England people were surprised that this woman, who
15 is not native, could speak and communicate in our
16 language. Under the customary law wahkotowin, the
17 Treaty resulted in each of His Majesty and
18 Nisicawaysihk nehethawuk adopting the families of
19 each other. By adopting us the through the treaty
20 making ceremonies, His Majesty promised to protect
21 and ensure the well-being of our people.

22 My late great grandfather would have
23 accepted all of the words and the promises of the
24 Treaty commissioners as showing respect for our
25 customary laws. And in particular customary laws

1 of kistethichikiwin, tawinamakewin,
2 puhkwenamakewin, nesohkumakewin and wahkotowin.

3 Together with all of the Treaty terms,
4 my grandfather accepted His Majesty's request for
5 consent to enter our land N'tuskenan. He also
6 accepted and made a mutual promise to share
7 equally with each other, and to provide support in
8 times of need and also promised to adopt and
9 protect the families of each other.

10 To all of the Nisichawayasihk
11 nehethawuk within the Treaty circle July 30, 1908
12 there were three parties making this sacred
13 treaty. On their way to the negotiating treaty
14 table my ancestors, they had in their mentality to
15 share this land, not to surrender the land, the
16 waters or the natural resources within our lands.
17 The terms of Treaty 5, adhesion to Treaty 5
18 established a solemn promise that the lands within
19 our ancestral lands and traditional territories
20 would be shared forever between the Treaty nations
21 and the Crown and with the settlers and others
22 entering into our traditional lands.

23 As an example, and explained by Treaty
24 Commissioner Semmens, the terms of Treaty 5 assure
25 a Treaty right to earn an income from our land,

1 and also assure His Majesty's support for our
2 economic pursuit by promising that you shall have
3 the right to pursue our avocations of hunting and
4 fishing throughout our traditional territory, our
5 land, and to make an annual purchase of ammunition
6 and twine for nets, which were some of the most
7 important tools of our livelihood in 1908. And
8 also to encourage the practice of agriculture.
9 (Cree Spoken).

10 This Treaty also contained our food
11 sovereignty, our food security, and it was
12 supported by the Treaty by His Majesty at that
13 time, by promising to support to provide twine and
14 ammunition. It is still in Treaty. (Cree
15 Spoken).

16 The education of our children was very
17 important to the First Nation negotiators at that
18 time. The written terms of Treaty 5 and the
19 spoken promises of Commissioner Semmens confirmed
20 that Treaty right to education by promising and
21 agreeing in Treaty to maintain schools for
22 instruction, whenever the Indians of the reserve
23 so desire it.

24 It is an acknowledged historic fact
25 that the Nelson House band, as it was called at

1 that time, was concerned about the impacts of our
2 livelihood that will result from the coming of the
3 railroad and other developments. The Treaty
4 commissioner recorded the fact that our Treaty
5 negotiators wanted to make sure that Treaty 5 will
6 protect our occupation as hunters and boatmen, so
7 that there will be no misunderstanding, no
8 misunderstanding should arise and no friction
9 would result. Treaty 5 reflects a sacred and
10 perpetual commitment to nation building between
11 Treaty 5 nations and His Majesty the King.

12 As Treaty nations we must protect,
13 assert and exercise our Treaty and human rights at
14 every opportunity in order for our rights to be
15 recognized and fulfill the Treaty relationship and
16 for the honour of the Crown to be upheld.

17 In accordance with the customary law
18 of the tawinamakewin, his Majesty needed our
19 consent to open our land to settlement. And our
20 consent is required before any changes can be made
21 to the terms of our Treaties.

22 Mutual consent is the binding
23 principle of our sacred Treaties. The Natural
24 Resources Transfer Act of 1930 is a violation of
25 Treaty promises, and we have never consented to

1 the unilateral attempt by his Majesty's government
2 to change the Treaty terms.

3 Our Treaty relationship is not frozen
4 in one moment in history, but must evolve and
5 adapt as events take place, as challenges take
6 place in our lives. Today in order to honour the
7 spirit and intent of the Treaties, we must now
8 ensure that the resource revenue sharing, benefit
9 sharing and resource access agreements with our
10 nations were a condition of any government
11 approvals or licences related to energy, water,
12 mining and natural resource developments within
13 our traditional lands. (Cree Spoken).

14 As well, the Supreme Court of Canada
15 says that the Crown-First Nation consultation and
16 accommodation process is an enforceable part of
17 the modern Treaty, and of the government to
18 government relationship. All our Treaty nations
19 must take every step to apply that Crown-First
20 Nation consultation and accommodation process to
21 every proposed action or decision of the Crown so
22 that we will protect our inherent Aboriginal
23 treaty and human rights, so that we will protect
24 them for our children, to give meaning to our
25 government to government relationship, and to

1 ensure that the honour of the Crown is upheld.

2 My great grandfather and our Treaty --
3 our ancestors, our Treaty negotiators were aware
4 in July, 1908 that change was coming. (Cree
5 Spoken). And that they were negotiating for the
6 future of all generations to come. (Cree Spoken).
7 It must have been a tremendous responsibility for
8 our ancestors who negotiated these Treaties. And
9 so we must work together to achieve a full
10 implementation of the legacy of our ancestors, our
11 negotiators, and to secure a future where all
12 Treaty nations and for all Treaty nations and
13 First Nations citizens. To exercise our
14 sovereignty and the systems of governance and laws
15 that reflect our language, our custom, our
16 traditions, principles and beliefs; continue to
17 use and occupy and exercise stewardship over our
18 traditional lands; continue to exercise our
19 inherent and Treaty right to carry out our
20 livelihoods and the harvesting practices without
21 interference; protect the waters, fish, animals
22 and plants within our lands; to exercise our
23 cultural and spiritual practices; to protect our
24 sacred burial and medicine sites, and also
25 intangible interests, things that you can't see,

1 with respect to our spirituality; deliver adequate
2 education, health care and community services to
3 all of our citizens; live in safe and adequate
4 housing; and receive any benefit from equitable
5 sharing of employment and wealth arising from the
6 use and development of our lands and waters and
7 natural resources within our ancestral lands. And
8 where us leaders, us citizens, us relatives of
9 treaty nations, as Manitobans and as Canadians,
10 that the treaty relationship is respected,
11 honoured and upheld and enforced. (Cree Spoken).

12 Each step we take together, as human
13 beings, must upheld the honour of the Crown.
14 Every step must contribute to restoring and
15 advancing the spiritual, political and economic
16 sovereignty and the human rights of the treaty
17 nations. As parents, grandparents, brothers,
18 sisters and aunts and uncles, relatives, every
19 step we take together must ensure that each
20 generation of the Treaty nations will be able to
21 determine their own future. (Cree Spoken).

22 Our actions are guided by the
23 customary law Aski Kanache Pumenikiwin, which
24 means that the contact of a person must be in
25 accordance to protect N'tuskenan, our land, being

1 the waters, land, all life, all creation, our home
2 and our spiritual shelter entrusted to us by
3 kiche'manitou for our children for time
4 immemorial. (Cree Spoken).

5 Our customary laws also continue to
6 apply to upholding the Treaty terms and give life
7 to a spirit and intent of treaties. Our customary
8 laws also apply to the consideration of proposals
9 of new major developments within our ancestral
10 lands and territories, including to the planning,
11 approval and development and monitoring of
12 hydroelectric projects.

13 Stated plainly it is contrary to our
14 customary law to intentionally obstruct the flow
15 of a river and knowingly alter water, fish,
16 animals and habitat, and to knowingly create
17 hardships for human beings that make a living from
18 that land and that water. In accordance with our
19 customary law, we must acknowledge the obligation
20 we all hold to carefully identify and to reconcile
21 the irreversible adverse effects of the diversion
22 and control and damming of our rivers and lakes to
23 produce hydropower. This sacred obligation is
24 expressed in our customary law, Kwayaskonikiwin,
25 meaning the duty to restore balance.

1 We must do that through our
2 ceremonies. We have survived because of our
3 ceremonies, ceremonies are so important to our
4 people. (Cree spoken). We sit here in front of
5 you enjoying the gift of life and it is because of
6 our ceremonies, and our spiritual guides. (Cree
7 Spoken).

8 If you look at the Treaty medal, that
9 handshake in that Treaty medal, that's very
10 significant for my people. It symbolizes the
11 mutual commitments of the Crown and our Treaty
12 nations to respect each other, and to build a
13 nation together as long as the sun shines, the
14 grass grows and the waters flow. (Cree Spoken).
15 It is particularly important when considering and
16 settling -- setting terms and conditions for major
17 resource developments that the affected Treaty
18 First Nations, the proponent, regulatory parties
19 and all of the Canadians share in the
20 responsibility to uphold the Treaty terms and the
21 honour of the Crown, and to recognize and respect
22 the treaty and human rights of our people.

23 As an example of how the effort to
24 incorporate customary law principles into the
25 terms and conditions of the licences for the

1 Wuskwatim Generating Station was approached by the
2 Nisichaywasik O'nanakachechikewi, it means that
3 you observe your environment. Nanakachechikewi
4 means monitors and stewards of N'tuskenan, our
5 land.

6 I have attached a complete -- comments
7 of Nisichaywasihk O'nanakachechikewuk dated
8 December 21, 2005, regarding a Comprehensive Study
9 Report for the Proposed Wuskwatim Generation
10 Project. The section of the submission entitled
11 Comments/conclusions; Application of Customary Law
12 Principles, sets out some of our recommendations
13 in order to ensure that the project as defined by
14 the scope of the CRS is not likely to cause
15 significant adverse environmental effects. It is
16 necessary that the responsible authorities, other
17 regulatory authorities and those responsible for
18 implementing any environmental plans or programs
19 which authorities include, our people,
20 Nisichawayasi nehethawuk; acknowledge that the
21 traditional knowledge of Nisichawayasi nehethawuk
22 incorporates aboriginal law regarding how the
23 environment works, being the customary law
24 principles inherent in Kihche'othasowewin, the
25 great binding law of the Creator. Acknowledge the

1 equal importance and value to be accorded to
2 Enninesewin on the western scientific knowledge,
3 must also recognize and include the application of
4 customary law principles of Nisichawayasi
5 Nehethawuk as an integral part of the
6 consideration and application of Enninesewin.
7 Recognize those rules and relationships,
8 responsibilities and authorities as are necessary
9 for Nisichawayasi Nehethawuk to effectively apply
10 customary law principles; and to achieve nehetho
11 tipithimisowin in a manner that is consistent with
12 Kihche'othasowewin, as determined by Nisichawayasi
13 Nehethawuk; and recognize the exercise of our
14 customary law, beliefs, values and principles that
15 are essential to the culture of Nisichawayasi
16 Nehethawuk as being within the scope of the
17 assessment of the potential environmental effects
18 of the project; and that appropriate mitigation
19 measures on monitoring plans are identified.

20 Twelve customary law principles
21 identified by Nisichawayasi O'nanakachechikewuk
22 were incorporated into the protection plan,
23 monitoring plans, management plans, and the
24 heritage resource protection plan for the
25 Wuskwatim project. Since these plans are linked

1 to the licence conditions for the Wuskwatim
2 project, the result is that these key customary
3 law principles of our people was applied to the
4 project as expressed in ethinesewin in our
5 language are now associated with the licenced
6 terms of the project.

7 I was very proud of that work. People
8 said that I was against development, was against
9 Wuskwatim, but in my belief I said, when I was
10 really determined, this can't be just a business
11 deal, there has to be a spiritual component of
12 that arrangement. And the work of the elders at
13 that time (Cree Spoken) to incorporate customary
14 law principles, Ethinesewin, the traditional
15 knowledge and wisdom of Nehethawuk into the
16 Wuskwatim project, and into the terms of the
17 project licences was indirectly acknowledged by
18 the Canadian Electricity Association when Manitoba
19 Hydro received the Association's Environmental
20 Steward award on February 11, 2008. I was very
21 proud of that work.

22 And I have information that I want to
23 share, Mr. Chairman. That our work, our elders
24 were not acknowledged, but it doesn't matter. As
25 long as Ethinesewin was incorporated into that

1 project. Somebody else received an award for our
2 work. Although it is sad, but it doesn't matter.
3 That's how we are. (Cree Spoken).

4 So my relatives, so happy for this
5 opportunity, Mr. Chairman, commissioners. And so
6 we must as human beings as a human family, we must
7 carefully consider each step that we take, each
8 step that we take we act on behalf of our
9 children, not only our children but your children.
10 Each step we take we act on behalf of the unborn
11 who are watching us right now from the spirit
12 world. (Cree Spoken). This is our sacred
13 responsibility we each hold under our customary
14 law.

15 Mr. Chairman, I also wanted to share a
16 powerpoint presentation if I may. We present this
17 presentation to the regulators at that time.

18 MR. DOLINSKY: These are part of the
19 materials that were filed with -- yes, that would
20 be it. And just for reference, there was
21 reference made in the presentation to the
22 submissions on the Wuskwatim dam and those are
23 part of 3.2 of the filing electronically on
24 December 5th. And they are included within that a
25 list of the documents as part of Mr. Linklater's

1 presentation.

2 THE CHAIRMAN: Thank you. Okay, are
3 we ready? Whenever you are ready, Mr. Linklater.

4 MR. LINKLATER: I wanted to explain my
5 great binding law, which our ancestors took
6 tradition by the great binding law of the Creator.
7 It is underpinned by a spiritual, philosophical
8 beliefs, values, principles and goals.
9 Nisichawayasihk Nehethawuk customary law is the
10 sum total of all of these beliefs, values and
11 norms. These customary laws all combined to guide
12 and direct the conduct of ithiniwuk, individuals,
13 ka'esi minisichek, the family, ka'esi
14 anisko'wakometochek, the extended family,
15 mamawe'minisichek, the clan, and
16 ka'esi'pisketuskan'nesichik, the nation. In this
17 way social order was maintained by doctrines that
18 reflect Kihche'othasowewin, the great binding law.
19 It is this great law that determines and still
20 determines Nisichawayasi Nehethawuk customary law.

21 Nisichawayasi nehethawuk recognized
22 that the construction and the operation of the
23 Wuskwatim project is inherently inconsistent with
24 the great binding law. In order to address and
25 resolve these inconsistencies, Nisichawayasi

1 Nehethawuk have taken every step to ensure that
2 the construction, operation and environmental
3 protection and monitoring of the Wuskwatim project
4 will apply Kihche'othasowewin, including the
5 customary law principle, Kwayaskonikiwin,
6 reconciliation.

7 Kwayaskonikiwin is applied to
8 establish harmony between Kihche'othasowewin and
9 the Wuskwatim project. Incorporate customary law
10 principles into all aspects of the Wuskwatim
11 project; project related agreements, licence terms
12 and conditions, heritage resource protection,
13 environmental protection, project monitoring.
14 Fully engage and incorporate ethinesewin, which
15 means wisdom and traditional knowledge of
16 Nisichawayasi Nehethawuk. Ensure the exercise of
17 Nehetho Tipithimisowin, the exercise of Nehetho
18 sovereignty. In order to apply Kwayaskonikiwn to
19 the Wuskwatim project, Nisichawayasi Nehethawuk
20 are working to incorporate Kihche'othasowewin into
21 the Aniskowatesewew Ketapahchekewe Othaschekewin,
22 heritage resources protection plan; Aski
23 Ketapahchekewe Othaschekewin, environmental
24 protection plans, and nanakachechikewi
25 Othuschikewina, monitoring plans.

1 Ceremonies are so important, I
2 explained, ceremonies are an important part of
3 ensuring Kwayaskonikiwin is applied to Wuskwatim
4 project. Ceremonies are performed to seek
5 guidance, demonstrate respect, restore harmony,
6 reverse the potential of misfortune, achieve
7 balance with one's surroundings.

8 Kwayaskonikiwin and the conduct of our
9 ceremonies; each ceremony includes offering, song
10 prayer, feast.

11 The Aniskowatesew Ketapahchekewe
12 Othaschekewin, heritage resources protection plan.
13 The Aski Ketapahchekewe Othaschekewin,
14 environmental protection plan, and
15 nanakachechikewi Othuschikewina, monitoring plans,
16 will reflect Nehetho Tipithimisowin by clearly
17 defining the roles, responsibilities,
18 relationships and authorities of Nisichawayasi
19 Nehethawuk in construction, operation and
20 monitoring activities.

21 The other Nisichawayasi Nehethawuk
22 planning principles will be expressed in terms and
23 language relevant and meaningful to Nisichawayasi
24 Nehethawuk, will be guided by the ethinesewin of
25 Nisichawayasi Nehethawuk, including the influence

1 of moons season on our climate, weather, animals,
2 plants and the ithiniwuk, seasonal harvesting
3 cycles and practices.

4 Our elders came up with these
5 calendars, harvest calendars. And they said there
6 is a time for everything. For example, there is a
7 time for archeologists when they can take the
8 remains of, human remains that need to be taken
9 that are in the affected waterway. There is a
10 season for that. And according to our people we
11 have six seasons and 13 moons, and each moon has a
12 name. There is a place in each moon to harvest
13 the animals. (Cree spoken)

14 Nisichawayasi Nehethawuk recognize
15 that the proper persons must provide guidance to
16 ensure that Kihche'othasowewin is applied to the
17 construction, operation and monitoring of the
18 Wuskwatim project. Nisichawayasi Aski Kihche
19 O'nankachechikewuk, environmental advisors, that
20 team will be established and provide the necessary
21 guidance. Nisichawayasi Aski Kihche
22 O'nankachechikewuk, Nisichawayasi environmental
23 advisors team will be comprised of representatives
24 of chief and council -- and at that time I was
25 cochairing with my former colleague, Agnes

1 Spence -- resource management board, a male and
2 female elder, the NCN cultural coordinator, and
3 other persons as may be required.

