

MANITOBA CLEAN ENVIRONMENT COMMISSION

KEEYASK GENERATION PROJECT

PUBLIC HEARING

Volume 31

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1 Thursday, January 9, 2014

2 Upon commencing at 9:30 a.m.

3 THE CHAIRMAN: Good morning. We'll
4 reconvene. We have, after three and a half
5 months, finally arrived at the day we are all
6 looking forward to, hearing Mr. Madden's final
7 argument.

8 Seriously, though, I misinformed you
9 last night, I was under the impression Mr. Madden
10 wouldn't be here in person but he'd be Skyping in,
11 but here he is, nicely tanned and in shock from
12 Winnipeg's weather.

13 We have four final arguments today.
14 First up, Mr. Madden on behalf of the Manitoba
15 Metis Federation, followed by Peguis First Nation,
16 followed by KK, the York Landing Citizens Group,
17 and then the Partnership.

18 Mr. Madden, you have 90 minutes. If
19 you're getting close to the end, I'll give you
20 flash cards at about ten, five, and about one or
21 two, and then at 90 we cut you off.

22 So go ahead, the floor is yours.

23 MR. MADDEN: Thank you, Mr. Chair.

24 I want to start by thanking the panel
25 for the opportunity for the MMF to participate in

1 the hearing process. I've got to admit, it's
2 challenging for my client as well as myself, as a
3 lawyer who has represented many clients in
4 regulatory proceedings, not to sometimes be
5 cynical of how current regulatory process in
6 Manitoba unfolds. I think that, Mr. Chair, I read
7 the transcripts, you commented saying, well,
8 there's been a billion dollars invested and we're
9 going to say no. You know, not -- it's
10 challenging for people who are participating in
11 the process to not feel that the deal is done, and
12 no matter what input is provided, no matter what
13 flaws are presented, Manitoba Hydro's projects
14 will get approved at the behest of the current
15 government. And that regardless of whether
16 there's a highly deficient EA, as in the case of
17 Bipole III, or whether it ignores Keeyask specs of
18 the scoping document, as in the current hearing,
19 that it really, it's going to muddle through.

20 With that said, though, I want to
21 convey and the MMF wants to convey that we
22 always -- one of the reasons that we continue to
23 participate in the CEC process, and we appreciate
24 this hearing process, is that the reports of the
25 Commission have allowed the Metis voice, and more

1 so frustration, to come through in those reports.
2 And it's not a complete whitewash exercise, and
3 the MMF very much appreciates that. While the CEC
4 hasn't said no yet, and despite the MMF's urgings,
5 the Commission's report have always given Hydro
6 the green light, it has -- what's been in the
7 reports has given the government some pause. And
8 we thank the CEC for that. And we think that that
9 is a really important public interest role that
10 this Commission plays. And while I haven't been
11 here as often as I had in Bipole III, my client
12 wants to convey that, that what the work you do
13 matters.

14 Now, while it has given the government
15 some pause, on the other hand it hasn't given
16 Manitoba Hydro very much pause. Manitoba Hydro
17 really hasn't paid attention and hasn't really
18 changed its approaches when it comes to Metis.
19 But I will tell you this: That will come
20 eventually.

21 The one thing about the Manitoba Metis
22 community and the MMF is they aren't going
23 anywhere, and they are doggedly determined that
24 things are going to change, and they will defend
25 their rights. I think the 30-year struggle of

1 getting to finally the Supreme Court of Canada
2 illustrates that determination. And whether it's
3 now or whether it's when the Province or the
4 courts finally direct Manitoba Hydro to do the
5 right thing, Hydro will make a course correction.
6 That hasn't happened yet, as you have seen in this
7 hearing, but we know the day will come.

8 With that said, I am going to focus my
9 presentation on two main areas. I want to address
10 the Partnership's arrogant claims about that
11 there's no Metis communities and no Metis rights
12 in our backyard. I want to address that. I'm not
13 going to spend too much time on it.

14 We're also going to provide detailed
15 written submissions that critique the EIS. I am
16 not going to focus on that today, I think that
17 that's technical and you'll have our evidence on
18 that. What I want to talk about is the
19 recommendations that we hope that the CEC will
20 consider when you're sitting down and writing your
21 report over the next few months. And I hope that
22 I can convince you on some of the suggestions that
23 the MMF has. And I would rather focus on that
24 today than getting into the technical issues.

25 Now, I've got to tell you since the

1 release of the Powley decision from the Supreme
2 Court of Canada in 2003, and for those of you that
3 aren't aware, that is a case which was the first
4 case before the Supreme Court of Canada to
5 recognize Metis hunting rights. And prior to the
6 Powley case, the assumption was Metis -- it's kind
7 of actually the same thing that you are seeing
8 play out by the Partnership. Well, we were here
9 first -- and the Metis don't say that they were
10 here first. The Metis are the product of the
11 beautiful marriages and evolution between
12 non-Aboriginal and Aboriginal communities and a
13 birth of a new nation occurred in Western Canada.
14 But because you aren't here first, you don't
15 count.

16 And what section 35 was about and the
17 inclusion of Metis in there is things were
18 supposed to change, back in 1982 when our
19 Constitution was repatriated, and Metis were
20 recognized along with Indians and Inuit peoples.

21 Now, the argument was, well, that's an
22 empty box, it was a me fool you proposition,
23 right? We put you in there, but it placated you
24 for 1982, and it took essentially another 15 years
25 to get to the Supreme Court of Canada, and the

1 Supreme Court said clearly, it's not an empty box.
2 And Metis aren't just people who can't get status,
3 Metis aren't the other Aboriginal people that
4 don't have any rights, they have rights as well
5 based upon being here prior to Canada becoming
6 Canada as we know it today.

7 So I spent the last decade of my life
8 since Powley -- we thought Powley would change
9 everything -- so I spent the last decade of my
10 life in courts fighting exactly the same nimbyism
11 you have heard from the Partnership over the last
12 few months and that you see in their EIS, not in
13 our backyard. And I've got to tell you, I have
14 litigated, and heard that from First Nations and
15 Provincial Governments, and in every case except
16 for one, which is currently being -- we have been
17 successful in proving that, yes, Metis rights
18 co-exist where First Nation territories exist.
19 And the one that is the thorn in my paw still is
20 currently before the Supreme Court of Canada and
21 we'll see if we get leave on it very soon. And
22 that's the only loss of those cases.

23 And my point on this is, it's very
24 easy to dismiss Aboriginal peoples' rights. I
25 find it a little interesting that counsel for the

1 Partnership sometimes forget the history of their
2 own clients of less than 50 years ago, First
3 Nations, some First Nations on reserve were
4 charged for hunting on reserve, because people
5 didn't recognize those Treaty rights that were
6 protected.

7 And so I think that we all are going
8 through an evolution, and the Metis are running
9 about 15 to 20 years behind where First Nations
10 have advanced their rights, and we'll catch up
11 eventually. And I think that what you're seeing
12 play out here, though, is one of those unfortunate
13 situations of the people trying to play catch up,
14 the ones who have got even through the door want
15 to slam that door behind them. And we say that's
16 wrong, we say that's unfortunate, and we say that
17 that's unhelpful.

18 Now, I'm sure my friends of the
19 Partnership -- I'm not sure if my friends of the
20 Partnership have even read the Powley case or
21 understand the type of evidence that you need in
22 order to establish Metis rights. But I want to
23 just tell you this, that it's a nice narrative to
24 say this is all Cree territory, but the facts of
25 history tell a different story.

1 And there's a beautiful logic to where
2 Metis are in this country and where they aren't.
3 You follow those routes of the fur trade, and in
4 the north you follow those York brigade routes,
5 and you will find where Metis were and where Metis
6 communities were. And you'll see through the
7 historic record that Metis were in the region
8 since the early 1800s. Now, they weren't there
9 first, but the test for Powley isn't that Metis
10 had to be here at contact, the test is that they
11 were here prior to effective control in a given
12 region.

13 And effective control up in the north,
14 I think that maybe the Cree Partners would argue
15 they have still got control. The issue of our
16 point, though, is that at the time of effective
17 control in the northern territories, the Metis
18 were there, they were on the ground. And similar
19 to how the Cree, the home-guard Cree moved inland
20 and moved to different areas, so did the Metis.
21 The question is, were they there prior to the
22 relevant time? And we say the evidence
23 overwhelmingly says that they do, that they were.

24 And I think one of the key pieces for
25 me, and it's a very simplistic concept, but when

1 the Treaty commissioners were going up north to
2 actually begin, well, somewhat co-existent with
3 effective control, they didn't just have Treaty
4 commissioners, they also had Metis script
5 commissioners. And in fact, half breed script,
6 what it was referred to, was issued up in these
7 areas. And it really just poses the simplistic
8 question, if there were only Indians up there, why
9 on earth would you be issuing half breed script up
10 there?

11 Now, that may seem overly simplistic,
12 but in the cases I have litigated some of the
13 judges looked at that and gone, wow, that really
14 makes sense. Because it would have been far
15 easier for everyone to say, well, I'm Indian, but
16 they didn't. They clearly said, we are a distinct
17 people and we are a distinct group and register it
18 as such.

19 And more importantly, and this is key
20 to the Powley case, those family names that you
21 see on those script records are still there today.
22 Those well-known Metis sur names, some of them,
23 absolutely, individuals have made personal choices
24 of registering as Indians, or as one of the chiefs
25 said, taking Treaty, but not everyone did. And I

1 think you saw from the panel that stood up there,
2 that testified, that there are still Metis there.

3 They struggle with -- it would be easy
4 sometimes to just say, well, I'll just take
5 Treaty, but a distinct culture and identity is
6 extremely important to them, and they stand firm.
7 And so the idea that they aren't there in huge
8 numbers, and the MMF is not overreaching by saying
9 this is the same numbers you see in Winnipeg or
10 that you see in the breadbasket, but I'll go back
11 to President Chartrand's points of, just because
12 it's small in numbers doesn't mean it's small in
13 rights. And in that smallness, it still has
14 rights.

15 And the community that is up there has
16 existed historically and continues to exist today.

17 And I just want to draw -- we're not
18 here to actually make a determination on these
19 issues, but I find it deeply offensive and
20 troubling in the Partnership's responses where
21 they say, well, clearly it's evident that there's
22 no rights bearing Metis community. I've got to
23 tell you, I have been practising in this area for
24 the last ten years, and I don't have that
25 arrogance to make those determinations without

1 actually reading the facts of history and
2 understanding the facts of history. So I think in
3 the response that was given to the CEC's, the
4 CEC's questions, we would caution of the
5 offhandedness of saying, no Metis, no rights
6 bearing Metis community is just wrong, in fact,
7 wrong in law.

8 We also just want to point out that
9 this isn't the Metis are these interlopers all of
10 a sudden appearing. If you look at the census
11 records from the mid 1900s, if you look at the
12 Lagasse study where the Manitoba Government
13 commissioned a report from Mr. Lagasse to go up
14 and write about what the Aboriginal population
15 looked like up in the north, he's identifying half
16 breeds and he is identifying them distinct from
17 First Nations. And also the evidence we put
18 forward is, a repetitive pattern in recent
19 contemporary censuses of a consistent identifiable
20 Metis population in the area. Now, it may be
21 inconvenient for the Partnership, but the facts
22 are the facts.

23 And we just want to make the point
24 that when you put these pieces together, you see
25 an unbroken chain of evidence of a Metis

1 population up there.

2 Now, clearly their home base, by and
3 large, is more in Thompson and in the Bayline
4 communities, but you have also seen from the
5 census, as well as from the testimony, that Metis
6 live, whether it's in Ilford or whether it's in
7 Gillam, not in huge significant numbers, but they
8 are there as well.

9 The other concern that we have about
10 how -- and I think Ms. Kempton made the point
11 yesterday -- is similar to how you don't define
12 Pimicikamak or other First Nations by their
13 reserves, that you can't define Metis that way
14 either. And one of the arguments that we have
15 been having in the litigation that's been ongoing
16 is, how do you define a Metis community? Because
17 what you're looking for is, where's the land base?
18 And in some cases, there isn't one. And so the
19 reality is, is what the courts have found in the
20 Goodon case, I'll give this as an example, is that
21 these are regional communities and they may be
22 scattered, the individuals may live in different
23 settlements, but that doesn't mean that they are
24 different Metis communities or different Metis
25 people.

1 And I just want to read one quote,
2 it's in paragraph 46 and 47 of the Goodon case,
3 which we provided in our previous materials. But
4 it really illustrates of how you need to
5 understand what a Metis community looks like. It
6 says:

7 "The Metis of Western Canada has its
8 own distinctive identity. As the
9 Metis of this region were a creature
10 of the fur trade and they were
11 compelled to be mobile in order to
12 maintain their collective livelihood,
13 the Metis community was more
14 extensive, for example, than the Metis
15 community it described in Sault Ste.
16 Marie in Powley. The Metis created a
17 large interrelated community that
18 included numerous settlements."

19 And they go on to say:

20 "This area was one community, as the
21 same people and their families used
22 the entire territory as their homes,
23 living off the land and only
24 periodically settling in a distinct
25 location when it met their purposes."

1 And the same facts situation you see in this area
2 is that there are different Metis living in
3 different locations, but they are a part of the
4 same regional rights bearing community that is an
5 indivisible part of the Manitoba Metis community.

6 So I want to just provide that because
7 I just think that the idea of being dismissive of
8 Aboriginal rights, I know that the Manitoba Metis
9 Federation would not do that towards First
10 Nations. We had hoped that that wouldn't be done
11 towards Manitoba Metis Federation, but that is the
12 case.

13 I also just want to provide a little
14 bit of clarity and just clean up the confusion
15 that I think some of my friends have about what
16 the MMF Manitoba Harvesting Agreement actually
17 says and what it stands for. And I say this
18 because I think some of them, reading the
19 transcripts, had their backs up when people made
20 judgment calls on the agreements that they
21 assisted their clients in negotiating, whether
22 it's the Partnership agreement or whether it's the
23 adverse effects agreements. And I think that
24 having an understanding of what that harvesting
25 agreement represents is important to give context.

1 And I think it's this: Prior to the
2 Goodon case and prior to the recent harvesting
3 agreement, Manitoba took the position, no Metis
4 harvesting rights anywhere within the Province of
5 Manitoba. And what the MMF did is, we'll pass our
6 own law, we'll issue our own cards and we'll
7 defend our people in the courts, and we did that.
8 And we had what was called the parking-lot where
9 charges continued to ratchet up, and we took one
10 test case, the Goodon case, to establish the right
11 and to have the right recognized.

12 And of course, Goodon, the case took
13 us a year to essentially do, but it only covered a
14 small part of the Province of Manitoba, around
15 40,000 square kilometres. And rather than having
16 to go litigate again and again and again all
17 throughout the province, what the MMF and the
18 Province finally sat down to say, let's see if we
19 can agree in some areas. And where we disagree,
20 rather than just being at each other's necks on
21 it, we'll essentially advance reconciliation and
22 we'll set out a process of how we figure out
23 answering those other areas. So what was agreed
24 to is 800,000 square kilometres of where rights
25 are recognized, and a two-year process that sets

1 out how we're going to make determinations in
2 those other areas based on joint research that's
3 done. And if at the end of those two years we
4 still disagree, we'll consider going for a
5 reference to the Manitoba Court of Appeal to get
6 answers to those questions. And then in the
7 interim, we'll still issue -- you have to apply
8 for Provincial licences, but we'll reimburse you
9 the costs of those. And that that was the way of
10 how we move this along.

11 But I just want to make this point.
12 That's a two year process, and by the time Keeyask
13 may be built, if it's finally licensed, that two
14 years will be up. And the MMF will be fully in
15 the position of saying, well, if we haven't come
16 to a resolution in the other area, our people are
17 going to go hunting again without having to get
18 the licences, similar to what was done previously.

19 So this idea that the moose
20 sustainability plan doesn't need to factor the
21 Metis hunting into consideration, we just think is
22 unhelpful and not realistic based upon what's
23 actually happening on the ground.

24 So I want to move on. And I guess
25 finally on that, it just, in our opinion, defies

1 logic to think that the agreement is an
2 acknowledgment that there's no rights there. It
3 actually accommodates rights there. It hasn't
4 recognized them there yet, but we're in the
5 process of doing that.

6 So that's all I want to say about
7 those two issues, and I want to move into the
8 recommendations, and I want to start with the
9 words of a wise, wise, wise man from January 6th,
10 2014. And it says:

11 "It is incumbent upon the Proponent to
12 meet the requirements of the scoping
13 document."

14 And that's the Chair of the CEC, of this panel.

15 And I want to start, that is our
16 starting point is that, yes, you need to meet the
17 requirements of the scoping document. And what
18 the MMF wants to make very clear and wants to draw
19 the panel's attention to is that the Partnership
20 has not met those requirements of the scoping
21 document.

22 And in the handout that I provided, on
23 the first page we draw your attention to some of
24 the -- just some of the guideline references that
25 illustrate this. And I think one of the important

1 ones is 7.2 that says Aboriginal consultation:
2 "The Proponent will actively solicit
3 Aboriginal concerns from groups other
4 than the Keeyask Cree Nations during
5 the course of the EA. The Proponent
6 will examine opportunities to mitigate
7 the adverse effects of the project on
8 Aboriginal groups' current use of the
9 lands and resources for traditional
10 purposes and for other Aboriginal
11 interests."

12 I want to make this point. This is in the scoping
13 document that was put out by governments. If they
14 thought that the whole story was, it's just those
15 four First Nations, don't worry about anybody
16 else, why would it be drafted in this way?

17 And the assumption that permeates the
18 EIS, and it's almost like they have blinders on
19 that, oh, well just don't look over in that
20 corner, don't look over in that corner. And if we
21 slice and dice it in such a way, we can solely
22 focus on our partners, and not Thompson with a
23 significant Aboriginal population that's just
24 sitting in the periphery, not the Metis people who
25 live within Gillam or who live within Ilford. And

1 that blinder leads to -- those blinders lead to a
2 deficient EIS when it comes to understanding and
3 assessing the effects of the project on Metis, as
4 well as other Aboriginal groups that aren't in
5 that periphery.

6 And the MMF wants to make the point
7 that there is a Metis community that lives within,
8 uses and relies on the project's local and
9 regional study area, and their interests haven't
10 been considered, understood, or assessed.

11 And much was made of the MMF finally
12 signing an agreement to collect some baseline
13 information, as well as to do an effects
14 assessment in June 21st, 2013, with the
15 Partnership -- actually the agreement is with
16 Manitoba Hydro, not the Partnership.

17 But we want to make this point. The
18 Proponent's EIS was filed on July 6th, 2012.
19 That's a year after that they have essentially
20 finally got around to it. And the only reason
21 that they finally got around to doing that is the
22 Canadian Environmental Assessment Agency put the
23 boots to them on it of asking some more pointed
24 questions. It wasn't of their own volition.

25 And I think President Chartrand has

1 spoken about the frustration. At least this time
2 we got to an agreement before the CEC, as in the
3 Wuskwatim case. But this is the same repeated
4 pattern that's undertaken.

5 And why I want to emphasize this,
6 though, is when I get to one of the non-licensing
7 recommendations that we're asking the CEC to
8 consider making, I think this just illustrates of
9 how on earth can you not have a deficient EIS
10 being filed if at that point in time you haven't
11 even started the discussion or the assessment with
12 that Aboriginal group?

13 Now, we're not saying that you have to
14 treat everyone the same, didn't have to make the
15 MMF a partner, didn't have to spend the same
16 amount of money, but you have to at least make
17 sure that you have met the requirements of the
18 scoping document. And this EIS does not do that.
19 And as a result of the unwavering and the
20 adversarial positions, you don't see an agreement
21 being put into place until the summer of 2013.

22 And I think the other issue is, there
23 is a long list of, oh, look at all the meetings
24 attended. And President Chartrand highlighted,
25 where we kept on falling down in the meetings was

1 for about 15 of them, one of their statements from
2 the staff was, we only think that there is \$80,000
3 worth of Metis in the north. And that was the
4 statement. And so the issue for the MMF was
5 continually, well, we won't accept that. And so
6 finally when an amount was arrived at that is far
7 less than what was done with other Aboriginal
8 peoples, the MMF needed to make a choice. They
9 needed to say, look, do we continue to beat our
10 head against the wall and then run the appearance
11 of looking unreasonable, or do we at least start
12 with what we have and try to get to the finish
13 line and try to get some evidence and try to get
14 some information. And that's the decision that
15 was made.

16 And Manitoba Hydro somehow uses it
17 against the MMF to say, well, you didn't get it
18 done in six months. Well, it took them ten years
19 and \$140 million, and there are still gaps in what
20 they did. So I don't think that that should be
21 used against my client for making a cognizant
22 choice of saying, we have to essentially start
23 somewhere and we haven't got to that finish line.

24 And I guess this gets us to one of the
25 other recommendations of essentially saying, well,

1 that process needs to be completed and it needs to
2 be completed before construction.

3 So I think that when you put those
4 pieces together, and the MMF will in detail in its
5 written submissions go through where the EIS
6 doesn't address the Metis specific effects and
7 impacts, that the project shouldn't be recommended
8 at this time until the MMF is allowed to complete
9 the study that it's been contracted to do by the
10 end of March 2014, that based on those results,
11 that if there are impacts identified that a
12 further impact assessment process be completed
13 consistent with the processes used for the KCNs
14 and set out in the scoping document. And that
15 that once a more fulsome impact assessment is
16 completed, some sort of agreement or arrangement
17 be negotiated in order to address Metis specific
18 mitigation measures, as well as Metis
19 participation in future monitoring in relation to
20 the project.

21 And I think the MMF's first submission
22 is that we don't think that the project should be
23 recommended at this time, based upon the
24 deficiencies and the lack of assessment of meeting
25 the requirements of the scoping document.

1 Now, on page 3 of my presentation, I
2 want to get into some of the non-licensing
3 recommendations, as well as the licensing
4 recommendations that we're hoping that the CEC
5 will consider incorporating. And the first one
6 goes to this issue. And Manitoba has a very
7 unique way of how they deal with Crown
8 consultation. They say, well, no, the Crown will
9 take care of it and we'll keep it in this little
10 box over here and we will have separate processes
11 for the environmental assessment. But what I
12 think, Mr. Chair, you have raised continually is
13 that in the EIS some of the biophysical effects
14 that -- they may be rights, but they are also
15 biophysical effects have to be -- are within the
16 mandate and realities of what has to happen in the
17 environmental assessment process. In addition,
18 when you consider socio-economic impacts, those
19 have to be identified.

20 So one of the challenges we have and
21 that the MMF continues to run into is, because the
22 Province sits back and lets the Proponent decide
23 who they are going to engage, you don't have --
24 you run into this situation where the MMF is
25 continually running up against the wall. And I

1 think one of the recommendations -- or you get to
2 a situation where you get to the end of the
3 process and you have Aboriginal groups who have
4 use, or have interests, or have effects on them,
5 and they had been excluded from the start because
6 of positions that the Proponent has taken. And we
7 don't think that that should be left to the
8 proponent. In fact, we think that the Manitoba
9 Government should identify the relevant Aboriginal
10 groups, i.e. First Nations and Metis, that a
11 proponent should engage in undertaking their
12 environmental assessment, as well as assessing
13 potential project effects as required by the
14 scoping document. And we say that the
15 identification of the relevant Aboriginal
16 communities should occur during or before the
17 finalization of the scoping document, and that the
18 determination of what groups the Proponent should
19 engage with should not continue to be left to
20 Proponents without guidance from the Manitoba
21 Government.

