

MANITOBA CLEAN ENVIRONMENT COMMISSION

MANITOBA-MINNESOTA TRANSMISSION PROJECT

VOLUME 17

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Transcript of Proceedings
Held at RBC Convention Centre
Winnipeg, Manitoba
MONDAY, JUNE 5, 2017

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NO UNDERTAKINGS

1 MONDAY, JUNE 5, 2017

2 UPON COMMENCING AT 9:30 A.M.

3 THE CHAIRMAN: All right. Morning,
4 everyone, and welcome to our second-last day of
5 the hearings. And we are finally at closing
6 arguments. We don't have any announcements this
7 morning, so we will launch right into it.

8 And we are going to go back to the
9 order that was agreed to at the start, or even
10 before the hearings, so we will start with the
11 Consumers' Association of Canada,
12 Ms. Pastora Sala.

13 MS. PASTORA SALA: Thank you, and good
14 morning, Mr. Chair. Good morning, Mr. Nepinak,
15 Mr. Gillies, and Ms. Streich.

16 I would note for the panel members
17 that joining me a little later will be Ms. Gloria
18 DeSorcy, executive director of the Consumers'
19 Association of Canada, Manitoba branch.

20 And also here with me today, and
21 someone who has been with me every day, is Max
22 Griffin-Rill, who is a summer law student at my
23 office. And maybe I should say for the record
24 that without him, I probably wouldn't be sitting
25 here today, so I just wanted to thank him on the

1 record.

2 On behalf of CAC Manitoba, I would
3 like to begin by thanking you, members of the
4 panel, for the opportunity to participate in the
5 CEC hearings, bring the evidence of
6 Dr. Fitzpatrick, and present CAC Manitoba's
7 closing arguments today.

8 As you will see in front of you and on
9 the screen, we have provided you with a short
10 PowerPoint to help you follow along with our oral
11 presentations, and we will be submitting written
12 arguments with references to follow.

13 In terms of a roadmap for my closing
14 arguments today, we have divided the CAC
15 Manitoba's closing submissions in the following
16 order.

17 First, we will provide a brief
18 overview of the main arguments. Second, we have
19 divided the information we heard during the
20 hearing within the following six main themes,
21 which we will discuss individually.

22 First, the acknowledgement that best
23 practice today is always evolving, and that
24 regulatory compliance is not sufficient.

25 Second, transparency and inclusiveness

1 of consumers in decision-making, monitoring, and
2 follow-up.

3 Third, recognition of and planning for
4 uncertainty.

5 Fourth, silos within Manitoba Hydro
6 and the Manitoba regulatory process itself.

7 Fifth, coordination and cooperation
8 among provincial, federal, and indigenous
9 jurisdictions.

10 Sixth, relationships with and between
11 Manitoba Hydro and indigenous nations and people.

12 In conclusion, we have prepared
13 recommendations for the CEC to include as
14 licensing and non-licensing recommendations. As
15 well, we will be presenting a list of statements
16 which we will ask the CEC to include in its report
17 as express findings.

18 By way of a reminder, we have spent
19 the last five weeks together as the CEC has been
20 asked by the Minister to hold public hearings and
21 consider stakeholder and public input, as well as
22 to prepare and file a report with The Minister of
23 Sustainable Development outlining the results of
24 the Commission's review, as well as to provide
25 recommendations for the Minister's consideration.

1 Specifically, your mandate with
2 respect to the Manitoba-Minnesota transmission
3 line, in the terms of reference, asks you to
4 consider whether an Environment Act licence should
5 be issued to Manitoba Hydro for the
6 Manitoba-Minnesota transmission project, and
7 should the Commission recommend the issuance of a
8 licence, any conditions that should be included in
9 the licence.

10 In considering these terms of
11 reference, we ask the CEC to remember the
12 important role it plays in establishing best
13 practices, best practice environmental assessment
14 in Manitoba.

15 Over the last decade or so, the CEC is
16 gaining a reputation across Canada for innovative
17 recommendations which have set standards for best
18 practice. The recommendations of the CEC for
19 Bipole III and Keeyask projects reinforced the
20 iterative nature of the monitoring design, but it
21 also set the stage for appropriate regulatory and
22 industry practice in follow-up and monitoring
23 programs.

24 Environmental practices and standards
25 have continued to evolve and improve, and will

1 necessarily continue to change as certain
2 elements, such as the respect for indigenous legal
3 traditions, have not yet been incorporated in
4 environmental assessment to date. The
5 Manitoba-Minnesota transmission project offers the
6 CEC an opportunity to enhance its reputation and
7 make recommendations which will exceed past
8 standards and practices. CAC Manitoba asks the
9 CEC to carefully consider its recommendations,
10 particularly in light of Manitoba Hydro's economic
11 uncertainties. Your recommendations will be key
12 in identifying which elements of the project get a
13 designated budget envelope.

14 As we have heard over the last few
15 weeks, the bar is being raised for environmental
16 assessment across Canada. As part of the exercise
17 of doing better environmental assessment in
18 Manitoba, we are asking that the CEC give
19 significant weight to the evidence of Dr. Patricia
20 Fitzpatrick, who is a leader in the area of
21 monitoring and follow-up, adaptive management and
22 non-state market-driven initiatives.

23 Specifically, we would ask that you
24 expressly find that she is well qualified,
25 reliable, and provided compelling, forward-looking

1 recommendations that are consistent with the
2 spirit and intent of the Environmental Assessment
3 Act and the aspirations of Manitoba Hydro and of
4 the policy communities. We also ask that you
5 accept all of Dr. Fitzpatrick's recommendations as
6 licence recommendations.

7 By way of a reminder, during our
8 opening statements, you heard that CAC Manitoba
9 provides evidence-based advocacy and strives to
10 ensure that consumers can have access to
11 information, skills, and knowledge to make sound,
12 sustainable choices. You also heard that
13 consumers want to know where and how their goods
14 and services are produced. As consumers, we all
15 have the right to have a role in making government
16 policies and also to have a healthy environment
17 for ourselves, but also for future generations.

18 During Dr. Fitzpatrick's presentation,
19 we heard that environmental assessment is a
20 proactive planning exercise which is designed to
21 identify, where possible, mitigate the potential
22 negative impacts of a proposed project before
23 irreversible decisions are made. Consumers care
24 about good practice environmental assessment, as
25 it allows us to exercise our rights to education

1 and information. It provides us with a voice in
2 the marketplace, forces governments to publicly
3 consider all elements of the environment before
4 making decisions for the future, and in the case
5 of a monopoly such as Manitoba Hydro, it forms
6 part of the proxy for our right to choice.

7 It is the only way we can learn about
8 potential impacts to the environment, including
9 the people, animals, species, lands. Good
10 practice environmental assessment is good for the
11 environment.

12 The planning and hearing process
13 offers an opportunity to build relationships and
14 information and knowledge-sharing.

15 As identified in Dr. Fitzpatrick's
16 report and presentation, good practice
17 environmental assessment is always changing.
18 Based on what we know now, good practice
19 environmental assessment includes such elements as
20 a broad definition of the environment, public
21 involvement, monitoring and follow-up, adaptive
22 management, and a respect for indigenous legal
23 traditions and world views. It also necessarily
24 includes a respect for treaties and the United
25 Nations Declaration on the Rights of Indigenous

1 People.

2 Good practice environmental assessment
3 can increase transparency and create more trust in
4 the services provided by the proponent. And
5 certainly we have heard from Dr. Fitzpatrick's
6 evidence that it has been particularly busy this
7 year for environmental assessment practitioners.
8 And environmental assessment has taken large steps
9 ahead, even over the last few weeks, particularly
10 with the release of independent expert reports
11 relating to both the federal environmental process
12 and the National Energy Board.

13 I'm at Slide 6.

14 You will recall that Dr. Fitzpatrick
15 outlined two main elements as the foundation of
16 environmental assessment. First, legislative
17 requirements which are enshrined in law, such as
18 the Environment Act; and second, learning from
19 past experiences, also known as process
20 components. Learning from past experiences and
21 integrating those learnings into every project is
22 key, as laws are far slower to change than the
23 knowledge and expectations of policy communities.

24 For the purposes of my oral
25 submissions, I adopt the definition of policy

1 communities which was shared by Dr. Fitzpatrick
2 and involves all those who have an interest in a
3 particular sector or particular issue that informs
4 that sector.

5 Dr. Fitzpatrick directed the CEC's
6 attention to the independent expert report on
7 federal environmental assessment process, which I
8 will call the CEAA expert report for the remainder
9 of my presentation. According to this report,
10 good practice environmental assessment must be
11 guided by the principles of transparency,
12 inclusivity, informed deliberations, and
13 meaningful consumer participation.

14 Slide 7.

15 Importantly, best practice
16 environmental assessment must include monitoring,
17 follow-up, and adaptive management. As you know,
18 Dr. Fitzpatrick presented independent expertise
19 and evidence on behalf of CAC Manitoba on best
20 practice monitoring and follow-up, which includes
21 adaptive management. And adaptive management can
22 be defined as a systematic process for improving
23 strategies and practices by learning from and
24 acting on outcomes of management experiences.

25 Dr. Fitzpatrick also presented

1 evidence on non-state market-driven initiatives,
2 including ISO 14001.

3 According to Dr. Fitzpatrick, best
4 practice monitoring and follow-up can include
5 compliance, which is ensuring the proponent is
6 meeting its regulatory requirements; monitoring,
7 which are the activities designed based on value
8 components to identify the nature and cause of
9 change; auditing, which involves an objective
10 examination or comparison of observations with
11 those pre-determined; and an ex post or post hoc
12 evaluation, which is a detailed comparison of the
13 information provided in the EIS as compared to
14 what is happening in reality.

15 Slide 8.

16 While there may be many definitions of
17 adaptive management, Dr. Fitzpatrick identifies
18 some common elements in her evidence to which
19 Manitoba Hydro agreed. This includes learning and
20 reducing key uncertainties, using what is learned
21 to change policy and practice.

22 And adaptive management is formal,
23 structured, and systematic. It is purposeful.
24 Core features of adaptive management include --
25 and you will recall the diagram which is in the

1 PowerPoint -- the Plan, Do, Evaluate, and Learn
2 and Adjust cycles, which leads to continuous
3 change and adaptation.

4 A comprehensive definition and
5 application of adaptive management includes
6 uncertainty, and considers uncertainty, and it
7 also is deliberate in design and implementation.

8 As stated by Dr. Fitzpatrick, learning
9 can't just be at the desk. It should inform
10 subsequent management decisions in the
11 implementation of follow-up and monitoring plans.

12 Adaptive management is different from
13 managing adaptively. Adaptive management requires
14 setting strategies and a framework ahead of time
15 with different scenarios. You will recall that
16 Dr. Fitzpatrick used the example of preparing her
17 plan A to J for her students as an example of
18 this.

19 The notion of experimentation is a key
20 element of adaptive management. On this point,
21 Dr. Fitzpatrick described the differences between
22 passive and adaptive management, and she used
23 making coffee as an example. She clarified that
24 while not everything requires experimentation, in
25 order to determine the type of experimentation

1 required, it is helpful to consider the financial
2 costs, the potential impacts on the environment,
3 as well as the human resources.

4 Overall, Dr. Fitzpatrick determined
5 that Manitoba Hydro's approach to adaptive
6 management in the monitoring and follow-up reports
7 is an improvement over the Bipole III project.

8 Slide 9.

9 During Mr. Matthewson's testimony on
10 May 23rd, we heard him say that he hoped that
11 Manitoba Hydro would be in a position or is in a
12 position of being and creating best practice.
13 While we certainly agree with Mr. Matthewson in
14 hoping that one day Manitoba Hydro is in a
15 position of being and creating best practice, it
16 is certainly not yet the case, as Manitoba Hydro
17 continues to have challenges in acknowledging that
18 best practice EA is always evolving, and that
19 regulatory compliance is not sufficient, and
20 having transparent and inclusiveness of consumers
21 in decision-making, monitoring and follow-up, in
22 recognizing and -- recognition of and planning for
23 uncertainty, and silos within Manitoba Hydro and
24 the Manitoba regulatory process itself,
25 coordination and cooperation among provincial,

1 federal, and indigenous jurisdictions, as well as
2 its relationship with indigenous nations and
3 people.

4 And I'm going to take you through all
5 of these individually.

6 Slide 10.

7 This leads me to the first discussion,
8 or to the discussion of the first theme or
9 challenge, which is that of transparency of the
10 process, inclusiveness, and meaningful
11 participation of consumers throughout the entire
12 EA process, including monitoring and follow-up.

13 Dr. Fitzpatrick describes transparency
14 as an openness of a process to the public. She
15 further states that clear procedures, structured
16 decision-making, and clear decision-making
17 criteria assist us in providing transparency.

18 According to the CEAA report,
19 transparency restores trust and confidence in
20 assessment processes. People must be able to see
21 and understand how the process is being applied,
22 how assessments are being undertaken, and how
23 decisions are being made. Without this
24 transparency, no process will be trusted.

25 As we heard during Dr. Fitzpatrick's

1 expert testimony, transparency should inform the
2 entire environmental assessment process, including
3 monitoring and follow-up. An inclusive process
4 meaningfully takes into account the concerns of
5 the entire policy community. It provides
6 opportunities for relationship-building, and
7 creates real opportunities for the policy
8 communities to influence decisions.

9 Successful meaningful engagement can
10 create better relationships, and the reverse is
11 also true. Engagement strategies must be
12 transparent, proactive, and adaptive. While
13 Manitoba Hydro uses public engagement and
14 participation interchangeably, it must be noted
15 that the literature seems to be moving away from
16 this approach, and makes the distinction between
17 the two terms.

18 On the one hand, public participation
19 is described in the literature as
20 project-specific. On the other hand, meaningful
21 engagement is all about building and improving
22 long-term relationships.

23 Manitoba Hydro agrees that building
24 long-term relationships is an important element of
25 engagement, and says that it is something they

1 strive to do.

2 One of the ways that Manitoba Hydro
3 can achieve better relationships with policy
4 communities is by having clear process intentions
5 and transparent information. Having participated
6 in all other aspects of the EA process, it remains
7 unclear whether Manitoba Hydro's public engagement
8 process have standardized processes relating to
9 ensuring that expectations, process intentions,
10 and the role of staff involved are communicated
11 with policy communities. For example, it is only
12 through cross-examination that it was revealed
13 that the project liaison for the entire MMTP is
14 Mr. Trevor Joyal.

15 Slide 11.

16 Given the interests of time, my oral
17 submissions will focus within this area on the
18 preconstruction as well as postconstruction
19 phases.

20 In the preconstruction phase,
21 transparent and inclusive decision-making requires
22 meaningful engagement at all levels of the EA
23 process. This necessarily includes the
24 preliminary planning phases of any project.

