

MANITOBA CLEAN ENVIRONMENT COMMISSION

KEEYASK GENERATION PROJECT

PUBLIC HEARING

Volume 30

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Transcript of Proceedings  
Held at Fort Garry Hotel  
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WEDNESDAY, JANUARY 8, 2014  
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1 Wednesday, January 8, 2014

2 Upon commencing at 9:30 a.m.

3 THE CHAIRMAN: Good morning. Time to  
4 get to work. We have a relatively busy day today.  
5 We have two closing arguments this morning and one  
6 this afternoon. As most, if not all of you will  
7 know, Ms. Kempton, on behalf of Pimicikamak, is  
8 unable to get to Winnipeg because of the flight  
9 delays out of Toronto. So she will be appearing  
10 by video conference of some sort.

11 But before that, we have two  
12 participants here in person, ready and raring to  
13 go, giving their final arguments. So first up is  
14 Manitoba Wildlands and then following that,  
15 Consumers Association of Canada, Manitoba Branch.

16 So Ms. Whelan Enns, over to you. And  
17 note that I will be holding up little signs at  
18 about ten, five and two, and at zero the sound man  
19 will cut off the mic if you're not finished by  
20 then.

21 MS. WHELAN ENNS: Thank you and good  
22 morning. I may stop and check my time also along  
23 the way. And somebody was smart yesterday in  
24 terms of the tags.

25 THE CHAIRMAN: Yes, that was

1 Ms. Pawlowska-Mainville. We may give her a  
2 full-time job as our timekeeper because she had  
3 such nice signs made up.

4 MS. WHELAN ENNS: Good morning again.

5 I am dedicating these remarks, closing  
6 statement if you will, to my Aboriginal ancestors.  
7 Simply put, I would not be here and, therefore,  
8 would not have participated in this or previous  
9 Manitoba Hydro project proceedings without my  
10 Aboriginal ancestors. As a very lucky Canadian, I  
11 can say that when your people first arrived in  
12 what we call Canada in the year 1654, that means  
13 your people were kept alive by, mentored by  
14 Aboriginal peoples, married by Aboriginal persons,  
15 and that your family has been benefitted from  
16 traditional knowledge through the generations.

17 Manitoba Wildlands is a regional  
18 non-profit environmental organization. We focus  
19 on research, analysis, and participation and  
20 processes regarding decisions about public lands  
21 and waters in Manitoba. Our associations then in  
22 these environmental activities over time have been  
23 with the World Wildlife Fund, Nature Canada,  
24 Sierra Club Canada, Canadian Boreal Initiative and  
25 Climate Action Network Canada. I am an elected

1 third term member of the Canad board.

2 Our work is respected across Canada  
3 among colleagues, the media, and environmental  
4 organizations. Manitoba Wildlands website is  
5 regarded as the place to go for information about  
6 Manitoba lands and waters. Certainly 20,000 plus  
7 unique visitors a month on our website and social  
8 media are an indication of the relevance of our  
9 work. The exception to this respect, though,  
10 occurs sometimes in Manitoba.

11 Manitoba Wildlands has participated in  
12 Manitoba Environment Act reviews, EIS guideline  
13 reviews, scoping document reviews, and all stages  
14 of CEC proceedings and hearings regarding hydro  
15 projects since 2002. This includes both  
16 transmission and generation for Wuskwatim, Bipole  
17 III and Keeyask. It also includes upcoming  
18 projects, and also includes the Canadian  
19 Environmental Assessment Agency review for certain  
20 of the same projects. For the Keeyask Generation  
21 Station, this includes participation since 2009 in  
22 both Federal and Provincial reviews.

23 The Keeyask materials from Coldstream  
24 Consulting, three experts, and Dr. Amelia Clarke  
25 and Mr. Dan Soprovich, each of them a Manitoba

1 Wildlands expert, are available on the CEC website  
2 and also from our offices and on our website.

3           At the outset, I'd like to thank the  
4 CEC Chair, secretary and panel members for your  
5 reasonableness and fairness towards Manitoba  
6 Wildlands in these hearings. We'd also wish to  
7 thank and acknowledge the four Cree Nations who  
8 are partners in the Keeyask Generation Station  
9 undertaking with Manitoba Hydro, that is War Lake,  
10 Fox Lake, York Factory and Tataskweyak Cree  
11 Nations. We realize they, you, have future  
12 decisions to make about this project and we  
13 realize that you have worked hard for years to  
14 arrive at these CEC hearings. Your environmental  
15 evaluation reports, your presence here in these  
16 hearings are important for all parties and  
17 especially important for the funded participants.  
18 You have successfully communicated your  
19 intentions, your environmental evaluations and  
20 your hopes for this project.

21           Should you wonder about the use of  
22 terms by participants during the hearings, you  
23 should know that some of us may be reluctant to  
24 hold you each responsible for Manitoba Hydro  
25 assessments and commitments, et cetera. So we

1 reference the Proponent as meaning all five  
2 parties, or we reference your partnership to date.  
3 Again, thank you for being here and all the steps  
4 you have taken to date.

5 We also want to thank the other  
6 participants. It has been good working with you.

7 Our closing statements today is broken  
8 into segments with headers to assist along the  
9 way. We have a tendency in our office to use  
10 bold, and we have tried to basically do that and  
11 to assist this morning with the closing statement.

12 I have just changed versions because I  
13 am hitting late at it.

14 We aim to continue our learning, or  
15 aim to continue our learning about the Keeyask  
16 project at each stage of the regulatory review in  
17 order to continue in the public interest to the  
18 CEC proceedings and hearings and to decision  
19 making about land and waters in Manitoba. We have  
20 been training interns for 12 years, and each  
21 review, proceeding or hearing becomes part of the  
22 training of these young environmental science and  
23 environmental policy researchers.

24 Manitoba Wildlands identified  
25 environmental matters and regulatory areas of

1 primary importance for our participation regarding  
2 Keeyask with the aim of keeping a focus on at  
3 least these through all stages of the Keeyask  
4 Generation Station project reviews.

5           It should be noted that over a  
6 four-year period, and as materials became  
7 available, the initial focus topics expanded.

8           We always aim to assist in access to  
9 information and support communication. For the  
10 Keeyask CEC proceedings and hearings, we have  
11 maintained a chart to list all documents, events,  
12 decisions and schedules since April 2013. It's  
13 posted on our website and updated regularly. We  
14 have provided a chart of the proponent's  
15 personnel, a who is who chart. The research  
16 requested from the CEC panel to provide a brief on  
17 definitions of externalities was also fulfilled.  
18 And our website will hold the Keeyask materials  
19 going forward as we have posted and maintained the  
20 Wuskwatim hearings materials on line.

21           The main EIS and EA topics important  
22 to Manitoba Wildlands then are, and this is a  
23 straightforward list, climate change, access to  
24 information, water quality management and species,  
25 quality and organization of the EIS materials, the

1 EA standards and CEA, or cumulative effects  
2 assessments standards, Federal responsibilities  
3 and regulatory steps, Provincial responsibility  
4 and regulatory steps, sustainable development  
5 principles and guidelines, consistency in scoping  
6 document in the EIS guidelines, species and  
7 biodiversity, public engagement, the hearing  
8 process and productivity for all of us.

9 THE CHAIRMAN: Slow down a touch,  
10 please.

11 MS. WHELAN ENNS: Thank you.

12 Protect the areas is the last in that  
13 list.

14 We aim to inform these proceedings.  
15 We aim to support the CEC and other participants  
16 in fulfilling their roles in these proceedings and  
17 hearings.

18 Contribution to the Keeyask Generation  
19 Station hearings, we do bring 20 years experience  
20 in our resource centre of EA and EIS and Hydro  
21 materials to the process. We also bring a team of  
22 researchers who are keen to learn about the  
23 regulatory process use and to review and assess  
24 materials. We bring a network of experts and  
25 independent researchers who advise Manitoba

1 Wildlands and support our analysis. With the  
2 assistance of CEC participant funding, we were  
3 able to bring into the CEC hearings five experts  
4 who reported and presented in four areas.

5           Highlights of these hearings: We see  
6 the affected community participants from Fox Lake  
7 and York Factory is important. You inform the  
8 hearings and everyone in the room. We also  
9 appreciate the range of experts which the  
10 participants have brought into the hearings. The  
11 expertise, independent analysis and advice to the  
12 proponent provided will contribute to the CEC  
13 panel's deliberations.

14           Overall, the Aboriginal presence in  
15 these hearings, from the contribution of the  
16 Partnership communities to the First Nations among  
17 the participants is perhaps the most important  
18 aspect of these hearings. The First Nation panels  
19 were effective and informative.

20           Thanks to Manitoba Hydro personnel.  
21 We would like to thank Ryan Kustra for his  
22 accessibility over the years and his project  
23 manager contribution to the Keeyask Generation  
24 project. We have missed him in these hearings.

25           We'd also like to thank Ed Wojcinski

1 for his role in the Keeyask Generation Station  
2 project, his ethic and ability to see the whole  
3 picture are attributes important to any public and  
4 large undertaking, the knowledge and civility are  
5 missed.

6 I'd like to add a thanks to  
7 Mr. Bedford for his public words. It would be the  
8 first week of December, four years ago I believe,  
9 in a room full of lawyers and judges, so he must  
10 have meant what he was saying, where he was  
11 basically highly complimentary of our work and of  
12 our, shall I say, dedication to the Hydro reviews.

13 Some observation action from Manitoba  
14 Hydro. You have a ways to go still in  
15 understanding or being able to work with civil  
16 society. It's unfortunate, because 12 years ago,  
17 I thought that Manitoba Hydro was well on its way  
18 to being able to work with civil society. While  
19 the Keeyask Generation Station workshops,  
20 especially round one and two were well-handled,  
21 these hearings still have a tinge of self-interest  
22 and an aggressiveness or arrogance about them that  
23 isn't appropriate for our utility.

24 It's also possible that you have a  
25 long way to go before fully engaging First

1 Nations, especially those who are not business  
2 partners with the utility.

3           Here is a suggested exercise and one  
4 which our utility was engaged in 10 years ago.  
5 Imagine having four environmental organizations as  
6 participants in these hearings. What would  
7 happen? How many experts would they bring into  
8 the hearings? How would Manitoba staff, managers  
9 and consultants function? Would you be open to  
10 listening and learning?

11           It seems Manitoba Hydro needs still to  
12 be reminded, Manitobans own you. Manitobans are  
13 your shareholders. Manitobans carry your debt.  
14 Manitobans are your primary customers. And  
15 sometimes Manitobans benefit, though this is  
16 decreasing and as such is a risk factor.

17           The CEC procedures are important. We  
18 work to maintain and support the hearing  
19 procedures, or so I thought. Not this time. It  
20 is a waste of time and paper to identify what we  
21 have seen and heard in the room and the hallways  
22 during these hearings. This time there has been a  
23 lot of things that will turn up in your videos,  
24 but not necessarily on your audio files. At the  
25 least, everyone representing or providing services

1 to our utility needs to be able to hear and see  
2 themselves and understand how they look and how  
3 they sound to others.

4 I am going to move into a series of  
5 recommendations that are specific to the Keeyask  
6 Generation project.

7 ATK and methods for ATK should be used  
8 to develop environmental assessment studies --  
9 studies and assessment, no two-track approach.  
10 This has been recommended by participant community  
11 panels and also by participant experts. An ATK  
12 standard, as discussed by other participants,  
13 signed onto by First Nations, for use in EA and  
14 EIS would go a long way. All sources of  
15 information used to draft the EIS materials,  
16 scientific and technical, et cetera, should be  
17 made available to the public to assist review of  
18 EIS materials in a timely fashion.

19 The Environmental Protection Program  
20 should be presented as a single document, complete  
21 with a set of guidelines and reference procedures  
22 to bridge with one another. This is a reference  
23 between the different aspects of the program and  
24 all of the plans. Rather than individual  
25 documents that do not have a bearing on other

1 environmental protection plans, each environmental  
2 protection plan should be included with full  
3 details as to monitoring plans. This whole should  
4 be accessible and used as a guide through  
5 construction and operation phases over the  
6 project, posted publicly and updated regularly.

7 Environmental monitoring reports  
8 should be scheduled and the schedule posted so  
9 that the public, communities and stakeholders know  
10 beforehand what is being monitored and when  
11 reports would be available.

12 Environmental monitoring activity  
13 should be conducted for the lifespan of the  
14 project and consistently for all VECs and  
15 supporting topics.

16 Monitoring advisory committee, sub  
17 committees should be put in place for significant  
18 topics of VECs early in the construction or  
19 operation phases of the project. Given the 100  
20 year lifespan of the project, mechanisms to update  
21 VECs, add VECs, and change methods, frequency or  
22 type of monitoring for both environmental and  
23 social VECs need to be put in place within the  
24 first year should a licence be issued.

25 Independent experts should be

1 available to the MAC, the Monitoring Advisory  
2 Committee.

3 Study areas should be consistent  
4 between EIS materials and technical reports. All  
5 study areas should be mapped, listed, and  
6 explained in one place in the EIS. As this has  
7 not been done, it should be required in the first  
8 year of a licence should a licence be issued.

9 An overarching guideline should be  
10 developed from which all study areas derive that  
11 includes scientific justification, control areas,  
12 proxy areas, benchmark areas, et cetera. This  
13 guideline should be reviewed every three to five  
14 years in relation to results of monitoring and  
15 ongoing technical studies and reports.

16 The EIS materials need to accurately  
17 represent the information derived from the  
18 technical reports. This is not so for the  
19 technical reports for this project.

20 Identification of these gaps or variances is  
21 needed before construction would start under a  
22 licence should a licence be issued. Decisions in  
23 a plan as to how to have a living, working set of  
24 technical reports and monitoring reports with  
25 consistent standards, terminology, methodology and

1 reporting process are needed before any licence is  
2 issued.

3 Manitoba Hydro should be required to  
4 conduct a full scale environmental assessment at  
5 various time periods throughout the 100-year  
6 project life, with monitoring activities and  
7 reports between environmental assessments as part  
8 of this pattern. Any results different from what  
9 is projected in the EIS would then be adjusted.

10 Public comments and external  
11 independent review of these outcomes is  
12 recommended.

13 The challenge is one we have never met  
14 before: How to handle 100 years lifespan of a  
15 project. The reference to not having had met it  
16 before is literal, and that is we have never  
17 actually planned for the entire lifespan of a dam  
18 in the province.

19 Selected VECs and supporting topics  
20 should include all species at risk within the  
21 northern hydro region, not just a select few  
22 identified by the utility.

23 Manitoba Hydro should be required to  
24 conduct a complete lifecycle assessment based on  
25 the full suite of international standards. It

1 should be made public as a guide for ongoing  
2 assessment and monitoring of the materials and  
3 emissions from the project areas, infrastructure,  
4 reservoir, et cetera, through the life of the  
5 project.

6           The CEC could consider commissioning a  
7 one to 50,000 land and water change shoreline  
8 inundation study of the hydro region in Northern  
9 Manitoba to build on the one to 250,000 study  
10 presented at the hearings by a participant. The  
11 products should be public and could be used as a  
12 reference for the regional cumulative effects  
13 assessment.

14           Ecosystem functions and ecosystem  
15 services studies need to be conducted for the  
16 Keeyask project and future projects. Given the  
17 lifespan of this project and the current  
18 international research and models for valuating  
19 ecosystem services and natural capital, Manitoba  
20 Hydro should be required to conduct research with  
21 the aim of incorporating these methods into the  
22 Keeyask Generation Project, should it be licensed,  
23 and into future projects. Please see the fall  
24 2013 Stats Canada report.

25           While we were talking about it here,

1 Stats Canada was releasing their first specific  
2 report on valuation of ecosystem services and  
3 functions.

4 Greater attention needs to be paid to  
5 the long-term health impact to individuals from  
6 this project who are living near hydroelectric  
7 generation stations, both environmental and social  
8 impacts.

9 It is not evident how Manitoba Hydro  
10 intends to keep up with the science, analysis,  
11 social issues and future methodologies with  
12 respect to human health and social impacts for  
13 this or other generation projects. The assumed  
14 application by the Proponent of the precautionary  
15 approach to Keeyask generation project should be  
16 reviewed and compared to other hydroelectric and  
17 energy for mining, et cetera, developments.

18 Manitoba Hydro should be required to  
19 research, study and update its method, and  
20 application of precautionary principle for this  
21 project, should it be licensed, to any future  
22 project.

23 Disclosure of Manitoba Hydro's 50 and  
24 100 year development plan is needed, so that  
25 regulators, stakeholders, affected communities and

1 Manitobans can determine what is intended and  
2 participate in the discussion for energy planning  
3 in our province.

4 Sturgeon monitoring and studies need  
5 to incorporate all ATK and scientific data  
6 available in Manitoba and also relevant areas or  
7 projects independent of whether the findings agree  
8 or disagree with Hydro objectives.

9 The literature review provided in the  
10 EIS materials need to identify literature that  
11 contradicts Hydro's findings so as to provide an  
12 objective view of the science, rather than only  
13 research and literature that agrees with Manitoba  
14 Hydro's findings.

15 Fire history and fire predictions or  
16 trends, as provided in the EIS, need to be  
17 reviewed, updated and widened. No clear  
18 predictions were provided. Climate change was  
19 dismissed as a factor in fire history and future  
20 fire trends.

21 We request the CEC to acquire an  
22 independent assessment of fire records, trends,  
23 risks, history and projections in the RSA, LSA,  
24 along the Nelson River corridor, and then in this  
25 project's RSA and LSA.

1                   Recommendations to the CEC about  
2   hearings: The top of this page is a little bit  
3   bold and it's basically a reminder to Manitoba  
4   Conservation and the licensing branch that all of  
5   this is about their standards also, and that we  
6   have a situation where, for instance, a lot of  
7   these recommendations potentially also can  
8   reflect, or refer, or connect to the  
9   responsibilities of the licensing branch and the  
10   department. And it's incumbent on the department  
11   to place some of the standards that the CEC has  
12   been calling for, for some time, in place.

13                   There are literally dozens of reports,  
14   materials and sources for the Keeyask Generation  
15   Station, which were only referenced either  
16   verbally -- there was one reference to, oh, we  
17   used 20 reports, from the terrestrial and aquatics  
18   panel, for instance -- have still not been  
19   completed and provided, or were provided late and  
20   used by the Proponent as if they were part of the  
21   EIS. When asked early in the hearings, the  
22   project manager simply said, late reports were to  
23   simply inform the EIS. We would observe that they  
24   have been used for much more. These late  
25   materials include the curious decision to not make

1 available any of the technical reports for the  
2 Keeyask Generation Station EIS for the public  
3 reviews, and to only make these reports available  
4 upon request once the CEC proceedings began.

5 Manitoba Wildlands recommends to the  
6 CEC that they ignore any Proponent material not  
7 received by the round two IRs in your  
8 recommendations. Ideally, only spring 2013  
9 supplemental filings, the late set of technical  
10 reports, public technical advisory committee  
11 comments and IRs will be relevant in your process.

12 For the first time ever in a CEC  
13 hearing we have had multiple Proponent lawyers in  
14 the hearing room, in the process. We achieved a  
15 single day record of 10 lawyers for the Proponent.  
16 These lawyers did not always identify themselves  
17 or their clients when they spoke. We had at least  
18 one lawyer who was never identified. There were  
19 other lengthy polemics. We ask the CEC to  
20 consider how best to put procedures in place about  
21 legal counsel for the Proponent that will improve  
22 the process for all those also present in the  
23 room.

24 We suggest to the CEC that any future  
25 Environmental Act proposal for a Hydro project

1 could be work-shopped and discussed with  
2 stakeholders and affected communities before the  
3 EIS or the EIS guidelines is worked up. This  
4 approach was taken to a degree by the CEC in  
5 advance of the Wuskwatim project EIS guidelines  
6 being put in place. And their review included,  
7 for instance, what we call Conawapa I and those  
8 EIS guidelines. And they held I think, I want to  
9 say six community meetings on that basis. The  
10 question is, what are the ways to front end the  
11 EIS process so that it will be informed,  
12 understandable when released for the public  
13 review, and what changes in this sequence are  
14 feasible and possible?

15 Manitoba Hydro and Proponent lawyers  
16 used various documents in examining experts  
17 provided by the participants. These documents  
18 were not provided to the participants, only to  
19 their witnesses, or to legal counsel for  
20 participants, despite ongoing preparation for  
21 examining those same experts. We note that all of  
22 a sudden this happened on January 7th, and the  
23 rest of this text here is to basically ask the CEC  
24 to make sure that this happens in the future.

25 Undertakings identified and listed

1 during the hearings are best in a common listing.  
2 This saves duplication of effort by the different  
3 parties and ensure accuracy. We ask the CEC to  
4 make sure that all parties and participants have  
5 the same list of undertakings in future hearings.