22 This type of identification process
23 will provide greater clarity to Proponents, but it
24 will also not create the situation that you have
25 right now where an adversarial relationship is

1 created between the Proponent and the Aboriginal
2 group, based upon their own positions on these
3 issues. The reality is that the proper place of
4 where that adversarial or where that questioning
5 should be is with the government, not -- and I
6 think that this is very different than Crown
7 consultation. This is -- in that scoping
8 document, it says, it usually uses language like,
9 the Proponent shall assess the effects on
10 Aboriginal groups and their contemporary or
11 current use within the areas. Well, the Proponent
12 shouldn't be left to be feeling around in the dark
13 about who those groups may be. The Crown is the
14 one that has that knowledge. The Crown should be
15 providing at least some direction on who those
16 groups are, so you don't get into situations like
17 this at the end of the day.

18 So we think that this has happened one
19 too many times, and it's happened more so for the
20 Metis. And we hope that you are still here for
21 Conawapa, Mr. Chair, but we hope that we aren't in
22 the same situation. And the buck needs to be put
23 back to the Province to step up and say, look it,
24 you can keep Crown consultation, but these
25 Proponents shouldn't be guessing about who to

1 engage.

2 And I would just note that this played
3 out on Bipole III as well, of who are we talking
4 to, the Northern Affairs communities, the MMF in
5 its locals, what First Nation should be engaged?
6 That properly lies with the Crown identifying who
7 should be engaged on these issues.

8 The second non-licensing
9 recommendation that we would ask the CEC to
10 consider is that it urges that the Manitoba
11 Government should ensure its previous acceptance
12 of the recommendations set out in 4.1 of the
13 Aboriginal Justice Inquiry Implementation Report
14 is met. And we make this point because you are a
15 public interest vehicle, that upholding these
16 kinds of government commitments to Aboriginal
17 communities is important to all Manitobans. But
18 it's also important to building sustainable
19 communities and protecting the environment. And
20 those commitments that are sitting out there are
21 sometimes ignored and not necessarily fully
22 embraced or implemented. And we think that the
23 CEC standing up and saying, we went through a long
24 process in the Aboriginal Justice Inquiry and
25 those recommendations shouldn't just be sitting on

1 a shelf, and that we would urge that Manitoba --
2 we are supportive of those as well. Clearly the
3 MMF is. I would hope that most of the First
4 Nations are as well. And I think that we would
5 ask that that be echoed in the CEC report.

6 We also -- one of the last
7 non-licensing recommendations that we would ask
8 the CEC to consider is that based on current and
9 court decisions on Metis issues, and ongoing
10 discussions between the MMF and the Manitoba
11 government under the MMF government points of
12 agreements on Metis harvesting, the Manitoba
13 government should evaluate and consider the
14 implications of the ongoing exclusion of Metis as
15 a distinct Aboriginal community from the Northern
16 Flood Agreement, with a view to potentially
17 identifying alternative processes to address Metis
18 issues, concerns and outstanding claims. Because
19 what continues to happen, and I think this has
20 happened in front of the CEC, is the bunfight
21 plays out here. And the reality is that this
22 isn't the place for the bunfight. But I've got to
23 tell you, this is the only place that my client
24 has a microphone and has an ability to actually
25 have its voice heard, and sometimes get that voice

1 reflected in its reports. And it will continue to
2 use this process in order to, in an attempt to do
3 that.

4 Now, others may think that that's not
5 appropriate, but I can tell that you from the
6 MMF's participation from Wuskwatim onward it has
7 had an effect, it's moved the yard stick. And we
8 would ask that this at least be looked at, not
9 with any direction on how it be done. But the
10 reality is that when the Northern Flood Agreement
11 was signed in the 1970s, there was the assumption,
12 well, Metis don't have any rights. And I think
13 what we clearly know is that law has changed, the
14 times have changed, and I think that looking at
15 this issue, or urging the Manitoba Government to
16 look at it would be helpful.

17 The final one that we want to just
18 draw, for a non-licensing recommendation that we'd
19 like to draw the CEC's attention to is in relation
20 to the Northern Flood Agreement. And one of the
21 commitments in the Northern Flood Agreement that
22 the Metis often look at and that the MMF is
23 concerned is going to play out in a negative way
24 in relation to, you have adverse effects
25 agreements for First Nations, but in the same

1 communities there is nothing in place for Metis.

2 And I just want to draw your attention
3 to article 1.1 of the NFA and article 18.3 of the
4 NFA. And in the NFA it states that:

5 "Settlement means a community
6 together, all non-treaty Indians and
7 Metis collectively whose principal
8 residences are adjacent to a community
9 and are within an area commonly
10 described by the name of that
11 community, notwithstanding the
12 location of such residents which may
13 be described by some other more
14 particular name."

15 And the long-worded version of that
16 is, look it, we know there's communities that
17 there's Metis and non-status Indians in them as
18 well, and that that's defined as a settlement for
19 the purposes of the NFA.

20 18.3 goes on to say that:

21 "Canada and Manitoba, to the extent it
22 is practical to do so, will avoid
23 creating inequities within any
24 settlement that would adversely affect
25 a relationship between the community

1 and the other residents of that
2 settlement."

3 And I think what you saw play out from
4 the testimony of the Manitoba Metis Federation
5 witnesses is that these adverse effects
6 agreements, and the relationship is skewed. In
7 fact, some of them say, well, maybe my kids should
8 go get Treaty, because at least if they do,
9 they'll have these protections. And we think that
10 that's wrong and we think that that is counter to
11 what the commitment of the NFA is.

12 And I just want to continually make
13 this point. It doesn't mean that they have to be
14 treated the same, it just means that respect has
15 to be shown. Because the needs of the Metis are
16 not the same as the challenges, the needs of the
17 First Nations. And I think that the reality,
18 though, that you can just ignore one is
19 unacceptable, the same way it would be
20 unacceptable to ignore First Nations.

21 And I think that what you see playing
22 out, and what I hope that the panel can see
23 playing out is, once those adverse effects
24 agreements come into play, right now you heard
25 some of the witnesses testify, well, we definitely

1 put the boat in my wife's name because she's
2 Treaty and if it gets damaged in the river system,
3 we'll get it replaced. That sort of inequity and
4 imbalance is what's playing out between Metis and
5 First Nations. And we think, we would ask that
6 the CEC comment on that, of that -- well,
7 rightfully so, the Manitoba Hydro has said, look
8 it, where we're at today with the Keeyask Cree
9 Nations flows from the relationship that's built
10 from the NFA. There are other commitments to
11 other peoples in the NFA as well. And those
12 inequities, in particular once Keeyask comes into
13 play, will be more stark in contrast further.

14 And I think that we would ask that the
15 recommendation we propose be put in there that at
16 least Manitoba be urged to turn its mind to that
17 section of the NFA, not giving it, saying this is
18 what you do, but turn your mind to it. Because
19 it's often ignored, and we have seen that
20 disparity play out in Wuskwatim, and you heard it
21 from the testimony of the Manitoba Metis.

22 With respect to the licensing
23 requirements, we would ask that -- we have four of
24 them and I want to start with the first one. And
25 the licensing requirements that we have put

1 forward are actually based on language that's very
2 similar to the language that was used in the
3 Wuskwatim licence and the language that was used
4 in the recent Bipole III licence.

5 And I think that what we would ask in
6 this case is, if the CEC ultimately decides to
7 recommend the project, that a licensing condition
8 be put in similar to what's in the Bipole III
9 licence, that before you get to a further approval
10 in relation to an environmental protection plan,
11 that you've gone through this process with those
12 other communities that haven't been in your
13 headlights. And I think that Pimicikamak speaks
14 of that, as well as the Manitoba Metis Federation.
15 And that it doesn't mean that you have to
16 pre-determine where you get to, but you have to
17 complete those processes.

18 Because what happened the last time in
19 Wuskwatim is, oh, we got over the hump, great. At
20 the end of the day an agreement doesn't get put
21 into place with the Manitoba Metis. We don't
22 actually finish the effects assessment, and that's
23 a key part. Because what you saw in Bipole III
24 and what Manitoba Hydro often has the relationship
25 with MMF is, oh, we've done the TK study, great,

1 append it to the EIS, we're done, no effects
2 assessments done at all. And I think that what we
3 want to see is, complete that process, let us
4 have, let us finish that process, and prior to
5 construction that process should be followed
6 through on.

7 And in the licensing recommendation
8 number one, we outline that. And we also say that
9 this isn't a trump card, this isn't a veto that
10 the MMF gets. It says, if a mutually -- what we
11 add in is that:

12 "If a mutually agreeable arrangement
13 or agreement is not reached with a
14 willing Aboriginal community,
15 including the MMF, who live within the
16 Nelson watershed within a reasonable
17 period, the Partnership shall provide
18 a report outlining its efforts and
19 reasons, an agreement or an
20 arrangement could not be reached to
21 the director who may determine that
22 this licensing condition has been met
23 through best efforts."

24 But I think that what we don't want to see happen
25 is, we've got through, let's just focus on getting

1 our project done. Because that's what happened
2 last time. And fool me once, shame on you, fool
3 me twice, shame -- I think I have mixed that up.
4 But anyways, our point is, we would ask the CEC to
5 provide at least some protections to go make sure
6 that process gets completed. Because once you get
7 your report done, your job is done, but there's
8 still more work to be done, in particular, between
9 the Partnership and the Manitoba Metis Federation.

10 The second clause, or licensing
11 condition that we would like, we would ask that
12 the CEC consider including is actually very much
13 cribbed from the Wuskwatim environment licence
14 clause 14. And it's in particular in relation to
15 monitoring. And you have seen a whole bunch of
16 organizational charts and a whole bunch of
17 structures that are really contained about -- and
18 they are all about the KCNs and Manitoba Hydro,
19 and there is no place for those periphery
20 communities who are not partners. And we say
21 that's wrong. We say, you don't have to treat us
22 the same, but you do have to find a place for
23 others, because they all use that river system and
24 there are -- there are ways in which they can be
25 involved in monitoring.

1 And so what we would ask is that the
2 Partnership shall establish an ongoing advisory
3 committee, comprised of the KCNs, along with other
4 willing proximate Aboriginal communities,
5 including the MMF, who live within and use the
6 Nelson watershed, for the purposes of providing
7 guidance on the research and monitoring activities
8 set out in any project licence. Reasonable costs
9 associated with the participation of each
10 community in the advisory community shall be borne
11 by the Partnership based on an annual or
12 multi-year work plan, and that, ideally, part of
13 the above mentioned clause of getting to an
14 agreement or an arrangement, that would be
15 incorporated into that agreement or arrangement.

16 But we point to the Wuskwatim licence
17 and it's in there, and we think that it's a model
18 that can work, but we think also that it needs to
19 be explicit that other people should be having
20 input. This is not just about the KCNs.

21 Finally, an additional licensing
22 recommendation that we would ask for is that prior
23 to construction, the project's moose
24 sustainability plan be updated to include and
25 address any additional information related to

1 harvesting of moose by other proximate Aboriginal
2 communities, including the MMF, who live within
3 and use the Nelson watershed.

4 And we make this point, and you'll see
5 this more in our written submissions about what
6 Ms. Stewart talked about is, they think, oh, well,
7 we've taken -- we have accommodated or addressed
8 all of this in that black box. They haven't.
9 Because they don't have an understanding of what
10 the Metis harvest actually looks like in the area.
11 And we're actually just collecting that
12 information from the baseline, but that
13 sustainability plan does not incorporate, contrary
14 to Mr. Bedford's submissions, it does not
15 incorporate the Metis harvest in that plan.

16 And last but not least, I think you
17 heard a lot about this, is that prior to
18 construction an independent regional cumulative
19 effects assessment be completed in relation to the
20 Nelson watershed. And I won't go on about that, I
21 think that others have made that point.

22 I think that, Mr. Chair, you have
23 spoken of that that may not be able to be a
24 licensing condition. But the MMF agrees
25 wholeheartedly with the recommendation that the

1 CEC made in the Bipole III report, as well as it
2 being -- that was adopted by the Minister. The
3 reality yet again, though, is that Manitoba Hydro
4 has referred to, well, this is sitting on the
5 Minister's table, on the Minister's desk, they are
6 thinking about it. The Manitoba Metis Federation
7 has not been engaged in this at all. And it's one
8 of the, I think, worries that the MMF has, as well
9 as other Aboriginal communities that will be
10 outside, will be looking on the outside yet again
11 when it comes to this regional cumulative effects
12 assessment when it happens.

13 With that, I think I'm under time
14 surprisingly. This is precedent setting. And
15 unless there's any further questions, those are
16 our submissions.

17 THE CHAIRMAN: Thank you, Mr. Madden.
18 You are very under time. I'm quite impressed.

19 I have just one simple question. I
20 think the Lagasse report or commission, what year
21 was that?

22 MR. MADDEN: I think it's 1957, but I
23 can get that additional information.

24 THE CHAIRMAN: We don't have any other
25 questions.

1 Thank you very much for your
2 presentation this morning, and I hope you get over
3 the shock of returning to Canada from the middle
4 of the Indian Ocean.

5 MR. MADDEN: Thank you.

6 THE CHAIRMAN: Thank you.

7 Well, we are well ahead of schedule
8 now. Ms. Guirguis, would you be prepared to go in
9 about 15 minutes if we took a break now?

10 MS. GUIRGUIS: Yes.

11 THE CHAIRMAN: Okay. Let's break now
12 and come back at about 10:30.

13 (Proceedings recessed at 10:15 a.m.
14 and reconvened at 10:30 a.m.)

15 THE CHAIRMAN: Okay. Let's get back
16 to work. Next up is the final closing argument
17 from Peguis First Nation. Ms. Guirguis, 90
18 minutes, and I'll give you warnings if you
19 approach the 90 minute mark.

20 MS. GUIRGUIS: Thank you, Mr. Chair.
21 Good morning, Mr. Chair, commissioners of the
22 Clean Environment Commission, participants to the
23 proponent, representatives of the Cree Nations
24 partnering in this project and Manitoba Hydro. As
25 you know, my name is Cathy Guirguis. I'm here on

1 behalf of Peguis First Nation. With me is
2 Councillor Mike Sutherland who you have heard from
3 before. He's going to provide a statement as
4 well. And then I will take over and provide
5 Peguis's final arguments.

6 MR. SUTHERLAND: Good morning,
7 Mr. Chair. I'd just like to pass on regrets for
8 Chief Hudson. He's out in the U.S. Flights were
9 cancelled yesterday so he was not able to make it
10 back until sometime later this afternoon. And
11 doing so, I'm representing our First Nation with
12 the closing arguments.

13 That's the thing about getting old,
14 even your bifocals don't always work.

15 Good morning to the Chair of the Clean
16 Environment Commission and the fellow
17 Commissioners on the Keeyask panel, to the
18 Proponent of the Keeyask Generating Station, to
19 the participants, to Manitoba Hydro and to the
20 general public present here today. One of my
21 regrets is that there should be more First Nations
22 present and involved in this process, involved in
23 environmental reviews and studies. Do First
24 Nations lack the required capacity to get on board
25 to achieve standing in these hearings, to

1 participate in environmental reviews? After all,
2 this is their land, this is their water, and this
3 is their resources.

4 It is our duty to protect Mother Earth
5 and the environment. Manitoba Hydro was put on
6 notice in November 18, 2009 when the Southern
7 Chiefs Organization passed a resolution demanding
8 a full environmental audit on its dams, generating
9 stations and converter stations. Thirty-five
10 First Nations which make up the Southern Chiefs
11 Organization have stated their position and yet
12 Manitoba Hydro has failed to address their
13 concerns.

14 Is this indifference driven by the
15 quest for profit? Does the end justify the means?
16 We have to address the process and to ensure the
17 process is fair and just.

18 In the earlier presentation by our
19 Peguis panel, colonialism was referred to citing
20 the history of colonialism in this country and how
21 this colonialism was taken over by Neal Colonius
22 in the request for land, water and resources. To
23 the detriment of our First Nations, of First
24 Nations, in order to legitimize the actions of
25 Neal Colonius, the Provincial Government has set

1 up agencies and organs that assist in achieving
2 the goal, resource extraction from the land and
3 from the water. These organs are derived from the
4 Manitoba Hydro Act and the Environment Act. And
5 of course these organs are directly related to the
6 provincial government and consequently this gives
7 first rise to the notion of bias. Whenever
8 there's bias, the resulting outcomes brings the
9 whole process into disrepute.

10 Is the Keeyask hearing process seen as
11 being fair? From an objective perspective, it is
12 hardly fair to only have six or seven lawyers for
13 the proponents present in the hearing and yet some
14 participants did not have legal counsel to
15 represent them. There ought to be more First
16 Nations at these hearings to present their
17 objective views.

18 It should be noted that some but not
19 many First Nations may share the view of Manitoba
20 Hydro and one has to wonder how that similar view
21 was achieved.

22 You know just to add to that, I guess
23 it makes me wonder, and our people talk about it
24 all the time, how the government and Hydro can
25 move forward with some of the major projects in

1 the north. But without respecting the lives of
2 the First Nations that are affected by many of
3 those projects. We have seen and we have
4 explained to you, we have provided evidence, that
5 many of those projects in the north directly
6 affect our First Nation by compounding the
7 flooding in our community, taking away many of our
8 livelihoods. And as the chief stated earlier in
9 December, we used to have over 75 families farming
10 in Peguis. Since 2006, we're down to three. The
11 flooding and the compound of flooding through the
12 levels of Lake Winnipeg has taken away an industry
13 in our community, our livelihood. And I think it
14 has to go on record and be stated again that the
15 projects to the north are very destructive if not
16 done properly.

17 The Keeyask Generating Station site
18 seemed to attract most of the focus, yet when you
19 look at the integrated hydro system, little or no
20 attention was given to areas that were upstream to
21 the Keeyask dam site. While the Keeyask dam site
22 is the epicenter of the project activity, there
23 are other areas outside the epicenter that are
24 affected, just like an earthquake. Outside the
25 epicenter, there are related concentric circles

1 that describe the areas affected and one of those
2 areas is the Peguis First Nation.

3 We have described those impacts in our
4 earlier submissions in December 2013. In the
5 construction of the previous dams, many wrongs
6 were committed and all those wrongs have not been
7 addressed by accommodation or any other measures.
8 And the pile of wrongs continue to grow creating a
9 quagmire of environmental breaches and breaches of
10 Aboriginal and Treaty rights. Peguis has asserted
11 its rights in the northern part of the province by
12 virtue of its Aboriginal title which has not been
13 extinguished.

14 In the essence, if a legislative
15 scheme, Crown policy or Crown practice or action
16 is to take the rights of Aboriginal people
17 seriously, such a scheme must do more than simply
18 establish any licensing or other resource
19 management system in the public interest.
20 Specifically any legislation or regulatory scheme
21 must be devised in consideration of what
22 Aboriginal Treaty rights might be affected. There
23 must be some evidence of any attempt by the Crown
24 to accommodate. I'll give an expression to the
25 rights in question. In the absence of such

1 accommodation, the Crown risks a finding that an
2 infringement cannot be justified. It must be
3 stated that the sites of the past hydro dams,
4 sites of the proposed hydro dams such as Keeyask
5 and others rest on the lands upon which Peguis has
6 underlying Aboriginal title.

7 In conclusion, Peguis recommends that
8 the Clean Environment Commission recommends that
9 the Keeyask Generating Station be disallowed and
10 our legal team will provide supporting reasons for
11 the recommendation or disallowance, all of which
12 is respectfully submitted.

13 And again, I thank you on behalf of
14 the Peguis First Nation. Thank you.

15 THE CHAIRMAN: Thank you, councillor.

16 MS. GUIRGUIS: Okay. So let me just
17 start off by saying thank you for the opportunity
18 to speak today on behalf of Peguis First Nation.
19 We have heard a lot over the past several weeks
20 about the Keeyask Generation Project, about hydro
21 in the north. We have heard the good, the bad and
22 we have heard what's missing. What's very
23 apparent from everything we have heard over the
24 past few weeks is that there has been a lot of
25 work and effort and expertise in planning, into

1 pushing forward the Keeyask Generation Project.
2 There has been numerous studies and analysis of
3 environmental impacts, physical, aquatic, social,
4 economic, studies about potential effects, designs
5 of plans to deal with the mitigation of those
6 effects. But what we have also heard in the past
7 several weeks is that what has been done isn't
8 enough. There are flaws in the approach, in the
9 methods and in the conclusions.

10 Some of the examples that we have
11 highlighted in our written final submissions,
12 which have been provided to you, and I won't go
13 into too much detail on them here because they are
14 before you and you have, I'm sure, more than
15 enough time to review them, but what I want to
16 highlight here is some of the examples from
17 Peguis's perspective where it just wasn't enough.
18 And you have heard directly from Peguis First
19 Nation members, from Chief Hudson, from Councillor
20 Mike Sutherland, about how Hydro in the North, how
21 hydro development has impacted their community and
22 their lands.

23 So while there's an appreciation for
24 the vast amount of working expertise that the
25 proponent has put towards completing its

1 environmental assessment, completing its
2 environmental impact statement, it's not complete.
3 Peguis submits that what was done is simply not
4 enough. And that's because they didn't ask and
5 they didn't answer all of the right questions.

6 One of Peguis's witnesses, professor
7 Niigaan Sinclair, talked about the significance of
8 gift giving in his presentation. He talked about
9 gift giving and what it represents in the context
10 of Treaty making and the continuing relationship
11 it represents, the rights and obligations that you
12 accept pursuant to that gift giving, pursuant to
13 accepting that gift. And he also referred to
14 Hydro as a gift. And Hydro is a gift. It
15 provides a lot of benefits, it provides jobs, it
16 provides power right to our homes. But it's a
17 mighty and it's a dangerous gift and it's a gift
18 that comes at a great cost to many. And that's
19 what I want to highlight today, is the cost, and
20 what Peguis doesn't want to have to continue
21 paying for this gift.

22 There has been an acknowledgment of
23 some of these costs, of past costs and damages and
24 of some of the costs going forward. And I think
25 that's reflected in who the proponent is in this

1 hearing. The Partnership that exists between
2 Manitoba Hydro and the four Cree Nations that are
3 in the vicinity of the Keeyask Generation Project
4 is a recommendation and acknowledgement of some of
5 these costs, but it's not an acknowledgment of all
6 of the costs.

7 We did hear about the devastating and
8 altering effects that hydro development in the
9 north has on the lands and daily lives of these
10 First Nations, but what about the costs, the
11 direct and indirect effects to others?

12 And that's why Peguis submits that the
13 Keeyask Generation Project should not go ahead.

14 Peguis urges the Commission to
15 recommend to the Minister not to approve the
16 project, because of the adverse effects, because
17 of the shortcomings in the assessment process
18 including a failure to do a proper and adequate
19 cumulative effects assessment with respect to this
20 project and with respect to what Peguis has been
21 talking about for a long time, is doing an overall
22 environmental audit of hydro development in the
23 north. And in shortcomings involving all affected
24 parties and Aboriginal peoples in the actual
25 assessment process.

1 In short, the assessment put forward
2 in these hearings for this project did not look at
3 the true cost of this gift. That, we submit, is
4 for a number of reasons for which I will speak to
5 in my time today. And that is why more questions
6 need to be answered before this project can go
7 ahead.

8 So I want to address a question to
9 begin with of why Peguis is here. The hydro
10 complex to which this project is going to be added
11 comes at enormous costs to Peguis First Nations
12 people in their community. I have said that. And
13 we have said that through the testimony that
14 Peguis members have provided in our panel in
15 December. Unfortunately what we have also heard
16 over the past several weeks are statements from
17 the proponent's representatives that they were
18 unaware that Peguis had any interest in this
19 project. And also maybe we have heard some
20 questions as to why Peguis, the First Nation with
21 its main reserve on the shores of Lake Winnipeg
22 more south in the province, is here and
23 participating in a hearing about a hydro
24 generation project set for the north.

