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KEEYASK GENERATION PROJECT

PUBLIC HEARING

Volume 28

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1 Monday, January 6, 2014

2 Upon commencing at 1:30 p.m.

3 THE CHAIRMAN: I'd like to come to
4 order. Welcome back. Happy New Year to all of
5 you. I hope all of you had a good break, although
6 I know some of the Partnership people would have
7 had to work hard responding to the questions that
8 we dropped on them just before the -- or just at
9 the end of the break. We appreciate their hard
10 work and we appreciate the responses that they
11 provided to us late last week.

12 I hope that some of you had the good
13 sense to escape this wonderful winter we are
14 having to warmer climes, I know I didn't, but
15 hopefully some of you had better sense than I.

16 I know we have asked an awful lot of
17 the Proponent, and particularly of Manitoba Hydro,
18 but if they have any powers that they could change
19 this climate, we'd all appreciate it quite a bit.

20 On the agenda today, and we are
21 prepared to go until 6:00 p.m. today if need,
22 first up we have a conclusion of a
23 cross-examination of witnesses presented by the
24 Concerned Fox Lake Grass Root Citizens. Once that
25 cross-examination is complete, we will then turn

1 to the Clean Environment Commission final
2 questions. As part of that response, the Clean
3 Environment Commission did request that the
4 Proponent present a bit of a, or make a bit of a
5 presentation on the Environmental Protection
6 Program, so that will be part of our final
7 question period which we will follow this
8 afternoon, presumably this afternoon, assuming we
9 conclude the cross-examination.

10 So I don't think we have any other
11 announcements we need to make at this time.

12 I believe, Dr. Kulchyski, were you
13 still on the hot seat when we concluded, or
14 adjourned the cross-examination a few weeks ago.
15 And I believe, Mr. Regehr, you were putting the
16 squeeze on. So, as soon as Dr. Kulchyski is
17 ready, I will turn the floor over to you,
18 Mr. Regehr.

19 MR. REGEHR: Thank you.

20 THE CHAIRMAN: Once the Proponent and
21 Mr. Regehr have concluded the cross-examination, I
22 believe one or two of the participants may have
23 some questions.

24 So Mr. Regehr.

25 MR. REGEHR: Thank you. Good

1 afternoon, Dr. Kulchyski, thanks for coming back.

2 DR. KULCHYSKI: Happy New Year to
3 everybody who is here, by the way, including you,
4 Mr. Regehr.

5 MR. REGEHR: And Happy New Year to you
6 and to everyone.

7 I think it was December 10th when we
8 left off, if my memory serves me correct. And we
9 left off, I think I had put the question to you
10 and you had answered in regard to whether the KCN
11 themselves are the ones who are best able to
12 determine what is useful and what they wish to
13 adopt.

14 So moving on into your report dated
15 November 2013, do you have a copy of that with
16 you?

17 DR. KULCHYSKI: Yes.

18 MR. REGEHR: On page 18 you state that
19 the Aboriginal Traditional Knowledge Research is
20 barely acceptable and does not meet the standard
21 of excellence now recognized in the field. Then
22 on page 19, you criticize the report conducted by
23 the Cree Nation Partners, stating it doesn't meet
24 the standard of the reports produced by the other
25 First Nations and doesn't contain any community

1 voices. And then on page 20 you make a conclusion
2 that there's little meaningful use of traditional
3 knowledge studies, stating that it bodes ill for
4 their use in monitoring and managing the overall
5 project.

6 You do understand that, or recognize
7 that traditional knowledge for each of the
8 separate Keeyask Cree Nation communities will
9 differ, as will their approach to documenting the
10 traditional knowledge?

11 DR. KULCHYSKI: Well, it will differ.
12 I think the approach to gathering it -- well, it
13 certainly differed in the case of the communities.
14 And you know, along with Fox Lake, the actual Fox
15 Lake Cree Nation, I don't use the term Keeyask
16 Cree Nations, but the Cree Nation Partners, Fox
17 Lake and York Landing have taken different
18 approaches to gathering traditional knowledge.
19 That's somewhat appropriate. Broadly speaking,
20 you know, we're talking about Inwaywin Cree people
21 in Northern Manitoba, so that I would expect that,
22 roughly speaking, some of the very broad kind of
23 consensus concerns of scholars in the field who
24 have been working on traditional knowledge
25 gathering in the last 20 and 30 years, that the

1 kind of main academic standards and approaches
2 would be fairly similar. I would certainly
3 anticipate collecting, depending on how detailed
4 you get, different traditional knowledge from the
5 different communities, but I would also expect
6 there to be a lot of similarities.

7 So in my report I commented, you know,
8 I liked many aspects of the ATK work that was done
9 by Fox Lake Cree Nation and that was done by York
10 Landing, particularly their use of local voice I
11 think was quite strong. There were elements of
12 all of the reports that I'm unhappy with, and I
13 don't see a very strong representation of what the
14 reports are saying in the work that's been done by
15 the Partnership as a whole. So that's a long-ish
16 answer to your question. I can go into more
17 detail if you'd like.

18 MR. REGEHR: No, that's fine. Thanks.
19 By York Landing, I assume you mean York Factory?

20 DR. KULCHYSKI: York Factory.

21 MR. REGEHR: Thank you.

22 On page 18 you make comments about
23 work done by Dr. Virginia Petch, and you seem to
24 state that she did not do any direct research into
25 certain areas. You also seem to criticize the

1 fact that First Nation Partners conducted their
2 own research and studies.

3 So are you aware of the fact that
4 Dr. Petch's team did, in fact, do interviews with
5 people?

6 DR. KULCHYSKI: I'm aware from what
7 she said, but also in testimony and in her report
8 she said they didn't gather direct testimony
9 around any spiritual question. So that's what I'm
10 referring to in my report.

11 MR. REGEHR: Now, I have known
12 Dr. Petch for over 20 years and I have found her
13 to be one of the most respectful researchers that
14 I have ever met. She is well respected by the
15 First Nations she has worked with, and her
16 decision not to push people in such sensitive
17 topics seems to me to be the most appropriate
18 method which respects the privacy of the people
19 interviewed. Wouldn't you agree?

20 DR. KULCHYSKI: Well, I would agree
21 that I have a great respect for Dr. Petch's work
22 in the field for a long, long time. However, you
23 know, her expertise is really in material culture
24 and that expertise -- I mean, she's been able to
25 use work in material culture to the advantage of

1 many First Nations communities across the province
2 and I think deserves our respect for doing that.
3 And that's why I am loath to be maybe as critical
4 as I might be of Dr. Petch's work in this regard.
5 She is not an expert in cultural anthropology and
6 in heritage, intangible cultural heritage, and her
7 work shows definite weaknesses in those areas.

8 So I respect those areas that she has
9 expertise in, and I certainly respect the body of
10 work that she's contributed to the First Nations
11 of Manitoba. I have less regard for the research
12 methods that she was associated with in collecting
13 any of the material around non-tangible cultural
14 heritage, including around spiritual matters.

15 And then you ask whether the most
16 respectful approach in dealing with spiritual
17 matters is to not ask the questions?

18 Well, if you develop a trust like
19 relationship with the elders that you work with, I
20 think they will be willing to talk to you about,
21 you know, the presence and existence of sacred
22 boulders or other spiritual matters, as we did in
23 a fairly short time. It appears that Dr. Petch
24 didn't -- you know, by backing away it means that
25 potentially very important cultural elements to

1 the community are being left unsurveyed,
2 unrecognized, unlooked at. And it also tells me
3 that the relationship she developed with the
4 particular elders may not have been particularly
5 strong. And to a certain extent, I think that
6 shows up in the report and the kind of material
7 that she documented and concerned about, which is
8 in her area of expertise, historical, tangible
9 culture, rather than intangible culture.

10 So that's why I made the comments that
11 I made.

12 MR. REGEHR: Now, my understanding is
13 Dr. Petch's team allowed the First Nations to
14 conduct a bunch of this work. So allowing First
15 Nations to conduct that type of work would also
16 build their research capacity within their First
17 Nation, wouldn't it?

18 DR. KULCHYSKI: Absolutely.

19 MR. REGEHR: And it would show trust
20 and respect upon the part of western trained
21 scientists for the KCN or the Cree Nations'
22 ability to contribute to the environmental
23 assessment process.

24 DR. KULCHYSKI: Well, there's a yes
25 and a no. I think, for example, in Tataskweyak,

1 it looks to me like the traditional knowledge
2 report prepared by Tataskweyak, which I would say
3 is much weaker than the other two, is largely also
4 prepared by people from outside the community. I
5 think Fox Lake and York Factory both had, I think
6 very appropriate and quite strong community
7 controlled and community run processes of
8 gathering traditional knowledge research.

9 My sense is that the Tataskweyak, or
10 the Cree Partners didn't engage the same kind of
11 process which is why they got different results.
12 They didn't get different results because the
13 communities are different. Like you would get
14 different results from different communities if
15 your results were so rich that you were getting at
16 a really detailed kind of landscape description,
17 family kinship descriptions that were
18 extraordinarily detailed. Then I think the
19 differences between the communities would show up.
20 I wouldn't expect that this level of research
21 where we weren't -- none of the researchers,
22 including us, were engaged in that level of
23 detailed research that community by community
24 differences would show up.

25 What shows up is the difference in

1 approach. And the Tataskweyak approach, I think,
2 was not -- looks not to be a community controlled
3 process. And you see almost no community voice in
4 the report that they prepared, versus the other
5 two communities which were community controlled
6 processes and we see a lot of community voice in
7 those processes. Very little of that community
8 voice finds an appearance in Dr. Petch's work
9 because she didn't engage in it herself.

10 It absolutely is capacity building for
11 the communities to engage in research in the area,
12 but if you're submitting a report and you're
13 talking about the cultural heritage and the
14 heritage of the communities, I think you have to
15 go in and get your fingers dirty and actually work
16 with people and find out from them what they have
17 to say about the questions that you might have to
18 ask.

19 And again, you know, we have much less
20 resources and much less time, and we were coming
21 into it in a very politically conflictual
22 situation and were given some direct information
23 that was volunteered to us by elders with whom we
24 built a close working relationship in a relatively
25 brief period of time. And I would say we were

1 being and have been highly respectful through that
2 whole process.

3 MR. REGEHR: On page 22 of your
4 report, you seem, from what I've seen from some of
5 your other writings, you seem to find a great deal
6 of satisfaction with the Peace of the Braves
7 Agreement out of Quebec. Is that correct?

8 DR. KULCHYSKI: Well, as a matter of
9 fact, I was one of the few of the sort of experts
10 in the field who could be found publicly to
11 criticize the agreement when it was first
12 negotiated. And so I'm not absolutely head over
13 heels in love with the Peace of the Braves, and
14 I'm one of the few people who noted that in fact
15 one of the communities voted against it because
16 they didn't want the project to go ahead.

17 However, after that I then was in
18 Manitoba long enough and saw the Partnership
19 agreements that we were signing. And when I
20 compared them, I found that, in my view, they are
21 much less adequate than the Peace of the Braves.
22 So my assessment of the Peace of the Braves has
23 probably over the years kind of risen, both as I
24 have seen it put in practice, but also as I have
25 seen the kind of agreements that we're working

1 with here in Manitoba. The structure of those
2 agreements has made me appreciate the structure of
3 the Peace of the Braves agreement more. So that's
4 correct.

5 MR. REGEHR: So, given your
6 understanding of the Peace of the Braves
7 agreement, you do understand the Peace of the
8 Braves agreement deals with more than just hydro,
9 it also deals with forestry and mining, whereas
10 the JKDA just deals with one hydro project; right?

11 DR. KULCHYSKI: That's right.
12 Although hydro was really the critical issue or
13 the critical lever in moving the province towards
14 pushing for the Peace of the Braves.

15 MR. REGEHR: Yes. So to confirm, the
16 Peace of the Braves agreement was between those
17 First Nations and the Government of Quebec, not
18 Hydro Quebec?

19 DR. KULCHYSKI: Well, Hydro Quebec was
20 a major player in it and is providing the funding
21 that supports the Peace of the Braves, so they are
22 involved in it, but it's between, it is a nation
23 to nation agreement, such as I think we need here
24 in Manitoba.

25 MR. REGEHR: So, then if such an

1 agreement was in place, you would be supportive of
2 hydro development under such an agreement?

3 DR. KULCHYSKI: I would probably still
4 be looking at the nuts and bolts to try and figure
5 out the best ways to proceed. But I would say at
6 least that we're using the best standard that's
7 available in Canada, rather than the lesser
8 standard. So I would probably be -- well, I mean,
9 you know in 2001, I probably wouldn't have been,
10 but now looking at where we are, looking at what's
11 happened, I would say I probably would be. I
12 would have to say that if there were an agreement
13 where the communities were receiving that kind of
14 significant resources immediately upon signing,
15 without risking their own existing resources and
16 without having to invest their own existing
17 resources to improve the quality of life in the
18 communities, then under these circumstances I
19 would probably support that.

20 And I have to say that, you know, many
21 of the Aboriginal leaders, you know, I have talked
22 to in Manitoba, when they visited the Cree Quebec
23 communities they are in awe of how much better off
24 things are in Northern Quebec than, just at the
25 everyday community level, things are in Northern

1 Manitoba.

2 And I would think at some point it
3 might be important for the Commission or somebody
4 to travel to the Northern Quebec communities and
5 take a look. Take a look at the difference
6 between, you know, paved roads, roads that get
7 nominated as United Nations excellent community
8 awards. All of that is going on in Northern
9 Quebec. We're not achieving that kind of status
10 in Manitoba at all. I think we are falling, with
11 these agreements I believe we're falling further
12 behind the standard that's being set by Quebec.
13 And I believe, given the portion of Aboriginal
14 people in the province, we should be showing the
15 leadership.

16 So actually, I think, for me the Peace
17 of the Braves is kind of a minimal standard. I
18 would support it in comparison with the
19 Partnership agreements we have now, but I would
20 also think there are other innovative things that
21 we can do that's better.

22 All that is to say that I'm not
23 absolutely opposed under all circumstances to
24 hydro development. I am in favour of development
25 if it can be shown to support the well-being of

1 the communities. And so far I don't believe any
2 of the hydro projects that we have built, and I
3 don't believe the models we're using in the
4 current projects that are being contemplated have
5 any track record and, in fact, have an opposite
6 track record, they are reducing the well-being of
7 the communities.

8 MR. REGEHR: So just a few minutes ago
9 you testified that there was opposition to the
10 Peace of the Braves agreement. You said you were
11 one of the few people to outline that. So even
12 though there was opposition within the Cree
13 communities to the agreement, you would still be
14 supportive of it?

15 DR. KULCHYSKI: Well, what I'm saying
16 is that after 10 years of being in Manitoba and
17 looking at what we have in Manitoba versus the
18 Peace of the Braves, I have come to the conclusion
19 that it's basically the best standard that we have
20 in the country right now. And so I'm pushing for
21 us to at least achieve that standard.

22 You know, frankly, I will push as long
23 and as hard as I can for a much, much better
24 arrangement for the hydro affected communities in
25 Northern Manitoba, and for those communities that

1 will be even more affected by future hydro
2 projects. And it might be fair to say, I may
3 never be satisfied, you know, so I'll always be
4 here hurling thunder bolts at you, but the thunder
5 bolts won't be quite so loud if I can at least say
6 what we've got is as good as anywhere else in
7 Canada. Right now we don't have that.

8 MR. REGEHR: Is it fair to say that
9 you were satisfied with the Peace of the Braves
10 agreement when you testified at the Wuskwatim
11 hearings, that was maybe nine years ago?

12 DR. KULCHYSKI: By that point in time
13 I stood up and I said, this is what we have in
14 comparison with the Peace of the Braves. So I
15 testified, in my view, that that was a better
16 agreement, which is what I say in my report as
17 well.

18 MR. REGEHR: On page 31 of your paper
19 you state:

20 "Furthermore, where the consultants,
21 lawyers and advisers to a nation's
22 leadership had mislead them or not
23 adequately provided them with the
24 information base required to make
25 decisions, there is room for criticism

1 aimed at promoting discussion."

2 Now, my understanding is you may have
3 heard a comment from one of the four or five
4 people of the group you represent. Are you
5 attacking the integrity of lawyers and consultants
6 hired by the four Cree Nations, or are you just
7 making a generalized observation here?

8 DR. KULCHYSKI: Well, I'm doing --
9 first of all, I'm not attacking all of the lawyers
10 and all of the consultants associated with the
11 process. I make a generalized observation, but I
12 would say that I believe that the observation is
13 relevant to this process. So that means I believe
14 there are some consultants and some lawyers, not
15 all, some consultants and some lawyers involved in
16 this process who have not served their communities
17 very well. And I outline -- that's why I outline
18 criteria, and this is to the benefit of the
19 communities if they wanted to take a look at what
20 I call predator consultants, so that you can
21 determine whether or not you are engaged with
22 predator consultants or not.

23 And I'm concerned about the fact that
24 there is a small group of people who are very
25 content with the amount of money they can make off

1 of serving Hydro's interests much more than the
2 community's interests nominally in the work for
3 the community.

4 I mean, this partly came out of the
5 uprising in Tataskweyak of 2012, probably more so
6 than my colleagues on the Concerned Fox Lake Grass
7 Roots Citizens Group, I will say that much. And I
8 have been threatened with litigation in the past
9 over naming said consultants, so I'm not naming
10 them now.

11 MR. REGEHR: So you're making the
12 statement but you're not prepared to name who
13 you're talking about?

14 DR. KULCHYSKI: Well, I have
15 correspondence of six page single-spaced letters
16 threatening to sue me over naming them in the
17 past, and I know that in fact the First Nation
18 paid the consultants to write that letter, so I'm
19 trying to save the community resources by not
20 naming them. But I think anybody who takes a
21 close look at the record can figure out who I'm
22 talking about.

23 And so, yes, I'm not making a blanket
24 statement about all the consultants and all the
25 lawyers involved in this process, many of whom I

1 think have done, you know, very good work for the
2 communities that they are working for. But I'm
3 also not letting everyone off the hook. I think
4 there are some lawyers and some consultants
5 involved in this process who have dealt themselves
6 a very good hand and have not necessarily
7 represented the best interest of some of the
8 communities.

9 And you know, I'm not afraid to name
10 names, I'll name names if you ask me point blank,
11 but I am trying to save the community money in
12 another attempt to sue me.

13 And, you know, I have some very harsh
14 things in my report to say about predator
15 consultants, and that's not merely in the
16 abstract. They have been involved in this process
17 and, you know, there are people who are in very
18 desperate circumstances and large amounts of money
19 throwing around, and I don't see any concern for
20 the people in desperate circumstances in a lot of
21 the places where the money flows.

22 And I'm mindful of the fact, you know,
23 of all of the work I have done in my career, as
24 Steph McLachlan said, 99 percent of it has been
25 for free. I have been actually generously paid

1 through the Clean Environment Commission for this
2 process myself, and I have put in many more hours
3 than I was paid for, but I also feel it was very
4 generous. But I am shocked at how some of the
5 consultants and some of the lawyers in this
6 process have behaved.

7 MR. REGEHR: So you make those
8 comments about -- and I don't want to get you into
9 trouble so I'm not going to ask you to name names.

10 Now, this comment you make, would it
11 also be extended to Cree Nation members who were
12 consultants and advisers to their First Nation,
13 such as Loretta Ross, George Neepin, Karen
14 Anderson, Joe Courchene, Victor Spence, Ted Bland,
15 Martina Saunders and others? Are you suggesting
16 that they mislead their people or did not
17 adequately provide them with a broad base of
18 information required to make decisions?

19 DR. KULCHYSKI: I think within that
20 list of names, there are many people with great
21 integrity who I respect, and there are some
22 people, or at least an individual, you know, whose
23 knowledge I respect but I don't think has
24 necessarily served his Nation's interests well.

25 MR. REGEHR: You're suggesting that

1 some of these people mislead their First Nation?

2 DR. KULCHYSKI: I'm not sure if
3 mislead is an accurate term, but I would say --

4 MR. REGEHR: I'm using your words from
5 your paper.

6 DR. KULCHYSKI: Well, yeah, they
7 mislead. If they haven't informed their
8 community -- if I can go to a community and talk
9 to a band councillor and the band councillor has
10 never heard of the Peace of the Braves, would you
11 think, you know, there might be a problem with
12 that?

13 MR. REGEHR: I'm the one asking the
14 questions today.

15 DR. KULCHYSKI: That was what is
16 called a rhetorical question. I wasn't really
17 expecting you to answer it.

18 My answer to that question is, I do
19 think there is something wrong if there are
20 existing band councillors on councils in these
21 communities who have never heard of Peace of the
22 Braves, who don't know what revenue resource
23 sharing means as a technical term. I think that's
24 a very serious problem.

25 And then I would say, well, is it that

1 individual's problem? They probably have a grade
2 eight education. They relied on certain lawyers
3 and certain consultants to inform them of what
4 options might be available. So who do I blame?
5 In my report I blame the lawyers and the
6 consultants. And some of those lawyers and
7 consultants involved in it may have been, you
8 know, being of First Nations origin doesn't
9 entirely free you from having a self-interest that
10 might not, or that might collide with the
11 self-interest of your community.

