

MANITOBA CLEAN ENVIRONMENT COMMISSION

KEEYASK GENERATION PROJECT

PUBLIC HEARING

Volume 4

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Transcript of Proceedings
Held at Fort Garry Hotel

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THURSDAY, OCTOBER 24, 2013

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APPEARANCES

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Judy Bradley - Member
Jim Shaw - Member
Reg Nepinak - Member
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1 Thursday, October 24, 2013

2 Upon commencing at 9:30 a.m.

3

4 Thursday, October 24, 2013

5 Upon commencing at 9:30 a.m.

6 THE CHAIRMAN: We'll reconvene for the
7 day, day four. Now that's D minus what? I think
8 it was Janet Mayor yesterday thought we should
9 have a clock on the wall counting down the days.
10 But you never know, if it's anything like Bipole
11 we may have to add a month or two. So we'll have
12 to wait and see. Hopefully not.

13 We'll resume where we left off
14 yesterday with the presentation by Ms. Cole on the
15 regulatory environmental assessment approach.
16 We're at Aboriginal traditional knowledge.

17 Ms. Cole?

18 MS. COLE: Thank you, Mr. Chair. Good
19 morning Commissioners, Elders, our Partners,
20 hearing participants and others. For the benefit,
21 to recap what we talked about yesterday, and for
22 perhaps the benefit of those who weren't here,
23 through the course of yesterday afternoon's
24 presentation, we reviewed the overall assessment
25 methodology for the regulatory components of the

1 Keeyask Environmental Impact Statement.

2 As part of that, we reviewed the
3 Partnership's public involvement program, the
4 environmental assessment methods, and we spent
5 quite a lot of time with particular focus on four
6 key subject areas: Scoping and the selection of
7 valued environmental components; cumulative
8 effects assessment and how the environmental
9 assessment for the Keeyask Generating Station is,
10 in effect, a full cumulative effects assessment
11 for Keeyask; the methodology used for
12 significance, and in that regard we're referring
13 to regulatory significance; and the Partnership's
14 approach to incorporating climate change into the
15 environmental assessment overall.

16 Today we have sort of I guess two
17 topics left. We'd like to review the
18 partnership's approach to incorporating Aboriginal
19 traditional knowledge and its use in the
20 regulatory component of the environmental
21 assessment, and we'll conclude with some
22 concluding comments on the Keeyask project with a
23 special consideration on how it relates to
24 sustainable development.

25 So, as you have heard in earlier

1 presentations, Aboriginal traditional knowledge
2 has been incorporated throughout the entire
3 planning and assessment process. It is reflected
4 through the Two-track approach undertaken by the
5 Partnership and described earlier by Mr. Keeper
6 and me, but is also reflected throughout the
7 regulatory environmental assessment.

8 As you heard from Mr. Keeper,
9 Aboriginal traditional knowledge exists within the
10 worldview and values of, in this case, the Cree.
11 The notion of relationships built on respect is
12 central to that worldview. From a difficult
13 history, Manitoba Hydro and our Partners have
14 gradually, over time, developed respectful
15 relationships working together on the Keeyask
16 project. This started in the 1990s with
17 Tataskweyak Cree Nation, when we started
18 discussing options for proceeding with Keeyask and
19 the conditions under which it may be acceptable to
20 the community.

21 Beginning in 2001, this began to be
22 reflected through formal processes with
23 Tataskweyak and War Lake First Nation, who worked
24 together as the Cree Nation Partners along with
25 Fox Lake Cree Nation and York Factory First

1 Nation, all of which eventually lead to the
2 establishment of the Partnership and the
3 formalized planning process for the Keeyask
4 project.

5 Working together we have planned a
6 better project that has appropriately considered
7 issues that are of greatest concern to those most
8 affected, and that has far better mitigation and
9 enhancement measures than would have otherwise
10 been possible. This process will continue into
11 the future with the involvement of our partners
12 and stewardship, through implementation
13 structures, including monitoring.

14 In 2008, the EIS coordination team,
15 which included representatives of each of the
16 partner communities and Manitoba Hydro, began to
17 look at the overall challenge of incorporating
18 Aboriginal traditional knowledge in a principled
19 way. The coordination team decided to hold a
20 workshop which included 39 members and advisers
21 from the partner communities and 13 Manitoba Hydro
22 representatives, including both staff and some of
23 our environmental assessment consultants. This
24 workshop was used as the catalyst to develop and
25 establish what we refer to as the Aboriginal

1 traditional knowledge principles for the
2 Environmental Impact Statement.

3 These principles, which are documented
4 in the EIS, identified how Aboriginal traditional
5 knowledge would be included in the environmental
6 assessment. It is worth reviewing these because
7 they are key to the approach we took as a
8 Partnership throughout the environmental
9 assessment process to address this fundamental
10 requirement.

11 The first is giving equal weight. The
12 assessment process honours and respects Aboriginal
13 traditional knowledge and the Cree worldview. The
14 assessment aims to give equal weight to Aboriginal
15 traditional knowledge and western science. It is
16 recognized that Aboriginal traditional knowledge
17 has value in and of itself.

18 Ensuring visibility. Aboriginal
19 traditional knowledge will have a distinguishable
20 voice in the Environmental Impact Statement and
21 will not be melded with western science so as to
22 become invisible.

23 Maintaining authority and
24 confidentiality. Aboriginal people have authority
25 and control over their traditional knowledge.

1 Each Keeyask Cree Nation, together with its
2 knowledge holders, will choose whether the source
3 of its knowledge is to be acknowledged in the EIS
4 document or to remain confidential.

5 Leading documentation, rigorous and
6 defensible methods. Each Keeyask Cree Nation is
7 taking the lead role in collecting and documenting
8 their Aboriginal traditional knowledge. Rigorous
9 and defensible methods will be used to collect and
10 document Aboriginal traditional knowledge.

11 Acknowledging worldviews. The
12 assessment process and the EIS document recognize
13 Cree knowledge and western science as distinct
14 worldviews. Aboriginal traditional knowledge is
15 more than just information about resources and
16 resource use. There is a role for Aboriginal
17 traditional knowledge in each step of the
18 environmental assessment process.

19 Building and sustaining respectful
20 relationships. The environmental assessment
21 process aims to foster communication and knowledge
22 sharing, and to build and sustain respectful
23 relationships between Manitoba Hydro and the
24 Keeyask Cree Nation communities.

25 Acknowledging the past. Acknowledge

1 the past in the environmental assessment process
2 as providing context for the assessment, including
3 temporal context.

4 Reflecting cultural values and
5 spirituality. Cree spirituality and cultural
6 values are being and will be reflected in the
7 assessment process.

8 And finally, acknowledging caution and
9 addressing uncertainty. Acknowledge and respect
10 the caution that many Keeyask Cree Nation members
11 have about predictions of environmental effects of
12 hydroelectric development, for example,
13 uncertainty associated with predictive models. It
14 is important to employ a precautionary approach
15 that identifies knowledge gaps and recognizes the
16 uncertainty of predictions.

17 So how did we actually apply these
18 principles? Well, in many, many ways and in many,
19 many components of the regulatory assessment. The
20 first was in identifying issues and concerns that
21 required study through the assessment process,
22 including ultimately the selection of valued
23 environmental components. You will remember from
24 yesterday that one of the main criteria for the
25 selection of VECs was its importance to people.

1 This was accomplished from the beginning of study
2 planning and the acceptance by Manitoba Hydro to
3 proceed with a lower head option for Keeyask.

4 During the assessment process, the EIS
5 coordination team established working groups to
6 deal with key issues of common concern, including
7 mercury and human health, mammals, and especially
8 caribou and aquatics.

9 On an annual basis, study plans were
10 reviewed and discussed and modifications made to
11 proposed studies as required. A lot of time has
12 been spent sharing and discussing the effects of
13 past developments and how this has shaped
14 community perspectives and concerns about future
15 development. Understanding and acknowledging the
16 past has also provided important lessons about how
17 we, as partners, want to move forward on Keeyask.
18 As much as our partners, we do not want to repeat
19 the mistakes of our past.

20 As noted on several occasions, our
21 partners were integrally involved in helping to
22 shape technical studies, participating in their
23 implementation and reviewing study results. They
24 also shared the results of work being undertaken
25 through their own evaluation processes. These two

1 sets of perspectives helped to create a better
2 understanding of possible project effects, areas
3 where there may be uncertainty in conclusions,
4 especially in cases where we reached different
5 conclusions about specific effects and mitigation
6 and enhancement measures. A key theme throughout
7 has been the importance of ongoing monitoring and
8 follow-up. This was seen as important to
9 addressing differences in conclusions and
10 uncertainty, but also taking seriously the
11 importance of environmental stewardship, a key
12 aspect of the Cree worldview.

13 The Partnership will continue to work
14 together to implement monitoring through both
15 technical scientific monitoring plans and
16 community specific Aboriginal traditional
17 knowledge monitoring programs.

18 These principles were also applied in
19 discussing how to document Aboriginal traditional
20 knowledge and technical science in the filing.
21 This was discussed for four years by the partners
22 as we grappled with how to capture the fullness of
23 the Cree worldview. And you have heard from
24 Mr. Keeper, Aboriginal traditional knowledge is
25 much more than discrete pieces of information, it

1 is based on a fundamentally different way of
2 viewing our world.

3 In the end, we have adopted what we
4 believe is an innovative approach that respects
5 the knowledge of each. Both versions have been
6 presented equally through the Two-track approach,
7 and in the regulatory component of the assessment,
8 we have worked to clearly document Aboriginal
9 traditional knowledge specific to each aspect of
10 the environment. The partners have also
11 collectively written components of chapter two of
12 the response to EIS guidelines documenting their
13 own Cree worldview.

14 As you have heard, all of the partners
15 reviewed and commented on the final Environmental
16 Impact Statement filing. Manitoba Hydro and the
17 Cree Nation Partners approved the filing
18 consistent with the environmental and regulatory
19 protocol in the EIS.

20 So where in the EIS can you find
21 Aboriginal traditional knowledge? Well, really,
22 it's reflected everywhere in the filing. The
23 Keeyask Our Story video and each of the Keeyask
24 Cree Nations environmental evaluation reports are
25 based on the Cree worldview. In the response to

1 EIS guidelines, discussion of Aboriginal
2 traditional knowledge is most prominent in
3 chapters two, six, seven and eight.

4 So, in summary, the Partnership has
5 used the environmental assessment process to its
6 fullest potential to plan and design a project
7 that minimizes environmental effects and enhances
8 positive benefit effects, and in the Cumulative
9 Effects Assessment Practitioner's Guide produced
10 by the Canadian Environmental Assessment Agency.

11 The environmental assessment
12 considered and incorporated the comments made on
13 how to undertake a high quality cumulative effects
14 assessment in the Commission's report on the
15 Wuskwatim project.

16 It undertook to incorporate cumulative
17 effects throughout the assessment process. It did
18 this by focusing on valued environmental
19 components affected by Keeyask, and a
20 consideration of the past, present and other
21 potential future projects affecting these VECs.
22 It also considered a long time horizon, back to a
23 pre-development timeline and forward into the
24 future up to a hundred years, depending on the
25 VEC.

1 Finally, it used the cumulative
2 effects assessment as a tool to, where feasible,
3 address the effects of past developments through
4 project design and mitigation, and to effectively
5 plan for potential cumulative effects with
6 reasonably foreseeable future projects.

7 The significance assessment concluded
8 that there were no significant effects of the
9 project, but this was not because the potential
10 for significant adverse effects did not exist.
11 Rather the Partnership worked hard through an
12 iterative process to address potential significant
13 effects as they were identified. The Partnership
14 also undertook to assess the influence climate
15 change may have on the findings of the assessment.

16 Working together as partners, Manitoba
17 Hydro and the Keeyask Cree Nations have developed
18 a regulatory submission that incorporates and
19 respects Aboriginal traditional knowledge in a
20 very meaningful and transparent way. The
21 conclusions reached by the western and Aboriginal
22 worldviews are not always the same, but we have
23 found mechanisms to address these differences
24 through ongoing project monitoring and, in some
25 cases, additional study.

1 The Partnership has also drawn on the
2 prospectus put forward by others through its broad
3 public involvement program that was undertaken
4 over the course of several years.

5 As partners, we have negotiated,
6 fought, cried, laughed, and learned an awful lot
7 about each other. But most importantly, we rolled
8 up our sleeves and worked together to assess this
9 project and to plan it in a manner that, based on
10 our collective knowledge and experience, seeks to
11 minimize environmental effects and enhance its
12 benefits. This is a good project, and it will
13 contribute positively to sustainable development
14 in the north and throughout Manitoba.

15 You have already heard about the
16 Partnership and the benefits of this project for
17 those most affected by its development, through
18 revenue sharing, employment preferences, direct
19 negotiated contracts, training opportunities,
20 comprehensive adverse effects agreements, and the
21 opportunity to be engaged as partners throughout
22 the life of this project.

23 You also heard yesterday about the
24 project description, and all of the alternatives
25 that were considered to designing the best

1 possible project, and the construction practices
2 that will be used to minimize environmental
3 effects. Most importantly, you have heard how the
4 size of this dam was actually reduced, foregoing
5 some power generation in an effort to decrease
6 potential environmental effects.

7 Over the course of the next several
8 panels, you will hear the results of the
9 regulatory assessment and the results of the
10 Keeyask Cree Nations' environmental evaluation
11 reports. You will also hear how the partners
12 intend to work together through construction and
13 operation to implement this project in a manner
14 that continues to show respect and stewardship for
15 the environment, a concept important to Manitoba
16 Hydro and absolutely integral to our partners.

17 As you listen to the remainder of this
18 evidence, we are confident that you will come to
19 the same conclusion that we have, that this
20 project will leave a positive legacy for future
21 generations.

22 It is really important to us that this
23 project's contributions to sustainable development
24 not be judged on the EIS or JKDA alone, but on the
25 project's entire planning and development process.

1 The EIS and the JKDA represent the outcomes of our
2 Partnership's planning process to date, but this
3 is not the endpoint. We are committed to working
4 together over the long-term so that Keeyask
5 continues to be planned, developed and operated as
6 promised.

7 As partners, we started evaluating and
8 incorporating the tenets of sustainable
9 development from the very beginning of our
10 discussions on Keeyask. The process is inclusive
11 and participatory, involves integrated
12 decision-making, has incorporated a long-term
13 mindset, and has sought to maximize benefits and
14 to minimize risks for future generations. Efforts
15 have been made to carefully plan this project so
16 that trade-offs are minimized and benefits are
17 enhanced as much as possible.

18 As well, detailed plans for
19 mitigation, compensation and offsetting have been
20 developed in advance of project construction and
21 incorporated into long-term project costs. This
22 means future generations will not bear the cost to
23 compensate and mitigate later for adverse effects,
24 as was the case with many previous hydroelectric
25 developments. The costs of compensating later

1 financially, socially, environmentally, and
2 emotionally, are much greater than those saved by
3 investing now in designing and implementing the
4 project responsibly.

5 This project will also provide broader
6 business and employment opportunities for Manitoba
7 as a whole, generating substantial labour income
8 and tax revenues. The Partnership will pay a
9 water rental fee to the Province throughout the
10 project's operational life, and these fees, in
11 addition to tax revenues on labour income, will be
12 used by government for the benefit of all
13 Manitobans.

14 Most importantly, the project will
15 provide a long-term source of reliable and
16 renewable energy for future generations that
17 offsets the need for electricity using fossil
18 fuels, both within Manitoba and elsewhere in North
19 America.

20 Provincially, the full regulatory
21 process to assess Keeyask will include both the
22 consideration of its environmental aspects,
23 through this Clean Environment Commission hearing
24 process, but also a consideration of the economic
25 implications of its development, and alternative

1 options through the Needs For and Alternatives To
2 process being undertaken by the Public Utilities
3 Board. Together these processes will provide
4 decision makers with a full understanding of the
5 net benefits we believe will be generated by the
6 project.

7 Thank you very much for your time, and
8 we now welcome your questions.

9 THE CHAIRMAN: Thank you, Ms. Cole.

10 An awful lot of ground has been
11 covered in this presentation, so I'm not exactly
12 sure how to approach the cross-examination. I'm
13 going to ask a couple of questions and then I may
14 seek some guidance from other participants.

15 I believe yesterday I asked a question
16 about the public involvement program, the PIP
17 program, as well as the cumulative effects
18 assessment, and I asked if there were going to be
19 stand-alone panels on those. And I believe you
20 told me no?

21 MS. COLE: No.

22 THE CHAIRMAN: Now, you are aware, I'm
23 sure, that one of the elements in our terms of
24 reference from the Minister asked us to
25 specifically review the proponent's public

1 involvement process. And quite frankly, what we
2 have seen in this presentation on PIP, to my mind
3 is pretty thin.

4 MS. COLE: All right.

5 THE CHAIRMAN: So, I think what we
6 will do is we'll go through the cross-examination,
7 and if it doesn't get sufficiently fleshed out, we
8 may need some further presentation from the
9 proponent at a future date. But we'll go through
10 the cross-examination first and see where it gets
11 us.

12 Now, I'm looking at page five of this
13 document and we have at least -- well, there's a
14 number of different areas, there's the PIP, then
15 there is, under regulatory environmental
16 assessment approach, there's four elements, and
17 then there's also the Aboriginal traditional
18 knowledge and how it was incorporated.

19 We can do the cross-examination in one
20 of at least two ways, and that is we can go
21 through each one separately and each participant
22 would go through the public involvement, et
23 cetera, or we can just have participants come up
24 and cover the whole waterfront in their
25 cross-examinations.

1 I'm seeking guidance. Mr. Williams,
2 do you have some thoughts on that?

3 MR. WILLIAMS: If I can just have a
4 moment?

5 THE CHAIRMAN: Certainly.

6 MR. WILLIAMS: Perhaps, unlike
7 Manitoba Hydro, I'm not as confident that I have
8 achieved consensus.

9 THE CHAIRMAN: Be careful now, it's
10 the Partnership.

11 MR. WILLIAMS: But certainly with my
12 partner intervenors, a couple of sentiments I have
13 heard expressed, one is that cross-examinations
14 have been designed to address kind of a number of
15 themes, and it would probably be disruptive if we
16 try and divide them piece by piece. And certainly
17 from my perspective, a strongly -- there's a
18 couple issues I certainly wish to canvass, and I'd
19 like to do them together because I think there's a
20 thematic benefit to do so.

21 A significant concern that I have
22 heard from some of my colleagues is that, echoing
23 the panel's comments that in terms of public
24 involvement there's been a relatively thin
25 presentation, and a concern has been expressed

1 that there's not enough to actually proceed in a
2 substantive way. So those are two sentiments that
3 I have heard expressed.

4 Speaking exclusively for CAC Manitoba,
5 in terms of cumulative effects, which will be a
6 major part of our discussion, both with expert
7 witnesses and through cross-examination, we
8 understand this discussion to be really more about
9 thematic issues relating to cumulative effects.
10 And so that on subsequent dates, if I have some
11 questions for Mr. Davies on his area, I will go
12 into his exact methodology. So certainly speaking
13 exclusively for CAC Manitoba, recognizing that
14 we've got some other kicks at the can,
15 methodologically or substantively later, we're
16 certainly prepared to proceed on cumulative
17 effects on a more thematic level today.

18 And I'm sure my other colleagues will
19 have some other comments, but that's just from our
20 perspective.

21 MS. WHELAN ENNS: And good morning,
22 and thank you to the Chair for voicing the
23 concern. I wanted to concur and add a couple of
24 comments and concerns, if I may.

25 We now have the transcripts for

1 yesterday, but it wasn't there to work with last
2 night, to the best of my knowledge. There was a
3 late -- how am I doing, is the secretary going to
4 correct me on that?

5 THE CHAIRMAN: Just carry on.

6 MS. WHELAN ENNS: There was also late
7 information as to which panels and who would be in
8 the panels in terms of preparation, you know, a
9 week ago, two weeks ago, three weeks ago. You are
10 right that the PIP is thin, and in some ways so is
11 the ATK information. The information that we've
12 heard from the member and Partnership communities
13 is very clear, but we are now in the EIS.

14 THE CHAIRMAN: Just on that point
15 alone, there will be substantive time spent on the
16 individual, the three individual environmental
17 assessment reports done by the Cree Nation
18 Partners.

19 MS. WHELAN ENNS: That's right. And
20 the --

21 THE CHAIRMAN: Pardon me, not the Cree
22 Nation Partners, the Keeyask Cree Nations.

23 MS. WHELAN ENNS: Thank you. The
24 balance then, of course, has to do with the ATK
25 content in the EIS that's from Manitoba Hydro.

1 Otherwise, I was going to ask for, and I agree
2 completely on the cumulative effects comments this
3 morning, I was also going to ask then if we go
4 through in the order we have heard it, and are
5 acknowledging that there's going to be an ability
6 to come back to some of this content in other
7 panels, is this an instance where an ability to
8 ask follow-up questions, given how much content we
9 have?

10 THE CHAIRMAN: I'm sorry, ask what?

11 MS. WHELAN ENNS: For participants to
12 ask follow-up questions, given how much content we
13 have in this panel, and also how long the cross is
14 potentially going to take?

15 THE CHAIRMAN: Well, participants will
16 have an opportunity, as much time as they need to
17 cross-examine. If you're asking if there's going
18 to be a second round of cross-examinations, I
19 answered that the other day, there will not.

20 MS. WHELAN ENNS: Thank you. Then,
21 Mr. Chair, I'm going to go get my materials.

22 THE CHAIRMAN: Okay. Ms. Land?

23 MS. LAND: Thank you, Mr. Chair.

24 I echo Mr. Williams' comments, and I
25 wanted to emphasize one specific concern, which is

1 the public participation matter. Certainly when
2 you clarified at the end of the day that this
3 would be our only shot at that issue, as you put
4 it, that was a concern. Because I understood that
5 this was going to be a panel on methodology, and
6 I'd also understood that there would be, as there
7 had been in Bipole III when I looked at the record
8 and so on, a separate panel that dealt with the
9 500 plus pages of evidence in that volume on PIP.
10 So that's a primary concern.

11 I can figure out ways to deal with the
12 other issues in the context of this
13 cross-examination, and the ones that will be
14 coming up in subsequent panels, but the PIP issue
15 is a primary concern for my client.

16 THE CHAIRMAN: Thank you, Ms. Land.
17 And I think you may have noted from my comments
18 that we were a bit surprised that there was no
19 distinct panel on PIP as well.

20 Anybody else have any different points
21 of view on this? If not, then I think we will
22 just go through one round, but covering all bases.

23 Mr. Bedford?

24 MR. BEDFORD: You know, Ms. Land's
25 memory serves her well. There's a whole volume on

1 the public information process, and folks are
2 welcome to ask questions arising out of any of the
3 material in that volume which they have had for 11
4 months.

5 I'll tell you, we did give some
6 thought to having a separate presentation on the
7 public involvement process. We opted not, in view
8 of the fact there's so much other material to
9 cover, and we thought we were better advised to
10 have presentations on so many of the other topics,
11 and not take up an hour to an hour and a half with
12 a PIP presentation, given that we have a whole
13 volume that cites all of the details of public
14 meetings and the time periods in which they were
15 held. But to repeat, folks are invited and are
16 welcome to ask questions arising out of any of the
17 material that's in that volume that was filed in
18 July 2012, and that they have all had, as I have
19 said, at least 11 months since your Commission was
20 engaged to review the material.

21 And Mr. Manzer, in particular, is on
22 the panel to respond to those questions, as is
23 Ms. Cole.

24 THE CHAIRMAN: Thank you, Mr. Bedford.
25 I would note, though, that given, as I said a few

1 moments ago, that one element in our terms of
2 reference is a specific mention of reviewing the
3 proponent's public involvement process. And I
4 think for some of us, given our relatively recent
5 experience with Bipole where there was an
6 extensive presentation made on the public
7 involvement and Aboriginal engagement program or
8 process, that we expected more.

9 Further, I mean, you do note correctly
10 that there is a full volume on the public
11 involvement process that participants can question
12 or direct questions at. But, you know, until
13 yesterday they didn't know who they would be
14 directing those questions at, until this panel
15 came up and had this small little piece on the
16 public involvement program.

17 So I think where I will leave it for
18 right now, and we'll move on with
19 cross-examination, is that we will go through the
20 cross-examinations. If at the end of the day the
21 panel in particular is not satisfied that we have
22 sufficient information upon which to make our
23 recommendations and give advice to the Minister,
24 then we may require further input from the
25 Partnership on the public involvement program, or

1 for that matter any other part of this
2 Environmental Impact Statement, or as you call it,
3 response to the EIS guidelines, which is another
4 mystery. But that's for another day, perhaps when
5 we have Mr. Adams back in the chair.

6 So we'll now turn to the
7 cross-examination, and let me find my list of
8 order.

9 Manitoba Wildlands, Ms. Whelan Enns?

10 MS. WHELAN ENNS: Good morning.

11 Would Ms. Cole confirm her comments
12 regarding page 6? You made a reference to other
13 materials added to the EIS. The question is,
14 specifically, which other materials?

15 MS. COLE: Well, we filed additional
16 materials through several supplemental filings. I
17 believe there have been three supplemental
18 filings.

19 MS. WHELAN ENNS: Yes.

20 MS. COLE: The Partnership has also
21 filed a preliminary environmental protection
22 program, which was filed this spring. In
23 addition, we filed responses to three rounds of
24 requests for additional information from both
25 Federal and Provincial regulators. And we filed

1 two rounds of information requests through the CEC
2 process. So that would be the additional
3 materials that we are referring to.

4 MS. WHELAN ENNS: Thank you.

5 May we take from that then that the
6 habitat modeling report that we received this fall
7 is not part of the EIS?

8 MS. COLE: The habitat modeling report
9 you received this fall is one of the technical
10 reports referenced in the response to EIS
11 guidelines in appendix 6 A. There's a long list
12 of technical reports in that appendix. And at the
13 time of publishing the EIS, it was noted that
14 several of those technical reports were still in
15 preparation. We have made them available to any
16 interested individual upon request. They are the
17 information from which the conclusions and the
18 analysis in the EIS are drawn. And so I would
19 view that model as, yes, part of the EIS filing.
20 And we provided it as soon as it was available and
21 finalized for distribution, because we knew that
22 there were interests from a number of participants
23 to review that particular memo.

24 MS. WHELAN ENNS: Thank you.

25 Then all of the technical reports and

1 their versions are also part of the EIS filings?

2 MS. COLE: They are dated and are
3 available to support the Environmental Impact
4 Statement. They were not filed with the
5 Environmental Impact Statement, but they are
6 available to support, and we have been transparent
7 and open in providing those memos. This is the
8 first time we have ever done that. And I would
9 say if you have questions related to those memos,
10 we would be more than happy to answer them.

11 MS. WHELAN ENNS: Thank you.

12 This is a public participation
13 question. You mentioned 130 groups or meetings,
14 and feel free to tell me this is already
15 available, but what I was hoping to hear and I'm
16 asking now is how many participants there were?

17 MR. MANZER: Thank you for the
18 question.

19 The number 130 that was referenced
20 earlier responds to the number of organizations,
21 communities, groups that were invited to
22 participate in the public involvement program.
23 That doesn't necessarily mean that all took up
24 this opportunity, but that's the number of 130.

25 MS. WHALEN ENNS: Will you be

1 providing then the number of organizations,
2 communities and groups who did attend, or the
3 number of people who were attending at your public
4 events?

5 MR. MANZER: As noted earlier, all the
6 information that was collected through the public
7 involvement program has been made available
8 through the public involvement program supporting
9 volume. It's been very transparent. We have held
10 over 70 events with interested groups, communities
11 and organizations. And in total, in looking back
12 at the sign-in sheets, which you have to remember
13 not everybody decided to sign in and provide their
14 name, we have an estimate that for round one there
15 was over 360 people that signed in, for round two,
16 over 200, and for round three, just over 250
17 people participated in the three rounds of the
18 public involvement program.

19 MS. WHELAN ENNS: Do those figures
20 include both the public events or open houses and
21 the workshops?

22 MR. MANZER: Yes.

23 MS. WHELAN ENNS: Could you provide us
24 with an example of a specific concern voiced in
25 each of the round one, two, and three workshops

1 that was then incorporated, or made for a change
2 in the EIS?

3 MR. MANZER: Sure. One thing that we
4 did with the public involvement for the Keeyask
5 project, along with our partners, was to record
6 notes that came from these meetings. These notes
7 were then sent back to participants to review for
8 accuracy. And upon doing so, there was a
9 concordance table that was put together that
10 reflects all the issues and concerns raised in all
11 our meetings and the appropriate section where
12 they are dealt with within the Environmental
13 Impact Statement.

14 MS. WHELAN ENNS: Yes, we all have the
15 concordance. But what I'm asking, or why I'm
16 asking is because there's different publics,
17 there's different participants here. And the
18 workshops held in Winnipeg are what I'm
19 specifically asking about. There was considerable
20 debate in those workshops on certain issues in the
21 EIS, hence the request for specific examples.
22 From the concordance table is fine, but there's
23 differences between open houses, meetings with
24 First Nation communities, north and south.

25 MR. MANZER: Yes. Some examples of

1 where we heard information that was incorporated
2 into the Environmental Impact Statement was
3 yesterday you heard from Marc St. Laurent, who
4 mentioned a peat report and a timber salvage
5 study. These were undertaken as part of our due
6 diligence with preparing the Environmental Impact
7 Statement. But in the PIP event, we heard of this
8 concern as well, so that lead to the reports being
9 refined in 2013 to confirm the conclusions in
10 that.