25 Well, I hope that subsequent to

1 Peguis's panel and the evidence provided by
2 Peguis's witnesses, that it's more clear. That
3 it's because of the annual flooding, because of
4 the impacts on its reserve lands and its Treaty
5 land entitlement selection. Because its members
6 have strong connections to the north including
7 exercise of their constitutional rights that
8 continue til this day.

9 But if it's not clear, let me set it
10 out again. This is not about Peguis seeking
11 redress for past damages. Yes, Peguis has felt
12 severe impacts because of the existing hydro
13 development that exists in the north of Manitoba.
14 They felt severe impacts because of flooding,
15 impacts that have been described by Chief Hudson
16 in his testimony as the most serious issue that
17 his community is facing. They felt this in the
18 past and they do take the position and had made
19 that position abundantly clear and put on the
20 public record that the annual flooding and
21 devastation is linked to and compounded by the
22 hydro system of the north. That integrated system
23 draws its water from upstream, from Lake Winnipeg.
24 When dams are put in, like what's being proposed
25 in this project, it affects everything upstream.

1 It affects those inflows of water.

2 So Peguis's interest here? They are
3 concerned with this and any other future hydro
4 development that will compound its existing
5 effects and give rise to new challenges that the
6 community will face. Peguis is concerned about
7 the cumulative ongoing and future adverse effects
8 of hydroelectric developments from the entire and
9 integrated Manitoba Hydro system.

10 And just to add on to what Mr. Madden
11 was alluding to earlier, I believe my friends have
12 said earlier on in this process, it's not just to
13 the lands in the south, the First Nation isn't
14 defined just by their main reserve lands, but to
15 all of their interests all over Manitoba.

16 The Keeyask Generation Project will
17 add to the system. It will add to the significant
18 costs and it is that cost that Peguis is concerned
19 with.

20 So the most critical concern, and I'm
21 sure it's apparent at this point, that Peguis has
22 about this project, the one recommendation that's
23 most important to Peguis and that it's making
24 submissions to the Commission about again in its
25 final arguments is that before any other further

1 hydro development goes ahead, there must be a full
2 environmental audit of the true costs of hydro
3 development on the Nelson Churchill and Burntwood
4 Rivers and on Lake Winnipeg. This must be a
5 transparent independent cumulative effects review,
6 a review that includes the perspectives and input
7 of First Nations and Aboriginal peoples that are
8 directly and indirectly affected by hydro
9 development. Now that point I believe is what is
10 key.

11 The Commission has already rightly
12 made a similar recommendation in the Bipole III
13 hearings and that was the subject of the motion
14 that Peguis First Nation brought before these
15 hearings for the CEC to hold off on making a
16 decision until it had the benefit of that evidence
17 from such a review.

18 But one of the key points is the
19 involvement of First Nations and Aboriginal
20 peoples in this province into such a review. An
21 involvement early on, involvement into designing
22 the terms of reference, reviewing the draft terms
23 of reference. I'm aware, I believe, that there
24 have been draft terms of reference put forward for
25 such a review. I don't have much information on

1 it. I believe it was just mentioned in the reply
2 to the CEC's questions from the proponent's reply.

3 But I don't believe my client's seen
4 it. I don't believe they have had input into it.
5 And that's one of the main problems going forward
6 that we need to address.

7 Peguis has also consistently
8 highlighted the problem of looking at each piece
9 of the puzzle independently. The problem is you
10 can't see the whole picture or you'll avoid
11 purposefully looking at the whole picture.
12 Keeyask can't be considered on its own and that's
13 something that the proponent has admitted to a
14 certain extent. But again, Peguis submits that
15 they have not gone far enough. Because there is
16 no overarching environmental audit to rely upon to
17 get a true gauge of baseline conditions and a true
18 gauge of what the cumulative effects of adding
19 another project will be, and because not enough
20 questions were asked for the cumulative effects
21 assessment for the Keeyask Generation Project in
22 specific, there are ways -- there were ways and
23 there are ways to insist that it's done better.

24 So that is something that I want to
25 talk about next, is how, in Peguis's perspective,

1 it could have been done better.

2 We have heard also during the hearings
3 about the shortcomings and the cumulative effects
4 assessment for this specific project, mainly from
5 the testimony from Dr. Jill Gunn and Dr. Bram
6 Noble. Peguis will want to highlight from its
7 perspective where the analysis and the assessment
8 fell short. The first one is that, and they are
9 related, is that the Partnership failed to
10 identify some key valued environmental components,
11 resulting in an adequate cumulative effects
12 assessment for the Keeyask Generation Project.
13 And Peguis submits that the Partnership failed to
14 assess all relevant, direct and indirect effects
15 of the project. That is, they didn't cast the net
16 wide enough.

17 So we heard a lot of the VEC centred
18 approach. VECs are selected by the proponent.
19 There is a variety of ways we have heard about how
20 they are identified. One of the ways is through
21 conversations with stakeholders. That is, taking
22 into account concerns of those affected when
23 determining what should be a valued environmental
24 component. They also have to take into account
25 the science. What stands to be potentially

1 affected and define VECs in accordance with them.

2 We also heard from representatives of
3 Manitoba Hydro and of the proponent that they are
4 aware of Peguis's concerns, the public statements
5 about concerns about annual flooding that is
6 connected to the system of the north, that this
7 has been put on the record and they understand
8 that this is Peguis's position. We're also
9 talking about the flow of water, connected
10 waterways. So dams, by their very nature, depend
11 on the regulation of water flow. As such, I would
12 say that it seems obvious that there's a need to
13 look at that interconnection of waterways. And so
14 that a VEC should have been identified to ensure a
15 proper look at this. In light of Peguis's stated
16 concerns about upstream impacts, about water
17 levels, we would submit that this should have been
18 part of the assessment. A VEC about the effects
19 upstream, on water levels upstream should have
20 been identified as part of this assessment, as
21 part of good cumulative effects assessment, but it
22 wasn't.

23 What we did hear from the Partnership
24 is the repeated belief that the Keeyask Generation
25 Project will not substantially affect water levels

1 upstream. But without a VEC identified, how did
2 they come to this conclusion? Were the proper
3 questions asked? It's not clear what analysis and
4 assessment was done to come to this conclusion and
5 limit the boundaries of the potential effects and
6 impacts to the zone that they did, which I believe
7 was stated in evidence as being about 41
8 kilometres upstream. And beyond that, they are
9 not going to have any monitoring of water levels
10 to see what added impact Keeyask will actually
11 have. Well quite simply, if you don't ask the
12 question, you can't get the answer. If you don't
13 do the assessment, you can't come to such a
14 certain conclusion.

15 So based on this, Peguis is asking the
16 Commission to recommend to the Minister that the
17 Keeyask Generation Project not be approved until a
18 thorough and independent regional cumulative
19 effects assessment of the Nelson River and
20 Churchill River watersheds and Lake Winnipeg
21 including a full and transparent review of
22 hydroelectric system is completed. That's not
23 new. That in the alternative, Peguis is asking
24 the CEC recommend to the Minister that a condition
25 of the approval of the Keeyask Generation Project

1 is that such a regional cumulative effects
2 assessment of the Nelson River and Churchill River
3 watersheds be completed and that the shortcomings
4 in the cumulative effects assessment done for the
5 Keeyask Generation Project be rectified through a
6 completion of a study about the impacts of the
7 hydroelectric system in the north on waterflows,
8 levels and quality in the south, including its
9 contribution to annual flooding of Peguis's lands.

10 So let me go back to what I was saying
11 about involvement of First Nations and it's
12 related to why I think that these questions
13 weren't asked to begin with in the environmental
14 assessment, in the environmental impact statement
15 that was completed. Why weren't water levels
16 upstream along the connected waterway identified
17 as a VEC, even though Peguis's concerns are stated
18 on the record, in the media, before the UN, in the
19 Southern Chiefs Organization Resolution, in a
20 court claim, in the Bipole III hearings? But what
21 we also heard from the proponent in this hearing
22 is that Peguis wasn't invited to any public
23 participation process until round three of its
24 workshops in the spring of 2013. That's about
25 eight years after the public participation process

1 started, that Peguis First Nation was not
2 mentioned anywhere in its 916 page public
3 involvement volume of the EIS.

4 This is in spite of all the knowledge
5 of everything that's been stated on the record
6 about Peguis's concerns. And I think that this is
7 the reason, we would submit that this is the
8 reason the failure to involve potentially affected
9 First Nations early on and adequately is the
10 reason why you don't end up asking the right
11 questions, you don't end up seeing or dealing with
12 these concerns. And instead, you have a very
13 limited look in the EIS as what the potential
14 impacts are going to be. Those limits, we submit,
15 were not and are not appropriate for this
16 assessment.

17 So we understand and accept the CEC's
18 previous ruling I think in the Bipole III hearings
19 that you're not making any determination about the
20 consultation obligations but it doesn't change the
21 fact that the proponent's assessment necessarily
22 involves questions about how First Nations' rights
23 and lands will be affected. And I'm just saying
24 that it shouldn't be limited to First Nations in
25 the vicinity of the project site. Affects reach

1 farther than that.

2 The assessment process is truly an
3 opportunity to understand and address those
4 concerns from various affected groups, including
5 First Nations. So that decision to create a
6 separate and parallel process, it's a duplicated
7 process. However, it doesn't replace
8 environmental assessment obligations with respect
9 to public consultation and participation.

10 The existence of a separate Aboriginal
11 consultation process doesn't negate the
12 environmental assessment obligations to measure
13 and address impacts of development on affected
14 groups that include First Nations and impacts on
15 their rights. This is what Mr. Madden was just
16 speaking to as well.

17 So let me be clear. Although Peguis
18 First Nation does have entitlement to Crown
19 consultation with respect to impacts on its
20 constitutionally protected 35 rights, asserted and
21 proven, what we're talking about is the need for
22 involvement of Peguis First Nation and other
23 Aboriginal peoples in this province in the actual
24 assessment process before the EIS is completed,
25 before we get to this point, because at this point

1 it's too late. It's too late for that meaningful
2 understanding of those concerns and meaningfully
3 addressing those concerns.

4 The lack of any substantive engagement
5 by the Partnership with Peguis is what results in
6 the failure to acknowledge the concerns to do a
7 full and adequate review. For example, to
8 identify VECs that fully capture the impacts of
9 the project upstream up to Lake Winnipeg. To
10 identify and address impacts of the project on
11 harvesting activities of other Aboriginal
12 harvesters in the region including Peguis First
13 Nation members beyond the four partner Cree
14 Nations.

15 So what I'm really saying is that the
16 remedy is a process that provides early and
17 adequate engagement.

18 So Peguis First Nation gave evidence
19 about its connection in the north and the exercise
20 of its rights in the north and the land use in the
21 area, but there is no evidence that this was taken
22 into consideration by the Partnership in
23 developing the EIS.

24 One of the examples that was
25 highlighted in the hearings and that's highlighted

1 in the written submissions that we have made the
2 recommendations is Peguis's concerns about the
3 viability of moose for continued traditional
4 harvesting by Peguis members. Questions were
5 raised about the assessment, the scope of
6 assessment, the impacts on habitat and also the
7 need to assess moose population availability for
8 harvest given the crash of population in other
9 areas. That was also highlighted in the Bipole
10 III hearings. However, that assessment, that kind
11 of assessment, there is no evidence that that was
12 taken into consideration.

13 Peguis First Nation also gave evidence
14 about its understanding of Treaty promises,
15 obligations and responsibilities and its
16 traditional territory. Where there are
17 obligations, there are claims to territory.
18 There's a responsibility there which settlers
19 agreed to upon signing these treaties.

20 Early and adequate engagement in the
21 assessment process is what is required to better
22 the relationship with Aboriginal peoples part of
23 fulfilling those Treaty promises and obligations.

24 And as noted, what I'm trying to say
25 is that Peguis submits that this is the remedy, is

1 that earlier involvement at the right times would
2 have remedied, for instance, the improper
3 identification of VECs. If Peguis was engaged
4 early on, perhaps those concerns might have been
5 addressed. It would have remedied the fact that,
6 you know, no consideration of Peguis's harvesting
7 activities in the north were taken into
8 consideration in the assessment.

9 So what Peguis is also asking the CEC
10 to do is to continue the trend that it started in
11 the Bipole III proceeding about the improvement of
12 the assessment process in general. Peguis
13 commends that and urges the commission to continue
14 with this and to make recommendations. We have
15 asked for specific recommendations about improving
16 that assessment process. So the first improvement
17 is the earlier and better involvement of affected
18 First Nations, directly and indirectly affected
19 First Nations.

20 So in addition to the above, the
21 examples that I mentioned, it's about involving
22 First Nations in the environmental decision-making
23 process of our resources that the First Nation
24 members rely on. And it's also about increasing
25 Aboriginal representation in all aspects of the

1 environmental assessment.

2 So there was some mention, and it's
3 mentioned further in our written submissions about
4 the examples that exist elsewhere in Canada, the
5 Voisey's Bay Nickel Mine, the Mackenzie Valley
6 Pipeline, the Lower Churchill Hydro Project where
7 Aboriginal groups are included earlier on and are
8 included and participate in establishing the
9 scoping and terms of reference for the
10 environmental assessments, for setting what's
11 required, what's required for the proponent to
12 actually meet, what requirements they need to
13 actually fulfil to be able to get their project
14 approved. It's that kind of early involvement
15 that would remedy the issues that we're talking
16 about.

17 So one of the recommendations that
18 Peguis is asking the CEC to make to the Minister
19 is that the Manitoba Government consider how the
20 environmental assessment process should evolve to
21 reflect the government-to-government relationship
22 between Manitoba and First Nations. By, for
23 example, ensuring Aboriginal participation in
24 determining the appropriate model used for
25 environmental assessment, nominating panel members

1 for assessment bodies, involving First Nations in
2 the initial processes of scoping of and developing
3 terms of reference for environmental assessment
4 reviews, and involving First Nations in the
5 process of identifying the basis and contents of
6 environmental reports, technical reports of all
7 requirements of the proponent.

8 The second recommendation that Peguis
9 is asking for with respect to improvement the
10 assessment process is to avoid project splitting.
11 So Peguis was involved in the Bipole III hearings
12 because they are very interested in -- they have
13 and they are very affected by that transmission
14 line that's going to be crossing through their
15 territory. Now that is, and other converter
16 stations and transmission lines are related to
17 this project, but everything is being kind of
18 assessed very separately.

19 And again, this relates to the
20 problem, and we want to highlight the issue of
21 looking at the piece of the puzzle and not seeing
22 the whole picture. For one, it relies on the
23 viability of another, then they need to be
24 considered together instead of approved
25 separately.

1 There's also the issue of the fact
2 that this hearing and this consideration and this
3 assessment is all taking place before the separate
4 review process that's going to be looking at the
5 need for this project. Now I understand that that
6 is a separate process but how -- it's very
7 difficult to justify going through the costs of
8 reviewing the actual environmental assessment and
9 then going forward and talking about
10 recommendations for approving the project before
11 we even understand or know whether this project is
12 needed or whether appropriate alternatives that
13 would have more benign impacts have been
14 considered and which is preferred.

15 So with respect to that, Peguis is
16 asking the CEC to recommend to the Minister that,
17 for any future projects, the "Needs For And
18 Alternatives To" assessment and all interdependent
19 aspects of a project be assessed in a combined
20 cumulative effects assessment process that reviews
21 and analyzes all key aspects of a project which
22 interact in causing the impacts.

23 With respect to this specific project,
24 Peguis is asking that the CEC recommend to the
25 Minister that no approval be given for the Keeyask

1 Generation Project until the outcome of the PUB
2 hearings.

3 And finally, Peguis is also asking the
4 CEC to recommend to the Minister that in general,
5 for future projects, for assessment of future
6 projects, that all related transmission and
7 converter stations and any other related projects
8 be considered, reviewed and assessed in connection
9 with one another.

10 And the third that I wanted to
11 mention, but I'm not going to go into much detail
12 about, improvements in the assessment process is
13 related to the evidence provided by David
14 Flanders. And I won't go into the technical
15 aspects of it probably because I won't do a very
16 good job summarizing what he went through. But he
17 did provide more information about how GIS mapping
18 and analysis can be an extremely useful tool for
19 doing cumulative effects analysis.

20 And so without repeating all of those
21 technical details, like I just said I wouldn't do
22 a good job of that, we would just state that his
23 work and his approach is a very useful and helpful
24 addition to assessment analysis. So we'd ask the
25 CEC to recommend to the Minister that kind of

1 analysis, that kind of a GIS mapping be used going
2 forward in the assessment of projects for Hydro.

3 So I started off by talking about how
4 hydro itself is a gift but it's one that we need
5 to be wary of and we need to accept with caution.
6 This is because of the substantial cost for this
7 gift. Everything that I have stated here that we
8 have submitted to the Commission for their
9 consideration and that we have said on behalf of
10 Peguis First Nation is about developing a more
11 accountable and cautious approach for accepting
12 this gift.

13 Peguis First Nation believes that we
14 are defined not only by what we create such as
15 dams like this, but by what we refuse to destroy.
16 Peguis has stated clearly that it refuses to allow
17 their lands, their community and the lives of
18 their people to be destroyed by hydro development
19 that does not properly consider the cost of the
20 gift of hydroelectric power. They had been
21 affected dramatically. Peguis has paid the cost
22 for hydro development and for this gift despite
23 the promises made to Peguis through Treaty,
24 promises the province is obligated to fulfil.

25 As we go forward, as the Commission

1 considers what to do and recommend with respect to
2 this project, it's those promises and obligations
3 that need to be remembered.

4 The potential destruction of these
5 promises and obligations is what needs to be
6 avoided before we go ahead and accept the gift of
7 hydro.

8 And I believe I am very significantly
9 under time as well. So if there are any
10 questions?

11 THE CHAIRMAN: Thank you,
12 Ms. Guirguis, Councillor Sutherland. No
13 questions. You are indeed under time. Too bad we
14 couldn't have had all of these people with their
15 short presentations in the months of November and
16 December when we were running behind schedule.
17 But thank you very much for your presentation this
18 morning and thank you to both of you and Ms. Land
19 and others from the Peguis community for their
20 participation. Thank you.

21 The next group is scheduled at 1:30.
22 They are not here yet, so we'll have a long lunch
23 hour. We'll meet at 1:30 and continue with the KK
24 closing argument followed by the proponent's final
25 argument.

1 (Proceedings recessed at 11:08 a.m.
2 and reconvened at 1:30 p.m).

3 THE CHAIRMAN: Okay. We'll reconvene.
4 We have the final closing argument from a
5 participant group, the Kaweechiwasihk
6 Kay-tay-a-ti-suk Inc. from York Landing.

7 Mr. Dolinsky, are you taking the lead
8 on this?

9 MR. DOLINSKY: Well, Mr. Chairman,
10 members of the Commission, the Elders of
11 Kaweechiwasihk Kay-tay-a-ti-suk are prepared to
12 provide their final oral argument this afternoon.
13 To begin, Elder Flora Beardy would like to perform
14 a ceremony, and then I will be able to provide an
15 overview of our submission for the time frame
16 allotted this afternoon immediately after and let
17 you know exactly where we're going and how we're
18 going to do it.

19 THE CHAIRMAN: Thank you.

20 MR. DOLINSKY: Thanks.

21 (Ceremony)

22 MR. DOLINSKY: Now, as I stated,
23 Mr. Chairman, to provide an overview, the elders
24 of Kaweechiwasihk Kay-tay-a-ti-suk provided
25 earlier in December their submission. And the

1 essence of their submission is to stress the
2 importance of their traditional knowledge, and
3 deemed it appropriate that terms of getting across
4 the message in its oral argument, in the clearest
5 and most effective way possible, that the elders
6 themselves would present on the substantive
7 points. And so the elders before you at the table
8 will be presenting on various aspects of their
9 recommendations.

10 As well, I will be making some
11 supplementary comments, and note that
12 Kaweechiwasihk Kay-tay-a-ti-suk intends to file
13 within the necessary timelines a written argument
14 as well to supplement the comments before the
15 Commission today. And the terms of -- and these
16 recommendations will be described fully and in
17 more detail substantively by the elders.

18 Elder Flora Beardy will lead off
19 regarding Aboriginal traditional knowledge being
20 treated as expert knowledge and with equal value
21 and importance to western scientific knowledge,
22 she will expand on that.

23 Elder Doreen Saunders will provide a
24 submission on recommendations that the
25 environmental protection program for the Keeyask

1 project include community specific ATK plans
2 directly incorporated into the environmental
3 protection program. Again, more detail and
4 specifics will be provided on that.

5 Elder Nancy Beardy will provide
6 further commentary on adoption of the process that
7 was put in place for the Wuskwatim project, and
8 that a similar process be established immediately
9 for incorporation of ATK into the environmental
10 protection program.

11 Further, Elder Stella Chapman will
12 provide commentary on the importance of the
13 continuity of the river to be maintained or
14 restored and to mitigate past and future blockages
15 of the river. And this will be, as you recall,
16 commentary regarding sturgeon.

17 Elder Flora Beardy will also provide
18 some comments on restoring balance regarding the
19 fish passages and fish passage enhancements, and
20 hitting some specific recommendations regarding
21 sturgeon.

22 And Elder Elizabeth Beardy will be
23 commenting on a recommendation for a process by
24 which the Aboriginal traditional knowledge and the
25 western scientific knowledge can work together and

1 recognize and protect the woodland caribou, group
2 of woodland caribou of the area that was described
3 in our submission.

4 I, as I have stated, may make some
5 supplementary comments in some of the areas, and
6 as well Elder Flora Beardy may additionally make
7 some supplementary comments in the areas.

8 Before we get into that, the elders
9 have requested that Mr. Michael Anderson, sitting
10 here beside me, make a few comments to honour the
11 recent passing of Elder Eric Saunders of the
12 community, and felt it important that he be
13 honoured prior to commencing the substance of the
14 oral submission.

15 So I'm just going to pass it over
16 briefly to Mr. Anderson.

17 THE CHAIRMAN: Just before we go
18 there, Mr. Dolinsky, I would remind you, and I
19 should have done this at the outset, that you have
20 a total of 90 minutes. I will flash cards, if you
21 get close to the deadline. I'll flash cards at
22 about 10, five and two minutes or something.

23 MR. DOLINSKY: We are cognizant of the
24 time frame and tend to respect the time frame, and
25 so we're prepared to carry on.

1 THE CHAIRMAN: And at 90 minutes, the
2 mic goes dead.

3 MS. ANDERSON: Thank you,
4 Mr. Dolinsky, Mr. Chair, and elders.

5 It's a great honour that I was asked
6 to share a few comments regarding the passing of
7 the late Elder Eric Saunders. It's with a heavy
8 heart that we share with you the passing of the
9 late Elder Eric Saunders of York Factory First
10 Nation on January 7th, 2014 at 6:20 a.m.

11 The late Elder Eric was born on
12 April 5th, 1942 at Kichewaskahekan at York Factory
13 on Hudson Bay coast within the heart of the
14 ancestral lands and traditional territories of the
15 York Factory First Nation.

16 The late Elder Eric loved being on
17 land and was an active hunter and fisher who
18 provided well for his family and community.

19 The late Elder Eric Saunders served
20 the community as Chief of the nation for more than
21 12 years from October 1984 to June 1997, and
22 continued serving his community as councillor for
23 two terms from 2004 to 2008. After serving as an
24 elected official, the late Elder Eric shared his
25 wisdom as a welcomed and valued advisor to chief

1 and council and to the community.