12 MR. REGEHR: So I'm to assume that the
13 people that I named were self-interested?

14 DR. KULCHYSKI: You know, you are
15 giving me a whole list of people and I am telling
16 you there are people on that list who I have great
17 respect for. I learned to respect Mr. Bland, for
18 example, during his testimony. I had never met
19 him before. I thought he was a very capable
20 leader. I strongly disagree with him, but I think
21 he sounded to me like he had great integrity and
22 spoke very well and I respect that. There are
23 other people on the list who I don't respect. And
24 you know, again, naming names is what actually
25 will get me in trouble with some lawyers, so I am

1 going to pick names off of a list. I am going to
2 say, as well as non-Aboriginal consultants and
3 lawyers who aren't on the list you mentioned,
4 there are people on that list who are working for
5 some of them who I have less respect for, and who
6 I think have been behaving in a more
7 self-interested fashion than in a fashion that
8 puts their First Nation front and centre.

9 MR. REGEHR: Is it your suggestion
10 that First Nations people are not capable of
11 grasping the central point or points in any deal
12 of this kind, so as to be competent to make a
13 decision on its desirability or validity?

14 DR. KULCHYSKI: Absolutely not.
15 That's why -- otherwise I wouldn't hold the
16 consultants up to a standard of advise the people,
17 let them know the fact, let them know the other
18 kind of deals that exist and let them make the
19 decision. But if you come to them and tell them
20 there's one kind of deal, this is what it is, sign
21 on the dotted line, then, you know, the First
22 Nation leadership doesn't have an adequate basis
23 of information to make a properly informed
24 decision from.

25 I'm not -- you know, you said -- you

1 know, previously you were asking me in several
2 different forums about whether I believed the
3 First Nations were the right people to make these
4 decisions for their communities. And what I have
5 said then and what I am saying now is, if they
6 have the information basis that's appropriate. If
7 they don't have the information basis that's
8 appropriate, then how can they? And I think
9 that's what has been the problem here, quite
10 frankly.

11 You know, we entered this process, I
12 believe Manitoba Hydro entered the process with
13 blinders on about what kind of deal they would
14 negotiate with. And nobody really seriously
15 looked at the alternatives. And the communities
16 weren't presented with alternatives, communities
17 weren't made aware of the alternatives, not just
18 the Peace of the Braves, but other kind of impact
19 and benefit agreements that exist across the
20 country and around the world, and other kind of
21 innovative agreements that First Nations have been
22 signing. You know, we had this one model that
23 people sort of blindly went down the path of this
24 is the best way to do it, this is what we're going
25 to offer. And I think that, frankly, that's

1 unacceptable. That is not giving the First Nation
2 leaders who are capable of making decisions the
3 information they need to make the right decisions
4 on behalf of their people.

5 MR. REGEHR: On page 34 of your report
6 you make a statement that a majority of voters are
7 required to vote on any major land related
8 matters. And I'm going to -- my colleague is
9 going to be handing to you sections 37, 38 and 39
10 of the Indian Act. So you have a copy in front of
11 you and the Commission has it, and we were very
12 careful to make sure we had 50 copies so everyone
13 can have a copy of this wonderful statute.

14 DR. KULCHYSKI: I'm surprised but
15 pleased that here you are reading the Indian Act
16 before me.

17 MR. REGEHR: You understand that it's
18 a requirement of sections 37, 38 and 39 of the
19 Indian Act for a majority of voters or members to
20 vote with regard to a surrender or designation of
21 reserve land?

22 DR. KULCHYSKI: Yes.

23 MR. REGEHR: And you understand that
24 reserve lands are specific parcels of land with a
25 specific legal --

1 DR. KULCHYSKI: Status.

2 MR. REGEHR: -- status, for lack of a
3 better word. You understand that?

4 DR. KULCHYSKI: Yeah.

5 MR. REGEHR: You understand what a
6 surrender or designation vote is?

7 DR. KULCHYSKI: Yes.

8 MR. REGEHR: And you understand that
9 the reason for the surrender or designation vote
10 is a result of the fiduciary obligation of the
11 Federal Crown to First Nations?

12 DR. KULCHYSKI: Yeah.

13 MR. REGEHR: So then you are also
14 aware that should the initial vote required in the
15 Indian Act, which requires a majority of a
16 majority to vote yes, that if that fails, a second
17 vote can occur where you just need a simple
18 majority of voters. You understand that too?

19 DR. KULCHYSKI: Yeah.

20 MR. REGEHR: But you do understand
21 that that is restricted to surrenders and
22 designations of reserve land under the Indian Act?

23 DR. KULCHYSKI: Yes.

24 MR. REGEHR: Now, I'm just going to
25 ask you a couple of more questions.

1 My understanding is that your central
2 thesis is that hunting cultures are fragile and
3 must be given preeminence over mega projects such
4 as Keeyask. Have I got that right, more or less?

5 DR. KULCHYSKI: Well, more or less. I
6 mean preeminence, I'm just saying that I don't
7 believe the value of them have been weighed
8 appropriately in this whole process. And that I
9 think, in my view, a single trapline can have the
10 same value as a single hydro dam. It will
11 certainly last a lot longer, can last a lot
12 longer. Hydro dams will eventually be
13 decommissioned. And the culture of the people
14 rests on their material action, on their
15 practices, and a trapline is integral to those.
16 And I think they have just been, to me,
17 consistently underestimated through this whole
18 process and through the previous processes.

19 MR. REGEHR: And time would be as
20 valuable as progress or profit in the modern
21 sense?

22 DR. KULCHYSKI: I believe that there
23 is a form of wealth in the form of time that also
24 doesn't get a proper estimation when we look at
25 First Nations communities.

1 MR. REGEHR: And so you would suggest
2 foregoing the economic and capacity building
3 benefits of Keeyask for the preservation of
4 intangible cultural property. Is that correct?

5 DR. KULCHYSKI: Well, in a nutshell I
6 suppose, yes.

7 MR. REGEHR: Now, you testified, as we
8 talked a little earlier, at the Wuskwatim
9 hearings, at the Clean Environment Commission
10 hearings, right?

11 DR. KULCHYSKI: Yeah.

12 MR. REGEHR: And in fact the Chair of
13 this panel was a member of that panel?

14 DR. KULCHYSKI: Yeah.

15 MR. REGEHR: So to be fair to you, I
16 am going to read to you a quote from Chief Jerry
17 Primrose of the Nisichawayasihk Cree Nation, which
18 he made during the Wuskwatim hearings. I have
19 given you a copy. It's from the testimony on
20 Monday, March 22, 2004, on page 2953 of the
21 Wuskwatim transcript, starting at sentence 23.

22 "At the hearing last week in Winnipeg,
23 Peter Kulchyski, the head of the
24 Native Studies at the University of
25 Manitoba suggested our people should

1 somehow turn back the clock and become
2 hunters once again. He's dreaming if
3 he thinks a rapidly growing population
4 would be able to survive today based
5 on a hunter's economy. And what makes
6 him think our young people would all
7 want to be hunters? They live in the
8 21st century and they want what the
9 21st century can offer them. Our
10 young people want to maintain our Cree
11 culture, but they also have the dreams
12 of a successful life in Canada as
13 teachers, dentists, doctors, even
14 lawyers, engineers, artists,
15 musicians, business leaders and trades
16 people. I think Mr. Kulchyski needs a
17 reality check. We don't need his help
18 in deciding what our future should be.
19 We will decide that and we will be
20 responsible for our decisions. We
21 live in our community and we know what
22 our culture is and what we need to do
23 to preserve it as we move forward.
24 Mr. Chairman and Commissioners, this
25 is 2004. It seems our people are

1 trapped in the 19th Century standard
2 of living. We want to catch up with
3 the rest of Canadians. Our young
4 people want to work, but today living
5 off the land has a new meaning. That
6 is using the profits and opportunities
7 presented by projects like Wuskwatim
8 to train and educate our people for
9 real jobs and business development
10 initiatives. They have the right to
11 live as well as anyone else with the
12 same opportunity. No one can deny
13 them this. We are here today in
14 support of Wuskwatim and the
15 opportunity it represents to create a
16 better future for our people, our
17 children and generations to come."

18 So I will leave this questioning by
19 asking you to respond to Chief Primrose's
20 perspective, which I suggest represents the
21 perspective of many of the Cree witnesses
22 throughout this hearing.

23 Can you tell us why your view ought to
24 be considered superior to theirs?

25 DR. KULCHYSKI: I believe I can, and

1 I'm glad for the chance to respond to
2 Mr. Primrose's comments.

3 First of all, I'm not talking about
4 going back at all. I showed you a picture of Jake
5 Ishulutak, who is a hunter today. He's not a part
6 of the past, he's a part of the future. It
7 shocked me and woke me up, you know, when I was
8 standing on his porch and he told his son to drop
9 out of school and come and learn from me. Because
10 I'm on the education track. It's like an instinct
11 for me to tell kids hang on, they are in school,
12 and come to university, you can learn a lot, you
13 can do a lot, you can do all of these things, you
14 know, education is the future. But when I stepped
15 back I thought, you know, he's right. Going to
16 his community's high school isn't going to help
17 him at all. Spending more time learning from his
18 father, if he can get the way of life that his
19 father has, and he can, that's a much more
20 rewarding life than anything that I could offer
21 through the education system.

22 So, you know, we always hear this, oh,
23 you can't go back, you can't go back, you can't go
24 back, it's like a little train chugging along.
25 But in most of these northern communities still,

1 and the group that I work with still, you know,
2 those people aren't a part of the part. Noah
3 Massan is not a part of the past. The brothers
4 and nephews he wants to pass his trapline off to
5 are not a part of the past. They are using
6 contemporary technologies, they are adapting the
7 hunting way of life to the modern world, and they
8 are trying to get the benefits and rewards that we
9 have completely underestimated of the hunting way
10 of life, in the context of the modern world.

11 And I should say, you know, if you
12 look at northern communities there's really two
13 options. One is the option of struggle and maybe
14 get a little bit of wage work that lasts for a
15 little while. So the most you get is to be a
16 working class member of society with a low paying
17 job, and in a racially stratified workforce, a
18 demeaning job. You get that work for a year or
19 two years, or five years if you are lucky, and
20 then you are unemployed and you're sitting in a
21 government house with no heating and no hope and
22 you're watching your children have, you know, no
23 hope. And if you are in Gillam, you know, you are
24 putting your children next to white Hydro kids who
25 are doing really well thank you, and have all the

1 latest gadgets.

2 Right next to those people are other
3 people whose parents are living off the land, and
4 who are using snowmobiles and high powered rifles
5 and not getting the prices that they might deserve
6 for the work they are doing, and having an awful
7 time to get the money they need to go in the bush.
8 But when they are in the bush, and when you are in
9 the bush with them, you are living a totally
10 different quality of life, where you are
11 surrounded by beauty, you're not surrounded by
12 electrical wires. And you are not being demeaned.
13 You are the expert, you are the one who knows
14 exactly how to live that way of life, how to enjoy
15 it, how to have time.

16 And so, you know, I think it's an
17 under appreciation, even from Chief Primrose, to
18 say that no one in his community practices that.
19 There are people in Nisichawayasihk who practice
20 that way of life. There are people in York
21 Factory, there is people from Tataskweyak, there
22 is people in Fox Lake who practice that way of
23 life.

24 You know, at one time they were a
25 majority in their communities, now they are

1 probably a minority in their communities, but they
2 are the social bedrock of their communities to
3 this day. And they are the cultural holders in
4 their community.

5 So if your vision is that all
6 Aboriginal people should basically -- the most
7 they can aspire to be is working class Canadians,
8 assimilated into the Canadian mainstream, that's
9 another way of paraphrasing what Chief Primrose
10 has to say.

11 We have a section of the Constitution
12 that says Aboriginal and Treaty rights are
13 recognized and affirmed. And that means, you
14 know, we had a huge battle in the 1960s and 1970s
15 about whether Aboriginal people should be
16 assimilated into Canadian society. And a whole
17 generation of Aboriginal leaders fought against
18 that vision. They fought against the white paper
19 of 1969, they fought for the entrenchment of
20 Aboriginal rights in the Constitution. And what
21 they were fighting for was the right to be
22 different. And the right to be different for most
23 of those people is grounded on the material
24 practices associated with hunting.

25 So this is, you know, I think at the

1 core in a certain sense of where our vision of the
2 future is. It's not that I don't see the
3 possibility of Aboriginal dentists and doctors and
4 artists and all sorts of other things. It's
5 curious to me that the most successful Aboriginal
6 artists are often the ones who come from
7 land-based families.

8 Zach Kunuk, who made the Cannes award
9 winning film *Atanarjuat*, won't come to a meeting
10 with me in August because he's out on the land in
11 August, because he grew up in a hunting family.
12 It's the hunting way of life that gave him the
13 artistic vision that he has. In his community, in
14 that community, Pangnirtung, Elisapee Ishulutak
15 just won the Governor General's Order of Canada
16 award. She has lived on the land all her life.
17 You know, the great writer Thomson Highway from
18 Northern Manitoba grew up in Brochet in a hunting
19 family. That's what gives him the skills and
20 ability to achieve the artistic success that he's
21 had. It's actually the children coming out of the
22 hunting families who have sort of the cultural
23 foundation and the vision to be able to exceed
24 beyond a poor working class lifestyle, where
25 Manitoba Hydro basically wants to see people, and

1 into making a contribution to the fabric of
2 Canadian culture.

3 So if we get rid of the possibility of
4 all of the hunting and all of the trapping
5 families to exist in those communities, you know,
6 we have condemned people to assimilation at the
7 bottom end of our scale. We'll have equality all
8 right, we'll have an equality where everyone
9 gets -- in fact, they get worse off misery because
10 they are attached to these northern communities
11 where there is no economy once all of the Hydro
12 construction jobs run out, as they will run out.

13 So I respectfully entirely disagree
14 with Chief Primrose's statement.

15 MR. REGEHR: Just to clarify, Chief
16 Primrose didn't say that none of the young people
17 wanted to become hunters. He said, what makes him
18 think that our young people would all want to be
19 hunters? So some of them clearly, according to
20 his testimony, would want to hunt.

21 DR. KULCHYSKI: And if they have no
22 land base to hunt from, it will be very difficult
23 for them to do that.

24 MR. REGEHR: But to clarify, that's
25 what he says, isn't it?

1 DR. KULCHYSKI: Sure.

2 MR. REGEHR: Mr. Chair, I almost
3 forgot my rules of civil procedure. I would like
4 to enter the excerpts from the Indian Act in as an
5 exhibit, as well as the excerpt from the minutes
6 from the Wuskwatim hearing as an exhibit.

7 I have no further questions for
8 Dr. Kulchyski. Thank you, Dr. Kulchyski, but my
9 colleague, Mr. Roddick, does have some questions.

10 THE CHAIRMAN: Thank you, Mr. Regehr.
11 Mr. Roddick?

12 MR. RODDICK: Mr. Chairman, I have
13 questions fundamentally in three areas and I will
14 do my best to be brief on them.

15 I have a package of documents that
16 will be dealt with in the three areas and I
17 propose to hand out these documents now and then
18 refer to the various copies of them as I go
19 through them.

20 THE CHAIRMAN: Go ahead, Mr. Roddick.

21 MR. RODDICK: Mr. Chairman, two of the
22 documents that have I have distributed are pages
23 out of the JKDA. And while I have distributed
24 them for convenience of reference, it's not my
25 intention to enter those. There are other

1 documents that I will ask to be entered later.

2 Dr. Kulchyski, in your paper you are
3 highly critical of lawyers and consultants,
4 particularly with regard to contingency
5 agreements. Is that correct?

6 DR. KULCHYSKI: Well, as I have said
7 before, not all the lawyers and all of the
8 consultants, but I think there are some to be
9 concerned about.

10 MR. RODDICK: No, but you're highly
11 critical of contingency agreements as a type of
12 agreement?

13 DR. KULCHYSKI: If by the contingency
14 agreement you mean the Partnership agreement, yes.

15 MR. RODDICK: No, the Partnership
16 agreement is not a contingency agreement. I'm
17 talking fees agreements that are based on a
18 contingency.

19 DR. KULCHYSKI: Oh, okay. Yes.

20 MR. RODDICK: And Dr. Kulchyski, in
21 the package that I have given to you, and I don't
22 expect anyone to remember everything that's in the
23 JKDA, section 24.4, would you agree that it puts
24 significant and strict controls on any contingency
25 agreements that may be entered into with regard to

1 matters arising out of the JKDA?

2 DR. KULCHYSKI: Are you talking about
3 24.4.1?

4 MR. RODDICK: Yes.

5 DR. KULCHYSKI: As far as I can see,
6 this allows the Partners or the Cree Nations to
7 engage in contingency agreements as long as they
8 are fully disclosed to Hydro.

9 MR. RODDICK: And it allows them to
10 enter into those agreements for very limited
11 purposes, which is a claim arising out of an
12 event?

13 DR. KULCHYSKI: Or events occurring
14 before the final closing date, sure.

15 MR. RODDICK: And Dr. Kulchyski, are
16 you aware that in all of the funding arrangements
17 that have been signed, at least by the Cree Nation
18 Partners, to the date of the signing of JKDA there
19 were specific provisions that disallowed any
20 contingency agreements?

21 DR. KULCHYSKI: I am not aware of
22 that.

23 MR. RODDICK: Okay.

24 DR. KULCHYSKI: I also note in this,
25 it says at the end, does not cede the lesser of

1 \$1 million or 30 percent of the settlement amount.

2 And I have to say that, you know, from the
3 perspective of these communities, that's a lot of
4 money. So we're dealing with very, very large
5 contingency agreements if that is what we are
6 looking at.

7 MR. RODDICK: Well, we're looking at
8 dealing with contingency agreements in that
9 clause, Dr. Kulchyski, and they are limited to
10 something that's defined as a claim. What I would
11 say is this: There are provisions for contingency
12 agreements in the JKDA. Would you agree?

13 DR. KULCHYSKI: I agree.

14 MR. RODDICK: And there were, I would
15 suggest to you, such arrangements in all of the
16 funding arrangements.

17 The second document I'd ask you to
18 look at is article 4, The Limited Partnership and
19 The General Partner it's headed, and it's 4.1.1,
20 4.1.2 and it goes on.

21 You were critical, Dr. Kulchyski, when
22 comparing the Quebec agreements and the JKDA in
23 that under the Quebec agreements the First Nations
24 involved in that had a right to a choice, and they
25 made a choice to take a fixed amount of money for

1 a length of time. Do you recall saying that? And
2 you suggested that was not available under the
3 JKDA?

4 DR. KULCHYSKI: What I was saying is
5 that from the signing of the agreement, the Cree
6 Nations in Quebec are getting a fixed amount of
7 money without taking any risk, without investing
8 any of their own already preciously needed
9 resources in that risk in order to get funds. And
10 that from the date of signing they are getting a
11 guaranteed automatic amount of funding.

12 MR. RODDICK: Are you aware, Dr.
13 Kulchyski, that under the adverse effects
14 agreements signed by the First Nations in this
15 process, they started receiving money the day the
16 adverse effects agreements were signed?

17 DR. KULCHYSKI: They started getting
18 money for some programs and some of it runs out
19 after certain periods of time. And they are
20 investing their own existing money to alleviate
21 the impacts of previous projects in order to
22 participate.

23 MR. RODDICK: Dr. Kulchyski, they
24 received some funds starting at the time of the
25 signing of the agreement; is that correct?

1 DR. KULCHYSKI: Sure, that's right.

2 MR. RODDICK: Fine. And with regard
3 to the provisions of article 4, the provisions of
4 article 4 in 4.1.2 and following sections provide
5 for the Cree Nations involved in this process the
6 right to make an election as to whether they want
7 to take a fixed sum of money or whether they want
8 to be equity partners. Do you understand those
9 clauses to give them that right and option?

10 DR. KULCHYSKI: I don't think I do
11 understand. You'll have to explain it to me.

12 MR. RODDICK: Well, the clauses in
13 article 4 and 4.1 and 4.1.1 and 4.1.2 set out that
14 there are two options for the First Nations. They
15 can have two different types of units and that
16 they can make a choice as to which one of those
17 they want to take. Further, Dr. Kulchyski, that
18 section provides that they do not have to make
19 that choice until after the dam is operational,
20 such that they will know all of the costs, all of
21 the potential income from contracts, and make that
22 choice on a fully informed basis. Were you aware
23 that that is what the meaning of article 4 is?

24 DR. KULCHYSKI: I'm aware that that's
25 a part of the meaning of article 4, yes.

1 MR. RODDICK: So your criticism, and
2 perhaps I didn't understand it, but I understood
3 your criticism to be that they didn't have this
4 choice. And if they were to choose one of the
5 options, they do not have to make substantial
6 investments of their own money, is that correct or
7 is that what you understand?

8 DR. KULCHYSKI: That's what I
9 understand.

10 MR. RODDICK: Good.

11 And Dr. Kulchyski, in your report on
12 page 6 and 7, and it's to deal with the Treaty at
13 Split Lake, toward the bottom of page, you say:

14 "Finally, it should be noted that the
15 First Nations involved in the
16 Partnership were not present or
17 represented at the signing of the
18 original Treaty in 1875. Rather they
19 are descendants of people who signed
20 an adhesion to the Treaty in 1908 with
21 one notable exception. In Split Lake
22 during the Treaty signing ceremony the
23 Chief was given the wrong document, an
24 individual adhesion rather than an
25 adhesion on behalf of his people.

1 This area was never corrected when it
2 was discovered in Southern Canada.
3 The people of Tataskweyak have to know
4 that their lands may have been
5 improperly surrendered or not
6 technically surrendered at all. Who
7 on the part of the government would
8 have such an interest in letting them
9 know?

10 Dr. Kulchyski, it's my understanding
11 that you cite as authority for that proposition a
12 statement in a book written by Frank Tough, "As
13 Their Natural Resources Fail." Is that correct?