25 Manitoba Hydro's preliminary planning

1 process for the MMTP began in February 2012.
2 Early in the process, Manitoba Hydro selected the
3 EPRI-GTC model as a methodology for route
4 selection, as it was deemed to, and I quote,
5 "provide a transparent model for decision-making
6 which sought to reduce effects of the transmission
7 line on people and the environment."

8 As we heard during Manitoba Hydro's
9 testimony, the perspectives which would be
10 considered for the process of selecting the final
11 route was identified by Manitoba Hydro in
12 consultation with Mr. Glasgow's team, with final
13 decisions being made by the project management
14 team.

15 By way of reminder, that project
16 management team consists of four engineers, two of
17 which are civil engineers and the other two are
18 electric engineers. So we have Shane Mailey,
19 Glenn Penner, Gerald Neufeld, and Anthony Clark.
20 It was these individuals who chose the built,
21 natural, and engineering perspectives.

22 As we heard during the presentation
23 and cross-examination of Manitoba Hydro's routing
24 panel, this stage of the planning was not
25 project-specific; but once the initial

1 perspectives were selected, the next step was to
2 receive feedback from a stakeholder workshop which
3 was held May 6 to 8, 2013.

4 According to Ms. Bratland's testimony
5 on May 11, 2017, it is this stakeholder workshop
6 which provided, and I quote, "the basis to move
7 forward for the rest of the routing approach for
8 MMTP."

9 As indicated in the EIS, the workshop
10 was, and I quote, "a foundational piece of
11 information that informed all the subsequent steps
12 of the route selection."

13 It was during the steps of the
14 pre-engagement process at which the suitability
15 values for each features were scored, and weights
16 were given to each factor, based on the knowledge
17 and opinion of importance of the individuals who
18 were at the stakeholder workshop.

19 In other words, the groups and
20 individuals who were present at this workshop had
21 significant involvement in determining the basis
22 upon which all other decisions relating to routing
23 methodology for the MMTP would be made.

24 Knowing that the MMTP involved a
25 delicate process of balancing conflicting

1 perspectives, particularly those between, on the
2 one hand, private lands, and on the other,
3 indigenous lands, indigenous nations and groups,
4 and that that workshop would have such a
5 foundational role in the outcome of the routing
6 process, it is expected that Manitoba Hydro would
7 have invited a variety of policy communities to
8 this workshop.

9 However, that was not the case. In
10 answer to a question during the hearing,
11 Mr. Glasgow indicated that it was only "technical
12 knowledge holders that could bring to the
13 discussion their understanding of the features on
14 the landscape and associated values and use who
15 were invited."

16 According to Manitoba Hydro, the
17 individuals and groups who met this criteria
18 consisted of a variety of provincial and municipal
19 government departments, as well as selected
20 non-governmental organizations. The hand-picked
21 individuals and groups who were there did not
22 include consumer advocacy groups, indigenous
23 nations people and indigenous representative
24 organizations. It is these people who did not
25 meet Manitoba Hydro's criteria of technical

1 knowledge holders.

2 In other words, at this early stage in
3 the process, Manitoba Hydro was not prepared to
4 hear from consumers, First Nations, the Metis
5 Nation, and Aboriginal organizations.

6 CAC Manitoba is concerned by this
7 fact, given the fundamental role of this workshop
8 in determining all subsequent steps in the MMTP
9 routing process.

10 I'm now moving to the postconstruction
11 phase, but I'm still on this slide.

12 In terms of the transparency of the
13 postconstruction phase, it must be noted that many
14 of the management plans were not available prior
15 to, or during, or to this date, of the
16 Manitoba-Minnesota transmission project hearing.

17 While it is understandable that some
18 of the plans have yet to be developed and that
19 many will be done by contractors, it is concerning
20 that the public may never have an opportunity to
21 review certain plans, including, for example, the
22 erosion and sediment control plan, the clearing
23 management plan, and the hazardous substance
24 management plan.

25 The lack of transparency around the

1 availability of these plans contributes to the
2 overall lack of trust by certain policy
3 communities. It also makes it challenging, at
4 best, to identify whether the recommendations of
5 policy communities relating to these plans have
6 actually been integrated.

7 Based on Dr. Fitzpatrick's report,
8 there are a number of important elements which
9 should form part of the licensing recommendations
10 for the MMTP with respect to transparency and
11 inclusiveness and meaningful engagement. These
12 include the publishing of monitoring reports, the
13 maintenance of project websites, and the ex post
14 evaluation.

15 So for the publishing of the
16 monitoring reports, you will recall that
17 Dr. Fitzpatrick recommended that the CEC replicate
18 the recommendation from Keeyask and Bipole III
19 that the proponent provide the Manitoba government
20 an annual report on the MMTP, containing
21 information in such detail that past, current, and
22 future assessment can be made as to the accuracy
23 of predictions, successive mitigation actions, and
24 commitments to future actions.

25 This recommendation focuses on

1 ensuring that results of follow-up and monitoring
2 are publicly available.

3 While annual reports are typically
4 sent to the Department of Sustainable Development,
5 Manitoba Hydro has committed to making annual
6 reports for the MMTP publicly available. However,
7 ensuring that this recommendation forms part of
8 your licensing conditions remains key.

9 With respect to the maintenance of
10 project websites, Dr. Fitzpatrick recommends that
11 the CEC replicate its recommendation from
12 Bipole III and Keeyask that the proponent maintain
13 a website for the life of the project, with all of
14 the information in a manner that is easily
15 retrievable and updated frequently.

16 In terms of the ex post evaluation, in
17 the interest of transparency, the CEC had
18 previously recommended ex post evaluations which
19 require an evaluation of whether commitments were
20 not met and to assess the accuracy of the
21 assumptions and predictions.

22 As stated by Dr. Fitzpatrick, the
23 importance of these recommendations cannot be
24 understated. They represent a new benchmark for
25 best practice and follow-up and monitoring in

1 Canada, and specifically here in Manitoba.

2 Fourth, independent oversight. While
3 it was not exclusively recommended by
4 Dr. Fitzpatrick for this project, independent
5 oversight was raised as an issue during the policy
6 community workshop organized by CAC Manitoba.

7 In her report, Dr. Fitzpatrick directs
8 us to the evidence she prepared for Bipole III.

9 Many of the elements raised during
10 Dr. Fitzpatrick's presentation, and the report
11 prepared by herself, Dr. Robson, as well as
12 Dr. Diduck, are elements which continue to be
13 present today, and which may demonstrate the need
14 for independent oversight.

15 This includes concerns relating to
16 ensuring that development proceeds in a
17 responsible fashion, providing benefits that
18 result in minimum harm, the transparency of the
19 process, and ensuring that information is readily
20 available.

21 The elements of effective independent
22 oversight identified by Dr. Fitzpatrick in the
23 report include a strong legal foundation, clear
24 mandate, effective communication, independent
25 authority, independent composition, adequate

1 long-term funding, as well as experience.

2 In her review of annual reports from
3 Bipole III and the Keeyask project,
4 Dr. Fitzpatrick found significant variability
5 between projects in the level of detail and types
6 of information included.

7 Which leads to the fifth
8 recommendation.

9 In the interests of transparency,
10 Dr. Fitzpatrick recommends that Manitoba Hydro
11 commit to develop a more standardized monitoring
12 format across projects, which include specific
13 components outlined in her report at page 25.

14 Along this vein, Manitoba Hydro claims
15 that one of the ways it will be achieving
16 oversight of the MMTP is through the ISO 14001
17 certification. Specifically, Manitoba Hydro
18 indicates that its commitment to improve
19 environmental performance is demonstrated through
20 the company's EMS, which is ISO certified.

21 Dr. Fitzpatrick describes ISO 14001 as
22 perhaps the most longstanding non-state
23 market-driven initiative. That said, she also
24 points out that the ISO 14001 certification does
25 not guarantee environmental stewardship.

1 Manitoba Hydro agrees. While the
2 ISO 14001 certification requires compliance with
3 government legislation and regulation, and also
4 requires a company to demonstrate continual
5 improvement, it does not set any absolute
6 requirements for environmental performance.

7 As you will recall, there is no clear
8 definition of what continual improvement is, and
9 there are no standards outlining where a company
10 actually starts from. So as stated by
11 Dr. Fitzpatrick, a company that has a terrible oil
12 spill in the Gulf of Mexico can seek certification
13 under the ISO 14001 as long as they perform
14 incrementally better moving forward, based on
15 however they define continual improvement.

16 In other words, it is left up to the
17 organization to identify the objectives,
18 responsibilities, and commitments and actions that
19 it will take as part of its ISO 14001
20 certification.

21 Manitoba Hydro's EMS is ISO 14001
22 certified, but it is unclear how the certification
23 will apply specifically to the Manitoba-Minnesota
24 transmission project.

25 None of the commitments made by

1 Manitoba Hydro in the EIS, such as annual reports,
2 project management, project websites,
3 incorporation of traditional knowledge within
4 components of the EPP, would be automatically
5 covered by the ISO 14001 certification. While
6 Manitoba Hydro made excerpts of the Riel Station
7 audit plan available, as well as select elements
8 of the Dashboard, for the first time available,
9 there is no commitment to make the annual audits
10 publicly available on an ongoing basis.

11 Independent audits happen every year
12 or two years, and at that time the company sets
13 its own targets. This is key, given that
14 Dr. Fitzpatrick describes the rapidly changing
15 picture within Manitoba Hydro relating to
16 ISO 14001.

17 Specifically, we read and heard during
18 the hearings that Manitoba Hydro is going through
19 a process of updating its management system to
20 comply with the most recent version of the
21 ISO 14001 certification. However, there is a lack
22 of information available to understand what this
23 will look like in the future.

24 As stated by Mr. Stuart, this is
25 because ISO 14001 is high-level and does not

1 provide a lot of descriptive detail. It is at
2 this high level that the EMF sets out instructions
3 for the corporation's overall goals and actions
4 for managing overall risk. It is not specific to
5 any project.

6 So, as I've already said, auditors get
7 to determine what elements of the ISO they will
8 cover. However, policy communities are not privy
9 to this information. Manitoba Hydro's position is
10 that ISO audit reports are confidential
11 information which are intended for management use
12 only.

13 In CAC IR 001, as well as CAC IR 018,
14 Manitoba Hydro states that the EMAC annual
15 Dashboard is under review, and there is a new
16 version of the ISO 14001 certification. So
17 therefore, in the interest of transparency, the
18 ISO audits should and must be made available
19 publicly available.

20 As I've already indicated, to date, it
21 has been the position of Manitoba Hydro that the
22 ownership of those audits are of the consulting
23 firm conducting the audit. While Manitoba Hydro
24 indicated that whether or not the audits would be
25 made publicly available is not something that they

1 can control, counsel for Manitoba Hydro indicated
2 during the questioning of Dr. Fitzpatrick that
3 "The tender which is going for auditors has asked
4 for a public reporting component of the ISO
5 audits."

6 This therefore demonstrates
7 considerable level of control about whether future
8 audits will be made publicly available.

9 While Manitoba Hydro may have its
10 reasons for wanting to be ISO 14001 certified, it
11 is important to remember that this, in and of
12 itself, does not fulfill the function or purpose
13 of a post hoc evaluation.

14 Next slide.

15 Uncertainty is a key concept for
16 environmental assessment, and specifically for
17 monitoring and follow-up.

18 We heard on several occasions over the
19 course of the hearing the colloquial definition of
20 uncertainty which is attributed to Donald
21 Rumsfeld. I will not read the definition again,
22 but I do want to point to the main elements of the
23 definition, because I think they are important.
24 So the known knowns, the unknown knowns, and the
25 unknown unknowns.

1 So this colloquial definition is
2 helpful to illustrate the level of detail
3 necessary and required for environmental
4 assessment.

5 Given the fundamental role of
6 uncertainty in monitoring and follow-up, good
7 practice environmental assessment requires an
8 acknowledgement of uncertainty throughout the
9 environmental impact statement. While Manitoba
10 Hydro acknowledges uncertainty in the EIS,
11 Dr. Fitzpatrick determined that it was unclear
12 how, if at all, uncertainty informed the selection
13 of valued components.

14 According to Dr. Fitzpatrick,
15 uncertainty is an important component for knowing
16 which valued component needs to be monitored.
17 Without an explicit understanding of uncertainty
18 related to each of the valued components, she
19 found it difficult to evaluate if the current list
20 of valued components selected for the MMTP was
21 adequate.

22 Recognizing she is not a VC-specific
23 expert, Dr. Fitzpatrick offered her expertise with
24 respect to the process used for VC selection. She
25 indicated that best practice requires thinking of

1 the areas or valued components that have higher
2 levels of uncertainty, VCs that have been
3 identified by First Nations and the Metis Nation
4 in their land-use studies and engagement process,
5 as well as the valued components that involve
6 cumulative effects.

7 As indicated in the EIS, the majority
8 of the monitoring plans, other than the one for
9 the sharp-tailed grouse, end approximately two
10 years after construction. This is particularly
11 concerning, because policy communities have
12 identified the need to monitor additional valued
13 components, and also to lengthen the time
14 allocated for monitoring certain valued
15 components.

16 For example, the Peguis First Nation
17 land-use occupancy report identified the need to
18 monitor wildlife for a period of at least five
19 years, and to extend the length of monitoring for
20 traditional medicine.

21 Another example that we can consider
22 is fish and fish habitat, which were selected as a
23 valued component because of their fundamental role
24 in functioning of ecosystems with fish as a key
25 indicator of aquatic health and its economic and

1 recreational health importance to Canadians.

2 The Roseau River Anishinabe First
3 Nation land-use study identified concerns about
4 decrease in spawning over the last decade. Those
5 same types of concerns were expressed by the
6 Keeyask Cree Nations during the Keeyask generation
7 hearing. And hearing those concerns, the Keeyask
8 CEC report stated, and I quote:

9 "That fears of possible contamination
10 might discourage community members
11 from consuming country foods,
12 including those not affected by
13 mercury."

14 So the report therefore emphasized
15 that the perception of contamination was
16 sufficient to discourage fish consumption.

17 According to the EIS, there are three
18 endangered species which are present in the
19 assessment area for the MMTP. These are bigmouth
20 buffalo, mapleleaf mussels, and lake sturgeon. In
21 addition to being recognized as an endangered
22 species by COSEWIC, mapleleaf mussels are also
23 protected under the Endangered Species and
24 Ecosystems Act.

25 Mapleleaf mussels are expected to

1 occur within the regional assessment area, or the
2 RAA, of the MMTP in the Assiniboine River, Red
3 River, LaSalle River, Seine River, Cook, Devil's
4 Creek, Rat River, and Roseau River.