2 During the late Eric's leadership as
3 chief, the York Factory First Nation engaged in
4 the negotiations of the comprehensive
5 implementation agreement under the Northern Flood
6 Agreement. He was involved and directed the
7 negotiations on behalf of the nation with the
8 Wapusk National Park establishment agreement,
9 which established the first management board that
10 was controlled 50/50 by First Nations and the
11 Crown where the park's superintendent was ex
12 officio. He also oversaw the negotiations
13 framework with the Manitoba Treaty Land
14 Entitlement Framework agreement which York Factory
15 has not entered into as yet because of concerns
16 regarding releases of claims that they had
17 regarding the relocations from the coast. So his
18 eye was ever on the rights and interests of the
19 nation.

20 You may be interested to know, and I
21 should add that under the park framework
22 agreement, York Factory First Nation still has
23 rights to select lands inside the boundaries of a
24 national park. So he was a keen negotiator.

25 As a chief, the late Elder Eric was

1 very active with the Manitoba Keewatinowi
2 Okimakanak and the Keewatin Tribal Council.

3 The Late Eric was very concerned about
4 the future of our children and our nation, and was
5 involved in the creation of the Awasis Agency of
6 Northern Manitoba. The late Eric also oversaw the
7 installation of the water and wastewater system in
8 the community of York Landing as part of the
9 Northern Flood reconstruction projects that took
10 place further to the agreement.

11 Before serving his people as chief,
12 councillor and elder, the late Eric worked as
13 financial services advisor for the First Nations
14 of the Keewatin Tribal Council. So the late Eric
15 was a numbers guy.

16 As we celebrate the life of this
17 remarkable man, let us show honour for his
18 fatherhood and leadership, for being a guiding
19 light and a calming sight for his children,
20 family, relations, friends and community. And I
21 am grateful to have called him my friend.

22 Eric was a passionate leader who
23 dedicated his life for his peoples' quest for
24 freedom and the protection of waters and lands,
25 and the exercise of inherent Aboriginal and Treaty

1 rights. Eric was a kind man who spoke clearly and
2 strongly for the rights and interests of his
3 people and for all First Nations.

4 It's notable, of course, that the late
5 Elder Eric is the registrant intervenor in this
6 proceeding. He was the one who signed the
7 intervenor request form for Kaweechiwasihk
8 Kay-tay-a-ti-suk. And so the participation of
9 Kaweechiwasihk Kay-tay-a-ti-suk today is a
10 continuing legacy of the late Elder Eric's
11 leadership for his community.

12 I was asked by the elders to mention
13 that the perspective of the late Eric that I may
14 share with you is that he was very knowledgeable
15 about the Northern Flood Agreement and its future
16 development provisions. He was very knowledgeable
17 about numbers. As I said, he was a numbers guy.
18 And yet he still felt it was very important to
19 ensure and to take substance, support the presence
20 of the Kaweechiwasihk Kay-tay-a-ti-suk here before
21 you to provide their thoughts on the Keeyask
22 project.

23 And with those directions and with the
24 great honour of being able to share these
25 comments, I turn the microphone back to Ken, and

1 I'm sure you will all join me in sending your
2 prayers and condolences to the family and to the
3 community of York Factory First Nation, who have
4 indeed lost a great leader this week. Egosi.
5 Kinanaskomitinawow. Thank you.

6 MR. DOLINSKY: Now, Mr. Chairman, I
7 begin a substantive portion with Elder Flora
8 Beardy, and I'll just give way to her.

9 THE CHAIRMAN: Go ahead.

10 MS. F. BEARDY: I want to talk about
11 the Inninew Kiskaytomowin, which is Aboriginal
12 traditional knowledge. Inninew Kiskaytomowin,
13 Aboriginal traditional knowledge, must be treated
14 as expert knowledge and with equal value and
15 importance to western scientific knowledge, which
16 we call (Cree spoken) Kiskaytomowin. Aboriginal
17 traditional knowledge must be considered first in
18 order to guide the technical science work. In
19 this way, western science will be coordinated and
20 harmonized with Aboriginal traditional knowledge
21 in the design, implementation and monitoring of
22 the Keeyask project.

23 Western science must be coordinated,
24 harmonized and integrated with Inninew
25 Kiskaytomowin to ensure that Aboriginal

1 traditional knowledge is not approached as an add
2 on to the design, implementation and monitoring of
3 the Keeyask project or as an add on to the
4 environmental protection program.

5 Monitoring programs should be in
6 accordance with the moons and seasons of the Cree
7 calendar. There are six seasons and 13 moons as
8 shared by Elder Linklater in the last round.

9 Elements of the Commission's findings
10 regarding the consideration of Aboriginal
11 traditional knowledge for the Wuskwatim generation
12 project are relevant to the Keeyask Generation
13 project. In particular, part 1.6.1, traditional
14 knowledge of the September 22, 2005 report on
15 public hearing for the Wuskwatim Generation and
16 Transmission projects of the Clean Environment
17 Commission, which states at page five, in this
18 report, the commission uses the terms western
19 scientific knowledge (Cree spoken) Kiskaytomowin,
20 and traditional scientific knowledge, Inninew
21 Kiskaytomowin, and accords them equal importance
22 and value throughout the report.

23 The Kaweechiwasihk Kay-tay-ti-suk
24 recommends that the Commission recognize
25 traditional scientific knowledge as expert

1 knowledge that is treated with at least equal
2 value and importance by the Partnership and
3 regulators concerning the project design,
4 construction and operation, the environmental
5 impact statement, the environmental protection
6 plans, the environmental monitoring plans, and the
7 environmental and project management plans, and
8 should coincide with our moons and seasons in the
9 Cree calendar.

10 I'll pass it on to Elder Doreen
11 Saunders.

12 MS. SAUNDERS: That the environmental
13 protection program for the Keeyask project must
14 include the completed community specific ATK plans
15 and the direct incorporation of ATK into the
16 environmental protection program. These ATK plans
17 must be part of, or attached to the project
18 licence and so form part of the licence
19 conditions.

20 The Kaweechiwasihk Kay-tay-a-ti-suk
21 recommend that the Commission recommend completed
22 ATK plans and the direction, incorporation of ATK
23 into the environmental protection program in the
24 manner similar to the Nisichawayasihk Aski Kitche
25 O'nanakachechikewuk process as described by D'Arcy

1 Linklater in Exhibits KK-006 through KK-019 and
2 KK-025 must form part of, or attachment to the
3 project licences, and so form part of the licence
4 conditions.

5 And I'll pass it on to Elder Nancy
6 Beardy.

7 MS. N. BEARDY: Kaweechiwasihk elders
8 adopt NKO process of being, to the Keeyask
9 project. We recommend the Commission make an
10 interim recommendation that a similar process be
11 established immediately for Keeyask project in
12 order to incorporate ATK portion directly into
13 each element of the environmental protection
14 program for the Keeyask project.

15 The KK recommend the Commission make
16 an interim recommendation, the process similar to
17 the NAKO process as described by D'Arcy Linklater
18 in Exhibit KK-006 through KK-019 and KK-025 should
19 be established immediately for the Keeyask project
20 in order to incorporate the ATK directly into the
21 environmental project program.

22 MS. F. BEARDY: Kaweechiwasihk
23 Kay-tay-a-ti-suk recommend that the Commission
24 make an interim recommendation that an arrangement
25 for the protection and disposition of found

1 non-forensic Aboriginal human remains, grave goods
2 and artifacts in a manner substantially similar to
3 the Manitoba Nisichawayasihk protocol on Heritage
4 Resources be established for the Keeyask project.

5 I'll pass it to Elder Stella Chapman.

6 MR. DOLINSKY: Sorry, I'll make a
7 supplementary comment on this later when the
8 elders have completed their comments.

9 MS. F. BEARDY: Elder Stella Chapman.

10 MS. CHAPMAN: The continuity of the
11 river must be maintained, and what can be done and
12 must be done to mitigate the -- reconcile past and
13 future blockages in the river.

14 MS. F. BEARDY: In order to ensure
15 progress toward achieving Kwayaskonikiwin, which
16 means to make things right, we recommend that the
17 Commission recommend a process by which Inninew
18 Kiskaytomowin and (Cree spoken) Kiskaytomowin, ATK
19 and WSK, will work together to identify and
20 implement fish passage and fish passage
21 enhancements, and enhancements to fish habitat,
22 including Keeyask fish passage as required by
23 Fisheries and Oceans Canada, in the project
24 design. Kelsey fish passage built at the site of
25 the original Kelsey Rapids, or misipawistik.

1 Kelsey spawning site, spillway operation and
2 enhancements to create spawning habitat for namao,
3 which is sturgeon and other fish species. Kelsey
4 discharge deflection, addition of in stream
5 structure to deflect flows downstream.

6 Kaweechiwasihk Kay-tay-a-ti-suk
7 recommends that the Commission recommend that
8 measures to mitigate the adverse effects of the
9 Keeyask Generation project on lake sturgeon should
10 broadly examine innovative measures to mitigate
11 adverse effects on lake sturgeon, and to enhance
12 sturgeon habitat and populations in both the upper
13 and lower reaches of the Nelson River,
14 particularly in the area of the multiple
15 confluences with the Nelson River, of the Grass
16 River, Burntwood River, Odei River, and Sipiwesk
17 Lake area.

18 I'll pass it to Elder Elizabeth
19 Beardy.

20 MS. E. BEARDY: Thank you, Flora.

21 The Commission should recommend a
22 process which by which ATK, Aboriginal traditional
23 knowledge and WSK, western science knowledge, can
24 work together to recognize and protect Noschimik
25 Atikok, being the group or herd of boreal woodland

1 caribou which has been long recognized by ATK, and
2 more recently by the western science knowledge,
3 and in the Bipole III and Keeyask hearings as
4 being resident in a general area of the Keeyask
5 project.

6 Kaweechiwasihk Kay-tay-a-ti-suk
7 recommend that the Commission recommend taking
8 immediate steps to resolve the differing
9 description of the Noschimik Atikok herd which
10 appear to be in the material filed as part of the
11 Bipole III Transmission project and the Keeyask
12 Generation project, being characterization in the
13 Bipole III material of Noschimik Atikok as coastal
14 caribou or the Gillam area Pen Island herd, and in
15 the materials filed as part of the Keeyask
16 Generation project being the description of the
17 Noschimik Atikok herd as summer resident caribou.

18 Kaweechiwasihk Kay-tay-a-ti-suk
19 recommend that the Commission recognize the
20 Noschimik Atikok herd as a distinct herd of the
21 resident boreal woodland caribou and that
22 appropriate steps be taken to recognize and
23 protect the Noschimik Atikok herd, to identify
24 appropriate measures to mitigate the impacts of
25 the Keeyask project on the Noschimik Atikok herd.

1 Kaweechiwasihk Kay-tay-a-ti-suk also
2 recommend that the Commission make interim
3 recommendation to immediately establish a project
4 for ATK and WSK to work together and recognize and
5 protect Noschimik Atikok including, as a possible
6 outcome of this initiative, the recognition and
7 inclusion of Noschimik Atikok herd in Manitoba's
8 Conservation and Recovery Strategy for Boreal
9 Woodland Caribou, rangifer tarandus caribou, for
10 the possible inclusion in an updated action plan
11 for boreal woodland caribou ranges in Manitoba.
12 Thank you.

13 MR. DOLINSKY: Mr. Chairman, our
14 submission will be well within the 90 minutes, but
15 I'm going to make some supplementary comments on
16 some of the points touched upon by the elders.
17 And as I have noted, many of the points,
18 particularly those with more specific references
19 to the mountains of material that are before the
20 Commission, we deem more appropriate to put in a
21 follow-up written submission. I will be making
22 some specific references, but you'll see more in
23 the written submissions.

24 Now, just regarding the
25 recommendations on treating Aboriginal traditional

1 knowledge as expert knowledge, and afforded equal
2 value and importance to western scientific
3 knowledge, that is a theme that pervades the
4 submissions and recommendations of Kaweechiwasihk
5 Kay-tay-a-ti-suk. And they are specifically borne
6 out in the recommendations regarding the sturgeon
7 and regarding the boreal woodland caribou. But
8 the importance, and I think it is picked up in
9 Dr. Terry Dyck's presentation as a person who is a
10 western scientist for decades, who said, in terms
11 of doing good research, if we're talking about
12 marrying the two concepts, and admittedly, perhaps
13 sometimes with different worldviews, or often, his
14 comments were, as a western scientist was that the
15 Aboriginal traditional knowledge should be the
16 baseline. It's the starting point. And without
17 it, in his view, scientific study had a great risk
18 of being flawed. I'm not quoting him, but that's
19 what I take from his comments.

20 So we see a natural connection between
21 those concepts, and a manner in which the two
22 different concepts can be reconciled and can be
23 treated equally.

24 And in terms of the purpose of the
25 elders being here, and you heard the comment, it

1 was in the submission and it was repeated here
2 this afternoon, specifically with respect to the
3 continuity of the river. And it was what can be
4 done, must be done.

5 And as you heard from the elders, when
6 they made their December 12th submissions, they
7 were not here to oppose, they were here to assist
8 and make recommendations so the project may be
9 done better, to prevent, to mitigate and to
10 restore balance where necessary.

11 So, they see better ways or a better
12 way, and they believe then, therefore, it is their
13 duty to bring forth those recommendations to the
14 Commission's attention. It's what they can do, so
15 they must do.

16 Now, in respect of the existing
17 incorporation of Aboriginal traditional knowledge,
18 they wanted to raise concerns and highlight the
19 necessity for incorporation of Aboriginal
20 traditional knowledge, because the information
21 before the Commission suggested that the
22 Aboriginal traditional knowledge and customary law
23 principles have not yet been incorporated into
24 documents relating to this project. And in the KK
25 information requests, there was -- there are first

1 information requests, so that would be KK 1, and
2 question 7, it was acknowledged by the Proponent
3 that there are no community based, community
4 specific ATK monitoring plans in place yet. So
5 that's one of their core recommendations, that
6 those need to be done, those need to be done
7 immediately. So that caused them concern.

8 In addition, there were the general
9 questions, responses. And I think it was response
10 to question 39 in the general questions where the
11 Proponent has stated there aren't agreements yet
12 in place regarding heritage resources.

13 And so those are examples of things
14 where, you know, it's not the elders' words, but
15 my words, it's time to get on it, time to be done,
16 and those things should be done sooner than later
17 in their view. And that there is a template for
18 the Wuskwatim project and that is, they are
19 suggesting, not to reinvent this wheel but to
20 follow that model in doing so.

21 So those are the comments I have,
22 supplementary comments I have on that subject.

23 Regarding sturgeon and the continuity
24 of the river, and I'm not going to make lengthy
25 comments on that, you heard testimony from

1 Dr. Terry Dyck about, as I have already talked
2 about, the connection and importance of Aboriginal
3 traditional knowledge as an appropriate baseline
4 for western scientific study. And he is
5 supportive of the continuity of the elders' view
6 that the continuity of the Nelson River through a
7 fish passage at Kelsey is important to connect the
8 populations of sturgeon above and below Kelsey and
9 this, you know, the elders' view on this is the
10 river should not be treated as -- it's the Nelson
11 River and should not be treated as a group of
12 distinct and discrete projects, but as a whole to
13 the extent possible.

14 And he commented on how the Aboriginal
15 traditional knowledge from the elders and
16 community members of York Landing, they reported
17 that the sturgeon had moved up and downstream
18 prior to the construction of the Kelsey dam. And
19 I won't bore you with the references now, but we
20 will be sure to put the specific references from
21 his, from the transcript and his comments in our
22 written submission.

23 And so he pointed out that there is
24 some contradiction between the Aboriginal
25 traditional knowledge in this area and what he

1 viewed as some limited sample size of western
2 scientific study.

3 This, in his view, and the view of the
4 elders, creates a question that calls out for more
5 study and care taken to look at the beneficial
6 effects of restoring the continuity of the river
7 where possible. You have heard some very specific
8 recommendations that were made. And again, we'll
9 detail them somewhat more in the written
10 submission.

11 You know, we know that through some of
12 the exhibits, such as KK 24, and some materials
13 from Dr. Dyck, the fish passage up and downstream
14 has been identified by the Department of Fisheries
15 and Oceans as a key priority to monitor for
16 Keeyask. So these are important concepts that the
17 elders are pushing, but they are certainly not
18 pulling them out of the air, and they are
19 certainly not entirely inconsistent. And in fact,
20 I'd suggest are consistent with western science as
21 proposed by the Department of Fisheries and
22 Oceans.

23 So in the view of the elders, and
24 adopting Dr. Dyck's comments, in order to truly
25 incorporate ATK, elders should be involved in the

1 design and implementation and monitoring of the
2 studies. That's what he meant by, you know, there
3 needs to be a baseline, not as an add-on at the
4 end. That makes it more difficult, that creates
5 more contradiction because what you essentially
6 have is you have one method of doing something,
7 and then the ATK coming as an add-on with greater
8 potential for contradiction where the two haven't
9 been, you know, communicating from the start.

10 So give consistency a chance by having
11 the Aboriginal traditional knowledge there as a
12 baseline, or at least there at the beginning with
13 the western science so that assumptions can be --
14 questions can be asked, assumptions can be
15 challenged and, you know, information can be
16 empirically tested, and that creates an
17 opportunity for that type of reconciliation. If
18 you do parallel streams or independent, one added
19 after the other, then I suggest that the results
20 will be replete with inconsistency.

21 So those are my comments regarding the
22 sturgeon and the continuity of the river. We will
23 be making some more comments, both in terms of
24 what I have said and to supplement, based on some
25 of the very specific recommendations adding some

1 reference to the materials on why those specific
2 recommendations are appropriate and supported by
3 the information and the science and the Aboriginal
4 traditional knowledge.

5 Now, turning to the caribou. And in,
6 I believe it was the information request round two
7 and question 16, there were questions posed, KK
8 16, regarding -- I won't go through the questions
9 because there is a long question with follow-ups
10 and a full response by the Proponent, but also
11 reference was made in that response -- yes, that
12 was information request round two, number 16 --
13 reference was made in that request generally to
14 the supplemental -- sorry, it's called the Bipole
15 III Transmission Project Supplemental Caribou
16 Technical Report, and as a basis for the
17 Proponent's response, without specific reference,
18 it is just here's the report, which is fine.

19 In terms of what the elders team has
20 looked at is that there are points in the report
21 itself that support the Aboriginal traditional
22 knowledge and the reporting by the community that
23 there is a resident group of caribou.

24 Now, you heard on December 12th from
25 Elder Flora Beardy who said, well, how do I know

1 about them? I've seen them. Was I the first to
2 them? Well, no, my parents and my grandparents
3 and family members and community members long
4 before have seen them. They have a name. We
5 didn't come up with that name recently, that
6 name's been around for longer than she's aware.

7 So there is your Aboriginal
8 traditional knowledge, there is your -- and I
9 would say firsthand accounts, but the technical
10 report -- and again, we'll make some more detailed
11 reference to it in the written submission --
12 looking around particularly page 78 of that
13 supplemental caribou report, there is information
14 noted in there that is suggestive that there is
15 such a group. And so, for instance, on page 78,
16 there is a reference to animals that consisted --
17 a group that had animals that summered in the
18 immediate vicinity of Gillam and ranged eastward,
19 and a second which summered in the Gillam area and
20 ranged thereabouts. The fact that there were two
21 groups identified as summering in Gillam is a
22 significant point.

23 There was also reference to animals
24 summering throughout the year -- or sorry, being
25 resident throughout the year and ranging no

1 further than 70 kilometres from the town in winter
2 and early spring, and remaining within 25
3 kilometres during the summer and fall. That's
4 again on page 78 of that report.

5 Not suggesting that that is conclusive
6 proof, but it is certainly supporting evidence and
7 suggests, emphasizes the need for a greater study
8 to look into that. And it leads back to the, I
9 would say, pervading theme of the necessity of the
10 Aboriginal traditional knowledge, which is the
11 work is not done adequately, and it can be done
12 better if the Aboriginal traditional knowledge is
13 not incorporated at an early stage, or as Dr. Dyck
14 referred to it as a baseline.

15 There are more references on page 78,
16 page 81, there are some references regarding
17 summer calving use of Pen Island caribou near the
18 Bipole III project infrastructure. We'll make
19 some reference to that in the materials.

20 And reference on page 82, that the
21 caribou which summer in the Gillam area are
22 referred to as migratory woodland caribou. And it
23 goes on to note that this description would appear
24 to appropriately describe their behaviour. And
25 there's a map, map 20 in that report that shows

1 sort of a core use area for summer overlapping,
2 and a winter core use area in close proximity of
3 the Keeyask area, which is suggestive of resident
4 group of caribou.

5 So those are just, I'm not going to go
6 on further with that on a list of references, but
7 I thought it was important at least to point out
8 that within the existing materials, consistent
9 with the knowledge that was imparted by Elder
10 Flora Beardy about a resident group, the existing
11 western materials are also, I would say,
12 suggestive of such a group as well, and so merits
13 a look at the elders' recommendation in that
14 regard.

15 I don't think that I could add
16 anything more eloquent or better than the manner
17 in which the elders have expressed it. So subject
18 to any questions that the Commission may have, or
19 specifically of the elders, that would wrap up the
20 oral part of Kaweechiwasihk Kay-tay-a-ti-suk's
21 oral submission.

22 THE CHAIRMAN: Thank you,
23 Mr. Dolinsky. There don't appear to be any
24 questions, so thank you very much. And a special
25 thank you to all of the elders, the front bench

1 and the back bench as well, for coming into
2 Winnipeg to make your presentations here today.
3 Thank you very much.

4 MR. DOLINSKY: Thank you,
5 Mr. Chairman.

6 THE CHAIRMAN: It's 2:15. We'll come
7 back at 2:30, and I presume that the Partnership
8 is ready to go at any time. So 2:30.

9 (Proceedings recessed at 2:15 p.m. and
10 reconvened at 2:30 p.m.)

11 THE CHAIRMAN: Okay. Can we come to
12 order, please?

13 I must admit I feel a bit like a kid
14 on the last day of school, one more class and
15 we're done.

16 We have the final presentation by the
17 Partnership. They have two hours to conclude
18 their presentation. And you probably know the
19 drill by now, if you get close to the two hour
20 mark, I'll start flashing cards, and at 120
21 minutes, Frank will cut off your mic.

22 So I'll turn it over to the
23 Partnership, whoever is taking the lead.

24 MR. REGEHR: Mr. Chair, before the
25 lawyers commence with the closing arguments,

1 Ms. Saunders here has something she would like to
2 say to the Commission.

3 MS. SAUNDERS: Good afternoon,
4 Commission. I have before me our community pipe.
5 This pipe was used in ceremony in York Landing by
6 our chief, and our chief brought it down to
7 Winnipeg to me and Ted to carry, and we have had
8 it here throughout the hearings. I have brought
9 it here everyday that I could carry this pipe, and
10 prayers were said for our First Nation and for our
11 people that we move forward and this process be
12 guided in a good way. So I have this pipe before
13 me. We didn't know when it would present itself,
14 but it's presenting itself now. So we thank you
15 for this opportunity. Egosì.

16 THE CHAIRMAN: Thank you.

17 MS. ROSENBERG: Thank you,
18 Mr. Sargeant. Thank you to the Commission for the
19 careful work you have done to listen to everything
20 that has come before you here. You are a citizen
21 panel listening to citizens speak and it's an
22 important job to do. It's a difficult job to do.
23 The quality of attention that it takes and the
24 dedication and the commitment is much appreciated
25 by everyone who has participated.