4 Achieving Kwayaskonikiwin: (Cree
5 Spoken). The Nisichawayasi Aski Kihche
6 O'nankachechikewuk will be responsible for the
7 conduct of ceremonies. And every creek at that
8 time, every stream that has to be disturbed, we
9 have ceremonies. Ensuring that the
10 Kihche'othasowewin and Nehetho Tipithimisowin are
11 reflected in any decisions and measures addressing
12 environmental concerns and responding to the
13 discovery of human remains and artifacts. And
14 there is a Provincial policy, it says they own all
15 of the artifacts and human remains, but under that
16 Heritage Resource Agreement, Nischawayasi
17 Nehethawuk own the artifacts and the human
18 remains. We do not want anybody to take any
19 artifacts from our land, any human remains, those
20 are owned by our people, Nischawayasi Nehethawuk.

21 Ensure that ethinesewin of
22 Nischawayasi Nehethawuk is engaged and applied to
23 any decision, activity and measure further to the
24 Aniskowatesew Ketapahchekewe Othaschekewin, the
25 Aski Ketapahchekewe Othaschekewin, and any

1 Nanakachechikewi Othuschikewina.

2 Thank you, Mr. Chairman, thank you for
3 allowing me to share our customary laws, our
4 values and beliefs.

5 THE CHAIRMAN: We thank you for doing
6 so, Mr. Linklater. I would like to take a short
7 break right now, just 10 minutes, as we will
8 probably have to take a break when we change
9 panels a little later on. So come back at 5 to
10 3:00, and we will continue with this panel.

11 (Proceedings recessed at 2:45 p.m. and
12 reconvened at 2:55 p.m.)

13 THE CHAIRMAN: Dr. Dick, are you ready
14 to proceed?

15 DR. DICK: Yes, I'm okay.

16 THE CHAIRMAN: Okay.

17 DR. DICK: Okay. I would like to
18 thank the chair and the council for allowing me to
19 make a presentation, and also to the elders for
20 asking me to come here. Because I have, as you
21 know, worked a lot on the EIS with Fox Lake,
22 everybody knows that, Vicky is smiling.

23 The reason -- I thought when I moved
24 to B.C. I thought I was basically done with the
25 EIS. But when I realized the elders were so

1 cohesive in their interest and some of their
2 concerns, I decided to come back and help them out
3 as much as I could with my scientific background.

4 So I am professor, was a professor
5 from 1972 to just little over a year ago when I
6 retired. I worked a lot on sturgeon. My
7 experience, I started with lake sturgeon in the
8 late 1980s, wrote the initial status report on
9 lake sturgeon, and submitted it in 2002 to
10 COSEWIC, and it still hasn't been approved. I
11 think it is the longest report that went into for
12 a species. So you know how important this species
13 is, not only to First Nations, but also
14 politically. That is one of the reasons I think
15 why it has been held up.

16 I published the first annotated lake
17 sturgeon bibliography in early 1990s, and then
18 updated that bibliography from the mid to late
19 2000s.

20 Now, I don't know whether you have
21 been watching the news, but I think it is of
22 interest, because there was about 12, 1,300 papers
23 that we annotated, which was a major job. And
24 those papers I gave to the Freshwater Institute.
25 I don't know whether you listened lately to news,

1 but they actually have really closed that library.
2 So all of those papers, a lot of the literature
3 are going somewhere else outside of Manitoba, and
4 I think that's really a shame. Because I had
5 worked very hard to make sure that Manitoba was
6 front and centre with lake sturgeon work.

7 Now, my research was on the biology,
8 ecology, marking fishing, radio and acoustic
9 tagging, aquaculture, feed development. I want to
10 talk a little bit at the end about, I looked at
11 Steve Peake, the comments back and forth on Steve
12 Peake's work. And I don't want the Commission to
13 be left with some doubts about some of the
14 science. There is more science out there that's
15 better than what came out from discussion.

16 I did fish habitat assessment using
17 acoustical technologies and current profiling, all
18 of those kinds of things that were in the EIS and
19 are used to show how the systems were assessed.

20 I worked on sturgeon for over 25 years
21 with elders and resource users from Rainy River,
22 White Dog, Sagkeeng, Berens River, Pigeon River,
23 Cumberland House, and more recently with the
24 Nelson River.

25 I was really pleased to see Henry

1 Letendre's granddaughter come up and tell me that
2 he was her grandfather. He and I were great
3 friends, we did a lot work on the Winnipeg River.
4 In fact, I don't know if there is anybody who
5 knows as much about the Winnipeg River now as I
6 do, because all of the old elders are gone. You
7 know, it is really amazing. And I worked with
8 them in the upper reaches of the river, and it was
9 a really amazing time for me working with all of
10 these elders and resource users.

11 And in fact, it is probably the most
12 important part of my research career, because it
13 was there that I started to get the idea that --
14 well, we were living in tents and, you know, dirty
15 and wet and all of this stuff out in the field.
16 But what we were doing was talking to each other.
17 It was really a beautiful relationship, because I
18 was telling Henry things that I knew and he was
19 telling me things that he knew.

20 What I arrived at from doing this over
21 the years was that, I knew that I can do all of
22 the science in the world, I was getting lots of
23 research money, Manitoba Hydro gave me research
24 money, wanted to give me more money. But part of
25 the problem was, I realized that -- my interest in

1 sturgeon was always how are we going to -- I knew
2 it was in trouble, that's why I wrote the status
3 report, was how are we going to recover this
4 species? All of my research was directed towards,
5 how are we going to recover this species. And I
6 started to realize that I couldn't do it without
7 the help of the First Nations. They had all of
8 the baseline knowledge. And so when I hear people
9 talking about ATK, and it is the same level, you
10 know, as western science, in my view, it is even
11 more fundamental because it is the baseline
12 information on which I would build my study. It
13 is, you know, once we get it established, it is
14 fine to say that this data then is more or less
15 equal, but initially it is not equal, it is
16 actually more important, in my view. And I had
17 the experience of doing a lot of research. So
18 basically, I think I know what I'm talking about
19 when I say that.

20 The science is good, and of course I
21 love doing science. But I also realized this was
22 important and we had to do more of it.

23 I guess when I started looking at the
24 species -- I want to give you a little bit of a
25 story here I guess. I think lake sturgeon is an

1 iconic species for First Nations. I mean, it is
2 in their literatures, it's in their stories, it's
3 in their art. It still is, it was and still is a
4 major source of food for many, for many types of
5 food. And they talked about it and they still
6 talk about it, like you can get meat in a sturgeon
7 that tastes like chicken, it tastes like pork, it
8 tastes like beef. And there is all kinds of
9 things that they used. The fish was so important
10 to them in terms of all aspects of their life.

11 And I met several elders, some from
12 Rainy River, and also from Cumberland House, and
13 they kept telling me that sturgeon, it was
14 important for the medicine. And of course, I
15 said, well, medicine, is it because of the oil or
16 is it because of the Isinglass. And they said no,
17 no, it is because of the sturgeon. And I started
18 to realize that, you know, this day and age we
19 talk about nutrition and how important it is for
20 health. They knew it a long time ago, that in
21 fact sturgeon was medicine for health, but it was
22 also medicine for the spirit. And most of the
23 time we don't get it, right, we just don't
24 understand. And it is so important that people
25 understand that this fish is so connected to First

1 Nations, all across the country.

2 Now, in my opinion, from all of my
3 work and working on both sides of the fence -- and
4 I don't profess to be an ATK guy, I'm a scientist,
5 understanding that we must use this knowledge in
6 order to do better science. Okay.

7 Now, in my opinion, it is their fish,
8 I consider sturgeon First Nations fish. It isn't
9 a biologist for Manitoba, Province of Manitoba, it
10 isn't some scientist like me that is studying it.
11 It is their fish because it has been connected to
12 them for so many generations. And they should
13 have a say in whatever is done to protect it. In
14 fact, the elders, in my view, are really the
15 keepers of the sturgeon for Canadians and for
16 human kind. It is that important, as far as I'm
17 concerned as a scientist looking at it from their
18 perspective.

19 And one of the other things I wanted
20 to comment about, and talk about -- a lot of
21 Canadians, a lot of you people sitting in this
22 room, you probably don't think you have much
23 connection to sturgeon. But every time you turn a
24 light switch on, you are connected to them. If
25 you live in Quebec, Ontario, Manitoba,

1 Saskatchewan or Alberta, you are connected in some
2 way to this fish, because dams are built on
3 sturgeon habitat most of the time. And so I think
4 it is a sobering thought when you think, I hope
5 you go away and every time you turn a light switch
6 on, you say I'm connected to sturgeon. Maybe you
7 will give some money for sturgeon research or
8 something, right.

9 Now, York Landing, from my perspective
10 is situated in a very unique place at the upper
11 end of the Lower Nelson River, and then of course
12 they have traditional lands at the bottom end
13 right near the estuary. So, in effect, they see
14 the beginning and the end of whatever is going on,
15 on the river. So that knowledge, that historical
16 knowledge is extremely important for us to
17 understand how the river works, and where it is
18 fragmented, and where there are problems. So they
19 to me have a unique situation in terms of the
20 river.

21 Can you hear me if I turn away,
22 because I like to talk to who I'm talking to.

23 Now, the historical record reports
24 that the decline of the Nelson River, that's the
25 decline of the environment, as the elders knew it,

1 began shortly after Kelsey was built. They will
2 talk about lake sturgeon populations dropped,
3 water quality, they couldn't go down the river in
4 canoe and dip water out of the river and drink it.
5 This is a very common story you hear all along the
6 Nelson River. And it all goes back to the
7 beginning of the first dam at Kelsey.

8 I mean, they do have a really, you
9 know, good connection to the river.

10 Now, how did I get involved with this
11 hearing? I was asked a couple of years ago to do
12 a review of a series of reports referring to the
13 Kelsey dam. This was -- they were ruddering and
14 they were putting new turbines in. And they asked
15 me to look at those reports, which I did. There
16 was a variety of reports that dealt with fish
17 mortality, studies through turbines, fish habitat
18 and ramping studies. Ramping studies, that is
19 just where they turn the water on and off and
20 cycle the turbines, and it is used to be most
21 efficient in terms of generating electricity.

22 Now, because ramping is not so
23 critical at Keeyask, because this is a hearing
24 about Keeyask I'm not going to talk too much about
25 ramping, but ramping, as everybody knows, where it

1 occurs in rivers is important because waters go up
2 and down, and you get wet and drying of the river,
3 and that affects, of course, habitat. And I guess
4 at some point it would be nice if there was a
5 complete hydraulic study of the whole river system
6 so people could understand the relationship
7 between reservoirs, the ramping of the turbines
8 and so on. But, again, I don't want to get into
9 that because I will probably get hammered here by
10 somebody after. But the ramping is an issue that
11 really needs to be looked at in my view.

12 Now, what I'm going to talk about is
13 fish habitat studies, fish mortality, in
14 relationship to cumulative effects assessment and
15 mitigation, and the relevance to Keeyask, but it
16 does also relate very much to Kelsey.

17 Now, you hear it over and over again,
18 and I saw it in several of the presentations
19 before, but the cumulative impacts along the
20 river, we tend to look at each project and entity,
21 and of course, that's what you guys are reviewing
22 is a single project. But when you look at a
23 river, it is an intact ecosystem, so it is very
24 difficult not to try to understand the entire
25 river, if you don't look at all of how it was

1 integrated at one time. And of course, this is
2 how the elders see the river, they see it as a
3 unit, it is integrated, continuous. So when it is
4 broken down by dams, it is very difficult for them
5 to comprehend, how are we going to make this thing
6 whole again or make it recover? It is quite
7 difficult. So they view it as additive. In other
8 words, every time something new happens along the
9 river, if there is a decline in sturgeon when
10 Kelsey was built and then when Kettle was built,
11 Long Spruce and Limestone, if sturgeon decline in
12 its populations each time, then that's an additive
13 effect. Right?

14 After you see it the first time, they
15 are experts. In fact, the elders are experts,
16 they know if they have seen it once, they know
17 what is going to happen and they can predict what
18 is going to happen when the next is built, in a
19 general way. They do that, they know that. So in
20 their mind, and when I talk to them, they are
21 quite predictable what they see is going to happen
22 on these systems. And they will tell you, they
23 are very good at it. I think they are better than
24 me for sure at times, and certainly a lot of
25 biologists, which aren't familiar long term with

1 those river systems. That's the problem. We go
2 in and out and do our studies. And if you don't
3 make a very strong connection to the communities,
4 you really are missing some very fundamental
5 information that you actually need to improve your
6 science in many ways, in my view at least.

7 Now, the study that I'm going to talk
8 about a little bit, just to make a case about how
9 we have to, when we look at monitoring and stuff,
10 I listened this morning about monitoring and these
11 committees and stuff that are set up. But the
12 Kelsey mortality study, the Kelsey study that was
13 done for mortality and fish injury was a turbine
14 study where they put fish, they designed a thing
15 and put a tube and put fish into it. And the fish
16 went through the turbines, and they were damaged,
17 some were damaged, some weren't. And they would
18 put a balloon on them that would pop up when they
19 came through the turbines, and then they would
20 look for the fish and see what the damage was.

21 Now, that particular study, I reviewed
22 it very carefully. And there were problems with
23 some of the science, and I won't go into all of
24 the details here because I'm probably to get
25 really -- asked questions on that. But there were

1 problems with consistency and the description.
2 And one of the reasons that I think it happened
3 was because -- when I started to review the
4 reports, the people in the community didn't really
5 know what was going on. They couldn't understand
6 the reports or anything. So I started reviewing
7 them, and then I realized that they hadn't been
8 asked anything. And so not only were they not
9 asked anything, but there was actually no ATK,
10 there was none of their knowledge in that report.

11 And of course, they weren't asked,
12 everybody along the Nelson River knows that there
13 is some mortality, and everybody concedes that
14 when turbines and spillways, there may be some
15 damage with fish going over spillways and through
16 turbines. And the elders and everybody, they see
17 it. So what needs -- what should have been done
18 in my view is they should have been asked, what do
19 they see? What criterion do they use for an
20 injured fish to not make it, maybe dying, or fish
21 that actually do die? And then why not have, in
22 this case, taken pictures so that there was a
23 standard way to look at this thing?

24 And so to me it is a very easy
25 solution, this is not really condemning anybody,

1 it is just saying, well, get them involved early
2 on, get them involved in the design, get them
3 involved in making the decisions about what they
4 want to assess, get them involved in the
5 implementation, and then finally get them involved
6 in the monitoring. And do it up front, not
7 through a long-term committee, do it through
8 grassroots.

9 She is nodding, because that's the
10 key. Once you get them brought into this kind of
11 decisions, it is going to be a lot easier. They
12 are a part of the process, and I can tell you they
13 make good decisions. When I'm out with these
14 elders in the field, I say I'm out with people
15 with PhDs in common sense. I mean, they really
16 do, and they can make very good decisions. So I
17 think if we do that, we will, we can -- you know
18 it is going to be hard to put ecosystems back
19 together, but I think that -- I don't think it is
20 possible, but at least we can try to do the best
21 we can. And I think -- I think if we work that
22 way, we are going to have a lot better solution.

23 And I guess the other thing that I
24 think has to be done too is this -- how you look
25 at a river. Like, they look at river a lot

1 different than, you know, people from down here,
2 from Winnipeg, or me in fact when I used to be
3 younger, is that you look at it as generating so
4 much power. You don't look at it as a beautiful
5 living kind of system. In fact, I don't know if
6 you know it or not, but in New Zealand now, there
7 has been several places in the world that rivers
8 have been given legal rights, just like human
9 rights, and one case in New Zealand under English
10 law. So there are now places around the world
11 that are giving rivers rights, which I find is
12 actually pretty amazing.

13 But what I'm getting at is, it doesn't
14 matter if that ever happens, what I'm getting at
15 is First Nations know that, they know how
16 important this river system is as a linked entity,
17 in other words, connected across all parts, right,
18 they know it is really important.

19 And the other thing that I found
20 amazing too is this river, do you know what
21 ranking this river has in Canada, the Nelson
22 River? It is the third largest river in our
23 country. So it really has a considerable amount
24 of significance, after the St. Lawrence and the
25 Mackenzie. So it really is a significant river

1 and it drains a huge per cent of Canada.

2 So if we do cumulative studies I think
3 properly and completely, using science and with
4 ATK, I think we will come up with a much better
5 way to look at a river in terms of all of its
6 functions, not just a dam generating some power,
7 but how it relates to the needs of communities.

8 Imagine if somebody went into your
9 backyard and put something on that you didn't
10 like, right, and then destroys it that you
11 can't -- it is very insulting in a way, right,
12 without talking extensively to the people. It is
13 really important. I heard somebody come in and
14 say, eating your apples without asking you
15 sometimes -- I shouldn't say that, I might get in
16 trouble with the lawyers here.

17 So these issues, I can't make a plea
18 strong enough that, first of all, accept them as
19 their knowledge is equal, in fact, it is more
20 baseline than our own at the beginning, that they
21 see things in a more holistic sense than we do,
22 and they bring in this spiritual component that we
23 have kind of lost in the western science way of
24 thinking of things. And I think if we bring it
25 back in terms of overall management of resources,

1 we will be a better people, a better country. I
2 very much feel that way. I get quite emotional
3 about that kind of stuff because I really believe
4 it. I think it is a mistake that we are making.
5 And we have such a large First Nation community
6 that we can really benefit from this kind of
7 guidance in terms of our long-term management
8 strategy.