11 Also throughout the public involvement
12 program, we heard a number of issues raised with
13 regard to sturgeon, and this certainly lead us to
14 the importance of the mitigation works that were
15 being undertaken through the project to deal with
16 this issue. Just like with moose and caribou,
17 another very important issue that we heard
18 throughout the public involvement program, and
19 that supported the design of the mitigation and
20 monitoring programs for those VECs.

21 Also, we heard a lot about employment
22 and business opportunities. And this as well was
23 supported by measures that were demonstrated
24 through the collective agreement and preference
25 that was given to Aboriginal and qualified

1 northerners, and the importance of employee
2 retention measures that were incorporated into the
3 EIS.

4 So those are five examples of where
5 what we heard that have influenced the project and
6 the Environmental Impact Statement.

7 MS. WHELAN ENNS: Thank you very much.
8 What did you hear in the first workshop in
9 Winnipeg about the multi-project development area,
10 if you will, and/or the overlapping RSAs -- sorry,
11 LSAs and project footprints that were basically
12 all near each other?

13 MR. MANZER: Just let me consult here
14 on the details of that.

15 MS. COLE: So we have the meeting
16 notes as well as the concordance table in front of
17 us. Could you repeat for us what the specific
18 issue was that you were looking for us to reflect
19 back?

20 MS. WHELAN ENNS: Yes, and excuse my
21 throat again this morning, I will speak louder if
22 needed.

23 My question was what you heard in the
24 first workshop, this would be in 2008, I believe,
25 what you heard in the first workshop -- this would

1 be basically a set of questions in the first
2 workshop regarding the RSA, LSA and project
3 footprint for what is a current combined or
4 multi-project area and a future or intended
5 project multi-project area?

6 MR. MANZER: Is it the first round you
7 are referring to?

8 MS. WHELAN ENNS: This was a fairly
9 thorough conversation at the boards and maps, so
10 your note-taker may have missed it.

11 MS. COLE: Of which maps, excuse me?

12 MS. WHELAN ENNS: Well, we're in 2008
13 now, so it has to do with what was on the boards
14 and also the maps that were on the wall at the
15 time.

16 MR. MANZER: So what we have here
17 listed in the public involvement program are the
18 notes that are from November 18, 2008, that were
19 held at the Radisson Hotel with the
20 non-governmental organization workshop.

21 In preparation of the notes, the notes
22 were recorded and drafted and sent out to the
23 participants for review for accuracy. In our
24 review of the notes right now, I do not find that
25 issue that was raised in the notes which was

1 subsequently reviewed by the participants at that
2 meeting. So --

3 MS. WHELAN ENNS: Do your notes from
4 that workshop include the discussion -- and again,
5 I do not in any way intend to speak for any First
6 Nation person or community when asking a question
7 of this sort -- but do your notes show the
8 extensive discussion about the ability of members
9 of the Partnership First Nations, who are not
10 living in the reserve communities, to be able to
11 participate in reviews and discussions and
12 decisions?

13 MR. MANZER: Yes, we did record that
14 there was a member from Tataskweyak Cree Nation
15 that noted that Split Lake community members, and
16 especially more vocal community members, should be
17 included in band council meetings regarding the
18 project. So that was recorded as a concern.

19 The process that was undertaken within
20 each of the KCN communities would have been their
21 own process. And at the next panel, you will hear
22 from the KCN, each of them, within each of their
23 evaluation reports that talk about the extensive
24 consultation that they have had with their members
25 on a range of issues, using a range of methods and

1 a range of tools to communicate that information.

2 One of those tools that they would
3 have used is the materials that were developed for
4 the public involvement program, for all three
5 rounds.

6 MS. WHALEN ENNS: Thank you.

7 MR. MANZER: You're welcome.

8 MS. WHALEN ENNS: Let's move to the
9 second workshop, if I may. There was extensive
10 discussion about woodland caribou. I would like
11 to know what your record shows in terms of the
12 concerns, but also the response from Fox Lake
13 First Nation?

14 MR. MANZER: Okay. I have the meeting
15 notes in front of me. Again, the same process
16 would have applied. We recorded the notes and the
17 notes would have been sent back to the
18 participants to review for accuracy.

19 You raised a question with respect to
20 caribou. Could you please repeat the question?

21 MS. WHELAN ENNS: Yes. The question
22 is concerning the content of the pre-thorough
23 discussion about woodland caribou, and this is
24 RSA, LSA and project footprint, and then the --
25 most of the discussion was actually, or response

1 was from Mr. Lawrenchuk from Fox Lake.

2 MR. MANZER: Yes, we have recorded in
3 our notes that the CAC wanted to know more about
4 how ATK related to caribou habitat would be
5 included in the project. And a sub point of that
6 was that we talked about the likelihood of
7 woodland caribou in the study area. That's what
8 was recorded.

9 As part of the public involvement
10 process, the public involvement process collects
11 information. We record it. We ensure it's
12 accurate. And then as the notes are being
13 verified, these notes then go off to our
14 terrestrial team or other team with respect to
15 that. And that group would then be made aware of
16 the issue for which they would then speak to
17 within the Environmental Impact Statement.

18 MS. WHELAN ENNS: The discussion was
19 about not just woodland caribou, but the number of
20 kinds of caribou in the RSA, LSA and project
21 footprint. And there was detailed discussion
22 about hunting rights and so on.

23 So I'm asking the questions, because
24 the overriding one is whether or not you are
25 absolutely confident that your notes from these

1 workshops are sufficient -- particularly then are
2 they sufficient in terms of handing off to your
3 terrestrial team on this topic?

4 MR. MANZER: Yes, we are very
5 confident in the notes that we record from our
6 meetings with our partners, and that is why we
7 ensure our confidence is high through the return
8 of the notes to the participants to review for
9 accuracy. Only on that can we then determine that
10 the points that we heard and the information we
11 heard was correct. And as I had mentioned, then
12 it flows on through the process to our assessment
13 team.

14 MS. WHALEN ENNS: Is anybody from this
15 panel, or anybody here from Manitoba Hydro, aware
16 of the sequence of discussions with the former
17 project managers about initiating a pattern of
18 regular monthly briefing sessions and discussions
19 with civil society about the Keeyask and Conawapa
20 projects in advance of the EIS being filed?

21 MS. COLE: We are certainly aware of
22 that previous process. There is no one on this
23 panel who was engaged in that process. It's our
24 understanding that at the time that process was
25 under way, a lot of the focus was on the Needs For

1 an Alternatives To subject matter. But we will
2 get more information, if you'd like, and report
3 back.

4 I would note, though, that all of the
5 groups who participated in that process certainly
6 were invited to and had the opportunity to
7 participate throughout the entire Keeyask public
8 involvement program. So the opportunity to
9 participate and influence the Keeyask project
10 existed regardless of whether or not that forum
11 continued.

12 MS. WHALEN ENNS: Thank you, Ms. Cole.
13 You anticipated perhaps the next question.

14 My question was whether or not anyone
15 here today, or in your panel, is aware of the,
16 including starting before the first workshop in
17 2008, the series of conversations with the former
18 project manager about in fact initiating this kind
19 of involvement of civil society again?

20 THE CHAIRMAN: Whose project manager?

21 MS. WHELAN ENNS: Some of the
22 questions that I have been asking this morning,
23 Mr. Chair --

24 THE CHAIRMAN: No, no, I just --

25 MS. WHELAN ENNS: -- were Mr. Ryan

1 Kustra, he would know the answer.

2 THE CHAIRMAN: Oh, okay.

3 MS. WHELAN ENNS: So I'm going to -- I
4 will I think take that as a no to that first
5 question. And then the second question, which you
6 anticipated, Ms. Cole, has to do with then
7 awareness that there was, prior to the Wuskwatim
8 EIS and Wuskwatim proceedings and hearings, a
9 four-year pattern of informing and exchanging, if
10 you will, information and advice about the
11 development plan for the utility, but specifically
12 also about Wuskwatim. And your answer to the
13 first question says you are aware. Thank you.

14 THE CHAIRMAN: Move on.

15 MS. WHALEN ENNS: Let's try another
16 one from the second workshop. The question would
17 be whether or not your record of the concerns
18 regarding the clearing and the intention to burn
19 everything cleared is in your record?

20 MR. MANZER: Yes. As reflected in the
21 notes, IISD suggested that the cleared or flooded
22 peat areas could be harvested for an energy
23 source. As I earlier stated, due to this issue
24 being raised again through the public involvement
25 program, the project description team undertook a

1 re-evaluation of the options related to peat
2 harvesting and timber salvage, and that was
3 discussed yesterday during the project description
4 panel.

5 MS. WHALEN ENNS: Thank you.

6 MR. MANZER: You're welcome.

7 MS. WHALEN ENNS: This is a question
8 in terms of the approach to arriving at VECs. And
9 it's a question that applies, you know, you are
10 moving into it once you get to page 22 in terms of
11 the VECs and the process, so not just on one
12 slide. And that is, would you tell us whether at
13 any time in arriving at your steps to select and
14 identify VECs, whether you had discussions and
15 considered the importance or value for specific
16 species, as a VEC, as a gateway into VECs?

17 So for instance, your principle start
18 with importance and value to people, and you have
19 Key for ecosystem function. So the question is
20 whether or not you gave any consideration to key
21 to survival, key to habitat of specific species?

22 MR. DAVIES: The criteria we used were
23 very specific in the EIS, and it stated that the
24 overall importance value to people as one of the
25 criteria, key for ecosystem function, importance

1 ecologically, umbrella indicator, amenable to
2 scientific study in terms of the analysis of
3 existing and post project conditions, potential
4 for substantial project effects, and regulatory
5 requirements.

6 MS. WHELAN ENNS: Yes. So did you,
7 arriving at those, at any time consider importance
8 to specific species?

9 MR. DAVIES: We looked at a very large
10 number of components and discussed it very closely
11 with the First Nation partners. And there were a
12 total of 38 VECs that were selected which is a
13 relatively large number but covered the full scope
14 of species, five of which were aquatic, 13 were
15 terrestrial and 20 were socio-economic.

16 In addition to that, to make sure that
17 we were taking a broader approach, we also
18 selected four aquatic supporting topics. And some
19 of the supporting topics in fact contain more than
20 one component. For example, lower trophic levels
21 was one supporting topic but it contained
22 phytoplankton, zooplankton, benthos, macrophytes.
23 So there was a number of subcomponents under that
24 also.

25 There were nine terrestrial

1 subcomponents, supporting topics rather, and one
2 socio-economic supporting topic, if that answers
3 your question?

4 MS. WHALEN ENNS: Can we take then the
5 supporting topics as the way you have included
6 specific species or specific concerns in terms of
7 value and importance to specific species?

8 MR. DAVIES: Again, we looked at a
9 number of factors not just the value in
10 determining what the VECs were in order to provide
11 a broader and more complete assessment. And look
12 at all of the possible linkage, we also included
13 the supporting topics.

14 MS. WHELAN ENNS: There has been a
15 fair amount of attention in IRs and in review to
16 ecosystem function which is the next area of
17 question.

18 In the presentation yesterday, we
19 heard that everything is connected. And certainly
20 those are the sentiments from your partners, and
21 that's there in the presentation. Could you tell
22 us then why the VECs are not, and the study areas
23 or zones for them are not based in identified
24 ecosystems?

25 MR. DAVIES: I'm sorry, I'm not clear

1 on your question.

2 MS. WHELAN ENNS: Well, Mr. Chair, I'm
3 trying to avoid any explanation from my side. So
4 I'll give it another shot.

5 Again, in arriving at the principles,
6 the criteria for VECs, where did VECs become more
7 important than ecosystems?

8 MS. COLE: Are you referring to the
9 delineation specifically of study areas for each
10 of the VECs?

11 MS. WHELAN ENNS: That would be one
12 way of narrowing the question so we can get
13 specific, thank you.

14 MS. COLE: I believe we have answered
15 quite thoroughly that question in a number of IRs
16 and I'll pass that down to James to respond in a
17 more fulsome way.

18 MS. WHELAN ENNS: Thank you.

19 DR. EHNES: Yes. I'm going to
20 apologize in advance, I have a cold and excuse me
21 for clearing my throat.

22 In terms of the aquatic, and I'm going
23 to speak mostly in terms of the terrestrial
24 ecosystem approach and Mr. Davies can comment on
25 the aquatic approach, but we started off by

1 considering the ecosystems of the area,
2 particularly the regional ecosystem that contains
3 the Keeyask project. And then asked the questions
4 if we wanted to select a set of indicators that
5 tells a reliable story of what is there now and
6 how it changes over time. Well, without getting
7 into hundreds of indicators, what would that set
8 of indicators be? And those would be considering
9 things like ecosystem functions, providing habitat
10 for animals, oxygen for everyone to breathe. So
11 the VEC and supporting topic selection approach
12 took an ecosystem perspective and searched for
13 reliable indicators. And from that list of
14 reliable indicators, which we called key topics,
15 the ones that were of particular relevance for the
16 ecosystem or particularly important to people
17 became the VECs, and the remaining topics became
18 the supporting topics. And that's not to say that
19 the EIS and all the technical studies didn't
20 consider issues or pathways of effects well beyond
21 that. Certainly they did. But in order to focus
22 the assessment, and I'm sure that you are tired of
23 reading, you know, three metres of paper already,
24 the purpose of the VECs is not to say that things
25 are not interconnected but to say we realize it's

1 an interconnected system, how can we give you a
2 reliable picture of what is there now, how it's
3 going to change over time with and without the
4 project.

5 Now a component of that, turning to
6 study areas, because we're focused on the regional
7 ecosystem and the wildlife species that are
8 contained within that ecosystem, and I'm going to
9 be speaking to this in more detail at the
10 terrestrial panel, so I'm just going to give an
11 overview, and if you'd like more detail, I can
12 give it now. But if you would like to wait,
13 you'll see it in a presentation.

14 In terms of the terrestrial study
15 areas, the first step was to say what is the
16 regional ecosystem that contains the Keeyask
17 project. And that was identified based on
18 ecological criteria. This is a very standard
19 approach where you say let's look at areas that
20 have similar surface materials, climate,
21 vegetation, et cetera, where the project is and
22 then expand outwards through similar surface
23 materials -- or similar ecological conditions.

24 In terms of the study areas
25 themselves, we start with the project footprint

1 and the impact areas. The project impacts would
2 include things like traffic that's generated by
3 construction or operation, because that has
4 effects on wildlife. And then moving out from
5 that, you know, those effects are not just
6 occurring in the project footprint, there's a zone
7 of influence where say there are indirect effects
8 on the vegetation or, as I mentioned, on the
9 wildlife. And that defined the local study area.
10 So those are the areas where project effects are
11 most visible.

12 But the ultimate questions of interest
13 are how is that going to affect that regional
14 ecosystem? How is that going to affect the
15 wildlife populations that are part of that
16 regional ecosystem? And that's where the regional
17 study areas come in.

18 And in the case of ecosystem functions
19 or indicators for ecosystem functions, we use the
20 regional ecosystem as our regional study area.
21 And in the case of wildlife species or wildlife
22 VECs or supporting topics, it was either the
23 regional study area, if that was appropriate to
24 support an appropriate size for a self-sustaining
25 population. If it wasn't, then either a smaller

1 or a larger study area was selected. So you'll
2 see in the terrestrial presentation, caribou used
3 a larger study area because the animals, you know,
4 wander over much larger areas whereas beaver, you
5 can have a self-sustaining population in a smaller
6 area.

7 MS. WHELAN ENNS: Thank you, Dr.
8 Ehnes. Does a particular ecosystem for Keeyask
9 then nest within or equal the RSA?

10 DR. EHNES: The regional study area
11 varied for each VEC or supporting topic, there was
12 one, there was only one regional ecosystem
13 containing the Keeyask project. But for the
14 different wildlife VECs and supporting topics, the
15 regional study area was the one that was just
16 large enough to maintain a self-supporting
17 population for that species.

18 MS. WHELAN ENNS: Thank you. Did you
19 use, and I heard your references to, you know,
20 surface material, whether habitat and so on, did
21 you use the Environment Canada ecoregions and
22 ecodistrict system?

23 DR. EHNES: We used the soil
24 landscapes of Canada national data set. And that
25 data set is the building blocks that are used to

1 create ecodistricts, ecoregions and ecozones.

2 MS. WHALEN ENNS: Thank you. So that
3 is a no on Environment Canada's ecoregion and
4 ecodistrict system?

5 DR. EHNES: We did not use
6 ecodistricts to define regional study areas. The
7 project itself, the zone of influence, overlaps
8 three different ecodistricts. So if we would have
9 used ecodistricts, the area would have been
10 enormous so the project effects would have been so
11 diluted it would have been very difficult or
12 impossible to have a significant project effect on
13 any ecosystem component.

14 MS. WHELAN ENNS: Do you consider the
15 national soil data for these northern regions in
16 Manitoba to be adequate?

17 DR. EHNES: This national soil data is
18 very core scaled mapping. And for that reason,
19 for the project area, we photo interpreted large
20 scale area photos, 1 to 15,000 scale. So that the
21 local study areas for all of the terrestrial VECs
22 and supporting topics was mapped at what is a
23 large scale.

24 MS. WHALEN ENNS: Thank you. And to
25 take your point, you know, the follow-up panels

1 are the best place for more on that. Thank you
2 very much.

3 DR. EHNES: You're welcome.

4 MS. WHELAN ENNS: I don't have a slide
5 number beside this next question but I'm sure you
6 will identify it. We heard yesterday that
7 Manitoba Hydro has fulfilled its responsibilities
8 under the NFA with regards to potable water.

9 MS. COLE: Yes.

10 MS. WHELAN ENNS: And that was 10
11 years ago, correct?

12 THE CHAIRMAN: I just don't know that
13 that's relevant to our review. I found it
14 interesting that Hydro commented or that the
15 Partnership commented on it yesterday but it's not
16 really under our review, at least as was presented
17 yesterday. Where do you wish to go with this?

18 MS. WHELAN ENNS: One basic question.

19 THE CHAIRMAN: One basic question.

20 We'll try it and we'll see.

21 MS. WHELAN ENNS: Okay.

22 Then is there -- should there be risk
23 or consequences to water quality, potable water,
24 from Keeyask? Would Manitoba Hydro have
25 responsibility or not?

1 MS. COLE: We fully assess the
2 implications to water quality in the environmental
3 assessment. In particular, the sewage treatment
4 plant fully conforms to the guidelines required
5 through the province for operating sewage
6 treatment facility. We have also assessed water
7 quality with respect to aquatic life and do meet
8 the guidelines for that.

9 So in this circumstance, there is not
10 an effect to water quality that needs to be
11 discussed within the context of potable water. So
12 it's not a particularly relevant question I guess.

13 MS. WHELAN ENNS: We are in the
14 planning stage of this project, I think we all
15 agree, and that was an if question. Are you
16 declining to answer?

17 MS. COLE: I'm actually not sure I
18 understand the question. The assessment has
19 indicated quite clearly that there is not an
20 effect to water quality. If there were an effect
21 to water quality that was important, we would
22 certainly take measures to address that effect.
23 Is that --

24 MS. WHELAN ENNS: Yes. Thank you.

25 MS. COLE: Okay.

1 MS. WHELAN ENNS: I'd like to go back
2 to the PIP for a second and ask, given that 38
3 topics is a lot, how many did you arrive at and
4 did you start out with where you had three times
5 that many, and how did you arrive at the 38?

6 MR. DAVIES: It was quite a long
7 process. As you know, the field studies for this
8 project took place over a period of 10 years.
9 There was a great deal of information that was
10 collected. And the information that was collected
11 was collected with the full participation of the
12 First Nation partners.

13 We used a number of different ways to
14 select the 38 VECs, which actually isn't an overly
15 large number as compared to other major EISs
16 particularly when you're looking at the aquatic,
17 terrestrial and socio-economic environments as a
18 whole. It's sort of right in the middle. We
19 tried not to get so many that it became more
20 difficult for decision makers to see what the real
21 key factors were. And not too many that we were
22 missing things that might be important to people
23 and to the environment.

24 As I had said before, there was a
25 process for selecting them. We used professional

1 judgment. We used the PIP program. But primarily
2 it was through discussions with the First Nation
3 partners and two very intensive workshops that
4 took place where we looked at a variety of items
5 and determined whether they would be valued
6 environmental components or whether they would be
7 supporting topics or whether they'd be addressed
8 in a different fashion.

9 MS. WHALEN ENNS: Thank you. I
10 prefaced this as another PIP question because of
11 the steps you went through in the workshops.
12 Would it have been workshop 2 in terms of the
13 southern workshops where the options and possible
14 VECs and supporting topics and so on would have
15 been discussed? Or is this -- because I don't
16 remember that, that's why the question. Or is
17 this more subtle in terms of looking through the
18 results of your workshops for these?

19 MS. COLE: Through the course of round
20 one, the partnership met, not just through that
21 workshop but with a number of other communities
22 and organizations throughout Manitoba, to elicit
23 and discuss issues and topics of concern to
24 communities and organizations related to the
25 Keeyask generation project. That list provided

1 input to the potential list of valued
2 environmental components. There is a full list of
3 the issues that were raised in the PIP supporting
4 volume in the concordance table. And if you'd
5 like, my colleague Mark can walk you through that
6 list.

7 As Mr. Davies has mentioned, we use
8 that initial list and refine that list through
9 workshops with the Keeyask Cree Nations and our
10 partners to arrive at a final list of valued
11 environmental components and supporting topics.
12 Those certainly would have been available and
13 discussed in the round two public involvement
14 program where we talked about the initial findings
15 of the environmental assessment, and that would
16 have focused on specific VECs.

17 MR. DAVIES: Actually, I'd just like
18 to add one additional thing which I had missed to
19 give a more fulsome answer. In addition to the
20 other things that we had spoken about, the VECs
21 were also discussed with the project advisory team
22 and with the technical advisory committee. And in
23 fact, there were three VECs that were recommended
24 by them that were included.

25 MS. WHALEN ENNS: Among the larger,

1 longer list, was there discussion or
2 identification in terms of environmental
3 externalities and how to include them?

4 MR. DAVIES: Could you please define
5 your definition of environmental externalities,
6 because there are quite a number of different
7 definitions.

8 MS. WHELAN ENNS: There are. And the
9 question was asked Monday. We perhaps could do
10 with an undertaking of definition.

11 THE CHAIRMAN: What was the request
12 again, specific undertaking you seek?

13 MS. WHELAN ENNS: My question was
14 whether in arriving at and identifying VECs and
15 subtopics whether at any time in those discussions
16 and those decisions, whether there were any
17 environmental externalities part of the
18 discussion. And then I was asked for a definition
19 because there are a variety of ways of identifying
20 or defining environmental externalities.

21 MS. COLE: I think before we take an
22 undertaking, it would actually be more helpful for
23 us to understand how you're defining environmental
24 externalities so we can answer the question in a
25 way that meets specifically what it is you're

1 asking of us.

2 THE CHAIRMAN: That's not
3 unreasonable.

4 MS. WHALEN ENNS: No. Mr. Chair, I
5 would then be inclined to then request some, a bit
6 of time to put something on paper?

7 THE CHAIRMAN: We can do that. Move
8 on.

9 MS. WHELAN ENNS: Okay, thank you.
10 Now, I'm on the slides that have to do with CEA
11 with the sequence of them. They start at 32.
12 Yes, on 32, quick question. It appears that you
13 did not use the update from 2007 from CEA, did
14 you?

15 MS. COLE: Are you referring to the
16 CEA Practitioner's Guide or the CEA Operational
17 Policy Statement?

18 MS. WHELAN ENNS: There's operational
19 statements from 2007 that are often taken as an
20 ad-on or an update.

21 MS. COLE: Yes.

22 MS. WHELAN ENNS: You did use it?

23 MS. COLE: I have with me here and we
24 have looked at both the 2007 operational policy
25 statement from CEA as well as the updated version

1 that came out when the Act was updated last year.

2 MS. WHELAN ENNS: Right. Which
3 version of the Act though is relevant for Keeyask
4 generation?

5 MS. COLE: Not the undated version of
6 Keeyask, the previous version of the Act.

7 MS. WHELAN ENNS: Thank you.

8 MS. COLE: CEAThis though I would note
9 is not a quote from the Operational Policy
10 Statement, this is a quote directly from the
11 Practitioner's Guide.

12 MS. WHELAN ENNS: That's evident, yes.
13 And basically I was asking about the add-ons and
14 as current as possible.

15 MS. COLE: Okay.

16 MS. WHALEN ENNS: I do not have a
17 slide number, but in the CEA discussions and
18 examples, there was a comment about calving
19 islands. I presume we're talking about Arctic or
20 tundra caribou calving islands. The question is
21 did I hear you correctly about creating calving
22 islands?

23 MS. COLE: You did hear me correctly.
24 And Mr. Berger will speak to that further when the
25 terrestrial panel is up. But certainly following

1 the creation of the Stephens Lake reservoir after
2 we put Kettle in place, caribou calving islands
3 were created within the Stephens Lake reservoir.
4 And as I noted in my presentation yesterday, it is
5 expected that similar calving islands could be
6 created in the Keeyask reservoir given the
7 similarities of the environments.

8 MS. WHELAN ENNS: Are these potential
9 calving islands viewed as a compensation mechanism
10 under CEA?

11 MS. COLE: They are not viewed as a
12 compensation measure under CEA, but CEA also does
13 not require us to provide compensatory habitat.
14 I'm not actually sure where you're going. And Rob
15 can certainly answer, in detail for you, any
16 questions regarding caribou habitat and the
17 creation of caribou calving islands.

18 MS. WHALEN ENNS: You are aware though
19 that there are instances, fairly recent instances
20 in Canada, where there have been compensation
21 agreements connected to CEA reviews.

22 THE CHAIRMAN: I think it might be
23 best to wait until Mr. Berger is before us.

24 MS. WHALEN ENNS: Yes. Okay, thank
25 you, Mr. Chair.

1 This is a quick comment, question
2 rather about a comment when you were discussing
3 page 44. You made quick reference to wetlands.
4 So would you tell us whether, when you're
5 referring to like wetlands, that you are including
6 the whole range of peat lands?

7 MS. COLE: I'll let James answer that.

8 DR. EHNES: Yes.

9 MS. WHALEN ENNS: Thank you. Page 54,
10 this may be a question for Dr. Ehnes also, and
11 that is were any habitat suitability indices for
12 terrestrial species used in all the work on the
13 species VECs and sub topics? Did you use HSIs?

14 DR. EHNES: We did not use the U.S.
15 EPA mathematical specification for habitat
16 suitability index models. Models of various types
17 were developed for the wildlife VECs and
18 supporting topics. And we could speak to those in
19 detail in the aquatic and terrestrial panel.

20 MS. WHALEN ENNS: Yes, thank you. Did
21 you look at or consider any of the HSI models that
22 are available and have been used by the Government
23 of Manitoba?

24 DR. EHNES: They were considered as
25 part of an overall modeling approach. Those

1 models were developed for forest management
2 purposes to be applied province-wide in general.
3 The models and the modeling approaches developed
4 for the Keeyask project were tailored to the
5 specific conditions that exist in the project
6 area.

7 MS. WHELAN ENNS: Thank you. I'm
8 going to pass on one that's better for another
9 future panel.

10 Could you tell us what an acceptable
11 level of trust is? I think this is a comment from
12 you, Ms. Cole, between page 54 and 55.

13 MS. COLE: I think what you may be
14 referring to is the discussion on socio-economic
15 effects. And what we indicated was that we didn't
16 make an attempt to identify any acceptable level
17 of adverse effect or risk in cases of particular
18 VECs that are particularly sensitive on the people
19 side. And that instead, we focused on looking at
20 reasonable mitigation and adaptive management
21 measures.

22 MS. WHELAN ENNS: Thank you. On page
23 9, you have listed the regulatory environment. Do
24 you consider the scoping document arrived at after
25 public review for the Keeyask generation station

1 part of the regulatory environment?

2 MS. COLE: The items identified in the
3 scoping document are effectively the same and
4 virtually identical to what has ended up in the
5 final EIS guidelines. And the final EIS
6 guidelines issued by the regulator are the
7 guidelines we followed in undertaking the
8 assessment.

9 MS. WHALEN ENNS: Do you agree that
10 they are both binding? That the scoping document
11 and the EIS guidelines for the Keeyask Generation
12 Station are both binding? Taking your point about
13 some repetition and overlap.

14 MS. COLE: I'm not sure actually what
15 you mean by binding. So perhaps you could explain
16 to me a little bit better what it is you're
17 envisioning by the term binding?

18 MS. WHALEN ENNS: We have both federal
19 and provincial realities here.

20 MS. COLE: Yes.

21 MS. WHELAN ENNS: So that's what I'm
22 asking then, is the scoping document contents and
23 the process to arrive at the final scoping
24 document is through Manitoba Conservation?

25 MS. COLE: Yes.

1 MS. WHALEN ENNS: So does Manitoba
2 Hydro consider fulfilling the scoping document
3 contents as a requirement in terms of the Keeyask
4 Generation Station decisions?