6 Manitoba Hydro staff, all three who  
7 were sent Manitoba Wildlands IRs lost track of 26  
8 IRs. That essentially meant our office was  
9 dealing with IRs from May through August. We  
10 request the CEC put in place a requirement for the  
11 Proponent to confirm receipt of all IRs by  
12 participant source so that any glitches are  
13 identified immediately rather than two months  
14 later.

15 On January 7, 2014, the Proponent  
16 indicated in a presentation the Keeyask website  
17 would be maintained for the life of the project.  
18 There have also been acknowledgements that  
19 intended postings of reports and technical  
20 materials for the Keeyask project will be more  
21 timely, accessible and complete than for the  
22 Wuskwatim project. We request the CEC recommend  
23 specific requirements of this manner in any  
24 licence for the project, should the CEC recommend  
25 a licence.

1                   Information requests are a selective  
2 process, with what we see as an improved but still  
3 needing improvement in level of response from the  
4 Proponent. Unfortunately, the Proponent appears  
5 to assume that any answer to an IR that is not  
6 challenged is correct and complete. While this is  
7 helpful in the instances where the Proponent  
8 provided information that should have been in the  
9 EIS in the first place, it is not justifiable in a  
10 blanket assumption. We request the CEC consider  
11 how in its procedures you could clarify that  
12 participants and the CEC have to be selective in  
13 the areas or topics for IR content, and selective  
14 again in identifying which IR responses are  
15 relevant to use resources for a round two request.

16                   EIS organization continues to appear  
17 to benefit the Proponent and ignore the  
18 accessibility, organizational and structural steps  
19 that would greatly improve the ability of experts,  
20 participants, and the CEC to do their jobs.

21                   We recommend to the CEC that they  
22 indicate an EIS for complex class 3 project of  
23 this sort should include an all-in glossary, a  
24 listing with location of all maps, an all-in  
25 reference to literature cited listing, an all-in

1 table of contents that is easy to find, any  
2 listing of technical reports or technical products  
3 to be alphabetical and chronologically listed with  
4 an updated date on each version issued, a standard  
5 for the production of DVDs that guarantees that  
6 the DVDs will be usable when they arrive. We  
7 realize that there may well be other steps that  
8 you have on your mind, but we wanted to include  
9 this short list. And this is an example then in  
10 our closing statements of things that also clearly  
11 pertain to the licensing branch.

12 Another precedent was set with these  
13 hearings. We have audio and video recording of  
14 all presentations, cross-exams, and the whole  
15 hearing. As a public venue and public  
16 proceedings, this is appropriate. As a public  
17 utility with a project in a public hearing, we  
18 suggest that Manitoba Hydro should make its audio  
19 files and videos public also.

20 We request the CEC to require Manitoba  
21 Hydro to provide all of these materials and  
22 recordings to the CEC for your archives.  
23 Certainly if they can provide 25 sound and video  
24 feeds to advisers, legal counsel, staff,  
25 consulting firms, and other rooms in the hotel,

1 then they can provide a set of these materials to  
2 the CEC.

3 The questioning of Manitoba Hydro and  
4 Proponent panels and experts in these hearings has  
5 been somewhat different than in the Bipole III  
6 hearings. This is from our -- this is not a  
7 comment on CEC procedures, but rather on the  
8 experience.

9 We suggest to the CEC that you  
10 consider providing a half-day workshop or  
11 orientation for new participants and for those  
12 participants without legal counsel, in advance of  
13 the next class 2 or class 3 CEC proceedings and  
14 hearings. This step would support both  
15 participants and the CEC's requirements.

16 Also, in contrast to recent CEC  
17 hearings, the topics, content, number of  
18 presenters and advisers for Manitoba Hydro and  
19 Proponent panels regarding the Keeyask Generation  
20 Station increased significantly. We had panels  
21 with as many as 15 to 20 persons in the combined  
22 front row and back-up row. It is an obvious  
23 question whether certain of these panels needed to  
24 be broken, and that may well be on the minds of  
25 the panel.

1                   The CEC and participants were not  
2 informed in advance of the sequence or topics in  
3 relation to the EIS for each panel. We were not  
4 provided with identification of who would be  
5 presenting in advance either. The document that  
6 was provided October 18th -- and thank you to the  
7 secretary of the CEC for that -- which was the  
8 Friday before the Monday hearings start in  
9 Winnipeg, was simply inadequate and not identified  
10 as to source or project, et cetera. The content  
11 re panels in that document was incomplete.

12                   We suggest to the CEC that your  
13 procedures could stipulate this information be  
14 provided to all parties on the 14-day rule or even  
15 earlier. This step would make better use of the  
16 public funds that go to participants, because it  
17 would support better preparation for the Proponent  
18 panels. Certainty and predictability are  
19 important in any business undertaking. We suggest  
20 that these qualities also assist in the quality of  
21 participant preparation and analysis for the  
22 hearings.

23                   We are left with some questions. Why  
24 would Manitoba Hydro withhold this information?  
25 Does Manitoba Hydro think it is its prerogative to

1 not provide the lineup of its panels in advance of  
2 hearings? Where or in what regulatory system  
3 would any private corporation be available or want  
4 to take this approach?

5 We recommend that the CEC panel review  
6 the Manitoba Planning Act with respect to Manitoba  
7 Hydro when considering the Keeyask EIS commitment  
8 and discussion about redevelopment of Gillam. We  
9 also recommend that the Interpretation Act of  
10 Manitoba with respect to Aboriginal rights be  
11 considered in your recommendations about this  
12 project.

13 The Tritschler Commission report of  
14 1979, made public in 1982 by former Premier  
15 Pawley, is the result of an inquiry into Manitoba  
16 Hydro projects built in the 1970s, especially the  
17 Churchill River Diversion. A summary of that  
18 report is posted on our website.

19 We recommend to the CEC panel some  
20 consideration of the issues which prompted the  
21 Tritschler Commission being appointed. The main  
22 question is whether the issues then, including for  
23 instance cost overruns and level of environmental  
24 damage, are relevant in your Keeyask Generation  
25 Station considerations.

1                   Also there is the question of whether  
2    or not Manitoba Hydro consultants or lobbyists are  
3    lobbyists. We request the CEC to review  
4    Manitoba's regulatory framework and registration  
5    process to consider whether consultants or  
6    advisers to our utility may need to register as  
7    lobbyists? This question arose when I heard one  
8    of the consultant advisers discuss the current  
9    thinking at the legislature about the Keeyask  
10   Generation project based on a recent meeting and  
11   discussion. One was reporting to the other and  
12   the other was a partner in Keeyask.

13                   Sustainability assessment of the  
14   Keeyask GS: Vice-president Ken Adams provided  
15   some opening statements for Manitoba Hydro and the  
16   Proponents for the Keeyask Generation Station on  
17   the first day of Winnipeg hearings, October 21,  
18   2013. Mr. Adams used the opportunity to brag  
19   about two things. The first one was the  
20   International Hydro Association sustainability  
21   assessment of the Keeyask Generation Station  
22   planning phase based on the new International  
23   Hydro Association sustainability protocol.

24                   Manitoba Wildlands asked the Keeyask  
25   Generation project manager when the results of the

1 Keeyask sustainability assessment were posted for  
2 comments whether the utility intended to use this  
3 assessment in the Keeyask hearings. We received  
4 no answer to that message. But Mr. Adams brought  
5 it in and there are spoken references through the  
6 hearings, most importantly by legal counsel for  
7 Manitoba Hydro.

8 I'm checking time.

9 THE CHAIRMAN: Lots of time, you have  
10 only used a half an hour.

11 MS. WHELAN ENNS: Thank you.

12 So a few facts, this sustainability  
13 assessment is for the planning phase only of the  
14 Keeyask Generation Station and it was conducted in  
15 January 2013. It was conducted by a team of six  
16 persons from Europe, the U.S. and other countries.  
17 It's the first assessment using this protocol in  
18 North America. Only two civil society interviews  
19 were conducted despite the pages and pages listing  
20 interviews with stakeholders listed in the back of  
21 the report. Those two interviews were myself,  
22 Gaile Whelan Enns, Manitoba Wildlands director,  
23 and Peter Miller, Green Action Centre, whose  
24 activity regarding Manitoba Hydro is in PUB  
25 hearings. All of the other persons listed are

1 Hydro staff and government staff, some community  
2 members.

3 I agreed to an interview based on my  
4 respect for the project leader inside our utility  
5 and my interest in sustainability. Three  
6 assessors were involved in my interview, they  
7 arrived at three different times. Two Manitoba  
8 Hydro staff were present. One of the three was  
9 not allowed to pose the questions that he wished  
10 to ask of me. I was refused a copy of the notes  
11 from the interview. The lead assessor tried to  
12 acquire agreement on EIS elements from me,  
13 caribou, sturgeon, water quality, reservoirs, et  
14 cetera, and that was not why I was there. He also  
15 indicated in a cavalier manner that they knew we  
16 had lost some shoreline when building dams in the  
17 past.

18 Imagine six people who know little  
19 about Manitoba, little about our utility, spending  
20 two weeks interviewing Manitoba staff and  
21 government staff, and concluding that the Keeyask  
22 Generation Station is sustainable.

23 There were also visits to northern  
24 First Nation communities. My assumption is that  
25 these were only the Partnership First Nations and

1 select individuals. The CEC panel may choose to  
2 ignore all of this, but if you or others are  
3 interested, we posted comments regarding this  
4 sustainability assessment report, which Manitoba  
5 has to respond to by January 20. Our comments and  
6 their response will both be posted and adjustments  
7 may be needed to the assessment. It did take some  
8 time to actually receive confirmation of the  
9 comments Manitoba Wildlands posted and to receive  
10 a copy back of those comments.

11 Our main observation then is that the  
12 standards in this assessment for sustainability  
13 come nowhere close to those identified in these  
14 hearings by Dr. Amelia Clarke and Dr. Robert  
15 Gibson, both from Waterloo University, and both  
16 experts brought in by participants. We do not  
17 think the sustainability protocol will fulfil  
18 Manitoba's sustainable development principles and  
19 guidelines either.

20 Common international concerns about  
21 the IHA sustainability protocol process include  
22 that it focuses on process and plans, not  
23 outcomes. All information is from the Proponent.  
24 Fact checking or ground truthing are not part of  
25 the process, and short time spans are what's

1 allowed for the on-the-ground assessment.

2 Nature.com has this to say:

3 "The protocol is designed to be  
4 applied one dam at a time, missing  
5 cumulative impact of development as  
6 well as opportunities to identify the  
7 best sites and coordinate energy  
8 production across an entire river  
9 system."

10 World Commission on Dams claim. The  
11 second claim vice-president Adams made on day one  
12 in the Winnipeg hearings was to say that the  
13 Keeyask Generation Station would fulfil the WCD,  
14 that is the World Commission on Dams,  
15 recommendations and standards. I had one  
16 opportunity to ask the lead consultant a question  
17 about one of those standards. I was met with a  
18 blank, a complete blank from the entire panel,  
19 front and back row.

20 I would suggest that that means they  
21 are not aware of what the World Commission on Dams  
22 standards and criteria are and they were not used  
23 in any way in terms of this EIS and the  
24 presentations we have heard.

25 The World Commission on Dams was a

1 voluntary, independently funded commission, whose  
2 global report and work have guided community  
3 advocacy research and standards regarding dams.  
4 My sense is that the standards have also guided  
5 impact benefit agreements and other more technical  
6 work. All of their materials are currently housed  
7 on the International Rivers website.

8                   We were surprised to hear  
9 vice-president Adams make this claim, as Manitoba  
10 Wildlands brought the former secretary of the  
11 World Commission on Dams into the Wuskwatim  
12 hearings as a presenter. The following list  
13 illustrates key World Commission Dams' principles  
14 that are not required in the draft sustainability  
15 protocol from IHA: Access to information and  
16 legal support for stakeholders. Legally  
17 enforceable negotiated agreements with affected  
18 people covering both mitigation and benefit  
19 sharing arrangements. Benefits provided first to  
20 adversely affected people in all projects -- first  
21 means early on in the process. The free, prior  
22 and informed consent of affected and indigenous  
23 persons, peoples.

24                   The World Commission on Dams was the  
25 first international body to put free, prior and

1 informed consent into their recommendations. And  
2 we have, of course, heard in these hearings from  
3 certain of the First Nation panels and First  
4 Nation presenters, including Elder Linklater,  
5 about the importance of free, prior and informed  
6 consent. Land for land compensation for affected  
7 people. A comprehensive participatory assessment  
8 of development needs and options to meet those  
9 needs where environmental and social concerns are  
10 given the same significance as other factors that  
11 influence decisions to proceed with a particular  
12 water or energy project. Time bound licence  
13 periods for dams and licence renewals, only after  
14 outstanding issues have been identified and  
15 addressed. A basin-wide approach to  
16 decision-making on water and energy projects. The  
17 delineation of certain areas of high conservation  
18 value as off limits to big dams. A clear  
19 compliance framework, subject to independent  
20 reviews, that includes both sanctions and  
21 incentives with necessary costs built into the  
22 project budget. Negotiation amongst riparian  
23 states before the construction of a dam on a  
24 shared river -- and the question I asked the  
25 aquatics panel was about shared rivers.

1                   Measuring respect for rights is not  
2 the same as respecting rights. This is the key  
3 difference between the World Commission on Dams  
4 and the draft protocol and the reason the protocol  
5 is unlikely to lead to improved social and  
6 environmental performance of large dams.

7                   Correction here in terms of the  
8 document, putting this in quote marks, this is the  
9 International Rivers Network, and we'll fix that  
10 before the final document.

11                  The next header here is absence,  
12 presence and not identified, an ecological  
13 principle. All of us hopefully have learned what  
14 Dr. Bill Pruit would have called an ecological  
15 principle. I first heard about the fieldwork and  
16 inventory standard that indicates not identifying  
17 a species does not prove that it is absent, from  
18 Bill Pruit years ago when I was editing one of his  
19 ecological newspaper articles.

20                  Yet we have listened to weeks of panel  
21 presentations that conclude there are no  
22 significant environmental effects from the Keeyask  
23 Generation Station due to mitigation mostly. The  
24 EIS, those presentations, answers to questions,  
25 assumptions about monitoring programs and

1 reporting may all be based on the false assumption  
2 that not identifying a species during limited  
3 aerial study or desk reviews of technical  
4 literature, or from existing data, means the  
5 absence of that species.

6 Thanks to Dr. Gibson, Dr. McLachlan,  
7 Dr. Schaefer and others for confirming this  
8 ecological principle during the hearings.

9 We ask the CEC to consider the risks  
10 from this principle being ignored or misused. We  
11 recommend that standards from monitoring,  
12 reporting, environmental management and all future  
13 analysis for species be based on this principle.

14 The next header, Rights Holders and  
15 Four Partner First Nations. We wonder if there is  
16 anywhere else in Canada where the only affected  
17 Nations happen to be the business partners in an  
18 energy project. We continue to wonder how  
19 communities who are business partners to the  
20 project can also be stakeholders. We urge the CEC  
21 to consider all Aboriginal rights holders in the  
22 Keeyask RSA, LSA and project area. They are all  
23 potentially affected by this project. We heard  
24 from Shamattawa First Nation about their hunting,  
25 travel and traditional activities on the Nelson

1 River and north of the river in this project's  
2 region. We heard from Pimicikamak about its  
3 history, rights, and concerns about this project  
4 and the entire Nelson River CRD Hydro system. We  
5 heard from Peguis First Nation about its history  
6 of travel, land use, hunting and forming family  
7 alliances in the project region. They included a  
8 firm reminder about Treaty 1 putting their First  
9 Nation on a different footing regarding  
10 province-wide rights compared to the other numbers  
11 Treaties. We heard from the Metis Federation  
12 about the rights and activities of their hunters  
13 and fishers in the Keeyask region.

14 How many others are there? Are not  
15 all Northern Flood Agreement First Nations  
16 potentially rights holders the region?

17 Elder Darcy Linklater of Nelson House,  
18 presenting for York Factory Concerned Citizens,  
19 confirmed in answer to a question that his people  
20 are also rights holders in the Keeyask regions.  
21 He told us we are all related.

22 We continue to worry about Aboriginal  
23 rights, about whether Aboriginal rights will  
24 actually be upheld, and worry the Constitutional  
25 and Treaty and Northern Flood Agreement rights are

1 at risk from this project.

2 Public ownership, expectations. I  
3 confess a bias. Like many Manitobans and peoples  
4 from the province west of here, like myself, I  
5 prefer public ownership for primary services. We  
6 have high expectations of Manitoba Public  
7 Insurance and Manitoba Hydro, for instance. We  
8 both love and hate our Crown corporations. None  
9 of this changes the facts. Publicly owned  
10 corporations, Crown corporations if you will, must  
11 be accountable and responsible. They must provide  
12 us with the highest quality possible of  
13 environmental affects assessment, planning and  
14 financial management. They must be open to  
15 scrutiny, descent and criticism. They must  
16 deliver under the best and worst of conditions to  
17 all Manitobans. And today's world with electronic  
18 communications -- and here's a throw away -- how  
19 about a search engine on the Manitoba Hydro press  
20 releases? And what are you worried about anyway?  
21 They are very, very hard to use.

22 So to go to the sentence, in today's  
23 world with electronic communications, Manitoba  
24 Hydro must post more information immediately.  
25 There has been a steady increase and improvement,

1 but much more is needed. A good start would be  
2 all of its reports and presentations to the U.S.  
3 regulators and other utilities in the U.S. They  
4 need to be public in Manitoba, not just in  
5 Minnesota. In particular, a Crown corporation  
6 must have a social licence to operate.

7 This means that from a community,  
8 shareholder, stakeholder, affected community and  
9 societal perspective, our utility must have our  
10 approval.

11 This is an overall encompassing  
12 licence to operate, intangible, not part of the  
13 regulatory process but essential. It is sad, but  
14 I do not think our utility today understands this  
15 part of its obligations, or it does and is intent  
16 on ignoring what it must have.

17 "The concept of an informal social  
18 licence is comfortably compatible with  
19 legal norms in countries that operate  
20 under the principles of common law.

21 The social licence has been defined as  
22 existing..."

23 Mr. Chair, that's about the fourth or fifth time  
24 in terms of whispering to my left.

25 THE CHAIRMAN: I'm sorry, I hadn't

1 caught it.

2 MS. WHELAN ENNS: "Social licence has  
3 been defined as existing when a  
4 project has the ongoing approval  
5 within the local community and other  
6 stakeholders, ongoing approval or  
7 broad social acceptance, and most  
8 frequently ongoing acceptance."

9 This is from socialLicence.com. A variety of  
10 tools and publications are available on website  
11 source.

12 Cumulative affects assessment,  
13 regional and historical cumulative effects  
14 assessment. Manitoba Wildlands continues to  
15 support the September 2013 motions regarding the  
16 regional cumulative effects assessment for the  
17 hydro system and region in Northern Manitoba. We  
18 request the CEC panel to consider the support from  
19 participants for this and other CEC  
20 recommendations in the Wuskwatim and Bipole III  
21 reports. Certain of these are relevant in your  
22 current deliberations and participants agree with  
23 many of the CEC recommendations and share the  
24 frustration over repeat recommendations not acted  
25 on.

1                   Our favourite recommendation from the  
2 Wuskwatim report is the recommendation for climate  
3 change plan and strategy. Nothing to a sufficient  
4 standard has been provided since 2004. Our  
5 efforts will continue until we see Manitoba Hydro  
6 paying attention to, planning for and  
7 acknowledging the climate change effects already  
8 happening in the regions where our hydro system is  
9 located.

10                   The next section here is an example of  
11 the kinds of concerns, challenges and issues in  
12 terms of cumulative effects assessment that we all  
13 share. It's from the 1985 Limestone EIS report,  
14 was the final one. And this is, of course, one  
15 year before the current Environment Act went  
16 through all three readings, and three years before  
17 it was proclaimed. It was not proclaimed until  
18 1989.

19                   So the section then in that EIS report  
20 is 4.3, implementation of comprehensive  
21 biophysical monitoring.

22                   "It was also agreed that a  
23 comprehensive monitoring program would  
24 lay the basis for a systematic  
25 evaluation of the biophysical

1 implications of further hydro

2 development on the Nelson River."

3 A set of requirements for pre and post

4 development monitoring plans were laid out in the

5 Limestone EIS. Monitoring programs were to be

6 annual and,

7 "...should respond to testable

8 hypotheses."

9 Four pages of conditions for those monitoring, for

10 monitoring brook trout follow in section 4.4.

11 "While the data to be generated are

12 important, Limestone related impacts,

13 they are of equal value in assisting

14 predevelopment planning vis-a-vis the

15 proposed Conawapa and other generation

16 stations downstream."

17 Does anyone know if the Limestone

18 Generation Station monitoring was conducted as per

19 the EIS? Was any of the information and data

20 collected used in the Keeyask Generation Station

21 EIS? Do we keep track of VECs or their

22 equivalent, both in monitoring results and in

23 methodologies for our hydro generation stations?