9 I know we are running out of time, so
10 I wanted to go through and just go over some
11 recommendations that came out of the work that I
12 did, and also talking to the elders and Mike and
13 so on. But one of the first recommendations that
14 they feel extremely strong about is that an
15 Aboriginal traditional knowledge study must be
16 integrated to all studies related to lake sturgeon
17 fish habitat. I was asked primarily to talk about
18 lake sturgeon, the fish habitat.

19 So ATK must be recognized as the
20 baseline knowledge required in environmental
21 assessment. I said it once, I say it again. But
22 it is really important I think that we start to
23 recognize that. Wouldn't it be amazing if the
24 next EIS that's written actually says right up
25 front, first thing we do, we go to the

1 communities, we talk about all of the local and
2 historical knowledge, and that becomes a first
3 chapter in an EIS. And then after that we say, we
4 are going to work closely with the Manitoba Hydro
5 and the consultants. And what we will do is we
6 will start to develop a plan that's based on what
7 their knowledge was, the history of the region.
8 That's just common sense. You do history before
9 you do the other things, right, basically.

10 And the second one is, they
11 recommend -- they recommend, I talked about this,
12 but they recommend a comprehensive cumulative
13 impact study for lake sturgeon and their habitat
14 now, today, tomorrow, so predictions of effects of
15 future projects can be developed properly.

16 There needs to be a really -- we have
17 to face the fact that there are cumulative
18 effects. All of the communities know it. The
19 elders all know it. If we do that, then we know
20 there is risks, we know there is costs, but then
21 we start to be able to make the best decisions we
22 can make, and respect the best decision makers in
23 the process.

24 So to me that's a very critical step.
25 If we don't do it, I think we are going to

1 continue to have these kind of, well, dialogue
2 that doesn't ever resolve the issue.

3 Now, I know that this paper here,
4 this -- I was very interested in this letter that
5 came out from DFO. There is a four-page letter,
6 July 12, 2013. It actually is a pretty good
7 letter, I think, from DFO. They really -- it was
8 thoughtful and they also were very careful not to
9 close the doors on any major issue. So I think
10 they struck a pretty good balance. But there is a
11 couple of things missing in here, in my view. It
12 is the Federal government, right. So I was
13 surprised that they not recognize the importance
14 of ATK up front. And they said that this is
15 really front and centre in terms of what has to be
16 done, whether it is fish mortality, whether it's
17 passage studies, or fish passage studies, or just
18 monitoring. And I think that it is unfortunate,
19 and I hope it gets into the record, I think that
20 it would have been far better had they
21 acknowledged ATK as a fundamental part of the
22 process.

23 And then they also recognized that in
24 the design, in the implementation and the
25 monitoring, that First Nations has to be there in

1 the process, not at a committee meeting every two
2 months or annually or whatever, but in the process
3 up front, and they would be making decisions.

4 Okay, if there is a problem with a
5 study, say it is on fish mortality, somebody sees
6 something they don't like and they are observing
7 it and they say, well, let's go back, sit down,
8 let's take a look and see whether we can improve
9 on that particular study. And that's the kind of
10 thing that I'm talking about trying to get. And I
11 wish DFO would actually put a little bit more in
12 that regard.

13 MR. DOLINSKY: Dr. Dick, just for
14 clarification, you mentioned some areas that that
15 letter could have been improved upon. And in
16 passing you made a remark about some good points
17 in that letter. Perhaps for the Commission you
18 could just point out what about the letter you
19 find helpful?

20 DR. DICK: Just having a look at it,
21 where my notes are here.

22 Well, the ones that come off the top
23 of my head were fish mortality studies,
24 upstream/downstream movement, because that's going
25 to be a critical thing that you are trying to fish

1 passage, and general monitoring of all of those
2 things related to fish, fish habitat and stuff, so
3 those were the key. You asked me, but you caught
4 me there.

5 There is another one that I can't
6 think of offhand, I don't remember what it was. I
7 will find it here and then I will tell you.

8 You know that in the Fisheries Act,
9 Aboriginal fisheries is identified. There is
10 recreational fisheries, there is commercial
11 fisheries and there is Aboriginal fisheries.

12 Now, I'm assuming that Aboriginal
13 fisheries referring to subsistence fisheries, as
14 well as other fisheries, maybe for food. So I
15 would have thought in that letter that they would
16 have really identified that as a major, important
17 concern. And I don't know if it is there or not,
18 but I don't remember seeing it.

19 Now, because of the mortality studies
20 in looking at that particular system at Kelsey,
21 one of the things that struck me, and that was
22 some years ago I had a meeting with York Landing,
23 and Hydro, was the way that dam is designed. Can
24 you show them that, the way the dam comes out?

25 Now, the way the dam is designed

1 there, if you look at it -- you just put it
2 there -- the water goes straight across the river.
3 It is a very unusual design. Most people would
4 have designed -- I don't know why it was designed
5 that way, maybe it was the easiest way to design
6 it, but most of the times dams are designed so the
7 water flows out and goes down the river instead of
8 straight across the river. It seems like, when I
9 try to find reports on what is going on there in
10 terms of fish movement, there is not a lot of
11 information. It would be better if there was
12 better information on that type of thing.

13 Now, what the elders are suggesting is
14 that this area here, you know, the way Keeyask is
15 designed, they are going to have that spawning
16 site and all of that riprap downstream there. So
17 it would be to design something here that deflects
18 the water away and creating, you know, better area
19 on the other side of the river for movement of
20 fish upstream. Because where the spillway is,
21 that was a phenomenal spawning area, that whole
22 area was really an important area for sturgeon,
23 the Grass River, the actual -- it wasn't a
24 spillway then it was just an extra channel at high
25 water. So it was the main river, and actually

1 this one over here was the small channel.

2 So their idea is that try to make this
3 a better system for sturgeon, it is upstream and
4 it is run of the river. You see, on the Winnipeg
5 River, if you look at where good sturgeon habitat
6 is, and I did lots of work on the Winnipeg River,
7 it is always where it is run of the river.
8 Wherever they put the dams, they didn't impact
9 certain reaches of the river so the water doesn't
10 go up and down, it just flows and the banks are
11 about the same.

12 Here, of course, you have a ramping
13 problem with the turbine, so that might be
14 something that might have to get adjusted, if, in
15 fact, people buy into this as a possibility, which
16 would be to move the water downstream, create a
17 place for fish to move past, and then up here,
18 further upstream here -- we have these and we can
19 illustrate to you -- you are going to show it on
20 there? Right, create a diversion or some kind
21 of -- no, it is not this one -- some kind of a
22 passage way. It doesn't have to be -- it doesn't
23 look like it would have to be very elaborate. You
24 have got it there now.

25 So, in effect, and it would be all

1 natural, you don't have to cement it, you don't
2 have to make a whole bunch of cement or anything,
3 but in fact it would create a slough sort of
4 channel or, you know, something that would allow
5 fish to move through. This would be in keeping
6 with the feeling that the community has, that
7 there would be continuity in the river. This
8 would decrease fragmentation of the river and
9 increase actual continuity. That's the idea, it
10 would increase continuity of the river, which is
11 something that they believe in.

12 Now, who knows whether -- I think it
13 is something that they consider is important, and
14 I think it has -- may have some merit. I think it
15 is worth looking at.

16 Remember, below that you have run of
17 the river, you have run of the river, which means
18 that there is a fair amount of what looks like
19 half decent sturgeon habitat downstream there,
20 because there is natural rapids all along down
21 that area. Particularly water to a certain level,
22 if there is too much ramping at certain times you
23 may get some wetting, you may get some drying of
24 parts of the river that are normally wetted.

25 So I think these are the kind of

1 questions, I think, if you bring the First Nations
2 in, particularly the elders, they may be able to
3 help solve some of these problems and come up with
4 what I think are reasonable solutions and may, in
5 fact, enhance the sturgeon populations more than
6 in some of the areas that are highly perturbed.

7 MR. DOLINSKY: Dr. Dick, are you aware
8 of what that blockage, what structure is there
9 now, what that is made out of?

10 DR. DICK: I have not been there, but
11 apparently it is a dyke. I don't know, is it a
12 dyke with a core? Some dykes, like the dyke on
13 the Butnau River has a core in it, it is almost
14 like a dam. But some dykes are just gravel. I
15 don't know, Hydro, somebody at Hydro probably
16 knows. Is it all gravel? It is all gravel. So
17 it wouldn't be a big job to put a gate in there
18 and allow water through.

19 MR. DOLINSKY: Just for clarification,
20 prior to that structure being there, the gravel
21 structure, there is a reference up there to Great
22 Rapids. So where did the water flow?

23 DR. DICK: Grand Rapids is over here,
24 right, just below, that is the Grand Rapids, the
25 original. Can you point to them? The Grand

1 Rapids are there. They are dry if there is not
2 spilling, right? That in fact was actually
3 great -- no, Grand Rapids are right over down
4 here. Is that Grand Rapids there too? What is
5 this over here where the actual -- what is this?
6 Yeah, that's the spillway, but that was part of
7 Grand Rapids I guess at one point, because water
8 was going both ways. So, I mean, that was a
9 big -- there was a big set of rapids all through
10 there. In fact, it went right across the river as
11 you went down in the pictures we saw before the
12 dam was built. So there is a lot of good fish
13 habitat in there. You are right, it is called
14 Grand Rapids, not the Grand Rapids further up,
15 but, yeah.

16 MR. DOLINSKY: So just to be clear, at
17 least for me and the Commission, how would
18 something like this that you are talking about,
19 how would that affect the present, the Keeyask
20 project that's under discussion here?

21 DR. DICK: In fact, it could enhance
22 the Keeyask project if that water, if that
23 deflected down -- and right now we have no idea
24 where the fish even go through there because of
25 the way the water flows. So it could enhance

1 spawning in there, and probably some nursery areas
2 too, beyond the actual dam, the outlet from the
3 turbines. And then, of course, the other thing is
4 it could allow sturgeon to move upstream and
5 connect the two populations which, first, you
6 know, the elders feel is very important, this idea
7 of continuity along the river. So, yeah, so
8 that's extremely important.

9 That head is only about 21 feet,
10 right? It is about 21 feet? I think it is
11 21 feet -- or isn't it 7 metres, 21 feet? You
12 can't answer me. Yeah, so it is about 21 feet, I
13 think, the head there. So it is not a big high
14 area for, you know, to work with.

15 So is there anything else that you
16 wanted to ask about that potential modification of
17 the river, like in terms of structures that would
18 enhance sturgeon?

19 MR. DOLINSKY: If you have further
20 comments, carry on. If not, that's fine.

21 DR. DICK: No, I think it is
22 sufficient to explain the situation. But, in
23 fact, it wouldn't be a really extremely costly job
24 to do it. So, I think, you know, it would have to
25 be looked at, but I think it is worth considering.

1 And also because you got run of the river down
2 below, you have got a chunk of river that looks
3 like really good sturgeon habitat. I mean, that
4 would have to be decided by the elders and people,
5 the engineers and that to sort that out.

6 Now, the last thing I wanted to talk
7 about was a strategy, a First Nations strategy for
8 the entire river. There isn't -- so far there
9 hasn't been a way to look at the entire river in
10 terms of sturgeon recovery. And I think it is
11 going to be important because there has been a
12 loss of sturgeon in several sections of the river.

13 Now, if you go to develop a management
14 strategy for the river -- I mean, I listened to
15 some of those presentations, or read them, and
16 there seemed to be a very strong emphasis on
17 aquaculture or stocking. And the elders are not
18 opposed to stocking, they think it has value for
19 sure, but they would like to see a much more
20 comprehensive kind of look at the program. In
21 other words, bringing in a lot of the skills that
22 they already have, like deciding, for example, and
23 how, you know, what is the -- they decide where
24 the populations are say very low, low, moderate or
25 high, and then they would then decide on a

1 management strategy. Perhaps they would leave the
2 river where there is areas where there is very low
3 populations, don't touch them, they are protected
4 for a long time. And then if there is populations
5 that are low but maybe they do some fish in there,
6 that they would decide what fish would be removed,
7 but they would record all of the biological data.

8 What happens now is that there really
9 isn't any biological data being collected
10 because -- but there is nothing related to the sex
11 of the fish, the age to sex to maturity, that kind
12 of thing. That has to come from a subsistent
13 fishery. But if you don't allow the First Nations
14 the responsibility to become an integrated part,
15 and maybe the key manager, in my view, then how
16 are you ever going to get that information? How
17 do you manage a fish if there is no information,
18 except counting the fish. So there really needs
19 to be a much better effort in terms of that
20 regard. But they have got to make the decisions
21 because, in my view, it is their fish.

22 And if there is high levels, high
23 populations, then they would still manage it, but
24 it would be a harvesting, straight harvesting
25 thing, it wouldn't have to be some, you know,

1 conservation measures.

2 And then finally, if you have got a
3 place where there is absolutely no fish, then you
4 may have to spawn fish and then stock. But the
5 stocking, you have to be very careful here because
6 the -- how long is this going to take? I think
7 there was somebody this morning said 100 years.
8 Well, if you go through one cycle, if it takes 25
9 years or so for a fish to spawn, a female, and
10 then if that cohort, that reproductive cohort goes
11 right through, it is 50 years. So you really have
12 50 years until you get one reproductive cohort
13 through to spawning. And then that's really only
14 one generation. So if you take it longer than 100
15 years, I think 100 years is even too short.

16 So, in effect, if you are reasonable
17 about sturgeon recovery, you have think like the
18 elders do, really long term, hundreds of years
19 really to see it come back.

20 It is not that -- there is no quick
21 fix here, I know it is crazy, but there is no
22 quick fix of dumping a few fish in and counting,
23 the numbers go up, if, in fact, if you don't have
24 the life cycle, all of the life history stages
25 there.

1 So it isn't, yeah, it is mind boggling
2 for a big industry. They think I'm crazy I'm
3 sure, but it is really the only way it is going to
4 work. It is the only way it is going to work. I
5 know nobody wants to think of it that way.

6 Of course, that brings up another
7 point with respect to how do you fund, how do you
8 fund a recovery of a species that may take a
9 century or more? Let's just talk about a century
10 or more, that's a long time. And so if you are
11 going to get the commitment of the community as
12 long term, it would be nice to see a substantial
13 sum of money up front that is drawn on to, in
14 fact, ensure that that management is going to go
15 on long term. It would be what I would call the
16 environmental cost up front.

17 And then somebody was talking earlier
18 and said, well, how do you keep the evolution of,
19 you know, commitment to these projects? Well, I
20 don't see it as a problem at all, because the
21 elders, you know, like me, I'm getting old, I'm
22 going to pass away, some of them will, but there
23 is other elders coming up. So in their system
24 they have got an evolution of knowledge base
25 coming into their system. So it is a beautiful

1 system, and it is only part of their culture where
2 the old people are recognized for knowledge and it
3 is not going to continue and it is not going to
4 die out, right, the knowledge is always going to
5 be there. That's going to be important when we
6 start looking at 100, 200 years in terms of
7 sturgeon recovery.

8 And you have to be careful putting too
9 many fish in, because if you swamp the system
10 early on, and if you just happen to get lucky and
11 they take, you have way too much fish, without
12 understanding. And I will tell you, the way they
13 look at the environment is slow and steady wins
14 the race. Don't put a whole bunch of stuff in at
15 once. There are enough problems with the
16 ecological changes that are going on, so let's use
17 a little more common sense when we come to that.

18 Okay. So, I think, I guess to
19 summarize -- this was actually in the DFO thing,
20 and what they said was, the requirement for
21 Manitoba Hydro on behalf of the KHLP, it is on
22 page, I'm not sure, to include in its planning and
23 construction.

24 MR. DOLINSKY: We are back in the DFO
25 letter?

1 DR. DICK: Yes, the DFO letter, yeah.

2 I'm thinking ahead here.

3 "Those fish passage facilities are
4 necessary to allow for economic and
5 technical feasible retrofits to occur.
6 Planning would include siting of
7 future fish passage facilities."

8 Which might happen, right?

9 So they really have identified it.

10 And of course, the elders have identified it too.

11 "Manitoba Hydro, on behalf of the
12 KHLP, has undertaken an accommodation
13 of fish passage option. As indicated,
14 there are technically and economically
15 feasible retrofit options."

16 I mean, that's why I said I thought
17 this was a really good letter. I thought it gave
18 industry a chance to respond, and it identified
19 the important issues. But where I didn't like it,
20 it didn't identify First Nations clearly enough to
21 say how important they are and what their role
22 should be. So I hope maybe in the future they
23 will get better at it, because the Aboriginal
24 fisheries is identified as an important issue.

25 Okay. Now, I don't know whether I

1 even can do this or not, because I read Peake's
2 comments there, and because there were some
3 confusion in the answers to the Commission, to the
4 Commission, right, I thought I should clarify a
5 few things. Because there was, I thought in this,
6 that whole debate there that there was -- I have
7 done a lot of culture of sturgeon, I can culture
8 them, I grew a 10 pound sturgeon in 18 months. I
9 mean, I developed the feeds that you can grow
10 sturgeon. I didn't understand why people were
11 having so many problems growing sturgeon. So if
12 you want to grow sturgeon, I can tell you how to
13 grow sturgeon. I just don't think it is the only
14 solution to recovery. It may have some merit in
15 certain places.

16 So, the fact that there was -- endless
17 argument about the fact that it was so hard to
18 grow them, I don't agree with that. I can get 92
19 per cent or higher survival from the egg and then
20 I can grow them up.