1 I also want to remind you that your
2 recommendations matter. You might recall that you
3 have heard something about the coordinated aquatic
4 monitoring program that Manitoba Hydro has
5 implemented over the last several years. That
6 program is a direct result of comments that were
7 made in the Wuskwatim report. It's resulted in
8 the assembling of all of the 30 years of
9 information that was on the record in various
10 places, and it's resulted in the use of that
11 information in a coordinated way to understand
12 monitoring efforts, and plan them and carry them
13 out on a permanent going-forward basis.

14 I want to speak for a minute also
15 about the importance of Manitoba Hydro. Many of
16 the participants here have acknowledged the
17 importance of Manitoba Hydro to the public
18 interest. We have in this province a utility
19 which is a Crown corporation, and its sole job is
20 to act on behalf of the people of Manitoba. Its
21 duty is to the people of Manitoba.

22 You have a heard from Mr. St. Laurent
23 how Manitoba Hydro plans for the future. And we
24 have had many participants acknowledge the
25 importance of a secure, reliable source of

1 renewable energy for today and for the future of
2 our province. But you should know that contrary
3 to what you have heard from some of the
4 participants, that this province will need the
5 power represented by Keeyask for domestic purposes
6 to serve Manitobans by approximately 2023.

7 Now, before we turn to the Keeyask
8 project specifically, one word about the role of
9 the Environment Act. We are at 25 years
10 approximately from the adoption of that
11 legislation. And although it may not be the kind
12 of very detailed robust environmental impact
13 assessment, rules that are in the legislation,
14 that is in some other jurisdictions. What we have
15 accomplished with that Act is not inconsiderable.
16 A decision was made 25 years ago to set a
17 requirement that projects be licensed, and that
18 before they build, proponents have to come to the
19 regulators with information about environmental
20 impact and that environmental impact be considered
21 in a licence with comprehensive terms. That is no
22 small achievement.

23 Now, you had the opportunity to listen
24 to a lot of evidence. Part of what you heard was
25 some of us engaging with the various experts that

1 were brought before you, and some of those were
2 people who are proponents of robust cumulative
3 environmental impact assessment. And they are
4 good advocates for that process.

5 I want to read you something that was
6 said in the course of that discussion about the
7 purpose of environmental impact assessment.

8 "We need to remember that
9 environmental impact assessment should
10 not be seen as a mechanism for
11 preventing development that might
12 generate negative environmental
13 effects. If that were the case, very
14 few developments would take place."

15 Now, you might think that those were
16 my words since I acted for proponents, not just
17 Manitoba Hydro or this proponent, but lots of
18 industries. You might think those were my words,
19 but they weren't. Those were words I read to
20 Dr. Noble and he confirmed that those were his
21 words.

22 And another thing that I read to him
23 that he confirmed was that the most important
24 result of all, out of environmental impact
25 assessment in the project specific context, is the

1 planning that the proponent does to make the
2 project environmentally acceptable. And that's
3 what I suggest to you is the result that you have
4 seen here. That's what we say the evidence, the
5 entirety of the evidence shows you the proponent
6 has achieved in this proposal. And that is the
7 intent of our legislation.

8 Now, specifically why should this
9 project be approved? Firstly, we would ask you to
10 consider the proponent. I invite you to reflect
11 on what it means for Manitoba and for all of us as
12 citizens, that we can reflect on the past and do
13 better. Reflect on what it means, please, that
14 four local communities used an environmental
15 impact assessment process of their own design,
16 based on Aboriginal traditional knowledge, to help
17 them reach democratic decisions that protect the
18 environment, develop their identity, promote
19 justice, and encourage economic development.

20 Now, you heard from a number of
21 professors who support community economic
22 development, who support community based
23 democratic processes. Well, these four First
24 Nations didn't theorize about it. You're going to
25 hear from their counsel in more detail about what

1 it means to them to have actually carried it out.

2 THE CHAIRMAN: Ms. Rosenberg, perhaps
3 we can take a minute and the front table could get
4 all their questions cleared up. It's very
5 distracting to listen to you while there's
6 whispering going up and down and notes going up
7 and down the front table.

8 MS. ROSENBERG: Forgive me.

9 THE CHAIRMAN: Okay, thank you.

10 MS. ROSENBERG: Secondly, we would ask
11 you to consider the excellence of the assessment.
12 Mr. Sargeant, you said at the outset that the
13 standard to meet is to ensure that this project,
14 if it is to be built, does not result in any
15 serious and ongoing damage to the environment.
16 You have heard environmental assessment theorists
17 advocate for a cumulative effects assessment takes
18 account of the impacts of the past. From the
19 teams of engineers and scientists who appeared
20 before you, you heard about how they did that in
21 reality, how they applied the skills of their own
22 disciplines to take account of the cumulative
23 impacts of the past.

24 When you retire to deliberate, please
25 remember all of the careful work that was done.

1 You might remember Mr. Davies, at the very
2 beginning, explaining to you how information about
3 the past was collected and used in this
4 assessment, how that information was used to plan
5 the studies and assess impacts to water quality
6 and fish.

7 Now, you have also heard those
8 advocates tell us to choose VECs that are
9 important measures of what matters to people
10 affected by the project and what matters to
11 environmental health, VECs that certainly will be
12 impacted by the proposed development. I invite
13 you to look again at the list of VECs. You can
14 find them in the information request CEC 20, or
15 you can review the slides from the presentations
16 that were given to you here.

17 When you review those VECs, you will
18 have no doubt that each one is connected to all of
19 those impacts.

20 And you had been told that impacts
21 should be assessed by considering everything that
22 affects those VECs, today, with the project,
23 tomorrow, with the project, and with any other
24 future projects. You heard from each of the
25 panels that the proponent put forward exactly how

1 they carried that out. You might, as an example,
2 keep in mind the insight that Dr. Ehnes provided
3 you when he described for you how he worked on the
4 intactness VEC in the terrestrial assessment, how
5 the analysis went right back to pre-development
6 conditions.

7 And you have heard about how the
8 significance of impacts on VECs should be assessed
9 against the health or the sustainability of those
10 VECs using benchmarks set for ecosystem health.
11 You heard also from the scientists on those panels
12 how they did just that for each and every one of
13 those VECs, setting those benchmarks well below
14 any tipping point. And this is what is meant by
15 cumulative effects assessments that is VEC
16 centric, not project centric.

17 You heard a lot about the way the
18 spatial scope of the assessment should be
19 determined. The principle that Dr. Noble's book
20 talks about as using a region that reflects the
21 maximum zone of detectable influence. You heard
22 that we have to understand which populations are
23 affected and take into account all the other
24 influences on those populations, and that we have
25 to make sure that the assessment considers the

1 whole of the geographic area used by those
2 populations.

3 The pathways diagram that was the
4 beginning for those theorists was also the
5 beginning for the teams of scientists that you saw
6 come before you, and the work, the reality of the
7 work that they did for over a decade. You have
8 seen for yourself how all of those linkages were
9 assessed and considered.

10 You had the opportunity to test this
11 evidence, and you had the opportunity to hear
12 participants test this evidence, and that for sure
13 was a critically important aspect of this process.

14 You heard me engage with the
15 participants' experts who advocate robust
16 cumulative effects assessments, and you heard some
17 of the acknowledgments that were given by those
18 experts in the course of that examination.

19 Please consider what you have heard,
20 and I believe you will come to the conclusion that
21 every single one of the principles of cumulative
22 effects assessment that you have heard advocated
23 for in this hearing, and in the ones that have
24 come before, have been applied in this assessment.
25 I urge you to acknowledge that in your report.

1 Your words matter. They matter to the dedicated
2 scientists and engineers and traditional knowledge
3 holders who did this work, and they matter to
4 Manitoba.

5 Now, what that means is that the goals
6 of regional cumulative effects assessment have
7 been achieved for this project. This cumulative
8 effects assessment accounts for the past and it
9 accounts for the future. It considers all of the
10 impacts to each VEC, not just the ones related to
11 Keeyask. This cumulative effects assessment
12 assesses the significance of effects against the
13 health of each VEC, the sustainability of each
14 VEC, exactly as all the philosophers of cumulative
15 effects assessment have advocated. This
16 cumulative effects assessment was scoped to
17 include the broad geographic regions which are
18 relevant to each VEC.

19 And for all of those reasons, you can
20 be confident that the record that you have created
21 contains everything the Minister needs to approve
22 and to set the conditions for this project.

23 Now, in the Bipole III hearing, you
24 recommended that Manitoba take a look at the
25 impacts of past Hydro development in the Nelson

1 River watershed. And the Minister has taken up
2 your advice and this work is under way. You have
3 achieved that. The Minister will consider how to
4 use that information in the future, and that will
5 be useful. But you should be confident that
6 everything that you need to complete your work on
7 this project on Keeyask is before you.

8 Now, you didn't hear, in the course of
9 this hearing, you didn't hear about impacts of
10 past development by Manitoba Hydro on areas not
11 affected by Keeyask. And that's because it was
12 not related to the impacts of Keeyask and the
13 cumulative effects of the Keeyask project, but not
14 because it hasn't been done. Question 20 in your
15 final questions to the Proponent takes up some of
16 those issues. And in that answer, you see an
17 outline of some of the enormous work that's been
18 done over the three decades.

19 I want to remind you that no one has
20 said that there will be no adverse effects, no one
21 has said that there will be no adverse cumulative
22 effects, and no one has said that there will be no
23 adverse residual cumulative effects. These are
24 acknowledged. What we have said is that these
25 residual adverse cumulative effects can be managed

1 to the point of acceptability. And I'd like to
2 take credit for that term because it's so elegant,
3 but it's not mine, I think you remember.

4 This project has been planned so that
5 it will not result in any serious and ongoing
6 damage to the environment. But that doesn't mean
7 the work is over. In fact, this work is just
8 beginning. If this project is approved, there
9 will be management to undertake and there will be
10 the uncertainty in that project to manage. And in
11 a minute Ms. Mayor is going to speak to you about
12 how the Partnership plans to do that.

13 Before she does that, a final word
14 from me about the challenge that the CEC now
15 faces. We recognize the challenge that you have
16 in developing licensing conditions that are both
17 appropriate and practical. One aspect in
18 considering the practicality of such conditions is
19 whether they can, in fact, readily be implemented
20 by a Partnership comprised of a Crown corporation
21 and four distinct Cree Nations who are already
22 operating under complex arrangements with their
23 own unique dynamics.

24 We suggest that the answer to your
25 problem is simple. Hold us to the promises that

1 the Partnership has made, hold us to each and
2 every one of them, and that will be a good
3 reflection on this process and on the work that
4 has to be undertaken in the future.

5 Now you're going to hear from
6 Ms. Mayor about how uncertainty is going to be
7 managed.

8 MS. MAYOR: The theme of uncertainty
9 has been raised by a number of the participants at
10 this hearing and during the course of closing
11 argument. We have heard them say, delay this
12 project until that uncertainty has been resolved.

13 The reality is that no level of study
14 or analysis or assessment can completely eliminate
15 uncertainty in environmental assessment.

16 During the hearing, one of the
17 participants put a motherhood statement, as they
18 called it, to the environmental assessment
19 approach panel. He said words to the effect that
20 environmental assessment done well appropriately
21 outlines its level of confidence, as well as
22 limitations and uncertainties. That statement
23 recognizes the inherent uncertainty that exists in
24 the field of environmental assessment, even when
25 it's done well or is best practice.

1 One witness even provided a quote from
2 Mr. Rumsfeld wherein he spoke of the known knowns,
3 the known unknowns, and unknown unknowns, and she
4 cited this as an excellent definition of
5 uncertainty in the context of resource management.

6 Uncertainty is a reality when it comes
7 to managing systems and projects. Predictions and
8 ultimately decisions must be made with the best
9 information available. Then adaptive management
10 during project implementation must be used where
11 necessary.

12 This is the crux of sound
13 environmental assessment, licensing and
14 management. Uncertainties are inherent in
15 environmental assessment. After all, we're making
16 predictions about the response of many
17 environmental parameters to the implementation of
18 a major development.

19 It is the Partnership's view that it
20 has gone through extensive efforts to minimize
21 uncertainty, to clearly acknowledge where
22 uncertainty exists, and to put plans in place to
23 address this uncertainty through its approach to
24 project planning and assessment. You heard
25 Ms. Rosenberg speak about the VEC based approach

1 to cumulative effects assessment. That's one of
2 the important measures to address uncertainty,
3 because it considers all effects on a VEC
4 regardless of its source.

5 The Partnership has also ensured
6 uncertainty using four other methods, to name but
7 a few. One, a decade of in-depth study and
8 analysis based on both western science and
9 Aboriginal traditional knowledge. Two, a
10 comprehensive engagement process with our
11 partners, other Aboriginal communities and
12 organizations, and both Provincial and Federal
13 regulators. Three, ongoing application of the
14 precautionary approach and the development of
15 detailed mitigation measures to address effects.
16 And fourth, a commitment to ongoing monitoring and
17 adaptive management for the life of the project.

18 And I'd like to just take a few
19 minutes to speak about those key steps taken by
20 the partnership to increase certainty and improve
21 confidence in its assessment results.

22 The first point I had made was the
23 decade of in-depth study and analysis. You'll be
24 pleased to know that I am not going to review the
25 list of technical reports and studies done by so

1 many talented and extraordinarily competent
2 individuals over the years. What I am going to
3 do, though, is to remind you that extensive work
4 was done from both the technical science
5 perspective that involved the Partner First
6 Nations throughout, and from a Cree worldview,
7 that resulted in three exceptional reports being
8 filed by our Partners as part of the overall EIS.

9 Many weeks ago we heard from both
10 Mr. Joe Keeper and Ms. Vicky Cole about the
11 journey the Partners took as they developed a
12 unique two-track approach to environmental
13 assessment, from vastly different worldviews.
14 There has been criticism of that track approach
15 during this hearing, arguing that a three track
16 approach or a final integration should have been
17 used. In answer to that, I remind you of the
18 words of Mr. Keeper, and it's a fairly lengthy
19 quote but it's an important one.

20 "From the beginning of the
21 consultation on the Keeyask project in
22 1998, Tataskweyak Cree Nation took the
23 position that they must do their own
24 environmental assessment of the
25 Keeyask project, based on their

1 knowledge, experience, customs,
2 values, to which Manitoba Hydro
3 agreed. The term two-track approach
4 was adopted to describe the unique
5 approach for assessing the effects of
6 Keeyask. To avoid confusion, it is
7 essential to emphasize that the two
8 processes are different in scope,
9 methods, values and concepts. Equally
10 important, both approaches, but
11 particularly the Cree assessment
12 process, needs to be recognized and
13 respected as being different, equal,
14 and separate in the EIS itself.
15 Aboriginal traditional knowledge and
16 an Aboriginal assessment based on the
17 Cree worldview and values are
18 completely different matters. On the
19 one hand, specific specialized
20 environmental knowledge derived from
21 and a part of Aboriginal traditional
22 knowledge can contribute to the
23 understanding of the specific impacts
24 of the project, together with sources
25 of information and knowledge derived

1 from a western technical science,
2 leading to regulatory approval or
3 rejection. On the other hand, an
4 assessment of the impacts of the
5 project based on the Cree worldview
6 and values is a different and separate
7 process altogether, since it does not
8 conform to the regulatory concepts and
9 values like significant adverse
10 effects or valued ecosystem
11 components."

12 So using those different knowledge and
13 value systems, assessments were carried out, and
14 astonishingly both processes arrived at the same
15 conclusion, that the project should proceed based
16 on its final design, including the extensive suite
17 of enhancement and mitigation measures.

18 Although it's not been an easy or a
19 smooth journey, both the project and the
20 assessment are infinitely better as a result of
21 this collaboration.

22 The second tool that I referred to is
23 the comprehensive engagement process with our
24 partners, other Aboriginal communities and
25 organizations, and Provincial and Federal

1 regulators. The extensive engagement process with
2 our First Nation Partners located in the vicinity
3 of the project and the Partners' public
4 involvement program also known as PIP, have
5 together reduced uncertainty in the assessment by
6 identifying and confirming topics of importance,
7 and by providing another mechanism through which
8 to identify and confirm possible project effects
9 and the appropriateness of related mitigation.

10 Turning first to the engagement
11 process with our Partners. It goes without saying
12 that the majority of time and effort in
13 communication and consultation took place in and
14 with those communities. They are the ones living
15 in the vicinity of the project and most deeply
16 affected by it.

17 What a different hearing this would
18 have been if they were not our partners in this
19 process and were not involved to the degree that
20 they have been. And frankly, what a different
21 project it would have been when not nearly as rich
22 in ATK or as thoughtful in terms of environmental
23 stewardship.

24 The public beyond the in vicinity
25 partner communities also had a full opportunity to

1 be engaged in the process and the project through
2 the Partnership's PIP program implemented between
3 2008 and 2013. The PIP provided an opportunity
4 for Aboriginal and other communities and
5 organizations, as well as the general public, to
6 be engaged through three substantive rounds of
7 public involvement, implemented as key stages
8 through the environmental assessment process.

9 The PIP design was based on recent
10 Wuskwatim PIP experiences. The core values of the
11 International Association of Public Participation,
12 and a review of public engagement processes and
13 practices throughout Canada. Through the PIP,
14 over 130 stakeholder groups throughout Manitoba
15 were informed of the potential project and
16 opportunities were provided for their involvement
17 if they so chose. In excess of 70 PIP events were
18 undertaken in the five-year period. During the
19 PIP, participants provided input into the best
20 methods to communicate in future rounds, the most
21 appropriate timing for PIP events to be scheduled
22 and the best location for maximizing
23 participation. A variety of methods were used to
24 provide information to the public and to receive
25 their feedback, including small community

1 meetings, leadership meetings, workshops, open
2 houses, newsletters, presentations, the use of
3 translation services, newspaper, posters, radio
4 advertising and, of course, the project website.

5 Results of the PIP were considered in
6 the environmental assessment process and provided
7 in a transparent manner in the Keeyask Generation
8 project public involvement supporting volume.
9 They also informed the VEC selection, effects
10 assessment, and the many mitigation measures and
11 monitoring programs developed.

12 Manitoba Hydro, on behalf of the
13 Partnership, also engaged in special Keeyask
14 related processes with the Manitoba Metis
15 Federation and with Cross Lake First Nation and
16 Pimicikamak Cree Nation, those having a
17 contractual right to separate consultation under
18 the Northern Flood Agreement. These organizations
19 also had the opportunity to participate directly
20 in PIP, again if they so chose. These processes
21 were undertaken as a matter of due diligence and
22 to address matters of mutual interest that go even
23 beyond assessing potential affects of the Keeyask
24 generation project.

25 Manitoba Hydro has engaged with the

1 MMF on Keeyask since it became involved with the
2 Hydro Northern Training and Employment Initiative
3 in 2003. Since that time, as you have heard, over
4 150 meetings that have addressed Keeyask in some
5 way have taken place.

6 At the insistence of the MMF, these
7 meetings have been organized by and taken place
8 with the MMF head office. The MMF were invited
9 and encouraged to participate in the public
10 involvement program, and special arrangements were
11 offered to support their participation. These
12 offers have been refused in all but round one of
13 the program.

14 We have also heard at these hearings
15 directly from some Metis witnesses that there is a
16 desire at the local level for more one-on-one
17 discussions directly with the Proponent. We even
18 heard from Ms. Campbell that not once had she had
19 the opportunity to sit down with Manitoba Hydro
20 about the issues in her community.

21 We could not agree more. We would
22 have welcomed the opportunity to meet directly
23 with any local Metis who are resident in the
24 Keeyask region, an opportunity that was offered on
25 many occasions and consistently rejected by the

1 MMF head office.

2 Between 2008 and 2013, Manitoba Hydro
3 and the MMF met specifically to come to the
4 agreement reached in June 2013 for the MMF to
5 undertake a Metis specific traditional land use
6 and knowledge study, socio-economic impact
7 assessment, and historical narrative for the
8 Keeyask resource use regional study area
9 identified in the EIS. Though due in November,
10 the results of these reports and studies are still
11 outstanding, and we have now been advised that
12 they may not be available until at least
13 mid-February.

14 However, as committed, the Partnership
15 will review them once available, will assess the
16 relevance, and will take such actions as may
17 reasonably be required. If the information
18 presented by the MMF at these hearings is any
19 indication, it's anticipated that the results will
20 simply confirm information already presented in
21 the EIS on possible project effects and
22 mitigation, that there is no Metis community or
23 significant presence in the Keeyask region, nor
24 are there unique traditional uses of the land by
25 Metis individuals in the vicinity of the project.

1 Project mitigation and monitoring
2 designed for all resource users and all types of
3 resource use, including that for moose management,
4 is and will be appropriate for Metis harvesters.
5 As such, no further mitigation or monitoring will
6 likely be required.

7 Discussions with Cross Lake First
8 Nation and Pimicikamak Cree Nation began in 2001
9 through Article 9 of the Northern Flood Agreement.
10 To date, these discussions have involved a range
11 of project related subjects. Currently the
12 parties are discussing a possible traditional land
13 use study to be undertaken by the community. And
14 similarly, if it's completed, it will be reviewed
15 and assessed when completed.

16 Counsel for PCN has indicated that the
17 Partnership has no formal process in place to
18 address project effects on other non partner
19 communities.

20 I'd like to point you to the JKDA
21 which specifically deals with potential adverse
22 effects on others in section 11.2.4. It requires
23 the limited partnership to consult with each such
24 person potentially adversely affected, or entity,
25 at the earliest reasonable time and to address

1 such adverse effects.

2 Frankly, the extensive investigation
3 done as part of the EIS has not identified any
4 such persons or entities. However, the
5 Partnership, as I said, remains committed to
6 considering any additional information provided on
7 the use of land and resources by Cross Lake, the
8 MMF, or others. If new information does emerge
9 through studies such as the MMF land use knowledge
10 study, or others, the Partnership will undertake
11 further dialogue through an existing forum or
12 establish new forum in order to address this new
13 information.

14 With respect to Pimicikamak's
15 recommendation in relation to NFA implementation,
16 the NFA is a multi-party agreement with
17 multi-party obligations and does not involve only
18 Manitoba Hydro and Pimicikamak. The NFA contains
19 its own provisions for implementation and
20 enforcement, including arbitration and appeal.
21 The implementation and enforcement of its
22 provisions are not matters within the scope of the
23 CEC in relation to the hearings on the Keeyask
24 project.

25 Government regulators are also

1 undertaking section 35 consultations with these
2 and other Aboriginal groups to specifically
3 address and consider potential effects on the
4 project, on Aboriginal and Treaty rights.

5 Finally, in terms of engagement,
6 extensive discussions, as you know, have taken
7 place over the years with both Federal and
8 Provincial Government agencies with a regulatory
9 interest in the project, and with their own
10 breadth of knowledge and expertise in
11 environmental assessment. And each of the VECs
12 was considered in the assessment.

13 Extensive review procedures have been
14 in place through the TAC and CEA processes,
15 including numerous meetings and discussions, and
16 the answering of hundreds of questions on the
17 environmental assessment, its approach, its
18 findings, and planned mitigation and monitoring.
19 These processes, like this CEC process, have
20 provided valuable input into the project,
21 particularly with respect to protection of fish
22 species, sturgeon, caribou, migratory birds, and
23 the development and implementation of ongoing
24 monitoring and risk communication measures
25 associated with mercury and human health.

1 Discussions with regulatory agencies
2 will be ongoing through the life of the project
3 and will be especially important in determining
4 the need for adaptive management.

