

MANITOBA CLEAN ENVIRONMENT COMMISSION

KEEYASK GENERATION PROJECT

PUBLIC HEARING

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WEDNESDAY, DECEMBER 4, 2013

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APPEARANCES

CLEAN ENVIRONMENT COMMISSION

Terry Sargeant - Chairman
Edwin Yee - Member
Judy Bradley - Member
Jim Shaw - Member
Reg Nepinak - Member
Michael Green - Counsel to the Board
Cathy Johnson - Commission Secretary

MANITOBA CONSERVATION AND WATER STEWARDSHIP

Elise Dagdick
Bruce Webb

KEEYASK HYRDOPOWER LIMITED PARTNERSHIP

Doug Bedford - Counsel
Janet Mayor - Counsel
Sheryl Rosenberg - Counsel
Bob Roddick - Counsel
Jack London - Counsel
Vicky Cole
Shawna Pachal
Ken Adams
Chief Walter Spence
Chief Louisa Constant
Chief Betsy Kennedy
Chief Michael Garson

CONSUMERS ASSOCIATION OF CANADA

Byron Williams - Counsel
Aimee Craft - Counsel
Gloria Desorcy
Joelle Pastora Sala

MANITOBA METIS FEDERATION

Jason Madden - Counsel
Jessica Saunders - Counsel

MANITOBA WILDLANDS

Gaile Whelan Enns
Annie Eastwood

PEGUIS FIRST NATION

Lorraine Land - Counsel
Cathy Guirguis - Counsel
Lloyd Stevenson
Jared Whelan

CONCERNED FOX LAKE GRASSROOTS CITIZENS

Agnieszka Pawlowska-Mainville

Dr. Stephane McLachlan

Dr. Kulchyski

Noah Massan

PIMICIKAMAK OKIMAWIN

Kate Kempton - Counsel

Stepanie Kearns - Counsel

Darwin Paupanakis

KAWEECHIWASIIHK KAY-TAY-A-TI-SUK

Roy Beardy

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1 Wednesday, December 4, 2013

2 Upon commencing at 9:30 a.m.

3 THE CHAIRMAN: Good morning. We'll
4 reconvene. We'll pick up where we left off
5 yesterday, part way through Ms. Larcombe's
6 presentation.

7 MS. LARCOMBE: Good morning panel
8 members, ladies and gentlemen.

9 We left off when I was on, I believe
10 slide number 11, which somebody has very carefully
11 figured that out for me. And hopefully today I
12 can actually read and see the slides at the same
13 time.

14 MR. MADDEN: Pull the microphone
15 closer to you, please.

16 MS. LARCOMBE: All right.

17 So the next few slides, I'm just going
18 to quickly review some of the profile information
19 about the interviewees that participated in the
20 TLUKS study.

21 Again, the figures that are on the
22 slides and the figures that I'm going to be
23 referring to today, except for the maps, are based
24 on 30 interviews. As I explained yesterday, there
25 were an additional five interviews that for

1 various reasons didn't make it into the slide
2 deck.

3 So of the 30 individuals that were
4 interviewed, there were predominantly men, 27 men
5 and three women. The age groups are illustrated
6 on the slide here, number 12. The majority of the
7 interviewees were aged 40 and older, although we
8 did have opportunity to interview a couple of
9 individuals that were younger than 20, which is
10 it's kind of special, because you don't often get
11 to interview people that young.

12 Twenty-one of the 30 interviewees live
13 within the Keeyask study area as we have defined
14 it, and the remaining interviewees were living at
15 the Interlake, the southwest of Winnipeg MMF
16 regions at the time. Three of the ones that were
17 no longer living in the study area had lived there
18 at some point in their life.

19 It's indicated on this slide here,
20 number 13, 43 percent of the interviewees were
21 born in the MMF Thompson region, 17 had been born
22 in the Interlake region, 10 percent in the
23 northwest region, and 10 percent from the Winnipeg
24 region.

25 For interviewees, one of the questions

1 that we asked during the interviews is where the
2 interviewees' parents were from. And it's
3 indicated on this slide, just less than half of
4 the interviewees' parents were born -- the
5 majority of the interviewees' parents came from
6 the northwest of the -- the northwest MMF region.
7 15 percent of their parents were from the Thompson
8 region, 12 percent from the Interlake, and then
9 smaller proportions from the remaining MMF
10 regions.

11 This next slide, number 14, just is
12 some high level demographic information about the
13 interviewees. They came from household size of
14 two and a half, ranged from one to eight. A
15 quarter of them, just less than a quarter of them
16 had grade nine or less education. About half of
17 them had between grade 10 and a high school
18 equivalency, and just under a quarter of them hold
19 a diploma or certificate.

20 Fifty-seven percent of the interviews
21 were employed full time, 10 percent part time, but
22 year-round, 14 percent full time or part time on a
23 seasonal basis, and 20 percent were retired.

24 When asked about their personal income
25 from all sources, 20 percent of the interviewees

1 had personal income of less than \$20,000 per year,
2 50 percent had income between 20 and 60,000, and
3 just slightly less than a quarter had personal
4 income of greater than 60,000.

5 They were then asked a second question
6 which was their family income, including all
7 people living in the home who drew income.
8 7 percent of the families had incomes of less than
9 20,000 a year, 27 percent had incomes between 20
10 and 60,000 and just over half of them had family
11 incomes of greater than 60,000.

12 I'm on slide 15. One of the questions
13 that we asked during the TLUKS interviews is what
14 type of equipment the interviewee personally owns.
15 This gives an idea of what kind of equipment they
16 might be using when they are engaged in
17 traditional use activities.

18 As shown on this slide, 80 percent of
19 the interviewees own a truck. Almost as many have
20 a skidoo, as well a boat. Forty-seven percent own
21 an all-terrain vehicle, and 37 percent own a
22 canoe. Just less than half of the interviewees
23 own four or more of the types of equipment on that
24 list. Just less than a quarter own three of these
25 types of equipment. And 30 percent own less than

1 three of those pieces of equipment, with the truck
2 and skidoo and boat being the most commonly noted
3 pieces of equipment.

4 In terms of traditional food
5 consumption, the interviewees are asked in the
6 previous 12 months of the interview to tell us how
7 often they consume a meal of traditional foods.
8 Seventeen percent of the interviewees reported
9 consuming country food four or more times a week.
10 30 percent reported they consume traditional food
11 two to three times a week. Twenty-seven percent
12 reported they consume about once a week, and the
13 remainder, just about a quarter, indicated they
14 consume it less than once a week.

15 Slide number 16 here provides a
16 perspective on what proportion of the interviewees
17 participate in various types of traditional
18 activities. Food fishing was identified by the
19 greatest proportion of the interviewees.
20 Eighty-seven percent indicated they engage in
21 fishing. Sixty-three percent reported that they
22 participate in moose harvesting.
23 forty-seven percent report involvement in
24 waterfowl harvesting and trapping activities.
25 Forty-three percent reported involvement in

1 gathering of plants such as berries. A third of
2 the interviewees reported harvesting upland birds,
3 grouse and ptarmigan. Less than one-third of the
4 interviewees reported harvesting caribou. And
5 finally, 27 percent reported harvesting plants of
6 various types for medicinal purposes.

7 Forty percent of the interviewees participate in
8 five or more of these activities.

9 Seventeen percent participate in three to four of
10 the activities. And 43 participate in less than
11 three of these activities.

12 Slide number 17 is an indication of
13 the frequency that the interviewees make a trip
14 from home onto the land to engage in a traditional
15 activity, and how many days in a year they spend
16 in total.

17 So I'm only reporting on the data for
18 the decade from 2000 to 2010, because a portion of
19 the interviewees who were interviewed for the
20 Bipole, obviously I hadn't reinterviewed them in
21 2013, so that's why I'm reporting on this decade.

22 So the average number of trips made in
23 a year by the interviewees was 38, and the average
24 number of days on the land was 59. What's showing
25 there is the median number of trips is 21 and the

1 median days is 50.

2 In terms of trips, the range was from
3 one trip a year to 134 trips a year. And for
4 days, it ranged from six days in a year as high as
5 208 days in a year.

6 Collectively, the interviewees spent
7 approximately 1,350 days annually engaged in
8 traditional activities, excluding trapping, in the
9 study area.

10 We asked the interviewees who they
11 learn, who they have learned from to go to a
12 particular place to do a particular activity.
13 Half of the locations that were identified during
14 the interviews, the interviewees indicated that
15 they had learned about that place from a family
16 member. Thirty-two percent said they had learned
17 from a friend or others. And 17 percent
18 discovered the place on their own.

19 Generally, the interviewees begin
20 their learning the skill-sets and knowledge of
21 traditional activity in the company of their
22 parents and grandparents, aunts, uncles, siblings
23 and cousins. And as they progress in their life
24 and marry and have their own children, they spend
25 more time with their immediate family, including

1 their partner or spouse's family. And as you --
2 as I interview individuals who are older, they
3 will then say they are now taking their
4 grandchildren or their great grandchildren out on
5 the land.

6 So for the next few slides I'm going
7 to be walking through a series of maps that
8 present the geographic information that came from
9 the interviews. And once again, the maps I'm
10 about to show you include the full set of
11 information from 35 interviews, not the 30 that
12 the non-spatial data, on the slides.

13 I caution that these maps represent
14 the findings of a very small sampling of Manitoba
15 Metis harvesters and they should not be viewed as
16 a complete picture of traditional use in the
17 Keeyask study area. They do not -- I wouldn't
18 want anyone to sort of feel that, you know, we
19 captured it all. I don't have that confident
20 level.

21 So this slide is showing the locations
22 that were identified for moose harvesting
23 throughout the period from 1900 to 2013. And the
24 areas that are in various shades of pink or
25 purple, depending, I think it's purple if you're

1 looking at that on the wall slide. So you can see
2 that areas that were identified for moose
3 harvesting include downstream of Stephens Lake
4 along the Nelson River. There's some areas along
5 the south of Ilford, the highway from Thompson up
6 toward Split Lake, an area near Limestone Lake,
7 various inland lakes south of Ilford. And the
8 biggest block of colour is largely south of Split
9 Lake and down through the Thicket Portage,
10 Pikwitonei area. Two-thirds of the areas that are
11 shown on this map were areas that the interviewees
12 had identified that they had been using it for
13 harvesting purposes for 30 years or more. And
14 25 percent of the interviewees had used their
15 areas for five decades or longer.

16 In the decade of the 2000s, the
17 interviewees made an average of 10 trips per year
18 to go moose hunting, and they spent an average of
19 28 days each engaged in that activity.

20 This next slide is showing caribou
21 harvesting areas for the period from 1990 to 2013.
22 As I said earlier, 30 percent of the interviewees
23 identified caribou harvesting in this area. Some
24 of these interviewees have been going and
25 harvesting caribou in these areas for three

1 decades or more. On average they make two trips a
2 year and spend between nine and 16 days a year
3 engaged in caribou harvesting in these areas.

4 The interviewees also engage in
5 waterfowl harvesting, which you can see on this
6 map is that, based on the people we spoke with,
7 the concentration of waterfowl harvesting is south
8 of the Split Lake area and south and east of
9 Thompson. Interviewees make six to eight trips a
10 year and spend 10 to 12 days per year harvesting
11 waterfowl.

12 This is the map for upland bird
13 harvest areas, grouse and ptarmigan. It looks
14 quite similar to the map I just showed you for
15 waterfowl, with the exception that highway 280 is
16 used as an access corridor for harvesting upland
17 birds, as well as the highway from Thompson
18 towards Nelson House.

19 The interviewees made an average
20 between 19 and 20 trips a year to engage in upland
21 bird harvesting and spend approximately two weeks
22 a year doing that activity.

23 This map number, slide number 23 is
24 the locations that were identified where food
25 fishing occurs. As I said earlier, 86 percent of

1 the interviewees said they engage in food fishing.
2 Species that they harvest in order of most
3 frequently identified are pickerel, jack fish,
4 whitefish, trout, sucker, perch and sturgeon.
5 Fish are harvested by net in the lake south of
6 Thompson and along the Nelson River south of the
7 Kelsey Hydro Station, and by angling method
8 primarily along the Burntwood River and then some
9 of the inland lakes shown on map.

10 Harvesting of fish occurs in all
11 seasons of the year. Fifty percent of the
12 interviewees had been harvesting in the areas for
13 three decades or more. On average, they make 26
14 to 30 trips a year to fish, and they spend about
15 an average of 40 days a year engaged in fishing.

16 During the course of my doing the
17 interviews, I'd like to point out that a number of
18 the interviewees indicated that they don't like to
19 fish in the Burntwood River, Split Lake or
20 Stephens Lake, and they had concerns about mercury
21 and water quality, and that was the reason they
22 preferred not to go there.

23 Access to fishing on the Burntwood,
24 Moak Lake, Assean Lake is either they go by road
25 and fish from shore, or they will go by boat from

1 Thompson. Access to fishing within Stephens Lake
2 is by boat from Gillam.

3 This slide number 24 is showing
4 locations identified where plant gathering occurs.
5 Forty-three percent of the interviewees indicated
6 they engage in plant harvesting activity. These
7 are plants that are used for food and/or medicine.
8 A number of interviewees identified harvesting
9 fuel wood for home heating. Berries are the most
10 sought after food species. They include
11 raspberries, strawberries, moss berries,
12 cranberries and blueberries. Plants are harvested
13 both for nutritional purposes and also for
14 medicinal purposes. Some of those include mint,
15 water parsnip, tamarack, mushrooms, wheatgrass,
16 Labrador tea.

17 Plants are harvested -- while
18 interviewees are engaged in other activities such
19 as harvesting moose or upland birds, but they also
20 will make specific trips to go plant gathering.
21 And plant gathering is the one activity that the
22 interviewees who are old enough identified as a
23 very special thing that they did with their
24 children and grandchildren.

25 With respect to trapping, half of the

1 interviewees I spoke with had trapped in the study
2 area at some point in their lifetime. I'm not
3 showing a map of where they trap. For
4 northerners, as soon as you put something on the
5 map, it's too identifying to know -- people know
6 who has which trapline, so that's why I'm not
7 showing a map. However, I will say that the
8 trapping has in the past occurred primarily south
9 of Thompson and southwest of Ilford. The species
10 that have been trapped and continue to be trapped
11 are the aquatic fur bearers, muskrat, beaver, mink
12 and otter, and upland fur bearer species, rabbit,
13 fox, lynx, marten, fisher, weasel, wolverine,
14 coyote and wolf.

15 This map now that's on slide number
16 26, the top map is showing the traditional use
17 locations that were identified between the 1940s
18 and the 1980s. And the map at the bottom right is
19 comparing for the 1990s to 2000 period. The one
20 on the latter period looks more colourful, and
21 that's because fewer of the interviewees were old
22 enough to contribute to the map on the top. So
23 what I'm trying to say is some of our interviewees
24 were old enough to have actually been engaged in
25 traditional activities in that earlier period, and

1 some had only just begun in the '90s. But there
2 is a consistency in terms of where people are
3 going on the land there.

4 So based on the limited research
5 undertaken, this study has documented no
6 contemporary traditional use by the Manitoba Metis
7 specifically within the Keeyask footprint. And
8 when I say the footprint, I mean where the actual
9 Keeyask Generating Station is proposed to be built
10 and the area of the river that is proposed to be a
11 reservoir.

12 However, there is evidence of Manitoba
13 Metis traditional use throughout the regional
14 study that was identified in the EIS, and also
15 within the geographic areas where the adverse
16 effects agreements are proposed to be implemented.

17 The limited research today generally
18 indicates that Manitoba Metis participate in
19 traditional use along the Burntwood River to Split
20 Lake, along highway 280 from Thompson east toward
21 Stephens Lake. There is some indicated fishing
22 within Stephens Lake. Traditional use primarily
23 is south and east of Gillam and south of the Split
24 Lake Road, and based on the interviewees that we
25 spoke to, the most extensive use is south of

1 Thompson.

2 I'm just going to briefly talk about
3 some of the constraints or disturbances to
4 traditional land use within the study area that we
5 used.

6 I know President Chartrand spoke
7 directly to the issue of Metis rights in the 2012
8 Manitoba agreement recognized rights, and what was
9 affectionately referred to as the pink area on the
10 map. So I just want to reiterate that Manitoba
11 Metis have asserted rights within the Keeyask
12 study area. The 2012 arrangement with the
13 Manitoba Government is a legal recognition of
14 rights in a portion of the province. It's not a
15 done deal. There's future discussions on the
16 horizon, and so it's not that Metis don't have
17 rights in the Keeyask area, they have asserted
18 rights, they just haven't been recognized through
19 the 2012 agreement.

20 In reading the environmental
21 assessment, and just about every map that's put
22 before this panel, there is a lot of First Nation
23 land in the Keeyask area. There's an unwritten
24 protocol amongst the Metis, and that is that they
25 don't engage in traditional use on reserve lands

1 unless they have specific permission to do so.
2 But generally, Metis people will avoid harvesting
3 on reserve land.

4 Also through this Clean Environment
5 Commission process and Environmental Impact
6 Statement, there's been talk about the Keeyask
7 Cree Nation resource management areas. My
8 understanding is that the concept of the resource
9 management areas evolved out of the Northern Flood
10 Agreement in the late '70s, and has been carried
11 forward in subsequent agreements for four of the
12 original five NFA bands or First Nations, and has
13 also carried through with subsequent agreements,
14 for example, with Fox Lake Cree Nation in 2004.

15 The majority of the land, with
16 obviously the exception of First Nation land, in
17 these resource management areas is Crown land.
18 But based on my interviews with Manitoba Metis
19 harvesters, at least among some of them there's a
20 perception land and waters within the resource
21 management areas are not available to them.

22 There's also been a substantial
23 alteration of waterways and landscape changes such
24 as flooding within the Keeyask study area as a
25 result of hydroelectric development. This began

1 in the 1960s and is showing on this slide number
2 28. I just bulleted out the major features of
3 hydroelectric development that have had, or caused
4 changes in our Keeyask study area, or will, or are
5 planned.

6 So this slide number 29 is showing
7 again the purple-ish colours as the Manitoba Metis
8 personal use that was identified in the TLUKS,
9 overlain with a number of the existing and
10 proposed hydroelectric generating stations or
11 water control structures. It's showing in green
12 the route of the recently licensed Bipole III
13 transmission line. It's also showing the Bipole I
14 and Bipole II lines. It's not showing all of the
15 converter stations or the smaller transmission
16 lines, otherwise the map would be just too busy
17 and it wouldn't illustrate anything.

18 I put this slide together just to show
19 that there's a lot has gone on and there's a lot
20 going on, and there's more to come, if approved,
21 in the Keeyask study area where the Manitoba Metis
22 do engage in traditional use activities.

23 The previous panel for the Bipole III
24 project, I believe also noted there was a lot
25 going on and actually made the recommendation,

1 panel recommendation 3.2 in their report said:

2 "Manitoba Hydro, in cooperation with
3 the Manitoba Government, conduct a
4 regional cumulative effects assessment
5 for all of Manitoba Hydro projects and
6 associated infrastructure in the
7 Nelson River sub watershed and that
8 this be undertaken prior to the
9 licensing of any additional projects."

10 So some concluding comments. The
11 traditional use information presented, beginning
12 yesterday by myself again this morning, is a step
13 towards addressing some of the gaps in the
14 Environmental Impact Statement and to meeting the
15 guidelines. It's based on a very small number of
16 interviews. However, that limited research done
17 today does show Manitoba Metis current use of
18 lands and resources in this Keeyask study area.

19 It also shows some traditional use in
20 the proponent's local and regional study areas
21 that they have identified in the EIS.

22 I'm not confident that this small
23 sample can be considered an adequate
24 representation of Manitoba Metis traditional use,
25 and I believe further work needs to be done to

1 feel confident that we have captured it all.

2 The EIS guidelines require an
3 assessment of effects and assessment of
4 significance of any residual effects. Similar to
5 the process with the Keeyask Cree Nations, this
6 assessment needs to be done in consultation with
7 the MMF, on behalf of and with Metis harvesters.
8 An understanding of how this project alone or
9 cumulatively may affect the Manitoba Metis
10 community in general, and specifically effects on
11 traditional use, social, economic and cultural
12 well-being is necessary to meet the guidelines.
13 And so there does remain work to be completed.

14 Several presenters before me,
15 including President Chartrand, have made the
16 statement and the truth that Manitoba Metis are a
17 distinct Aboriginal group. We have now
18 demonstrated there is traditional use in the area
19 of influence of the proposed Keeyask generation
20 project.

21 Mitigation measures of general
22 application to individuals may not suffice in
23 addressing all of the effects on Manitoba
24 harvesters or the Metis collective interests.

25 A process is needed to fully assess

1 project effects. First, in my opinion, a more
2 fulsome understanding of the current use of land
3 and resources by Manitoba Metis is necessary and
4 needed. And secondly, I would recommend that the
5 Manitoba Metis Federation and the proponent need
6 to jointly assess what those potential impacts
7 are, identify the utility of the mitigations that
8 have been proposed to date, and identify any
9 additional mitigation measures as necessary,
10 assess if there's any residual effects. And then
11 finally, if there is a determination of residual
12 effects and they are significant, that the two
13 parties will have to work out how they are going
14 to deal with that.

15 If effects are identified, the MMF and
16 the proponent also need to work jointly on the
17 design of environmental, socio-economic and
18 traditional use management plans and monitoring
19 plans that would be relevant to both the
20 construction and the operational phases of the
21 project if it's approved. These plans should
22 address both short-term and ongoing arrangements,
23 the protocols and the roles with respect to the
24 MMF and the proponent.

25 It's very late in the environmental

1 review day, and I'm not sure that the type of work
2 I have just outlined could be done in a matter of
3 weeks. So my recommendations to say the panel are
4 that you acknowledge the necessity and importance
5 that further work needs to be done, and you do
6 this by allowing time for this to be done before
7 you complete your report to the Minister.

8 And in the alternate, if you decide to
9 proceed with your report and you recommend that
10 the project be approved, that you do the two
11 things, one of two things. You include the
12 recommendations that I have made as a licensing
13 condition, if you recommend to the Minister the
14 project proceed, and you stipulate that the
15 licence for the project not be issued by the
16 Minister until arrangements or agreements between
17 the MMF and the proponent have been reached on
18 these issues.

19 Thank you very much.

20 THE CHAIRMAN: Thank you,
21 Ms. Larcombe.

22 Mr. Madden, do you have any further
23 examination? Thank you.

24 Proponent, Mr. Regehr, Mr. Bedford?

25 MR. REGEHR: Yes, I have some

1 questions for Ms. Larcombe.

2 Thank you, Ms. Larcombe, for joining
3 us and thanks for your presentation. The first
4 thing I would like to do is turn to slide four of
5 your presentation.

6 Now, are you aware that Manitoba Hydro
7 and the MMF entered into a funding agreement on
8 June 21st, 2013, so that the MMF could conduct a
9 single report that would consolidate a traditional
10 land use and knowledge study, a Metis
11 socio-economic impact assessment, as well as a
12 historical narrative documenting historic and
13 contemporary Metis use, and presence in Northern
14 Manitoba, generally, and the Keeyask local and
15 regional resource use study areas specifically?

16 MS. LARCOMBE: I have a general
17 awareness that there was an arrangement reached
18 between those two parties.

19 MR. REGEHR: And your firm and you
20 specifically were contracted to conduct the
21 traditional land use and knowledge study; is that
22 correct?

23 MS. LARCOMBE: That's correct.

24 MR. REGEHR: You weren't contracted to
25 do the socio-economics assessment, were you?

1 MS. LARCOMBE: I think at one time I
2 was asked to do that work, and we had a very short
3 period of time to actually get going on this. And
4 my recollection is that, due to workload and
5 family issues, the MMF brought in, or tried to get
6 someone else involved in doing it, but also ran
7 out of time.

8 MR. REGEHR: So you're not doing a
9 socio-economic assessment study?

10 MS. LARCOMBE: I initially got
11 involved and started looking what the baseline
12 information may or may not be available, but I
13 didn't get any further than that.

14 MR. REGEHR: So you can't tell me, yes
15 or no, whether you are doing the socio-economic
16 assessment study or a portion of this study?

17 MR. MADDEN: Mr. Chair, Ms. Larcombe's
18 presentation is on the TLUKS. She's not
19 presenting on the socio-economic and she's not
20 speaking to the agreement that is between the
21 Manitoba Metis Federation and the proponent. And
22 so she's not presenting on that.

23 And as you are aware, we asked for an
24 extension so the socio-economic study could,
25 something could be tabled. That was refused, and

1 it's not before the panel.

2 And so Ms. Larcombe can speak to her
3 presentation today, but the machinations of the
4 contract between MMF and the Partnership and how
5 that will ultimately be delivered is not her
6 wheelhouse, and she doesn't have knowledge of how
7 that's going to be done.

8 THE CHAIRMAN: Where are you going
9 with this, Mr. Regehr? I am inclined to agree
10 with Mr. Madden.

11 MR. REGEHR: I would like to know the
12 nature of her retainer for the work that she did.
13 She has done some work which would seem to
14 indicate some sort of socio-economic baseline, and
15 then they have done a study area which is much
16 larger than the resource use regional study area.
17 So I'm trying to get an understanding of what
18 exactly it was that she was contracted to do?

19 THE CHAIRMAN: I think Mr. Madden is
20 correct. What's covered in her presentation
21 yesterday afternoon and this morning is what
22 should be subject to the examination today.
23 Insofar as there's anything in this presentation
24 on socio-economic, you may pursue that.

25 MR. REGEHR: So you have stated that

1 you are aware of the June 21st, 2013 agreement.

2 That means you haven't seen it?

3 MS. LARCOMBE: I don't think I have
4 seen it in recent days for sure, and it wasn't
5 part of my -- I was tasked to do the traditional
6 land use and knowledge study, and that's what I
7 presented on today, and that's what I'm prepared
8 to answer today.

9 MR. REGEHR: Thank you.

10 So are you aware that clause 2.6 of
11 the agreement requires the MMF to provide Hydro
12 with an opportunity to review the deliverables of
13 that agreement before they are finalized?

14 MS. LARCOMBE: I think that's a
15 question you should ask a representative of
16 Manitoba Metis Federation. I am an independent
17 consultant tasked with something, my arrangement
18 is between the MMF and my firm.

19 MR. REGEHR: So then you wouldn't have
20 been aware that before a party uses the
21 deliverables from that contract in any regulatory
22 process, including this process, that they should
23 have given the other party seven days notice, and
24 that no party should have filed draft deliverables
25 within the regulatory process. You wouldn't have

1 been aware of that?

2 MS. LARCOMBE: It's not my job to
3 monitor and read arrangements between my client
4 and the proponent, or Manitoba Hydro in this case.

5 MR. REGEHR: The work that you did on
6 the traditional land use, that was funded by this
7 June 21st, 2013 agreement?

8 MS. LARCOMBE: For me it was funded by
9 the Manitoba Metis Federation.

10 MR. REGEHR: President Chartrand
11 testified two days ago, and he testified that the
12 study contemplated by the June 21st agreement was
13 completed. Do you know anything about that? Is
14 the study completed?

