

MANITOBA CLEAN ENVIRONMENT COMMISSION

KEEYASK GENERATION PROJECT

PUBLIC HEARING

Volume 2

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Transcript of Proceedings

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TUESDAY, OCTOBER 22, 2013

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INDEX OF PROCEEDINGS

Keeyask HydroElectric panel	
Ms. S. Pachal, Mr. V. Spence, Mr. T. Bland, Ms. E. Neville, Ms. Jane Kidd-Hantscher, Mr. G. Schick	
Cross-examination by Ms. Whelan Enns	217
Cross-examination by Ms. Land	257
Cross-examination by Mr. Madden	269
Cross-examination by Mr. Williams	352
Cross-examination by Ms. Pawlowska	383
Cross-examination by Ms. Kearns	416
Re-direct by Mr. Bedford	430

INDEX OF EXHIBITS

KHLP32	Appendix C from Fox Lake	433
KHLP 33	Presentation materials documentation from the Cree Nation partners	433
KHLP34	Presentation slides from the Cree partners	433
MMF01	Recommendation 4.1 from the Aboriginal Justice Implementation commission	433

INDEX OF UNDERTAKINGS

1	Advise if there is letter or direction from government instructing Hydro to work in partnerships	283
2	Advise if Hydro met with anyone from MMF in creating IHA report	349
3	Advise if sustainability assessment protocol is on the record of proceeding; and if not, advise if Hydro will file an electronic copy	373
4	Inquire and produce summary on meeting with member two, if available	403
5	Under advisement: Produce the band council resolutions	424

1 Tuesday, October 22, 2013

2 Upon commencing at 9:30 a.m.

3 THE CHAIRMAN: Good morning. Come to
4 order, please. We will this morning resume the
5 presentation that was started yesterday afternoon
6 by the partnership panel. It's at the front
7 table. I think you have no new faces at the front
8 table, but you have a whole row of new faces at
9 the back. Would you introduce them, please?

10 MS. PACHAL: Absolutely. It is my
11 pleasure to introduce Kelly Bryll from Manitoba
12 Hydro; Lisa Leochko, Manitoba Hydro; Robynn Clark,
13 Manitoba Hydro; Susan Collins, Manitoba Hydro;
14 Bill Kennedy with the Cree Nation Partners; Ron
15 Lowe with the Cree Nation Partners; Jim Thomas
16 with York Factory First Nation; and Karen Anderson
17 with Fox Lake Cree Nation.

18 THE CHAIRMAN: Thank you. And you may
19 proceed, and continue with your presentation.

20 MR. SPENCE: Good morning,
21 Mr. Chairman, panel. We will continue on from
22 yesterday on our presentation, but we can have
23 time to show the video, our story. So I believe
24 that's where we'll start this morning.

25 (Video shown)

1 THE CHAIRMAN: Thank you. I have seen
2 this video a number of times now, and I must tell
3 you, I never fail to be impressed with how well
4 done it is. It's a very good video.

5 Do you have any more presentation or
6 do we turn to cross-examination?

7 MR. SPENCE: Yeah, we're done.

8 THE CHAIRMAN: Okay. There will be an
9 opportunity now then for participants, as well as
10 members of the public, to ask questions of this
11 panel, but only on the matters that this panel has
12 presented. So it's basically questions about the
13 nature of the partnership, then some general
14 questions that relate to their presentation
15 yesterday afternoon, as well as the video today.

16 The cross-examination is in the same
17 order as the opening statements were made
18 yesterday. In fact, this will be the case
19 throughout these hearings. So first up is
20 Manitoba Wildlands.

21 Ms. Whelan Enns, do you have any
22 questions?

23 MS. WHELAN ENNS: Good morning. Just
24 to confirm, we had various presentations
25 yesterday, all from the partnership, and we have a

1 continuation this morning, including with the
2 video, and some changes then in terms of who has
3 been in the front row.

4 THE CHAIRMAN: Well, I think it's the
5 same front row as yesterday afternoon. And all of
6 the presentations yesterday were really about the
7 nature of the partnership.

8 MS. WHELAN ENNS: Thank you.

9 Could -- and I think we're going to,
10 again, just clarifying, Mr. Chair, that Ms. Pachal
11 has been chairing the panel, so I'm going to be
12 asking questions, start with her. And you can
13 advise and/or she can direct who would answer the
14 question?

15 THE CHAIRMAN: Absolutely, or you can
16 just direct the question in general and whoever
17 the appropriate respondent is will answer it, I
18 presume.

19 MS. WHELAN ENNS: I'm just checking
20 sets of slides.

21 Would you please, and I'd like to hear
22 from the Cree Partnership First Nations on this
23 one, would you please tell us what the
24 proportional shareholder positions are for each of
25 the First Nations? Now, what I mean by that is

1 that we have heard the option available to invest
2 in Keeyask in your presentations. We have also
3 heard then, and this was in the verbal information
4 when slide 21 was up yesterday, we heard a
5 reference to a 50/50 shareholder position. There
6 was also a reference to majority shareholder
7 position with a meaningful role. My understanding
8 from public materials is that this is a
9 partnership that's structured where 75 percent of
10 the liabilities and the revenues and the costs are
11 Manitoba Hydro and, therefore, public funds. So
12 what does the 50/50 shareholder reference mean and
13 what does the majority shareholder reference mean?

14 MR. BLAND: The 50/50 that you are
15 describing, I believe that's in the direct
16 negotiated contracts, and that's 50/50 partnership
17 with whoever that we decided we are going to
18 partner with. The 75/25 portion is, as you
19 pointed out earlier, 75 percent is Manitoba Hydro
20 and 25 percent is the First Nation; 15 percent of
21 that would be for Tataskweyak, 5 percent would be
22 for York Factory, and 5 percent would be for Fox
23 Lake.

24 MS. WHELAN ENNS: Thank you. And I
25 take the correction.

1 Does that mean then in any services or
2 materials contracts that they would be held
3 50 percent by the individual First Nation in the
4 partnership and 50 percent by, potentially by any
5 outside joint venture company?

6 MR. BLAND: Can you ask that again?

7 Sorry, I just --

8 MS. WHELAN ENNS: I'm back to the
9 50/50, taking your correction. Thank you for the
10 information.

11 Does that mean then that in a contract
12 for services or materials, where one of the
13 partnership First Nations has 50 percent of that
14 contract, that the other 50 percent is with an
15 outside company that might, in fact, then be a
16 joint venture partner?

17 MR. BLAND: Yes.

18 MS. WHELAN ENNS: And that applies in
19 materials, services, the whole range of housing,
20 food, construction and hauling contracts?

21 MR. BLAND: In section 13.1 of the
22 JKDA, it references what the partnerships are.

23 MS. WHELAN ENNS: Thank you.

24 MR. BLAND: And how they were
25 established.

1 MS. WHELAN ENNS: There was
2 information in the powerpoint presentation
3 yesterday about, and there was also in the oral
4 presentation, information about the contracts that
5 are already being let. So are there joint
6 ventures to date?

7 MR. BLAND: Sorry, I'm having a hard
8 time hearing you. I don't know, is it just me?

9 MS. WHELAN ENNS: Perhaps we should
10 ask whether that's your system or whether people
11 in the room are having trouble hearing me?

12 MR. BLAND: I think it might just be I
13 have a bad ear. This is my good ear.

14 MS. WHELAN ENNS: I just don't want to
15 be too loud.

16 MR. BLAND: That's fine, if you don't
17 mind, just be loud so we can hear you.

18 MS. WHELAN ENNS: All right. Okay.
19 Taking that as the go-ahead -- thank you. So
20 that's a reference back to the JKDA, and a
21 decision to not answer about whether there's any
22 existing joint venture contacts in place yet?

23 MR. BLAND: There is joint venture
24 contacts in place today, not for the JKDA, but for
25 the Keeyask infrastructure project. And so we do

1 have contracts in place today.

2 MS. WHELAN ENNS: Thank you very much.

3 My next question was whether the structure in
4 terms of joint ventures and the description of how
5 these contracts would be set up was already
6 happening in terms of the Keeyask infrastructure
7 project. So thank you for that.

8 Is the same thing true then, or
9 intended in terms of the Keeyask transmission
10 project?

11 MS. PACHAL: The Keeyask
12 infrastructure project is not part of the Keeyask
13 project partnership. The Keeyask transmission
14 component of the project is owned by Manitoba
15 Hydro.

16 MS. WHELAN ENNS: Thank you. So does
17 the JKDA apply then to any of the decisions with
18 respect to the previous Keeyask projects?

19 THE CHAIRMAN: Which previous Keeyask
20 projects are you speaking of?

21 MS. WHELAN ENNS: There are two
22 licensed, Mr. Chair, and they are not --

23 THE CHAIRMAN: I think they have
24 already made reference to the Keeyask
25 infrastructure project.

1 MS. WHELAN ENNS: Yes, they did.

2 THE CHAIRMAN: Is that what you mean
3 by the previous Keeyask projects?

4 MS. WHELAN ENNS: Previous licensed
5 ones, yes. And also then the transmission,
6 Keeyask transmission project is licensed.

7 THE CHAIRMAN: Well, I think it was
8 just responded that the Keeyask transmission
9 licence is not part of the partnership. That's a
10 matter on the public record, so...

11 MS. WHELAN ENNS: Thank you. On slide
12 24, I have a picture of a community meeting, so...

13 MR. BLAND: Which presentation?

14 MS. WHELAN ENNS: Just double-checking
15 page numbers here. I'm going to the powerpoint
16 presentation, that's the panel presentation guide
17 now. And there's a box at the top of the slide
18 about the advisory group on employment issues.
19 And there's a list then of the voting
20 representatives in this advisory group.

21 Could you tell us, because there's a
22 reference in the text in terms of voting, could
23 you tell us how the waiting is in terms of the
24 members of this group when they make a decision,
25 when they vote? Do the partner First Nations have

1 one vote or four? Does the Province of Manitoba
2 have one vote, and so on?

3 MR. BLAND: Who is that question
4 directed to?

5 MS. KIDD-HANTSCHER: So in terms of
6 the terms of reference for the advisory group on
7 employment, which are a schedule to the Joint
8 Keeyask Development Agreement, the representatives
9 are as follows: There will be four Keeyask Cree
10 Nation representatives, one member each from
11 Tataskweyak, War Lake, York Factory, and Fox; six
12 Hydro representatives; one representative of the
13 Province of Manitoba; one representative of the
14 Hydro Projects Management Association; one
15 representative of the Allied Hydro Council. And
16 those would be the voting representatives.

17 MS. WHELAN ENNS: So your chart then,
18 or the image on this page 24 does not include the
19 Manitoba Hydro six votes?

20 MS. KIDD-HANTSCHER: That would just
21 have been an oversight in terms of the chart. I
22 believe Ms. Pachal actually referenced it in her
23 speaking yesterday, though.

24 MS. WHELAN ENNS: Hence the question.
25 Thank you very much.

1 Would you tell us the timeline assumed
2 at this point for the equity investment from First
3 Nations in the Keeyask Generation Project? What
4 is assumed in terms of when the investment would
5 occur, when it's required?

6 MS. KIDD-HANTSCHER: If I could just
7 have one minute, please?

8 (OFF THE RECORD DISCUSSION)

9 MS. KIDD-HANTSCHER: Okay, thank you.
10 So in terms of the investment
11 timeframe for the First Nation potential partners
12 in the project, there are different dates at which
13 portions of the investment would be made. There
14 was an initial payment made after the filing of
15 the Environmental Impact Statement. There is
16 another payment, or investment on initial closing,
17 which is after we make our notice, or issue our
18 notice of construction. And the majority of the
19 investment would occur at final closing, which is
20 180 days after the last turbine is installed at
21 the Keeyask Generating Station.

22 MS. WHELAN ENNS: Thank you. Are the
23 four Cree partners able to make these investments?

24 MR. BLAND: So far we made the initial
25 payment. I believe each First Nation is building

1 up the amounts that are required for the second
2 payment and the third payments, and we all feel
3 fairly confident that we will make the payments.

4 MS. WHELAN ENNS: Thank you. Now I'm
5 speaking louder, but I'm also having some
6 difficulty hearing you. So we've got more light,
7 maybe we'll have more sound soon.

8 Thank you for that. And I wanted to
9 basically make a small qualifying comment, and
10 that is, those of us who are funded participants
11 in the room for the hearings have the job or the
12 responsibility to ask these questions. So the
13 caveat or qualifying comment is that none of the
14 questions that I am likely to ask are in any way a
15 criticism of the decision-making of the four
16 partnership First Nations. They are, in fact, for
17 information in the hearing process.

18 The question I was asking has to do
19 with then an overall pattern then in terms of the
20 timelines, thank you, in terms of the investment,
21 and the ability of the First Nations to make the
22 investment, and the hope that there won't be a
23 need to borrow any of the funds to make the equity
24 investments.

25 Changing pages here, again, in the --

1 MS. PACHAL: Could I just --

2 MS. WHELAN ENNS: Yes.

3 MS. PACHAL: When you said that there
4 won't be a need, I think that we explained that
5 there will be a need for both Manitoba Hydro and
6 the First Nations to borrow monies to fund this
7 project.

8 MS. WHELAN ENNS: Thank you. That was
9 in the oral comments yesterday, and it applies
10 then to Manitoba Hydro in terms of public debtor
11 investment, and also potentially to the four Cree
12 partners?

13 MS. PACHAL: That is correct.

14 MS. WHELAN ENNS: Thank you.

15 MS. KIDD-HANTSCHER: If I could add to
16 that, please? As was outlined in Ms. Pachal's
17 presentation, the partner First Nations have two
18 investment options with this project, and that is
19 a common equity investment or a preferred option.
20 And it would certainly be in the first where the
21 majority of the loans would come into play, and
22 the preferred option would be much less, if any,
23 loan is required for that option. So I wanted to
24 clarify that.

25 MS. WHELAN ENNS: Thank you. Is

1 there -- and again, I'm not an expert on the
2 agreements that have been signed to date, but
3 there is a question I think that has to do with
4 the historic pattern. And I would like to ask
5 then whether the Cree Nation partners, whether by
6 agreement or in terms of their future planning,
7 intend revenues from Keeyask to be placed in
8 community trusts? Whether that's been part of the
9 discussions or negotiations, whether that's a
10 future decision?

11 MR. BLAND: For York Factory, we
12 did -- or we are in the process of completing our
13 trust, and we do, we are intending on putting the
14 money into the trust and to use it for the local
15 community.

16 I believe also, Fox Lake also
17 mentioned that they are in the process of
18 establishing their trust as well, and that they
19 are -- it's not a trust, it's a corporation, but
20 it's kind of like the same idea. And maybe I'll
21 let George speak to that.

22 MR. NEEPIN: I believe in my
23 presentation I mentioned yesterday that we are
24 going to be putting ours in -- we have established
25 a joint venture account.

1 MS. WHELAN ENNS: Thank you.

2 MR. SPENCE: (Cree spoken) TCN will
3 also use the monies, the income from this
4 partnership and invest it and put it in trusts,
5 and it will be an annual submission to the members
6 for their approval, how to spend the money.

7 MS. WHELAN ENNS: Thank you. I
8 believe that one of the challenges we have in
9 terms of cross-examination at the beginning of
10 these hearings is that there's a lot of material
11 for everybody, and there's a tendency then, once
12 the panels begin to present, to have that as
13 background and refer to what is in the most recent
14 or immediate presentations from yesterday. So
15 thank you for confirming where content has been in
16 your presentations, and thank you for answering
17 questions.

18 There is a reference on page 29 to
19 ongoing monitor programs, it's the second bullet
20 under the insert of the slide. Could you confirm
21 that this is a reference to ongoing monitoring,
22 assuming water, aquatic, land species, various
23 potential impacts, could you confirm that the
24 monitoring programs referenced there are for the
25 planning phase, which we are in now, the

1 construction phase of the Keeyask Generation
2 Project, and then after operation begins?

3 MS. KIDD-HANTSCHER: Yes. I can
4 confirm that those arrangements are for all phases
5 of the project.

6 MS. WHELAN ENNS: Thank you.

7 MR. BLAND: We will also be doing a
8 presentation on a later panel, so you'll have more
9 detail.

10 MS. WHELAN ENNS: Thank you. I think
11 one of the most important things we heard
12 yesterday, and this is there in the text on page
13 30, has to do with each partner, bottom bullet,
14 having the opportunity to improve on the message
15 of the other to ensure accuracy and completeness
16 when you have been preparing materials. I would
17 like to request, and this would be at the option
18 of the partners and Manitoba Hydro, but I think it
19 would benefit us all to hear a couple of examples
20 of what that means, how that worked?

21 MS. PACHAL: Well, most of us that you
22 are going to see over the next five or six weeks
23 have never been in a hearing situation, so we have
24 spent months preparing for these hearings, and
25 going to witness training, and learning about the

1 best ways to convey our story about our journey
2 together as partners and about the environmental
3 assessment. And during that process, we made
4 presentations, we each made presentations to each
5 other and we provided feedback to each other. So
6 the presentation that we are looking at right now
7 is a perfect example. It went through many
8 iterations, with feedback from both people from
9 Manitoba Hydro and from our partners, to make sure
10 that everything, exactly as we say, that it's
11 accurate and truthful and it reflects what we all
12 feel or believe the story of our journey is.

13 MS. WHELAN ENNS: Thank you very much.
14 And that's why I asked the question, is because
15 this is probably, these four lines of text are
16 probably four lines that are some of the most
17 important from yesterday. So thank you for adding
18 the description.

19 On page 31, I'd like to know, and this
20 may be specifically a Manitoba Hydro question,
21 because this page is about hydroelectric power
22 being sustainable and having low emissions and so
23 on. I'd like to know which externalities Manitoba
24 Hydro takes into account when making the
25 comparisons between hydropower being sustainable

1 and in comparison, for instance, to natural gas or
2 coal?

3 I'm going to add a small comment while
4 we wait for the answer, if I may?

5 THE CHAIRMAN: Well, you're asking
6 questions, not comments.

7 MS. WHELAN ENNS: I wanted to explain
8 why the question, but we can pass.

9 THE CHAIRMAN: Well, I think it's
10 pretty straightforward, it's a good question. We
11 may not have the expertise here to answer it at
12 this time.

13 MS. WHELAN ENNS: We may need an
14 undertaking, Mr. Chair.

15 MS. PACHAL: So the chart here, the
16 purpose of the chart was to demonstrate just
17 specifically the greenhouse gas emissions produced
18 by natural gas versus coal versus hydroelectric
19 power. So if you looked at, for example, Keeyask,
20 a 695-megawatt project, and you evaluated the
21 greenhouse gas emissions for coal, it would be the
22 large dark gray circle. If you evaluate it for
23 natural gas, it would be the smaller gray circle.
24 And if you evaluate it for the hydroelectric power
25 for Keeyask, for sake of argument, it would be the

1 red dot.

2 THE CHAIRMAN: I'm sure
3 Ms. Whelan Enns doesn't need my help, but this is
4 a question that I have wondered about myself.
5 What do you consider in what makes up the
6 greenhouse gas in each of these circles? Is it
7 just when they are built and operating, or does it
8 include all of the greenhouse gas generated in the
9 construction and the full lifecycle of the
10 project, or of the various different --

11 MS. PACHAL: I believe it's just the
12 physical environment. You know what, there's
13 another panel that is coming up that has the
14 actual expertise to answer that much better than
15 us trying to give you bits and pieces.

16 THE CHAIRMAN: That's fair enough, and
17 I would suggest then that we wait until that
18 panel, and you ask that question again at that
19 time, Ms. Whelan Enns.

20 MS. WHELAN ENNS: Yes, Mr. Chair. And
21 we will probably also have questions about the
22 comment, about just the physical environment.

23 THE CHAIRMAN: Fair enough.

24 MS. PACHAL: Well, I'll just correct
25 myself. What my colleague in the audience was

1 trying to tell me was it's coming up in the
2 physical environment panel. So when I said just
3 physical environment, I was trying to read her
4 lips. But what she was trying to tell me is the
5 expertise is coming up in the physical environment
6 panel.

7 MS. WHELAN ENNS: Could we confirm
8 then that -- and this is a reference to the
9 structure of the EIS materials and reports and
10 technical reports -- can we conclude then that the
11 physical environment panel will have a focus that
12 includes climate change?

13 MS. PACHAL: Yes.

14 MS. WHELAN ENNS: And could we also
15 then assume that climate change, because it's got
16 a quite repetitive and repeating pattern within
17 the EIS materials, that climate change may also be
18 in the questions about the generation station in
19 other panels?

20 THE CHAIRMAN: Can we wait until that
21 panel is in the chair?

22 MS. WHELAN ENNS: Yes, thank you.

23 Will Mr. Adams be available for questions?

24 MS. PACHAL: No, he will not.

25 MS. WHELAN ENNS: Is there anybody

1 else available then from Manitoba Hydro who can
2 speak to and answer questions regarding the IHA
3 sustainability assessment of the Keeyask
4 generation project.

5 MS. PACHAL: Yes, I can do that.

6 MS. WHELAN ENNS: Mr. Chair?

7 THE CHAIRMAN: Go ahead.

8 MS. WHELAN ENNS: Would you tell us
9 what the public review process is for the
10 assessment of the sustainability of this project?

11 MS. PACHAL: Yes. The assessment
12 report is being posted, it was posted on
13 September 18th, and it will be up on the website
14 of both the Keeyask Hydropower Limited Partnership
15 at Manitoba Hydro, as well as the International
16 Hydropower Association website. It is the IHA
17 that posts it for the 60-day period. Based on
18 comments received, the assessors will determine if
19 changes are required for the report, and if so,
20 the revised document will be posted online for
21 another 60 days. So it's an IHA process. We
22 posted it on our website for convenience because
23 people were asking about it. So once it became a
24 public document, we posted it at the same time the
25 IHA posted it. If the assessors determine no

1 changes are necessary, the report would be then
2 considered final.

3 MS. WHELAN ENNS: Mr. Adams yesterday
4 mentioned four or five, maybe six international
5 environmental organizations in his remarks, about
6 the assessment of the sustainability of the
7 Keeyask Generation Project. Were any of those
8 international environmental organizations a party
9 to this assessment? Did any of them take part in
10 this assessment, review it, sign off on it, et
11 cetera?

12 MS. PACHAL: So a number of the NGO's
13 that Mr. Adams mentioned yesterday were actually,
14 he was talking about them in the context that they
15 were involved in developing the protocol. So I
16 can pull his presentation out here and just
17 double-check.

18 Yes, so he was talking about that the
19 protocol was endorsed by environmental
20 organizations like the World Wildlife Fund and the
21 Nature Conservancy, social organizations like
22 Transparency International and Oxfam, funding
23 organizations like the World Bank, Equator
24 Principles Bank, and both by developing country
25 and developed country governments. And so those,

1 all those organizations were involved in a
2 multi-year process of actually developing the
3 protocol, and then the protocol was applied to the
4 Keeyask project by auditors selected by the IHA.

5 MS. WHELAN ENNS: Thank you. So we
6 can conclude then from your answer, and I have
7 actually been following this process myself for a
8 number of years, that the international
9 environmental organizations participated in
10 arriving at the protocol to do an assessment, but
11 none of them had any role in the assessment of
12 Keeyask. Is that correct?

13 MS. PACHAL: Well, I would imagine
14 they have a role because they can read it online
15 and comment on it, if they so choose. And if they
16 have comments on it, that's the point at which
17 their comments will be taken into consideration by
18 the IHA auditors.

19 MS. WHELAN ENNS: So the role of the
20 international environmental organizations in terms
21 of the application of the sustainability
22 assessment protocol then becomes the option to
23 comment. Thank you.

24 The reason I'm asking is because
25 sometimes it's hard to tell when the names of

1 environmental organizations are added to public
2 information. There were then how many, six
3 auditors here? Six assessors?

4 MS. PACHAL: I think that sounds about
5 right, six or eight assessors.

6 MS. WHELAN ENNS: Were any of the
7 assessors acting on behalf of environmental
8 organization, or non profit organization, or
9 social organization?

10 MS. MAYOR: Sorry, we have an
11 individual that is also assisting. Her indication
12 is that they are independent auditors.

13 MS. WHELAN ENNS: Then we could call
14 the independent auditors consultants or
15 contractors, and that would be accurate?

16 MS. PACHAL: I have just been told
17 that somebody is just checking the resumés of the
18 auditors. Donald O'Leary was from Transparency
19 International in New York and he was one of the
20 auditors.

21 MS. WHELAN ENNS: Mr. O'Leary lives
22 and works in Washington. He is no longer
23 associated with Transparency International. I'm
24 not sure if he was last January when he was in
25 here in the group of six auditors.

1 THE CHAIRMAN: You are making a
2 statement rather than asking a question, and what
3 is the relevance of that?

4 MS. WHELAN ENNS: The relevance is to
5 establish, Mr. Chair, that these assessors are
6 auditors, independent, and they were not acting in
7 any way in relation to an international
8 environmental organization when they assessed the
9 Keeyask Generation Project.

10 THE CHAIRMAN: Well, I think it was
11 testified that they were independent auditors.

12 MS. WHELAN ENNS: Thank you.

13 MS. PACHAL: And I just want to
14 correct for the record, my colleagues are telling
15 me Donald O'Leary was, in fact, working for
16 Transparency International, New York, when he
17 participated in the audit last January.

18 MS. WHELAN ENNS: Thank you. Are
19 Mr. Adams' written speaking notes from yesterday
20 available?

21 MS. PACHAL: No, we don't have those.

22 THE CHAIRMAN: The transcript, the
23 daily transcript will be available which will --

24 MS. WHELAN ENNS: Thank you.

25 Is the assessment then of the Keeyask

1 Generation Project -- and I thank you for
2 identifying that there's two review periods or two
3 comments periods, potentially -- is the assessment
4 in any way binding on Manitoba Hydro and/or the
5 partnership for the Keeyask Generation Project?

6 MS. PACHAL: I am not sure I
7 understand what binding, in what way, what you
8 mean in that way?

9 MS. WHELAN ENNS: The question
10 basically has to do with whether or not the
11 proponent is in any way required to improve the
12 grades in the first round, to report publicly in
13 terms of the sustainability of the Keeyask
14 Generation Station through the next period of
15 time, whether the partnership of the proponent has
16 the intention to, plan to maintain these levels
17 that are currently in the assessment of a project
18 that doesn't exist yet?

19 THE CHAIRMAN: Are you asking if the
20 IHA has any authority over Manitoba Hydro in
21 respect of compliance?

22 MS. WHELAN ENNS: That would be one
23 way of putting it, Mr. Chair. If this is an
24 International Hydro Association, so there is also
25 a way of asking the question, and that is within

1 IHA and the members in IHA that are using the
2 protocol, do they have an accountability in terms
3 of the sustainability ratings of the projects?

4 THE CHAIRMAN: Perhaps it might help
5 if you can explain a little bit of what IHA is, a
6 little bit more than Mr. Adams did yesterday,
7 which was fairly brief?

8 MS. PACHAL: The International
9 Hydropower Association is a voluntary organization
10 that has members from hydroelectric utilities from
11 around the world. The assessment in, and of
12 itself, was prepared for the planning phase of the
13 project. So that's what was evaluated. And it
14 did receive, as we mentioned, or Mr. Adams
15 mentioned yesterday, the highest score of any
16 project that's yet to be assessed.