5 According to the literature, mussels
6 are keystone species and ecosystem engineers that
7 have a large impact on other organisms. They also
8 provide tangible benefits to human beings. And
9 habitat changes may have great effects on
10 endangered species, fish species, because of
11 special habitats or biological requirements for
12 species that have narrow tolerance to habitat
13 alteration.

14 Manitoba Hydro's position relating to
15 fish and fish habitat is that there is no serious
16 harm anticipated, and no residual effects. This
17 is despite the presence of endangered fish in the
18 right-of-way, and also recognizing that there was
19 no fish sampling that was conducted, not even for
20 the endangered species.

21 Manitoba Hydro said it relied only on
22 desktop historical data, and the only field
23 studies they conducted were on selected water
24 crossings, not on fish.

25 The panel was able to observe the

1 witness who testified with respect to fish, his
2 demeanor when he confirmed that there would be no
3 monitoring activities relating to any of the
4 endangered fish species, including bigmouth
5 buffalo, mapleleaf mussels, and lake sturgeon.

6 As indicated in Dr. Fitzpatrick's
7 report and oral presentations, the information
8 provided in the EIS relating to the individuals
9 involved in the MMTP was unclear. This is another
10 area of uncertainty.

11 The information provided in the
12 organizational charts in the EIS were not updated
13 to reflect the information provided in information
14 requests and oral submissions, which leaves many
15 questions with respect to the people involved and
16 the roles and responsibility of Manitoba Hydro
17 staff.

18 Moving now to planning for uncertainty
19 through ecosystems approach.

20 The ecosystem services approach was
21 suggested by Manitoba Wildlands' witness as one
22 approach to dealing with uncertainty. The
23 literature makes a clear distinction between an
24 ecosystems approach and an ecosystem services
25 approach. Whereas an ecosystems approach

1 recognizes that all things and beings are
2 connected, and must be considered as such, an
3 ecosystem services approach focuses on valuing
4 different elements of the ecosystem.

5 As indicated by the Wildlands witness,
6 the ecosystem services approach requires an
7 evaluation of the benefits and costs to society of
8 different ecosystem services. The witness spoke
9 of the desire to have these costs accounted for in
10 day-to-day market and economic decisions.

11 The literature makes it clear that
12 economic valuation is a key element of ecosystem
13 services. In fact, the witness acknowledged
14 during her testimony that one of the most common
15 criticisms in the literature is that of ecosystem
16 valuation.

17 The witness also acknowledged that
18 monetary evaluation is a common type of economic
19 valuation. According to the literature cited by
20 the witness, this economic valuation necessarily
21 involves making choices, which inevitably leads to
22 a discussion of trade-offs. The Millennium
23 Ecosystems Assessment report from 2005 relied upon
24 by the witness categorizes four types of ecosystem
25 services: Provisioning services, regulating

1 services, supporting services, and cultural
2 services. Cultural services were defined in the
3 witness's report as nonmaterial benefits obtained
4 from the ecosystem.

5 And based on what CAC Manitoba has
6 heard, it is challenging at best to fit indigenous
7 world views and legal orders within these four
8 categories of ecosystem services. It is
9 inappropriate and offensive to assume that
10 indigenous world views and legal orders should fit
11 within the valuation of cultural services, or that
12 somehow this should fit within all of the
13 categories. Ecosystem services is not generally
14 accepted as best practice for environmental
15 assessment, and should not be accepted as such by
16 the Clean Environment Commission.

17 Moving now to uncertainty with respect
18 to the financial circumstances of Manitoba Hydro.

19 When Manitoba Hydro submitted its
20 application for approval in September of 2015, the
21 estimated project cost was in the range of
22 350 million. Through the process of information
23 request SCO IR 28E, it was revealed that the
24 updated total project cost estimate is
25 \$453.2 million. In the time period between

1 September 2015 and April 2017, one year and two
2 months, no -- I'm not very good -- over a year,
3 the estimated cost had risen by over \$100 million,
4 so approximately 28 per cent. Despite this
5 significant rise in project cost estimate,
6 Manitoba Hydro did not conduct any subsequent
7 analysis of project expenditures for materials and
8 services during construction.

9 Slide 14.

10 According to Dr. Fitzpatrick, an
11 innovative feature of the impact statement is the
12 inclusion in each chapter of lessons learned.
13 Dr. Fitzpatrick stated that there were significant
14 changes to the materials, including monitoring
15 plans, and this demonstrates a desire by Manitoba
16 Hydro to learn. However, Manitoba Hydro's
17 approach to learning is not standardized, and it
18 seems to be ad hoc, as there is no organizational
19 learning policy.

20 You will recall that organizational
21 learning refers to the process by which knowledge
22 is transferred from the individual level to the
23 organizational level, and involves utilizing
24 knowledge from external and internal sources,
25 communicating and disseminating knowledge, as well

1 as learning from past and present practices.

2 As stated during questioning of both
3 Mr. Stuart and Mr. Matthewson, while there was no
4 organizational learning policy, it is members of
5 the Manitoba Hydro team who hold the institutional
6 knowledge and are responsible for sharing the
7 information.

8 While members of the project team have
9 demonstrated their interest in learning, it is
10 difficult to understand the organizational culture
11 related to learning.

12 Considering the recommendation from
13 both Bipole III and Keeyask reports, related to
14 the lack of standardized approach, but also the
15 need to reduce silos, also considering the
16 financial insecurities and job cuts at Manitoba
17 Hydro, there is an urgent need for Manitoba Hydro
18 to develop an organizational learning policy.

19 Organizational learning policy should
20 include information about Hydro's organizational
21 memory. The CEC panel will recall the passionate
22 personal account by Dr. Fitzpatrick relating to
23 the importance of organizational memory, and what
24 happened in the circumstances when her father was
25 killed on the job.

1 The Clean Environment Commission has
2 repeatedly recommended that Manitoba Hydro use a
3 centralized environmental assessment process to
4 set standards and guide, manage, and coordinate
5 all environmental assessment and monitoring
6 processes. Based on what we heard from the policy
7 and strategic initiatives director of the
8 indigenous relations department, it seems apparent
9 that this department continues to be siloed from
10 the rest of the organization. In fact, the
11 cross-examination of this Manitoba Hydro senior
12 employee within the department of indigenous
13 relations revealed a more siloed organization.

14 If you look on Slide 15, you see the
15 quote by Ms. Zebrowski which refers to those
16 silos. It says, in part, "That's because of how
17 we are organized."

18 What we see is an indigenous relations
19 department which is currently undergoing
20 restructuring, and its role is unclear.

21 We also heard that this department was
22 not involved in the selection of the valued
23 components, which was surprising, given the
24 concerns which have been raised by First Nations
25 and the Metis Nation in past hearings about VC

1 selection process.

2 As stated by Dr. Fitzpatrick, the
3 interactions between decisions seemed opaque to
4 me. I am particularly concerned that members of
5 the indigenous relations division were not
6 involved in the selection of the VCs. It is
7 important to have members of the indigenous
8 relations department involved in this critical
9 component of the monitoring program.

10 According to Dr. Fitzpatrick,
11 cooperation -- next slide.

12 According to Dr. Fitzpatrick,
13 cooperation and coordination among provincial,
14 federal, and indigenous jurisdictions can provide
15 more opportunities for meaningful engagement,
16 create fail-safe mechanisms which allow one
17 jurisdiction to address potential errors and
18 oversights of another, increase the
19 decision-makers' ability to look at the whole
20 system of impacts, which can be missed when one
21 jurisdiction is excluded, and also avoid
22 duplication and prevent the creation of major
23 gaps.

24 Furthermore, according to Fitzpatrick
25 and Sinclair -- and this is a quote from the

1 literature:

2 "The idea we need to better coordinate
3 environmental assessment efforts in
4 cases that cross jurisdictions has
5 been clear to most participants and
6 government agencies for some time now.
7 The obvious challenge is finding an
8 appropriate way to take action on the
9 need for coordination while respecting
10 the decision-making authority of
11 jurisdictions involved."

12 In the case of the MMTP, the EIS is
13 meant to meet the requirement of the Provincial
14 environmental assessment process under the
15 Environment Act, as well as the Federal process
16 under the National Energy Board Act and CEAA 2012.

17 Manitoba Hydro requires authorization
18 under Section 58 of the NEB Act, and Section 4(1)
19 of the CEAA Act states that federal and provincial
20 governments should promote the cooperation and
21 coordination of their actions with respect to
22 environmental assessment.

23 In a letter from April 2017 from Sheri
24 Young, the secretary of the National Energy Board,
25 to counsel for the MMF, she confirmed that the NEB

1 will not commence the federal environmental
2 assessment process until after the CEC public
3 process relating to the MMTP has been completed,
4 in order to reduce duplication.

5 But the particular challenges with
6 cooperation and coordination between federal and
7 provincial processes, as well as the lack of
8 communication with policy communities, including
9 the proponent itself, was particularly clear when
10 on May 8th, Ms. Tracey Braun of the Environmental
11 Approvals Branch stated that the CEC hearings are
12 being held in lieu of the National Energy Board
13 hearings.

14 As a response to my questions,
15 Manitoba Hydro stated that it was their
16 understanding that the letter from the NEB
17 indicated that they had not made a formal decision
18 or formal determination as to whether or not there
19 would be an NEB hearing. This is a case in point
20 relating to the lack of cooperation and
21 coordination with respect to environmental
22 assessment.

23 Moving to Slide 17.

24 It almost goes without saying that the
25 relationship between indigenous people and

1 Manitoba Hydro has been damaged as a result of the
2 development of the land, as well as its past
3 practices. As stated in the Keeyask report,
4 indigenous people have a long history of having
5 been affected by past development. The Keeyask
6 report further acknowledges the need to regain
7 trust and respect between indigenous peoples and
8 Manitoba Hydro.

9 While the Commission's comments in the
10 Keeyask report relating to the damaged
11 relationship between indigenous people and
12 Manitoba Hydro focused on the North, it can be
13 argued that the relationship between indigenous
14 people and Manitoba Hydro throughout Manitoba is
15 damaged and needs re-building.

16 The CEC stated in the Keeyask report
17 that Manitoba Hydro is sincere in its effort to
18 address these past concerns, but the Commission
19 believes that more must be done. Specifically,
20 the Commission, at page 163 of the Keeyask report,
21 recommended that a more formal process of
22 reconciliation be undertaken.

23 According to Manitoba Hydro's website,
24 it is committed to working with indigenous
25 communities in a spirit of cooperation. It also

1 says that over the past decade, significant
2 contributions have been made towards a renewed
3 relationship built on mutual respect, a committed
4 understanding, and a more meaningful
5 communication.

6 Manitoba Hydro's corporate strategic
7 plan includes a commitment to addressing the
8 adverse effects on operations on Aboriginal
9 communities, and also to foster an appreciation of
10 Aboriginal cultures in the workplace, among other
11 things.

12 In addition, in an article published
13 on line on May 11, 2017, in the Energy magazine,
14 Mr. Kelvin Shepherd, who is the CEO of Manitoba
15 Hydro, stated that one of Manitoba Hydro's four
16 strategic priorities over the next year is, and I
17 quote: "The respect and support for indigenous
18 people in all aspects of our business."

19 Based on what we know, it is the
20 indigenous relations department of Manitoba Hydro
21 who presumably would be primarily responsible for
22 identifying how to foster this respect and support
23 for indigenous people.

24 During Manitoba Hydro's opening
25 statement, counsel for Manitoba Hydro referred to

1 the work of the Truth and Reconciliation
2 Commission of Canada, and made specific reference
3 to the Call to Action 45, which, as he stated, and
4 I quote:

5 "Although directed specifically to the
6 government, has some useful guidance
7 for our work here, as it recommends
8 that indigenous laws and legal
9 traditions be recognized and
10 integrated in processes that involve
11 land claims and other constructive
12 agreements."

13 Legal counsel also explained his
14 understanding of indigenous legal traditional
15 traditions, and indicated that Anishinaabe law is
16 all about relationships.

17 We would note that Call to Action 45
18 also speaks to the need to implement treaties, and
19 along this vein, Call to Action 50 of the TRC
20 requires recognition and support of indigenous
21 legal institutions to better understand indigenous
22 laws in accordance with the unique cultures of
23 indigenous peoples.

24 CAC Manitoba would also draw the
25 Commission's attention specifically to Call to

1 Action 92, which requires the corporate sector of
2 Canada to adopt the United Nations Declaration on
3 the Rights of Indigenous People, as well as a
4 reconciliation framework to apply its principles,
5 norms, and standards to corporate policies and
6 core operational activities.

7 While CAC Manitoba appreciates the
8 aspirational statements of Manitoba Hydro, there
9 is little tangible evidence in this hearing to
10 demonstrate commitment to these statements. When
11 asked for a specific policy or practice requiring
12 Manitoba Hydro to take indigenous world views or
13 legal traditions into account, CAC Manitoba was
14 referred to the Cultural and Heritage Resources
15 Protection Plan, whose goal is to, "Describe key
16 actions in the event of discovery of cultural or
17 heritage resource or human remains."

18 Upon reviewing this plan, it became
19 quickly apparent that it does not contain any
20 express policy or practice relating to the respect
21 for indigenous world views or legal traditions.

22 CAC Manitoba is concerned with the
23 fact that there is such limited information
24 available about the interactions between Manitoba
25 Hydro and indigenous people on an ongoing basis.

1 In CAC IR 004, CAC Manitoba had
2 requested an explanation of the difference between
3 environmental monitors and inspectors. At that
4 time, Manitoba Hydro indicated that it had not
5 determined whether environmental monitors would be
6 employed.

7 At the time of questioning of the
8 environmental protection plan, Manitoba Hydro was
9 still not in a position to confirm whether
10 environmental monitors would be employed.
11 Manitoba Hydro stated that it was not in a
12 position to confirm whether environmental monitors
13 would be employed because it remained unclear
14 whether the indigenous monitoring committee would
15 be created.

16 However, Manitoba Hydro was not
17 explicitly prepared to confirm whether
18 environmental monitors would be created in the
19 event that the indigenous monitoring committee was
20 not created. They did, however, say that for the
21 Bipole III project, Manitoba Hydro had
22 environmental monitors and community liaisons in
23 each community, and according to Hydro --
24 specifically according to Mr. Matthewson, on
25 May 23rd -- this approach worked really, really

1 well.

2 Hydro's response and inability to
3 commit to an ongoing approach to engage indigenous
4 peoples and nations is concerning, particularly
5 given its timing. Despite having heard a variety
6 of different mechanisms for monitoring by
7 community members, the only proposed monitoring
8 and follow-up activity identified in the EIS for
9 indigenous nations and people were field trips.

10 The indigenous monitoring committee:
11 As of May 23rd, 2017, the indigenous community
12 monitoring group or committee had not been
13 confirmed. Manitoba Hydro says that the reason it
14 had not been confirmed was because they wanted to
15 create the terms of reference of the indigenous
16 monitoring group with the involvement of
17 indigenous communities.