24 Do we actually follow through on what is required

25 in EIS and licences? How do we expect to get the

1 regional cumulative effects assessment for Keeyask  
2 in the hydro system right? Is any of this  
3 information public?

4 Scoping documents, EIS guidelines and  
5 the regulators. The Canada/Manitoba agreement on  
6 environmental assessment cooperation, which is  
7 from 2007, covers projects which require review  
8 under both Federal and Provincial legislation, and  
9 which will undergo a single cooperative assessment  
10 meeting the legal requirements of both.

11 The CEAA website contains a notice  
12 that indicates that the Keeyask Generation scoping  
13 document was used to form joint guidelines for the  
14 Environmental Impact Statement, EIS, for the  
15 project.

16 Tracey Braun, Director of  
17 Environmental Licencing for the Manitoba  
18 Government, indicated in her October 21  
19 presentation to these hearings that the scoping  
20 document was deemed equivalent to EIS guidelines  
21 because they had the same content and review  
22 process.

23 Ms. Vicky Cole, project manager, on  
24 October 24th, page 741, line 22:

25 "The items identified in the scoping

1 document are effectively the same and  
2 virtually identical to what has ended  
3 up in the final EIS guidelines, and  
4 the final EIS guidelines issued by the  
5 regulators are the guidelines we  
6 followed in undertaking the  
7 assessment."

8 I've got a typo there.

9 This is Ms. Cole:

10 "We are seeking to meet all the  
11 requirements provided to the  
12 Partnership under the Canadian  
13 Environmental Assessment Act under the  
14 EIS guidelines. So in doing so at the  
15 same time we are meeting all of the  
16 requirements that are included within  
17 the scoping document that was  
18 developed by the Partnership and put  
19 out by the Provincial Government for  
20 review and comment."

21 Manitoba Wildlands agrees with the  
22 Chair's comments that both the EIS guidelines and  
23 the scoping document are part of the regulatory  
24 process and requirements.

25 Manitoba Wildlands assumes that all

1 elements in the EIS guidelines in the scoping  
2 document for the Keeyask Generation Station are  
3 relevant in terms of the CEC's deliberations and  
4 the recommendations you may make.

5           The next header then here is EIS  
6 guidelines, Keeyask Generation Station. We  
7 request the CEC to review certain of these and  
8 consider the following sections of the EIS  
9 guidelines in making your recommendations  
10 regarding this project.

11           4.1 is the Proponent, and there is  
12 requirements for unit A implementation.

13           4.4, regulatory framework and role of  
14 government, please see what the EIS should  
15 identify.

16           6.2.1, VECs, identifies the needs to  
17 select VECs and have the selection undergo public  
18 review.

19           6.2.2, spatial boundaries includes  
20 justification and rationale needed for all  
21 boundaries required.

22           And it also suggests, we are  
23 suggesting rather that you see the standards and  
24 range of scales for baseline descriptions, et  
25 cetera.

1           In our research in our office we are,  
2 we have been counting areas and trying to see what  
3 could have helped all of us in understandability  
4 and ability also to participate to the best of our  
5 abilities in terms of the areas used for  
6 assessment of VECs and sub topics. There are 40  
7 to 50 of them.

8           6.2.3 is temporal boundaries, and we  
9 suggest you see the inclusion of the decommission  
10 plan, reclamation, seasonal and annual variation  
11 for VECs all phases of the project.

12           7.1 is public participation, and we  
13 suggest you see the effort made required to  
14 distribute project information to the public.

15           These are a selection, and then a  
16 selection within each of these, and there may well  
17 be other elements there in the EIS guidelines that  
18 are on the horizon for you.

19           8 is existing environment. Please see  
20 sufficient detail requirements and see the  
21 requirements for follow-up testing of predictions  
22 made in the EIS.

23           8.1 is the physical environment land.  
24 Please see the permafrost condition descriptions  
25 required, and see the peat land and shoreline

1 characteristic requirements.

2 8.2.2 is the terrestrial environment  
3 fire. Please see the requirements re ecosystem  
4 functions and fire regime parameters. 8.2.2 also  
5 has special -- I may have the number wrong on  
6 that, my apologies. Terrestrial environment  
7 species and conservation concern, and please see  
8 requirements to include movement corridors,  
9 seasonal movement, life history of species, and  
10 identify all species in schedule 1 of SARA and all  
11 species at risk under COSEWIC.

12 8.3.4 is land use and resource use.  
13 Please see the requirements to include Aboriginal  
14 groups who use the land and resources, land and  
15 water access by Aboriginal peoples, water and  
16 usage, et cetera. This part of the EIS guidelines  
17 is not about the Partnership Nations.

18 9.1, this is environmental effects  
19 assessment and methodology. Please see the  
20 requirements for all studies to be transparent and  
21 reproducible with degrees of uncertainty,  
22 reliability and sensitivity provided. This is one  
23 of the main recommendations that Mr. Soprovich was  
24 making in his presentation.

25 See that the model calibration should

1 be available for independent review and  
2 assessment. See that the modeling methods and  
3 equations should be described and include  
4 calculations of margins of error and confidence  
5 limits. Again, recommendations that are within  
6 his, Mr. Soprovich's, presentation. All  
7 information should be substantiated. And see the  
8 reference to review, for review of all appropriate  
9 literature and public availability of all works  
10 consulted.

11           Missing panels: Manitoba Wildlands  
12 agrees with the early comment of the Chair of the  
13 CEC about the Proponent panel structure and the  
14 missing panels. Cumulative assessment information  
15 was either missing from the EIS or spread among  
16 multiple volumes of the EIS. We needed a panel on  
17 cumulative assessment, a panel on the public  
18 engagement process, and perhaps a combined panel  
19 about ATK, the Cree worldview and heritage. We  
20 ask the CEC to consider what the panel structure  
21 and information exchange in relation to the EIS  
22 could have been and should have been for these  
23 hearings for the Keeyask Generation Station  
24 project, but also to make recommendations for the  
25 future.

1                   Data shape files and data requests:  
2    The Keeyask Generation Station project manager  
3    directed Manitoba Wildlands to put all requests  
4    for data, maps, shape files, et cetera, into IRs.  
5    That step was taken despite the obvious potential  
6    delay in the receipt of that information. No  
7    data, shape files, databases, or LCA, as in  
8    lifecycle assessment data were provided. IR  
9    responses to these requests consistently noted  
10   that the data is in the EIS.

11                   Sometimes there are numbers in the  
12   charts in the EIS and some data that could be  
13   assessed, but mostly the data is not there in the  
14   EIS.

15                   Perhaps we should have taken the first  
16   in-person response as the reality. We were told  
17   at the round three workshop in the spring in  
18   Winnipeg that we would not be provided any data.  
19   No, you can't have any data was the statement.  
20   Then the instruction to put these requests into  
21   IRs occurred.

22                   Now, I have gone through the sort of  
23   boring process of asking for confirmation and  
24   commitment from each person who works around me  
25   who handles anything to do with Keeyask. I have

1 asked this request a range of ways. And what we  
2 did not receive and what stands in our closing  
3 statement here is what did not occur.

4 Sustainability and sustainable  
5 development: We ask the CEC to consider the  
6 sustainability framework which Dr. Amelia Clarke  
7 brought to the hearings, apply it to this EIS and  
8 your deliberations. One question would be whether  
9 aspects of the presentations EIS and comments from  
10 the Proponent contribute to sustainability and  
11 sustainable development, or how many of the EIS  
12 elements are looking and sounding like compliance  
13 only, on the left column of the sustainability  
14 framework chart versus the right column where  
15 sustainability and sustainable development happen.

16 Dr. Clarke agreed with Dr. Gibson's  
17 observation that sustainability means improving,  
18 doing no damage, and restoring both the  
19 environmental and social environment for a project  
20 being assessed. We have asked other participants'  
21 experts if they also agree with this is approach  
22 to sustainability and the answers have  
23 consistently been yes.

24 Dr. Gibson's set of sustainability  
25 assessment criteria are light years ahead of the

1 approach which Manitoba Hydro and the Proponent  
2 took for this EIS.

3 We would ask the CEC to consider  
4 carefully the advice and expertise Dr. Gibson and  
5 Dr. Clarke brought to the Keeyask hearings.

6 Manitoba Wildlands does not think that  
7 what we have read, heard, questioned, et cetera,  
8 fulfills the sustainable development principles  
9 and guidelines as per the terms of reference for  
10 these CEC hearings.

11 The next header is "Climate Change -  
12 Deniers?"

13 Manitoba Hydro's external experts have  
14 acknowledged that models for habitat and species  
15 for this EIS do not take climate change into  
16 account. Mr. Ehnes told us October 31st, page  
17 1759:

18 "These effects..."

19 my brackets (climate change),

20 "...are going to happen over a very,  
21 very long period of time, so certainly  
22 over the course of that very long  
23 period of time, moose and moose  
24 management certainly may change."

25

1 Another quote:

2 "The EIS does not assess the effects  
3 of climate change on VECs. It is  
4 assessing the effects of how the  
5 project may affect those VECs' ability  
6 to adapt to climate change."

7 And another one:

8 "Climate has been changing for  
9 millions of years and this assessment  
10 is not assessing how the future  
11 climate change, whatever it will be,  
12 is going to affect those ecosystems  
13 and species."

14 This area of our closing statement  
15 clearly also is important for Manitoba  
16 Conservation to hear. We are a province and a  
17 society paying attention to climate change. The  
18 Wuskwatim hearings were very thorough and  
19 effective, I believe, on the subject of climate  
20 change, a first time. This is why my reference to  
21 the Wuskwatim recommendation not having been  
22 fulfilled sufficiently.

23 We have a risk here that is  
24 surprising, frankly, that surprised all of us,  
25 that the responses to questions about climate

1 change during these hearings asked of Manitoba  
2 Hydro panels, staff, experts and consultants, were  
3 handled, responded to in the way they were.

4           So Manitoba Wildlands asked a series  
5 of questions about the effects of one degree  
6 increase in temperature in the Keeyask region.  
7 None of the answers even acknowledge the  
8 temperature in this part of Canada has likely  
9 already increased this amount, and that this  
10 region is identified as being highly likely to  
11 experience, as is much of Canada, temperature  
12 increases higher than global averages.

13           We ask the CEC to consider whether  
14 climate change content in the EIS fulfills the  
15 guidelines or not. We ask the CEC to consider  
16 recommendations that would require Manitoba Hydro  
17 to provide a climate change strategy and plan with  
18 monitoring for the Keeyask region in relation to  
19 climate change itself and the effects of climate  
20 change on the VECs, on the region, habitat, et  
21 cetera. Certainly the same will be required for  
22 any cumulative effects assessment for this region,  
23 and it would start with the climate before hydro  
24 development.

25           We wonder some days what the elders

1 among the Cree Partner Nations have informed  
2 Manitoba Hydro experts about climate change in the  
3 region. First Nations and Aboriginal elders  
4 across Canada have been discussing these changes  
5 for the last 10 years or more. This is our  
6 experience in Manitoba also, in our relationships  
7 with Manitoba First Nations. I learn about  
8 climate change every time I talk to an elder.

9           There are similar comments in the  
10 transcript regarding the fire regime in this  
11 region. The Manitoba Hydro expert may be the only  
12 scientist in Canada who does not think fire  
13 frequency, size and intensity has been increasing  
14 in the boreal regions over the last 40 years.

15           We will leave it to others to conclude  
16 whether Manitoba Hydro is using climate change  
17 deniers as experts. The Suzuki Foundation website  
18 contains information and definitions about climate  
19 deniers.

20           Modelling, Species and Monitoring,  
21 Valuing Ecosystem, that is a long header. Mr. Dan  
22 Soprovich reviewed VEC contents in the EIS,  
23 including method of selection. He also provided  
24 analysis regarding Habitat Quality Models and  
25 certain Species At Risk. We have provided a

1 rebuttal set of questions in the transcript for  
2 the Manitoba Hydro response to our analysis of  
3 beaver as a VEC, and EIS content. See January 7,  
4 2014.

5                   We have also reviewed the situation as  
6 to VECs, listed bird species and the EIS  
7 guidelines. There are five other bird species  
8 present in the Keeyask region and listed by  
9 COSEWIC, SARA and/or MESA. So this is the  
10 committee on -- sorry, acronyms, I'm losing, must  
11 have been a long night last night. So this is  
12 basically the two Federal listings, and MESA,  
13 which is the Manitoba Endangered Species Act. Why  
14 were they not included in VECs or sub topics? How  
15 was the olive-sided flycatcher selected? This  
16 goes to our earlier recommendation in terms of all  
17 of the listed species in the region being part of  
18 an EIS.

19                   Lifecycle assessment: Manitoba Hydro  
20 has now provided partial lifecycle assessment  
21 reports for three different projects. All were  
22 done by the same organization, based we are sure  
23 on what they were contracted to do.

24                   Manitoba Wildlands brought Coldstream  
25 Consulting to the hearings with a primer about how

1 to do a lifecycle assessment of this generation  
2 station project, what standards to use and which  
3 data would be required. We ask the CEC to  
4 consider steps that could be taken almost  
5 immediately to conduct a complete lifecycle  
6 assessment for this project. Once in place, that  
7 LCA could serve as the basis for long-term  
8 monitoring, an updating of data regarding  
9 materials, materials use and emissions. We also  
10 ask the CEC to recommend that such monitoring  
11 should be a requirement of this and any other  
12 potential generation project. It should be noted  
13 that this approach was taken due to -- got typos  
14 here, apology, late night -- it should be noted  
15 that this approach, that is the primer brought to  
16 the hearings in the Coldstream presentation, was  
17 taken due to the fact that all attempts to  
18 collaborate failed.

19 So there's some stages to closing  
20 here. Like the CEC, we are still waiting for  
21 action on the recommendations made after the  
22 Wuskwatim hearings. We're uncertain of those  
23 recommendations.

24 CEC recommendations are based on a  
25 range of input and information. That range

1 includes the work of participants and their expert  
2 witnesses. Given the failure of our utility to  
3 obtain and exercise its social licence to operate,  
4 and failure to do enough beyond compliance with  
5 respect to environmental licences and permits, we  
6 cannot recommend that a licence be issued for the  
7 Keeyask Generation Project.

8           There are also areas in the EIS  
9 presentations and technical information that do  
10 not fulfil scoping documents or EIS guidelines.  
11 Much work remains.

12           Currently steps to fulfil the licence  
13 conditions to start construction on Bipole III  
14 emerge, and we prepare for the appeal to cabinet  
15 of the Bipole III licence. At this time we would  
16 urge the Chair and the panel to act on the Chair's  
17 earlier comments. Please, should you recommend a  
18 licence, despite participants' recommendations,  
19 experts' and panels' contributions to these  
20 proceedings and hearings, make more of your  
21 recommendations regulatory.

22           The January 6, 2014, bragging about  
23 the regional cumulative effects assessment by the  
24 Proponent's team and project managers makes our  
25 point. Our utility thinks that they can assess

1 their own projects without independent or peer  
2 review reports. There is an open question whether  
3 they simply thought their role in these hearings  
4 was to disagree with anything a participant said  
5 or an independent witness suggested.

6           There is no public process or hint of  
7 what the RCEA will be, yet the utility is sure  
8 when it will be done. This is the same thinking  
9 that assumes all in-service dates are a go,  
10 including for a generation station that has no  
11 regulatory process started at all.

12           This same thinking assumes it is fine  
13 to have the general contract tenders awarded for  
14 the Keeyask Generation Station with a process  
15 going on during IRs, such assumptions with no  
16 licences.

17           Quiet and firm consideration of what  
18 10 years and \$100 million have provided for the  
19 Keeyask EIS and agreements and Partnership is now  
20 the CEC's task. The reference to \$100 million  
21 here is a figure from the Keeyask sustainability  
22 assessment report.

23           The most common comment I hear from  
24 those outside this room, concerned Manitobans all,  
25 about the Manitoba Hydro development plan is

1 hubris. I will leave that for consideration and  
2 for some in the room to look up.

3 THE CHAIRMAN: Thank you, Ms. Whelan  
4 Enns. Thank you for a very comprehensive  
5 presentation.

6 I actually have just two questions of  
7 clarification. The pages aren't numbered, but it  
8 would be page five, sort of the middle paragraph,  
9 you have a heading, Recommendations Re KGP, and  
10 before that:

11 "The CEC procedures are important.  
12 We work to maintain and support  
13 hearing procedures, so I thought. Not  
14 this time. It's a waste of time and  
15 paper to identify what we have seen  
16 and heard in this room and the  
17 hallways during these proceedings.  
18 What are you talking about there?

19 MS. WHELAN ENNS: Thank you for  
20 asking. It was a decision at about 2:00 a.m. in  
21 terms of how to put this into the text, but I did  
22 have to indicate to you that that was about the  
23 third or fourth time that the people sitting  
24 beside me were whispering and discussing while I  
25 was presenting. So there has been a lot of that.

1 The specific area in your procedures that I am  
2 referring to is all of us working to maintain  
3 respect and civility in the room. And it simply  
4 hasn't been sufficient. If anything, I'd say it's  
5 definitely been less than the civility and respect  
6 from Manitoba Hydro in the Bipole III hearings.  
7 And again, I can only -- speaking individually  
8 here, but that's what I mean. I know it's a  
9 challenge for everyone to hear and see, and for  
10 the Chair to keep us in line in the room. And  
11 there's been an awful lot of conversations in the  
12 room, in the Hydro rows. It's also -- and I have  
13 mentioned this to the secretary -- there's a sight  
14 line block if you're sitting behind those rows.  
15 So there's some operational things in the room,  
16 but it's the talking and the whispering and the  
17 nattering, particularly when one is at the  
18 microphone.

19 THE CHAIRMAN: Thank you for that. I  
20 mean, I think I would disagree with that. If not,  
21 then I have failed as the Chair. I have actually  
22 found that the amount of whispering and in-room  
23 talking in this proceedings has been less than in  
24 other proceedings that I have participated in over  
25 the last 10 years in this job. It certainly has

1 happened, but I tend to be somebody who gets  
2 distracted rather easily by whispering and  
3 conversation, so I have tried to pick them up as  
4 quickly as I can.

5 As far as sight line blocks, short of  
6 holding it in a theatre with sloped seating, I'm  
7 not sure how we would address that.

8 MS. WHELAN ENNS: Well, it's a first  
9 time.

10 THE CHAIRMAN: First time?

11 MS. WHELAN ENNS: In terms of the  
12 number of staff, the Manitoba Hydro, and the  
13 number of Proponent legal counsel, it's just the  
14 number of bodies.

15 THE CHAIRMAN: Actually, I think it's  
16 more or less the same. We have typically had two  
17 tables for the Proponent at the front, and that's  
18 what we have this time, or two rows of tables. I  
19 mean, you ended up in the back row, I think that  
20 was just an unfortunate draw. I wasn't even  
21 involved in assigning the participants to the  
22 tables.

23 MS. WHELAN ENNS: Mr. Chair --

24 THE CHAIRMAN: But it wasn't done out  
25 of any malevolence or anything, let me assure you.

1 MS. WHELAN ENNS: Certainly not,  
2 Mr. Chair, we actually requested it.

3 THE CHAIRMAN: Oh, well there you go  
4 then.

5 MS. WHELAN ENNS: And my comment had  
6 more to do with the distraction of conversation  
7 and whispering when one is sitting here.

8 Did you have further questions?

9 THE CHAIRMAN: I do have one, again on  
10 your second last page under Closing, you just ask  
11 us to make more of your recommendations  
12 regulatory. Just what do you mean by that?

13 MS. WHELAN ENNS: Well I was -- and I  
14 did not look your comment up in the transcript at  
15 the time of wording this, but my understanding of  
16 what you said had to do with a reference to the  
17 fact that we have an unusual and perhaps precedent  
18 setting situation with the Bipole III licence,  
19 where, again, in your responsibilities, you have  
20 regulatory recommendations in your report and you  
21 have process and program recommendations. And the  
22 Minister, of course, has in fact endorsed all of  
23 them. And I believe I heard you make an early  
24 comment about how you have the option for things  
25 to move into regulatory recommendations.

1 THE CHAIRMAN: Okay. Just let me  
2 clarify. We used the terms licencing or  
3 non-licencing, is that what you mean?

4 MS. WHELAN ENNS: Yes.

5 THE CHAIRMAN: We should make more  
6 licencing?

7 MS. WHELAN ENNS: That's right, thank  
8 you.

9 THE CHAIRMAN: We are limited by our  
10 terms of reference in what we can make as  
11 licencing recommendations, so that's really where  
12 we draw the line. You know, when we recommended,  
13 for example, the regional cumulative effects  
14 assessment in our Bipole III and in our Wuskwatim  
15 report, those were clearly not within our terms of  
16 reference for those projects. So we made them as  
17 non-licencing recommendations. We feel it should  
18 be done. We feel it should have been done long  
19 ago, but they are not something that we can attach  
20 to a licence, or recommend that it be attached to  
21 a licence.