14 DR. KULCHYSKI: Yeah, we handed out
15 the statement to the Commission and everyone here
16 previously.

17 MR. RODDICK: And in the package that
18 I have given you is a document, and it's my
19 handwriting on it that says, it's page 110, and it
20 says "As Their Natural Resources Fail," Frank
21 Tough 1986.

22 Now, I have examined that statement by
23 Frank Tough. Would you agree with me that he does
24 not cite any authority for that statement?

25 DR. KULCHYSKI: No, I disagree with

1 you. He cites the archival reference, there is a
2 citation there. If you go back to the version
3 that I handed out, the one that I handed out had
4 the footnotes to the section. And in one of his
5 footnotes, he cites his archival references to the
6 letters he was quoting.

7 MR. RODDICK: No, no, we're not
8 talking about the letters, we're talking about the
9 document that was signed. I agree he references
10 the letters, but he nowhere has any authority,
11 other than what he says, for the fact that they
12 had purportedly signed the wrong document?

13 DR. KULCHYSKI: Well, I think you are
14 misinterpreting the value of scholarly archival
15 based research. If you are an archival
16 researcher, you are conducting what is called
17 original research. If you are conducting original
18 research, you don't go to the authorities because
19 the authorities, other historians wouldn't have
20 conducted that research. You'd be basing your
21 view on the primary documents and you'd be
22 conducting original research.

23 I should note, Dr. Tough's book is a
24 refereed publication. The statements that I
25 referred to are properly footnoted by him. He's

1 not citing an authority, he's citing the achieves
2 directly, which is where he gets his information
3 from.

4 MR. RODDICK: Well, with respect, I
5 don't know that I agree with that.

6 DR. KULCHYSKI: If you look at the
7 footnotes, which are in the version that I handed
8 to the commission, so you can find those copies,
9 you'll see a footnote, you'll see that he cites
10 specific archival sources.

11 MR. RODDICK: Well, perhaps --

12 DR. KULCHYSKI: If you have the book,
13 I can show you.

14 MR. RODDICK: I have the book right
15 here, but perhaps we can go back to that in just a
16 minute.

17 I have included in the package I have
18 handed out, Dr. Kulchyski, a document called
19 "Life's Embarrassing Moments, Right Treaty, Wrong
20 Adhesion: John Semmens and the Spilt Lake
21 Indians." It's written by a David Hume.

22 Have you seen that article before?

23 DR. KULCHYSKI: Can you tell me where
24 it's published? It doesn't say on the document?

25 MR. RODDICK: It's an archival --

1 well, it does at the back of the document, I
2 believe, indicate that it was done by an archival
3 researcher and it was published in an Ottawa
4 document. I'm sorry, I don't have it in front of
5 me here. Are you familiar with that document?

6 DR. KULCHYSKI: I'm not familiar with
7 it, but I can tell you it doesn't look like a
8 refereed publication so it is not something that
9 would have likely crossed my desk.

10 MR. RODDICK: And it would appear that
11 it wasn't something that was picked up by Frank
12 Tough when he wrote his book in 1996?

13 DR. KULCHYSKI: It may not have,
14 because then apart from archival sources, I mean,
15 he would look at some of the great literature
16 but --

17 MR. RODDICK: Well, it's kind of a
18 strange document. It says they signed the wrong
19 Treaty. And they did sign the wrong adhesion, but
20 they did not sign the type of document he refers
21 to. They did not sign an individual adhesion,
22 they signed the wrong adhesion.

23 Would you agree there's a significant
24 difference between an individual adhesion and a
25 First Nation adhesion?

1 DR. KULCHYSKI: Well, that's the whole
2 point. And if they signed the wrong adhesion --
3 like I'd need to see, I haven't seen what they
4 signed. I think it is an issue of some
5 significance, but clearly they did not sign the
6 document they were supposed to sign.

7 And Tough, who looked at the archives,
8 said they signed an individual adhesion, and Tough
9 is a professor, David Hume is an archival
10 researcher, that could mean anyone. This is not a
11 refereed article. So on the spot, I am inclined
12 to agree with Tough.

13 MR. RODDICK: Well, is Dr. Tough a
14 lawyer?

15 DR. KULCHYSKI: Dr. Tough is a senior
16 professor.

17 MR. RODDICK: Is he a lawyer?

18 DR. KULCHYSKI: He is not a lawyer.
19 Is David Hume a lawyer?

20 MR. RODDICK: Are you a lawyer?

21 DR. KULCHYSKI: I'm not a lawyer.

22 MR. RODDICK: Okay.

23 DR. KULCHYSKI: Are you a historian?

24 MR. RODDICK: Maybe as well as you are
25 a lawyer, Dr. Kulchyski.

1 DR. KULCHYSKI: Well, that's probably
2 right. Since we're talking about historical
3 matters, I think my assessment of which view and
4 the significance might have more credibility.

5 MR. RODDICK: Dr. Kulchyski, Frank
6 Tough is your authority for the statement that an
7 individual adhesion rather than adhesion on behalf
8 of his people was signed; is that fair?

9 DR. KULCHYSKI: That's right.

10 MR. RODDICK: And if Frank Tough is
11 wrong, then you are wrong?

12 DR. KULCHYSKI: Well, depends on the
13 nature of how he's wrong. I'd have to look at the
14 archival record myself.

15 MR. RODDICK: Okay. But you didn't
16 look at those archival record before you made
17 representations?

18 DR. KULCHYSKI: No, that's right. I
19 think Frank Tough is right.

20 MR. RODDICK: And I have just been
21 handed the reference that this document was part
22 of archivia 17 in the winter of 1983/84 at page
23 261 in that document. So that's the reference and
24 where it's from.

25 DR. KULCHYSKI: Thank you.

1 MR. RODDICK: You then go on --

2 DR. KULCHYSKI: Just to be clear. Is
3 the point you're making, that Hume is making is
4 that they did not sign the right document, they
5 signed a different First Nation adhesion, the
6 wrong one, not that they signed a different
7 individual adhesion? Is that correct?

8 MR. RODDICK: The point is that they
9 did not sign an individual adhesion at all. They
10 signed a band adhesion. They signed the wrong
11 one, it's fairly clear from the documentation and
12 the follow-up.

13 The point I would make is you went on
14 to indicate in your paper, going from page 7 to
15 page 8, that I left the quote off, who on the part
16 of the government would have an interest in
17 letting them know? They have not been well served
18 by many consultants and lawyers surrounding them
19 who appear to be unaware of this historical fact.
20 You then say it can be easily adduced from
21 reading, from a reading of Frank Tough's, "As
22 Their Natural Resources Fail," potentially worth
23 millions of dollars.

24 That's your view on what it's worth?

25 DR. KULCHYSKI: Yeah.

1 MR. RODDICK: That view, have you ever
2 obtained a legal opinion with regard to that,
3 Dr. Kulchyski?

4 DR. KULCHYSKI: What I can tell you is
5 this. I worked in the Northwest Territories --

6 MR. RODDICK: Doctor, would you please
7 just answer the question? Did you get a legal
8 opinion on it or not?

9 THE CHAIRMAN: Can I interrupt? I'm
10 not quite sure how this point on whether or not
11 the correct adhesion was signed is relevant to the
12 matters before us. I realize that Dr. Kulchyski
13 made his statement in his evidence. I would ask
14 the question of both you Mr. Roddick and
15 Mr. Kulchyski how this is relevant to what's
16 before us?

17 MR. RODDICK: Well, Mr. Chairman,
18 Dr. Kulchyski has made a number of statements, and
19 all I'm trying to show is that at least some of
20 the statements he made are inaccurate. They are
21 incorrect and they lead to great mischief with
22 representations that there are claims out there
23 worth a million dollars.

24 I have one more document and I will go
25 as far as I'm going.

1 THE CHAIRMAN: I will allow it.

2 DR. KULCHYSKI: If I may answer the
3 question?

4 THE CHAIRMAN: Yes.

5 DR. KULCHYSKI: It happens that I
6 spent a lot of years working in the Northwest
7 Territories. And the Northwest Territories from
8 Yellowknife through to, I'm blanking on the name,
9 but like Arctic Red River, the Dene communities in
10 the far northwest, all of those territories are
11 nominally covered by Treaty 11. That's Treaty 11
12 territory. You look at any map of Canada that
13 shows the treaty areas and you'll see the Western
14 Arctic is covered either by Treaty 8 or Treaty 11.

15 In spite of the fact that those
16 treaties were signed and that the Government of
17 Canada has argued that those treaties cover all of
18 that territory, over the last 40 years, all the
19 communities have been involved in negotiating
20 modern treaties with the Government of Canada, and
21 those modern treaties have, you know, been valued
22 in 1990 dollars at \$70 million, \$80 million and so
23 on, significant amounts of money. And that's
24 because there were improprieties in the
25 negotiation of those treaties. And a Commission

1 was held by Justice Moreau that determined that he
2 believed, in spite of the fact that normally these
3 treaties signed, there were enough irregularities
4 that the Dene and those territories still have
5 Aboriginal title to those lands.

6 So I'm basically saying, I think a
7 case can be made, I'm not saying it's an easy
8 case, and I'm not saying that there won't be
9 arguments both ways, but I think it's a very
10 significant fact that there are improprieties in
11 the signing of the treaties. Tough points to
12 other ones, I just point to that one. Because I
13 think signatures on the treaties are very
14 important to the Federal Government, that's why
15 they go through so much process and efforts to get
16 them. Where they don't have them, where they are
17 not on the right document, that is potentially
18 very valuable to the communities. That's what I
19 say in my report.

20 MR. RODDICK: And last document I have
21 in the group that I have given you is a document
22 that's headed "significant of TCN Treaty 5
23 adhesion on June 26, 1908." And it's a document
24 that was handed out at the 100th anniversary of
25 the Treaty.

1 Dr. Kulchyski, also handed out at the
2 100th anniversary of the Treaty was the document I
3 just referred to that says they signed the wrong
4 Treaty. So Split Lake has known at least since
5 1908 that this was the situation. It's not
6 something that they don't know. And I would
7 suggest that you are inaccurate to suggest that
8 they aren't aware of it.

9 DR. KULCHYSKI: Well, I have talked to
10 people who -- again, band councillors, when I was
11 there in 2012, who weren't aware of it and were
12 very interested in the fact. And again, you know,
13 here you have it called "Life's Embarrassing
14 Moments." So someone could read that and not
15 think it has any significance, because they are
16 not a lawyer. The band councillors and the people
17 who become band councillors may not be trained in
18 law. If someone comes along and tells them, you
19 know, this could be potentially very significant
20 and very important, then people might get more
21 interested.

22 MR. RODDICK: And I agree,
23 Dr. Kulchyski, that people may get more
24 interested, but it's important that they get more
25 interested with a factual base to it.

1 The situation, Dr. Kulchyski, is that
2 these matters were known about for some time.

3 My final part of this, Mr. Chairman.
4 Dr. Kulchyski, I understand that you went into
5 Split Lake sometime in 2012 and you met with some
6 people who were having a protest. Is that
7 correct?

8 DR. KULCHYSKI: That's correct.

9 MR. RODDICK: Do you recall driving
10 into Split Lake, and on the right-hand side of the
11 road just before you got to community there was a
12 large sign and it said UCC on it, a construction
13 site?

14 DR. KULCHYSKI: I remember that there
15 were construction site signs. I couldn't say
16 particularly that one, but I'll grant you that
17 there's probably such a sign.

18 MR. RODDICK: Dr. Kulchyski, are you
19 aware that the Tataskweyak Cree Nation has had a
20 joint venture agreement with the Quebec Cree, and
21 that that company is that joint venture agreement
22 on the ground in Split Lake for the last eight or
23 nine years?

24 DR. KULCHYSKI: That's right.

25 MR. RODDICK: Are you aware that the

1 chiefs, the various chiefs and councils, and I
2 can't speak to the last one because they are in
3 office at this point, but have gone to Quebec to
4 meet with the James Bay Cree on more than one
5 occasion?

6 DR. KULCHYSKI: Yeah.

7 MR. RODDICK: Are you aware that the
8 James Bay Cree and the Tataskweyak Cree exchanged
9 their various agreements that they have signed
10 with the government so that each knew what the
11 other knew?

12 DR. KULCHYSKI: That I don't know, but
13 I know that there are councillors who I was
14 talking to in 2012 who had no knowledge of the
15 Peace of the Braves. They had been to Quebec,
16 because they told me that they were very envious
17 of the conditions in the Quebec side communities,
18 extremely envious, given the kind of horror show
19 that was going on in their community at that time.

20 MR. RODDICK: I have no further
21 questions, Mr. Chairman.

22 THE CHAIRMAN: Thank you, Mr. Roddick.
23 Are there any other questions from Partnership
24 counsel? No? Thank you very much.

25 MR. RODDICK: Mr. Chairman, might I

1 ask that the document, "Life's Embarrassing
2 Moments" and the other document, "The significance
3 of TCN Treaty 5," and the single page from Frank
4 Tough's book be entered as exhibits?

5 THE CHAIRMAN: Yes.

6 MR. RODDICK: Thank you.

7 THE CHAIRMAN: Participants, Manitoba
8 Wildlands, Ms. Whelan Enns?

9 MS. WHELAN ENNS: Dr. Kulchyski, I
10 have questions that are in notes of course from
11 December, and also I have some that have to do
12 with today.

13 Based on questions from the
14 Partnership legal counsel today, I'd like to ask
15 you whether or not you have given any thought to
16 whether the consultants involved with Manitoba
17 Hydro or the Partnership First Nations regarding
18 the Keeyask Generation Station are lobbyists?

19 THE CHAIRMAN: I don't think that's a
20 relevant question. I also don't understand how it
21 might be germane to our consideration.

22 MS. WHELAN ENNS: We'll pass,
23 Mr. Chair.

24 The research fields that I have worked
25 in and work in are quite different than what you

1 do. But the question in terms of sources that has
2 come up is one that begs the question. Would you
3 agree or recommend that legal and academic
4 research should be based on primary sources?

5 DR. KULCHYSKI: I mean, the whole
6 point of academic scholarship is that it's to
7 contribute original research. So we use primary
8 sources which can be archival sources or, you
9 know, can be observation, can be field notes,
10 depending on whether you are doing ethnographic
11 style research or whether you are doing archival
12 style research or if you are doing social science
13 research where you are gathering data but -- and
14 then there's a theoretical level. So people can
15 be involved in reading the different research
16 produced by other academics and generating kind of
17 a higher level of discourse that's more
18 theoretical, where they are not actually doing
19 empirical research themselves, but they are
20 generating --

21 MS. WHALEN ENNS: Thank you,
22 Dr. Kulchyski.

23 Is it an accurate statement then, when
24 legal counsel for First Nations are involved in a
25 land claim, one kind or another, or a specific

1 legal action that includes then history, that the
2 sources used by legal counsel in that situation
3 are likely to be primary sources?

4 DR. KULCHYSKI: Yeah. Like I have
5 been involved as an expert to some extent --

6 THE CHAIRMAN: Excuse me. Mr. Regehr,
7 I think you were going to --

8 MR. REGEHR: I'm just wondering what
9 the relevance of this is?

10 THE CHAIRMAN: I'm wondering the same
11 thing?

12 MS. WHELAN ENNS: Thank you.

13 Dr. Kulchyski, are you aware, and this
14 would be over a generalized period of time and not
15 just specific to the Keeyask Generation Station,
16 are you aware of any Manitoba Hydro research,
17 studies, reports and so on that see peer review?

18 DR. KULCHYSKI: Now --

19 THE CHAIRMAN: Mr. Regehr?

20 MR. REGEHR: Again, what is the
21 relevance of this?

22 THE CHAIRMAN: I agree.

23 MS. WHELAN ENNS: Thank you,
24 Mr. Chair. The relevance of course has to do with
25 the expectation that Manitoba Hydro and the

1 Partnership has had of participant witnesses. But
2 we'll go on.

3 Dr. Kulchyski then -- let's see --
4 there has been some, and again this takes us back
5 to December, there has been some commentary and/or
6 concern on the part of the proponent about the
7 small sampling for traditional knowledge used in
8 your work and the work of the Concerned Citizens
9 for Fox Lake. Is that a valid criticism?

10 DR. KULCHYSKI: Actually, the
11 criticism sort of shows the lack of knowledge of
12 the people making it basically. As I said in my
13 report, you know, the single best traditional
14 knowledge published, refereed research that you'll
15 find is almost all done with very few elders. So
16 for me the standard is Julie Cruikshank's "Life
17 Lived Like A Story," which was conducted with
18 three female elders in the Yukon. It is an
19 outstanding piece of work that I think everyone
20 should read actually. It's a readable piece, and
21 extraordinarily rich in terms of the quality of
22 the work that she's done. But there are many
23 others, Nancy Wachowich's Saqiyuq. I work with
24 Inuit so I see a lot of this kind of work with
25 Inuit. But the new generation of scholars,

1 including Niigaan Sinclair, who is here, or Neil
2 McLeod, when they do traditional knowledge
3 research, they tend to kind of apprentice almost
4 with a single elder. And that produces trust like
5 relationship and that -- now I'm falling on the
6 legal side -- a trusting relationship in the
7 conventional term and produces very rich scholarly
8 results.

9 You can phone a hundred elders and do
10 a telephone survey with a hundred elders, and you
11 would probably actually get -- be misinformed
12 rather than properly informed. You know, doing a
13 kind of social science numerical qualitative study
14 does not fit with the nature of traditional
15 knowledge, and there is no refereed, there is no
16 widely read work that's based -- that's a
17 traditional knowledge piece of scholarship that's
18 based on quantitative data gathering.

19 And in fact, actually if you look
20 closely at the traditional knowledge reports that
21 I like, they often lean heavily on a very few
22 elders. So that if you read the Fox Lake Cree
23 Nation traditional knowledge report, you'll find
24 Zach Mayham's name reappears consistently through
25 the report. He's obviously one of the key

1 informants. They cite maybe a few more, not many
2 more than the people that we cite. So there are a
3 few names in there. There are a lot of quotes
4 that are unattributed, and there are several
5 people who are leaned on very heavily in that
6 report. And that's one of the reasons why I think
7 it's a good report. They developed a trust
8 relationship with certain elders. They got very
9 good quality results as a result of that. And
10 we're basically doing the same thing.

11 And you know, if I had more time, I
12 would work more intensively, but probably not add
13 extensively too many more people to the list of
14 people I would desire to talk to. I found Tommy
15 and Noah and Ivan and Nancy and Christine and Jack
16 very well-informed people that I could establish a
17 good close relationship with and get excellent
18 results from.

19 So I think, you know, the notion that,
20 oh, we're seeing the same people over and over
21 again, which Mr. Bedford, was a comment he made a
22 few times, I think just shows kind of a lack of
23 knowledge of what traditional knowledge research
24 really involves, even the good quality research
25 conducted by their own partners.

1 MS. WHELAN ENNS: Thank you. You have
2 a note. Is there anything to add or --

3 THE CHAIRMAN: Please carry on.

4 MS. WHELAN ENNS: Thank you. Dr.
5 Kulchyski, are you familiar with the
6 Interpretation Act of Manitoba?

7 DR. KULCHYSKI: No, I'm not.

8 THE CHAIRMAN: Can you --

9 MS. WHELAN ENNS: Reason for the
10 question, yes, Mr. Chair.

11 Dr. Kulchyski, sorry reasoning for the
12 question then is needed. You have made a variety
13 of comments with respect to the implementation
14 agreements of the '90s, the JKDA, and so on, both
15 in your presentation and in your report and also
16 as a result of questions asked of you. So in that
17 context, are you familiar with the Interpretation
18 Act of Manitoba?

19 THE CHAIRMAN: Can you explain how
20 that's relevant?

21 MS. WHELAN ENNS: Well, the
22 Interpretation Act of Manitoba is potentially
23 quite relevant to in any discussion of these
24 agreements, and anything that happens under law in
25 Manitoba, because whether it's section or clause

1 8, it guarantees that Aboriginal and Treaty rights
2 will not be affected by action under law in
3 Manitoba.

4 THE CHAIRMAN: Mr. Regehr?

5 MR. REGEHR: If Ms. Whelan Enns wants
6 to argue section 8 of the Interpretation Act, she
7 is more than free to do so in final argument.
8 It's asking for a legal conclusion of a provincial
9 statute.

10 THE CHAIRMAN: I would agree.

11 MS. WHELAN ENNS: Thank you.

12 DR. KULCHYSKI: Thank you, Mr. Regehr.
13 I wasn't quite sure how I was going to answer that
14 myself.

15 MS. WHELAN ENNS: This is a similar
16 question, Dr. Kulchyski, and that is, have you had
17 occasion to read/review the Manitoba Wildlands
18 product that's a summary of the Tritschler
19 commission review of hydro projects?

20 DR. KULCHYSKI: I have looked at it,
21 yes. It's been a while now I think, but --

22 MS. WHELAN ENNS: Did you give the
23 pattern in the findings in terms of projects being
24 coming in over cost?

25 THE CHAIRMAN: Mr. Regehr, I know what

1 you're going to --

2 MR. REGEHR: Then I won't say it.

3 THE CHAIRMAN: I would agree. I can't
4 see the relevance.

5 MS. WHELAN ENNS: We'll pass then,
6 Mr. Chair.

7 THE CHAIRMAN: As Mr. Regehr had noted
8 earlier, there are certain points that you are
9 free to argue in your final argument. But at this
10 point, I don't see it.