21 The problem with stocking, again, the
22 issue was about fingerlings died versus finger
23 fish. Well, the issue is probably not so much the
24 fingerlings as it is the condition of the fish.
25 It is very hard to feed a fish blood worms or

1 black fly larvae, whatever people sometimes use.
2 I went to nutrient dense foods, which meant I was
3 getting extremely good growth, and also very
4 robust fish. They looked like me, they were
5 really full. And the point is, if they are in
6 good condition, they will survive better in the
7 winter.

8 Now, the reason why I have not been a
9 real big fan of fingerlings, I know they are
10 easier to produce and so on, but the reason that
11 I've always said we should go with yearlings or
12 bigger fish is because, you don't have to put so
13 many fish in, but what you can do is, they are a
14 platform for learning something. You put these
15 little fingerlings in, and everybody is trying to
16 tag them and find them and all this kind of stuff,
17 right? And if you put a bigger fish in, you don't
18 have to worry about finding them. You put a tag
19 on them and you follow them around and you figure
20 out what they are doing. So you put less fish in
21 each year, but what you do is you study them
22 better.

23 I did a study, I was told that you
24 couldn't, it wouldn't work, right. A lot of
25 people, there are a lot of armchair biologists out

1 there, and they told me that if you culture
2 sturgeon and put them in the wild, they have been
3 grown in the tank, they won't feed properly,
4 right. So I ran a study on Nuamo Lake there on
5 the Winnipeg River where we took cultured sturgeon
6 that were about the same size as wild sturgeon.
7 They were the same size as the wild sturgeon but
8 the wild sturgeon were a bit older because they
9 didn't grow as fast. They were a couple of years
10 older. So we ran the study with acoustical tags.
11 We ran the study where they were put in at the
12 same time, we caught wild fish, tagged them, and
13 we caught the fish that I had in my tanks. We put
14 them in the water. And sure enough, in a little
15 while they were swimming around together, going
16 the same circuit, right. It was amazing.

17 And then, of course, people said,
18 well, they will lose weight and they will die and
19 stuff.

20 So I looked at them about three months
21 later, they lost 10 per cent of their weight. But
22 I looked at them in the spring again, I sampled
23 them with the guys from Sagkeeng. And then we --
24 I looked at their stomach, what they were eating,
25 and it was amazing. They were eating the same

1 food as the bigger sturgeon, but it was a little
2 bit smaller. They were also, and they had more
3 gravel in their gut because they weren't as good
4 at cleaning their food. And they had parasites,
5 direct life cycle parasites.

6 A lot of people think parasites are
7 ugly things, but in fact they tell you a lot. The
8 direct life cycle parasites is found in a certain
9 place, it is dropped off and it is picked up as
10 the fish swims around, right? So those fish had
11 to be in the same place as the wild fish because
12 they had the same parasites. There were two other
13 parasites that were transmitted in invertebrates
14 in the wild, in the food, and they had them too.
15 So not only were they moving in the same circle in
16 terms of what the tagging told us, the acoustical
17 tagging, they were in the same environment to pick
18 up the direct life cycle on their gills, and they
19 were eating the same food. So anybody who tells
20 me, you can't do it, it doesn't work; it does.
21 The most they lost was ten per cent. Now that's
22 because they are not good feeders, the sturgeon,
23 they suck the food up off the bottom and then they
24 rotate it in their mouth, and they rotate it in
25 their mouth and spit it out and wash it, they spit

1 out the gravel. And they are just not so good at
2 it, it takes them a little longer. If you are
3 feeding them, a lot of time -- it is going to
4 affect how it affected them.

5 Now, there is another thing I think
6 you need to know about in the environment, the
7 life history stages. Now, everybody is hung up on
8 sand, right, because that's what they can find, it
9 is easier to find sand in that mess. But if you
10 look at sturgeon in the lab, I grew them from
11 little guys, or from eggs, and look at them. A
12 little sturgeon looks like a tadpole, it doesn't
13 look like a sturgeon at all, it looks like a
14 tadpole. Probably the reason is that the
15 development of a little sturgeon is very much like
16 a frog, the development is the same. So they
17 looked at me like, partly like a frog in terms of
18 their early development. They are also like a
19 shark in terms of their cartilage in this nature,
20 right?

21 So the problem is, where are those
22 fish in the wild?

23 And later on what happens is the
24 sturgeon, they grow a snout. The snout comes out
25 and then the mouth drops down here, the mouth is

1 down here. So they have to figure out how they
2 are going to feed. And I was working on them for
3 quite a while, and I looked at these sturgeon, and
4 they would swim up in the water column, they would
5 go up like this in the water column, and then they
6 would just drop right down. They would go up and
7 they would just drop right down. I said, well,
8 this is really peculiar. So I thought when I was
9 culturing sturgeon initially that it was tied to
10 swim bladder, because if you grow pickerel, if the
11 pickerel don't go to the surface and gulp air,
12 their swim bladder doesn't open.

13 So then I went to work with a guy in
14 the States, because I couldn't find any larval
15 wild sturgeon. Ron Brooks, the guy that we did
16 the gonad index with, he caught me a little wild
17 sturgeon. And I started looking at them. And
18 they didn't have a swim bladder, for two months,
19 no swim bladder. Well, a swim bladder, you know,
20 a fish goes around, goes up here and sits and
21 doesn't use energy, right? Well, they didn't need
22 a swim bladder because they are in area where --
23 and also when they get the snout, they start to
24 feed, they what we call tail walk, they go up
25 and -- this has been recorded in the wild -- but

1 they go to the surface and they can feed with
2 their mouth against the side of the glass tank,
3 right. Well, they are actually -- I think, nobody
4 really knows, but they are probably in an
5 environment that has interstitial spaces between
6 rocks. They are going up and down and feeding in
7 there and they don't need a swim bladder.

8 Then all of a sudden, when they get to
9 about two months old they develop a swim bladder
10 and they can disperse more. And then you see them
11 on the sand, but not before. So we really have a
12 lot of stuff we really don't know.

13 Now, the other thing about them is
14 this idea that they die, right? Well, they don't
15 have a cellular immune system, I did all of the
16 histology on these things, they don't have a
17 cellular immune system until they are about five
18 months old, October or November if they are born
19 in June. So they can't defend themselves against
20 fungus and bacteria and everything.

21 So there is a lot of things that we
22 don't understand about sturgeon. So you really
23 need to have some kind of a clean habitat
24 environment for them to be in. Anyway, I didn't
25 want to belabour the point, but I find it so

1 interesting I thought you should know.

2 Okay. Thanks.

3 THE CHAIRMAN: Thank you, Dr. Dick.

4 I would like to beg the indulgence of
5 Mr. Dolinsky and this panel. The MMF was
6 scheduled to go on right after you for a short
7 period of time, for some cross examination.
8 President Chartrand and some of the others have to
9 leave very shortly for a funeral in Duck Bay, a
10 family funeral. So I am just wondering if we
11 could ask you to stand down for a short period of
12 time, allow the MMF to come up. The Partnership
13 has some questions of them, and then we will move
14 back to this panel.

15 We will just take a three or four
16 minute break while we swap things around here.

17 (Proceedings recessed at 3:48 and
18 reconvened at 3:52 p.m.)

19 THE CHAIRMAN: Okay. Where we left
20 off a week ago, I guess, was that the Proponent
21 had some questions for some of the MMF leadership,
22 and I believe that's all of the questioning that
23 will take place of the MMF leadership, and then we
24 are -- Mr. Chartrand?

25 MR. CHARTRAND: Thank you very much.

1 I don't know if this is working or not. Firstly I
2 want to express my gratitude to the First Nations
3 for allowing us to circumvent their presentation.

4 MS. JOHNSON: Mr. Chartrand, could you
5 speak into the microphone?

6 MR. CHARTRAND: Okay. I will speak
7 slowly too.

8 I said, I just expressed my gratitude
9 in Saulteaux for being allowed to speak again
10 today. If I can, Mr. Chair, just for future
11 references, last time I was here I took the
12 understanding, when Mr. Regehr was questioning me,
13 that he was representing Hydro. I did not know
14 who he was representing. I think for the future
15 that should be disclosed to a witness so the
16 witness can have an understanding of what
17 potentially is, or who is asking the questions for
18 whatever reason, so I can better understand maybe
19 the direction or the information that they are
20 seeking, for the benefit of understanding how I
21 can properly answer their pursuit of information.

22 The reason I say that, Mr. Chair, is
23 again, you know, yesterday -- sorry, last time I
24 was here, because why I felt it was Hydro is
25 because when Mr. Regehr was pushing the agenda

1 that there was 150 meetings that happened with
2 ourselves and Hydro, I was under the impression
3 with Hydro, you know, what the agenda is, you know
4 what the topics were, and clearly you know it
5 wasn't Keeyask. So I was leading myself to
6 believe that Hydro was just throwing out those
7 numbers. And I was going to, obviously -- clearly
8 our evidence is that in those discussions and
9 meetings, Keeyask wasn't really discussed.

10 So Mr. Regehr confused me in a sense,
11 after I realized several days later, that he was
12 representing York Factory.

13 And I also want to put on record that
14 I made sure from my legal counsel not to in any
15 way pursue cross-examination of any First Nation,
16 just on clarity. The reason I do that, as the
17 president of the Metis Federation, I believe in
18 unity, I believe in supporting my fellow colleague
19 First Nations.

20 And I want to echo for the record, on
21 many occasions I was approached by my people, by
22 the assembly, where I had 3,000 delegates standing
23 there, asking me to challenge the First Nations
24 when it comes to Treaty Land Entitlement, to stop
25 and put an injunction on them. I didn't. I asked

1 my people to support my vision and that we must
2 work together.

3 So that's why I was so confused later
4 and got a little bit upset about it later, but I
5 thought it is important now for me to share this
6 proper information. If I knew then who Mr. Regehr
7 was, I would have then provided adequate
8 information to the committee.

9 First of all, Mr. Regehr referenced
10 150 meetings. And we got clarity, when a question
11 was posed by our legal counsel, how many of those
12 were for Wuskwatim? And the total was 86.

13 I have with me document C, which I
14 call document C for myself, the Wuskwatim
15 agreement. Referencing that the impression was to
16 be placed to the committee that out of the 150
17 meetings -- this was Hydro was in doubt pushing
18 and trying to work with the Metis Federation and
19 the Metis people when it comes to the issue of
20 Keeyask. Wuskwatim meetings were attached
21 probably for this reason. I say this, if the
22 Commission wants to see the evidence, it is a
23 document from Hydro. It was called the Wuskwatim
24 and Keeyask training consortium. But actually it
25 was, the HNTEI was an acronym given to this, Hydro

1 Northern and Training Employment Initiative to
2 facilitate the training of northern Aboriginal
3 people to take advantage of employment on
4 Wuskwatim and Keeyask hydroelectric development
5 projects. That's what the document was. And
6 that's the document that we signed.

7 And the 86 meetings that were
8 referenced by Mr. Regehr, none of them, the
9 Wuskwatim project was ever discussed with Keeyask.
10 In fact, I got a Deloitte report done by Hydro
11 themselves who actually hired Deloitte to do a
12 Wuskwatim training, employment and evaluation
13 report. And I will leave this for evidence for
14 the submission of this committee, that not once in
15 their own audit is Keeyask mentioned in here, no
16 evidence of discussion or any relations to when it
17 comes to Keeyask.

18 THE CHAIRMAN: Mr. Regehr?

19 MR. REGEHR: Well, for the record, I
20 will first state that I'm here as council to the
21 York Factory First Nation. Secondly, I don't
22 think this is appropriate. We were here to do
23 cross-examination, not for a participant to put in
24 additional evidence. Their opportunity to do that
25 was last week.

1 MR. CHARTRAND: If I can?

2 THE CHAIRMAN: Very briefly.

3 MR. CHARTRAND: Mr. Regehr is the one
4 who brought this upon me, and it is my duty and
5 responsibility to make sure this committee gets
6 the full information and evidence that's
7 necessary. If Mr. Regehr would have represented
8 himself in the opening, I believe some of this
9 discussion would have been much more different.

10 So I don't know why it would be of
11 great concern for Mr. Regehr to know more about
12 what took place, instead of -- he is the one who
13 brought 150 meetings to smoke and mirror committee
14 that lots of work was done. I'm trying to show
15 the evidence, the facts, not hearsay, not throwing
16 out innuendos, the facts before this committee,
17 and they could look at it to see if these 150
18 meetings actually took place dealing with Keeyask.

19 THE CHAIRMAN: Mr. Chartrand, I have
20 to interrupt you. I agree with Mr. Regehr that
21 this is not the time to be making statements. You
22 put in, and your leadership team put in a fair bit
23 of evidence a week or so ago. At the time you had
24 to leave to fly to Toronto, and we were lead to
25 believe, and perhaps we misinterpreted, but we

1 were lead to believe that other members of the
2 panel would be available the next day. Then we
3 were told that no, they weren't available until
4 you returned.

5 We are here today just to conclude the
6 cross-examination. We are not here today to hear
7 any new evidence. Most of the argument that you
8 have just been making, your counsel can make when
9 they make final argument in early January.

10 MR. CHARTRAND: Just for my knowledge
11 base, to understand the purpose from here, is to
12 state that the references made by Mr. Regehr in
13 regards to the 150 so-called meetings, it is not
14 then my responsibility to share any of that
15 information to this Commission?

16 THE CHAIRMAN: It is -- we are going
17 to recess for a couple of minutes.

18 (RECESS TAKEN)

19 THE CHAIRMAN: What we will do, and
20 I'm not cutting you off or shutting you down, but
21 there is a process in play here. It is up to
22 Mr. Regehr, I will turn the floor over to
23 Mr. Regehr to continue his cross-examination for
24 now. At the end of the cross-examination, it is
25 open for your lawyer in re-examination to adduce

1 other evidence.

2 MR. CHARTRAND: Thank you.

3 THE CHAIRMAN: Mr. Regehr.

4 MR. REGEHR: Thank you, Mr. Chair.

5 Good afternoon. As I indicated last
6 week, I really only had questions left for
7 Mr. Park and Ms. Lagimodiere. And in the interest
8 of saving time, and I know that the York Factory
9 elders group is not finished, I have substantially
10 cut back on my questions for this panel. I also
11 realize that the other participants may have
12 questions for them, so I will keep this short.

13 Mr. Park, my understanding is that you
14 are Minister responsible for Hydro for the MMF; is
15 that correct?

16 MR. PARK: Yes, that's correct.

17 MR. REGEHR: And my understanding is
18 that the MMF is currently in discussions with the
19 Province with regard to consultation and
20 accommodation in relation to the Keeyask project,
21 is that correct?

22 MR. PARK: Yes, it is.

23 MR. REGEHR: And I also have the
24 understanding that the MMF has reached agreement
25 with the Province in relation to funding on this

1 consultation, is that correct?

2 MR. PARK: No.

3 MR. REGEHR: The MMF has received
4 funding from the Government of Canada, in
5 particular the Canadian Environmental Assessment
6 Agency, to assist it with the environmental
7 assessment and associated consultation in relation
8 to the Keeyask project?

9 MR. PARK: Is this another question?

10 MR. REGEHR: Yes.

11 MR. PARK: I believe we did. Right
12 Marcie? Yep.

13 MR. REGEHR: And you stated this in
14 your report on the MMF website, correct?

15 MR. PARK: Yes.

16 MR. REGEHR: And do you understand
17 that the Crown consultation process is separate
18 from these hearings?

19 MR. PARK: No, I don't understand. It
20 is all one in the same, the Crown has duty to
21 consult with us.

22 MR. REGEHR: But would you understand
23 that the Clean Environment Commission is an
24 independent body from the Provincial Crown?

25 MR. PARK: Yeah, but I thought we were

1 dealing with Hydro matters related to that.

2 MR. REGEHR: But you would understand
3 that consultation and accommodation of section 35
4 rights is the duty and obligation of the Crown,
5 and not the Partnership or the Clean Environment
6 Commission?

7 MR. PARK: I would say yes, with the
8 exception of Hydro. Hydro has a duty to consult.

9 MR. REGEHR: My next questions are for
10 Ms. Lagimodiere.

11 It is my understanding that you are
12 the vice president of the Thompson region?

13 MS. LAGIMODIERE: Yes.

14 MR. REGEHR: And that would be the top
15 executive position for that region?

16 MS. LAGIMODIERE: Yes.

17 MR. REGEHR: And, of course, that
18 region is obviously a part of the MMF?

19 MS. LAGIMODIERE: That's correct.

20 MR. REGEHR: And the region is, the
21 Thompson region is different from the Thompson
22 local; correct?

23 MS. LAGIMODIERE: Would you rephrase
24 that, please?

25 MR. REGEHR: Is the Thompson region

1 executive different from the local?

2 MS. LAGIMODIERE: It is -- actually it
3 is one in the same, we represent all of the locals
4 within the Thompson region.

5 MR. REGEHR: But the local would have
6 a separate executive from the region?

7 MS. LAGIMODIERE: Yes, that would be
8 true.

9 MR. REGEHR: Okay.
10 Last week we had testimony that there
11 was, in fact, a local in Gillam. My understanding
12 is that the local in Gillam closed in 2003. Is
13 that correct?

14 MS. LAGIMODIERE: No.

15 MR. REGEHR: It is not?

16 Again, in the interests of time,
17 that's all of the questions that I have for the
18 panel.

19 THE CHAIRMAN: Thank you, Mr. Regehr.

20 MR. REGEHR: Sorry, Mr. Chair, I have
21 one question of clarification on the undertaking,
22 and I don't think that the panel can answer this,
23 probably Mr. Madden can.

24 Undertaking number 13 was provided to
25 the parties. As part of undertaking 13, there

1 were a number of documents attached to that,
2 including, I believe, three documents or
3 agreements between the Metis National Council and
4 the Government of Canada. There was also some
5 interim Federal guidelines and a handbook for
6 Federal officials.