5 MS. COLE: I'm going to answer the
6 question in a little bit of a different way than
7 you have asked it, which is I previously stated
8 that the federal EIS guidelines issued for the
9 project, they cover actually all of the same items
10 covered in the scoping document. We have met and
11 are seeking to meet all of the requirements
12 provided to the partnership under the Canadian
13 Environmental Assessment Act under the EIS
14 guidelines. So in doing so, at the same time, we
15 are meeting all of the requirements that are
16 included within the scoping document that was
17 developed by the partnership and put out by the
18 provincial government for review and comment.

19 MS. WHELAN ENNS: Does Manitoba
20 Conservation then, and its licensing branch and
21 authority, and the Minister because we're talking
22 about a class three project under the Act, then
23 consider the EIS guidelines to be the context for
24 any decision about licensing in terms of
25 fulfillment of those EIS guidelines?

1 MS. COLE: I can't speak on behalf of
2 Manitoba Conservation and Water Stewardship, but
3 we were privy to an opening presentation by
4 Ms. Tracy Braun. And I think she clearly stated
5 in that opening statement that she used the
6 scoping document prepared by the Partnership to be
7 the equivalent to the guidelines for the province.
8 And I think I stated to you that the final EIS
9 guidelines issued by the Canadian Environmental
10 Assessment Agency covered all of the same topics
11 as the scoping document.

12 So effectively, the EIS developed
13 towards those EIS guidelines is covering off the
14 same subject matter regardless of which document
15 we're referring to.

16 MS. WHALEN ENNS: Thank you very much.
17 I'm on page 62. Could you tell us which set of
18 standards were used in interviews and/or any
19 interpersonal work? Clearly there was a
20 considerable amount with the ATK partner members.
21 So the question is which standards were used in
22 gathering ATK.

23 MS. COLE: When I walked through the
24 ATK principles earlier this morning, principle
25 number 4 that came up during that point was

1 rigorous and defensible methods and leading
2 documentation. When I talked about, when we sort
3 of walked through the presentation there and I'll
4 read it back to you, is that each Keeyask Cree
5 Nation is taking the lead role in collecting and
6 documenting their Aboriginal traditional
7 knowledge.

8 So none of the panelists who are up
9 here can speak to the collection methods and how
10 that Aboriginal traditional knowledge was
11 collected. We relied on our partner communities
12 to collect that knowledge and to determine for
13 themselves which pieces of that knowledge they
14 wanted to share with the environmental assessment
15 team. And they have also all written their own
16 volumes based on their Aboriginal traditional
17 knowledge and their own Cree world view.

18 MS. WHALEN ENNS: Thank you. Is it
19 correct then that Manitoba Hydro did not make
20 suggestions, advise or discuss with your partners
21 the standards that are usually used by, for
22 instance, first nations academics and experts
23 across Canada to acquire ATK information?

24 MS. COLE: Certainly during the course
25 of study, and there are other interviews taken

1 that I would say are providing community
2 perspectives but I wouldn't always view as
3 providing Aboriginal traditional knowledge, we
4 certainly talked among the partners and ourselves
5 about the importance of informed consent. And
6 that the individuals understand how the
7 information they are collecting will be used.

8 In terms of standards and standards
9 used by other groups across Canada in terms of
10 collecting Aboriginal traditional knowledge, I
11 think as a partnership we all respected that each
12 community would understand for themselves the best
13 and most appropriate way to collect and document
14 their traditional knowledge. And we view them as
15 the experts for their own community.

16 So really, ultimately it was up to
17 each community to determine the most appropriate
18 mechanism for working one-on-one with their own
19 community members.

20 MS. WHELAN ENNS: Yes, thank you. And
21 we look forward to that panel.

22 THE CHAIRMAN: Ms. Whalen Enns, I'm
23 only thinking about an appropriate time for a
24 break. Do you have much more?

25 MS. WHALEN ENNS: I have some, maybe

1 three or four here, three or four here.

2 THE CHAIRMAN: We will take a break
3 now for 15 minutes. Come back just after 11:15.

4 MS. WHELAN ENNS: Thank you.

5 (Proceedings recessed at 11:04 a.m. and
6 reconvened at 11:15. a.m.)

7 THE CHAIRMAN: I would like to
8 reconvene. Ms. Whelan-Enns?

9 MS. WHELAN ENNS: Thank you,
10 Mr. Chair.

11 Could you tell us then what the data
12 agreements between Manitoba Hydro and the four
13 partnership First Nations require?

14 THE CHAIRMAN: What exactly does that
15 mean?

16 MS. WHELAN ENNS: And this is a tool,
17 if you will, that is commonly used across Canada,
18 where if there is a public sector or government
19 agency, or in some cases a private sector agency,
20 that has an arrangement with a First Nation where
21 the First Nation is going to share, in this case
22 ATK data, it could be historic information, it
23 could be archeological information, with that
24 other party, there is a written agreement,
25 sometimes also with a Band Council Resolution

1 attached, for instance, or motion from a community
2 meeting. Its very common, even for instance
3 inside Manitoba -- Ontario Government uses them
4 for everything.

5 THE CHAIRMAN: Okay. That explains
6 it.

7 MS. WHELAN ENNS: Thank you.

8 MS. COLE: Well, certainly this
9 morning I walked through the Aboriginal
10 traditional knowledge principles, which between us
11 would have laid the foundation for how we were
12 going to work together and were agreed to.
13 Separately, and depending on the context,
14 typically when we work with an Aboriginal
15 community, not just our partners but any First
16 Nation community, in the collection of traditional
17 knowledge, or an Aboriginal traditional knowledge
18 study, we have a contribution agreement with that
19 First Nation. And the contribution agreement
20 would include the work plan and budget prepared by
21 the community to undertake the work, an agreement
22 by Manitoba Hydro to fund the work, and then it
23 also includes clauses with respect to ownership
24 and terms of use of the information provided
25 through the work undertaken by the community.

1 So in virtually every case there is an
2 agreement in place, a contribution agreement. It
3 typically is signed by both Manitoba Hydro, as
4 well as signing authority for the First Nation
5 community. And it outlines the terms of use and
6 the ownership of any information that's collected.

7 In the case of traditional knowledge,
8 in all of the cases that I'm aware of, or at least
9 that I've been responsible for negotiating and
10 working on the contribution agreements for,
11 ownership of the information always rests with the
12 First Nation community who collect the
13 information.

14 MS. WHELAN ENNS: Under copyright law
15 in Canada, that's not necessarily so unless it is
16 agreed in writing. So does then your contribution
17 agreement clearly state that the First Nation
18 community owns the data?

19 MS. COLE: Yes, I think I just stated
20 that.

21 MS. WHELAN ENNS: Thank you.

22 On page 63, or when we were looking at
23 page 63, you made a reference to the precautionary
24 approach that's been there in your verbal or oral
25 presentations a few times this week. What is

1 Manitoba Hydro's working definition, or what do
2 you include and mean when you talk about the
3 precautionary approach?

4 MR. DAVIES: We have a relatively
5 short definition. The cautionary approach is
6 where there is uncertainty, we assume that the
7 effect is larger rather than smaller.

8 MS. WHELAN ENNS: Thank you.

9 When we were moving between 63 and 64,
10 you indicated that Manitoba Hydro does not want to
11 repeat mistakes of the past. Is the flooding
12 involved in the Keeyask Generation Station project
13 then not a mistake?

14 MS. COLE: I'm going to answer this in
15 a couple of different ways. The first is, you've
16 heard a number of presentations and a number of us
17 talk about, and we had questions from the
18 Commission yesterday, regarding the amount of
19 flooding associated with this project. And I
20 think it has been pointed out on numerous
21 occasions that we actually reduced the head of
22 this dam and have lowered the amount of flooding
23 to the most technically and economically feasible
24 generating station that can be developed at this
25 site, with the smallest amount of environmental

1 damage.

2 So I think that that's a really
3 important context to keep in mind. But when I
4 talk about not repeating the mistakes of our past,
5 and I believe you heard that echoed through many
6 of the community members who were up with the
7 Partnership panel, I'm specifically and most
8 importantly referring to the complete lack of
9 involvement and the complete lack of engagement of
10 Aboriginal communities in previous projects.

11 That is fundamental to the approach
12 that's been taken with Manitoba Hydro's new
13 developments, both at Wuskwatim and at Keeyask.
14 The communities that are most affected by this
15 development have been engaged in the planning
16 process. They have been engaged in helping us
17 design mitigation to ensure that it is appropriate
18 and minimizes the adverse effects of the project.
19 They have helped us find benefits that are
20 important and matter to their community, and that
21 are appropriate to the project.

22 And we've also worked very hard with
23 them in advance of the project being developed to
24 put in place comprehensive adverse effects
25 agreements that are forward looking and that are

1 based on the community's perspective about what
2 adverse effects may occur as a result of the
3 project. They are based on offsetting programs
4 designed by the community, for the community, for
5 matters that are most important to the
6 communities.

7 So from my perspective, we have gone a
8 long way from repeating the mistakes of our past,
9 by engaging and working with the communities that
10 are affected, to design a project that meets and
11 starts to work towards some of the goals of their
12 community. We talked about aligning interests in
13 the initial partnership panel. And also works to
14 minimize environmental effects, and also enhance
15 the positive benefits of this project.

16 That is fundamentally different than
17 how projects were approached in the past,
18 particularly in the '50s, '60s and '70s.

19 MS. WHELAN ENNS: Thank you very much,
20 Mr. Chair. Just one more question on this,
21 because the rest is for the panel.

22 Is everybody in your panel and your
23 group on regulatory matters -- you have two
24 members there -- this panel who will be the other
25 panel's. Is everybody then aware that the EIS

1 materials, the response to IRs clearly indicate
2 that the full extent of flooding will not be known
3 until the end of the construction period, and that
4 it may take as long as eight years after operation
5 begins to have full knowledge of flooding?

6 MS. COLE: Everyone on this panel is
7 fully aware of that finding. It is talked about
8 clearly in the EIS. It is talked about in the
9 executive summary. I'm quite confident you will
10 hear about it from the physical environment panel
11 when they review the findings of their assessment.
12 And all of our partner communities are aware there
13 is a prediction that there will be another -- that
14 through peatland disintegration and other erosion
15 that the reservoir will expand following
16 operation.

17 MR. DAVIES: I would like to add to
18 that -- I will bring it a little closer in.

19 The flooding that's estimated is 45
20 kilometres squared, and the potential expansion is
21 8 kilometres squared after peat disintegration.
22 If we compare that to the flooding that occurred
23 to Kettle, which was 220 kilometres squared.

24 MS. WHELAN ENNS: Thank you.

25 This is section 6.8 of the EIS, it has

1 to do with heritage resources, and it is a
2 question that I'm obligated to ask and that I
3 asked in the previous proceedings, and that is:
4 Was the archeological work undertaken planned so
5 that predictive modeling, archeological predictive
6 modeling was also used?

7 MS. COLE: That's probably -- that is
8 an excellent question, and I think I would wait,
9 and specifically you can ask our project
10 archeologist that question. She will be up as
11 part of the socioeconomic resource use and
12 heritage resource panel that is -- sort of
13 anchors, I guess, as it comes at the end of this
14 regulatory assessment set of panels.

15 MS. WHELAN ENNS: Thank you. Okay.

16 I'm very close, Mr. Chair, I'm just
17 checking.

18 We will all know the section, I guess,
19 of the EIS that has to do with sustainable
20 development. Avoiding making a statement,
21 Mr. Chair -- is it correct that Manitoba Hydro is
22 actually required under the Manitoba Sustainable
23 Development Act to adopt the guidelines and
24 principles in that Act or have their own?

25 MS. COLE: I believe under the

1 Sustainable Development Act we are required to
2 have our own that reflect the principles and
3 guidelines that are reflected in the Act, but that
4 are unique to Manitoba Hydro's own situation.

5 MS. WHELAN ENNS: And what is the
6 requirement in the Act in terms of the pattern of
7 review of Manitoba Hydro's sustainable development
8 principles and guidelines?

9 MS. COLE: Sorry, I don't have the Act
10 in front of me, I actually printed it and I forgot
11 to bring it upstairs with me in my set of binders.
12 So I'm sure I have it marked somewhere in there.
13 We can come back to that question, or if someone
14 has the Act with them I can read it and tell you
15 what it is.

16 THE CHAIRMAN: We can come back later.

17 MS. WHELAN ENNS: Okay. Has Manitoba
18 Hydro also put in place a set of sustainable
19 development or sustainability indicators for your
20 operations?

21 MS. COLE: Manitoba Hydro has a
22 corporate policy on sustainable development, and
23 the policy is founded on a series of guiding
24 principles related to sustainable development that
25 the corporation follows. And those guiding

1 principles are outlined in the environmental
2 assessment in chapter 9. And we also provide an
3 indication in chapter 9 of how we believe this
4 project, in how it has been planned and developed,
5 meets those guiding principles, or meets
6 achievement of those guiding principles.

7 MS. WHELAN ENNS: And they are the
8 same as the Province's?

9 MS. COLE: The guiding principles, are
10 they the same as the Province's?

11 MS. WHELAN ENNS: Yes?

12 MS. COLE: No. I think, as I stated,
13 they are guiding principles that are based on the
14 Provincial legislation and the principles
15 developed by the Province, but they are specific
16 to Manitoba Hydro's circumstances and our
17 responsibilities as a Crown corporation.

18 So, for example, I will read you one.
19 Under the context of stewardship, one of our
20 guiding principles is:

21 "The corporation will meet the
22 electricity needs of present and
23 future Manitobans in a manner that
24 ensures the long-term integrity and
25 productivity of our economy, our

1 environment, and our natural
2 resources, and safeguards our human
3 health."

4 MS. WHELAN ENNS: Thank you very much.
5 I'm complete. Thank you, Mr. Chair.

6 THE CHAIRMAN: Thank you,
7 Ms. Whelan-Enns.

8 I understand there has been a bit of
9 horse trading among participants as to who will be
10 up next because of commitments. So I'm not sure
11 what the order is, I will just be guided by
12 whoever comes forward.

13 Manitoba Metis Federation,
14 Ms. Saunders.

15 MS. COLE: I'm wondering if you would
16 like to come back to the Sustainable Development
17 Act question. I have the Act in front of me now,
18 so if you want to finish the question, I'm more
19 than happy to take the question again.

20 THE CHAIRMAN: I think the question
21 was, does the Act -- perhaps you can do it,
22 Ms. Whelan Enns, your question about reviewing.

23 MS. WHELAN ENNS: What does the Act
24 require of Manitoba Hydro in terms of reviewing
25 your sustainable development principles and

1 guidelines?

2 MS. COLE: Well, specifically under
3 14(d), where it talks about the Crown corporation,
4 it indicates:

5 "Require a review of the guidelines
6 and goals within five years after
7 their establishment and at regular
8 intervals of not more than five years
9 after the initial review."

10 MS. WHELAN ENNS: Am I correct then,
11 from what you said, because obviously they now
12 are -- your guidelines and principles are not now
13 just the language, or exactly the language of the
14 Province. Is it accurate then to assume that
15 Manitoba Hydro is reviewing and updating?

16 MS. COLE: I would have to take that
17 back and ask those who are responsible for
18 developing and implementing the sustainable
19 development guidelines of Manitoba Hydro.

20 MS. WHELAN ENNS: Okay.

21 THE CHAIRMAN: Thank you.

22 Ms. Saunders?

23 MS. SAUNDERS: Mr. Chair, the counsel
24 for the other parties has agreed to allow me to go
25 first as I do have a scheduling commitment. I'm

1 very appreciative to counsel for that.

2 I have -- all of my questions are on
3 the public involvement program, and I have three
4 areas of questioning, most of which I believe can
5 be answered by Ms. Cole and Mr. Manzer.

6 On comments regarding MMF's
7 involvement in rounds one to three of the public
8 involvement program, do you recall receiving
9 responses from the MMF, or having discussions with
10 the MMF regarding its participation in Hydro's
11 public involvement program?

12 MS. COLE: We certainly have had a lot
13 of engagement and discussion with the Manitoba
14 Metis Federation in terms of their engagement in
15 the public involvement program. In particular, as
16 I pointed out in the presentation yesterday, the
17 head office has made it very clear that they would
18 prefer Manitoba Hydro to deal directly with the
19 head office and not with any of the local regional
20 offices. For that reason we have been quite
21 particular in making sure that all of our
22 correspondence and discussions have been directly
23 with the head office and not with any of the
24 locals.

25 MS. SAUNDERS: Great. Do you recall

1 MMF communicating its position to Hydro regarding
2 the need for a specific process to be followed in
3 dealing with the MMF and engagement with the
4 Manitoba Metis community regarding Hydro projects?

5 MR. MANZER: Yes, I do recall that.
6 That was raised during round one, public
7 involvement program, with the Manitoba Metis
8 Federation head office, where they asked for a
9 separate process, which then triggered off
10 discussions into developing a work plan and budget
11 for the now agreed to traditional land use and
12 knowledge study, the socioeconomic impact
13 assessment, and a narrative talking about
14 historical and current use in the area.

15 MS. SAUNDERS: So the process that you
16 just spoke of, we will get to that, but with
17 respect to the public involvement program where
18 you spoke of the three rounds, do you recall the
19 MMF's concerns that that particular mode of
20 approaching MMF for engagement was identified by
21 the MMF as to be inappropriate for discussing
22 Hydro projects with the MMF?

23 MS. COLE: Yes, we had a lot of
24 conversation about this. And we particularly have
25 had conversations with both you and with Ms. Riel

1 and Mr. Madden regarding the desire by the
2 Manitoba Metis Federation to effectively carry out
3 a Manitoba Hydro's public involvement program and
4 the Partnership's public involvement program on
5 its own, and the interest that we would provide
6 funding to the Manitoba Metis Federation to
7 deliver on our behalf the public involvement
8 program and consult directly with its members.

9 So I'm sure you can imagine that
10 wasn't entirely acceptable to the Partnership,
11 because we definitely wanted to be in the room and
12 have the opportunity to provide information of the
13 project, and to be able to answer any questions
14 that have been raised. We certainly had a lot of
15 conversation about that, and did indicate on
16 multiple occasions that the Partnership would be
17 more than happy to participate in a meeting
18 brought together, or a consultation meeting called
19 by the head office, where we would present the
20 information linked to the PIP program, and we
21 would be more than happy to leave the room. And
22 if it was, you know, if we were in Winnipeg, leave
23 so the membership could have its own conversation
24 about its thoughts related to the project without
25 us in the room. In fact, we were perfectly

1 willing to do that and did offer that as part of
2 round three.

3 MS. SAUNDERS: Okay. So what I hear
4 in that then is that you do recognize that, we
5 recognize that, the Manitoba Metis Federation
6 recognizes that there are some aspects that the
7 Partnership requires as part of this process. And
8 do I hear how Hydro similarly accepts that there
9 are certainly protocols that the MMF has to
10 follow, for instance, the protocol you mentioned
11 with respect to dealing with head office, that the
12 MMF has to respect and implement. Do I then hear
13 you saying that this potential disagreement
14 between the Partnership and the MMF, with respect
15 to how it would be consulted, that's a matter that
16 you proposed be dealt with differently in round
17 three. But I can confirm that there are still
18 difficulties my client has with that.

19 Is Hydro, the Partnership, willing to
20 discuss these ongoing, I guess, disagreements with
21 respect to this process?

22 MS. COLE: I think we've always, and
23 we have continued to demonstrate a willingness to
24 meet with the Manitoba Metis Federation and its
25 members at the request of the Federation, really

1 at any time. And we are more than willing to
2 continue to have further discussion. And while
3 the formal PIP round three has closed, and we
4 filed a supplemental filing, there are others who
5 have also come forward and asked for further
6 discussions and additional meetings. And we are
7 making arrangements to make sure that those happen
8 if they are interested in learning about the
9 project. The same would hold for the Manitoba
10 Metis Federation.

11 MS. SAUNDERS: Okay. And you are
12 aware of the consultation and model -- my
13 apologies -- so you are aware of the consultation
14 model followed in Bipole III, correct?

15 MS. COLE: I didn't work on the Bipole
16 III project, so I don't want to speak specifically
17 to their consultation model.

18 MS. SAUNDERS: Okay. Is there anyone
19 on the panel then that can confirm, did Hydro use
20 the same consultation model with the MMF in
21 relation to Keeyask as was used in Bipole III?

22 MS. COLE: We can only speak to the
23 consultation model in the course of the Keeyask
24 project. I guess it would be up to you to decide
25 whether you felt that they were the same or

1 different.

2 MS. SAUNDERS: And I do believe that
3 MMF will speak to that in its evidence, so I won't
4 go into that at this point.

5 Regarding the agreement in 2009
6 between Manitoba Hydro and the MMF, on slide 20
7 you indicate that Manitoba Hydro and the MMF have
8 worked together for several years through the 2009
9 protocol agreement?

10 MS. COLE: Yes.

11 MS. SAUNDERS: And in your comments
12 you spoke of this agreement as creating a forum
13 for reviewing and discussing Hydro related issues
14 such as Keeyask. Is this the agreement that you
15 spoke of, the agreement signed between Manitoba
16 Hydro and MMF in December of 2009?

17 MS. COLE: Yes, it's an agreement that
18 was signed between Manitoba Hydro and the Manitoba
19 Metis Federation on December 3rd of 2009.

20 MS. SAUNDERS: MMF recalls this
21 agreement, as it sets out commitments to implement
22 a work plan that is aimed at developing a protocol
23 Agreement. Would you agree that that's fair to
24 say?

25 MS. COLE: Yes, there are two phases

1 to the work plan that are attached to the
2 agreement. The first phase was the development of
3 the Manitoba Metis Federation of work plans and
4 budgets for the Keeyask, Pointe Du Bois, Conawapa
5 and Bipole III project. And there was funding
6 associated with the agreement to develop those
7 work plans. And the second phase of work that was
8 to be undertaken relates to the Manitoba Metis
9 Federation holding focus groups with its
10 membership on the protocol process in order to
11 seek input.

12 MS. SAUNDERS: Thank you.

13 Would you agree then that the 2009
14 agreement is not a protocol agreement, as you say
15 in your presentation, but rather is an agreement
16 to establish a process, particularly an agreement
17 to the implementation of the work plan that you
18 have just outlined for development of a protocol
19 agreement that would one day be entered into
20 between the parties?

21 MS. COLE: I think that's entirely
22 fair. We refer to it as a protocol agreement
23 because it was an agreement to work together to
24 establish a protocol. So, apologies if that's not
25 how the MMF refers to it.

1 MS. SAUNDERS: It is an important
2 distinction, because we would certainly be glad to
3 have a protocol agreement that would outline our
4 dealings, particularly dealings such as Keeyask.
5 But unfortunately the MMF is not at that point
6 with Manitoba Hydro.

7 MS. COLE: I think we would love to
8 have that agreement too.

9 MS. SAUNDERS: Very well, thank you.
10 Regarding the Metis specific studies
11 with respect to Keeyask, you mentioned in your
12 comments yesterday on slide 20, Hydro's funding of
13 the MMF study and engagement with MMF on Keeyask.
14 Would you agree with me that the MMF submitted a
15 work plan particularly for MMF's engagement in
16 Keeyask in 2010?

17 MS. COLE: There have been several
18 proposals over the course of our conversations
19 that we have received. I will go through my
20 binder, and I'm certain there probably was a 2010
21 proposal. All of those proposals have been
22 refined and discussed over the course of the last
23 four years to come to agreement on the final
24 proposal.

25 MS. SAUNDERS: I appreciate you would

1 have to review your binder to go through those
2 discussions. Fair to say there were a number of
3 discussions that occurred on the work plan since
4 2010, and would you agree with me that the amount
5 eventually agreed to in 2013 was very similar to
6 that originally proposed by the MMF in 2010, in
7 fact, that the amount that was finally agreed to
8 in June of 2013 was more than was originally
9 proposed by the MMF in 2010?

10 My apologies to the panel and to the
11 Commission, if there is to be a specific panel
12 that goes into these matters, I don't mean to make
13 you go through that right here now, Ms. Cole.

14 MS. COLE: I'm going to speak from
15 recollection, and I might be wrong, so I will
16 apologize in advance for that. Because I don't
17 have specifically a 2010 proposal in front of me,
18 I have a 2011 proposal, and I have the final work
19 plan. Do you want to talk numbers? My
20 recollection is that the earlier proposals had a
21 study amount of approximately \$200,000. Now
22 that's -- my recollection is that it was around
23 \$200,000. And the final agreed to amount with the
24 MMF is approximately \$300,000 to undertake the
25 work.

1 I would point out, however, that the
2 final proposal is quite a bit different than the
3 initially proposed 2010 proposal. The initial
4 2010 proposal was entirely based on the
5 undertaking of a traditional land use and
6 knowledge study, and it was based almost exactly
7 on the work undertaken for Bipole III.

8 The final proposal that we have agreed
9 to, and this is part of the reason that the
10 proposal is more money, is that there are more
11 activities in the final work plan. So, in
12 addition to undertaking a traditional land use and
13 knowledge study, we have also funded the MMF to
14 undertake a socioeconomic impact study and to
15 provide back to the Partnership an understanding
16 of what the MMF believes the socioeconomic effects
17 of the project are to its members, and also to
18 undertake a historical narrative to look back at
19 the historical, or the history of Metis, both
20 specifically in the Keeyask region and in Northern
21 Manitoba.

22 So there is a bit more included in the
23 final proposal than there was in the initial 2010
24 proposal.

25 MS. SAUNDERS: However, all of which

1 you just mentioned right now, those were all
2 matters that MMF originally discussed in 2010, and
3 that then occurred in discussions further between
4 2010 and 2013; correct?

5 MS. COLE: None of us recall, until
6 the final work plan and budget, we don't recall
7 the earlier proposals, including a socioeconomic
8 impact assessment. And I'm actually quite
9 confident they didn't include a historical
10 narrative, because that came quite a bit later in
11 the process, after we developed a response to an
12 information request from the Canadian
13 Environmental Agency, CEA 14, related to
14 traditional land use of Metis, Shamattawa, and
15 also Pimicikamak in the region. And the MMF were
16 quite concerned with how we had characterized
17 historical and current land use and asked for the
18 historical narrative. And that's the point where
19 it was added. And there is a letter from
20 Mr. Madden asking for that work to be undertaken.
21 And it is quite close actually to when we
22 finalized the final work plan and budget.

23 MS. SAUNDERS: And you can confirm
24 then that the study you mentioned in your
25 presentation that Hydro was funding for MMF to

1 complete regarding Keeyask was finally and only
2 agreed to in July of 2013?

3 MS. COLE: I believe it was June of
4 2013.

5 MS. SAUNDERS: June, my apologies.

6 MS. COLE: Late June. Yes, and we
7 point it out in the presentation as well that
8 that's when the final date was.

9 MS. SAUNDERS: Okay.

10 Now regarding the last point on your
11 slide 20, you indicate that studies will build on
12 information already collected and documented by
13 the Partnership in EIS filings. Can you explain
14 what kind of information that is?

15 MS. COLE: Yes. Give me a moment,
16 please?

17 So I previously mentioned during the
18 course of our conversation that there is an IR, or
19 that we responded to, or a request for additional
20 information from the Canadian Environmental
21 Assessment Agency. And that request specifically
22 asked us to look at traditional use by other
23 Aboriginal communities beyond the Keeyask Cree
24 Nations, in the Keeyask region, with a focus on
25 the Metis, Pimicikamak and Shamattawa First

1 Nation. And in the course of responding to that
2 request for additional information, the
3 Partnership submitted CEA 14, which included quite
4 a lengthy document that pulled together all
5 existing and publicly available information on use
6 by Metis of the area in the Keeyask region. So
7 that is certainly one piece of information.

8 The other is, and I don't want to
9 leave the impression that we haven't considered
10 all Aboriginal groups in the context of
11 undertaking the EIS. Both the local and regional
12 study areas include the entire Aboriginal
13 population included in those regions. And as we
14 discussed through the Partnership panel the other
15 day, that would include any Metis citizens that
16 happened to be resident in those regions. So the
17 effects assessment would include effects to the
18 Metis community or Metis citizens who would be
19 living in that area. In addition, any related or
20 available mitigation would also be, unless it is
21 specifically included in the Adverse Effects
22 Agreements, any of the mitigation measures put in
23 by the Partnership would also be available and
24 would help to offset any effects that may be
25 experienced by Metis citizens who use the local

1 study area.

2 So, a great example of that is the
3 waterways management program that the project
4 description group walked us through. That program
5 creates safe waterways for any user of the area,
6 it is not specific to any individual group.

7 Similarly, the access management plan,
8 which we will talk about as part of the
9 socioeconomic panel but was alluded to yesterday,
10 individuals who traditionally use the Keeyask area
11 will certainly be provided access to the Keeyask
12 area along the access road, regardless of whether
13 or not they are members of the Keeyask Cree Nation
14 communities.

15 MS. SAUNDERS: So you had mentioned
16 that this information would also include
17 information on Metis citizens that happen to be
18 living in the area. And now, similar to how the
19 Partnership has collected information directly
20 from impacted communities, like its Cree Nation
21 partners, for example, the Aboriginal traditional
22 knowledge specific to the Cree worldview and the
23 importance of that, Hydro certainly recognizes the
24 importance of having that information specific
25 from those communities and specific to those

1 communities.

2 And so similarly, Hydro, though they
3 funded this and though they mention that these
4 studies will build upon information already
5 collected, the Partnership views it responsible to
6 take the information collected directly as a
7 result of these studies by the MMF, specific to
8 their community. And so, I guess I just want
9 confirmation that that recognition of the
10 information coming specific from these
11 communities, on these communities, in particular
12 the Metis, is important as opposed to just
13 building on information already collected?