18 However, a careful read and listen of
19 Manitoba Hydro's evidence reveals that Manitoba
20 Hydro has already created its own vision with
21 respect to the role of this monitoring group. For
22 example, during Mr. Matthewson's presentation, he
23 stated, and I quote:

24 "We also had envisioned the indigenous
25 monitoring group as a mechanism by

1 which we could get other groups
2 together and go to the field during
3 regular visits to the construction of
4 the project and be involved in
5 monitoring activities."

6 And according to Mr. Matthewson, the
7 reason that the development of terms of reference
8 had not been confirmed was because, and I quote:

9 "Some communities express an interest
10 in meeting with senior executives
11 prior to moving forward any further
12 with the monitoring group."

13 However, we heard from counsel of the
14 Southern Chiefs' Organization that there are
15 issues of timing. And specifically he indicated
16 that Manitoba Hydro had ample time to start
17 putting together a framework for the indigenous
18 monitoring group.

19 It must also be noted that should the
20 indigenous nations and Manitoba Hydro agree that
21 an indigenous monitoring group is required, it is
22 unclear how much decision-making authority the
23 monitoring group will actually have.

24 For example, based on the questioning
25 of counsel for Peguis First Nation, we know that

1 it will be the environmental management team that
2 will get to decide when decision thresholds of
3 actions are triggered, without any apparent
4 involvement of the potential indigenous monitoring
5 group. And Mr. Matthewson confirmed that it would
6 be the environmental protection management team
7 that would ultimately make the final decision to
8 adjust and take some mitigative measures to
9 implement the adaptive management approach.

10 During the hearing, counsel for the
11 Southern Chiefs' Organization asked Manitoba Hydro
12 what decision-making authority the indigenous
13 monitoring group would have. As a response,
14 Mr. Matthewson simply indicated that:

15 "As the terms of reference have not
16 been developed, I cannot comment on
17 what authorities the indigenous
18 community working group will have, or
19 its responsibilities."

20 It was also confirmed that Manitoba
21 Hydro has already determined that the indigenous
22 monitoring group would not be at the same level as
23 the environmental protection management team.

24 And you will recall the organizational
25 chart that we had up on the screen and the

1 exchange between Mr. Matthewson and I regarding
2 that level of authority.

3 But this is important, because it
4 would mean that the indigenous monitoring group
5 would likely not have the same privileges, and
6 they likely wouldn't be involved in those regular
7 meetings, and probably wouldn't have access or
8 they might not have access to the same amount of
9 information.

10 Also importantly, a budget for the
11 indigenous community monitoring working group has
12 not been allocated. And again, this is
13 particularly concerning given how much Manitoba
14 Hydro seems to rely on this monitoring group for
15 its future activities and building of
16 relationships with indigenous peoples and nations.

17 This brings me to our conclusion and
18 summary of recommendations and findings.

19 I would note that for the benefit of
20 today's presentation and in the interests of time,
21 I will only be listing the recommendations today.
22 However, in our written submissions, we will
23 provide a further explanation of the
24 recommendations with proper citations.

25 Based on -- which means I'm on

1 Slide 18.

2 Based on the expertise of
3 Dr. Fitzpatrick and the lessons learned through
4 its significant involvement with environmental
5 assessment in Manitoba, CAC Manitoba has the
6 following licensing recommendations relating to
7 the MMTP.

8 Manitoba Hydro should develop and
9 implement an organizational learning policy.

10 Manitoba Hydro should modify its
11 objectives of the monitoring program to add a
12 reference to adaptive management and remove the
13 reference to baseline information.

14 Manitoba Hydro should commit to
15 developing a more standardized monitoring format
16 across projects.

17 Manitoba Hydro should maintain a
18 project website for the life of the project which
19 contains all the information committed to by the
20 proponent in the EIS.

21 Manitoba Hydro should undertake a
22 third-party environmental audit.

23 Manitoba Hydro should work with the
24 policy communities to create an independent
25 oversight committee for the MMTP.

1 Manitoba Hydro should create
2 monitoring plans for the three endangered fish
3 species which are found in the ROW, which include
4 bigmouth buffalo, mapleleaf mussels, and lake
5 sturgeon.

6 Manitoba Hydro should also be creating
7 a monitoring plan for the medicinal and
8 traditional plants.

9 Manitoba Hydro should create, in
10 collaboration with indigenous nations and
11 organizations, an indigenous community monitoring
12 committee.

13 Manitoba Hydro should develop, in
14 collaboration with grandmothers, indigenous
15 elders, and knowledge holders a proclamation or
16 express policy statement on its commitment to
17 respecting indigenous world views and legal
18 orders, which includes Manitoba Hydro's
19 understanding of its responsibilities flowing from
20 this commitment.

21 As non-licensing recommendations,
22 which are on Slide 19, CAC Manitoba recommends
23 that the Minister support the longstanding
24 indigenous institutions in indigenous communities
25 consistent with the Truth and Reconciliation

1 Commission's Calls to Action, and incorporate a
2 circle of grandmothers with a mission to oversee
3 safeguarding the environment, as recommended in
4 the Keeyask report.

5 It is also recommended that the
6 indigenous relations department of Manitoba Hydro,
7 as well as any other department engaging with
8 indigenous people, undertake regular training by
9 grandmothers, indigenous knowledge holders, and
10 elders who are the experts in indigenous world
11 views and legal traditions.

12 Slide 20.

13 In terms of express findings, we would
14 ask that the CEC make the following express
15 findings.

16 That first, policy communities were
17 not meaningfully engaged sufficiently early in the
18 preliminary planning process, when fundamental
19 decisions were being made about the route
20 selection.

21 That despite past recommendations of
22 the CEC, Manitoba Hydro has failed to incorporate
23 a standard for coordination and elimination of
24 silos.

25 That uncertainties must always be a

1 factor in the selection of valued components, both
2 at the initial stage but also in the monitoring
3 stages by Manitoba Hydro.

4 That Manitoba Hydro has
5 responsibilities flowing from the Truth and
6 Reconciliation Commission Report Calls to Action,
7 which require concrete actions by the corporation,
8 rather than just aspirational statements.

9 In accordance with best practice, that
10 a full cumulative effects assessment for each
11 project must always be undertaken.

12 That the ecosystem services approach
13 can be problematic and should not be employed by
14 Manitoba Hydro, and that significant caution
15 should be given to the conclusions of the witness
16 who presented on behalf of Manitoba Wildlands on
17 ecosystem services, given the challenges in her
18 evidence revealed during cross-examination.

19 This brings me to the end of CAC
20 Manitoba's closing submissions. I would like to
21 thank you, Mr. Chair, as well as members of the
22 panel. CAC Manitoba appreciates the opportunity
23 to be involved in these hearings. We also thank
24 Ms. Johnson, secretary to the Clean Environment
25 Commission, as well as Cheyenne Halcrow, for their

1 assistance during this hearing, as well as counsel
2 to the CEC.

3 Subject to any questions, Mr. Chair,
4 those are CAC Manitoba's closing arguments. Thank
5 you.

6 THE CHAIRMAN: Thank you,
7 Ms. Pastora Sala, for a very comprehensive and
8 focused closing argument.

9 The only questions that we have, as
10 agreed to earlier during our pre-hearings, would
11 be from the panel, and they are only for
12 clarification. So I will ask the panel if they
13 have any issues they would like clarified.

14 All right. Well, you are off the
15 hook; there are no questions. And thanks again
16 for a good presentation.

17 MS. PASTORA SALA: Thank you.

18 THE CHAIRMAN: Well, it is just about
19 5 minutes to 11; I think we'll take our break now,
20 and we'll resume at 11:10. And next up -- I will
21 check my order -- will be the Southern Chiefs'
22 Organization and Mr. Beddome. That will be at
23 10 minutes after 11. Thanks.

24 (Recess at 10:55 to 11:10 a.m.)

25 THE CHAIRMAN: All right. Welcome

1 back, everyone.

2 We are now ready for the second of our
3 closing arguments, and that will be on behalf of
4 the Southern Chiefs' Organization.

5 Mr. Beddome, it is all yours.

6 MR. BEDDOME: Thank you very much,
7 Mr. Chair. James Beddome, for the benefit of the
8 monitor again.

9 Good morning, Mr. Chairman,
10 Commissioner Gillies, Commissioner Streich,
11 Commissioner Nepinak, Commission staff, fellow
12 participants, representatives of Manitoba Hydro,
13 and all of us in attendance today.

14 My client, the Southern Chiefs'
15 Organization, which I shall sometimes also refer
16 to as SCO, is an independent political forum
17 established to protect, preserve, and promote
18 indigenous rights of SCO member nations, as you
19 have heard throughout the hearing.

20 The members of the Southern Chiefs'
21 Organization includes about 33 member nations
22 located in Southern Manitoba. This is about half
23 of the First Nations in Manitoba. It is important
24 to remember that SCO does not speak for its member
25 nations, but rather serves to support them. SCO

1 stands here today in support of its member
2 nations, and my client wants to acknowledge the
3 participation of one of its member nations, Peguis
4 First Nation, in the Clean Environment Commission
5 hearings.

6 SCO takes direction from the
7 resolutions passed by the Chiefs in summit. As we
8 have already heard, the resolution passed in
9 September of 2004 by the Chiefs in summit at
10 Dakota Tipi, being Resolution Number 16,
11 environmental stewardship, is particularly
12 noteworthy.

13 The resolution on environmental
14 stewardship underscores the need for, one, First
15 Nations to be active partners in environmental
16 stewardship programs and initiatives; two, First
17 Nations to perform their own environmental
18 research and studies in regards to environmental
19 stewardship in their traditional territories; and
20 three, for the Grand Chief to lobby for more
21 support for First Nations to participate fully in
22 all environmental stewardship programs and
23 initiatives.

24 This resolution has been presented to
25 the Commission, and it can also be found on the

1 Southern Chiefs' website, at scoinc.mb.ca.

2 SCO wants to thank and acknowledge the
3 CEC for the support that it has received to
4 participate in these Manitoba-Minnesota
5 Transmission Project Clean Environment Commission
6 hearings. This is the first time that SCO has
7 ever participated in CEC hearings, and my client
8 wants to let the Commission know that they plan to
9 be back with respect to future projects and
10 hearings, to stand up for SCO member nations.

11 Without CEC's filing award, SCO
12 participation would have been limited to at most a
13 15-minute presentation, if anything at all. With
14 the assistance of the CEC, SCO was able to retain
15 technical services, legal counsel, and to contract
16 a single expert, Dr. Petr Cizek, to utilize GIS
17 technology and available historical maps to
18 perform a land-change analysis in the project
19 development area for MMTP.

20 That said, SCO also wants to put on
21 the record that it could have informed the CEC,
22 and assisted in your review and decision-making,
23 with more funding. Dr. Cizek's services were
24 constrained by funding available. He was not able
25 to purchase satellite data to improve on the

1 Manitoba remote sensing data results, or to assess
2 the rest of the lands affected by MMTP. See his
3 outcomes and the constraints in his report and
4 presentation to this hearing.

5 Also, in its original request for
6 funding for the MMTP review and proceedings, SCO
7 requested funding to include further experts to
8 inform and advise the CEC panel. We also included
9 a request for funding to involve more of the First
10 Nations affected by the MMTP who are members of
11 SCO. Our proposal aimed to involve each of the
12 tribal councils in SCO which are potentially
13 affected by the MMTP. We wish to more fully
14 assess the engagement steps Manitoba Hydro took
15 with our member nations, starting with the 15
16 which Manitoba Hydro approached, and moving to
17 those First Nations which Manitoba Hydro may have
18 omitted in its MMTP engagement process.

19 It is noteworthy that Manitoba Hydro
20 appears once more to have simply identified a user
21 variation of proximity to project standard in its
22 engagement processes with First Nations.

23 You have noted during the hearing that
24 First Nations have pointed out there are members
25 who live off reserve, exercise their rights in

1 regions with remaining Crown lands. This fact
2 means that members of the Interlake Tribal Council
3 First Nations are a prime example of those you
4 have not heard from during the hearings, and who
5 exercise their rights in the MMTP region. More
6 complete participation by SCO would only serve to
7 improve the environmental assessment process and
8 decision-making in Manitoba.

9 SCO also wants to acknowledge the
10 support Manitoba Hydro provided to some of its
11 member nations to conduct their own studies with
12 respect to the Manitoba-Minnesota Transmission
13 Project. These studies obviously helped influence
14 some of Manitoba Hydro's decisions. However, as
15 much as Manitoba Hydro wants to talk about what it
16 has learned from past projects, it is also clear
17 that Manitoba Hydro did not listen fully, and that
18 much remains to be learned.

19 Indigenous knowledge needs to be
20 incorporated better and earlier in the overall
21 process. This needs to start at the conception
22 stage of the project planning, and needs to be
23 broad and ongoing throughout the planning and the
24 entire life of the project, and including the
25 decommissioning stage.

1 I would now like to outline a little
2 bit about what you heard from SCO during these
3 hearings. As already mentioned, as part of the
4 CEC hearing process, SCO contracted Dr. Petr
5 Cizek.

6 His analysis showed that between 1930
7 and 2016, more than one-fifth of the forested land
8 has been lost in the routing planning area, or
9 sometimes referred to as the routing assessment
10 area, RAA, and linear features have more than
11 doubled in the same area over the same time frame.

12 This is important, because as you
13 heard from the Grand Chief during the SCO panel
14 presentation on May 29, 2017, Crown lands is where
15 indigenous people can exercise their inherent
16 rights.

17 Intact land is also culturally
18 significant. The Western concept of ownership of
19 land is foreign to the indigenous world view.
20 Since the arrival of the settler population, the
21 places where indigenous people can exercise their
22 indigenous rights has been greatly diminished.
23 The more Crown land that's taken up, the less land
24 is left for the First Nations people -- and Metis
25 as well, I should acknowledge.

1 Although the studies were limited, and
2 further work is still required, the traditional
3 knowledge studies showed that the
4 Manitoba-Minnesota study area is a very important
5 area for indigenous people and traditional
6 practices.

7 During the SCO panel, you heard from
8 June Thomas, who conducted and wrote the
9 indigenous traditional knowledge study of Roseau
10 River Anishinaabe First Nation, which was funded
11 by Manitoba Hydro and can be found in the EIS.
12 She did this before she was elected a councillor
13 for her nation. Now Councillor Thomas testified
14 that the project included several site visits and
15 interviews with community members. This included
16 elders and youth.

17 Councillor Thomas testified that the
18 site visits were emotional for many of the elders,
19 as it brought back memories for them. Through the
20 memory mapping that was conducted, areas of
21 traditional use were identified, which spanned
22 vast distances, from the edge of Buffalo Point
23 First Nation to north of Winnipeg, right up to
24 Turtle Mountain Provincial Park.