11 MS. WHELAN ENNS: So it may be that
12 the next question will sort of, you know, bounce
13 the same way. But we have heard --

14 THE CHAIRMAN: Try us.

15 MS. WHELAN ENNS: I will.

16 MR. REGEHR: I'll get ready.

17 MS. WHELAN ENNS: We have had a fair
18 bit of content regarding Gillam. And this witness
19 for the Fox Lake Concerned Citizens spoke about
20 concerns in terms of the divided society in
21 Gillam. So I have a couple of questions on this
22 topic, but it does have a tendency to want to
23 start with whether or not you are aware that
24 Manitoba Hydro is exempt from the Planning Act
25 with respect to Gillam redevelopment and Gillam

1 subdivisions.

2 DR. KULCHYSKI: I am not aware of
3 that.

4 MR. REGEHR: I am going to have to
5 object. It's again asking for legal
6 interpretation of a provincial statute.

7 DR. KULCHYSKI: She just asked me if I
8 was aware of the statute, not to interpret it.

9 MR. REGEHR: I'm still going to
10 object.

11 THE CHAIRMAN: I will uphold your
12 objection.

13 MS. WHELAN ENNS: Thank you. It's
14 section 12(2)(C), Mr. Chair.

15 THE CHAIRMAN: It's still irrelevant.

16 MS. WHELAN ENNS: So the main question
17 then, Dr. Kulchyski, is whether or not in your
18 estimation, again given your comments about Gillam
19 and your concerns about Gillam, whether the JKDA
20 and the adverse effects agreements, what we have
21 before us in the terms of agreements, what is your
22 estimation of the ability of these agreements to
23 solve the divided society issues that you
24 identified in your presentation?

25 DR. KULCHYSKI: Well, I mean I'm

1 largely here because I don't think these
2 agreements will solve or even work towards
3 solving. Like I don't see them even beginning to
4 alleviate the problems that have been created.
5 Quite the contrary, I see them exacerbating the
6 problem.

7 We will see and Hydro is already
8 building more lovely subdivisions in Gillam that
9 will look like the subdivisions they already have.
10 And the First Nations, at least from my firsthand
11 experience of Tataskweyak and Fox Lake Cree
12 Nation, you know, are scrambling to get more
13 trailers such as they already have.

14 And, you know, when we talk about the
15 responsibility of Manitoba Hydro, they don't have
16 a responsibility for the infrastructure of the
17 communities. So the fact that the school in
18 Tataskweyak is, you know, unusable by the students
19 and they are being educated in substandard
20 trailers is not going to be alleviated by this
21 agreement. You know, any resources that will flow
22 to the community, the major resources, the
23 significant resources, if there are any, if they
24 make profits. There's money coming around the
25 margins, around the alleviation of specific

1 documented impacts that have been talked about.
2 But in terms of actually getting the rewards of a
3 percentage of the profits, significant amounts of
4 money that will be needed in order to deal with
5 the absolutely gross situation of human suffering
6 that exists in these communities. If it comes,
7 you know, it won't come for a long time. I
8 suspect if it comes, a lot of it will be tied up
9 in investment portfolios and other bureaucratic
10 structures that won't trickle down to the
11 communities. And so we will see a small group of
12 people benefiting and we will see the same
13 conditions prevailing, certainly for the next
14 generation, but likely long after that.

15 Where ever I have seen, you know,
16 these kind of patterns and had been in some
17 communities that have been engaged in and worked
18 with development projects in minerals or logging
19 for long periods of time, you know, the picture is
20 quite bleak. So northern Quebec is one of the
21 places where we can say because especially of the
22 emphasis on the original agreement which included
23 a hunter income support program. So the James Bay
24 and northern Quebec agreement of 1975 actually
25 went so far as to say we will do something to

1 support hunters. The only agreement in Canada
2 that did that. The Nunavet agreement did that but
3 it was a program that had a shelf life and lasted
4 a few years and disappeared. Other than that, if
5 there's nothing that, you know, supports the
6 income of hunters directly, if there's nothing
7 that shows a commitment to improving the
8 infrastructure and the social infrastructure of
9 the communities, I honestly don't think we're
10 going to see any kind of improvement. And
11 arguably, but I think the weight of evidence is
12 there and we're going to see things get worse.
13 And really, to be worse than what they are when I
14 visited in 2012 in Tataskweyak, to see the
15 divisions that exist now in Gillam get
16 exacerbated, be made worse, I think is a
17 horrendous prospect actually.

18 MS. WHELAN ENNS: Thank you, Dr.
19 Kulchyski. One of the other members of this panel
20 for the participant recommended that Manitoba
21 Hydro, or identified that Manitoba Hydro has not,
22 to date, issued an apology to the hydro affected
23 First Nations and recommended that the CEO of
24 Manitoba Hydro would in fact deliver that apology.
25 Do you agree with that recommendation?

1 DR. KULCHYSKI: I asked the question
2 specifically about that because I think it will
3 matter kind of on the -- well, some of the leaders
4 of the First Nations communities agree with me.
5 It would matter in terms of their path to healing.

6 I think it would matter to the
7 organization, if it gave a sincere and detailed
8 apology or it had to acknowledge really what it
9 had done wrong in the past, you know, that can
10 potentially lead the organization into some soul
11 searching and thinking about why it did that.

12 And certainly for someone like Nancy
13 Beardy or the people that we talked to, but I
14 think many of the communities as a whole, to hear
15 such a thing, would let them know that their life
16 experiences are validated in the same way the
17 residential school inquiry has had an emotional
18 effect for a lot of people and help them kind of
19 validate their life experiences. And even at a
20 fairly old age, allowed them to sort of turn
21 around some things in their mind and start feeling
22 like, you know, they deserve the ground that they
23 walk on.

24 MS. WHELAN ENNS: Thank you. Could
25 you confirm my note again from December, but I

1 made a note during your presentation that you
2 indicated there were 180 persons from the Fox Lake
3 community attend the discussion groups, the open
4 houses and the sessions that your organization put
5 on in the community.

6 DR. KULCHYSKI: No, that's inaccurate.

7 MS. WHELAN ENNS: Okay.

8 DR. KULCHYSKI: There were around 180
9 people, I didn't keep an accurate count, but in
10 the meetings that were held in Tataskweyak when I
11 went up in 2012. So it was Tataskweyak, not Fox
12 Lake.

13 MS. WHELAN ENNS: Thank you.

14 DR. KULCHYSKI: We had a lot of people
15 coming through on two separate occasions. In Fox
16 Lake, we met with individuals. Although I'm told
17 by my colleagues that they have -- they had been
18 talking to a lot of other people and there's a lot
19 of support from many other elders and many other
20 community members. We haven't had a large meeting
21 of that sort in Gillam or in Bird.

22 MS. WHELAN ENNS: Thank you. One last
23 question, also somewhat academic I guess. In your
24 preparation and participation for the Keeyask
25 generation station hearings, and also in your

1 research, your supervision of master students and
2 so on, have you used Virginia Petch's 500 page
3 bibliography of reports, technical analysis books
4 and all range of information, products regarding
5 the regions in Northern Manitoba around Hudson's
6 Bay, have you had reason to use it?

7 DR. KULCHYSKI: We haven't used it.

8 MS. WHELAN ENNS: Okay, thank you.

9 THE CHAIRMAN: Thank you, Ms. Whelan
10 Enns.

11 Consumers Association, Ms. Craft? A
12 new face. New at the front table.

13 DR. KULCHYSKI: I'm quaking in my
14 boots now.

15 THE CHAIRMAN: I'm sorry, I missed
16 that, Dr. K?

17 DR. KULCHYSKI: I'm quaking in my
18 boots. I was used to Aimee, but now --

19 THE CHAIRMAN: Well, I should warn you
20 as somebody who once articulated at the Public
21 Interest Law Centre, their articling students can
22 be really tough and also very good.

23 MS. PASTORA SALA: I hope I don't
24 disappoint you, Mr. Chair.

25 Good afternoon, Mr. Chair and members

1 of the commission and members of the panel of
2 course. My name is Joelle Pastora Sala. I am an
3 articling student at the Public Interest Law
4 Centre as indicated by Mr. Chair. And I am here
5 today on behalf of the Consumers Association of
6 Canada, Manitoba branch.

7 THE CHAIRMAN: Pull the mic just a bit
8 closer, please.

9 MS. PASTORA SALA: You are off the
10 hook, Dr. Kulchyski, because today, my questions
11 will be directed to Dr. McLachlan.

12 So good afternoon, Dr. McLachlan.

13 DR. McLACHLAN: Good afternoon.

14 MS. PASTORA SALA: I have
15 approximately five areas of questioning for you
16 this afternoon. The first being, I'm wondering in
17 speaking to members of the Fox Lake community, did
18 you get the sense that Keeyask -- that the Keeyask
19 project was inevitable?

20 DR. McLACHLAN: According to my
21 report, certainly I had spoken to people on the
22 panel and looked at the indepth interviews that
23 most people have seen here through our
24 presentation. Perhaps more of my work was focused
25 on looking at the public hearings and the

1 information that came out in terms of actual
2 information, and many of those people were
3 actually from Fox Lake as well.

4 So looking at all those things, I
5 got -- and in my report, I call it heavy hearts.
6 And so I got a sense that at some level, people
7 were quite cynical about this process and the
8 opportunity to change the course of events that
9 seem to be transpiring up there. And that
10 certainly some people were optimistic about the
11 opportunities that would arise from Keeyask which
12 I also talked about in my report. But certainly
13 there was an overtone there of again heavy hearts
14 where people just felt that at some point it was
15 inevitable. And that regardless of how they felt,
16 that the momentum was already in place that the
17 project would go ahead.

18 MS. PASTORA SALA: And in your report
19 and in your presentation, I'm now moving to ATK,
20 you refer to ATK and Cree world view, correct?

21 DR. McLACHLAN: I do.

22 MS. PASTORA SALA: Could you help me
23 in understanding the distinction between ATK and
24 Cree world view and the differences between them?

25 DR. McLACHLAN: Again, as someone

1 whose scholarship and whose life experiences come
2 from outside of those world views, I have to tread
3 softly. But as far as I understand, ATK or in
4 many cases it's just called traditional knowledge,
5 or TK, is usually bureaucratic in nature. It's
6 seen as data that are collected usually from
7 people outside the cultures that are used to
8 inform decision-making by government, by industry.
9 And as such, they represent factoids, information
10 that are separated in many cases from the lived
11 experiences from the people who give that
12 traditional knowledge meaning.

13 And so in contrast, when you look at
14 world views, it's a context, an important context
15 for that traditional knowledge. And it's just
16 based on people's lived experiences. It's based
17 on experiential learning. And in that sense, you
18 can't separate it from the people themselves.

19 And I think in many cases -- and it's
20 been criticized as such that this bureaucratic
21 version of the traditional knowledge and the world
22 view that gives it meaning is, in many cases, used
23 against the communities themselves because often
24 it isn't grounded in what people feel is important
25 and what gives their lives and their communities

1 meaning.

2 And so to me, they are often very very
3 different things. And just the fact that people
4 can talk about ATK as something that's separate
5 from people, that's separate from lived
6 experiences that might exist in paper and models
7 just shows how different those two views are.

8 MS. PASTORA SALA: And so perhaps
9 leaving the technical definitions of ATK aside,
10 would I be correct in suggesting that ATK is
11 informed by world view?

12 DR. McLACHLAN: It can be. And
13 certainly when it's used in appropriate ways, when
14 consultation is meaningful, when communities are
15 actively involved in decision-making, then ATK is
16 one part of a world view that gives it meaning.

17 MS. PASTORA SALA: Thank you. And so
18 would it be fair to say that a common thread
19 throughout your report and your presentations is
20 that the EIS demonstrates an imbalance even though
21 there was supposed to be an equal weight
22 attributed to ATK and western sciences?

23 DR. McLACHLAN: Certainly in terms of
24 just indicators of the weight that was given to
25 either, whether it's looking at page length,

1 whether it's looking at the amount of attention
2 that was given in terms of decision-making. As I
3 went through the documents, and I went through
4 many many documents, I found in most cases that
5 there was very little weight given to the ATK.
6 And in the cases when both were incorporated and,
7 you know, there's lots of plans to do so and who
8 knows how those plans will transpire, but when I
9 looked at the few cases where they actually both
10 reflected in the reporting in all, in every single
11 one of those cases, that the technical and
12 scientific information in that stream was given
13 precedence and dominated over the other.

14 So yes, I would agree in all of those
15 cases that the science and technical thinking
16 dominated over the ATK despite claims to the
17 contrary.

18 MS. PASTORA SALA: And this dominance
19 is something that you find problematic?

20 DR. McLACHLAN: Absolutely because
21 there's nothing that indicates that that won't
22 continue happening despite the -- you know, I
23 think the intent on the part of the Cree partners
24 to do whatever they can to ensure the ATK does
25 have an influence. I don't see anything that

1 indicates anything else but that continuing to
2 happen.

3 MS. PASTORA SALA: And so if I
4 understood your report and presentation correctly,
5 and feel free to correct me, as a way of dealing
6 with the disconnect or disimbalance, you suggest
7 or propose a Three-track approach, correct?

8 DR. McLACHLAN: I did, yes.

9 MS. PASTORA SALA: Would you be able
10 to identify for me some key features of your
11 Three-track approach?

12 DR. McLACHLAN: For sure. And I did
13 so in the report as well.

14 In those cases, it's as much based on
15 process as it is based on the outcomes where
16 there's a process by which the science and the
17 ATK, if you like, are allowed to contrast with one
18 another. And when they agree, that's great. And
19 in most cases, I would say the science is
20 strengthened by that. And when they disagree,
21 there's a genuine process by which those -- it's
22 not just assumed that the ATK is inferior, which
23 happens in most of these cross-cultural processes,
24 but which then kind of the scientists go out and
25 try to strengthen their science as suggested by

1 the knowledge holders themselves around the table.
2 And so it's an iterative process, you know, in
3 terms of resource management. We often call it
4 adaptive management. And so it's adaptive and it
5 evolves over time. But it's a democratic process.
6 It's open, it's transparent. It kind of builds
7 trust. It's based on diversity. And so you get
8 not just these monolithic forms of ATK and science
9 but you have many people participating around the
10 table and I think there are good examples out
11 there where it does work. And ultimately, I would
12 say it's accountable. So not only is it diverse
13 and is it transparent, but it's accountable to the
14 people who ultimately are most -- when things go
15 wrong, are most adversely affected by the
16 development. And in this case, it's obviously
17 community members and the leadership of those
18 communities.

19 And I think that this Two-track model
20 that's being described here where each is
21 presented in isolation and there are no real
22 vehicles, if you like, for them to interact with
23 one another as different knowledge systems. In
24 this case, it's something that's integrated and
25 adapts and evolves over time. And I would say

1 that, again, there's very very little of that kind
2 of thinking that's reflected in this EIS right
3 now.

4 MS. PASTORA SALA: Did I hear you
5 correctly in that there are examples of where the
6 Three-track approach has been used?

7 DR. McLACHLAN: For sure in terms of
8 our work there are, and our work around the oil
9 sands development in northern Alberta and some of
10 the community-based monitoring programs. And in
11 some cases, you know, that I know of where
12 scientists, you know, are hired by communities to
13 generate information that's useful for the
14 communities. And so in that case, it's science
15 working for the communities. Some of the work
16 that's done, for example, through CIER, the Centre
17 for Indigenous Environmental Resources, and
18 through TSAG, the Technical Services Advisory
19 Group in Alberta, are all, I think, organizations
20 that work with that Three-track process in mind.

21 MS. PASTORA SALA: And so these
22 approaches, in your view, are approaches used that
23 would give equal weight to ATK and western
24 science?

25 DR. McLACHLAN: It would. And

1 importantly, I think, as a scientist, I'm trained
2 as a scientist, it results in better science, it
3 results in better assessment of impacts. It's
4 really grounded. It's situations where the
5 science is really grounded in people's rich
6 knowledge of the changes that are taking place in
7 their landscapes.

8 And so it's not so much that you have
9 these parallel processes taking place, but that
10 the outcome, because the science is grounded in
11 that world view, because it's grounded in the ATK,
12 actually is stronger and more effective.

13 MS. PASTORA SALA: I'd like to take
14 you to page 26 of your report. Do you have that
15 in front of you?

16 DR. McLACHLAN: I do. Hold on a sec
17 here.

18 MS. PASTORA SALA: And I'm just going
19 to be paraphrasing the first line on that page.

20 DR. McLACHLAN: On page 26?

21 MS. PASTORA SALA: Of your report,
22 yeah.

23 DR. McLACHLAN: Okay.

24 MS. PASTORA SALA: So you indicate
25 that an approach especially relevant to Keeyask,

1 is to involve First Nations communities in
2 restoration processes and activities especially
3 when restoration is conducted on traditional
4 indigenous territories, correct?

5 DR. McLACHLAN: I do, yes.

6 MS. PASTORA SALA: We also heard from
7 Dr. Terry Dyck who testified on behalf of the
8 elders from York Landing on December 12th who
9 indicated that elders should be involved early on
10 in the design and implementation of monitoring
11 measures. Do you agree?

12 DR. McLACHLAN: Absolutely I do.

13 MS. PASTORA SALA: Could you elaborate
14 on the importance of involving elders both in
15 terms of the mitigation and monitoring phases?

16 DR. McLACHLAN: Maybe I can start by
17 giving some examples of some of our work around
18 the oil sands again.

19 MS. PASTORA SALA: Sure.

20 DR. McLACHLAN: One of the things that
21 takes place as a scientist is that when you are
22 working in northern regions with northern
23 communities, that you are always limited in terms
24 of how adequate your scientific data are. And so
25 what happens in that case is that by doing this as

1 a collaborative process, as a cross-cultural
2 process where you have the scientists working side
3 by side with the elders and the community members
4 that they can really, perhaps in some cases
5 without really knowing the science, they can
6 really act as a litmus test, if you like, in terms
7 of giving feedback to scientists both in terms of
8 the design that they work, where they conduct the
9 research, the kinds of data that they collect, the
10 kinds of species that they examine. And also if
11 the scientific data are found to be inadequate,
12 again speaking to the iterative nature of the
13 process, they have ideas about what to do
14 differently.

15 And so for example, in our case, we
16 were looking at monitoring around mercury, and
17 something called PAH's, or polycyclic aromatic
18 hydrocarbons, around the oil sands. And we were
19 finding in this case that the muskrat weren't
20 showing signs of having high toxic levels of heavy
21 metals in these PAH's. And so they were able to
22 go through. And once we showed them where we had
23 kind of harvested these animals, they were able to
24 tell us, well, those are in fact the wrong places
25 to be looking at, that they had a strong sense of

1 where the impacted regions would be.

2 And so we were able then, in this
3 phase 2 process, to actually go out and to
4 mitigate those problems. They also had other
5 ideas in terms of sampling beaver rather than
6 muskrat because muskrat have disappeared in
7 similar ways as they are much less common around
8 the Keeyask region, that they were able to suggest
9 other species that we might be able to examine.
10 And so they had a very -- obviously they had a
11 very rich kind of experience with the region and
12 were able to refine the science and to make it
13 more focused in approach and more efficient.

14 And so in the report, I contrasted
15 that, say with the plant monitoring that has come
16 up in terms of even though it's in a very very
17 preliminary form, it's only a few paragraphs,
18 certainly what seems to be the case now is that
19 they will -- for monitoring something like rat
20 root or Wiikae, that they will go out and just use
21 already existing data and they will see if there
22 are any changes.

23 Where what I was suggesting in the
24 report and what I'm suggesting here is that going
25 and spending time say with someone like Tommy who

1 we met in December and other medicine people, you
2 could go out, again, if it was a trust-based
3 relationship if it wasn't just conducted by Hydro,
4 if it was seen as something that was meaningful
5 and engaged, you could go out onto the land,
6 scientists and elders together, and you could come
7 up with kind of monitoring designs that actually
8 tracked and saw whether those changes were taking
9 place.

10 What you have here with this western
11 science defined approach is really an absence of
12 any real insight into the changes that are taking
13 place. And obviously the scientists, in terms of
14 EIS, have just assumed that that's because the
15 impacts aren't taking place. And again, what we
16 have heard again, and again from elders and from
17 other knowledge holders, is that those impacts are
18 real.

19 And so rather than just assuming that
20 the absence of information is real in this case,
21 because of this collaborative close relationship
22 that you have in this Three-track approach, is
23 that you can actually again refine the science and
24 really give it an opportunity to be meaningful.

25 And so, you know, I have talked about

1 monitoring but it's the same thing with the
2 rehabilitation. You know, just talking to Tommy
3 and to Noah and to Ivan, it's pretty clear I think
4 to everybody how much they know, for example,
5 about the sturgeon populations.

6 And so really to do monitoring or to
7 shape the rehabilitation around the sturgeon, you
8 know, going out there with the elders and the
9 scientists, really listening actively and making
10 space for that. And again, that is not going to
11 happen in a Two-track process where you have the
12 ATK that happens in isolation from the science.
13 And ultimately, as I'm saying, where you just have
14 the science dominating in the event that the
15 monitoring and the management that takes place in
16 the future. And so it's a fundamentally different
17 process.

18 And I would say in the case that where
19 there's been so little work that's being done thus
20 far in monitoring and rehabilitation, you know,
21 just looking at the environmental protection kind
22 of presentation that's going to come up again,
23 it's just a plan of a plan. This is a real
24 opportunity to do it differently and to do it in a
25 meaningfully engaged way where you have both

1 knowledge systems really working side by side, and
2 in a sense resulting in something that will have
3 more substance down the road.

4 MS. PASTORA SALA: And so just to make
5 sure I understand. The importance of involving
6 elders would be in order for them to identify the
7 concern sort of based on a more trust relationship
8 and to identify appropriate mitigation monitoring
9 designs based on the experiences of those elders.
10 Would that be correct?