15 MS. LARCOMBE: I don't know which
16 study he was referring to.

17 MR. REGEHR: The study contemplated by
18 the June 21st, 2013 agreement we have just been
19 talking about?

20 MS. LARCOMBE: The only thing I can
21 speak to is that I was hired to do the TLUKS. I
22 have -- the interviews are finished. You have --
23 not a report but a presentation, and that there
24 will be a report prepared by me for the MMF to
25 provide to Manitoba Hydro.

1 MR. REGEHR: Now, in doing your
2 research, was a database of members for the
3 Thompson region made available to you?

4 MS. LARCOMBE: What do you mean a
5 database?

6 MR. REGEHR: Well, the MMF keeps a
7 database of their members, don't they?

8 MS. LARCOMBE: I believe they do.

9 MR. REGEHR: Was that database made
10 available to you in terms of where people were
11 located?

12 MS. LARCOMBE: No, I don't believe the
13 actual names were provided to me. I was -- in
14 terms of how individuals were identified for
15 interviews was done by the Manitoba Metis
16 Federation and the regional office.

17 MR. REGEHR: Sorry, could you repeat
18 that answer?

19 MS. LARCOMBE: The process of
20 identifying individuals to be interviewed for the
21 TLUKS was done by the Manitoba Metis Federation in
22 cooperation with the Thompson regional office.

23 MR. REGEHR: Now, you mention on slide
24 4 that 21 of the 30 individuals currently reside
25 in Thompson, Gillam, Ilford, the KCN reserves and

1 the Bayline communities. How many of those 21
2 reside in Thompson?

3 MS. LARCOMBE: I believe that's
4 confidential information.

5 MR. REGEHR: And how is it
6 confidential?

7 MS. LARCOMBE: Because it's such a
8 small number of individuals, I'm not comfortable
9 giving residents information about the
10 interviewees.

11 MR. REGEHR: I'm not asking for you to
12 give me names or street addresses, I'm just asking
13 how many live within the City of Thompson limits.

14 MR. MADDEN: Mr. Chair, we are not --
15 Ms. Larcombe can't provide information that the
16 MMF is unwilling to provide. The sampling is so
17 small, and in particular, as you saw from the
18 individuals who testified where the MMF has
19 concerns about that. What we can say is that
20 there's individuals from those locations, but the
21 exact numbers from each location, the MMF isn't
22 willing to provide and has instructed Ms. Larcombe
23 not to provide it because it's such a small
24 sampling. And the north, to a certain extent, is
25 a very small place.

1 THE CHAIRMAN: Mr. Regehr, on that
2 point?

3 MR. REGEHR: Ms. Larcombe has been
4 sworn in here as an expert. She has provided
5 evidence. A lot of it has very general
6 information. We're supposed to be allowed to
7 cross-examine on that information, to delve down
8 into these numbers to try and figure out what this
9 means. And if they are refusing to provide this
10 information, it's going to make our ability to
11 cross-examine this witness very, very difficult.

12 THE CHAIRMAN: I would tend to agree
13 with Mr. Regehr, Mr. Madden. I fail to see how it
14 violates any rules of confidentiality to release
15 the number of people who live in Thompson who were
16 examined for this study. Ms. Larcombe has already
17 said that we have to take with caution the overall
18 report because the study set is so small. I mean,
19 it speaks to the credibility of the -- or the
20 validity, pardon me, of the presentation. I just
21 can't see how withholding the number of people in
22 one community is a problem.

23 MS. LARCOMBE: Could I speak?

24 MR. MADDEN: I think Ms. Larcombe
25 wants to speak to that.

1 MS. LARCOMBE: My concern is if I
2 answer the first question, how many live in
3 Thompson, the next question is going to be, how
4 many live in Gillam and how many live in Ilford?
5 And then we are going to get into concerns about
6 confidentiality.

7 MR. REGEHR: Mr. Chair.

8 THE CHAIRMAN: Mr. Regehr?

9 MR. REGEHR: Ms. Larcombe is correct,
10 I will be asking those questions in terms of how
11 many of these 21 people reside in each of these
12 communities. It goes to credibility, it goes to
13 the credibility of the report.

14 THE CHAIRMAN: I am of the opinion
15 that these questions are legitimate and should be
16 answered.

17 MR. MADDEN: Well, I guess one of our
18 challenges are, as you -- I just want to go back
19 to -- the KCN's have a theory that there is no
20 Metis community here. And one of the challenges,
21 as I think you have seen on the panel yesterday,
22 is that there is a dominant group and a reluctance
23 sometimes, almost of Metis, especially the one who
24 live in the KCN communities or in Gillam, where
25 the population is less than a hundred people, to

1 identify and participate in these studies. And if
2 those numbers are going to now be disclosed, what
3 the fear is, is that, one, people won't
4 participate in those studies in the future; and
5 two, this is an exercise, not in credibility,
6 because I think Ms. Larcombe's testimony is, look,
7 I interviewed people who live in those areas and
8 this is what their aggregated use is. It is
9 not -- a TLUKS study is not about we're taking
10 names and numbers to go suss out where these
11 people are. And it goes to weight and it goes to
12 credibility.

13 If the panel -- Ms. Larcombe gets to
14 make the decision of whether she wants to disclose
15 it -- if the panel feels that it is incredible
16 because she didn't disclose the exact locations of
17 where those people are, then I guess that that
18 goes to weight of what the panel puts on the
19 study.

20 But the point being is, Ms. Larcombe
21 is testifying to, she interviewed people, 21 of
22 them that are from those locations. And the
23 argument, or what the MMF puts forward is, this is
24 not a site specific community, this is a regional
25 community that uses a general area, and the study

1 shows where those general areas are.

2 So those would be our submissions.

3 And at the end of the day, Ms. Larcombe as an
4 expert needs to decide whether she wants to
5 provide those answers.

6 THE CHAIRMAN: Mr. Regehr, on that
7 point, anything to add?

8 MR. REGEHR: Actually, I don't even
9 know how to respond to it. If a participant puts
10 evidence in front of the Commission, we are
11 entitled to cross-examine on it. There is all
12 sorts of general numbers throughout this
13 presentation, I am entitled to cross-examination
14 on it, I am entitled to an answer on it.

15 THE CHAIRMAN: I agree with
16 Mr. Regehr. I would ask again that Ms. Larcombe
17 answer the questions that are put to her. If she
18 does not, then it will certainly bear some weight,
19 or bear some influence on the weight that the
20 panel gives to this report.

21 MS. LARCOMBE: Mr. Chairman, before I
22 can answer that question, I need legal counsel
23 advice, because I do not want to be in breach of
24 confidentiality arrangements that I have signed.

25 THE CHAIRMAN: Okay. We can do that

1 one of two ways, we can recess right now or we can
2 move on and come back to this point later on.

3 MR. MADDEN: We'll recess right now.

4 THE CHAIRMAN: Okay. Let's recess
5 right now for five or 10 minutes.

6 (Proceedings recessed at 10:16 a.m.)

7 THE CHAIRMAN: Okay, are we ready to
8 reconvene? Okay. Can we end the conversations,
9 please? Mr. Madden or Ms. Larcombe?

10 MR. MADDEN: Ms. Larcombe will provide
11 her answer to the breakdowns.

12 MS. LARCOMBE: So I'm going to provide
13 an answer that, in talking with legal counsel, I
14 feel comfortable that I will not be in breach of
15 confidentiality arrangements I have with
16 interviewees.

17 And I'm not trying to be difficult,
18 Mr. Regehr. I'm sure you can appreciate when you
19 sign an agreement with somebody, you don't want to
20 get sued, and you want to protect the integrity of
21 that agreement.

22 So I'm hoping the answer I give you
23 will be detailed enough that it protects me, the
24 interviewees and answers your question.

25 So I will tell you that 57 percent of

1 the interviews were with individuals that live in
2 Thompson. Twenty-eight percent live in one of the
3 Bayline communities, which would include Ilford,
4 Pikwitonei, Thicket Portage, Wabowden. And the
5 remaining 14 percent are from one of, or all of
6 Gillam, Ilford and Split Lake. And that is as
7 detailed as I am comfortable providing.

8 THE CHAIRMAN: Sorry, what was the
9 number for Bayline?

10 MS. LARCOMBE: Twenty-eight percent.

11 MR. REGEHR: Can you repeat to me
12 which, when you say the Bayline communities, which
13 one you mean?

14 MS. LARCOMBE: Ilford, Pikwitonei,
15 Thicket Portage, Wabowden.

16 MR. MADDEN: Sorry, Ilford, in the
17 Bayline communities or in the Gillam?

18 MS. LARCOMBE: Sorry, Wabowden,
19 Thicket Portage, Pikwitonei, Bayline.

20 MR. REGEHR: And then you said
21 57 percent are in Thompson?

22 MS. LARCOMBE: Thompson or outskirts.

23 MR. REGEHR: And what does outskirts
24 mean, the RM of Mystery Lake?

25 MS. LARCOMBE: Yes, that census

1 division.

2 MR. REGEHR: And then you said
3 14 percent in, sorry, can you tell me which
4 communities again?

5 MS. LARCOMBE: Gillam, Ilford, Split
6 Lake.

7 MR. REGEHR: Now, can you please
8 convert those percentages into actual numbers for
9 me? And part of my confusion is on this page,
10 I've got 35, and I've got 30, and I've got 21, and
11 then I've got nine. So it would be very helpful
12 if you could give me what those numbers actually
13 are?

14 MS. LARCOMBE: The numbers I am giving
15 you are based on 21.

16 MR. REGEHR: So if you can just give
17 me one minute, because I'm really not very good at
18 math.

19 MS. LARCOMBE: If you're going to do
20 the math and read it out loud, then I'll do it for
21 you.

22 MR. REGEHR: That would be much
23 appreciated.

24 MS. LARCOMBE: So just to clarify, the
25 numbers that I am speaking of right now are the

1 interviews that were done in 2013. I do not have
2 the numbers in my head for the overlap for the
3 Bipole. So these were the 2013 interviews only.

4 Fourteen percent is the same as saying
5 three. Twenty-eight percent is the same as saying
6 six. And 57 percent is the same as saying 12.

7 MR. REGEHR: Now, on that same slide
8 you mentioned that nine, I guess it's nine of the
9 30, is that correct? Because you've got 21 and
10 then you've got in the bulleted, in the third
11 bullet, you then have two sub bullets and you've
12 got 21 in the first sub bullet, and nine in the
13 second sub bullet. And it states that those nine
14 do not reside in any of Thompson, Gillam, Ilford,
15 the KCN reserves or the Bayline communities. So
16 where do these nine reside?

17 MS. LARCOMBE: I think there was -- if
18 you bear with me, I think I do actually have a
19 slide. Apologies, that's where they were born.

20 I don't have my data in front of me,
21 but when I say elsewhere, these are individuals
22 that live in other regions of the province.

23 MR. REGEHR: Can we get more specific
24 rather than just regions?

25 MS. LARCOMBE: As I said, I didn't

1 bring the data, I don't have it in my head, sorry.

2 MR. REGEHR: Can you undertake to
3 provide us with that information?

4 MS. LARCOMBE: Yes, I can.

5 MR. REGEHR: Thank you.

6 MS. LARCOMBE: In making that
7 undertaking, I'm conditioning that to tell you
8 what MMF region they are from. I will not, again,
9 give specific towns.

10 MR. REGEHR: Mr. Chair, we have the
11 same problem here. The MMF regions are huge.
12 They cover, with the exception of Winnipeg which
13 covers the City of Winnipeg, the other regions are
14 large regions covering large portions of the
15 Province of Manitoba. We're entitled to this
16 information if it's being presented here.

17 MR. MADDEN: We can provide that in
18 general geographies as opposed to the MMF regions,
19 similar to the Bayline communities, just that it's
20 not identified per local or settlement.

21 THE CHAIRMAN: Thank you, Mr. Madden.
22 It's less than ideal but it seems to me that's as
23 far as we're going to get, or as good as we're
24 going to get.

25 So, Mr. Regehr, my understanding is

1 they will provide numbers for the nine remaining
2 in the same groupings that we have just heard,
3 Thompson, Bayline, and remaining, remaining being
4 Gillam, Ilford, Split I think.

5 MR. REGEHR: I'm sorry, my
6 understanding is that the nine do not reside in
7 any of those of Thompson, Gillam, Ilford, the KCN
8 reserves or the Bayline. That's my understanding.

9 THE CHAIRMAN: You are right, I'm
10 sorry.

11 So we would expect that the breakdown
12 of the nine is a little more specific than just
13 Interlake region or Winnipeg region. In fact, the
14 more specific it can be, the better.

15 (UNDERTAKING #14: Provide breakdown of locations
16 for nine remaining interviewees)

17 MR. REGEHR: Now if we can turn to
18 slide number 6? My understanding is that your
19 work on the traditional land use and knowledge
20 began back in 2010; is that correct?

21 MS. LARCOMBE: That's correct.

22 MR. REGEHR: Was that specific to
23 Bipole III?

24 MS. LARCOMBE: Initially it was in
25 response to the MMF's knowledge that there were

1 going to be a number of large scale projects that
2 were going to be undergoing environmental review
3 in the Province.

4 MR. REGEHR: And my understanding,
5 because in the previous slide you mentioned where
6 we can look for methodology, and I looked at your
7 Bipole III report on methodology. My
8 understanding is that you have been involved
9 pretty much since the beginning in designing this
10 system; is that correct?

11 MS. LARCOMBE: The design of it, yes,
12 correct.

13 MR. REGEHR: Now, how many contracts
14 with the MMF have you done using this system?

15 MR. MADDEN: Mr. Chair, I don't know
16 how that's relevant to Ms. Larcombe's presentation
17 on TLUKS for this project.

18 THE CHAIRMAN: Mr. Regehr?

19 MR. REGEHR: I'm trying to appreciate
20 her involvement. She's made statements in the
21 Bipole hearings and she's brought up slides on
22 methodology here. I'm trying to understand her
23 role in the methodology for this system.

24 MR. MADDEN: That's different. I
25 think the question should be posed to the system.

1 What the Partnership continues to ask about is the
2 contracts and the machinations of the arrangements
3 that the MMF may have in place with its
4 contractors. I think the methodology, absolutely
5 fair game. And in fact, a document was provided
6 that we still don't know whether it's been
7 accepted by the CEC, on explaining the methodology
8 that was used for this study. But the various
9 different contracts and trying to elicit that type
10 of information, I don't know how that's relevant.

11 THE CHAIRMAN: Well, I think there is
12 some relevance to it. If not at least the fact
13 that some of the work for this report that was
14 presented to us today was actually conducted
15 earlier in 2009, 2010, or whenever, for Bipole.
16 So there is sort of a mishmash of information and
17 studies that's all put together into this one. So
18 I think that some of that past history is
19 relevant.

20 MR. MADDEN: I wholeheartedly agree,
21 and that goes to methodology but the varying
22 contracts -- I guess I think what's good for the
23 goose is good for the gander. I, at various
24 points in time before the CEC in the past, have
25 attempted to elicit, well, how much is that

1 contract, or what type of contracts were in place
2 between the Partnership and Hobbs & Associates, or
3 Manitoba Hydro and various other entities. And I
4 don't think that's appropriate. If it's on
5 methodology, and did other studies contribute to
6 the methodology, I think that's fair. I object to
7 what contracts and details in that manner.

8 THE CHAIRMAN: I would agree with you
9 that the specifics of contracts are not relevant.
10 And if that's where Mr. Regehr goes, we won't
11 allow it. But if he's asking more general
12 questions about the methodology and how this
13 report was put together, that is valid.

14 MR. REGEHR: Mr. Chair, I'll ask my
15 question a different way.

16 THE CHAIRMAN: Thank you.

17 MR. REGEHR: You filed a Curriculum
18 Vitae with the Commission; is that correct?

19 MS. LARCOMBE: I believe the MMF filed
20 it on my behalf.

21 MR. REGEHR: And on that CV you
22 indicate that you did the Berens River Road
23 traditional land use and impact study; is that
24 correct?

25 MS. LARCOMBE: That's correct.

1 MR. REGEHR: You also indicate that
2 you did the Bipole III traditional land use study
3 for the MMF?

4 MS. LARCOMBE: That's correct.

5 MR. REGEHR: Did you use this TLUKS
6 system in doing those studies?

7 MS. LARCOMBE: Yes, I did.

8 MR. REGEHR: Now, who started the
9 initial work of locating the Metis harvesters for
10 this study?

11 MS. LARCOMBE: Which study are you
12 referring to?

13 MR. REGEHR: This Keeyask study, the
14 powerpoint, the information you are providing in
15 the powerpoint.

16 MS. LARCOMBE: It started with
17 identifying individuals who had responded to the
18 screening survey, which predated, was the sort of
19 phase one of the TLUKS, identifying people that
20 had drawn on maps and indicated that they had some
21 use in the northeast quadrant of the province.
22 And from that list I believe the MMF office here
23 in Winnipeg made contact with the Thompson region
24 office, and through their combined efforts
25 attempted to put a list of potential candidates

1 together, and then outreached to potential
2 candidates. Certainly, whatever list they had was
3 I'm sure larger than the number of people that we
4 interviewed, simply because not everybody is
5 agreeable. And as I had said earlier, you can't
6 compel somebody to participate in an interview.

7 MR. REGEHR: And so this screening
8 survey, that is what is known as phase one on your
9 slide number 6?

10 MS. LARCOMBE: That's correct.

11 MR. REGEHR: And so that activity took
12 place between October 1st and November 16th, 2010?

13 MS. LARCOMBE: That's correct, that's
14 what the slide says.

15 MR. REGEHR: So the work in finding
16 the Metis people who harvest in the project area,
17 and I am talking about Keeyask now, and who use
18 the land for traditional purpose, that's been
19 ongoing since 2010?

20 MS. LARCOMBE: The screening survey
21 was, I wouldn't say it was project specific, it
22 was Manitoba Metis Federation's sort of first
23 province-wide outreach to understanding patterns
24 of traditional use throughout the province. The
25 screening package, I'm going by memory here,

1 identified that there would be a number of large
2 scale projects that were going through regulatory
3 review and that they were -- one of the questions
4 on the screening survey was asking respondents if
5 they would be interested in participating in a
6 more interview -- more detailed interview down the
7 road.

8 MR. REGEHR: Did you design that
9 screening survey?

10 MS. LARCOMBE: I was a major player in
11 it, yes.

12 MR. REGEHR: Now, for the Bipole III
13 hearings, you filed a report called Manitoba Metis
14 Traditional Land Use and the Bipole II Project; is
15 that correct?

16 MS. LARCOMBE: There were two reports,
17 which date are you referring to?

18 MR. REGEHR: November 4th, 2012, it's
19 the one you refer to, I believe, on slide five of
20 your presentation today. That's the one where you
21 suggest people look to determine the methodology,
22 on slide number five?

23 MS. LARCOMBE: The November 4th report
24 that you are referring to was the report that was
25 filed with the Clean Environment Commission. My

1 recollection, there was a more detailed report
2 that was provided by the MMF directly to Manitoba
3 Hydro prior to that time.

4 MR. REGEHR: In that report you
5 interviewed 49 people for that study?

6 MS. LARCOMBE: I believe that's
7 correct. I don't have the report in front of me.

8 MR. REGEHR: But you were only able to
9 interview six people from the Thompson region of
10 the MMF; is that correct? Do you remember that?

11 MS. LARCOMBE: I'm going to take you
12 at your word, I don't have the report in front of
13 me. It sounds about right.

14 MR. REGEHR: So I guess at the time
15 you were having a difficult time finding Metis
16 harvesters in that region?

17 MS. LARCOMBE: I don't think that's a
18 fair characterization.

19 The Bipole III study area was massive.
20 We all affectionately referred to it as the big
21 yellow banana. We were trying to identify
22 candidates for interviews in various locations
23 within that project area. And so I wouldn't say
24 it would be fair to characterize it as, that's all
25 that could be found to do interviews. We were

1 working under timelines and budgets and that was
2 at -- the Thompson area was the last place that
3 was frequented to do interviews.

4 MR. REGEHR: But you just testified
5 that phase one of the screening survey occurred in
6 October/November 2010, and your report was
7 submitted in November 2012. So after two years,
8 you were only able to locate six Metis harvesters
9 in the Thompson region?

10 MS. LARCOMBE: Again, I disagree with
11 your characterization.

12 MR. REGEHR: I'm not characterizing
13 it, I am asking, are these timelines -- these are
14 the timelines?

15 MS. LARCOMBE: Well, there's two
16 questions, Mr. Regehr. I agree in what you have
17 asked me about the timelines, that the screening
18 survey was in 2010, and that the Bipole III
19 interviews were, I believe, concluded early 2012,
20 I can't remember the date off the top of my head.

21 I disagree with your statement that we
22 could only find six people in the Thompson region.

23 MR. REGEHR: Now, going back to the
24 slide number 6, to me it looks like there's blue
25 and then at the bottom there's gray. My

1 understanding is the monitor sometimes has
2 different colours, so the bottom three, are those
3 gray on your monitor as well?

4 MS. LARCOMBE: They are brown, but I
5 know what you're talking about.

6 MR. REGEHR: Okay. So I'm referring
7 to the bottom of phase two, the detailed Keeyask
8 project interviews. Who conducted those
9 interviews?

10 MS. LARCOMBE: I conducted all but
11 three of the ones that were done between August
12 and November of this year.

13 MR. REGEHR: And who conducted the
14 other three?

15 MS. LARCOMBE: They were done by
16 Mr. Cameron Stewart of the Manitoba Metis
17 Federation, who is the individual who does the
18 mapping during the interview with me. And the
19 reason I was not present in those last three
20 interviews was due to family medical emergency.

21 MR. REGEHR: Now, the interviews that
22 were done by Mr. Stewart, you have incorporated
23 that data into your study?

24 MS. LARCOMBE: Yes, I have.

25 MR. REGEHR: Can you tell me what

1 Mr. Stewart's qualifications are to conduct these
2 kind of interviews?

3 MS. LARCOMBE: Mr. Stewart has
4 probably in excess of a hundred hours sitting by
5 my side conducting these interviews. He's the
6 person who does the mapping. So that component of
7 doing it on his own is no different than when he
8 does them with me. I believe, I mean, I looked at
9 the data of those interviews afterward, I looked
10 at the maps and I asked questions, and I felt
11 comfortable that he had carried out those
12 interviews in the same manner that I would.

13 MR. REGEHR: But Mr. Stewart is an
14 employee of the MMF, correct?

15 MS. LARCOMBE: That is correct. Well,
16 I don't know what his status there is to be
17 honest. He does not work for my company, I can
18 tell you that.

19 MR. REGEHR: At the time he did the
20 interviews, he was an employee of the MMF?

21 MS. LARCOMBE: I can't speak to what
22 his status is there.

23 MR. REGEHR: So yesterday, you
24 testified that you were an independent consultant.
25 But today, you are telling us that you relied upon

1 data from someone who may or may not have been an
2 employee of MMF; is that correct?

3 MS. LARCOMBE: I am testifying that I
4 relied on data for three interviews.

5 MR. REGEHR: Let's move on to slide
6 number 7. So this is the study area employed in
7 your study, correct?

8 MS. LARCOMBE: That's correct.

9 MR. REGEHR: Am I correct in assuming
10 that the red oval or elliptical shape, whatever it
11 is, is centred over the red dot titled Keeyask?

12 MS. LARCOMBE: It's pretty close to
13 being centred, yes.

14 MR. REGEHR: And you created this map?

15 MS. LARCOMBE: I had this map created
16 for me.

17 MR. REGEHR: Who created it for you?

18 MS. LARCOMBE: Mr. Cam Stewart.

19 MR. REGEHR: So you can't testify in
20 terms of how, the mechanics of how this was
21 created, Mr. Stewart would have to do that?

22 MS. LARCOMBE: I am not a computer
23 mapping person.

24 MR. REGEHR: You don't have GIS and
25 all that?

1 MS. LARCOMBE: No.

2 MR. REGEHR: Whatever that --

3 MS. LARCOMBE: Whatever that is.

4 MR. REGEHR: But this red oval, I'm
5 going to call it an oval because I really don't
6 know what the other shape, what it should be
7 called, it's been expanded in a fairly uniform
8 manner to bisect Thicket Portage and to extend
9 into Hudson Bay. Isn't that correct?

10 MS. LARCOMBE: Yes, it does extend
11 into Hudson Bay.

12 MR. REGEHR: Now, you had previously
13 indicated that this red oval is, I think the word
14 you used was our study area, I think you said that
15 yesterday afternoon. Is that correct?

16 MS. LARCOMBE: That's correct.

17 MR. REGEHR: Were you directed to use
18 this shape in this map?

19 MS. LARCOMBE: No, I was not. I am
20 the author of our study area. And the fact that
21 it's sort of a perfectly shaped cylinder is for
22 convenience as opposed to following any political
23 lines or resource management area boundary lines.
24 It's a characterization of a study area.

25 MR. REGEHR: Now, from earlier today,

1 my understanding is that you had been retained to
2 do this traditional land use, and that relates to
3 resource harvesting, correct?

4 MS. LARCOMBE: What do you mean by
5 resource harvesting?

6 MR. REGEHR: Well, a lot of what you
7 presented is data and information that relates to
8 resource harvesting?

9 MS. LARCOMBE: I would say it relates
10 to the use of lands and resources for traditional
11 purposes.

12 MR. REGEHR: Now, unfortunately, I'll
13 have to take you back to the June 21st, 2013
14 agreement.

15 Were you aware that that agreement
16 stated that the studies that were to be done were
17 to be done of the local study and regional study
18 areas of the Keeyask project, as those areas are
19 defined by the Environmental Impact Statement?

20 MR. MADDEN: Mr. Chair, I think there
21 is a real confusion here about what is being
22 presented to the CEC and what final report may
23 ultimately be presented to Manitoba Hydro based on
24 a -- the CEC is not a party to that contract.
25 That is a relationship between the proponent and

1 the MMF. So this line that essentially that
2 contribution agreement defines what is presented
3 here is just not a reality. And Ms. Larcombe is
4 speaking to her study, and it is not the final
5 product, which you have already heard from her, of
6 what may be provided under that contract.

7 THE CHAIRMAN: Mr. Regehr, on this
8 point?

9 MR. REGEHR: Well, Ms. Larcombe was
10 retained to do a traditional land use and
11 knowledge study. That traditional land use and
12 knowledge study is part of the subject of the June
13 21st, 2013 agreement, which has specific terms on
14 what the study was supposed to do and what area it
15 was supposed to cover. So it is relevant to the
16 information that she is presenting here today.

17 And I am simply asking whether she was
18 aware of the fact that the study was to be done on
19 those particularly defined areas set out in the
20 EIS? Because this oval, as we will see, does not
21 match those study areas.

22 THE CHAIRMAN: I think that
23 question -- well, Mr. Madden, you seem to have
24 more to say?

25 MR. MADDEN: Well, I just think that,

1 just to keep those two things separate, because
2 what is finally prepared in order to meet
3 contractual obligations between the MMF and the
4 Partnership is not the subject of the CEC. What
5 is subject of the CEC is, the proponent was
6 supposed to file an EIS. The MMF is here to say,
7 was that met? And in addition, you have language
8 within the EIS saying, based on this knowledge,
9 and this is the KCNs, they have intimate knowledge
10 about their communities and the broader study
11 area, based on this knowledge and years of study
12 documenting the existing socio-economic
13 environment, the Partnership is not aware of any
14 Metis community in the vicinity of the project, or
15 of any potential project impact that is specific
16 to the Metis.