14 MS. COLE: I don't think that we would
15 have offered to fund the studies or spent as much
16 time and resources negotiating those studies if we
17 didn't believe that the studies were important,
18 not just in terms of providing additional
19 information beyond that in the EIS, but also in
20 terms of building our relationship with the
21 Manitoba Metis Federation, which is something that
22 we have been working very hard to do over the last
23 several years since Wuskwatim.

24 So, I'm not quite sure -- I mean, in
25 addition to what is on that slide, I think we have

1 also very clearly indicated that we are committed
2 to reviewing and discussing the outcomes of these
3 studies directly with the Manitoba Metis
4 Federation, so that the Partnership can determine
5 how best to address any new information.

6 MS. SAUNDERS: Okay. And so this
7 might have been in your presentation already, but
8 then does Hydro similarly, with respect to the
9 information that it has collected on its Cree
10 Nation partners, does it similarly build on that
11 information that's already available on its Cree
12 Nation partners? Like, I'm just --

13 MS. COLE: I'm not understanding the
14 question, sorry?

15 MS. SAUNDERS: I'm just wanting to get
16 a handle on studies will build on information
17 already collected, and I know this comes from the
18 CEA IR.

19 MS. COLE: Yes.

20 MS. SAUNDERS: But how it has been put
21 to the Manitoba Metis Federation particularly, I
22 am just wondering, this process of collecting
23 information specifically from the community, and
24 then building on information currently available,
25 like, do you similarly, when you have information

1 collected on your Cree Nation partners, do you
2 similarly build on that information as well, or is
3 this just something particular to the MMF and
4 those other Aboriginal groups?

5 MS. COLE: When we undertook to
6 complete CEA 14, and particularly the information
7 with respect to Metis, much of the information
8 that was included and documented in that
9 information request back to CEA is information
10 that was gathered, collected, and documented by,
11 specifically by the Manitoba Metis Federation, and
12 not necessarily information by others. So, for
13 example, the Manitoba Metis Federation put on
14 record during the course of the Bipole III project
15 quite a lot of information. And there is other
16 information that's been collected, and there is a
17 detailed bibliography included with that.

18 So that is -- it would seem to me that
19 the work that you are undertaking now builds on
20 the body of work that you already have in place.
21 Similarly, when we work with the Cree partners and
22 our First Nation partners, all of our partners
23 have in their past and through other processes,
24 undertaken a number of traditional knowledge
25 studies and have a lot of past information and

1 past experience. A great example is Tataskweyak
2 Cree Nation, who actually worked with us during
3 the '90s to do a very detailed post project
4 environmental review of the LWR and CRD projects,
5 and what that specifically meant to their
6 communities. So that information is available,
7 and the communities use and take that information
8 and build upon it as part of understanding what
9 the effects of Keeyask might be on their
10 community.

11 Similarly, I mean I would expect the
12 process to be similar with the Manitoba Metis
13 Federation. So we have documented what we know in
14 the EIS, based on the information that's
15 available. And we would anticipate that the
16 information through the work plan and the studies
17 that you are undertaking now would build upon that
18 information that's already available in the public
19 domain.

20 MS. SAUNDERS: Okay. And that was my
21 concern, was build upon the information already in
22 the public domain, and to be fair, there are a lot
23 of -- there is a lot of information in that
24 bibliography that's not just information prepared
25 by the MMF.

1 MS. COLE: Absolutely, I would agree
2 with you.

3 MS. SAUNDERS: Thank you. Those are
4 all of my questions.

5 THE CHAIRMAN: Thank you.

6 Now, what is the order next? Peguis?
7 Ms. Land?

8 MS. LAND: Thank you, Mr. Chair and
9 Commissioners. I'm at your disposal in terms of
10 timing. I anticipate that I have about 45 minutes
11 of questions.

12 THE CHAIRMAN: Well, I think we will
13 break at about 12:30 as usual for lunch.

14 MS. LAND: Okay, very good.

15 Thank you members of the panel. I'm
16 Lorraine Land, legal counsel for Peguis First
17 Nation.

18 I want to start with some of the
19 remarks that were made yesterday about the
20 regulatory environment. And if you could go with
21 me to slide number 9, just as a reference point.
22 This was the slide that was being used to describe
23 the regulatory environment, as you understood it,
24 for the purpose of framing the methodology for
25 your reports and assessments.

1 So, this would be your understanding
2 of the statutory regimes that are relevant to your
3 review then, I take it, is that correct?

4 It lists the EIS guidelines from CEA,
5 then the CEA Act pre 2012, the Manitoba
6 Environment Act, and then the Provincial/Federal
7 agreement on environmental assessment.

8 So you understand that that would be
9 the statutory regimes that would be relevant to
10 your review?

11 MS. COLE: This was an overview
12 presentation, and it focuses on the, I guess the
13 highest level. There are certainly a number of
14 other statutes and regulations that apply within
15 the context of receiving licences and
16 authorizations for the Keeyask Generating Station.
17 There is an entire section in the response to EIS
18 guidelines that goes through those. So while I
19 didn't include them in this presentation,
20 certainly we are fully aware of things like the
21 Fisheries Act and other legislation.

22 MS. LAND: Okay. And the one --
23 that's helpful, and the one that I wanted to take
24 you to specifically, just to do a check in, in
25 terms of principles for methodology, was the

1 Manitoba Sustainable Development Act, which as you
2 may recall has as an appendix, Principles and
3 Guidelines for Sustainable Development. And I'm
4 wanting to take a look at, particularly the
5 guidelines for sustainable development, which are
6 schedule B to the Sustainable Development Act.

7 And I'm going to quote a couple of sections which
8 I will just read into the record for ease.

9 So schedule B of the Sustainable
10 Development Act, guidelines for sustainable
11 development: Public participation means, among
12 other things, establishing forums:

13 "A. Establishing forums which
14 encourage and provide opportunity for
15 consultation and meaningful
16 participation.

17 B. Endeavoring to provide due
18 process, prior notification, and
19 appropriate timely redress for those
20 adversely affected."

21 And then under Access to Information, which is the
22 third guidelines means:

23 "A. Encouraging and facilitating the
24 improvement and refinement of economic
25 environmental human health and social

1 information.

2 B. Promoting the opportunity for
3 equal and timely access to information
4 by all Manitobans."

5 So would it be fair to say that you
6 would consider those as well to be fundamental
7 guiding principles for the assessment in terms of
8 framing your methodology?

9 MS. COLE: Yes.

10 MS. LAND: And would it be fair to say
11 then that those guidelines were also relevant to
12 your methodology for identifying what would be
13 relevant valued environmental components or
14 ecological components for assessment?

15 MS. COLE: Yes.

16 MS. LAND: So from there I want to
17 talk a little bit, I want to talk a little bit
18 about the process that you described yesterday for
19 how you selected those VECs. And as you described
20 it to us yesterday, I understand you were
21 discussing how, from the overview, you saw the
22 process as a selection process that was iterative,
23 based on inputs from a variety of sources. And at
24 slide 26 you list some of those inputs that you
25 received information from in terms of selecting

1 your VECs. And that included the Keeyask Cree
2 Nations experts, CEA, the PIP program, baseline
3 studies and so on.

4 MS. COLE: Yes.

5 MS. LAND: Then you mentioned that in
6 terms of the process, after you had identified
7 this variety of sources, you sought input in round
8 one, and then you came up with an initial list --

9 MS. COLE: Yes.

10 MS. LAND: -- that was considered by
11 the Partnership, and then the VECs were selected,
12 correct?

13 MS. COLE: Yes.

14 MS. LAND: And so would you -- I'm
15 just, I'm also looking at the CEA EIS guidelines.
16 So the CEA EIS guidelines for March 2012.

17 MS. COLE: Let me catch up with you,
18 one sec?

19 MS. LAND: Sure, okay. So this is
20 from the EIS guidelines from CEA from March 2012
21 for the record. And I'm looking at guideline
22 6.2.1, which is on page 10 --

23 MS. COLE: Okay.

24 MS. LAND: -- of the guidelines. And
25 that is the determination of valued eco-system

1 components. It says:

2 "The EIS will describe the process
3 used for identification of valued
4 eco-system components. VECs will be
5 selected based on professional
6 judgment, interests, and concerns
7 raised by the public, Aboriginal
8 groups and government."

9 So would any Aboriginal groups that were not
10 involved in round one have been part of the
11 process of selecting -- giving input into the
12 selection of the VECs?

13 MS. COLE: The round one public
14 involvement program included both meetings
15 directly with communities, based on our
16 understanding of communities who were likely
17 interested in participating in the project, based
18 on their past discussions with Manitoba Hydro, or
19 their proximity to the project, or other related
20 interests.

21 It also included a series of public
22 open houses and workshops, which were available to
23 the public.

24 So for those who participated in round
25 one of the PIP, they certainly would have had an

1 opportunity to bring forward, as it states in
2 here, interests and concerns raised by the public,
3 Aboriginal groups and government.

4 I would also note, though, that we
5 went out with round two as well, and during the
6 course of round two talked about initial findings
7 of the EIS. And I think if there had been
8 something raised during the course of those
9 discussions in round two, that there was really a
10 lot of interest related to a specific topic and we
11 all agreed it should have been a valued
12 environmental component, we likely would have
13 taken another look and considered it further.
14 There were some topics raised through the course
15 of regulators that did, we did -- some topics that
16 were supporting topics did become VECs as a result
17 of those discussions.

18 So the opportunity certainly started
19 in round one, but I wouldn't say it ended in round
20 one.

21 MS. LAND: Would it be fair to say,
22 based on what you just said in your explanation,
23 that you would agree with me that when the EIS
24 guidelines called for the participation or the
25 inputs from Aboriginal groups, it wasn't

1 confined -- the EIS guidelines were not meant to
2 be confined to seeking inputs from only the four
3 partner First Nations?

4 MS. COLE: No, and nor did we seek
5 input from just the four partner First Nations.

6 MS. LAND: That's helpful. In terms
7 of the scope of what you looked at for the purpose
8 of the local and regional area, you testified or
9 presented information yesterday that the
10 methodology for assessment incorporated the
11 recommendations that had been made by the CEC in
12 Wuskwatim and in Bipole III. If you go to slide
13 37, you presented the list of past projects and
14 activities. And you testified that this list of
15 past projects and activities was a consideration
16 in how you scoped the inputs for the inclusion of
17 which were the appropriate VECs; is that correct?

18 THE WITNESS: Well, this discussion
19 was particular to the cumulative effects
20 assessment, and the past projects and activities
21 considered relevant to the cumulative effects
22 assessment.

23 MS. LAND: Right. So would you agree
24 that that list of projects and activities that
25 were relevant to the cumulative effects assessment

1 for the project would be relevant to which VECs
2 you would choose?

3 MS. COLE: In some senses they would
4 be relevant, to the extent that these past
5 projects and activities may have affected a VEC in
6 our area in a very measurable and important way,
7 and so there are VECs in the region that are
8 affected by past projects and developments. A
9 great example of this is lake sturgeon, clearly a
10 VEC that has been affected by both past
11 hydroelectric development as well as commercial
12 overharvest.

13 MS. LAND: Right. And so a couple of
14 those -- that list of past projects and activities
15 included Lake Winnipeg Regulation, the Churchill
16 River Diversion, Jenpeg; so you would agree that
17 those would be within that group that you just
18 described, that you looked at as relevant for
19 cumulative effects assessment in terms of also
20 seeing how that related to effects in the study
21 area?

22 MS. COLE: Yes, to the extent that the
23 effects from these projects overlap with the
24 effect of Keeyask, yes.

25 MS. LAND: Right. Would you agree

1 with me that my client, Peguis First Nation, is
2 within the Lake Winnipeg Regulation area?

3 MS. COLE: Yes. My understanding is
4 that they are close to Lake Winnipeg.

5 MS. LAND: Can you direct me to where
6 you sought input or received information from
7 Peguis First Nation in the identification and
8 scoping of which VECs should be chosen to assess
9 various impacts?

10 MS. COLE: I cannot direct you to a
11 consultation related to the VECs with Peguis First
12 Nation, with your client. And I will be honest,
13 until the participant assistance application was
14 filed from Peguis, we had absolutely no indication
15 from the community that they were interested from
16 the -- were interested in the Keeyask Generation
17 Project or felt they were affected by the project.
18 But as soon as we received that participant
19 application, we made sure that the community was
20 engaged in future consultation activities. And I
21 would note that there were opportunities for the
22 community to come forward through both public
23 workshops, as well as the public website where all
24 of the project information is housed, and
25 certainly there is a lot of contact information

1 there. If the community was concerned at any
2 point in time, we are more than willing to discuss
3 matters with the communities and to meet with them
4 one on one.

5 MS. LAND: So just to pick up on some
6 of those points then, the public workshops were by
7 invitation; is that correct?

8 MS. COLE: There were workshops, as
9 well as open houses. Some of the public workshops
10 were certainly by invitation. All of the open
11 houses were advertised in the communities in which
12 they took place, and they were open to any member
13 of the public.

14 MS. LAND: Right. So, the invitations
15 for -- are you aware whether Peguis was invited to
16 any of the workshops or opportunities in round one
17 or two of the process?

18 MS. COLE: I think I was pretty clear;
19 Peguis did not participate in rounds one or round
20 two of the process, Peguis was specifically
21 invited to participate in round three of the
22 process, after they learned -- after we learned
23 that the community was interested and concerned
24 about the project.

25 MS. LAND: Did you make any efforts to

1 identify which Aboriginal groups, including my
2 client, were located in the area of these other
3 past projects and activities for the purpose of
4 soliciting input into what appropriate VECs should
5 be, other than the four partner First Nations?

6 MS. COLE: I want to be clear about
7 the purposes of the public involvement program,
8 because I think they might be getting a little bit
9 muddied. The primary purpose of the public
10 involvement program, which I went through
11 yesterday, is to give stakeholders and others the
12 opportunity to receive input about the project
13 itself, and to provide feedback and express any
14 concerns with respect to the project. The PIP,
15 certainly through the -- you know, as stated in
16 the EIS guidelines which you've pointed out to me,
17 sought to understand the interest and concerns of
18 the public. The purpose of the PIP program was
19 not to go out and discuss the effects of past
20 projects with every community who may have been
21 affected by past projects undertaken by Manitoba
22 Hydro. The PIP was designed specifically for the
23 Keeyask project and to understand the effects of
24 the Keeyask project. In order to determine who we
25 involved in the PIP program, we undertook an

1 extensive stakeholder mapping program that began
2 in as early as 2000 when we first started looking
3 at the program. And we looked at pathways of
4 effects to the project and who might be
5 potentially interested or potentially affected by
6 the project. In looking at those pathways of
7 effect, certainly past projects matter, but we
8 really need to understand the overlapping effect
9 in terms of biophysical effects. In terms of
10 looking at pathways of effects with respect to
11 socio-economic effects, the primary piece that we
12 look at in terms of stakeholder mapping are the
13 preferences outlined in the Burntwood/Nelson
14 agreement. Because we know that there is a huge
15 interest in employment on this project, and that
16 is a huge pathway of effect in Northern Manitoba
17 from Keeyask.

18 So based on the pathways of effect, we
19 would have tried to elicit and figure out who
20 could potentially benefit or be adversely affected
21 by this project. And that's how the initial
22 stakeholders were identified.

23 We then undertook round one, which
24 there were a series of invited communities,
25 workshops, as well as open houses, and based on

1 feedback that we received from that, as well as
2 our experience through the Wuskwatim project, we
3 refined the approach, and would either add
4 communities who were interested and continuing to
5 work with us -- some communities through that
6 process indicated thanks, very much, that's
7 enough, we are okay, you don't need to come back
8 to our communities, and in some cases others came
9 forward. We have had some communities who said
10 they are not interested and have come back in
11 round three and said actually we have changed our
12 mind, we would like to hear from you again, can
13 you come and chat with us. So I hope that's
14 starting to answer your question --

15 MS. LAND: I'm going to just pick up
16 on a couple of questions based on what you just
17 said, just to start with where you ended in that
18 long explanation, so you said you came back to
19 communities that said we have changed our mind, we
20 now want to participate?

21 MS. COLE: Yep.

22 MS. LAND: Did my client, Peguis, tell
23 you that they had changed their mind and had
24 previously not been wanting to participate, and
25 had changed their mind to say that they did? Was

1 there a change of mind that they indicated to you?

2 MS. COLE: I think I was pretty
3 straightforward and honest with you, that we did
4 not approach your client in round one or round
5 two. We were not aware that the community --

6 MS. LAND: So it would be fair to say
7 they didn't change their mind --

8 MS. COLE: I'm not referring to your
9 community when I say the community changed their
10 mind. There are other communities involved in the
11 public involvement process who chose not to
12 participate in round two, initially told us they
13 were not interested in participating in round
14 three, and then asked the question, you know, we
15 are really interested in hearing from you.

16 (Technical difficulty)

17 THE CHAIRMAN: We are back on. I'm
18 not sure where you were at. I think you were
19 about to ask a question.

20 MS. LAND: Yes. As I understand it,
21 we are really pursuing two lines of questions
22 here. One is with respect to how you identify the
23 inputs into what were the proper VECs to select
24 and how to assess them. And one is around the
25 public information process. So I'm going to

1 pursue those two separately, starting to come back
2 again to the VECs selection specifically. And I
3 will come back later to the public participation
4 question.

5 So in terms of the selection of the
6 VECs then, you are saying that you would not have
7 intentionally gone to the communities that were
8 specifically part of that list of communities
9 where these past projects were to seek input into
10 what were the relevant VECs? Did you go to them
11 or not based on that list? So you have the list
12 on slide 37 of the past projects and activities
13 that you were considering as part of your
14 cumulative effects assessment; did you
15 specifically identify communities that were in
16 these areas where these past projects were and go
17 to them to ask them for input into the selection
18 of the VECs?

19 MS. COLE: No. We went to communities
20 and spoke with communities based on our
21 understanding of what we felt the effects of the
22 Keeyask project would be, and who we thought could
23 either be potentially affected by the project or
24 communities that were interested in the projects,
25 so not just communities, but also organizations

1 that may be potentially interested in the project,
2 based on our understanding given their previous
3 engagement with Manitoba Hydro or a previously
4 expressed interest. So, I think we did not
5 specifically go out to talk to them about past
6 projects and activities, we went to talk to them
7 about Keeyask.

8 MS. LAND: Okay. So you described how
9 part of your new way of doing assessments compared
10 to what had happened in the past was that you
11 would consider past effects of past projects and
12 activities and the larger regional scope, is that
13 correct?

14 MS. COLE: Yes, that's correct.

15 MS. LAND: So would that be relevant
16 to how you would determine the methodology and
17 scope of what you would be assessing for the
18 project? So would the past projects then, and the
19 regional -- larger regional area be relevant to
20 how you would scope the effects that you would be
21 assessing?

22 MS. COLE: Yes, it is relevant. And I
23 walked through yesterday some of the important
24 reasons why it is relevant. And one of the
25 biggest is it gave us a really strong

1 understanding of the things that could be affected
2 by hydroelectric development is understanding past
3 effects of hydroelectric development. So it gave
4 us an understanding of the types of things in the
5 environment that may be expected to be affected.
6 It also helped us understand what mitigation might
7 work or might not work.

8 MS. LAND: But you did not choose to
9 use that as a basis for understanding what the
10 inputs into the VECs should be? Is that -- you
11 are saying that they are relevant, you were saying
12 that the past projects are relevant, the larger
13 area is relevant, but you are saying that it is
14 not relevant for the purpose of determining what
15 are the appropriate inputs for selecting the VECs?

16 MS. COLE: That's not at all what I'm
17 saying. You are focusing on one aspect of how we
18 selected VECs. You are focusing on the issues and
19 concerns raised through the public, there is a
20 long list that I presented yesterday that talk
21 about other aspects, and some of those aspects are
22 clearly things that have been affected by past
23 developments. And our understanding of what is
24 important and might be affected is based on our
25 understanding of past effects. And quite frankly,

1 some of the VECs brought forward by communities
2 and the issues and concerns brought forward by
3 communities, not just the Keeyask Cree Nations,
4 but other communities who have been affected by
5 hydroelectric development confirmed for us some of
6 the past effects of hydroelectric development and
7 what might be really important to study.

8 MS. LAND: Would it be correct to say
9 that the basis for your assessments in the EIS
10 were the VECs that you selected for assessment; is
11 that fair to say?

12 MR. DAVIES: The VECs are the main
13 components that we selected so that the decision
14 makers would be able to look at the key
15 components, but we also looked at supporting
16 topics. And as I had mentioned before, the
17 supporting topics actually contained, in many
18 cases, a number of other items, such as we talked
19 about the word trophic as it contains phyto
20 plankton, zoa plankton, benthos and aquatic
21 macrophytes. So we really tried to look at the
22 entire system. And going back to a previous
23 question, did the affects of past projects help
24 determine the types of things that we looked at?
25 The answer to that is yes. The linkage that was

1 made between flooding and mercury at South Indian
2 Lake, and the knowledge that was gained from the
3 programs developed by the Department of Fisheries
4 and Oceans and other people assisted us in
5 identifying that as a supporting topic to be used
6 in the health assessment, and it was also
7 confirmed by the people that were interviewed.

8 MS. LAND: So if, as you said, the
9 effects of the past projects were relevant to the
10 assessment, then would it not make sense that you
11 would integrate that into understanding what were
12 the appropriate VECs to select and to analyze?

13 MR. DAVIES: It was one of the
14 components that we looked at. We talked about
15 professional judgment. Professional judgment is
16 based on the knowledge that we have gained from
17 not only the hydroelectric projects in Manitoba,
18 hydroelectric projects elsewhere.

19 MS. LAND: I don't think that you
20 really answered my question, but I'm going to move
21 on.

22 MR. DAVIES: I thought I did.

23 MS. LAND: What I'm going to do is
24 talk a little bit about public participation,
25 because we were kind of starting to head there,

1 and it was helpful, because yesterday we had two
2 slides and about two minutes of evidence about the
3 public participation process. And we heard about
4 the four stages of the project planning process.
5 And at stage 4, the proponent talked to
6 communities. So that was actually in the evidence
7 from the previous panel on the projects. I'm just
8 setting that as context for understanding timing.

9 MS. COLE: Certainly.

10 MS. LAND: So, stage 4 would have
11 commenced approximately ten years ago, give or
12 take, is that correct?

13 MS. COLE: The detailed planning for
14 Keeyask, yes, it is a bit more than ten years ago,
15 but sure, yep.

16 MS. LAND: And round one started about
17 five years ago, round one of the public
18 involvement process; is that correct?

19 MS. COLE: Round one took place in
20 2008.

21 MS. LAND: Okay. And in earlier
22 evidence Ms. Pachal gave evidence that my client,
23 Peguis First Nation, was invited to one workshop
24 in round three. Round three occurred in 2013, is
25 that correct?

1 MS. COLE: Yes.

2 MS. LAND: Was Peguis invited to any
3 of the round one or two events?

4 MS. COLE: No.

5 THE CHAIRMAN: I think that's already
6 been answered.

7 MS. LAND: Can you refer me to any
8 points in the 914 pages of the public involvement
9 process where you mentioned engagement with my
10 First Nation?

11 MS. COLE: Yes. In the round three
12 supplemental filing it certainly would be talked
13 about, where the community did participate in and
14 was invited to participate in round three. But
15 clearly if you didn't participate in round one or
16 two, then your client would not -- there would be
17 no reference to your client in the filed
18 materials.

19 MS. LAND: And so would it be your
20 position that you had no obligation to reach out
21 to seek input from my client until round three?

22 MS. COLE: This is kind of a difficult
23 question for me to answer, in part because as a
24 proponent we take very seriously any concerns
25 raised by communities or individuals or groups

1 about the project, we take them seriously. And we
2 seek to respond to them. We have a flexible and
3 adaptive public involvement program, and have
4 worked very hard to be responsive and to provide
5 information when we are aware that individuals or
6 communities are interested about the project.

7 So, in the case of Peguis First
8 Nation, and I think I have stated this earlier, we
9 were not aware that your client was interested or
10 concerned about the project. As you are aware and
11 as we've talked about in many of our
12 presentations, Manitoba Hydro operates throughout
13 the province, we have an integrated system. There
14 are many communities, Aboriginal and
15 non-Aboriginal, that are affected by our
16 operations. We sought to understand the pathways
17 of effect from our project and what communities,
18 based on those pathways of effect, may be
19 interested or may be potentially affected by the
20 Keeyask project. And those are the communities
21 that we initially identified during our
22 stakeholder mapping, and that participated in
23 round one.

24 The public involvement program was
25 advertised extensively throughout Northern

1 Manitoba when there were open houses in both
2 Thompson and Gillam. It was also advertised in
3 Winnipeg when there were open houses. And the
4 website clearly is accessible to anyone. So as
5 soon as we became aware that Peguis First Nation
6 was interested, we did reach out to the community.
7 We provided the community with all relevant
8 project materials, with an executive summary, with
9 all of the previous PIP information, all copies of
10 the newsletters, copy of the EIS, a copy of the
11 video, and we invited the community to participate
12 in round three of the PIP. Until that point, we
13 were not aware that the community was concerned
14 about the project.

15 THE CHAIRMAN: I'm going to take this
16 opportunity to break for lunch. We will come back
17 at 1:30.

18 (Proceedings recessed at 12:30 and
19 reconvened at 1:30 p.m.)

20 THE CHAIRMAN: We'll reconvene.

21 Ms. Land, I think you are about to ask
22 your next questions?

23 MS. LAND: Thank you, Mr. Chair and
24 Commissioners. I only have a few more questions.
25 So thank you again, panel members.

1 Just before we left off at lunch, I
2 believe the last thing that Ms. Cole testified to
3 was that the proponent only became aware that
4 Peguis First Nation had concerns about the Keeyask
5 project in spring of 2013, and then the proponent
6 immediately moved to involve Peguis in round three
7 public participation.

8 Are you aware that Peguis was a
9 participant in the Bipole III hearings in 2012?

10 MS. COLE: Yes.

11 MS. LAND: And are you aware that
12 Peguis filed a Statement of Claim against Manitoba
13 Hydro in 2011, regarding claims that the
14 management of the northern dams by Manitoba Hydro
15 were linked to flooding that was devastating
16 Peguis's lands?

17 MS. COLE: I'm aware of the claim. I
18 cannot -- I will be honest, that is not my area of
19 responsibility and I cannot speak to any aspects
20 of what is contained in that claim.

21 MS. LAND: Sure. And my question was
22 more about the timing. Were you aware that that
23 claim was filed in 2011?

24 MS. COLE: I'm aware of the claim.

25 MS. LAND: Okay. Were you aware that

1 in spring 2011, Peguis First Nation appeared
2 before the United Nations General Assembly to call
3 for an environmental audit of all of Manitoba's
4 current and future Hydro projects because of the
5 devastating effects of flooding on Peguis's lands?

6 MS. COLE: I'm not personally aware of
7 that, no.

8 MS. LAND: Would it be fair to say
9 that Manitoba Hydro would be aware of that -- let
10 me rephrase it this way. If that matter was
11 canvassed in multiple Manitoba newspapers and on
12 the public record, in the news media in Manitoba
13 in May of 2011, would it be fair to assume that
14 Manitoba Hydro would have knowledge that Peguis
15 First Nation would have appeared before the United
16 Nations General Assembly to raise concerns about
17 the impact of the management of the northern dams
18 on the flooding that Peguis was experiencing?

19 MS. COLE: I am quite confident that
20 there are probably some people at Manitoba Hydro
21 who are aware of the presentation made by Peguis.

22 MS. LAND: So then it would be fair to
23 say that Manitoba Hydro reasonably should have had
24 some sense that Peguis First Nation would have
25 concerns about new Hydro projects prior to spring

1 of 2013?

2 MS. COLE: Well, actually, I'm not
3 sure that is entirely fair, because what you have
4 just laid out for me are concerns that the
5 community has with respect to the operation of
6 past projects. And this is particularly in
7 relation to the Keeyask Generation Project, and
8 there are certainly an overlap of the effects with
9 Keeyask with some of the effects of past projects.
10 And we have talked about the pathways of effect
11 this morning and how we identified communities.
12 And I'm not sure that we would have perceived that
13 your concerns with respect to past projects
14 necessarily link to a concern with respect to a
15 new generation project.

16 MS. LAND: Right. And I think that
17 this is something that will obviously be canvassed
18 in the evidence, is the assumption that one
19 project may not have links to another. So I guess
20 my question is, in the scope of what you told us
21 you laid out in terms of cumulative effects
22 assessment, for instance, that included Lake
23 Winnipeg Regulation area, correct?

24 MS. COLE: To the extent that the
25 effects of the Lake Winnipeg Regulation overlap

1 with the effects of Keeyask, I mean, the Lake
2 Winnipeg Regulation extends all the way along the
3 Nelson River, right? And it includes the lake.
4 So, to the extent that there is an overlap of an
5 effect, it certainly is considered.

6 MS. LAND: Okay, good. Thank you.

7 I want to take you to some of your
8 evidence about traditional knowledge methodology.
9 And I just -- I have two short questions based on
10 a couple of examples where in the materials the
11 methodology for the balancing of traditional
12 knowledge and western science is considered.