17 The IHA is not binding, the
18 recommendations or the findings of the audit
19 aren't binding on us, but we welcome the
20 opportunity to have independent auditors review
21 our project and tell us where we were doing a
22 great job and where there were opportunities to
23 improve. And so we have taken that to heart. We
24 are looking at some of the areas they identified
25 for improvement. But I must say we performed so

1 well in so many areas there's only a few that we
2 need to look at.

3 MS. WHELAN ENNS: Thank you. We have
4 established then that this assessment is for the
5 planning phase only?

6 MS. PACHAL: Correct.

7 MS. WHELAN ENNS: I think the earlier
8 question then was approached in your response just
9 now, and that is: Are we to take from what you're
10 saying that Manitoba Hydro and the proponent, as
11 in the partnership, will be continuing to work
12 with this standard, or were you primarily and only
13 interested in the planning phase assessment?

14 We heard you say that you scored well
15 and that there's only certain areas to improve.
16 The reason I'm asking these questions is because
17 the sustainability assessment at the planning
18 stage of a project like this has real potential if
19 there is, in fact, an intention in terms of
20 sustainability standards for construction and
21 operation also.

22 MS. PACHAL: So the protocol is
23 designed to be applied, a utility could ask for
24 the protocol to be applied in any of the phases,
25 whether it's planning, construction or operation.

1 Some of the utilities that have been assessed to
2 date were in the construction phase, for example.
3 We decided to undertake the assessment when we
4 were in the planning phase. So at this point,
5 many of the materials that were reviewed by the
6 auditors during the planning phase dealt with many
7 of the activities that will take place during
8 construction and operations.

9 So by way of an example, in the
10 planning phase you are not doing a lot of actual
11 construction, obviously, but they took an in-depth
12 look at what our spill response plans were and how
13 we would deal with spill response in the event of
14 a spill of the project, which would be what would
15 happen, clearly, in the construction and
16 operations phase. So during the planning phase
17 they looked at some of the things that happen from
18 the environmental perspective in the other phases,
19 but we were assessed on the basis of being in the
20 planning phase. Hopefully that helps clarify it.

21 MS. WHELAN ENNS: Thank you.

22 How many other generation projects in
23 North America have been assessed using this
24 protocol?

25 MS. PACHAL: Keeyask is the first

1 plant in North America to be assessed using the
2 sustainability assessment protocol. To date five
3 other companies have published the assessment of
4 their plants. And there has been one in Iceland
5 and Brazil, and two other European plants that I
6 don't have the name of. And all the companies
7 assessed, that have chosen to publish their
8 reports, are leading companies in their respective
9 countries.

10 MS. WHELAN ENNS: Thank you.

11 How were the six assessors briefed?
12 They were all from different countries and
13 different professional backgrounds. How were the
14 six assessors briefed and prepared in terms of
15 their background on Manitoba as a province, the
16 north, our hydro system, the partnership?

17 MS. PACHAL: Well, I can't speak to
18 what they did for themselves, or their
19 organization did to brief them. What I can speak
20 to is what the partnership did to provide
21 information to them. And that was that we
22 provided all of the materials we could possibly
23 think of related to our project in advance, and
24 then while they were here, we have numerous share
25 point sites that have all our materials and

1 information that they had access to, plus binders
2 and boxes of materials that were brought into the
3 rooms everyday as they interviewed all of the
4 Hydro employees and all of our partners.

5 MS. WHELAN ENNS: Thank you. Can we
6 take your answer to mean that the six assessors
7 were not provided with information about the
8 existing hydro system in the Province, the
9 neighboring infrastructure, if you will, on the
10 Nelson River, or even just the history of the
11 system?

12 MS. PACHAL: My partners are reminding
13 me that the auditors went into each of their
14 communities and interviewed many of the members of
15 their communities. So as we know from just coming
16 from the hearings in the north, they would have
17 heard an extensive amount of information about the
18 existing hydro system and people's feelings about
19 the existing hydro system in those communities.
20 As well they did tour, I believe it was Kettle
21 Generating Station but I don't know if there's
22 anyone here who remembers. It was Kettle
23 Generating Station that they went on a tour of
24 when they were in the north.

25 MS. WHELAN ENNS: Thank you. I'll

1 refrain from asking any more questions because I
2 have had the description before and met these
3 assessors. What I had been trying to ask is
4 whether or not the assessors were in fact informed
5 about flooding. I think we'll have to stop.

6 THE CHAIRMAN: I think that's been
7 answered in our last response.

8 MS. WHELAN ENNS: Thank you.
9 Mr. Adams also made, there's been quite specific
10 references to the World Commission on Dams in his
11 remarks yesterday. He was indicating I believe
12 and I would like to hear the specifics, he was
13 indicating I believe that Manitoba Hydro is in
14 fact fulfilling and working on fulfilling World
15 Commission on Dams recommendations. Could you
16 tell us, please, the specifics of what Manitoba
17 Hydro is working on or has fulfilled with respect
18 to the World Commission on Dams recommendations?

19 MS. PACHAL: I'll just need a moment
20 to go back to reference some of his remarks.

21 So I don't have the transcript from
22 yesterday but I have a version of Mr. Adams'
23 speaking notes, so...

24 MS. MAYOR: I have the transcript and
25 I'll read it for the witness if that's acceptable

1 so they can get exactly what was said. So it
2 says:

3 "Earlier I referred to the
4 International Hydropower Association
5 or IHA as it's known as. Since 2000,
6 the IHA has worked with other
7 interested partners to develop a
8 practical approach to implementing the
9 core values and strategic practices
10 recommended by the World Banks World
11 Commission on Dams. The result is a
12 sustainability assessment protocol
13 endorsed by environmental
14 organizations including the World
15 Wildlife Fund and the Nature
16 Conservancy. It's endorsed by social
17 organizations including Transparency
18 International and Oxfam and is
19 endorsed by funding organizations such
20 as the World Bank and the Equator
21 Principle Banks."

22 THE CHAIRMAN: Does that answer your
23 question, Ms. Whalen Enns?

24 MS. WHELAN ENNS: No. The question
25 was which recommendations of the World Commission

1 on Dams was the vice-president of Manitoba Hydro
2 referring to?

3 MS. PACHAL: We aren't in a position
4 to answer that question.

5 THE CHAIRMAN: I would just note that
6 it is a bit unusual that somebody who gave
7 testimony yesterday is not available for
8 cross-examination. And we may have to call him
9 back if witnesses wish to ask further questions of
10 him.

11 MS. PACHAL: I should have clarified
12 my answer. He had to fly to London last night.
13 So I thought you meant today is he available for
14 cross-exam with us, and he's not. But he'll
15 absolutely be back next week and could absolutely
16 answer to some of his comments if we needed him to
17 for sure.

18 THE CHAIRMAN: Okay. Let's leave any
19 cross-examination of what Mr. Adams put into
20 evidence yesterday. We will determine in
21 consultation with participants over the next few
22 days whether we need Mr. Adams to come before us
23 next week.

24 MS. WHALEN ENNS: Thank you,
25 Mr. Chair. I have one question left on this topic

1 that pertains to the I guess approximately
2 two-week period when the assessors were here last
3 January and that has to do with the stakeholder
4 interviews.

5 Were the stakeholders who were
6 requested to come in for a discussion with the
7 assessors provided with a record of their
8 interview?

9 MS. PACHAL: I do not have an answer
10 to that question but we can certainly find out for
11 you and potentially later today provide you with
12 that answer.

13 MS. WHELAN ENNS: Yes.

14 MS. MAYOR: If you can just clarify
15 for the record what your specific question is.
16 What stakeholders are you referring to?

17 MS. WHELAN ENNS: Thank you.

18 THE CHAIRMAN: I'd just like to add
19 that we want to be quite clear in this go-around
20 in this round of hearings as to what is being
21 asked in an undertaking. So please clarify it.

22 MS. WHELAN ENNS: Thank you,
23 Mr. Chair.

24 There were also interviews with
25 stakeholders where three, perhaps a different

1 combination of three, of the assessors interviewed
2 a range of stakeholders. My question then is
3 whether the stakeholders who were interviewed were
4 provided with a copy of the interview.

5 MS. PACHAL: I believe that Manitoba
6 Wildlands was one of the organizations that was
7 interviewed. So you would probably be in a better
8 position than me to say whether or not you got a
9 record of that meeting. I don't know if the
10 auditors provided that to the stakeholders. We
11 weren't present at those meetings. We can talk to
12 the auditors and find out but I would assume you
13 would know if they provided you with them or not.

14 MS. WHALEN ENNS: Mr. Chair, I will
15 try to avoid statements. Shall I answer the
16 question?

17 THE CHAIRMAN: Go ahead.

18 MS. WHELAN ENNS: Thank you. I will
19 try to avoid describing the most unprofessional
20 experience I think I have ever had, and I do
21 interviews all the time, but I was promised,
22 Mr. Chair, verbally, a copy of the notes from that
23 interview. And it has never arrived.

24 THE CHAIRMAN: Thank you. Do you have
25 more questions, Ms. Whalen Enns?

1 MS. WHALEN ENNS: Yes, Mr. Chair.

2 MS. PACHAL: Can I just clarify then
3 whether or not we need an undertaking for that
4 then?

5 MS. WHELAN ENNS: I would still
6 appreciate a copy of the notes from that
7 interview.

8 THE CHAIRMAN: Ms. Mayor?

9 MS. MAYOR: That's not an undertaking
10 that the partnership can give, that's records that
11 were made by the IHA. I'm sure Ms. Whalen Enns
12 could make a formal request to the IHA for those
13 records but we're not providing an undertaking in
14 that regard.

15 THE CHAIRMAN: I accept --

16 MS. WHALEN ENNS: Mr. Chair, it was
17 Manitoba Hydro staff providing all of the services
18 in the interviews and taking all the notes and
19 making -- indicating verbally that it will be
20 forthcoming. Enough.

21 This next question pertains to the
22 powerpoint presentations and oral presentations
23 with them yesterday, and that is there were a
24 whole series. Over time, it's over about 12
25 years. There are a whole series of documents

1 signed and obviously referenda, the presentation
2 that we have, the slides shows each of them. So
3 the question is, are they all on the keyask.com
4 website? Is each agreement, MOU protocol document
5 referred to in this presentation yesterday, are
6 they all in the Keyask generation station
7 materials on the keyask.com website?

8 THE CHAIRMAN: Are you asking if they
9 are all public documents?

10 MS. WHELAN ENNS: Yes. I am asking if
11 they are all public, I'm asking if they are all
12 available to all parties to these hearings?

13 MS. PACHAL: They would all be public
14 documents. I can't verify them unless I
15 cross-check every one to the website to answer if
16 they are all there, but they are all public
17 documents. The majority of them should be there.
18 If there's one missing, we'd be happy to post it.

19 THE CHAIRMAN: Had they been made
20 available to all of the parties to these
21 proceedings?

22 MS. PACHAL: It's a public website.
23 They can access those documents off the website.

24 THE CHAIRMAN: Thank you.

25 MS. WHELAN ENNS: Mr. Chair, I found

1 one yesterday afternoon. Our researchers are now
2 also searching the two other potential public
3 website locations.

4 THE CHAIRMAN: But do you have access
5 to these documents otherwise?

6 MS. WHELAN ENNS: No.

7 THE CHAIRMAN: Then carry on. That's
8 a matter that should be resolved, but please carry
9 on now.

10 MS. WHELAN ENNS: Thank you. I'm just
11 double-checking in terms of tags, Mr. Chair.

12 On slide 32 yesterday, we have a --

13 THE CHAIRMAN: Show them which
14 document you're referring to. There are a number
15 of different ones.

16 MS. WHELAN ENNS: This is the KHL P
17 panel, the slides.

18 MR. BLAND: That's the CNP.

19 MS. PACHAL: Right. It's the Cree
20 Nation Partners presentation. Victor's just
21 getting it. I'm just going to go back one second
22 to the website issue. These documents are either
23 on the Keeyask website, but there's other related
24 documents like settlement agreements, for example,
25 that might have been mentioned yesterday that

1 you'll find on the Manitoba Hydro website.

2 MS. WHELAN ENNS: Thank you.

3 Mr. Chair, there's four possible websites but they
4 haven't been provided to the participants so we'll
5 come back to it. Thank you.

6 THE CHAIRMAN: Now, are you ready for
7 the questions on the CNP document? Ms. Whalen
8 Enns, please carry on.

9 MS. WHALEN ENNS: Thank you. So slide
10 32, the Mother Earth ecosystem model. And first
11 may I say wow. I have some questions for all of
12 us in terms of learning, certainly in our offices.
13 I would appreciate knowing what the time line was
14 for the TCN First Nation members to arrive at your
15 ecosystem model. Whether this was literally, you
16 know, community meetings, time with elders,
17 interviews, time on the land for two years or
18 eight years?

19 THE CHAIRMAN: Just how is this
20 relevant to our review?

21 MS. WHELAN ENNS: Mr. Chair, my
22 questions go to --

23 THE CHAIRMAN: Just let me add. Those
24 of us who were involved in the Bipole process, as
25 you were, saw this document at that time when TCN

1 made a presentation almost a year ago.

2 MS. WHELAN ENNS: What I want to
3 approach in questions, Mr. Chair, is the, for lack
4 of anything other than a European word, the
5 definition of ecosystem that TCN arrived at. I'd
6 like to be able to ask that of TCN.

7 THE CHAIRMAN: Well ask that question.

8 MS. WHELAN ENNS: Thank you. Would
9 you let us know, and I'm sorry to have to use the
10 word definition or meaning, but would you let us
11 know what you arrived at in terms of what
12 ecosystem means?

13 MR. SPENCE: My name is Victor Spence.
14 I can speak for TCN on the word ecosystem. We are
15 very familiar. It's, pardon my language, but we
16 see it as a white man's language, western science.
17 The word we use is Aski in our language. It
18 covers everything, the land, water, the air, our
19 brothers, the people, the animals and the birds.
20 And this did not take over two years to produce.
21 It's our way of life, it's our culture, our
22 identity, our very being. And we try to put it in
23 a way that the western science can understand and
24 see visually and in words who we are as people.
25 So we would have preferred to use Aski which we

1 all use in our independent respective reports, but
2 we are here at the hearing where western science
3 seems to be the prevailing document approach to
4 evaluating development. So we can explain this.
5 And we will also use this, the model here on
6 Mother Earth, Aski, in our next panel that we will
7 be participating on. Egg owe see.

8 MS. WHELAN ENNS: Thank you very much,
9 Mr. Spence.

10 Mr. Chair, I have a couple of, I
11 haven't counted them, but some questions specific
12 to the video this morning. I'm just checking with
13 you in terms of use of time.

14 THE CHAIRMAN: Well, I'm getting a
15 little concerned with your use of time. But if
16 they are brief and if they are on point, go ahead.

17 MS. WHELAN ENNS: Thank you. I will
18 be brief.

19 At the discretion of the panel then,
20 we have some information, and it was there in some
21 of the oral presentation yesterday also, that
22 refers to 1993 as the date for the agreement
23 subsequent to the NFA. Would you tell us how many
24 agreements there are and what dates they were?

25 THE CHAIRMAN: Just how is that

1 relevant to our review? Again, that's a matter of
2 public record. But I'm not sure that it's
3 relevant to our review, so move on.

4 MS. WHELAN ENNS: Fair enough. The
5 generalization with an early date is the reason
6 for the question, but I'll pass and I'll finish
7 with questions then.

8 And thank you, Mr. Spence.

9 THE CHAIRMAN: Thank you, Ms. Whalen
10 Enns. We'll take a 10 minute break so come back
11 just after 11:15, please.

12 (Proceedings recessed at 11:06 a.m.
13 and reconvened at 11:16 a.m.)

14 THE CHAIRMAN: Can we reconvene,
15 please? We have an hour and quarter until the
16 lunch break, and I will reconvene the
17 cross-examination of the partnership panel.

18 I don't believe there is anyone here
19 from the York Factory Elders group. Does Peguis
20 have any cross-examination? Ms. Land?

21 MS. LAND: Thank you members of the
22 panel. Lorraine Land, legal counsel for Peguis.
23 Thank you members of the panel. For your
24 information, I do have a few questions for you.

25 I want to start off with a question, I

1 just wanted to first clarify something that was in
2 the materials provided by the Partnership, the
3 copy of which is in the panel presentation guide,
4 and cross-reference that to some remarks that you
5 made yesterday, Ms. Pachal.

6 So on page 8 of that document, the
7 panel presentation guide, the second bullet of
8 information, which is information where you were
9 talking about the Adverse Effects Agreements, says
10 in the written text:

11 "The agreements also contemplate a
12 process to address any adverse effects
13 that were not anticipated or foreseen
14 and which were identified from the
15 Environmental Impact Assessment
16 process."

17 My first question is, I notice that
18 when you were orally presenting, you actually used
19 different language, and I wasn't sure if that was
20 because you were correcting what was on this
21 record or if that was because you had a different
22 intent. And when you were orally presenting, you
23 said:

24 "The agreements also contemplate a
25 process to address any adverse effects

1 that were not anticipated or foreseen
2 and which were not identified from the
3 Environmental Impact Assessment
4 process."

5 Was that just a skip in the oral presentation?

6 MS. PACHAL: It was a misspeak in the
7 oral presentation.

8 MS. LAND: That's helpful. So can you
9 provide a little more information about what that
10 process is that will happen if there are
11 unanticipated or unforeseen effects and how, from
12 your perspective, that will affect the Adverse
13 Effects Agreements?

14 MS. NEVILLE: I can maybe take the
15 start with that.

16 I don't know if you want me
17 necessarily to read it, but there are provisions
18 specifically laid out in the Adverse Effects
19 Agreements with the Keeyask Cree Nations that deal
20 directly with the process.

21 If you look, for example, to the
22 Tataskweyak Adverse Effects Agreement, article 7,
23 there is a section that talks about change in
24 circumstance, and it says:

25 "If new material and information about

1 potential Keeyask adverse effects
2 becomes apparent through the
3 Environmental Impact Assessment, then
4 subject to...",
5 and there is some other provisions. I'm not going
6 to read the whole thing. Then subject to and in
7 accordance with subsection 7.1.3, either TCN or
8 Hydro may request changes to this agreement or any
9 of the offsetting programs. Then it goes on to
10 talk about the nature of the changes, and then
11 there is actually an article that deals with the
12 process. And it says, in the event of changed
13 circumstance contemplated in this section, either
14 party may request a meeting to discuss the changed
15 circumstances and proposed amendment,
16 and they have to provide the other party with
17 written notice, and it talks about the
18 circumstances and what they need to include.

19 So I don't know if I want to go
20 through every line by line of this, but you can
21 certainly access that directly.

22 MS. LAND: Sure. And is this one of
23 the documents that you have confirmed is publicly
24 available already on the website?

25 MS. NEVILLE: Yes, it is on the

1 Keeyask website, all of them are available on the
2 website.

3 MS. LAND: This one is on the website,
4 this Adverse Effects Agreements?

5 MS. NEVILLE: Just to be clear, there
6 is some other provisions in the other Adverse
7 Effects Agreements, I was reading from
8 Tataskweyak.

9 MS. LAND: Right. Okay. So then my
10 question for the partner's is, for the Cree
11 partners the question for you is, if as a result
12 of the documentation and evidence that you hear in
13 this process about what data was used, how, and
14 whether it was properly analyzed, if evidence
15 comes out that there are significant unforeseen
16 impacts that weren't properly advanced in the EIS,
17 do you feel you have the ability to and will you
18 alter your Adverse Effects Agreements?

19 MR. BLAND: I can speak for York
20 Factory. We do have unforeseen built into our
21 Adverse Effects Agreement as well, and we will
22 definitely pursue something if we feel that
23 whatever is in our agreement is not covered. If
24 something is starting to happen, then, yeah, we
25 will pursue it.

1 MS. LAND: I appreciated a lot of very
2 frank and moving testimony that was provided both
3 by the presenters yesterday and the panels, and
4 the video, including the testimony of your elders
5 and current and former community leaders about the
6 understandable concerns that the partners have had
7 going into the agreement. And that leads me to
8 the question, if you find out as a result of this
9 process, in the testing of the evidence, that in
10 fact the environmental assessment process to date
11 has serious process and substantive flaws, do you
12 have the ability to and would you withdraw from
13 the partnership?

14 MR. BLAND: I don't think -- let me
15 put it this way, I believe that we would probably
16 try and go through the process first. And
17 depending on what the situation is, you know, it
18 is difficult to see, but depending on the
19 situation, you know, I believe that we would try
20 and work something out with Manitoba Hydro before
21 we take any real tough measures, I guess. But for
22 now, I would say that we would try to negotiate it
23 first.

24 MS. LAND: And just building on that
25 same theme, another question that was in my mind

1 was, again, that evidence and the multiple
2 references to the lessons that your communities
3 have learned in the past 50 years of experience,
4 that lead to your initial concerns in terms of
5 entering the partnership, and your concern that
6 you will no longer pay the price that you have in
7 the past, my question for the Partners is, would
8 you agree that the data and information,
9 scientific information about those historic and
10 ongoing impacts of past flooding projects is
11 relevant to understanding and mitigating the
12 impacts for this project, and should it be built
13 into the baseline data for good environmental
14 assessment for this project?

15

16 MR. RODERICK: Mr. Chairman, I don't
17 think that's a question the Cree can answer with
18 regard, it is a matter of law for what is built
19 into the background, and it is for your committee
20 to decide what is to be there. But to ask them
21 about what should or should not be part of the
22 baseline information, I don't believe is an
23 appropriate question.

24 THE CHAIRMAN: Perhaps, Ms. Land, you
25 might restate it or explain what you would like to

1 achieve out of the response?

2 MS. LAND: Well, Mr. Chair, yesterday
3 and this morning in the video, the partnership put
4 into evidence the reasons for the partners
5 entering into this project, and that's the impetus
6 for proceeding with this project in the first
7 place. And the evidence of the various elders and
8 others, including Chief Garson, for instance,
9 yesterday who talked about the fact that for over
10 50 years his community has been impacted, is that
11 they have learned lessons. And my question is,
12 are those lessons that have been learned and that
13 were referred to as part of the basis for entering
14 the agreement actually going to be part of the
15 evidence in this hearing, which goes to the
16 question of what is the appropriate baseline data
17 on which this assessment is being done?

18 THE CHAIRMAN: I think a good part of
19 our work over the next five or six weeks is to
20 examine that Environmental Impact Statement and to
21 examine what has gone into determining the base
22 upon which they are building. So I don't think
23 that we can preclude that by asking one question
24 today. It might save us a lot of time, but I
25 think we need to spend the next number of weeks

1 pursuing those issues around the Environmental
2 Impact Statement.

3 MR. LONDON: If I may?

4 THE CHAIRMAN: Mr. London?

5 MR. LONDON: If I may, Mr. Chairman, I
6 would remind everyone that the Environmental
7 Impact Statement contains the evaluation reports
8 of each of the Cree Nations. And in those reports
9 one would find, I believe, all of the data that
10 anyone is seeking here. And there is a panel,
11 there are two panels coming up that deal with it.

12 THE CHAIRMAN: And it is the job of
13 this panel over the next number of weeks to
14 determine whether or not that was done
15 sufficiently, and you will get your opportunity
16 over the next number of weeks to challenge that.
17 So I think the question at this time is out of
18 order, but certainly the thought behind it is
19 really our purpose over a number of weeks.

20 MS. LAND: Right, and I can come back
21 to it. But what I was trying to, at least today,
22 Mr. Chair, was whether the Cree partners held this
23 as a core principle in terms of their
24 participation in the project, that what they have
25 learned from the past 50 years of data should be

1 incorporated into the scientific baseline data?

2 So I can come back to it in future panels. That's
3 fine.

4 THE CHAIRMAN: Thank you.

5 MS. LAND: Okay. In Ms. Pachal's
6 evidence yesterday, you mentioned that you invited
7 my client, Peguis First Nation, to a round three
8 workshop as part of your public involvement
9 program. Can you tell me about any other ways in
10 which you have included Peguis in the process for
11 understanding impacts of the project and looking
12 at what appropriate baseline data should be part
13 of the EIS?

14 MS. PACHAL: I'm actually not in a
15 position to answer that, nor is anyone on our
16 panel. The public involvement process is coming
17 up. There will be a number of people from
18 Manitoba Hydro and the partnership who ran the
19 public involvement process, and they can speak
20 specifically to the public process that was
21 undertaken and the number of times that we reached
22 out that would have potentially touched Peguis.
23 And I think the point that I was trying to make in
24 the presentation yesterday was that, once we found
25 out that Peguis was a participant, we went the

1 extra step of trying to invite them to the
2 particular third round participant hearing
3 process, or involvement process.

4 MS. LAND: Right. And when was that
5 third round? Can you remind me when the third
6 round occurred? The question that I'm getting at
7 is that that would have been fairly recently in
8 the process?

9 THE CHAIRMAN: It is something that
10 will be covered when the community engagement,
11 Aboriginal engagement panel is before us.

12 MS. LAND: I will come back to it
13 then.

14 I have just a couple of short
15 questions for clarification. There was a
16 discussion in the video of the equity positions of
17 the Cree partners, and also some questions about
18 that that Wildlands asked. But one thing that I'm
19 not sure that I'm catching properly yet is, what
20 is the equity stake, if any, that War Lake has in
21 the project? Maybe I'm just obtuse and I'm
22 missing that?

23 MR. SPENCE: Yeah, two and a half per
24 cent.

25 MS. LAND: Two and a half percent.

1 Finally, just a process question for
2 clarification. On what panel will you be
3 presenting the evidence about methodology and
4 results of the Aboriginal traditional knowledge
5 studies undertaken in the partner communities?

6 MS. PACHAL: It is what we are calling
7 panel five, the Keeyask Cree Nations environmental
8 evaluation approach and processes.

9 MS. LAND: Okay. And that will
10 include substantive evidence on the Aboriginal
11 traditional knowledge as well as the methodology?

12 MS. PACHAL: Both Victor and Ted are
13 having trouble hearing, so we are just waiting for
14 Victor to get his ear in here.

15 THE CHAIRMAN: Perhaps I can shorten
16 things, given that these studies are part of the
17 Environmental Impact Statement, I think the answer
18 should be one word, yes? Are you in agreement?

19 MR. SPENCE: Yes.

20 MS. LAND: I think the question is,
21 I'm not seeing it, I see the methodology issues
22 but not the content in the panels. Maybe I'm just
23 unclear what you are intending. The panel
24 descriptions, as you know, don't track the
25 components of the EIS, so it makes it a bit

1 difficult to anticipate in some cases what you are
2 planning to call in. And I'm just trying to
3 understand where that's going to be fitting in?

4 MS. PACHAL: So the KCN's evaluation
5 reports are the standard part of the EIS, as the
6 Chair just mentioned, so the answer is yes. And
7 the KCN representatives, their witnesses will be
8 on the panel to answer any questions that you have
9 about the evidence that they have filed.

10 MS. LAND: Those are all of my
11 questions.

12 THE CHAIRMAN: Thank you, Ms. Land.
13 Mr. Madden, Manitoba Metis Federation?

14 MR. MADDEN: I'm not quite sure what
15 everyone's name is and so I'm going to start,
16 though, with the presentation that was made by
17 Manitoba Hydro. It is the one that says panel
18 presentation, and I just have a few questions
19 about that overall document.