11 DR. McLACHLAN: Yeah. But again going
12 beyond that and saying, well, how, as scientists,
13 can we make our science better based on that and
14 make it accountable? And so, for example, having
15 the scientists go back and not just generate
16 reports as consultants do and as people like Peter
17 and I do, but of course reports are important but
18 going beyond that and going out on the land and
19 learning and saying. And that's where the
20 accountability comes in. So giving people an
21 opportunity to criticize the outcomes of the
22 science. They might not know the modeling that
23 goes into it, they might not know the number
24 generation, but they will certainly know if the
25 predictions that the models have don't agree with

1 their own life experiences. And so that's where
2 the iterative nature of this approach is
3 important.

4 And so yes, I would say for sure
5 talking to the elders and making room for -- and
6 other knowledge holders and making room for that
7 is the first step. But again, we're talking or
8 what I'm suggesting is something that's sustained,
9 something that continues.

10 The other benefit that I talk about in
11 the report is that it allows communities to build
12 their own capacity around science. So it's not
13 just communities generating and recording ATK, if
14 you like, but you've got lots of youth interested
15 in technology up there, youth ostensibly who are
16 interested in science as well. And so kind of
17 through training and mentorship, kind of working
18 toward the situation where it's not just
19 consultants who are coming in from outside and
20 then leaving again, but actually where you have
21 that capacity remaining within the community.

22 And in the example that I give in the
23 report in terms of Fort Chipewyan, they have their
24 own long-standing monitoring program. And they
25 are out there, they are collecting the data for

1 sure. It's still mentored by consultants from the
2 outside but it's data that they are generating for
3 themselves. And it's scientific data as well as
4 the ATK.

5 MS. PASTORA SALA: Those are my
6 questions, Mr. Chair. Thank you. And thank you
7 to Dr. McLachlan and the panel as well.

8 DR. McLACHLAN: Thank you very much.

9 THE CHAIRMAN: We don't get a second
10 kick at the cat.

11 MS. WHELAN ENNS: Just a small comment
12 then, Mr. Chair. My assumption was when you
13 called for questions of Dr. Kulchyski, that we
14 would do the members of this panel in that
15 sequence rather than --

16 THE CHAIRMAN: My recollection, and it
17 could well be way off given the three or four
18 weeks since we last had this panel before us, was
19 that Dr. Kulchyski was actually the only one to be
20 cross-examined today. Is that not correct? Yes.

21 MS. WHELAN ENNS: Fair enough, thank
22 you.

23 DR. KULCHYSKI: Dr. McLachlan had been
24 cross-examined by -- had only been cross-examined
25 by Hydro, so Hydro was concluding their

1 cross-examination of me. And then I think the
2 other intervenors were still to question
3 Dr. McLachlan.

4 DR. McLACHLAN: I haven't had an
5 opportunity to be questioned by anybody else
6 except for Hydro.

7 THE CHAIRMAN: Okay. I'm not going to
8 rule on that right now, it's time for an afternoon
9 break. We'll break for 15 minutes and then we'll
10 come back and then decide where we're with the
11 cross-examination.

12 MS. WHELAN ENNS: Thank you,
13 Mr. Chair.

14 (Proceedings recessed at 3:19 p.m. and
15 reconvened at 3:35 p.m.)

16 THE CHAIRMAN: Okay, we will
17 reconvene, taking up where we left off before the
18 break.

19 I stand corrected. Ms. Whelan Enns
20 and others were correct, she hadn't had the
21 opportunity to cross-examine Dr. McLachlan, so
22 Ms. Whelan Enns?

23 MS. WHELAN ENNS: Thank you,
24 Mr. Chair. We almost managed it. I think it was
25 the day that Peguis First Nation was up, we came

1 close but not quite.

2 I would like to thank the CEC for some
3 of their questions that they beat me to.

4 Dr. McLachlan, I'm going to assume,
5 correct me if need be, that you have had an
6 opportunity to, or you are aware of the contents
7 of both Dr. Gibson and Dr. Clark's presentations
8 to the hearings here regarding sustainability and
9 sustainable development?

10 MR. McLACHLAN: I have read their
11 reports, yeah.

12 MS. WHELAN ENNS: Thank you.

13 The question then is, given that they
14 both defined sustainability as improvement, and no
15 more environmental or social effects, and
16 restoration underway, so the question for you is
17 whether you agree with their definition on
18 sustainability?

19 MR. McLACHLAN: Can you repeat the
20 definition again, please?

21 MS. WHELAN ENNS: Certainly.

22 They both identified improvement being
23 the goal, improvement in both the environmental
24 effects, and location, and VECs if you will, no
25 more effects, and restoration as key elements in

1 sustainability.

2 MR. McLACHLAN: Yes, I can agree with
3 that, yeah.

4 MS. WHELAN ENNS: Thank you.

5 You explained to us in your
6 presentation about the risks of type two
7 statistical errors and how they could, in fact,
8 cause false negatives.

9 Did I understand you correctly that
10 you were then identifying that certain of the
11 species which are VECs may be at risk in terms of
12 having type two statistical errors and, therefore,
13 false negatives in the data interpretation?

14 MR. McLACHLAN: Yes. Again, the idea
15 with the false negatives is that scientists, when
16 they do research and they find an absence of
17 information, that obviously in some cases that can
18 be meaningful, the absence of impacts. But there
19 is a high threshold that you have to pass before
20 you can, say, publish in a peer reviewed journal.
21 Because, again, you don't know why they are
22 negative. It might be a meaningful negative or,
23 as you were saying, a false negative.

24 So through that report, it wasn't just
25 the VECs, but throughout the report I was

1 questioning whether or not the absence of impacts
2 that we were seeing again and again on the part of
3 scientists, when you contrasted those with the
4 very real impacts that people were seeing with the
5 same components of the system on the part of ATK,
6 whether or not that might be a false negative.
7 And because I had some grave concerns around some
8 of the methodologies that were being used to
9 assess those impacts, that was a real concern for
10 me.

11 So, yes, I mean for sure in terms of
12 the VECs, in terms of these valued eco-system or
13 environmental components, if those are valued on
14 the part of community members, then I would be
15 very concerned that those would be false
16 negatives.

17 MS. WHELAN ENNS: Thank you.

18 Would you see any technical or
19 assessment value in the Proponent having let us
20 know which VECs they dropped, you know, as in if
21 we had more thorough information in terms of VECs
22 and sub topics to the VECs that were in fact
23 dropped and/or determined not relevant?

24 MR. McLACHLAN: Well, in my report
25 what I showed, and this shouldn't be a surprise to

1 anybody, that the way that the VECs were defined
2 for the five criteria that they used were actually
3 science based or technical based criteria, whether
4 they were of regulatory significance or whether
5 they were seen as being important from a science
6 perspective. And so only one out of those five
7 criteria were actually, made space for values that
8 were important to people who live in the
9 communities. And so, yeah, I mean, ultimately
10 what I showed was that of all of the VECs that
11 were discussed, that were either dominated
12 entirely by science, or in some cases where ATK
13 lined up well with science in terms of they both
14 found value. So, for example, you know, mallard
15 ducks or sturgeon obviously, they are seen as
16 valuable both by western science as well as ATK.
17 Nowhere did I see any information in terms of the
18 things that were dropped, that weren't included.
19 And obviously VECs are important because then they
20 are subject to cumulative impact assessment. And
21 certainly talking to people in our own group here,
22 and others, there are many, many species that
23 could have been included, and I would argue should
24 have been included, if a more inclusive approach
25 had been taken that gave equal weight to both the

1 ATK and the science. So, yes, that's a
2 long-winded way to say it would be important to
3 know what hadn't been included that community
4 members actually wanted to see included.

5 MS. WHELAN ENNS: Thank you.

6 The next question is a best practice
7 EA question, and it goes to the hundred year life
8 of the Keeyask Generation Station.

9 Are you aware of any, say, energy
10 projects in Canada where, that have this kind of a
11 life line where there is a mechanism in the
12 construction and/or operation stage of the project
13 to add species to monitoring plans, to add VECs,
14 and/or to change or broaden the basis for
15 assessment and the basis for monitoring. It is
16 the 100 year question again, and I have no idea
17 whether there is any examples, or any other
18 practices for these projects?

19 MR. McLACHLAN: I'm not aware of any.
20 But I think, as Dr. Kulchyski was saying earlier,
21 that we shouldn't be held hostage by what, kind of
22 what the status quo is. And I think it would be
23 really important to build in that flexibility and
24 that adaptability that as species emerge or as
25 phenomena emerge in ways that weren't anticipated,

1 that they can be incorporated, and that you have
2 something that is iterative. And an invasive
3 species is a perfect example of that. Ostensibly
4 whether it is through climate change or through
5 other things that we don't anticipate, there may
6 be species moving in, for example, that in our
7 best attempts to predict what impacts might be, we
8 didn't allow for those. And likewise, there may
9 be impacts that people are seeing that scientists
10 and knowledge holders alike hadn't anticipated
11 would occur in terms of impacts. And so to have
12 something that's iterative and that adapts would
13 be important. And yeah, I think that is a great
14 idea in terms of best practices. I think that's
15 the way to go.

16 MS. WHELAN ENNS: Could the best
17 practice then that we are asking about, and your
18 answer, fit with the third track approach and the
19 collaborative approach that's been in your
20 presentation, your recommendations, is it
21 something that, in fact -- or going to try a
22 second way of asking it -- or is this response to
23 the 100 year life line and possible changes in
24 what needs to be monitored and what the VECs
25 should be or could be, or need to be, part of the

1 responsibility for the monitoring advisory
2 committee, do you see a mechanism or possible
3 mechanism to make this happen?

4 MR. McLACHLAN: You know, yeah, the
5 monitoring advisory committee might be one such
6 mechanism. I think if the process right from the
7 get go is inclusive, and if you have genuine
8 community involvement in terms of assessing what's
9 important to monitor, and then how to respond to
10 those changes that can take place. So it might be
11 something that's more institutional in nature like
12 the MAC, or it might be something that is more
13 grassroots in approach, where it is kind of
14 perhaps controlled more by the affected
15 communities and working with scientists, either
16 from their own communities or from elsewhere. But
17 in each of those cases I would see that as being
18 appropriate.

19 MS. WHELAN ENNS: Thank you.

20 Do you know of any instances where the
21 Fox Lake Cree Nation was able to choose its own
22 biologists, ecologists and experts?

23 MR. McLACHLAN: I don't, but I can --
24 I mean, Ivan and Noah might have insight into
25 that.

1 THE CHAIRMAN: What is the relevance,
2 Ms. Whelan Enns?

3 MS. WHELAN ENNS: The same topic I
4 think, Mr. Chair, and that has to do with the
5 potential that Dr. McLachlan has been bringing to
6 the hearings in terms of having an arm's length
7 process in terms of science going forward and
8 experts going forward, and also the kind of
9 collaborative approach that he has been -- and the
10 three track approach.

11 THE CHAIRMAN: What was your question
12 just now, would you repeat it?

13 MS. WHELAN ENNS: My question has to
14 do whether or not there is any instances of Fox
15 Lake First Nation choosing their own experts,
16 biologists, ecologists and so on in terms of the
17 planning stage on Keeyask?

18 THE CHAIRMAN: The planning stage on
19 Keeyask?

20 MS. WHELAN ENNS: Yes, where we are
21 until now on the Keeyask Generation Station.

22 THE CHAIRMAN: Well, this panel
23 doesn't represent the Fox Lake First Nation. Does
24 counsel for the Proponent --

25 MS. SAEED: That was my only

1 objection, this is not the correct panel to pose
2 that question to. This panel does not represent
3 the First Nation.

4 MS. WHELAN ENNS: Thank you,
5 Mr. Chair. I will try a slightly different way.

6 Would you, in your presentation and
7 your advice in terms of the three-track approach
8 and a collaborative approach going forward from
9 the planning stage to the point we are at now on
10 the generation station include then, for instance,
11 Fox Lake First Nation or any of the three Keeyask
12 Cree Nations selecting their own experts,
13 including biologists, ecologists, economists,
14 would you recommend that approach?

15 MS. SAEED: Sorry, I'm going to object
16 again. I don't believe that's relevant.

17 THE CHAIRMAN: I think she is correct,
18 Ms. Whelan Enns. You are asking for an opinion
19 whether they think that somebody else should
20 engage.

21 MS. WHELAN ENNS: Yes, Mr. Chair, I'm
22 attempting to ask it in relation to the
23 recommendations that Dr. McLachlan has made.

24 THE CHAIRMAN: I think you can make
25 your point very well without pursuing what are

1 essentially sort of fishing expeditions with
2 witnesses who really don't represent who you want
3 to do these things -- if that's not convoluted.

4 MS. WHELAN ENNS: Okay, we will pass.

5 MR. McLACHLAN: Mr. Chair, if I could
6 say that in terms of best practices, in terms of
7 credibility of science, that it is really
8 important for scientists to be at arm's length
9 from the Proponents in this case, whether it is
10 industry or whether it is government. What I have
11 seen again and again is that, especially if you
12 are presenting negative data, if you haven't found
13 any information in terms of impact, or you found
14 an absence of impact, the first thing that, again,
15 in terms of my experience, the first thing that
16 community members, leadership together start
17 questioning is where the sources of the
18 information in terms of funding came from, what
19 kind of -- whether someone is a proponent around
20 development or not. And so in terms of my
21 recommendation, what I suggested is that there be
22 a body made up of both, kind of Hydro proponents,
23 as well as community members, perhaps even other
24 stakeholders, that together would decide on
25 research priorities and VEC proposals, and in a

1 sense use that more transparent process, and from
2 a community perspective more --

3 THE CHAIRMAN: Excuse me,
4 Dr. McLachlan, we have an objection.

5 MS. SAEED: Yes. It is just that this
6 question was objected to, I believe the objection
7 was upheld. And now it seems that the answer is
8 coming forward anyways.

9 THE CHAIRMAN: You are right in a way,
10 but Dr. McLachlan also did couch it in best
11 practices. But I think we get the message and
12 that's sufficient on that point.

13 Ms. Whelan Enns?

14 MS. WHELAN ENNS: Thank you,
15 Mr. Chair. This is actually in reference to slide
16 72, we don't need it up, but in terms of your
17 presentation. Our understanding of what you were
18 saying, and it is there in your report also, that
19 mercury monitoring needs to go much wider in the
20 eco-system and not be just about fish.

21 Now, that's sort of a very simple way
22 of describing it. But what I want to ask you is
23 where else in the system should mercury be
24 monitored?

25 MR. McLACHLAN: Again, in terms of the

1 consultants' reports, they suggested that fish
2 could be proxies for waterfowl, so for ducks and
3 geese. And they quoted, as I indicated in my
4 report, personal observation with an admittedly
5 kind of a credible scientist. But to me that's
6 very, very risky. In terms of our work with
7 mercury, waterfowl show high levels of
8 concentrations of methylmercury, and I just don't
9 see why you would play roulette with something
10 like that, where people are consuming these
11 animals. And there is always a chance that
12 animals will exhibit kind of phenomena that aren't
13 anticipated by using the proxies. And so I said
14 as a minimum that you should really test kind of
15 every aspect of the trophic structure, if you
16 like, of the food when you might anticipate kind
17 of high levels. I further suggested that the
18 community members be involved in testing for
19 mercury levels, and in terms of human hair and
20 urine, which I think is standard practice.

21 Again, if you come from outside, if
22 you are seen as a consultant working for Hydro,
23 then there will be reluctance to participate in
24 something like that. But if it is done in an
25 inclusive way where the communities are the owners

1 of the data and have control over the data, then I
2 think that's a logical kind of extension of the
3 thinking that you already see in terms of the
4 consultant reports.

5 What I also said in terms of my report
6 is right now there is some capacity there kind of
7 to support animals that are submitted by community
8 members on a voluntary basis for testing. But my
9 experience again is that while it is important to
10 include that, that you shouldn't depend on the
11 community members voluntarily bringing animals in,
12 because for the most part people don't see the
13 symptoms of the contaminants in terms of -- it
14 doesn't manifest itself often. And it is symptoms
15 that are naked to the human eye, you know, that
16 can be seen easily. So those voluntarily
17 programs, while important, aren't adequate. And
18 so there should be a central systematic testing of
19 VECs as defined by the community members. So that
20 would include a much wider diversity of animals
21 than what you see recommended right now in the
22 EIS.

23 MS. WHELAN ENNS: Thank you.

24 You have made quite specific
25 references to risk communication in your

1 presentation and in your report. We would
2 appreciate just a little bit of help in terms of
3 what is included and what you mean by risk
4 communication.

5 MR. McLACHLAN: So right now in many
6 of the communities that we work with, even where
7 you have voluntary testing taking place in the way
8 that is suggested by Hydro, often what will happen
9 is people will get back technical scientific
10 reports from the labs where they get the testing,
11 the material tested. And it is written in a
12 language that's completely not understood by, I
13 would say most Canadians. You need advance
14 scientific degrees to make sense. So the
15 information isn't made, isn't presented in a way
16 that's understandable by most "lay people" from
17 the labs. So the idea is, well, then who can play
18 that role? And Manitoba Hydro I guess could do
19 that, or the government, sometimes Health Canada
20 can do that in terms of when results have health
21 implications. But, again, as I have said, the
22 problem with that is then the data, the
23 information isn't seen as credible or believable.

24 But certainly as it stands, a lot of
25 work can go -- and there are people who do it

1 across the country, who can make that information
2 accessible in terms of the format that's
3 available. So often people talk about presenting
4 information in "plain" language, you know, kind of
5 let's say a grade eight or grade ten level, that
6 it is understood by anyone and everyone. And so
7 that's in terms of the information itself.

8 And then it is also the forum by which
9 they are shared. Again, if you submit a report,
10 it is not going to be accessible to anybody, and
11 certainly not to the grassroots and to the larger
12 membership. So by having community meetings, by
13 making pamphlets available, by spending time
14 building relationships with people, by even -- I
15 have seen in some cases in some communities
16 scientists go out on the land with elders and
17 presenting the scientific data in a culturally
18 appropriate way out on the land, you know, those
19 kinds of things where people can actually talk
20 about what they are seeing and point at it, make
21 the information that much more accessible. If you
22 don't do that, there is a danger that people will
23 just get scared.

24 In terms of the work that we are doing
25 around the downstream impacts of the oil sands, we

1 see a substantial proportion of these communities
2 no longer eating fish, because they have been told
3 by, in this case Health Canada, and by the
4 Provincial Government that it is not "safe" to eat
5 the fish. And at the same time the fish and the
6 other country food is the most healthy alternative
7 out there. So that's the worrying part. If you
8 are not proactive, if you don't find ways to make
9 this information kind of accessible and meaningful
10 in terms of the way it is presented, then you will
11 just scare people off what is still the healthiest
12 food out there.

13 MS. WHELAN ENNS: Thank you.

14 Going back to December quickly if we
15 may. It seemed to us in terms of the questions
16 that you were asked by the Proponent legal counsel
17 that there was sort of -- it was being implied
18 that your comments about the science basis for the
19 EIS and for the planning stage for the project and
20 the ATK were biased. Today you are talking about
21 what is important about being arm's length. So
22 would you tell us whether you are biased?

23 MR. McLACHLAN: In terms of my report
24 that I put together? Because I was clear about
25 this, I became involved at a late date. What I

1 did is I went through all of the public hearings,
2 all the transcripts, all of the reports, and I
3 just looked for anything that I felt was relevant.
4 I didn't know who the people were. It turns out
5 that many of the people that I quoted in the
6 report were actually people that I subsequently
7 found to be proponents of the project. But
8 anybody who talked about environmental impacts,
9 biophysical impacts, especially those that were
10 terrestrial in nature.

11 So in that case, because it was arm's
12 length, certainly I don't see bias being
13 problematic that way. And when I was going
14 through and looking for insights in terms of the
15 scientific technical reports, I likewise just
16 looked for relevance. And bias, in a sense,
17 wasn't manifest that way as well.

18 MS. WHELAN ENNS: Thank you.

19 Have you had an opportunity to review
20 Elder Linklater's presentation materials? He was
21 here in the panel for York Factory Concerned
22 Citizens, and he was presenting the practices at
23 Wuskwatim in terms of some of the kinds of things
24 that you are recommending. Have you had a chance
25 to see his material?

1 MR. McLACHLAN: I reviewed it quickly.

2 THE CHAIRMAN: Excuse me?

3 MS. SAEED: I'm going to object to
4 this. I don't think that it is relevant.

5 THE CHAIRMAN: Can you explain the
6 relevance, Ms. Whelan Enns? I mean, you have been
7 through enough of these processes that you are
8 aware that if something is already on the record,
9 then it shouldn't be revisited in another
10 subsequent cross-examination.

11 MS. WHELAN ENNS: Yes, Mr. Chair.

12 The identification on our part has to
13 do with the fact that there was a fair bit of --
14 potentially, because I'm not the historian or the
15 scientist here -- but potentially a fair bit of
16 content in what Elder Linklater provided that in
17 fact supports Dr. McLachlan's report and
18 contribution to these hearings. But I take your
19 point, if it is dealt with already.

20 THE CHAIRMAN: It has been, and it is
21 further dealt with, if you read the questions that
22 were submitted by the panel in December and
23 responded to by the Proponent last week, that very
24 point is addressed in there as well.

25 MS. WHELAN ENNS: Thank you.

1 In your discussions and interaction
2 with community members, have you heard Fox Lake
3 community members mention any other species of
4 fish, other than those that are identified in the
5 EIS as a species present, a species that used to
6 be present, a species that concerned them?