13 So, the two examples I want to take
14 you to are both from responses that were provided
15 to the CAC in round one of the IR process. And
16 those two particular responses that I'm going to
17 take you to are round one CAC 0049, and the other
18 one is round one CAC 0057.

19 MS. COLE: Please just give us a
20 moment. We have 57, we're just missing 49.

21 MS. LAND: Let me give you a heads up
22 about where I'm going to take you so that you can
23 take a look.

24 MS. COLE: Okay.

25 MS. LAND: So the first one, 0049,

1 this was an information request about water
2 quality issues and impacts on aquatic life. And
3 where I'm going to take you is to line 65 and 66
4 on page 2.

5 MS. COLE: Of the 49?

6 MS. LAND: Of 49.

7 MS. COLE: Okay. So I'll start with
8 that one.

9 So this was, as I said, an information
10 request about water quality and aquatic life. And
11 the question that was asked by the CAC was, and
12 I'm going to line 27 to 29 here:

13 "Respond to the discrepancies apparent
14 upon comparing the EIS technical
15 science findings with the KCN
16 environmental evaluation reports."

17 And then in the response, starting at
18 line 65:

19 "It is acknowledged that the KCN's
20 environmental evaluation reports
21 present a different view than
22 described in the scientific
23 assessment. See response to CAC round
24 one CAC 0057."

25 And I'll go there next. And then it goes on

1 further to explain, if I take you to the next page
2 on page 3, starting at line 74:

3 "Mitigative measures that have been
4 incorporated into the project
5 design...",

6 and this is after the discussion that there is
7 some discrepancy between the two sets of data from
8 the traditional knowledge and western science.

9 "Mitigated measures that had been
10 incorporated into the design and
11 proposed measures to address effects
12 of the project on water quality are
13 identified in the EIS and the
14 environmental protection program.
15 Water quality will be monitored during
16 construction and operations, and
17 results will be compared to EIS
18 predictions and to Manitoba water
19 quality standards, objectives and
20 guidelines...",

21 and then to other guidelines?

22 MS. COLE: Yeah.

23 MS. LAND: So, do I take it correctly
24 then that the response in this particular
25 situation in terms of methodologies, when you had

1 a conflict between the data that was received
2 through the traditional knowledge from the KCN,
3 from the Aboriginal partners and the western
4 science bases, that the methodology then was to
5 look at monitoring for water quality as a way to
6 deal with that discrepancy?

7 MS. COLE: I'm quite confident we
8 likely would have undertaken monitoring with
9 respect to water quality, regardless of whether
10 there had been a difference in opinion between the
11 two findings of the different assessments. Water
12 quality is clearly something that is important,
13 not just for people, but it's also important for
14 aquatic life. And so regardless of those
15 differences in opinion, monitoring with respect to
16 water quality definitely would have taken place.

17 MS. LAND: Okay. And then in that
18 particular IR, it referred to another one, which
19 was the CAC 0057 from that same round. And that
20 was one in which some of the methodology was
21 further explained. So I'm going to take you there
22 next.

23 So this was an information request
24 from the CAC about the difference in viewpoints
25 between Manitoba Hydro and the KCN Partners around

1 the issue baseline data.

2 MS. COLE: Um-hum.

3 MS. LAND: And that was the question:

4 "Please respond to that difference in
5 the viewpoints between Manitoba Hydro
6 and the KCN Partners around the issue
7 of baseline data."

8 And then in the response starting at line 59:

9 "The differences in these two
10 worldviews are noted in the EIS.
11 Given the differing worldviews, there
12 are naturally some cases where the
13 conclusions reached to date by these
14 two evaluation processes are
15 different."

16 And then it goes on to explain what some of these
17 differences were between traditional knowledge and
18 western science. And then starting at line 67:

19 "In such cases the partnership has
20 developed monitoring programs that
21 respond to the concerns raised through
22 both worldviews. For example, water
23 levels will be monitored on Split
24 Lake. This monitoring will be
25 conducted to determine what, if any,

1 changes occur to a VEC or other
2 indicator due to the project
3 development and/or other factors, and
4 to assess the accuracy of predictions
5 in the EIS and the efficacy of
6 mitigation measures. As such,
7 monitoring will measure changes
8 against current conditions and the
9 expected trends in such conditions
10 without the project. This monitoring
11 will be undertaken through both
12 technical monitoring programs, as well
13 as ATK monitoring programs undertaken
14 by each of the KCNs."

15 So, would it be fair to say that the
16 mitigation measure here that's identified then is,
17 when you have a conflict between western science
18 and Aboriginal traditional knowledge, is to
19 monitor to see what happens?

20 MS. COLE: So the information request
21 you're specifically referring to actually does ask
22 us specifically about monitoring and how the
23 partnership does intend to undertake monitoring to
24 reconcile differences in perspective.

25 And so we have answered that

1 information request with respect to monitoring and
2 then there is a very good example in here of a
3 place where there is a fundamental difference of
4 opinion between the Partnership -- between the
5 Cree communities and Manitoba Hydro. And the
6 example provided in this IR is water levels on
7 Split Lake.

8 All of the engineering and technical
9 studies we have undertaken indicate that open
10 water levels on Split Lake will not change. Both
11 York Factory and Split Lake have said no, we're
12 not sure we agree with you. In fact, we think
13 water levels will change. And that difference
14 certainly underlies what we talked about earlier
15 in terms of precaution and understanding and
16 certainty. And so we have worked together to
17 determine that, yes, we will continue to monitor
18 water levels on Split Lake to make sure that they
19 don't change. And in fact, it became a
20 fundamental feature. Marc walked through
21 yesterday the fundamental features in the Joint
22 Keeyask Development Agreement, that those water
23 levels won't change became a fundamental feature
24 of the Joint Keeyask Development Agreement.

25 So this is an example of monitoring

1 and ongoing stewardship to address differences, or
2 where we might have differences and where the
3 predictions came to different conclusions. But
4 there are other cases, it's not always monitoring,
5 there are other cases, and we have highlighted a
6 few of them where we have actually taken a
7 different approach to mitigation or taken
8 different action. And one of the best examples
9 there is the reservoir clearing plan that Marc
10 walked through yesterday in the clearing of the
11 reservoir. That was actually done in part at the
12 insistence of our partners, and we worked together
13 quite closely with them to determine not just, you
14 know, should we clear the whole reservoir, when
15 should we clear the whole reservoir, but also how
16 should we clear the whole reservoir?

17 So you saw some differences yesterday
18 between hand clearing versus machine clearing, and
19 when those different techniques are applied.
20 Those were all arrived at jointly. So that's
21 actually an example of a mitigation measure that
22 was implemented as a result in sort of the
23 differences of perspective about how we should
24 proceed with the project.

25 MS. LAND: That's helpful.

1 So would you agree with me then that
2 monitoring is not the same thing as mitigating?

3 MS. COLE: I would absolutely agree
4 with you that they are not the same thing. And
5 you read the IR back to us. I think the IR
6 actually stated it really well.

7 "Monitoring measures change against
8 current conditions and the expected
9 trends, it determines the accuracy of
10 predictions in the project EIS and the
11 efficacy of mitigation measures."

12 MS. LAND: So in these two particular
13 IRs then, are the responses, no, we're not
14 mitigating, we're monitoring; is that correct?

15 MS. COLE: I'm sorry, can you repeat
16 the question, please?

17 MS. LAND: If that's what you're
18 saying based on what you just said, then in these
19 two information responses that are asking about
20 how to reconcile these differences where the
21 Aboriginal communities' knowledge is saying, yes,
22 there's going to be impacts, and your western
23 science is saying, no, you're saying we're going
24 to monitor, not mitigate. You just told me that
25 monitoring and mitigation are not the same thing;

1 is that correct?

2 MS. COLE: Monitoring and mitigation
3 are not the same thing, that is correct. But I
4 don't believe what I said to you is that all we
5 ever do is monitor when there are differences.
6 Sometimes there are very clear and definite
7 mitigation measures that we can undertake to
8 eliminate an effect. Sometimes those measures are
9 not necessarily as clear, and so that's why the
10 monitoring is being undertaken. And the
11 monitoring is not just being undertaken from a
12 western scientific perspective, the communities
13 will also be undertaking their own Aboriginal
14 traditional knowledge monitoring. And those two
15 worldviews will come together in reviewing and
16 discussing the results, and determining whether
17 additional mitigation is required, or perhaps
18 adaptive management to the mitigation measures
19 already in place are required based on the
20 prospectus being brought forth by both parties.

21 MS. LAND: So in a case where you have
22 identified monitoring is appropriate, and you have
23 said that monitoring is not the same thing as
24 mitigation, although it may lead to mitigation,
25 would you then assume that a next step would be

1 mitigation, looking at mitigation? Like where is
2 the mitigation in that, if you only identify
3 monitoring I guess is my question. If you're
4 following the pathway of your assessment process,
5 and part of what you're supposed to be doing is
6 getting to the point, after you identify potential
7 impacts, where you mitigate, how do you in cases
8 like this take the step from monitoring to what
9 you say is a different process, which is
10 mitigating, or do you?

11 MS. COLE: So, I think the Partnership
12 has a fairly comprehensive environmental
13 protection program that identifies a number of
14 mitigation measures for many different aspects of
15 the environment. Those mitigation measures were
16 designed in partnership with our communities.
17 Many of them were designed with our partners based
18 on concerns and issues they brought forward, or
19 their own perspectives about what the effects may
20 be. In addition to the mitigation program that's
21 there, we also have comprehensive Adverse Effects
22 Agreements with each of the communities that we're
23 working with, that have offsetting programs, for
24 the communities' effectively mitigation measures
25 to deal with concerns that the community has about

1 how these projects may affect them.

2 So the monitoring, from my

3 perspective, it's an iterative process. So we

4 have identified mitigation, we have applied that

5 mitigation both through western science and

6 Aboriginal traditional knowledge. We're going to

7 implement that mitigation. We'll monitor how that

8 mitigation performs. We'll look at what the

9 actual predicted effects of the project are.

10 We'll continue to work together over the long

11 term. We will look at the results of that

12 monitoring to determine how effective the

13 mitigation has been, whether it's functioning as

14 we all planned. We will collectively work

15 together to determine whether perhaps additional

16 monitoring is needed. Are we answering the right

17 questions? Are we getting the right information?

18 Perhaps there's some additional things we need to

19 look at. And we will also consider whether

20 additional mitigation or changes to the mitigation

21 measures are required, based on the results of

22 monitoring that's been undertaken. So it is a

23 fairly iterative process and there are mechanisms

24 set up within the Partnership for us to work

25 together within that process.

1 MS. LAND: I think the questions I had
2 are answered. Thank you.

3 THE CHAIRMAN: Thank you, Ms. Land.

4 Now, are we back on our normal order
5 or -- Mr. Williams, are you up next?

6 MR. WILLIAMS: Good afternoon members
7 of panel and the Hydro panel.

8 I think the only exhibit I'll be
9 referring to today, with luck, is the powerpoint
10 presentation from Hydro yesterday, which I believe
11 is KHLP number 39. And we won't quite start
12 there, but page 27 would be a good page to have
13 open. And I'm off to an auspicious start because
14 I have mislead the panel already, I meant page 9,
15 so I apologize for that. Trying to make sure
16 everyone's awake.

17 Good afternoon, Ms. Cole.

18 MS. COLE: Good afternoon.

19 MR. WILLIAMS: You're in fine form
20 today.

21 MS. COLE: I don't know, we'll find
22 out I guess.

23 MR. WILLIAMS: Just for my
24 clarification, will you be appearing in subsequent
25 panels or is this it?

1 MS. COLE: I will be appearing in the
2 Socioeconomic Resource Use panel, as well as the
3 final panel and Moving Forward as Partners.

4 MR. WILLIAMS: Now, Ms. Cole, in
5 looking at the authorities that Manitoba Hydro has
6 considered in developing its regulatory
7 assessment -- excuse me one moment, please. I'm
8 not going to ask anyone to turn to the proper page
9 except for Ms. Cole, which is page 31.

10 MS. COLE: All right.

11 MR. WILLIAMS: I'm pretty confident
12 the rest of my examination will go better, but
13 we'll see.

14 Ms. Cole, in looking at the
15 authorities that Manitoba Hydro relied upon or
16 employed for its cumulative effects assessment, we
17 can agree that one of those was the CEA
18 Practitioner's Guide, correct?

19 MS. COLE: Yes, and I think I
20 mentioned yesterday that the guidelines
21 specifically ask us to look at that guide.

22 MR. WILLIAMS: Absolutely, and that's
23 a document from 1999?

24 MS. COLE: Yes.

25 MR. WILLIAMS: And one of the authors

1 of that document was Mr. Hegmann?

2 MS. COLE: Yes.

3 MR. WILLIAMS: And he is an expert in
4 the practice of cumulative effects assessment;
5 agreed?

6 MS. COLE: I would agree.

7 MR. WILLIAMS: And he has provided
8 expert testimony to the Clean Environment
9 Commission in the course of the Bipole III
10 proceeding, agreed?

11 MS. COLE: Yes.

12 MR. WILLIAMS: And it's accurate to
13 say that he has consulted with Manitoba Hydro in
14 terms of its work on cumulative effects on the
15 Keeyask project as well?

16 MS. COLE: I think it would be
17 accurate to say that Mr. Hegmann has worked with
18 us, and that we had spoken with Mr. Hegmann and
19 sought his advice after we filed the Keeyask EIS.
20 Mr. Hegmann was not involved in working with us at
21 the time the EIS, at the time the methodology was
22 undertaken or we undertook the EIS. So I don't
23 want to leave the impression that this is
24 Mr. Hegmann's approach, or that somehow he was
25 involved in putting it together?

1 MR. WILLIAMS: He was identified by
2 the corporation as a potential witness in this
3 proceeding?

4 MS. COLE: Yes, he was.

5 MR. WILLIAMS: And we'll come back to
6 Mr. Hegmann in a few moments. And obviously you
7 have also had reference, quite properly, to the
8 advice of the Clean Environment Commission in the
9 Wuskwatim proceedings in preparing your EIS?

10 MS. COLE: Yes.

11 MR. WILLIAMS: And in terms of the
12 CEC's advice in terms of Bipole III, that would
13 not have been available to you at the time of the
14 EIS; agreed?

15 MS. COLE: Agreed, that came out
16 following the filing, yes.

17 MR. WILLIAMS: Now, Ms. Cole, you have
18 got a fascinating curriculum vitae. I'm correct
19 in suggesting to you that you completed your
20 Masters in Natural Resources Management around
21 2000?

22 MS. COLE: Yes.

23 MR. WILLIAMS: And among the academics
24 you would have studied with would be Professor
25 Sinclair at the University of Manitoba?

1 MS. COLE: Yes, he was one of my
2 thesis advisors.

3 MR. WILLIAMS: And you actually
4 co-authored a report with him as well, did you
5 not, in 2002?

6 MS. COLE: Well, yes, we co-authored a
7 report based on my masters degree research, yes.

8 MR. WILLIAMS: And I love the topic,
9 you looked at an ecological footprint analysis of
10 a community in the Himalayas, agreed?

11 MS. COLE: Yes.

12 MR. WILLIAMS: Now, I would also be
13 correct in suggesting that you are professionally
14 affiliated with the International Association for
15 Impact Assessment?

16 MS. COLE: Yes.

17 MR. WILLIAMS: And would it be
18 accurate to say that through your university
19 studies and your association with the
20 International Association for Impact Assessment,
21 and your interaction with Mr. Hegmann, you have
22 developed some familiarity with the ongoing
23 dialogue regarding the practice of cumulative
24 effects in Canada?

25 MS. COLE: Yes, I'm familiar that

1 there's an ongoing dialogue. In fact, I'd say
2 it's a topic of great and hot debate in both, in
3 the literature and through the IAIA work that the
4 IA undertakes, so...

5 MR. WILLIAMS: You and I may be the
6 only two people who would characterize it as great
7 and hot debate.

8 MS. COLE: Well, you know.

9 MR. WILLIAMS: But I applaud your
10 enthusiasm. So you would be aware of some of the
11 leading practitioners of cumulative effects in
12 Canada, such as Professor Dunker?

13 MS. COLE: Yes, I'm aware of Professor
14 Dunker, I have read some of the things he has
15 written. Although Hydro has hosted workshops with
16 Professor Dunker, I had not attended those
17 workshops, they were during the course of
18 Wuskwatim.

19 MR. WILLIAMS: Fair enough. And you
20 will be aware of the work of other leading
21 practitioners such as Lorne Greig, G-R-E-I-G.

22 MS. COLE: Yes, I know Lorne Greig.

23 MR. WILLIAMS: And Bill Ross?

24 MS. COLE: Yes.

25 MR. WILLIAMS: And Riki Therivel,

1 T-H-E-R-I-V-E-L. Not ringing a bell?

2 MS. COLE: Not so much.

3 MR. WILLIAMS: Okay. And, of course,
4 Bram Noble.

5 MS. COLE: Yes.

6 MR. WILLIAMS: And you'd agree with me
7 that while Mr. Hegmann is well known for his
8 contribution to the 1999 Practitioner's Guide, you
9 are aware that he has continued to write and think
10 about cumulative effects assessment since then?

11 MS. COLE: I am certain he has. I am
12 not going to profess that I spend a lot of time
13 following the works of Mr. Hegmann throughout his
14 career, but I'm sure he's written further
15 articles.

16 MR. WILLIAMS: I'm sure Mr. Rempel
17 probably follows it with more interest, from the
18 same firm and things like that? You're nodding
19 your head, that's fine.

20 Just so I'm clear, though, Ms. Cole,
21 and if you're not aware, that's fine, but prior to
22 today, would you have been aware of Mr. Hegmann's
23 article, "Alchemy to Reason, Effective Use of
24 Cumulative Effects Assessment in Resource
25 Management," it was written in 2011. Would you

1 have been familiar with that?

2 MS. COLE: I have not read that
3 article.

4 MR. WILLIAMS: In the course of your
5 work on Keeyask, have you had some opportunity to
6 have discussions with Mr. Hegmann?

7 MS. COLE: Yes, I have had plenty of
8 opportunity to have discussions with Mr. Hegmann.

9 MR. WILLIAMS: Now, once I finally
10 arrived on page 31, and I'm glad I did, apart from
11 the authorities listed on this page, in preparing
12 its cumulative effects assessment, would Manitoba
13 Hydro have relied upon Dunker and Greig's article
14 from 2006, "The Impotence of Cumulative Effects
15 Assessment in Canada"?

16 MS. COLE: We did not rely
17 specifically on this article. If you'd like to
18 walk through some of the things mentioned in this
19 article, we can certainly talk about them. I
20 believe, as a proponent, we have met some of the
21 things that were raised as a concern both by
22 Mr. Dunker and Mr. Greig in this article. And
23 through the course of -- while we did not rely on
24 this article per se, we have also met with
25 Mr. Greig, and the partnership brought Mr. Greig

1 to Winnipeg, along with Michelle Berube of Hydro
2 Quebec, in 2008 to host a workshop with the
3 Partnership, and to walk us through what they
4 believed would be a good quality cumulative
5 effects assessment, and how they would approach
6 undertaking a cumulative effects assessment, to
7 help us get our heads around how we might design
8 our methodology.

9 THE CHAIRMAN: Can I interrupt? Were
10 the Bipole III people involved in that workshop
11 with Berube and Greig? If they were, they
12 certainly didn't follow what those two wrote.

13 MR. DAVIES: I attended the workshop
14 and, to the best of my knowledge, they were not
15 there.

16 THE CHAIRMAN: Thank you.

17 MR. WILLIAMS: And, Ms. Cole, we'll
18 come back to some of that work later.

19 Just in terms of developing its
20 approach to cumulative effects assessment, would
21 the corporation have relied upon the work of Ross
22 and Therivel, "Cumulative Effects Assessment, Does
23 Scale Matter"?

24 MS. COLE: No.

25 MR. WILLIAMS: And how about Gunn and

1 Noble, "Conceptual and Methodological Challenges
2 in Integrating SEA and Cumulative Effects
3 Assessment," would that have been a document you
4 relied upon?

5 MS. COLE: No.

6 MR. WILLIAMS: I'm pretty excited
7 because I do have the right slide number this
8 time, page 23, slide 23. And I'm not looking for
9 a great deal of elaboration, Ms. Cole, but
10 certainly I'm correct in suggesting to you that a
11 key element of this environmental assessment was
12 the assessment of project effects focused on the
13 determination of potential residual adverse
14 environmental effects on each VEC?

15 MS. COLE: I'm not sure I'm following
16 the question. The focus of the assessment was to
17 understand the potential residual effects, both
18 positive and adverse, for all of the 38 VECs
19 considered in the assessment.

20 MR. WILLIAMS: Thank you, that's
21 probably a better answer than the question. And
22 of course, as part of that analysis, there was a
23 conclusion reached in terms of significance?

24 MS. COLE: Yes, we talked about that
25 yesterday.

1 MR. WILLIAMS: And similarly, another
2 key step was to describe the cumulative effect
3 likely to result from the project on VECs, in
4 combination with other key projects that have
5 been, or are reasonably likely to be carried out.
6 Agreed?

7 MS. COLE: Yes, we looked at the
8 cumulative effect of Keeyask acting in combination
9 with past, current, and future projects, yes.

10 MR. WILLIAMS: And again, there was a
11 determination, a conclusion reached in terms of
12 whether the residual effects were significant;
13 correct?

14 MS. COLE: Yes.

15 MR. WILLIAMS: And the final key steps
16 set out on this page is the development of a
17 monitoring and adaptive management plan, agreed?

18 MS. COLE: Yes.

19 MR. WILLIAMS: And it would be fair to
20 say that a considerable focus of your efforts in
21 your impact assessment, and in your CEA, has been
22 upon answering the question of significance,
23 agreed?

24 MS. COLE: Can you repeat the question
25 for me, please?

1 MR. WILLIAMS: A considerable focus of
2 your impact assessment and CEA has been upon
3 answering that question of significance; agreed?

4 MS. COLE: Well, I want to correct a
5 little bit of your preamble. I don't view the two
6 as separate. I believe the partnership undertook
7 a cumulative effects assessment. And in some
8 cases, that extended to consider future projects
9 when there were considerable adverse effects. And
10 yes, the focus was on determining whether or not
11 there was a significant residual adverse effect
12 that was likely to occur.

13 MR. WILLIAMS: You were looking to
14 arrive at a conclusion as to significance, agreed?

15 MS. COLE: Yes, that's --

16 MR. WILLIAMS: And leaving aside the
17 Cree worldview for a moment, leaving that aside,
18 would it be fair to say that a key lens for the
19 western scientific determination of significance
20 has been through the VEC?

21 MS. COLE: We have talked quite a bit
22 about VECs and the fact that they have been
23 selected to focus the assessment and give us an
24 indication of the things that are important and
25 what might change in a project. In terms of

1 assessing significance, it is only assessed in
2 this case, in the case of valued environmental
3 components. And I actually probably shouldn't say
4 in this case, that's standard environmental
5 assessment methodology across Canada and pretty
6 much throughout the world, is that the
7 significance determinations are made based on the
8 selected valued environmental components.

9 MR. WILLIAMS: So we are agreed that
10 leaving aside the Cree worldview, the primary lens
11 in which you analyse the question of significance
12 was via the VEC, agreed?

13 MS. COLE: Agreed.

14 MR. WILLIAMS: Now, I believe I'm on a
15 hot streak because once again I have the correct
16 slide number, which is slide number 27.

17 MS. COLE: We are back where we began.

18 MR. WILLIAMS: You had to remind me,
19 didn't you, Ms. Cole?

20 In terms of the selection criteria for
21 valued environmental components, one of those we
22 can agree was the potential for substantial
23 project effects, correct?

24 MS. COLE: Yes. It's right on the
25 slide.

1 MR. WILLIAMS: And Ms. Cole, and I
2 have probably missed it on the record, but I
3 wonder if you can assist me in understanding for
4 this purpose how Manitoba Hydro defined
5 substantial?

6 MR. DAVIES: One of the things that we
7 did for the assessment was to take a very close
8 look at the project linkages between the project
9 and the VECs, or the potential VECs. And when
10 there was a linkage that had the potential to
11 affect the VEC, affect it in a substantial,
12 meaningful way, then that met the criteria of
13 having the potential for project effects. So
14 there had to be a linkage between the effects of
15 the project and the effects of the project on that
16 specific VEC.

17 MS. COLE: I think I also walked
18 through yesterday, in my speaking notes, that that
19 creates the link, when I was talking about this,
20 that creates the specific link to the project, and
21 that we tried to focus in some cases on components
22 of the environment that are amenable to measuring
23 change, and that where change can be measured, not
24 just today but in the future, and that can tell us
25 in a really meaningful way what the effects of our

1 project are.

2 DR. EHNES: I'd like to add to that,
3 when we talk about substantial, we're not talking
4 about major effects, we're talking about effects
5 that are at least detectable or discernible. If
6 there are no detectable or discernible effects,
7 then there would be no project linkages.

8 MR. WILLIAMS: So, just so I am clear,
9 when you use the word "substantial" in this
10 context, you do not use it as a synonym for
11 significant; is that correct?

12 MS. COLE: That is correct.

13 MR. WILLIAMS: Now, Ms. Cole, you have
14 demonstrated today that you have got the record
15 pretty much memorized, for which I commend you.
16 Can we agree that the word "substantial" appears
17 very frequently in chapter 6 of your report? I
18 can give you some examples, but the word
19 substantial and substantially show up a lot there.
20 Agreed?

21 MS. COLE: Agreed. I think actually
22 there might even be an IR on this, from your
23 organization.

24 MR. WILLIAMS: I will let you pull up
25 the IR, I am not intending to refer to it, but

1 feel free. Ms. Cole, I'll just give you an
2 example of where I'm trying to get precision in
3 how you have used the word. Just as one example,
4 perhaps you could turn to page 618? I don't
5 believe the panel needs to turn there, but page
6 618?

7 MS. COLE: Of the response to EIS
8 guidelines?

9 MR. WILLIAMS: Yes.

10 MS. COLE: Okay. So just to confirm,
11 the page 618 I have deals primarily with past
12 agreements. Is that the same section?

13 MR. WILLIAMS: Yes, absolutely.

14 MS. COLE: Okay.

15 MR. WILLIAMS: And language is used to
16 the effect -- now we might have been going off of,
17 it's section 6.22.36. You used language to the
18 effect that:

19 "The developments were planned and
20 implemented with no involvement or
21 consultation with nearby communities
22 whose traditional lands and way of
23 life were to be substantially
24 altered."

25 Agreed?

1 MS. COLE: So this is the first
2 sentence, I believe, that you are reading?

3 MR. WILLIAMS: Yeah, yeah. Now in
4 that particular context, what does the word
5 substantial mean?

6 MS. COLE: Well, actually I am going
7 to reference back to the IR, even though you're
8 not referencing it. And in the IR, and it's IR
9 CAC 60, you did ask us specifically what we mean
10 by the term substantial. And we indicated there
11 why we were careful in not using the term
12 significance and why we have defined regulatory
13 significance. And one of the challenges that we
14 have, I guess, is that the Canadian Environmental
15 Assessment Act chose to use the word significant.
16 And it's very difficult -- it's a common word in
17 everyday language, but it has a really particular
18 meaning under the Canadian Environmental
19 Assessment Act. And one of the things we
20 struggled with as a partnership is how to
21 acknowledge that just because something doesn't
22 have regulatory significance doesn't mean it's not
23 important.

24 And so we have really looked at ways
25 to -- it's been a language struggle. And I

1 believe actually it's quite well stated in the IR
2 where we said, although the term substantial was
3 used, it is to denote considerable in quantity.

4 MR. WILLIAMS: And let's be clear, for
5 here, you're in no way suggesting that the impacts
6 of those developments historically were not
7 significant in the regulatory context? The
8 corporation is not trying to assert that these
9 were not regulatory significant alterations?

10 MS. COLE: I'm struggling with how to
11 answer this question, Mr. Williams, because I
12 haven't, nor has this Partnership undertaken a
13 post project environmental assessment specifically
14 based on CEA legislation and EIS guidelines to
15 determine what you have just thrown at me, which
16 is the regulatory significance of past projects.

17 I think what's become very clear
18 during the course of opening presentations, what
19 is acknowledged in the EIS, it's talked about
20 through the Keeyask Cree Nation environmental
21 evaluation reports, is that -- and I'm now going
22 to use the everyday common use of the term, that
23 there is no doubt that these projects have had a
24 significant impact on the communities that we're
25 working with.

1 I don't think anyone on this panel
2 would deny that. I don't think anyone at Hydro
3 would deny that. And I don't think any of our
4 partners would deny that. But we haven't gone
5 back and done a regulatory VEC by VEC based
6 assessment on every, on all of the VECs that are
7 in this EIS to say, does that apply to everything?
8 Does it apply to some things? So I'm struggling
9 with how to answer your question, because we have
10 not done an EIS of past projects based on the
11 similar methods that you're asking us for here.
12 And that wasn't the intent of this assessment, to
13 assess the regulatory significance of past
14 projects.

15 MR. WILLIAMS: So just on that
16 specific phrase, and then we're going to go to one
17 or two more examples, we have agreed that, first
18 of all, there's no doubt that it was a substantial
19 alteration?

20 MS. COLE: I think that's stated quite
21 clearly in the EIS.

22 MR. WILLIAMS: And the corporation
23 would go further and say that there is no doubt
24 that in terms of the ordinary usage of the word
25 significant, it has been a significant alteration?