20 So I want to turn to page 7, and it
21 says, in particular the quote that says:

22 "During negotiations Manitoba Hydro
23 committed not to proceed with the
24 project for export purposes if the
25 Partner First Nations did not support

1 the project. This is really important
2 because this meant that the Partners
3 and Manitoba Hydro had to reach an
4 agreement that was satisfactory to
5 both parties if the project was to be
6 advanced for export."

7 Can you explain to me why, how that I
8 guess commitment came to be? Was that a corporate
9 business commitment or was that a commitment
10 directed by the Crown? If you can elaborate on
11 that a bit more?

12 MS. PACHAL: It was a corporate
13 business commitment.

14 MR. MADDEN: And the commitment, is it
15 in relation to -- can I understand what underlies
16 it? Is what underlies it the theory that there is
17 resources being used, or the project flows from
18 the traditional territory of these First Nations,
19 and if there is benefits being accrued to Manitoba
20 Hydro in a financial context for export to the
21 United States, that should be shared with those
22 First Nations? Because I think that it is a
23 significant corporate decision, and so I would
24 like to understand what underlies it, what is the
25 theory?

1 MS. PACHAL: Well, I will start by
2 explaining that in the Manitoba Hydro Act we have
3 a commitment, we are legislated to ensure that we
4 meet the power demands of Manitoba first and
5 foremost. So if we were advancing a plant for the
6 purposes of export and not for the purposes of
7 serving Manitobans, we as a corporation have some
8 flexibility to decide whether or not we would
9 advance that plant. If we have to serve the needs
10 of Manitobans and we are short of power, then
11 there is less flexibility in terms of deciding
12 whether or not we can advance a plant. So the
13 idea was, while we have that flexibility, we would
14 make a commitment that unless we could reach an
15 agreement with our Cree partners, we wouldn't
16 advance it for export.

17 MR. MADDEN: And would that apply
18 similarly, does that apply broadly? Is that a
19 corporate policy somewhere?

20 MS. PACHAL: I wouldn't say it is --
21 I'm not sure how I would characterize it. We
22 applied the same position on Wuskwatim, and made
23 the same commitment in Nisichawayasihk Cree Nation
24 on Wuskwatim.

25 MR. MADDEN: And you will make the

1 same commitment in relation to Conawapa?

2 MS. PACHAL: That decision has not
3 been taken yet.

4 MR. MADDEN: In relation to
5 transmission, does that same principle apply?
6 Following your logic to the point that it is about
7 reliability and protecting the system, that is
8 part of Hydro's mandate and it needs to fulfill
9 it, but if there is -- I will use an example that
10 I think that one of Hydro's counsel explained it.
11 If you have built a Cadillac and you want to flick
12 the switch to, in the context of Bipole III, yes,
13 we are using this for reliability, but if we
14 increase it because it is there, and we've built
15 it for greater capacity and it is for export,
16 wouldn't that same principle apply in
17 transmission?

18 MS. PACHAL: Well, it wouldn't apply
19 to transmission because we don't partner on
20 transmission, so we don't enter into partnerships
21 on transmission.

22 MR. MADDEN: But the logic, if you
23 follow it through, is the same, would you not
24 agree with me?

25 MS. NEVILLE: I think that

1 fundamentally, the answer to the question is it is
2 a decision that we make on a project by project
3 basis. That decision was not made in relation to
4 the transmission project that Mr. Madden is
5 inquiring about, and it was only made in the
6 context of the projects that my colleague has
7 specifically commented on.

8 MR. MADDEN: So let's bring it back
9 then to this project, which does include a
10 transmission piece, but that is not brought
11 forward by the partnership, I understand, it is
12 Manitoba Hydro's piece alone. Is that the reason
13 why it was scoped out?

14 If there is someone better to answer
15 the question, I'm willing to wait until that
16 person can answer it.

17 MS. PACHAL: We are actually trying to
18 decide what exactly the question is in terms of --

19 THE CHAIRMAN: Perhaps in the interest
20 of some time, you could ask earlier in the stage
21 for a clarification of the question.

22 MS. PACHAL: Okay.

23 MR. MADDEN: So you have stated
24 earlier that this is, on this project you decided
25 that since some of the energy, or some of the

1 development related to it would be for export, you
2 would ensure that the First Nations in and around
3 the project were in agreement with the project
4 before you proceeded with it. And you said you
5 don't apply that to transmission. And then that
6 was, the transmission project was scoped out of
7 not being a part of the partnership. And I just
8 want to know if that's the rationale of how you
9 got there, or is there other reasons of why
10 transmission is scoped out of the project?

11 MS. PACHAL: No, I think as my
12 colleague Elissa mentioned, the policy decision
13 within Manitoba Hydro is that we don't, for our
14 transmission system which is an integrated system
15 that we need to have control over, we do not
16 partner on transmission.

17 MR. MADDEN: But you do have, to a
18 certain extent, control over the generation as
19 well? My understanding and general read of the
20 partnership agreement is that the First Nations
21 Partners don't have the ability to say no, we are
22 turning off Keeyask.

23 MS. PACHAL: That's correct.

24 MR. MADDEN: So I'm just trying to
25 understand the differentiation in -- you can

1 still, you know, these sorts of projects are done
2 all over the place, you can still have control but
3 you can have partnerships within it.

4 MS. PACHAL: Yes, as I mentioned, the
5 corporation took a policy position, made a policy
6 decision that they would not partner on
7 transmission.

8 MR. MADDEN: And is there a corporate
9 policy, or a corporate decision, or a resolution
10 that actually made the decision in relation to
11 Keeyask, is there a board decision that sets out
12 on this project, this is what we are doing?
13 Because I think at least for -- and now,
14 Mr. Chair, I'm going to build this out a little
15 bit more. This is just an understanding of why,
16 how does Hydro get here and how does it get here
17 based on partnering with these four as opposed to
18 others. And I just need to understand, where was
19 the decision point in the Manitoba Hydro corporate
20 structure that this is, the policy you just
21 enunciated was actually going to be applied in
22 relation to Keeyask?

23 MS. PACHAL: Well, in the Joint
24 Keeyask Development Agreement there is a project
25 description. The project description specifically

1 speaks to the fact that the associated
2 transmission is not part of the Keeyask project,
3 as the same way as it is described in the project
4 description submitted with the EIS. And the
5 board --

6 MR. MADDEN: I think, you can go
7 ahead, but the question I'm asking is, even before
8 you get to the joint Keeyask decision, or the
9 joint Keeyask agreement, where is the decision
10 point of saying that we are even going to have
11 discussions about that partnership or partner on
12 this project, from Hydro? I'm sure someone had to
13 make a decision somewhere. I'm willing to take an
14 undertaking on it.

15 MS. PACHAL: So, I believe if I've
16 understood the question right, you are saying what
17 was sort of the driving factor, the decision
18 around Manitoba Hydro determining who would be
19 part of the partnership?

20 MR. MADDEN: No. So the policy that
21 you just articulated about saying, look, we made
22 this decision about if the electricity for export
23 sale, we are going to say that we needed -- we
24 committed to the partners that we wouldn't proceed
25 with the project unless they supported it. Where

1 does that decision come from?

2 MS. PACHAL: That's an executive
3 decision.

4 MR. MADDEN: And are there minutes on
5 that or is there a resolution on that? So I would
6 just say, you know, this is a review of --
7 Manitobans would like to understand how the
8 decision is made of getting here. And if that is
9 a case by case basis, I'm sure that other
10 Aboriginal groups as well as others would be
11 interested in knowing, okay, well, this is how you
12 get that decision made on future project by
13 project basis?

14 MS. PACHAL: And you are correct, it
15 is on a project by project basis that we assess
16 what sort of structure we will undertake on the
17 project, whether it will be a partnership, and
18 what form of a partnership, and what that would
19 look like. So you are absolutely right on a case
20 by case basis.

21 Within the organization, as projects
22 are in the planning process, we go through a
23 number of steps to evaluate from a business case
24 perspective what the pros and cons would be of
25 entering into business arrangements or

1 partnerships on the specific projects. So then
2 there is a number of decisions taken within the
3 corporation at various levels, as those ideas
4 progress, and ultimately the board of Manitoba
5 Hydro approves the approach by approving the
6 agreement that -- initially the agreement in
7 principle to enter into partnerships with the Cree
8 Nations on the Keeyask project, and ultimately on
9 the Joint Keeyask Development Agreement which they
10 would approve, which includes the four Keeyask
11 Cree Nations.

12 MR. MADDEN: So in the timeline, when
13 was the actual decision made to say, we are going
14 to pursue, or at least explore the potential of
15 pursuing partnerships in relation to Keeyask,
16 based on this principle?

17 MS. PACHAL: I think as you heard in
18 the evidence that was provided yesterday, it was
19 that Manitoba Hydro and Tataskweyak, as well as
20 the other Cree Nations have a long history. And
21 discussions about the projects had been ongoing
22 for many years. And it was the early 1990s when
23 the First Nations approached Manitoba Hydro,
24 particularly Tataskweyak to start, and said, we
25 would like to be partners in the project. And at

1 that time the corporation took a corporate
2 decision to say, we will consider that and explore
3 that partnership.

4 MR. MADDEN: And so when was the
5 actual corporate decision to say -- so you
6 considered it, they provided information, and then
7 when was the decision actually made of saying, you
8 know, we are now on the road to seeing if we can
9 get to a partnership?

10 MS. PACHAL: Could you ask the
11 question again, please?

12 MR. MADDEN: When was the actual
13 decision made by the Manitoba Hydro Board of
14 saying, you know, we will explore the potential of
15 entering into a partnership in relation to
16 Keeyask? How you've explained it is the First
17 Nations, through a long relationship outlined --
18 I'm sure there has to be a corporate decision
19 somewhere. One would think that in Manitoba Hydro
20 there wouldn't be bureaucrats going off and
21 negotiating a partnership by themselves, or even
22 beginning those discussions of saying, we will
23 give you the authorization and the mandate to go
24 see if you can do it. All I want to know is the
25 year, the general time point of when that decision

1 was made by Manitoba Hydro that it would do this
2 in relation to Keeyask? There has got to be some
3 corporate minute book or decision that was made?

4 THE CHAIRMAN: Mr. Madden, some of us
5 on the panel are wondering what the relevance of
6 the specificities that you are seeking? I can
7 understand the general relevance.

8 MR. MADDEN: I think that Manitobans,
9 and this is the point of this Commission, is to
10 understand how we got here. And Hydro does, I
11 think broad brush strokes of saying, look, we
12 spent ten years here, but I think for other
13 Aboriginal communities, as well as the public at
14 large, having an understanding of going, okay,
15 when was that decision made? And then I'm going
16 to set it up of asking the question, did the
17 Manitoba Government have any input into getting
18 that decision or was it purely a corporate
19 decision?

20 THE CHAIRMAN: Okay, go ahead.

21 MS. PACHAL: Well, I would say in 1998
22 Manitoba Hydro provided a letter to Tataskweyak
23 Cree Nation confirming its commitment to work
24 towards an Agreement in Principle on a
25 partnership. So that was in 1998. And then the

1 board approved the Agreement in Principle probably
2 late '99, 2000, I don't know the exact date when
3 the board would have approved the Agreement in
4 Principle.

5 MR. MADDEN: So the 1998 letter, is
6 that part of the record or --

7 MS. PACHAL: I do not believe that it
8 was part of the EIS submission.

9 MR. MADDEN: Can I ask for an
10 undertaking for that letter? I think it underlies
11 of saying where -- when you are saying, okay, this
12 is how we proceeded on it, I just -- we are
13 looking for, okay, how was that framed and --

14 THE CHAIRMAN: Mr. Bedford?

15 MR. BEDFORD: The Agreement In
16 Principle will be on our website. That's my
17 recollection, I have personally found it there, so
18 Mr. Madden can access that.

19 The letter that Mr. Adams wrote to
20 Tataskweyak in 1998, I'm struggling to see the
21 relevance of that. Mr. Madden said he wanted a
22 date, he has the date. I don't think that the
23 letter is critical to him. And I don't think,
24 anticipating where this might be going, that it is
25 useful to you five Commissioners to understand

1 what role, if any, the Province of Manitoba may
2 have played in the Crown corporation's decision to
3 pursue, for the Keeyask project, a partnership
4 arrangement.

5 THE CHAIRMAN: Thank you, Mr. Bedford.
6 Mr. Madden, I would tend to agree with
7 Mr. Bedford, that the specifics of the letter are
8 not as important. You said you were looking for
9 the date and you received that, so...

10 MR. MADDEN: So my next question is --
11 and I can already here my friend's objection, and
12 I will outline why I think it is relevant, because
13 it is -- did, in ultimately making that decision,
14 did the Manitoba Government in any way feed into
15 the idea that partnerships, in relation to
16 entering into a partnership with the First
17 Nations, or was it purely a decision of Hydro and
18 Hydro alone?

19 MS. PACHAL: I don't know the specific
20 dates, but I know for many years in the Throne
21 speeches, the Province has spoken to and made
22 reference to the partnerships in association with
23 the Hydro projects.

24 MR. MADDEN: But initially getting
25 there, was there direction given of saying, please

1 explore this? I know what you are referring to in
2 the Throne speeches of once the partnership was
3 there, but previously?

4 THE CHAIRMAN: Are you looking,
5 Mr. Madden, for sort of the type of smoking gun we
6 had in Bipole, when the Minister responsible for
7 Hydro wrote a letter directing them to not go down
8 the east side, are you looking for a similar type
9 of direction?

10 MR. MADDEN: Right.

11 THE CHAIRMAN: Perhaps we can simplify
12 it and ask if they are aware of any specific
13 letter or direction from the government
14 instructing the Crown corporation to work in
15 partnerships?

16 MS. PACHAL: I'm not aware of
17 anything, but I will take an undertaking to go
18 back and check.

19 THE CHAIRMAN: Thank you.

20 (UNDERTAKING # 1: Advise if there is letter or
21 direction from government instructing Hydro to
22 work in partnerships)

23 MR. MADDEN: So that brings me to the
24 other issues, and I handed this out, it is a
25 recommendation from the Aboriginal Justice

1 Inquiry, and I just want to -- are you aware of
2 the Aboriginal Justice Inquiry?

3 MS. NEVILLE: Yes.

4 MR. MADDEN: And I'm assuming you are
5 aware of its recommendations?

6 MS. NEVILLE: I can't speak for
7 everybody at the table, but I think there is a
8 general awareness of the recommendations.

9 MR. MADDEN: So as part of the
10 implementation committee, one of the
11 recommendations that was made by the
12 implementation committee, which was ultimately in
13 2002 accepted by the NDP Government at the time,
14 in section 4.1 says:

15 "Any future major natural resource
16 developments not proceed unless and
17 until agreements or Treaties are
18 reached with the Aboriginal people and
19 communities in the region, including
20 the Manitoba Metis Federation and its
21 locals, regions, who may be negatively
22 affected by such projects, in order to
23 respect their Aboriginal Treaty or
24 other rights in the territory
25 concerned."

1 In coming to the decision to enter
2 into the partnership, did this factor in in
3 Hydro's decision making?

4 MS. PACHAL: There was a lot of,
5 obviously, people involved in the process of
6 making the decision to create a partnership. So I
7 can't speak for what individual people's thoughts
8 were. But I can tell you, as a corporate overall
9 view, Hydro made a business decision to negotiate
10 partnership arrangements with the four
11 communities, and this was based on a number of
12 factors. One of the factors was that the
13 communities were located in the vicinity of the
14 project. The other factor was that Hydro has
15 current and historical considerations arising out
16 of past impacts with these First Nation
17 communities from previous Hydro developments, and
18 these include provisions to compensate these First
19 Nations for new adverse impacts that arise from
20 any future Hydro development projects.

21 We also considered the fact, when we
22 were making our business decision, that these
23 communities are communities that historically use
24 the project area and that could potentially be
25 impacted by the project.

1 The business decision to negotiate
2 this, as we've talked about just now as we were
3 trying to grasp for the timelines and dates, was a
4 culmination of years of discussion with these
5 communities, including, as some of my colleagues
6 from the panel were reminding me, that there is
7 commitments in the NFA and the implementation
8 agreements and other settlement agreements to
9 discuss further development opportunities with
10 these particular communities.

11 MR. MADDEN: And you would agree with
12 me that Keeyask is a future major natural resource
13 development in the Province of Manitoba?

14 MS. PACHAL: Yes, I would.

15 MR. MADDEN: And when those
16 discussions were being held with the First
17 Nations, were the Manitoba -- and I'm talking now
18 back in the '90s, was the Manitoba Metis
19 Federation engaged, involved? Did Hydro reach out
20 to begin those discussions with them?

21 Mr. Chair, why it is relevant to this
22 panel -- just as they seem to be finding an answer
23 for it -- is you are being asked to make a
24 recommendation to the Minister. We know that this
25 recommendation has been accepted by the current

1 government. And I think that the question from
2 the Manitoba Metis Federation's perspective is,
3 how can we -- how could a project be recommended
4 if previous commitments in relation to these new
5 future major natural resource developments haven't
6 been undertaken in relation to Keeyask vis a vis
7 the Metis? But anyways, that's the context for
8 it.

9 MS. NEVILLE: I think if your question
10 was, did Manitoba Hydro reach out to the Manitoba
11 Metis Federation in the 1990s, when we began
12 discussions with Tataskweyak in particular, I
13 believe the answer is no.

14 THE CHAIRMAN: Thank you.

15 MR. MADDEN: And following 2002, with
16 the recommendation of the Aboriginal Justice
17 Inquiry being accepted by the government, did
18 Hydro reach out to the Manitoba Metis Federation
19 at that time?

20 MS. NEVILLE: I believe that Manitoba
21 Hydro, there is a number of documents and IRs, and
22 I can draw your attention to them, and to the EIS
23 as well, where we document the period of
24 engagement with the Manitoba Metis Federation
25 specifically. I believe the initial discussions

1 with Manitoba Metis Federation in relation to this
2 project started in 2008. So, hopefully, that
3 answers the question.

4 THE CHAIRMAN: Thank you.

5 MR. MADDEN: It does.

6 And in between the period of 2002 to
7 2008, since I asked you about 2002, and you said
8 no, there was no outreach or engagement with the
9 Manitoba Metis Federation on --

10 THE CHAIRMAN: I think she answered
11 that.

12 MR. MADDEN: Did she? I just said in
13 2002, was there any outreach? So essentially the
14 answer is, from 2002 all the way to 2008 there
15 were no discussions?

16 MS. NEVILLE: I think in relation to
17 the Keeyask project, as I've just noted and is
18 noted in our materials, the dialogue with the
19 Manitoba Metis Federation, specifically in
20 relation to the project, began in 2008. Certainly
21 between 2002 and 2008 there were opportunities for
22 discussion with the Manitoba Metis Federation and
23 venues for discussion with the Manitoba Metis
24 Federation on a range of issues. I believe and
25 recall that future development activities were a

1 topic from time to time, but the in-depth
2 discussions specifically related to this project
3 did begin in 2008.

4 MR. MADDEN: And in 2008 and, this is
5 just my own not having a clear memory, was the
6 partnership agreement already solidified or was
7 the AIP signed?

8 MS. PACHAL: The AIP was signed, the
9 Joint Keeyask Development Agreement was not
10 signed.

11 MR. MADDEN: Okay. And I guess this
12 is one of the questions I have; the adverse
13 effects agreements deal with Aboriginal rights
14 related issues. They acknowledge as saying we
15 will, in light of any impacts, these adverse
16 effects agreements deal with them, they don't
17 abrogate or derogate or extinguish in any way, but
18 what is being presented to this panel is saying
19 look it, part of the deal is that, based upon all
20 of these different pieces put together, that the
21 First Nations are saying any infringements or
22 impacts on our rights are dealt with through the
23 agreements, whether offsetting or partnership, et
24 cetera. And what I'm just trying to understand is
25 was Hydro delegated procedural aspects of the

1 Crown's duty in order to deal with that?

2 MS. NEVILLE: No, Manitoba Hydro was
3 not delegated responsibility to deal with that.
4 When we were negotiating the adverse effects
5 agreements with our partners, parties had
6 reasonably good understanding, and again I can go
7 back to some of the specific IRs that deal with
8 this, around the nature of the project, and the
9 nature of the impacts that we could foresee at
10 that time, given the nature that some of the
11 impacts were impacts related to activities that
12 involved resource use, many of which were well
13 established in the context of our partners as
14 their Aboriginal and Treaty rights, we sought and
15 received a release in relation to the potential
16 infringement on the exercise of Aboriginal Treaty
17 rights. However, we were not delegated that
18 responsibility, ultimately that responsibility
19 still rests with the Crown, and the Crown wanted
20 to take its own consultation and determine for
21 itself whether we have appropriately addressed any
22 impacts on those activities.

23 MR. MADDEN: So somewhat of a
24 precautionary principle being followed on these
25 issues of in order to -- for the Crown's

1 assessment, those issues are dealt with in the
2 agreements, but still at the end of the day the
3 Crown is going to be the arbiter of whether the
4 duty has been fulfilled?

5 THE CHAIRMAN: The answer, in respect
6 of the Crown's constitutional duty, that will
7 definitely be dealt with by the Crown and not this
8 panel. But as you will know from our Bipole III
9 process, the same environmental impact can have
10 implications that are relevant to our review as an
11 environmental impact, but also have a Treaty right
12 impact. It is a bit of a fine line, as long as
13 you are pursuing it here as an environmental
14 impact, that is fine, but once you get into the
15 Crown's duty --

16 MR. MADDEN: I'm just pursuing it
17 because it is an opportunity to get some answers
18 to the inconsistencies between some projects and
19 this project, i.e., in relation to Bipole, and I
20 think it is also just understanding what those
21 provisions of the agreements are doing. And I
22 agree they are about traditional uses, and I think
23 I'm done with this question, except for, at any
24 point in time when you did do the engagement in
25 2008, did the Manitoba government direct you to

1 engage with the Manitoba Metis Federation?

2 THE CHAIRMAN: What is the relevance
3 of that to our review?

4 MR. MADDEN: I think all we want to
5 know is there is clearly decision -- different
6 decision points that are made of, you know, we
7 will begin those discussions with First Nations
8 either on -- I just want to understand why so late
9 in the process, as this Commission has written in
10 past reports, this is a persistent pattern of
11 Manitoba Hydro that, you know, in the eleventh
12 hour before it goes for a regulatory review it
13 might engage with the Manitoba Metis. You
14 commented on this in recommendation 7.3 of the
15 Wuskwatim report. This was don't do it again.
16 Get out in front of it. And so what we are trying
17 to understand is why the late engagement again.
18 We have the Wuskwatim decision from 2004, we also
19 have a TLUKS or a work plan that's not finalized
20 until June of this year, and I'm just trying to
21 understand what is the delay in reaching out and
22 engaging with the Manitoba Metis Federation from
23 the late '90s to 2008, when clearly a lot of work
24 has been done on the project.

25 MS. PACHAL: I would like to first of

1 all point out that Manitoba Hydro and the MMF have
2 had a long term relationship long before the
3 1990s. And specific to this project, the MMF was
4 actually a partner in the Wuskwatim training,
5 Wuskwatim Keeyask training consortium. They were
6 a member and they had a seat on the board of the
7 Wuskwatim Keeyask training consortium. They
8 started receiving funding in 2004, so they would
9 have had extensive knowledge of the project
10 through participation.

11 MR. MADDEN: About what project,
12 Wuskwatim or Keeyask?

13 MS. PACHAL: Both. They would have
14 had extensive knowledge of the project through
15 their participation on the Wuskwatim Keeyask
16 training consortium, and that the extensive
17 knowledge of the project and the labour
18 requirements of the project and the details of the
19 project, because they were developing work plans
20 and budgets to train their members for jobs on
21 those projects. The 2008 meeting my colleague,
22 Ms. Neville, referred to was a meeting where we
23 first started our discussions in 2008. And we
24 filed this in one of our IR responses, a list of
25 30 plus meetings that we have had since 2008 with

1 the MMF, and I will just read for you the
2 description of the meeting in 2008 that was filed
3 in the IR. The meeting took place at the MMF
4 office with a number of individuals, and the
5 purpose of the meeting was to work with the MMF to
6 gain an understanding of resource use by Metis
7 people in areas affected by the Manitoba Hydro --
8 two Manitoba Hydro projects currently undergoing
9 an environmental assessment. That was the Keeyask
10 project and the Pointe du Bois spillway
11 replacement project.

12 MR. MADDEN: And just to supplement,
13 the MMF will be filing all of its -- hydro has had
14 the opportunity to file all of its documents. The
15 MMF has written many letters to the government as
16 well as Hydro setting out its claims.

17 THE CHAIRMAN: Move on.

18 MR. MADDEN: Yes. The next question
19 that I have is with respect to on page 10, the
20 process for funding the 140 million that was
21 referred to that's been spent since -- over the
22 ten year period. And is that 140 million solely
23 in relation to the four First Nations or does it
24 include potentially engagement of other Aboriginal
25 groups within that number?

1 MS. PACHAL: Just give me one moment
2 to check that. It is just the four partners.

3 MR. MADDEN: So moving on to page 12,
4 you mentioned the historic relationship between
5 the four First Nations and Manitoba Hydro. Can
6 you elaborate on what the historic relationship
7 is? Is it the relationship that flows through the
8 Northern Flood Agreement or is it just ongoing
9 discussions? I just want to understand how there
10 is some that, as you have mentioned, the MMF and
11 Hydro have had a historic relationship as well,
12 and I'm just trying to understand where the
13 differential comes of why those discussions began
14 with First Nations but not with the Metis
15 community?

16 MS. NEVILLE: Before I answer the
17 question, I'm looking at page 12, I'm not sure
18 what you are referring to. Can you clarify it?

19 MR. MADDEN: Where you say down here,
20 the Manitoba Metis Federation and Manitoba Hydro
21 continue to determine whether there are Metis who
22 have interests in the project area.

23 MS. NEVILLE: Right.

24 MR. MADDEN: I'm trying to understand
25 some context of, we know that this engagement only

1 began recently. Why -- and my understanding is if
2 you read the paragraphs above it, is the reason we
3 got to this with First Nations was because of a
4 historic relationship. I just want to understand
5 the differences.

6 MS. NEVILLE: I was just a little
7 confused because I couldn't find anything on the
8 page that Mr. Madden was referring to about the
9 historical relationship, but I gather you are
10 talking generally about --

11 MR. MADDEN: My understanding is this
12 happened -- we got to a place in our relationship
13 that we started talking about partnership.

14 MS. NEVILLE: I will try and comment
15 on it briefly and I expect that other colleagues
16 on the panel may wish to say something about it.
17 Certainly in the case of two of our partners, the
18 relationship started with the -- or didn't start,
19 but a notable point for the relationship was the
20 Northern Flood Agreement in the case of
21 Tataskweyak and York Factory. While we did not
22 have -- while neither War Lake or Fox Lake were
23 parties to the Northern Flood Agreement we had
24 been involved in discussions with them going back
25 some time, and I can't nail down the year or the

1 exact date that our relationship with those
2 communities started, nor would I even suggest that
3 1977 was the start of the other relationship. But
4 I think that the relationship has been
5 characterized by a process of ongoing dialogue,
6 negotiation, agreements, efforts at resolution of
7 outstanding issues, and certainly has been
8 challenging at times, but has been substantive in
9 terms of the kinds of issues that we have covered
10 and the issues we have tried to address.