17 And what the MMF's role in this
18 hearing is, whether it's putting some Metis faces
19 up there saying, yes, there's a population there,
20 or President Chartrand testifying about what the
21 legal rights assertions are, or Ms. Larcombe
22 testifying about, look it, there's traditional use
23 there, is to put evidence before this Commission
24 that that -- that these statements aren't true,
25 and also that there's a deficiency in the EIS.

1 The MMF isn't obligated to do the proponent's EIS
2 for them.

3 And so all we want to make sure is
4 that what is ultimately provided under that
5 contract is not confused with the evidence that's
6 being provided here from the MMF. They are not
7 synonymous or one and the same.

8 THE CHAIRMAN: Mr. Madden, it strikes
9 me, though, you just said that you are here to
10 challenge the assertion made in the EIS that there
11 are very few, if any, Metis people living within
12 the study area. Now, that seems to be one of the
13 principles, if not the principle purposes of this
14 presentation that Ms. Larcombe has made this
15 morning. The proponent has a right to challenge
16 that. They are challenging your challenge and --

17 MR. MADDEN: I can accept that. All
18 I'm saying is, he keeps on referring to that
19 contract as somehow --

20 THE CHAIRMAN: But I think where he
21 was going, and you know, I said earlier and I will
22 stick to it, if he wants to get into the specifics
23 on the nature of the business side of that
24 contract, that is not relevant. But that contract
25 talks about what is to be studied under the TLUKS.

1 Ms. Larcombe is the person who has done the TLUKS
2 study and has presented at least an outtake from
3 it here today.

4 MR. MADDEN: I think if the question
5 is, our study areas defined by the EIS is not the
6 same as yours, that's fine. The question -- I
7 just do not feel comfortable with this becoming,
8 you know, a discussion about a bilateral contract
9 that's in place between the Manitoba Metis
10 Federation and the Partnership. So I can accept
11 that. But I keep on getting concerned that this
12 becomes an exercise in trying to get details of
13 that contract before the CEC.

14 THE CHAIRMAN: Well, we won't let him
15 get details of that contract before the CEC. But
16 I don't think he was going for details of the
17 contract. He was pointing out some of the terms
18 of the study embodied in that contract, and he's
19 challenging some of those terms, I assume.

20 MR. MADDEN: Okay.

21 THE CHAIRMAN: Mr. Regehr?

22 MR. REGEHR: So, Ms. Larcombe, were
23 you aware of the requirement for the TLUKS study
24 to be done in accordance with the study areas as
25 set out in the EIS?

1 MS. LARCOMBE: The work that I did, I
2 was not provided with a contractual arrangement
3 between Manitoba Hydro and the MMF. I was asked
4 to do a TLUKS study for the Keeyask -- I wasn't
5 told, you have to use this area or you use that
6 area. I defined the Keeyask study area based on
7 what I thought would encompass potential use by
8 communities that I was aware that there was Metis
9 presence in. I think that the work that I have
10 done has not excluded any study area that the
11 proponent has identified. So we have not
12 disregarded any of the local or regional study
13 area identified in the EIS. But I was -- I'll
14 make this really clear -- I was not given the
15 agreement between the MMF and Hydro and said, this
16 is your contract. That did not happen.

17 MR. REGEHR: Thank you.

18 Now, up on the screen just now, and
19 what was handed out, is a document called -- what
20 it is, it's a map, it's a map from slide 29 of
21 your presentation. And what we have done is
22 superimposed the regional study area and local
23 study area from the EIS onto your map. And
24 yesterday you testified that you understood that
25 the study area, as you defined, did not include

1 all of the regional study area. And the regional
2 study area is the hatched area. You would agree
3 with that?

4 MS. LARCOMBE: I am assuming that
5 whoever your GIS person is has accurately put
6 those lines on the map, on our map I note.

7 MR. REGEHR: And so you can see from
8 this map that those squiggly purple lines, those
9 are the various, that's the various data you
10 obtained from harvesters in and around the
11 Thompson area, is not included in the regional
12 study area; is that correct?

13 MS. LARCOMBE: It's not included in
14 the regional study area identified by your
15 clients.

16 MR. REGEHR: In the EIS?

17 MS. LARCOMBE: Correct.

18 MR. REGEHR: Mr. Chair, I'd like to
19 enter this as an exhibit. Thank you.

20 Can I ask one -- well, I guess I can
21 ask lots of questions.

22 MS. LARCOMBE: Yes, you may.

23 MR. REGEHR: I'm sorry, I'll apologize
24 now. But why is the Conawapa site included in
25 your maps when the study is to be done on Keeyask?

1 MS. LARCOMBE: I believe this map was
2 showing existing and planned hydroelectric
3 development and infrastructure.

4 MR. REGEHR: Sorry, to the technical
5 person, can we go back to slide number 7, please?

6 And as you said earlier, Mr. Stewart
7 prepared this map, you didn't. So it would have
8 been Mr. Stewart who would have put the Conawapa
9 site onto this map?

10 MS. LARCOMBE: That's correct. And I
11 hadn't actually noticed that before, Mr. Regehr.

12 MR. REGEHR: It's on all of your maps;
13 is that correct?

14 MS. LARCOMBE: It appears so.

15 MR. REGEHR: Now, I'd like to move
16 onto slide number 9. In here, you mention that of
17 the, well, of the 30 people interviewed, and
18 obviously I'm assuming that some of those were not
19 actually interviewed as part of the Keeyask
20 project, right, they were interviewed as part of
21 the Bipole project?

22 MS. LARCOMBE: Yes.

23 MR. REGEHR: So that 30 includes them?

24 MS. LARCOMBE: That's correct.

25 MR. REGEHR: You said 50 percent were

1 MMF members or had harvester cards, so that would
2 be 15?

3 MS. LARCOMBE: Fifty percent of 30 is
4 15.

5 MR. REGEHR: So how many of the 15
6 were MMF members?

7 MS. LARCOMBE: Mr. Regehr, I don't
8 have that data with me.

9 MR. REGEHR: So you wouldn't know how
10 many of the 15 had harvester cards?

11 MS. LARCOMBE: Not off the top of my
12 head, no. Some have both.

13 MR. REGEHR: And then you state that
14 15, or 50 percent or 15 of the people interviewed
15 have pending MMF applications or harvester card
16 applications. And the word "or" is used in there,
17 "and/or".

18 MS. LARCOMBE: Correct.

19 MR. REGEHR: So how many of those have
20 pending MMF applications?

21 MS. LARCOMBE: As per my previous
22 answer, I don't have that data in front of me.

23 MR. REGEHR: So you wouldn't know how
24 many of the 15 would then obviously have pending
25 harvester card applications either? You didn't

1 obtain that data, or you just don't have it here
2 with you today?

3 MS. LARCOMBE: I just don't have it
4 with me today.

5 MR. REGEHR: Could you undertake to
6 provide us with that data, please?

7 MS. LARCOMBE: I'd like to ask legal
8 counsel if I am even allowed to do that?

9 MR. REGEHR: Yes.

10 MS. LARCOMBE: Mr. Madden, am I
11 allowed to do that?

12 MR. MADDEN: Yes.

13 MS. LARCOMBE: Okay. Thank you.

14 (UNDERTAKING #15: Provide date re how many of 15
15 have pending harvester card applications)

16 MR. REGEHR: Can I ask, for the 15
17 pending applications, whether MMF applications or
18 harvester card applications, when were these
19 applications made? I am not asking for specific
20 dates like September 1st or November 15th, but if
21 you could provide me with a general idea, the
22 month of September, the month of October, the
23 month of November?

24 MS. LARCOMBE: I am -- if it's to be
25 an undertaking, it's not one that I am prepared to

1 undertake, because I don't have access to MMF's --
2 I'm not a staff person, I don't have access to
3 their data so I would have to request it.

4 MR. REGEHR: But you have conducted a
5 report, and in your report and in the evidence you
6 have given to the Commission today, you have put
7 this into evidence that there are 15 people with
8 pending MMF applications, or pending harvester
9 card applications. So you know, somehow you know
10 that this is a fact?

11 MS. LARCOMBE: That's correct.
12 Because I made that request to the MMF to confirm
13 for me if the individuals I was interviewing had a
14 harvester card, or a member, or if not, were they
15 in an application process, so that I could be
16 comfortable with who I was actually interviewing.

17 MR. REGEHR: So you don't have the
18 data in terms of, obviously, applicant X made an
19 application for the MMF in March of 2000?

20 MS. LARCOMBE: I am not privy to that.

21 MR. REGEHR: You didn't ask for that
22 information? You just asked if they had a pending
23 MMF application?

24 MS. LARCOMBE: That would be correct.

25 MR. REGEHR: Now, let's move on to

1 slide number 10. You mentioned that the 30, well,
2 you actually reference an arrangement between the
3 MMF and Manitoba Hydro with respect to documenting
4 Manitoba Metis traditional use, was to assemble
5 information from a small sample of 30 harvesters.
6 And this would be the arrangement which is set out
7 in the June 21st, 2013 agreement; is that what
8 you're referring to?

9 MS. LARCOMBE: I'm referring to, I
10 was -- in the discussions between myself as a
11 private consultant and the MMF, they said they
12 needed 30 interviews, and that I could include, if
13 there was overlap from the Bipole, I could include
14 those interviews in that number of 30.

15 MR. REGEHR: Now, in the Bipole III
16 report there was, it appears there was a fairly
17 large screening sample or survey done for that
18 report. And any report, it was done of the people
19 who meet the definition of Metis in the MMF
20 Constitution of 2008; is that what you relied upon
21 to do the screening survey for Bipole III?

22 MS. LARCOMBE: Okay. The screening
23 survey was not specific to Bipole III. The
24 screening survey was a province-wide instrument.

25 And in part what you said is true. A

1 part of the list of people that the survey was
2 sent to was based on the membership that had
3 started post 2008. And a portion of that
4 database, or list of people who were sent the
5 instrument had harvesters card. And in some cases
6 an individual might have been on both lists.

7 MR. REGEHR: My understanding is that
8 the screening survey sample frame for Bipole III
9 was comprised of individuals who meet the
10 definition of Metis as per the MMF Constitution of
11 2008. Do those words sound familiar to you?

12 MS. LARCOMBE: Yes. But I think
13 that's only part of what the report says. It
14 also, in the methods description for the screening
15 survey, talks about the harvester card database
16 also contributing to that master list of people
17 for the screening survey.

18 MR. REGEHR: And would the 2008
19 Constitution of the MMF be different from the 2012
20 Constitution which is currently on the MMF
21 website? Do you know that?

22 MS. LARCOMBE: I think there was a
23 by-law that passed that delayed the date of
24 applications under the new membership code.

25 MR. REGEHR: Do you know the details

1 of that change? I don't, because the only thing I
2 have access to is the 2012 version. I don't have
3 access to the 2008 version.

4 MS. LARCOMBE: I don't personally have
5 it on me either. I think that's more of a legal
6 question. I'm not comfortable speaking to a
7 nation's constitution.

8 MR. REGEHR: The reason I'm asking is
9 because in your Bipole III study, you specifically
10 reference it in your methodology, that you used
11 the definition of the term Metis.

12 MR. MADDEN: Mr. Chair, I can
13 undertake on behalf of the Manitoba Metis
14 Federation to provide, I think that the 2008
15 definition is the identical same as the current
16 definition of Metis, but we can confirm that. And
17 we can provide the by-laws from 2008 as well as
18 2000 and -- the one that's currently on the
19 website.

20 THE CHAIRMAN: Thank you. Would that
21 satisfy you, Mr. Regehr?

22 MR. REGEHR: Yes, that's fine.

23 THE CHAIRMAN: Thank you.

24 (UNDERTAKING #16: Provide 2008 definition of
25 Metis provide by-laws from 2008 as well as current

1 ones on website)

2 MR. REGEHR: So, earlier you stated
3 that some of your data is based upon 35
4 interviews, and some is based on 30 interviews,
5 because there was a mixup or something with the
6 data from five. I'm not quite --

7 MS. LARCOMBE: The maps that are in
8 the presentation contain the full set of 35
9 interviews.

10 MR. REGEHR: And the rest of data is
11 30?

12 MS. LARCOMBE: The rest is based on
13 30.

14 MR. REGEHR: Okay. And on this slide,
15 you indicate that only a total of 21 new
16 interviews were conducted as part of this study,
17 21 new interviews?

18 MS. LARCOMBE: Correct.

19 MR. REGEHR: So as a result, you have
20 only been able to locate 21 new resource
21 harvesters; is that correct?

22 MS. LARCOMBE: No, I wouldn't agree
23 with that. It's not that we could only locate 21,
24 we had a time frame and a budget that we were
25 working within.

1 MR. REGEHR: And so for 10 of the
2 interviews, you are relying upon data collected in
3 relation to the Bipole III project and not the
4 Keeyask project?

5 MS. LARCOMBE: That's where the extra
6 five comes in actually. There is, in total there
7 were 15 interviews done from Bipole that had
8 overlap with the Keeyask study area, that's where
9 the -- we didn't not put the five new -- it's not
10 the case there were 26 interviews and I'm only
11 reporting on 21 new interviews, the missing five
12 interview data is from the Bipole III data set.

13 MR. REGEHR: But here you're stating
14 you did a total of 21 new interviews and added to
15 interview information from 10 interviews, not 15?

16 MS. LARCOMBE: That's correct.
17 Because the error was not discovered until
18 literally hours before this presentation had to be
19 filed with the CEC to meet that deadline. And so
20 I could not change the powerpoint presentation
21 after the fact.

22 MR. REGEHR: And so the interviews,
23 the 21 and the 10 or 15 were for different
24 projects. The questions posed in the two sets of
25 interviews would have been different?

1 MS. LARCOMBE: No, they were not.

2 MR. REGEHR: Is it possible that there
3 may have been different concerns for the people
4 who were interviewed in relation to Bipole versus
5 those interviewed for Keeyask?

6 MS. LARCOMBE: The nature of the TLUKS
7 interviews is, it's a very hard core data hungry
8 system. It doesn't -- the same questions are
9 asked in the same way in the interview that feeds
10 into the data. The only difference between the
11 interview for the Bipole III and the Keeyask is
12 that we were -- our last decade of recording
13 information for Bipole was 2010, and so we have
14 added another field because we are into a new
15 decade for the Keeyask. And that's the only
16 difference in how the interviews were done and the
17 data was recorded.

18 MR. REGEHR: So the Bipole III
19 interviews concluded in 2010?

20 MS. LARCOMBE: I think we started in
21 2010, in the field code, when we are documenting
22 activity by decade, it's 1940s, '50s, '60s, '70s,
23 '80s and so on. And since last -- we finished the
24 Bipole III, obviously we weren't into 2013, and
25 I'm not even sure we were into 2012. So we had

1 entered another decade. That's the only
2 difference.

3 MR. REGEHR: So you can't tell me --
4 what I'm wondering is, when were those Bipole III
5 interviews? What time period did they take place
6 in?

7 MS. LARCOMBE: Do you have my report
8 in front of you?

9 MR. REGEHR: No, your Bipole III
10 report?

11 MS. LARCOMBE: Yes.

12 MR. REGEHR: Yes, we have a copy here.

13 MS. LARCOMBE: I believe it says in
14 there.

15 MR. REGEHR: Mr. Chair, it's ten after
16 11:00. Do you wish to take a break?

17 THE CHAIRMAN: By that I assume you're
18 going to be going somewhat longer?

19 MR. REGEHR: Yes.

20 THE CHAIRMAN: Okay. I think we'll
21 take a break then for, perhaps just for 10 minutes
22 since we did have a short break a little while
23 ago. Come back at 20 after.

24 (Proceedings recessed at 11:09 a.m.
25 and reconvened at 11:20 a.m.)

1 THE CHAIRMAN: Okay. Mr. Regehr.

2 MR. REGEHR: Thank you. On slide
3 number 10, Ms. Larcombe, when you refer to the
4 Keeyask study area, I'm assuming that you are
5 referring to what I call the red oval?

6 MS. LARCOMBE: Correct.

7 MR. REGEHR: And not the study area
8 set out in the EIS; is that correct?

9 MS. LARCOMBE: That would be correct.

10 MR. REGEHR: Now on this slide, you
11 mentioned that you did a screening survey for half
12 of the interviewees or did someone else do the
13 screening survey?

14 MS. LARCOMBE: The screening survey
15 that I was referring to on this slide is the
16 screening survey that was implemented by the MMF
17 in 2010 with my assistance in the design of it.

18 MR. REGEHR: So that was a screening
19 survey done for Bipole III?

20 MS. LARCOMBE: It wasn't done
21 specifically for Bipole III. As I said earlier,
22 it was a province-wide screening survey to
23 kick-start the MMF so that they could do TLUKS
24 type studies.

25 MR. REGEHR: Okay. So then in this

1 third bullet, when you say half of the
2 interviewees, which number of interviewees are you
3 talking about, the 30 or the 21, the 35?

4 MS. LARCOMBE: In that case, I am
5 talking about the 21.

6 MR. REGEHR: And I'm going to gather
7 you probably don't have the screening survey
8 questions here with you, do you?

9 MS. LARCOMBE: I think they were in
10 the document I said yesterday that I didn't know
11 if the CEC had accepted the document.

12 MR. REGEHR: Can I ask, how is
13 additional use defined for this study?

14 MS. LARCOMBE: It's defined in the, I
15 believe it was in the November 4th document. But
16 generally, the concept of traditional use includes
17 the physical activities of harvesting of animals,
18 plants, fish, medicines. It includes the activity
19 of staying on the land, the cultural aspect of it,
20 the social aspect of it, the economic aspect of
21 it. It's generally understood to be one manner of
22 exercising a right, a constitutional right. There
23 is no legal definition of traditional use that I'm
24 aware of.

25 MR. REGEHR: Now, when this data was

1 collected, was there a minimum number of visits or
2 hunting trips or fishing trips per year which were
3 counted? Did a person have to do a certain
4 minimum number before they were included?

5 MS. LARCOMBE: No.

6 MR. REGEHR: So it could have just
7 been one event in one particular year and they
8 would have been included?

9 MS. LARCOMBE: Well, let me clarify
10 that the screening survey didn't ask information
11 about how many times somebody harvested. So the
12 screening survey doesn't serve as a base for that
13 type of selection of an interviewee.

14 MR. REGEHR: But that would have been
15 asked during the actual interviews?

16 MS. LARCOMBE: There's no
17 pre-screening once you start a TLUKS interview.
18 You're into it. And if that's what you learn
19 during that interview, that's what you learn.

20 MR. REGEHR: You mentioned that half
21 of the interviewees, the MMF Thompson regional
22 office located them or identified them; is that
23 correct?

24 MS. LARCOMBE: Yes.

25 MR. REGEHR: You weren't involved with

1 that?

2 MS. LARCOMBE: No, I don't live in
3 Thompson. I mean the idea is -- the MMF Thompson
4 region, they know who their harvesters are. They
5 know their names, they know their phone numbers.
6 I certainly don't have that information, and so
7 that's why I rely on them to help identify people
8 who are willing to do interviews.

9 MR. REGEHR: Who, in the Thompson
10 regional office, provided you with this
11 information?

12 MS. LARCOMBE: Which information are
13 you referring to?

14 MR. REGEHR: The name of half of the
15 interviewees that they --

16 MS. LARCOMBE: I don't know that it
17 was any one individual. Some of the information
18 came to me through the MMF's Winnipeg office and
19 some came from the individual who is in charge of
20 the membership and harvester card application.

21 MR. REGEHR: Now don't you think that
22 if in fact half of the interviewees were selected
23 by the Thompson regional office, and it appears
24 now that the Winnipeg office had something to do
25 with it, doesn't this have the potential to show

1 bias and skew the results? Wouldn't you, as a
2 scientist, think that?

3 MS. LARCOMBE: If I was doing a
4 statistically valid sample, yeah. But the reality
5 of -- I'll be blunt here. The reality of, and I'm
6 sure you're actually aware of this, Mr. Regehr,
7 yourself. When you are doing this type of
8 interviews, it's not like the census where you get
9 to go door to door and say you're going to do it
10 and you're going to do it and you are going to do
11 it. You're relying on people who are willing to
12 participate. I mean it's hours of their time and
13 it's painful. I wouldn't want to be the person
14 being interviewed by me, thank you very much.

15 So is it skewed? If it's skewed based
16 on the people we did talk to is that there was a
17 larger number of people from the Bayline
18 communities. It was probably underrepresented by
19 the people from other communities. But the
20 information I presented is not the be all end all.
21 As I said at the beginning of my presentation,
22 it's a step towards filling some gaps. It is not
23 definitive but it's illustrative.

24 MR. REGEHR: So then just to be clear,
25 10 or 11 of those people did not go through the

1 screening survey, correct? Half being 50 percent.

2 MS. LARCOMBE: Well, individuals who,
3 in 2010, had not applied for under the new
4 membership code or were a holder of a harvester
5 card in 2010 wouldn't have been on the list to
6 begin with. And that's why they weren't
7 identified off the screening survey.

8 MR. REGEHR: Let's turn to slide 11.
9 You state that the interviews were not based on
10 oral history; is that correct?

11 MS. LARCOMBE: The harvesting aspect
12 of it is not based on oral history. If an
13 individual shared traditional knowledge, that may
14 have been based on oral history.

15 MR. REGEHR: So there is oral history
16 in the data you have presented or there isn't oral
17 history in the data you have presented?

18 MS. LARCOMBE: I have not presented it
19 in this presentation.

20 MR. REGEHR: Now let's turn to slide
21 number 12. Of the 21 interviewees, how many of
22 them were MMF members?

23 MS. LARCOMBE: What do you mean by
24 member?

25 MR. REGEHR: They have a membership

1 card, a full-fledged member of the MMF.

2 MS. LARCOMBE: That's what the
3 previous slide was saying, 50 percent.

4 MR. REGEHR: So 10 or 11?

5 MS. LARCOMBE: Had their card or had a
6 harvester card at the time I interviewed them.
7 They all self-identified as Metis people.

8 MR. REGEHR: And that's of the 21.
9 Your 50 percent or half statistic relates to the
10 21 or does it relate to the full 30?

11 MS. LARCOMBE: That's a good question.

12 MR. REGEHR: I'm just trying to get
13 these numbers straight in my head because there's
14 so many.

15 MS. LARCOMBE: And I apologize because
16 of the error of the five at the start of this
17 presentation.

18 I can't say definitively off the top
19 of my head, Mr. Regehr. My recollection is that
20 most of the people that participated in the Bipole
21 III interviews either had a harvester card and/or
22 a membership card. And the newer interviews that
23 were done in this year is the 50 percent that held
24 a card of one or the other type, and the other
25 were in the application stage.

1 MR. REGEHR: Of the three of the nine
2 who do not reside in the study area but where they
3 had lived in, and they lived in here it says the
4 study area earlier in life, where did they live in
5 the study area, those three?

6 MS. LARCOMBE: In the study area.
7 Again, I'm not trying to be argumentative.

8 MR. REGEHR: We have a large number of
9 town settlements, we even have a city up there.
10 I'm just wondering, they clearly don't live there
11 anymore. But I gather you gathered the data in
12 terms of where they were born. You were able to
13 present evidence here that they lived there
14 earlier in life. So clearly you gathered that
15 data. So I'm asking where did they live in the
16 study area?

17 MS. LARCOMBE: So you're asking for
18 the particular town or village?

19 MR. REGEHR: That's right. I don't
20 want their address, I don't want their names, I
21 don't want their medical information.

22 MS. LARCOMBE: Some of these
23 communities, as you well know, have a hundred
24 people in them. And again, I'm very concerned
25 about the confidentiality of interviewees. If you

1 can give me some compelling reason why I would
2 consider risking confidentiality, I'd be happy to
3 hear it.

4 MR. REGEHR: Because you have sworn to
5 tell the truth in front of this commission and you
6 have presented evidence. And so I'm asking you,
7 on cross-examination, to provide me with this
8 information. I'm not asking for confidential
9 information. I'm asking what city, what town,
10 what settlement, what Northern Affairs community
11 in the study area did they live in earlier in
12 life?

13 THE CHAIRMAN: Mr. Madden, did you --

14 MR. MADDEN: Mr. Chair, this is
15 just -- well, I don't think that the same rigour
16 was applied to the TK studies of the KCNs about
17 tell us the exact locations of the interviewees.
18 I guess, and this feeds into their whole line that
19 we want to explain that there's no Metis, which is
20 fine. But it gets to a point where there is
21 not -- the confidentiality that's in place with
22 these people giving interviews needs to be
23 respected. I don't see the relevance of providing
24 that exact data of the locations. It's not as if
25 we're adverse. But it also gets to a level of

1 what's the point.

2 THE CHAIRMAN: Mr. Regehr, I'm
3 inclined to agree with Mr. Madden on this one. I
4 fail to see the relevance of knowing exactly where
5 everybody might have once lived.

6 MR. REGEHR: Well, apparently it was
7 important enough to say that these three people
8 lived here earlier in life. So then apparently it
9 is a relevant fact. I'm entitled to cross-examine
10 on it. I'm not sure what the reluctance here is
11 in terms of if you're going to put evidence in
12 front of the commission, then it needs to be
13 subject to scrutiny. And if other participants
14 did not -- decided for whatever reason did not
15 cross-examine to a certain level, that's their
16 decision. I don't tell them how to cross-exam.

17 THE CHAIRMAN: No, you haven't, and
18 you are entitled indeed to cross-examination, but
19 I think you are starting to split hairs here. But
20 carry on.

21 MR. REGEHR: So I'm not going to get
22 an answer to my last question or --

23 THE CHAIRMAN: I suspect not.

24 MS. LARCOMBE: I'll provide a partial
25 answer, Mr. Regehr. Those three people lived in

1 the study area and it wasn't Thompson.

2 MR. REGEHR: And that would be your
3 study area, not the EIS study area?

4 MS. LARCOMBE: That's correct.

5 MR. REGEHR: On slide 13, it's
6 mentioned that 43 percent of the, is this 30
7 people, 21 or 35?

8 MS. LARCOMBE: All of the data that's
9 in the power point presentation with the exception
10 of the maps was based on 30.

11 MR. REGEHR: The reason I'm asking is
12 because some of the data, as we have heard, was
13 actually based on 21 and not 30.

14 MS. LARCOMBE: Only when I'm referring
15 to the new interviews.

16 MR. REGEHR: So 43 percent that were
17 born in the Thompson region, that would be
18 approximately 13 individuals?

19 MS. LARCOMBE: That would be correct,
20 close enough.

21 MR. REGEHR: And by Thompson region,
22 you are referring to the MMF political region; is
23 that correct?

24 MS. LARCOMBE: Governance region,
25 correct.

1 MR. REGEHR: Governance region. And
2 that region covers approximately half of the land
3 mass of Manitoba and includes 16 different locals?
4 Is that the one I'm talking about or the one we're
5 talking about?