7 I was just wondering where these
8 documents can be found, because both I and google
9 can't find them on the internet. And as well,
10 there is no date on the documents.

11 THE CHAIRMAN: Thank you. Do you have
12 any knowledge on that, Mr. Madden?

13 MR. MADDEN: They are Federal
14 documents, one is approved by Cabinet. We can
15 undertake to get the ISBN number on them from the
16 Government of Canada. But they aren't produced by
17 the Manitoba Metis Federation, they are produced
18 by the Government of Canada and we provided them
19 to the Commission.

20 THE CHAIRMAN: Well, if you could
21 further pursue an identity so we can trace those
22 documents?

23 MR. REGEHR: I would also like to know
24 the date of the documents as well, because that's
25 not indicated on either of them.

1 THE CHAIRMAN: You will provide that,
2 Mr. Madden?

3 MR. MADDEN: I will endeavor to, but
4 they are not our documents, they are documents
5 that have been provided to the MMF by the
6 Government of Canada. And we can make inquiries
7 about when they produced them but --

8 THE CHAIRMAN: Do you have copies of
9 them?

10 MR. MADDEN: We provided them. We
11 provided them as part of --

12 THE CHAIRMAN: You provided copies but
13 you are still looking for --

14 MR. REGEHR: Yes, I'm trying to find
15 where they originated from and the date.

16 THE CHAIRMAN: Okay. So the origin
17 and the dates of them, if you could?

18 MR. MADDEN: We can provide that they
19 are documents produced by the Government of
20 Canada, and it shows their logo and insignia right
21 on the document, but we will undertake to get some
22 additional detail on what departments and dates.

23 THE CHAIRMAN: Thank you.

24 (UNDERTAKING # 20: Advise re government
25 department and dates on Government of Canada

1 documents produced by MMF)

2 THE CHAIRMAN: Now, I'm lead to
3 believe that none of participants has any
4 questions of these panelists. Okay, thank you
5 very much.

6 Re-direct, Mr. Madden?

7 MR. MADDEN: Ms. Lagimodiere, we
8 talked -- Mr. Regehr asked about the Gillam local.
9 How many members are needed for a local?

10 MS. LAGIMODIERE: We need nine.

11 MR. MADDEN: And what is, do you know
12 how many citizens are currently in the Gillam
13 area, MMF members?

14 MS. LAGIMODIERE: Sorry, I can't -- I
15 can get that information, I don't have it at the
16 tip of my tongue, I just don't have.

17 MR. MADDEN: Okay. With respect to
18 consultation, the question was, Hydro still has a
19 duty, can you answer a bit about what you meant by
20 that, if Hydro still has a duty, Mr. Park?

21 MR. PARK: Well, what I was referring
22 to specifically is Hydro's responsibility to
23 consult with us, as an Aboriginal people within
24 Canada, I know that Mr. Regehr was referring to
25 Canada specifically, but in the Province of

1 Manitoba as a Crown corporation, they still have a
2 duty to consult with us.

3 MR. MADDEN: And maybe this is a
4 question for the entire panel. And has Hydro
5 engaged with the Manitoba Metis Federation on
6 Keeyask?

7 MR. PARK: Do you want me to answer?

8 From my point of view as the Minister
9 responsible for Hydro, I have had three meetings,
10 two with president Thomson and one with vice
11 president Ruth Kristjanson, two meetings with
12 Minister Chomiak, and one with Minister Struthers,
13 since he has taken over the portfolio. But that's
14 the extent of my meetings, and no discussions on
15 Keeyask specifically.

16 MR. MADDEN: President Chartrand?

17 MR. CHARTRAND: Thank you very much,
18 Mr. Madden. In fact, to answer your first
19 question in relation, does the Crown of Hydro have
20 responsibility? I think it is very clear on the
21 onset that, in fact, the meetings that I have been
22 with, directly with the Minister of Manitoba, for
23 the Provincial Government of Manitoba, along with
24 the president of Hydro, and very clearly
25 Mr. Chomiak -- and you can bring him here as a

1 witness if you want -- made it very clear to Hydro
2 that the Metis Federation must be consulted in the
3 process of moving forward, and must be included.
4 And those are the words of Mr. Chomiak himself.

5 And I also would echo loud and clear
6 that Hydro is definitely taking the lead in most
7 negotiations and consultations when it comes to
8 First Nations in Manitoba.

9 Going to the issue of Keeyask,
10 Keeyask, in fact, was first discussed with us in
11 2008. And it is unfortunate that something didn't
12 progress there, because I think a lot of what we
13 are doing today would not have halted it.

14 And what has to be in the record, as
15 already been showed in the Commission here, that
16 in AJIC, which is clearly as evidence displayed
17 very loud and clear recommendation, and which is
18 adopted by the Province of Manitoba, which is now
19 the Crown corporation works under the Province the
20 Manitoba, part of the family, very clear that the
21 Manitoba Metis Federation must be consulted or
22 included in the hydro developments in Manitoba.
23 That was never abided by.

24 The Commission itself under Bipole III
25 made recommendations, or at least conditions or

1 consideration that the Manitoba Metis Federation
2 should be included. To our disappointment that
3 has not happened, and I'm sure to the Commission's
4 disappointment too, that their recommendations
5 should have carried some weight.

6 Now, the document that I'm referring
7 to, the meeting actually falls from the 150
8 meetings that was recorded by a statement by
9 Mr. Regehr. Documents that we had received
10 generated, I am sorry, in '08, was a discussion
11 phase. At that time we asked for \$300,000 to help
12 us finish off what was necessary to try to do the
13 proper duty to consult in the sense of
14 environmental requirements or rules that apply to
15 the requirements. Well, none of that took place
16 after that. In fact, it was part of the last
17 meeting. And the documentation, I want to ask my
18 staff, go into the archives and start finding
19 these documents, because they were produced as
20 evidence of 150 meetings. But what was never
21 shown is the real content of what those meetings
22 were.

23 So when I looked at the documents
24 myself, which is evidence in this room table A5-1,
25 list of meetings held of Manitoba Metis Federation

1 in relation to Keeyask project.

2 If you look at most of the context,
3 Mr. Chair and the rest of the Commissioners, you
4 will see that the agenda itself will always
5 reference -- and this is smart of Hydro in their
6 way of trying to mislead that actually discussions
7 are taking place, they will say, when you look at
8 most documents, they will say Keeyask generation
9 project on the agenda. It was on the agenda but
10 it was never discussed. They included every
11 aspect, most of this was on the task force, and
12 the task force was really how do we build a
13 relationship, because you don't want to recognize
14 our rights, and clearly the Province of Manitoba
15 is echoing to Hydro to do something about it.

16 Now, we, in fact, are not as fortunate
17 as the First Nations. I commend the First Nations
18 openly, I really support their vigor and their
19 tenacity to keep on pushing Hydro in the province
20 to start respecting their rights. But we, in
21 fact, as I said, asked for 3,000 in 2008.

22 In 2010, what was quite interesting,
23 Mr. Chair, is the numbers, the names, the dates
24 that were given to you of the meetings, one of the
25 meetings that's not in here -- and obviously Hydro

1 shared this information with you -- there is a
2 missing January 12th meeting that took place,
3 Mr. Chair. And the reason I say that is very,
4 very important is because on January 12th Keeyask
5 was discussed. And at that time on January 12th,
6 they stated, in fact, the gentleman -- what is his
7 name again -- Ryan Kustra, I will say his name
8 because he said it on behalf of Hydro, basically
9 stated that the only value that they see in the
10 Metis of the north was about \$90,000. That's the
11 value they would be willing to give for any
12 consultations, that's the only value.

13 Now, we echoed, of course, if you look
14 at the rules that apply, we have to hire all of
15 these experts which costs a fortune. It is not my
16 cost, it is the market price, the way it goes.
17 But they said it is only worth \$90,000. Now,
18 that's all the Metis are worth in the north.
19 These are his words and you can bring him as a
20 witness if you want, and ask him further dialogue
21 on that.

22 In fact, what is interesting, and as
23 you heard Mr. Regehr ask my Minister, is there
24 agreement with Keeyask and the Manitoba Metis
25 Federation? Well, let me share with this body,

1 the only agreement that actually takes place, in
2 fact, happens on June 12, I believe is the date --
3 June 21st, I am sorry, June 21st is the agreement
4 of this year that was signed that started in 2008.

5 We have six months to complete this
6 process. So I thought it was important just to
7 reflect, how does this work with the rest of the
8 bodies when it comes to the First Nations and how
9 they interacted? And obviously Hydro knows what
10 they are doing, they know how to do this work,
11 they have been at it for a long time. So I
12 started doing our own work to find out to make
13 sure I give the proper information to the
14 committee here, is I pulled out the OWL report.
15 Okay. The OWL report was done, which is a First
16 Nation partnership with the Tataskweyak Cree
17 Nation. And it is very clear that the report was
18 done for the committee to know, completed
19 June 2002 on Keeyask, 2002. So it meant obviously
20 there was discussion prior to 2002, because the
21 report was completed 2002.

22 Now, bring it back to the Metis
23 people, it is June 2013 that I sign the agreement
24 to do this, in six months, which I have been
25 asking for since 2008. So I have been doing

1 everything in my power to try to be a partner,
2 because I truly believe in the project that Hydro
3 is doing. It is unfortunate that they are seeing
4 me as not an ally, they are seeing me as a
5 problem. But it is unfortunate that if the right
6 deed was done, Mr. Commissioners, you wouldn't
7 probably have us sitting at this table bringing
8 forth all of these type of issues that are truly
9 affecting us. But what has to be understood, I
10 think loud and clear, Mr. Madden, is the reference
11 to the resources that were expended. Because the
12 300,000 that they keep on, you know, this
13 agreement that they keep on showing back and
14 forth, you have got agreement, don't you?

15 Well, I pulled out, which was public
16 documents, I pulled out the document from Hydro
17 and how much they spent on Keeyask. The total
18 amount is \$144,532,734. Which again I think
19 evidence was given on a longer form, which is
20 their own document, which is this one, the
21 partners -- this is the one that you guys probably
22 have in your documents somewhere -- which shows
23 total expenditure is \$140 million on the Keeyask
24 consultation.

25 Well, I took the liberty of taking a

1 proper look at it and saying, well, we got
2 300,000, there is 140 million spent. And so I did
3 a calculation, just hypothetically, I wanted to
4 know what the population of Fox Lake,
5 Nisichawaysihk and Cree partners, total population
6 all together, on and off reserve, 5,627 people.
7 If you do a calculation of \$144,000,471, that's
8 \$25,674.69 a person.

9 Now, for us the calculation is \$20.63,
10 using census numbers. Those aren't my numbers, my
11 numbers are higher. \$20.63, I couldn't even
12 afford a turkey for Christmas on that.

13 So that is how much they are spending
14 on the Metis, and they are saying there is parity,
15 there is fairness, there is equality. Tell me
16 where equality exists? I would love to see
17 equality. And I would love to see somebody sit
18 here and take the position that it is fair and
19 being done right to our people. It is completely
20 unfair, and they are trying to show case that this
21 is happening in a fair and equitable process. And
22 to try to show there was 150 meetings took place
23 where Keeyask was part of the clear discussions
24 with Hydro -- you can see why I am sad that people
25 are throwing out numbers like this nature, and

1 they sit here and they try to portray that there
2 is some work being done. Then they say, you
3 aren't finished your report. I have six months to
4 do what they have taken over a decade to do with
5 some of the First Nation bands, six months.

6 That is why I am not fearful, Mr.
7 Commissioner, I will go to court following this
8 matter, if I don't get some direction of
9 participation, I have no choice of filing a
10 report, and I look forward to seeing Hydro's
11 lawyer there at the end of the table.

12 So what I want to state, again, also
13 very importantly, is that these aspects of what is
14 being recorded as expenses information,
15 documentation of consultation is truly not
16 happening, Mr. Commissioner. And I'm at the point
17 where I've tried vigorously -- and the point that
18 I find myself, Mr. Commissioner, all
19 Commissioners, is this: The \$300,000 I didn't
20 want to sign it, but if I didn't sign it, because
21 I'm looking at the task, and I almost brought -- I
22 don't know if I brought with me -- the expense and
23 the expectations of is going to be done in the six
24 months.

25 I have told this Commission at the

1 Bipole III, and I have told this Commission the
2 last time I was here, that Hydro still owes me
3 close to \$400,000. I'm fronting this. Why am I
4 fronting this? I'm paying all the costs to do
5 this. Now they are coming back and denying this
6 to pay me, Mr. Commissioner. In fact, I got an
7 email just came from Hydro, stating that if I do
8 not divulge -- and this is important, because I
9 know they don't do it to First Nations -- if I do
10 not divulge the witness, their name, where they
11 live, who they are, they are not going to pay me.
12 And I can show you, Mr. Commissioner, the contract
13 that was signed by Hydro, there was a clause in
14 there that the people have the right as a witness
15 without disclosing who they are, for protection of
16 reason -- some of them are Hydro employees, and
17 some of them actually do Hydro work as tendered
18 contracts. So they were afraid to put their name
19 in. That was agreed with Hydro that they did not
20 have to disclose their names. I can show you,
21 which I brought here, evidence where Hydro will
22 not pay that bill unless we disclose who that
23 person is. And we signed -- I'm sorry,
24 Mr. Chair -- we signed with each of these
25 harvesters that came and told us, in the world of

1 Manitoba, where they used the land, where they
2 harvest, how they trap, what they do, and how they
3 use it for medicinal, wood, whatever it is. And
4 they signed a confidential document with us,
5 because it is in the contract that if they want to
6 divulge their name, they can, but they don't have
7 to, and it us under agreement. But now Hydro send
8 me an email, they will not pay unless we show them
9 the names. And I will not break my
10 confidentiality with those harvesters. So what
11 does that mean, Mr. Commissioner? I will be stuck
12 with a hell of big bill, that's what it means at
13 the end of the day.

14 So how do I go forward is what I am
15 asking my board, my cabinet, how do we go forward
16 if I keep on putting myself in the front, and I
17 find out the reverse part is, and I keep on
18 coming -- we will probably be here the next
19 commission telling you they still owe me money.

20 I had a meeting since the last time,
21 Mr. Commissioner, I met the new Minister of Hydro,
22 we had a meeting in his office. We had a
23 discussion, a very stern discussion on what is
24 happening. It is my understanding they are going
25 to quickly meet with Hydro, figuring out what is

1 happening and how to put an end to this animosity
2 that's growing, and growing bigger. So we will
3 see where that takes us. But I made it very
4 clear, Mr. Commissioner, that if this continues, I
5 cannot front these processes. If they are already
6 telling me on this new Keeyask arrangements, they
7 are not going to pay me already, I'm in trouble.
8 Financially it is going to hurt me. I'm going to
9 pay this bill, I'm fighting a multi-billion dollar
10 company, with a few thousand dollars. So you want
11 to talk about fairness? It is not there.

12 So I also want to share with you
13 something that was really making me -- as I left
14 here, if I can, it was a question posed regarding
15 the harvesting agreement. And I want to share our
16 view on that.

17 The harvesting agreement that was
18 proposed by Mr. Regehr made it very clear that we
19 do not -- I think the impression was posed that
20 our rights don't exceed past the pink map. And we
21 showed it on the screen here and everybody had a
22 chance to see it. But what was happening at that
23 point in time, only certain specific segments were
24 being torn out of this document. So I had the
25 chance to go back on my legal counsel, go back to

1 myself and read these things over. And I looked
2 at these things, and if you could put a note for
3 yourself to look at the first page, just put a
4 note for yourself, it says:

5 "...implemented in good faith by both
6 parties."

7 I also referred to you, Mr. Chair, and the rest of
8 the community members, I did not need the
9 Provincial Government, their laws do not apply to
10 me, just as the First Nations, the laws don't
11 apply to them, when it comes to harvesting. I
12 went out of my way to create a partnership,
13 because I believe that conservation is fundamental
14 for the future of our people to continue to
15 practice all of the important aspects, as you
16 heard, the sturgeon issue, how to keep that going.
17 Well, same thing with us, we want to make sure
18 that the population of animals and species that we
19 harvest are still there. I went out of my way to
20 make that partnership with the Province of
21 Manitoba. But they made it very clear if they
22 look at it in item number 10, you put for a record
23 for yourselves as a note to look at it after, and
24 is referred to -- Mr. Regehr raised it. There is
25 a clause that very clearly says, as part of

1 implementing these points of agreement -- I read
2 this last time -- the processes set out in section
3 E, the Minister of Conservation and Water
4 Stewardship will recommend an amount equal to the
5 amount of provincial licence fees related to
6 harvesting collected from -- here is the quote --
7 Metis rights holders. They acknowledge that Metis
8 rights holders exist in Northern Manitoba, whereas
9 that outside of the recognized harvesting area,
10 which is outside of the pink area in the east and
11 all the way to the north, they recognize, the
12 Province does recognize there are Metis rights
13 holders there, without question.

14 When you look at item 17, the points
15 of agreement shall be reviewed after two years.
16 If there is significant areas of disagreement at
17 that time, Manitoba will consider what are
18 referenced in the Manitoba Courts of Appeal may be
19 appropriate to resolve those outstanding issues.
20 If there was no rights, they wouldn't even waste
21 their time in the Court of Appeal, they would just
22 tell us to go home.

23 And the last part of it is very
24 important, item 19. Nothing in these points
25 agreement shall be construed as to abrogate or

1 derogate from existing Aboriginal rights of Metis
2 in Manitoba and are protected under section 35 of
3 the Constitution Act, signed by the Premier of
4 Manitoba and witnesses by the Minister himself.