11 MR. MADDEN: And so focusing again on
12 that bullet, and I just want to understand the
13 context of this, this is what -- you've focused
14 ten years on doing this with your First Nation
15 partners. You've signed an agreement with the
16 MMF, I think it is in June or July of this year.
17 If the outcomes of this study show uses and
18 impacts, is Manitoba Hydro committed to following
19 through that same process that it set out in
20 previous -- well, it sets out in detail with the
21 Manitoba Metis Federation?

22 MS. NEVILLE: Can you hang on one
23 second? I just want to draw the Commission's
24 attention to some of the evidence that we filed on
25 that point. We have had a number of requests on

1 that issue.

2 MR. MADDEN: And all I want is that
3 you would at least follow through -- the key
4 question is follow through the process. I'm not
5 saying what the end of it would be, but that the
6 partnership would follow through an assessment of
7 saying are there impacts. If we can't mitigate
8 them, and there is residual impacts, that we would
9 then have a discussion about offsetting, et
10 cetera, an equivalent process to what the First
11 Nations have gone through, at least on the adverse
12 effects not in relation to partnership.

13 MS. NEVILLE: I'm looking at a couple
14 of IRs that touch on this, and I will draw the
15 Commission's attention to them. They are not the
16 ones that I was actually looking for, but I will
17 try and find that as well. IR, MMF 63(b) asked
18 the question whether an Adverse Effects Agreement
19 will be negotiated with the MMF, and will the MMF
20 have the opportunity to validate it through a
21 community ratification process or other means
22 appropriate to the MMF. We indicate that that is
23 something that can not be confirmed at this time.
24 That Manitoba Hydro, on behalf of the partnership,
25 is currently engaged with the MMF to fund work

1 related to the study that Mr. Madden has
2 referenced.

3 And there is another IR which
4 specifically asks, and I can't find it. What we
5 will do, we will we have the results of that study
6 and I believe it says that the partnership will
7 have further dialogue with the MMF once those
8 results are in.

9 MR. MADDEN: But you won't commit to
10 the process that is I think pretty well
11 established within Manitoba Hydro and you've
12 articulated it in that EIS, the four part process
13 of assessing effects, at the end of it you got to
14 the adverse agreements with the First Nations, but
15 you aren't committing to what the results of that
16 study show will at least go through that process
17 with the MMF -- because one of the issues --

18 MS. NEVILLE: I'm not entirely sure
19 what the four part process is, although I'm
20 thinking what Mr. Madden may be referring to is
21 the approach of Manitoba Hydro and the Partnership
22 is first to prevent or avoid impacts; second, to
23 try to mitigate impacts; third to provide
24 appropriate replacements or substitutions to
25 offset impacts, and then and only then to pay

1 compensation. I think that certainly we would
2 take the same approach when we receive the MMF's
3 report that we will be first looking to try to
4 mitigate any of the impacts that are identified.
5 Should there be impacts that can't be identified
6 or offset in some way, then the Partnership will
7 have to consider, you know, whether additional
8 discussions are required with the MMF.

9 MR. MADDEN: Thank you, that's much
10 clearer than the IR responses.

11 The question that I have relating to
12 that is -- and can I just ask the question? You
13 said Manitoba Hydro is doing that, this on behalf
14 of the Partnership, can I -- is it because the
15 Partnership has delegated that responsibility to
16 Manitoba Hydro or the Partnership doesn't want to
17 be involved in that process or -- I just -- I
18 don't -- just how you worded it right then, I'm
19 just not understanding the context for it.

20 THE CHAIRMAN: I don't particularly
21 understand the importance of that question.

22 MR. MADDEN: I'm just to -- the whole
23 point of this process is -- Manitoba Hydro --
24 Manitoba Metis Federation, there is a lot of
25 processes set up here, there is a lot of

1 structures, and trying to find our way through the
2 maze --

3 THE CHAIRMAN: I understand that, but
4 whether it is Manitoba Hydro or the Partnership
5 making this commitment, I don't quite understand
6 how that --

7 MR. MADDEN: I will get to this at a
8 later date when we get into the panels about how
9 the Cree narrative is explained, and there isn't
10 quite a place for the Metis within that. What we
11 are trying to understand is if the Partnership
12 itself is willing to go through these processes
13 with the Manitoba Metis community, because I think
14 one of the challenges that another Aboriginal
15 group finds is trying to understand why this is
16 played out this way. And I am just asking it on
17 trying to comprehend why it is only Manitoba Hydro
18 sitting with the Manitoba Metis Federation as
19 opposed to the Partnership.

20 MR. BLAND: Could I just say something
21 here? It is about the Metis participation in the
22 region. In 1986 I was -- I wouldn't say I was a
23 Metis but I was a non-status. I became Treaty
24 through bill C31, and so did the rest my family.
25 And I'm trying to think about how many people that

1 we had on our reserve that were non-status, and I
2 can't really think of anybody today. In terms of
3 being able to consult with them, it is hard to
4 consult with them when they are not around, you
5 know, specifically around York Factory. And I'm
6 not quite sure about the other First Nations but,
7 you know, I wouldn't say they were Metis, I would
8 say they were non-status.

9 MR. MADDEN: And I think that is one
10 of the issues that will come out of here, is so --
11 especially in the north, bill C31 has had a
12 dramatic impact. But the idea that the community
13 disappears, and some people may choose that
14 election to take bill C31, but the idea of saying
15 well, we've made -- there are people that still
16 exist up in this region that identify as Metis,
17 have been bona fide as Metis, and so we appreciate
18 that that may be how, and no one is saying there
19 is Metis living on York Factory First Nation, but
20 if that understanding means, well, it means there
21 is no Metis in the region because this is how we
22 see it, that's what we are trying to understand.
23 Because I just don't think that everyone became an
24 Indian in this region after bill C31 or Treaty --

25 MR. BLAND: Treaty. Indians are from

1 the Middle East.

2 Like I said earlier, it is difficult
3 to engage even if there were people on our First
4 Nation, you know, we probably would have been
5 speaking to them because I would imagine they
6 would be direct relation to the membership through
7 marriage. But in our case, it is hard to speak to
8 that.

9 MR. MADDEN: And I think part of the
10 MMF's evidence will be that, well, there are
11 people there, and here is the panels and here is
12 the other history. But I do agree that, you know,
13 the reality or the impacts of bill C31 are a lot
14 of individuals did access Treaty. But there are
15 also other individuals who were never non-status
16 Indians and were Metis, living in areas like
17 Thompson, still live in areas like Gillam today,
18 and they are not -- they don't identify as First
19 Nations or as Treaty individuals either.

20 MR. NEEPIN: If I may, George Neepin,
21 Fox Lake. My understanding during that time in
22 our community of Gillam where we have -- Gillam is
23 more than just Fox Lake people, we have people
24 coming in for employment purposes mainly through
25 Hydro and the service industries that result from

1 Hydro being in our community. My understanding at
2 that time was there were -- there was a local but
3 it was mainly non-status. A lot of those people
4 became band members of Fox Lake, and they were
5 not -- everybody gained status at that point.

6 I mean they are not status at that
7 time because they didn't belong to a First Nation,
8 particularly Fox Lake, approached the local for
9 advocacy purposes for employment, for health.
10 They needed it, they needed an advocacy group, but
11 once they were able to gain status, there was no
12 evidence of the local any more in our community.
13 As a matter of fact, some of these people claimed
14 Metis status to gain employment in the region,
15 whether it was through Manitoba Hydro, who was the
16 biggest employer in the area.

17 MR. MADDEN: So is it my understanding
18 of the Partnership's position as well that because
19 of how that played out there is no Metis within
20 the region?

21 THE CHAIRMAN: Do we need to resolve
22 that question today? I think what you are looking
23 at today is -- I mean, you've noted it and the
24 Partnership has noted that there is a study
25 ongoing at the present time to determine Metis

1 land use in the area. You've asked a question,
2 whether the Partnership -- or what the Partnership
3 will do with that information. I think that's
4 what we need to resolve right now, and I believe
5 Ms. Neville might be prepared to answer a bit more
6 on that.

7 MS. NEVILLE: I'm going to try. Just
8 getting back to sort of the preamble to the
9 question, the Adverse Effects Agreement with each
10 of the partners were negotiated prior to the
11 Partnership, so Manitoba Hydro negotiated them as
12 Manitoba Hydro, but the Partnership will
13 ultimately resume -- assume responsibility for
14 those agreements. And I think similarly the
15 dialogue with the MMF started prior to the
16 partnership and has continued, although the
17 partners are aware of the engagement that Manitoba
18 Hydro has been undertaking with the Manitoba Metis
19 Federation, and certainly going forward and once
20 we have the study in hand, I expect as a
21 partnership we will be reviewing it. And I don't
22 know exactly what that will look from an
23 individual people perspective, but I believe that
24 to the extent that we are having ongoing dialogue,
25 it may and can involve members of the partners

1 beyond Manitoba Hydro reps. But that would be
2 something that we will discuss and decide once we
3 have the material in hand.

4 MR. MADDEN: I think it is a pretty
5 fundamental question, though, is it the position
6 of the Partnership that there is just no Metis in
7 the region? From what I hear from those comments
8 are, well, there may have been, but to be quite
9 frank, from my understanding of who the Metis are,
10 Metis aren't just non-status Indians or people who
11 can't get status or Treaty, they are actually a
12 distinct Aboriginal people. So I kind of disagree
13 with how the gentleman phrased it, but that's
14 neither here nor there. I guess my question is do
15 they -- is it the position of the Partnership that
16 there are no Metis in the region because they have
17 all got Treaty?

18 MS. PACHAL: No, that's not the
19 position of the Partnership. The Partnership has
20 undertaken an extensive public involvement process
21 that we detailed in the EIS. And that in
22 subsequent panels you will hear from the
23 individuals who undertook this public involvement
24 process, and you will hear about the efforts that
25 were made to deal with the Metis in the area. And

1 to date we have not been made aware of anybody
2 specifically Metis that will be impacted by the
3 project. And that's not to say, as we answered in
4 numerous IRs, that when we get the study from the
5 MMF, if there are in fact Metis in the project
6 area that are impacted in some way by our project,
7 we will be in discussions with the individuals and
8 potentially the MMF to deal with that.

9 MR. MADDEN: That's great. Let's move
10 on to page 22. And I just, this was said in
11 passing and I just want to understand it, and it
12 relates back to employment and the employment
13 commitments that have been made to the partners,
14 and I think someone spoke yesterday that it is to
15 the First Nations and -- but they don't
16 necessarily need to be living in Northern Manitoba
17 in order to benefit or to be beneficiaries of
18 those commitments. So, for example, someone from
19 Fox Lake could be living in Winnipeg right now and
20 they could still benefit from the employment
21 commitments from Keeyask.

22 MS. KIDD-HANTSCHER: Just to clarify,
23 you are asking specifically about the distinction
24 between living in the north versus living
25 throughout the province, if you are a member of

1 one of the Keeyask Cree Nations?

2 MR. MADDEN: Exactly. What I
3 understood yesterday was that the commitment was
4 made to Fox Lake members wherever they may live.
5 Using Fox Lake as an example, it is not that they
6 have to be living within the north?

7 MS. KIDD-HANTSCHER: That's correct.
8 And in Ms. Pachal's presentation it indicated that
9 it would be members of the Keeyask Cree Nations
10 who reside in the province.

11 MR. MADDEN: And is it the
12 Partnership's interpretation that that's
13 consistent with the Burntwood/Nelson agreement?

14 MR. SCHICK: Yes that's correct.

15 MR. MADDEN: And why would
16 geography -- if geography is not an issue for
17 those First Nations, why would it be for other
18 Aboriginal communities that may be affected?

19 MR. SCHICK: I was just searching for
20 the IR myself. So I think the Manitoba Metis
21 Federation brought forward an IR, 32(A), and that
22 addresses -- the question was confirm whether the
23 KCN members residing outside of the local study
24 area will be given employment preferences to
25 equally qualified Metis residing in the local

1 study area. So the short answer is no. For
2 contractors hiring on the open competitive tender
3 contracts, KCN members residing outside of the
4 local study area will not be given priority over
5 equally qualified Metis residing within the local
6 study or residing within the regional study area
7 for the socio-economic assessment.

8 MR. MADDEN: So how it was --

9 THE CHAIRMAN: Mr. Madden, I would
10 like to remind you that cross-examination should
11 be on new matters, and if the question has been
12 asked and answered in the IR process, that's very
13 much part of the record.

14 MR. MADDEN: How I understood it, as
15 it was explained yesterday was not consistent with
16 what the IR was, so I was seeking clarification on
17 that. But if the IR is essentially what still
18 stands, then -- because how it was explain to me,
19 we can look at the transcripts, was those
20 commitments are made to the First Nations even if
21 they don't live within the north. And --

22 THE CHAIRMAN: Okay. It is also time
23 for our lunch break. Do you have many questions
24 left?

25 MR. MADDEN: I do.

1 THE CHAIRMAN: Then we will adjourn
2 now and come back at 1:30.

3 (Proceedings recessed at 12:30 p.m.
4 And reconvened at 1:30 p.m.)

5 THE CHAIRMAN: I'd like to reconvene.
6 I'd first just like to say a word
7 about, clarify a possible misconception. Earlier
8 when I appeared to be admonishing Mr. Madden about
9 the use of cross-examination and IRs, I didn't
10 want to give the impression that challenging or
11 seeking further clarification of an IR was out of
12 order. It is certainly within order. The message
13 I wanted to get across was that cross-examination
14 in a public forum is not to be used to repeat the
15 same question seeking the same answer. But as
16 Mr. Madden responded to me at that time, he was
17 seeking clarification, so that is certainly within
18 order.

19 Mr. Madden, back to you and continuing
20 your cross-examination.

21 MR. MADDEN: Thank you. I'm going to
22 turn now to, starting at page 23 of your
23 presentation and the JKDA employment targets, and
24 the advisory group on employment issues, which I
25 guess is on page 24.

1 You spoke previously about, in the
2 Wuskwatim process, that there was a body that
3 included the Manitoba Metis Federation in relation
4 to training. That entity no longer exists. And
5 the ongoing training in relation to this specific
6 project seems to exclude any other parties other
7 than the four partners. Can you explain how that
8 evolved from an inclusive process to an exclusive
9 process for the partnership?

10 MS. PACHAL: Well, to begin with, the
11 Wuskwatim Keeyask training consortium has
12 completed its training initiative, that is
13 correct. Training is not by any means complete
14 for the Keeyask project. There is a number of
15 opportunities that my colleague, Glen Schick, can
16 speak to for on-the-job training opportunities.
17 And those would be open to anybody working on the
18 Keeyask project.

19 Glen, would you like to --

20 MR. MADDEN: I guess before you just
21 elaborate on that, my point is that in the
22 previous governance structure, the Manitoba Metis
23 Federation was a participant within that training.
24 This new structure or the management of it has no
25 participation other than the four partners. I

1 just want to confirm that. A simple yes or no
2 would be fine.

3 MR. SCHICK: No, it isn't. For the,
4 in particular for the general civil works
5 contracts, which is the largest single component
6 of the project, Manitoba Hydro, this is just
7 reading straight out of the RFP, request for
8 proposal:

9 "Manitoba Hydro seeks to provide
10 on-the-job training opportunities for
11 contractor employees in accordance
12 with the BNA for its major northern
13 projects."

14 So that would include Metis within that frame.

15 MR. MADDEN: I guess we're kind of
16 skipping two things. What was spoken of before
17 was the process of how training was undertaken
18 through a collaborative means of multiple --
19 partners being involved, but also other Aboriginal
20 organizations and communities played a role as
21 well.

22 MS. KIDD-HANTSCHER: Mr. Madden, if I
23 could, I just think we're talking perhaps across
24 each other. What has been referenced as the
25 Wuskwatim Keeyask training consortium, as Ms.

1 Pachal mentioned, was the training effort and
2 initiative to train members from Nelson House, the
3 four KCN's, MMF and MKO, for project jobs on both
4 Wuskwatim and Keeyask, and that initiative and the
5 funding that went with it has concluded. There is
6 no separate training for Keeyask in terms of some
7 being in the pot and others not. So I think
8 that's an important clarification.

9 MR. MADDEN: Well, maybe what doesn't
10 become clear then, and that's where my question
11 comes from, is then on slide 24 there's an
12 advisory group on employment to address employment
13 issues. That is not inclusive of the Manitoba
14 Metis Federation, or from my read of it, other
15 communities or groups that may have an interest,
16 correct?

17 MS. KIDD-HANTSCHER: Correct, and
18 also --

19 MR. MADDEN: You said correct, right?

20 MS. KIDD-HANTSCHER: That is a group
21 that is very specific to the project and the
22 partners working with Manitoba Hydro, but does
23 have the other representatives that we mentioned
24 earlier this morning.

25 MR. MADDEN: But it has no other

1 communities or the Manitoba Metis Federation
2 involved in it?

3 MS. KIDD-HANTSCHER: That is correct.

4 MR. MADDEN: And the same thing on the
5 next slide of the pre-project and on-the-job
6 training, or is this in reference to the past
7 Wuskwatim Keeyask training.

8 MS. KIDD-HANTSCHER: That is correct,
9 except on-the-job opportunities that Mr. Schick
10 was speaking about.

11 MR. MADDEN: And those would be
12 inclusive of Metis, from what my understanding of
13 what your answer was?

14 MR. SCHICK: Yes, that's correct.

15 MR. MADDEN: And moving on to the
16 income benefits and I am just going to -- my
17 simplistic understanding of it, and I am familiar
18 with this in other jurisdictions where there is
19 actually a -- it's a different system because
20 there isn't a monopoly like there is in Manitoba.
21 How I understand, for earning, for ownership
22 earning, would be there would be a guaranteed rate
23 of return on participation in a project. The
24 First Nation or Metis community can go and borrow
25 money at a certain percentage, say a million

1 dollars at 5 percent. They are guaranteed a rate
2 of return of 12 percent, and usually where the
3 income that they make off of the project is the
4 split between. Is that the same model? Because
5 I'm not quite sure of how the income is determined
6 because there is no regulator like the Ontario --
7 you know, you get an overall one percent increase,
8 you don't get a, you know, this is how much you
9 are getting for the specific project. So I don't
10 know how that's determined.

11 MS. KIDD-HANTSCHER: As was indicated
12 in Ms. Pachal's presentation yesterday, the income
13 that would come to the partners on this, potential
14 partners on the project if we advanced it, would
15 be from the revenues from the project. So that
16 it's not a guaranteed rate of return, as you have
17 described it.

18 MR. MADDEN: So then the challenge
19 with that then becomes what if interest rates
20 increase over the next few years, and it no longer
21 becomes lucrative or financially viable for them
22 to make a \$300 million investment?

23 MS. KIDD-HANTSCHER: That's something
24 certainly that the corporation -- and I don't want
25 to speak for the partners but that I would assume

1 they would consider. And we have seen over the
2 last decade how the world economy has changed
3 considerably. So a projection is a projection in
4 time in terms of the revenues from the plant, the
5 investment required, and we would have to -- there
6 is no guarantee. So there would be a range of
7 returns based on where the export, or the market
8 is when the plant goes into service.

9 MR. MADDEN: Okay. If we can just
10 turn to slide 26? I'm not quite sure, and maybe
11 I'm just misinterpreting the deck. There's only
12 two options that the partners can choose from.
13 One is the common unit partner option, is what we
14 just talked about, right, which is you are playing
15 a role in the risk up to a certain percentage.
16 And then the other one is a preferred unit option.
17 And I think it was you, or someone said this
18 morning, "and that may not even require an
19 investment."

20 MS. KIDD-HANTSCHER: If I said that, I
21 misspoke. Oh, no, I believe what I said was it
22 may not require loans, I did not say it didn't
23 require an investment by the First Nation
24 Partners.

25 MR. MADDEN: And so the less risk

1 means probably less reward, but that there is a
2 guaranteed rate of return, or a guaranteed
3 dividend, or stipend, or whatever payment ongoing
4 throughout the life of the project? I'm trying to
5 understand, because I have looked at the joint
6 development agreements, and the joint development
7 agreements I thought dealt more with the common
8 unit model. Is this new?

9 MS. KIDD-HANTSCHER: No, it's not.
10 The joint development agreement, and it's very
11 complex in this regard and I'm not going to
12 suggest that I'm a financial planner by any means,
13 but it contains both of the options. The common
14 and the preferred options are both outlined in the
15 development agreement very clearly in terms of
16 what they entail, and that those two options
17 exist, and that absolutely the common option is
18 more of what we would refer to as a quasi
19 commercial arrangement, where there is greater
20 risk certainly and more upside potential. The
21 preferred is more of a, not necessarily a
22 guarantee, but a more steady rate of return with
23 less of a risk and less of the loans leveraging
24 that the partners would require to invest in that
25 option.

1 MR. MADDEN: Would you describe this
2 as, this is an opportunity provided to the
3 partners? They may choose to -- they are not
4 obligated to exercise the opportunity, they can
5 choose if they want to?

6 MS. KIDD-HANTSCHER: Of which option
7 are you speaking, either option?

8 MR. MADDEN: Either option.

9 MS. KIDD-HANTSCHER: Just one minute,
10 please. Yes, they can choose either option or
11 they can choose not to invest in the project.
12 That would be a decision that would be made.

13 MR. MADDEN: And I guess -- and this
14 is a question -- if that opportunity is provided,
15 could that opportunity be expanded to other
16 individuals, or not individuals, communities that
17 may be impacted, not necessarily changing the
18 management governance structure but the
19 opportunity? Because how I understand it is, if
20 you go out and raise money, usually taking loans,
21 although some of the payments may be paid for from
22 past grievances or settlements, it's that split
23 between the rate of return and what you have to I
24 guess pay your mortgage on where the opportunity
25 lies for the Aboriginal community. And so my

1 question is, is there a potential of creating that
2 opportunity for other Aboriginal communities?

3 MS. KIDD-HANTSCHER: If you're asking
4 specifically about the Keeyask Generation Project,
5 then the answer to that question would be no. As
6 we have already talked about earlier today, the
7 development agreement is between Manitoba Hydro
8 and the four partner Cree Nations.

9 MR. MADDEN: And even if it didn't
10 alter that agreement, but Manitoba Hydro -- and
11 this recently happened in Ontario -- opened up a
12 space by saying, look it, where the public, if a
13 community wanted to make a pure commercial
14 investment in the project, without all of the
15 other pieces, Manitoba Hydro's position on that
16 would still be no, it wouldn't open that to the
17 Manitoba Metis Federation?

18 MS. KIDD-HANTSCHER: That is correct.

19 MR. MADDEN: And why is that?

20 MS. KIDD-HANTSCHER: I think I will
21 ask Ms. Pachal if she would like to weigh in,
22 please?

23 MS. PACHAL: I would have to say, at
24 this point the partnership is very hopeful that
25 each of the Keeyask Cree Nations will be investing

1 in the project, and there won't be an issue where
2 there is some of the 25 percent partnership equity
3 available.

4 MR. MADDEN: I think that wasn't my
5 question. It would be the -- okay, we make
6 another 1.5 percent available. Clearly it doesn't
7 affect management and control, or the governance
8 structure, but it would be an ability for other
9 impacted communities to participate in the
10 opportunity. They would still have to go out and
11 raise the money, if no one's giving them anything
12 for free, but it would be the issue of that
13 opportunity isn't just exclusionary.

14 MS. KIDD-HANTSCHER: I will start, and
15 if Ms. Pachal would like to add. But I think as
16 we have clearly indicated, although as you
17 characterize it, it might not change the
18 governance, it would change fundamentally many
19 aspects of the arrangement, and it is based on a
20 75 percent/25 percent investment on the equity by
21 Manitoba Hydro and the four Partner Cree Nations.
22 So if we were to open that up to another
23 organization, as you have outlined, I'm not sure
24 how you make the math work then, in terms of the
25 pie. The pie has been allocated with this

1 partnership arrangement, and there are all kinds
2 of aspects of the development agreement that go
3 along with that allocation and the complexity of
4 that, so...

5 MR. MADDEN: But I guess for me,
6 though, if it's a pure commercial arrangement,
7 you're going to have to go to market in one way or
8 another to raise that money anyways. If as
9 opposed to raising the money, the opportunity,
10 just the opportunity is provided to another
11 Aboriginal community, I don't know how that
12 changes the schematics. You're still going to
13 have to pay that money to a bank or as part of a
14 bond issuance.

15 MS. PACHAL: So, if I'm understanding
16 your question, you are asking would the
17 partnership consider going to another entity, be
18 it the MMF or an Aboriginal organization, for its
19 debt financing?

20 MR. MADDEN: Right?

21 MS. PACHAL: And I do not believe at
22 this time that is under consideration.

23 MR. MADDEN: Okay. We'll move on.

24 I just want to go back to the point
25 that you made in relation to -- well, they may not

1 have to go for loans. What did you mean by that
2 comment?

3 MS. KIDD-HANTSCHER: Specifically with
4 respect to the preferred option?

5 MR. MADDEN: Yes.

6 MS. KIDD-HANTSCHER: Yes. I don't
7 want to put any inaccurate information on the
8 record, as I have indicated, I'm not a financial
9 expert, so I don't have all of the details of the
10 loan versus invested cash in front of me. And if
11 that information is required, I would prefer to
12 take an undertaking to make sure the record is
13 accurate.

14 MR. MADDEN: Okay. And related to the
15 loans or the raising of money in the market that
16 the First Nation Partners may have to undertake,
17 are they also -- are any of the monies that have
18 been allocated through Adverse Effects Agreements
19 rolled into that? I know that that's been a
20 practice in Ontario of the past grievance
21 settlement is then their initial down payment for
22 participation in the economic opportunity.

23 MR. BLAND: York Factory is
24 considering that as one of the avenues for a
25 partial payment, second payment.

1 MR. MADDEN: Okay. I want to turn on
2 to page 27 now. And I just -- and this is
3 another, Mr. Chair, just clarification that I may
4 have misheard. And I think I heard it from the
5 gentleman from York Factory about this is
6 discretionary funds, or funds that are the
7 complete discretion of the First Nation once those
8 payments are made. And then that seems to me to
9 be a bit inconsistent with slide 27, about the
10 potential use of income distributions. But I
11 could be confused by, this is only if they pick
12 option B, which is the preferred unit option, or
13 are there still strings -- no, I wouldn't say
14 strings -- are there still parameters on how
15 distributions, even if they are earning it off
16 their own loans and economic opportunity, how that
17 money can be spent? Is that what slide 27 is
18 about?

19 MR. BLAND: Just give me one second,
20 please?

21 MS. KIDD-HANTSCHER: To clarify, the
22 distributions from the project are, it's
23 regardless of whether it's from the common option
24 or the preferred option for the purposes outlined
25 on slide 27.

1 MR. MADDEN: Okay. So this is an
2 additional income stream that, a guaranteed income
3 stream that is available to the First Nations?

4 MS. KIDD-HANTSCHER: No. This is the,
5 whatever the income stream may be from whichever
6 investment option is pursued, these are the
7 parameters for the use of those distributions, and
8 that is outlined in the development agreement.

9 MR. MADDEN: Okay. What I heard
10 earlier on the panel was, well, it's at our
11 complete discretion of how we use the funds.
12 That's not exactly the case. It has to fall
13 within, they are broad parameters, I'll give you
14 that, but it has to fall within what's on slide
15 27, generally?

16 MR. BLAND: Actually, I don't remember
17 saying it like that.

18 MR. MADDEN: Okay. Then I may have
19 misheard.

20 MR. BLAND: Yeah, I don't remember
21 saying it like that.

22 MR. MADDEN: So there isn't complete
23 discretion on how the income distribution is used,
24 it has to fall within these general areas?