6 MS. LARCOMBE: I haven't done the
7 math.

8 MR. REGEHR: But it is a very large
9 region?

10 MS. LARCOMBE: It's a very large
11 region.

12 MR. REGEHR: You mentioned that
13 85 percent of the parents of the 30 interviewees,
14 correct, were born outside of the Thompson region,
15 so that would mean only four to five of the 30 of
16 the interviewees had parents born in the Thompson
17 region?

18 MS. LARCOMBE: I'm going to trust you
19 on the math.

20 MR. REGEHR: Subject to check if you
21 like.

22 MS. LARCOMBE: But that's what this
23 table indicates, correct.

24 MR. REGEHR: And on slide 15, what I'm
25 trying to do, Ms. Larcombe, is I'm trying to get

1 actual numbers to these percentages. You state
2 that 74 percent of the interviewees eat country
3 foods more than once a week and that would be
4 approximately 22 people?

5 MS. LARCOMBE: I don't have the
6 numbers in front of me. If someone wants to give
7 me a calculator, I can confirm. But otherwise,
8 I'll assume that your math is correct, Mr. Regehr.

9 MR. REGEHR: Subject to check, of
10 course.

11 And now of these 22 people who eat
12 country foods more than once a week, how many of
13 them reside within the regional study area as
14 defined by the EIS?

15 MS. LARCOMBE: I can't answer that
16 question off the top of my head.

17 MR. REGEHR: And so you won't be able
18 to tell me of those 22, how many of them are MMF
19 members and how many of them are pending MMF
20 members? You wouldn't have that available?

21 MS. LARCOMBE: I thought we went
22 through that.

23 MR. REGEHR: These are different
24 numbers now from what we went through before.

25 MS. LARCOMBE: These are the

1 percentages of the 30 interviews which includes
2 the interviews that were done this year and the
3 interviews that were done in the Bipole III.

4 MR. REGEHR: Yes. And previously, I
5 had been asking you for percentages and numbers in
6 relation to the number of people who lived in the
7 region and the number who didn't. Now this is
8 data related to the percentages of people who eat
9 country foods which can be different people,
10 right? This could obviously include some of the
11 people from outside the region. All of them, none
12 of them. I don't know because I can't get that
13 from the percentages. And so I'm asking you if
14 you collected that data? Do you have it?

15 MR. MADDEN: Mr. Chair, I think we can
16 state for the record that this is not tied -- this
17 is about a sampling of getting an understanding of
18 how the Metis population, within that study area,
19 hunt, harvest, et cetera. It is not tied to the
20 EIS, the proponent-defined EIS lines. It is
21 giving an understanding of what the community's
22 use is.

23 And so if we're going to go, well, how
24 many are within there? What this is, it's a
25 general tool to show a representation of what the

1 community's use is. And Ms. Larcombe hasn't
2 broken it down in that way. So continuing to ask
3 questions about that, it's not available.

4 THE CHAIRMAN: Thank you, Mr. Madden.

5 I would accept Mr. Madden's comments,
6 Mr. Regehr. I think the evidence hasn't been
7 broken down, so I think move on with what we have
8 before us.

9 MR. REGEHR: I am assuming that the
10 reference to study area again is the reference to
11 the red oval, not the EIS study area; is that
12 correct?

13 MS. LARCOMBE: Sorry, can you repeat
14 that?

15 MR. REGEHR: On the slide 16, there's
16 the words study area. Again, I'm correct in
17 assuming that that is the red oval study area?

18 MS. LARCOMBE: It's the Keeyask study
19 area as defined by us.

20 MR. REGEHR: And this traditional use
21 activity took place between is it 1990 and 2013?

22 MS. LARCOMBE: Can you clarify your
23 question?

24 MR. REGEHR: What time period does
25 this, you say people are engaged in traditional

1 use, so what time period does this cover? Because
2 later on you have got maps that cover a time
3 period from 1990 to 2013. So does this correspond
4 to that data?

5 MS. LARCOMBE: The equipment ownership
6 and frequency of food consumption, those are
7 current.

8 MR. REGEHR: So as of --

9 MS. LARCOMBE: As of the time of the
10 interview.

11 MR. REGEHR: Okay.

12 MS. LARCOMBE: In terms of the
13 percentage of people involved on slide number 16,
14 I believe I was taking 2010, was the decade I was
15 looking at. Because the Bipole III interviews
16 don't go beyond that time frame, so...

17 MR. REGEHR: I'll move on to slide 17.
18 You make a reference to the 2000s decade. Is that
19 just, if you can clarify for me what -- I'm not a
20 social scientist, I don't know what that means.
21 Is that 2001 to 2010 or?

22 MS. LARCOMBE: It's usually considered
23 2000 to 2009, and then 2010s start in 2010.

24 MR. REGEHR: Thank you. Now, before
25 we turn to the various maps in your presentation,

1 you are aware of an agreement signed between the
2 MMF and Manitoba, the province that is, on
3 September 29th, 2012. You are aware of that
4 agreement?

5 MS. LARCOMBE: I have an awareness of
6 it, yes.

7 MR. REGEHR: That agreement was
8 entered into evidence as KHLP 77 yesterday, I
9 believe?

10 MR. MADDEN: Mr. Chair, I've got to
11 object to this. If there's now going to be
12 questioning about the harvesting agreement that
13 the Manitoba Metis Federation signed with the
14 Manitoba Government. Ms. Larcombe is not an
15 Aboriginal rights lawyer, she is not a
16 constitutional law lawyer, she is not a member of
17 the Manitoba Metis Federation or a Metis
18 harvester. So I don't -- so questioning on that I
19 just don't think is appropriate.

20 What Ms. Larcombe is presenting on is
21 traditional land use of the Metis in the area.
22 And what the legal framework may be in relation to
23 recognition of those rights or what have you, not
24 her wheelhouse. And I don't think it's relevant
25 to her questioning.

1 THE CHAIRMAN: You're making
2 assumptions. We don't know yet where Mr. Regehr
3 will go with his questioning. If your assumptions
4 are correct, then I would agree with you.

5 MR. REGEHR: I would like to note,
6 Mr. Chair, that before the break, Ms. Larcombe
7 gave what appeared to be opinion on the harvesting
8 rights of Metis within the Keeyask area.

9 In addition to that, she has written
10 about the harvesting agreement in her report which
11 was filed in the Bipole III proceedings. So I
12 believe she is able to answer questions. I'm not
13 necessarily asking her about legal interpretation,
14 but she certainly has given evidence on this. And
15 so it's open to cross-examination.

16 THE CHAIRMAN: Go ahead.

17 MR. REGEHR: Now you have the
18 agreement in front of you?

19 MS. LARCOMBE: No, I have a map in
20 front of me.

21 MR. REGEHR: I am sorry, you have a
22 document entitled -- well, it's the cover page of
23 your Bipole III submission of November 4th, 2012.
24 And enclosed in that is a map from page 3 of that
25 report with a large shaded area in pink. I'll ask

1 that this be entered as an exhibit.

2 This is a map from that report you had
3 submitted in the Bipole III hearings?

4 MS. LARCOMBE: I believe this is a
5 copy of a map off the Government of Manitoba
6 website that's referenced in the footnote.

7 MR. REGEHR: And it's from your
8 report, page 3 of your November 4th, 2012 report?

9 MS. LARCOMBE: Do you want me to
10 double check?

11 MR. REGEHR: Yes, if you would like to
12 check, take a minute to do that.

13 MS. LARCOMBE: It appears to be the
14 same, although it's not exact to the page that's
15 in my version of the report. And I'm not speaking
16 to the boundaries, I'm speaking to the referencing
17 of it.

18 MR. REGEHR: We have increased the
19 bottom part so that the source data is readable to
20 whoever reads it. But I can assure you, this is
21 from page 3 of your report.

22 Now, you would agree with me that the
23 pink areas on this map are from the south and
24 southwest portions of the Province of Manitoba?

25 MS. LARCOMBE: Yes, I would agree with

1 that.

2 MR. REGEHR: And you would agree with
3 me that you referred to the 2012 agreement and the
4 associated harvest areas in your Bipole III
5 report?

6 MS. LARCOMBE: It's on page 3, that's
7 correct.

8 MR. REGEHR: But in the text of your
9 report, you referred to that as well, I believe
10 it's on page 25 of that report, last paragraph?

11 MS. LARCOMBE: Yes, I referred to it.

12 MR. REGEHR: And would you agree with
13 me that the pink areas set out in this map are
14 some distance from, not just the Keeyask site, but
15 also the regional study area as defined by the
16 EIS, and your study area for your study?

17 MS. LARCOMBE: I would agree that --

18 MR. MADDEN: Mr. Chair, I just want to
19 raise this point. The process that was set out
20 and was talked about by President Chartrand, there
21 are white areas that are -- it is an agreement of
22 where the Province and the Manitoba Metis
23 Federation could agree on, and as opposed to
24 continuing to go to court, they signed an
25 agreement. It sets out a two year process. And

1 my friends continue to say, oh, well, that doesn't
2 mean anything. Maybe they should read section 17
3 that says, if at the end of the day there is no
4 agreement --

5 MR. REGEHR: Mr. Chair, this isn't
6 appropriate.

7 MR. MADDEN: -- there's going to be a
8 reference to the Manitoba Court of Appeal.

9 THE CHAIRMAN: You're making
10 statements now, Mr. Madden.

11 MR. MADDEN: I guess my point is, is
12 that testimony has already been provided on that
13 agreement and --

14 THE CHAIRMAN: I think, you know, what
15 I heard was a fairly simple question, just the
16 separation of the pink area here from the oval
17 study area under consideration. So I don't see
18 that as a terribly inappropriate question.

19 So, Mr. Regehr, would you continue,
20 please, or restate your question?

21 MR. REGEHR: I have to find my
22 question.

23 THE CHAIRMAN: I didn't mean by
24 restating, I meant repeat.

25 MR. REGEHR: You would agree with me

1 that the pink area in this map is some distance
2 from the Keeyask Generating Station site?

3 MS. LARCOMBE: It's --

4 MR. REGEHR: And it would be some
5 distance from the regional study area set out in
6 the Environmental Impact Statement?

7 MS. LARCOMBE: I agree it's some
8 distance, but we have not agreed what some
9 distance means.

10 MR. REGEHR: And it would also be some
11 distance from the area that you defined for your
12 study, which was the red oval?

13 MS. LARCOMBE: When I say some
14 distance, it's more than 10 miles. I don't know
15 what the distance is. But I hazard when we're
16 both using a phrase "some distance" without
17 actually defining what we mean by that.

18 MR. REGEHR: It's your understanding
19 that should a Metis person with a harvester's card
20 issued by the MMF hunt outside of the pink areas,
21 they still have to obtain a provincial hunting
22 licence?

23 MS. LARCOMBE: Yes, that's my
24 understanding for hunting.

25 MR. REGEHR: You stated that at page

1 25 of your Bipole III report in the last
2 paragraph?

3 MS. LARCOMBE: Hunting regulations,
4 correct.

5 MR. REGEHR: I'd like you to read the
6 full paragraph that was referenced in the Bipole
7 III report, the last paragraph.

8 MS. LARCOMBE: On page 25?

9 MR. REGEHR: On page 25 of your
10 report.

11 MS. LARCOMBE: "On September 29th,
12 2012, the Province of Manitoba, the
13 Manitoba Metis Federation agreement on
14 Metis natural resource harvesting was
15 signed. In this agreement, Manitoba
16 has recognized Manitoba Metis rights
17 to harvest animals, fish and plants
18 for food, and trees for fuel wood
19 purposes within the area depicted
20 earlier in figure 1. Manitoba Metis
21 will continue to harvest under the
22 Manitoba Metis Federation, Metis laws
23 of the hunt in this area. However,
24 harvesters engaged in harvesting
25 outside of this defined area will be

1 subject to Provincial sport hunting
2 legislations and regulations. The MMF
3 and Manitoba have agreed to conduct
4 further research regarding future
5 expansion of the geographic area
6 identified in the agreement."

7 MR. REGEHR: I'd just like to confirm
8 for the record that the figure 1 in the paragraph
9 you just read is the figure 1 that I have handed
10 out?

11 MS. LARCOMBE: Yes, I confirm that.

12 MR. REGEHR: Thank you.

13 You are also aware that all licensed
14 hunters, including for caribou and moose, have
15 been accounted for in the Keeyask Environmental
16 Impact Statement?

17 MS. LARCOMBE: I can't -- I did not
18 review the Environmental Impact Statement for that
19 purpose, so I can't say or not.

20 MR. REGEHR: So you didn't read the
21 supporting volume on resource use?

22 MS. LARCOMBE: No, I actually wasn't
23 tasked with reviewing the EIS.

24 MR. REGEHR: Let's turn to slide
25 number 19. And this is the moose harvest map.

1 And so I'm going to ask first just a few questions
2 that will apply to all the subsequent maps, just
3 so I understand.

4 This map and the other maps contain a
5 variety of, I don't know what colour it's showing
6 up for you, to me they look between purple and
7 violet, a variety of shades of purple and violet,
8 and they range from light to dark; is that
9 correct?

10 MS. LARCOMBE: That's correct.

11 MR. REGEHR: Now, the legend on the
12 map, on all the maps in fact, does not indicate
13 the range of this colour coding; is that correct?

14 MS. LARCOMBE: No, it doesn't indicate
15 a numeric range.

16 MR. REGEHR: Now, are the lighter
17 shaded areas to be considered as one harvester and
18 the darker ones, where there's overlap, between
19 two, three, four, five harvesters?

20 MS. LARCOMBE: My understanding of
21 what happens in the computer mapping is that if
22 you tint, put a tinting on the colour, and you
23 have one layer that's feeding over another, it
24 will appear as a darker colour, because they are
25 layered one on top of the other. I can't tell you

1 off the top of my head if the lightest colour is
2 one person or four people.

3 MR. REGEHR: And yet you have
4 presented these maps today as part of your
5 evidence. You can't tell me what those purple
6 polygons mean?

7 MS. LARCOMBE: Well, certainly I can
8 tell you those are the locations that were
9 identified for moose harvesting.

10 MR. REGEHR: But you can't tell me if
11 that's for one person or two persons, or whether
12 one moose was harvested there, in the darker areas
13 there was several animals taken?

14 MS. LARCOMBE: My eye doesn't
15 recognize that many intensities of purple. I
16 can't tell the difference from one shade to
17 another to say if that's three versus four versus
18 five.

19 MR. REGEHR: So you can't tell me if
20 the lighter one are just one person who was
21 interviewed and said I hunt --

22 MS. LARCOMBE: I suspect it is one
23 person but I can't say for sure. It's the
24 lightest colour.

25 MR. REGEHR: You rely upon this in

1 your report and you can't tell me what the basis
2 for this report, what --

3 MS. LARCOMBE: I didn't consider it in
4 my presentation to speak to the numbers of people.
5 I said these are the locations.

6 MR. REGEHR: Was Mr. Stewart the one
7 who prepared these maps?

8 MS. LARCOMBE: Yes, he did.

9 MR. REGEHR: Do you know what the
10 scale of the map is? Is it 1 to 250,000?

11 MS. LARCOMBE: My eyesight is not that
12 great but it does you show in that far left
13 corner.

14 MR. REGEHR: I have the same problem,
15 I can't -- you don't know if it's 1 to 250 or --

16 MS. LARCOMBE: I can't read it,
17 Mr. Regehr.

18 MR. REGEHR: It doesn't appear that
19 the map scale is on the map.

20 MS. LARCOMBE: It's showing a linear
21 scale.

22 MR. REGEHR: A linear scale, but it is
23 not showing --

24 THE CHAIRMAN: I'm not sure it's that
25 important.

1 MR. MADDEN: We can undertake to get
2 that.

3 (UNDERTAKING #17: Confirm scale of map is 1 to
4 250,000)

5 MR. REGEHR: My understanding that a
6 map scale of 1 to 50,000 or 1 to 25,000 is better
7 for documenting traditional uses. Is that your
8 understanding?

9 MS. LARCOMBE: We document, we have --
10 the base maps we were using. We can zoom into any
11 scale we wanted, and we had 1 to 250,000 and 1 to
12 50,000, and we can zoom down to 1 to 1,000 if we
13 chose, during the interview.

14 MR. REGEHR: And so on these maps,
15 this now includes the full 35?

16 MS. LARCOMBE: Correct.

17 MR. REGEHR: Right, this information?

18 So on slide 19, you can't tell me how
19 many of the 35 harvesters are harvesting moose and
20 are on this map?

21 MS. LARCOMBE: Sixty-three percent.
22 And again, these are the numbers based on 30, but
23 63 percent indicated moose harvesting in one of
24 these coloured areas.

25 MR. REGEHR: Sixty-three percent of

1 30?

2 MS. LARCOMBE: Correct.

3 MR. REGEHR: And yet these maps are
4 based on 35 harvesters?

5 MS. LARCOMBE: They are, because we
6 were -- clearly the person who creates maps can
7 analyze things more quickly than I could. So we
8 were able to get the updated maps into the
9 powerpoint before the deadline, but I didn't have
10 sufficient time to change all the numbers and
11 whatnot in the text part of the presentation.

12 MR. REGEHR: Now, according to this
13 data here, it would appear to me that using the
14 local study area, as defined by the Environmental
15 Impact Statement, none of the 35 harvesters are
16 harvesting moose within the local study area; is
17 that correct?

18 MS. LARCOMBE: Your local study area
19 being the footprint of the generating station and
20 the reservoir?

21 MR. REGEHR: Including the reservoir.

22 MS. LARCOMBE: That's correct.

23 MR. REGEHR: And if we go on the basis
24 of the regional study area as defined by the EIS,
25 I was going to suggest that it looks like there

1 could be four to five harvesters, but you can't
2 tell me that because you don't know?

3 MS. LARCOMBE: Mr. Regehr, I'm not
4 going to analyse on the fly here.

5 MR. REGEHR: You have presented this
6 map as evidence.

7 MS. LARCOMBE: And you are asking me
8 to sit here and visually picture what your study
9 area looks like on top of this map. And I'm just
10 not prepared to do it. There's too much potential
11 for error.

12 MR. REGEHR: So you can't tell me how
13 many people are harvesting within the regional
14 study area, as defined by the EIS, correct?

15 MS. LARCOMBE: I have not analyzed
16 that data in that manner.

17 MR. REGEHR: And so this would go for
18 all the maps?

19 MS. LARCOMBE: It goes for all the
20 maps. This is a study area that was chosen to do
21 this work. You have a different study area. You
22 have a rationale for it. We have a rationale for
23 our study area.

24 MR. REGEHR: Can you -- well, I'll ask
25 it, I'm not sure whether you can or not. But I'm

1 looking at a number of the areas, and a lot of
2 them are, they are purple blobs. There is one
3 polygon which is sort of a trapezoidal figure,
4 starting at Pit Siding going south, and then it
5 angles up northeast, and then it heads sort of
6 northwest to -- I'm not sure what that is, Munk?
7 It's on the south side of the rail line, the
8 Bayline. Can you explain why that polygon is so
9 different from all of the other ones, why it's
10 based on straight lines like that?

11 MS. LARCOMBE: That's how the
12 interviewee identified their traditional
13 harvesting area.

14 MR. REGEHR: So let's move on to slide
15 20, the caribou harvest area. Are you able to
16 provide me with a percentile of the number of
17 harvesters who are harvesting caribou?

18 MS. LARCOMBE: Thirty percent of the
19 interviewees.

20 MR. REGEHR: Thirty percent of 35?

21 MS. LARCOMBE: Correct.

22 MR. REGEHR: Can you tell me what type
23 of caribou they were harvesting?

24 MS. LARCOMBE: I believe every -- my
25 recollection, every interviewee, when I asked if

1 it was barren ground or woodland, they described
2 it as a hybrid that didn't fall in either one of
3 those categories.

4 MR. REGEHR: I'm going to hand to you
5 a map which is contained within the EIS, so it's
6 already in evidence. It's map 1-11, page 1-119
7 from the socio-economic environment resource use
8 and heritage resources supporting volume.

9 This is a map that contains the
10 regional study area, as you understand it,
11 correct, as defined by the EIS?

12 MS. LARCOMBE: That's my
13 understanding, correct.

14 MR. REGEHR: Now, if you look there
15 you'll see in green there are a number of things
16 that say GHA, and then have a number following
17 them. Do you see those?

18 MS. LARCOMBE: I do.

19 MR. REGEHR: Is it your understanding
20 those are game hunting areas set up by the
21 Province of Manitoba?

22 MS. LARCOMBE: That's my
23 understanding.

24 MR. REGEHR: And you can identify on
25 there, there's game hunting area 3 in the bottom

1 right-hand side of the map, and then going
2 northwest from there we have a GHA 9. I think
3 we've got 2 and 1, 9A and 3A all in there. Can
4 you see those?

5 MS. LARCOMBE: I do.

6 MR. REGEHR: Now, if I compared this
7 to the map that's been put into evidence here,
8 your map --

9 MS. LARCOMBE: Which map?

10 MR. REGEHR: The one that's up on the
11 screen right now, the caribou one.

12 MS. LARCOMBE: Right.

13 MR. REGEHR: It would appear that
14 there's some harvesting going on of caribou in
15 game hunting area 9. Because the division between
16 game hunting area 9 and 3 is the Bayline? Is what
17 appears to be?

18 MS. LARCOMBE: I'm having difficulty
19 seeing but -- so you are saying the rail line
20 itself is the boundary?

21 MR. REGEHR: It appears to be the
22 boundary between 3 and 9. Because my
23 understanding is that, I believe the rail line
24 crosses the Kettle, around Kettle. If you're
25 uncertain, that's fine. That's fine.

1 And then the map that you have
2 produced, the caribou hunting map definitely has
3 purple polygons going northwest of the Bayline; is
4 that correct? We've got some hunting going on
5 along PR 280 by the Split Lake community. Then
6 we've got some which seems to be going north to
7 the Keeyask site.

8 And are you aware that caribou hunting
9 is prohibited in game hunting area 9?

10 MS. LARCOMBE: I'm aware that it's
11 prohibited for sport hunting.

12 MR. REGEHR: So you weren't aware that
13 caribou hunting was prohibited in game hunting
14 area 9 since 1992?

15 MS. LARCOMBE: I couldn't say I have
16 known that since 1992.

17 MR. REGEHR: So this data that's
18 collected would be all pre 1992, so it would be
19 from the period 1990 to at some point in 1992?

20 MS. LARCOMBE: No, this map is showing
21 from 1990 to present.

22 MR. REGEHR: Okay. Again, you can't
23 tell me exactly how many harvesters are hunting,
24 in the data on this map?

25 MS. LARCOMBE: I said 30 percent of 30

1 interviewees identified caribou harvesting.

2 MR. REGEHR: So let's move on to the
3 next one, which is I believe waterfowl harvest.
4 And I'm just going to --

5 MS. LARCOMBE: I think this is still
6 slide number 20 that's showing.

7 MR. REGEHR: Can we move to slide 21,
8 please?

9 So the vast majority of, I don't know
10 whether this represents number of harvesters, or
11 the amount of game collected, or waterfowl
12 collected, but the vast majority of this is taking
13 place east of Thompson; is that correct?

14 MS. LARCOMBE: Correct, based on the
15 individuals who were interviewed.

16 MR. REGEHR: And if I overlaid the
17 regional study area and the EIS, it would look
18 like there was no waterfowl harvesting taking
19 place within the regional study area; is that
20 correct?

21 MS. LARCOMBE: I would expect that
22 there is not, although I can't visualize your
23 study area on top of my map. But I would
24 generally agree.

25 MR. REGEHR: The map we introduced

1 earlier on with the overlay, if we could put that
2 up? I'm just putting this up if it helps you
3 visualize the regional study area of the EIS.

4 Now, of course, I guess it's
5 difficult, because this map contains all of the
6 data that you collected, whether -- though we
7 don't know whether that is data for individual
8 harvesters, or we don't know what that data is for
9 the purpose of these maps.

10 So then if I turn to page 22 on upland
11 bird harvest, we can go back to slide 22, please?

12 If I overlaid this data onto the
13 regional study area, it would appear that maybe
14 one person is harvesting along PR 280 for upland
15 bird? Because it appears that the vast majority
16 of the harvesting is going on around Thompson.

17 MS. LARCOMBE: South of Thompson,
18 that's correct.

19 MR. REGEHR: It also appears there's a
20 little bit of harvesting going on along the
21 Butneau Road out of Gillam?

22 MS. LARCOMBE: There is along the
23 highway.

24 You know, Mr. Regehr, we can continue,
25 and I'm prepared to answer your questions, but I

1 just want to reiterate for the panel, these maps
2 are based on a very small sample size, 2 percent
3 of the adult Metis population. So, please, as I
4 said, I'm willing to answer these questions,
5 please take it with a grain of salt. Thank you.

6 MR. REGEHR: And to clarify, we don't
7 know exactly what these maps represent, isn't that
8 correct? You told me just a little while ago that
9 you could not tell me whether the shading of
10 polygon represented the number of animals taken,
11 or whether it represented the number of
12 harvesters; isn't that correct?

13 MS. LARCOMBE: Well, it certainly
14 doesn't tell you the number of animals harvested,
15 I agree. What I said was, when you get into
16 different shades of that purple, visually I can't
17 tell the range in colours. I am assuming that the
18 lightest colour is one person, but I can't say for
19 sure. Because if it's -- the base is two, the
20 base is two, and it builds from there. So I think
21 it's unfair to say that these maps, you don't know
22 what they say. They are telling -- these maps are
23 demonstrating where that small sample of
24 harvesters that I interviewed identified where
25 they are engaging in traditional use for these

1 different activities and different species.

2 MR. REGEHR: But you're just making an
3 assumption that the lighter polygons represent one
4 person and the darker ones represent multiple
5 people?

6 MS. LARCOMBE: The assumption that the
7 darker it gets -- I understand the computer
8 mapping procedure well enough to know that when
9 you lay one tint on top of another, it gets
10 darker.

11 MR. REGEHR: But you came here today
12 to present these maps as evidence.

13 MS. LARCOMBE: I have presented them
14 as evidence. I have presented them as evidence of
15 where the sample of Metis harvesters I interviewed
16 identified where they go on the land for purposes
17 of traditional use.

18 MR. REGEHR: Let's move onto slide 23,
19 which is the food fishing harvest areas.

20 Now, it appears to me that if I looked
21 at the regional study area, I'm not even sure
22 there would be any food fishing. Now, I know you
23 talked about Stephens Lake -- but perhaps it's the
24 powerpoint that was provided to me and my own bad
25 eyesight, I can't see a polygon in Stephens Lake.

1 If there is one, could you point it out? I think
2 there's a laser.

3 MS. LARCOMBE: It's just to the right
4 of the red letter in Keeyask, I believe.

5 MR. REGEHR: There should be a laser
6 pointer up there.

7 MS. LARCOMBE: Now you're really going
8 to test me. I believe it's this little dot here.

9 MR. REGEHR: So that little dot is the
10 polygon?

11 MS. LARCOMBE: I believe so, yes.

12 MR. REGEHR: Okay. Thank you.

13 But the vast majority of the
14 harvesting, again, it appears to be around and
15 south of Thompson, and then on the Nelson River
16 south of the Kelsey dam.