1 That's what you just said?

2 MS. COLE: I would say it's
3 significant, and I think you've heard our partners
4 tell you their story. This was a major change in
5 their lives, past projects.

6 MR. WILLIAMS: But I want to be clear,
7 the corporation is not claiming that these
8 alterations were not significant in the regulatory
9 sense? You are not alleging that they were not?

10 MS. COLE: I don't think we're making
11 a claim either way. I haven't said that they are
12 not -- and they are a regulatory significance
13 perspective and I haven't said they are. What I
14 have told you is that we haven't undertaken an
15 assessment of past projects within that context.

16 MR. WILLIAMS: So, in the course of
17 your environmental assessment, you did not address
18 your mind to the regulatory significance of
19 historic alterations to these lands and to these
20 people?

21 MS. COLE: Yesterday we walked through
22 how the partnership considered past projects and
23 activities, and the importance of considering past
24 projects and activities. And in undertaking this
25 cumulative effects assessment, we did not look at

1 the regulatory significance of every individual
2 past project that's been undertaken. What we did
3 in looking at the past, which is consistent with
4 guidance provided through the CEA guide that we
5 have talked about, as well as some of the works
6 written by Lorne Greig, who you talked about
7 earlier, in his impotence cumulative effects
8 paper, is we took a VEC based approach. And what
9 we did is we looked at the past and we looked at
10 what's happened in the past to understand how a
11 VEC has been affected by past projects and
12 development, the response of that VEC to those
13 past projects and effects, what the current state
14 of a VEC may be. And in some cases we have some
15 VECs which have been substantially or
16 significantly affected by past developments, most
17 importantly lake sturgeon. So we sought to
18 understand and have an understanding of the
19 current state of a VEC through understanding how
20 it's been affected by past developments and how
21 it's responded to those past developments.

22 We have not gone back and picked out,
23 well, this project did this and this project did
24 this and this project did this, because it's not
25 always possible to do that. Many of these

1 projects were developed within the same time frame
2 or close to the same time frame. So we have used
3 those lessons of the past gained through both our
4 understanding through western science, as well as
5 through Aboriginal traditional knowledge to give
6 us the story of the VEC and help us understand how
7 it's responded to past developments, and the
8 current status of that VEC.

9 MR. WILLIAMS: I'd like to just pursue
10 this with -- if you would turn, Ms. Cole, to page
11 6-172? And I'm referring you to the first
12 paragraph.

13 MS. COLE: The one that begins, "Safe
14 and economical access to harvesting"?

15 MR. WILLIAMS: Yes.

16 MS. COLE: That one, okay.

17 MR. WILLIAMS: And on the third line,
18 the narrative speaks of substantially altering the
19 pattern of resource use. And I'm asking you, in
20 that particular context, what the partnership
21 meant by the word substantially?

22 MS. COLE: Well, I think the term
23 substantially would be the same as what I read to
24 you in the IR, which is -- let's go back to the
25 IR.

1 MR. WILLIAMS: If it's the same
2 answer, Ms. Cole, you don't need to.

3 MS. COLE: It's the same answer.

4 MR. WILLIAMS: Let me go further now.

5 MS. COLE: All right.

6 MR. WILLIAMS: In terms of the
7 alteration of the patterns of resource use, the
8 corporation would agree that the alterations were
9 significant and consistent with the ordinary
10 understanding of that word?

11 MS. COLE: I would say that based on
12 an ordinary understanding of the word, one could
13 use substantial or significant. And this is in
14 part the reason that we have the Northern Flood
15 Agreement and the subsequent comprehensive
16 implementation agreements, is an acknowledgment
17 that there was an effect here.

18 MR. WILLIAMS: And am I correct in
19 suggesting that the corporation's analysis, in its
20 Environmental Impact Assessment, did not address
21 itself to the question of whether the historic
22 impacts of hydroelectric development on the Nelson
23 River have had an impact on patterns of resource
24 use that are significant within the meaning --
25 within the regulatory meaning?

1 MS. COLE: Well, I think I have
2 actually already answered that question, which is
3 that we did not do a post project environmental
4 assessment based on the Canadian Environmental
5 Assessment Act. What we did is seek to understand
6 how things have changed, and the extent and
7 magnitude of that change, and what that has meant
8 for a particular VEC. So we would have a very
9 clear understanding of what the state of that VEC
10 was, to put it into context so to speak
11 historically, so that going forward we had a sense
12 of the importance of any further change that may
13 take place.

14 MR. WILLIAMS: Thank you. Now, we had
15 that handy dandy little chart on slide 23. I feel
16 quite apologetic about making anyone flip back and
17 forth, but we shall.

18 MS. COLE: That's all right.

19 MR. WILLIAMS: Now, this chart does
20 not outline the principles of sustainability
21 analysis. It's just not here on this particular
22 page, agreed?

23 MS. COLE: Well, it's not on this page
24 in part because the partnership was asked to
25 undertake an environmental effects assessment

1 consistent with existing legislation. We were not
2 asked to undertake a sustainability assessment of
3 our project.

4 MR. WILLIAMS: Were you the primary
5 author of the sustainability analysis?

6 MS. COLE: We did not undertake a
7 sustainability analysis.

8 MR. WILLIAMS: Sorry, you have a
9 chapter in your response to your EIS guidelines
10 discussing whether it's in accordance with the
11 principle of sustainable development. Were you
12 the primary author of that section?

13 MS. COLE: No, I was not.

14 MR. WILLIAMS: Who was, Ms. Cole.

15 MS. COLE: So, if we turn to chapter
16 9, chapter 9 provides some context for sustainable
17 development, and it compares the Keeyask project
18 against the principles of sustainable development
19 as outlined by our Partners, by the Federal
20 Government, and by the Province, and also by
21 Manitoba Hydro's guidelines for sustainable
22 development which we discussed this morning.

23 There are many different -- it's a
24 multi-faceted chapter, because it's pulling from
25 several different pieces of information to

1 indicate how we believe the project meets the
2 specific principles or guidelines or indicators.
3 So there was not one specific author, but rather
4 several different authors contributed to this
5 chapter.

6 MR. WILLIAMS: So if we choose to ask
7 questions, Ms. Cole, who would we address those
8 questions to?

9 MS. COLE: You can ask me.

10 MR. WILLIAMS: Okay. We may get to
11 that but probably not today. I'm mindful of the
12 time.

13 On slide 8, Ms. Cole, the corporation
14 sets out the purposes of these documents and of
15 this assessment. And Ms. Cole, I want to back
16 away from your text here and kind of look at the
17 big picture of why we do EIA or EIS. And I'm
18 going to suggest a series of reasons and see if
19 you'll agree with me. But one of the reasons we
20 undertake this type of analysis, one, is to
21 identify potential effects that may require
22 mitigation in order for the project to proceed.
23 That's one of the things we're trying to do.
24 Agreed?

25 MS. COLE: Can you just repeat what

1 you read again? I'm sorry.

2 MR. WILLIAMS: I'm not sure I'm
3 reading it.

4 MS. COLE: Oh, okay, I thought you
5 were.

6 MR. WILLIAMS: One of the purposes
7 that we do this whole, why we're producing all
8 this paper, all these maps, is we want to identify
9 potential affects, that if the project is going to
10 proceed may require mitigation. Agreed?

11 MS. COLE: Well, I don't think that
12 the purpose of the assessment is just to identify
13 those effects. It's also to identify the
14 mitigation that we could implement, and to talk
15 about how certain we are in that mitigation, how
16 we think it will work, and to identify residual
17 effects remaining after the mitigation.

18 MR. WILLIAMS: So that's one of the
19 things we are trying to accomplish when we
20 undertake this exercise, agreed?

21 MS. COLE: Absolutely, we are trying
22 to plan a good project.

23 MR. WILLIAMS: And we want to also
24 identify risks and uncertainties associated with
25 the proposed project. Agreed?

1 MS. COLE: Yes, I would agree with
2 that. And this morning we walked through that
3 actually within the context of the ATK principles
4 and the importance of taking a precautionary
5 approach in part for that reason.

6 MR. WILLIAMS: And we want to
7 ultimately, Ms. Cole, achieve an outcome that
8 ensures the environment is protected and
9 maintained in a manner that sustains a high
10 quality of life? Agreed?

11 MS. COLE: I'm struggling to agree
12 with you only because --

13 MR. WILLIAMS: It's really easy to
14 agree with me. Most people do.

15 MS. COLE: I do agree with you. I am
16 just like, how does one define what's a high
17 quality life, right? Everyone might have a
18 different definition.

19 MR. WILLIAMS: That's the Environment
20 Act.

21 MS. COLE: I think it's that component
22 of it that I'm struggling with. But, yes, I would
23 agree that that's what we do.

24 MR. WILLIAMS: And that's the language
25 of the Environment Act.

1 MS. COLE: Fair enough.

2 MR. WILLIAMS: And one of the reasons
3 we undertake this whole massive exercise is at the
4 end of the day, the Minister has got to make a
5 decision whether or not the proposed project
6 should proceed?

7 MS. COLE: Yes. But I think, as noted
8 in my presentation, I think the partnership felt
9 that it went a little bit beyond that. We weren't
10 just focused on regulatory approval, but also on
11 designing a project that was acceptable to our
12 partners and that we could all agree on. So I
13 don't want to leave the impression that the focus
14 here has been 100 percent getting regulatory
15 approval.

16 MR. WILLIAMS: But that would
17 certainly be an added bonus, would it not?

18 MS. COLE: Well, you know, if the
19 project is going to proceed, it kind of matters,
20 yeah.

21 MR. WILLIAMS: Just staying at a
22 conceptual level. From a societal perspective,
23 could we describe the purpose of an Environmental
24 Impact Assessment or statement as a process
25 designed to sustain environmental values when

1 projects that might compromise those values are
2 being proposed? That's what we're trying to do?

3 MS. COLE: Yes, that sounds
4 reasonable.

5 MR. WILLIAMS: I've got an easy one
6 for you this time Ms. Cole. Slide 32.

7 MS. COLE: I thought maybe you were
8 going to ask me my name or something, my middle
9 name or something.

10 MR. WILLIAMS: I'm not referring to
11 the language here yet, but based upon your
12 knowledge, Ms. Cole, of the literature, and upon
13 your academic experience and work experience, you
14 are familiar with the well-known phrase that all
15 effects are cumulative in nature?

16 MS. COLE: Yes, I actually believe
17 probably Lorne Greig has said that many times.

18 MR. WILLIAMS: And that's a statement
19 you agree with wholeheartedly?

20 MS. COLE: I don't know if I would say
21 that the only effects that matter are the
22 cumulative effects, because depending on the
23 project, there might be --

24 MR. WILLIAMS: Okay. What I was
25 asking you to agree with was the statement that

1 all effects are cumulative in nature?

2 MS. COLE: I suppose that's fair.

3 MR. WILLIAMS: And we don't need to
4 repeat the language, but on slide 32 you have
5 repeated the well-known language from the -- in
6 terms of suggesting that CEA is environmental
7 assessment as it should always have been. It's an
8 environmental impact assessment done well, that's
9 the language you have repeated here?

10 MS. COLE: Yes.

11 MR. WILLIAMS: So I want to push you
12 on this point a little further to see if you would
13 agree to a modification of this statement?

14 MS. COLE: Oh, okay.

15 MR. WILLIAMS: Would you agree with
16 the proposition that good practice CEA, good
17 practice CEA, that appropriately outlines its
18 level of confidence, as well as its limitations
19 and uncertainties, is environmental assessment as
20 it should always have been?

21 MS. COLE: That's a bit more than a
22 slight modification.

23 MR. WILLIAMS: Well, the thinking has
24 evolved of course, Ms. Cole, since 1999.

25 MR. DAVIES: Could you read that one

1 more time, please?

2 MR. WILLIAMS: Mr. Davies, I will do
3 my best.

4 The proposition I am putting to the
5 panel is that good practice CEA, that
6 appropriately outlines its level of confidence as
7 well as limitations and uncertainties, is
8 environmental assessment as it should always have
9 been?

10 I thought I was offering you a
11 motherhood statement.

12 MS. COLE: You are offering me a
13 motherhood statement. I just have to check with
14 my other folks here, make sure everyone's
15 comfortable. So we want to know if you're quoting
16 something to us or if this is something that you
17 have thought of?

18 MR. WILLIAMS: Mr. Chair, I have been
19 asked to offer evidence, and so I'm reluctant to
20 do that.

21 Ms. Cole, I'm going to suggest to you
22 that at the heart of Mr. Hegmann's article of
23 Alchemy to Reason is that very premise.

24 MS. COLE: Okay. Well, we have all
25 reviewed it and we're not uncomfortable. We would

1 agree with you that good practice assessment does
2 talk about the level of confidence in the
3 findings, the limitations in the findings, as well
4 as any uncertainties. And I think we are all in
5 agreement that we are quite confident that the
6 Keeyask EIS has done that. We have identified
7 where we think there are limitations. We have
8 identified monitoring. We have identified
9 uncertainty. So we're comfortable with your
10 statement.

11 MR. WILLIAMS: Okay. Of course, we
12 may resume this conversation next week.

13 MS. COLE: I'm sure we will.

14 MR. WILLIAMS: I want to go, just for
15 the purposes of illustrating a practical example
16 of cumulative effects, Ms. Cole, I just do want to
17 turn to -- you don't need to turn there, no one
18 else has it, but you did some research for your
19 masters thesis in the Himalayan's. Do you
20 remember that?

21 MS. COLE: We're going back to my
22 article now?

23 MR. WILLIAMS: Yes.

24 MS. COLE: Okay.

25 MR. WILLIAMS: Do you recall that?

1 MS. COLE: Yes, I recall.

2 MR. WILLIAMS: And you were, in
3 essence, examining the ecological footprint from
4 the cumulative effects of the tourism industry
5 upon a mountain resort in the Himalayan's.
6 Agreed?

7 MS. COLE: Yes, it was looking at a
8 cumulative effect based on a very specific
9 methodology known as ecological footprint
10 methodology.

11 MR. WILLIAMS: And for the purposes of
12 our conversation, I'm not that interested in the
13 methodology. What I am interested is the
14 particular case that you studied.

15 MS. COLE: Yes.

16 MR. WILLIAMS: You looked at a
17 community that went from two hotels roughly, in
18 1970, to about 700, 25 years later, agreed?

19 MS. COLE: Yes, I agree. It's an area
20 in northern Indian up in the Himalayas. And when
21 the Kashmir district became very dangerous, this
22 very small community became effectively like the
23 Niagara Falls of India. It was the place that
24 people went for honeymoons and that you took your
25 family to on a family holiday. It's beautiful.

1 MR. WILLIAMS: And so along with that
2 dramatic increase in hotels, there was a dramatic
3 increase in tourists, correct?

4 MS. COLE: Yes.

5 MR. WILLIAMS: And that dramatic
6 increase in hotels and in tourists appeared to be
7 related to a number of adverse effects, including
8 atmospheric pollution, and a substantial increase
9 in the amount of waste. Agreed?

10 MS. COLE: Yes, I agree. And I'm not
11 sure whether anyone on the panel here has ever
12 been to India, but certainly air pollution and the
13 management of waste are matters that are maybe not
14 as well managed in India, certainly not in 2002,
15 as they would be in Canada.

16 MR. WILLIAMS: And just a simple point
17 of that example, Ms. Cole, is that while moving
18 from two hotels to three hotels, or from 499
19 hotels to 500 hotels, in itself seems relatively
20 insignificant. At a certain point a threshold is
21 crossed, agreed? Instead of a death of a thousand
22 cuts, it's a death of 700 hotels.

23 MS. COLE: Certainly there is the
24 potential for a threshold to be reached. You're
25 taking me back many years.

1 MR. WILLIAMS: Yeah.

2 MS. COLE: I don't know if I
3 identified a threshold.

4 MR. WILLIAMS: Fair enough.

5 MR. DAVIES: And you didn't want to
6 focus on the methodology of this paper. It
7 actually does matter. It's quite focused on
8 looking at land area required to support a
9 community, it's a way of measuring effect, so...

10 MR. WILLIAMS: Ms. Cole, let's take it
11 away from this paper and go to the concept of
12 thresholds, and you discussed threshold yesterday?

13 MS. COLE: Yeah.

14 MR. WILLIAMS: And I'm not really
15 relying on your presentation.

16 MS. COLE: That's okay.

17 MR. WILLIAMS: But can we agree that
18 when a response threshold is crossed, cumulative
19 effects theory suggests that the behaviour of
20 system components can change in a way that is
21 difficult to reverse.

22 MS. COLE: Can you repeat your
23 question for me again? I want to make sure we
24 answer it.

25 MR. WILLIAMS: I'll rephrase it.

1 MS. COLE: Certainly.

2 MR. WILLIAMS: Ms. Cole, and we'll
3 approach it in baby steps. I'm not being
4 dismissive, but my question may be --

5 MS. COLE: No, no, it's okay. It's an
6 important question.

7 MR. WILLIAMS: -- inelegant, and I
8 apologize for the imprecision of my question.

9 One of the reasons that we seek to
10 develop thresholds for cumulative effects, if they
11 exist, is because that crossover point, when you
12 have crossed over that threshold is an important
13 time to be aware of. Agreed?

14 MS. COLE: Yes. We described it
15 yesterday as a limit of tolerance that, if
16 exceeded, results potentially in an adverse
17 response by a VEC.

18 MR. WILLIAMS: And I'm trying to
19 elaborate on that point by suggesting to you that
20 why we're so alert to crossing that threshold is
21 that when those thresholds are crossed, the
22 behaviour of system components can change in a way
23 that is difficult or impossible to reverse.
24 That's why we're so alert to those thresholds.
25 Agreed? It's a pretty fundamental premise of

1 cumulative effects theory, is it not?

2 MS. COLE: Well, it's the latter part
3 of your theory that I'm struggling with.

4 Maybe James, you can --

5 DR. EHNES: Yes. In some conditions
6 and some systems, yes, there can be a threshold
7 reached where there is a change that is difficult
8 to reverse. And of course in environmental
9 assessment land use management, good planning, the
10 Clean Environment Commission wants to ensure that
11 the system or VEC, a species never gets to that
12 point. Which is why we described yesterday
13 benchmarks which are precautionary levels of
14 stress, if you would like to put it that way, that
15 have been used in the effects assessment. So that
16 we are well away from approaching those
17 thresholds. And in terms of the analysis, the
18 studies that had been done, they have all been
19 done with a view to staying well away from those
20 ecological or biological thresholds which is why
21 we identified the benchmarks.

22 MR. WILLIAMS: And the risk and the
23 reality as one approaches those thresholds --

24 DR. EHNES: As I just said, we are not
25 trying to approach those thresholds.

1 MR. WILLIAMS: But why --

2 DR. EHNES: We are explicitly trying
3 to avoid getting to those thresholds.

4 MR. WILLIAMS: And the reason we are
5 trying to avoid getting those thresholds, sir --

6 DR. EHNES: And then some --

7 MR. WILLIAMS: Let me ask my question,
8 sir. I thought you were finished. So I'm going
9 to try to ask mine and then please feel free to
10 chip in.

11 The reason we are concerned and wish
12 to avoid approaching those thresholds is that as
13 we approach or cross those thresholds, each
14 additional disturbance, I think the fancy word is
15 perturbation, can represent a high marginal cost
16 to the environment. Agreed?

17 DR. EHNES: If we are actually
18 approaching those thresholds.

19 MR. WILLIAMS: Ms. Cole, or certainly
20 to the rest of your panel, would it be fair to say
21 that a lesson that we have as a society learned
22 from cumulative effects assessment is that
23 ecological systems are complex and that they often
24 respond to disturbance in a non-linear fashion.

25 DR. EHNES: That is correct.

1 MR. WILLIAMS: And, sir, if I
2 interrupted you before, I didn't mean to. I think
3 we were both kind of at cross-purposes.

4 DR. EHNES: And I apologize. This
5 cold is kind of causing me to stop and catch
6 breath.

7 MR. WILLIAMS: And would it be
8 accurate to say that in seeking to forecast the
9 effects of disturbances upon already disturbed
10 environments, that that analytic or forecasting
11 process is inherently difficult to forecast in the
12 short-term or in detail?

13 DR. EHNES: Again, I would repeat the
14 comment I made previously. If we were in fact
15 reaching that point in a system or for a species.

16 MR. WILLIAMS: We have agreement if
17 we're approaching or reaching that point?

18 DR. EHNES: Yes.

19 MR. WILLIAMS: Okay. That was tough.
20 Slide 60, Ms. Cole. I think this is an easy one.
21 Famous last words.

22 MS. COLE: I was just thinking the
23 same thing.

24 MR. WILLIAMS: Ms. Cole, as part of
25 its Two-track process, which my client certainly

1 commends Hydro for, Hydro's partners assumed
2 primary responsibility for drafting certain
3 sections of the response to the EIS guidelines.
4 One example of that being section 2.2 which
5 articulates the world view of the Cree?

6 MS. COLE: Yes.

7 MR. WILLIAMS: I would be correct in
8 suggesting to you that if I was looking at chapter
9 7, being the assessment of cumulative effects,
10 Hydro's partners were not the primary drafters of
11 that document. Agreed? That chapter?

12 MS. COLE: Well, I'm going to start by
13 correcting a premise in your lead-in there which
14 is that chapter documents cumulative effects with
15 future projects. And it summarizes the effects of
16 the project acting in combination with past and
17 current activities as they are described in
18 chapter 6. Certainly the Cree were not the
19 primary authors of that chapter, but I think we
20 made it quite -- we spent quite a lot of time
21 discussing the environmental protocol that's been
22 established between Manitoba Hydro and our
23 partners. And we work together jointly on the
24 environmental assessment. So methodology, the
25 final EIS, were all developed, reviewed and

1 discussed through both an EIS coordination team as
2 well as through the partners' regulatory and
3 licensing committee. All of the Cree had a review
4 and comment function. The Cree Nation Partners
5 had a review and approved function. And the final
6 filing itself was actually approved by the
7 partners of the licensing committee before we
8 filed it. So while not the primary author, they
9 have certainly had lots of opportunity to review
10 and comment on that aspect of the assessment, well
11 all aspects of the assessment.

12 MR. WILLIAMS: Who would have been the
13 primary author of that particular chapter,
14 Ms. Cole, or was it by committee?

15 MS. COLE: This one is definitely by
16 committee. This one walks through basically a
17 summary of everything that's contained in chapter
18 6 and then provides additional assessment and
19 analysis based on our understanding of how the
20 effects to the VECs that are impacted by Keeyask,
21 how there may be overlapping effects with the
22 effects of future projects and activity. So there
23 is no one person who could write that. We have
24 several specialists who work on our study team and
25 have different areas of expertise. And each of

1 those specialists will have written for themselves
2 their components of chapter 7.

3 MR. WILLIAMS: So if it was the
4 sturgeon specialist who did the section 6 work, it
5 would have been the sturgeon specialist who drew
6 the section 7 conclusions; is that correct,
7 Ms. Cole? It doesn't have to be sturgeon but
8 that's essentially what you're saying?

9 MS. COLE: Yes.

10 MR. WILLIAMS: Okay. Oh so long ago,
11 Ms. Cole, you were expressing your enthusiasm for
12 the debate about the direction of cumulative
13 effects practice. And you were aware that with a
14 Canadian CEA, cumulative effects analysis
15 literature, and among leading practitioners, there
16 has been considerable commentary about the current
17 state of CEA practice in Canada. Agreed?

18 MS. COLE: Agreed.

19 MR. WILLIAMS: Could I go so far as to
20 get you to agree with me that some of the leading
21 practitioners have been lamenting the state of
22 current CEA practice in Canada?

23 MS. COLE: Yes. You have quoted some
24 articles to me this morning where there are CEA
25 practitioners who are lamenting the state of CEA

1 practice.

2 MR. WILLIAMS: And I hope it wasn't
3 this morning.

4 MS. COLE: Oh, it's this afternoon.
5 It's a long day.

6 MR. WILLIAMS: It seems like so long.
7 I thought we were having fun, though.

8 MS. COLE: We are.

9 MR. WILLIAMS: And of course, Dunker
10 and Greig concluded that continuing the kind and
11 quality of CEA currently undertaken in Canada is
12 doing more harm than good?

13 MS. COLE: That is certainly a
14 criticism raised by Dunker and Greig, but that's
15 the final conclusion. They will also walk through
16 in that same article. I believe you're
17 referencing the article entitled "The Impotence of
18 Cumulative Effects Assessment in Canada, Ailments
19 and Ideas for Redeployment." They walk through
20 what they believe some of the key problems are.
21 And one of the main problems raised in that paper
22 is they focus exclusively on project effects and
23 not taking a VEC-centric or a VEC-based approach.

24 And I think one of the things that we
25 have laid out clearly here is that we're not just

1 looking at, you know, the 10 fish that the project
2 might affect, we've gone back through to the past
3 to understand historical status and to put the
4 state of a VEC into context, and to understand how
5 a VEC might change over time with the Keeyask
6 project in place, with everything else that's
7 happened in the past and then we have looked at
8 well what's coming in the future and what might
9 that state of a VEC be in the future if other
10 projects are implemented that we believe are
11 certain or reasonably foreseeable?

12 And so that actually is one of the
13 biggest concerns raised in this paper and it's
14 what I believe we have addressed quite well.

15 MR. WILLIAMS: And, Ms. Cole, if
16 you're not familiar with this, you'll just let me
17 know. But could we agree as well that
18 Mr. Hegmann, in his recent written work, has been
19 commenting upon the current poor showing of CEA
20 practice in Canada?

21 MS. COLE: He may well be. I don't
22 have it in front of me what you're talking about.

23 MR. WILLIAMS: That's fair enough,
24 okay.

25 THE CHAIRMAN: Mr. Williams, I'm just

1 looking to a time for an afternoon break. Are you
2 going to be much longer?

3 MR. WILLIAMS: Mr. Chair, I don't
4 expect to be much longer but I might be able --
5 there's a couple of, a question directed to three
6 of the particular experts that I can, over the
7 break, draw to their attention and that might make
8 things work a little more, save us a couple
9 moments of page shuffling. So a break right now
10 will be appropriate.

11 THE CHAIRMAN: Okay. Let's take a
12 break for about 10 minutes, come back about 3:10.

13 (Proceedings recessed at 3:00 p.m. and
14 reconvened at 3:10 p.m.)

15 THE CHAIRMAN: I would like to
16 reconvene, please. I just note that we have about
17 an hour and a quarter until 4:30. I hope we can
18 conclude all of the cross-examination in that
19 time, because I do know that a few people have
20 travel arrangements out of town this evening. If
21 not, we may well have to carry it over until
22 Monday morning.

23 Mr. Williams.

24 MR. WILLIAMS: Ms. Cole, I'm going to
25 direct this question to you. If you decide this

1 one you would like to refer to one of your
2 colleagues, that's certainly fine with me.

3 MS. COLE: Fair enough.

4 MR. WILLIAMS: Of course, that's
5 always your option.

6 Ms. Cole, can it be said that in
7 addressing conclusions related to significance,
8 the discussion tends to focus attention on the
9 kind of forecasting that generally cannot be
10 performed with great confidence? Do you want me
11 to repeat that? Can it be said that in addressing
12 conclusions related to significance, the
13 discussion tends to focus attention on the kind of
14 forecasting that generally cannot be performed
15 with great confidence?

16 MS. COLE: Can I ask you -- can I ask
17 you a clarifying question? Sorry, I thought I
18 heard someone else speaking.

19 Is this a general statement, or are
20 you pulling specifically from our assessment and
21 saying that throughout our assessment our focus
22 has generally been basically on conclusions?

23 MR. WILLIAMS: No, and I apologize for
24 the imprecision. Most of our discussion today has
25 been conceptual.

1 MS. COLE: So we are going back to
2 conceptual?

3 MR. WILLIAMS: We are going back to
4 high level conceptualization of the practice of
5 cumulative effects assessment.

6 And Ms. Cole, if I can assist, another
7 way to state the question --

8 MS. COLE: Are you reading from an
9 article that one of us should have, or is this a
10 quote or -- I feel you are asking me out of
11 context, and that I might be agreeing to something
12 in an article that might have tons of other
13 context and --

14 MR. WILLIAMS: I'm happy to share the
15 document with you, Ms. Cole, although I'm kind of
16 working with my own interpretation, but I will
17 take guidance from your legal counsel. It is a
18 document that you personally have explained that
19 you are not familiar with, so I didn't want to put
20 you in the spot of referring to it. So let me try
21 asking the question in a different way.

22 MS. COLE: Ask it in a different way,
23 sure.

24 MR. WILLIAMS: A challenge for an
25 expert in a cumulative effects assessment often is

1 the absence of guidance on thresholds, such that
2 there is often little available to equivocally
3 state significant or not significant.

4 MS. COLE: Okay.

5 DR. EHNES: We stated in the EIS that
6 there are very few regulatory thresholds or
7 thresholds that are generally accepted by the
8 scientific community. We do have confidence, and
9 there is sufficient scientific evidence, although
10 we don't have established thresholds to identify a
11 range where there can be substantial, or change to
12 a VEC, or to the eco-system condition that is of
13 concern, and that's why we worked with benchmarks
14 which were set below those levels where we -- or
15 that range where, from a scientific perspective,
16 we anticipated those thresholds or that threshold
17 would be for the particular attribute or condition
18 that we were examining.