5 Overall, Aboriginal and other
6 communities and organizations, as well as the
7 general public and government bodies, have been
8 provided with substantive opportunities to engage
9 with the Partnership about the project. The
10 Partnership is confident that meaningful
11 engagement has been achieved and that the
12 information provided through those processes have
13 provided additional certainty to the assessment of
14 potential effects on all VECs contained in the
15 EIS.

16 The third tool that I mentioned was
17 the ongoing application of the precautionary
18 approach and the development of detailed
19 mitigation measures to address project effects.
20 We heard early in this process about ATK
21 principles developed to guide the environmental
22 impact statement. Interesting that was one of the
23 recommendations of one of the participants, but
24 it's already been done.

25 The ATK principles documented in the

1 EIS identified how ATK would be included in the
2 environmental assessment. Notably, one of those
3 principles was entitled "Acknowledging Caution and
4 Addressing Uncertainty." This principle
5 acknowledged and respected the caution that many
6 of our Partner First Nation members have about
7 predictions of environmental effects of
8 hydroelectric development. For that reason, it
9 was important to employ a precautionary approach
10 that identifies knowledge gaps and recognizes the
11 uncertainty of predictions.

12 When asked to define what its
13 precautionary approach was, Mr. Stuart Davies, on
14 behalf of the Partnership, indicated simply that
15 where there was uncertainty, we assumed that the
16 effect was larger rather than smaller.

17 Then having made that assumption,
18 project design was reconsidered and mitigation
19 measures were carefully planned to either avoid,
20 prevent or reduce, to the extent practical,
21 adverse effects from the project.

22 The measures are based on extensive
23 study of the project, relevant ATK, best
24 practices, research, literature review and
25 numerous discussions between the Partners. Many

1 of the measures are found within the environmental
2 protection program and within its two
3 environmental protection plans, within numerous
4 environmental management plans, and within the
5 various technical science and ATK monitoring
6 plans.

7 The Partnership then took the unusual
8 step of submitting most of those plans at an early
9 stage and prior to licensing to its regulators for
10 review and input, and of posting them on its
11 public website for further commentary.

12 Interestingly, we have been actually criticized
13 for not providing complete plans, but what we did
14 in fact was more than has ever been done before.

15 The Partnership has committed in the
16 EIS, in information requests, in those plans that
17 I have described, and in evidence to significant
18 number of mitigation measures. So to assist the
19 CEC, these have been encapsulated in one document
20 which will be provided with the final written
21 argument, similar to the commitment letter that
22 was provided in the Bipole III licensing hearing.

23 Those measures developed jointly with
24 the First Nation Partners go a very long way
25 towards reducing uncertainty. And I'm just going

1 to provide you with a few examples of how the
2 precautionary approach was used to deal with some
3 of the uncertainties inherent in this project with
4 respect to some key topics.

5 Caribou, one of the key questions
6 posed by the project Partnership was whether any
7 caribou displaced by construction would return.
8 After careful study and analysis, it is predicted
9 that they will return. That prediction is in part
10 based upon actual experience in the Stephens Lake
11 proxy area, as well as years of scientific
12 research, ATK, peer reviewed studies, and
13 information from government sources. The
14 Partnership jointly carried out aerial surveys,
15 tracking and trail camera studies, to identify
16 current calving and rearing habitat, winter
17 habitat use and migratory movements, in an effort
18 to identify and understand all caribou in the
19 region.

20 In challenging that prediction,
21 participants have pointed to the population of
22 summer resident caribou that have, as of yet, not
23 been designated by other Federal or Provincial
24 Governments as woodland caribou, but would share
25 characteristics of both migratory and boreal

1 woodland herds.

2 The Partnership could have relied
3 exclusively on the designations of the governments
4 in their assessment. But instead, in an attempt
5 to make a clear and certain determination about
6 the potential for these animals to be woodland
7 caribou, the Partnership utilized ATK, local
8 knowledge, and scientific field data and
9 literature on boreal woodland caribou.

10 We have heard that radio collaring
11 would have been the best approach to studying
12 these local animals, but radio collaring would
13 have had to have been done in the summer months
14 during a time when calving is taking place, and
15 the risks to the health and safety of females and
16 their young is at its highest. This was of great
17 concern to the elders, the partners and
18 regulators, and for those reasons radio collaring
19 of local woodland caribou in the summer was not
20 undertaken. However, the Partnership did use
21 Bipole III radio collaring studies in addition to
22 its own field work to inform the effects
23 assessment and reduce uncertainty.

24 In the end, the Partnership chose to
25 use a precautionary approach that assessed effects

1 to these local caribou as if they are a boreal
2 woodland caribou population herd that resides in
3 the local regional study areas. Because of this
4 precautionary approach, if this population is
5 designated in the future, it is expected that no
6 change in the effects assessment predictions or
7 monitoring will be required.

8 The Partnership also had provided
9 additional information with respect to the impact
10 of last summer's fires on caribou populations,
11 although fire itself was included in the modeling
12 and analysis previously done. And it is hoped
13 that this material will help to alleviate the
14 concerns relating to caribou that have been
15 raised.

16 Professor Schaefer, in his evidence,
17 discussed uncertainty using these words.

18 "The other point, if I might make, is
19 that my understanding of the key to
20 boreal forest conservation is to
21 buffer for uncertainties, as they say.
22 In other words, we want a margin of
23 safety so we don't foreclose on
24 options and put ourselves into a box.
25 Fire may be unplanned, unintended, but

1 we have enough information in the EIS
2 to make an educated projection of what
3 this landscape is going to look like
4 in the next 20, 40 years, and we
5 should plan for that."

6 And that's what the Partnership did.
7 It looked ahead, it took into account all possible
8 impacts to caribou, and it has planned and created
9 mitigation measures to protect the species.

10 And let's not forget the words of
11 Ms. Luttermann when she stated that boreal species
12 are wide ranging and extremely resilient.

13 Over the long term, using both ATK and
14 western science, the Partnership will continue to
15 investigate, monitor and research all caribou
16 populations in the region, not only with respect
17 to the type of caribou, but also with respect to
18 other potential uncertainties such as the extent
19 of harvest, predation, mortality, habitat loss or
20 alteration, so that project effects are
21 well-understood and mitigated.

22 To further reduce uncertainty
23 throughout the project implementation, the
24 Partnership has committed to establishing a
25 caribou coordination committee as a sub committee

1 of MAC. This group will have representatives of
2 the Partnership, each of the Partner First
3 Nations, governments, and others who are involved
4 in caribou research and management throughout the
5 Lower Nelson River region.

6 The purpose of this group is to
7 coordinate efforts and share the results of
8 research so that the best possible management
9 decisions can be made to protect and sustain the
10 species.

11 Sturgeon: Lake sturgeon has been a
12 significant focus of assessment and mitigation due
13 to its importance to both the First Nations and
14 regulatory authorities, and its sensitivity to
15 hydroelectric development. It is well known that
16 lake sturgeon populations in this region have
17 declined dramatically as a result of commercial
18 overharvest and hydroelectric development. In
19 fact, sturgeon populations in the Kelsey to Kettle
20 reach of the river are very low, and the current
21 low numbers are limiting the potential for
22 recovery. In some areas, notably Stephens Lake,
23 it is unlikely that the population is presently
24 self-sustaining.

25 To address this existing condition and

1 the possible incremental effects of Keeyask, the
2 Partnership has committed to a large scale
3 stocking program to bring back a self-sustaining
4 population of sturgeon in the reach of river
5 flowing between Kelsey and Kettle. To address
6 uncertainty, that plan includes stocking a range
7 of sturgeon ages. And based on monitoring, this
8 plan will be adapted to provide the best long-term
9 solution for the sturgeon.

10 This means the Partnership will not
11 only maintain or increase sturgeon numbers in Gull
12 and Stephens Lake due to project effects, but will
13 provide full support for recovery of the sturgeon
14 population in the reach of the Nelson River, a
15 population that is genetically distinct from those
16 upstream and has been since prior to Kelsey
17 development.

18 Manitoba Hydro and the Partnership
19 have also worked to improve certainty in stocking
20 success. Efforts have been undertaken on the
21 Upper Nelson River through the Nelson River
22 Sturgeon Board and are showing signs of success.
23 Similarly, rearing techniques have improved over
24 the years, and the Partnership will benefit from
25 the hard work of local communities, governments

1 and organizations to understand what it takes to
2 realize successful sturgeon recovery in the Nelson
3 River and elsewhere.

4 This has included a tremendous amount
5 of work done over decades to gather information
6 from other hatcheries, universities, river systems
7 and programs, as well as consultation with experts
8 to change turbine design and to look at genetic
9 relationships, all for the benefit of the sturgeon
10 population.

11 But it's not just about stocking.
12 Sustainable lake sturgeon populations exists in
13 many river systems, but they need suitable habitat
14 to survive and thrive. As such, a study has also
15 been done on habitat development to ensure it will
16 be available in time to all life history
17 requirements. Use and effectiveness of this
18 habitat will be monitored throughout the project
19 implementation, and adaptive management measures,
20 if required, have already been identified.

21 Finally, it's also worth noting and
22 reminding all of us that in addition to the
23 programs being implemented for this project, there
24 are other important initiatives under way to
25 promote the protection and recovery of lake

1 sturgeon on the Lower Nelson River. Two of those
2 being the Lower Nelson River Lake Sturgeon
3 Stewardship Committee, ratified amongst five First
4 Nations, Manitoba Conservation and Water
5 Stewardship, and Manitoba Hydro; and secondly, the
6 Manitoba Hydro Lake Sturgeon Stewardship and
7 Enhancement Program in the Nelson, Churchill and
8 Saskatchewan and Winnipeg Rivers.

9 The passion and level of commitment of
10 the broad team of sturgeon experts and resource
11 users is extraordinary. And while uncertainty
12 will continue to exist, it is clear that no
13 possibility for sturgeon recovery will be left
14 unexplored until sturgeon are thriving.

15 Another key topic that has been
16 identified and referenced throughout closing
17 argument is mercury and human health. This was
18 identified early by the Partner First Nations as a
19 key concern based on their past experience. TCN
20 and War Lake recognize the importance of
21 addressing community concerns with methylmercury
22 through the establishment of a healthy food fish
23 program and a community fish program under their
24 respective adverse effects agreements. Similarly,
25 York Factory and Fox Lake have resource use

1 programs that allow for the harvest and
2 consumption of off-system country foods.

3 The Partners also established a
4 mercury and human health technical working group
5 in 2007, with representation from each of the
6 Partner First Nations, Manitoba Hydro, and
7 supporting specialists, to better understand
8 possible mercury and human health effects of the
9 project and how risk can appropriately be
10 communicated to local resource users. To further
11 reduce uncertainty and ensure a full understanding
12 of those issues, that group selected Ross Wilson,
13 a toxicologist expert in the field of mercury, to
14 complete a human health risk assessment. And
15 Dr. Lori Chan, an internationally renowned mercury
16 and human health specialist, perhaps the best
17 known and respected on this topic in the world,
18 was selected to provide independent advice to the
19 group and to conduct a peer review of the risk
20 assessment and communication products developed
21 for use in the communities.

22 As part of the risk assessment, the
23 Partner First Nations provided community specific
24 information on the types of all country foods used
25 by people in their communities, the frequency of

1 consumption, and the portion sizes consumed. This
2 local and community specific information was used
3 to assess possible risks, rather than generic
4 information being pulled from scientific
5 literature and studies in other regions. Making
6 the assessment of risk in this manner has resulted
7 in a cautious approach, but one which is specific
8 and most relevant to those communities.

9 Going forward, monitoring and adaptive
10 management will be key elements to understanding
11 and communicating risks associated with increased
12 mercury in country foods, especially fish,
13 associated with the project. Ongoing monitoring
14 will be conducted as part of the aquatic
15 environment monitoring plan to identify actual
16 levels of mercury concentrations in fish flesh in
17 the Keeyask and Stephens Lake reservoirs and in
18 offsetting lakes used for the healthy fish food
19 programs.

20 The objectives of this monitoring are
21 to verify predicted increases in mercury levels in
22 fish in the Keeyask reservoir, in Stephens Lake,
23 and to address uncertainties regarding the
24 duration and magnitude of increases.

25 The terrestrial environment monitoring

1 plan has similar monitoring.

2 Opportunities for testing of human
3 hair will be offered once again to communities on
4 a voluntary basis, and samples of wildlife will be
5 tested if submitted through a voluntary testing
6 program. As well, starting in 2022 and every five
7 years subsequent to that, a survey of country food
8 consumption in the Partner First Nation
9 communities will be undertaken.

10 Collectively, all of this monitoring
11 information will be used to develop an updated
12 human health risk assessment every five years
13 after peak mercury levels have been reached, so
14 that appropriate adjustments can be made to the
15 consumption recommendations. All of this work
16 will be overseen which the Partners through the
17 monitoring advisory committee and general partner
18 board of directors, and through discussions with
19 Federal and Provincial health authorities.

20 The last topic under this area is
21 worker interaction. The Partner communities, and
22 in particular Fox Lake and TCN members, have
23 regularly expressed concern about negative
24 interactions during the course of past
25 hydroelectric developments and their intense

1 desire to prevent these types of occurrences from
2 ever happening again.

3 All of us share that desire. The
4 Partnership has spent considerable time and effort
5 trying to fully understand the issue of public
6 safety and worker interaction, and trying to
7 develop ways to prevent incidents from occurring.

8 It was rather distressing on Tuesday
9 to hear Dr. Kulchyski make light of these efforts,
10 using words to the effect that Hydro thinks it has
11 it all covered. No amount of work can guarantee
12 that every woman and child will be safe at all
13 times, but we can do everything possible to work
14 with all the important stakeholders to plan for
15 this vision. And so such planning has been done,
16 not just for Keeyask, but collectively for all
17 possible developments taking place in the Gillam
18 region in the foreseeable future.

19 The Partnership is described and
20 committed to taking preventative mitigation
21 measures at the construction site in an effort to
22 minimize travel outside of the camp for
23 recreational purposes and to reduce the time spent
24 in nearby communities by project workers.

25 Cultural awareness training for all

1 project workers, as part of the employee retention
2 and support DNC, is to be implemented by Fox Lake
3 and York Factory. This will provide the
4 opportunity to describe past experiences with
5 hydro development and expectations for respectful
6 behaviour by construction workers at site, as well
7 as when visiting communities.

8 This DNC also includes on-site
9 counselling for employees to hopefully deal with
10 issues proactively before they escalate.

11 Manitoba Hydro has already started
12 working with Fox Lake, the Town of Gillam and the
13 local service providers to coordinate measures
14 related to worker interaction through a worker
15 interaction sub committee of the harmonized Gillam
16 development process. This sub committee has been
17 formed to identify and confirm potential issues
18 and concerns from each respective organization and
19 community, to identify existing or planned
20 mitigation measures for each of the identified
21 issues and concerns, to identify programs and
22 mitigation measures that exist elsewhere which
23 could be implemented in Gillam to assist in
24 addressing any of the issues or concerns, and to
25 identify and discuss ways to address any

1 mitigation gaps that exist.

2 The committee will be developing a
3 worker interaction monitoring plan that will
4 include assessing existing data collection through
5 monitoring activities by the respective member
6 communities and organizations. It will also
7 identify any additional monitoring that may be
8 required.

9 The monitoring plan will enable the
10 sub committee to identify and seek to address any
11 trends of concerns in a timely manner and within
12 the respective mandates of each of the represented
13 organizations.

14 You heard that Manitoba Hydro has also
15 been meeting regularly with the RCMP to discuss
16 policing matters related to the Town of Gillam and
17 has started discussions with them to assess and
18 respond to project impacts on policing
19 requirements for the region, including the project
20 site and beyond the town into rural areas around
21 Gillam, Bird, Thompson and Split Lake.

22 Human behaviours and interactions are
23 not entirely predictable, but it can be said that
24 the Partnership has made considerable effort to
25 try to minimize the risks associated with that

1 uncertainty and to prevent incidents from
2 occurring. It will continue to do that work with
3 full participation of all of its partners.

4 The fourth tool that I talked about
5 was the commitment to ongoing monitoring and
6 adaptive management for the life of the project.

7 Despite all the tremendous work and
8 assessments that both Ms. Rosenberg and I spoke
9 about, and despite the anticipated effectiveness
10 of planned mitigation measures, there are still
11 some uncertainties with predicted effects. These
12 are documented and fully discussed in the EIS
13 documents and in each of the Partner evaluation
14 reports.

15 On an ongoing basis, the Partners will
16 continue to address uncertainty head on, to follow
17 up on monitoring programs designed to identify
18 actual project effects, and to evaluate the
19 effectiveness of mitigation measures. The
20 commitments in this regard are comprehensive and
21 demonstrate the importance of and the value placed
22 on environmental stewardship by the Partnership, a
23 key aspect of the Cree worldview.

24 Most importantly, ongoing project
25 evaluation and adaptive management will continue

1 to be assessed through the lenses of two different
2 worldviews and ways of knowing.

3 So unlike other projects where a
4 corporate Proponent on its own monitors its own
5 actions, all of the Partners in this Partnership
6 will jointly design, develop and implement
7 monitoring activities, and each of the communities
8 will independently undertake ATK monitoring
9 programs. This will continue throughout the life
10 of the project.

11 Adaptive management is a cornerstone
12 of the Partnership's environmental protection
13 program. It is a planned process for responding
14 to uncertainty and to unanticipated or
15 underestimated projects effects.

16 And you may recall the Partnership
17 actually received good marks from the
18 participants' experts on its efforts in this
19 regard, though I couldn't pin them down on an
20 actual grade.

21 Adaptive management was defined during
22 the hearing by one witness as the implementation
23 of new or modified mitigation measures over a
24 project to address unanticipated environmental
25 effects. It is a way to deal with uncertainty and

1 a tool defined specifically for that purpose to
2 allow for adaptation to change. It will be used
3 extensively by the Partnership where necessary,
4 and will even be used with respect to the adverse
5 effects agreements negotiated by the Partner First
6 Nations.

7 The Partner First Nations have an
8 intimate knowledge of the Nelson River basin,
9 which allowed them to best assess the foreseeable
10 adverse effects of the project and negotiate
11 adverse effect agreements with unique programs to
12 address their particular effects and needs.
13 Though some criticize this approach as untested
14 and predicted a significant chance of failure,
15 that criticism is unfounded.

16 Some of the offsetting programs were
17 tested in pilot programs such as the TCN's pilot
18 access program between 2004 and 2009, and Fox
19 Lake's pilot youth wilderness traditional program
20 in 2009. The success of these pilot programs was
21 used directly to develop and plan for the
22 programming in each community's adverse effects
23 agreements. Where uncertainty still exists, the
24 agreements themselves provide adaptive ways to
25 modify the mitigation response by allowing the

1 communities to make improvements to existing
2 programs, or even implement new ones if necessary.

3 There are a number of safeguards in
4 place to account for new information arising out
5 of monitoring and evaluation of those programs.
6 One of the most important mechanisms for
7 collectively working together on the environmental
8 matters into the future is MAC. It has been
9 described to you in detail as recently as Monday,
10 and I won't go over it again, and its success in
11 the Wuskwatim project has been explained.

12 All of the Partnership's monitoring
13 and follow-up activities will be publicly
14 available, and opportunities exist for public
15 input and dialogue about these efforts through
16 regulators and the Partnership. The project will
17 have regulatory oversight at both the Federal and
18 Provincial level, but most importantly at the
19 local level.

20 It is unlikely that anyone else could
21 or would hold the Partnership more accountable for
22 its mitigation and monitoring efforts than the
23 Partner communities, those most directly affected
24 by this project. As strong independent
25 communities, they are committed stewards of the

1 land and water. They will take whatever steps are
2 necessary to ensure that Aski and everything it
3 represents is protected and strengthened if
4 Keeyask proceeds. This is fundamental to each
5 community's ongoing support of this project.

6 I would just like to briefly comment
7 on sustainable development before I turn it over
8 to our Partners.

9 It was suggested yesterday or the day
10 before that there's an onus on the Proponent to
11 demonstrate that the project will make a net
12 positive contribution to sustainability. With
13 respect, this is not a court hearing where onus or
14 burden of proof or standards of proof apply, nor
15 should it. More importantly, there is no
16 requirement in law, in the scoping document, or in
17 the terms of reference or mandate issued by the
18 Minister, for the Proponent to demonstrate such a
19 net positive contribution.

20 The Minister asked this Commission to
21 incorporate in its recommendations, where
22 appropriate, the principles of sustainable
23 development and guidelines for sustainable
24 development as contained in the Sustainable
25 Development Strategy for Manitoba. Principle four

1 states that Manitoba should anticipate and prevent
2 or mitigate significant adverse economic,
3 environmental, human health, and social effects of
4 decisions and actions, having particular careful
5 regard to decisions whose impacts are not entirely
6 certain, but which on reasonable and well-informed
7 grounds appear to pose serious threats to the
8 economy, the environment, human health and social
9 well-being.

10 Principle four represents exactly the
11 environmental planning process followed by the
12 Partnership in planning this project. It has been
13 acknowledged that the Keeyask Generation project
14 will cause numerous and widespread environmental
15 and social effects, some of which would have had
16 the potential to be significant. However, using
17 past experience, ATK, leading scientific and
18 engineering techniques, this Partnership has
19 mitigated, remediated and/or compensated for these
20 effects.

21 As well, the principles of sustainable
22 development require consideration not only of
23 adverse environmental effects, but also
24 environmental, economic, and social benefits. To
25 that end, it's submitted that the project will

1 produce substantial environmental, social and
2 economic benefits, all of which are consistent
3 with the principles of sustainability established
4 by the Governments of Canada and Manitoba.

5 The project will contribute to
6 reductions in greenhouse gases and increases in
7 lake sturgeon populations. It will provide
8 training and employment for hundreds of
9 Aborigines and northern workers. It will enable
10 the First Nation Partners to build capacity and to
11 profit from construction contracts and their
12 investment as equity partners. And it will
13 provide clean renewable energy for Manitobans and
14 export markets. As such, the Partnership believes
15 the project should be granted regulatory approval
16 to proceed.

17 At the very end, I would like to take
18 a few moments to say some thank yous, but first
19 I'm going to turn it over to Mr. London.

20 MR. LONDON: Mr. Chairman, members of
21 the Commission, I want to summarize the
22 perspective of the Fox Lake Cree Nation in these
23 proceedings.

24 After a long and troubled history of
25 unilateral action by Manitoba Hydro, devastating

1 the land, waters, economy, and society of Fox Lake
2 members, not to mention their psychological and
3 physical health, a new era has dawned, one in
4 which, as a partner of fellow Cree Nations and
5 Manitoba Hydro, Fox Lake has the opportunity to
6 benefit from the development, operation,
7 maintenance and governance of Keeyask. This
8 phenomenon truly constitutes a SEA change.

9 No one has suggested or would suggest
10 that the Keeyask Hydroelectric Partnership is the
11 ultimate panacea of progress and reclamation for
12 Fox Lake and its members. Obviously it is not.
13 But it does represent a significant step towards a
14 measure of independent financial autonomy, already
15 improved capacity with more to come, and a
16 significant role, not only in the environmental
17 assessments which preceded this hearing, but
18 perhaps even more importantly, a significant role
19 in future monitoring and mitigation of the effects
20 of the project on the environment.

21 The importance of this monitoring
22 function cannot be overstated. Its base elements
23 are detailed in the Environmental Impact
24 Statement, and it is more developed and much more
25 greatly resourced in Hydro's commitment letter to

1 the chiefs of November 17. That commitment, based
2 on an agreement with the Limited Partners, will
3 ensure collaborative efforts amongst the Cree for
4 on-the-ground moment-by-moment monitoring of the
5 effects of the project, and a significant role for
6 them, equal to that of technical science, in
7 devising appropriate solutions to problems in
8 emergencies, even before the MAC, through adaptive
9 management.