7 MR. McLACHLAN: I mean, in my report
8 kind of someone at the public hearings talked
9 about myrrha, ling cod as being one. We heard the
10 youth from Fox Lake talking about brook trout. So
11 there is certainly species that have been and are
12 anticipated to continue being affected. But to my
13 knowledge, I haven't seen anything that
14 systematically looked at that.

15 MS. WHELAN ENNS: Thank you for the
16 reminder. The reason for the question was
17 specifically to do with trout. Is there a
18 difference between trout that would be in the main
19 stem of the Nelson River and trout that would be
20 in brooks?

21 THE CHAIRMAN: What is the relevance?

22 MS. WHELAN ENNS: Well, the
23 question --

24 THE CHAIRMAN: Furthermore, I mean,
25 the response that Dr. McLachlan just gave you was

1 already on the record. So I just repeat my
2 admonition about not repeating stuff that is
3 already part of the record.

4 MS. WHELAN ENNS: Certainly, Mr.
5 Chair. I remember the brook trout reference and
6 have researched something since, that is the basis
7 for the question, but I can certainly pass.

8 THE CHAIRMAN: Go ahead.

9 MS. WHELAN ENNS: In your work with
10 the EIS and the filings from the proponent, are
11 you aware of any specifics in terms of the time
12 lines on particular VECs or sub topics to positive
13 effects? Now realizing that there are some
14 general references in the EIS, we have vague
15 statements, to the best of our knowledge, in terms
16 of our work with the EIS. So are you aware of any
17 specifics where there is statements that would
18 basically say, it will take this number of years
19 under these circumstances for a species to recover
20 from the construction phase?

21 MR. McLACHLAN: As presented --

22 MS. SAEED: I'm going object. I'm not
23 sure what the relevance is?

24 THE CHAIRMAN: I'm also -- I think it
25 is already on the record as well.

1 MS. WHELAN ENNS: Thank you,
2 Mr. Chair. We will stop the questions.

3 THE CHAIRMAN: Thank you, Ms. Whelan
4 Enns. I will just canvass panel members to see if
5 any of them have questions for this panel.

6 I have one for Dr. Kulchyski, and I
7 hope it will be brief, I don't want to open up the
8 whole Peace of the Braves again. Earlier today
9 you said, you acknowledged that the Peace of the
10 Braves agreement, in response to a question from
11 Mr. Regehr, was a government to government
12 agreement. And you said that it is something that
13 Manitoba should have. Just what did you mean by
14 that? What kind of agreement would you see being
15 in place between Manitoba and First Nations?

16 MR. KULCHYSKI: Well, in a nutshell,
17 you know, this agreement has a lot to say about
18 the future of these communities. It is not a mere
19 business agreement like a road construction
20 contract. I think the communities are deciding on
21 their future. So I think we need a nation to
22 nation agreement actually. I think the Government
23 of Manitoba needs to be involved and take
24 responsibility in effect for what is going on, and
25 with Manitoba Hydro and with the Federal

1 Government sit down with the parties and, you
2 know, look at their overall future. I think this
3 kind of dealing with things in silos and putting
4 this into, or trying to put this into the narrow
5 terms of a business agreement is limiting our
6 ability to think about the best interests of the
7 communities as a whole. And so that's very
8 briefly what I would say.

9 THE CHAIRMAN: Thank you very much.

10 So that concludes our examination of
11 this panel. So I want to thank you very much for
12 your participation throughout the many last few
13 weeks, you will be before us again, of course, in
14 the next day or two with your final argument.
15 Thank you very much, and you are excused. We will
16 take a five minute break while we switch panels
17 and set up the next one.

18 (Proceedings recessed at 3:55 and
19 reconvened at 4:05 p.m.)

20 (KHLP Panel)

21 THE CHAIRMAN: Now what we have now is
22 in effect the panel's final cross-examination.
23 Most of it we submitted by written questions on
24 December 20th, and the Partnership responded last
25 Friday, January 3rd, I think it was, there was one

1 fairly overriding question that we asked the
2 Partnership to do a bit of a presentation on the
3 Environmental Protection Program.

4 Now all of this constitutes our
5 cross-examination, so none of this, including the
6 presentation, is examinable by any of the other
7 parties. We will have the presentation first.
8 Panel members may have some questions in respect
9 of that presentation. After that we will turn to
10 the list of 50 odd questions and we will go
11 through them in numerical order. I don't want to
12 scare you, I think that of the 50 odd questions
13 there might be 10 or 12 that we have some further
14 questions, and I don't believe any of them are --
15 will require involved answers. We will wait and
16 see though. So, I will turn it over to Ms.
17 Northover. You are making the presentation?

18 MS. PACHAL: I just want to make a
19 couple -- just from a logistics perspective.
20 First of all, our partners from Fox Lake and York
21 Factory, as you can see, are here with us. Our
22 partners from the Cree Nation partners --
23 unfortunately John Garson passed away, he was
24 quite a significant leader in Tataskweyak Cree
25 Nation. The funeral is today, and so all of our

1 partners from Tataskweyak Cree Nation are
2 attending that funeral today, so they are not on
3 the panel with us.

4 A number of our technical experts --
5 we didn't have a clear understanding exactly which
6 questions you would need more information on, so
7 we put up a very small panel, and we have all of
8 our technical experts in the back, if we need to
9 bring them up to the front table to supplement an
10 answer for you.

11 THE CHAIRMAN: We really didn't know
12 until this morning which questions we would have
13 further questions on either, because we got it on
14 Friday, read it over the weekend, and we met this
15 morning to go through them and determine which
16 ones we would like some further clarification.

17 I think I can say the vast majority of
18 the questions were answered well, some of them
19 excellently. I don't think that you will find
20 that the panel needs much more information to
21 complete the record from our perspective. Okay.
22 Ms. Northover.

23 MS. NORTHOVER: Good afternoon,
24 Mr. Chairman, commissioners, participants, ladies
25 and gentlemen. As Mr. Chairman said, my name is

1 Carolyne Northover and I'm a senior environmental
2 specialist with the Environmental Licensing and
3 Protection Department at Manitoba Hydro.

4 I will be presenting today on behalf
5 of the Partnership, who has been asked by the CEC
6 to provide a brief overview of the environmental
7 protection program, how it will be managed and
8 implemented and its various components.

9 This diagram demonstrates graphically
10 the structure the Partnership will have in place
11 to implement and manage the Environmental
12 Protection Program. The Keeyask Hydropower
13 Limited Partnership has delegated authority to
14 Manitoba Hydro to manage construction and
15 operation of the project, including implementation
16 of the Environmental Protection Program. This
17 will include the management of internal resources,
18 external consultants and contractual arrangements
19 with the Keeyask Cree Nations to undertake
20 Aboriginal traditional monitoring.

21 Under the terms of the JKDA the board
22 of the general partner is responsible for running
23 the business of the Partnership. This board
24 includes five nominees from the Keeyask Cree
25 Nations and seven from Manitoba Hydro. In its

1 capacity as project manager for the Keeyask
2 generation project, Manitoba Hydro is guided by
3 this board of directors.

4 So this is the top portion of the
5 diagram on the previous slide. Although Manitoba
6 Hydro is responsible for construction and
7 operation of the Keeyask generation project, the
8 KHLPP has put mechanisms in place to make sure that
9 all partners are involved in implementing the
10 Keeyask Environmental Protection Program, and
11 reviewing program outcomes. The establishment of
12 a monitoring advisory committee, or MAC, is one of
13 these mechanisms. The MAC is an advisory
14 committee to the general partner board of
15 directors. The terms of reference for MAC are
16 part of the JKDA, and it is an integral aspect of
17 the Partnership's governance structure.

18 The purpose of MAC is to provide
19 oversight of the environmental protection program
20 by reviewing program activities and outcomes from
21 both a western science and ATK perspective.

22 Manitoba Hydro will be guided on the
23 implementation of the program by the MAC and the
24 general partner board of directors. The MAC will
25 have representatives from each of the four partner

1 First Nations and from Manitoba Hydro. The
2 committee will have five Manitoba Hydro reps and
3 five First Nation reps; two from Tataskweyak, one
4 from War Lake, one from York Factory and one from
5 Fox Lake. The First Nation partners will also be
6 provided funding for technical advisors who will
7 attend meetings and provide overall support and
8 guidance to the KCNs on MAC.

9 The MAC will meet every two months
10 during construction, although its terms of
11 reference allow for more frequent meetings if
12 required. The MAC will be in place for the life
13 of the project. During operations, meeting
14 frequency will be determined by the board of the
15 general partner, and at least two meetings a year
16 will be held.

17 So this is the bottom portion of the
18 implementation structure diagram that I showed
19 you. It indicates the main components or plans
20 included in the Keeyask Environmental Protection
21 Program. Collectively, these plans describe in
22 detail how environmental management and monitoring
23 commitments documented in the EIS will be
24 implemented during the construction and operation
25 phases of the project.

1 In general, there are three types of
2 plans that make up the Environmental Protection
3 Program; environmental protection plans,
4 environmental management plans and environmental
5 monitoring plans, including both technical science
6 and ATK monitoring. I will discuss each of these
7 in the slides that follow.

8 Preliminary versions of most of these
9 plans have already been submitted to the
10 regulators and are available on the Partnership's
11 website. Those that remain to be completed are
12 shown on the diagram in italics.

13 Typically, these plans are not
14 submitted until the conditions of project licences
15 and authorizations are received. However, given
16 the interest in these plans, the Partnership made
17 a decision to file preliminary plans for review by
18 regulators and the public as part of the licensing
19 process. If the project is approved, clauses in
20 the Manitoba Environment Act Licence and the
21 Fisheries Act authorization will need to be
22 incorporated into the plans, as appropriate, and
23 they will be finalized at that time.

24 So first the Environmental Protection
25 Plans. The Environmental Protection Plans have

1 measures to be implemented by contractors and
2 staff to minimize the effects of construction
3 activities. They are designed to be a reference
4 manual and instruct contractors on the best
5 management practices to be used for environmental
6 protection. Two preliminary plans have been
7 drafted and were submitted in April of 2013; one
8 for the construction of the generating station and
9 one for construction of the access road. Both
10 plans are organized by construction activity.
11 Examples include, tree clearing, drilling and
12 material placement in water. Mitigation measures
13 specific to these activities are listed in the
14 plans and application of these measures is
15 intended to meet and in many cases exceed
16 regulatory requirements.

17 It is a contractual obligation for the
18 contractors to follow the plans. Environmental
19 staff on site, called site environmental officers,
20 will monitor compliance with the Environmental
21 Protection Plans, and will have authority to issue
22 stop work orders. They will provide regular
23 reports on compliance and how any non-compliances
24 were corrected.

25 Environmental management plans provide

1 detailed implementation plans for the mitigation
2 commitments described in the EIS for specific
3 issues. It is anticipated that there will be
4 eight plans dealing with such things as sediment
5 management, fish habitat, site access, the
6 protection of heritage resources, terrestrial
7 habitat and the management of the woody debris.
8 To date preliminary versions of six of these plans
9 have been filed and are available on the
10 Partnership's website.

11 The detail required to finalize the
12 remaining two additional plans, vegetation
13 rehabilitation plan and the terrestrial mitigation
14 implementation plan, will not be known until
15 construction is underway, and the nature and
16 extent of site disturbance is fully known. The
17 mitigation measures to be included in these plans
18 are already documented in detail in the EIS. The
19 final plans will simply flesh out actual
20 implementation details and, where required, the
21 engineering design.

22 I wanted to take a few minutes to
23 highlight one of the plans which we have recently
24 received questions from the CEC, that Mr. Chairman
25 referred to. The heritage resource protection

1 plan documents the steps to be taken by the
2 Partnership if suspected human remains and other
3 heritage resources are discovered during the
4 course of construction. I want to make a
5 correction to the note, it says "or operation" in
6 here, and that's not correct. I will talk about
7 how it is dealt with in operation in a minute.

8 This is a matter that has been taken
9 very seriously by the partnership, both in
10 planning for the project and developing the plan.
11 Throughout the planning process, extensive efforts
12 have been made to identify and locate all possible
13 burial locations. However, the possibility
14 remains that unknown burials could be discovered
15 during the course of construction. Planning for
16 these types of occurrences has been undertaken
17 very seriously by the Partnership.

18 There are a series of 12 steps to be
19 followed so that human remains and heritage
20 resources are handled in a manner that's
21 culturally appropriate and in compliance with the
22 Manitoba Heritage Resource Act and the policy
23 concerning the Reporting, Exhumation and reburial
24 of Found Human Remains. Human remains, if not of
25 a forensic nature, will be managed by the province

1 according to its mandate. During operation if
2 human remains are unearthed, the Heritage Resource
3 Act applies, and Manitoba Hydro has a process in
4 place to support the historic resources branch to
5 recover the remains.

6 The Keeyask Cree Nations, with TCN as
7 a lead, will provide cultural advice and ceremony.
8 Found human remains associated with the Keeyask
9 project will be re-interred in a yet to be
10 determined site along the north access road. Four
11 possible sites will be examined by the Keeyask
12 Cree Nations and the project archeologists and
13 Hydro representatives in the spring of this year.

14 The final aspect of the Environmental
15 Protection Program are the environmental
16 monitoring plans. Monitoring will be fundamental
17 to the protection program's success. As with all
18 environmental assessment work, there is some
19 uncertainty with predictions. The amount of
20 uncertainty varies, depending on past experience
21 and the accumulated state of knowledge about a
22 particular aspect of the environment.

23 Monitoring addresses uncertainty,
24 including those areas where there are differences
25 between the predictions based on technical science

1 and ATK. Both technical science and ATK
2 monitoring will be undertaken throughout the
3 course of construction and operation. The
4 information gained will be used to lessen
5 uncertainty as much as possible by determining
6 actual project effects and measuring the
7 effectiveness of mitigation measures. This
8 information will then be used to inform adaptive
9 management measures.

10 Five technical science plans have been
11 drafted. They are specific to each of the
12 environments studied during the course of the
13 environmental assessment; physical, aquatic,
14 terrestrial, socio-economic and resource use.
15 Preliminary versions of the physical environment,
16 terrestrial effects and socio-economic and
17 resource use monitoring plans were submitted in
18 June of 2013. A preliminary version of the
19 aquatic effects monitoring plan was submitted in
20 August of 2013. As with the full environmental
21 protection program, these plans will be finalized
22 following receipt of licences and authorizations
23 from regulators.

24 Members of the partner Cree Nations
25 were involved throughout the field studies

1 undertaken for the environmental assessment. This
2 practice will continue into operations, as
3 technical science monitoring plans are
4 implemented. Community members will be involved
5 in the field programs working side by side with
6 the technical specialists. The technical science
7 monitoring plans will start early in construction
8 and extend into operation for many years.

9 ATK monitoring is planned for the life
10 of the project and will be implemented through
11 contractual arrangements with each of the
12 partners. The programs will be developed on an
13 annual basis, based on construction and/or
14 operational activities and related community
15 concerns about potential effects. Each of the
16 partner First Nations will be responsible for
17 collecting and interpreting ATK to assess the
18 project for the purposes of reporting on actual
19 effects to the regulator and also to evaluate the
20 impact of the project on its members from a Cree
21 worldview perspective.

22 The results of ATK monitoring will be
23 an integral part of assessing the accuracy of
24 predictions and the effectiveness of mitigation
25 measures. The Partnership recognizes the benefit

1 of the KCNs knowledge holders and elders
2 collaborating with one another and sharing
3 information. As outlined in the October 17th
4 letter from Manitoba Hydro to the KCNs, a
5 commitment has also been made to provide resources
6 for a collaborative forum, as well as the
7 individual ATK programs.

8 Throughout the hearing we have been
9 asked how differences between ATK and technical
10 science will be addressed. There is no formulaic
11 answer to this question. As partners, we have
12 worked to successfully address differences between
13 our two ways of knowing throughout the EIS process
14 on a case by case basis. This will continue
15 throughout implementation. Differences will be
16 dealt with on a case by case basis, primarily
17 through review and discussion at MAC.

18 Collectively we will seek to find a
19 reasonable course of action to address these
20 different findings. This could include additional
21 or enhanced monitoring, or changed or new
22 mitigation measures. For example, during the
23 course of Wuskwatim construction, elders expressed
24 concern after impoundment about the rate of
25 erosion just downstream of Wuskwatim Falls at a

1 particular location, and the possibility of debris
2 falling into the river. This was investigated and
3 erosion rates were greater than anticipated likely
4 because planned channel improvements in this area
5 had not yet been completed. As a result,
6 additional tree clearing in this area and a
7 heritage assessment was undertaken. The site has
8 also been added to a long term monitoring plan to
9 determine if predicted erosion rates are
10 experienced now that the project is complete. All
11 of these matters were discussed and agreed to
12 through MAC.

13 Experience with the Wuskwatim MAC
14 indicates that it is a positive, solution focused
15 forum that functions effectively. Based on this
16 experience, it is considered likely that a process
17 to address all or virtually all differences will
18 be possible through MAC. If agreement cannot be
19 reached, the partner First Nations can take issues
20 to the general partner board of directors. If an
21 issue still remains, the dispute resolution
22 process outlined in the JKDA could be initiated.
23 It is also possible that concerns may need to be
24 addressed between Manitoba Hydro and a specific
25 community if the findings relate to matters that

1 require a revision to a specific community's
2 adverse effects agreement. These agreements
3 include a process to address unforeseen and
4 unforeseeable adverse effects experienced as a
5 result of the project.

6 The mitigation measures described in
7 the EIS and over the course of these hearings have
8 been carefully planned and designed to prevent or
9 reduce, to the extent practical, adverse effects
10 from this project. The measures are based on
11 extensive study of the project, best practices,
12 research, literature review and numerous
13 discussions between the partners.

14 As noted, there are still some
15 uncertainties with predicted effects and the
16 effectiveness of planned mitigation measures.
17 Adaptive management is a planned process for
18 responding to uncertainty or to an unanticipated
19 or underestimated project effect. With Keeyask,
20 adaptive management will be implemented when
21 monitoring demonstrates that there is a variation
22 between actual project effects and predicted
23 effects.

24 Three possible types of adaptive
25 management outcomes are anticipated, and these are

1 described in chapter 8 of the response to the EIS
2 guidelines. The first is the application of
3 pre-determined adaptive measures. These are
4 adaptive management measures that the Partnership
5 has identified in advance of project construction
6 and operation. A great example of this is the
7 terrestrial rehabilitation and the re-vegetation
8 of disturbed areas. If the identified planting
9 prescriptions are not succeeding, then other
10 planting prescriptions can be applied.

11 Second, alternatively, new measures
12 can be designed based on monitoring results. An
13 example of this that has been discussed regularly
14 throughout the hearing is the determination of the
15 need for fish passage based on post-project
16 monitoring. If passage is required, the
17 facilities would be designed and implemented based
18 on what is required and the best science at the
19 time of its implementation.

20 And finally in some cases there are
21 simply no adaptive measures that can be applied.
22 For example, if methylmercury levels in fish are
23 higher than anticipated, there is no means to
24 minimize this effect. The Partnership will focus
25 its efforts on communication and risk management

1 planning.

2 The time it takes to make an
3 adaptation varies greatly among the numerous
4 mitigation measures that will be implemented. In
5 some cases a quick response or adaptation is
6 required and possible. For example, the Sediment
7 Management Plan relays information in real time so
8 the construction team can adjust in-stream work if
9 the project's total suspended solids (TSS) exceed
10 target levels.

11 Compliance with construction specific
12 mitigation measures in the environmental
13 protection plans will be monitored by
14 environmental site staff. If something is not
15 working as intended, they will discuss this with
16 the contractor and determine what is needed to
17 rectify the problem. Manitoba Hydro will
18 implement these quick adjustments and provide the
19 information to the Monitoring Advisory Committee.

20 Determining the effectiveness of other
21 mitigation measures will take time, in some cases
22 years of monitoring. These situations will be
23 overseen and discussed by the MAC before a
24 decision is made on how to proceed. For example,
25 the Vegetation Rehabilitation Plan could have high

1 mortality of trees and plants after one season and
2 need review. But it is also possible that
3 mortality occurs after several years of growth and
4 the need for modification to planting prescription
5 may be required. As well, determining if sturgeon
6 are using the constructed habitat structures will
7 take at least three years.

8 The MAC will review and discuss
9 monitoring results to determine if adaptive
10 management is required. A decision to proceed
11 with adaptive management measures will be based on
12 a review of ATK and technical science monitoring
13 results and recommendations from technical experts
14 and possibly regulatory agencies on the most
15 appropriate course of action.

16 MAC has a communication mandate as
17 well. On an annual basis the Committee is
18 responsible for communicating the outcomes of the
19 Environmental Protection Program to members of the
20 partner communities and the general public.
21 Communication to partner communities will service
22 to keep community members updated on project
23 activities, adverse effects and proposed
24 mitigation strategies. It will also provide an
25 opportunity for members to voice perspectives and

1 concerns about project outcomes.

2 Communication to partner communities
3 could occur through various forums; open house is
4 an example, but each community will determine the
5 appropriate approach for and frequency of
6 communicating with its members.

7 A summary report of all environmental
8 protection program activities and results will be
9 prepared annually by the MAC on behalf of the KHLP
10 for the partner communities and the general
11 public. This report will be translated into Cree.
12 The report will be sent to the interested parties,
13 including the participants at these hearings.

14 Manitoba Hydro, on behalf of the KHLP,
15 will submit reports to regulators on an annual
16 basis, including a compliance monitoring report in
17 connection with the Environmental Protection
18 Plans, technical reports of the activities and
19 results of monitoring, including the outcomes of
20 both ATK and western science.