19 MS. COLE: I would actually like to
20 build on, since we are --

21 MR. WILLIAMS: Please do?

22 MS. COLE: I would like to build a
23 little bit on James's article and come back to the
24 article that you referred to me right before our
25 break, which was the article written by Dunker and

1 Greig. In that article the authors are quite
2 clear that if you don't know a threshold, and
3 sometimes it is impossible to know a threshold,
4 then the duty of a proponent and the person
5 undertaking the assessment is to exercise caution,
6 and extreme caution. And that's what we have done
7 with the benchmarks. We have set them well below
8 what we believe is the range of the threshold for
9 the VEC, so that we can be more confident in our
10 assessment and have more certainty that we do not
11 have a significant adverse effect.

12 MR. WILLIAMS: But, Ms. Cole, I'm
13 going one step further, and I'm saying that in
14 asking your specific experts to draw conclusions
15 about significance or not significance, you are
16 putting them into territory where there is not a
17 lot of unequivocal support for that conclusion.
18 In essence, what I'm suggesting, Ms. Cole, I will
19 try it one more time.

20 MS. COLE: Certainly.

21 MR. WILLIAMS: We are asking CEA and
22 CEA practitioners to wear a cloak of certitude
23 that does not fit.

24 DR. EHNES: To your first question I
25 would have answered, not at all, because we are

1 using benchmarks that are set below where we
2 expect the thresholds to exist.

3 MR. WILLIAMS: How about my second?
4 It was poetic if nothing else.

5 DR. EHNES: It was a variation on the
6 first I thought.

7 MR. WILLIAMS: I understand. Just a
8 few cleanup questions to the specific, three of
9 the practitioners -- apologies to you, Mr. Rempel,
10 I'm sorry.

11 Mr. Davis, at page 716 of the response
12 to the EIS guidelines, you talk about the aquatic
13 environment in the lower Nelson River being
14 substantially altered by past hydroelectric
15 developments, and that it continues to experience
16 those effects today. Agreed?

17 MR. DAVIES: That's correct.

18 MR. WILLIAMS: And to repeat a dull
19 theme, in terms of substantial, sir, how do you
20 use that word?

21 MR. DAVIES: I think we could use
22 considerable as a synonym.

23 MR. WILLIAMS: Considerable?

24 MR. DAVIES: Considerable, and it goes
25 back to the IR CAC 0060, which on line 54 reads:

1 "Although the term substantial was
2 used in multiple locations in chapter
3 6 of the response to the EIS
4 guidelines to denote considerable in
5 quantity."

6 I guess in this respect, similar to significant
7 being great, it was not employed to avoid or
8 compromise the regulatory significant assessment
9 required for each of the 38 VECs. Again, in
10 addition, we weren't really talking about a VEC
11 there. So the term considerable is, I believe,
12 applicable.

13 MR. WILLIAMS: And Mr. Davies, just
14 while I have your attention, at page 654 of the
15 response to the EIS guidelines, you suggest that
16 the effects of Keeyask will be superimposed upon a
17 disrupted environment. Agreed?

18 MR. DAVIES: Yes, that's correct.

19 MR. WILLIAMS: And with precision, the
20 disrupted environment, what definition are you
21 using for that, sir?

22 MR. DAVIES: We will be able to talk
23 about more of this in the aquatic and terrestrial
24 panel, but essentially what we are trying to say
25 is that, if there has been an effect on lake

1 sturgeon in Stephens Lake as a result of Kettle,
2 or as a result of commercial fishing or other
3 factors, that is taken into account when we are
4 looking at the VEC and mitigation that's
5 appropriate for that VEC.

6 MR. WILLIAMS: Now, in this section,
7 sir, of course you are not just speaking to lake
8 sturgeon, you are speaking aquatic environment.
9 Agreed?

10 MR. DAVIES: That's correct.

11 MR. WILLIAMS: I might have misheard
12 your answer, but elaborate on your definition or
13 description of the existing environment as a
14 disrupted environment?

15 MR. DAVIES: I think it is fairly
16 clear that with the Kettle Generating Station
17 there, that it is disrupted environment that is
18 different than what was there prior. I think it
19 is self-explanatory.

20 MR. WILLIAMS: Substantially
21 disrupted, sir?

22 MR. DAVIES: I would say considerably.

23 MR. WILLIAMS: I will ponder that over
24 the weekend.

25 I suspect I'm going to get the same

1 answer from Ms. Kinley and Dr. Ehnes, so I will
2 save us all the pain.

3 Ms. Cole, just coming back to your
4 work in Manali for a moment, was the end to the
5 story and the end to your article a disclosure
6 that in that circumstance the High Court passed a
7 complete ban on future tourism developments in the
8 Manali area subject to future study? I believe it
9 is at page 140 of your -- on the right-hand side.

10 MS. COLE: It has been a while. I
11 wasn't expecting to be discussing this today, I
12 must admit. I'm having trouble finding that
13 specific recommendation.

14 MR. WILLIAMS: It wasn't a
15 recommendation, and I don't want to belabour the
16 point, but, Ms. Cole, if you turn to the bottom,
17 the last paragraph on 140, the fifth line?

18 MS. COLE: Okay.

19 MR. WILLIAMS: What happened in that
20 story, at least in 2001, is they passed a complete
21 ban on future tourist development until they did
22 additional study; is that fair?

23 MS. COLE: I'm assuming that was
24 accurate at the time, that the High Court had
25 passed a ban on further tourist development in

1 Manali in 2001. My research was undertaken in
2 1998, and this is very specific to this particular
3 circumstance.

4 MR. WILLIAMS: Of course, okay.
5 Members of the panel and the Hydro panel, I thank
6 you both for your patience and considerable
7 insight.

8 THE CHAIRMAN: Thank you,
9 Mr. Williams. Fox Lake Citizens?

10 MS. PAWLOWSKA: Good afternoon. So I
11 have a few questions that are perhaps more
12 straightforward than the technical stuff that
13 lawyers have presented, but some of the questions
14 are, once again I'm stating that, directly from
15 community members that I represent. And I'm not
16 the legal advisor, I am just representing them
17 here.

18 So the first question I have is, were
19 the community consultations a two-track approach?

20 MS. COLE: Yes, the community
21 consultations were in many ways a two-track
22 approach. Marc alluded to that earlier in
23 answering an IR. Each of our partner communities
24 was provided funding to undertake consultation
25 with its own members, not just on the

1 environmental assessment, but on becoming
2 partners. It was a very difficult decision for
3 communities, and so the communities were afforded
4 the opportunity to undertake for themselves
5 consultation with their members to determine how
6 they felt about the project.

7 MS. PAWLOWSKA: Thank you. Is the
8 format of this presentation, with the powerpoint
9 and you reading out, the same format that was used
10 in many of the community presentations?

11 MS. COLE: I have to be frank, I can't
12 answer that question because I wasn't engaged in
13 most of the community consultation that took
14 place. Most of it was undertaken by the community
15 on its own. Hydro wasn't involved in a lot of
16 that consultation. So that's a great question and
17 it is probably best answered I think by the KCN
18 panel, and they will speak specifically to the
19 engagement processes that they undertook.

20 MS. PAWLOWSKA: And the PIP
21 consultations, were they of a similar format?

22 MS. COLE: Within the communities, no,
23 the PIP consultations generally didn't involve a
24 detailed powerpoint, particularly open houses.
25 Typically they involved a series of story boards

1 and a lot of maps. One of the things that we
2 found works really well and generates a lot of
3 discussion are maps. The communities that we
4 worked with, we found a place has a lot of
5 meaning, and people relate to the land and they
6 understand their experiences based on where they
7 have been in the landscape. So a lot of the
8 consultation through PIP has focused a lot on
9 project maps, and images of project
10 infrastructure, and generating conversation
11 through those means, as well the model and sort of
12 the -- I don't know, there is the big model and
13 the water model that are outside, and anyone who
14 has been in a meeting with those models around,
15 they definitely generate a lot of discussion.

16 MS. PAWLOWSKA: So the model that is
17 outside, the 3D, that went up north as well?

18 MS. COLE: Yes, we have carried it all
19 over the place.

20 MS. PAWLOWSKA: Did Manitoba Hydro
21 ever meet directly with any of the elders to
22 discuss Keeyask?

23 MS. COLE: There have been a number of
24 meetings with the community over the course of
25 this project. I mean, we have been working

1 together to plan it for the last ten years. So
2 certainly elders have participated in many of
3 those meetings. As well, Fox Lake, who is your
4 client, over the course of the last two or three
5 years, and I believe they talked about this in
6 their opening remarks, has established what they
7 refer to as their core elders group. And I am not
8 even going to try and say it in Cree, because I
9 always say it wrong, but it is "comes from the
10 heart." And certainly members of our
11 environmental team have met on several occasions
12 with the core elders group directly to review and
13 discuss studies that are being undertaken and to
14 get feedback and perspectives on those studies.

15 MS. PAWLOWSKA: Has anybody ever met
16 with the elders to discuss the VECs?

17 MS. COLE: It is my understanding that
18 there were elders involved in both the VEC
19 workshops that were held directly between
20 ourselves and the partners that we talked about
21 earlier today. So, yes.

22 MR. DAVIES: The VEC workshops were
23 held on June 19th, 2008, and September 17th and
24 18th, 2008, and elders participated in the
25 workshops.

1 MS. PAWLOWSKA: Okay, thank you.

2 Did you meet with the First Nation
3 partners to discuss slide 63 on this presentation?
4 This is the slide on applying ATK principles?

5 MS. COLE: Yes.

6 MS. PAWLOWSKA: Those and ATK
7 principles, so the two I suppose.

8 MS. COLE: Okay. Why don't we talk
9 about the ATK principles first? I think during
10 the course of my meeting, talking about that today
11 I indicated that those ATK principles were
12 developed through the course of several workshops
13 starting in 2009 -- starting in 2008. And they
14 were developed jointly with all of the partners
15 and agreed to by all of the partners. So this is
16 certainly, absolutely we met with the partners.
17 And we wouldn't have put that in any way in the
18 EIS if there wasn't complete agreement on
19 including that in the EIS.

20 Slide 63 talks about how those
21 principles were applied. Yesterday I think it was
22 in response, and maybe it was a few days ago, I'm
23 losing track of time, to a question raised by
24 Ms. Whelan Enns about working together on getting
25 ready for the hearing. And I think Ms. Pachal

1 answered and spoke about how as partners we spent
2 a lot of time working together to get ready to
3 come here, and to make sure we agree with how we
4 might answer questions, and what we are presenting
5 in presentations.

6 So this particular presentation has
7 been available and has been -- I don't know, we
8 have done a dry run two times now, and the
9 partners were invited to participate in that
10 process and to provide feedback.

11 MS. PAWLOWSKA: So if we were to ask a
12 lot of Cree Nation Partners and Partner Cree
13 Nations that these are the ATK principles, they
14 would agree there is nine of them?

15 MS. COLE: Those are the ATK
16 principles that were agreed to for the purposes of
17 undertaking the Keeyask Environmental Assessment.
18 There may be other broader ATK principles, but
19 these are what we agreed to together for the
20 purposes of undertaking the Keeyask assessment,
21 and they are written right in the Keeyask
22 assessment. What I read you this morning is
23 directly out of the EIS. I didn't change any of
24 the words.

25 MS. PAWLOWSKA: Thank you.

1 When you met with the Fox Lake members
2 or with the other First Nation members, did you
3 have a strict set agenda that you presented, or
4 did you let them guide the process for speaking
5 and for discussions?

6 MS. COLE: Yes.

7 MS. KINLEY: If you are speaking about
8 the process of developing the ATK principles
9 originally?

10 MS. PAWLOWSKA: No, I'm actually
11 speaking, every time you met with the First Nation
12 partners, did you have a set of agenda that you
13 handed out to the members who were present, or did
14 you let the elders and the First Nations to
15 actually set the agenda for you?

16 MS. KINLEY: I was going to offer with
17 respect to the original workshop that we had, the
18 ATK workshop, the agenda was very simple. It was
19 each of the partner First Nations spoke about
20 their perspectives with regard to what ATK was and
21 what the principles should be. And then Manitoba
22 Hydro went last. And out of that process the
23 group asked -- there is a group called the EIS
24 coordinators, which is one of the multi-party
25 groups that was involved in developing the

1 environmental assessment, and at the end of that
2 workshop they asked the EIS coordinators to take
3 the results and ideas that were developed at that
4 workshop, to take them away and develop principles
5 and then look at how to apply them.

6 So that was in June of 2008, and
7 through the course of a series of meetings that
8 included Fox Lake and the other First Nations,
9 that process developed the final set of principles
10 and also the approach to applying them.

11 MS. PAWLOWSKA: But initially, when
12 you did have a meeting with the First Nation, did
13 you come to the meeting with an agenda already
14 present like we do here each day, or did you
15 actually work on the agenda of what you would be
16 doing that day with the present First Nations
17 members?

18 MS. COLE: It entirely depends on the
19 meeting. In some meetings processes were far more
20 formal, we have an agenda, it is circulated in
21 advance, we provide opportunity for individuals
22 who are coming to the meeting to comment on the
23 agenda and provide us feedback. But I can tell
24 you right now that 90 per cent of the time there
25 is also an agenda item at the end that says

1 "other" and other can pretty much mean anything.
2 And the course of our conversations over the last
3 ten years, it doesn't matter what meeting we are
4 in, it really can vary and wander depending on the
5 will of the group, what people are interested in
6 discussing, the nature of what is on people's
7 minds that day or what might be concerning them.
8 It might have nothing to do with the actual
9 purpose of the meeting.

10 So, yes, there are often draft agendas
11 circulated in advance. I can tell you right now
12 the processes is not nearly as formal as what we
13 are experiencing here as part of these hearings.

14 MS. KINLEY: If I could just add to
15 that. When I talked about the 2008 workshop, the
16 Aboriginal traditional knowledge workshop, how to
17 approach that workshop and the very straight
18 forward agenda that I talked about, that was
19 worked out in advance by the EIS coordinators. In
20 other words, we talked as a group with all of the
21 communities and Manitoba Hydro as to what would
22 work best as a workshop to talk about Aboriginal
23 traditional knowledge. So the structure of the
24 day was worked out with the involvement of the
25 communities.

1 MS. COLE: We started this discussion
2 talking about the public involvement program, and
3 if I build on Janet's comment, the same would hold
4 for the public involvement meetings that took
5 place in each of the communities. We worked with
6 them, as part of presenting the information, to
7 determine best how they would like the information
8 presented in their community.

9 MS. PAWLOWSKA: Thank you.

10 How long have you members of the panel
11 been involved with Aboriginal people in the north?

12 MS. KINLEY: 34 years.

13 MS. PAWLOWSKA: And Ms. Cole?

14 MS. COLE: I don't know, since 1999 or
15 2000, what is that? 13 or 14 years.

16 MS. PAWLOWSKA: Sorry, and I forgot
17 your name.

18 MR. DAVIES: I would say around the
19 same time. If you include people in the Northwest
20 Territories and Aboriginal people in other
21 countries, about 40 years.

22 MS. PAWLOWSKA: Thank you.

23 Have you built trust with any
24 particular elders throughout your life?

25 THE CHAIRMAN: I'm not sure that

1 that's a fair question, or even a relevant one.

2 MS. PAWLOWSKA: Okay, that's fine.

3 So did any of you who are here have
4 trouble understanding the Cree worldview
5 initially, when starting to work on the project?

6 MS. COLE: I will take a stab at it.
7 It is a personal question, I guess. I'm not Cree,
8 it is not my worldview, I don't live it. It is
9 not my foundation of experience. So I think it is
10 fair to say that I don't understand what it is
11 like to be Cree. I have worked very hard to
12 understand where our partners are coming from, and
13 throughout the course of the last ten years have
14 had many aha moments. And I learn every time I
15 sit down with our Cree partners and have
16 conversations about their concerns and their
17 perspectives, and the reasons behind those
18 concerns and perspectives.

19 So I guess the answer is, yes, I'm
20 not -- I'm not Cree and I'm not going to purport
21 to fully appreciate and understand the Cree
22 worldview.

23 MR. MANZER: I would also like to add
24 that both myself and Janet Kinley had the
25 opportunity and were invited by the KCN during the

1 development of the worldview chapter to observe
2 and learn through that process with them. So the
3 Partnership has been open to inviting us to learn
4 both ways, through the regulatory process, but
5 also learning about the Keeyask Cree Nations and
6 their worldview, particular to their specific
7 communities as well.

8 MS. PAWLOWSKA: Okay. Thank you.

9 So to help you with your methodology
10 for this project, have you ever read books such as
11 Linda Smith, Neal McLeod, Julie Cruikshank, Rauna
12 Kuakkanen?

13 THE CHAIRMAN: I'm not sure where you
14 are going with those questions or if they are
15 particularly relevant.

16 MS. PAWLOWSKA: We are trying to
17 figure out if individuals who have been working
18 with an Aboriginal worldview for the past ten to
19 30 years have even looked into some of the methods
20 and the research methodologies that deal with how
21 to work with Aboriginal people.

22 THE CHAIRMAN: We are not here to
23 consider the skills of individuals who have done
24 this work, as much as we are here to consider the
25 output of their work.

1 MS. PAWLOWSKA: Okay.

2 Have you ever included the Tri-council
3 standards of working with Aboriginal people in
4 your methodologies on the Keeyask project?

5 MS. KINLEY: Yes.

6 MS. PAWLOWSKA: How did it play a role
7 in the Keeyask project?

8 MS. KINLEY: In terms of undertaking
9 interviews with people, in particular, the notion
10 of informed consent is very important. The notion
11 of asking, if we are talking to someone from an
12 Aboriginal community, making sure that they are
13 clear as to what is the purpose of the information
14 that we are asking about, how the information
15 would be used, confidentiality around the
16 information, and indicating that they are free at
17 any time to not continue on with the interview.
18 So the idea is to make sure that people are fully
19 aware of how their information will be used.

20 MS. PAWLOWSKA: So you used informed
21 consent form in your studies?

22 MS. KINLEY: Yes, we did.

23 MS. PAWLOWSKA: Do you see the First
24 Nations community members as participants or
25 informants to the Keeyask project?

1 MS. COLE: I guess I think it is fair
2 to say that they play a number of roles. These
3 are communities who have voted to be partners in
4 this development and are participating with us as
5 partners in developing the project. So in that
6 respect, they are absolutely participants in the
7 project.

8 Do they provide information and inform
9 us of issues and concerns? Absolutely. And in
10 that regard, I guess they play the role of
11 informant.

12 MS. PAWLOWSKA: So they participated
13 as participants in the data collection and the
14 selection of VECs, correct?

15 MS. COLE: Yes.

16 MS. PAWLOWSKA: Did they participate
17 in the data analysis for the VECs and the TK
18 gathering?

19 MS. KINLEY: I just offer that with
20 respect to the socio-economic studies in each of
21 Fox Lake and York Factory, for example, we had a
22 steering committee that involved people from the
23 local community that -- we will see more of this
24 later next week when we talk about the
25 methodologies that we have used, but we did work

1 with the local communities in a steering group
2 environment to develop the work plans, and also to
3 look at what kinds of studies the communities were
4 undertaking, that that information could
5 contribute to the environmental assessment, and
6 then what additional information might be needed
7 for purposes of the environmental assessment.

8 We also trained people from the local
9 community to actually do the questioning and to
10 help with the studies. They actually conducted
11 the interviews, and we spoke with them about the
12 results. The results were presented to the
13 socio-economic steering committees for
14 verification. So they were quite integral in the
15 process of collecting information.

16 MS. PAWLOWSKA: So I would be correct
17 in saying that, yes, the First Nations communities
18 participated in data analysis?

19 MS. KINLEY: I would say verification
20 more than data analysis. Key person interviews
21 that were done, for example, were collected, those
22 were collected. There was analysis and themes
23 drawn out of those, and then they were discussed
24 with the steering committee, and then the
25 information was pursued from there.

1 MS. PAWLOWSKA: So just to clarify, so
2 you gathered the data with the community members?

3 MS. KINLEY: Um-hum.

4 MS. PAWLOWSKA: Then you took it to
5 Manitoba Hydro, analyzed it, and once analyzed it,
6 you presented it for verification to the First
7 Nations community members?

8 MS. KINLEY: The process of -- there
9 was no Manitoba Hydro in the middle of this
10 process. I guess I should -- you are suggesting
11 that the data went to Manitoba Hydro and was
12 analyzed?

13 MS. PAWLOWSKA: Who did the data
14 analysis then?

15 MS. KINLEY: That was our firm,
16 socio-economic assessment firm.

17 MS. PAWLOWSKA: What about the
18 non-socio-economic assessments, all of the other
19 ones?

20 MR. DAVIES: There are a number of
21 First Nations members that were employed in the
22 field studies. In fact, there were a total of 105
23 individuals, a number of who were elders, that
24 participated in both the aquatic and terrestrial
25 field studies. I believe the last calculation was

1 somewhere around 144,000 hours were spent working
2 side by side.

3 MS. PAWLOWSKA: Sorry, to interrupt?

4 Yes, we got to that, so participation
5 is in there. But I'm talking about data analysis,
6 so once the data is gathered, have the First
7 Nations been involved in the analysis of what
8 those numbers mean?

9 MR. DAVIES: They were involved in the
10 collection and recording, and then the information
11 went back to the individual firms, which would be
12 North/South Consultants, Wildlife Resources
13 Consulting, or EcoStem. So the various companies
14 took the data back, organized it, analyzed it, and
15 reported that information.

16 MS. PAWLOWSKA: Okay. So it is the
17 North/South Consultants that organized and
18 analyzed the data and then took it back to the
19 communities; correct?

20 MR. DAVIES: It would depend on the
21 component. If it was a wildlife component it
22 would be more likely Wildlife Resources Consulting
23 Services. If it was in regard to birds, it would
24 be StanTec. If it was in regards to priority
25 plants, it would be EcoStem. So there was a

1 number of different companies that were involved.

2 MS. PAWLOWSKA: But in any case, it
3 was the consulting firms that gathered the data
4 with the First Nations, analyzed it, put them
5 together, and then verified with the First Nations
6 afterwards.

7 MR. DAVIES: I guess we should also
8 start a bit earlier. It was also the First
9 Nations in a lot of cases that proposed the
10 studies that were conducted, and then participated
11 in the studies, collected the data. The analysis
12 of the data input was done by the various
13 consulting companies, and then taken back to the
14 communities.

15 MS. PAWLOWSKA: And that's fine, but
16 if you could please answer for me yes or no, if
17 the First Nations were involved in the data
18 analysis?

19 THE CHAIRMAN: I think he has
20 described the process quite -- more than once.

21 MS. COLE: I would like to build on
22 Stuart's answer a little bit to point out that
23 what Stuart and Janet are describing are the
24 technical western science studies that were
25 undertaken within the context of the regulatory

1 assessment. Each of the communities has also
2 produced its own environmental assessment, and
3 certainly the communities undertook those based on
4 their own worldview and their own traditional
5 knowledge. And that analysis was undertaken
6 independently and by the communities, and then the
7 results were shared back with Manitoba Hydro. So,
8 I think it is really important to remember here
9 that there were two different tracks of assessment
10 that were undertaken.

11 MS. PAWLOWSKA: Okay. Thank you. So
12 back to your presentation, you said that in
13 March 2012, the EIS guidelines were finalized and
14 that they were -- yes, and then the EIS was
15 actually finalized itself in July 2012. Correct?

16 MS. COLE: Yes.

17 MS. PAWLOWSKA: So what did you use to
18 build the EIS in those three months?

19 MS. COLE: Can I understand your
20 question a little bit better?

21 MS. PAWLOWSKA: Did you use the draft
22 EIS guidelines, did you use the scoping document,
23 the preliminary data for Wuskwatim in order to
24 finalize the EIS?

25 MS. COLE: Well, the EIS guidelines

1 were finalized certainly in March. The scoping
2 document was completed and filed in -- let me get
3 it. It was provided in December of 2011, but the
4 process had been ongoing. I think we have talked
5 about the process of selecting valued
6 environmental components. We met in several
7 instances, with both the project advisory team and
8 the technical advisory team, to talk about the
9 selected environmental components, among other
10 matters.

11 I think it is fairly safe to say that,
12 particularly with regards to the Canadian
13 Environmental Assessment Agency, that the EIS
14 guidelines that have been issued for projects
15 recently are quite similar. I think we had a
16 fairly good idea what was going to be asked of us
17 in terms of putting together the EIS, and we would
18 have used that guideline to confirm that we
19 weren't missing any data, to fill any gaps once we
20 received the final set of guidelines, and to make
21 sure that what we had produced was consistent with
22 what showed up in the final EIS guidelines.

23 So, certainly we have worked on it for
24 12 years, but we didn't wait until the very nth
25 hour until we got the EIS guidelines to start

1 writing the environmental assessment. That
2 started sooner based on an understanding of what
3 is typically required in an environmental
4 assessment in Canada.

5 MS. PAWLOWSKA: Thank you.

6 Would you say that Manitoba Hydro has
7 a business relationship with the First Nation
8 based on the relationship of trust?

9 MS. COLE: We certainly have a
10 business relationship. I would like to believe
11 that it is founded on trust, but I can't speak for
12 our partners.

13 MS. PAWLOWSKA: Thank you.

14 How do you differentiate between
15 Aboriginal traditional knowledge and information
16 that is just given by an Aboriginal person?

17 MS. KINLEY: If you look at chapter
18 five of the EIS, it does provide a definition of
19 Aboriginal traditional knowledge that was
20 developed with the partners.

21 Aboriginal traditional knowledge is
22 something that belongs to the communities and is
23 verified by the communities. So through the
24 course of -- in terms of what, for example, that
25 you see in the response to the EIS guidelines, as

1 characterized as Aboriginal traditional knowledge,
2 we were -- the communities very much provided to
3 us those sources that we were -- that they felt
4 could be cited as Aboriginal traditional
5 knowledge. In fact, we developed a set of
6 documents and so on that each of the communities
7 felt that they could -- that they would like to
8 characterize as Aboriginal traditional knowledge.

9 MS. PAWLOWSKA: Thank you.

10 And back to the informed consent form,
11 do you consider the consent of the Chief and
12 Council to be enough, or did you also use
13 individual consent?

14 MS. KINLEY: Individual consent.

15 MS. PAWLOWSKA: Thank you.

16 And did you have guidelines of ethical
17 protocols or training that you provided to your
18 consultants in how to work with Aboriginal people?

19 MS. COLE: That's actually a very
20 interesting question. And this was an issue that
21 came up during the course of undertaking field
22 studies, and we responded to it. And Manitoba
23 Hydro provided cultural awareness training in all
24 of the field camps, and that cultural awareness
25 training was provided directly by our partners and

1 not by us.

2 MS. PAWLOWSKA: Thank you.

3 How did you negotiate the plurality of
4 ATK that you mention in the EIS, to the singular
5 or First Nation worldview of the Cree that you
6 present in the EIS?

7 MS. COLE: I'm not quite sure I
8 understand the question, but I'm going to do my
9 best to try and answer it.

10 We tried for four years, and we all
11 concluded at the end of the day that they are
12 fundamentally different and not the same, and
13 that's the reason you see two sets of assessments
14 provided with this environmental assessment.
15 There was agreement among the partners that the
16 two worldviews can not and should not be
17 integrated, that both get lost in the process. So
18 the agreement at the end was the two-track
19 approach that Mr. Keeper and me presented
20 yesterday.

21 MS. PAWLOWSKA: Thank you.

22 However, what I'm asking is not the
23 difference between western science and Aboriginal
24 knowledge, I'm asking how you negotiate the fact
25 that there was four Cree Nations, and there is

1 always talk of one Keeyask Cree Nation and their
2 spirituality. And so therefore you are presenting
3 a First Nation singular worldview throughout the
4 EIS?

5 MS. COLE: So, through the course of
6 the environmental assessment process, the
7 communities lead a process to determine sort of
8 what they believe to be common among them, the
9 commonly held that they could all collectively
10 agree represented their Cree worldview. And
11 that's presented in chapter two of the response to
12 EIS guidelines. That was developed among the
13 Cree, it was lead by our partners, it occurred
14 over the course of four or five workshops, and
15 that component of the EIS was written by the
16 communities.

17 Throughout the rest of the assessment,
18 we've relied on that Cree worldview as it was
19 articulated by the communities.

20 MS. PAWLOWSKA: Thank you.

21 And who particularly authored that
22 piece?

23 MS. COLE: The four Keeyask Cree
24 Nations wrote it together.

25 MS. PAWLOWSKA: So there is no

1 specific individuals working on this piece?

2 Somebody must have done the typing?

3 MS. COLE: I don't know. I mean,
4 during the course of writing the assessment, there
5 is always someone who has to take the pen first,
6 but that doesn't mean that what is written goes
7 through significant modification and review and
8 refinement based on the perspectives of others.
9 So, my understanding is that workshops were held,
10 everyone expressed their perspectives, there will
11 have been some sort of common understanding of
12 what should go on paper. Someone clearly took the
13 pen and took the first stab at writing it, and
14 then there would have been an iterative process of
15 working together to reach words that everyone
16 could agree on.

17 MS. PAWLOWSKA: Okay. Thank you. Let
18 me try a stab at this one then.

19 So throughout your presentation, and
20 also on page 60, I think it is page 60, you show
21 it as a two-track approach. So it is perfectly
22 aligned arrows both going off into the sunset, you
23 can say. So at some point obviously you mentioned
24 the word disagreements, there was tears and there
25 was laughter throughout your meetings.