17 MS. LARCOMBE: On the Burntwood also
18 up toward Split Lake and Assean Lake.

19 MR. REGEHR: Okay.

20 And then I think your last map was
21 plant gathering, on slide 24?

22 MS. LARCOMBE: Correct.

23 MR. REGEHR: And so if we went with
24 the assumption that the various shades represent
25 the numbers of harvesters, it would appear that

1 there is one person engaged in plant gathering
2 along PR 280 up toward the Keeyask site, and I
3 guess it would be past the north access road; is
4 that correct?

5 MS. LARCOMBE: It suggests, and I am
6 assuming that the lightest pink does mean one in
7 this case, it might mean two. What this map tells
8 us is, based on the small sample size, there is at
9 least one individual that relies upon the access
10 route as a means of engaging in plant gathering
11 activities.

12 MR. REGEHR: And at slide 25, you
13 indicate that 15 of the interviewees engage in
14 trapping in the red oval study area?

15 MS. LARCOMBE: That's correct.

16 MR. REGEHR: Obviously, you had not
17 included -- you said earlier you wouldn't be
18 including that on a map?

19 MS. LARCOMBE: No.

20 MR. REGEHR: So you probably don't
21 want to tell me what traplines they are in?

22 MS. LARCOMBE: No, I do not.

23 MR. REGEHR: Okay.

24 MS. LARCOMBE: For confidentiality
25 reasons.

1 MR. REGEHR: And those trappers, they
2 would hold trapping licences issued by the
3 province, correct, because it's commercial
4 trapping?

5 MS. LARCOMBE: Either a helper's
6 licence, or the registered trapper's licence, or a
7 family member.

8 MR. REGEHR: I do note in slide 2 of
9 your presentation, you emphasize -- the emphasis
10 is on traditional purposes, correct, resource
11 activities for traditional purposes?

12 MS. LARCOMBE: Yes, I said with the
13 exception of trapping.

14 MR. REGEHR: But in the guidelines
15 that you have quoted on page 2, it says:

16 "Current and proposed uses of land and
17 resources by each Aboriginal group for
18 traditional purposes, i.e. hunting,
19 fishing, trapping, cultural and other
20 traditional uses of the land."

21 That's what it says, right?

22 MS. LARCOMBE: That's what the
23 guidelines say.

24 MR. REGEHR: That's what the guideline
25 says.

1 So you would agree with me that
2 commercial trapping is not relevant or applicable
3 to the guidelines you have quoted here?

4 MS. LARCOMBE: No, I'm not saying
5 that.

6 MR. REGEHR: But you would agree that
7 trapping is primarily a commercial activity?

8 MS. LARCOMBE: No, I would not agree
9 with that. It's a cultural activity probably more
10 importantly, particularly in this economic time
11 with fur prices.

12 MR. REGEHR: Now, flipping to slide
13 26, we have the two different maps for two
14 different time periods.

15 Now, the information that you have on
16 there from the 1940s to the 1980s, is that data
17 that you obtained from your interviewees?

18 MS. LARCOMBE: Correct.

19 MR. REGEHR: So your interviews were
20 beyond the 1990 to 2013 period?

21 MS. LARCOMBE: They go as early as the
22 interviewees' experience.

23 MR. REGEHR: All of the maps you have
24 provided so far were from the 1990 to 2013 period?

25 MS. LARCOMBE: Yes.

1 MR. REGEHR: Can you explain your
2 rationale for now why you include data from 1940
3 to 1980?

4 MS. LARCOMBE: I included these
5 comparing maps to illustrate that the locations
6 primarily have been the same since the earlier
7 period as they are in the late period, in terms of
8 the sample of harvesters, where they had engaged
9 on the land.

10 They look different because many of
11 the people I interviewed hadn't come onto this
12 planet in some of the decades that the older
13 harvesters were actually active on the land.

14 MR. REGEHR: So is some of this
15 information based on oral history?

16 MS. LARCOMBE: No.

17 MR. REGEHR: On slide 27, you stated
18 that there is no Metis use within the project
19 footprint?

20 MS. LARCOMBE: I did.

21 MR. REGEHR: That would be the local
22 study area as defined by the EIS?

23 MS. LARCOMBE: Being the footprint of
24 the generating station and the proposed reservoir.

25 MR. REGEHR: So would you agree that

1 your finding is consistent with the evidence filed
2 in the EIS, in particular volume 2, resource use
3 section 1.2.2.1 at page 17, which says that, apart
4 from the KCN:

5 "Use of the local study area by other
6 Aboriginal groups has not been
7 identified through the PIP or through
8 direct consultations with Aboriginal
9 groups and communities."

10 Your finding would be consistent with that
11 finding, wouldn't it?

12 MS. LARCOMBE: My preliminary findings
13 based on the sample.

14 MR. REGEHR: You then say that there
15 is Metis use within the offsetting program areas?

16 MS. LARCOMBE: I did.

17 MR. REGEHR: And which offsetting
18 programs under which adverse effects agreement are
19 you referring to?

20 MS. LARCOMBE: It would be in the
21 Tataskweyak resource management area, there's
22 traditional use in that area. And I'm looking for
23 a map. It would look like to me that there's some
24 in what's called the War Lake traditional area.
25 And also I understand Split and York Factory share

1 a resource management area. Those are the ones
2 primarily.

3 MR. REGEHR: Do you mean Tataskweyak
4 instead of York Factory?

5 MS. LARCOMBE: It's my understanding
6 that under the Northern Flood Agreement, that York
7 Factory has a resource management area that's
8 closer to Hudson Bay, but that they share
9 traditional activities within the Tataskweyak
10 resource management area because of the
11 relocation.

12 MR. REGEHR: The impacts from the
13 offsetting program, how many of the 35 harvesters
14 are going to be impacted? Did you collect that
15 data?

16 MS. LARCOMBE: Impacted?

17 MR. REGEHR: Yes. You stated that
18 they will be impacted by the offsetting programs.
19 So how many of the 35 would be impacted?

20 MS. LARCOMBE: Well, I said that there
21 were potential impacts. I haven't counted.

22 I did my presentation based on our
23 study area, not the Partnership's study area. So
24 I haven't analysed the data from the perspective
25 that you would obviously have liked me to analyze

1 it for.

2 MR. REGEHR: Now, let's move onto
3 slide 28, and I promise you we are almost done.

4 And here you list constraints and
5 disturbances in the study area. And that, of
6 course, is the red oval study area, not the EIS
7 study areas, correct?

8 MS. LARCOMBE: Yes.

9 MR. REGEHR: You note a lack of
10 government recognition.

11 You do understand that the Partnership
12 doesn't control negotiations between the
13 government and the MMF, correct?

14 MS. LARCOMBE: I'm not qualified to
15 answer, but I would doubt it.

16 MR. REGEHR: You reference reserve
17 land?

18 MS. LARCOMBE: I do.

19 MR. REGEHR: You understand that the
20 Partnership has no control over reserve lands,
21 correct?

22 MS. LARCOMBE: I would doubt it would.

23 MR. REGEHR: You reference the various
24 KCN resource management areas. Are you suggesting
25 that those resource management areas were created

1 to somehow deny use by Aboriginal rights holders?

2 MS. LARCOMBE: No, I have never
3 implied that.

4 MR. REGEHR: You then also mentioned
5 Bipole III, Keeyask and Conawapa. However, with
6 the exception of some of the Keeyask
7 infrastructure, none of those projects have been
8 built, correct?

9 MS. LARCOMBE: Which ones?

10 MR. REGEHR: Bipole III, Keeyask and
11 Conawapa, I can specify Keeyask Generating
12 Station, they haven't been built, have they?

13 MS. LARCOMBE: The generating station
14 has not been built.

15 MR. REGEHR: Conawapa hasn't been
16 built, has it?

17 MS. LARCOMBE: I doubt it, no.

18 MR. REGEHR: Has Bipole III been
19 built?

20 MS. LARCOMBE: I don't know if they
21 have started it yet.

22 MR. REGEHR: So if they are not built,
23 they can't be said to be having a disturbance,
24 correct?

25 MS. LARCOMBE: I said they are

1 planned, planned developments.

2 MR. REGEHR: Now, we will go over to
3 page 29.

4 MS. LARCOMBE: Page or slide?

5 MR. REGEHR: Slide 29, I am sorry.

6 And this is where all the data from
7 the other maps have all been put onto one map, the
8 shading has been removed. Clearly, we get some
9 darker purple areas because that's where lines are
10 bisecting each other, correct?

11 MS. LARCOMBE: Correct.

12 MR. REGEHR: Now, if I'm reading
13 correctly, at the bottom of that map, or the title
14 of the map -- my one course in cartography from
15 many, many years ago is now coming back to me --
16 it says:

17 "Manitoba Metis Federation Keeyask
18 Generation Project Traditional Land
19 Use Values and Knowledge Study.
20 Traditional use: Hunting, fishing,
21 gathering, trapping."

22 You said earlier, trapping data had
23 been suppressed. Has it been included in this
24 map?

25 MS. LARCOMBE: It has because it

1 significantly camouflaged that I felt you can't
2 identify an individual trapline.

3 MR. REGEHR: As with the previous map,
4 this map fails to provide us any data in terms of
5 the number of harvesters each polygon, or the
6 times over the 23 years when their harvesting
7 activities took place, and it doesn't include any
8 reference to the local study area or regional
9 study area as defined in the EIS. Is that
10 correct?

11 MS. LARCOMBE: Can you break that
12 question down, please?

13 MR. REGEHR: This map doesn't give me
14 any data, it doesn't give me any description in
15 terms of the number of harvesters in each polygon?

16 MS. LARCOMBE: This map does not do
17 that. There's no numbers on it.

18 MR. REGEHR: It doesn't tell me when,
19 over the 23 years of the study, people were
20 engaged in those harvesting activities.

21 MS. LARCOMBE: It tells you they have
22 been involved there in that time frame, 1990 to
23 2013.

24 MR. REGEHR: And it doesn't include
25 any reference to either the local study area or

1 regional study area as defined by the EIS,
2 correct?

3 MS. LARCOMBE: That is correct.

4 MR. REGEHR: Thank you, Mr. Chair, I
5 have no more questions. I'm not sure, I don't
6 believe Mr. Bedford does.

7 We have no more questions.

8 THE CHAIRMAN: Thank you. It's now
9 just after 12:25. We'll take a break and come
10 back at 1:30.

11 MR. MADDEN: Can I suggest I have no
12 questions. If there -- I don't know if any of the
13 participants.

14 THE CHAIRMAN: Okay. Fair enough. We
15 can canvass and see, do any of the participants
16 have any questions of this witness? Do you have
17 very many?

18 MS. CRAFT: Fifteen minutes.

19 THE CHAIRMAN: Okay, then we'll come
20 back at 1:30.

21 (Proceedings recessed at 12:26 p.m.
22 and reconvened at 1:30 p.m.)

23 THE CHAIRMAN: Everybody here? Okay,
24 we will reconvene with participant
25 cross-examination.

1 Ms. Craft?

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

3 Good afternoon, Ms. Larcombe, my name
4 is Aimee Craft, I'm counsel for the Consumers
5 Association of Canada, and I have a few questions
6 for you on behalf of my client.

7 I'm going to refer to two of your
8 slides, number 10 and number 11, if you want to
9 have those ready.

10 And my first question relates to the
11 first bullet in which you indicate that a small
12 sample of 30 harvesters active in the Keeyask
13 study area were interviewed. And can you define
14 for me what active in the Keeyask study area
15 means?

16 MS. LARCOMBE: Active meaning if we
17 were going to expend time and money, we wanted to
18 interview people who we had some sense would
19 actually be engaged in traditional use activity
20 within our study area, as opposed to blindly
21 interviewing people. In fact, one of the
22 interviews didn't have any use in the study area.

23 MS. CRAFT: And what would be an
24 indicator of active?

25 MS. LARCOMBE: Active being in their

1 lifetime, and in more recent decades involved in
2 one of the traditional use activities, whether it
3 is the harvesting of plants, animals, fish,
4 trapping activity, engaged in camping on the land,
5 cabins on the land, just expressing culture on the
6 land.

7 MS. CRAFT: And in the context of your
8 study, would a single use of land within the
9 Keeyask study area have been enough to consider a
10 participant as active in the Keeyask study area?

11 MS. LARCOMBE: Well, during an
12 interview you get what you get. You don't know
13 what you are going to get for sure until you are
14 through the interview. But if an individual has
15 one activity in one location, and they have been
16 doing it for a period of time, it falls under the
17 purview of traditional use of lands and resources.

18 MS. CRAFT: Okay. Can I ask why you
19 used the parameter of active in the Keeyask study
20 area rather than residents?

21 MS. LARCOMBE: Because what -- before
22 I -- when we were designing the screening survey
23 in 2010, I understood that Metis are very mobile
24 in terms of where they engage in traditional use,
25 and it is not necessarily in the vicinity of where

1 they live. In fact, the TLUKS study for the
2 Bipole III work was remarkable in terms of the
3 distances that Manitoba Metis will go to engage in
4 traditional use.

5 MS. CRAFT: Thank you.

6 You indicated earlier to counsel for
7 the York Factory First Nation that you did not
8 base your study on oral histories; is that
9 correct?

10 MS. LARCOMBE: I qualified that the
11 oral history information, if shared with us, would
12 only pertain to sites of cultural importance but
13 it did not apply to harvesting activity.

14 MS. CRAFT: Were any of the
15 interviewees prohibited from sharing oral history
16 information during the course of the interviews?

17 MS. LARCOMBE: No, they were not.

18 MS. CRAFT: Also in relation to this
19 slide, you mentioned yesterday that you excluded
20 commercial fishing from the study. Can you
21 explain to us why commercial fishing was excluded?

22 MS. LARCOMBE: I'm not suggesting that
23 commercial fishing is not a traditional use. It
24 is a -- while trapping is a licensed activity, it
25 is also a cultural activity. And I'm not going to

1 say that commercial fishing isn't a cultural
2 activity. But traditional use of lands and
3 resources has typically in Canada, at least in the
4 last several decades, has not looked at the
5 commercial aspect of the exercise of rights and
6 traditional use.

7 MS. CRAFT: Okay. Would you say that
8 the Metis that you interviewed drew a clear
9 distinction between commercial and personal
10 fishing?

11 MS. LARCOMBE: Yes. In some
12 circumstances an interviewee, particularly when
13 asking what species of fish they were harvesting
14 for food purposes, would talk about, if they were
15 a commercial fisher then they would keep the
16 higher dollar valued fish to sell under their
17 commercial licence and utilize fish that didn't
18 draw as good a price for food fishing. Regardless
19 of whether that was their food preference, that's
20 what they would do because it was how they were
21 making a living.

22 It is not uncommon for a family that's
23 out involved in commercial fishing to throw some
24 fish in the boat for dinner. They wouldn't go out
25 on a separate trip to get the fish, they are often

1 done in tandem.

2 MS. CRAFT: So would it be fair to say
3 that the map that we saw in relation to fishing
4 could actually potentially be inclusive of
5 additional areas, if you consider the personal use
6 blended with commercial use?

7 MS. LARCOMBE: There would be areas,
8 there could be areas on the map that weren't
9 identified where there was commercial fishing. If
10 an interviewee during an interview starts to talk
11 about commercial fishing, I will ask them, do they
12 also acquire food fish from the same location at
13 the same time? And I will document the food
14 fishing aspect of it and not the commercial.

15 So in the Keeyask interviews, if
16 somebody identified a place that they commercially
17 fished, but didn't indicate that they food fished,
18 it wasn't documented.

19 MS. CRAFT: Ms. Larcombe, did the
20 interviewees express concerns about the impacts
21 and effects of Keeyask and their traditional use
22 during the course of your study?

23 And we can certainly break this down
24 into different areas, if you want. We can talk
25 about fishing separately from moose hunting, from

1 caribou hunting.

2 MS. LARCOMBE: First off, the TLUKS
3 interview was geared at baseline collection, it is
4 not an impact assessment interview. I try to
5 speak as little as I can about a project before I
6 do the interviews, so then I'm not potentially
7 introducing bias so that they say, well, maybe I
8 should identify use near here, maybe that's what
9 they want of me, and that happens. It is a
10 dynamic that goes on between interviewer and
11 interviewee.

12 If there was time before the next
13 interview, I would ask them if they had any
14 concerns, or if they said, well, where is it, I
15 tried to answer any questions they had. But the
16 purpose of the interview is not an effects
17 assessment.

18 Generally, some of the comments I made
19 during my presentation were, you know, some
20 interviewees express that they don't like to
21 harvest fish for food out of the Burntwood River.
22 Sometimes they mentioned mercury, sometimes the
23 word dirty was used. There was an awareness of
24 mercury in fish in Stephens Lake. There were
25 concerns about mercury in Sipiwesk Lake. And that

1 was the extent of it.

2 MS. CRAFT: I appreciate that you
3 weren't asked to do an impact study in relation to
4 Keeyask, but I'm wondering if any of the
5 participants would have raised that independently
6 of you asking any questions?

7 MS. LARCOMBE: You are asking me to
8 guess?

9 MS. CRAFT: I'm asking, based on your
10 interviews, did that come up independently of you
11 soliciting it through questions?

12 MS. LARCOMBE: I don't recall. There
13 was not, there wasn't a good awareness of the
14 Keeyask project among the pool of people that I
15 interviewed. Among quite a number of them there
16 was a pretty good understanding of past Hydro
17 projects in areas that they were engaged in
18 traditional use.

19 MS. CRAFT: And did they express any
20 concerns regarding impacts or effects relating to
21 those?

22 MS. LARCOMBE: To past projects?

23 MS. CRAFT: Yes?

24 MS. LARCOMBE: Yes.

25 MS. CRAFT: Thank you. Those are my

1 questions.

2 THE CHAIRMAN: Thank you, Ms. Craft.

3 Ms. Pawlowska-Mainville, I understand
4 that you have a question or two? Oh, it has
5 grown.

6 MS. PAWLOWSKA: Thank you kindly for
7 allowing us to ask these questions.

8 Thank you, Ms. Larcombe, for your
9 presentation. I'm speaking on behalf of the
10 concerned Fox Lake Grassroots Citizens.

11 Your CV shows, and also you have
12 testified in your presentation today that you do
13 traditional knowledge and -- knowledge studies
14 with First Nations and other Aboriginal groups, is
15 that correct?

16 MS. LARCOMBE: Yes, that's correct.

17 MS. PAWLOWSKA: Thank you.

18 And do you have confidentiality signed
19 with individuals that you interviewed for each of
20 the studies?

21 MS. LARCOMBE: Yes, it is standard
22 practice.

23 MS. PAWLOWSKA: Thank you.

24 And is the confidentiality agreement
25 that you referred to in your cross-examination

1 today a standard confidentiality agreement that
2 you use for other traditional knowledge and land
3 use studies?

4 MS. LARCOMBE: I have a standard
5 template that I ask my clients, but often my
6 clients have their own version of it, and if I'm
7 agreeable, I will sign their version of it.

8 MS. PAWLOWSKA: Thank you.

9 And my final question is, the
10 confidentiality agreement that you use is based on
11 what you consider to be the best practices in your
12 field?

13 MS. LARCOMBE: Yes, it is.

14 MS. PAWLOWSKA: Thank you.

15 These are all of the questions that I
16 had.

17 THE CHAIRMAN: Thank you,
18 Ms. Mainville Pawlowska. I don't believe there
19 are any other participants who wish to
20 cross-examine this witness. Thank you.

21 Any panel members?

22 MR. NEPINAK: I just want a
23 clarification on slide 28, and it is not something
24 that you have on the slide, but you had said
25 that -- you mentioned the term asserted rights?

1 MS. LARCOMBE: Yes, I did.

2 MR. NEPINAK: What did you mean by
3 asserted, in what context of asserted did you
4 mean?

5 MS. LARCOMBE: You know, I'm not a
6 lawyer. My understanding of asserted rights is
7 that the Constitution of Canada says that it
8 recognizes the existing rights of Aboriginal
9 peoples, but they are not defined in the
10 constitution. In some respects they are defined
11 in treaties, but sometimes they are defined
12 through jurisprudence of Aboriginal law.

13 I used the term asserted because my
14 understanding is that the Manitoba Metis claim to
15 have Aboriginal rights throughout Manitoba and
16 beyond, but until they are recognized legally,
17 they remain in the domain of being asserted as
18 opposed to recognized.

19 MR. NEPINAK: And that's through the
20 courts?

21 MS. LARCOMBE: Well, the 2012 Manitoba
22 and MMF agreement was a negotiated document, as
23 far as I know. But, yes, often rights are defined
24 through the courts.

25 MR. NEPINAK: All right. Thank you

1 very much.

2 THE CHAIRMAN: Thank you. I don't
3 have any questions.

4 Mr. Madden, any re-direct?

5 Thank you very much, Ms. Larcombe, you
6 have been a trooper this morning and early
7 afternoon. Thank you for your participation and
8 your presentation.

9 MS. LARCOMBE: Thank you. It has been
10 an honour.

11 THE CHAIRMAN: We won't take a break,
12 but we will be switching panels, and the fine
13 folks of Pimicikamak will be pleased to know that
14 we are finally ready to have your presentation, or
15 the first of your presentations. Okay.

16 Perfect timing. Do you want to
17 introduce the process, Ms. Kearns?

18 MS. KEARNS: Yes. To clarify any
19 confusion for the others in the room, we had
20 originally proposed that Dr. Annette Luttermann
21 would be speaking with this panel. Dr. Luttermann
22 was snowed in, in southern Alberta, so she didn't
23 get out. So she will speak tomorrow. So this
24 panel will speak without her, and then she will
25 speak alone tomorrow.

1 So I would ask each of the witnesses
2 to introduce themselves, and then you will be
3 sworn for the record.

4 MS. ROBINSON: Hi, good afternoon, I'm
5 Vice Chief Shirley Robinson.

6 MR. MUSWAGGON: Good afternoon, Tansi.
7 My name is David Muswaggon, I'm a member of the
8 executive council with Pimicikamak Okimawin.

9 MR. SETTEE: Good afternoon, my name
10 is Darrell Settee from Pimicikamak.

11 MR. PAUPANEKIS: Good afternoon, I am
12 Darwin Paupanekis. I'm the secretary to the
13 councils of Pimicikamak Okimawin.

14 Shirley Robinson: Sworn

15 David Muswaggon: Sworn.

16 Darrell Settee: Affirmed.

17 Darwin Paupanakis: Sworn.

18 MS. KEARNS: Okay, Vice Chief
19 Robinson.

20 MS. ROBINSON: Okay. Good afternoon
21 everybody. I'm here on behalf of Chief Cathy
22 Merrick, because she was injured and is unable to
23 be present today. And I will read a statement on
24 behalf of Chief Merrick from Pimicikamak Okimawin.

25 About 50 years ago Pimicikamak had to

1 deal with a massive Hydro project that was imposed
2 on our people, lands and waters. This massive
3 Hydro project was built without our consent or
4 even without any consultation. This was a
5 violation of Treaty 5 and a violation of our
6 inherent rights.

7 In 1977, after many years of the Hydro
8 project operating, we signed a Northern Flood
9 Agreement with Canada, Manitoba, and Manitoba
10 Hydro. The NFA is a Treaty between us and the
11 Crown parties. The NFA was to address all of the
12 violations of our rights by remedying, mitigating,
13 and compensating us for the harms caused by the
14 project.

15 While Hydro and the Crown parties
16 reaped all of the benefits of the Treaty, the NFA
17 Pimicikamak bear the burden of project impacts
18 alone. Our once healthy economy, society, and way
19 of life, which had depended on and were interwoven
20 with the environment became devastated by the
21 project. The environmental impacts that we have
22 endured and encountered were disruptions to the
23 ecosystems. There was flooding, massive erosion,
24 water pollution, destruction of our forests and
25 species habitats, rotting debris in the waters,

1 destruction of our fisheries and mercury
2 poisoning.

3 The social impacts that we face, and
4 still to this day, are mass poverty, high
5 unemployment, high suicides, one of the worst in
6 the world. A health crisis, injuries and
7 accidents from project hazards that includes
8 submerged trees, spiders, reefs and rocks, and the
9 loss of a way of life, and the ripple effect that
10 the health crisis has on the whole Manitoba Health
11 system.

12 Many of our young people do not go out
13 on the land and exercise their rights by fishing,
14 hunting, trapping, swimming, and living a way of
15 life, because it is not worth the risk of loss of
16 life and the fear of the environment provided by
17 the project.

18 Our land has gone from clean and
19 unusable before the project to poisoned and
20 rendered unusable today. This disruption to our
21 land has cumulative effects on the state of our
22 people and all of Manitobans. The benefit we get
23 when we exercise our rights has been denied.

24 Many of our people suffer from
25 post-traumatic stress disorder because of the

1 destruction we witness every day from the project,
2 both directly and indirectly on a daily basis.

3 As a woman who brings life into this
4 world, I honour my sacred responsibility to the
5 life and Mother Earth. All women are concerned
6 about how water is poisoned by the project. We
7 need a study to find out why many women do not
8 carry their children to term, and many that do are
9 still born, and there are many more that have
10 birth defects and health defects unheard of prior
11 to the project.

12 The existing massive project is
13 killing our lifeline, our waters, which is the
14 lifeblood of Mother Earth. When you flood lands,
15 the plants and trees are poisoned, and so are all
16 other living creatures which we rely on for
17 sustenance.

18 It should not be this horrifying in
19 this day and age. The NFA requires Crown parties,
20 including Hydro, mitigating the impacts and
21 remediating and preventing harm. But the Crown
22 parties have failed to do this. They have
23 violated their legal obligations and violated our
24 inherent and human rights.

25 We are greatly concerned about the

1 impacts of new development on the critically
2 fragile environment and any further impacts on our
3 rights may not be mitigated and will definitely
4 not be compensated.

5 Pimicikamak has the following rights
6 in relation to Keeyask. We have Aboriginal rights
7 in our homeland. Our traditional territory
8 extends up to the Keeyask area and includes much
9 of the project in Northern Manitoba. We have
10 Treaty rights right across Manitoba, and extends
11 beyond its borders. We have NFA rights across the
12 entire area affected by the project. We have
13 self-determination rights under international law
14 and Canadian law. We have, we also have rights
15 and responsibilities to protect the land and
16 waters under our Pimicikamak traditional law.

17 Pimicikamak's position is that Keeyask
18 should not go ahead until a broad watershed
19 cumulative effects assessment has been done, and a
20 land use and occupancy study and impact study
21 completed. Only after these studies are done can
22 Pimicikamak and the CEC panel, the Minister, and
23 all Manitobans understand the true impacts of
24 Keeyask. And only after these studies are done
25 can Manitoba Hydro begin to consult with all

1 Manitobans, including indigenous peoples, about
2 the impacts of Keeyask.

3 You will hear more about the need of
4 these studies from Pimicikamak's other witnesses.
5 This is the message from our Chief Catherine
6 Merrick from Pimicikamak Okimawin.

7 Thank you very much.

8 MS. KEARNS: Thank you, Vice Chief.
9 Councillor Muswaggon?

10 MR. MUSWAGGON: (Speaking Cree.)

11 I'm here to share with you our
12 understanding and view of this process. Our
13 commentary is not limited to this. Our views are
14 holistic, based on our history, our laws, and our
15 system of government.