10 It also will help build capacity in
11 both traditional knowledge and technical science,
12 so that young First Nation members will ultimately
13 be able to master and utilize both types of
14 knowledge.

15 Building on the participation of
16 Nelson House in the Wuskwatim project, the Keeyask
17 project brings before this Commission a new
18 paradigm, a fresh methodology and perspective in
19 fulfilling your recommendatory function, one which
20 focuses on the First Peoples.

21 Keeyask's footprint and study area are
22 large and comprehensive, larger than some European
23 countries. Much has been heard about the need for
24 a regional cumulative effects study. In Fox
25 Lake's view, the Partnership, through technical

1 science and the comprehensive and long worked on
2 evaluation studies of each of the Cree Nations,
3 has already concluded the significant part of such
4 a study, having looked at the past, present,
5 future, and geographic limits of discernible
6 effects. What more cogent, reliable and
7 comprehensive information can be gleaned about
8 past projects, or this one, than that which is
9 gleaned from the memory, insight, and daily
10 experience through the centuries of the people who
11 populate the region, the four First Nation
12 peoples?

13 As Karen Anderson said, the Fox Lake
14 report on Aboriginal traditional knowledge was
15 framed through the participation of numerous
16 elders and resource users. Through ATK, together
17 with technical science, one has a full
18 understanding of the adverse effects of previous
19 projects, the state of the environment as we go
20 into Keeyask, and most important in this context,
21 the prediction of what marginal effects Keeyask
22 will have on the environment and its
23 sustainability protected by collaborative
24 monitoring and adaptive management.

25 Frankly, it goes beyond curious that

1 effects outside of the Keeyask footprint and study
2 area could in any way be discernible by or more
3 significant for others.

4 You have heard the term Aski repeated
5 frequently throughout these proceedings and with
6 good reason. Aski is a holistic term, describing
7 everything, corporeal and incorporeal in the
8 environment, real and metaphysical. It is a
9 concept that does not distinguish between human
10 beings and everything else. It underlies the new
11 paradigm we urge on the Commission.

12 Until the Wuskwatim decision, what was
13 required of this Commission was environmental
14 evaluation primarily concerned with the non-human
15 environment, and in the case of humans, primarily
16 with the adverse or negative effects that
17 development might have on their lives. Surely,
18 that is all still part of the work of the
19 Commission and of environmental assessment. But
20 the new factors in our submission, equal if not
21 greater factors to be taken into account, are the
22 positive benefits and impacts that the project
23 will have on the human content of Aski.

24 If the Commission takes First Nations
25 seriously, and Aski as a synonym for environment,

1 you will recognize and balance the enormous step
2 forward which will accrue to the members of these
3 four communities, the human elements of Aski, as a
4 result of this project and the projects which will
5 follow.

6 Our submission has both a qualitative
7 and chronological dimension. Qualitatively, as
8 Chief Spence, Karen Anderson and Councillor Neepin
9 all testified, the benefits of the project, both
10 monetary, capacity building, pride of ownership,
11 and rights of participation and decision making,
12 are a beginning step in healing and growing to
13 independence as peoples.

14 The evidence of the youth of Fox Lake
15 at this hearing exemplified this new path.

16 Chronologically, as Councillor Neepin
17 and Chief Spence testified, Fox Lake believes that
18 the recommendation of this Commission -- of this
19 Commission to the Minister, and the Minister's
20 decision should proceed expeditiously, without
21 incorporating time-consuming processes or other
22 hurdles which would have the effects of delaying
23 the timing of the project, and in the result, the
24 earliest enjoyment of the benefits by the young
25 people of Fox Lake and the other Nations.

1 I would not be discharging my
2 obligation to Fox Lake and the other Nations if I
3 did not spend a moment commenting on the evidence
4 tendered by some of the intervenors during the
5 course of the hearing. I have been instructed to
6 report that most offensive to Fox Lake and to the
7 other Nations was the sort of evidence that was
8 received from Dr. Gibson, who admitted under
9 cross-examination that he had paid little or no
10 attention to the Nations' evaluations, and that of
11 Drs. Buckland and O'Gorman, who under the guise of
12 their particular theoretical methodology implied,
13 as did others, that First Nations are not fully
14 capable themselves of understanding and
15 determining their own fate and managing their own
16 affairs. They and others also implied that the
17 consultation and decision-making processes of the
18 Nations were somehow flawed or unreliable.

19 On the first issue, inadequacy, though
20 we are sure the professional evidence was well
21 meant, in Fox Lake's view it was naive,
22 ideologically based, and as I had said, insulting
23 to the Cree. The Cree are not incapable, nor by
24 way with training are they destined only for
25 menial jobs, as professor Kulchyski suggested.

1 Chief Primrose was clear and eloquent on that
2 point in his evidence at the Wuskwatim hearing,
3 which was read into the record here.

4 "Alternatives are weighed and choices
5 are made. The youth may choose to be
6 hunters, trappers and/or doctors,
7 lawyers or carpenters. They are not
8 mutually exclusive. That's why under
9 the adverse effects agreements, Fox
10 Lake specifically negotiated for and
11 included programs to help the
12 community ensure that no matter what
13 their choices, the youth will know
14 their culture and their customs will
15 be nurtured so that they will grow to
16 maturity knowing who they are and how
17 they are connected to the land."

18 On the second point, the Nation's
19 clear evidence was that their consultation
20 processes were more than adequate, qualitatively,
21 as in carefully expressed, understandable
22 explanations, and quantitatively, as in thousands of
23 meetings held amongst the four.

24 Moreover, the positive results of all
25 four referenda are determinative. In that regard

1 we bring back to your attention a normative
2 touch-point. During the hearing you were provided
3 with a copy of section 39 of the Indian Act, which
4 regulates voting in referenda on surrenders of
5 land. Nothing is more important in the history or
6 life of First Nations than a surrender of land.

7 In fact, two court cases, the Garand
8 case of the Supreme Court of Canada, and the
9 Manitoba Court of Appeal decision in Fairford,
10 suggest that the only important fiduciary
11 obligation of the Federal Government to First
12 Nations may be engaged only where a surrender or
13 significant dealing in land involves the Federal
14 Government.

15 Here's the point. Under subsection
16 39.3, where less than 50 percent of eligible
17 voters vote in a first referendum, a second vote
18 may be called. And if a majority of those then
19 voting approve the surrender, it is deemed to have
20 been assented to conclusively by a majority of the
21 electors of the band.

22 The referenda here were not about
23 surrender, but the policy expressed in the Act is
24 instructive here as well.

25 I would also observe that almost all

1 of the intervenor's expert testimony relating to
2 the Cree Nations was based on minimal, if any,
3 direct research and investigation in the
4 communities themselves. Indeed, all of the
5 experts on the issue of consent relied on theory
6 and/or statistically invalid, minimal adverse
7 commentary by the few. In fact, their evidence
8 did not even purport to have taken into account
9 the circumstances of all four of the communities,
10 but rather just one, and sometimes two of the
11 communities, which were then generalized to the
12 four.

13 This notion, let's call it the tyranny
14 of the minority, is an interesting one and one
15 which could bear hours of fruitful academic
16 debate. But though it is obviously very important
17 to take into account dissenting and opposition
18 perspectives, something with Councillor Neepin and
19 Chief Spence, as well as Karen Anderson and the
20 other Cree witnesses spoke to eloquently, it is
21 important to remember that major benefits of the
22 project, like annual profit sharing, the
23 development of a business base, extensive
24 monitoring activities, and learning, and the pride
25 of ownership, all will result for a hundred years

1 or more for the benefit of the whole of the
2 communities. That represents a lot of schools and
3 housing.

4 I don't want to suggest that the
5 distilled philosophy of John Stuart Mill, the
6 greatest good for the greatest number, or some of
7 you may know that as the philosophy of Dr. Spock
8 in Star Trek, is the doctrine which the Commission
9 necessarily must accept, but I do suggest that the
10 evidence is that all four communities favoured
11 moving forward into the new era as beneficiaries
12 and owners of the project and its benefits,
13 because in the long run, the communities as a
14 whole will be improved.

15 Parenthetically, let me say this: It
16 was and is the exclusive prerogative of each of
17 the First Nations to have decided whether to
18 participate in hydroelectric development and which
19 contractual terms were and were not acceptable to
20 them.

21 Those with the faint arrogance
22 paternalism who criticize or second-guess the
23 Nations' decisions as a tactical means of
24 attacking the project itself, frankly, are playing
25 a historically discredited card. The commercial

1 details of the deal have nothing to do with its
2 environmental acceptability. The overriding fact
3 of the participation and consent of the Cree has
4 everything to do with its environmental
5 acceptability.

6 I finish by saying this: For the last
7 more than quarter century, I have been involved as
8 senior external legal counsel for the Assembly of
9 Manitoba Chiefs, the Assembly of First Nations,
10 and numerous First Nations in Canada on a wide
11 variety of issues. I can attest to the fact that
12 the single most common demand of First Nations
13 across the country, aside from the repeal of the
14 Indian Act itself, is to implement the Treaties
15 and to be able finally to share equitably in the
16 profits of the resource base of First Nations
17 territories.

18 Here in Keeyask, we have a classic
19 example of exactly that happening, in surely what
20 is a precursor of what is yet to come. The people
21 who have historic rights to these resources and
22 are most impacted by their exploitation finally
23 will share in its benefits. Nothing should be
24 allowed to get in the way of that sea change.

25 If you'll permit, Councillor Neepin

1 has asked to address the Commission for a minute
2 or two at this point.

3 MR. NEEPIN: Good afternoon,
4 Commissioners, Mr. Chairperson.

5 First of all, I am honoured to be a
6 representative of my community at these hearings,
7 participating and effectively advancing the rights
8 and interests of the (Cree spoken). It is also a
9 privilege to extend appreciation to our (Cree
10 spoken), our relations of the other Cree
11 communities. Even amongst the Cree, positions
12 differed, planning and processes internally were
13 not necessarily common, and each of us exercised
14 our individual capacities to undertake a thorough
15 review, assessment and analysis of what our
16 inclusion to the KHLIP would appear and how
17 significant that would be.

18 Our ability to do that independent of
19 any outside influences was a key factor behind our
20 decision to become partners.

21 I thank you and wish you well in your
22 deliberation. You have a tremendous
23 responsibility. Egosi.

24 MR. REGEHR: Thank you, panel members.
25 I am Brad Regehr. I'm counsel for York Factory

1 First Nation.

2 On behalf of the York Factory First
3 Nation, I would like to take this opportunity to
4 make a few brief closing remarks to the members of
5 the panel. Ted Bland had intended to also make
6 some closing remarks, but he has returned to York
7 Landing to attend the funeral of Elder Eric
8 Saunders.

9 Martina Saunders, who is next to me,
10 will provide some brief closing words at the end
11 of my presentation.

12 There is no doubt there has been a
13 troubled history between Manitoba Hydro and York
14 Factory. Some of this history has been detailed
15 in Kipekiskwaywinan, Our Voices. The Our Voices
16 document has become a very important document to
17 the community as it helps to explain the history
18 and experiences that lead York Factory to make the
19 decision to support and become a partner in the
20 Keeyask project. The history, experiences and
21 views shared in the document are important and
22 cannot be accurately or fairly condensed into the
23 few moments I have here today to speak to you. It
24 is not tokenism, as has been suggested by at least
25 one participant. That statement is both

1 inaccurate and insulting.

2 I hope you have had the opportunity to
3 read the Our Voices document in its entirety. If
4 you have, I encourage you to reread it. Give
5 yourself the time to understand everything that is
6 said in it.

7 The panel needs to remember that the
8 EIS is not just the response to EIS guidelines and
9 the supporting volumes, it includes Our Voices and
10 the other Keeyask Cree Nation environmental
11 evaluation reports, as well as the Keeyask Our
12 Story video. We are confident that the Commission
13 will honour and respect the KCN reports and
14 testimony. In particular for York Factory, the
15 Our Voices report, the Keeyask Our Story video,
16 the opening remarks made by Chief Constant, and
17 the testimony of Ted Bland and Martina Saunders
18 should be given substantial credibility and
19 weight.

20 York Factory's evaluation of Keeyask
21 does not ignore its relationship with Manitoba
22 Hydro and Hydro development for more than 55
23 years. The past should never be forgotten, but it
24 is important to look forward and look towards a
25 better future. Times have changed, and something

1 very important and historic is happening here.
2 And it is York Factory's hope that this panel does
3 not overlook the fact that the First Nations, the
4 Aboriginal peoples whose land and waters are
5 directly impacted by Hydro development are
6 partners in the project. This is an important and
7 significant change from past practices. This is a
8 positive new phase in the relationship between
9 Manitoba Hydro, York Factory, and the other first
10 Nation Partners.

11 The decision to support the Keeyask
12 project was not an easy one. It was certainly not
13 made quickly or without serious consideration. As
14 stated previously in this hearing, York Factory
15 participated in hundreds of meetings and workshops
16 related to the Keeyask projects since at least
17 2002. Members have had the opportunity to discuss
18 and share their views, feelings, fears and hopes
19 about becoming a partner in the Keeyask project.
20 There is much hope in the community regarding the
21 benefits that the Keeyask project will bring, but
22 members understand there may also be negative
23 impacts.

24 York Factory worked very hard to
25 ensure community members were well-informed about

1 the potential benefits and the potential negative
2 impacts of supporting the Keeyask project. It was
3 because of this transparent process that all
4 voices were heard, those that supported the
5 project, those that were opposed to the project,
6 and those that were uncertain. Even though
7 86 percent of those who voted support the project,
8 York Factory understands that opposition to any
9 proposal is a normal and healthy part of any
10 democratic process.

11 After carefully weighing the pros and
12 cons, York Factory members made the decision to
13 support the Keeyask project and join the
14 partnership. The community chose to pursue the
15 potential benefits that could result from the
16 Keeyask project for current and future generations
17 to sustain and achieve respect for Cree culture
18 and to have a voice in the Partnership.

19 Chief Constant, in her opening
20 statement at this hearing, stated that York
21 Factory recognizes that the Keeyask project will
22 not solve all the challenges and obstacles the
23 community faces, and that the project may present
24 new problems and obstacles. York Factory is well
25 aware that benefits are often accompanied by

1 negative consequences. However, with that
2 knowledge, members still chose to support the
3 Keeyask project.

4 So why did the York Factory First
5 Nation members choose to support the project? The
6 overarching reason community members gave for
7 joining the Partnership was that being a partner
8 would be beneficial for future generations, for
9 the children, grandchildren, and for generations
10 afterward.

11 THE CHAIRMAN: Slow down a touch,
12 please.

13 MR. REGEHR: Those benefits include
14 training and employment opportunities that would
15 not be otherwise available to the community.
16 There would also be financial benefits derived
17 from employment, increased business opportunities
18 and investment income. The increased capacity
19 building and income will empower York Factory to
20 improve the community's socio-economic conditions
21 that will ultimately be beneficial to future
22 generations.

23 By joining the Partnership, York
24 Factory not only had the opportunity to benefit
25 from the Keeyask project, but also to have a voice

1 on how the project will proceed. Being a partner
2 means that members can ensure their traditional
3 ways. Their culture and their land and waters
4 will be sustained while participating in the
5 financial and other benefits of Keeyask. It is a
6 delicate balancing act, but one that the community
7 is prepared to take on.

8 York Factory is confident that they
9 can live in both worlds. Only they can determine
10 what will work for them.

11 Throughout time, York Factory's
12 relationship with the land has been and continues
13 to be fundamentally important. Traditional
14 teachings have been handed down through the
15 generations and continue to be passed on today.

16 Community members view themselves as
17 stewards of the environment and that will not
18 change. The panel can have confidence that York
19 Factory's role as steward of the environment will
20 not end if this licence is granted.

21 York Factory recognizes that ownership
22 within the Keeyask project will come with
23 responsibilities, and its members accept and
24 welcome those new responsibilities.

25 York Factory and its partners are

1 committed to ensuring that the environmental
2 protection program for Keeyask will be
3 comprehensive, substantial, and respectful to the
4 importance of both Aboriginal traditional
5 knowledge and western science.

6 York Factory's Aboriginal traditional
7 knowledge is fundamental to who they are as a
8 people. Their traditional knowledge is maintained
9 by elders and passed down through the generations.
10 Therefore, York Factory's traditional knowledge is
11 an essential part of the ongoing process of
12 sharing and participating in the Partnership. It
13 is not just information to be recorded and
14 included in the Environmental Impact Statement or
15 science-based management programs.

16 The Commission has heard from a group
17 of York Factory elders. The Kaweechiwasihk
18 Kay-tay-a-ti-suk are a group of concerned elders
19 who have questions regarding the environmental
20 impact statement. This group of elders wants to
21 ensure that York Factory fairly benefits from the
22 Keeyask project, while still fulfilling its duty
23 as steward of the land and water. In addition,
24 these elders have emphasized that traditional
25 knowledge and wisdom and western science should be

1 given equal importance and value. York Factory
2 agrees.

3 York Factory has said as a nation, and
4 members have said as individuals, that it is
5 important to continuously reconcile participation
6 in the Keeyask Partnership with the relationships
7 and obligations to the natural and spiritual
8 world, and to generations to come. If not, the
9 elders in their teachings tell us that the Cree
10 will not survive as a people. This is a central
11 core message and impact for the York Factory Cree.

12 York Factory wants to work with its
13 partners to heal, rebuild and strengthen
14 trustworthy relationships through processes,
15 programs and decision-making, throughout the life
16 of the Keeyask project and the partnership.

17 York Factory has entered into this
18 Partnership insisting on a long-term ongoing
19 commitment to healing, reconciliation, mutual
20 respect and self-determination. They seek to
21 sustain their Cree values, customs and traditions
22 in the process.

23 The panel heard from members of the
24 Shamattawa First Nation who stated they were
25 concerned that the offsetting programs of the

1 Keeyask project will have an adverse effect on
2 Shamattawa. Shamattawa contends that resource
3 users from York Factory via these programs will
4 begin using Shamattawa's traditional territory. A
5 response has already been provided in writing on
6 January 3rd. But to reiterate, York Factory is
7 adamant that the offsetting programs will simply
8 take resource users back to York Factory's
9 traditional lands and waters, and to an area that
10 York Factory resource users have used for
11 thousands of years and will continue to use.

12 During the course of this hearing, the
13 panel has received evidence from various
14 participant witnesses. Like Mr. London, I have
15 been instructed to provide some comments on this.
16 These witnesses, in a very short period of time,
17 and with either limited or no direct contact with
18 the communities or their members, have come to
19 certain conclusions about what is best for the
20 Partner First Nations. Compare that to the
21 community-based grassroots process used by York
22 Factory. Over the course of more than a decade,
23 York Factory discussed the Keeyask project with
24 community members, provided information, conducted
25 studies, held workshops, training sessions,

1 meetings, sharing circles and information
2 sessions. The opinions of all the community
3 members were canvassed, regardless of what those
4 opinions were, and everyone's opinion was heard.

5 The overall theme of these expert
6 witnesses' evidence was that the First Nation
7 Partners were incapable of fully understanding the
8 process they had become involved in and were,
9 therefore, unable to make appropriate decisions
10 regarding their own future and destiny. That view
11 is judgmental, incorrect and paternalistic.

12 I have been told by members of York
13 Factory that they take offence to many of the
14 statements made by these expert witnesses. York
15 Factory does not need these witnesses to tell them
16 what is good for York Factory. To be frank, these
17 witnesses do not know what they are talking about.

18 York Factory has approached
19 participation in the Partnership with great
20 caution and care. The intent is to move forward
21 while continuing to respect the past. York
22 Factory members view the Keeyask project as an
23 important step towards self-determination, as well
24 as reconciling the relationship between York
25 Factory and Manitoba Hydro.

1 Community members are determined to
2 use the Keeyask project to empower their community
3 to retain who they are and to create a better
4 future for the youth and future generations who
5 will inherit the project.

6 York Factory will be involved with
7 Keeyask for the life of the project and York
8 Factory is optimistic about the relationship.

9 York Factory is requesting that the
10 Commission recommend to the Minister that the
11 licence be granted.

12 In closing, I would like to read two
13 quotes from Mr. Eric Saunders, a widely respected
14 elder of York Factory First Nation who was
15 involved with the Keeyask project for many years.
16 Eric was also the chief who was involved with the
17 Northern Flood Capital Reconstruction Authority
18 and the chief who signed the 1995 Comprehensive
19 Implementation Agreement between York Factory,
20 Canada, Manitoba and Manitoba Hydro, the
21 agreement, which one of the witnesses said is not
22 worth the paper it is written on.

23 Sadly, Mr. Saunders passed away this
24 past Tuesday. Eric lived with his feet planted in
25 both worlds, an accomplished harvester and

1 community leader, he was also comfortable working
2 with a computer and bookkeeping software. His
3 quotes, which can be found at pages 3 and 8 in Our
4 Voices eloquently represent the view of many
5 community members.

6 "I'd like to see a better future. I'd
7 like to see more benefits for our
8 people. We need more opportunities
9 for the future of our people, for our
10 youth. I'd like to see them have
11 jobs. I'd like to see more business
12 development. We have to respect and
13 uphold what our elders taught us in
14 terms of how we use the land and how
15 we take care of it. It is important
16 for our younger generations to be
17 taught and learn the traditional ways
18 of life so that these teachings can be
19 passed on to future generations."

20 Thank you panel members for listening
21 to me. Those are my remarks. And now
22 Ms. Saunders has a few words.

23 MS. SAUNDERS: I ask that you take
24 careful consideration of what we have testified to
25 and presented to you. We have considered this

1 very carefully. Other people are trying to decide
2 what is best for us.

3 We know what is before us and we are
4 prepared to participate in this project. This is
5 our opportunity to help our people and to improve
6 our lives, the lives of our youth and our
7 generations to come. Thank you. Egosi.

8 MR. RODDICK: Thank you, Mr. Chairman,
9 Commissioners, participants, and fellow
10 proponents. My name is Bob Roddick and I am
11 counsel to the Cree Nation Partners.

12 The Cree Nation Partners is a
13 Partnership that was made between the Tataskweyak
14 Cree Nation and the War Lake First Nation to
15 participate in the discussions and ultimately join
16 the Joint Keeyask Development Agreement.

17 Prior to getting into my presentation,
18 and I will do my best not to see any of your
19 cards, Mr. Chairman, I have to comment on some of
20 the matters that were raised this morning.

21 Firstly, I have no intention of
22 putting forth some type of a legal treatise about
23 Powley or rights. The Partnership will, in its
24 written submission, be supplying a short paper,
25 and I say short being a number of paragraphs with

1 regard to legal rights. The Partnership has
2 retained a constitutional expert to prepare that
3 paper.

4 What I need to speak to, Mr. Chairman
5 is the comments that were made about the Northern
6 Flood Agreement and the sections that were cited
7 at that time.

8 The Manitoba Metis Federation is a bit
9 of a strange organization. The MMF purports to
10 represent groups of Metis and individual Metis, at
11 least some of whom did not choose the MMF to be
12 their representative. And that came very clear
13 this morning when they spoke about the NFA.

14 Contrary to what was said this
15 morning, Metis groups that are affected by the
16 Northern Flood Agreement have been dealt with.
17 There is an agreement in place in Nelson House. I
18 know that agreements have been negotiated with the
19 Metis community at Cross Lake and the Metis
20 community at Norway House. Now, I don't know if
21 those have been signed, only because I'm aware
22 from some other things that for a period of time
23 there have been some problems with some of the
24 land under those agreements. But those agreements
25 include compensation, land and rights. So those

1 matters have been dealt with.