5 THE CHAIRMAN: Mr. Chartrand, you are
6 giving evidence or repeating evidence that you
7 gave a week ago, and it is not necessary.

8 MR. CHARTRAND: Go ahead.

9 THE CHAIRMAN: I really believe you
10 have gone quite far afield from the question that
11 Mr. Madden asked you initially.

12 MR. CHARTRAND: Okay. Mr. Madden.

13 MR. MADDEN: I think I have nothing
14 further in re-examination.

15 THE CHAIRMAN: Thank you very much,
16 Mr. Madden. Thank you to all of you for coming
17 back again. Our condolences to you, Mr.
18 Chartrand, and safe speed out to Duck Bay.

19 MR. CHARTRAND: Is it out of the scope
20 for me to do closing comments? I'm talking two
21 minutes?

22 THE CHAIRMAN: No, it is not part of
23 the process.

24 MR. CHARTRAND: It is not part -- I
25 can't do a closing comment?

1 THE CHAIRMAN: Not at this time. We
2 will have closing comments in --

3 MR. CHARTRAND: I'm not talking about
4 the litigation, I'm talking about my government.

5 THE CHAIRMAN: There will be closing
6 comments in January.

7 MR. CHARTRAND: I will be there, if
8 you bring me back.

9 THE CHAIRMAN: That's up to your
10 lawyer. Actually, it is up to you. You are the
11 client.

12 So, again, we will take another three
13 or four minute break and then we will invite the
14 KK people back up.

15 (Proceedings recessed at 4:25 p.m. and
16 reconvened at 4:30 p.m.)

17

18 THE CHAIRMAN: So, we are ready for
19 cross-examination?

20 MR. DOLINSKY: Yes. Mr. Linklater, I
21 believe was crossing me. I was coming back so --
22 he will join us.

23 THE CHAIRMAN: All right.

24 Okay. Now we are going to go through
25 until we are finished the cross-examination, so

1 this puts pressure on you cross-examiners not to
2 go too long or we will be hexing you. I have no
3 idea how long it will be, it could be another hour
4 or hour and a half. So Mr. Bedford?

5 MR. BEDFORD: No questions.

6 THE CHAIRMAN: Oh, ideal. Thank you.
7 Consumers Association? Mr. Dolinsky, typically if
8 you sit at the table behind and let the examiner
9 sit up there.

10 MR. WILLIAMS: Yes, and good afternoon
11 members of the panel, and also to the witnesses,
12 Elder Beardy, we do not have any questions for
13 you. We are really interested, but we thought you
14 would be happy to know that we don't have any
15 questions for you.

16 I'm going to have just a few for
17 Dr. Dick. And then I believe my colleague, Ms.
18 Craft, will have a few for Mr. Linklater.

19 Dr. Dick, in your oral information
20 today you talked about that from the perspective
21 of elders continuity along the river is very
22 important. Do you recall making that statement?

23 DR. DICK: Yes.

24 MR. WILLIAMS: From a scientific
25 perspective is it also important?

1 DR. DICK: Yes.

2 MR. WILLIAMS: Could you just
3 elaborate from your perspective why continuity
4 along the river is important from a western
5 perspective?

6 DR. DICK: Yeah. Everybody knows that
7 studied sturgeon that they have local populations
8 in parts of the river where there is smaller fish,
9 where they spawn, and some life stages are there.
10 So there is a localized population. But at the
11 same time ATK says that the fish move through all
12 the rapids along the lower reaches of the Nelson
13 River. And there is a reason for that
14 biologically. Because you -- it is a bet hedging
15 strategy in genetics -- what you want are some big
16 fish, some big males that move around and spread
17 their sperm around. It is a very standard
18 biological phenomenon. So having continuity
19 ensures that you are going to have as great a
20 genetic diversity as possible.

21 MR. WILLIAMS: So that's a case where
22 the western science and the ATK are in accord in
23 terms of the importance of continuity?

24 DR. DICK: Right. From the point of
25 view of sturgeon, but there is also the idea that

1 the river is an intact kind of entity, and that
2 water flows normally all of the time. So that's
3 important, and it follows seasonal patterns, and
4 that's important, of course, in just the function
5 of a river system. And of course, the elders know
6 that, they know that the river functions better as
7 long as it has got continuity and it follows
8 seasonal patterns.

9 MR. WILLIAMS: Thank you for that.

10 Just following up on both of your
11 points, both in terms of the sturgeon and in terms
12 of the health of the river as a whole, the more
13 the fragmentation, the greater the risk, both to
14 the sturgeon and to the health of the river
15 system. Is that correct?

16 DR. DICK: Yes, that generally is
17 true, although -- and I mentioned the Winnipeg
18 River -- the Winnipeg River has a lot of dams, and
19 parts of the Winnipeg River where there is
20 reservoirs, you don't see a lot of recruitment of
21 young fish. But in the parts of the river where
22 you have run of the river, good run of the river,
23 and you don't have changing shorelines, there is a
24 lot of hard rock there, you actually have good
25 sturgeon populations. So my argument has always

1 been, look at the river and try to understand how
2 we can make use of that river. We can still
3 generate power, but we may be able to keep
4 sections of rivers intact as good sturgeon
5 habitat.

6 MR. WILLIAMS: You talked about, if we
7 do kind of cumulative science or cumulative study,
8 it is better to look at the river with all of its
9 functions. Do you recall making a statement to
10 that effect?

11 DR. DICK: Yes, yeah.

12 MR. WILLIAMS: I'm just curious for my
13 client's benefit, by all of its functions, sir,
14 what were you referring to?

15 DR. DICK: How all of the fish species
16 worked there, how the normal rhythms of the river
17 are in terms of seasonal patterns, the shoreline
18 of stability. Yeah, I can go on and on. But it
19 is the whole biological system, biophysical system
20 in terms of stability, shorelines, species
21 composition and so on. Did that answer your
22 question?

23 MR. WILLIAMS: Yes, that is helpful.
24 Just a couple of more questions. I have been
25 doing a fair bit of Hydro work for a number of

1 years, but I have to confess that I'm not
2 particularly familiar with two terms that you used
3 today, those being ramping and cycling. I wonder
4 if you can just quickly define both of those?

5 DR. DICK: Ramping, what happens is
6 that to optimize production in terms of selling
7 electricity, what you do is you run water through
8 the turbines, and so when there is a need for
9 power, you ramp up the water coming through. And
10 of course, that changes the flow, the levels of
11 water downstream. So it is a very standard
12 procedure in running hydroelectric operations.

13 MR. WILLIAMS: And cycling?

14 DR. DICK: Cycling is the same thing,
15 I use them interchangeably. Cycling is probably a
16 better term because it is easier to understand.
17 Ramping is some kind -- I don't know if it is an
18 engineering term.

19 MR. WILLIAMS: Now, I understand that
20 you have noted that ramping is important
21 economically for the Hydro monopoly. But does it
22 also have important ecological implications, sir?

23 DR. DICK: It can have, depending on
24 the amount of ramping, because it will cause
25 wet/dry cycles. And so you will have wetted

1 areas, meaning full bank maybe when it is ramped
2 up. And then when you cut back on the ramping and
3 you are holding water, then it may drop, the water
4 will drop and that will, of course, cause the
5 water to flow out if it is not in the reservoir.
6 And then you get some dry areas. And that could
7 have an impact on some, if fish have spawned in a
8 site, a gravel bar or something close to shore,
9 and then the water drops a few feet, then it could
10 impact, yeah.

11 MR. WILLIAMS: And I believe you used
12 the words today, ramping is important, we need a
13 complete hydraulic study. And I wonder if you can
14 elaborate on that point?

15 DR. DICK: Well, in the river, if you
16 are going to look at a river as, even with dams on
17 it, as a kind of connected entity, right? There
18 is a whole bunch of things going on. You may have
19 a dam where you are going to get ramping and it is
20 going to impact on the run of river, in other
21 words, the normal river flow. But you also have
22 some ramping in the reservoir, so you may get the
23 reservoir going up and down too. So there is a
24 whole series of events going on. You have got
25 ramping in what is a normal piece of the river,

1 water is going up and down. And then you have got
2 the ramping that goes on inside a reservoir as
3 water is pushed through for electricity, and it
4 goes all the way down the river.

5 So then it would be nice to see a
6 hydraulic model that will show us, well, what is
7 the overall effects of all of this ramping that
8 occurs on the river? I'm sure that it is known in
9 terms of, for generation of power. I'm just not
10 so sure that it is that well known in terms of the
11 impacts on some of the, what would be traditional
12 areas that the elders know about.

13 MR. WILLIAMS: And if we are trying to
14 understand what is going on in terms of the health
15 of the river, or a particular subsection of the
16 river, that insight that we get from a hydraulic
17 study into ramping would be particularly
18 important?

19 DR. DICK: I think it would be useful
20 to know. I mean, everybody is on the same page in
21 terms of understanding how the river, how
22 hydroelectric development operates all along the
23 river. We know naturally how rivers operate, the
24 elders know that for sure. But when you are
25 manipulating flows, it is not that well

1 understood. I should clarify that, for each
2 project it probably is reasonably well understood.

3 MR. WILLIAMS: Dr. Dick, just a couple
4 of more questions. Near the start of your
5 presentation you use words to the effect of how
6 are we going to recover the species? Do you
7 recall that?

8 DR. DICK: Yes. Because it is my
9 whole modus operandi for 25 years.

10 MR. WILLIAMS: I think you also used
11 words to the effect, when it is broken down by
12 dams, how do you make it whole again? Do you
13 recall that?

14 DR. DICK: Yes. That's always been a
15 dilemma for me as a scientist is how you do it.

16 MR. WILLIAMS: And in your view, if
17 you have a view, does adding another dam have
18 potential implications for how we are going to
19 recover the species?

20 DR. DICK: Yes. That's what I was
21 getting at when I said that the elders said, look,
22 they are the experts of the impacts along the
23 river because they see, after one dam is built
24 there is an effect on sturgeon population. So
25 these things are additive. You know, if you look

1 at water quality, an impact may not be so much
2 after the first dam or so. But the impact on
3 sturgeon is a real good example that when you
4 build a dam, it has an impact on the local
5 population if the dam is built on the same rapids.
6 So it is additive.

7 MR. WILLIAMS: Thank you. I will turn
8 it over to my colleague.

9 MS. CRAFT: Thank you.

10 Just a few questions, but before I
11 start I wanted to thank Elder Beardy and the
12 coocums (ph) that are here for representing the
13 elders of your community and bringing that
14 knowledge forward. Egosi. And that's on behalf
15 of my client, the Consumers Association. And I
16 know that they are happy to hear your words today.

17 And my questions are going to be for
18 Elder Linklater. And you are going to have to
19 help me with some pronunciation of Cree words, but
20 that won't be the first time we go through that
21 exercise, we have had that opportunity many times
22 before.

23 Just to start, Elder Linklater,
24 Keeyask, and we are here for a decision to be made
25 about an environmental licence. Are you aware of

1 that? That's the purpose of proceeding?

2 MR. LINKLATER: (Witness nodding).

3 MS. CRAFT: And that this Commission
4 is making recommendations in relation to licensing
5 of Keeyask. Are you aware of that? I just need
6 you to say that into the microphone so it is on
7 the record.

8 MR. LINKLATER: Can you repeat the
9 question?

10 MS. CRAFT: The question is, are you
11 aware that this Commission is making
12 recommendations about an environmental licence
13 relating to Keeyask?

14 MR. LINKLATER: Yes, I am.

15 MS. CRAFT: And you are also aware
16 that the Minister will decide whether or not the
17 licence is granted and what conditions to put on
18 the licence if it is granted?

19 MR. LINKLATER: Yes.

20 MS. CRAFT: And you are familiar with
21 that process because of your involvement with
22 Wuskwatim licensing?

23 MR. LINKLATER: Yes.

24 MS. CRAFT: Thank you. I would like
25 to go to some of the information that you shared

1 today about customary law of Nisichawayasihk
2 Nehethowuk. And specifically on page 5, if we had
3 more time I would like to walk through each and
4 every one of those principles with you, but I know
5 that we are limited in time today. So there is
6 one in particular that I wanted to talk about.
7 And that's nesohkumakewin. Was that okay in terms
8 of pronunciation?

9 MR. LINKLATER: Yep.

10 MS. CRAFT: And you said in your
11 presentation today that that means helping others,
12 or to help and support others; is that right?

13 MR. LINKLATER: Um-hum.

14 MS. CRAFT: Okay. I also heard you
15 say today that we are applying customary law
16 today, we are applying it by being here. And
17 would you agree with me that your statement goes
18 more broadly than just us being here, but that
19 customary law is alive and well and applied today
20 in a variety of context?

21 MR. LINKLATER: Yes.

22 MS. CRAFT: Thank you.

23 Now, to assist this Commission, I'm
24 wondering if you can explain how that one
25 customary law principle that I just, that I picked

1 out of all of the ones that you have talked about
2 today, how it might be helpful in making an
3 environmental decision?

4 MR. LINKLATER: That customary law
5 that I was talking about, nesohkumakewin, and I
6 said we are exercising that today. Our elders
7 have always told us to, when I grew up my parents
8 and my grandparents and taught me the art of
9 listening and also the art of empathy,
10 nesohkumakewin, to feel, to try and experience the
11 feelings when people go through a difficulty.
12 That is another customary law principle,
13 nesohkumakewin.

14 So in order to understand what we are
15 trying to do with respect to Keeyask, we have to
16 understand the art of listening, we have to
17 understand also the art of nesohkumakewin to try
18 and understand each other, to try and understand
19 who we are, especially with respect to our people.

20 You have to understand also what we
21 have been through as First Nations people in this
22 country with respect to extinguishment, we nearly
23 lost our ways, our language. But the Creator gave
24 us blood history, through those customary laws and
25 customary law principles that we get reminded, we

1 never lose anything because of our blood history,
2 and it is always there. And we must use what was
3 given to us and apply it to things that makes our
4 lives difficult. And that is the purpose of that,
5 why we are here, try and understand the art of
6 listening and also the art of understanding.

7 In my territory in Thompson, Manitoba,
8 there is a bridge there across the river similar
9 to that bridge at Dorsey. And our people refer to
10 those bridges, those two bridges as connection
11 between two cultures. We call it the bridge of
12 understanding, so we can understand each other,
13 why we were put there on part of our territory.
14 So it is important to try and understand our
15 people and our laws. It is important also to
16 governments and regulators to try and understand
17 us, who we are and where we come from.

18 MS. CRAFT: And you and I have had the
19 discussion in the past, and you are familiar with
20 my work, when I talk about procedure law and
21 substantive law and the difference between those
22 things, how we do something and the laws
23 themselves, what it is that we are bound to be
24 doing. And in this case, is there any advice that
25 you can offer about the process of how customary

1 law might come into decision making in relation to
2 Keeyask?

3 MR. LINKLATER: In my community there
4 is always two sets of law, one is a foreign law
5 and one is traditional law, and sometimes we
6 don't, in our communities we don't understand each
7 other, one doesn't respect the other. So it is
8 important that we teach each other as human beings
9 so we can understand each other. It is important
10 that people understand our way, our traditional
11 ways of justice, and also we try to understand the
12 foreign traditional way of justice.

13 You know, our people have changed
14 their way of life, ways of life. And that was the
15 first question I ask when we start talking about
16 Wuskwatim, and I said, we have changed our lives,
17 our way of life, we have tried to understand you,
18 why can't you change your way of life and
19 understand us? Why can't the governments and the
20 developers understand our way? Why can't they
21 change? Why are we the only ones to change?

22 I think that's important to understand
23 that, to understand that we have changed our way,
24 our way of life and it has been difficult, and we
25 tried to create understanding. So I still ask why

1 are we the only ones to change?

2 Governments have the same behavior and
3 attitude towards our people and towards our land.
4 They haven't changed. We are still waiting for
5 them to change.

6 So it is important to try and
7 understand each other. The Creator gave us these
8 laws when he placed us on this physical plain.

9 I would like to briefly share a story
10 with you so you will understand what I'm trying to
11 say.

12 After the Creator placed us here,
13 there were four kingdoms, and the first kingdom
14 was Mother Earth and the water, and then there is
15 the plant kingdom and then the animal kingdom, and
16 then the human beings were put here, placed here,
17 and they were given the responsibility to look
18 after the other three kingdoms. Such a tremendous
19 responsibility. The other three kingdoms followed
20 the law of the Creator. For example, there was a
21 shark one time, and there was a little fish, and
22 that little fish's duty was to clean the fungus
23 out of all of the fish. And even the shark, so
24 dangerous, even the shark stood still while that
25 little fish was cleaning the fungus from that

1 shark. The shark even opened his mouth to allow
2 that little fish to clean the fungus from inside
3 of its mouth. And you see it is only the plant
4 kingdom, the animal kingdom that still follow that
5 path the Creator gave them.

6 The Creator also gave us the path of
7 the heart, us human beings, to use the path, to
8 use your heart. My people and other First Nations
9 call it netemowin (ph), to do things from the
10 heart.

11 So as human beings with that
12 tremendous responsibility, we are the only ones
13 who have strayed from that path of the heart. And
14 I think governments and developers look at our
15 teachings, like what I shared with you just now,
16 and it is so important. If we are to survive, if
17 our children are to survive, we must share with
18 each other, and people have to understand our
19 creation story, to understand how the Creator put
20 us here and the laws that were given to us.