25 MS. KIDD-HANTSCHER: That's correct.

1 MR. MADDEN: And so on the technical
2 and legal services, is that technical and legal
3 services in relation to ongoing participation in
4 the processes related to it, or is that
5 essentially the First Nations are now going to
6 have to pay for those themselves as opposed to the
7 140 million, which legal and technical services
8 form a portion of that for the last 10 years, does
9 that mean that they pay for it out of this, or in
10 addition there would be potential work plans that
11 would pay for that as well?

12 MS. KIDD-HANTSCHER: Yes. In the
13 development agreement, there is a note that we
14 have different phases of the project, is how we
15 refer to it, the planning phase, the transition
16 phase and the implementation phase of the project.
17 And the implementation phase is when the general
18 civil construction starts. So assuming that it
19 does start, then there would be a period of time,
20 six or so years, that would be under the
21 implementation funding. And there has already
22 been an agreed to quantum in the development
23 agreement for the four partners First Nations'
24 participation and related costs. And that funding
25 pays for the same types of things that have been

1 paid for during the planning and licensing phase.
2 But it is an articulated number that was agreed to
3 between the communities and Hydro when we were
4 finalizing the development agreement.

5 MR. MADDEN: And that would also
6 include technical and legal services on an ongoing
7 basis?

8 MS. KIDD-HANTSCHER: Yes, that is
9 correct. But certainly there's also a provision
10 here that if the communities choose to use their
11 distributions, they would use that for technical
12 and legal services in other regard, but there is
13 established funding, in answer to your question.

14 MR. MADDEN: And so for --

15 MS. PACHAL: I'd just like to follow
16 up and refer the panel to IR CAC 0087. The
17 question was, how will revenue be determined for
18 the project for the partners? How will the
19 revenue be distributed within the communities? Is
20 there a contingency plan if U.S. demand prices
21 increase or decrease, et cetera?

22 And then I won't read the whole
23 response, but it speaks to revenue distributions
24 from the partnership were provided to the
25 investment entities established by the Keeyask

1 Cree Nations, as per article 14.2.2. of the Joint
2 Keeyask Development Agreement. Distributions
3 received by a KCN investment may be used for the
4 following. And the list was on slide 27 there.
5 And the Chief and Council of each Keeyask Cree
6 Nation will ensure that there will be an
7 appropriate community consultation prior to using
8 the project distributions.

9 MR. MADDEN: Okay. On the issue of
10 the 140 million that's already been spent leading
11 up to the 10 years, is that posted against the
12 project's potential revenues, or is it that Hydro
13 has absorbed those costs, and the ratepayers have?

14 MS. PACHAL: No, it will become a
15 partnership cost.

16 MR. MADDEN: Okay. On page slide 28
17 you talk about the benefits to Manitobans. And
18 there is some, and I have seen the other -- you
19 don't need to go to any IRs, we understand how
20 Manitoba Hydro has come up with these numbers.
21 The question I have is, do you have any breakdowns
22 on how this may actually potentially benefit other
23 Aboriginal communities, not just the four
24 partners?

25 MS. KIDD-HANTSCHER: Are you speaking

1 specifically about the employment benefit?

2 MR. MADDEN: Right.

3 MS. KIDD-HANTSCHER: Can I just have a
4 moment, please?

5 MR. MADDEN: I guess, before you go to
6 that, is there a target set for other Aboriginal
7 peoples communities?

8 MS. KIDD-HANTSCHER: To my knowledge,
9 there is no target set. What I was going to go to
10 is, because the Keeyask Generation Project is not
11 approved and we have -- what we have for history
12 is where there might have been employment on the
13 Wuskwatim project or the Keeyask infrastructure
14 project, we do have a sense of what the Metis
15 employment has been specifically. And in terms of
16 the Wuskwatim project, there were over 500 Metis
17 hires on that project, which was one of the
18 highest rates of hire for any Aboriginal
19 organization or group in the province. And on the
20 Keeyask project to date, there have been a total
21 of 97 hires on the infrastructure project, which
22 has been a significant number as well. So that's
23 in response to your question.

24 MR. MADDEN: And we do well on that.
25 We get locked out of other things, we don't get

1 locked out of the jobs usually.

2 The question I have is, so following
3 up on that, in order to identify as Metis, though,
4 it's just a self-identification, correct? You
5 don't ask, well, are you a member of the Manitoba
6 Metis Federation? It's just someone checks off a
7 box of Metis, you don't have the ability to test
8 the veracity of whether those numbers are actually
9 Metis people.

10 And I'll just go back to the
11 definition. A lot of people think that they are
12 Metis, you know, anyone with a mixed ancestor
13 sometimes think that they are Metis, don't even
14 need to have an Aboriginal ancestor. So I
15 guess -- and I think that First Nations and Metis
16 can agree on that, that a lot of people use the
17 term loosely, but it may not actually be the Metis
18 people, it may just be mixed ancestry people who
19 are not -- that's not synonymous.

20 MS. KIDD-HANTSCHER: If we could just
21 have one minute, please?

22 This is the benefit of the back row,
23 to help clarify.

24 So in terms of hires within the
25 Manitoba Hydro Corporation, it's a

1 self-declaration that happens. And in terms of
2 jobs on our projects, where a job referral service
3 is used, you have to provide a Metis card, I have
4 been advised.

5 MR. MADDEN: Can I ask why Manitoba
6 Hydro doesn't apply a greater identification?

7 MS. KIDD-HANTSCHER: Within our
8 operations specifically?

9 MR. MADDEN: Yes.

10 MS. KIDD-HANTSCHER: I have been
11 advised that it's because Metis would be one
12 example under our equity program, so our entire
13 employment equity program is based on
14 self-declaration, regardless of whether you're a
15 member of an Aboriginal organization or community,
16 or whether you're a visible minority, as another
17 example.

18 MR. MADDEN: Just so I understand it
19 correctly, you ask your contractors to do it, but
20 Manitoba Hydro doesn't do it?

21 MS. KIDD-HANTSCHER: I believe that's
22 what I have indicated.

23 MR. MADDEN: Okay.

24 MS. NEVILLE: I think, though, in the
25 context of the career development partnership that

1 was agreed to with Manitoba Hydro, there is a
2 slightly different process where -- sorry, a
3 career development initiative program where
4 there's a hundred job target set out for Metis
5 people in Manitoba, and it's administered and
6 monitored jointly with the MMF. So I believe the
7 candidates for that program come through a joint
8 referral process. So that's a slight modification
9 to Jane's comment.

10 MR. MADDEN: And it's a little bit
11 different. That's a corporation wide -- the stats
12 that you provided about Keeyask and the other
13 projects, there's targets for where those jobs
14 will be, with the MMF, the arrangement with the
15 MMF. What my understanding was is that the
16 numbers that you threw out of over 500 were
17 employed in Wuskwatim and that, those are
18 different than those other jobs. You aren't
19 double counting them?

20 MS. NEVILLE: I was referring to
21 operational jobs.

22 MR. MADDEN: Right.

23 MS. NEVILLE: So jobs within Manitoba
24 Hydro.

25 MR. MADDEN: And I guess the point of

1 my question is, I just want the Commission to
2 understand that when those numbers are thrown out,
3 what they are actually thrown upon, and they are
4 solely based upon self-identification. They
5 aren't based upon a veracity or some sort of
6 underlying proof, not necessarily a genealogy, but
7 something that the person just hasn't checked off
8 a box?

9 MS. PACHAL: Well, the numbers that
10 Jane spoke about are, in fact, verified, because
11 the numbers that she referred to are on our
12 projects, and those are through the job referral
13 system, and so those would require a Metis card.

14 The current development program that
15 is a joint partnership between Hydro and the
16 Manitoba Metis Federation is something different,
17 and that's in our operational jobs program, that's
18 not related to our projects.

19 MR. MADDEN: Okay. Now I'm even more
20 confused.

21 So the number, what I would like to
22 understand is the numbers that are thrown out
23 about how many people were employed in Keeyask, or
24 not Keeyask, in Wuskwatim and other projects, are
25 those self-identification numbers or are those

1 actually numbers that required a level of veracity
2 to see if those people were actually Metis or just
3 someone who checked off the box accidentally?

4 MS. KIDD-HANTSCHER: No. The over 500
5 number that I referenced was, those are project
6 related jobs at Wuskwatim, that would have been
7 through the job referral system and would have
8 required the Metis card.

9 MR. MADDEN: Okay.

10 THE CHAIRMAN: Can I ask a question of
11 clarification? Is there a preference under the
12 BNA for Metis workers?

13 MR. SCHICK: Under the BNA, there
14 would be the first level, or first preference
15 would be for northern Aboriginals living in the
16 Burntwood/Nelson/Churchill River regional area.
17 So if there's Metis living within that area, they
18 would be in the first preference.

19 THE CHAIRMAN: Now, I'm just trying to
20 understand the response that some workers who come
21 through the job referral agency need to produce a
22 Metis card. Why is that?

23 MR. SCHICK: I guess it's a
24 confirmation. The job referral service is a
25 provincially run body. And like, the difference

1 between our operational jobs, which would be jobs
2 working directly for Manitoba Hydro, would be just
3 the self-declaration. For the jobs on the project
4 itself, all jobs are hired through the job
5 referral service. And within the job referral
6 service, the province has a requirement of
7 evidence that you are of Aboriginal ancestry.

8 THE CHAIRMAN: Thank you.

9 MR. MADDEN: Right. And so the MMF
10 card would be one form of that. They could
11 provide something else as well. But I guess we'll
12 come back at this in our presentation later, but
13 those numbers aren't quite what we think they are
14 either, because some of them aren't Metis that
15 have veracity behind the identification.

16 So, for example, other people could
17 provide documentation still saying they are, it
18 doesn't necessarily mean they have to have a Metis
19 card, correct, or an MMF card? For the job
20 referral service, all they have to show is that
21 they are Aboriginal and they checked off the box?
22 Going back to my friend's point of, there's a
23 difference between people who just can't get
24 Treaty and who the Metis people really are.

25 MR. SCHICK: And I think earlier on,

1 Jane had mentioned that one of the requirements
2 would be to have evidence of a Manitoba Metis
3 Federation card.

4 MR. MADDEN: Or aboriginal ancestry.

5 MR. SCHICK: Well, if you are in the
6 Treaty, yeah.

7 MR. MADDEN: Okay.

8 MR. BLAND: I just wanted to point out
9 as well that First Nations also have to show their
10 status cards as well, their Treaty status cards.

11 MR. MADDEN: Okay. So can I -- I
12 heard this repeated several times yesterday and I
13 just want to confirm that the partnership accepts
14 that for the Aboriginal communities, the four
15 partners in the study area, there are adverse
16 effects from this project. But they are, there's
17 mitigation measures that have been put in place to
18 address those. But they do acknowledge there's
19 effects, and in some cases, you know, could be
20 significant?

21 MR. BLAND: We understand that there's
22 effects.

23 MR. MADDEN: And those have been
24 addressed through the Adverse Effects Agreements?

25 MR. BLAND: Yes.

1 MR. MADDEN: I'll come back to that
2 when it's more of the biophysical panels.

3 So I want to move on to, yesterday you
4 spoke of, at various points in time you talked
5 about, well, we're going to rely on Aboriginal
6 traditional knowledge as we move forward. When
7 you're really talking about that Aboriginal
8 traditional knowledge, it's the partner's
9 knowledge, it's the Cree knowledge in it, it's not
10 at this point in time, until you get a -- so
11 you're using a broad term, but it's really at the
12 end of the day First Nations traditional knowledge
13 that's guiding the partnership, based upon the
14 information you have right now?

15 MR. BLAND: Yes.

16 MS. PACHAL: I'd just like to go back
17 to create clarity around the issue of the Adverse
18 Effects Agreements dealing with all of the adverse
19 effects from the project. So there is going to be
20 adverse effects from the project, and some of the
21 mitigation measures will be for resource users in
22 the area of the project who are not covered by an
23 adverse effects arrangement. So if you happen to
24 be an individual from another community, or in the
25 event that there are Metis people who utilize the

1 area, and in the event that those individual would
2 be impacted by the project, mitigation measures
3 are and would be put in place to deal with both
4 those individuals. And so that may not be under
5 the umbrella of an adverse effects arrangement,
6 that would be under the umbrella of our regular
7 mitigation programs. Whereas for our First Nation
8 partners, the specific adverse effects
9 contemplated by those agreements are covered under
10 their adverse effects arrangements.

11 MR. MADDEN: Because you see them as
12 communities? Anyways, we'll get clarity on this.
13 But it's the issue of, we'll deal with you as a
14 bunch of individuals, a rag tag bunch of Metis,
15 but we'll deal with, we'll enter into -- we see
16 the other groups as collectives and we'll enter
17 into Adverse Effects Agreements with them to deal
18 with collective impacts.

19 MR. SPENCE: Victor Spence, TCN. In
20 regard to Aboriginal technical knowledge, we have
21 a whole presentation on that, the environmental
22 panel. So at that time, I will respond, provide
23 clarification and clarity as to TCN's, how we
24 evaluated the project upon ourselves.

25 THE CHAIRMAN: So I think what

1 Mr. Spence said was that this will come up again
2 under the environmental panel.

3 MR. MADDEN: Okay.

4 THE CHAIRMAN: Can we move on from
5 that?

6 MR. MADDEN: Well --

7 MS. NEVILLE: Maybe I'll just take a
8 stab at this. I think the question that
9 Mr. Madden was asking was in relation to -- I
10 think it was multifaceted, but whether we were
11 only dealing with the collective in terms of the
12 Adverse Effects Agreement. We have talked a
13 little bit about why we entered into the Adverse
14 Effects Agreements when we did and some of the
15 genesis of those agreements. Certainly to the
16 extent -- and Mr. Madden had asked earlier about
17 this -- and the fact that they deal with
18 Aboriginal Treaty rights, which is acknowledged in
19 those agreements, which are collective rights. We
20 are looking in the context of an Adverse Effects
21 Agreement at potential impacts on a community. We
22 would deal with direct impacts on an individual,
23 and we will deal with resource users for any
24 impacts directly on resource users.

25 But the question was raised in one of

1 the MMF's IRs, 24 G, and I apologize for going
2 back to the IRs again, where the MMF asked why was
3 an Adverse Effects Agreement not negotiated with
4 the Metis Federation. And we indicated, among
5 other things, that the limited partnership is not
6 aware of any Metis community in the vicinity of
7 the project or of any potential project impact
8 that is specific to the Metis. As a result,
9 Adverse Effects Agreements were not negotiated
10 with any Metis communities or any Metis
11 organizations.

12 So that's effectively our answer for
13 now. We are awaiting the study, and if we become
14 aware of different information, then we'll
15 certainly have to take that into account.

16 MR. MADDEN: And you are aware that --
17 well, you may not acknowledge it, but the MMF has
18 outlined what its rights assertions are within the
19 region.

20 MS. NEVILLE: We are aware of that.
21 We touched on this earlier today. Manitoba Hydro
22 is not getting into determining what the rights
23 are of the Manitoba Metis. I expect that you'll
24 be taking this up with the Province in your
25 section 35 consultation. Manitoba Hydro is

1 interested in any impacts that arise in the
2 project area, and that's something that we're
3 dealing directly with. And to the extent that the
4 study that the MMF produces reveals impacts,
5 reveals something that we need to consider, we'll
6 look at it in that context.

7 MR. MADDEN: And the dance on the
8 pinhead continues. So I think I'll just move on
9 from it.

10 I do want to just follow through on
11 one of the comments made about, well, if we
12 identify individuals that are in communities or
13 locations -- so, for example, an individual in
14 Gillam who may not even be Aboriginal, who may be
15 Aboriginal -- we have mitigation measures for
16 that. But the adverse effects agreements are much
17 broader than just for the First Nation individuals
18 living on the reserves. In fact, significant
19 portions of the populations from TCN and the other
20 First Nations are diffused throughout the region.
21 The idea, though, you just don't look at them from
22 this prism of the reserves as what the community
23 is. Is that correct?

24 MS. NEVILLE: I'm not entirely sure if
25 I followed what you said. But the way the adverse

1 effects agreements were negotiated, determined,
2 were based on, in part, on the development of
3 programs, offsetting programs that were specific
4 to the individual First Nations who identified the
5 kind of offsetting programs that they felt would
6 be most appropriate to their membership who were
7 going to be impacted. I expect you may be able to
8 get feedback directly from our partners on that,
9 but I don't know that -- I can't comment on the
10 extent to which they feel that their members who
11 are not living on reserve would be utilizing those
12 programs. I think many of the programs were
13 designed specifically to deal with the impacts
14 that are going to be felt by people in the most
15 immediate vicinity of the project.

16 MR. NEEPIN: If I may provide a
17 response, George Neepin, Fox Lake. Our community
18 will receive the funding for and will administer
19 the offsetting programs, as I noted in my
20 statement yesterday. And also with the use of
21 those funds, and also the proper usage of those
22 funds, we are required to provide annual budgets
23 and also submit annual reports to our members and
24 to Manitoba Hydro. So I can't see us including
25 other members or citizens in those agreements

1 because we have to report directly to our
2 community.

3 MR. MADDEN: So you only see the
4 community as who live on reserve? That's the
5 community that you negotiated on behalf of, or is
6 it actually all of your membership?

7 MR. NEEPIN: Fox Lake members living
8 in Gillam and in our home reserve, which is known
9 as Bird, but it is the Fox Lake reserve.

10 MR. MADDEN: But I think you yesterday
11 said Gillam is not only -- Gillam has become our
12 home, it's a source of comfort for our people,
13 it's not a reserve but it is definitely -- you see
14 it as an extension of your community. The
15 community isn't the site specific location, the
16 community is the people.

17 MR. NEEPIN: We have a reserve in
18 Gillam.

19 MR. MADDEN: So when you say -- I
20 don't know if it was you who said this yesterday,
21 Gillam has not only become our home but it's a
22 source of comfort for our people.

23 MR. NEEPIN: That was me, yes.

24 MR. MADDEN: Are you referring solely
25 to the reserve?

1 MR. NEEPIN: No, Gillam was our
2 community before Hydro came.

3 MR. MADDEN: Right.

4 MR. NEEPIN: And we have always taken
5 that position. And that is why we are so
6 assertive when it comes to discussing, or
7 accessing benefits from Manitoba Hydro, or any
8 developer for that matter that comes into our
9 region.

10 MR. MADDEN: So you don't just see the
11 community as being defined by the reserve, you see
12 it being defined by your territory?

13 MR. NEEPIN: That's exactly right.

14 MR. MADDEN: Good. I think the point
15 is that, well, if you see it that way, I think
16 maybe other Aboriginal peoples may see it that way
17 too, is that the land base isn't the definition of
18 who the people are.

19 MR. NEEPIN: Getting back to Gillam,
20 and we have provided as much as we could in terms
21 of why Fox Lake has to take the stand, or this
22 partnership that it has considered very seriously
23 is because we can't -- and we've seen it in the
24 video, the former chief expressing that it is only
25 through our involvement, that that was the only

1 option that we see at this point in time, that we
2 must have direct involvement with this
3 development.

4 And to do anything else or to listen
5 to anyone else tell us otherwise, it would be
6 unbelievable for us to even consider that.
7 Because we have lived through three developments,
8 three generating stations, several converter
9 stations, thousands of miles of interconnecting
10 line. And you know, Hydro converged on us in Fox
11 Lake, we were there first. So, I mean, it's
12 unbelievable that we would have to justify why we
13 have taken the position that we have taken.

14 MR. MADDEN: And I think my point was,
15 if, when you negotiated those agreements, you
16 negotiated those agreements for some of your
17 citizens live in Thompson, some of them live in
18 Split Lake, some of them live in other -- and you
19 negotiated on behalf of all of those members
20 wherever they live. Because clearly they also
21 participated in the ratification, or they had the
22 ability to be ratify the agreements as well as
23 members of your respective First Nations, correct?

24 MR. NEEPIN: Can you just repeat your
25 question?

1 MR. MADDEN: Sure. Do the First
2 Nations see that they negotiated those adverse
3 effects agreements on behalf of all of their
4 members, wherever they may live?

5 MR. NEEPIN: That's correct. That's
6 why we couldn't cover -- and we had mail-in
7 ballots as well, but we couldn't cover every
8 community that our members reside or are employed
9 in. And unfortunately, as you understand and
10 probably will come to realize, a lot of our
11 members would love to come home but we can't, the
12 community can't provide the services that they
13 require.

14 MR. MADDEN: And they --

15 MR. NEEPIN: The elderly, we can't
16 keep them in our community because they have to go
17 elsewhere for extended health. Education wise as
18 well. I mean, we do what we can, but we can't
19 keep our members in Fox Lake alone. So what we
20 have done, and we have made mention of that in our
21 presentation, we have gone to Churchill, we have
22 gone to Winnipeg, we have gone to Thompson, we
23 have done extensive consultation with them to make
24 them feel that they are part of the community's
25 decision to proceed with this partnership.

1 MR. MADDEN: Would you agree with me
2 that those citizens are no less citizens of Fox
3 Lake than the ones that live on that the reserve,
4 or on a defined land base? They are just as much
5 a part of your community, that's why you went and
6 talked to them?

7 MR. NEEPIN: Exactly. Because, as I
8 said before, it's not because it's their fault
9 that they can't be a part of our community, you
10 know, whether it's housing, whether it's
11 education, whether it's health services. A lot of
12 times, especially when it comes to our elderly, it
13 seems like the healthy ones are the only ones that
14 we are able to keep at home. If you need extended
15 health, or personal care home, or levels three and
16 four in a personal care home, you have to leave
17 our community. And that's the sad part of all of
18 this.

19 MR. MADDEN: I think that we can agree
20 on one thing, that reserves that are created by
21 governments don't define who the Aboriginal people
22 are and how they see their communities. And I
23 applaud the efforts of the four First Nations for
24 recognizing in that that they are trying to build
25 a better future for all their citizens, wherever

1 they may live, and in the prospect of possibly
2 coming home.

3 Okay. And I just had one other
4 question, and I forget who mentioned it yesterday,
5 but it was referred to that the NFA is a modern
6 day treaty, and I don't know who said that. And
7 I'd be -- the MMF is very interested in modern day
8 treaties, and I just wanted to know if you can
9 maybe elaborate on that a bit? I wasn't quite
10 sure of what you meant.

11 MR. SPENCE: First of all, it was 1908
12 that our grandfathers signed a Treaty with the
13 Federal Government. Subsequently, we had
14 negotiations where a development was to cause
15 impacts on our nations. So about six years there
16 was negotiations, going back to 1971 to 1977.
17 Negotiation was done by and involved five First
18 Nations, but TCN was one. And there was a lot of
19 time and effort put into it by our grandfathers,
20 and a lot of them are no longer with us. But to
21 them, they were talking about their livelihood,
22 their way of life, where change was put on them,
23 imposed on them. And in terms of the Treaties,
24 our grandfathers negotiated with Canada, Manitoba
25 and Manitoba Hydro, and considered a modern day

1 treaty, an agreement.

2 Subsequently, in 1992 TCN further had
3 negotiations on the implementation of the Northern
4 Flood Agreement. On June 24, 1992, it was snowing
5 in Split Lake that time, there was a signing
6 ceremony. And Premier Dave Doer -- Gary Doer,
7 sorry, at that time, upon signing the '92
8 agreement, implementation agreement, made a speech
9 and he called it the modern day treaty.

10 So we look at these agreements as
11 negotiations between governments, the government.
12 Our nation, TCN, we have our own governance. It
13 is our government, the Chief and Council, and also
14 the membership. And I am very familiar and I can
15 honestly say that in terms of modern day treaty,
16 there are different understanding and different
17 interpretations by others on this discussion.

18 So that is why I said it's a modern
19 day treaty, and we stand by that.

20 MR. MADDEN: I just want to move now
21 into the IHA report.

22 Did anyone, in creating that report by
23 the experts, did anyone meet from the Manitoba
24 Metis Federation? Did Hydro instruct saying,
25 well, we should meet, or is all the information

1 that fed into that report through the lens or
2 filter of Hydro and its partners?

3 MS. PACHAL: I know they met with a
4 number of stakeholders and I can't say
5 specifically which one, but we will undertake to
6 find that out for you.

7 MR. MADDEN: Okay.

8 (UNDERTAKING # 2: Advise if Hydro met with anyone
9 from MMF in creating IHA report)

10 MR. MADDEN: My last question, it's
11 this presentation, the presentation for CEC KHLP
12 panel, and if you go to page -- well, actually
13 just for fun, if you go to page 30, there is a
14 bunch of people standing in front of a tepee and
15 there's a Metis infinity symbol on the tepee. You
16 may want to black that out in future photos. I
17 just noticed that when I was flipping through.
18 It's a very good photo but I --

19 When we go on to slide 32, about the
20 Mother Earth ecosystem, is that going to be a part
21 of another -- because what I'm interested in is,
22 when you got to the end of the process and said,
23 okay, well, here are the inputs and here's how we
24 identified what the residual effects are, how did
25 then you move it to the next stages of that, I

1 will call it the four-step process, but how did
2 you quantify those sorts of things? Is that best
3 left for another panel to talk about, how you
4 moved through that? Okay, then I will leave that
5 for a future panel. Can you let me know what
6 panel that is best for? Because I am, similar to
7 other participants, a little bit confused about
8 who's talking about what part of the EIS.

9 MS. PACHAL: Panel 5 will speak to the
10 KCN environmental evaluation themselves, and the
11 processes and approach and the findings.

12 MR. MADDEN: Okay. So what I'm
13 interested in is not just TCN, but for the other
14 First Nations as well, about how you got to the
15 Adverse Effects Agreements from the residual
16 effects or --

17 MS. PACHAL: I think if you read their
18 submissions, you'll find out they tell their story
19 of their journey in their submissions.

20 MR. MADDEN: I think one of the
21 questions I will have is, there is absolutely, I
22 fully understand how at the end of it they say
23 these are the impacts. What I'm interested in is
24 how does that translate into a quantification of
25 what ended up in the Adverse Effects Agreements?

1 The Manitoba Metis Federation is interested in
2 that.

3 MS. NEVILLE: I'll just comment
4 briefly on that.

5 MR. MADDEN: All I'm interested in
6 is -- I did read some of the materials, so what
7 I'm interested in is what panel for questions on
8 that?

9 MS. NEVILLE: You can start with this
10 panel, I'll give you a brief answer and if you're
11 not totally satisfied with the answer, I expect
12 you can raise it at other panels, but you did ask
13 that question in one of your IRs, how were non
14 foreseeable adverse effects quantified?

15 MR. MADDEN: Right. If you're just
16 going to read the IR, let's not do it. So let's
17 wait until a panel who can kind of talk about the
18 environmental --

19 MS. NEVILLE: Okay. The answer is in
20 the IR, so...

21 MR. MADDEN: I'm sure you can safely
22 assume that if I'm asking additional questions on
23 it, I'm not satisfied by the answer in the IR.