25 The area to the east of the preferred

1 route, which included the Sandilands aquifer and
2 the Watson P. Davidson Wildlife Management Area
3 and the Sandilands Provincial Forest, were
4 identified by Roseau River as areas of concern.
5 Concerns about the impacts to burial sites were
6 identified, based on historical travel routes.
7 Concerns about how further and further travel is
8 required for Roseau members to pursue hunting,
9 trapping, and other gathering practices, because
10 continual deforestation causes animals to move
11 farther away, and also of how pesticides and
12 deforestation was impacting fish as well.

13 There were concerns about how the line
14 would impact vegetation, and birds that might
15 strike the lines, birthing areas of deer, fox,
16 rabbits along the Red Roseau Rapids that have been
17 disturbed and impacted by national natural
18 disasters and/or farming activities.

19 The primary concern of the Roseau
20 study would be the protection of traditional areas
21 identified on the map. Other questions from the
22 project included concerns about employment
23 opportunities and revenue-sharing of the power
24 moving through the transmission project.

25 The SCO panel also included Dave

1 Daniels. Dave Daniels was a lead author of a
2 botanical study that is summarized in Appendix C
3 of the indigenous knowledge study conducted
4 jointly by Long Plain First Nation, Swan River
5 First Nation, and Black River First Nation, and
6 which is part of the EIS.

7 Through that botanical study, more
8 than 300 species were identified, with 95 per cent
9 of them being used by indigenous people. The
10 study involved walking the preferred route and
11 documenting plant species via photography.

12 Mr. Daniels was therefore able to share with the
13 Commission numerous photographs that he had taken
14 of wildlife and plant species. In particular, he
15 was able to show pictures of the ten rare or
16 endangered S1 to S3 species that were located
17 along or near the preferred route.

18 Both Councillor Thomas and Mr. Daniels
19 testified that last-minute changes made to the
20 preferred route near Piney, Manitoba, to
21 accommodate a planned airport expansion just south
22 of the border meant that they were not able to
23 study this route change; and because the area was
24 identified as an area of importance to indigenous
25 people, they feel that further studies should have

1 already been done.

2 William Abraham also was part of the
3 SCO panel. He is an elder from Black River First
4 Nation, and he testified that Black River members
5 have historically traveled to the Sandilands and
6 Watson P. Davidson areas to exercise their
7 traditional rights. He also testified that Black
8 River has a long history with Hydro development,
9 as his First Nation has been particularly impacted
10 by Hydro projects.

11 It should also be noted that Black
12 River First Nation is a Treaty 5 First Nation that
13 is moving to within some of the areas that were
14 identified in Treaty 1.

15 You also heard, I think, a really good
16 testimony by Mr. Gordon Blue Sky, and I would
17 encourage the Commission to reread that in its
18 entirety. But Mr. Blue Sky is the lands manager
19 at Brokenhead Ojibway First Nation, and he
20 testified on the historical impacts of the
21 development on First Nations people, owing to the
22 loss of unoccupied Crown land.

23 Mr. Blue Sky also testified that moose
24 populations continue to decline in Southern
25 Manitoba. And rather than pointing a finger at

1 development, it is First Nations Treaty rights
2 which are identified as the cause of moose
3 population declines.

4 Mr. Blue Sky also suggested a zero net
5 loss of unoccupied Crown land policy be put in
6 place, a point which will be further addressed in
7 SCO's recommendation section.

8 Elder Ernie Daniels, from Long Plain
9 First Nation, also offered an opening and closing
10 prayer, and I must say he put the Commissioners on
11 the hot seat a little bit with a few very poignant
12 questions and comments about the need to have a
13 dedicated day of CEC hearings for indigenous
14 people, and questions about how this Commission
15 intended to take into account the information it
16 received from indigenous people.

17 Now I would like to just talk a little
18 bit about the terms of reference. The updated
19 terms of reference for the CEC assessment and
20 hearings regarding the MMTP, dated October 21,
21 2016, but delivered to the Commission February 15,
22 2017, added an additional paragraph from the
23 original terms of reference dated December 23rd,
24 2015, and delivered to the Commission on
25 December 31, 2015.

1 That paragraph indicates the review by
2 the Commission of the EIS and the public hearings
3 will include consideration of the effect on First
4 Nation, Metis, and other Aboriginal communities of
5 any changes to the environment, including those
6 related to, one, health and social economic
7 conditions; two, biophysical and cultural
8 heritage; three, the current use of lands and
9 resources for traditional purposes; and four, any
10 structure, site, or thing that is of historical,
11 archeological, paleontological, or architectural
12 significance.

13 It should be noted that this language
14 is essentially identical to the language found in
15 Section 5C of the Canadian Environmental
16 Assessment Act, 2012. And that the cover letter
17 from Manitoba Minister Cox of the updated terms of
18 reference dated February 15, 2017, indicates that
19 the terms of reference have been updated to
20 "Ensure the scope of the hearings will meet
21 federal environmental assessment requirements
22 related to the potential impact of the project on
23 Aboriginal people and avoid duplication of the
24 Provincial and Federal Environmental Assessment
25 Process."

1 Given this late addition, and the fact
2 that the EIS was filed a year before the updated
3 terms of reference were provided to the CEC, it is
4 SCO's position that it is questionable that this
5 process was properly designed to meet federal
6 environmental assessment requirements, and NEB
7 requirements as well, and therefore further
8 federal public hearings with respect to this
9 project should be held.

10 Now, the updated October 21, 2016,
11 terms of reference also asked this Commission to
12 answer two questions in its final report: One, to
13 recommend whether an Environment Act licence
14 should be issued to Manitoba Hydro for the
15 Manitoba-Minnesota Transmission Project; and two,
16 should the Commission recommend issuance of any
17 licence and any conditions that should be included
18 in the licence.

19 So the first question, once again, is:
20 Should this commission recommend that the Minister
21 grant an Environment Act licence to Manitoba Hydro
22 with respect to MMTP?

23 At this point, SCO is not prepared to
24 recommend that an Environment licence be issued or
25 not, as there is still further work to be done.

1 SCO therefore recommends that no licensing
2 decisions be made until a number of this further
3 work is done. This includes further funding be
4 provided to First Nations for them to complete
5 their studies which remain incomplete due to route
6 changes near the border crossing near Piney, as
7 was indicated by both Councillor Thomas and Mr.
8 Daniels during their testimony -- and it was also
9 noted in Hydro's testimony, I would add.

10 Another issue is that unoccupied Crown
11 lands should have been included as a VC in the
12 EIS, and a cumulative effects assessment of that
13 should have also been included in the EIS, because
14 the impact on unoccupied Crown lands should be
15 considered, particularly should be considered when
16 one looks at 5C CEAA.

17 And I would also note -- and I will
18 return to this -- that the MMF did a study on this
19 and brought this forward to the Commission.

20 SCO also submits that a proper health
21 assessment, that includes a detailed study of the
22 active ingredients in the herbicides, needs to be
23 performed before any licensing decisions are made.
24 This will also be discussed a little bit further
25 as we get into our recommendations.

1 Also, SCO suggested no licensing
2 decisions be made until details surrounding the
3 indigenous monitoring group are first established,
4 such as the terms of reference, the
5 decision-making power of the indigenous monitoring
6 group, and even whether an indigenous monitoring
7 group will be established at all. All of this
8 remains unclear, and this will be discussed
9 further later.

10 Although SCO is not prepared to
11 recommend whether a licence should be issued or
12 not, it is clear that the preferred route that was
13 selected is the least bad option, and SCO member
14 nations have clearly indicated they do not want
15 the line moved further east, through the areas
16 near the Sandilands Aquifer, Sandilands Forest,
17 and Watson P. Davidson Wildlife Management Area.

18 Now, should an Environment Act licence
19 be granted or recommended to the Minister for
20 Manitoba Hydro with respect to the MMTP, what
21 conditions should be recommended or included in
22 that licence?

23 One of the recommendations that we
24 would like to see would be more, I would argue,
25 perhaps a non-licensing recommendation, but I

1 think it could also be included as a licensing
2 recommendation.

3 Manitoba Hydro indicated in its
4 opening statement that the proposed
5 Manitoba-Minnesota Transmission Project is about
6 213 kilometres in length; 92 kilometres is
7 existing rights-of-way, and 121 kilometres of new
8 rights-of-way.

9 Now, of the 121 kilometres of new
10 rights-of-way, about 30 per cent, or 36 kilometres
11 of right-of-way, will be on Manitoba Crown land,
12 and 70 per cent, or about 85 kilometres, will be
13 on privately owned land. The private land also
14 includes land that Manitoba Hydro already owns.

15 Now, you can reference the transcript
16 from May 8, 2017; that's the opening statements by
17 Manitoba Hydro, delivered by Mr. Doug Bedford.
18 That's page 21, lines 19 to 22.

19 You may also want to refer to Manitoba
20 Hydro Exhibit MH-022, introduction and project
21 description presentation. And that's at Slide 21.

22 The reason I raise that is that from
23 SCO's perspective, although they recognize and
24 appreciate that Manitoba Hydro did make several
25 routing decisions which minimized the amount of

1 Crown land that would be taken up by the
2 Manitoba-Minnesota Transmission Project, SCO
3 appreciates the Manitoba-Minnesota Transmission
4 Project was routed to the west of the Watson P.
5 Davidson Wildlife Management Area and the
6 Sandilands Provincial Forest and Aquifer, as this
7 is an area that has been identified by SCO member
8 nations as being a significant area for them to
9 carry out their traditional activities and
10 exercise their rights.

11 However, SCO's recommendation -- and
12 there is a following one, to follow on this -- is
13 that there be no Crown land taken up whatsoever,
14 for this project or future projects.

15 This is not to say that SCO does not
16 understand or is not sympathetic to the concerns
17 of private landowners who are also concerned about
18 this project. But unoccupied Crown lands are
19 vital for indigenous people to be able to exercise
20 their rights, and the amount of unoccupied Crown
21 lands, particularly in Southern Manitoba,
22 continues to dramatically decrease as the amount
23 of private land correspondingly increases. The
24 rarer that unoccupied Crown land becomes, the more
25 important it becomes to protect what little

1 remains for the benefit of indigenous people.

2 As noted in the expert report of
3 Dr. Cizek, the amount of forest-covered land in
4 the routing assessment area has decreased by
5 one-fifth or more since 1930, whereas the amount
6 of linear features has more than doubled.

7 As Grand Chief Daniels testified, to
8 put that amount of lost forested land into
9 perspective, that's equivalent to twice the area
10 of Winnipeg, twice the area of Brandon, four times
11 the area of Portage la Prairie, and nearly four
12 times the area of Dauphin, Manitoba. And that's
13 just in the route assessment area, which is only
14 about 1-85th of the province.

15 Also worth noting that the Manitoba
16 Metis Federation had the Calliou Group conduct a
17 Metis land use and occupancy study, and through
18 that study it was determined that unoccupied Crown
19 land only constitutes 10.3 per cent of the land in
20 the routing assessment area.

21 To reference that, you can see
22 Manitoba Metis Federation Exhibit MMF-004, at
23 Slide 50.

24 It is also important to note that the
25 MMF identified loss of unoccupied Crown land that

1 should have been included as a VC -- SCO would
2 support that position -- and that the cumulative
3 effects assessments of that VC was not conducted
4 by the MMF and should have been conducted.

5 Therefore, what we are really saying
6 is that the EIS is effectively incomplete, and
7 that the loss of unoccupied Crown land needs to be
8 assessed in the context of the EIS.

9 Once again, it is SCO's preference
10 that this transmission project and all future
11 projects avoid Crown land altogether. There is
12 just not a lot left in Southern Manitoba.

13 Now, that said, although SCO's
14 preference is that that would be taken up, SCO
15 recognizes that at times, this may be difficult to
16 avoid. In those circumstances, SCO recommends
17 that a zero net loss of Crown land be an express
18 licence condition for the MMTP project.

19 Therefore, if any Crown land is taken up, that
20 there be a licence condition that for every acre
21 of unoccupied Crown land taken up, that Manitoba
22 Hydro be required to purchase an equivalent amount
23 of private land for conversion to unoccupied Crown
24 land.

25 Gordon Blue Sky, the land manager from

1 Brokenhead Ojibway First Nation -- I really would
2 encourage you to read it again -- outlined this
3 concept in his presentation to the CEC as part of
4 the SCO panel on May 29, 2017. You can turn to
5 page 3058, lines 20 to 24 of the transcript. And
6 he succinctly captures the essence of this
7 concept, saying "We," meaning First Nations, "have
8 no more to give. If you are going to take any
9 more, I don't care if it is an inch or a kilometre
10 or an acre, those lands have to be replaced
11 somewhere else."

12 Putting in place this type of licence
13 requirement would also help to fix some of the
14 inequities with respect to how Manitoba Hydro and
15 the Manitoba Government provide compensation for
16 private land versus Crown land.

17 During SCO's cross-examination of the
18 Hydro construction operations and property panel,
19 the 25 per cent market value paid to Manitoba
20 Crown land for rights-of-way on Crown land, in
21 accordance with the Crown Lands Act, was
22 contrasted with the 150 per cent of market value
23 paid to private landowners under existing Manitoba
24 Hydro policies.

25 I refer the Commission to the May 15,

1 2017, transcript, where I cross-examined
2 Mr. Ireland, and at page 1196, lines 7 to 18, I
3 asked him, Mr. Ireland:

4 "But you would be aware that the
5 taking up of Crown land would have an impact on
6 indigenous harvesters?"

7 Mr. Ireland responded: "Yeah. That's
8 a matter for the Crown."

9 Mr. Beddome: "So that's a matter for
10 the Crown, okay, but you only pay the Crown
11 one-sixth of what you would pay private
12 landowners. Correct?"

13 "Just to be clear, Manitoba Hydro
14 doesn't determine that; that's in the Crown Lands
15 Act."

16 Fair enough, that's true, but this
17 shows the drastic disparity. Private landowners
18 get 150 per cent of market value, and Crown lands
19 occupation, 25 per cent is paid to the government,
20 and it is up to the government to make things
21 right with First Nations people.

22 And if I could be a little bit
23 sarcastic for a moment, I think it is fair to say
24 that hasn't always been the history in Manitoba,
25 and in Canada and in general.

1 So, when we take a look at this
2 disparity of a multiple of six, it is probably
3 larger when one considers that the market values
4 of Crown lands are likely going to be assessed
5 lower than private lands.

6 So, from an economic perspective,
7 therefore, Manitoba Hydro has an incentive to
8 route across Crown lands rather than private
9 lands, even though in the MMTP case, they wish to
10 run their right-of-way across a greater proportion
11 of private land.

12 And that is appreciated. Once again,
13 the money is paid to the Province, but the impact
14 from the loss of Crown land is felt by indigenous
15 people.