21 And in my territory there was a
22 teacher, the first teacher of my people, his name
23 was Wesakechak, it is translated to loving spirit.
24 He was the one that was sent here to warn the
25 plant kingdom, the animal kingdom about the human

1 beings coming here. And he was the one that was
2 given to name all of the plants and animals and to
3 prepare them for the coming of the human kingdom.
4 Wesakechak left a mark in my territory, Wesakechak
5 chair. He left his footprints in a steep cliff as
6 a reminder that he was there, and we never forget
7 it.

8 THE WITNESS: Thank you.

9 MS. CRAFT: Egosi. Elder Linklater,
10 in your view, is this Commission obligated to
11 consider Nehethowuk customary law?

12 MR. LINKLATER: Can you repeat the
13 question?

14 MS. CRAFT: My question is, in your
15 view, based on your understanding of your own
16 customary law, is this Commission obligated to
17 consider Nehethowuk customary law in making
18 decisions?

19 MR. LINKLATER: I just shared with you
20 our inherent obligation towards the land, towards
21 the water, towards the plant kingdom, towards the
22 animal kingdom. So, yes, they are obligated to
23 understand our people, to understand the laws that
24 were given to them. In that way we, as human
25 beings, if we work with each other like that shark

1 and that little fish, our children will be healthy
2 and will prosper and they will understand each
3 other.

4 MS. CRAFT: Can I assume that your
5 answer will apply also to the Minister as
6 representative of the Crown?

7 MR. LINKLATER: Definitely, yes,
8 that's so important, our Treaty relationship. And
9 we are all Treaty people, all of us sitting here.
10 And we must teach that to our children to
11 understand the Treaty relationship that we have.
12 That has to be taught in schools.

13 When I was going to school it was
14 never taught about Treaty, in high school I was
15 never taught about Treaty, what it means. But now
16 it is important to teach it in every school, so
17 our children will understand that relationship.
18 The Creator wants us to do that and it is our
19 responsibility.

20 MS. CRAFT: I have one last question
21 for you Elder Linklater, and it is in reference to
22 the slides, the blue sky pictures that you shared
23 with us, slide number 9, if we can put that up.
24 And when were you speaking to us earlier you told
25 us that Nisichawayasihk Nehethowuk customary law

1 principles were incorporated into environmental
2 monitoring plans, management plans, heritage
3 resource protection plans for Wuskwatim. Is that
4 right?

5 MR. LINKLATER: Yes.

6 MS. CRAFT: And Elder Linklater, were
7 you aware that the monitoring plans for York
8 Factory First Nation, Fox Lake, Tataskweyak and
9 War Lake are not completed, and that drafts are
10 not available for review by this Commission?

11 MR. LINKLATER: I wasn't aware. I
12 felt it is my duty to come here to share. I
13 shared this afternoon, and I hope people will
14 understand, I hope that people will understand
15 that they also have a responsibility to respect
16 those people that are trying to eradicate and
17 combat poverty amongst their children, and to
18 understand that we have laws that help us to look
19 after the land and the water.

20 MS. CRAFT: Thank you very much.

21 MR. LINKLATER: I hope that, I'm very
22 thankful that I was asked to come here and to
23 share.

24 MS. CRAFT: Thank you. Those are all
25 of the questions that I wanted to ask you. Egosi.

1 THE CHAIRMAN: Ms. Whelan Enns?

2 MS. WHELAN ENNS: Mr. Chair, the
3 counsel for the Consumers Association of Canada
4 asked a series of questions that I was going to
5 attempt. That reduces activity.

6 I would like, though, to start by
7 asking the elders questions, and then some
8 questions for Dr. Dick.

9 Elder Beardy, I understood in your
10 presentation that you were recommending to the
11 Commission that this suggestion from the elders,
12 in terms of the change in the channels and the
13 possible improvement for fish passage at Kelsey,
14 is something that you are recommending. Did I
15 understand correctly?

16 MS. BEARDY: Yes.

17 MS. WHELAN ENNS: Thank you very much.

18 You also expressed what sounded like
19 similar concerns, fish and then caribou, you were
20 speaking about the woodland caribou herd. Are the
21 concerns of the elders and yourself then similar
22 with respect to the coastal caribou, the Pen
23 Island caribou the Qamanirjuaq herd, or is your
24 focus on the woodland caribou?

25 MS. BEARDY: Right now it is on the

1 woodland.

2 MS. WHELAN ENNS: All right. Thank
3 you. I have questions for Elder Linklater now.

4 Early in your presentation today, you
5 were talking to us about consent. I wanted to ask
6 you then whether the way that the United Nations
7 is using, and has been over the last 15 years or
8 so, references to consent, and this would include
9 the U.N. Declaration of Indigenous Peoples and
10 also the World Commission on Dams report where
11 they have the same meaning or the same language
12 where they are talking about free, prior and
13 informed consent, and whether that matches or fits
14 with what you were telling us about consent?

15 MR. LINKLATER: Thank you for asking
16 me that question. It is so important.

17 Of course, the United Nations, they
18 have their own definition, they have their own
19 definition of consent, free, and informed consent.
20 It is also included in that Royal Proclamation,
21 and also the Magna Carta of 1512. The Royal
22 Proclamation -- I mean the United Nations also
23 have their definition of genocide. Canada has
24 their own definition of genocide. I don't know if
25 they understand each other, but our own definition

1 of consent is the way -- it is so important, it is
2 the way I explain it, explained to me by the
3 elders that I work with. There was a committee of
4 elders that I work with, and that is why it was so
5 important they told me, and they used my great
6 grandfather as an example, consent is so
7 important. I shared with you that the
8 Commissioner at that time respected that consent.
9 When he brought Treaty to my people, he was not
10 allowed to get out of the canoe. My grandfather
11 was chief at that time. You don't get off your
12 canoe, I didn't give you my consent. Even my
13 grandfather didn't allow the police to come into
14 our territory, into our community, without his
15 consent. And I want to share sort of a short
16 story with you about consent, Tipihimisowin.
17 There was an accident, hunting accident one time
18 when one of the hunters got shot. The RCMP took
19 that man who did the shooting to court in The Pas
20 at that time. My grandfather was away. So they
21 went to look for him and told him what happened.
22 Then he went to the Pas into the court and was
23 before the judge, and that man was standing there,
24 and my grandfather took that man out, he told the
25 judge, there is a difference between an accident

1 and murder, and I did not give you my consent to
2 take one of my citizens and to bring him here in
3 front of you, and he took him out. And nobody --
4 nobody would stop him. That's how my people at
5 that time exercised their belief in consent.
6 Consent is so important amongst our people,
7 especially refers to our land.

8 MS. WHELAN ENNS: Thank you.

9 Because, the next question is, because
10 of your home First Nation, and you have brought
11 the work with regards to preparation for Wuskwatim
12 with you today, have you given any consideration
13 to whether then your First Nation is potentially
14 affected by the Keeyask Generation Station?
15 Should it be licensed?

16 MR. LINKLATER: My elders believe, you
17 know, the water goes any place. My elders
18 believe, and they haven't given us that direction
19 to look into it, but I also believe that from the
20 teachings of my parents, my grandparents, that the
21 water doesn't stay in one place, the water goes
22 any place on the ground, falls from the sky.

23 And you mentioned, I'm glad you
24 mentioned the United Nations Declaration. It was
25 endorsed by Canada, and I haven't heard anything

1 from the Prime Minister of Canada, how they are
2 going to implement that endorsement of the United
3 Nations declaration, especially with respect to
4 our Treaty rights and especially with respect to
5 our consent. So I'm happy you brought it up.

6 MS. WHELAN ENNS: Thank you.

7 I wanted then to ask you about the
8 CEC's recommendation for a regional cumulative
9 effects assessment for the Hydro region. And
10 correct me on my understanding, but was I hearing
11 you say that all Hydro affected First Nations
12 would need to be included in such an assessment?

13 MR. LINKLATER: I don't know that I
14 said that, I don't remember saying that. But it
15 is my belief that what happens to the water, to
16 the environment, to the land, will affect our
17 lives, not only in Nisichawaysihk Nehetho Nation,
18 but other people who live in that region. I
19 wonder how much is owed to us as Treaty people.
20 If there ever was a Treaty audit on our land, I
21 wonder how much is owed. Because according to our
22 understanding, the newcomers are only supposed to
23 use six inches of our land. And they said at
24 time, I will use this land, our harvest -- our
25 plant and harvest, if I harvest a potato, I will

1 cut it in half, one for you and one for me. That
2 hasn't happened, that promise. So I want to throw
3 in that Treaty audit, people to think about.

4 MS. WHELAN ENNS: I would take that,
5 and am I understanding you correctly that the
6 Treaty audit would connect or need to be part of
7 this cumulative assessment for the Hydro system?
8 Did I hear you correctly?

9 MR. LINKLATER: There needs to be,
10 people have to understand the promises that were
11 made. People only referred to, government people
12 only referred to a written provision of the
13 Treaty. But what I share with you is the oral
14 understanding, the way our ancestors understood.
15 You know, the only implementation of Treaty is
16 that \$5. Now, I ask how much is that worth today,
17 if somebody did a Treaty audit properly?

18 MS. WHELAN ENNS: Thank you.

19 One last question. What I hear you
20 today, and there have been other speakers in First
21 Nation panels in the last two weeks who have been
22 approaching their remarks in the way that you
23 have, both elders today. I come back to a
24 question that has to do with the number of nations
25 and rights holders who, in fact, have, potentially

1 have a history of traditional activity and
2 occupancy in the region where Keeyask would be
3 built. So the question is then whether, for
4 instance, the members of your First Nations
5 elders, or Shamattawa, or other First Nations who
6 have a longstanding historic pattern of travelling
7 up the rivers and into the region where Keeyask
8 will be built, whether you would you agree that
9 they are rights holders in the region, in terms of
10 hunting, in terms of fishing, in terms of
11 medicines, visiting sacred sites?

12 MR. LINKLATER: Whether they are the
13 original holders, is that your question?

14 MS. WHELAN ENNS: Well, also in terms
15 of today. So some First Nations have a 100 or 200
16 year, maybe much farther if we knew back in time,
17 history of traveling up the rivers and
18 practising -- and excuse me for the terminology --
19 but hunting and fishing and camping and traveling
20 and gathering, and forming family alliances in the
21 region where Keeyask would be built?

22 MR. LINKLATER: I believe in that
23 reason, I believe we are all related. Like I
24 shared with you this afternoon that we didn't come
25 over from the Bering Strait like we were taught in

1 schools. We were placed here by the Creator. And
2 all of us, I got relatives in York Landing by
3 marriage, I got relatives in Split Lake, my
4 aunt -- I didn't know she was my aunt -- lived
5 there, and her children, she has so many children
6 and grandchildren. And my late grandfather, great
7 grandfather, Pierre Moose, one of his nephews
8 moved to Thicket Portage. So the surrounding
9 communities, we are all related to each other as
10 native people, and I believe all of those people
11 should be respected. Because the water is so
12 important. And the people have their own experts
13 in those communities. There is always full of
14 knowledge in each community, and these full of
15 knowledge has been ignored. It was ignored when
16 government started planning in our territory. The
17 cries of our elders, of our people fell on deaf
18 ears. And at that time the elders said, what
19 about kakekisik (ph)? The scientists didn't know
20 that. Kakekisik is permafrost. And they tried to
21 warn the scientists about that.

22 So all of these people in the southern
23 region, I think we have similar laws, customary
24 laws, we have similar ways because we are all
25 related somehow or another. Sometimes we forget

1 because of what happened to us, because of
2 interference in our spiritual life and
3 interference in our lives, but it is coming back.

4 MS. WHELAN ENNS: Thank you, Elder
5 Linklater.

6 I have some questions for Dr. Dick
7 now, and I'm hoping we can move quickly.

8 A quick question then first about the
9 July 12th, 2013 DFO letter. And that is, did you
10 notice in reading it there is references sort of
11 about three places in the letter in terms of the
12 meetings that occurred, that there were no Keeyask
13 Cree Nation participants in those meetings?

14 DR. DICK: Yes.

15 MS. WHELAN ENNS: All right. Thank
16 you.

17 Dr. Stephen Peake was a witness
18 earlier in these hearings, and in his report he
19 says and I ---this is a quick quote, and the
20 question is whether you agree with his statement.

21 "The current strategy for passing lake
22 sturgeon downstream is through the
23 turbines and over spillways. This
24 cannot be considered mitigation to
25 provide safe downstream passage."

1 And then he goes into the numbers and the lack
2 of --

3 DR. DICK: Yes, I would agree with
4 that.

5 MS. WHELAN ENNS: Thank you.

6 In your report you made a comment
7 about how the mapping that was used with respect
8 to water levels and sturgeon appear to all be at
9 high water levels. Is that correct?

10 DR. DICK: Yes.

11 MS. WHELAN ENNS: And are you making a
12 recommendation there then, because you were also
13 talking about needing better and additional
14 mapping later on. In your report, and based on
15 today, are you making a recommendation then that
16 the mapping needs to be at low and high, and/or
17 stages of water levels to be fully --

18 DR. DICK: Yes, and then it would be a
19 proper study, in my view.

20 MS. WHELAN ENNS: Thank you.

21 We've been told by the proponent in
22 these hearings that this particular stretch of the
23 Nelson River has had less study than where the
24 dams are, up and downstream?

25 DR. DICK: Yes, true.

1 MS. WHELAN ENNS: And you've remarked
2 on the need for baseline studies?

3 DR. DICK: Yes.

4 MS. WHELAN ENNS: And the lack of
5 them?

6 DR. DICK: And ATK, really important
7 that there is, yeah.

8 MS. WHELAN ENNS: Yes, combined,
9 absolutely.

10 Do you think that there is more
11 baseline data in hand over time in and around the
12 Kelsey Station?

13 DR. DICK: That there is -- yes, it is
14 not documented, but orally in the community, but
15 not written down, no. Definitely it needs to be
16 done, an ATK study needs to be done.

17 MS. WHELAN ENNS: Would an ATK
18 study -- it is a long day I guess and I'm showing
19 it -- would that kind of a study then be among
20 your recommendations in terms of going forward
21 with what the elders are suggesting?

22 DR. DICK: Yes.

23 MS. WHELAN ENNS: For fish passage at
24 Kelsey?

25 DR. DICK: Yes.

1 MS. WHELAN ENNS: You made a reference
2 today in terms of cumulative studies and them
3 being done properly, and looking at the whole
4 system and the whole river and all of its
5 functions. So the question would be then, when
6 you make a reference to all of the river's
7 functions, are you including all of the river's
8 services?

9 DR. DICK: All of the -- what was
10 that?

11 MS. WHELAN ENNS: The river's
12 services?

13 DR. DICK: You mean including
14 hydroelectric, or are you talking about man made
15 services, or just natural?

16 MS. WHELAN ENNS: Natural?

17 DR. DICK: I would prefer that they do
18 a natural study first. We have pretty good
19 knowledge about the hydroelectric, what is
20 generated and the flows and stuff. That's pretty
21 well documented. It is the natural system that
22 needs to really be beefed up for the whole system.

23 MS. WHELAN ENNS: Thank you.

24 You have been, in your report and
25 today, focusing on sturgeon, but you've also made

1 comments in terms of, again, for instance, lack of
2 baseline study and recommendations in terms of
3 whole system studies and whole river studies.

4 Is there a risk, could it be that the
5 other fish that are VECs for the EIS, for this
6 generation station, have some of the same risks in
7 terms of lack of baseline data and lack of
8 sufficient ATK integrated into --

9 DR. DICK: When I'm talking about an
10 overall ATK studies, that would include all fish
11 species, including burbot, which is not really
12 recognized, except in the communities it is
13 recognized a lot, they talk a lot about burbot,
14 but there is no special designation for it, and to
15 me it is important, and brook trout, all of the
16 way down would be really important too.

17 MS. WHELAN ENNS: Thank you. I would
18 like to thank the panel, and that's the end of
19 questions, Mr. Chair.

20 THE CHAIRMAN: Thank you, Ms. Whelan
21 Enns. Ms. Pawlowska-Mainville?

22 MS. PAWLOWSKA: Thank you. I only
23 have about four or five questions.

24 First of all, my name is Agnes
25 Pawlowska-Mainville, and I'm speaking on behalf of

1 the Concerned Fox Lake Grassroots Citizens, who
2 wanted specifically to thank you for your
3 presentations and to acknowledge your voices.
4 Unfortunately, they had to leave this morning, so
5 they were unable to be here and listen to you.

6 The first question I have is for
7 Dr. Dick. In your report you have reviewed the
8 EIS and the science reports. Do you think that
9 the ATK, so the knowledge and the data within
10 traditional knowledge, is appropriately accounted
11 for?

12 DR. DICK: Well, I said earlier in my
13 talk that I felt in the future what we will
14 hopefully see is that ATK will be presented in a
15 chapter by itself, up front before they do any
16 assessment. So I would have to say no, not the
17 way it is written, but I hope in the future it is
18 going to change. These are reiterations, I think,
19 of what will happen, and I think we have moved a
20 long way in this EIS, but, yeah, I think we can
21 get better.

22 MS. PAWLOWSKA: Thank you.

23 And the second question that I have
24 is, did you find in speaking with the elders and
25 from your experience with community members, and

1 this perhaps can be answered by Elder Beardy, do
2 you find that the use of hormones in sturgeon was
3 actually an issue when it comes to bringing
4 sturgeon back?