22 MS. WHELAN ENNS: Well, participants  
23 are long-sighted, thinking about Dr. Kulchyski's  
24 comments yesterday, so some of these comments from  
25 our side are hopeful. And perhaps the Law Reform

1 Commission's review of the Act and of licencing  
2 will put us all in a situation where some of these  
3 things are clearer and where your mandates may in  
4 fact be adjusted or different in terms of what is  
5 a licencing recommendation.

6 THE CHAIRMAN: Without being specific,  
7 you can be assured that anywhere that this panel  
8 feels improvements can be made in the process, we  
9 will comment on that. Thank you again.

10 MS. WHELAN ENNS: Thank you.

11 THE CHAIRMAN: It's 10:47 by my  
12 Blackberry, so let's take a 15 minute break and  
13 we'll return with Consumers Association.

14 (Proceedings recessed at 10:47 a.m.  
15 and reconvened at 11:02 a.m.)

16 THE CHAIRMAN: Okay, back to order,  
17 please. Thank you.

18 We now have the closing argument from  
19 Consumers Association of Canada, Manitoba Branch.  
20 Ms. Craft, you look like you are getting set to go  
21 first, so we'll turn it over to you. Ninety  
22 minutes.

23 MS. CRAFT: Thank you, Mr. Chair. I  
24 have brought my mic in very close to make sure I  
25 am speaking loudly enough.

1                   And I want to thank you for the  
2 opportunity, Mr. Chair and panel members, to  
3 present the closing comments of CEC Manitoba  
4 Branch.

5                   I just want to note that Gloria  
6 Desorcy, who is the executive director of CEC  
7 Manitoba Branch, is here with us today. And I'm  
8 going to begin our closing argument, and  
9 Mr. Williams will provide the balance of our  
10 presentation.

11                   Now, we have provided you with a  
12 powerpoint for some of the key messages, key  
13 quotes from the record, to help you follow along  
14 with our oral presentation, and a written argument  
15 will follow.

16                   This quote by Ramona Neckoway echos  
17 for us all, yet it echos differently for each of  
18 us. Although there's no easily identifiable  
19 collective we or us in this regulatory process, or  
20 in the proposed Partnership itself, each of the  
21 parties and persons represented in this room can  
22 acknowledge that there is a past legacy of  
23 hydroelectric development that has negatively  
24 impacted the environment and First Nations on the  
25 Nelson River system, and those enduring effects

1 will have profound implications for the future.

2           The First Nation Partners have  
3 reminded us that the past must be acknowledged. I  
4 was reminded by an elder this morning, who has  
5 attended this entire proceeding, that this  
6 proceeding is a short story or a small chapter in  
7 a much longer story. The First Nation Partners  
8 also told us through the course of this proceeding  
9 that they made a decision to become partners with  
10 Manitoba Hydro with the future in mind, so that  
11 they could be part of writing the next chapter.

12           Collectively, they formed a  
13 Partnership, what we have known to be the KHLIP,  
14 and have decided to proceed with a two-track  
15 approach to the Keeyask hydroelectric development.  
16 Although they are acting in partnership, each  
17 partner has proposed to move forward on its own  
18 track, aiming to bring together their different  
19 perspectives into one EIS, while remaining  
20 distinct in a few ways, remaining distinct in  
21 their worldviews, in the preparation of their  
22 environmental assessments and in the development  
23 of their monitoring plans.

24           The two tracks that we have heard  
25 about appear to inevitably intersect at some point

1 in the future, including through monitoring and  
2 mitigation measures planned for in the  
3 environmental protection program, and particularly  
4 at the monitoring advisory committee which  
5 oversees the environmental protection plan.

6           The First Nation Partners have shared  
7 with us, each in their own nuanced word, models  
8 and perspectives, that the Cree worldview is  
9 founded on relationships, with the goal of  
10 achieving mino-pimatisiwin. The western worldview  
11 in contrast is founded on individual values and is  
12 driven by property, including capital and profit.  
13 It is less holistic in nature. Of course, the  
14 understandings of each of these worldviews is more  
15 complex than I can demonstrate in one slide, but  
16 these foundations of political and legal  
17 philosophy and theory distinguish the two  
18 worldviews and show how in some cases they may be  
19 difficult to reconcile.

20           From a regulatory perspective, the  
21 western worldview looks at significance of adverse  
22 effects, you know this very well, and net positive  
23 contribution to sustainability, in order for  
24 licences to issue and for projects to proceed.

25           Now, the partners collectively took on

1 the daunting task of preparing one EIS that would  
2 respect and value each of these worldviews, and  
3 the systems of knowledge that flow from them,  
4 namely in the preparation -- namely, the two  
5 systems that flow are Aboriginal traditional  
6 knowledge, or ATK, which is rooted in the Cree  
7 worldview, and western science which is also  
8 referred to as technical science rooted in the  
9 western worldview.

10 Now, through their own environmental  
11 assessments, the First Nations demonstrated that  
12 they were attempting to reconcile the inherent  
13 difficulties associated with causing damage to  
14 Aski through efforts at ongoing monitoring and  
15 mitigation, including ceremonies, but accepting  
16 that not all of the potential impacts have been  
17 mitigated or compensated for.

18 ATK monitoring plans are planned as  
19 part of the environmental protection program.  
20 These remain to be developed by the Cree Nations.  
21 Manitoba Hydro has committed to funding the ATK  
22 monitoring plans, and negotiations are ongoing  
23 about the future development and implementation of  
24 each of the four ATK monitoring plans.

25 The Fox Lake Cree Nation has shared

1 that their standard for monitoring exceeds what is  
2 required by the regulator and western science.  
3 Where there is disagreement or difference between  
4 the conclusions that were drawn from the ATK and  
5 the western science in the EIS, the Partners plan  
6 to proceed to the monitoring phase with that  
7 difference in mind. This may mean that the  
8 partners will be faced with two baselines of data  
9 from which to approach monitoring activities.  
10 There may also be two perspectives that emerge on  
11 the effectiveness of mitigation measures as the  
12 monitoring takes place.

13           There is no described process for  
14 coordinating, harmonizing or resolving differences  
15 in ATK and western science. The approach  
16 suggested by the partners is to deal with  
17 different ways of knowing and understanding on a  
18 case-by-case basis, primarily through review and  
19 discussion at the MAC.

20           Where does this place us now in terms  
21 of understanding the impact of Keeyask? We see  
22 that the conclusions that can be drawn from the  
23 four parts of the EIS are founded on two different  
24 and differing systems of understanding the world.  
25 Therefore, the conclusions drawn and the

1 recommendations made by this Commission must  
2 consequently take into account each of these  
3 analyses founded on two different worldviews, and  
4 including Cree customary law and principles.

5           Ultimately, the Commission will have  
6 to make a recommendation as to whether or not a  
7 licence should issue for the proposed Keeyask  
8 Generating Station. But more importantly, this  
9 Commission will have to arrive at some  
10 understanding as to whether the risks and benefits  
11 of the project, separately and collectively, are  
12 acceptable based on the four environmental  
13 evaluations that have been provided.

14           The decision to move forward on two  
15 separate tracks while acting in Partnership  
16 demonstrates the complexity of the relationship  
17 between the Cree Partners and Manitoba Hydro.

18           For the First Nations, the decision to  
19 enter into partnership was made with trepidation  
20 and deliberation. Less is known about the  
21 internal deliberations of Manitoba Hydro.

22           Now, it's difficult to accept that the  
23 KHL Partnership is just a business deal, whether  
24 one considers it from a western perspective or  
25 based on the Cree worldview centred around

1 relationships, partnership is a form of  
2 relationship.

3                   With relationship comes  
4 responsibility. Elder Linklater described the  
5 customary law of wahkotowin by which one can  
6 become responsible for the protection and the  
7 well-being of a person and family and vice versa.

8                   The Cree Nations have expressed their  
9 moral dilemma in entering into a relationship with  
10 Manitoba Hydro to develop the Keeyask Generating  
11 Station. The Cree Nations have had to reconcile  
12 their worldview in which they see themselves as  
13 keepers of the land, Aski, with their  
14 participation in destruction of the land through  
15 development.

16                   In their process, the First Nations  
17 voted through community referendum. Although the  
18 four First Nations received support for their  
19 chief and council to sign the JKDA and AEAs, voter  
20 participation did not result in a majority of the  
21 voices of York Factory Cree Nation or Fox Lake  
22 Cree Nation explicitly endorsing the signing of  
23 the documents. Regardless of the York Factory  
24 First Nation and Fox Lake votes, the majority of  
25 positive votes required to proceed with the JKDA

1 and AEAs had already been achieved by having a  
2 positive referendum vote in Tataskweyak a month  
3 prior.

4           Some members of each of the First  
5 Nations have and continue to express their dissent  
6 and discontent at the decision to enter into  
7 partnership. Some have expressed a sense of  
8 inevitability that the project will go ahead.

9           The York Factory First Nation has  
10 expressed that their decision to become partners  
11 and their continued participation in the planning  
12 of Keeyask has resulted in a process of  
13 reconciliation for their community.

14           Throughout this CEC process, the  
15 Consumers Association of Canada, Manitoba Branch,  
16 has heard this message, that it is important to  
17 consider not only what will be lost as a result of  
18 the project, but what will be gained, and what  
19 legacy that will leave for future generations.

20           When I asked Mr. Massan, why is the  
21 sight and sound of the rapids important to you, I  
22 heard, because they sound pretty good when you are  
23 fishing along it. And then after that thing,  
24 being the dam, you start hearing these humming  
25 noises now, like the rapids, the water is the

1 sound of the rapids, and then they replace it with  
2 the sound of the power line, humming sound.

3 Now, those are some overarching  
4 introductory remarks that speak to some of the  
5 issues that have to be reconciled in this type of  
6 partnership, and Mr. Williams will continue with  
7 some of the core messages and key recommendations  
8 of the Consumers Association of Canada, Manitoba  
9 Branch.

10 MR. WILLIAMS: Thank you, Ms. Craft.  
11 And good morning members of the panel.

12 We'll stay on this page for a second,  
13 of the powerpoint. A question that's not in the  
14 powerpoint but that has been central in our  
15 client's deliberations is, why are we here? And  
16 the panel will be aware from the participant  
17 funding application of CAC Manitoba that CAC  
18 intended and has been undertaking a significant  
19 round of consultation with regard to this hearing,  
20 and a significant round of learning. Some of the  
21 more prominent elements, obviously, are simply  
22 participation, whether in the Bipole III  
23 proceeding or regular Hydro proceedings. Both CAC  
24 and its legal counsel have been very involved with  
25 the Law Reform Commission examining the changes to

1 the Environment Act. But with this hearing in  
2 mind, CAC, over the last four years, has  
3 undertaken an extensive series of focus groups,  
4 both with urban consumers and with selected panels  
5 whose roots lie in northern and remote  
6 communities. They have also held advisory groups,  
7 internal debates, and those advisory groups have  
8 had representatives from non government  
9 organizations, industry and consumers. And they  
10 have met directly, not with as many as they would  
11 have liked, but with some traditional resource  
12 users. And certainly CAC Manitoba has asked me to  
13 thank those resource users for spending the time  
14 with us.

15                   Perhaps above all in the learning  
16 exercise, CAC Manitoba has tried to read and  
17 listen carefully in this hearing, not only to the  
18 perspectives that reinforce their own entering  
19 perspectives, but also to the kind insights  
20 provided through cross-examination of our experts.  
21 CAC has been in a conscious learning exercise  
22 through all of these.

23                   Much like Ms. Craft's discussion with  
24 the elder this morning, a prominent theme that has  
25 emerged in almost all of CAC's discussions,

1 whether in the room or outside the room, there's  
2 been a constant question, why do you bother? The  
3 implication of that question is that licensing  
4 approval is inevitable, given the legislative  
5 regime under which we operate, and given the  
6 enforcement of this project by the Provincial  
7 Government.

8           So to those who ask why does CAC  
9 Manitoba bother, why is CAC Manitoba here, our  
10 client offers three responses. The first response  
11 is to learn. What our client has discovered over  
12 the past four years, and certainly they knew it  
13 before, is that there is a deep gap of  
14 understanding between the south and the  
15 communities in the north, especially those most  
16 profoundly affected by hydroelectric development.  
17 And so one of our client's objectives in this  
18 hearing, and their expectation is that we will  
19 take a small step forward in trying to bridge that  
20 gap of knowledge.

21           The second reason our client is here  
22 is because our client is a Clean Environment  
23 Commission fan. They believe the Clean  
24 Environment Commission proceedings make a  
25 difference. And at the heart of the

1 recommendations made by our client today will be  
2 recommendations to build upon the insight that the  
3 Clean Environment Commission has developed in  
4 Wuskwatim and the insight that the Clean  
5 Environment Commission developed in Bipole III,  
6 and to help move those important insights forward,  
7 hopefully into the broader licensing context.

8           Finally, our client is here, CAC  
9 Manitoba is here, because in their view this is a  
10 watershed hearing. In our client's view, this is  
11 probably the most important environmental  
12 proceeding that they have ever participated in.  
13 It raises fundamental issues about whether the  
14 people, the waters and the land of the Nelson  
15 River will have a sustainable future.

16           So on behalf of CAC Manitoba, we  
17 certainly express our appreciation to the Province  
18 and to the Clean Environment Commission for  
19 supporting their participation, and we express  
20 their appreciation to the Proponent and to other  
21 participants for listening carefully in this  
22 hearing.

23           On this powerpoint 13, which is slide  
24 13 which is before you, you are going to see the  
25 eight consumer rights that guide the intervention

1 of CAC and its activities in whatever it does.  
2 CAC Manitoba certainly prides itself on being  
3 evidence driven, but also guided by principles.  
4 Don't worry, I'm not going to read all eight to  
5 you, but I do want to highlight a couple of them.

6           Number one speaks to the right to  
7 satisfaction of basic needs, to have access to  
8 basic essential goods and services, adequate food,  
9 clothing, shelter, health, public utilities and  
10 others. And clearly this is a central and  
11 important issue in this hearing.

12           Economic opportunity as a means to a  
13 better way of life really appears to our client to  
14 be driving much of the Cree Nation Partners'  
15 involvement in this proceeding, and we acknowledge  
16 that. It's also, that issue of access to basic  
17 needs is also important, you have heard it from  
18 other communities as well, from Shamattawa and the  
19 fact that they are not connected to the grid. You  
20 have heard it from residents of Gillam and the  
21 tremendously expensive power bills they have, not  
22 because their rates are different, but because of  
23 the deficiencies in their housing. So that's  
24 certainly been an important theme that our client  
25 has heard in this hearing.

1                   In terms of bullet number five, the  
2 right to be heard, which means to have the  
3 consumer interest represented in the making and  
4 execution of government policy and in the  
5 development of products and services. Again, it  
6 is increasingly important for consumers to  
7 understand that their purchases are supporting  
8 ethical production values. And in the case of a  
9 monopoly like Manitoba Hydro, there really isn't a  
10 right to choose, but there is a right to be heard.  
11 And our clients see this hearing as an important  
12 opportunity to have that consumer perspective,  
13 guided by key issues, heard.

14                   In terms of who is CAC Manitoba, what  
15 is its voice, it's the voice of the consumer from  
16 a consumer perspective in the context of consumers  
17 of hydroelectricity. And as part of that role,  
18 CAC has a commitment to sustainability and the  
19 ethical purchase of products.

20                   In this hearing, CAC acknowledges that  
21 it has an ongoing duty to learn, not only to hear  
22 what is being said, but to do as Elder Linklater  
23 said, to listen and try to understand each other.  
24 That commitment to listen must be tempered by the  
25 reality that we will not always hear, we will not

1 always understand. We acknowledge that there are  
2 profound cultural nuances that we do not yet  
3 understand.

4           Flowing from that obligation to listen  
5 is an obligation in this hearing to be honest with  
6 ourselves, and that is always an obligation. But  
7 certainly from our client's perspective, in this  
8 hearing above all, it's to pierce the veil of  
9 Hydro branding of its product and look at the  
10 implications of the product and how it is  
11 produced.

12           I have often been told that it's good  
13 to start a story with the end of the story, and if  
14 we -- what we want to share with you in the next  
15 couple moments are the core recommendations of CAC  
16 Manitoba. The panel, in terms of the written  
17 argument of CAC Manitoba, will get a lengthy eight  
18 or nine page summary of recommendations, but our  
19 client wishes to highlight a few of them for your  
20 consideration today.

21           First of all, we recommend that in  
22 terms of evaluating this project, that the Clean  
23 Environment Commission adopt two key questions.  
24 First, has the Proponent met its onus, has it  
25 demonstrated that the project will not have

1 significant adverse environmental, economic, human  
2 health and social effects? May sound like section  
3 4 of the Principles of Sustainable Development.  
4 And secondly, has the Proponent demonstrated, has  
5 it met its onus to demonstrate that the project  
6 will make a net positive contribution to  
7 sustainability?

8                   And I'll elaborate on a rationale in  
9 just a moment.

10                   In terms of the findings from this  
11 hearing, CAC Manitoba recommends to the Commission  
12 three core, three central findings. The first is  
13 that the past record of development and resulting  
14 regional environmental disturbance seriously  
15 challenged the notion that the project will not  
16 contribute to processes of adverse cumulative  
17 environmental change already in motion, and that  
18 the incremental effects of the project will not be  
19 cumulatively significant. That's finding number  
20 one.

21                   Finding number two, given the highly  
22 disturbed state of the region, the KHLF places too  
23 much confidence in the proposed mitigation of the  
24 direct effects of this project.

25                   And finding number three, there is

1 ample evidence from the record to conclude that  
2 the incremental adverse effects of the project are  
3 cumulatively significant.

4           There are two core recommendations  
5 that CAC Manitoba wishes to share with you today.  
6 I will elaborate on them more towards the end of  
7 my presentation, our presentation. But the first  
8 is that the final recommendation by the CEC and  
9 the licensing decision of the Minister should be  
10 deferred, in our client's submission, until there  
11 has been the opportunity for an independent and  
12 publicly transparent consideration of three key  
13 items. A regional cumulative effects assessment,  
14 an operational review as proposed by the CEC  
15 during Wuskwatim, and the NFAT considering the  
16 Hydro preferred plan.

17           Our staff at the Public Interest Law  
18 Centre has always been big fans of Elder D'Arcy  
19 Linklater. And certainly he had a lot of  
20 important things to say to us on December 12th.  
21 Among the most important was a reminder that the  
22 Treaties were not just about a surrender of land,  
23 the Treaties were not just about the acquisition  
24 of certain rights, they were about sharing, and  
25 there was a solemn promise in terms of sharing.

1 And throughout the hearing, our client has been  
2 reflecting upon that promise, and reflecting back  
3 to the very first day of the hearing where Chief  
4 Garson, on behalf of his First Nation, asked why  
5 are not the Cree Nations getting the share of the  
6 resources running through the turbines of their  
7 plants? Asking a pretty fundamental question from  
8 our client's perspective.

9           So this leads to the second core  
10 recommendation flowing from our client's  
11 participation in this hearing. And I'll come to  
12 the recommendation in a moment, but I want to  
13 anchor it in three fundamental principles. The  
14 first is a recognition of the fundamental interest  
15 of First Nations in the traditional lands and  
16 waters of the Nelson River, and their ongoing  
17 right under Treaty to share in the resources, as  
18 recognized and affirmed by Cree law and by section  
19 35 of the Constitution Act.

20           The second is the fundamental interest  
21 of indigenous resource users in the traditional  
22 lands and waters of the Nelson River, as  
23 recognized and affirmed under section 35 of the  
24 Constitution Act.

25           And the third is recognition of the

1 expected future deleterious effects of Manitoba  
2 Hydro's integrated operations on the lands,  
3 waters, and people of the Nelson River.

4           In light of those three principles,  
5 core elements, our client is recommending that the  
6 Province of Manitoba should take steps towards the  
7 equitable sharing of the resources flowing from  
8 Hydro development by dedicating a designated  
9 percentage of water rental fees associated with  
10 hydroelectric activity to those communities who  
11 share the resources and whose Treaty and  
12 Aboriginal rights may be affected by the use of  
13 the Nelson River for hydroelectric development.

14           In terms of this point, members of the  
15 panel, it will certainly be more fully elaborated  
16 upon in written submissions. But our client, in  
17 making this point, is trying to address the  
18 reality that not all affected First Nations or  
19 resource users may have the opportunity to  
20 participate in resource development like a  
21 hydroelectric dam. And even those who do receive  
22 that opportunity may face barriers in enjoying  
23 equitable benefits from these projects, whether in  
24 terms of inadequate access to capital, or because  
25 they consider the risks associated with the

1 project potentially too high.