24 MS. NEVILLE: And I understand the
25 Chair had indicated that would be appropriate, but

1 I'm not entirely clear on what the additional
2 aspect of the question is?

3 THE CHAIRMAN: Can we wait until that
4 panel comes forward and do it at that time?

5 MR. MADDEN: Sure. I'm done.

6 THE CHAIRMAN: Thank you, Mr. Madden.
7 Next, Consumers Association.

8 MR. WILLIAMS: Good afternoon members
9 of the panel, and good afternoon members of the
10 partnership panel. I don't expect to pay a lot of
11 reference to it, but if the Commission is looking
12 to follow along, they may want to have at hand
13 KHLP Exhibit 29, which Ms. Pachal presented
14 yesterday, and I'm hoping Mr. Spence won't cover
15 his eyes again, but KHLP 33, which is the written
16 presentation of the Cree Nation Partners. Again,
17 I won't be paying much reference to it. And I
18 will have a few questions for Mr. Bland which flow
19 from a document that wasn't provided yesterday,
20 but it's from Our Voices, page 24. So I have
21 taken the liberty of providing a copy to Mr. Bland
22 through his legal counsel, and also to the Clean
23 Environment Commission. I haven't made copies for
24 others just because I'm trying to save a bit of
25 paper and because it's on the record.

1 And Ms. Pachal, I'm going to apologize
2 to you right off the bat, because I want to put a
3 CH in your last name all the time, a "CH" sound
4 for the record, and so I'll just correct me when I
5 misspeak.

6 And also, Mr. Bland, I am going to
7 have a few questions for Councillor Neepin and
8 Mr. Spence to start off with. I don't want you to
9 feel ignored or forgotten. I know you are coming
10 back next week, so I have a few questions for next
11 week in the cue already, and then a few later on
12 today. So please don't feel neglected.

13 Mr. Spence, you don't need to turn to
14 it, but when your colleagues on behalf of the Cree
15 Nation partnership spoke yesterday, you'll recall
16 that they spoke of past Hydro development and the
17 devastating effect on your customs, practices and
18 traditions? Do you recall that, sir?

19 MR. SPENCE: Yes.

20 MR. WILLIAMS: And I have had the
21 pleasure of hearing you speak before, and it would
22 be fair to say that on the traditional lands of
23 your people, there have been more than 35 major
24 generation, conversion and transmission projects
25 undertaken by Hydro. Would that be fair, sir?

1 MR. SPENCE: Yes.

2 MR. WILLIAMS: And when one looks at
3 these 35 existing projects, either individually or
4 in their totality, you would agree that they have
5 had a significant effect upon the TCN and its
6 people?

7 MR. SPENCE: They had adverse effects
8 on our people, yes.

9 MR. WILLIAMS: Councillor Neepin, you
10 had a bit of a discussion earlier today with my
11 friend, Mr. Madden, in terms of the many impacts
12 of Manitoba Hydro on the Fox Lake Cree Nation,
13 agreed?

14 MR. NEEPIN: Yes.

15 MR. WILLIAMS: And you noted
16 generation stations, converter stations, and I
17 think you mentioned as well thousands of miles of
18 interconnecting lines?

19 MR. NEEPIN: Yes.

20 MR. WILLIAMS: And in your evidence
21 yesterday, sir, as I understand it, you observed
22 that your community still bears the scars from the
23 earlier era of hydroelectric development. Would
24 that be fair, sir?

25 MR. NEEPIN: Yes.

1 MR. WILLIAMS: Now, Councillor Neepin,
2 I want to, and recognizing and acknowledging that
3 historic legacy and how it endures and carries
4 through the future, I want to turn to a couple of
5 plan projects. And would I be correct, sir, in
6 suggesting to you that apart from the proposed
7 Keeyask Hydroelectric Station, there is another
8 proposed hydroelectric -- or Hydro project that is
9 likely to affect the traditional lands of your
10 people, and that is the Bipole III transmission
11 line?

12 MR. NEEPIN: Yes.

13 MR. WILLIAMS: And the activities
14 associated with the construction and operation of
15 Bipole III are expected to have an impact on the
16 Fox Lake Cree Nation, its people and their
17 traditional lands?

18 MR. NEEPIN: Yes.

19 MR. WILLIAMS: And along with the
20 transmission lines, sir, am I correct in
21 suggesting to you that within your traditional
22 land, there is also a proposed new converter
23 station that will connect this converter station
24 to other Hydro projects?

25 MR. NEEPIN: Yes.

1 MR. WILLIAMS: And the activities
2 associated with the construction and operation of
3 the converter station can be expected to have an
4 impact on the Fox Lake Cree Nation, its people and
5 its land, agreed?

6 MR. NEEPIN: Agreed.

7 MR. WILLIAMS: Councillor Neepin,
8 would I be correct in suggesting to you that the
9 Fox Lake Cree Nation does not own any part of the
10 Bipole III transmission line or associated
11 projects?

12 MR. NEEPIN: That's correct, yeah.

13 MR. WILLIAMS: And at this point in
14 time, would I be correct to suggest to you that
15 Manitoba Hydro has not offered the Fox Lake Cree
16 Nation an opportunity to invest in the Bipole III
17 transmission line or associated projects?

18 MR. NEEPIN: Yes.

19 MR. WILLIAMS: Mr. Spence, back to
20 you. Going back to those 35 major hydroelectric
21 projects currently affecting your traditional
22 lands, would I be correct in suggesting that your
23 Cree Nation, Tataskweyak, does not own any part of
24 those 35 major projects?

25 MR. SPENCE: That's correct.

1 MR. WILLIAMS: And, Mr. Spence, I
2 believe I saw you in the front row of the room
3 yesterday listening to Chief Garson when he gave
4 his opening statement yesterday. Is that right,
5 sir? You were here when Chief Garson gave his
6 statement?

7 MR. SPENCE: I was.

8 MR. WILLIAMS: And do you recall him
9 employing words to the effect that someone had
10 once said to him, every time the turbine turns on
11 those existing projects, you should have been
12 making money? And if not, Mr. Spence, that's
13 okay.

14 MR. SPENCE: I can't recollect.

15 MR. WILLIAMS: Okay. Would I be
16 correct, Mr. Spence, just sticking with those 35
17 existing projects for one moment, that at this
18 point in time, Hydro has not offered the TCN an
19 opportunity to invest in any of those 35 existing
20 projects?

21 MR. SPENCE: Are you including Keeyask
22 as part of the 35?

23 MR. WILLIAMS: I wasn't. I was
24 talking about the ones that are in place already,
25 having effects already, sir?

1 MR. SPENCE: We have negotiated an
2 agreement with Manitoba Hydro in relation to past
3 projects.

4 MR. WILLIAMS: Okay. Councillor
5 Neepin, I did want to come back to you. You will
6 recall yesterday you spoke about some of the
7 choices for the Fox Lake Cree Nation, in terms of
8 the investment choice it would ultimately have to
9 make in the Keeyask project. Do you recall that,
10 sir, at a high level?

11 MR. NEEPIN: Yes.

12 MR. WILLIAMS: And the page doesn't
13 specifically refer to your evidence, but just for
14 the benefit of the panel, page 26 of Keeyask -- or
15 the Keeyask Hydropower Limited Partnership, page
16 26. Mr. Neepin, I'm sure you've got these details
17 memorized anyways, but it's just a cheat sheet if
18 you're trying to follow along.

19 And just for the benefit of you,
20 Mr. Neepin, and also for the panel, I am
21 travelling on parallel ground to some of the
22 questions asked by my friend, Mr. Madden, but I'll
23 make sure to the extent possible I do not
24 duplicate them.

25 Yes, Mr. Chair, I'm well aware of your

1 proclivity to cut off if that happens, so I am
2 alert to that.

3 Councillor Neepin, I am correct in
4 understanding that one option available to the Fox
5 Lake First Nation is to become a common unit
6 partner; agreed?

7 MR. NEEPIN: Yes, the option is
8 correct.

9 MR. WILLIAMS: And under that
10 relationship -- you have the document now,
11 Councillor Neepin?

12 MR. NEEPIN: Yeah.

13 MR. WILLIAMS: Okay. Under that
14 relationship, if Fox Lake Cree Nation chooses to
15 follow that route, they will be eligible to
16 receive annual distributions based on a
17 proportionate share of the distributable cash
18 value after the equity repayment? Is that
19 correct, sir, after the equity loan repayment?

20 MR. NEEPIN: Yes.

21 MR. WILLIAMS: And again, Councillor
22 Neepin, another option would be the preferred unit
23 partner option, agreed?

24 MR. NEEPIN: Right.

25 MR. WILLIAMS: And that is generally

1 considered to be the lower risk option, sir,
2 agreed?

3 MR. NEEPIN: Yes.

4 MR. WILLIAMS: And Councillor Neepin,
5 I believe I heard you correctly yesterday, that
6 you indicated that the time for your First Nation
7 to elect its option would be shortly after the
8 last turbine was installed and up and running. Is
9 that right, sir?

10 MR. NEEPIN: Yes.

11 MR. WILLIAMS: And that's likely about
12 seven years from now, or in about 2020, agreed?

13 MR. NEEPIN: Yes.

14 MR. WILLIAMS: And Councillor Neepin,
15 I'm interested in asking about risk associated
16 with this income stream. And certainly I'd like
17 to direct my questions to you. If at some point
18 in time you feel I should be directing them
19 elsewhere, you'll let me know.

20 But, sir, am I correct in
21 understanding that in terms of the risk associated
22 with the common unit partnership, that risk would
23 be that Manitoba Hydro would earn less in the
24 export market than it hopes, and so the prices it
25 pays to the partnership would be less than hoped.

1 Am I correct in suggesting that that's the risk?

2 MR. NEEPIN: I'll just defer that.

3 MS. KIDD-HANTSCHER: I think that
4 would probably be a fair characterization of the
5 risk.

6 MR. WILLIAMS: Okay. And it's
7 certainly conceivable that in any particular year,
8 if the market doesn't turn out as the partnership
9 hopes, that it can lose money in that year?

10 MS. KIDD-HANTSCHER: It is possible
11 that the partnership could lose money in any year.
12 Again, an important point to remember though is
13 that these assets, these new generating stations
14 or all of our generating stations are multi multi
15 multi year assets. And that they often are not as
16 profitable in the early stages and are far more
17 profitable further on in the life of the asset,
18 the plant.

19 MR. WILLIAMS: Thank you. And,
20 Councillor Neepin, feel free to chip in at any
21 time. But certainly to the Hydro witness, again,
22 and I will no doubt do an injustice to your name
23 as well, but Ms. Kidd-Hantscher.

24 MS. KIDD-HANTSCHER: Hantscher, pretty
25 close.

1 MR. WILLIAMS: I'm not doing very well
2 with names today. And in fact, just by analogy,
3 we can agree that the Wuskwatim partnership lost
4 money in the 2012/13 year as an example?

5 MS. KIDD-HANTSCHER: Yes. The
6 partnership was not as profitable as expected in
7 the first year.

8 MR. WILLIAMS: And my client has your
9 point about these being multi year projects. But
10 it is certainly conceivable that the partnership
11 could lose money in a number of consecutive years.
12 Agreed?

13 MS. KIDD-HANTSCHER: That is possible,
14 yes.

15 MR. WILLIAMS: And indeed, when
16 Manitoba Hydro is projecting returns for the
17 Wuskwatim partnership, it is telling us that for
18 the next couple of years at least, it does not
19 expect that relationship to be profitable for the
20 partnership, agreed?

21 MS. KIDD-HANTSCHER: I think that I
22 agree but I would like to add that as has been put
23 on the record by Manitoba Hydro in front of the
24 other tribunal, the Public Utilities Board, there
25 is a recognition that the projections for the

1 Wuskwatim project have not been what we
2 anticipated, we or our partner. They ratified the
3 deal in 2006. There had been considerable market
4 changes, export prices being the most dramatic,
5 cost of construction. And therefore, we are
6 revisiting some of the arrangements of the
7 Wuskwatim transaction exactly for those reasons.

8 MR. WILLIAMS: Okay. Thank you for
9 that. And if the Fox Lake Cree Nation or the
10 other partners make the choice to be a common unit
11 partner, they will run the risk of losing money in
12 a year or in a series of years. Agreed?

13 MS. KIDD-HANTSCHER: I would just like
14 to distinguish between losing money as opposed to
15 the return and that's what we would focus on. The
16 return for the partners might not have been as
17 great as might have been anticipated under certain
18 projections, but I wouldn't characterize it as
19 losing money.

20 MR. WILLIAMS: I don't want to get
21 hung up on this point but you're not suggesting
22 that the Wuskwatim partnership made money last
23 year, are you?

24 MS. KIDD-HANTSCHER: I'm not
25 suggesting that the Wuskwatim partnership

1 necessarily made money but I am not saying that
2 NCN lost money.

3 MR. WILLIAMS: That's helpful, and
4 that's where I wanted to go next with you just so,
5 as you correctly noted, the development agreement
6 is complicated. My humble mind is not as nimble
7 as Ms. Neville's so I want to understand how it
8 works.

9 So let's assume any particular First
10 Nation partner chooses to elect to be a common
11 unit partner. And let us assume as well that the
12 partnership is losing money.

13 In terms of the Cree Nation partner,
14 what is the consequence of that? And specifically
15 does that mean that there would be no
16 distributable cash or does it mean that the
17 distributable cash would be less? I wonder if you
18 could just elaborate on this, remembering that I'm
19 constraining you to the common unit partner
20 example.

21 MR. BLAND: I just wanted to say too
22 that there's also a risk of making more money from
23 the common units than preferred.

24 MR. WILLIAMS: Absolutely. And
25 Mr. Bland, I am going to get to that. And you

1 quite cleverly anticipated where I'm going next.
2 And so we'll get there, but let's -- and you're
3 always welcome to interject but I do want to
4 finish this thought.

5 MS. KIDD-HANTSCHER: As was indicated
6 in Ms. Pachal's presentation yesterday and is in
7 the notes on page 26, it indicates that as a
8 common unit partner, a first nation will be
9 eligible to receive annual distributions based on
10 their proportionate share of distributable cash
11 after equity loan repayments.

12 So in the circumstance that you are
13 describing, the effect would be on the
14 distributable cash or the amount thereof paid to a
15 participating partner in any given year.

16 MR. WILLIAMS: And that I had
17 understood. And just to follow this along and
18 then we'll get to Mr. Bland in a moment, is the
19 effect of a bad year for the partnership no
20 distributable cash or is it just less?

21 MS. KIDD-HANTSCHER: Just one moment,
22 please. There could be years where neither Hydro
23 nor the partners receive any distributable cash
24 from the project. That would be correct.

25 MR. WILLIAMS: And again, before we

1 get back to Mr. Bland and that side of the table,
2 just to follow it one step further. In the event
3 that a Cree Nation partner elected to be a common
4 unit partner, is there the potential that in the
5 event of a bad year, that a cash call could be
6 made upon that partner? And so just to be clear,
7 I'm going one step further than saying no
8 distributable cash, I'm saying is there the
9 potential for a cash call on that partner?

10 MS. KIDD-HANTSCHER: Yes, as per the
11 development agreement. The debt equity ratio is
12 75/25 for this first 10 years and it can climb to
13 85/15 following that. So if we were to exceed
14 that ratio in either of those time frames, there
15 could be a requirement for a cash call on the
16 partners being Hydro and all of the communities
17 who invest in the project.

18 MR. WILLIAMS: And so maybe I'm a
19 little smarter than I thought because I actually
20 understood that, not that I have demonstrated
21 that.

22 Now, Mr. Bland or to Mr. Neepin, in
23 any event, and Mr. Bland, you have quite correctly
24 noted that while there is a downside risk with the
25 common unit partnership, there was also an upside

1 opportunity in terms of the potential for
2 increased returns for the first nation. Agreed?

3 MR. BLAND: Yes.

4 MR. WILLIAMS: And so the difficult
5 issue that may be facing York Factory or Fox Lake
6 or Tataskweyak or War Lake is that in 2020 or so,
7 the partners will have to make a decision whether
8 to select the higher reward/higher risk option or
9 whether to select the lower risk/lower reward
10 option. Agreed?

11 MR. BLAND: Yes.

12 MR. WILLIAMS: And Mr. Bland, given
13 your lengthy experience with the project, would I
14 be correct in assuming that you had been following
15 the ups and downs of the export market, the
16 electricity export market with some interest?

17 MR. BLAND: I only look occasionally.
18 I don't follow it daily.

19 MR. WILLIAMS: Nor do I. But can we
20 agree that it may be a challenging task for any
21 Cree Nation or any utility indeed to, in essence,
22 read the tea leaves in terms of where the export
23 market is going in 2020?

24 MR. BLAND: Can we agree on that? Is
25 that what you said?

1 MR. WILLIAMS: Yes, sir.

2 MR. BLAND: I couldn't answer that.
3 That's a long ways from now.

4 MR. WILLIAMS: Okay. Mr. Neepin, I
5 have a few questions to you I think again
6 following up your conversation yesterday. And
7 again if at any point in time I should be
8 referring to another witness, you'll direct me
9 accordingly. Or Councillor Neepin, excuse me. I
10 should say that my client was quite interested and
11 impressed with your description of capacity
12 building flowing from the partnership that you
13 shared yesterday. And I noted from your evidence
14 yesterday that Fox Lake community members are
15 developing expertise in the catering area which I
16 understood to be an outcome of the direct
17 negotiated contracts flowing from its business
18 relationship with Hydro. Did I get that point
19 right yesterday, sir?

20 MR. NEEPIN: Yes.

21 MR. WILLIAMS: And no doubt of course
22 there will be some jobs associated with the
23 catering business. Agreed?

24 MR. NEEPIN: Yes.

25 MR. WILLIAMS: And, Councillor Neepin,

1 what my client is trying to understand, and, sir,
2 I'll ask you to agree first of all before I get to
3 my next question, that in terms of the Keeyask
4 partnership, there is a construction employment
5 target for the Cree Nation Partners. Agreed?

6 MR. NEEPIN: Yes.

7 MR. WILLIAMS: And I wonder if you can
8 clarify for my client whether the jobs that might
9 be associated with the catering business would be
10 included in the target or in the count in terms of
11 jobs associated with the project? And I think
12 Councillor Neepin may be pointing to someone else
13 from the panel.

14 MR. NEEPIN: I'll defer.

15 MS. KIDD-HANTSCHER: Yes. Every job
16 worked on the construction project is included in
17 that JKDA operational target -- construction
18 target, yes.

19 MR. WILLIAMS: And I had thought that
20 was the case, but just to make sure I understand.
21 So if there were jobs through a direct negotiated
22 contract associated, for example, with security
23 positions, those would also be counted towards
24 that employment target. Agreed?

25 MS. KIDD-HANTSCHER: Yes.

1 MR. WILLIAMS: Ms. Pachal, I'm afraid
2 to speak to you because I'm afraid to mispronounce
3 your name but I'm going to bravely venture there
4 anyways. At page 26 of your presentation
5 yesterday, you discussed at a high level the
6 potential benefits and risks associated with the
7 partnership in terms of income. Agreed?

8 MS. PACHAL: First of all, I was going
9 to say I'm almost 50 so I have heard my name
10 pronounced probably every way that it can be
11 pronounced, and I answer to almost anything. So
12 you're very safe.

13 MR. WILLIAMS: Okay.

14 MS. PACHAL: And yes, the answer to
15 your question is yes.

16 MR. WILLIAMS: And would I be correct
17 in suggesting that the EIS or the response to the
18 EIS of Manitoba Hydro does not include an
19 assessment of Hydro's markets or the economic
20 feasibility of the project?

21 MS. PACHAL: That's correct.

22 MR. WILLIAMS: And of course that's
23 because that discussion, the examination of the
24 feasibility of the project, is for another hearing
25 and for another day. Agreed?

1 MS. PACHAL: Well, it's for the
2 process, the NFAT process, yes, that's currently
3 under way.

4 MR. WILLIAMS: So based on the record
5 of this proceeding, neither you or I or the Clean
6 Environment Commission would be in a position to
7 make a judgment in terms of whether this is an
8 economically feasible project or not?

9 MS. PACHAL: That's correct. I don't
10 believe that's in the scope of the CEC's
11 assessment of our EIS.

12 MR. WILLIAMS: And we wouldn't be able
13 to discuss the credibility of the assertion that
14 there would be substantial incomes because that's
15 for a different proceeding. Agreed?

16 MS. PACHAL: Yes, I'd agree to that.

17 MR. WILLIAMS: Now, Ms. Pachal -- and
18 I would never have guessed you were 50 by the way.
19 How am I doing?

20 MS. PACHAL: I'm going to bite my
21 tongue.

22 MR. WILLIAMS: You have had some
23 discussion both with Ms. Whalen Enns and with my
24 friend Mr. Madden in terms of the sustainability
25 assessment protocol that Mr. Adams discussed with

1 great enthusiasm yesterday.

2 MS. PACHAL: Yes.

3 MR. WILLIAMS: And I won't go into
4 those discussions except to suggest to you that
5 while Manitoba Hydro has kindly shared that
6 document with a number of parties, I'm going to
7 suggest to you that I'm not sure that it's on the
8 record of this proceeding. And so I'm going to
9 ask you, by way of undertaking, to determine
10 whether it is on the record of the proceeding.
11 And if it is not, I wonder if you could, by way of
12 undertaking, file an electronic copy?

13 MS. PACHAL: Well, before I take the
14 undertaking, I just want to understand. Like it's
15 not a final -- it's been posted by the IHA on
16 their website for comment. It's not a final
17 document in its final form. It wasn't used in the
18 development of the EIS. It was -- the assessment
19 was conducted after the EIS was filed. And so in
20 Ken's introductory remarks, he referred to it in
21 the context of the project and other, sort of an
22 independent assessment of the project. But the
23 intent is never that it's part of our EIS or part
24 of our filing.

25 THE CHAIRMAN: I think I might be

1 inclined to agree with Mr. Williams' request. I
2 think if the partnership is going to use it to
3 support the efficacy of their environmental impact
4 statement, then it should be part of the record.

5 MS. PACHAL: Well, we'll take an
6 undertaking to review that.

7 MR. WILLIAMS: And just so I am clear,
8 Hydro, at this point in time, is not agreeing to
9 file the document on the record, it is undertaking
10 to report back to the Commission in terms of
11 whether it's prepared to file the document?

12 MS. PACHAL: Correct.

13 MR. WILLIAMS: And certainly members
14 of the panel, at the time that Manitoba Hydro
15 reports back, certainly if they decline to answer,
16 our client would like the opportunity to make
17 submissions on that point.

18 THE CHAIRMAN: We'll do that.
19 (UNDERTAKING # 3: Advise if sustainability
20 assessment protocol is on the record of
21 proceeding; and if not, advise if Hydro will file
22 an electronic copy)

23 MR. WILLIAMS: Mr. Bland, I have been
24 pondering a statement you made or that is
25 attributed to you in Our Voices at page 24.

1 MR. BLAND: Okay.

2 MR. WILLIAMS: And there's a nice
3 picture of you on the side but I'm not focused on
4 the picture. It's the middle statement with your
5 name above it. And just to set out the record, I
6 will read it to you and hopefully you'll confirm
7 that I have read it and then I'm going to ask you
8 a couple of questions about it. Is that
9 satisfactory, sir?

10 MR. BLAND: Sure.

11 MR. WILLIAMS:

12 "I never felt comfortable with the
13 situation we went into where
14 Tataskweyak Cree Nation (TCN) was the
15 main First Nation negotiated with
16 Manitoba Hydro. We were put in a
17 situation where we felt that we were
18 either a part of it or we were out of
19 the deal. A lot of people didn't
20 [still don't] understand that this
21 thing was going to happen whether we
22 liked it or not. You either watch it
23 happen or become a part of it. With
24 us being partners, we have a limited
25 voice. Our only real benefit is for

1 our children and their children after
2 that. We did this for our children
3 and future generations."

4 Mr. Bland, first of all, did I
5 accurately represent that statement?

6 MR. BLAND: Yes, you did.

7 MR. WILLIAMS: And I'm not sure I
8 understood it until I heard you speak this morning
9 and I just want to see whether I understand it
10 now. Would it be correct to interpret that
11 statement to suggest that it was your view that
12 once TCN signed on, the project was going ahead?
13 And that what you were taking to your community
14 was a vote not on whether or not the project would
15 go ahead but whether or not they would be part of
16 the project?

17 MR. BLAND: No, it wasn't that.

18 MR. WILLIAMS: So please help me.

19 MR. BLAND: It wasn't that I didn't
20 want them to be a part of the project. When we
21 finished the negotiations in 2009, we signed the
22 JKDA, we started the process of reconciliation.
23 And this is where our document Kipekiskwaywinan,
24 you know, it came to be. And we invited a lot of
25 our community members to sit around in a circle

1 and talk about our feelings and our relationship
2 that we just formally established with Manitoba
3 Hydro.

4 And everybody, you know, everybody
5 talked about where they were, you know,
6 emotionally, mentally. And a lot of the people
7 talked about how -- you know, they kept reflecting
8 on old feelings. And you know, we actually -- we
9 did this process for a few days. And what we --
10 we all stayed around old feelings. You know, our
11 mistrust, our misgivings that we felt with our
12 past and previous relationship with Manitoba
13 Hydro.

14 And at a certain point, you know, we
15 started looking at where are we going to go from
16 here, you know. People had tears, people were
17 very emotional speaking about the impacts of the
18 development.

19 And at one point, we all kind of made
20 a bit of a flip. You know, not everybody was okay
21 with it, but a lot of people recognize and realize
22 that we are in Tataskweyak's traditional
23 territory.

24 As I pointed out earlier, in my
25 presentation, we are originally from the coast and

1 we moved to York Factory right at the beginning of
2 the construction of the Keeyask or Kelsey project,
3 sorry. And we recognize that we are in their
4 territory and we had to give them that respect.
5 The comments that I made were I could already -- I
6 already understood that, you know, we're in their
7 territory. They are going to have the lion's
8 share, we'll say, of what's going to happen with
9 this project, and duly so. Their population is
10 bigger. And, you know, compared to our resource
11 management area, you know, we're a tiny dot in
12 that 7 percent of Manitoba's, you know, as
13 Mr. Spence pointed out.

14 So we recognize that. We respect that
15 and we all felt that little bit of nervousness and
16 a bit of, you know, there wasn't a whole lot of
17 clarity moving forward.

18 As time went on as we started meeting
19 more and discussing some of our issues and
20 concerns with Manitoba Hydro and our partners,
21 things began to change. People began to see
22 things differently and start to acknowledge that
23 there are opportunities for our young people.
24 There are benefits of employment, business
25 opportunities, the partnership, the shares and all

1 the different -- you know, like the covenant
2 preferred shares, all the different opportunities
3 that come with it.

4 So those are the other things that we
5 had to take a really hard look at. And people
6 started that process of reconciliation and were
7 able to breathe some of that stuff out.

8 And when I made these comments, these
9 comments were early on right after the signing of
10 the JKDA. And you know, as I said, we acknowledge
11 Tataskweyak, we acknowledge that it's their
12 territory and we have a lot of respect for our
13 neighbours and our family and our friends that
14 reside there.

15 MR. WILLIAMS: That's very helpful and
16 thank you for that.

17 Mr. Spence, I had been ignoring you
18 and I apologize for that. At the Cree Nation
19 Partners presentation from yesterday, it's Exhibit
20 33, it's the second last page. I don't think
21 anyone needs to turn there. But you will recall
22 that the presenters yesterday discussed how the
23 ensuing process of consultation and negotiation
24 was conducted in accordance with our tradition of
25 consensus decision-making. Do you recall that

1 statement, Mr. Spence?

2 MR. SPENCE: No. However that is how
3 we conduct our, make our decisions.

4 MR. WILLIAMS: That was a careful
5 answer. And what I was hoping, not in great
6 detail, but if you could give me our client and
7 others in the room some insight into your
8 traditional process of consensus decision-making.