16 By putting in place a licence
17 condition that Manitoba Hydro -- or any other
18 developer, for that matter -- must replace any
19 unoccupied Crown land that is taken up, this would
20 help to avoid the loss of land to exercise
21 indigenous rights. Manitoba Hydro would have to
22 pay 25 per cent of the market value for Crown
23 land, plus an estimated 100 per cent to replace
24 the lost Crown land, and this would only total
25 150 per cent, in comparison to 150 per cent of

1 market value for private land.

2 So you can see it would help to
3 balance the inequity a bit, and indigenous people,
4 therefore would have some assurances that the
5 little remaining unoccupied Crown land in Southern
6 Manitoba will either be protected, or at minimum,
7 replaced.

8 Another suggestion might be to reduce
9 the right-of-way to 80 metres from 100 metres.
10 This is the way to both minimize the amount of
11 both Crown and private land taken up by this
12 project. It would seem to be something that this
13 Commission could make a licensing condition, or at
14 least for the portions of the route where it is
15 feasible to do so, as similar lines in Manitoba
16 operate with narrower rights-of-way.

17 I also want to talk a little bit about
18 the disparity in how private landowners are dealt
19 with with respect to herbicide use on their land
20 versus Crown lands.

21 So during the hearing, there were a
22 couple of questions -- including one from me that
23 I'm not going to repeat, because I have to tip my
24 hat a little bit to Mr. Mills from Dakota Plains
25 First Nations, who got it on the record better

1 than me.

2 But it was revealed that Manitoba
3 Hydro has committed to ultimately not spraying
4 herbicides on private lands if the owner of the
5 property ultimately objects to its use, but they
6 would not make the same commitment for Crown
7 lands.

8 So, returning to the cross-examination
9 of Mr. Mills, on May 18, 2017, at page 1995 of the
10 transcript, lines three to 14, Mr. Mills asked:

11 "Great. If Dakota Plains was to
12 indicate to you that the entire route was
13 environmentally sensitive to them, would that be
14 sufficient to prevent herbicide use on the route?"

15 Mr. DeCarlo responds:

16 "No, as I indicated earlier, there are
17 certain" -- there is an interjection from
18 Mr. Mills, "Come on"; Mr. DeCarlo then continues:

19 "Certain circumstances where applying
20 herbicides is the best approach, because if left
21 unchecked, the outcome could be much worse than
22 the negative effects from using herbicides."

23 In contrast, on June 1, 2017, at
24 page 3663 through 3665, Commissioner Nepinak asked
25 a similar question with respect to private land,

1 and was told that ultimately Manitoba Hydro would
2 respect the wishes of the landowner.

3 This is a rather long exchange, but
4 I'll go through it.

5 "Mr. Nepinak: If the MMTP is located
6 on private land and the landowner does
7 not want herbicide spraying, would
8 Manitoba Hydro grant that request, and
9 could you please explain?"

10 Mr. Matthewson responds:

11 "Good afternoon, Commissioners. James
12 Matthewson, for the record.

13 "So Manitoba Hydro would first discuss
14 the concern with residents to
15 understand the nature of the concern.
16 It would share information about its
17 specific integrated veg management
18 plan for the area, including the
19 objectives, the mitigation methods
20 that it puts in place, the treatment
21 method, options, chemical and
22 mechanical, and the applicability of
23 those options on that particular site,
24 and the potential environmental
25 effects of all the different options.

1 And it would honour, after those
2 discussions with the landowner, and
3 explaining the concerns, it would
4 strive to come to some type of
5 consensus on an alternative management
6 technique, which may include a reduced
7 herbicide use, such as a backpack
8 spray operation, or potentially the
9 landowner has a concern with more of a
10 broadcast application of the entire
11 area. So really understanding the
12 nature of the concern can help
13 Manitoba Hydro explain to a landowner
14 the different types of things that it
15 could do. But if, alternately, the
16 landowner chose it did not want to use
17 any type of herbicide on the land,
18 then Manitoba Hydro would honour that
19 request."

20 So they would honour the request of a
21 private landowner not to use herbicide, but they
22 will not honour if a first Nation raises that
23 concern. Now, admittedly, Manitoba Hydro has
24 indicated in the EIS and the IR responses that it
25 will be their practice not to spray herbicides in

1 areas that are identified as being traditional
2 practices, but they are not willing to go so far
3 as to say if it is the entire area of the occupied
4 Crown lands, then so be it. Just like it was
5 every private landowner that objected, then so be
6 it.

7 We would say that that inequity needs
8 to be fixed, and it could be fixed with a
9 licensing condition that expressly indicates that
10 if Manitoba Hydro cannot spray herbicides on areas
11 identified by First Nations as used for
12 traditional harvesting practices.

13 Some of this gets challenging, given
14 the lack of clarity with the indigenous monitoring
15 group. But I think it is something that's needed,
16 because SCO member nations have raised concerns
17 about the use of herbicides and how this can
18 impact traditional gathering practices in country
19 foods.

20 It also would seem to make it a
21 licensing condition would simply be incorporating
22 as part of the licence something that Manitoba
23 Hydro has already committed to doing, and we would
24 suggest that that is a better way of ensuring
25 compliance than simply taking Hydro on their word

1 on it.

2 I also spoke a little bit about the
3 fact that the health assessment regarding
4 herbicide use is, in SCO's opinion, inadequate.

5 SCO refers the Commission to the
6 cross-examination of Dr. Leece on May 17, 2017, at
7 page 1662, lines 12 to 23, where it is revealed
8 that Hydro's health assessment with respect to
9 herbicides was entirely reliant on Health Canada
10 regulatory certifications.

11 So I cross-examine there:

12 "And basically it is fair to say that
13 the summary of that conclusion is
14 Health Canada said it is safe, so we
15 think it is safe."

16 Dr. Leece responded,

17 "That's fair. Health Canada's
18 evaluations on the PRA provided the
19 regulatory certification for herbicide
20 use in Canada.

21 So you are entirely reliant on Health
22 Canada studies with respect to the
23 health concerns.

24 Dr. Leece: "That's correct."

25 So, now that it has come out in the

1 hearing that Manitoba Hydro plans to use a
2 different herbicide, with different active
3 ingredients, and -- you know, without
4 acknowledging, perhaps, that it is even safer, but
5 we have no way of knowing if it is safer or more
6 harmful, because there is no further updated
7 health assessment that's required, at least in
8 Hydro's opinion, in the EIS.

9 I still submit that this isn't
10 adequate, and that a further health assessment of
11 herbicide use should include the active
12 ingredients of the herbicides being used, and this
13 should also include a licence condition that if
14 the active ingredients are changed at some future
15 point, at some time in the future, that there
16 would also need to be a similar assessment of the
17 potential health impact of those herbicides.

18 Another really important issue, an
19 area of recommendation for SCO, is that sacred
20 sites must be protected. Through the SCO
21 Information Requests 15 and 37, Manitoba Hydro
22 provided an example from the Bipole III project of
23 a culturally appropriate ceremony that was
24 performed before burying of a sacred prayer tree.
25 And we appreciate Manitoba Hydro's response on

1 that, and commitments to perform similar cultural
2 activities.

3 However, on May 15, at pages 1186 to
4 1188 of the transcript, this issue was picked up
5 further during cross-examination. And so I asked:

6 "Okay, now let's assume we have the
7 same example, where some prayer trees
8 are located, but after discussion with
9 the community, the elders refuse to
10 give it their blessing. They are not
11 willing to give you the right to
12 proceed with the right-of-way. In
13 this case, they did give you the
14 blessing. What happens if they didn't
15 give the blessing? What would
16 Manitoba Hydro's approach be then?
17 Let me put it a different way: Would
18 you consider re-routing the project to
19 go around those sacred prayer trees?"

20 Mr. Matthewson responds:

21 "I guess, hypothetically, similar to
22 an easement, if we didn't receive an
23 easement, that was a line of
24 questioning. There is a variety of
25 different mitigation measures that

1 Manitoba Hydro can put in place before
2 we get to any point of re-routing a
3 transmission project."

4 And I'm going to skip a section, but I
5 asked Mr. Matthewson about those mitigation
6 measures, and he goes on to provide me a
7 description. And then I respond:

8 "But If the response you got from the
9 community and from the elders in that
10 community was that they didn't want
11 you to prune those trees, that they
12 felt that running a Hydro line over
13 top of them would ruin the sacred
14 spiritual nature of those trees, would
15 Manitoba Hydro then be willing to
16 reconsider re-routing?"

17 And Mr. Matthewson effectively refused
18 to give a committal response:

19 "So Manitoba Hydro, in its development
20 of transmission projects over the last
21 five years, with the Bipole project
22 and the Lake Winnipeg East, we haven't
23 run across that scenario that you are
24 describing to me, so I can't comment
25 on what ultimately we would end up

1 doing."

2 So we have no answer on that. But
3 once again, I referred you to your updated terms
4 of reference, and I referred you to 5C of CEAA,
5 and -- let me find the specific one that I want to
6 highlight.

7 I apologize; I think it is worth going
8 back.

9 Once again, just to highlight, one of
10 the things includes any structure, site, or thing
11 that is of historical, archeological,
12 paleontological, or architectural significance to
13 Aboriginal peoples.

14 So if the others refuse to yield,
15 Hydro has to move. And that's what SCO is
16 recommending, that a licence condition be added
17 that any licence granted, that Manitoba Hydro is
18 required to respect the cultural concerns of First
19 Nations.

20 In other words, if sacred sites are
21 identified through the monitoring process or
22 otherwise, Hydro has to reroute the project if
23 mitigation measures are not acceptable to the
24 impacted indigenous group.

25 There is also a need for clarity

1 required on the indigenous monitoring group, its
2 role, its activity, and its results.

3 I want to thank my friend this
4 morning, Ms. Pastora Sala; she I think covered it
5 a little bit for you as well, but I'm going to go
6 over some of the same points, because Manitoba
7 Hydro has placed a considerable degree of reliance
8 on the ability of the as-of-yet unformed
9 monitoring process, and in particular, there is
10 still yet to be formed an indigenous monitoring
11 group to deal with a number of issues, such as
12 cultural sites, herbicide application; you've
13 heard me talk about impact on wildlife, and
14 others.

15 However, despite conceiving this
16 project in 2007 and starting the public and First
17 Nations engagement process in 2013, the terms of
18 reference, the composition, and other important
19 details of this indigenous monitoring group are
20 still not yet determined. It is in fact not even
21 clear if the indigenous monitoring group will be
22 established at all, or maybe similar to
23 Bipole III, there might be some sort of role for
24 the monitors, but it is too small of a project, as
25 Hydro testified, for that.

1 So SCO says that this work ought to be
2 completed before any licensing decisions are made.
3 I think it is incumbent for us to understand how
4 this indigenous monitoring group is going to work.
5 And I think also, particularly during the hearing,
6 it was revealed that even if the indigenous
7 monitoring group was established, it would be only
8 advisory in nature, and that decisions would be
9 made by Manitoba Hydro.

10 And there was a lot of this, but I
11 think the most clear point was on May 23, 2017, at
12 page 2320, line 19 of the transcript. I asked
13 Mr. Matthewson:

14 "And just to be clear, the indigenous
15 monitoring working group is advisory only to you
16 and your team in terms of those decisions, so
17 provides you advice, but you make the ultimate
18 decisions in terms of the environmental protection
19 management team, just to be clear."

20 So, as Ms. Pastora Sala noted, the
21 environmental protection management team is the
22 decision-making body in most cases, unless it has
23 to be elevated up.

24 And Mr. Matthewson responded:

25 "Manitoba Hydro makes the decisions

1 about the actions that Manitoba Hydro
2 has to conduct. Yes."

3 I think that's worth reading again:

4 "Manitoba Hydro makes the decisions
5 about the actions that Manitoba Hydro
6 has to conduct. Yes."

7 It doesn't certainly leave, I would
8 argue, a lot of room or respect for indigenous
9 people and First Nations. And SCO submits that
10 for the indigenous monitoring group to be
11 effective at all, the indigenous monitoring group
12 needs to have the authority to tell Manitoba Hydro
13 what to do and what not to do. And SCO encourages
14 the CEC to make this an explicit condition of any
15 licence that might be recommended.

16 Now, throughout this hearing, Manitoba
17 Hydro has learned how they have learned from past
18 projects. And to be fair, there is, I think, some
19 forward progress. But SCO references, and has
20 referenced through cross-examination, several
21 unfulfilled CEC recommendations.

22 In particular, the Clean Environment
23 Commission made non-licensing recommendations 6.2
24 and 6.2 in its final report, dated June 2013, with
25 respect to the Bipole III transmission project.

1 And so, when we take a look at this,
2 it becomes clear that while maybe Hydro has
3 learned a little bit from past projects, how much
4 have they learned? Because recommendations 6.1
5 and 6.2 talk about Manitoba Hydro to improve its
6 consultation process by seeking input from
7 experts, many available in Manitoba, in the field
8 of participatory consultation processes, as well
9 as from representatives of Aboriginal
10 organizations.

11 And 6.2, the Manitoba government, with
12 Manitoba Hydro, investigate the feasibility of
13 developing an Aboriginal traditional knowledge
14 database that could be used in the assessment of
15 potential impacts of future projects related to
16 Manitoba's natural resources.

17 Now, SCO recognizes that it is
18 important that First Nations retain their own data
19 and retain ownership of the same. They go out and
20 they collect their own studies. SCO recognizes
21 that this can be sensitive information, and that
22 First Nations might be understandably reluctant to
23 share such information.

24 So, admittedly, the fulfillment of
25 this recommendation requires work on the parts of

1 both the Manitoba government, Manitoba Hydro, and
2 First Nations governments and other indigenous
3 communities. But in the hearing, it was revealed
4 that Manitoba Hydro did little, if anything, to
5 fulfill this recommendation. Because, as was
6 indicated by Mr. Matthewson on May 11, 2017, at
7 page 901, line 11 to 13:

8 "We have not had any specific
9 discussions about the development of
10 an Aboriginal traditional knowledge
11 base."

12 Basically, Mr. Matthewson's position
13 was: The government hasn't approached us, so we
14 haven't taken any actions.

15 With respect to Manitoba Hydro, this
16 is not enough. This is not learning from past
17 mistakes. It is turning away from a problem in
18 hopes that avoidance will make it go away.

19 Manitoba Hydro could have initiated
20 the discussions with First Nations and the
21 Province of Manitoba. This is a recommendation
22 that is nearly four years old.

23 And so these recommendations from
24 these previous hearings need to be incorporated
25 into, I would suggest, your recommendations in

1 your report.