2 Our client endorses this  
3 recommendation as well, because from our client's  
4 perspective, the sharing relationship should not  
5 just be Hydro and the Cree Nations, it should  
6 involve the Province, Hydro and the Cree Nations.  
7 And our client believes quite strongly in that.

8 I'm going to go back and just talk  
9 briefly about the evaluative criteria for the  
10 Environmental Impact Statement. We have set them  
11 out here, and certainly they are ones that our  
12 client proposed in Bipole III and they adhere to  
13 today. They acknowledge that these are derived  
14 from a western perspective and statute, and that  
15 the criteria and outcome from the Cree worldview  
16 might be different. But certainly from our  
17 client's perspective, they think these are  
18 profound, solid recommendations, a good framework  
19 in which to evaluate the project.

20 They draw this conclusion, first of  
21 all, because they believe there is good support in  
22 the legislative regime, in particular the  
23 Sustainable Development Act for these principles.  
24 And in particular, they draw the panel's attention  
25 to section 3.4 of the Principles of Sustainable

1 Development -- I haven't shared them with you  
2 because I didn't want to kill any more trees --  
3 which speak to the need to consider the  
4 aspirations of all people and all regions within  
5 our province. They highlight the focus on  
6 prevention and anticipation of significant adverse  
7 effects found in principle 4. They draw guidance  
8 from the principles of stewardship, of balancing  
9 for future and today's generation, the economy,  
10 environment, human health and social well-being,  
11 which are set out in principle 2 of Guidelines of  
12 Sustainable Development. And they note that the  
13 principle 5, speaking to conservation and  
14 enhancement, and principle 6, speaking to  
15 rehabilitation and reclamation, mandate a duty not  
16 just to anticipate, prevent, or mitigate  
17 significant adverse effects, but to do more, to  
18 begin the project of reclaiming the health,  
19 whether socially, economically or environmentally.

20 Our clients also endorse these  
21 evaluative criteria because they think they are  
22 good regulatory practice. Dr. Gibson talked to  
23 you about the five or so Federal tribunals that  
24 are adopted analogous principles, and we certainly  
25 will be elaborating on that in the hearing.

1                   And finally, we think these are good  
2 principles because -- and certainly we focus on  
3 addressing one's mind to significant residual  
4 adverse effects, because that in essence is what  
5 the EIS did. And we will certainly be sharing  
6 quotes from the record of our conversations with  
7 Ms. Cole, which emphasize that this was really the  
8 focus of the EIS, at least the response to the EIS  
9 guidelines.

10                   In terms of the two evaluative  
11 criteria, our client just wants to underline that  
12 it's not enough just to look at effects,  
13 especially in this hearing where so much of the  
14 analysis has to be -- you know, almost the  
15 inevitability that there will be significant  
16 adverse effects when you drop a major  
17 hydroelectric project into a profoundly disturbed  
18 environment. From our client's perspective, that  
19 should not be the end of the story and we must go  
20 on to consider both the effects and the possible  
21 benefits in the context of a net positive  
22 contribution to sustainability.

23                   You won't see this headline in the  
24 powerpoint but you will see it in the written  
25 argument. And the question here is, are we at a

1 tipping point for cumulative effects? And I want  
2 to spend quite a few moments on this in the course  
3 of our conversation.

4           And our client finds it quite  
5 interesting, the impressive array of adjectives  
6 that the Partners and the response to EIS  
7 guidelines have used to discuss the cumulative and  
8 ongoing effects of existing Hydro development.  
9 They have called it substantial. They suggested  
10 they are considerable in quantity. They have  
11 suggested that they are significant, within the  
12 everyday common meaning of the world. They have  
13 described the effects as a major change,  
14 considerably disruptive, changing a way of life  
15 forever. And Elder Victor Spence perhaps said it  
16 most eloquently:

17           "We can no longer live off the lands  
18           and waters in the way we used to."

19           CAC Manitoba accepts these  
20 characterizations as accurate and reflective of  
21 the ongoing reality of hydroelectric development,  
22 and they wish to acknowledge this tragic reality,  
23 as well the aspirations of the communities to move  
24 forward in a spirit of reconciliation.

25           The next few slides we're going to

1 slide through fairly quickly, but when time  
2 permits, I would encourage the panel to go back  
3 and read slides 24 through 27 in some detail.  
4 Because what we have set out there, and we imitate  
5 the work of Dr. Noble in this regard, is an  
6 overview, in our view, clearly demonstrating an  
7 inescapable conclusion, that the effects of  
8 Keeyask will be superimposed upon a profoundly  
9 disturbed environment, a profoundly disturbed  
10 aquatic environment, a profoundly disturbed  
11 terrestrial environment, a profoundly disturbed  
12 socio-economic environment, and significant  
13 adverse effects with regard to traditional use and  
14 culture.

15                   And really for our client, although  
16 there's tens of thousands of pages of evidence in  
17 this hearing, there is a key message from these  
18 four pages. And certainly from our client, a very  
19 important conclusion can be drawn from them.

20                   What we have put on slide 28, again  
21 asking the question, are we at a tipping point,  
22 this is guidance from Fisheries and Oceans Canada,  
23 this is CAC exhibit 2 in the record. And what  
24 does this exhibit document? The opinion of  
25 Fisheries Canada in terms of the current threats

1 to survival of lake sturgeon.

2                   Number one, habitat degradation  
3 resulting from the presence of dams, impoundments  
4 and other barriers. Bullet number 3 on that page,  
5 population fragmentation resulting from the  
6 presence of dams, impoundments and other barriers.  
7 And clearly demonstrating the deleterious effects  
8 upon the existing system of existing developments,  
9 and also begging the question, what are going to  
10 be the implications of another dam impoundment  
11 upon this already fragile system? What does it  
12 mean for habitat degradation? What does it mean  
13 for habitat fragmentation? And also in that  
14 document, which we strongly refer to you, is a  
15 warning that activities that damage or destroy  
16 functional components of habitat or key lifecycle  
17 pose a very high risk to the survival and recovery  
18 of lake sturgeon in certain parts of the river  
19 system, and a moderate to high risk in other parts  
20 of the river system.

21                   So just highlighting not only the very  
22 real historic effect of development, but the  
23 profound implications of an incremental one more  
24 dam in this already degraded system.

25                   We understand the conclusion of the

1 Partnership, at least the response to EIS  
2 guidelines, to be that there are no anticipated  
3 cumulative effects despite the highly disturbed  
4 region. Our client finds this conclusion  
5 profoundly troubling and puzzling. And Dr. Noble  
6 pointed this out in his direct evidence, given  
7 that the environment is already profoundly  
8 disturbed, given that this is another major  
9 project with inevitable ramifications for habitat  
10 degradation and fragmentation, how can this  
11 conclusion stand?

12 Analytically, our client does not  
13 believe it can.

14 So, regardless of what adjective we  
15 choose to use, whether we call it damaging,  
16 substantial or significant, CAC Manitoba feels  
17 bound to disagree with the conclusions of the EIS  
18 guidelines that there would be no anticipated  
19 significant -- EIS guidelines, I meant to say  
20 response to EIS guidelines. They conclude that  
21 the environment has already been significantly  
22 altered by previous development. It continues to  
23 be affected today by that development, and that  
24 Keeyask and other future projects will be  
25 superimposed on this already gravely stressed

1 environment. And that is why our client believes  
2 this hearing and the recommendations of this board  
3 are so important.

4 As we turn to the next slide, our  
5 client asks the question, are the partners too  
6 confident in their conclusions? And in trying to  
7 read into the somewhat puzzling conclusions  
8 regarding cumulative effects, our client looks  
9 back to good old Hegman from 1999. He had a  
10 salutary warning in the Practitioners Guide.

11 "Significance may appear to decrease  
12 as the perceived effectiveness of  
13 mitigation measures increases."

14 He was polite. Dr. Noble put it another way. He  
15 asked:

16 "Is too much confidence placed in  
17 proposed mitigation of direct effects  
18 given the highly disturbed state of  
19 the region?"

20 And our client would say, absolutely, yes.

21 And as our client will detail in its  
22 written submissions, a prominent theme throughout  
23 this hearing, in our client's perspective, is that  
24 of overconfidence. And our clients note that many  
25 independent witnesses in this hearing have

1 questioned whether the Partnership witnesses have  
2 been overenthusiastic in their conclusions in  
3 terms of certainty. And we will provide many  
4 examples of this in the written argument. But  
5 here is just one from Professor Schaefer, a  
6 well-known specialist in boreal woodland caribou,  
7 part of the National Advisory Committee advising  
8 Environment Canada. He notes the confidence of  
9 Hydro in terms of the assessed impacts upon  
10 woodland, or what he considers to be more likely  
11 than not woodland caribou, but says:

12 "I am not fully convinced by the  
13 conclusions nor by their certainty."

14 And notes that in terms of that specific ecotype,  
15 the project has been assessed in the face of two  
16 major uncertainties. And that recurring theme of  
17 overconfidence our client believes is important  
18 for the consideration of the panel as it proceeds  
19 through this hearing.

20 There are many effects that our client  
21 will detail in written argument, effects of  
22 mercury, effects on lake sturgeon, effects on  
23 traditional land use, effects on boreal woodland  
24 caribou, but given time limitations, we chose to  
25 focus on cumulative effects for these submissions.

1                   We want to turn to a discussion in  
2 terms of net positive contribution to  
3 sustainability. And our client wishes to  
4 highlight the fact that these should be labelled  
5 the preliminary observations of CAC Manitoba in  
6 this regard. Because it is CAC Manitoba's firm  
7 view that an ultimate conclusion in terms of net  
8 positive contribution to sustainability will not  
9 be possible until the conclusion of the NFAT, and  
10 perhaps in terms of input from the regional  
11 cumulative effects assessments. Because as  
12 criteria, the test of net positive contribution to  
13 sustainability has two core needs. First of all,  
14 you need to define, clearly define the need. And  
15 what is it? And is it for domestic use? Is it to  
16 meet the need in the expert market? Is it to  
17 achieve social justice and sharing with the Cree  
18 Nations? In our client's view, you can't assess  
19 the overall impacts and benefits until you assess  
20 them against the need.

21                   And secondly, that net positive  
22 contribution to sustainability also requires an  
23 assessment of alternatives. And really we don't  
24 have that here.

25                   So with that caveat, here is a

1 preliminary discussion of our clients in terms of  
2 this very important issue.

3           We want to start with flagging, from  
4 our client's perspective, some of the key  
5 strengths of the Cree Nations. And with the  
6 benefit of hindsight, our client probably hasn't  
7 spent enough time talking about some of the  
8 strengths of the Cree Nations, so they do wish to  
9 flag some of those now.

10           A key one is their unique insight and  
11 intimate connection to their traditional  
12 territories. And we have seen tremendous value to  
13 this proceeding flowing from the insight of elders  
14 and from community members in terms of what is  
15 actually happening on the ground, in that intimate  
16 connection between species, lands, waters and  
17 people?

18           Another tremendous strength the Cree  
19 Nations bring is the richness of the culture, and  
20 perhaps the artificiality of a regulatory  
21 proceeding hasn't allowed us to see it as much as  
22 we might have liked, but we certainly have seen  
23 aspects of that in this proceeding.

24           Also our client would flag a third key  
25 strength, which they consider to be the skills and

1 innovations that the Cree people have demonstrated  
2 in both traditional and non-traditional  
3 enterprises, whether in the market-place or in  
4 adventures of Noah Massan out on his trapline with  
5 his teddy bear. But there is a tremendous,  
6 skillful, innovative entrepreneurial culture that  
7 our client tremendously appreciates.

8           And as Karen Anderson pointed out,  
9 perhaps the greatest strength is the resilience  
10 and energy of these people, of these first people  
11 and the way that their culture has endured under  
12 incredible pressures.

13           So those are some of the key strengths  
14 that we wish to flag.

15           We note, though -- and this we spent  
16 more time on in this hearing -- key barriers that  
17 these communities face. And some of the most  
18 fundamental are in terms of basic infrastructure,  
19 the education system, Mr. Bland and Ms. Anderson  
20 shared with us, housing, we have heard it from so  
21 many people in this community, the access, the  
22 lack of access to essential social services such  
23 as child care, the legacy of colonialism, racism,  
24 and environmental degradation brought about by  
25 external forces. And another key barrier, perhaps

1 under-flagged in this hearing, is restricted  
2 access to capital and to reliable, sustainable  
3 revenue streams. So those had been some of the  
4 key barriers that our client feels should be  
5 acknowledged and considered in the context of  
6 examining whether this project contributes a net  
7 positive contribution to sustainability.

8           We want to talk for a few moments  
9 about the positive aspects of this project, or the  
10 potential positive aspects of this project. One  
11 that has been emphasized again and again, and we  
12 have shared some quotes from Mr. Bland today in  
13 this powerpoint, is the importance of having a  
14 meaningful voice in projects that have a mere  
15 material impact upon the community. And  
16 Mr. Neepin said that as well. In fact, he  
17 described it as a revolutionary concept, not just  
18 a business deal, but something pretty  
19 revolutionary. So we acknowledge that.

20           A second is enhanced capacity, whether  
21 through the negotiation of these incredibly  
22 complex deals, through the operation of community  
23 based training, HNEITI, H-N-E-I-T-I for the  
24 reporter, the operation of businesses engaged in  
25 the DNCs, and the role in mitigation and

1 management.

2 A third key element, a positive  
3 element, potentially positive element is enhanced  
4 skills and jobs, both in construction and in  
5 future operations of Manitoba Hydro.

6 A fourth and very important one is the  
7 opportunity of potential revenue streams, some  
8 through locally held businesses, some through the  
9 opportunity to share in the production, or in the  
10 plant itself, and some through expenditures in the  
11 community from those who have jobs through these  
12 projects.

13 A key one as well, potentially, is the  
14 synergistic benefits with Conawapa, the hope that  
15 it will allow people to take their skills and  
16 trainings from one project and build into another,  
17 the hope that it will avoid or mitigate some of  
18 the boom and bust cycle commonly associated with  
19 major developments.

20 A key one certainly, we know from the  
21 Partnership perspective and certainly our client's  
22 perspective, is the potential for more positive  
23 health outcomes. And as Dr. Lee said, good health  
24 outcomes are all about poverty and equity. And  
25 this project has potential to reduce some of the

1 poverty in the community, and potential to  
2 increase equity within the community, at least  
3 potential. And certainly from that should flow  
4 better health outcomes.

5           The opportunity for enhanced cultural  
6 and socio-economic practices obviously is a key  
7 potential positive element flowing in part from  
8 the offset programs and other adverse effects  
9 agreements relating to linguistic programs. And  
10 as Mr. Bland really eloquently pointed in this  
11 hearing, a key potential positive element is the  
12 opportunity to take some steps towards  
13 reconciliation.

14           So those, from our client's  
15 perspective, are some of the key potential  
16 positive elements. But there are also material  
17 challenges, risks, and uncertainties associated  
18 with this project, and our client wishes to  
19 highlight some of them, not in the role of doom  
20 sayer or nay sayer, but in the role of saying that  
21 there are a lot of uncertainties associated with  
22 this project which raise questions about the  
23 ultimate objective of making a net positive  
24 contribution.

25           Under the risk to jobs and revenues,

1 our client starts by noting that there really is a  
2 mismatch between the labour force demands of the  
3 capital projects of Keeyask, which really is  
4 focused in the designated trades and management  
5 abilities, as compared to the most dominant skill  
6 set within the communities, which don't match up  
7 that well. So that's a threshold problem which  
8 will pose serious challenges.

9 Our clients note that there are  
10 material barriers to enhance skill development  
11 facing the Cree Nations. Some, as shared with us  
12 by Mr. Bland and Ms. Anderson, relate to  
13 challenges within the education system.  
14 Ms. Kinley spoke to this as well. Others relate  
15 to the end of HNEITI and the absence of a current  
16 replacement program. And that, from our client's  
17 perspective, is a critical challenge and  
18 shortcoming that needs to be remedied.

19 Going back to the skills mismatch  
20 point. There is a real risk that construction  
21 jobs may be skewed towards less skilled, lower  
22 paying positions. And an equally significant risk  
23 that expectations in terms of construction  
24 employment duration and tenure may be higher than  
25 reality. And we will show in written argument a

1 simple comparison between the number of available  
2 skilled trades persons within the community as  
3 compared to the upper end of the employment  
4 estimates. And as Ms. Kinley confirmed in  
5 cross-examination, for those skilled people, it  
6 amounted to about one person year of employment.

7           And so we see a risk in expectations  
8 being higher than what actually happens on the  
9 ground. From our client's perspective, that is a  
10 significant risk.

11           There is a risk that Conawapa may not  
12 proceed thereby depriving the communities of  
13 anticipated synergistic employment opportunities  
14 and revenue streams.

15           A risk that business income may be  
16 lower than expected, a risk of a Wuskwatim like  
17 revenue stream disaster. And the potential of an  
18 unsustainable debt load for future generations.  
19 And there is not a risk but the reality that if  
20 the preferred dividend stream is elected rather  
21 than the common unit share option, that the  
22 benefits would appear to be potentially much  
23 lower.

24           And that has important implications  
25 because as we understand the evidence of the

1 Partnership, that income was to be directed, at  
2 least in part, towards improving community  
3 infrastructure. And our clients raise a risk, a  
4 concern, that those revenues may not be there.

5 And that's one of the key reasons why  
6 our client has recommended a sharing of water  
7 rental streams of revenue in the hope that this  
8 may provide better benefits.

9 THE CHAIRMAN: I just want to  
10 interrupt, Mr. Williams. There are at least a  
11 couple of conversations going on in the back of  
12 the room that I would ask end or take them out of  
13 the room, please.

14 Sorry.

15 MR. WILLIAMS: No, thank you. And  
16 thank you for that, Mr. Chair.

17 So just that point wasn't lost, one of  
18 the key underlying principles behind our promotion  
19 of this sharing of water rentals is the concern  
20 that the full potential of sharing may not be  
21 realized in this project.

22 Our client has flagged some concerns  
23 as well, which they have described as uncertain  
24 results in terms of equity. And we'll share the  
25 full quote in the written argument. But

1 Dr. Murray Lee, on behalf of CAC Manitoba, was  
2 very eloquent about how important equity within a  
3 community and between communities is to good  
4 health outcomes. And he expressed disappointment  
5 that there wasn't -- that the equity issues were  
6 not more front and centre of the response to EIS  
7 guidelines. And he said that if our goal is not  
8 just to mitigate specific risks but to actually  
9 improve health and to reduce inequity, he would  
10 have expected that to have a much more prominent  
11 play in their evidence. So that's a biding  
12 concern of our client.

13 So from our client's perspective in  
14 terms of uncertain results in terms of equity, it  
15 has not been established that improved health  
16 outcomes will be ensured given the potential for  
17 unequal distributions of benefits and effects  
18 within the community.

19 And just as one example, the reality  
20 is that there will be those who disproportionately  
21 feel the effects of the project, traditional  
22 resource users losing their land, for example.

23 There will be those who  
24 disproportionately receive the benefits and we're  
25 happy for them, who achieve employment on the

1 project. But there will be others who may enjoy  
2 relatively less benefits such as those who did not  
3 secure employment or those whose employment is  
4 only of a temporary nature.

5 So from our client's perspective,  
6 that's a major analytical gap in our understanding  
7 of the response to EIS guidelines and really the  
8 equitable implications of this which are so  
9 profoundly important to health.

10 A second major equity concern of our  
11 client is that in the course of this hearing, they  
12 have developed a concern that there may not be an  
13 equitable sharing of the hydroelectric resource  
14 within our province, not referring to the money or  
15 the revenue streams, but in terms of certainly the  
16 circumstances of Shamattawa and the three other  
17 diesel communities forced to rely on diesel,  
18 denied access to the grid. And also in terms of  
19 even whether it was Ivan Moose or others in this  
20 hearing talk about the tremendously high cost that  
21 consumers and First Nation people in remote  
22 communities pay in terms of hydroelectricity, not  
23 because the rates are different but because of the  
24 quality of their housing.

25 And so in our written recommendations,

1 you will certainly see some encouragement towards  
2 addressing inequity in terms of access to  
3 affordable hydroelectricity.

4 Our client is not yet satisfied,  
5 staying on the equity concern, item number 3, that  
6 balance will be achieved in terms of the benefits  
7 flowing outside the Nelson River region as  
8 compared to the benefits within the region.

9 And certainly from our client's  
10 perspective, one of the drivers behind the  
11 proposed sharing of water rental guidelines is an  
12 ambition to have a more equitable sharing of the  
13 benefits with perhaps more benefits going to the  
14 Nelson River system than currently contemplated.

15 On the subject of loss, our clients  
16 would be remiss if they didn't speak to the  
17 concerns expressed both by Fox Lake but also the  
18 Concerned Citizens of Fox Lake about the massive  
19 influx of outsiders into the communities  
20 recognizing the terrible historic legacy of past  
21 interactions with outsider workers, the potential  
22 for whether it's malign drug influences or  
23 otherwise. And so our clients wish to acknowledge  
24 the historic loss and also the risks in terms of  
25 the current project.