9 And, Mr. Bland, heads up because I'm
10 going to ask you the same question next.

11 THE CHAIRMAN: Mr. Williams, while
12 they are consulting, do you have many more
13 questions?

14 MR. WILLIAMS: I would guess I have 10
15 to 15 minutes at the most, sir.

16 MR. SPENCE: On your question, fully
17 describing our environmental assessment report,
18 and we will be doing that on panel 5. So at that
19 time, I would defer that answer to that panel.

20 MR. WILLIAMS: And, Mr. Bland, would
21 that be your response as well?

22 MR. BLAND: Yes.

23 MR. WILLIAMS: And so, Mr. Spence, are
24 you going to be coming back in panel 5?

25 MR. SPENCE: Yes, that's correct.

1 MR. WILLIAMS: Okay. Then I'm going
2 to defer a few of these questions for that panel.

3 Ms. Pachal, I understand that you have
4 been an employee of Hydro for almost 30 years; is
5 that correct?

6 MS. PACHAL: I think 29 and counting,
7 around there.

8 MR. WILLIAMS: And you had been
9 working on matters related to the Keeyask project
10 for over a decade?

11 MS. PACHAL: That's correct.

12 MR. WILLIAMS: So I'm not going to ask
13 you about all the cool international consulting in
14 your Curriculum Vitae. But would I be correct in
15 assuming you were a co-author along with
16 Mr. Wojczynski, Ms. Cole and Mr. Goulet of a
17 document called Mission Partnerships, A Socially
18 Responsible Approach for New Hydroelectric
19 Development?

20 MS. PACHAL: That's correct.

21 MR. WILLIAMS: And would I be correct,
22 I don't believe the document's on the record, I
23 don't think it needs to be, I just have a few
24 questions on it. And I'd be correct in suggesting
25 to you that that document in that report is

1 focused on the lessons learned by Manitoba Hydro
2 in developing and implementing partnership
3 agreements with northern indigenous communities
4 relating to Wuskwatim and Keeyask. Fair enough?

5 MS. PACHAL: Yeah, and I think that's
6 an important distinction. This is a Manitoba
7 Hydro paper, not a partnership paper.

8 MR. WILLIAMS: And would it be correct
9 that in judging these efforts to date to be
10 successful, a central theme that you and your
11 co-authors identified is the alignment of the
12 long-term interests of Hydro with these
13 communities?

14 MS. PACHAL: Absolutely.

15 MR. WILLIAMS: And we have heard a lot
16 of evidence about it, but it's your understanding
17 that from the community's perspectives, they saw
18 these new projects as a vehicle to increase
19 employment and business capacity, reduce poverty
20 and strengthen their capacity for self-government.
21 Agreed?

22 MS. PACHAL: Yes.

23 MR. WILLIAMS: And would it be fair to
24 say that underlying this relationship was a
25 recognition both by Hydro and the community

1 leaders that without First Nation participation in
2 the wealth generated from their traditional lands
3 and their support for future development, the
4 company faced some pretty significant regulatory
5 and business obstacles?

6 MS. PACHAL: Yes, that would be true.

7 MR. WILLIAMS: I thank the panel.
8 This has been helpful and certainly, Mr. Chair,
9 subject to the one undertaking, I stand down with
10 this particular panel.

11 THE CHAIRMAN: Thank you,
12 Mr. Williams. We'll take a break for 10 minutes.
13 So please come back at 3:25.

14 (Proceedings recessed at 3:15 p.m. and
15 reconvened at 3:25 p.m.)

16 THE CHAIRMAN: We will be adjusting --
17 Mr. London, please take your seat. We will be
18 adjusting our agenda, as I'm sure you won't be
19 surprised. Introduction to collaborative two
20 track approach will be on at 9:30 tomorrow
21 morning, and following that at approximately 10:30
22 or so, we will get into the project description.

23 From what the two remaining
24 cross-examiners have told us, we will fill out
25 most, if not, the rest of the afternoon on

1 cross-examination.

2 So first up is the Fox Lake citizens
3 group.

4 MS. PAWLOWSKA: Good afternoon.

5 First all I'm here once again on behalf of the
6 Concerned Grassroots Citizens, so I'm representing
7 all members of our panel. Please forgive my
8 questions, they are a bit random because I had a
9 lot of different individuals email or call, and
10 they are a bit hectic.

11 Also since the Chiefs and the Partners
12 and Manitoba Hydro said yesterday that they
13 respect differing opinions, basically we are here
14 and we thank you for that and we appreciate that.
15 And we appreciate the fact that we can have some
16 of the questions that we are going to ask
17 answered.

18 And also to all of you, I would like
19 to excuse myself, because I'm making my own notes.
20 So once in a while when you speak I will be taking
21 notes, so I will not be looking at you directly.

22 First question that I have is
23 regarding the "Our voice" video that we saw
24 earlier today and that's available to everybody.
25 And my question is directed to Fox Lake; have you

1 interviewed any elders for this video?

2 MR. NEEPIN: There is a gentleman that
3 was included in the video, I think he may have
4 been narrating as well, he is from Fox Lake and he
5 pretty much was at the time working directly with
6 our community.

7 MS. PAWLOWSKA: I believe the narrator
8 was Mike Lawrenchuk.

9 THE WITNESS: Yes, and he appears in
10 the video a bit later on as well.

11 MS. PAWLOWSKA: Is he the elder in the
12 community?

13 MR. NEEPIN: I wouldn't describe him
14 as an elder. At the time, as I said, he was
15 working for the negotiations office, and he
16 facilitated a lot of the community discussions
17 that we had that included elders.

18 MS. PAWLOWSKA: Thank you. Were any
19 other elders used for the purpose of this video?

20 MR. NEEPIN: I'm not sure.

21 MS. PAWLOWSKA: If you did interview
22 elders, would you put them in the video?

23 MR. NEEPIN: If we interviewed other
24 elders, would we have included them in the video?
25 I would think so, but this has four Cree Nations

1 that are involved, I'm sure the other Cree Nations
2 would likely have more elders. But it was the
3 main -- the video has to be very brief.

4 MS. PAWLOWSKA: There is a lot of
5 elders from other First Nations except for Fox
6 Lake. Is there a reason for that, other than the
7 fact that it has to be brief?

8 MR. NEEPIN: I'm just being advised
9 that, not being fully aware of why they aren't,
10 may likely be because they were not wanting to be
11 part of it, or because Mike was from our community
12 and he was, as I said, facilitated many of the
13 discussions with the elders in our community. So
14 I couldn't answer that straight why there were not
15 more Fox Lake elders in the video.

16 MS. PAWLOWSKA: So is it a yes or no,
17 that no elders participated in the promotion of
18 this video?

19 MR. NEEPIN: I didn't see any. I
20 guess yes to your question.

21 MS. PAWLOWSKA: They did participate
22 in the promotion of this video?

23 MR. NEEPIN: No, you said they didn't,
24 I'm answering that question.

25 MS. PAWLOWSKA: Okay. Another

1 question is, Fox Lake is in the unique position of
2 having most of the projects and its infrastructure
3 located in its traditional territory. So off the
4 top of your head, how many Fox Lake individuals
5 would you say are currently employed, not in
6 training, actually work at Hydro and all of its
7 projects, living and working there?

8 MR. NEEPIN: I will just defer that.

9 MS. KIDD-HANTSCHER: Could you please
10 repeat the question, just so we are all clear
11 exactly what you were asking?

12 MS. PAWLOWSKA: How many Fox Lake
13 individuals living and residing, so residing in
14 Fox Lake, are also working for a project in Fox
15 Lake?

16 MS. ANDERSON: Can you just clarify
17 that, like you said living in Fox Lake and working
18 in Fox Lake?

19 MS. PAWLOWSKA: Yes?

20 MS. ANDERSON: But do you mean at the
21 Keeyask camp, living at the camp, or are you
22 talking about the whole traditional territory, or
23 do you mean the community, or the Keeyask camp?

24 MS. PAWLOWSKA: I will say the whole
25 community.

1 THE CHAIRMAN: When you say Fox Lake,
2 you are talking about the traditional territory?

3 MS. PAWLOWSKA: Yes.

4 THE CHAIRMAN: Not just the Bird
5 community?

6 MS. PAWLOWSKA: No, let's start with
7 the traditional territory first, and then we will
8 go to community members.

9 THE CHAIRMAN: I think perhaps they
10 might have information as to how many Fox Lake
11 band members are working on the three generating
12 stations or the two converter stations.

13 MS. PAWLOWSKA: Including making roads
14 and all of the other infrastructure, yes. So how
15 many in general, I'm looking for a number, 5 per
16 cent, 50, 90?

17 MS. KIDD-HANTSCHER: I will take a
18 stab at this. We will break it down the way we
19 have it, and if it is not hitting the point, then
20 we can be asked follow-up questions.

21 MS. PACHAL: Just before Jane starts,
22 we do not know where these individuals reside now
23 based on these numbers, just to clarify. These
24 are the numbers, as the Chair mentioned, of
25 individuals who declare that they are Fox Lake

1 members working in Hydro operations or in Hydro
2 associated projects.

3 THE CHAIRMAN: Go ahead.

4 MS. KIDD-HANTSCHER: There are a
5 number of different numbers that I'm going to
6 provide. So in terms of total hires for the Fox
7 Lake community on the Keeyask project, which
8 includes all individuals who are working on the
9 infrastructure project, working in the future
10 development office, in the community, working on
11 field activities, licensing and planning
12 activities, and on the Provincial road upgrade,
13 that hire to date, to the end of September is 88
14 in terms of hires, which accounts for 6 per cent
15 of the total hires on the Keeyask project. So
16 that is one set of numbers.

17 And then in terms of Manitoba Hydro's
18 operations, because I think that was also a part
19 of the question -- if it wasn't, then I can stop
20 where I was.

21 MS. PAWLOWSKA: No, please go on.

22 MS. KIDD-HANTSCHER: So in terms of
23 active hires within Manitoba Hydro for Fox Lake as
24 of September 30th, that number is 38 Fox Lake
25 members in our overall operations.

1 MS. PAWLOWSKA: Can you describe also
2 what do you mean by hires?

3 MS. KIDD-HANTSCHER: Yes. So hires is
4 the actual -- and Glen can certainly step in
5 here -- is the number of times that we hire, or
6 hire for a particular position. So the same
7 person could be hired multiple times on a project.

8 MR. SCHICK: Yes, that's correct.

9 MS. KIDD-HANTSCHER: I wouldn't
10 characterize that quite the same in our base
11 Hydro operations, you would have more longevity
12 generally in those positions. Hires versus
13 people, if you are looking at it that way, would
14 be, certainly there would be difference.

15 MS. PAWLOWSKA: So it is possible to
16 say the 38 Fox Lake members, the numbers repeat
17 because of the number of positions that can be
18 hired?

19 MS. PACHAL: Not for the 38.

20 MS. PAWLOWSKA: Okay. What about the
21 88?

22 MR. SCHICK: Yes, for the 88 number,
23 that's true.

24 MS. PAWLOWSKA: So the numbers,
25 therefore, could be less for individuals who

1 reside and work -- who reside in Fox Lake and work
2 on the project?

3 MR. SCHICK: Yes.

4 MS. PAWLOWSKA: So it is less than 88
5 individuals?

6 MS. PACHAL: Well, again, we actually
7 don't know where these individuals reside.

8 MS. PAWLOWSKA: Thank you.

9 So the next question.

10 MR. LONDON: Mr. Chairman, could I
11 interrupt for a moment? In the hopes of
12 accelerating the process and taking less time, I
13 would ask that Ms. Anderson be allowed to sit with
14 Mr. Neepin, because she has a lot of the
15 information that he wouldn't have as a Councillor,
16 she can speak to it, so they will alternate in
17 giving responses depending on which one has the
18 expertise.

19 THE CHAIRMAN: I have no problem with
20 that.

21 MS. KIDD-HANTSCHER: And if I could
22 add, we do have the number in response to your
23 question, the number of employees and members of
24 that 88 is 61.

25 THE CHAIRMAN: So 61 different people

1 have filled those 88 different positions?

2 MS. KIDD-HANTSCHER: That is correct.

3 MS. PAWLOWSKA: Okay. So the
4 question, the next question is to the First Nation
5 Partnerships, so the Partnership. Considering the
6 losses that you describe in the video at early
7 stages Hydro development, do you think that
8 further development and losses to the land are
9 worth the 5 or 15 per cent of equity shares that
10 you will get?

11 MS. ANDERSON: Okay, Karen Anderson on
12 behalf of Fox Lake Cree Nation.

13 For us, for Fox Lake Cree Nation we
14 believe, yes, it is a benefit for Fox Lake going
15 into the future. We view it as a benefit.

16 MS. PAWLOWSKA: Can I ask from the
17 other partner members the same question?

18 MR. BLAND: Can you repeat the
19 question, sorry?

20 MS. PAWLOWSKA: Considering the losses
21 that you have described in the videos, and your
22 testimony, at early stages of Hydro development,
23 do you think that further development and losses
24 to the land are worth the 5 per cent or 15 per
25 cent of equity shares that you will get?

1 MR. BLAND: I think the way we look at
2 it is, all of these losses and everything already
3 occurred, they occurred before Keeyask. When we
4 look at what is projected and the amount of
5 changes that are going to happen, it is difficult
6 to try to put it into perspective. But if you
7 look at our community, York Landing, we are an
8 isolated community, there is not a whole lot that
9 we can look forward to. We don't have access to
10 all-weather roads, and it is difficult to try and
11 bring in any businesses or try to bring in more
12 money to our community so that it can help our
13 community. If we stay where we are, we are going
14 to remain dependent on the Federal Government.
15 And I think York Factory is prepared to look
16 forward and try and get away from the Federal
17 Government's control over our First Nation. And
18 that's something that we always strive for. We
19 have no other opportunities for York Factory at
20 this point. And we are, we know exactly what we
21 are doing, and we know exactly what direction we
22 are heading. And we are confident that this is
23 going to help. It is not going to solve all of
24 our problems. It is not going to be the answer to
25 all of our questions, but it is going to set us in

1 the right direction.

2 MS. ANDERSON: I just wanted to
3 further comment, I'm sorry this incident up here
4 kind of threw me off when I was trying to answer,
5 sorry.

6 For Fox Lake, the same thing, like
7 we've been affected by all of the Hydro projects
8 in the past, and we want to look forward to the
9 future and for the future generations of our
10 children. We are looking for ways to, you know,
11 enhance their ability to do something in their
12 lives that is positive, and so this is one avenue.

13 Again, we also know that the Hydro
14 development and this partnership is not the end
15 all, be all. But it is a chance for us to, you
16 know, go forward with something without being
17 dependent on Federal funding, without being
18 dependent on always having these parameters
19 around, or strict parameters on things that we
20 want to do in our community.

21 So, going forward, like those are the
22 options that our community members looked at, they
23 reviewed them. You know, it was a hard decision,
24 but they decided to go forward and take part in
25 this partnership. So that those are some of the

1 reasons that Fox Lake did go forward in this
2 partnership. Thank you.

3 MS. PAWLOWSKA: This is directed, I
4 think, to Victor Spence. A lot of comments were
5 made yesterday from the partners that promote the
6 Keeyask project, and I think it was you who said
7 that the Keeyask will actually enhance your
8 culture.

9 Would you explain this, please?

10 MR. SPENCE: I'm not sure if everybody
11 was able to read the statement that was made by
12 one of our elders, William Beardy. It says:

13 "The lands, the waters, and the
14 resources have provided for us in the
15 past. These waters and their power
16 could once again help to provide for
17 our people."

18 As we all know, we were once hunters
19 and gatherers, and that's how we provided for our
20 people. And then the bartering came during the
21 1600s, and then the white economy arrived. We
22 evolved to those changes.

23 And then there were laws made that
24 restrict our activities within our set lands,
25 territories. Not only laws restricted us, but

1 there was no source of income for many of our
2 people to venture again into the forest. Gas
3 price went up, to fly for people on welfare,
4 couldn't do it. So through negotiations to
5 continue our lifestyle, this was one means where
6 we used Manitoba electric development
7 compensations to offset those programs that we
8 weren't able to do in the past.

9 But through careful considerations and
10 usage of the monies, through consultation was our
11 members -- Manitoba Hydro development impacted our
12 way of life, namely trapping, fishing. And that's
13 what the Northern Flood Agreement -- is the
14 foundation of the Northern Flood Agreement. And
15 through negotiations with other Federal programs
16 and Provincial programs, we were able again to go
17 and harness the lifestyle that we enjoyed. So I'm
18 not sure if I'm doing justice to Elder William
19 Beardy's statement, but we are proud people, we
20 lived off the land. We will continue to live off
21 the land. Egosi.

22 MS. PAWLOWSKA: So can you answer yes
23 or no to the question that one of the elders from
24 Fox Lake asked, do you need a hydroelectric
25 project to have culture?

1 MR. SPENCE: We need our land, but the
2 answer is no.

3 MS. PAWLOWSKA: To clarify, you don't
4 need the hydroelectric project to have culture?

5 MR. SPENCE: No.

6 MS. PAWLOWSKA: Do you there retract
7 your statement about Keeyask enhancing your
8 culture?

9 MR. SPENCE: Pardon me, can you repeat
10 that question?

11 MS. PAWLOWSKA: Do you retract your
12 statement about the Keeyask enhancing your
13 culture?

14 MR. SPENCE: No. With Keeyask, and
15 previously the Northern Flood Agreement,
16 subsequently the 1992 agreement, and our Adverse
17 Effects Agreement of 2008, we negotiated a package
18 for our nation for offsetting programs, to
19 exercise our Treaty rights under the Treaties and
20 also section 35 of the Constitution.

21 MS. PAWLOWSKA: Thank you. So we, the
22 CFLGC, understand it was a difficult decision to
23 sign the Keeyask project for many of the partners.
24 Did you, and I speak to all of the CNP partners
25 here, have any chance in looking or speaking with

1 other First Nations in other provinces, or in the
2 U.S., to see what agreements they have made to
3 make a better informed decision?

4 MR. SPENCE: I cannot speak for other
5 First Nations, however, we went through an
6 extensive process, fully having our nation members
7 participate. There were some that did not want a
8 project, they did not want an agreement. However,
9 after an extensive process with our members,
10 consultation, and I can honestly say that we did
11 over 2000, we held over 2000 meetings with our
12 members, both here, at Thompson and Split Lake.
13 And after careful consideration and trying to
14 perform an intensive process, our members, we held
15 a referendum and our members voted on it. And
16 yes, it was difficult, a difficult journey, a
17 difficult path.

18 MR. BLAND: Did you just say CNP, or
19 did you mean the KCN?

20 MS. PAWLOWSKA: Could you repeat that?

21 MR. BLAND: The question you asked,
22 were you just asking --

23 MS. PAWLOWSKA: All of the partners in
24 the project, the CNP and the Cree Nation partners.

25 MR. BLAND: Okay, I thought you

1 specifically just said CNP.

2 I don't believe that we actually
3 consulted directly with anybody else out of
4 Province. We did, however, meet with our
5 relatives to the east, who was Nisichaywasihk Cree
6 Nation, and we followed their negotiation process
7 and tried to keep up-to-date with what was going
8 on there. And I began working with Future
9 Development six years ago, and if there were any
10 other meetings that may have taken place, then I'm
11 not aware.

12 MR. NEEPIN: Just recently I was
13 advised that the previous Council went east to
14 meet with the nations out there. We also, I
15 believe, our partner with Sodexo, York Factory and
16 us went to Northern Quebec at one of their Hydro
17 camps, and we were provided with an orientation
18 just exactly what our partner, the level or what
19 kind of services they were providing there at the
20 time. So that we accompanied them there and that
21 was just for them to provide us with an overview,
22 as I said, on what they are doing.

23 MR. BLAND: Yes, as Councillor Neepin
24 pointed out, we did go east, but it was mainly to
25 develop and establish our relationship with

1 Sodexo, it was not to meet with the Hydro
2 communities out there, but more so how Sodexo was
3 delivering services to the different First
4 Nations.

5 MS. ANDERSON: And I'm just going to
6 elaborate a little bit on Councillor Neepin's
7 comments. We had, I don't remember the year, but
8 the James Bay Cree came to our community, and it
9 was in the days when Limestone was being
10 developed. And they came to ask us about our
11 experience with the previous Hydro projects. And
12 at the same time, we asked them what their
13 experience was and how, you know, what types of
14 programs, et cetera, that they were looking at.
15 And at the time I believe they said, and my memory
16 is not right up to speed because it is many years
17 ago that they had come to Fox Lake, but they were
18 negotiating an agreement of the same sort that we
19 have here today, and looking for ways how, like
20 what is coming ahead for them, the same way that
21 we look forward, I mean, that what we experienced
22 in the past already. So that's what they had come
23 for. And at the same time we took advantage to
24 ask them what avenue they are going forward, so
25 that would be one comparison of where we had an

1 opportunity to talk to other First Nations
2 affected by a hydro project itself. But we didn't
3 go to any other communities who were affected by
4 different projects.

5 At the same time, we did consult with
6 the members and, you know, the programming and
7 that came from the members ideas. And it was
8 very, you know, I would say all inclusive, so
9 everybody had the opportunity to come out and
10 state their views, you know, their concerns. But
11 we did consult with others when we had the
12 opportunity.

13 MS. PAWLOWSKA: Could you tell me what
14 year that was?

15 MS. ANDERSON: Okay. When I was 20 --
16 I just got to figure out -- 1983 maybe, about
17 there.

18 MS. PAWLOWSKA: Can you say that
19 again?

20 MS. ANDERSON: About 1983, around that
21 time.

22 MS. PAWLOWSKA: So you haven't
23 consulted with anybody since 1983 outside of Fox
24 Lake?

25 MS. ANDERSON: Well, I haven't always

1 worked for Fox Lake, so I can't completely say
2 that. But in the time I have been back and
3 working in the negotiations office, I have been,
4 we haven't gone to any other communities except
5 the one that George said the previous Chief, the
6 delegation went to member two -- I'm not sure if
7 they went to Nova Scotia, but they went there to
8 have the discussion so...

9 MS. PAWLOWSKA: And what year was
10 that?

11 MS. ANDERSON: And I would say just
12 like two or three years. I can get the date for
13 you but I don't have it on me right now.

14 MS. PAWLOWSKA: Do you have minutes on
15 that discussion as well?

16 MS. ANDERSON: I don't know if there
17 is minutes, I can check for you.

18 MS. PAWLOWSKA: We would like to
19 request the CEC panel if we can have access to the
20 minutes, or at least see them?

21 MS. ANDERSON: It is probably just a
22 brief summary of what happened. I can check. I
23 don't know if there is actual minutes.

24 THE CHAIRMAN: We will ask Fox Lake to
25 review it and see if they feel comfortable in

1 releasing it. If it is of a private nature, they
2 may not, but if it is just a report on the
3 meeting, it will probably be no problem. So we
4 will ask Fox Lake to do that.

5 MS. PAWLOWSKA: Thank you. Okay.

6 MS. JOHNSON: Can we clarify that so
7 we can put that down as an undertaking, or did you
8 intend that to be an undertaking or just a
9 question?

10 THE CHAIRMAN: I think it is an
11 undertaking, and we ask Fox Lake to review, or to
12 inquire and see if there are any minutes or
13 written report of that meeting.

14 MS. JOHNSON: Of which meeting?

15 THE CHAIRMAN: A meeting between Fox
16 Lake, Sodexo and -- some people from member two?

17 MS. ANDERSON: It is not Sodexo -- it
18 is not Sodexo that I just reported on, it was the
19 trip to member two, I don't know their First
20 Nation, I'm not sure of the title. And that's the
21 meeting that I can give you a summary, or if it is
22 a report that was done. And that's what I am
23 going to review and check if there is something
24 available and get back to the Commission.

25

1 (UNDERTAKING # 4: Inquire and produce summary on
2 meeting with member two, if available)

3 MS. PAWLOWSKA: Thank you. So this is
4 again through the partner members, since you
5 travel a lot to and from Winnipeg across the
6 province, and we are sure elsewhere as well, would
7 you consider then, based on what you saw anywhere
8 in the province, that members of your communities,
9 those directly affected by Hydro development, are
10 better off than other communities without Hydro
11 development in terms of housing, employment,
12 alcoholism, and anything else?

13 THE CHAIRMAN: I'm not sure that this
14 is relevant, or how this is relevant, and it is
15 also that you are asking for an opinion.

16 MS. PAWLOWSKA: We are asking for an
17 opinion.

18 THE CHAIRMAN: Well, I'm not sure that
19 that's relevant to the examination before us.

20 MS. PAWLOWSKA: Okay, thank you.

21 Although, it is slightly relevant, but
22 I will rephrase the question in a different way.

23 So, again this is to the Partnership;
24 do you think that Keeyask, as it stands, without a
25 cumulative regional study that takes into account

1 all of the social, cultural, environmental
2 effects, will contribute to your own understanding
3 of Mino Pimachiowin?

4 So I will rephrase the question, how
5 will Keeyask, without a study, a cumulative study,
6 contribute to understanding of Mino Pimachiowin?

7 MR. BLAND: Without a regional
8 cumulative study, is that what you are asking?

9 MS. PAWLOWSKA: Without a regional
10 cumulative study that takes into account the
11 social, cultural, environmental, economic effects?

12 THE CHAIRMAN: Well, let me interrupt
13 here as well. The whole purpose of the
14 environmental assessment that has been done by the
15 Partnership is to look at the effects of all, in
16 all of those areas, environmental, social,
17 socio-economic, cultural. And that is the purpose
18 of our review over the next six weeks or so. The
19 question of a regional cumulative effects
20 assessment has already been addressed through the
21 motions that we heard last Thursday. And although
22 the reasons have not been provided yet, the panel
23 has decided against a need for that. And since
24 they are not contained in the terms of reference,
25 either the guidelines or scoping document directed

1 to the Partnership, or in the terms of reference
2 directed to the panel, or the Commission, I don't
3 think that's on the table.

4 MS. PAWLOWSKA: Okay.

5 THE CHAIRMAN: And having said that,
6 there is and will be a review of cumulative
7 effects, perhaps not as broad as some people would
8 like, but there will be a review of cumulative
9 effects.

10 MS. PAWLOWSKA: Thank you. Can I
11 rephrase the question to ask how will Keeyask
12 contribute to understanding of Mino Pimachiowin?

13 THE CHAIRMAN: Again, I'm not sure --
14 that's a huge question. I mean, in some ways that
15 question could take hours, if not days or weeks to
16 respond to, but in other ways it again comes back
17 to our purpose here in reviewing the environmental
18 assessment.

19 MS. PAWLOWSKA: I suppose the question
20 was asked because of some of the documents that
21 were presented to us yesterday, and the word Mino
22 Pimachiowin was actually a part of those
23 documents.

24 THE CHAIRMAN: I understand that. And
25 I suspect that as we review the environmental

1 assessment, or the Environmental Impact Statement
2 over the next number of weeks, Mino Pimachiowin
3 will come back into the conversation.

4 MS. PAWLOWSKA: So can we ask to have
5 this discussion at a different panel then?

6 THE CHAIRMAN: I would think that when
7 we get into the discussion of environmental and
8 socio-economic effects that that may well be
9 relevant. And also this panel five that some
10 people have spoken of, when we review the, I
11 believe it is panel five will review the three
12 impact statements done by the two First Nations
13 and the Cree Nation partners. I mean, in effect
14 all four First Nation partners.