2 In addition, Mr. Chairman and panel,
3 Manitoba Hydro has entered into, and the
4 Government of Manitoba have entered into
5 agreements with the Metis communities at Moose
6 Lake, at Easterville, at Cormorant, at South
7 Indian Lake, and I believe at Grand Rapids,
8 although I do not know whether that agreement has
9 been signed.

10 The Partnership is not trying to
11 exclude a group of people. We are not. There are
12 provisions in the agreement, there are commitments
13 to look at any evidence that is brought forward.
14 But it is irresponsible to make representations to
15 this Commission about groups of people not being
16 dealt with when they have been dealt with. That
17 is an internal problem for the MMF.

18 Mr. Chairman, with regard to Split
19 Lake and War Lake, now known as Tataskweyak --
20 historically the Tataskweyak Cree, then known as
21 the Split Lake Band of Indians, was recognized by
22 Canada as a First Nation in 1908 by signing an
23 adhesion to Treaty 5. The wrong adhesion actually
24 due to clerical error, but nonetheless a legally
25 binding adhesion.

1 War Lake First Nation became a First
2 Nation in 1980. The majority of the members of
3 War Lake had previously been members of
4 Tataskweyak.

5 At the signing of Treaty, Tataskweyak
6 had 407 members on its membership list. Today it
7 has 3,615. War Lake, when it was first recognized
8 as an independent First Nation, had 79 members.
9 It has 289 members today.

10 We have heard much throughout these
11 hearings about the hunter-gatherer way of life as
12 being preferable. We have heard statements which
13 suggest that one trapline is equivalent to one
14 dam. I do not believe these statements to be
15 worthy of comment.

16 The government of TCN got here by a
17 rather winding road. They were in the early '70s
18 faced with a situation where they were living
19 among existing dams and further dams were planned
20 and a river diversion was planned.

21 Tataskweyak joined York Factory First
22 Nation, Norway House Cree Nation, Nisichawayasihk
23 Cree Nation and Pimicikamak in the Northern Flood
24 Committee and negotiated an agreement with
25 Manitoba Hydro, the Government of Manitoba, and

1 the Government of Canada. This agreement, the
2 Northern Flood Agreement, was concluded and
3 ratified by 1978.

4 Mr. Joe Keeper, the former executive
5 director of the Northern Flood Committee, and who
6 is today a highly respected elder, has testified
7 at these hearings. Mr. Keeper has clearly stated
8 that the Cree Nation's objective for NFA was about
9 fairness and finding a place for NFA signatories
10 in the fabric of the larger Canadian society.

11 The Northern Flood Committee, on
12 behalf of its five member nations, faced
13 continuing failure to fairly implement the terms
14 of the agreement by the other parties. The NFC
15 attempted, in spite of this inflexibility of the
16 other parties, in 1988 and '89 to negotiate a
17 comprehensive framework to implement the
18 commitments made in that agreement. That
19 negotiation, while ground breaking in a number of
20 areas, did not result in an agreement. Instead,
21 it resulted in the withdrawal of four of the Cree
22 nations from the negotiations.

23 Tataskweyak, at the direction of its
24 members, exercised its rights under the Northern
25 Flood Agreement to negotiate their own agreement.

1 That agreement with Manitoba, Manitoba Hydro and
2 Canada was signed on June 24, 1992, at Split Lake.

3 Over the next decade, three of the
4 other NFA Cree signatories as well negotiated
5 their own implementation agreements.

6 The 1992 implementation agreement
7 contains specific provisions that establish the
8 Split Lake resource management area, the Split
9 Lake Resource Management Board, and provision for
10 allocation of resources within the area. It also
11 made the Government of Split Lake and the
12 Government of Manitoba jointly responsible for
13 land use planning and monitoring in that area.

14 In 1996, TCN again negotiated with
15 Hydro what was called a water regime agreement.
16 That agreement, again I believe a first, was an
17 agreement that saw Hydro pay the First Nation
18 whenever the levels and flows of the Nelson River
19 through their territory exceeded or fell below
20 agreed upon levels. Provisions of this agreement
21 were overtaken by the unprecedented 2005 flood
22 resulting in major commitments to better protected
23 TCN land and waters.

24 The 2000 agreement in principle
25 between TCN and Hydro, which was later signed by

1 War Lake, set out the process for negotiating what
2 ultimately became the Joint Keeyask Development
3 Agreement, which is the document that has been
4 presented to this Commission. The CNP Partnership
5 agreement formalized the relationship between the
6 governments of TCN and War Lake.

7 What was the road to the JKDA? In
8 1998, TCN, after significant deliberation, wrote
9 to Manitoba Hydro and proposed exploring the
10 possibility of building Keeyask to be jointly
11 owned by Manitoba Hydro and the Cree. TCN wrote
12 to Hydro.

13 War Lake joined TCN as a partner, and
14 Fox Lake Cree Nation and York Factory First
15 Nation, after their own internal deliberations
16 independently joined negotiations and became part
17 of the group that became known for the purposes of
18 convenience during negotiation as the Keeyask Cree
19 Nations.

20 The erroneous representations that
21 were made to this Commission that the KCNs
22 believed that Keeyask would be built "whether they
23 really wanted it or not" is incorrect. TCN
24 commenced the discussions on Keeyask, and as the
25 evidence is confirmed, TCN had a veto over whether

1 Keeyask would proceed or not.

2 Contrary to comments again made
3 throughout the course of this hearing at various
4 times, the community involvement of TCN and War
5 Lake, and in TCN and War Lake was exhaustive. As
6 Chief Michael Garson, Victor Spence, Robert Flett
7 and Roy Ouskun has testified, there were more than
8 2,000 meetings over the course of the consultation
9 period from 2001 to 2009. These meetings were
10 related to considering and participating in all
11 elements of the project, both internally and with
12 Manitoba Hydro.

13 Victor Spence has given evidence
14 before you here. Mr. Spence was a councillor in
15 the '80s when the impetuous started to do
16 something with the Northern Flood Agreement. He
17 was there when that agreement was signed in 1992.
18 He became the director of monitoring after that.
19 He then, in about 1998, became the director of
20 external development that dealt with this
21 agreement. That is the type of history and the
22 type of people that the First Nation have had
23 involved from day to day in this process. He was
24 the lead negotiator for the Cree Nation Partners
25 and it is something that the Cree Nation Partners

1 are proud of.

2 The JKDA and respective adverse
3 effects agreements are somewhat complex. They
4 provide for offsetting programs which include an
5 access program, maintenance of harvesting trails
6 and portages, cabins, snow machines and equipment,
7 the TCN healthy fish food program, and a variety
8 of other programs aimed at strengthening CNP
9 culture, and importantly contain a provision that
10 allows the flexibility to change and alter these
11 programs if required over time.

12 The TCN agreement also provides for
13 the construction of the Keeyask Centre in Split
14 Lake, and the War Lake agreement provides for the
15 construction of facilities in War Lake.

16 The CNP will participate in the
17 revenue from Keeyask. Importantly, the decision
18 on how to participate does not have to be taken by
19 the CNP until after the project is licensed and
20 constructed, such that the costs of construction
21 are actually known, and the terms of potential
22 sale contracts are as well known. This is not a
23 matter of a decision before there is a project, if
24 it is licensed.

25 The CNP and their KCN partners have

1 had an unprecedented impact on the preparation of
2 the EIS. They have had and will continue to have
3 an unprecedented role in an environmental
4 monitoring program.

5 The CNP also have direct negotiated
6 contracts. These contracts which have a value
7 exceeding \$111 million to date have been part of
8 the work that has been ongoing. More contracts
9 are expected. There is real participation.

10 From the perspective of the CNP, the
11 most significant non-monetary benefit of the JKDA
12 is the CNP right to participate in the future. My
13 friends have described in some detail some of that
14 participation. I will not cover that ground
15 again.

16 The JKDA has in it a number of
17 commitments that were the result of the work of
18 the Cree: Pre-clearing of the reservoir for the
19 first time in Manitoba history, control of water
20 levels on the Keeyask forebay and Split Lake in
21 the open water season, narrowly constrained
22 maximum and minimum levels on the Keeyask forebay
23 and camp rules that severely restrict hunting and
24 fishing in the area by workers.

25 The group of concerned elders from

1 York Factory raised, quite correctly, their
2 concerns regarding respectful dealings with any
3 graves that might be discovered or any artifacts
4 that might be found during construction. They
5 brought as a witness Elder D'Arcy Linklater, who
6 testified about the agreement NCN reached with
7 Hydro and the Province of Manitoba in this area.

8 CNP, in support of this type of
9 arrangements, wrote to and received from the
10 Province of Manitoba assurance that it would enter
11 into a Heritage Resources Agreement. The
12 Partnership, in answer to the written questions
13 from the CEC panel, gave a similar assurance. An
14 agreement covering these matters is wanted by and
15 is a commitment of the Partnership.

16 There are provisions addressing
17 construction monitoring, but most significantly
18 provisions covering CNP environmental monitoring
19 for the life of the project.

20 Keeyask, if built, will be in the
21 heart of the Split Lake Resource Management Area.
22 Knowing what is happening through monitoring is
23 critical to CNP members. It is the Cree who will
24 be affected first and to the greatest extent. It
25 is the Cree who have the knowledge and life

1 experience to best recommend management measures.

2 The Keeyask project, however, is about
3 more than land and animals, megawatts, monitoring
4 and dollars, it is about the Cree people who live
5 in the area. It is about the members who are
6 looking for a future, a future that only to a
7 minimal extent can rely on hunting and gathering
8 as a basis for survival.

9 Indian leaders, from the late David
10 Courchene of the Manitoba Indian Brotherhood and
11 late Harold Cardinal of Alberta, in the 1960s and
12 1970s, and today the Split Lake chiefs, including
13 the late John Garson, Norman Flett and Beardy,
14 recognized and promoted participation in the
15 larger Canadian economy as the vehicle to protect
16 the culture and lifestyle of the First Nation
17 members. They worked diligently to open doors and
18 create opportunities for First Nations.

19 Keeyask is about the people who lived
20 with and endured river diversions having had four
21 dams built in their recognized territories. They
22 received few benefits from those dams. They have
23 endured their construction and are still enduring
24 their operation.

25 The governments of the CNP want other

1 and better things for their people, particularly
2 their young people.

3 The Commission has heard evidence on
4 certain provisions to the JKDA being improvements
5 over the Wuskwatim agreement. This is positive.
6 There have been criticisms suggesting certain
7 inadequacies in the agreement. This may give
8 direction for negotiation and further agreements.

9 The goal, in closing, Mr. Chairman,
10 the goal of the Cree Nation Partners is best
11 stated by Elder William Beardy. I know you have
12 heard this before but I believe it's worth saying
13 one more time.

14 "The land and waters and the resources
15 have provided for us in the past. We
16 can't exercise our traditional
17 pursuits as in the past because the
18 waters have changed. Yet these waters
19 and their power could once again help
20 to provide for our people."

21 The CNP believe that the JKDA and the
22 proposed Keeyask development is a major step down
23 that road. It is an agreement proposed and
24 negotiated by the KCNs as equals with Hydro, not
25 with the same financial size, but as recognized

1 autonomous governments.

2 We respectfully ask the Commission in
3 making your decision to give serious consideration
4 to the KCN's historic decision and support that
5 decision by recommending a licence for Keeyask.
6 Egesi.

7 MS. MAYOR: I'm hesitant at all to
8 make any further remarks as I want the words from
9 our partners to be the first and the last thing
10 that you remember from this hearing and from these
11 closing arguments, but I would be remiss if I
12 didn't take a few moments to say thank you.

13 On behalf of the Partnership, I would
14 like to first thank the Clean Environment
15 Commission, the participants and the various
16 presenters for their thoughtful input into the
17 process, and their intention and enthusiasm
18 throughout this lengthy hearing.

19 A full environmental assessment is an
20 iterative process, and as a result of the
21 participation of all involved, we believe that a
22 robust examination of all relevant environmental
23 impacts has been undertaken.

24 Mr. Williams, yesterday morning in his
25 closing remarks, asked the question, why do we

1 bother with this hearing if the result is
2 inevitable? To that, I say the people at these
3 two tables and the hundreds who have been involved
4 in this intensive environmental process over the
5 last decade have not invested years of their lives
6 and their professional reputations ensuring that
7 the environment is well protected and creating the
8 best project possible, and spending hours upon
9 hours over the last few years preparing the EIS
10 materials and preparing for this hearing, assuming
11 all along that the end result is inevitable. To
12 the contrary, you have heard the passion in their
13 voices and the sincere and undeniable commitment
14 to environmental stewardship.

15 What you have not heard and what was
16 going on many times behind the scenes was their
17 keen interest in the viewpoints and reports of the
18 many experts and participants and their strong
19 commitment to learning and improving their
20 environmental work.

21 So why bother? Because it's a
22 meaningful process from which both the environment
23 and the project benefit through new learning and
24 thoughtful and sensible recommendations, as
25 Mr. Williams himself observed.

1 The Partnership would also like to
2 acknowledge and commend the efforts and dedication
3 of the skilled and committed people that make up
4 the Partnership team. As Mr. Adams indicated in
5 his opening statement, the overwhelming majority
6 of the people involved, both from the traditional
7 knowledge and western science perspectives are
8 Manitobans. They are accountable to their peers,
9 to their colleagues, to their friends and
10 relatives and to future Manitobans. And in most
11 cases, they will be the ones responsible for
12 dealing with the consequences of this work. They
13 cannot and do not take their responsibilities
14 lightly.

15 To the First Nation partners, it has
16 truly been an honour and a privilege to work
17 beside them. I have learned so much each and
18 every day from each individual, and my respect has
19 grown daily.

20 There is an old adage about walking in
21 another person's shoes to truly understand what
22 they go through. I cannot possibly do that, nor
23 would I purport to do so. They have made many
24 personal sacrifices to be here, to be before their
25 peers, to be criticized and challenged on their

1 decisions, and their respect is well deserved.

2 It seems insufficient actually to just
3 say thank you. But on behalf of all of Manitoba
4 Hydro, I do so.

5 I also want to thank their legal
6 counsel and advisors for the many hours of
7 assistance and excellent advice provided
8 throughout the hearing. And many Star Trek
9 references that we have heard.

10 The Partnership also engaged a
11 tremendous team of experts and external counsel,
12 were required to ensure that the best available
13 minds have been brought to bear on all aspects of
14 the analysis. They have provided invaluable
15 guidance over the course of many years, and have
16 been virtually on call 24/7 since the IR process
17 began and the hearing evidence concluded this
18 week. To them, I also want to offer our sincerest
19 thank you.

20 Finally I want to thank the incredible
21 team from Manitoba Hydro that I have had the
22 pleasure and honour of working with, not only the
23 faces that you have seen day-to-day, but also the
24 many faces working intensely behind the scenes, to
25 respond, to answer questions and to provide

1 support.

2 To sit through the hearing and to hear
3 criticism day in and day out of both your employer
4 and your own work in the field of your choosing
5 has been very difficult for them. But to them, I
6 want to say how proud I am to be a Manitoba Hydro
7 employee.

8 The Clean Environment Commission now
9 has before it a complete and thorough record to
10 consider. And the Partnership looks forward to
11 receiving its recommendations, not only for this
12 project but for many to come. Your journey in
13 three months will be over so far as the Keeyask
14 project is concerned, but for many of us who have
15 worked on behalf of the Partnership, it will
16 continue in some fashion or another.

17 As Mr. Bedford said to you 11 weeks
18 ago, if not more, when you look back at this
19 hearing, we hope what will remain with you the
20 longest is the fact that the proponent here was a
21 Partnership, a Partnership formed by parties who
22 have long had divergent views about their stained
23 history and the merits of hydro development in the
24 province, but who now share a common vision of the
25 future. Thank you.

1 THE CHAIRMAN: Thank you, Ms. Mayor,
2 and thank you to all of the other presentations
3 from the Partnership this afternoon.

4 I have a few closing comments, some
5 thanks and some administrative. But first I'd ask
6 the commission secretary to register a few
7 documents.

8 MS. JOHNSON: Okay. KHL106 is the
9 stack of powerpoint slides from the present
10 presentation. MMF 17 is the oral closing for the
11 MMF from this morning. And PFN 12 is the Peguis
12 presentation.

13 (EXHIBIT KHL106: Powerpoint slides
14 of closing presentation)

15 (EXHIBIT MMF17: MMF closing
16 presentation)

17 (EXHIBIT PFN12: PFN closing
18 presentation)

19 THE CHAIRMAN: Thank you, Ms. Johnson.
20 I'd just like to say in closing that this has been
21 a long and complex and perhaps even at times an
22 arduous process. We have had 31 days of hearings
23 in Winnipeg, which was probably about 10 to 12
24 days longer than we guestimated when we first set
25 out to plan these hearings. In addition, we held

1 seven hearings in Northern Manitoba, four of those
2 in First Nation communities.

3 As an aside, I'd like to thank each of
4 those communities for the hospitality shown to us
5 when we visited, and for the organizing -- and for
6 organizing the events in those communities. And
7 also for the fabulous food that was provided to
8 us.

9 The Commission began preparing for
10 these proceedings in some ways three or four years
11 ago. We have been working on it actively for more
12 than a year now. At times, in the early stages,
13 overlapping with the final months of the Bipole
14 process.

15 As we have heard this afternoon and
16 throughout these hearings, the proponent, the
17 Partnership, Manitoba Hydro and the four Cree
18 Nations have been working on this for more than a
19 decade. And the participants, most of them have
20 been working on this for the better part of the
21 year, for some of them even a bit longer as they
22 knew it was coming so they started to prepare
23 before the official announcement for participation
24 was set out, I'd like to thank all of you for your
25 commitment to this process.

1 I also want to thank you for the
2 respect and courtesy that you have shown to each
3 other and to us throughout this process.

4 It's now up to this panel, as some of
5 you have said in the last few minutes, to take
6 what we have heard over the past three and a half
7 months of hearings, along with all of the filed
8 documentation, and turn it into a report to the
9 Minister, with recommendations and advice as to
10 what, in our view, should be the outcome of the
11 proponent's application for an environmental
12 licence.

13 This will be another long road. There
14 will be lots of decisions to be made. There will
15 be many complex issues to be considered. We have
16 the many presentations by the proponents and the
17 many concerns raised by the participants, as well
18 as the many recommendations as to what many of you
19 think we should recommend to the Minister.

20 Just a few words, and this will be a
21 little bit administrative, but a few words on this
22 process. In coming to our decision, only those
23 members of the Commission who sat on this panel
24 during the proceedings will be involved in the
25 decision-making, so that's the five of us here.

1 We will, of course, receive advice from our
2 counsel, our Commission Secretary and our own
3 consultants, but the ultimate decisions are made
4 by the five of us.

5 The powers that the panel is given
6 under the Act are that we are to provide advice
7 and recommendations to the Minister. The Minister
8 is not bound to accept our advice and/or
9 recommendations, however he typically will and
10 typically has, and hopefully will continue to be
11 strongly informed by the conclusions of the
12 hearing panel.

13 As you all know, we are only one of
14 the elements of his ultimate decision. There is
15 also the NFAT proceedings which are yet to
16 commence and the section 35 consultations.

17 Under the Act, the Commission must
18 deliver our report to the Minister 90 days from
19 the closure of the record, and I'll come to the
20 timing of that in a moment or two.

21 As far as all of the records that we
22 have received, the Commission will maintain all of
23 the records of the proceedings for an indefinite
24 period of time. Initially they will be kept in
25 our offices and ultimately, in accordance with

1 government archival directives, they will be
2 transferred to the Manitoba archives.

3 Now, closing of the record;
4 participants must file final arguments by noon,
5 Monday, January 13th. That's next Monday, about
6 four or five days from now. If they come in the
7 afternoon, they will not be put on the record.

8 As with all documents, these must be
9 filed in an electronic form. No other documents
10 for the record will be accepted from participants
11 after that time.

12 Yesterday another issue arose when
13 counsel for the proponent brought a matter to the
14 Commission Secretary. And it relates to our
15 procedures whereby oral arguments are made prior
16 to the submission of written arguments. Given
17 that we had initially intended that the proponent
18 was to submit its written arguments at the same
19 time as the participants, the participants were
20 concerned that it was possible that
21 recommendations may be made by participants to the
22 panel that are brand new and were not raised in
23 oral submissions, and that the proponent obviously
24 was not aware of and thus not in a position to
25 respond.

1 The panel quickly saw that this would
2 not be fair to the proponents and considered
3 options. The proponent recommended a fairly short
4 but slightly convoluted process. The panel
5 considered it, and felt that the simplest and
6 fairest process, and one that would be fair to the
7 proponent without compromising the fairness
8 afforded to participants was that the proponent
9 will file its final argument one week later by
10 noon on Monday, January 20th. At that time, noon
11 January 20th, the record will close.

12 Other administrative matters: To the
13 participants, the 120 day clock will start on
14 January 20th, that is for you to complete your
15 accounting and submit it to us. The regulation
16 says it is 30 days after the close of the
17 proceedings. We interpret the close of the
18 proceedings to be the day we file the report with
19 the Minister. So, 120 days from January 20th,
20 which will be more or less April 18th or 19th, we
21 will let you know, believe me. We will also
22 remind you probably tomorrow about Monday the 13th
23 deadline and Monday the 20th deadline.

24 Get on with your accounting. Given
25 that there are four months to get it done, we will

1 not tolerate any lateness in that respect, and
2 don't feel constrained, you don't have to file it
3 at the last minute on the 120 days, you can send
4 it in anytime you want.

5 I'd also like to note to all of you
6 that we would like, at some point in the next few
7 months, to either get together, or perhaps by
8 letter and e-mail, just talk about some lessons
9 learned from this process. There were a lot of
10 things that have gone on. Every once in a while,
11 the Commission, in particular Cathy Johnson and I,
12 look at our procedures and review them. So we'd
13 appreciate any thoughts you have in that regard.
14 And I will be writing to you about that at some
15 time in the next month or two or three.

16 To repeat myself, I'd like to thank
17 all parties to these proceedings, the proponent,
18 including the many officials from Manitoba Hydro
19 and from the Keeyask Cree Nations, as well as your
20 many contractors and consultants. To the
21 participants, it goes without saying that
22 well-informed, well-prepared participants make our
23 process a lot better. I know this from my own
24 experience, but your challenging of the positions
25 put forward by the proponents makes our job

1 easier, as well as ensuring as best we can that
2 the project does not cause undue harm to our
3 environment.

4 I'd like to thank my colleagues with
5 the Commission, my panel members, the members of
6 our staff and our contractors.

7 It's been a long process, but it's not
8 been without its benefits. It has been an
9 incredible learning experience. I appreciate the
10 dedication, respect and professionalism you have
11 all brought to the proceedings over the last few
12 months. And I thank you for that.

13 One final thanks, and this is to
14 Martina Saunders and her chief and her community
15 for allowing your community pipe to be with us
16 throughout these hearings, and for its continued
17 help in guiding the panel to conclusions that will
18 protect Aski. So, thank you.

19 I'd like to close where I started back
20 in October by acknowledging that here in Winnipeg,
21 we have conducted these hearings in the homeland
22 of the Treaty 1 people and of the Metis Nation.

23 I would now like to call about Ila
24 Garson to say a closing prayer before we adjourn.

25 (Closing prayer)

1 THE CHAIRMAN: Thank you, Elder
2 Garson. And with that, we adjourn for the final
3 time.

4 (Proceedings adjourned at 4:42 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

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

Cecelia Reid
Official Examiner, Q.B.

Debra Kot
Official Examiner Q.B.

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