1                   In terms of loss, they also want to  
2 flag a really fundamental one. This development,  
3 if approved, will create another barrier in an  
4 already desperately fragmented river system. It  
5 will directly flood a material amount of land and  
6 indirectly impair significant related areas.

7                   A third loss, and we have heard it  
8 very eloquently in this hearing whether from  
9 Robert Spence or others, is the reality or the  
10 risk, excuse me, that the project may disconnect  
11 some traditional land users from their traditional  
12 lands and from the species they rely upon, either  
13 directly through flooding or indirectly through  
14 the chilling effects of human activity.

15                   And a dominant theme of loss from our  
16 client's perspective in this hearing, a fourth  
17 theme of loss, has been the sense of loss of use  
18 of the ecosystem and a loss of confidence in the  
19 ecosystem. And in a way when you think of the  
20 offset programs, or if you think of the students  
21 from Fox Lake having to travel so far to Fisher  
22 brook -- a brook trout, their very nature suggests  
23 a recognition of the reality that the traditional  
24 lands can no longer sustain the community in the  
25 way they historically did.

1                   And when we think of the mercury issue  
2    or the unsatisfactory taste of fish, there's a  
3    loss there as well, a loss of confidence in the  
4    ability of the community to sustain the people.

5                   Finally in terms of loss, a fifth  
6    theme is a loss of critical species or the  
7    potential loss of critical species. And certainly  
8    our clients would ask, in great detail in the  
9    written argument, what are the prospects for  
10   success of the experimental efforts to upgrade the  
11   habitat or to remediate habitat for Young of the  
12   Year sturgeon? What are those prospects? They  
13   would ask can the sturgeon endure additional  
14   habitat fragmentation? They would ask will the  
15   combined effects of fire and human activity  
16   further put at risk what some call resident  
17   caribou, what others call, and certainly Dr.  
18   Schaefer suggests are more likely than not boreal  
19   woodland caribou, what would be the implications  
20   for them? And certainly our client sees a loss or  
21   a potential loss in terms of that species.

22                  Our client, its first key  
23    recommendation, was a deferral of the licensing  
24    recommendation and decision. And I'm quite fond  
25    of repeating the words of tribunals back to them.

1 I think they generally say things better than I  
2 do. And plus you always like to try and align  
3 yourselves with their past statements.

4 And within the Bipole III decision,  
5 there is tremendous advice to the province and to  
6 all of us in terms of the importance of taking a  
7 look at the region as a whole. And that needs to  
8 be done, in our client's perspective, first of all  
9 to understand the effects, the extent of the  
10 effects. Secondly, to make a determination of  
11 whether the system can tolerate additional  
12 degradation and fragmentation. And third, to  
13 provide a holistic sense of mechanisms that might  
14 be available to mitigate and enhance and reclaim  
15 on a system-wide basis.

16 And our client agrees with the advice  
17 of the Clean Environment Commission that in order  
18 to fully understand the impact of proposed future  
19 projects, a regional cumulative effects assessment  
20 is required. And that is at the heart of our  
21 client's submission that that information is  
22 essential to make an ultimate licensing  
23 determination.

24 Way back in Wuskwatim, in  
25 recommendation 7.6, about line 4, there was a

1 recommendation by the Clean Environment Commission  
2 for an operational review which we interpret to be  
3 an operational review of the operations of the  
4 system as a whole. And certainly with focus on  
5 the effects of Churchill River Diversion, effects  
6 of Lake Winnipeg Regulation and the effects of the  
7 integrated system of operations on the Nelson  
8 River system and the Burntwood River system.

9 Our client's perspective is that that  
10 was good advice back then, it wasn't accepted at  
11 the time, but they believe it is good advice today  
12 as well. And it's essential to understanding the  
13 scope of remedial tools available to Manitoba  
14 Hydro and to the province in terms of the  
15 operations of the system as they may affect the  
16 people, the waters and the land of the Nelson  
17 River.

18 And there is a good quote from  
19 Dr. Lutterman on December 5th. And she talked  
20 about how all over North America and in other  
21 regions, whether it's a Columbia River system or  
22 otherwise, a fresh look is being taken at these  
23 complex systems and how we can better operate  
24 these dams in order to create an improved balance  
25 between habitat, quality and needs. Not to drive

1 these important operations out of business, but to  
2 take a more holistic look at how they can be  
3 operated and to begin to reclaim and to enhance  
4 and to remediate some of the habitat that has been  
5 degraded and lost.

6 Our client, and I spoke about this  
7 earlier so I won't go into it a great deal, but  
8 some of the advice that Dr. Gibson gave to this  
9 commission is that if you are undertaking a net  
10 positive contribution to sustainability analysis,  
11 you need to have a clearly defined need and you  
12 need to have some alternatives to determine what  
13 is the best option. And as we understand  
14 Dr. Gibson's work, you need to define the need  
15 because that has implications for measuring the  
16 effects and benefits.

17 We may be, as a society, more prepared  
18 to tolerate adverse effects of hydro development  
19 if there is an urgent shortage of domestic load.  
20 We may or may not be less prepared to tolerate  
21 that if it's for a more commercial reason.

22 So Dr. Gibson pointed out, and our  
23 clients believe, that the core of a net positive  
24 contribution to sustainability analysis is an NFAT  
25 analysis. It doesn't mean that this commission

1 should undertake it. What it does mean is that  
2 just as the public utilities board has made it  
3 clear that it will take into account your analysis  
4 in its NFAT decision-making, that it should be  
5 open to this commission to look at the NFAT  
6 results and see how, if at all, they might affect  
7 its ultimate recommendation.

8           The province, for reasons of its own,  
9 has elected a certain process. Our client has  
10 expressed some discomfort with how the elements of  
11 the process do not appear to be really  
12 well-connected. And we are recommending to this  
13 commission and strongly suggesting that it take  
14 the opportunity or seek the opportunity to benefit  
15 from the advice that the Public Utilities Board  
16 may be able to give you, just as the Public  
17 Utilities Board may benefit and will benefit from  
18 whatever findings the Clean Environment Commission  
19 comes to within its designated reporting period.

20           I don't have a flowery conclusion, I  
21 don't have a fist pounding conclusion, I do have a  
22 puzzle. On that puzzle are what our clients  
23 consider to be the four key elements for an  
24 ultimate decision in terms of licensing this  
25 project; an environmental impact analysis, a

1 regional cumulative effects analysis, an  
2 operational review and an NFAT. And perhaps  
3 echoing the words of the Concerned Citizens of Fox  
4 Lake, notwithstanding the fact that we have been  
5 deluged with papers, we have been deluged with  
6 studies, in our client's respectful submission  
7 there are core elements of insight that the  
8 province does not have yet which should guide an  
9 ultimate licensing decision.

10           The nature of the adversarial system,  
11 even within a regulatory process where it's  
12 tempered, is that we are often challenging the  
13 case of the proponents.

14           Our client has asked me to note and to  
15 conclude by noting that hydroelectric projects  
16 have had a profound influence upon all Manitobans.  
17 I look at the lights, they keep our lights on.  
18 For many of us, they keep our houses warm.  
19 Hydroelectricity fuels much of our industry and  
20 our business. And our client acknowledges that  
21 and they appreciate that. But these many  
22 positives have not been without a cost. Whether  
23 in terms of devastating, social and cultural  
24 effects or substantial habitat degradation and  
25 fragmentation.

1                   In many ways, the Keeyask project is  
2   an innovative effort and response to the need for  
3   reconciliation and the desire, the legitimate  
4   desire, the profound desire for a brighter future.

5                   And CAC Manitoba has heard the Cree  
6   Nation leadership and has heard that they are  
7   anxious to proceed. Yet in addressing the  
8   licensing issue, the CEC, the Clean Environment  
9   Commission and the province have a seminal issue  
10  before them. Can this tortured system, can it  
11  sustain yet another project? Unfortunately,  
12  looking at the puzzle, many of the tools that the  
13  CEC needs to make that determination are not  
14  there.

15                  Last summer, the Clean Environment  
16  Commission made a wise recommendation to suggest  
17  that licensing should not proceed until insight  
18  had been provided from a regional cumulative  
19  effects assessment. CAC believes even more firmly  
20  that that wisdom applies today. The issues are  
21  too important. The information is too incomplete  
22  to make a decision based on the current record.

23                  Subject to any questions by the panel,  
24  that would close our submissions.

25                  THE CHAIRMAN: Thank you,

1 Mr. Williams. I don't see any questions from any  
2 of my panelists and I don't have any particular  
3 questions. You have given us a very comprehensive  
4 overview of your closing comments. And I take it  
5 from your comments that you will be submitting a  
6 fairly, even more comprehensive written review in  
7 the next few days?

8 MR. WILLIAMS: Yes. Sadly over the  
9 objections of my spouse and I think the partners  
10 of all our team, there will be extensive written  
11 submissions and a fairly extensive list of  
12 recommendations. The recommendations will be  
13 familiar to the commission from the reports of our  
14 experts. But that will be a consolidated product  
15 filed at 11:59 on the 13th.

16 THE CHAIRMAN: As long as it's 11:59  
17 and not 12:01.

18 MR. WILLIAMS: And my colleague,  
19 Ms. Craft, notes that there will also be some  
20 process recommendations that will be filed as  
21 well.

22 THE CHAIRMAN: Thank you very much.

23 Well, that concludes our morning  
24 proceedings. As I noted at the outset this  
25 morning, Ms. Kempton, on behalf of Pimicikamak,

1 will be appearing by video conference. My  
2 understanding is that she will be available at  
3 3:00 p.m. So I would ask that you come back  
4 shortly before 3:00 p.m. and hopefully the weather  
5 Gods between here and Toronto won't mess up the  
6 electronic and video connections.

7 In that regard, we are not certain yet  
8 whether Mr. Madden and/or Ms. Guirguis will be  
9 able to appear in person tomorrow may also be by  
10 video conference because of the ongoing problems  
11 at Toronto airport.

12 So we have an extended lunch hour.  
13 We'll see you back here a little before  
14 3:00 o'clock, please.

15 (Proceedings recessed at 12:15 p.m.  
16 and reconvened at 3:00 p.m.)

17 THE CHAIRMAN: We seem to have the  
18 connection, so we will get going very shortly.  
19 Good afternoon, Ms. Kempton, can you hear us?

20 MS. KEMPTON: Yes, and I can hear  
21 somebody said I didn't know you were looking at  
22 me. But yes, I can hear.

23 THE CHAIRMAN: Now, I think we are  
24 ready to go here. As you know, we have a 90  
25 minute limit on the closing final arguments. You

1 won't be able to see my flash cards, so I would  
2 ask that if you want I can give you a verbal  
3 warning at about ten minutes, or if you can keep  
4 track of your own time. At the end of 90 minutes  
5 I will -- if you are still going, I will end it at  
6 that point. So do you want me to give you a  
7 verbal warning or can you keep track of it?

8 MS. KEMPTON: I can keep track of it.

9 THE CHAIRMAN: Okay. Well, then go  
10 ahead. And we have written copies of your  
11 presentation. So over to you.

12 MS. KEMPTON: \*\*\*All right. Thank  
13 you, Mr. Chair and panel and whoever else is  
14 there, I can't see into the attendees' section.  
15 My apologies for not being there in person. As  
16 you all I think know, I'm Kate Kempton, legal  
17 counsel for Pimicikamak in this matter. I tried  
18 to get out yesterday. I had a flight scheduled,  
19 it got cancelled. There are no other available  
20 seats to come out to Winnipeg because of the  
21 severe weather that we are having and you are  
22 having, until Thursday night. So that wasn't  
23 going to work, so this is our second best solution  
24 to do it this way. It is a little awkward for me,  
25 but hopefully it will work fine.

1 I'm going to be following the written  
2 version of this that I sent you more or less  
3 basically summarizing it and not speaking to it  
4 verbatim. So if you have the written version,  
5 panel, then certainly that's my intention to more  
6 or less follow that.

7 As the panel should know, this became  
8 clear from our initial motion in regard to a  
9 regional cumulative effects assessment and the  
10 land use and occupancy study, that Pimicikamak's  
11 position has been and remains that the licence for  
12 Keeyask should not be approved or recommended by  
13 the CEC unless and until there is a clear  
14 understanding of what the existing impacts from  
15 the Hydro development that is already there that  
16 Keeyask would add to and alter, what those are;  
17 how much they are affecting the environment and  
18 the people who rely on it; and in what ways; and  
19 also until there is a full addressing of those  
20 impacts to the extent feasible.

21 That does remain Pimicikamak's  
22 position today.

23 The problem, as we have seen it at a  
24 very root level is Manitoba Hydro's assertion that  
25 its project, including the Keeyask addition to it,

1 is clean and green and renewable. My  
2 understanding in reading the materials presented  
3 before this panel is that this is an assertion  
4 based primarily on the issue of climate change,  
5 that Hydro development does not add to climate  
6 change to the same extent that other forms of  
7 electricity generation do, such as coal and  
8 natural gas. I don't take issue with that. What  
9 we do, however, want to point out, which was  
10 pointed out by Dr. Luttermann in her submissions  
11 on behalf of Pimicikamak, is the type of impacts  
12 that one expects from climate change are the same  
13 types of impacts, and on the same large massive  
14 scale that are being experienced as a result of  
15 the existing Hydro project that Keeyask would  
16 cumulatively add to and alter. Things like  
17 alternate drought and flooding, habitat change,  
18 melting of permafrost, invasion of non-native  
19 species and other things that one would expect  
20 from climate change are the very types of things  
21 that the Hydro project is causing. This is  
22 happening on a basin-wide large region scale.

23 Dr. Luttermann's testimony was that  
24 what we are seeing here is at least severe, if not  
25 more severe, of what one would expect from climate

1 change. And therefore the accurate way to look at  
2 this is not to sort of look at climate change as  
3 if it is a separate and unique issue that Hydro  
4 needs to be looked at independently about, but  
5 rather look at what climate change itself causes  
6 and look at what the Hydro project is causing.

7           The problem, of course, that we have  
8 is that on the one hand Hydro calls its project  
9 clean and green, and on the other hand Hydro has,  
10 in the Wuskwatim hearings and in this one,  
11 continued to argue against the need or veracity  
12 for an underlying cumulative effects assessment of  
13 the existing ongoing impacts of the entire Hydro  
14 project. So we cannot say with any degree of  
15 accurate detail today just what all of those  
16 impacts are, and that is the big problem that we  
17 face. Neither can Hydro.

18           The problem that we have here is that  
19 we are to some extent all working in the dark.  
20 Pimicikamak and the other Aboriginal peoples who  
21 live where the impacts are felt most severely can  
22 and have spoken quite eloquently to the  
23 devastation that they continue to face because of  
24 those impacts which occur on many different levels  
25 with them. That fact is on the record.

1                   Nonetheless what is also on the record  
2    and what has been used in this environmental  
3    assessment is the Aboriginal approval, if you  
4    will, of this project by the four Keeyask Cree  
5    Nation partners. This, in our submission, this  
6    approval has been used to substitute for proper  
7    assessment of the actual significance of the  
8    impacts that we can expect from Keeyask  
9    cumulatively with existing impacts, and it is  
10   basically used to substitute and overshadow the  
11   significance of those impacts and to somehow argue  
12   that this approval makes them insignificant.  
13   Factually that is simply not correct.

14                   This, by the way, so called Aboriginal  
15   approval, we have to really understand what it  
16   means. It is not ever the case that the First  
17   Nations consent or veto of this project was ever  
18   on the table. It was not. It was not as if the  
19   four First Nations or Pimicikamak or any other  
20   Aboriginal people could, from Hydro's perspective,  
21   say we don't want this, do not build it, and such  
22   that it would not get built. That was not the  
23   option on the table.

24                   It became clear, particularly from my  
25   cross-examination of the partners' panel, that the

1 Keeyask Cree Nations felt that this project was  
2 going to get built anyway, with or without them.  
3 They felt that it would probably have severe  
4 impacts, as they are experiencing severe impacts  
5 from the existing Hydro project, and that they  
6 felt that given those circumstances they might as  
7 well try to get some benefit out of it versus  
8 none. That's the nature of Aboriginal approval in  
9 this case. In my view that is essentially boxing  
10 people in to a corner and saying, well, it is  
11 going to happen anyway, so with or without you we  
12 are going to do it. And then parties in those  
13 circumstances, you know, if they approve something  
14 it is not the same as having the choice to not  
15 approve it or veto it. It is the choice of -- I  
16 might even put it akin to being under duress.

17 Hydro, in order to push this Keeyask  
18 project through to approval, has done some  
19 interesting things, in our submission, in the  
20 impacts assessment here. We think that the  
21 results of these actions or structure of the EIS  
22 by Hydro has resulted in fictionalized assertions  
23 that are divorced completely from the reality on  
24 the ground. First it imposed a baseline of  
25 assessment being the environment today. The

1 already seriously altered and devastated  
2 environment and people by the existing Hydro  
3 project that Keeyask would be added to, are  
4 basically being shut out of the assessment.  
5 That's not real.

6           Testimony from environmental  
7 assessment experts made it quite clear that the  
8 only real impacts that count are cumulative  
9 effects impacts. That's the way things happen on  
10 the ground, they do not happen in a vacuum, yet we  
11 are ignoring the bulk of what the cumulative  
12 effects really are by choosing the baseline or by  
13 allowing Hydro to choose the baseline of the  
14 environment as it exists today, and not as it  
15 existed prior to Hydro development.

16           Secondly, VECs, the valued ecosystem  
17 components, were selected that do not reflect the  
18 reality of existing ongoing impacts across entire  
19 watersheds and ecosystems. Instead the VECs are  
20 narrowly framed and out of the context of the  
21 basin-wide large scale impacts that will exist.

22           Third, the EIS selected a boundary for  
23 impacts assessment that's too narrow and will not  
24 capture the reality of all effects, cumulative,  
25 incremental, direct and indirect. There was

1 testimony from environmental assessment experts to  
2 that effect as well.

3           As a result, the cumulative effects  
4 assessment part of the EA is too narrow and weak  
5 for the reasons just stated. As a result of that,  
6 the mitigation measures proposed are also too weak  
7 because the assertion of the significance of  
8 impacts and the degree of impacts that exists is  
9 itself too weak. We think that this is a  
10 manipulation of factual reality that results in  
11 incorrect and invalid conclusions of  
12 insignificance. Many experts testified to that.

13           In Pimicikamak's submission, Hydro is  
14 trying to push through a project for profit.  
15 There is, by Hydro's own admission, no need  
16 domestically to build Keeyask now. Whether or not  
17 Keeyask is ever used for domestic power remains to  
18 be seen. It is possible that through conservation  
19 and efficiency measures it might not ever be  
20 needed for that purpose. There is no need to  
21 hurry Keeyask along at this time. There is nobody  
22 with power out as a result of Keeyask not being  
23 built, and that is not going to be the case for  
24 the foreseeable future.

25           Pimicikamak, therefore, cautions that

1 we really do need to step back and do this right  
2 and ensure that instead of pushing things ahead  
3 for the sake of profit, we need to ensure that  
4 adequate understanding and addressing of existing  
5 impacts that Keeyask would add to and alter are  
6 fully understood and addressed before we move  
7 forward.

8 I will be addressing weaknesses in  
9 scope in the EIS four different ways; baseline of  
10 assessment chosen; the boundaries for assessment;  
11 the VECs; and the impacts on Pimicikamak and other  
12 Aboriginal parties other than the four Cree  
13 Nations partners.

14 Secondly, I will be looking at  
15 weaknesses in approach in regard to the Aboriginal  
16 perspective were not really included, and in  
17 regard to the sustainability assessment that has  
18 been called for that we support.

19 And third, I will then be looking at  
20 weaknesses in conclusions in regard to mitigation  
21 measures, and in regard to what is asserted to be  
22 insignificant effects.

23 In regard to weaknesses in scope; I  
24 will mention this again now because I think it  
25 deserves to be fully thought about and

1 appreciated. What the effect of essentially  
2 wiping out and ignoring 30, 35 years of Hydro  
3 development and its severe alteration of a large,  
4 large landscape, what the effect of that is, at  
5 least one of the Cree Nation partners in its  
6 assessment document called for actually a baseline  
7 (audio cut out) and Hydro disagreed with that and  
8 imposed its own views, its own wishes here on the  
9 baseline being of the environment already altered  
10 today. We cannot therefore know when this  
11 fictionalized baseline, which has nothing to do  
12 with reality, is chosen when assessing something.  
13 We cannot know if Keeyask therefore will lead to  
14 further additions and alterations to the severe  
15 impacts that have already occurred, whether that  
16 will be the thousandth cut, if you will, death by  
17 a thousand cuts through incremental, project after  
18 project being added into what is effectively one  
19 integrated whole, we do not know where the  
20 breaking point is. We do not know whether Keeyask  
21 is going to represent that breaking point. That  
22 is why we are urging caution and urging that  
23 before any shovel hits the ground to build  
24 Keeyask, there needs to be a step back and a full  
25 examination of what has already happened that

1 Keeyask will add to and alter, and a full  
2 addressing of those impacts.

3 As stated in the cumulative -- real  
4 cumulative impacts are really the only ones that  
5 matter in reality. And yet we are ignoring the  
6 vast majority of them.