15 MS. PAWLOWSKA: Okay, thank you.

16 So there is a question directed to Fox
17 Lake. Did you complete a social, cultural,
18 economic study and present it to the community
19 before the hearings or the licensing of Keeyask?

20 MR. NEEPIN: No.

21 MS. PAWLOWSKA: That was the question.

22 THE CHAIRMAN: I thought he responded,
23 I believe his response was no.

24 MS. PAWLOWSKA: Okay. Is it not, and
25 I quote one of our members, the agreement to

1 Keeyask, of Fox Lake to Keeyask and the JKDA
2 agreements are dependent on the outcomes of all of
3 the studies done on Keeyask, particularly the
4 social impacts?

5 THE CHAIRMAN: Again, I think that
6 falls under our review over the next number of
7 weeks, that's one of the main questions in our
8 review.

9 MS. PAWLOWSKA: Well, one of our
10 members said that there is a particular study that
11 was, that was the key determining factor in the
12 Keeyask project, and they were wondering if this
13 study was ever completed and presented to the
14 community. That's all.

15 THE CHAIRMAN: Well, if it is the same
16 study that was sought --

17 MS. PAWLOWSKA: It is not.

18 THE CHAIRMAN: Well, then we have to
19 take as on the record what is on the record right
20 now. If you know of for certain some other
21 document, then you can bring that to our
22 attention. But to throw out a question like this
23 is a fishing expedition, and we can't do that.
24 But if you have specific knowledge of it, I would
25 suggest that you talk with our legal counsel and

1 perhaps with the Partnership's legal counsel about
2 that document.

3 MS. PAWLOWSKA: So we can't have
4 access to this document?

5 THE CHAIRMAN: Well, we don't know
6 that this document even exists. If you can
7 identify specifically this document -- but I would
8 say rather than debate that in this forum, perhaps
9 you should talk with the Commission's legal
10 counsel. If you can identify a specific document,
11 and if there is sufficient evidence that it is
12 relevant to our review, then we will ask for it.

13 MS. PAWLOWSKA: Can I ask if this
14 document exists, to the Fox Lake member?

15 THE CHAIRMAN: You can try, yes.

16 MS. PAWLOWSKA: So this is directed to
17 the Fox Lake, does the social, cultural heritage
18 study, the Skip report, is it in your possession?

19 MR. LONDON: That was the subject of
20 the motion.

21 THE CHAIRMAN: That was the subject of
22 motion.

23 MS. ANDERSON: Sorry, I thought you
24 said no when he said Skip, but the social,
25 cultural, health impact program, and I thought you

1 were referring to a further study, and I was going
2 to ask you what the name of it was, but I guess
3 you are referring to that.

4 MS. PACHAL: If you are referring to
5 the Skip report, there was a motion filed in the
6 hearing last week, and there is a long discussion
7 on the transcripts about it, and affidavits
8 related to people's knowledge of the report, the
9 history of the report and all of those kinds of
10 things.

11 THE CHAIRMAN: I have to confess that
12 I never heard to it referred to as Skip until a
13 couple of minutes ago. And I take it that it was
14 a document that was the subject of the motion last
15 week and the panel has said no to requiring
16 release of that document.

17 MS. PAWLOWSKA: Actually, up until
18 yesterday, we didn't know that that was the same
19 document.

20 THE CHAIRMAN: Okay.

21 MS. PAWLOWSKA: There was a quote by
22 one of our members who said:

23 "We are not seeing any improvements in
24 our community. The only benefactors
25 are Hydro workers and the town itself,

1 nothing for our people."

2 How does the Partnership, or Fox Lake
3 in this case, plan to improve the living
4 conditions in the affected communities, or in Fox
5 Lake?

6 MR. NEEPIN: I could maybe start off,
7 and there is a number of areas that I, probably
8 speaking, that I could probably speak about. Like
9 the mitigation programs all have a focus on
10 healing and strengthening the Fox Lake Cree
11 Nation, the people, and also strengthening our
12 culture, Fox Lake's culture, language and
13 heritage. Those are all intended to benefit our
14 members.

15 We also have a process with the Town
16 of Gillam, Manitoba Hydro, in terms of local
17 opportunities that Fox Lake can take advantages
18 of. By being involved with the Town of Gillam, we
19 feel that we would have access to their plan, and
20 also being involved closely with Hydro, we would
21 be involved with their plan, so that we could take
22 full advantage of any opportunities that may come
23 our way.

24 With our involvement in this process
25 as well, we have been able to have access to a

1 number of resource people that we've relied on for
2 their advice and support, and for us to take
3 advantage in terms of business opportunities that
4 may come our way, employment and training
5 opportunities that came our way. We had access to
6 resources that allowed us to utilize them
7 effectively for our community.

8 MS. PAWLOWSKA: You spoke earlier
9 about the need for a place to place all of your
10 elderly so they don't have to leave the city, or
11 leave Fox Lake. Is that in your planning
12 initiatives?

13 MR. NEEPIN: Yes. We, a few years ago
14 we had a discussion with the Manitoba Health
15 through its Regional Health Authority in Thompson.
16 And in part of that discussion we noticed that
17 Thompson had a personal care home, and we inquired
18 as to how they were able to build that facility,
19 and we were told by the Regional Health Authority
20 that the local community raised funds and provided
21 its own contribution, and Manitoba Health kicked
22 in the rest. And that's basically the line of
23 thinking that we took when we approached Manitoba
24 Hydro to provide us with some funding to be able
25 to lever a personal care home. In time the

1 proposal, and the Regional Health Authority looked
2 at an assistive living centre, thinking that a
3 personal care home would be a little bit too
4 expensive, but an assisted living centre would
5 still provide the kind of care and support that
6 our elders require.

7 MS. PAWLOWSKA: Thank you. So here is
8 another question from us, what were the
9 communities' feedback after reading or being read
10 the EIS report?

11 THE CHAIRMAN: Again, I'm not sure
12 that that's a valid question. We would expect, in
13 fact, anticipate hearing from members of your
14 community. And I assume that some of them will
15 have read at least parts of the EIS and we will
16 hear from them at that time.

17 MS. PAWLOWSKA: Okay, thank you.

18 Another perhaps risky question by our
19 members to the Fox Lake and other Cree Nation
20 Partners; do you think that you have the courage
21 to back out of a Hydro project like Keeyask?

22 THE CHAIRMAN: I think the question
23 was asked in a different way earlier, not so much
24 whether they had the courage, but the question was
25 asked whether or not, or what it would take for

1 them to pull out. And I believe it was Mr. Bland
2 who responded that at this point it is not in
3 their thinking.

4 MS. PAWLOWSKA: Okay, thank you.

5 So the Cree Nation Partnership spoke
6 about self-determination yesterday. So our
7 members wanted to ask if they were confident
8 accepting a five Fox Lake and five York Factory
9 vote, 15 CNP vote, and a 74 vote to Manitoba Hydro
10 as is outlined in the JKDA?

11 MR. BLAND: I'm not quite sure if it
12 was a vote, I think it was a percentage in
13 ownership.

14 MS. PAWLOWSKA: It is votes in section
15 4.2.1 of the JKDA.

16 MR. BLAND: Can you rephrase that
17 question?

18 MS. PAWLOWSKA: Of course. Our
19 members want to know, how do you foresee
20 self-determination, and how are you confident in
21 accepting a five York Factory, five Fox Lake, 15
22 CNP and 74 votes going to Manitoba Hydro?

23 MR. BLAND: I guess what you are
24 asking is, we are not the majority shareholder,
25 how do we feel about it? Is that what you are

1 saying?

2 MS. PAWLOWSKA: Well, I suppose our
3 members want to know how this is an example of
4 self-determination if you are only having five
5 York Factory and five Fox Lake votes, versus 74
6 going to Manitoba Hydro.

7 MR. BLAND: It is a business
8 relationship. As I mentioned earlier, York
9 Factory does not have the capacity to own a
10 project like this, realistically we cannot, we
11 need partners to move forward. And in terms of
12 self-determination, as I pointed out earlier, this
13 is not an answer, our answer to everything, but it
14 is a step in that direction.

15 MR. NEEPIN: Okay. Just following up
16 on Ted's response, it is a business relationship
17 but -- well, the profits or the benefits that
18 result from that business relationship will help
19 with self-determination. And I believe Karen
20 mentioned it as well, with our capacity to use the
21 profits, use the resources that will result from
22 that partnership, based on our -- based on our
23 community's plans and priorities, rather than
24 conforming to a contribution agreement from the
25 Federal Government, I mean, there is -- that's

1 going to give us a lot of freedom to do, and
2 actually base our spending of funds based on our
3 priorities and not anyone else's. That to me is
4 very key, very important for us to remember.

5 MS. PAWLOWSKA: Thank you. And the
6 final question, I promise. If, if you can use
7 your imagination, you withdrew from the Keeyask
8 project and all the studies that you have
9 completed, who do the study reports and the data
10 gathered belong to?

11 THE CHAIRMAN: That's conjecture and
12 it is not a fair question.

13 MS. PAWLOWSKA: I guess we just want
14 to establish the ownership of some of the data
15 that was gathered for the project.

16 THE CHAIRMAN: Well, I think we have
17 already established that some of it is owned by
18 the First Nations, and some of it is owned by the
19 Partnership, and some of it is owned by Manitoba
20 Hydro. So if that ever happens, then I suspect
21 there might be more work for lawyers to resolve
22 that one.

23 MS. PAWLOWSKA: Thank you. That's all
24 of the questions I had.

25 THE CHAIRMAN: Thank you. Ms. Kearns,

1 Pimicikamak.

2 MS. KEARNS: Thank you, Stephanie
3 Kearns, legal counsel for Pimicikamak. I will be
4 relatively brief as many of my questions have
5 already been covered by those that went before me.

6 I will start on slide number 7 of the
7 panel presentation guide, and bullet number 2,
8 which has already been referred to by some of my
9 friends today in cross-examination. The point
10 about how during negotiations, Manitoba Hydro
11 committed to not proceed with the project for
12 export purposes if the partner First Nations did
13 not support the project.

14 So my question to the Manitoba Hydro
15 witnesses is, do you agree that you gave the four
16 First Nations a veto on the project?

17 MS. PACHAL: I would say that you
18 could characterize -- I would say it is a matter
19 of semantics. You can call it a veto, you can use
20 a lot of different names for it. The reality was
21 that Hydro committed to the Cree Nations that we
22 would not proceed with the development of Keeyask
23 without their support if we were going to advance
24 it for export purposes.

25 MS. KEARNS: Okay. I will use the

1 word veto for my next question, but I take your
2 point that there is many words to describe it.

3 Am I correct that the decision on
4 which First Nations were given the veto power was
5 based on Manitoba Hydro's measure of the proximity
6 of those communities to the project?

7 MS. PACHAL: I think this morning that
8 I answered that question with Mr. Madden in
9 explaining that Manitoba Hydro made a business
10 decision to negotiate partnership arrangements
11 with those four First Nation communities for four
12 main reasons, but they weren't all of the reasons;
13 but they were located in the vicinity of the
14 project; that Hydro had a current and historical
15 relationship and considerations arising out of
16 past impacts on these First Nation communities
17 from previous Hydro developments, which included
18 provisions to compensate these First Nations for
19 new adverse impacts that arise from any future
20 Hydro development projects. One of the other
21 reasons, that they historically used the project
22 area, and for the most part they are the ones
23 currently using the project area. And I think we
24 have heard extensively today that in all of our
25 public involvement processes, they continue to be

1 the ones that for the majority are the ones who
2 use the area that could potentially be impacted by
3 the project. And so those were some of our basic
4 thoughts and thinking around why those first four
5 nations.

6 MS. KEARNS: And was the decision
7 about located within the vicinity of the project
8 based on the location of the reserves?

9 MS. PACHAL: I think I just mentioned
10 one of the factors was the fact that these
11 communities were located within the vicinity of
12 the project.

13 MS. KEARNS: And I'm just asking by
14 using the word "community" you mean the reserves?

15 MS. NEVILLE: I think the reserves
16 were certainly a point of reference, but there was
17 a reserve in Gillam, as we've talked about, but
18 the community of Gillam and Fox Lake as a
19 significant presence was also contemplated, but
20 the reserves are in the vicinity, so that was a
21 consideration, yes.

22 MS. KEARNS: And was the location of
23 the First Nations traditional territory a
24 consideration?

25 MS. PACHAL: We certainly talked

1 about -- there is a lot of distinctions between
2 people's traditional territory, resource
3 management areas, resource use areas, primarily it
4 came down again to those four factors that I've
5 mentioned.

6 MS. KEARNS: Then I will turn to the
7 representatives from the nations. There is
8 references, as one was just made, to the resource
9 areas and references yesterday in the evidence.
10 So my question to you, to Councillor Neepin,
11 Mr. Spence and Mr. Bland is are your resource
12 areas legally surveyed?

13 MR. NEEPIN: No.

14 MS. KEARNS: Thank you. And would you
15 agree that your resource area was established for
16 trapping purposes?

17 MR. NEEPIN: For ours, it fell into
18 the Limestone trapline district, I believe.

19 MS. KEARNS: And Mr. Bland, was your
20 resource area set up for trapping purposes?

21 MR. BLAND: Our reserve land is a
22 small piece. Trapline 13 is what we call it,
23 specifically in York Landing. But in York Factory
24 we have a traditional territory, resource
25 management area that we use, and it was not only

1 for trapping, it was used for a variety of other
2 reasons.

3 MS. KEARNS: And, Mr. Spence, is your
4 resource area, was it set up for trapping
5 purposes?

6 MR. SPENCE: Yes. And it had not been
7 surveyed.

8 MS. KEARNS: Thank you. And, Mr.
9 Bland, you alluded to this, and my next question
10 is, is your resource area the same as your
11 traditional territory?

12 MR. BLAND: No.

13 MS. KEARNS: And Councillor Neepin?

14 MR. NEEPIN: No.

15 MS. KEARNS: And Mr. Spence?

16 MR. SPENCE: Sorry, what is the
17 question?

18 MS. KEARNS: Is your resource area the
19 same as your traditional territory?

20 MR. SPENCE: No.

21 MS. KEARNS: I will now move to slide
22 number 8.

23 MR. BLAND: I just want to say,
24 though, that we respect the resource management
25 area boundaries, and we try to acknowledge each

1 other because we are on our boundaries.

2 MS. KEARNS: So slide number 8, bullet
3 number 2, this is about the Adverse Effects
4 Agreement. It states that the agreements also
5 contemplate a process to address any adverse
6 effects that were not anticipated or foreseen, and
7 which were identified from the Environmental
8 Impact Assessment process. So my first question
9 to the Hydro witnesses is, can you please confirm
10 that there are no Adverse Effects Agreements for
11 any one other than the partner four First Nations?

12 MS. NEVILLE: There are no Adverse
13 Effects Agreement for the Keeyask project for
14 anyone other than for the four First Nation
15 partners.

16 MS. KEARNS: Thank you. And as I just
17 read out that bullet referred to the process in
18 those Adverse Effects Agreements, if there are
19 adverse effects that were not anticipated or
20 foreseen, and my question is what is the process
21 for adverse effects that may impact other nations,
22 not one of the four First Nations, that may arise
23 that were not anticipated or foreseen?

24 MS. NEVILLE: The nature of the exact
25 process is not specifically defined. But the

1 prospect of that happening was contemplated by the
2 Partnership in the JKDA, section 11.2.4, there is
3 a clause that deals with potential adverse effects
4 on others. It is a bit lengthy. I don't want to
5 read the whole thing. I'm just looking at the
6 concluding sentence. Effectively it sets out a
7 mechanism, a process if the environmental
8 assessment process identifies adverse effects in
9 others that the Partnership will address those.

10 MS. KEARNS: Is that also incorporated
11 into the EIS, that principle?

12 MS. NEVILLE: Off the top of my head,
13 I don't know.

14 MS. KEARNS: I will flag it to ask
15 another panel.

16 MS. NEVILLE: Okay.

17 MS. KEARNS: A question to the three
18 representatives of the Nations. Did you sign
19 these agreements in your capacity as Indian bands?

20 MR. BLAND: As First Nations?

21 MS. KEARNS: When you signed the
22 agreements, did you sign in your legal capacity as
23 an Indian band?

24 MR. BLAND: I would say on behalf of
25 York Factory First Nation, I'm not quite sure.

1 One second, please.

2 MR. REGEHR: Brad Regehr, counsel for
3 York Factory, I'm going to have to object to that
4 question, it is asking for a legal conclusion.

5 THE CHAIRMAN: Okay. Accepted.

6 MS. KEARNS: Okay. Then my follow-up
7 would be are there band council resolutions
8 authorizing the signing of the agreement?

9 MR. REGEHR: Again, I don't know where
10 this is going, but it seems to be requesting a
11 legal conclusion from these witnesses.

12 MS. KEARNS: It is going to just
13 confirm that the agreements were legally signed
14 and binding, and we note that the JKDA references
15 BCRs, but they haven't been provided and so we
16 were ultimately going to ask that those BCRs be
17 provided.

18 MR. REGEHR: Sorry, I'm confused here.
19 I thought these questions were going to find out
20 whether this agreement is legally binding, and
21 these witnesses are not in a position to ask those
22 kind -- to provide that kind of legal
23 interpretation.

24 THE CHAIRMAN: Are they not -- and I'm
25 just asking this for clarification, Mr. Regehr,

1 are they not qualified to respond whether or not
2 there was a BCR to ratify the decisions?

3 MR. BEDFORD: There were band council
4 resolutions, which is what a BCR is. No party to
5 the partnership is in any doubt that we are
6 legally bound to one another. I don't think
7 that's an issue before the Commission. I will
8 leave it to my colleagues if the next question is
9 please produce copies of the band council
10 resolutions. In my experience sometimes First
11 Nations take issue with making public those sorts
12 of documents, but they are the property of the
13 four First Nations.

14 THE CHAIRMAN: Thank you. Ms. Kearns.

15 MS. KEARNS: And as my friend
16 anticipated, my next question is produce the band
17 council resolutions.

18 MR. RODERICK: Mr. Chairman, we will
19 take it under advisement and determine whether or
20 not we are prepared to voluntarily produce those.

21 THE CHAIRMAN: Thank you, Mr.
22 Roderick.

23 (UNDERTAKING # 5: Under advisement: Produce the
24 band council resolutions)

25 MS. KEARNS: So my next question is to

1 Councillor Neepin, Mr. Spence and Mr. Bland. Am I
2 correct to summarize your evidence yesterday that
3 your First Nations are consenting to the project
4 on the basis of the economic benefits that will
5 flow to your communities?

6 MR. BLAND: Among other things, yes.

7 MS. KEARNS: And what are the other
8 things?

9 MR. BLAND: Having a say in how the
10 project is delivered, having a say in the
11 environmental impacts.

12 MS. KEARNS: Thank you. And
13 Councillor Neepin?

14 MR. NEEPIN: I won't repeat his
15 response. We were looking at as well the business
16 opportunities, training and employment
17 opportunities that we had.

18 MS. KEARNS: Thank you. And
19 Mr. Spence?

20 MR. SPENCE: Mr. Bland and Mr. Neepin
21 have answered the question. But go ahead.

22 MS. KEARNS: The question was am I
23 correct that you are consenting to the project on
24 the basis of the economic benefits that will flow
25 to your community?

1 MR. SPENCE: Part of it, yes.

2 MS. KEARNS: Sorry, go ahead.

3 MR. SPENCE: The other part of that,
4 we do have an agreement with Manitoba Hydro, the
5 Federal government, and the Province of Manitoba,
6 in relation to any future impacts of development.
7 And we negotiated an agreement based on our
8 culture, our way of life, and of course the
9 positive -- the benefits that -- some of our
10 people don't like to use the word benefit, however
11 there are opportunities that arise from this
12 business arrangement.

13 MS. KEARNS: Thank you. And again to
14 Councillor Neepin, Mr. Spence and Mr. Bland.
15 Would you agree that an Aboriginal belief is that
16 you have a responsibility to not cause any
17 environmental damage?

18 MR. BLAND: I mentioned that in the
19 video. But I also mentioned that we need to be
20 able to understand exactly what we are doing, and
21 to be able to, I guess, one of terms that I
22 discussed in there was ochinewin, if you are
23 harming the land, if you are causing destruction
24 or whatever, it will come back to you. And one of
25 the things, one of our beliefs as First Nations is

1 that we need to have ceremonies, we need to have
2 feasts, we need to involve our people and
3 acknowledge the spirits, the water, and
4 acknowledge that they are helping us. So does
5 that answer your question?

6 MS. KEARNS: Thank you. Councillor
7 Neepin?

8 MR. NEEPIN: I'm sure you are aware
9 the community that you are representing, there is
10 a Jenpeg generating station that's there too. I
11 mean, that obviously impacts the communities in
12 that area. And I think for me in the video you
13 will notice there was a young man in the video who
14 described that there was no employment
15 opportunities in his community. And we had --
16 this was not an easy decision for our community to
17 make. It was a very difficult decision for our
18 community to make because we saw what Hydro
19 development can do. As leaders and as a
20 community, with the elders and everybody that had
21 input, the youth saw this as an opportunity. The
22 youth were excited by the opportunity. It is
23 going to bring employment, it is going to train
24 them to operate machinery, and they were excited.
25 The elders were different, they were cautious,

1 because they knew what the effects -- they weren't
2 in any position to speculate. We are beyond
3 speculating because we know exactly what Hydro
4 development brings and what the consequences can
5 be.

6 So it wasn't an easy decision but the
7 community made the decision. And we, through the
8 experts and the advice that we were able to
9 access, assisted our community in making that
10 decision. And I agree with Ted when he mentions
11 about ochinewin, what the results are, when you
12 asked the question hurting the environment, and he
13 alludes to that in that video. So that's why it
14 is a very difficult decision.

15 MS. KEARNS: Thank you. Mr. Spence.

16 MR. SPENCE: TCN. With any
17 development there is change. There is impacts.
18 Our way of life, our culture, we harness and
19 harvested the immediate resources around us, the
20 animals, the birds, and different plants. In
21 terms of stewardship respecting the land, we
22 believe in the spirit kingdom that all things that
23 are alive have a spirit. However, we are not
24 extremists in that we harvest and survive from the
25 environment, whether fish, the aquatic animals,

1 the moose the caribou; that was us back then. And
2 our immediate resource area, we have Fox Lake, War
3 Lake, York, town of Gillam, town of Thompson. The
4 environment is utilized by the Province of
5 Manitoba. So, we meet with the Province of
6 Manitoba and respect the hunting and Treaty rights
7 of the other First Nations that venture into our
8 territory. However, no one should kid themselves
9 that if we were all to be hunters and gatherers,
10 that that way of life would be sustainable. We
11 are good hunters, we would deplete the immediate
12 resources.

13 So, as stewards of the land, we have
14 to plan where we are going to hunt, when we are
15 going to hunt, and how many animals we take.

16 So that is the important part of this
17 decision whether we are partners with Manitoba
18 Hydro on this development or mining exploration or
19 timber, we have to consider our environment, our
20 animals, and our aquatic communities. So again
21 that was part of the consideration on Keeyask.

22 Yes.

23 MS. KEARNS: And my final question is
24 to Mr. Bland. You said in your evidence and
25 described all of the losses that have already

1 occurred before Keeyask was built as a result of
2 the existing hydro development. My question is do
3 you agree that additional environmental damage is
4 likely to occur with Keeyask?

5 MR. BLAND: As described in Ms.
6 Pachal's presentation there is a section that will
7 be affected.

8 MS. KEARNS: So defer to the panel,
9 later panel? Is that --

10 MR. BLAND: Her presentation showed
11 the impacted area.

12 MS. KEARNS: I see, okay. Thank you,
13 those are my questions. Thank you.

14 THE CHAIRMAN: Thank you, Ms. Kearns.
15 Mr. Bedford.

16 MR. BEDFORD: I have one question
17 arising on re-examination, given that we are now
18 finished all of the cross-examinations.
19 Ms. Kidd-Hantscher, in the event that this
20 partnership experiences a bad financial year, and
21 the general partner of the limited partnership is
22 compelled to give what is called a cash call, a
23 notice to each of the equity partners requiring
24 them to pay cash in to the Partnership in order to
25 maintain the debt to equity ratio, would you

1 please tell us what role the three KCN financing
2 agreements have in that process of making cash
3 calls?

4 MS. KIDD-HANTSCHER: In anticipation
5 of this question I looked at the JKDA in section
6 5.3.10. It discusses that these cash calls would
7 be funded by advances under the KCN investment
8 entities operating credit facility, so that is the
9 loan facility. So earlier my answer to a question
10 I believe from Mr. Madden may have indicated, or
11 Mr. Williams, indicated that there would be
12 additional cash required by the partners in those
13 years, and that is not accurate. That it would
14 not be further invested cash, it would be under
15 the loan facility that exists.

16 MR. BEDFORD: Thank you.

17 THE CHAIRMAN: So in other words, they
18 would just take on a bigger debt?

19 MS. KIDD-HANTSCHER: That is correct.

20 THE CHAIRMAN: I have one question and
21 it is probably related. In the documents you talk
22 about the cost of the project being \$6.2 billion.
23 But let's say for whatever reasons, astonishingly
24 high increase in the cost of steel or concrete,
25 the project suddenly becomes 8 billion; do the

1 numbers then just go up, the 25 per cent of the
2 8 billion is now 2 billion instead of whatever it
3 is, 1.2?

4 MS. KIDD-HANTSCHER: Yes, that's
5 correct.

6 THE CHAIRMAN: Okay. Thank you. Any
7 panel members have any other questions?

8 Okay, thank you, that brings us to the
9 end of the cross-examination of this panel. Thank
10 you for your diligent work. We will resume
11 tomorrow morning with the panel on the
12 collaborative two track approach, followed by the
13 project description. Ms. Whelan-Enns.

14 MS. WHELAN ENNS: Sure, sorry, I just
15 wanted to ask you whether you will be checking
16 with the participants whether they have any
17 follow-up questions when we have reached the end
18 of the first sequence of cross-examination?

19 THE CHAIRMAN: Nope.

20 MS. WHELAN ENNS: Will that be the
21 approach throughout the hearings?

22 THE CHAIRMAN: Yep.

23 MS. WHELAN ENNS: Thank you.

24 MS. JOHNSON: Mr. Chairman, I just
25 have a couple of things here, I need to correct

1 the record on a couple of numbers for exhibits
2 yesterday. The KHLP32 is appendix C from Fox
3 Lake, 33 is the presentation materials
4 documentation from the Cree Nation partners, and
5 KHLP34 is presentation slides from the Cree
6 partners. As well as Mr. Madden brought in one
7 more document this morning, MMF01 is
8 recommendation 4.1 from the Aboriginal Justice
9 Implementation Commission.

10 (EXHIBIT KHLP32: Appendix C from Fox
11 Lake)

12 (EXHIBIT KHLP33: Presentation
13 materials documentation from the Cree
14 Nation partners)

15
16 (EXHIBIT KHLP34: Presentation slides
17 from the Cree partners)

18 (EXHIBIT MMF01: Recommendation 4.1
19 from the Aboriginal Justice
20 Implementation commission)

21 THE CHAIRMAN: Thank you. Any other
22 business? We stand adjourned until 9:30 tomorrow
23 morning.

24 (Adjourned at 4:46 p.m.)

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