16 Pimicikamak is not new, as you can see
17 on the map, on the screen. It was always there,
18 except it functioned orally. Pimicikamak is a
19 particular place with a particular tribe that
20 formed part of a much larger Cree confederacy.
21 Pimicikamak is a sovereign indigenous nation
22 located in what we call now Northern Manitoba.
23 Pimicikamak territory has vast tracks of land that
24 extends throughout what is now known as Manitoba.
25 This is a known fact.

1 We respect the system of governments
2 established by Canada, and I'm not here to debate
3 the system of whether this process is right or
4 wrong. That is your system of law.

5 However, I am here to tell you
6 existing Hydro systems affect our lands and our
7 people. By virtue of its sovereign authority and
8 the right to govern its lands and its people,
9 Pimicikamak was entertained with a peace and
10 friendship Treaty in 1875 by Treaty commissioners
11 representing the British Crown. In trust and
12 respect and honour, the Pimicikamak tribe, the
13 people accepted the 1875 Treaty with the Crown,
14 which is known as Treaty 5. Pimicikamak
15 understood this Treaty to be one of friendship and
16 peace where the lands would be shared with the
17 Crown and its people coming into our island, what
18 we call North America today.

19 History has shown Treaty 5 was not
20 honoured in its spirit and intent. Many steps
21 have been taken to deny Pimicikamak its fair share
22 of wealth generated off its lands.

23 In the mid 1990s, Pimicikamak, with
24 the encouragement, wisdom and guidance from their
25 elders, took another step to reassert its inherent

1 sovereignty and self-determination. Pimicikamak
2 adopted a policy of adaptation to meet the needs
3 of various challenges it faces. Pimicikamak,
4 which is a people driven government, contrary to
5 the system of government established by Canada,
6 passed its own national written laws and national
7 policies. And today Pimicikamak is governed by
8 the four councils, the three traditional councils
9 which is comprised of elders, women, and our
10 youth, and the executive council of the
11 government.

12 Pimicikamak is not a band or a First
13 Nation, which is something created entirely by and
14 imposed on indigenous people by the Federal
15 Government through the Indian Act, which is a
16 Federal law.

17 Pimicikamak is a party to the British
18 Treaty known as Treaties 1 to 11, and the Northern
19 Flood Agreement Treaty.

20 Treaty 5, I want to speak to you in
21 summary. Pimicikamak granted rights to the Crown
22 and the settlers by virtue of treaty to use our
23 lands. In the Treaty 5 relationship, the Crown
24 and its agents, meaning Canada, Manitoba, and
25 Hydro today, have responsibilities to that

1 relationship. These responsibilities include, but
2 are not limited to, true stewardship to the lands
3 belonging to Pimicikamak, whom agreed to share it.
4 Pimicikamak people are waiting in good faith with
5 the Crown to implement their promises in good
6 faith. Pimicikamak people should not have to come
7 to you to remind you of the treaty obligations.
8 It is offensive and disrespectful for the Crown
9 and its agents not to honour the sacred covenants
10 of the treaty promises made.

11 Pimicikamak ancestors were mindful of
12 their nation's future for the unborn. They gave
13 your ancestors permission to live with us on our
14 lands. This was based on respect, trust and
15 honour when the British Treaty was concluded. The
16 adherence to this Treaty, the Northern Flood
17 Agreement Treaty, has not changed to date. It
18 added more responsibilities.

19 We are here because we believe in the
20 integrity of this process here. We are relying on
21 you to do the right thing to bring justice to this
22 process. The laws and regulations established by
23 Canada cannot be conveniently used.

24 MS. KEARNS: Councillor Muswaggon, I'm
25 going to interrupt briefly to ask you a question.

1 When you say the integrity of the process, can you
2 explain what you mean by integrity?

3 MR. MUSWAGGON: My Pimicikamak
4 integrity, our interpretation from our
5 perspective, (Cree spoken) our language is (Cree
6 spoken) the truth, (Cree spoken.)

7 All people concerned about Hydro's
8 adverse effects on the lands and the people living
9 in those lands need to be exposed, the truth needs
10 to be told, the truth needs to be seen. Then you
11 will understand our view of what integrity is.
12 (Cree spoken.)

13 Case in point, evidence shows existing
14 dams have done so much harm to our lands and to
15 our people who live there, meaning this map that
16 we look at. And the community of Cross Lake is
17 not alone. Additional dams will add to this
18 problem. We have extensive evidence presented in
19 the past and in this process.

20 Pimicikamak's survival is at stake.
21 Its own critical infrastructure that has sustained
22 it for thousands of years is being washed away.
23 Its traditional economies have been washed away.
24 Its history is being washed away. Erosion is out
25 of control, even as we speak today. Our ancestors

1 remains are constantly exposed from fluctuating
2 water levels. Some have been reburied with some
3 remediation measures. But more needs to be done
4 to control the damage that has been done and
5 continues to date, as we speak.

6 (Cree spoken.)

7 Yesterday, while I was at this
8 hearing, I received a call from one of my people,
9 an elderly woman. Her husband and her live on
10 social assistance. I want to share this story
11 with you. They do not work. To make ends meet,
12 they fish domestically to feed their family. They
13 are so poor they can't even afford a snow machine.
14 They pull a big sleigh to go check their net out
15 in the lake. Since freeze-up they had their net
16 out to get whatever fish they can to consume, sell
17 a little bit to survive. While they are going to
18 check their net with no snowmobile, they had to
19 pull their sled with all of their gear to check
20 this thing. Recently Manitoba Hydro has been
21 releasing so much water, causing so much slush to
22 accumulate above the surface. It is hidden under
23 the snow, the blanket of snow. With all of that
24 weight, it weakens the ice. While out checking
25 their net, the elderly woman's husband fell

1 through the ice, and they were there almost every
2 day checking his net. She told me her husband
3 almost drowned. She was able to save him. This
4 has traumatized the family.

5 So you can hear, this is one of the
6 adverse effects facing my people. Hydro continues
7 to manufacture risk on our lands and waters. This
8 is the truth.

9 Other land users have experienced
10 similar incidents. Some have died. Some have
11 been critically injured, scarring them for life.
12 Some have gone silent, losing faith and trust in
13 the system which promised many good things.

14 To some people who ever go home with a
15 conscience, when they go to bed at night, those
16 poor people that suffer out there, the misery,
17 they have to bear that burden, the anger that
18 builds up inside of them because of broken
19 promises.

20 Pimicikamak has seen many of our
21 people being used in this system, your system, not
22 ours. We have seen some of our (Cree spoken)
23 meaning the old people used to open up these
24 meetings by conducting prayers, use of sacred
25 pipes and sweetgrass. These objects and

1 undertakings are sacred and significant to us.
2 They have been with us for thousands of years.
3 They represent the truth.

4 We would expect the truth will
5 outweigh the plans of creating more problems for
6 our lands and the people who live in there. We
7 hope that decisions to be made will favour the
8 truth and based on honest moral values of decision
9 makers.

10 We all have responsibilities to look
11 after the land and it will look after us.

12 The Northern Flood Agreement, I want
13 to talk about a little bit. I understand the CEC
14 panel heard about the Northern Flood Agreement
15 from Partner First Nations. Unlike Tataskweyak
16 and York Factory, we do not have alternative
17 agreements like the other four First Nations do
18 that gives away their NFA Treaty.

19 Pimicikamak still honours those elders
20 who made the decisions to agree to Treaty 5 on
21 NFA. In 1977, it was the elders of the five
22 communities who negotiated and agreed to the terms
23 of the Northern Flood Agreement. This agreements
24 were settled then. It was not the chief and
25 councils who negotiated the treaties, it was the

1 wisdom of the elders that established those
2 relationships. Leaderships at the time were
3 instructed by the elders back then to sign the NFA
4 in its spirit and intent.

5 Pimicikamak still awaits honourable
6 implementation of the 1977 agreement. This is our
7 view, our laws, our understanding.

8 And I want to refer to you on the
9 screen here about the NFA article 25, which is
10 very clear.

11 MS. KEARNS: Council Muswaggon, I
12 think there should be a remote on the table there,
13 so you could move ahead to that slide.

14 MR. MUSWAGGON: The literature to
15 article 25 is very clear. As we read it, it
16 says --

17 MS. KEARNS: I think you went one too
18 far.

19 MR. MUSWAGGON: This agreement with
20 the exception of the provisions of
21 article 24 shall remain in force and
22 be binding upon the parties hereto for
23 the lifetime of the project, including
24 any substantially similar
25 redevelopment thereof. It is

1 understood and agreed that this
2 provision shall remain in force and be
3 binding upon the successor to any
4 party hereto and upon the heirs,
5 executors and successors of any
6 claimant."

7 We never gave this up. That's our
8 understanding, for the lifetime of the project, as
9 long the turbines keep spinning, generating
10 revenue for Hydro and the Crown, our benefits are
11 to continue. They can not be capped for a
12 one-time deal.

13 Pimicikamak is the only nation that
14 still retains its full NFA rights. The
15 responsibility is in the hands of the Crown and
16 its agents to do the right thing.

17 The truth of the matter is this: Our
18 homeland has been turned upside down, the
19 environment has been destroyed, our traditional
20 economies have been destroyed, our social fabric
21 is no longer stable, our waters are no longer
22 healthy to consume, navigable waterways are no
23 longer safe, our animals and fish are no longer
24 healthy, our traditional food chain is affected
25 and it affects our physical and mental health.

1 This dampens our spirit to hopelessness.

2 We are lead to believe that the 1977
3 Northern Flood Agreement Implementation would
4 replace our traditional economies and develop a
5 new way to sustain our survival.

6 Pimicikamak understands that the NFA
7 is the wishes of the people. Implementation calls
8 for professional planning based on fact based
9 needs to support the rationale of the
10 implementation processes resulting from the
11 adverse effects from the project.

12 Our people are sick and dying because
13 our Mother Earth is sick and cannot continue to
14 sustain us.

15 We all have a responsibility to make
16 conscious decisions. We have to see, we have to
17 feel, and we have to walk in the shoes of the
18 oppressed in order to understand (Cree spoken).

19 We have heard many different versions
20 of what the Northern Flood Agreement is and is
21 not. What we are certain of is that the Northern
22 Flood Agreement is a Treaty. I understand that
23 this fact was already put into evidence by Victor
24 Spence for the Partnership earlier in the
25 hearings.

1 Our people do not want to be spoonfed
2 with continued dependency of handouts. We were
3 always a very independent and thriving nation. We
4 have seen many approaches by others how to
5 implement the NFA. Historically, our people have
6 been very good, reliable workers, good responsible
7 men who looked after the welfare of their
8 families, the love of their lands and traditional
9 economies sustained them. Our women were good
10 responsible caregivers and keepers of life. They
11 also cherish the sacred relationship that they had
12 with the lands and waters that enabled them to
13 raise their children in a healthy way, with
14 healthy lands and healthy foods.

15 The wisdom of our elders were aware
16 that the project would impact us. They were not
17 sure in what way and how much.

18 After so many decades we have seen the
19 results of the devastation. The NFA is clear of
20 the responsibilities of what needs to be done to
21 address the adverse effects. Our understanding is
22 that the adverse effects would be mitigated first,
23 to be followed by remediation, and lastly
24 compensation.

25 This is the standard for implementing

1 the NFA. Somehow this has gone backwards, it has
2 reversed. We have heard of the many alternative
3 agreements that have been signed, but the reality
4 is, we are no better off today. (Cree spoken).

5 Benefit sharing; Pimicikamak is an
6 inherent and treaty rights holder. Sharing in the
7 wealth of natural resource development should be
8 done in a transparent, accountable, visible, fair
9 and equitable way. The wealth generated from the
10 project includes existing hydro dams, and will
11 include future for both dams like Keeyask.

12 History shows that the project has and
13 will continue to adversely affect Pimicikamak.
14 The impacts will continue to accumulate.
15 Pimicikamak suffers the costs and burdens of this.
16 Mitigation measures need to be implemented in a
17 professional, planned way to address the
18 environmental harms and to the people who live
19 there.

20 Let's start cleaning up the mess in a
21 serious way. The environmental and economic
22 benefits will start flowing for Pimicikamak by
23 implementing meaningful and practical plans to
24 mitigate the problems created by Hydro. We need
25 to start implementing the NFA in its spirit and

1 intent. Pimicikamak has developed plans and they
2 are available and moving forward to address that.

3 This is how benefits should flow.
4 Reverse the cycle of poverty to prosperity. Get
5 my people working as promised. The list goes on
6 in the Northern Flood Agreement.

7 Why should the benefits of any new
8 dams be only shared, when we also have to consider
9 existing dams that continue to generate revenue
10 from the lands and waters of the people that live
11 there, the Pimicikamak tribe in their Pimicikamak
12 territory.

13 In our view, decisions have to made --
14 that have been made do not make sense. To make
15 sense of the decisions requires the truth.

16 We live right below the Jenpeg dam,
17 and we pay more than any other Manitoban, damage
18 to our lands and resources, damage to our way of
19 life, high cost of hydroelectricity.

20 And in conclusion, I want to say this
21 for every individual that's hear to think about.
22 Renewable energy should be clean and green. (Cree
23 spoken.)

24 Thank you for listening.

25 MS. KEARNS: Thank you, Councillor

1 Muswaggon. Mr. Paupanakis?

2 MR. PAUPANAKIS: Thank you.

3 Good afternoon Commission. My name is
4 Darwin Paupanakis. I'm the secretary to the four
5 councils for Pimicikamak Okimawin.

6 I have been secretary for Pimicikamak
7 for over five years. My work consists of being
8 the keeper of our laws, knowledge holder of our
9 traditional laws, and I coordinate the Nation's
10 business.

11 I am here to assist the Commission in
12 getting the facts surrounding the concerns of our
13 government regarding the proposed Keeyask
14 development.

15 Our government is structured so that
16 all the represented bodies are ensured all
17 decisions are made in a consensus format to
18 account for transparency and accountability. We
19 have four councils, an elders' council, a women's
20 council, a youth council, and the executive
21 council.

22 The executive council has the
23 legislative authority, so all proposed laws or
24 amendments are proposed by the executive. All
25 proposed material is put through the process of

1 having each council pass or reject the material in
2 part or in its entirety. After this goes, it goes
3 to the general assembly for ratification and
4 adoption.

5 Pimicikamak is a self-determined
6 Aboriginal peoples that has been in its homeland
7 forever. Pimicikamak is the holder of Aboriginal
8 and treaty rights under Canadian law and under
9 international law. Aboriginal rights are inherent
10 rights, they come from being here in our homeland
11 since the beginning of time.

12 A reference I want to make at this
13 point with this, is a dear friend of mine,
14 Mr. Atkins will know well, Mr. Gideon McKay always
15 introduced himself with this reference, (Cree
16 spoken), meaning he was put there by the Creator
17 on that land.

18 Here is a map of Pimicikamak's
19 traditional territory. Pimicikamak signed Treaty
20 5, in which we agreed to share the lands and
21 resources we had exclusive inherent right to with
22 the Crown. In doing so, we agreed to adopt your
23 laws and ways of respecting such laws. This did
24 not mean that we agreed to relinquish our rights
25 to not abide by the laws of our own, but rather we

1 agreed to live in harmony with your laws.

2 We have self-determination rights
3 under international law and Canadian law. By
4 international law I'm referring to the fact that
5 Canada has ratified the United Nations declaration
6 on the rights of indigenous peoples and the
7 international covenants on civil and political
8 rights, and economic and social and cultural
9 rights. Article one of the covenant states:

10 "All peoples have the right of
11 self-determination. By virtue of that
12 right, they freely determine their
13 political status and freely pursue
14 their economic, social and cultural
15 development."

16 Pimicikamak acknowledges the Crown had
17 needs to address its obligations to the Treaty
18 partner, therefore, instituted the Indian Act,
19 where it gives them the ability to deliver its
20 programs to the beneficiaries of the Treaty.

21 The band did not sign Treaty 5,
22 Pimicikamak did. In fact, the band did not exist
23 when the Treaties were signed. The band was
24 created by Federal legislation and it was imposed
25 on us by Canada after Treaty 5 was signed. The

1 band does not hold inherent rights to bargain away
2 our rights. Only Pimicikamak holds the inherent
3 Aboriginal rights and our treaty rights.

4 Since Pimicikamak is the rights
5 holder, it is Pimicikamak who must be consulted
6 and accommodated about any development, including
7 hydro development, that might affect our rights.
8 This is both under section 35 of Canada's
9 Constitution and under article 9 of the NFA, which
10 I will discuss in more detail later in my
11 presentation.

12 Our people have been and continue to
13 be adversely affected and impacted by the various
14 projects such as Kelsey, Kettle, Grand Rapids
15 Generating Station, et cetera. The most impact in
16 immediate vicinity of those impacts are generated
17 from the control structure of Jenpeg. The Jenpeg
18 control structure has turned the environment
19 upside down in Pimicikamak, and as such has done
20 irreversible environmental damage to the lands and
21 waters of the inhabitants who want to enjoy the
22 land and water, which they could do if Manitoba
23 had worked hard to mitigate the adverse effects of
24 the project.

25 Darrell Settee, to my left, will be

1 speaking later about the nature of these impacts
2 and relate what we have seen to the expected
3 impacts of Keeyask, both directly and
4 cumulatively, with the existing impacts.

5 We, as Pimicikamak citizens, are
6 stewards of the land and waters. We have a
7 mandate to protect our natural resources. We have
8 a spiritual mandate to protect all living things
9 in accordance with our spiritual law and
10 responsibilities. This law and our relationship
11 with the land that it governs is essential to who
12 we are as a people.

13 Darrell will start his presentation
14 now. But let me just warn you that the images and
15 graphics you are about to see will be very
16 disturbing to some and very -- could have impact
17 on your thoughts and your feelings about this
18 today.

19 Darrell?

20 (Video playing)

21 MS. KEARNS: This is the powerpoint
22 presentation.

23 While it is being loaded,
24 Mr. Paupanakis or Mr. Settee, can you explain who
25 produced the video we just saw?

1 MR. PAUPANAKIS: The video we just saw
2 was produced by multi-channel television in Cross
3 Lake, and the content of it was derived from the
4 student that was speaking at the end there. The
5 pictures were inserted to show what she was
6 talking about. So this video, the script of it
7 was developed through Jody Trout's thoughts and
8 through her -- one day writeup of one page that
9 was submitted to the CEC. So that's what the
10 video represents.

11 MS. KEARNS: Thank you. So over to
12 Mr. Settee for your presentation. Before you
13 start, I will ask that you introduce yourself and
14 explain a bit about who you are.

15 MR. SETTEE: Good afternoon, my name
16 is Darrell Settee.

17 MS. KEARNS: You can pull the mic
18 closer to you.

19 MR. SETTEE: I would like to tell you
20 about my background, I lived in Pimicikamak all of
21 my life and I have lived all through the project
22 years and pre-project years, and I've seen
23 changes.

24 MS. KEARNS: Mr. Settee, you are
25 soft-spoken, so you are going to have to speak a

1 little bit louder, so that way it is caught on the
2 transcript and the Commissioners can hear.

3 MR. SETTEE: I guess I have to get
4 used to this microphone.

5 I was saying my background in
6 Pimicikamak, I lived in Pimicikamak all of my
7 life, during the pre-project and post-project and
8 the impacts. And I would inform you that the
9 purpose of the presentation is to provide the
10 panel with a broader view of what we have lived
11 through, the negative impacts in our territory.
12 And so I'm going to proceed with the presentation.

13 So we can see the first one there, it
14 says the effects of Hydro impacts, Nelson River
15 and problems with mitigation measures. Okay.

16 The nature is infinitely complex and
17 very beautiful, nature is very, what could be
18 appreciated by everyone, and we like to leave it
19 intact the way it is, the way we find it. And
20 so --

21 MS. KEARNS: Sorry, Mr. Settee, I'm
22 going to interrupt you one more time and then you
23 can carry on.

24 The photos you are showing, are they
25 photos you took?

1 MR. SETTEE: I have taken most of the
2 photos, and some of them were presented to me by
3 the other people in Pimicikamak who -- and some
4 people had distributed disposable cameras, you
5 know, to cover a wide range -- I can only be in
6 one place at one time.

7 MS. KEARNS: Thank you.

8 MR. SETTEE: Nature is beautiful and
9 we can appreciate, you know, this waterfall is
10 about 15 kilometres east of Cross Lake, and it
11 does appear when the water levels are high enough
12 but disappears when the, you know, the water
13 levels drop.

14 Now, this slide shows you a couple of
15 people, namely Mr. Alexander McKay and his son,
16 that are preparing a net. And if I could -- there
17 is a fish tub there, and the water line was there.
18 And then fluctuation, it goes down. So I am down
19 right by the river taking this picture. And it
20 was taken in June 15th of '03. Mr. McKay is no
21 longer with us. He lost his life in this very
22 location.

23 This one shows the low water levels in
24 our community. You can see a lot of the reefs,
25 you know, and also you can see that's effluent

1 from the sewage treatment plant, which it is very
2 close to the fish plant that we have today,
3 including the water treatment plant.

4 This one shows on the Jenpeg forebay
5 formally was forest, and cleared for the purpose
6 of the project. And you can see the stumps in the
7 foreground and all of the roots that are going to
8 be entering the water at some point.

9 And I will just point out that the
10 water will advance all the way to the trees in the
11 background, and then eventually it will take some
12 of them out, and then will recede again.

13 MS. KEARNS: Mr. Settee, the panel
14 turns to look at your slide when you are using
15 your laser. So if you could just pause, I don't
16 think they saw what you were pointing out with
17 your laser pointer, so you have to give them a
18 second to turn around. There you go.

19 MR. SETTEE: As I was saying, the
20 trees, the water will advance to the tree line
21 that you see in the background, and then will
22 recede again when the water levels go down. So
23 stumps in there will enter the water at some
24 point.

25 This is a slide showing the grebe

1 nest. A grebe is a diving bird which doesn't
2 really walk too much, it spends most of its time
3 in water, but it builds a nest closer to shore.
4 So when the water levels rise, the nests will
5 collapse. And the next slide we will show you
6 what happens. The egg --

7 MS. KEARNS: We have lost the slide on
8 our screen. Can you go forward a couple more, see
9 if it is just that photo? There you go. Okay.
10 You can just skip over that one.

11 MR. SETTEE: We will just start from
12 this point. Okay.

13 During the spring the fish school into
14 the tributaries, you know, for spawning. And the
15 water will be a little bit high enough for them to
16 advance into the tributaries, but then the water
17 levels drop and they become stranded and, of
18 course, they die there. And they are lost also.

19 And we find a lot of muskrat that they
20 are frequently frozen in the ice because, you
21 know, the fluctuation forces up the ice and
22 causes, you know, swells, cracks, and crushes the
23 lodges.

24 Again, we also discovered the young
25 ones that drown. Muskrat also burrow into the

1 ground, like on the banks, and not only do they
2 thrive in the lodges offshore, but they do burrow
3 into the ground. And what happens is the ice, you
4 know, the shifting ice will crush the entrances
5 and the animals are trapped in there, also they
6 drown.

7 There is an example of one that we
8 found inside a lodge that was -- we think probably
9 drowned or got crushed by the ice.

10 This shows a beaver lodge that's high
11 and dry. In this case the beaver leaves the lodge
12 because there is no water, no protection. So now
13 they are subject to predation from animals like
14 wolves and otter, and all of the other, you know,
15 even the bear, coyote. And if they are young
16 ones, eagles swoop down and take the young ones if
17 they are exposed.

18 This shows the science, school science
19 project in Cross Lake a few years back. This is a
20 makeshift dam, if you would. In the background
21 there, that's where the, if the water is held
22 back -- and yet there is a natural and artificial
23 material used, you know, to depict the ecosystem,
24 model ecosystem. And when the students pulled
25 their corks, which are there, and the water gushes

1 out and simulates a flooding scenario.

2 And this next slide shows a clay model
3 of a muskrat lodge and also a breathing hole. So
4 I will just explain to you about breathing holes
5 and the lodge. The animals enter through the
6 bottom, you know, the hole in the ice, and so the
7 lodge keeps the water from freezing for the
8 entrance. And there are a series of breathing
9 holes which the muskrat move from breathing hole
10 to breathing hole getting food and such.

11 And this tank here contains water, and
12 they put a piece of, cut a piece of plexiglass to
13 represent ice, and they put more water on top of
14 the glass there to give us an idea about how the
15 flooding occurs around the habitat of muskrats and
16 such animals.

17 This shows what we call a spider. It
18 could be small, it could be huge, it could be like
19 eight feet in diameter. It is a tree or willows,
20 the roots of a tree might be larger, so we got
21 roots sticking out representing the legs, and you
22 have a tree stump there, a body, so we call them
23 spiders. And they become water logged, and we
24 refer to them as underwater minefields. They are
25 very hazardous to us. And it still is, so we go

1 through a lot of stress to try and get through
2 navigation to our activities so...

3 MS. KEARNS: Mr. Settee, can you
4 describe -- you mentioned it is a hazard, can you
5 describe how they are hazards? How are spiders
6 hazardous?

7 MR. SETTEE: When outboard, you know,
8 the group of people in boats powered by outboard,
9 so they come in contact with this, and they are so
10 heavy and water logged they flip a boat, or take
11 off the motor. And there is a case where a group
12 of people, where a few people were ejected, and
13 the operator was also injured. And in order to
14 retrieve the ones that were in the water, one of
15 them had a fractured skull, so the operator had to
16 use the trim hydraulic mechanism to raise the
17 motor to bring those individuals out of the water,
18 into the boat, try and attempt to pull them into
19 the boat.

20 MS. KEARNS: And where would you find
21 these spiders?

22 MR. SETTEE: Throughout Nelson River,
23 even on Cross Lake, you go towards Jenpeg, towards
24 the lake we call Pipestone, yeah.

25 MS. KEARNS: Thank you.

1 MR. SETTEE: This is at Sipiwesk,
2 taken a few years ago. And at one point this was
3 a fairly large island, and it is washed away.
4 There is a little bit left, as you can see in the
5 picture, but by now it is no longer, it is no
6 longer there, it is gone. So the elders have told
7 me that there were over 300 islands in Sipiwesk,
8 and lots of them were used for cultural purposes
9 over the hundreds, for the past hundreds of years.
10 And they were calving areas for moose. So it was
11 a good area for the Pimicikamak people who lived
12 in Sipiwesk Lake throughout hundreds of years, and
13 now most of them are washed away. So, camping, it
14 is very hard to find a camping spot there.

15 There is another, closer view of some
16 spiders. You can see they are on shore, but when
17 the water will come up, and they are subject to
18 being washed back and entering into the water.
19 And this one shows what we encounter when we are
20 trying to do fishing. There is so much debris
21 there, we lose our fishing nets, or we have a
22 difficult time trying to remove them. Now we are
23 stuck with this debris, and now you are left with
24 having to remove your net and not catch any --
25 well, not too much success in catching any fish

1 because you are too busy dealing with the debris.

2 And this is again at Jenpeg forebay,
3 and there is a collection of debris. And this is
4 what still occurs, and will continue throughout
5 the system, I believe.

6 So we have here the debris that's
7 caught in net and -- it is those kind of debris,
8 they could be logs, and also organics, everything.
9 And the net becomes very heavy, very water logged,
10 and also delays your fishing time because you have
11 to remove it again.