7 Drs. Noble and Gunn indicated that the  
8 incremental effects appear to be underestimated  
9 because of that fact, even though the EIS admits  
10 that the Nelson River sub watershed has been  
11 substantially altered by past developments over  
12 the last 55 years, and that those effects persist  
13 today. We are still not assessing them  
14 appropriately in the context of this environmental  
15 assessment because by and large they are being  
16 ignored. Dr. Luttermann found the same thing.

17 In regard to the boundaries selected  
18 for the environmental assessment, again several  
19 experts Noble, Gunn, Luttermann, among others,  
20 testified that the area chosen was not broad  
21 enough to really capture the cumulative effects  
22 that will or may be experienced as a result of  
23 Keeyask. The error made in the environmental  
24 impact statement that was pointed out by these  
25 experts is that the idea that the physical

1 components of the project are physically  
2 separated, i.e., Keeyask generating station is  
3 physically not in the exact same vicinity, if you  
4 will, as Kelsey, as Limestone, as Jenpeg, et  
5 cetera. The error in that, taking that fact of  
6 physical separation and extrapolating and applying  
7 it to say that the impacts, therefore, are  
8 physically separated, and we can ignore those  
9 existing developments and create a narrow boundary  
10 around a small vicinity around Keeyask is  
11 incorrect. It is factually, logically incorrect.  
12 Impacts in a river basin, in a project that is  
13 integrated across that river basin, will be felt  
14 across that river basin and beyond. And yet the  
15 EIS failed to do that and chooses a very narrow  
16 boundary.

17           Drs. Noble and Gunn spoke to what good  
18 EA practice is. They spoke to what a cumulative  
19 effects assessment should look like and the  
20 boundaries that need to be selected need to be a  
21 lot broader to capture all of the, not just the  
22 direct incremental effects from a project, but the  
23 indirect cumulative effects from a project as  
24 well. And that just simply is not occurring here.

25           They spoke about the need to select

1 VECs that go toward the river system, the basin,  
2 that will be affected and not to select those too  
3 narrowly as well.

4 Dr. Luttermann spoke to the same  
5 thing. For instance, even just on the issue of  
6 movement of sediment and nutrients through the  
7 river system, the boundary selected is clearly way  
8 too narrow to really capture that, and how Keeyask  
9 will alter that which is already occurring.

10 In regard to VECs, again in our  
11 submission they were selected in a too narrow way  
12 that does not capture or reflect actual reality on  
13 the ground. It is a consistent error that occurs  
14 repeatedly throughout the EIS. The EIS  
15 acknowledges itself that the VECs were selected on  
16 those -- there are those that are directly  
17 affected by the Keeyask project only, do not deal  
18 with the more indirect cumulative effects. This  
19 is an error. The Partnership or Hydro should have  
20 selected VECs that capture the interconnectedness  
21 of this environment, which is its reality, and  
22 more particularly the system-wide nature of the  
23 impacts of hydroelectric development that runs  
24 through an entire river basin.

25 One appropriate VEC that should have

1 been selected that wasn't, identified by Dr.  
2 Luttermann, is, for instance, the naturally  
3 functioning riparian corridor of the Nelson River  
4 system because that would provide a landscape  
5 level understanding that also corresponds to the  
6 Cree worldview that was supposed to be respected  
7 here but, and I will get to this, in fact was not.

8 Another VEC that could have been and  
9 should have been selected but was not is an  
10 ecological process or processes, such as the  
11 natural hydrological regime, because it is a key  
12 driver of biodiversity in a river landscape, which  
13 this is and which will be affected.

14 Also on the issue of VECs, Pimicikamak  
15 requested input into their development through the  
16 Article 9 process, the consultation process under  
17 the Northern Flood Agreement. Pimicikamak's  
18 submission in evidence were that Hydro did not  
19 engage adequately with Pimicikamak in this regard,  
20 and that Pimicikamak as a result was denied input  
21 into the VECs.

22 Pimicikamak stands to be affected by  
23 Keeyask, including cumulatively with the existing  
24 impacts of Hydro development already built, and  
25 yet Pimicikamak's voice has been left almost

1 entirely out of the environmental impact  
2 statement. In fact, I would say entirely.

3 In that the VECs selected are narrow  
4 and do not reflect the reality of impacts that  
5 occur across a river system that has been  
6 deliberately so manipulated to provide hydro power  
7 through one integrated system, the EIS conclusions  
8 about ecological integrity cannot be relied on.  
9 The VECs selected simply cannot lead to that  
10 conclusion because they are too narrow and do not  
11 reflect reality.

12 In regard to impacts on Pimicikamak  
13 and other Aboriginal people other than the four  
14 Keeyask Cree Nation partners, these remain  
15 virtually completely ignored in the EIS and  
16 throughout this process. The Federal guidelines  
17 require that this information be solicited from  
18 such Aboriginal people, that their concerns be  
19 brought forward as part of the environmental  
20 impact statement. However, this has not occurred.  
21 We pointed that out as well in our motions that we  
22 brought earlier, the several items that the EIS  
23 guidelines require to be there in regard to  
24 information about impacts on Pimicikamak and its  
25 concerns, and it remains completely absent from

1 the impact assessment or impact statement, and  
2 therefore the EIS should be rejected for that  
3 reason alone.

4           Further, if it turns out as we have  
5 submitted it will, that adverse environmental  
6 impacts will be experienced by Pimicikamak as a  
7 result of Keeyask, Manitoba Hydro has no formal  
8 process in place right now to ensure that those  
9 impacts are mitigated in a manner that is  
10 acceptable to Pimicikamak, or where other  
11 Aboriginal peoples, for instance, Shamattawa and  
12 others are to be affected by Keeyask as well, they  
13 have no formal mechanism in place right now to  
14 address and mitigate those concerns down the road.  
15 The only processes they have set up are with those  
16 First Nations that are partnering in this process.  
17 In other words, if you support this process, this  
18 project, through the fact of getting some benefits  
19 from it, there are processes established to have  
20 concerns at least heard and perhaps addressed. If  
21 you are not supportive of this process and  
22 project, such as Pimicikamak, there is nothing  
23 available to have one's concerns heard and  
24 addressed in any kind of formal manner.

25           I will remind everybody here that it

1 is an error of law and of fact to consider any  
2 Aboriginal people as being confined to its reserve  
3 or reserves. Reserves are a function of Treaties.  
4 They do not reflect the homeland of Pimicikamak.  
5 Pimicikamak's homelands or traditional territory,  
6 where it had exclusive rights that it subsequently  
7 agreed to share with the Crown through Treaty 5,  
8 was in evidence. It is a large area, or at least  
9 what is known of it is a large area that goes up  
10 to the Keeyask vicinity. Pimicikamak citizens use  
11 and rely on this homeland for many purposes,  
12 including cultural, traditional purposes. Darwin  
13 Paupanakis and Vice Chief Shirley Robinson  
14 provided evidence to this effect.

15           Despite this fact, Pimicikamak's voice  
16 remains absent from the Environmental Impact  
17 Statement. It and its territory and its use of  
18 its territory will be impacted by Keeyask, and yet  
19 Pimicikamak is ignored.

20           These will be direct impacts on its  
21 territory and its uses of its territory and values  
22 in its territory. There will also likely be some  
23 system impacts upstream that will be affected or  
24 be -- that will result due to Keeyask. The  
25 problem is, we don't know what they are.

1                   Dr. Luttermann pointed out that adding  
2 yet another dam to this large integrated system  
3 will no doubt change how decisions, including  
4 financial decisions, are made. When you add  
5 another structure into the mix, you add the costs  
6 of running that structure into the mix, it will,  
7 of course, have an impact on how economic,  
8 financial and business decisions are made. Money  
9 that is currently spent by Hydro on mitigation and  
10 other measures to "address existing impacts" could  
11 well be diverted to pay for some of the costs  
12 associated with Keeyask, for instance. But this  
13 assessment was never done. We do not know what  
14 those system impacts in terms of the hydrological  
15 water system will be upstream.

16                   The Partnership made a statement there  
17 would be no discernible impact, but clarified that  
18 this doesn't mean there will be no impact. And  
19 our experience with the existing development has  
20 been quite the opposite, that impacts each time a  
21 dam is added are quite discernible and felt  
22 profoundly by Pimicikamak.

23                   As stated, however, even if there are  
24 no impacts upstream as far as Cross Lake, where  
25 Pimicikamak happens to have its reserves, its real

1 homeland, its area that is its real backyard, its  
2 church, its breadbasket, is much larger and goes  
3 right up into the Keeyask vicinity.

4           As we know, based on our motion and  
5 evidence before this environmental assessment, the  
6 actual extent and nature of all of the values that  
7 Pimicikamak has in its homeland, its uses and  
8 occupancy and connections to that homeland have  
9 not been studied and, therefore, are not known by  
10 Hydro or anybody here. We had submitted that this  
11 information must be gathered and undertaken first,  
12 and then Hydro will understand just what it is  
13 going to affect with Keeyask, and then apply that  
14 information about what those connections, uses,  
15 and values are to an impact assessment to look at  
16 just how Keeyask will impact them. Then and only  
17 then can we understand what the true nature of  
18 Keeyask and its impact will be, such that we can  
19 take appropriate measures to address and otherwise  
20 mitigate those impacts.

21           Today, as we sit here, that  
22 information is not gathered, is not available to  
23 be analyzed. The EIS is therefore grossly  
24 deficient in that way, especially because the EIS  
25 guidelines require this type of information to be

1 available. And therefore, the EIS should be  
2 rejected as a result of that fact as well.

3 In respect of weaknesses in approach,  
4 the first issue I want to address is the  
5 incorporation, so-called, of Aboriginal  
6 perspective in this environmental assessment.  
7 Unfortunately to Pimicikamak, while there were  
8 assertions that the Aboriginal perspective was  
9 given due weight, or equal weight to western  
10 science, when you really look at what happened and  
11 the results of what happened in the EIS in this  
12 environmental assessment is quite the opposite.  
13 And unfortunately, what this looks like to us is  
14 tokenism. We have seen this many times before.

15 What happened, when the Aboriginal  
16 perspective called for one thing and Manitoba  
17 Hydro in its reliance on western science called  
18 for another, was that Manitoba Hydro's perspective  
19 won out, western science won out. And that is  
20 seen for sure in the selection of the baseline,  
21 being the environment today. And it also came  
22 through in respect of the Keeyask Cree Nations'  
23 perspective and concerns that from their  
24 Aboriginal perspective there will be effects on  
25 Split Lake and the water level there. Since

1 western science disagreed with this, that  
2 perspective was effectively ignored. And all the  
3 EIS proposes to do is to look at this, not to put  
4 into place any mitigation and other measures in  
5 advance.

6           The threshold for benchmarks used to  
7 measure significance of effects did not quite  
8 explicitly include any Aboriginal traditional  
9 knowledge or perspectives at all. They are  
10 strictly informed by western science and this is  
11 made clear in the EIS. It was also made clear  
12 by -- it should be Ms. Cole in the transcript.

13           The finding of insignificance of  
14 effect is also completely devoid of the Aboriginal  
15 Cree worldview perspective.

16           What the EIS finds, conveniently so I  
17 might add, is that certain impacts were  
18 "regionally acceptable". In other words, effects  
19 on the habitat of Canada goose, caribou and moose,  
20 it was acknowledged that on local scales, local  
21 populations in some cases might be significantly  
22 affected, but when you average or spread that out  
23 over a larger so-called region, then regionally  
24 the impacts are acceptable.

25           This does not at all incorporate or

1 reflect the Cree perspective. Cree people, and I  
2 will speak from Pimicikamak's perspective here, do  
3 not engage with their environment on that basis at  
4 all. They engage on a family or clan basis. They  
5 have family or clan hunting areas, trapping areas,  
6 fishing areas, sacred areas, et cetera. Those  
7 families and clans rely on those areas, those you  
8 might want to call local areas. The people, the  
9 Aboriginal people who use their lands, if you  
10 will, have a deep attachment and connection to  
11 those lands.

12           It is not appropriate and correct at  
13 all from an Aboriginal Cree perspective to suggest  
14 that impacts on those areas that families and  
15 clans have their attachments running back for  
16 thousands of years to are insignificant. They  
17 would be greatly significant to those people and  
18 peoples. And yet this fact was completely ignored  
19 in a finding of so-called regional acceptance and,  
20 therefore, insignificant.

21           Furthermore, Hydro's use of this magic  
22 term of regulatory significance, which somehow  
23 suggested this was a special type of significance  
24 by which this project should be judged, was based  
25 on technical western science.

1                   First of all, we do not agree that the  
2   so-called regulatory significance is how this  
3   project should be judged and assessed. It is some  
4   kind of magic term that is not reflective of the  
5   requirements in environmental assessment law, or  
6   in respect of Aboriginal law and the duty to take  
7   the concerns of affected Aboriginal peoples into  
8   account. In that it was admitted by Hydro that  
9   this so-called regulatory significance framework  
10   or standard by which it is asking the CEC to  
11   assess or judge the EIS, in that it admits that  
12   this is based entirely on technical western  
13   science, it too therefore completely ignores the  
14   Aboriginal perspective.

15                   So what we really ended up with is  
16   this so-called two track approach in which the  
17   Keeyask Cree Nation partners developed their own  
18   assessment reports and Hydro essentially developed  
19   the main EIS documents, is that where western  
20   science, on which Hydro relied, conflicted with  
21   the Aboriginal science or expertise or perspective  
22   of the Keeyask Cree Nation Partners, the latter  
23   was set aside and ignored and western science won  
24   out.

25                   Pimicikamak has deep concerns about

1 this. Its voice has been pretty much completely  
2 shut out. But it points out through evidence that  
3 the Keeyask Cree Nation Partners themselves, their  
4 voices as Cree people were effectively shut out  
5 when push came to shove and there was any conflict  
6 with western science.

7 In regard to the sustainability  
8 assessment approach that was proposed by Dr. Bob  
9 Gibson, an expert in this field, he asked that, or  
10 proposed that the EA would only have any true  
11 validity if it were conducted in accordance with  
12 the requirements for sustainability assessments,  
13 and that that is what the CEC should do and apply  
14 now, or should require that Hydro and the Keeyask  
15 Cree Nation Partners go back and reassess this  
16 project applying the sustainability assessment  
17 criteria.

18 We, Pimicikamak, not only support that  
19 position, but we also say that it is actually  
20 required by law. Because this process, in  
21 accordance with terms of reference, is to be  
22 consistent with the principles and guidelines of  
23 sustainable development in Manitoba. These  
24 guidelines and principles themselves, among other  
25 things, call for encouraging and assisting the

1 research and development application and sharing  
2 of knowledge and technology which further our  
3 economic, environmental, human health and social  
4 well-being. In other words, we are to be  
5 assessing and researching matters, especially  
6 matters that will cause such huge impacts,  
7 permanent impacts on a large swath of the  
8 environment and on people who rely on it, in a  
9 sustainable, sustainability assessment manner  
10 where we look in an integrated way at whether or  
11 not a project will actually add to sustainable,  
12 the sustainability of the environment, of the  
13 economy, of human health and social well-being.  
14 It is an integrated approach.

15           Since this is a requirement of  
16 environmental assessment process, we then say that  
17 the EA, the EIS that was submitted failed on that  
18 account as well, and that Manitoba Hydro should be  
19 directed to go back and redo it in regard to what  
20 the principles and guidelines of sustainable  
21 development require, as put forward by Dr. Bob  
22 Gibson.

23           In regard to the conclusions reached  
24 in the EIS and the weaknesses in those, first of  
25 all in respect of mitigation measures, if the

1 whole house of cards which you have constructed to  
2 reach conclusions is unfound and incorrect, the  
3 conclusions therefore themselves are invalid, and  
4 any proposals to address what falls out of those  
5 conclusions, i.e. residual impacts, are bound to  
6 be wholly inadequate as well. That is essentially  
7 our point here.

8           The many failures that compound each  
9 other, setting the wrong baseline, setting the  
10 boundaries too narrowly, defining VECs too  
11 narrowly, ignoring the Aboriginal perspective  
12 throughout, ignoring impacts on Pimicikamak and  
13 other Aboriginal peoples except for the four  
14 Keeyask Cree Nation Partners, mean that the  
15 conclusions are going to be highly questionable at  
16 best, and that the mitigation measures proposed  
17 are therefore going to be wholly inadequate.

18           The testimony of Hydro and the  
19 Partners indicated that mitigation measures for  
20 those four First Nations only are to be set forth  
21 and addressed to the adverse effects, in part to  
22 the adverse effects agreement that the four First  
23 Nations have signed with Hydro.

24           These adverse effects agreements, we  
25 caution, need to be looked at for what they are

1 and are not. They do not speak to the existing  
2 impacts from existing Hydro development. Nothing  
3 in them goes toward those, and yet that is the  
4 reality in which Keeyask will be inserted.

5 In addition, there are no such  
6 agreements or anything like them for parties other  
7 than the four Keeyask Cree Nation Partners, even  
8 though Pimicikamak and other Aboriginal people  
9 will be affected by Keeyask, including  
10 cumulatively with the existing Hydro project.

11 Hydro ignored the Aboriginal  
12 perspective in developing mitigation measures  
13 where this differed from western science. As  
14 indicated, the Aboriginal perspective coming from  
15 the Keeyask Cree Nations themselves indicated that  
16 the water levels on Split Lake will be affected  
17 more than the EIS says as a result of Keeyask.  
18 And yet no mitigation measures have been put into  
19 place in this EIS in advance. It is as if Hydro  
20 is saying, well, frankly, we don't believe you  
21 because our western scientists say otherwise. In  
22 ignoring this perspective, therefore, mitigation  
23 measures have been ignored as well. All that the  
24 EIS proposes to do is to monitor the situation and  
25 then if, in fact, the Aboriginal perspective is

1 correct about this, the parties will discuss it  
2 later.

3           This discussion shuts down Pimicikamak  
4 from it. There is no proposition put forward that  
5 Pimicikamak would be part of that discussion. And  
6 because it is such a vague and uncertain  
7 proposition, nothing to really know what will  
8 amount from those discussions, it is nothing that  
9 we can judge the efficacy of. Pimicikamak is not  
10 proposed to be part of it, and Pimicikamak is left  
11 shaking its head saying, what is this? We don't  
12 even know what it is or what it is going look  
13 like.

14           There is a few pages in my written  
15 version of these submissions that go to what we  
16 submit is the wholly inadequate mitigation  
17 measures in respect of sturgeon. I will not take  
18 the panel through all of this now. Many experts  
19 testified at length about the total uncertainty of  
20 what Hydro is proposing, the questionable results  
21 from it, based on studies and attempts to mitigate  
22 and deal with sturgeon populations in other  
23 places. Suffice it to say that Hydro's high level  
24 of confidence it states in the EIS about these  
25 mitigation measures is grossly overstated. When

1 you look at the admissions that Hydro makes itself  
2 in the EIS about things not having worked in other  
3 places, or being too soon to tell, et cetera, et  
4 cetera, that conclusion is just simply, completely  
5 out of place with the facts.

6           If it turns out that sturgeon  
7 populations are protected and, in fact,  
8 invigorated later, that would be wonderful, but  
9 there is absolutely no degree of certainty at all  
10 that that will be the result. In fact, Keeyask  
11 could be again the thousandth cut in respect of  
12 sturgeon populations which have already been  
13 significantly affected by the existing Hydro  
14 project. We don't know, and there is no degree of  
15 confidence in what Hydro is proposing that that  
16 will not be the outcome. The EIS should be  
17 rejected for that fact alone.

18           What we really need to do is to put in  
19 place stronger and better monitored mitigation  
20 measures in respect of sturgeon for the next  
21 several years, funded by Hydro and employing  
22 people from Pimicikamak and other affected  
23 Aboriginal peoples, and really monitor those to  
24 see whether or not what Hydro is proposing here  
25 has any chance of working or not. We need to do

1 that before we pour many tons of concrete into  
2 this river system. The damage from the existing  
3 project is severe enough. Let's test out some of  
4 what Hydro, or all of what Hydro is proposing for  
5 sturgeon in a vigorous program to help save the  
6 sturgeon and the people that rely on it now,  
7 before causing ever more damage.

8           Why is it, why is it that every time  
9 something is proposed to be done to help, it  
10 requires the harm to occur as a necessary  
11 condition of that first? And that is exactly what  
12 is happening here. It need not be the case.