21 The reporting to Manitoba Conservation
22 and Water Stewardship, Fisheries and Oceans Canada
23 and possibly other regulators will be in
24 accordance with schedules outlined in the licence
25 and authorization received, if the project is

1 approved.

2 All reports, including the summary
3 report, will be publicly available on the Keeyask
4 website. The current website will be maintained
5 throughout construction and operation. The site
6 will be updated frequently as information is
7 available. It provides the opportunity for
8 comments or questions about the project and
9 associated posted materials. All comments
10 received will be reviewed and considered and
11 questions answered.

12 In summary, the partners have
13 developed mitigation measures to minimize the
14 adverse effects. Both ATK and technical science
15 will be used to assess project effects and the
16 effectiveness of mitigation measures. Through
17 MAC, the partners will oversee the Environmental
18 Protection Program and work together to protect
19 the environment, as the Cree call it, Aski.
20 Manitoba Hydro, MAC and regulators determine if
21 adaptive management is required. And finally
22 program results will be communicated in partner
23 communities and on the Keeyask website.

24 And that's it.

25 THE CHAIRMAN: Thank you, Ms.

1 Northover. Mr. Yee, do you have a question or
2 two?

3 MR. YEE: Yes, thank you, Mr. Chair, I
4 do have a couple of questions. I think you have
5 answered for the most part the question I did
6 have, but I'm still thinking in terms of
7 coordination and potentially harmonization between
8 ATK and western science. I guess my thoughts are,
9 you have answered it to some degree in terms of
10 going out and doing the work in the field, and I
11 also realize from the moving forward panel that
12 these two tracks are quite different, but there
13 certainly seems to be areas where you can look at
14 coordination as well as harmonization. And in
15 harmonization I'm thinking in terms of report
16 writing, when the reports are written, the ATK
17 perspective along with the western science
18 perspective. So has the Partnership thought
19 through a process that they could put forward in
20 terms of trying to better coordinate or harmonize
21 the two, ATK and western science?

22 MS. NORTHOVER: I will talk about the
23 report writing question first. When we started
24 Wuskwatim we originally thought that we would have
25 the technical science and the ATK as one. For

1 example, so if we were writing about water
2 quality, there could be water quality from a
3 technical science perspective and from an ATK
4 perspective. It didn't work. The perspectives
5 are so different, and as our partners can
6 describe, it is a holistic approach for ATK, so
7 breaking it down by parameter like that wasn't
8 effective and didn't really work. So I think that
9 we will talk about as we go forward in MAC, if
10 there are ways to incorporate ATK into the
11 technical science monitoring reports, but right
12 now I actually think we are seeing it as two
13 separate reports, as it is two separate processes.
14 But we will see how things go.

15 MR. YEE: Thank you. Just as one
16 follow-up question, I realize that the reports are
17 mostly on an annual basis, but you do have a
18 website, so I guess it is more important I think
19 in terms of the relevance to the community how
20 often changes in the environmental monitoring
21 programs occur, if they are reported more
22 frequently to the community, would this be done
23 through the website or other means?

24 MS. NORTHOVER: The representatives
25 from the partner communities that are on MAC, as

1 part of their job on MAC is to report back to the
2 communities, so if there are significant changes
3 or something that they felt was noteworthy, it is
4 their job to take that back to the community. So
5 that can happen at least on a bimonthly basis, if
6 not more frequently.

7 MR. YEE: Okay, thank you.

8 THE CHAIRMAN: I have a question or
9 two. I think they are related. How independent
10 will MAC be? I realize it is a creature of the
11 KHLPP, but will it be independent of the KHLPP?
12 Will it be able to operate transparently without
13 interference?

14 MS. NORTHOVER: I do believe it will
15 be able to operate without interference. But I
16 don't think that you can say it is independent
17 considering the structure. I think that an
18 independent body wouldn't be made up of, you know,
19 members that are proponents on the project. So I
20 think that what a true independent body would be,
21 it is not, because it is a part of the Partnership
22 structure. But will it be able to work without
23 interference? Yes. And that has definitely
24 happened in the Wuskwatim case. It works and
25 there was no interference.

1 THE CHAIRMAN: So there is no
2 interference from the Partnership itself in the
3 work of MAC?

4 MS. NORTHOVER: That's correct.

5 THE CHAIRMAN: Will --

6 MS. PACHAL: Can I follow up on that
7 from a structural perspective? I know sometimes,
8 myself included, it is hard to wrap your head
9 around how Manitoba Hydro is organized because it
10 is such a large organization. But one of the
11 things that we have done is the monitoring is
12 conducted out of Carlyne Northover's department,
13 the department that she works in, which is a
14 separate department in a separate business unit in
15 a separate division from the construction. So
16 within our own organization it is arm's length
17 from that perspective.

18 THE CHAIRMAN: Thank you. And perhaps
19 you might be able to give examples from the
20 Wuskwatim MAC experience. Are there minutes kept
21 of the MAC meetings, and if so, are they made
22 available to the public?

23 MS. NORTHOVER: There were minutes --
24 actually detailed notes were kept at the MAC
25 meetings. Those were not made public for the

1 Wuskwatim process. We have not discussed whether
2 or not that they would be for Keeyask at this
3 point.

4 THE CHAIRMAN: Why were Wuskwatim
5 notes not made public?

6 MS. NORTHOVER: Just as -- they were
7 very, very detailed, and as it was never intended
8 to be made public, as they were, they were
9 certainly not fit for a public forum, it was
10 definitely a lot of internal discussion that was
11 documented. And we have already changed for
12 Keeyask, for example, the technical science
13 reports were not posted on the Wuskwatim website.
14 They were public through the Manitoba Conservation
15 and Water Stewardship's public registry. So we
16 have already committed to more detailed disclosure
17 on the website, but the minutes themselves, if
18 they were needed to be made public, would be
19 recorded in a different manner than they were for
20 Wuskwatim.

21 THE CHAIRMAN: Thank you.

22 Any other questions on this? Okay,
23 thank you, Ms. Northover, and thank you for this
24 presentation. It has helped us clear up some of
25 our sense about this process.

1 I would like to turn now to our 50 odd
2 questions. And as I noted a few moments ago, we
3 are not going to go through all 50 of them. I did
4 note that for the most part the questions were
5 well answered. In some cases the panel and our
6 experts felt they were sufficiently answered and
7 there wasn't much point in pursuing further
8 questions. In others we just felt that you gave
9 us a response that met our needs and will allow us
10 to make whatever comments and perhaps
11 recommendations when we come around to our report
12 writing. But we do have a few that we would like
13 a little bit more, or to follow up a little bit
14 more. And I'm just going to go through them in
15 numerical order.

16 The first one is the covering letter,
17 and this was an issue that at least one other
18 panel member and I noted some months ago, and
19 slightly got our noses out of joint the way this
20 covering letter is written.

21 I would note that the process that the
22 Partnership is going through is seeking a licence
23 from the Government of Manitoba. The public
24 process is through this Commission, the Manitoba
25 Clean Environment Commission, a Crown agency of

1 the Government of Manitoba. Yet the way this
2 letter is written, everything seems to focus on
3 the Federal Government. It is a response to the
4 EIS guidelines, the EIS guidelines being a Federal
5 document. Even that, I mean, I have never heard
6 of an EIS called in a response to EIS guidelines.
7 I mean, that's a minor point.

8 And then in the last paragraph, or the
9 second to last paragraph it notes that the
10 Manitoba statute makes no reference to
11 determinations of significance of an adverse
12 effect. And if we are to take that to heart, then
13 why are we here? Why have we spent the last many
14 months preparing for these hearings, and the last
15 three or four months conducting hearings? And in
16 fact, it is incorrect. The response that came to
17 us last Friday, I will say was a wonderful bit of
18 spin, but it didn't really address our concerns.

19 And in fact, when you look at the
20 Provincial process, Manitoba doesn't have
21 environmental assessment legislation, but what the
22 Manitoba process does, at one time they did issue
23 EIS guidelines. In recent years they have turned
24 to a scoping document, a scoping document that is
25 initially prepared by the proponent, is then

1 reviewed and change is recommended by Provincial
2 Government officials. And that scoping document
3 talks about determinations of significance of
4 adverse effects, et cetera. And it is incumbent
5 upon the proponent to meet the requirements of
6 that scoping document.

7 So I don't understand why, you know,
8 this interpretation or this statement was written
9 about the Manitoba statute and why -- I know
10 Manitoba Hydro for many years of conducting these
11 proceedings, I know the Partnership from a year or
12 more now of working with them on this process, I
13 know that you didn't mean to slight the Provincial
14 process, but the way this letter is written, it
15 certainly comes across that way.

16 Any comment?

17 MS. COLE: Actually, I have a few
18 comments for you, and I think it is really
19 unfortunate that the letter came across that way
20 because, in fact, I think it is quite the
21 opposite. One of the challenges that we faced as
22 partners throughout the entire process is this
23 exclusive focus on a finding of a significant
24 adverse effect, which is so predominant in Federal
25 legislation and tends to take over the

1 environmental assessment process, I think. And it
2 has been really challenging working as partners,
3 in part, and we have talked a lot about that
4 during the course of the hearing, that word
5 significance and what does it mean, and what does
6 it mean in the context of legislation versus
7 everyday parlance, and how one talks about the
8 term significance? And our partners will tell you
9 and have told you that any effect to the
10 environment is significant, regardless of how big,
11 how small, how long it lasts. So it has been
12 really challenging for us as partners trying to
13 write an EIS and talk about those things in a way
14 that fully covers off the range of effects and
15 gives them I guess their due.

16 And in fact, I would say that on the
17 Manitoba side it is perhaps a little bit more the
18 opposite, it is far more balanced and looks at all
19 effects, and talks as well about benefits, and
20 talks about positive effects, which Federal
21 legislation doesn't really talk about very much at
22 all. So it seeks to find that balance, and it is
23 a far more holistic look at environmental
24 assessment, and a far more, a bit more focus on
25 sustainable development and looking at all aspects

1 of a project.

2 So I think the intention was actually
3 not to slight the Manitoba Environment Act at all,
4 but to say, please look at the project as a whole
5 and not just focus on the finding of a significant
6 adverse effect. So I guess that is the reason
7 that it is there.

8 I wanted to talk a little bit about
9 why it is called the response to EIS guidelines,
10 because I know it is a really weird name, and it
11 sounds awkward. And that also isn't a slight to
12 the Federal process, or a slight to Manitoba
13 process, or the Federal process taking precedent.
14 In fact, we heard from Ms. Braun at the beginning
15 of the hearings that the EIS guidelines issued by
16 the Federal Government, which are very similar to
17 the scoping document, were sort of viewed as the
18 guidelines for the project under which the
19 Environmental Impact Statement would take place.

20 And the reason we have a response to
21 EIS guidelines is to distinguish it from the three
22 partner evaluation reports. And that's why it is
23 called that. That the overall Environmental
24 Impact Statement is not just a response to EIS
25 guidelines, it is the sum total of the response to

1 EIS guidelines, which is a response to a very
2 defined regulatory process, and the three partner
3 First Nation Cree worldview evaluations.
4 Collectively all of those reports constitute the
5 EIS. So if we just called it the EIS, it would be
6 presuming that those other reports and the partner
7 reports were not part of the whole. So that's why
8 we have that name. And there was a lot of
9 discussion coming to that name, as I'm sure you
10 can imagine, and that's where we arrived.

11 THE CHAIRMAN: Actually that makes
12 imminent sense. It's too bad you didn't convey
13 that a year ago.

14 I mean, I also, I understand your
15 comments about the significance of, or the
16 determinations of significance and how that can
17 become sort of an oppressive stick out in front of
18 us. And I agree with that. But, again, that is
19 not clear in this letter. It is not really
20 important, but it is just something that I wanted
21 to bring up and put on the record.

22 MS. PACHAL: We will get it right for
23 Conawapa.

24 THE CHAIRMAN: I'm not sure when I may
25 contemplate retirement, whether it is before or

1 after Conawapa. But we will see how quickly you
2 come along with Conawapa.

3 Moving along then with question 2,
4 which was a question about the regional cumulative
5 effects assessment, the recommendation in our
6 Bipole report, and has been noted a number of
7 times through these proceedings. In your response
8 you say that it is proposed that the work be
9 accomplished using a phased approach, an interim
10 product will be ready in mid 2014. What will this
11 interim product be? Will it be an interim
12 cumulative effects assessment or an interim work
13 plan for the RCEA?

14 MS. PACHAL: We are just trying to go
15 from memory. As we mentioned here in the answer,
16 it is a phased approach, and the interim product
17 will be basically a baseline that has all of the
18 data and knowledge Manitoba Hydro has on its
19 existing system. So that will be what we will be
20 providing as that part, that product rather.

21 It is currently with the Minister of
22 Conservation and Water Stewardship, who is
23 reviewing the proposal and the plan.

24 THE CHAIRMAN: Is there an anticipated
25 completion date?

1 MS. PACHAL: For when we hear back
2 from the Minister?

3 THE CHAIRMAN: No, for when a regional
4 cumulative effects assessment will be completed?

5 MS. PACHAL: The entire complete
6 assessment? I believe it is -- October 2015 would
7 be the final over the complete piece.

8 THE CHAIRMAN: Thank you.

9 Moving along, I think our next
10 question is on question 15, on caribou and
11 blasting, and I don't think it is a very tough
12 question. Mr. Shaw is going to ask that question.

13 MR. SHAW: Yes, just with respect to
14 the first paragraph under response in the last
15 sentence, and you will see there the reference to
16 four kilometres. Just by way of clarification, is
17 that four square kilometres or a four kilometre
18 radius from the disturbances?

19 MS. PACHAL: It is a radius.

20 MS. COLE: It is a four kilometre
21 radius. So where there will be a disturbance, we
22 say there will be a loss of effective habitat four
23 kilometres out from that disturbance.

24 MR. SHAW: Very good. Thank you.

25 THE CHAIRMAN: Next question, question

1 20, a question about cumulative effects, although
2 it is a fairly narrow question. Mr. Yee, I
3 believe, is going to ask this one.

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

5 I think the answer was reasonably
6 satisfactory. We just -- for clarification I
7 guess -- we asked the question, what has or is
8 being done to address past disturbances on the
9 environment of negative effects in past projects?
10 It is kind of broad from that perspective, so
11 maybe if I could narrow it down for you a bit. I
12 guess the question really is, because we know what
13 is happening, what you are proposing for Keeyask,
14 and it sounds really good in terms of, for
15 instance, your borrow pit rehabilitation. So we
16 were wondering, given that there has been borrow
17 pits with all of the other previous projects, how
18 many borrow pits are there and are there plans to
19 rehabilitate these borrow pits? I realize some of
20 them may still be active, but the ones that are
21 inactive?

22 MS. NORTHOVER: To address your
23 question, I'm going to first answer about
24 Wuskwatim and then Shawna is going to answer about
25 the rest.

1 Because Wuskwatim has been built under
2 the current Environment Act and under today's
3 legislation, the borrow pits for Wuskwatim are
4 being rehabilitated. As we speak, trees are under
5 snow, but hopefully they are doing very well and
6 will come along in the spring. So borrow pits
7 that were no longer required, it was determined at
8 the end of the project what was going to be
9 required to maintain the road, for example, long
10 term, and those sections were set apart. And
11 everything else was, you know, scraped up and
12 mucked up to allow for tree growth and trees have
13 been planted. So we are well along the way. We
14 have two more years of planting ahead of us to
15 finish that rehabilitation. So Wuskwatim's borrow
16 pits, and I can't tell you off the top of my head
17 how many there are, are being rehabilitated.

18 MS. PACHAL: In terms of the other
19 projects we, to our knowledge, based on those of
20 us on the panel -- unless anybody from our team
21 back there can speak to this in a different way --
22 there is no plans that we know of to deal with
23 anything from the previous projects with respect
24 to borrow pits, or having said that, whether or
25 not some of them have been rehabilitated, we

1 don't -- nobody has that knowledge, in fact,
2 nobody is there jumping up so...

3 MR. YEE: Dr. Ehnes has something.

4 DR. EHNES: There were attempts to do
5 some rehabilitation of the older borrow pits
6 associated with Kettle and Limestone. In some
7 cases it was as simple as spreading the stockpiled
8 organic material and woody debris. There were a
9 couple of borrow pits where there was some
10 experimentation done with different methods of
11 rehabilitation. There was some follow-up
12 monitoring of that for a few years. In general,
13 the success was not that good. And that
14 information, we've done some further follow-up
15 studies in those borrow areas, and some of that
16 information is what is helping to guide the
17 rehabilitation plan for Keeyask.

18 MR. YEE: Thank you.

19 THE CHAIRMAN: Is that it? Thank you.

20 I should just note as an aside that
21 question 17 on water quality on Lake Winnipeg, we
22 don't have any follow-up question, but the
23 Commission secretary and I, who are already
24 thinking forward to Lake Winnipeg Regulation,
25 highlighted that as a piece of good information

1 for that review.

2 The next question that we have up is
3 number 26, and that's on-site support. Question
4 26, you talk about the on-site support service
5 that will be delivered by Fox Lake and York
6 Factory. And you talk about this ERSS having
7 employees. And then in the last paragraph it
8 starts off with two new KCN site representatives
9 will be hired as advisors. I have a few questions
10 just around the resources. What resources will be
11 available to this ERSS? How many staff will there
12 be? How many will be on site at any given time?
13 And are these two new KCN site representatives,
14 are these the ERSS staff or are they in addition
15 to?

16 MS. PACHAL: They are in addition to.
17 And we probably should have worded the response
18 slightly different actually in the current sense,
19 because this contract has already been awarded and
20 it is underway with the Keeyask infrastructure
21 project. Perhaps, Ted, who is managing that
22 contract, could speak more specifically to the
23 resources they have?

24 THE CHAIRMAN: Mr. Bland?

25 MR. BLAND: The two additional are

1 support staff for the employment retention
2 coordinator and the cultural coordinator. They
3 were brought on as the project brings on more
4 staff. I think we are limited -- not limited, but
5 construction of the access road and the start-up
6 camp brings in up to about 300 people. And if
7 things move forward as the schedule predicts, then
8 we have two other staff lined up just to
9 complement the staff that we have and to kind of
10 relieve some of the stress and the rotation of
11 schedules.

12 THE CHAIRMAN: And these staff persons
13 will live on site? They will live in the camp?

14 MR. BLAND: Yes, they will stay on
15 camp. We have it scheduled so there is always one
16 of the coordinates -- like we have a manager for
17 the whole contract, but we also have an employment
18 retention coordinator, and we have a cultural
19 coordinator. And the other two members, as I
20 pointed out, are just support staff, but they will
21 be helping out in terms of the schedule and being
22 able to help relieve the staff when it is, you
23 know, I guess if there is stressful situations,
24 depending on what is happening in the camp and how
25 much interaction there is with the staff that are

1 there.

2 THE CHAIRMAN: There will be somebody
3 on site at almost all waking hours?

4 MR. BLAND: Yes, somebody is always
5 going to be there. We did intend on trying to
6 provide a 24-hour service and we did look at like
7 an on-call schedule for somebody to be able to
8 respond if there are incidents, or people need to
9 talk during the evenings, or late, early in the
10 mornings.

11 THE CHAIRMAN: This is a bit of a
12 slight tangent, but I noted in the Deloitte report
13 on Wuskwatim employment that one of the
14 recommendations, and I think this came from people
15 in the camp, was for AA or drug abuse expertise.
16 Will this be available through the ERSS?

17 MR. BLAND: I think the staff that we
18 hired, they have different skills. They are
19 skilled, I guess, in a lot of different areas, but
20 they are not what we would call AA or NA workers,
21 those are things that are brought in from our
22 community. And the only thing that's different is
23 this project and the service that we are providing
24 is for everybody, it is not only for on-reserve
25 members. If anybody has problems that they need

1 to be able to see somebody, we do have referral
2 systems, we do have contacts for, you know, people
3 that are specialized in different areas, and we do
4 have, you know, the people that are trained and
5 that are on site know where and how to refer
6 people if there is any incidents that are, you
7 know, require immediate attention or stuff like
8 that. Those are things that we thought were
9 critical to ensuring safety of our staff as well
10 as the people that are just on site in general.
11 So there is connections there that are made.
12 There is also, I think it has been discussed
13 earlier, connections with the RCMP and stuff like
14 that, for immediate matters that need attention.
15 But in terms of the resources, it is limited as to
16 what exactly we can deliver on site. But there
17 are communities in the surrounding areas that can
18 be utilized.

19 THE CHAIRMAN: Thank you.

20 MS. PACHAL: In response to that
21 specific recommendation in the Wuskwatim report,
22 or observation, the Partnership has been working
23 with the Northern Regional Health Authority with
24 respect to all health services in the north, and
25 the impacts on those services, or the requirement

1 for additional services as a result of the
2 projects. And we've also been in touch with the
3 Addictions Foundation, so to establish a more
4 formal type of arrangement in terms of referral
5 people. So we haven't worked out what that
6 exactly looks like, but it is on everyone's radar
7 with the health authority and initial discussions
8 with the Addictions Foundation.

9 THE CHAIRMAN: Thank you.

10 MS. COLE: Mr. Chair, if I could, I
11 just want to add, and I'm not sure it got answered
12 for you. In your opening remarks you asked if the
13 KCN site reps were part of the ERS contract?