12 And the last few years we avoided
13 putting one in there. There is so much -- we did
14 a trip there to see if there is any debris, but
15 there is too much, so we didn't do any fishing
16 this year.

17 And this is the example of the stuff
18 we have to pull out from our nets. And I guess
19 this is three years ago. And that's the last
20 time, I think, that I had my net in the water
21 because there is so much stuff there, and we are
22 concerned about collision with these debris.

23 MS. KEARNS: Mr. Settee, can you
24 explain where this photo is taken?

25 MR. SETTEE: This was taken about five

1 kilometres west of our community. And this is a
2 place where we do all of our, a lot of our
3 activities for hunting and fishing. We use this
4 part of the lake quite often. Well, we use a lot
5 of the lake, most of the lake, but we like to come
6 here a lot. Yeah. We have a good feeling when we
7 go out in the wilderness and do some fishing, but,
8 you know, you have to keep one eye open and be
9 careful not to get into serious trouble.

10 THE CHAIRMAN: Mr. Settee, you said
11 five miles west of your community. Where would it
12 be in relation to Jenpeg?

13 MR. SETTEE: It would be maybe about
14 eight kilometres north as one of the --

15 THE CHAIRMAN: North of Jenpeg?

16 MR. SETTEE: North of Jenpeg.

17 THE CHAIRMAN: And you mentioned a
18 lake, is this Sipiwesk or is this another lake?

19 MR. SETTEE: This is Cross Lake.

20 THE CHAIRMAN: Cross Lake, yes, of
21 course. Yes. Thank you.

22 MR. SETTEE: And this is north of
23 Cross Lake again, this time it is north. I had
24 taken this about five years ago, and it shows you
25 what happens to the fish nets, also the organics.

1 When the water levels come up, and then all of the
2 growth, all of the reeds that were there, they
3 become dislodged from the bottom somehow. But
4 anyway they float around and they end up in the
5 nets, and that could be a pain for us.

6 This one is at Sipiwesk Lake, this is
7 about maybe close to 20 years ago. This entire
8 net was infested with debris. So it does take a
9 lot of time, it could take a month or two, you
10 know, to try to get all of this stuff off your
11 nets, drying, redrying, hanging, airing out, so
12 not a good thing for us.

13 This one was, I took this one north of
14 our community, just a few kilometres. And winter
15 fishing here, the algae, when the water is very
16 low the algae becomes excessive, and it flows out,
17 and then it floats into the nets, I guess, and it
18 flows there and gets stuck there. And another
19 difficult task to keep the nets clean, and fishing
20 is not good either.

21 This one was taken about six years ago
22 by my friend who gave me the picture, his name is
23 Harold Sinclair. And what happened here, they
24 were in an area southeast of Cross Lake, it is
25 probably the Kiskittogisu Lake that's east of

1 Jenpeg. So they were out on a moose hunting trip,
2 and spent the night over night, spent one night,
3 and then the next night the water went out too
4 low, so the boat could no longer be used. So they
5 ended up hiking through the swamp and forest for
6 eight hours to get to the main road, like for 373,
7 I believe, towards the Norway House side. So, you
8 know, very, very difficult.

9 This, I took this one in Nelson River
10 north of Sipiwesk Lake on Nelson River and Hunting
11 River junction. And this is the burying of human
12 remains on higher ground when erosion exposed
13 these human remains.

14 And this is right in our community,
15 and this is the typical situation that's happening
16 right now, as Mr. Muswaggon explained to us just a
17 while ago, when there is deep holes, there would
18 be three feet of water in there, and try to keep
19 the children out of there and try -- it is just a
20 huge, huge river system and lake system around our
21 community, and we completely are water logged, and
22 it is not good, not safe.

23 And this one shows that large spaces
24 are left under the ice when the water is drawn
25 out, drawn down in winter, making ice travel

1 hazardous. What happens, the river bows, you
2 know, it causes quite a stretch of the ice, and we
3 get blow outs on both sides. So when the water
4 recedes we get left with these shapes, like peaks,
5 swells, rollercoasters.

6 And trapping is also affected, traps
7 are flooded out and frozen. So this gentleman
8 here he is trying to chop out his trap under
9 water, maybe around two feet. And finally gets to
10 the trap, and there is an animal in there that he
11 is trying to save, trying not to damage while he
12 is chipping away at the ice to try and get the
13 trap and the animal for selling purposes.

14 Slush ice is -- makes travel
15 difficult, as we have heard just a while ago. And
16 also damage to machines happens, you know. And
17 the effort is, it takes a lot of effort to try and
18 get this out, so we attempt not to leave it there,
19 we attempt to get the machine, it is our
20 livelihood, it is very important to us, and it
21 will be much more of a headache if it freezes in
22 there.

23 This is the trend for the Pimicikamak
24 trappers and hunters, one snowmobile is out, but
25 the struggle to get the others is a difficult

1 task. This was the alternative route, when one
2 route was flooded out, so we had another route,
3 but now this one was also affected.

4 MS. KEARNS: Mr. Settee, I think you
5 were here when we had the Partnership's evidence
6 on safe ice routes. Is that something that you
7 also have?

8 MR. SETTEE: Yes, we have safe ice
9 trails. They put markers, you know, and reflector
10 eyes, you know, the plastic bowls. But they also
11 become subject to the flooding effects and
12 openings and such. So there was an ice trail, but
13 one of my friends road into open water with his
14 snowmobile. But fortunately he survived. And it
15 happened about, probably 60 kilometres east on
16 Cross Lake. So that's a long way off.

17 MS. KEARNS: Thank you.

18 MR. SETTEE: So this next series of
19 images will show you the effort of trying to free
20 the machines. The first top row, you see the snow
21 machine, and the effort of trying to free them.
22 So you can see in the middle three group, you can
23 start to see the sun. This effort started in the
24 morning, and once you go down towards the bottom
25 row of pictures, you see the sun is still, is

1 already going down in the horizon. And the battle
2 continues, to try to free the machines. If they
3 don't, if we don't free the machines, it is going
4 to take a lot more trouble to get them out later
5 on if they leave them frozen.

6 Sorry, I can't speak so clearly
7 because I had the battle with the bug as well, so
8 I'm just doing my best to try to explain to you as
9 we go along.

10 And this is another hazard which shows
11 probing of hazards openings are created by
12 pressure on the ice from fluctuation water.

13 And if you go to the next slide, it is
14 pretty deep there. Like I couldn't get to the
15 bottom, so it is a large opening, it is covered by
16 snow. And if you travel too slow you can end up
17 with the machine going down, and having trouble
18 getting out.

19 And this one shows low water calls for
20 extreme measures. These hunters from Pimicikamak
21 use a boat, normally they pull over a short
22 portage, but the water levels go down so low, so
23 that could be hundreds of metres on both sides.
24 So now they are using a snowmobile which is much
25 suited for traveling on winter, you know, on

1 frozen ice, lakes and rivers. So they make do
2 with the snowmobile to try to get to the other
3 side of the portage.

4 And this is another situation we have
5 with the slush bogging, we call this. We often
6 try and go home, make it home for Christmas, they
7 break now, especially people are starting to pull
8 out of the traplines because the water will become
9 unsafe. Well, the routes won't be fit for travel,
10 so they get out as soon as they can, but not
11 always successful. We have bogged down and it
12 takes the straining.

13 And the next video shows more of the
14 same situation, where they try to team together
15 and pry loose the machine and the sled next, one
16 machine after the other.

17 And this one shows the circumstance
18 and surrounding of fatal boating accident caused
19 by floating debris on Jenpeg forebay, which is a
20 kilometre, about a kilometre just south of the dam
21 itself. On the left there, Lloyd B. Ross explains
22 to the other gentleman the details of the
23 incident. And in the middle is Mr. Dick Kelly,
24 from Xcel Energy, and they are the company that
25 buys the power from Nelson River projects. And on

1 the right there is the former chief, John
2 Muswaggon, and you can see that emotional content
3 is obvious. And it was very emotional for us to
4 listen to Mr. Ross explain the incident.

5 Human remains from our ancestors erode
6 from the banks of the river, and they are
7 littering, you know, beaches and Sipiwesk Lake.

8 I'm a direct descendant of the people
9 who were buried in Sipiwesk, and I will take a
10 moment to explain to you. The Miller family,
11 which in the Sipiwesk was a large family unit, so
12 when the plague arrived it really affects larger
13 family units and it wipes them out that much
14 quicker as opposed to small ones. So that's -- in
15 Cross Lake there is still Miller family that are
16 still surviving.

17 This one is from the Hunting River,
18 Nelson River. They try, do their best to try and
19 match the human remains, if there is several, by
20 gathering and placing, we could -- well, the
21 archeologist will assist, will try and match up
22 the skeletal structure to which -- as original, to
23 the original burial, or ancestor, to try to put
24 them together and bury them again as best as we
25 could. This is a closer look at the human

1 remains, and they are pretty much the same size,
2 so they belong to the same ancestor.

3 And this is another one that's a
4 little bit further scattered out. Sometimes
5 animals will remove a bone and take it maybe, you
6 know, hundreds of yards from the site where the
7 remains of our ancestors are discovered. And we
8 do a search pattern to try and recover as much as
9 we can, and a lot of the pieces are never found,
10 they are lost, buried under the erosion.

11 Also, I have an image which shows a
12 piece of historic pottery. There are generally
13 two eras of pottery that we discovered, there is
14 historic pottery, and pre-historic pottery, which
15 goes back much further in time. But this one
16 shows historic pottery that may be hundreds of
17 years old. As you can see, there is little bumps
18 there which they call them punk dates, I believe,
19 right there. And the purpose of that is that our
20 ancestors used some form of probably a stick or
21 something to push and cause these bumps from the
22 outside to decrease the surface of the pot, make
23 it boil faster. So we called it a predated
24 microwave oven.

25 There is another collection that we

1 tried to put together and piece together, one of
2 the ancestors remains. And one skull separated a
3 few metres, like not too far, but there is also,
4 there is a piece of rib over in the corner. So it
5 is very difficult for to us try and put together
6 and bury the remains intact.

7 So this is the last slide which shows
8 a skull and it is, we said that it is the erosion
9 of the river, erosion of our history and culture,
10 erosion of our people. Mitigation has not stopped
11 this.

12 So that concludes my presentation, and
13 I want to thank you for taking time to listen and
14 watch.

15 THE CHAIRMAN: Thank you, Mr. Settee.

16 I think maybe we will take the
17 afternoon break now, so come back in 15 minutes
18 which will be just before 3:30.

19 (Proceedings recessed at 3:14 p.m.

20 And reconvened at 3:30 p.m.)

21 THE CHAIRMAN: I would like to
22 reconvene in a minute, is Mr. Atkins anywhere to
23 be found? Here we go.

24 MR. ADKINS: Sorry, Mr. Chairman.

25 THE CHAIRMAN: You don't need to be

1 sorry. You had another 30 seconds and then you
2 would have been sorry. Ms. Kearns.

3 MS. KEARNS: I think we are still
4 missing one of our witnesses, he will wander back
5 shortly. We still have some more evidence to
6 give, and I think by the time he gets back, it
7 will be well in time for cross exam. So over to
8 Mr. Settee to introduce the second video.

9 MR. SETTEE: Yes. I have one last
10 video to show you, and this shows you people,
11 Pimicikamak people, that we need our voices heard.
12 And you will see a group of pictures, probably
13 some of them we have seen, but some we haven't, so
14 I guess --

15 MS. KEARNS: Can you explain the song
16 that we will hear?

17 MR. SETTEE: The song was written by a
18 late friend of mine to go with the pictures that I
19 took over the years, and we got together a few
20 years ago, and he wrote a song, and we did like a
21 video slide presentation to show you who we are as
22 Pimicikamak people.

23 MS. KEARNS: Thank you.

24 (Video playing)

25 MS. KEARNS: And so we do need one

1 more deck? We need the DP presentation back up,
2 the powerpoint. Over to you, Mr. Paupanakis.

3 MR. PAUPANAKIS: Thank you. This is
4 part two of my presentation. And now as discussed
5 earlier in these proceedings Manitoba Hydro and
6 the Partnership relied upon the article 9 process
7 under the Northern Flood Agreement in order to
8 engage with Pimicikamak about Keeyask project.

9 For the CEC panel's benefit, article 9
10 of the NFA says, article 9.2: "Hydro shall not
11 make any decisions in respect to any such future
12 developments unless and until a process of bona
13 fide and meaningful consultation with the
14 communities has taken place."

15 To be meaningful and bona fide,
16 consultation must be with the intent of
17 substantially addressing all of the affected
18 Aboriginal parties' concerns. Addressing these
19 concerns is what accommodation is.

20 Pimicikamak is very concerned that the
21 proponents are not informed in a meaningful way
22 about their proposal. We have tried to have those
23 discussions with Manitoba Hydro in a meaningful
24 way. We continue to attempt to have such a
25 dialogue with them where we continue to be delayed

1 at every turn. There is continued delay in the
2 article 9 process, and most of our requests for
3 information are met with problematic issues.

4 Funding for a respectful process is
5 proving to be problematic for both Hydro and
6 Pimicikamak. This results in information that are
7 therefore limited and this hinders the process of
8 consultation. We continue to attempt to discuss
9 our concerns over the proposed project again and
10 again. And we will continue to be open to these
11 discussions, as is our way to be open to all who
12 wish to discuss the land and the waters.

13 I was appointed to represent the
14 executive council in the Northern Flood Agreement
15 article 9 consultation in October 2008. My effort
16 to have those discussions began with the proponent
17 refusing to have any discussions with Pimicikamak
18 after many emails and telephone requests to
19 hydro's representative, Mr. Darrell Cockerill,
20 after four months Manitoba Hydro finally decided
21 to have its firsting meeting with us to discuss
22 the Keeyask project, this was in February of 2009.
23 We began to have these discussions regarding
24 Keeyask project. At the first meeting we
25 discussed how and what we should be discussing, as

1 well as what information we would be needing to
2 have a meaningful discussion. As my
3 understanding, based on my experience and
4 normally, we request information to be discussed
5 at meetings and we would have independent
6 technical and legal counsel assist us in
7 determining what relevant information we would
8 need. In general I would characterize the
9 consultation as not being meaningful and bona fide
10 at all. I have to say that in my four years of
11 experience working as a representative on the
12 article 9 committee, I have had an extremely
13 difficult time getting information from Manitoba
14 Hydro at every turn.

15 A typical article 9 meeting would
16 require Pimicikamak to prepare to discuss issues
17 surrounding all aspects of the content of
18 meetings. And this is particularly relevant to
19 Keeyask. Manitoba Hydro would prepare to send an
20 agenda, and we would comment on it and add items
21 to agendas. In these meetings we have a
22 presentation made, for example, on the VECs, and
23 we would ask if we can see the list of VECs. And
24 under normal consultations this would be provided.
25 But in this case when we asked for the VECs,

1 Manitoba Hydro told us that it would have to go to
2 the partners for authorization to provide this
3 information.

4 As with most of the requests for
5 discussions on items such as debris removal, Hydro
6 would inform us that it will be sent up to the
7 executive to consider.

8 MS. KEARNS: Mr. Paupanakis, can you
9 explain what you mean by debris removal?

10 MR. PAUPANAKIS: Debris removal is the
11 removal of debris on the waterways that Manitoba
12 Hydro has produced. It is their debris and they
13 are obligated to remove it. They were ordered by
14 the arbitrator to remove this debris. So that
15 debris that I'm talking about is one that fatally
16 took the life of our citizen, one of our citizens
17 where Hydro was held liable. So that's what I
18 mean by debris removal.

19 We wanted to have this discussion with
20 them. It was sent up to the executive to
21 consider. Many times the response is they do not
22 want to engage in discussions. This is the normal
23 response I would get from Hydro.

24 Needless to say, Pimicikamak is very
25 concerned with this project from the beginning.

1 Pimicikamak has raised a number of concerns with
2 Keeyask, for example, effects on sturgeon, effects
3 on migratory birds, effects on exercise of
4 Pimicikamak rights, way of life, culture, values,
5 connections to the land, its aspirations, effects
6 on water quality. Neither Pimicikamak nor Hydro
7 can know what our detailed concerns are without
8 engaging in necessary research and studies to
9 identify all of our values, uses and occupancy as
10 the connections to the land, our traditional
11 territory, and then to assess how Keeyask might
12 impact all of this.

13 Our traditional territory goes up to
14 the Keeyask vicinity. Pimicikamak has over 8,000
15 citizens, nearing 9,000. We have never received
16 the funding before to gather from our citizens
17 good information about these uses, values and
18 connections. We know there are many, and we know
19 some of our citizens harvest right up to the
20 Keeyask area and even beyond. Manitoba Hydro has
21 not approved the accompanying impact assessments
22 until recently. Until this study is done, we
23 cannot know how Keeyask may impact Pimicikamak and
24 our environment.

25 MS. KEARNS: Mr. Paupanakis, can you

1 explain what aspect of the study has been approved
2 and how long you would expect it will take?

3 MR. PAUPANAKIS: We submitted a
4 proposal to Manitoba Hydro for a work plan to be
5 developed, which was approved not long ago. And
6 then I'm not sure exactly the details, but
7 Mr. Tommy Monias is the contact person for that
8 file. I'm no longer the article 9 representative,
9 so he would be the one who would be able to answer
10 what that entails.

11 Pimicikamak says how can Keeyask be
12 built or not without knowing critical information
13 on how Keeyask, cumulative with impacts from the
14 existing project, is likely to affect Pimicikamak
15 and our core relationship with the land?

16 Pimicikamak has also for months
17 proposed this work plan and budgets to enable
18 group sessions among Pimicikamak citizens to
19 discuss our concerns, which ones are legitimate
20 concerns about Keeyask and to prioritize such
21 concerns so that together with the study that I
22 just mentioned we can give more detail to Hydro so
23 it can work to address our legitimate concerns.
24 Hydro finally about a week ago, a week and a half
25 ago, agreed to fund this work, and until we

1 complete this work we can not specify our
2 concerns. Yet Hydro keeps saying that Pimicikamak
3 is not giving it enough detail about our concerns.
4 Hydro can't suck and blow at the same time.

5 A further example of the problems with
6 this process is that Manitoba Hydro has had a
7 lawyer attend all article 9 meetings to take
8 meeting notes. We were promised copies of these
9 notes, and we have asked for copies repeatedly.
10 But we still do not have copies of the meeting
11 minutes from Manitoba Hydro for meetings that have
12 happened two years ago. I do not have a full set
13 of copies of those meeting minutes, and we have
14 not even reviewed the minutes. I have requested
15 the record on a timely basis, but I have not been
16 provided copies of those minutes. This seriously
17 hinders Pimicikamak's ability to meaningfully
18 engage in consultations with Manitoba Hydro on
19 Keeyask.

20 Pimicikamak has determined that the
21 wildlife and aquatic species will be affected, and
22 continue to negatively be impacted by Keeyask.
23 And this determination is based on traditional
24 knowledge. To our knowledge, Hydro has not
25 assessed the environment for the impacts that may

1 be residually transmitted upstream of Keeyask and
2 its adjacent waterways. We believe that Keeyask
3 as it is, at this moment, will impact Pimicikamak
4 more. How much more, we do not know. Therefore,
5 we conclude that Keeyask is not environmentally
6 sensitive to the watershed as a whole.

7 Pimicikamak has many concerns about
8 the impacts of the existing Hydro project and
9 about how Keeyask might alter or add to these
10 impacts. Keeyask will affect Pimicikamak directly
11 and cumulatively with the devastating impacts of
12 existing hydro development, and Pimicikamak just
13 suffers the costs and burdens. The deep impacts
14 we have experienced is what we call genocide.

15 We also have many concerns about the
16 so called mitigation measures that Hydro and the
17 Partnership say they will put in place, and which
18 the Partnership uses to attempt to justify the
19 environmental soundness of Keeyask project. We
20 have had first hand experience with the mitigation
21 measures Manitoba Hydro uses for its development,
22 and know that these do not work.

23 MS. KEARNS: Mr. Paupanakis, can you
24 give us a example of what you are referring to?

25 MR. PAUPANAKIS: One example is an

1 impact that I can speak to when speaking with our
2 elders, we talk to them about fishing, and we
3 asked them how, what do you think about the
4 domestic fishing program that's delivered by
5 Manitoba Hydro in Cross Lake to the citizens,
6 that's supposed to benefit all people? The issue
7 of a negative impact that this has on our people
8 is Manitoba Hydro is a corporation, it is in the
9 dam building business, it is not in the business
10 of feeding Aboriginal people, yet that is what
11 they are attempting to do in Cross Lake with the
12 domestic fishing program. And in doing so, what
13 are the impacts of that delivery of that program?
14 In the past our elders, parents and children would
15 all participate in this exercise of harvesting
16 fish domestically. My grandfather was a
17 fisherman, my grandfather in Norway House was a
18 fisherman. He supported three families with one
19 fish net in between the river at Norway House,
20 just down the bank. He supported this household
21 with two families, grandparents, parents and
22 children, and he supported another household just
23 across the river, 150 feet away.

24 The practice of that exercise goes
25 beyond just fishing, it goes beyond just putting

1 food on the table, it teaches the young people the
2 value of being in touch with the land. It teaches
3 them what you call (Cree word,) what relationship
4 this (Cree word) has with the land, with us and
5 the creator, it is all one unit. The ability to
6 talk to our children in our language when we speak
7 of (Cree words), all have traditional knowledge
8 and traditional laws instilled into that language.

9 Development of our way of life and our
10 culture is interwoven into this process. This is
11 what the negative impact that domestic fishing
12 program has on our people. By delivering a
13 mitigation measure of a domestic fishing program
14 in Cross Lake by Manitoba Hydro selectively
15 choosing where we can go get fish and where we
16 can't, is a direct negative impact on our people
17 and their culture and way of life.

18 That is one example of a negative
19 impact.

20 MS. KEARNS: Thank you.

21 MR. PAUPANAKIS: The article 9 process
22 has been -- has not been a meaningful and bona
23 fide consultation. While there have been many,
24 many meetings between Pimicikamak and Manitoba
25 Hydro, there has been no accommodation of

1 Pimicikamak concerns about the impacts, Keeyask
2 cumulative with the impacts of the existing
3 project. Manitoba Hydro and the Partnership and
4 therefore the CEC, do not and cannot know the
5 impacts of Keeyask on Pimicikamak. Therefore this
6 project should not go ahead.

7 In conclusion, I have to express my
8 appreciation for the time you have taken to
9 consider this information, and that it may serve
10 you well in determining as to what recommendation
11 will be given to the Minister, and to all of
12 Manitoba for that matter. It is our commitment
13 that we provide only factual information to this
14 panel. You have seen for yourselves the land and
15 waters through video and through pictures, and
16 through the eyes of our young and old citizens who
17 spoke to you when you came to Cross Lake. They
18 have spoken up for the land, as the land cannot
19 speak for itself. As you have seen and heard, the
20 concern is for the well-being of the land in
21 Pimicikamak and concern for our brothers and
22 sisters in the immediate affected area.

23 It is abundantly clear to our people
24 that our worldview is being compromised by
25 economic interests that are being put first rather

1 than considering all the facts in a holistic way,
2 which is our way. Our existence is based on
3 respect for the creator and all that he has
4 created. In our language (Cree word) is the
5 foundation of our being, we come from the water
6 and we return to the water. Hence, our word for
7 death is (Cree word). Water has been deeply
8 affected and we state here today that any more
9 effects on the water we are now proposing to have
10 may be the straw that breaks the camel's back.
11 This in our view would be nothing short of
12 genocide.

13 On behalf of the chief, I say that she
14 supports all of the information that's been shared
15 with you through the words of our youth and as
16 well as through the teachings of our elders and
17 through documentation and video, and through the
18 images of the land and our waters which sustain
19 our people and our way of life. Egosi. Chief
20 Merrick wants to leave you with the hope that you
21 will be blessed with an open and clear heart with
22 your deliberations. On behalf of the youth,
23 elders and the women's council and her council,
24 she thanks you.

25 MS. KEARNS: That concludes

1 Pimicikamak's presentation of this panel.

2 THE CHAIRMAN: Thank you to all four
3 of you for this presentation this afternoon. We
4 have a half an hour or so before we adjourn for
5 the day, so we will turn to questioning. The
6 proponent? Mr. Adkins.

7 MR. ADKINS: Thank you, Mr. Chair. I
8 understand where your problems were there.
9 Mr. Chair, I'm not sure and perhaps what I should
10 do is seek some guidance, because I do know that
11 the Commission has made some recommendations in
12 connection with cross-examination, particularly of
13 non-expert witnesses, and also in terms of some of
14 the information that's presented, I'm not certain
15 of whether or not this is the appropriate place to
16 carry on cross-examination. So if I could ask a
17 few questions of the Commission and get
18 clarification.

19 Mr. Paupanakis and I have worked
20 together for a long time. And I have worked with
21 predecessors of his prior to that, including
22 Gideon McKay who passed away, and I do miss Gideon
23 considerably. Sandy Beardy as well who passed
24 away even prior to that point in time.

25 It is not unusual that Mr. Paupanakis

1 and I do not totally agree on everything in terms
2 of what has been exchanged in the article 9
3 process, but my sense is that's a process under
4 the Northern Flood Agreement, it does have its own
5 mechanisms for dealing with issues or disputes
6 concerning that process. It is relating to the
7 effects of Lake Winnipeg regulation on Cross Lake
8 in terms of, of course, under the article 9, it is
9 looking at the Keeyask issues. So I'm not sure if
10 there is much to be gained by my spending a lot of
11 time going over that, because Mr. Paupanakis'
12 recollection and mine is not exactly in accord,
13 and there are some things that I could ask about
14 that.

15 So I put that as the first point. Is
16 that something that the Commission would like me
17 to follow up on?

18 THE CHAIRMAN: The Commission always
19 appreciates it when cross-examination is done with
20 respect and with sensitivity to some of the
21 information that has been put before us. You
22 asked about expert or non-expert panels. We can't
23 have a fine line, as you may know yesterday there
24 was panel of Aboriginal harvesters that I noted
25 were a non-expert citizens panel. However, this

1 is a panel of leadership from the community. So
2 as we treated the MMF leadership a few days ago,
3 this -- we would expect that if you so wish and
4 within the confines of our guidance on
5 cross-examination, if you wish to cross-examine
6 these people, that's your right.

7 I think you should also keep in mind
8 as we expect all parties to these proceedings,
9 what you examine and the questions that you ask,
10 should be designed to help the panel in our
11 ultimate decision. We don't want you to try and
12 win points for your other discussions under the
13 article 9 proceedings in other forums. That's not
14 relevant to us. But if there are questions that
15 you can ask of these witnesses that will help us
16 in our deliberations, then please do.

17 MR. ADKINS: Thank you, Mr. Chair, I
18 appreciate those comments. The questions that I
19 would have, they are relating to the article 9
20 process, would relate to one aspect which is
21 primarily concerning the issue of consultation,
22 the idea that there would be respectful listening
23 by Manitoba Hydro. My experience has been that
24 generally that is the case. In fact, I would have
25 trouble trying to think of a situation where that

1 hasn't been the case. I'm not sure I could.