13           In respect of the conclusions of  
14 so-called insignificance of effects, there are  
15 several problems with this, as I stated. First of  
16 all, the EIS states in a number of areas,  
17 including about ecosystem diversity and fish and  
18 impacts on those, that they would fall in the  
19 moderate range. And yet we leap from that somehow  
20 magically to a conclusion that there will be no  
21 significant adverse effects in respect of these.  
22 Dr. Gunn pointed out that this simply defies  
23 common sense.

24           Secondly, as I've stated already, this  
25 reliance on this regional acceptable level in

1 terms of impacts on Canada goose, caribou, and  
2 moose is divorced completely from what matters to  
3 Aboriginal peoples and their perspective. Their  
4 relationship with the land is at the core of their  
5 identity as indigenous people. It is not any  
6 land, it's not like Pimicikamak can be  
7 transplanted to Saskatchewan, or Siberia, or  
8 Toronto, and say here, this is land, use it. It  
9 is their homeland. It is that particular land to  
10 which they have a relationship that has been there  
11 forever.

12           It has been found in case law, which I  
13 have been involved in, that this identity, this  
14 relationship and connection to their land, their  
15 homeland is at the core of their identity and  
16 their culture. If it were really taken seriously,  
17 if those of us who are not Aboriginal would  
18 endeavor to really try to understand what this  
19 means, or if we can't understand it, to pay it the  
20 respect that it deserves, then we would certainly  
21 not accept any conclusion that was divorced  
22 completely from this connection and this reality,  
23 and instead impose a western concept of regionally  
24 acceptable. It is false and it is completely  
25 disrespectful of Aboriginal peoples.

1                   As indicated already, this term of  
2 regulatory significance that Hydro applies in  
3 suggesting or saying that the CEC needs to judge  
4 Keeyask in accordance with some magical term  
5 called regulatory significance is as well  
6 completely divorced, by Hydro's admission, from  
7 the Aboriginal perspective and relies entirely on  
8 so-called western science.

9                   This failed the EIS Federal guideline  
10 requirements for this project. The guidelines  
11 require in several places that the Aboriginal  
12 perspective be taken into account. It required  
13 Hydro to explain how Aboriginal traditional  
14 knowledge was incorporated into the preparation of  
15 the assessment, how it was incorporated into the  
16 conclusions drawn, and where there was any  
17 disagreement between what the Aboriginal  
18 perspective and western science said, that was to  
19 be pointed out and explained. This has not  
20 occurred. Instead the project was touted as fully  
21 taking into account the Aboriginal perspective  
22 through the four -- three, I believe, reports  
23 submitted independently by the four Keeyask Cree  
24 Nations. But as stated earlier, when you examine  
25 what really did happen, what was really relied on,

1 and the conclusions that that reliance lead to,  
2 one can see that this is unfortunately likely  
3 nothing more than tokenism.

4           The guidelines require that in  
5 determining the significance of residual effects,  
6 the Proponent must provide a summary of the  
7 regional, Provincial, Aboriginal, or national  
8 objectives, standards or guidelines that have been  
9 used to assist in the evaluation of the  
10 significance of such effects. They do not in any  
11 way suggest that Hydro was somehow required to use  
12 western science in developing the thresholds and  
13 results for significance. And yet Hydro seems to  
14 say that they were forced to use western science  
15 because that's what this so-called regulatory  
16 significance test required. It is simply not the  
17 case. It is incorrect.

18           There were some benchmarks identified  
19 for some VECs in the EIS, but those were not used  
20 at all to assess cumulative effects. We therefore  
21 question how the EIS can make conclusions that  
22 cumulative effects will be insignificant without  
23 putting forth any means to measure the predicted  
24 cumulative effects against benchmarks. Again,  
25 this is a flaw and a leap that makes no sense.

1                   Due to the highly questionable  
2 conclusions about insignificance and the highly  
3 questionable mitigation measures proposed for  
4 so-called residual effects, we, Pimicikamak,  
5 assert that the EIS should be rejected, but if it  
6 is not rejected, that a strong monitoring program  
7 needs to be put into place for sturgeon before  
8 anything is done, and if Keeyask is to go ahead,  
9 that a very strong monitoring program involving  
10 Pimicikamak needs to be put into place.

11                   To conclude, there are two further  
12 parts to my submission. One is recommendations  
13 that we are putting forward that should occur  
14 before a licence is recommended by the CEC, if it  
15 is going to be, for Keeyask. And the last part of  
16 my submission is, if Keeyask is recommended for  
17 approval, then we are proposing licence conditions  
18 that should be part of that -- a condition on that  
19 approval.

20                   In regards to steps that we say should  
21 occur before there is any recommendation for  
22 approving Keeyask, we submit that the CEC should  
23 do the following: First, it should recommend that  
24 the EIS take into account the impacts of the  
25 existing Hydro project when assessing the

1 significance of the impacts of Keeyask and the  
2 cumulative effects for all the VECs, which does  
3 not happen right now.

4 Secondly, that the CEC require the  
5 proponent to revise its EIS taking into account  
6 VECs that capture the interconnectedness of the  
7 environment and system-wide nature of the impacts  
8 here, with input, strong input from the Aboriginal  
9 perspective.

10 As indicated, other VECs were  
11 proposed, the hydrological function across the  
12 river system and the riparian ecosystems across  
13 the river system, for instance. These should have  
14 been applied here, were not. We are therefore  
15 ending up with a very unrealistic and inaccurate  
16 picture. And we therefore submit that the CEC  
17 should require those changes, a rework, a redo, if  
18 you will, of the EIS in those regards.

19 We are also asking the CEC to  
20 recommend that before Keeyask is licensed that a  
21 land use and occupancy study for Pimicikamak be  
22 completed. That if the results of that study  
23 indicate that impacts from Keeyask on Pimicikamak  
24 and its uses of values in and connections to its  
25 homeland are possible as a result of Keeyask, that

1 an impact study in regard to what those impacts  
2 might be, the scope and nature of them, should be  
3 completed before any further steps are taken.

4           Once that study is done, Pimicikamak  
5 and the Proponent need to negotiate and agree on  
6 adequate mitigation measures to offset those  
7 impacts. We are proposing that the CEC make this  
8 a requirement before making any decision on  
9 whether to recommend Keeyask for approval or not.

10           We are also asking the CEC that it go  
11 back to the Proponent to rework the EIS in regard  
12 to mitigation measures, putting in place  
13 mitigation measures or proposed mitigation  
14 measures for effects that the Keeyask Cree Nations  
15 themselves predict will occur, where those are not  
16 agreed to by western science. For instance, the  
17 effects on the lake levels of Split Lake.

18           Finally, Pimicikamak is asking the CEC  
19 to find that if Keeyask is licensed, the  
20 Partnership must support, or Hydro at least must  
21 support financially an in-depth monitoring program  
22 by Pimicikamak of effects on its traditional  
23 territory and its uses of that territory on --  
24 sorry, by Keeyask. That it commit to funding the  
25 costs for Pimicikamak to engage in a reasonable

1 and adequate monitoring program, including the  
2 retention of experts to be involved, including for  
3 them to do peer reviews and analysis of Manitoba  
4 Hydro's own monitoring in respect of Keeyask and  
5 in respect of the existing Hydro projects through  
6 the CAMP process and others. And if the results  
7 of that monitoring indicate that there are indeed  
8 upstream impacts from Keeyask on Pimicikamak, that  
9 the Proponent must have to address those impacts  
10 to the reasonable satisfaction of Pimicikamak.

11 We are, therefore, in this part of our  
12 submissions proposing that there be no decision on  
13 approval of the EIS, or recommending approval by  
14 the CEC until all of these steps have occurred,  
15 until there is significant reworking of the EIS  
16 itself.

17 If, however, the CEC is going to make  
18 a recommendation to approve Keeyask, we propose  
19 that there be licence conditions that you also  
20 recommend as conditions, if you will, of that  
21 approval and of Keeyask getting built.

22 The first should come as no surprise,  
23 that there be a regional cumulative effects  
24 assessment that is conducted before any shovel is  
25 put in the ground to construct Keeyask. That is

1 to be an RCEA of the existing Hydro project, and  
2 projected alterations and additions to that by  
3 Keeyask.

4 Pimicikamak is deeply concerned that  
5 the process apparently already underway to begin  
6 some sort of regional cumulative effects  
7 assessment is going to be window dressing and  
8 nothing more, will enable the parties that be to  
9 say, well, we did it, so stop asking for it and go  
10 away.

11 The experience with regional  
12 cumulative effects assessments, or regional  
13 strategic effects assessments -- there are several  
14 names -- that have occurred elsewhere in Canada  
15 and to a much more significant extent in Europe,  
16 indicate what a fulsome reliable RCEA would look  
17 like. They are conducted independently of the  
18 Proponent and not by the Proponent, whoever the  
19 Proponent is, in minimizing the scope and scrutiny  
20 in any such assessment. The Proponent should  
21 therefore never be involved in setting and  
22 determining the terms of reference. And yet, as  
23 we understand it, that is exactly what has  
24 occurred here in the draft terms of reference that  
25 have gone to the Minister for approval, or review.

1                   Aboriginal nations that are affected  
2 by the existing Hydro project should have a  
3 fundamental key role in setting the scope terms of  
4 reference for such an assessment which we have  
5 seen in other RCEAs in Canada. These are the  
6 people who are most affected by the Hydro project,  
7 in particular in the north. The rest of us get  
8 the cheap electricity and benefit from the Hydro  
9 project, whereas the burdens are profoundly and  
10 disproportionately felt by Aboriginal peoples.  
11 They must be a key voice and have a key role in  
12 development of the RCEA and the conduct of the  
13 RCEA.

14                   In other circumstances, for instance,  
15 the Churchill dam project in Labrador, the Innu  
16 were a partner with the province in that case in  
17 conduct of the effects assessment there.  
18 Aboriginal nations should have a voice, be able to  
19 appoint members to conduct the assessment, not  
20 just the Province and Hydro.

21                   Again, if this is developed  
22 unilaterally without Aboriginal input, key  
23 fundamental input, and a voice all the way  
24 through, and if it is controlled mostly by  
25 Manitoba Hydro, then it will not be reliable. It

1 will be window dressing and not much more. And it  
2 will be used to silence the concerns of  
3 Pimicikamak and other Aboriginal peoples who have  
4 been calling for this for many, many years. This  
5 cannot be allowed to continue this way or it will  
6 be a sham.

7                   The condition, therefore, if one is to  
8 be put, must reflect good practice RCEAs. We have  
9 lots of examples to rely on. Good evidence was  
10 put forward by several experts about what good  
11 practice is. Manitoba deserves nothing less than  
12 good or best practice as has been developed and is  
13 known elsewhere. There is no good reason to short  
14 circuit and short sell Manitoba and Manitobans,  
15 including Aboriginal peoples here, with something  
16 far less.

17                   The second condition we would propose,  
18 which we have proposed in the past, is that a land  
19 use and occupancy study be conducted to determine  
20 Pimicikamak's connections to, uses of and values  
21 in its homeland or its traditional territory, and  
22 how those might be impacted by Keeyask. And that  
23 this too must be done before any shovel is put in  
24 the ground to construct Keeyask, and that the  
25 information from it must be used to develop

1 appropriate accommodation and mitigation measures  
2 to address those impacts.

3           The third condition we would seek  
4 relates to the Northern Flood Agreement.  
5 Pimicikamak is the only full, is the only  
6 Aboriginal party with full NFA rights that it  
7 retains. Manitoba Hydro relies on the NFA in this  
8 and in other fora to say that it is doing what it  
9 needs to do for Pimicikamak. That would only be  
10 true if the NFA was, in fact, being implemented  
11 fully in accordance with its spirit and intent.  
12 Pimicikamak submits that that is far from the  
13 truth. We are asking that a condition be put on  
14 this licence, as this project will effect  
15 Pimicikamak and its NFA rights and obligations,  
16 and Hydro and all Crown parties' rights and  
17 obligations under the NFA, that it must be  
18 implemented in accordance with annual action plans  
19 developed jointly by Pimicikamak and Hydro, and  
20 funded by Hydro through best efforts, good faith  
21 efforts to negotiate and develop such action  
22 plans.

23           This process, in fact, was in place at  
24 the end of 2002 for a short period of time until  
25 the Crown parties pulled out of it, so we do have

1 precedent to rely on here, I'm not pulling  
2 something out of thin air.

3           The fourth condition we are seeking is  
4 in respect of revenue sharing. We are asking for  
5 a condition that calls on Hydro to engage in good  
6 faith best effort negotiations with Pimicikamak,  
7 with the intent of sharing net profit or net  
8 revenue with Pimicikamak from the Hydro project,  
9 comparable to such arrangements that exist across  
10 Canada with many other types of developments,  
11 including hydro development. I have been involved  
12 in a number of those situations. Mining, hydro,  
13 pipelines, et cetera, revenue sharing is  
14 commonplace now, in that it is only being offered,  
15 if you will, it is not really revenue sharing, but  
16 equity buy in and the risks associated with that.  
17 So any financial benefit that might accrue from  
18 First Nations is through equity, with the  
19 attendant risk to it, and it is only being offered  
20 in respect of new dams and those First Nations  
21 that Hydro has somehow deemed it will partner with  
22 or seek to partner with, that are more in the  
23 immediate vicinity of where the actual dam will be  
24 built.

25           I don't know if the panel has seen

1 these ads about customer service and what is fair  
2 and not fair. This man comes into a room and  
3 talks to young kids and offers a pony to the kids  
4 that he is entering into a new customer service  
5 relationship with, and those that he has had a  
6 relationship with over past 10, 20, whatever years  
7 are completely ignored.

8           It makes absolutely no sense that  
9 those Aboriginal people such as Pimicikamak, who  
10 have been impacted since 1972 or before, for  
11 instance, by Jenpeg and other aspects of the Hydro  
12 project, are entitled to nothing. It makes no  
13 sense. It is out of keeping with the reality in  
14 many other parts of the Canada. The idea of  
15 revenue sharing is that the impacts, the burdens  
16 should not be only or disproportionately felt by  
17 the Aboriginal people who live there, and will  
18 always live there, and the benefits only accruing  
19 to mostly non-aboriginal people living elsewhere.

20           In recognition of that, and in  
21 furtherance of the grand purpose of section 35 of  
22 the Constitution, the purpose being reconciliation  
23 between Canada's First Peoples and the rest of us  
24 who came later at their grace, that revenue  
25 sharing is a small aspect of that, that we need to

1 be sharing more equitably the fruits of the  
2 resources of this country. And yet this has not  
3 occurred at all with respect to this Hydro  
4 project.

5           The next condition we are seeking is  
6 that Hydro is to complete a rework, if you will,  
7 of this EIS through a sustainability assessment  
8 approach as recommended by Dr. Bob Gibson, and  
9 resubmit the EIS prior to there being any shovel  
10 put into the ground for Keeyask.

11           The last condition written in -- there  
12 is one more I want to speak to -- in the written  
13 version of these submissions is about monitoring.  
14 And again, if Keeyask is going to be recommended  
15 for approval first, if you will, rather than  
16 doing -- having this as a condition prior to any  
17 recommendation or not, then we would seek a  
18 condition on the licence that requires a  
19 monitoring program involving Pimicikamak be  
20 developed jointly by Pimicikamak and Manitoba  
21 Hydro and funded by Hydro. And that whatever that  
22 monitoring program reveals as impacts to  
23 Pimicikamak and its traditional territory, and  
24 uses of and values in and connection with that  
25 territory, that those impacts need to be addressed

1 through mutual negotiations between Hydro and  
2 Pimicikamak.

3                   Something that is not written here but  
4 that I was instructed to inform the CEC about as  
5 well is that Pimicikamak supports, I believe, the  
6 call that will be made, or was made by another  
7 Aboriginal party here to a fish passage being  
8 constructed as a condition on this licence, at  
9 Kelsey, that would facilitate the less hindered,  
10 if you will, movement of fish from Jenpeg to  
11 Keeyask, in that reach of the Nelson River, which  
12 does not exist now, as a hopeful way to mitigate  
13 impacts on sturgeon and other fish. So, again,  
14 that would be a fish passage at Kelsey, at the  
15 original rapids where Kelsey Generating Station  
16 is, that that be funded by Hydro, but that the  
17 fish passage, to the extent feasible and  
18 practical, be built by affected Aboriginal peoples  
19 and be monitored and maintained by them as well,  
20 as funded by Manitoba Hydro.

21                   Those are our proposed conditions for  
22 this licence, but I will take the panel right back  
23 to the beginning. There is no need to push  
24 Keeyask and hurry Keeyask along at this time, no  
25 need whatsoever.

1                   The EIS is wholly devoid of an  
2    underpinning in the reality that Pimicikamak and  
3    the Cree, the Keeyask Cree Nation peoples face  
4    every day. If it is approved, we will be  
5    compounding the darkness in which we are all  
6    making decisions about, or judgments about the  
7    Manitoba Hydro project. And it is time that we  
8    stopped doing that. We owe it to ourselves to  
9    make decisions and draw conclusions in an informed  
10   way, and we can not do that without an independent  
11   fulsome, robust regional cumulative effects  
12   assessment to be completed first, and the  
13   addressing of those ongoing existing impacts to be  
14   much more fully handled and implemented first.

15                  Enough is enough. You are either  
16   going to believe Pimicikamak and its experience of  
17   devastation for the last 35 years, and you are  
18   going to try to do something about it, and the  
19   impacts on all of us. This is a vast, vast  
20   northern river system, impacts to which ultimately  
21   will effect all of us. And it is time we stopped  
22   rushing and pushing ahead, and require decisions  
23   be made in the light instead of the dark. And  
24   that's what Pimicikamak is ultimately calling on  
25   this Commission to do.

1 Thank you. If there are no further  
2 questions, then those are my submissions.

3 THE CHAIRMAN: Thank you very much,  
4 Ms. Kempton. I just have one question arising out  
5 of your additional recommendation. This fish  
6 passage, is it to be upstream, downstream, or  
7 both?

8 MS. KEMPTON: I would say both. I  
9 believe the person who can speak to this more  
10 accurately -- this came as a request through  
11 Michael Anderson on behalf of his client whom he  
12 is working for. I apologize, but I have not  
13 learned the pronunciation. If you ask him for the  
14 details, I believe it is both upstream and  
15 downstream. But that proposal we support, and  
16 certainly Pimicikamak would ask for it to be  
17 upstream and downstream.

18 THE CHAIRMAN: Thank you. They will  
19 be presenting or giving their final argument  
20 tomorrow afternoon, or sometime tomorrow. So we  
21 will get an opportunity to ask at that time.

22 Any of the panel members have  
23 questions?

24 Thank you very much, Ms. Kempton. We  
25 don't have any questions or further questions of

1 you. Thank you for your presentation this  
2 afternoon, and thank you for being willing to  
3 accommodate this process. Frankly, from our  
4 perspective, it worked out very well. So thank  
5 you for that and good afternoon.

6 MS. KEMPTON: Thank you.

7 THE CHAIRMAN: Okay. That brings us  
8 almost to an end. I believe the secretary will  
9 have some documents to register.

10 MS. JOHNSON: Yes, I do. PIM number 9  
11 is Ms. Kempton's presentation, CAC35 is the  
12 powerpoint presentation from this morning. And  
13 MWL12 is Manitoba Wildlands presentation.

14 (EXHIBIT PIM 9: Ms. Kempton's  
15 presentation)

16 (EXHIBIT CAC35: Powerpoint  
17 presentation)

18 (EXHIBIT MWL12: Manitoba Wildlands  
19 presentation)

20 THE CHAIRMAN: Okay. Tomorrow we have  
21 a full day. First up we have Manitoba Metis  
22 Federation with their final arguments. It is my  
23 understanding that Mr. Madden will not be able to  
24 make it in person, again owing to the flight  
25 conditions in and out of Toronto. He will appear

1 I believe also by Skype.

2 Peguis First Nations follows. We  
3 anticipate that Ms. Guirguis will be here in  
4 person. In the afternoon the York Landing, KK  
5 York Landing elders group. And finally the  
6 Keeyask Hydropower Limited Partnership will make  
7 their final comments. I would note the  
8 Partnership will have two hours to make their  
9 argument. And following that I will have some  
10 lengthy closing comments. So we are adjourned  
11 today until 9:30 tomorrow morning.

12 One more day as somebody up here is  
13 saying, light at the end of the tunnel.

14 (Adjourned at 4:20 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

Cecelia Reid and Debra Kot, duly appointed  
Official Examiners in the Province of Manitoba, do  
hereby certify the foregoing pages are a true and  
correct transcript of my Stenotype notes as taken  
by us at the time and place hereinbefore stated to  
the best of our skill and ability.

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Cecelia Reid  
Official Examiner, Q.B.

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Debra Kot  
Official Examiner Q.B.

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