2 When we talk about data, it is also
3 worth noting that there was further information
4 that Hydro was aware of and that was not included
5 in the routing model. So, on May 11th, at
6 page 872, lines 10 through 20, Mr. Matthewson
7 indicated the following:

8 "When we strive to fulfill these data
9 sets, we need data sets that cover the
10 entire study area and focus. And
11 while Peguis First Nation's
12 information would have been useful for
13 that information, it would have only
14 been one community's perspective on
15 hunting and trapping locations. So we
16 would have preferably wanted, as we do
17 with all of these data sets, want a
18 complete understanding of hunting and
19 trapping locations that cover the
20 geographic area."

21 I note at the same time -- and
22 granted, Winnipeg is the largest city in the
23 province, but Winnipeg, as a single community, was
24 invited to these meetings, with Manitoba
25 indicating that Winnipeg provided a different

1 context compared to First Nations, rural
2 communities, or rural municipalities.

3 Hydro was also aware that the MMF had
4 a data set which Manitoba Hydro did not include,
5 because that data identified areas that were too
6 large, in Manitoba Hydro's opinion. Note that the
7 Association of Manitoba Municipalities was invited
8 to planning meetings, even though they did not
9 subsequently attend; but my client, the Southern
10 Chiefs' Organization, which you've heard is itself
11 a regional organization, and has a membership that
12 includes 33 member First Nations in Southern
13 Manitoba, was not invited.

14 Once again, on May 11, at page 874,
15 lines 14 to 22, Mr. Matthewson testified:

16 "We did not ask the Southern Chiefs'
17 Organization to participate in the
18 stakeholders workshops. You are
19 correct."

20 And I respond:

21 "I'm aware of that. My question was
22 why."

23 Mr. Matthewson responded:

24 "So we didn't believe -- at the time,
25 we didn't believe the Southern Chiefs'

1 Organization had spatial data to share
2 that covered the entire study area."

3 But there was also no indication that
4 Manitoba Hydro even inquired to see what data my
5 client had or did not have. Again, if we want to
6 talk about learning from past mistakes, and
7 reconciliation and learning, at least extending
8 the offer only seems fair.

9 And to sort of support what
10 Ms. Pastora Sala said, it seems that there is some
11 selective choosing in there; that certain groups
12 are chosen because they have the technical data
13 that Hydro determines acceptable, and other groups
14 are excluded because they -- quote, unquote --
15 don't have the technical data that Hydro sees as
16 acceptable. And I think that's problematic,
17 because it means that a lot of this information
18 wasn't incorporated, starting at the routing
19 process.

20 And so, fundamentally, what SCO is
21 recommending is that indigenous knowledge needs to
22 be incorporated earlier in planning, in the EIS,
23 and it needs to be incorporated in the routing
24 model, and indigenous communities and
25 organizations need to be given the resources to

1 collect this knowledge on their own. And the
2 sooner we start, the sooner we can get the work
3 done -- recognizing, once again, there is lots of
4 work to be done to achieve that.

5 So that's what I'm offering today for
6 closing statements. Now, I just want to note that
7 SCO reserves the right to make further
8 recommendations by way of a written submission if
9 we choose to do so. I think we will be doing
10 that, trying to outline some of the things that I
11 pointed out to you today.

12 We want to thank the CEC for allowing
13 SCO to participate in these hearings. We
14 appreciate the time that the Commission has taken
15 to listen to my client's concerns, and my client
16 hopes the CEC will incorporate its recommendations
17 into its final report to the Minister.

18 SCO appreciates the work of the Chair
19 in moving this process along in an orderly
20 fashion. SCO appreciates all the hard work of the
21 Commission staff, Ms. Cathy Johnson, Ms. Cheyenne
22 Halcrow, legal counsel, Mr. Green and
23 Mr. Armstrong as well, the transcriptionists who
24 helped us out, both in keeping the record of the
25 hearing and also helping us with technical issues.

1 SCO appreciates and thanks its fellow
2 participants and Manitoba Hydro for all their hard
3 work. We may not always see eye to eye on all
4 issues, but the CEC process provides an important
5 mechanism for dialogue, and SCO appreciates the
6 opportunity it has been given.

7 Thank you.

8 THE CHAIRMAN: Thank you, Mr. Beddome,
9 for drawing our attention to a whole variety of
10 issues that you raised, and will be useful to us
11 in our deliberations, so thank you very much.

12 It is now just about 12. I will ask
13 Mr. Valdron, if you could come up for a minute at
14 least, and we can talk a bit about the length of
15 your presentation before we decide on proceeding
16 or taking lunch now.

17 So I guess my question is, how long do
18 you expect to present?

19 MR. VALDRON: Well, by now you've
20 gotten to know me, so you know I will not be
21 brief. I'm -- my client from Peguis, Mike
22 Sutherland, will be here to give a presentation.
23 It will be about five minutes, as part of the
24 opening remarks. I figure I'm going to be at
25 least an hour, hour-plus.

1 THE CHAIRMAN: Okay. And your plan
2 was to have Mr. Sutherland be part of that?

3 MR. VALDRON: Yes.

4 THE CHAIRMAN: What time do you expect
5 him to be here?

6 MR. VALDRON: He was here this
7 morning. He had to leave, but I have been texting
8 him.

9 So I would suggest that we break for
10 lunch.

11 THE CHAIRMAN: And could we resume,
12 then, at -- yes, at one o'clock sharp?

13 MR. VALDRON: Certainly.

14 THE CHAIRMAN: Does that work for us?

15 All right. 1:15.

16 MR. VALDRON: Okay.

17 THE CHAIRMAN: We will all be back
18 here at 1:15, then. Thanks.

19 (Recessed at 12:00 to 1:15 p.m.)

20 THE CHAIRMAN: Okay. Welcome back
21 from lunch, everyone. If you could take your
22 seats, we're about to start. So we're now moving
23 onto our third set of closing arguments, and that
24 will be Peguis First Nation represented today by
25 Dennis Valdron and then Mike Sutherland. So I'll

1 turn it over to you, Mr. Valdron.

2 MR. VALDRON: Yes, good afternoon,
3 Commissioners. Here today is Mike Sutherland, the
4 director of the consultation department, or
5 consultation office for the Peguis First Nation.
6 He's going to be giving a presentation or
7 submission on behalf of Chief Glenn Hudson.

8 MR. SUTHERLAND: Good afternoon
9 Commissioners, good afternoon Cathy, audience, and
10 so on.

11 Today I'd like to present our final
12 argument. Today I'm presenting on behalf of Chief
13 Glenn Hudson. He's been away all last week and
14 didn't get back till Saturday night and he's doing
15 some catch-up meetings this week, so asked me to
16 attend in his presence, and I'm honoured to do so.

17 With that I'd also like to say
18 miigwech for the opportunity to be a part of these
19 hearings. We are very grateful that Peguis has
20 been given the opportunity to be heard. We hope
21 that what we had to say and the presentation that
22 we made and our recommendations also be carried
23 forward.

24 I'm here on behalf of Peguis First
25 Nation. And I want to say at the outset that

1 First Nations are not just words, they have
2 meaning. The Peguis First Nation is a government
3 as much as a government as Canada and Manitoba.
4 Chiefs are as legitimate as the Premier. Our
5 councillors are equivalent to cabinet ministers.
6 And we are inheritors of a tradition of
7 guardianship over the land, the lands which go
8 back hundreds and thousands of years. We are
9 government and nation when the settlers came, and
10 we never gave that up.

11 I am here on behalf of the government
12 of Peguis, one nation speaking to another about
13 our common interests, the respect for and
14 guardianship of the land.

15 It has been heard before, but I will
16 say it again because it needs to be heard. We are
17 the largest First Nation in Manitoba. There are
18 the traditional territories of our people -- these
19 are the traditional territories of our people.
20 This is where we came from, this is where many of
21 us still reside. These are still the territories
22 that our people practice our traditions on, and in
23 today.

24 I wanted to commend the Commission for
25 hearing us. I wanted to commend Hydro for

1 beginning to listen to us. In the past our voices
2 and our concerns were not heard, and both
3 ourselves and Manitoba suffered for that, and
4 because Manitoba needed to hear it and what we had
5 to say.

6 This is changing. This is Peguis,
7 this is Peguis' fourth hearing before the CEC on
8 Hydro development. We got to participate in the
9 NEB and we've engaged with, or have 30 or so
10 projects under our belt. We look forward to more
11 in the future. But although we have made
12 progress, although the doors are opening and we
13 are participating in these hearings, I have to
14 wonder are we really being heard? Has Hydro
15 really listened?

16 Yes, we are funded for our land use
17 studies but it was late in the process. And if
18 you look at the Environmental Impact Statement
19 there, we are in chapter 11 under the FN EMP and
20 at ATK. But how do our views and our
21 contributions show up? Hydro has the elaborate
22 EPRI methodology to do routing. It shows us three
23 categories, man-made built, natural and
24 construction. There are a series of valued
25 components in these categories, but I don't see a

1 category for us, and I don't see in all these
2 valued, and I don't see us in all these valued
3 components.

4 So are our voices really taken into
5 account? Participation must be meaningful. It's
6 not meaningful if they are just asked for our
7 opinion and they ignore it. This is what I mean
8 when I say, therefore, that there is progress, but
9 there is still a ways to go. And I hope that
10 Hydro will take these words to heart. I don't say
11 this to condemn them but to show them the way
12 forward.

13 My message is a positive one. I do
14 not want to call out the sins of the past, but
15 talk about the way forward. What do we need to do
16 to go forward? The answers are simple. The goals
17 must respect communication, transparency,
18 cooperation and partnership. And I want to set
19 out some principles to following these goals.

20 Our first principle, the protection
21 and preservation of the land is in all our
22 interests, not just Peguis, but Manitoba and Hydro
23 as well. Let's work together.

24 The second principle is that we
25 recognize the need for the MMTP. Our challenge is

1 how to do it together.

2 Our third principle is that the
3 minimum traditional -- that is that minimum
4 traditional land must be impacted. If the line
5 must go through, go over the private land to the
6 extent possible.

7 Fourth, there needs to be monitoring,
8 and Peguis and Indigenous people must be a part of
9 that monitoring. That monitoring must be genuine
10 and responsive to the land, not casual, it must be
11 diligent and it must be funded. Peguis First
12 Nation is not -- must be funded to participate.
13 It must be transparent and it must be open.

14 Fifth, monitoring must be effective.
15 If we monitor and do nothing, what is the point?
16 There must be a commitment not just to monitor but
17 to mitigate. And if adverse effects take place
18 over time, they need to be addressed, not
19 overlooked. And I think I want to add personally
20 to that. When it comes to the monitoring process,
21 First Nations and Peguis in general, we want to be
22 a part of the development of the terms of
23 reference to ensure that we participate in the
24 development of the administration and the entire
25 process from the beginning to end, and not just

1 one, two, but 10 years over the life of that line
2 in the monitoring that's required.

3 Lastly, I believe that there needs to
4 be a scope for Peguis participation in this work.
5 We're available to assist, we have experienced
6 workers, skilled trades, and we have the expertise
7 and ability and the will.

8 Now our lawyer will be following up
9 and expanding on our remarks. And I want to thank
10 the Commission for hearing us and let us join
11 together for the path forward.

12 With that I say miigwech.

13 MR. VALDRON: Thank you, Councillor
14 Sutherland. Thank you very much, Councillor
15 Sutherland, or Director Sutherland.

16 At the start, just as a preliminary
17 matter, I note that I haven't brought my watch or
18 my phone up here. I wanted to avoid distractions.
19 So I believe I'll be under 90 minutes, but I'm
20 going to ask Ms. Johnson to give me a 15 minute
21 warning at 75, just in case.

22 And I would like to express my
23 gratitude and admiration for both Mr. Beddome and
24 Ms. Pastora for truly excellent, detailed,
25 comprehensive summations. I'm ashamed to say that

1 I will not be doing nearly as well as them. I
2 will not, unfortunately, be able to be as thorough
3 or comprehensive as them. And I'm ashamed to say
4 that I will probably be duplicating some of their
5 work. So please bear with me. I'm trying to
6 lower your expectations.

7 So I'll start off with a quote. I
8 never imagined in my life that I would quote
9 Donald Rumsfeld, but here it is. Okay. And I
10 will come back to this quote because it does
11 relate to some of the stuff that we're looking at
12 and some of the stuff that we have had in a
13 historical context. And the quote is this, wait
14 for it, the quote is:

15 "Absence of evidence is not
16 necessarily evidence of absence."

17 And I think that this describes the history of
18 Aboriginal involvement in these processes in the
19 past, and the history of Aboriginal involvement in
20 development in the past. We have always been
21 here, and often we have been overlooked. The
22 absence of our evidence is not and has never been
23 evidence of our absence.

24 And here today, what I guess my
25 summation is about is trying to remind you of that

1 principle, and remind you of that evidence, much
2 of which you have heard today. I want to refer
3 back -- before I do refer back to my opening
4 statement, I want to make first an initial
5 statement, which is to acknowledge the courtesy
6 and the consideration of the Commission with
7 respect to the gift of tobacco and the respect for
8 Indigenous ceremony and tradition. That meant a
9 lot to my clients. That meant a lot to me.
10 That's meant a lot to the MMF, to Dakota, to the
11 First Nations that have participated here. And we
12 certainly want to acknowledge this very
13 fundamental and very profound gesture of respect.

14 I understand or believe that this was
15 at the initiative of Commissioner Nepinak, but I'm
16 going to suggest, as one of my recommendations to
17 the Commission, that perhaps this should be looked
18 at and made part of the standards for the
19 Commission going forward.

20 Now, I want to talk, refer back to my
21 opening statement. And you'll recall when I had
22 my opening statement I said, our interests have
23 been overlooked too long. And back then I talked
24 about two myths. I'm going to revisit them both
25 briefly in light of the evidence that we have

1 heard. And the two myths were distance and
2 proximity. This notion that if a First Nation
3 wasn't sitting right there literally on the border
4 of development, or in the middle of development,
5 it didn't have an interest. And I think that's
6 been conclusively overturned. We have the
7 evidence of Niigaan Sinclair, historical evidence
8 going back centuries of involvement or
9 relationship to this area, to the origins of the
10 Anishinaabe and the Dakota in this area, and the
11 travels that brought us there. He's given us
12 evidence that this area that we are speaking of
13 was a nexus, it was a gateway for the people to
14 the north, to the south, to the east, to the west.
15 It was a meeting point. And it was a crucial area
16 for the history of the people.

17 We have heard evidence from Mike
18 Sutherland, from the chief himself, from the
19 panel, with respect to the use of these lands,
20 even today, with respect to the importance and the
21 meaning and the fundamental relationship of these
22 lands to First Nations culture, to Indigenous
23 culture, to the expression and recognition of that
24 culture. Because culture doesn't exist in a
25 vacuum, it exists by doing things, it exists by

1 acting and reacting, by relating to an
2 environment. And so for indigenous peoples, even
3 the Metis, and for SCO and for the others that
4 have been mentioned, Roseau River, culture related
5 to the land. You expressed your identity by going
6 out to the land, by carrying out the traditional
7 activities. And it wasn't going to generic land,
8 it was going to land that you had a relationship
9 with. And so what we have talked about is that
10 relationship with the land. And not just the
11 generic relationship with the land, but a
12 particular relationship, a special relationship.