1 Could you perhaps tell us what happens
2 if there are discrepancies between traditional
3 knowledge and scientific data, which knowledge
4 takes precedence to be entered into the EIS?

5 MS. COLE: I don't think either
6 knowledge takes precedence. The EIS, the response
7 to EIS guidelines, which is the regulatory
8 component of the assessment, clearly articulates
9 in several places where there is disagreement.
10 And we talk -- we've talked a little bit through
11 the course of cross exam today about some of those
12 places, and also how that has been or will be
13 addressed moving forward.

14 MS. PAWLOWSKA: So if there is a
15 conflict between data, earlier you stated of the
16 water, aquatic water quality, which one gets
17 placed in the EIS, or do you state both
18 conflicting data?

19 MS. COLE: We stated both.

20 MS. PAWLOWSKA: Thank you.

21 In your compilation of the EIS and the
22 selection of the VECs, did you find a pattern that
23 showed that Aboriginal traditional knowledge
24 values tended to align to the non-aboriginal
25 values and principles?

1 MS. COLE: We are struggling to
2 understand the question. In a particular regard
3 or --

4 MS. PAWLOWSKA: Perhaps you can give
5 us examples of, in what way do you think that ATK
6 values tended to align towards the non-aboriginal
7 values and principles? Obviously, we have
8 discussed that Aboriginal people have selected the
9 VECs in their work with Manitoba Hydro. So we are
10 wondering at which point you think those values
11 have started to change alignment?

12 MS. COLE: Are we talking about
13 specific VECs, or things that might be important,
14 or -- I'm sorry, we are just really struggling to
15 understand the question.

16 MS. PAWLOWSKA: We can use the VECs as
17 an example.

18 MS. COLE: So, certainly there is
19 definitely, I would say, alignment in many places.
20 While the VECs were decided ultimately jointly, we
21 do point out in many places in the EIS that the
22 valued environmental component approach, where you
23 are looking at discrete pieces of the environment,
24 is completely inconsistent with the Cree
25 worldview, which tends to be far more holistic,

1 and as I'm sure you will hear from our partners,
2 considered in a much more meaningful way, in a
3 different way, relationships with land and water,
4 looks at those things a little bit differently
5 than perhaps a rigorous and standard environmental
6 assessment approach would.

7 Having said that, there is certainly
8 no doubt that there would have been agreement on
9 many -- an instant agreement on many of the items
10 of importance that were considered through the
11 environmental assessment. Importance of water
12 quality, lake sturgeon, caribou has been a point
13 of a lot of discussion among the partners.

14 Another, I guess, theme that has been
15 alluded to through some of these presentations,
16 which might get a little bit more to the value
17 question that you are raising, is the importance
18 of long-term environmental stewardship. This is
19 clearly an important value within the Cree
20 worldview, and I would say that it is something
21 that -- well pretty much all of the individuals
22 that I work with would also say is of fundamental
23 importance.

24 MS. PAWLOWSKA: Okay.

25 Would you say then that the starting

1 point of ATK values for the Cree Nation Partners
2 started to change with the VECs? That it was at
3 that point that they started to align with the
4 non-aboriginal values and understandings of the
5 world?

6 MS. COLE: I'm sorry, but I'm actually
7 not understanding the question. We certainly have
8 learned a lot from our partners and have made
9 every effort to incorporate those learnings into
10 the environmental assessment in a way that they
11 were comfortable with and in a way that respected
12 and reflected how they wanted their knowledge and
13 views to be explained. I don't -- well, ask the
14 Cree when they are up here. I don't think that we
15 have changed their worldview or that that in any
16 way was -- we weren't seeking to change the
17 values.

18 MS. PAWLOWSKA: Okay. Thank you.

19 And I have one more question. So
20 based on your previous experience, would you say
21 that Manitoba Hydro has co-opted or subverted some
22 of the meanings of Aboriginal traditional
23 knowledge for the purpose of this project?

24 MS. COLE: From my perspective,
25 absolutely not. This is a -- well, you will have

1 the partners up here, you can ask them that
2 question as well. They have had the opportunity
3 to write their own assessment in their own words
4 and to tell you their own thoughts about the
5 project, and they will be here to share their
6 thoughts with you. So from my perspective, no.
7 In fact, we worked very hard to make sure that
8 those views are articulated and are clear
9 throughout the assessment.

10 MS. PAWLOWSKA: Okay, thank you.
11 That's all of the questions that I have.

12 MS. COLE: Thanks.

13 THE CHAIRMAN: Ms. Kearns, I will give
14 you a couple of options here. We are going to
15 break at 4:30, which is about 25 minutes. If your
16 cross-examination is going to be longer than that,
17 you can do it all on Monday morning, or you can go
18 on now until about 4:30 and then resume on Monday
19 morning.

20 MS. KEARNS: I don't expect to take
21 much longer than 25 minutes, so let's try to
22 squeeze it in.

23 Before I begin, I would just quickly
24 would like to seek the panel's indulgence. I had
25 a chance last night to review the transcript from

1 Tuesday. And Mr. Chair, I have a question, I
2 would like to clarify your order on Tuesday
3 regarding Ms. Pawlowska's question to the panel
4 regarding the need for the regional cumulative
5 effects assessment. If I could just quickly seek
6 a clarification?

7 THE CHAIRMAN: I don't understand
8 what --

9 MS. KEARNS: I will explain. So in
10 response to her question, there was an objection,
11 I think. And Mr. Chair, you stated that the panel
12 has decided against the need for a regional
13 cumulative effects assessment.

14 THE CHAIRMAN: Yes.

15 MS. KEARNS: So my question is, the
16 motions only addressed the issue of whether this
17 process should be adjourned to allow time for a
18 regional cumulative effects assessment to be done
19 before the CEC makes its recommendation. The
20 motions did not address whether or not a regional
21 cumulative effects assessment could be a license
22 condition. And for the record, I'm just seeking
23 clarification whether or not you have ruled that
24 you have pre-decided that a regional cumulative
25 effects assessment cannot be a licence condition

1 for Keeyask?

2 THE CHAIRMAN: That's a good question.
3 And I would respond that it could be a licensing
4 condition. That will be determined over the next
5 number of weeks.

6 MS. KEARNS: Thank you. That's
7 helpful.

8 So turning to the presentation panel
9 then, my first question is on slide 55. This is
10 the slide on the benchmarks and thresholds in
11 determining the significant adverse environmental
12 effects.

13 My question is, when you were
14 establishing the threshold and benchmarks, did you
15 speak with Aboriginal rights holders and Treaty
16 rights holders about what they would view as the
17 threshold or benchmark for a VEC?

18 MS. COLE: I first want to start by, I
19 guess, correcting something in your premise. And
20 that is that the Partnership did not establish
21 thresholds for any of the VECs that were here. I
22 think we have been fairly clear that from our
23 perspective, thresholds are typically established
24 by regulatory authorities or through scientific
25 consensus. So we did not establish thresholds.

1 What we looked to primarily in the
2 terrestrial assessment was to establish benchmarks
3 that we believed were conservative and well below
4 the range of what would be considered the
5 threshold. And that was based on our
6 understanding of the past and how a VEC has
7 responded to past effects, in addition to
8 scientific literature and other guidance across
9 Canada. You can elaborate on that if you like,
10 James.

11 MR. EHNES: Yes. The benchmarks were
12 based on where the range of effects or increasing
13 stress on the VEC or the eco-system was believed
14 to occur, based on scientific studies. In terms
15 of a particular, or threshold for a particular
16 species in a particular location, or a population
17 in a particular location, where that threshold
18 occurs depends on conditions at that time. So
19 there is a range of where that stress can occur.

20 So based on studies that were
21 conducted across Canada, it depends on which VEC
22 or eco-system component we are talking about,
23 those studies established a range where there was
24 increasing stress on a species or a component, and
25 the benchmark was set below that range in order to

1 minimize the risk that the VEC would be pushed
2 into decline.

3 MS. KEARNS: Thank you. So to clarify
4 then, this was an entirely -- an approach from a
5 western science perspective and there was no
6 consideration of the perspectives of Aboriginal
7 rights or Treaty rights holders?

8 MS. COLE: In terms of establishing
9 the biophysical threshold or the biophysical
10 benchmarks, I will correct my language, yes, that
11 is the case. But I want to go a little bit
12 further and note that that's actually not
13 uncommon, and we spent a little bit of the
14 afternoon talking about a paper written by Dunker
15 and Greig, who were actually very specific in that
16 paper that really thresholds should be defined, or
17 benchmarks in this case, through the scientific
18 method. So that's not uncommon.

19 MS. KEARNS: So turning then to slide
20 19, this is the slide that was on the Northern
21 Flood Agreement Article 6, potable water. I
22 notice this was addressed earlier I think by Ms.
23 Whelan-Enns and, Mr. Chair, you stated you are not
24 sure why it is there. If this slide and the
25 evidence given is going to remain on the record, I

1 would like to ask questions to clarify it. But if
2 it is not going to be considered, then I will
3 leave it. My concern is that in my client's
4 perspective this slide is inaccurate, and ignores
5 some other agreements that exist and complexities
6 to the situation.

7 THE CHAIRMAN: Well, I think since the
8 proponent has included it in this presentation, it
9 is a matter of record.

10 MS. KEARNS: Okay. So my question
11 then is haven't all five NFA First Nations signed
12 infrastructure agreements to implement Article 6?

13 MS. COLE: You are going beyond my
14 scope of understanding, so I can certainly take
15 that under advisement and come back with an answer
16 for you.

17 MS. KEARNS: So just to be clear, you
18 are undertaking to answer whether or not all five
19 NFA First Nations have signed infrastructure
20 agreements?

21 MS. COLE: Sure.

22 MS. KEARNS: I will also ask then what
23 is the implication of those infrastructure
24 agreements for the information contained on this
25 slide.

1 MS. COLE: Okay.

2 (UNDERTAKING # 7: Advise whether all five NFA
3 First Nations have signed infrastructure
4 agreements and if so what are the implications of
5 those agreements for the information contained on
6 slide)

7 MS. KEARNS: Further, isn't it true
8 that Manitoba Hydro and Canada have subsequently
9 entered into an agreement more recently about the
10 payment for potable water?

11 MS. COLE: Yes, and that was referred
12 to in my speaking notes. I did talk about the
13 fact that an agreement was reached roughly ten
14 years ago on the interpretation around these two
15 articles in the NFA, and in particular Article
16 6.2.

17 MS. KEARNS: Isn't it true that not
18 all of the funds have flowed to the five First
19 Nations?

20 MS. COLE: Well, under that agreement
21 the funds are intended to flow directly to Canada
22 and then to the First Nations. In some cases that
23 hasn't happened, and in some cases a First Nation
24 has elected to have the funds flow directly to
25 them. In other cases, the communities -- there

1 are a few communities who have elected to have the
2 overall value, I guess present value, then paid
3 out to the communities. So that has happened in
4 those cases.

5 MS. KEARNS: And Canada also has some
6 of the money still in its possession; is that
7 correct?

8 MS. COLE: I would have to find out
9 for you.

10 MS. KEARNS: Will you undertake to
11 clarify that for --

12 MS. COLE: I will undertake to clarify
13 that for you.

14 (UNDERTAKING # 8: Advise if Canada has some of
15 the money for potable water in Article 6 of NFA
16 still in its possession)

17 MS. KEARNS: So in the section on the
18 public participation, it was stated that notice
19 was given to Pimicikamak in 2001, is that correct?

20 MS. COLE: Yes, that's what I stated
21 in my speaking notes. It is also in appendix 4A
22 of the public involvement volume.

23 MS. KEARNS: Thank you. And another
24 statement, Ms. Cole, you stated that Manitoba
25 Hydro has consulted with Pimicikamak in an ongoing

1 effort to strengthen your relationship with
2 Pimicikamak; is that correct?

3 MS. COLE: Yes, that's correct.

4 MS. KEARNS: Isn't it true that
5 Manitoba Hydro has a legal obligation under the
6 Northern Flood Agreement to not make any decisions
7 in respect to any future development unless and
8 until a process of bona fide, meaningful
9 consultation with Pimicikamak has taken place?

10 MS ROSENBERG: If I may, is the mic
11 on? Okay. I think my friend is quoting not
12 exactly accurately from Article 9 of the Northern
13 Flood Agreement. So I don't happen to have a copy
14 of that article with me, but I think it is an
15 argument which is actually subject to the
16 interpretation of that provision.

17 THE CHAIRMAN: I'm also not certain
18 why we are pursuing the NFA, because the NFA is
19 beyond our scope.

20 MS. KEARNS: Well, the proponent here
21 has used in its public participation process,
22 references to Article 9 of the NFA are littered
23 throughout, and that's the process that Manitoba
24 Hydro and the Partnership, through Manitoba Hydro
25 have -- that's the mechanism that they have used

1 to consult with Pimicikamak. And I endeavor to
2 quote it correctly, but I may have misspoken, but
3 that the process of bona fide and meaningful
4 consultation, that language is in the NFA. But I
5 will leave it for now. I just wanted to clarify
6 for the record that it wasn't just the ongoing
7 effort to strengthen the relationship that's at
8 play here.

9 So my next question then is when did
10 the meaningful, bona fide and meaningful
11 consultation process with Pimicikamak actually
12 start after notice was given in 2001?

13 MS. COLE: So under Article 9 we did
14 notify the community in 2001. And there is a
15 detailed actual history of the consultation
16 process.

17 MS. KEARNS: I'm just looking for the
18 year though, the year when it started, when the
19 actual discussion, not just the notice, when the
20 actual discussion started?

21 MS. COLE: So Manitoba Hydro did
22 notify the community in 2001. We met with the
23 community throughout 2002 and 2005. The primary
24 focus during those conversations was in relation
25 to the Wuskwatim Generation Project. We met again

1 with the community in January of 2005, and
2 indicated again that we would like to talk about
3 Keeyask. At that point the community advised us
4 that they did not want to discuss potential
5 benefits or other preliminary information until
6 there was more complete information on potential
7 negative effects.

8 So starting -- I mean, there have been
9 meetings in between. Starting in I guess February
10 of 2009, we have met regularly with the community.
11 And presentations have been made related to future
12 development, in this case Keeyask, system effects,
13 the Keeyask EIS, the terrestrial environment,
14 resource use, the public involvement program, the
15 community has received all three rounds of the
16 public involvement program, the project
17 description, the assessment -- well, each of the
18 environments that's being studied, training
19 employment and business opportunities, heritage
20 resources, caribou, all of that has been discussed
21 through the course of those discussions which I
22 think, in fairness, although the community was
23 notified in 2001, true meaningful discussion will
24 have started as those presentations began to be
25 made in 2009. And at the request of the

1 community, we didn't provide preliminary
2 information at a sooner date.

3 MS. KEARNS: So Pimicikamak -- I will
4 refer then to the stages that Mr. St. Laurent
5 spoke about yesterday in his presentation. So
6 Pimicikamak was not consulted during stages one to
7 four of the planning process; is that correct?

8 MS. COLE: Well actually I don't
9 believe that's correct. I think we talked quite
10 accurately about stage four where we were actually
11 assessing and planning the project. And stage
12 four has been undertaken since 2001, and I don't
13 remember the exact date he gave in his slide, but
14 certainly these consultations would absolutely
15 have overlapped with the stage four process.

16 MS. KEARNS: And when did Pimicikamak
17 get a copy of the VEC list?

18 MS. COLE: The final VEC list would
19 have been provided around that -- through that
20 2009 period. The exact date I don't know.

21 MS. KEARNS: And would you agree that
22 this list -- the list was finalized then when it
23 was given to Pimicikamak? It was a final list of
24 the VECs?

25 MS. COLE: Let me just check with my

1 colleagues when we actually finalized the list.

2 So I actually think it is fair to say
3 that, and we have talked a little bit this through
4 the course of today, that there were VECs and
5 there were supporting topics, and I really think
6 it is fair to say that almost an equal amount of
7 rigor was put into studying and analyzing both
8 VECs and supporting topics. And we talked earlier
9 today that had we undertaken consultation later on
10 or throughout that process that indicated to us
11 that there was a major concern about another topic
12 or perhaps another supporting topic, that, you
13 know, until we had finalized the EIS or were close
14 to finalizing the EIS, we certainly would have
15 been open to considering moving one of the
16 supporting topics, or perhaps another topic, into
17 being a valued environmental component. And this
18 certainly was the case for two species which quite
19 actually late in the assessment process regulators
20 indicated to us they were very concerned about and
21 would like to see them treated as VECs. And we
22 were flexible and took some additional steps to
23 make sure they were addressed as VECs in the final
24 assessment.

25 So while there may have been a list,

1 it has always been -- we have always been flexible
2 and it has been a fairly open list, of course,
3 until we were in sort of the last sort of six
4 months of writing an assessment, it is a bit hard
5 to --

6 MS. KEARNS: So the list that was
7 given to Pimicikamak was the final list of 38
8 VECs?

9 MS. COLE: It would have been the list
10 that we considered to be final, and if Pimicikamak
11 had different perspectives or concerns on that
12 list, they certainly would have been available to
13 express those to the Partnership.

14 MS. KEARNS: In that PIP process, did
15 you advise those participating that there would be
16 no hydrological system impacts?

17 MS. COLE: I think we talked about
18 that yesterday in the context of the project
19 description. There was certainly a presentation
20 made to Pimicikamak regarding system effects, and
21 I don't believe during the course of that
22 presentation we've ever said that there are no --
23 I will use your words, could you repeat them?

24 MS. KEARNS: Hydrological system
25 impacts.

1 MS. COLE: I don't believe that we
2 have ever -- what we have said in the course of
3 the presentation that was made both to Pimicikamak
4 and also in testimony that was delivered
5 yesterday, is that Manitoba Hydro will continue to
6 operate the system in accordance with existing
7 licences and conditions within that licence. And
8 that water levels downstream of Lake Winnipeg
9 would follow the same general pattern as presently
10 exists. And that the main factor influencing
11 water levels is the amount of system inflow. And
12 that because there are really no changes or -- we
13 don't believe that water levels in water bodies
14 downstream of Lake Winnipeg, if we add Keeyask to
15 the system, are not expected to be discernible in
16 the context of existing water level variations.
17 Given this, we do not expect that physical
18 environment characteristics associated with water
19 level differences -- they are expected to remain
20 the same, they are not expected to change. So to
21 get to your impact question, given this, we don't
22 think there will be any discernible changes in the
23 biophysical environment.

24 MS. KEARNS: I didn't quite catch an
25 answer there. In the PIP process did you advise

1 that there would be no hydrological system
2 impacts, specifically I'm talking about upstream
3 of Kelsey?

4 MS. COLE: Maybe George can answer
5 that.

6 MR. REMPEL: I was at that particular
7 presentation on systemic effects to PCN. We did
8 not make that statement. We have never said there
9 will be no effects upstream. We said they were
10 not likely to be discernible or detectable.

11 MS. KEARNS: Thank you. That's
12 helpful.

13 Ms. Cole, you said in your
14 presentation that the Partnership had to use
15 qualitative descriptions to describe the pre-hydro
16 development conditions because quantitative data
17 was not available, is that correct?

18 MS. COLE: That's certainly correct
19 for some VECs, but not all VECs. For some VECs
20 there is a quantitative assessment provided.

21 MS. KEARNS: Are there any other
22 quantitative data sets missing between when hydro
23 development started and today in the EIS for that
24 pre-Keeyask period in your EIS assessment? What I
25 am wondering is you, in your presentation,

1 mentioned pre-hydro development 1957, there was
2 some data gaps. What I'm wondering is, is there
3 also quantitative data gaps between when Hydro
4 started and today in the EIS?

5 MS. COLE: I think actually that's
6 what I was referring to in my presentation. So
7 certainly Kelsey began to be built in 1957, was
8 followed by LWR and CRD in the very early '70s in
9 the development of Kettle and Long Spruce. All of
10 those projects were developed at a time when
11 environmental assessments were not mandated in
12 Manitoba. The Manitoba Environment Act didn't
13 exist. So, certainly, yes, there are some gaps in
14 quantitative data after hydroelectric development
15 started to be developed, because people were
16 simply not collecting information.

17 MS. KEARNS: And just to be fair,
18 those people is Manitoba Hydro was not collecting
19 information?

20 MS. COLE: Manitoba Hydro or perhaps
21 others, I mean, you know --

22 MR. DAVIES: I would like to add to
23 that. If you are familiar with the Northern Flood
24 Agreement, you are probably familiar with Claim
25 18. Claim 18 was brought on by the Northern Flood

1 Committee, which alleged that Manitoba and Canada
2 had not collected sufficient monitoring data
3 following the Lake Winnipeg, Churchill/Nelson
4 River Study Board Reports in 1972, '75, which
5 prompted the Manitoba Ecological Monitoring
6 Program in 1985, the Federal Ecological Monitoring
7 Program in 1986. There was a fair amount of
8 information that was collected from that to fill
9 the data gaps which were alleged under Claim 18 of
10 the Northern Flood Agreement.

11 MS. KEARNS: So just to clarify -- I
12 misunderstood your presentation, Ms. Cole. So
13 there are data gaps basically in all of the past
14 period. For certain VECs there is going to be
15 data gaps, where there is no quantitative data
16 available for the past?

17 MR. DAVIES: Are you referring to the
18 past being pre-hydroelectric development?

19 MS. KEARNS: No, past as in the
20 last -- since today into the past. I had
21 originally understood Ms. Cole's presentation as
22 being pre-hydroelectric development, but I think
23 Ms. Cole, you just clarified that, no, there is
24 data gaps even more recent than that?

25 MR. DAVIES: You should understand

1 also that the program that was used for Keeyask is
2 one of the longest environmental data collection
3 programs. In fact, it is the longest
4 environmental data collection program that
5 Manitoba Hydro and the Partnership has conducted
6 to date. In addition, we have full use of the ATK
7 provided by the First Nation partners added to
8 that ten year plus data collection process. So
9 there was a great deal of information collected
10 for the Keeyask EIS.

11 MS. KEARNS: Okay. But there are data
12 gaps?

13 MR. DAVIES: There is always data gaps
14 regardless of the amount of work that you do.

15 MS. KEARNS: And could you have used
16 historical air photos to do some habitat mapping
17 for those periods to get quantitative data?

18 MR. EHNES: Yes. In fact we did use
19 historical photos.

20 MS. KEARNS: My understanding is you
21 did it from 1962 forwards. Could you have done it
22 for before 1962?

23 MR. EHNES: The 1962 photo series was
24 prior to hydroelectric development in the Keeyask
25 area.

1 MS. KEARNS: My understanding is that
2 Kelsey was built in 1957.

3 MS. COLE: Construction started in
4 1957. The station wasn't complete or operating
5 until construction was complete.

6 MS. KEARNS: Okay. Thank you. So,
7 Ms. Cole, do you agree that a land use and
8 occupancy study for Pimicikamak has not been
9 published in which the Partnership can determine
10 impacts of the project?

11 MS. COLE: Are you referring
12 specifically to the land use and occupancy study
13 that we have been talking about in relation to
14 Keeyask or --

15 MS. KEARNS: I just mean any occupancy
16 study that the Partnership could rely on for
17 Pimicikamak. Is there a land use and occupancy
18 study that the Partnership could rely on for
19 Pimicikamak?

20 MS. COLE: I guess my answer to this
21 would be similar to an answer that we talked about
22 this morning in context of the Manitoba Metis
23 Federation. The Partnership has endeavored to
24 collect all available information that it has in
25 relation to Pimicikamak. And that information is

1 documented in the response to CEA 14, which was a
2 request for additional information directly from
3 the government. And we are confident that the
4 findings of that are accurate.

5 MS. KEARNS: I'm just asking, though,
6 those findings do not include a land use and
7 occupancy study, do they?

8 THE CHAIRMAN: While they are
9 discussing this, Ms. Kearns, it is after 4:30.

10 MS. KEARNS: That is -- I have one
11 more question.

12 THE CHAIRMAN: Okay.

13 MS. KEARNS: I don't know if I could
14 ask it while you are looking up the answer in the
15 volumes back there.

16 THE CHAIRMAN: Okay.

17 MS. COLE: I believe that you are
18 getting to the heart of something that was
19 discussed during the course of the motions filing,
20 and this get to the heart of one of the matters
21 discussed during the motions filing. So -- I'm
22 not sure if we want to go back through that whole
23 history again.

24 MS. KEARNS: The motion was about
25 whether this process should be stopped to allow

1 time for the study. That's not my question. I'm
2 just asking you, you referred to your filings with
3 CEAA about the information that is available on
4 Pimicikamak, and I'm asking does that information
5 include a land use and occupancy study?

6 MR. DAVIES: As you may be aware,
7 Manitoba Hydro and the Cross Lake First Nation
8 then, Pimicikamak now, undertook a large scale
9 study to look at resource use, land use in the
10 Cross Lake area in around 1993, 1994, with a lot
11 of information published in 1995. The individuals
12 or the groups that were hired to conduct the work
13 were the University of Manitoba. There were two
14 studies that were conducted simultaneously, one
15 was a harvest study conducted by Ruth Diamond from
16 the University of Manitoba. And the second was a
17 harvest study conducted by Fikret Berkes from the
18 University of Manitoba as well. The three
19 parties -- I was the chairperson of the steering
20 committee with all three parties, Glen Smith was
21 the representative from Cross Lake, decided that
22 we would look at both the harvest and consumption
23 to see whether the results from the two different
24 studies were close enough that we could put some
25 faith in the information that was being provided.

1 At the end of the process there were a number of
2 thesis that came out in regards to land use from
3 around the Cross Lake area.

4 But the central reports, the ones that
5 were done by Ruth Diamond and Dr. Berkes, the
6 committee, including Cross Lake or Pimicikamak,
7 concluded that the information was not rigorous
8 enough because it is two different documents to be
9 able to used for the claims process and,
10 therefore, that information has not been used.

11 MS. KEARNS: So that information is
12 not a published study. And that was also a
13 harvest study, not a land use or occupancy study?

14 MR. DAVIES: They were not used as
15 occupancy studies. There were three reports done,
16 one by Ian McDonald, as an underwriting thesis
17 under Dr. Berkes, and one by Kevin Warkentin which
18 was also a practicum under Dr. Berkes. And there
19 was a third one, which honestly I just can't
20 remember what the report was. Those reports
21 weren't published because they were for the
22 individuals themselves. There were a number of
23 documents that were circulated in the community
24 summarizing the information that did become public
25 documents. But the three parties did agree that

1 the information provided in the main volumes would
2 not be used for the claims process, because they
3 did not feel that the information provided was of
4 sufficient accuracy.

5 MS. KEARNS: Thank you. So my final
6 question then, Ms. Cole, you mentioned earlier the
7 stakeholder mapping process in determining the
8 partnership's determination, or Manitoba Hydro's
9 determination, of who could benefit and who could
10 be adversely affected by Keeyask. And my question
11 is did you speak with Aboriginal and Treaty rights
12 holders in making that assessment?

13 MS. COLE: So the stakeholder mapping
14 process was undertaken by Manitoba Hydro and our
15 partners to determine, based on what we believe
16 were pathways of effect from the project, those
17 who could be potentially affected or may be
18 potentially interested in understanding the
19 Keeyask project. We certainly have met with a
20 number of communities through that process, and I
21 guess you could refer to those as rights holders.
22 Those communities have, in some cases, indicated
23 that they are very interested in the project,
24 believe they are affected, would like to continue
25 having conversations with us. There are other

1 communities that indicated differently, and have
2 respectfully asked that it is okay, they have got
3 enough information and they are no longer
4 interested in being a part of the project.

5 So it has been a fairly broad
6 consultation procession. You saw the map, all of
7 those communities we sat down with and talked to.

8 MS. KEARNS: I think -- I was
9 referring to the stakeholder mapping process. Are
10 you referring to the public involvement process?

11 MS. COLE: The stakeholder mapping
12 process was the first stage in the public
13 involvement process for us internally. It was
14 part of designing the program and who we would
15 talk to in the context --

16 MS. KEARNS: Just to clarify, so a
17 stakeholder mapping process was an internal to
18 Manitoba Hydro process and the Partnership?

19 MS. COLE: It was internal to the
20 Partnership, yes.

21 MS. KEARNS: Thank you. Those are my
22 questions.

23 THE CHAIRMAN: Thank you. That brings
24 us to the end of week one. That brings us to the
25 end of the cross-examination of this panel, with

1 the caveat that I noted earlier, if at some time
2 over the next few weeks we determine that we need
3 further information in particular about PIP or the
4 cumulative effects process, we may call some or
5 all of them back, or we may ask that other
6 witnesses be brought forward.

7 So aside from that, you are excused.
8 We are all excused until Monday morning at 9:30.
9 I would note that Monday morning we are in a
10 different room, downstairs in the Provencher room.
11 I believe it is for next week only. We will see
12 you downstairs next week. Have a good weekend.
13 Those of you who are traveling outside of the city
14 to go home, safe travels. We are adjourned.

15 (Adjourned at 4:41 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

Cecelia Reid and Debra Kot, duly appointed
Official Examiners in the Province of Manitoba, do
hereby certify the foregoing pages are a true and
correct transcript of my Stenotype notes as taken
by us at the time and place hereinbefore stated to
the best of our skill and ability.

Cecelia Reid
Official Examiner, Q.B.

Debra Kot
Official Examiner Q.B.

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