5 DR. DICK: Yeah, it was. I mean,
6 there were some elders don't want it at all. And
7 I actually had a comment to Stephen Peake's about
8 it, but I didn't give it today. I will tell you
9 from a scientific point of view -- I'm sorry
10 Flora, and then you talk. But from a scientific
11 point of view, the problem is if you have very
12 small number of females, if you have a couple of
13 females and that's all you get, or even just one,
14 if you treat them with the hormones and the
15 hormones don't work, and they don't always work,
16 you have removed that year class of recruitment
17 from the system completely. You put the fish back
18 and she just won't spawn. If you take a few eggs,
19 not too many, you don't have to take a lot of
20 eggs -- we used to use what we call the brook
21 stroke, which is you push forward and push back
22 and release the eggs. The reason why that works
23 is because the sturgeon reproductive system is
24 like a frog, and you know how the male frog grabs
25 the female and pushes the egg forward, and they

1 come back and then he puts the sperm on them.
2 Well, they have a Mullerian duct the same way, so
3 that the eggs are pushed up and you push them
4 back. So there you can always get some eggs out,
5 right? Then you just dump the female back in the
6 river and she goes and spawns. So you don't lose
7 the whole natural year class. So we have to be
8 very cautious about how we are going to use that.
9 Some people are just opposed to it because it is
10 not natural.

11 MS. PAWLOWSKA: And Elder Beardy, I
12 saw you nodding your head. Would you like to say
13 something?

14 MS. BEARDY: Just what he said, like
15 with the elders, it is just like tampering with
16 nature, and that's against our law.

17 MS. PAWLOWSKA: Thank you.

18 Some of the members at the public
19 hearings, as well as the elders that we have been
20 working with in Fox Lake, actually say that they
21 tend to be blamed for overfishing sturgeon in the
22 Nelson River. So I'm just wondering if perhaps,
23 Dr. Dick, you can speak to that issue, whether or
24 not you find Hydro development starting at Kettle
25 to be a contributing component to the diminishment

1 of sturgeon or overfishing?

2 DR. DICK: Yeah, I looked at that
3 really carefully. Sipiwesk Lake, of course, was a
4 big commercial fishery, we all know that. There
5 wasn't a lot of heavy commercial fishing further
6 down. I think it is nonsense most of the time, it
7 really denigrates the fact that there have been
8 environmental perturbations and the fact that the
9 First Nations are allowed to do subsistence
10 fishing. So it has always been brought in,
11 particularly from the lower Nelson River, not a
12 lot of heavy commercial fishing over the years.
13 So I would prefer that it was taken out,
14 particularly on the lower Nelson. You can use the
15 argument on the upper Nelson, Sipiwesk Lake, and
16 so on, but the lower Nelson, it is hard for me
17 accept.

18 MS. PAWLOWSKA: Thank you.

19 The next question I have is for Elder
20 Linklater, actually. And you spoke a large -- a
21 large part of your presentation was actually about
22 incorporating cultural components and then your
23 customary law in dealing with Wuskwatim.

24 So my question is, have you ever
25 spoken or been approached by Manitoba Hydro using

1 certain of your cultural protocols, and you
2 mentioned gift gifting or smoking the pipe, has
3 that ever occurred?

4 MR. LINKLATER: Thank you for asking
5 that.

6 What we wanted was respect. Everybody
7 that came to Wuskwatim had to go through our
8 workshop, and we had our own people teaching that.
9 We wanted people to understand who we are. We
10 wanted people to understand our laws and our
11 ceremonies, and we wanted tobacco in this
12 equipment. If they found that they came upon a
13 sacred site, a burial site, a historic site, work
14 is supposed to stop, and that operator is supposed
15 to take that tobacco and place it. And I believe
16 that there was claws, white claws also that was
17 placed. Like I said with you, every creek, you
18 know, that was disturbed, our elders were there to
19 say prayers, to ceremony, and ask for forgiveness
20 if we breached a great law. And we also had
21 feasts. And in Wuskwatim we have our own, that
22 was our original settlement, and we asked Hydro,
23 we wanted to replace that settlement, there is no
24 settlement. And we have a beautiful cultural
25 centre there, and also at the Wuskwatim site. And

1 we also had an on-site counselor during
2 construction. If anybody had problems, the
3 on-site counselor would help those people. And I
4 don't know how many times we had ceremonies.
5 There is a beautiful cultural centre at Wuskwatim
6 and a beautiful cultural centre at the original
7 site in Wuskwatim Lake.

8 And our people continue to monitor the
9 environment, we continue to have elder and youth
10 gatherings, so the elders can teach the children
11 about medicines. The medicine people come there
12 and teach the children. As a matter of fact, we
13 had two weddings in Wuskwatim, one at the
14 Wuskwatim site, and my daughter, my late brother's
15 daughter, who is my daughter now, got married. It
16 was a beautiful ceremony. Last summer we also had
17 another wedding. There was so many children that
18 came there, to come and listen to teachings by
19 people who carry the pipe, bus loads and bus loads
20 of children came there. And I was so happy.

21 When I talk to one youth about our
22 teachings, about our spirituality, about our
23 culture, it makes me happy. Even talking to one
24 youth, it makes me happy. And last summer there
25 is so many youth that came there. One of my

1 cousins got married, I thought he was just fooling
2 around with me, and they had a traditional
3 wedding.

4 So, yes, it works, and it is going to
5 work. Even other First Nation people respect it.
6 We shared our teachings, especially
7 Kwayaskonikiwin, with the people that came there,
8 with the people, with Hydro people.
9 Kwayaskonikiwin is so important to my people. It
10 means what you do to the land and the water will
11 come back to you, and it will affect your family,
12 not your family, your children's family, if we
13 don't do things right. So that's why it is so
14 important, we have been having purification
15 ceremonies. We keep asking the Creator for our
16 forgiveness. We keep asking Creator not to let
17 oshinewin travel through our families and through
18 our land.

19 The customary law principle of aski
20 oshinewin is also important. When you disrespect
21 a resting place of an ancestor, when you take the
22 remains and the artifacts, the tools that are
23 buried with that ancestor, you are disrespecting
24 our people. That will also affect our family and
25 our children and our grandchildren.

1 I have 17 grandchildren, I have two
2 great grandsons, and one of them came to a sweat
3 lodge ceremony with me in July. It was very hot.
4 I had my two sons there and my two grandsons, and
5 my great grandson wanted to come. So this is
6 important. So these othawsowewin will continue
7 amongst our families, or amongst the people that
8 come to our land. That's important for everybody,
9 for all of us.

10 MS. PAWLOWSKA: Thank you for that.

11 And Elder Beardy, have you ever been
12 approached by Manitoba Hydro perhaps in a way that
13 is culturally appropriate in your community?

14 MS. BEARDY: Can you repeat that,
15 please?

16 MS. PAWLOWSKA: Of course. Have you
17 ever been approached by Manitoba Hydro, at some
18 point in the negotiations or with the consultants,
19 in a way that you find was appropriate in terms of
20 your cultural value system, about how to make
21 negotiations or discuss issues?

22 MS. BEARDY: I think during
23 negotiations in the meetings that we had, it was,
24 we expressed our cultural concerns or how we
25 should be doing this and that in some meetings,

1 yes. You know, there is always somebody who wants
2 to know more and we are there to give them more
3 information. I have never noticed any disrespect
4 or anything from any of the workers there, that I
5 have worked with anyway.

6 MS. PAWLOWSKA: Thank you.

7 MS. BEARDY: They have always shown us
8 respect.

9 MS. PAWLOWSKA: Thank you for that.

10 So my final question is for Elder
11 Linklater. So you spoke about Wuskwatim and your
12 community. I'm just wondering, do you think from
13 your perspective of living in the community and
14 being there your entire life that the community is
15 actually well off or better off after Wuskwatim?

16 MR. LINKLATER: I believe it is better
17 off, but I also believe that the hurt and the pain
18 and bitterness that we have experienced for the
19 last 40 years, it will take a long time for us to
20 heal. It will take a long time for us to
21 de-colonize ourselves. I lost a son, who lost his
22 life in a roadway that was poorly constructed, and
23 I was bitter because of that, and I didn't trust
24 anybody. And I couldn't let that stop -- I
25 couldn't stop my people from getting benefits, so

1 I had to forgive. I don't know how much a life is
2 worth, I don't know how much my son's life is
3 worth. But under the Northern Flood Agreement,
4 they said they were going to compensate loss of
5 life. My son died with four other boys in that
6 causeway, it was so narrow. And it still, it
7 still hurts, I still have a vacant spot in my
8 heart because of that. But I didn't want my
9 people collectively, I didn't want to stop the
10 Wuskwatim project, because I have this
11 responsibility, collective responsibility for my
12 people. But the other four lives, and there has
13 been a lot of lives that are lost, we paid for our
14 lives because of pursuit of power. There has been
15 young men that are harvesters, fishermen, we never
16 found their bodies. Not just because of oshinewin
17 (ph), what happened to our land, our water and our
18 environment, and we were never given, at that
19 time, we were never consulted in the '70s. And
20 that's why it is so important now that we pay
21 attention, the governments and developers pay
22 attention to our people.

23 You know, what does it take for a
24 landlord to heal or reconcile? I know some of the
25 elders in my community didn't go down to the lake

1 because of the flooding, and some of these elders
2 have gone to the grave with that pain and that
3 bitterness. So that's why we had to prevent that.
4 The water has taken so many of our people, that's
5 why we need to keep doing ceremonies, and to
6 protect our children, our people, our harvesters,
7 from ochinewin. Thank you.

8 MS. PAWLOWSKA: Thank you.

9 MR. LINKLATER: Thank you for that
10 question.

11 MS. PAWLOWSKA: Thank you.

12 THE CHAIRMAN: Thank you,
13 Ms. Pawlowska-Mainville. Panel questions? Yes,
14 Mr. Nepinak?

15 MR. NEPINAK: Elders Linklater, are
16 you okay to answer a couple of more questions?
17 Thank you.

18 You ended off that last statement with
19 our children, and you have mentioned our children
20 a couple of times. And I was wondering if you
21 could explain, what do you mean by our children?
22 Is it our Cree children, our Anishinabe children?

23 MR. LINKLATER: According to our
24 teachings -- and thank you for that question --
25 when I say our children, I don't only mean, and I

1 think I expressed that already, I don't only mean
2 our children, First Nation people. I explained
3 that our ancestors knew that the newcomers were
4 coming to our land, through ceremonies, through
5 dreams. And they understood why the Creator sent
6 them here, to come and share the land. And that's
7 what our elders, our ancestors did to share the
8 land, to respect the land, to prevent any
9 atrocities that would happen to our people. When
10 I say our children, I mean all of our children who
11 are human beings. We belong to the same human
12 family, and we have our responsibility for these
13 children. We have a responsibility for the
14 children that come in from the spirit world. And
15 we must, it is our responsibility to teach our
16 children how to walk hand in hand as they travel,
17 this part of the heart.

18 MR. NEPINAK: Miigwech, thank you.

19 My last question has to do with
20 language. I see you have put words, English words
21 and Cree words together. We use the word law.
22 And like yourself, you probably understand the
23 English language very well -- like myself I should
24 say. So the word law means law. But in my
25 language in Ojibway, the words have a whole lot

1 more meaning than just being a word. Can you
2 explain the -- can you expand on that a little bit
3 more with Cree?

4 MR. LINKLATER: My language
5 Nehethowewin, it means I speak from the four
6 winds, I speak from the four directions. And that
7 means when I speak that I speak the truth and
8 speak with honesty. And language, my language is
9 so precious to me. My history is embodied in my
10 language. My future is embodied in my language.
11 I am the ancestral law, which is contained in my
12 language. I am the future law contained in my
13 language. It is so precious to me. And it hurts
14 when the governments broke the bond of our
15 families and our community. And it hurts -- I'm a
16 residential school survivor, but I was raised by
17 my grandparents and I didn't let go of my
18 language, I still have it. And it is so important
19 that we teach our children their language in our
20 schools. It is so important that we teach
21 everybody our language, the teaching is contained
22 in our language. Language to me, is very sacred
23 to me. These laws that I talk about are contained
24 in the language. Some people call it keesowin
25 (ph), some people call it pisowin (ph), but

1 keesowin we say that in my language, in my native
2 language. Thank you.

3 MR. NEPINAK: Thank you.

4 Elder Beardy, same sentiments, same --

5 MS. BEARDY: Yes, it is the same with
6 us too.

7 MR. NEPINAK: All right. I want to
8 thank you very much for today. I'm personally
9 very honoured to be in their company, and the
10 ladies in the back as well. Miigwech.

11 MS. BEARDY: And may I do closing, may
12 I say something?

13 THE CHAIRMAN: Yes.

14 MS. BEARDY: I want to thank Elder
15 Linklater for his presentation. And what he has
16 shown us here, that's the views of Kaweechiwasihk
17 Kay-tay-a-ti-suk. It would be so nice, like what
18 they have done at Wuskwatim, it would be so nice
19 if it was possible at Kelsey -- Keeyask, sorry.
20 It has been a long day. It would really be nice.

21 THE CHAIRMAN: Thank you.

22 Mr. Dolinsky, any re-direct?

23 MR. DOLINSKY: No, Mr. Chairman.

24 THE CHAIRMAN: Thank you. I would
25 like to thank all of you for your presentations

1 today, for the reports that you prepared before
2 today, and for coming here today. I also thank
3 other members of your community who are with us
4 today but not at the front table. We are getting
5 close to the end of the day. Some documents to
6 register?

7 MS. JOHNSON: Yes, there two TLE
8 reports related to Peguis that have been supplied,
9 KHLP 92 and 93; the adaptive management report is
10 CAC 31; the presentation is number 32. And
11 Drs. Diduck and Fitzpatrick's report from Bipole
12 III on adaptive management is CAC 33. The
13 submission from KK in October 7th is number 4, and
14 the Aboriginal traditional knowledge report is
15 005. And there are a number of documents from
16 Mr. Linklater, and we will just start them 006 and
17 end them at 019. That's includes all of the
18 documents that he provided, plus his presentation
19 KK 20 is Dr. Dick's CV; 21 is the DFO report; 22
20 is one of the maps; 23 is another one of the maps.
21 KK 24 is the research news, and number 25 is the
22 press release. And MMF 14 is the response to
23 undertaking 13.

24 (EXHIBIT KHLP 92: TLE Peguis report)

25 (EXHIBIT KHLP 93: TLE Peguis report)

1 (EXHIBIT CAC 031: Adaptive management
2 report)
3 (EXHIBIT CAC 032: Adaptive Management
4 Presentation)
5 (EXHIBIT CAC 033: Drs. Diduck and
6 Fitzpatrick's report from Bipole III
7 on adaptive management)
8 (EXHIBIT KK 004: Submission October
9 7)
10 (EXHIBIT KK 005: Aboriginal
11 traditional knowledge report)
12 (EXHIBIT KK 006 - 019: Documents
13 provided by Mr. Linklater plus
14 presentation)
15 (EXHIBIT KK 20: Dr. Dick's CV)
16 (EXHIBIT KK 21: DFO report)
17 (EXHIBIT KK 22: Map)
18 (EXHIBIT KK 23: Map)
19 (EXHIBIT KK 24: Research news
20 article)
21 (EXHIBIT KK 25: Press release)
22 (EXHIBIT MMF 014: Response to
23 undertaking 13)
24 THE CHAIRMAN: Thank you. So we are
25 adjourning in a few minutes for about three and a

1 half weeks. We will be back here, we have added
2 one day that first week in January, so we will be
3 back here on Monday, January 6th. That day we
4 will start at 1:30 and go until 6:00 p.m. On that
5 day is the Concerned Fox Lake Grassroots Citizens
6 completing the cross-examination of their expert
7 witnesses. And depending on the timing, we will
8 probably start some final questions that CEC will
9 be putting to the proponent.

10 Now, those questions are not open to
11 cross-examination.

12 On Tuesday the 7th, we will conclude
13 the CEC questions, and the proponent will do their
14 rebuttal.

15 Participant closing arguments will be
16 on Wednesday, January 8th, Thursday the 9th. We
17 will determine the order and let you know. The
18 participant closing arguments will be limited to
19 one and a half hours, but we also expect written
20 documentation in support of your argument.

21 Mr. Williams?

22 MR. WILLIAMS: If memory serves me
23 right, and I'm not confident it does, but I think
24 in Bipole III any rebuttal was pre-filed. Are we
25 expecting the same process?

1 THE CHAIRMAN: It was pre-filed, I
2 can't remember the time lines, but we will look it
3 up, and we will have the same pre-filing, but I
4 really can't remember.

5 MS. JOHNSON: We will be able to look
6 it up.

7 THE CHAIRMAN: We will figure it out
8 and we will send out a fairly exhaustive email in
9 the next day or two.

10 MR. WILLIAMS: I have no doubt it will
11 be exhaustive, Mr. Chair.

12 THE CHAIRMAN: As long as it is not
13 exhausting.

14 MR. WILLIAMS: I expect it will be
15 that as well.

16 If we got it in late December, at
17 least a week, that would be helpful if we required
18 to review it.

19 THE CHAIRMAN: We will follow the same
20 times lines that we had for Bipole III. I
21 honestly can't remember what it was. I do
22 remember we had that discussion for Bipole III as
23 well.

24 MR. WILLIAMS: Thank you.

25 THE CHAIRMAN: I think, if I'm not

1 mistaken, we are back in this room in January.

2 So, enjoy your three and a half weeks off. Those
3 of you that are celebrating holidays, all of the
4 best. Anybody who is traveling, safe travels, and
5 see you in January.

6 MS. BEARDY: I would like to ask Elder
7 Linklater to close.

8 (Closing prayer)

9 (Adjourned at 6:00 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

Cecelia Reid and Debra Kot, duly appointed
Official Examiners in the Province of Manitoba, do
hereby certify the foregoing pages are a true and
correct transcript of my Stenotype notes as taken
by us at the time and place hereinbefore stated to
the best of our skill and ability.

Cecelia Reid
Official Examiner, Q.B.

Debra Kot
Official Examiner Q.B.

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