14 THE CHAIRMAN: Yes.

15 MS. COLE: That is an entirely
16 different job, they are not part of the ERS
17 contract, and they will report directly, or they
18 will report and work with the resident site
19 manager. So they are not through that contract.
20 So that's in addition to the staff that Mr. Bland
21 spoke about.

22 THE CHAIRMAN: Okay. Thank you for
23 that.

24 Next question is question 28 on
25 employment. Ms. Bradley?

1 MS. BRADLEY: Thank you, Chair.

2 The basic question, it is question 28
3 on employment, and it flows from section 12.6.3 of
4 the JKDA. We had asked for an estimate of how
5 many person years have already been worked since
6 the signing of the JKDA. And you did give us a
7 response of the number effective September 30th of
8 2013. Just as a further to that, does this, the
9 number of 257 person years, does that mean that
10 you've now achieved more than half of the
11 commitment, a quarter of the commitment? Where
12 were you at in terms of the job target?

13 MS. PACHAL: I think it is important
14 that the target is not a target in the sense that
15 when we achieve it, we will quit. It is not like
16 my weight loss plan in my New Year's resolution.
17 So it was a negotiated level of employment that
18 the Cree said they would be, if they achieved that
19 they would be comfortable to say, you know, it was
20 adequate employment or an adequate benefit. But
21 our hope is to far exceed the 630. So I think
22 since we have drafted the JKDA and the word target
23 was used, we have often sort of said we should
24 have used sort of a different way to describe it,
25 because the objective is 630, but it is not a

1 target that we will quit at.

2 MS. BRADLEY: Okay. Just one further
3 one then. In terms of those that are employed,
4 can you give us a sense of what is the nature of
5 the jobs? Are they employed with the Keeyask
6 infrastructure project, EA studies, what is the
7 nature of the employment?

8 MS. PACHAL: Well, you have answered
9 part of the question already. It includes the --
10 I think we started counting the 630 person years
11 starting at the signing of the JKDA in 2009. So
12 it would include anybody who is working in the
13 Future Development Office. For sake of argument,
14 Fox Lake has 20 some odd people that work full
15 time in their Future Development Office, Fox Lake
16 members. So I think that is right. Karen, is it
17 right, 20? So all of the person hours associated
18 with that, and any of the other First Nations and
19 their Future Development staffs, anybody working
20 in environmental assessment work, any of the
21 members involved in that, those hours would be
22 counted. Anybody who is supporting any of the
23 other studies the First Nations are doing, and
24 then as well the Keeyask, I'm just looking, the
25 Keeyask infrastructure project -- to Glen and

1 crew -- is also counted in there already.

2 MS. BRADLEY: Thank you.

3 THE CHAIRMAN: I think next Mr. Yee
4 has a question or two about training, and it sort
5 of flows out of questions 29 to 32.

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

7 I guess it is fair game since you have
8 referenced the Deloitte report, I'm going to do
9 the same. I don't mean to put you on the spot,
10 but I will let you know, it was table 7 on page 35
11 of the Deloitte report that looked at -- the table
12 7 title is active apprentices at the end of the
13 HNTEI by level and trade. And it lists by trade
14 carpenters, electricians, plumbers, millwrights,
15 cooks, et cetera. And it gives four levels of
16 training. And I did a quick calculation and I
17 found that about approximately 88 per cent have
18 only achieved level 2. So I guess my question in
19 regards to training is, does the Partnership have
20 plans for further training leading into and
21 continuing on with Keeyask in regards to skills
22 development and refresher courses?

23 MS. PACHAL: Well, there is on-the-job
24 training taking place on the Keeyask
25 infrastructure project currently, and there is

1 discussions underway to develop training
2 initiatives associated with Conawapa, where the
3 idea would be we would use aspects of the Keeyask
4 project to achieve that. There is no additional
5 training contemplated beyond that in terms of
6 skill level, like for those apprentices, a
7 formalized program other than the work they are
8 doing on the Keeyask infrastructure project,
9 on-the-job training. On the direct negotiated
10 contracts that the First Nation partners have,
11 similarly they have on-the-job training
12 initiatives as well. I can't think of -- Mr. Yee,
13 your question was specifically leading up to the
14 start of the construction of the GS?

15 MR. YEE: Well, in terms of both
16 leading into the whole Keeyask project as well as
17 continuing on throughout, even in the operation
18 phase, I guess, in terms of hiring people and
19 training people?

20 MS. PACHAL: One of the -- now, the
21 Deloitte report is fairly new for us. We actually
22 haven't had an opportunity, because we have been
23 in these hearings when it was finalized and
24 approved by the Wuskwatim partnership board, to
25 really talk about this with our partners. But one

1 of the things that we are doing on Keeyask is we
2 have allowed for, in the contract, the hiring of
3 level one apprentices and a certain number of
4 them, which wasn't the case on Wuskwatim. Which
5 should -- and that was one of the criticisms of
6 the report is that, unless you were a high level
7 apprenticeship, you couldn't get experience on the
8 project. So we have actually written into the
9 contract specs with the general civil contract --
10 I am just making sure the heads are nodding back
11 there and not hard objects flowing at me -- so
12 that we have got the level one apprentice system
13 built in this time to try and address that. I
14 can't think of anything else.

15 MS. COLE: In terms of operations,
16 when we start to move into operations, Hydro does
17 have a number of training programs. It has an
18 Aboriginal pre-placement program and other
19 training programs that would assist individuals in
20 getting into our operational work force, and
21 that's the entire purpose of the working group on
22 operation jobs that we have with each of the
23 communities, is to expand and increase the numbers
24 of our partners who are working within Manitoba
25 Hydro's operations, including potentially at

1 Keeyask.

2 MR. YEE: Thank you.

3 THE CHAIRMAN: Did you get anything
4 about ongoing on the job?

5 MR. YEE: I guess that includes
6 on-the-job training though, right, as well in
7 terms of operational, would there be further
8 on-the-job training?

9 MS. COLE: Yes, there is on-the-job
10 training. I mean, we internally run
11 apprenticeship programs for our lines trades and
12 for work at the generating stations. And then
13 there are on-the-job training programs
14 specifically associated with Keeyask construction.

15 MR. YEE: The reason I raised it is
16 because it looks like -- I mean, I realize this is
17 a step forward from other projects, but, I mean,
18 looking at the HNTEI program, it doesn't look that
19 successful from the perspective of skill
20 development. So I was thinking in terms of
21 additional training to bring their skill level up.

22 MS. COLE: Right.

23 THE CHAIRMAN: Or are you going to
24 have any?

25 MS. COLE: Are we going to have any?

1 THE CHAIRMAN: Further training
2 besides the apprenticeship on site?

3 MS. PACHAL: No. For Keeyask --

4 THE CHAIRMAN: Yes?

5 MS. PACHAL: -- there is no intention
6 to do so. We are going to start with the Conawapa
7 initiative and use Keeyask as the potential
8 on-the-job training opportunity. And in the
9 Conawapa, and we are also talking about the same,
10 the same group of people who would be the
11 trainees. So under the Conawapa umbrella, we will
12 be developing a training initiative that would
13 focus on people who already had achieved certain
14 levels of apprenticeship on Keeyask. So we would
15 be focusing on them in Conawapa and trying to get
16 their skill levels up, and potentially using
17 Keeyask as the opportunity.

18 I'm going to use this as an
19 opportunity to stand on a soap box, I do quite
20 often around -- there is a significant difference
21 between training on capital projects and in our
22 operations. We at Manitoba Hydro, I'm proud to
23 say, is one of the most, like a world class
24 Aboriginal pre-placement training program, where
25 people all over the world come and talk to us

1 about this program because it has been so
2 successful. It has been in place for probably 11
3 or 12 years. We have an 80 or 90 per cent
4 retention rate of people who come into the
5 program, become apprentices, become journey people
6 and are employed at Hydro. So that 80 or 90 per
7 cent includes ongoing employees at Hydro. But
8 that's because in the operations that is a
9 conducive environment to doing this kind of
10 ongoing training and mentoring and continuing,
11 getting people enough hours to get their levels
12 and go back to school and so on and so forth.

13 On a capital project, as you have seen
14 from some of the graphs that my colleagues have
15 showed you over the months, the employment is very
16 up and down, and different trades come in, and
17 there is this huge push and then they leave. So
18 it is not an environment that is super conducive
19 to getting a bunch of apprentices trained and
20 getting their hours. If you just look at how the
21 trades come in and out and the hours they work and
22 the cycles, it is not -- there is sort of this
23 expectation often that it will be this panacea for
24 training, but it is actually a really tough
25 environment to, particularly with apprentices, to

1 actually get some, you know, significant results.
2 On the operations side it is and we do. On the
3 capital side, not so much.

4 THE CHAIRMAN: When do you anticipate
5 that the Conawapa training initiative will start?

6 MS. PACHAL: After I sleep for about
7 three weeks when this is over. In all
8 seriousness, we have started on initial
9 discussions internally a little bit, but we have
10 just started to work with our partners on Conawapa
11 in discussions, we will develop it in consultation
12 with the partners, the First Nation partners. And
13 we have just started to sit down with them. I
14 don't even know -- I am looking at Jack -- I don't
15 even know if training has been on the agenda of
16 any of the meetings yet, if there even has been
17 preliminary discussions. I don't even think so.
18 So it is not even -- we are just starting to work
19 with our partners on what does that look like for
20 Conawapa.

21 THE CHAIRMAN: Thank you.

22 Mr. Davies, did you have something to
23 add to this?

24 MR. DAVIES: I was asked to speak very
25 briefly in regards to some of the employment

1 that's been provided through the environmental
2 assessment program. And during my previous
3 presentation I had mentioned there were about 105
4 First Nation members involved. That actually goes
5 back further in time than the JKDA, starting
6 around 2000, 2001. In total there were about
7 3,600 person weeks, which I think is about 27
8 person years, somewhere around there, or 144,000
9 hours of time spent working on the environmental
10 projects. All of the people working on the
11 environmental projects are provided training, and
12 we try to hire the same people to work with the
13 same crews over and over again so that they become
14 very adept at the type of scientific collection
15 that we are doing.

16 We have also made a concerted effort
17 at our company to ensure that any First Nation
18 members from any of the KCN communities that are
19 going to university and taking biological sciences
20 are hired as summer students with us. And we
21 mentioned that previously, that in some cases they
22 don't necessarily work on the Keeyask project or
23 the Conawapa projection. In some cases we have
24 had them working in Alberta on lake sturgeon
25 projects, or in Saskatchewan on lake sturgeon

1 projects, and try to provide them with a broader
2 view of biology, and to get them more interested
3 in the biological sciences so they can assist and
4 work on the programs, monitoring programs in the
5 future. Thank you.

6 THE CHAIRMAN: Thank you, Mr. Davies.
7 Are you satisfied on that?

8 Did you have any further questions on
9 the environmental protection plan?

10 MR. YEE: No, I don't, Mr. Chair.

11 THE CHAIRMAN: Thank you. I think
12 question 54, and I understand how the process
13 works, that even though you haven't received
14 approvals through either the environmental or the
15 NFAT process, that you are already tendering the
16 main project. But couldn't this lead to public
17 cynicism? I mean, if large construction
18 companies, which nowadays are basically
19 international companies, when they prepare a
20 tender for a project like this, which is going to
21 be, I mean, the general civil contract is probably
22 going to be in the hundreds of millions, if not
23 low billions. It takes a lot of time and a lot of
24 money to prepare a tender for a project like this.
25 Are they going to do this if there is a chance

1 that it is not going to be approved?

2 MS. PACHAL: It is already done, and
3 the companies have submitted their proposals, and
4 the proposals are under evaluation. And the
5 initial review and assessment of those proposals
6 is going to the board, to our board in March. So
7 we've already tendered it. We have already got
8 the bids, and the bids have been reviewed. And we
9 are going to the board with it in March.

10 THE CHAIRMAN: So when did you tender
11 it?

12 MS. PACHAL: June or July.

13 THE CHAIRMAN: So do you not think
14 this might lead to some public cynicism?

15 MS. PACHAL: Absolutely. And you
16 know, I mentioned a number of times that it is
17 such a balancing act for us, as a partnership and
18 as an utility, to decide how much effort and
19 energy to expend and in what parts of the process
20 to expend it. Because you need a certain amount
21 of information available for a process like this,
22 for example, where we have heard lots of people
23 say, well, you should have all of the
24 environmental protection plans prepared already.
25 Well, that's hugely expensive and very labour

1 intensive. Do you want to invest all of that if
2 you are not going to go?

3 So we are constantly balancing,
4 figuring out where do we invest our time and
5 energy, what things are on the critical path, what
6 things must we have done so that in the event
7 there is a recommendation for a licence and we are
8 granted a licence that we are ready to go. And so
9 that's the whole part of the balancing act of
10 protecting an in-service date, how much money do
11 you spend to protect an in-service date? That's
12 just part of what we have to deal with on a daily
13 basis.

14 THE CHAIRMAN: So if you fail to get
15 approval for this through either our process or
16 the NFAT process, would that scare off some of
17 these international contractors for future
18 projects?

19 MS. PACHAL: I would just be
20 speculating, I don't know.

21 THE CHAIRMAN: You don't know?

22 MS. PACHAL: I have no idea.

23 THE CHAIRMAN: That's fair enough.

24 I have one more question and it is not
25 one of our 56, it is one that arose out of today's

1 cross-examination, when Mr. Roddick was
2 cross-examining Dr. Kulchyski about the Peace of
3 the Braves, and then these limited partnership
4 units. And I never fully comprehended how this
5 process works. But am I to believe from the
6 discussion between Mr. Roddick and Dr. Kulchyski
7 that one of the, any one or more of the four
8 partner communities could opt for a process that
9 would give them cash grants similar to the payouts
10 that the Peace of the Braves gives?

11 MS. PACHAL: No.

12 THE CHAIRMAN: That was the impression
13 I got from Mr. Roddick's questioning. I mean, he
14 talks about in 4.1.2 in this sheet that he handed
15 out, class M units have the right to receive cash
16 distributions out of distributable cash, and also
17 have the obligation to fund cash calls. Now, it
18 also notes in there that class M units can only be
19 issued to Hydro and the general partner, which is
20 not one of the individual communities, is it?

21 Mr. Roddick, can you explain what you
22 were getting at?

23 MR. RODDICK: Mr. Chairman, the First
24 Nations, after the dam is built, have to make an
25 election. There isn't a fixed amount like there

1 is under the Peace of the Braves agreement where
2 that's been determined in advance, but there is a
3 formula.

4 My point was, there are the two
5 options, the decision does not have to be taken
6 until the dam was built, that's the point I was
7 trying to make. Those three things were all
8 wrapped up in there.

9 THE CHAIRMAN: But the option -- you
10 see, the impression I got from you this afternoon
11 was that they could just opt for cash payments?

12 MR. LONDON: If I can respond as well?
13 The issue that was being proposed was essentially
14 about risk. And one of the options that's
15 available to the First Nations is to have no risk
16 in the choice that it makes. And there will be a
17 stream of income that will be perpetual for that
18 First Nation that makes that election. Whether
19 all of the First Nations will make the same
20 election or not, we will have to wait to see.

21 THE CHAIRMAN: So if they opt for that
22 option with no risk, I guess -- I assume they
23 would get a lower amount, a lower stream?

24 MR. LONDON: Yes.

25 THE CHAIRMAN: If they take the

1 risk --

2 MR. LONDON: There is a risk premium.
3 Yes, okay, there is a risk premium. And there is
4 no risk premium if there is no risk. For example,
5 no -- never possibility of a cash call, no further
6 investment of effort or resources on the part of
7 the First Nation.

8 THE CHAIRMAN: So they can get in
9 effect a royalty without any risk or --

10 MR. LONDON: The First Nations would
11 like to think of it as a royalty, but Manitoba
12 Hydro and the Province of Manitoba seem to have
13 difficulty with that term.

14 THE CHAIRMAN: I don't have any
15 trouble at. But I'm not the Premier, though,
16 thank goodness.

17 MS. PACHAL: I think when we are
18 talking about these different options, there is
19 the common preferred shares, or the common, or the
20 preferred. And there was a thing made here about
21 they will get a lower amount. Well, not
22 necessarily, the floor is fixed between the common
23 and the preferred. So on the common there is more
24 upside, if they are accepting the risk there is a
25 possibility to make more money. On the preferred

1 it is capped, they didn't take the risk so they
2 are not eligible to receive the additional
3 dividends if the market was booming.

4 THE CHAIRMAN: Well, I'm not much of a
5 finance guy, so it is not quite clear as mud, a
6 little clearer than mud. Thank you very much.

7 I think that concludes all of our
8 additional questioning. Any of my panelists have
9 any further questions on that?

10 So I thank you all very much. That
11 also concludes, almost concludes today's
12 proceedings. We are now slightly ahead of
13 schedule in that we had allowed tomorrow morning,
14 we actually allowed the whole morning for
15 Commission final questions, but we obviously won't
16 need that. The Partnership will be providing
17 rebuttal evidence, Ms. Mayor or Ms. Pachal?

18 MS. PACHAL: We only had two pieces of
19 rebuttal evidence, we filed both of those. It is
20 in two specific areas, and those two specific
21 experts would be available tomorrow if anybody has
22 any questions of them, but there is no
23 presentation and they are not presenting their
24 written evidence, it is for the record for you.
25 So if there are questions of them, they will be

1 here to answer them, but there is no intention to
2 make a presentation. And we have no other
3 rebuttal.

4 THE CHAIRMAN: And that's the two
5 Soprovich reports, am I correct?

6 MS. PACHAL: Correct.

7 THE CHAIRMAN: Okay. So how so you
8 want to do this? I believe that Fox Lake is, or
9 will be prepared to make their final argument
10 tomorrow afternoon. We can meet at 9:30 tomorrow
11 and do this rebuttal evidence and then break until
12 the afternoon, or if we assume -- Fox Lake will
13 need an hour and a half to do their rebuttal
14 evidence -- if we assume that -- or to make their
15 final argument -- if we assume that rebuttal
16 evidence can be dealt with in an hour and a half
17 and we can just meet at 1:30, is that a safe
18 assumption? Do the participants anticipate many
19 questions in cross-examining those two rebuttal
20 pieces? Have you given it much thought?

21 MS. PACHAL: We can have them here any
22 time tomorrow, the two folks.

23 THE CHAIRMAN: Yeah. I would hate to
24 come in here at 9:30 and then break at 10:00, and
25 come back at 1:30 or something, although it

1 wouldn't be the end of the world. Why don't we do
2 it this way, why don't we meet at 11:00 tomorrow
3 morning? We will do the rebuttal evidence at that
4 time. If it takes longer than an hour and a half,
5 we will continue with it into the afternoon, then
6 do Fox Lake Citizens final argument. Does that
7 work? Any objections to that recommendation?

8 Okay. So we will meet at 11:00 a.m.
9 tomorrow. First up will be the two rebuttal
10 pieces, cross-examination on the two rebuttal
11 pieces. And then following that either at 1:30 or
12 perhaps later in the afternoon, Fox Lake Citizens
13 final argument.

14 Okay. We are adjourned for today. We
15 have some documents to file, Madam secretary?

16 MS. JOHNSON: We have quite a few
17 documents. The first one is CEC 003, which is the
18 letter to KHLP with the additional questions. CAC
19 34 is response to undertaking number 11. PFN
20 number 10 is response to undertaking number 12.
21 PFN 11 is response to undertaking 19. KHLP 95 is
22 response to undertaking number 10. KHLP 96 is
23 response to undertaking 18. KHLP 97 is the
24 excerpt from the Indian Act. Number 98 is the
25 excerpt from Wuskwatim. Number 99 is Mr. Tough's

1 book excerpt. Number 100 is the Life's
2 Embarrassing Moments, Right Treaty, Wrong Adhesion
3 document. 101 is the significance of TCN and
4 Treaty number 5. 102 is the presentation from the
5 EPP from this afternoon. 103 is the responses to
6 the CEC letter. MMF number 15 is response to
7 undertaking number 20. Number 16 is the Deloitte
8 report on the Wuskwatim training. And that's it
9 for today.

10 (EXHIBIT CEC003: Letter to KHLP with
11 the additional questions)

12 (EXHIBIT CAC 34: Response to
13 undertaking number 11)

14 (EXHIBIT PFN 10: Response to
15 undertaking number 12)

16 (EXHIBIT PFN 11: Response to
17 undertaking 19)

18 (EXHIBIT KHLP 95: Response to
19 undertaking number 10)

20 (EXHIBIT KHLP 96: Response to
21 undertaking 18)

22 (EXHIBIT KHLP 97: Excerpt from Indian
23 Act)

24 (EXHIBIT KHLP 98: Excerpt from
25 Wuskwatim)

1 (EXHIBIT KHL P 99: Excerpt from Mr.
2 Tough's book)

3 (EXHIBIT KHL P 100: Life's
4 Embarrassing Moments of Right Treaty,
5 Wrong Adhesion document)

6 (EXHIBIT KHL P 101: Significance of
7 TCN and Treaty number 5)

8 (EXHIBIT KHL P 102: Presentation from
9 the EPP)

10 (EXHIBIT KHL P 103: Responses to the
11 CEC letter)

12 (EXHIBIT MMF 15: Response to
13 undertaking number 20)

14 (EXHIBIT MMF 16: Deloitte report on
15 Wuskwatim training)

16 THE CHAIRMAN: Thank you. We are
17 adjourned until 11:00 a.m. tomorrow morning.

18 MR. KULCHYSKI: We wouldn't have any
19 questions on the rebuttal. Thank you.

20 (Adjourned at 5:35 p.m.)

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Cecelia Reid and Debra Kot, duly appointed
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hereby certify the foregoing pages are a true and
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