2 So although the article 9 process does
3 relate to Keeyask, the issues that have been
4 raised here have suggested a lack of participation
5 by Hydro and a lack of willingness to listen
6 respectfully, which is not consistent with my
7 recollection. So I will ask a few questions
8 there, but not because that's trying to resolve
9 that issue here, but to find out some more
10 information about it that might be helpful.

11 So Mr. Paupanakis, just with respect
12 to article 9, the process, in fact I think the
13 initial notice with respect to Keeyask was given
14 in 2001. I don't know if you recall that or not,
15 because I don't know if you were involved at that
16 point in time. Do you recall that?

17 MR. PAUPANAKIS: In 2001 --

18 MR. ADKINS: Correct.

19 MR. PAUPANAKIS: I can't recall if I
20 was involved at that point but I was involved in
21 the Wuskwatim project that abruptly ended. That's
22 all I recall of article 9, two meetings and it
23 ended for Wuskwatim for my involvement.

24 MR. ADKINS: Two meetings.

25 MR. PAUPANAKIS: For Wuskwatim for my

1 involvement.

2 MR. ADKINS: You were involved with --
3 you attended two meetings on Wuskwatim?

4 MR. PAUPANAKIS: Yes, and it ended.

5 MR. ADKINS: With respect to the
6 Keeyask, you are not aware that there was a notice
7 given or presentations made for Keeyask a lot
8 earlier than that?

9 MR. PAUPANAKIS: I would have to dig
10 out my little notebook that I keep at home. But I
11 do not -- I can't say that I heard the initial
12 discussions at that time, or were involved in the
13 discussion.

14 MR. ADKINS: Mr. Paupanakis, you refer
15 to minutes or notes of the meetings. In fact you
16 have received large numbers of copies of minutes
17 of meetings or notes of meetings that have been
18 taken by Ms. Fenske, who is sitting beside me; is
19 that correct?

20 MR. PAUPANAKIS: Yes, a few.

21 MR. ADKINS: When you say a few, would
22 you say 99 per cent of the notes or 2 per cent of
23 the notes?

24 MR. PAUPANAKIS: In the four years I
25 would say probably 50 per cent, because up until

1 two years ago they were pretty constant and pretty
2 accurate notes.

3 MR. ADKINS: And you recall as well,
4 Mr. Paupanakis, that there was additional funding
5 provided to Pimicikamak in order to have its own
6 person there because there was concern that you
7 may not be having the proper recording; do you
8 recall that?

9 MR. PAUPANAKIS: I recall that.

10 MR. ADKINS: And you have had someone
11 in attendance, I think it is for about the last
12 two years, who has been making recordings for you
13 as well?

14 MR. PAUPANAKIS: Yes, she has. She
15 hasn't been funded with the proper equipment to do
16 it.

17 MR. ADKINS: But she has been funded
18 to be there to take notes?

19 MR. PAUPANAKIS: Just to be there, and
20 yep.

21 MR. ADKINS: You talk about what was
22 recently just approved in terms of what the
23 community has requested or what you have requested
24 or behalf of the community for community meetings
25 to deal with the question of accommodation; did I

1 hear you correctly?

2 MR. CHARTRAND: Correct.

3 MR. ADKINS: And that has been
4 recently approved by Manitoba Hydro, funding for
5 that?

6 MR. PAUPANAKIS: Correct. The
7 information has been provided to me that it was
8 approved for part two of the consultation.
9 Initially the accommodations meeting happened with
10 the leadership, and they set out how we were going
11 to do the second part of the consultation with the
12 citizens.

13 MR. ADKINS: So just to clarify then,
14 there was an initial request for accommodation for
15 a community meeting and I understood it involved
16 the community not just leadership, but in any
17 event, for a discussion about accommodation
18 measures, and that was funded by Hydro a couple of
19 years ago?

20 MR. PAUPANAKIS: October 21, 2011 to
21 be exact.

22 MR. ADKINS: So I'm not too far off on
23 my dates, I was going from a recollection. And
24 that did proceed and there was a report ultimately
25 provided with respect to that?

1 MR. PAUPANAKIS: Correct.

2 MR. ADKINS: And then there was a need
3 to complete the budgeting or reporting on that
4 from a financial perspective, and other aspects;
5 do you recall that?

6 MR. PAUPANAKIS: I recall that.

7 MR. ADKINS: And then during the
8 course of designing the second stage of that
9 accommodation, there were a number of changes that
10 were discussed, both suggestions from Manitoba
11 Hydro and suggestions from consultants that
12 Manitoba Hydro provides funding for Pimicikamak to
13 retain; is that correct?

14 MR. PAUPANAKIS: Within reason, yes.
15 We had a sturgeon issue that we had to separate
16 directly from the initial plan, as you recall.

17 MR. ADKINS: So there was a period of
18 exchanges, and I think it was in July of this
19 year, 2013, that the final proposal came forward
20 from Pimicikamak for consultation. I could be
21 wrong, but that's my recollection, is that your
22 recollection?

23 MR. PAUPANAKIS: We tabled it again,
24 yes.

25 MR. ADKINS: But it had modifications

1 arising from discussions between the parties?

2 MR. PAUPANAKIS: Correct.

3 MR. ADKINS: And that was taken
4 forward and did require executive approval, I
5 believe approval by at least members of the
6 executive of Manitoba Hydro to provide funding; is
7 that your understanding?

8 MR. PAUPANAKIS: That was my
9 understanding.

10 MR. ADKINS: And you now have had that
11 funding approved, correct?

12 MR. PAUPANAKIS: Correct.

13 MR. ADKINS: Okay, thank you very
14 much. I have a distinct recollection, and I could
15 be wrong, but I would be interested in your
16 comments on it, of a number of emails from
17 Mr. Darrell Cockerill from Manitoba Hydro trying
18 to get the consultation processes recommenced with
19 respect to Keeyask. And the timing is about when
20 you've indicated, I think there were some efforts
21 starting prior to 2008, but we did have a meeting
22 in 2008 is my recollection. But I don't recall it
23 being Mr. Cockerill saying we are not prepared to
24 meet. To the contrary I recall meetings being set
25 up, and Pimicikamak advised, no, we are not going

1 to attend, we don't have -- we have not made a
2 decision as to who will be there on our behalf.
3 Am I totally wrong on this or --

4 MR. PAUPANAKIS: In my recollection
5 the information that was provided to me was that
6 there was a meeting that happened with the
7 previous council in July, if I recall, with
8 Councillor Robinson and Tommy Monias representing
9 Pimicikamak, and that was the last meeting that
10 happened. And subsequently the new council was
11 put in, and Councillor Settee proceeded to appoint
12 me to be the executive council representative in
13 October 28 of 2008. I received the letter and I
14 agreed, but I was not provided the ability to
15 meet.

16 MR. ADKINS: You weren't provided the
17 ability to meet from -- from Cross Lake,
18 Pimicikamak, is that not correct?

19 MR. PAUPANAKIS: Pimicikamak wanted to
20 meet. We wanted to meet in a respectable way.

21 MR. ADKINS: Correct.

22 MR. PAUPANAKIS: We did not have the
23 funds to jump in a plane to go and meet with
24 Manitoba Hydro. I did not have the funds to hire
25 a lawyer. I did not have the funds to hire a

1 technical expert, if I needed one, which is all
2 that's required in the consultation, as I'm not a
3 lawyer, I'm not an environmental consultant.

4 MR. ADKINS: Now, my recollection is
5 that Manitoba Hydro, during the course of article
6 9 consultation, provided a float of money. And
7 that was utilized by Cross Lake First Nation as
8 represented by Pimicikamak, which was initially
9 how this was done, and then subsequently at
10 Pimicikamak's request and recognizing, you know,
11 the rights that you have talked about and those
12 sorts of things, through Pimicikamak itself.

13 MR. PAUPANAKIS: Yes.

14 MR. ADKINS: So there would be money
15 available and when that was used, it could then be
16 accounted for and it would be replenished, am I
17 correct generally in how that works?

18 MR. PAUPANAKIS: It was accepted after
19 October, November, finally in December, I recall
20 this very clearly, Mr. Adkins, and I have the
21 emails to back it up, if I can I could submit them
22 to you, because I kept those particular emails for
23 that very purpose if somebody wanted them. Okay.
24 Darrell Cockerill informed me that he would not
25 meet with Pimicikamak, he wanted to meet with the

1 First Nation.

2 MR. ADKINS: Okay, that -- my
3 understanding is I had seen emails as well. The
4 reason I chuckled is it sounded a little bit like
5 our Senate issues, and I didn't want to get into
6 that.

7 MR. PAUPANAKIS: Yep.

8 MR. ADKINS: I think your recollection
9 and my recollection is slightly different, but we
10 may have looked at different things. I do know
11 that Manitoba Hydro was writing emails in an
12 effort to try to get further consultation started.

13 MR. PAUPANAKIS: Yes. Can I just add
14 a comment to that? There was a letter supporting
15 that from Councillor Settee, that Hydro was
16 instructed to meet with Pimicikamak, our
17 representative.

18 MR. ADKINS: But there were some
19 contrary instructions from your chief at the time.

20 MR. PAUPANAKIS: The legislative
21 authority was with Councillor Settee, as I
22 understand the political structure of the
23 Pimicikamak. The authority was given to him and
24 he exercised his authority by that letter. I have
25 a copy of that letter as well.

1 MR. ADKINS: Is it unfair for me to
2 say there were some conflicting messages coming
3 between your then chief, the head of the executive
4 council and also the chief of the Cross Lake First
5 Nation, as one person, and Councillor Settee; is
6 that a fair statement or not?

7 MR. PAUPANAKIS: I was not in Cross
8 Lake at the time, I was in university in Thompson.
9 So I don't know the details surrounding that, I
10 can't answer to that, but I do know under our law
11 the legislative powers was with Councillor Settee.

12 MR. ADKINS: I appreciate that very
13 much. I appreciate your clarification. Can I
14 just have one second?

15 I'm not sure where to address these
16 questions. I'm used to having communication was
17 Mr. Paupanakis, so I will address them to you if
18 that's okay, and if you want someone else to
19 respond to them, that would be fine as well.

20 One of the things that was commented
21 on, I can't remember now, is the approach towards
22 addressing impacts of projects. And you
23 referenced the Northern Flood Agreement with the
24 idea that mitigation, remediation and then
25 compensation would be the appropriate type of

1 approach; did I recall that correctly?

2 MR. MUSWAGGON: Can you repeat your
3 question? And can you speak up, I'm kind of hard
4 of hearing.

5 MR. ADKINS: I was just asking the
6 question, trying to recall who said this in part
7 of their presentation, but it was referencing
8 Northern Flood Agreement and the approach that the
9 Northern Flood Agreement -- it doesn't actually
10 use these terms -- but effectively I don't
11 disagree with the terms, and that was taking
12 mitigation, remediation and then compensation;
13 compensation not being necessarily the most
14 favorable way to proceed. Am I getting that
15 correct, that is what was being said?

16 MR. MUSWAGGON: Having said that
17 question what are you referencing it to? What is
18 your point, I guess, that you are getting at in
19 asking that question?

20 MR. ADKINS: My only point in that
21 question was to make sure I wasn't misrepresenting
22 what had been said by Pimicikamak representatives,
23 that's all. If that's correct, then I will ask
24 another question.

25 MR. MUSWAGGON: The point I was making

1 to those comments was to the Northern Flood
2 Agreement, the terms are clear, and the steps
3 required, what is needed to implement the Northern
4 Flood Agreement in spirit and intent. And what
5 we've come to find in this, since 1977, it has
6 been a lot of financial deals happening here, cash
7 deals, where the NFA calls for a planned approach,
8 and to do it right, and the NFA gives us that
9 right to get experts and legal people to help us,
10 to talk about the rationale behind the plan, the
11 realistic of the plan and what is required to do
12 in addressing adverse effects. So these are the
13 steps that we are talking about here, mitigation,
14 remediation, and compensation would be the last
15 resort.

16 One of the things that's been promised
17 to our people here is the creation of employment,
18 for example, to train and employ people, because
19 the project has pretty much decimated our
20 traditional economies. And the NFA said, well,
21 here is what we are going to do, here is the 25
22 articles, here is the preambles, here is the
23 schedules, here is how we intend to remedy as a
24 result of the project, and that's what I was
25 alluding to in that commentary. It calls for a

1 planned approach and not an adversary approach
2 where you minimize cost, because we are still
3 waiting for that approach.

4 As a matter of fact, for CEC's
5 information, way back in 1997/98 when we
6 initially -- there is a peace treaty document
7 dated May 8, 1988 where Canada, Manitoba and Hydro
8 signed a peace treaty with Pimicikamak saying can
9 we set aside our differences and can we sit at the
10 table? Okay. And said let's have a meaningful
11 dialogue to do what is right. How do we implement
12 the NFA? And that's the spirit and intent of
13 sitting at the table, rolling up the sleeves,
14 getting to work to address the adverse effects
15 that way. But what has been clear here is our
16 people have been starved out through bureaucracy,
17 from minimizing funds to get proper legal advice,
18 proper expert advice, to do the work right.
19 Pimicikamak, as a matter of fact, is the one with
20 their people who laid out a plan in how to
21 implement the NFA. And I believe that Marv McKay
22 was working at that time on this, and he was very
23 impressed with the level of effort that was put in
24 by our people, which we had to fund for ourselves
25 at the beginning, but the funds came after.

1 And in the spirit of this treaty
2 relationship, we have always taken that position,
3 our door is open to come and sit down with us,
4 Pimicikamak. But as you can hear here, Hydro
5 keeps referencing CLFN or Cross Lake First Nation.
6 Under the Indian Act, Indian bands do not have
7 Aboriginal rights and title to the land. They are
8 not signatories to the Treaty. Pimicikamak is.
9 They have to come to Pimicikamak Okimawin to sit
10 down in a very constructive way to address all of
11 these things that we are talking about. And we
12 can sit here all night and go through the Northern
13 Flood Agreement page by page, word by word, and
14 this has happened before in 16, 18 hour marathon
15 meetings, if you recall Bob, with our legal
16 counsel and our staff. And eventually a plan came
17 out.

18 As a matter of fact, we have always
19 taken the position with Hydro, if you do good
20 things, we will tell the world you are doing good
21 things. We are not in the business of painting a
22 bad picture of people. But when bad people behave
23 badly, we will tell the story. That's what it was
24 about. As a matter of fact, when we started
25 telling the story to the world about what was

1 happening to our land and our people, Hydro was
2 pretty much forced to come to the table and do
3 some of these things they promised in 1977.

4 As a matter of fact, a positive new
5 start that came out in 2003, over 400 people were
6 hired through mitigation programs to clean up the
7 land, to make sure there were safe, navigable
8 waterways on our land. That came as a result of
9 an arbitration ruling when one of our people died
10 in a boating accident. And fortunately they have
11 to get forced -- and they have that right, we
12 respect that, they are using all legal means under
13 Canadian law to defend their corporate interest.
14 But as a result of that, that's what happened in
15 terms of having them come to the table to do
16 honourable things in a good way because these
17 processes are costly. Why can't we sit at the
18 table and do these things honourably, as
19 honourable signatories at the table? Do the right
20 thing, budget properly, plan properly, address the
21 adverse effects properly. And these are the steps
22 that are written right in the Northern Flood
23 Agreement, not specifically as I'm saying it, I'm
24 not a lawyer, and I respect the Canadian law, but
25 we have our view and our laws in how we see this.

1 And that's the stuff that has been happening here.

2 And you know what, as a matter of
3 fact, of those 400 jobs just on the Cross Lake
4 band side, they saved over \$700,000 in welfare.
5 And that was a proud accomplishment that Hydro
6 could pat itself on the back for doing the right
7 thing for a change. So these are the things that
8 people have to, honorable people have to come down
9 to the table for. We shouldn't have to be
10 spending hours and hours here fighting over one
11 word. And clean up the mess. Because you are in
12 the business of manufacturing risk in our land and
13 it is hurting our land, and it is hurting our
14 people. And that's why I make that point there,
15 Bob.

16 MR. ADKINS: I appreciate your
17 comments very much. And I appreciate your
18 comments with respect to the debris program that
19 was implemented dealing with the Jenpeg forebay
20 area. There has been other mitigation things that
21 have been done that I was curious about. One of
22 the issues that was clearly a difficult problem
23 immediately following the creation of the Jenpeg
24 control structure, Lake Winnipeg regulation was
25 that it would aggravate droughts and floods on

1 Cross Lake as it ameliorated them on Lake
2 Winnipeg, and in an effort to try and address
3 that, one of the things that Cross Lake First
4 Nation has, at that point in time that was the
5 party with whom we were dealing, not Pimicikamak
6 per se, although I think it was basically -- it
7 was just a governance issue, it wasn't -- we are
8 still dealing with Pimicikamak, but I could be
9 wrong about that. I think I have got a fairly
10 good understanding of those things. But one of
11 the things that we looked at doing together was
12 the development of the Cross Lake weir. And I
13 believe that Cross Lake was involved, I know that
14 Cross Lake was involved in that process, and also
15 in monitoring that process afterwards. Have you
16 found that's been beneficial in addressing water
17 levels on Cross Lake?

18 MR. MUSWAGGON: We are still looking
19 for that weir. The water is so strong, and we
20 appreciate the effort, that it was constructed
21 back in 1992 I believe it was, for about
22 \$9 million?

23 MR. ADKINS: I believe that was the
24 figure.

25 MR. MUSWAGGON: Anyway a lot of work

1 came out of it. And I can't -- I'm not an
2 engineer, I can't tell you how it managed to stay
3 there, but we went back years after to check and
4 we still can't find it. And it hasn't really made
5 a difference, when the water gets held back at
6 Jenpeg our waters are still low. Claims, for
7 example, the lower unit have gone spiraled out of
8 control, yet they are getting processed through
9 the red tape, people are getting questioned
10 through a million things to frustrate them out of
11 their claims.

12 As a matter of fact, I will give you
13 an example about that particular story about the
14 water level. When somebody hits a reef as a
15 result of the murky waters from erosion, the
16 fluctuating water levels and all the silt that
17 comes up that is getting eroded, you hit a
18 submerged drop, and there is some people who knew
19 the land like the back of their hand, today the
20 most experienced people can't even navigate it
21 properly. When their lower unit gets hit, for
22 example, it goes through Hydro's little program
23 there. It goes to Thompson to get repaired. They
24 only repair the lower unit, but they don't fix the
25 impact of the engine, the head. So they are still

1 finding ways to minimize costs, and that's what
2 people are experiencing as well.

3 And so having said that, I'm just
4 using that as an example how the weir hasn't
5 really helped much. Even when you are releasing
6 water, the water still comes up, and a classic
7 story to this is Hydro just finished doing some
8 riprap work because of high water levels in Cross
9 Lake. So if this weir was so effective, it hasn't
10 really served its purpose.

11 MR. ADKINS: My understanding and I
12 have looked at this fairly closely is that the
13 construction development of the weir was to
14 restrict the discharge of water from Cross Lake,
15 the flow of water out of Cross Lake in low water
16 years, and then increase the ability to discharge
17 in high water years with the net effect that
18 certainly the extremes that were experienced
19 post-project and pre-weir, which I think we saw a
20 number of pictures up, after the weir was put in
21 place that has not transpired. And in fact, it
22 won't. I don't think that Cross Lake can even get
23 back down fully to what its historic low might
24 have been, or what could have been a historic
25 high, although we have had such unusually high

1 water levels. But is any one here aware of that
2 sufficiently to answer that?

3 MR. MUSWAGGON: I think what we can
4 tell you, Bob, is to share a story with you in
5 terms of your question. We can't start getting
6 technical on the answer. The bottom line is with
7 this thing, it hasn't functioned the way it was
8 intended to be. Obviously, other work has come to
9 play here in this forebay. And an example, the
10 erosion continues as a result, and you have seen
11 the pictures here, everybody has seen the pictures
12 here, the evidence speaks for itself. So even the
13 original water marks that were there, as they
14 eroded this thing keeps getting moved back. And
15 so the table content is constantly fluctuating, so
16 it hasn't served its purpose.

17 MR. ADKINS: When I looked at those
18 pictures I saw some I would have thought would
19 have come from the Mud Lake area of Sipiwesk Lake
20 and some perhaps from the Jenpeg forebay area; is
21 that correct?

22 MR. SETTEE: We showed some of the
23 pictures from Mud Lake area and also Jenpeg, yes.

24 MR. ADKINS: Downstream of the weir
25 and upstream of Cross Lake, so upstream of the

1 Jenpeg forebay.

2 The Cross Lake arena, it was a major
3 development -- sorry, am I quiet?

4 MR. PAUPANAKIS: No, no.

5 MR. ADKINS: It has provided some
6 recreational opportunities, alternative recreation
7 that the NFA refers to. Has that been a benefit
8 from the community's perspective?

9 MR. PAUPANAKIS: What was contemplated
10 with the Cross Lake arena, Bob? Can I ask you
11 that?

12 MR. ADKINS: Well, it was going to
13 provide an indoor arena with seating for about
14 2500 people enclosed, with artificial ice, and I
15 think it was operational for a while all of the
16 year. And the cost of operation and maintenance
17 are being paid by Manitoba and Manitoba Hydro
18 under a fund that was established. Is that
19 consistent with your understanding?

20 MR. PAUPANAKIS: My understanding of
21 the Cross Lake arena is that it is not the Cross
22 Lake arena. It is the Cross Lake sports complex.
23 It was to address various issues surrounding
24 recreation in Cross Lake. It wasn't just an issue
25 of ice skating, hockey. My understanding was we

1 were to build a sports complex that houses
2 recreation in Cross Lake. This never happened.
3 In the interim -- in the interim, I want to
4 emphasize in the interim, an arena was built for
5 Cross Lake. The full benefits of what was
6 originally contemplated, we have not seen yet.

7 MR. ADKINS: Okay. I -- I won't get
8 into any discussion or argument about that. This
9 isn't the time or the place. But the arena is
10 there.

11 One of the things that I am interested
12 in, was the issue that was raised in connection
13 with the domestic fishing program, because that
14 was something that I thought was actually quite a
15 good program, my understanding of that program,
16 and I know it was operated initially with the
17 involvement of the Province of Manitoba and
18 Manitoba Hydro and Pimicikamak representatives,
19 but it provided funding so that people who were
20 involved in domestic fishing were able to continue
21 to domestically fish, which was a positive I
22 thought of that program. And then they were able
23 to bring the fish back into the community. I know
24 in many years it was well over 100,000 pounds of
25 fish that was brought back into the community.

1 And it was then provided to community members at
2 no charge. One adjunct to that was a hot lunch
3 program that operated within the community. My
4 understanding is both of those programs are still
5 operating, but they seem to be negative in terms
6 of your comments. Can you advise more on that?

7 MR. PAUPANAKIS: Yes. As a citizen I
8 have many experiences going to the fish shed on a
9 weekly basis when it is open. I take my aunt
10 there every -- almost two or three times a week.
11 On a good month, Bob, on a good month, she would
12 be given the opportunity to put four whitefish in
13 her bag, on a good month. On various occasions I
14 did make note of noticing that employees were in
15 the habit of hiding whitefish under their -- under
16 the boxes for themselves to take home. So the
17 program is not monitored very well. It is not a
18 program that was managed by our people. Our
19 people used to feed fish to our people. We found
20 that this program was being run by North South
21 Consultants, and managed by North South
22 Consultants. They took it upon themselves to feed
23 fish to our people. I would not characterize that
24 as a positive thing.

25 MR. ADKINS: I think we are getting

1 close to the 4:30 --

2 MR. MUSWAGGON: Bob, I just wanted to
3 add on Darwin's comments about your question about
4 that program including the hot lunch. I just
5 wanted to say this much as well, to even know the
6 effort to deliver such a program, the lunch
7 program was great where Hydro has been paying for
8 the food. But it was not fully implemented the
9 way it should be. Cross Lake band has been
10 subsidizing that Hydro program in the past seven
11 years to the tune of about \$2 million. So in
12 trying to work together in a spirit of good faith
13 because our traditional foods have been destroyed,
14 I think Hydro should make every effort to correct
15 that problem. Because the Cross Lake band is in
16 the business of delivering normal programs and
17 services for Canada, and not in the business of
18 subsidizing Hydro for such an undertaking.

19 MR. ADKINS: I appreciate that
20 comment, and quite frankly there is a number of
21 programs, but I think it is we -- I think it
22 probably best to conclude with this: We could
23 engage for a long time, as we have, and I wanted
24 to thank you very much for the presentation. I
25 was going to ask you about some of the work that's

1 done in terms of the remains that have been
2 unearthed and what has been done with the Province
3 of Manitoba and Pimicikamak in terms of addressing
4 those and some of the projects that have been
5 undertaken, but we will be continuing these
6 discussions I'm sure. Thank you very much.

7 THE CHAIRMAN: Mr. Adkins, are you
8 saying that your cross-examination is concluded?

9 MR. ADKINS: That's what I'm saying.

10 THE CHAIRMAN: Thank you. I will just
11 test the room and see if either of the
12 participants remaining have any questions for
13 these witnesses? Ms. Whelan Enns? No.
14 Ms. Craft? No. Thank you very much.

15 So then we can excuse this panel, I
16 mean they are certainly welcome to come back, but
17 we won't put you on the hot seat tomorrow morning.
18 Thank you very much for your presentation today.
19 And I particularly would like to thank all of you,
20 and Chief Merrick and members of your community
21 for the warm hospitality that you showed us when
22 we came to your community about two months ago.
23 So thank you for that. And thank you for your
24 presentation today.

25 Do you have any re-direct?

1 MS. KEARNS: No, I do not.

2 THE CHAIRMAN: Thank you very much.

3 We have some documents to register.

4 MS. JOHNSON: We certainly do. The
5 first one is KHLP080, which is the combined map
6 with the EIS study area, along with the MMF study
7 area. 081 is the excerpt from Bipole III report
8 with the map. KHLP82 is the response to Ms.
9 Stewart regarding the moose harvest numbers. This
10 one is left over from last week, the life cycle
11 assessment, which is 083, accompanied by the
12 memorandum, technical memorandum which is 084. We
13 have PIM002, which is the Treaty 5 map. 03 are
14 the excerpts from the NFA. And 04 is Mr. Settee's
15 presentation.

16 (EXHIBIT KHLP080: The combined map
17 with the EIS study area, along with
18 the MMF study area)

19
20 (EXHIBIT KHLP081: Excerpt from Bipole
21 III report with the map)

22 (EXHIBIT KHLP82: Response to Ms.
23 Stewart regarding the moose harvest
24 numbers)

25 (EXHIBIT KHLP083: The life cycle

1 assessment)

2 (EXHIBIT KHLP084: Technical

3 memorandum)

4 (EXHIBIT PIM002: Treaty 5 map)

5 (EXHIBIT PIM003: Excerpts from the

6 NFA)

7 (EXHIBIT PIM004: Mr. Settee's

8 presentation)

9 THE CHAIRMAN: Thank you. We will
10 resume tomorrow morning with Pimicikamak and
11 Ms. Luttermann's presentation. Thank you very
12 much. Tomorrow morning at 9:30.

13 (Adjourned at 4:37 p.m.)

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