13 You have heard evidence from the land
14 use studies of 2600 data points. Think about
15 that. That meant that there was a person who
16 could look at the map and go, hey, I gather
17 berries right here, I got medicine right there.
18 Specific, not general, not some amorphous thing,
19 but specific use, tied to specific bits and pieces
20 of land, patches here, patches there, places to
21 fish, places to hunt, a land which had its own
22 rhythm of seasons, where things grew and
23 flourished and withered and died, where things
24 passed through, and people living according to
25 that rhythm. And I speak passionately about this

1 because this is what the First Nation relationship
2 to the land is about. The land is viable, it's a
3 live and viable thing. And ceremony and
4 traditions and culture and hunting, fishing,
5 trapping, gathering, medicine, family activities,
6 connection with the land, that's all live. And
7 all of this area of the MMTP involves that use of
8 land. All of the MMTP is in Treaty 1 territory.
9 Bipole was only a quarter. So this is very
10 important to our people.

11 And so the evidence that you have
12 heard should be looked at in that way. It is not
13 just people coming up and talking about trapping,
14 but people asserting the right to the land, their
15 right to participate in the land and the right to
16 participate here. And so this evidence reinforces
17 my conviction -- or conviction, or assertion, or
18 demand that rights have to be considered.

19 And of course then the second myth
20 that I talked about was this distinction between
21 private and public lands, this illusion that if
22 it's only private lands, there's no Aboriginal
23 interest. In fact, Manitoba Hydro contradicted
24 this themselves during cross-examination. They
25 were very stern with me, to continually remind me

1 that, you know, wildlands or private wildlands to
2 which people had permission to use were lands that
3 they could use, where the Aboriginal rights, the
4 Aboriginal traditions persisted. So that has to
5 be taken into account. I have talked about things
6 like road allowances and bits and pieces and all
7 of the fragmentation. And so that's all still
8 there. And so I think we have conclusively
9 dismissed these two myths.

10 So, what about going forward? Well,
11 the first thing I want to say, and I want to be
12 very fair about this, I want to be positive about
13 Hydro and its EIS. And I recognize the words of
14 Chief Glenn Hudson when he says, we've worked hard
15 to have a good relationship with Hydro. They have
16 extended their hand, they have opened the door,
17 and Hydro has reached out to take that hand. We
18 want to continue to develop and build on that
19 relationship. The Chief has said here and in
20 other places that they want to continue to do
21 business with Hydro, not just monitoring, but
22 construction, economic opportunities. It was said
23 very clearly that First Nations have been shut out
24 of Canada's economy in the past, 97 per cent
25 unemployment rates, poverty, destitution, all of

1 the handicaps. None of these are accidents, that
2 was political decisions to exclude people from the
3 economy, to exclude from society. And there's
4 been suffering for that.

5 Well, what the Chief has said is we
6 want in, we want the level playing field and
7 opportunity to prove ourselves. And Manitoba
8 Hydro, to their credit, has been willing to
9 listen. Manitoba Hydro, to its credit, has been
10 prepared to participate in consultation or
11 engagement, I guess engagement is the proper word,
12 has been prepared to participate and communicate.
13 And I will be honest, I dealt with Hydro some 20
14 years ago, and what I see today with Hydro, as
15 opposed to what I saw 20 years ago, it's like
16 night and day. And that is entirely to Hydro's
17 credit. But, there is still work that needs to be
18 done.

19 Now, I guess this takes us back to
20 Rumsfeld. I look at the EIS study, it's very
21 impressive, it's very thorough, it's very
22 detailed. It's long, my God it's long. It goes
23 on and on and on, and there's chapter after
24 chapter. And I'm quite amazed at the amount of
25 work, at the amount of consideration that went

1 into it. But I have to ask, where were the First
2 Nations in the first round in the preliminary
3 planning? Where were we in that opening scoping?
4 I looked in, I didn't find us. And in
5 cross-examination, you know, we found others.
6 Ducks Unlimited was right there, right on the
7 ground floor. I guess bad news for the ducks, or
8 possibly good news, depends on how they feel about
9 being shot.

10 Indian Affairs was right in there on
11 the ground floor. At least they had the
12 invitation. I have no idea why, to this day I'm
13 just baffled by that one. The Association of
14 Municipalities, okay. But where were we? We were
15 the people who lived there. We were the people
16 who went onto this land. We were the people who
17 were tied to this land, whose culture revolved
18 around this land. Where were we at this crucial
19 point, at this crucial period? And I think that's
20 a flaw. I think that First Nations and First
21 Nation organizations, and the Metis, of course,
22 because I mean no disrespect to them, we should
23 have all been there at that opening, right at the
24 beginning. And because we weren't there at the
25 beginning, we weren't even considered, I think

1 that flaws and potential issues crept into the
2 proceeding.

3 Now, we were at that point the absence
4 of evidence -- see, I've come back to Rumsfeld --
5 but our absence at that point was not proof that
6 there was no evidence.

7 And again, I'll come back and be fair
8 to Manitoba Hydro. There we are in chapter 11,
9 you know, with ATK, Aboriginal, I don't even know
10 what the acronym is now, I'm going blank, but
11 FN EMP and ATK, there it was. But as much as I
12 appreciate chapter 11, as much as I recognize the
13 consideration that Hydro has given and the effort
14 that's gone into to at least seek out, or at least
15 to hear the Aboriginal viewpoints, I have to ask,
16 where in the routing process was it incorporated?
17 You know, I mean, I looked at the routing process
18 and there is a list of valued components and
19 priorities. We're not found, you know, in that
20 list. You can see it. There's those three big
21 areas. There is the built, about man-made
22 construction, agriculture, buildings, facilities,
23 all of that, there's natural, and then there's
24 construction. Well, where are we in there? We
25 don't seem to be.

1 There's the 12 valued components,
2 reduced from what, 50, 60, 40? I'm vague, but
3 they certainly screen down the valued components a
4 lot. And given the massive volume of work that
5 they've done, I certainly appreciate a little bit
6 of editing, but we're not in those valued
7 components.

8 And I had a bit of trouble, I admit,
9 and I suspect that you as a Commission may have a
10 bit of trouble assessing how those valued
11 components related to Aboriginal issues, to the
12 Aboriginal evidence, to the Aboriginal rights, and
13 priorities, and engagement.

14 During cross-examination I asked a
15 witness from Hydro about the valued components.
16 And they said they didn't really prioritize them
17 on the valued components. I think one of them
18 even suggested that, you know, just the ordering
19 might simply be alphabetical. Come on,
20 alphabetical?

21 I found it difficult to pin them down
22 as to where Aboriginal interests and Aboriginal
23 knowledge fit in. And maybe they weren't sure
24 themselves. Okay. It could be that they weren't
25 evasive or deceptive on cross-examination, I was

1 just asking a question that they couldn't answer.

2 Well, if they can't answer the question properly,
3 you've got a problem. There's an issue there.

4 Jesse from Georgia, whose last name I
5 forget, but he is the APR or GTC expert, talked
6 about weighting. So I'm thinking, well, what
7 about that? I mean, they didn't prioritize the
8 valued components but there was weighting? I
9 assume that's the same thing. But he couldn't
10 give me the weights of the Aboriginal interest.

11 I cross-examined Hydro's witnesses on
12 this point, but I just couldn't find it. And to
13 my dismay, when Southeast Stakeholders brought a
14 witness up who had a lot of interesting comments
15 to make with respect to the APR methodology, I
16 asked him directly, I said where is the Aboriginal
17 component in here? What weight is it given?
18 Where is it in this list of priorities? He
19 couldn't find it. You know, he stuck them onto
20 the bottom of a list and said, well, it doesn't
21 mean I'm disparaging, doesn't mean I'm sending it
22 down at the bottom of the list, I just don't know
23 where to put it in here, and I don't know where
24 Hydro is putting it.

25 So, Mr. Berrien, to be fair, I mean,

1 he agreed it had to be referenced, it had to be
2 incorporated. He felt Hydro hadn't done that. So
3 here we are, Hydro has Commissioned ATK, or funded
4 ATK, but we've got a disconnect. We have a gap in
5 the process. I think something like Ms. Pastora
6 referred to as a silo, which I understood her to
7 mean silo off in one place and not really
8 communicating. And so I feel we're looking at
9 that in the context of the ATK and its
10 relationship to the routing process, to the
11 routing decisions.

12 If you can't find it in a specific
13 place, if the answer is, well, it's in there
14 somewhere, it's just generally part of the
15 consideration, I don't know that I'm satisfied. I
16 don't know that the Commission should be
17 satisfied. It's not sufficient to just say it's
18 in there somewhere, we had it in our minds all
19 along while we are doing other stuff. If you
20 can't find it, how can you have a list of
21 priorities and valued components and not
22 specifically acknowledge Indigenous, where did we
23 fit in?

24 And I have to ask why did First Nation
25 engagement take so long? Because as I've said,

1 Ducks Unlimited came first. Well, thanks a lot
2 for that. Why was it delayed? Why couldn't it
3 have commenced earlier in the process? That delay
4 had an impact, that delay had effects. When the
5 process originally opened up and decisions were
6 being made, we weren't there to contribute our
7 input. And perhaps if we had been able to provide
8 input, maybe those decisions could have been
9 different, maybe they could have been better.

10 You know, you'll hear this from
11 everybody. Everybody always says that funding was
12 limited, inadequate, you couldn't do the full job.
13 I mean, okay, I admit everybody says that in the
14 world. But, you know, this was cross-examined on
15 as well. I mean, we have 2,600 data points, we
16 have a lot of work. And I think one of the things
17 you'll see, you know, one of the things that must
18 be clear to you is the level of commitment, not
19 just of Peguis but of Southern Chiefs, of the
20 Manitoba Metis Federation, of Dakota, each of them
21 came here bringing their best, okay, bringing more
22 than their best. They went above and beyond just
23 to try and get here and communicate with you. And
24 a lot of data was put before you, but it's clear,
25 you know, from different points that, you know,

1 there were limits to what could be done. Peguis
2 brought forward 2,600 data points. But when we
3 were having discussions and examinations, I said,
4 well, so what's the nuance here? Do these data
5 points tell us who was using this area, who was
6 using particular areas and how they were being
7 used? And this is actually vital and it's
8 serious. Okay? Because, you know, I'll go back
9 to my cheese example on cross-examination where
10 private land is cheese. In a wheat field you go
11 five steps, it's wheat, 50 steps, it's wheat, a
12 thousand steps, more wheat. But out there in the
13 bush, in the country, there's a patch of seneca
14 roots, and there is a family that goes to that
15 patch of seneca roots, and maybe there's several
16 families that go to that patch of seneca roots.
17 If you take that away, you say to them, okay,
18 let's go to some other patch, why don't you go
19 there? Well, there's already families at that
20 other patch. There may be already people hunting
21 in other areas. There may be people exercising
22 their traditional lives. So what are they going
23 to do? Is it going to be a game of musical
24 chairs? We don't know. The resources, the level
25 of detail, the level of nuance wasn't possible to

1 examine these issues. And I would say they are
2 important issues.

3 And so I'm going to say, if we're
4 going to deal with the Aboriginal interest, the
5 Indigenous interest, if we are going to try and
6 wrestle with and sort out this kind of thing, you
7 have to recognize the level of detailing in it,
8 the level of intimacy with the land.

9 Now, my friend, Mr. Beddome -- I've
10 got a note here to reference the changed terms of
11 reference, I believe my friend Mr. Beddome has
12 touched on that more than effectively. So I will
13 simply note that in February 2017, the terms of
14 reference were upgraded to specifically look at
15 these kinds of issues. And if you look at the
16 quotation, you know, consideration of the effect
17 on First Nations, Metis and other Aboriginal
18 communities of health, physical and cultural
19 heritage, current use of lands for traditional
20 purposes, any structure or site, you can't just
21 look at it generically. You need a level of
22 detail, you need a level of insight into what's
23 going on and who's using it and how they are using
24 it and when. And have we truly seen this in the
25 EIS? I don't think so.

1 And to the extent that some of this is
2 in the EIS, has it made it into the routing
3 exercise? And I'm not sure at all.

4 Now, move on a bit. I just want to
5 have a couple of digressions because I'm a
6 Maritimer and we can never tell a story directly.
7 There's an old attitude to First Nations and First
8 Nations' interest, and that is simply, you know
9 what, just go do your thing somewhere else, move,
10 you know, that's the solution. We heard it from
11 Manitoba Hydro. And they said, well, hunters can
12 just hunt somewhere else. Because if the game
13 moved, they can move with it. You know, there's
14 other game elsewhere. And gatherers, well, you
15 know what, the patch of medicine doesn't move but
16 you can get your medicine from some place else.
17 We heard it from Mr. Berrien, who was frankly
18 refreshingly blunt about this. He was simply
19 being honest, and I will respect him for that.
20 But that attitude is still there in people's
21 minds, that the way to deal with or the way to
22 reconcile an Aboriginal right or an Aboriginal or
23 Indigenous interest is just for the Aboriginal
24 person to go some place else and continue doing
25 what they were doing, just, you know, not

1 bothering us on the piece of land that we actually
2 want.

3 Well, come on now. I mean, since
4 1930, the land base available has gone from 40
5 per cent used up by private interest and
6 agriculture and commerce and whatever, and that's
7 gone from 40 per cent to 60 per cent. The
8 Aboriginal land base of wildlands that they can
9 practice their culture on has dropped from 60
10 per cent to 40 per cent.

11 Mr. Berrien talked about, well, you
12 have the Aboriginal interest here and you have the
13 private interest here, and the best thing to do
14 would be for both sides to share the pain. Well,
15 okay, does it share the pain when what we've
16 really lost, a giant chunk of that land base? Is
17 it sharing the pain when more and more of that
18 land base is being nibbled away bit by bit? When
19 you've got fragmentation, environmental impacts
20 and disproportionate use, all infringing upon and
21 eroding that right, that tradition, that culture,
22 that history, is that sharing the pain?

23 To say just go somewhere else, that's
24 not a solution, it's not practical, it's
25 dismissive of culture, it's unrealistic and,

1 frankly, arrogant. And I think we need to bury
2 that attitude. And I say this not with hostility,
3 but I say this with the conviction that it's just
4 not working out. You have to look at it in the
5 big picture.

6 An acre belonging to a farmer isn't
7 the same as an acre out in the wilderness. There
8 are fundamental differences and those differences
9 have to be recognized. And I am not saying, you
10 know, Mr. Berrien overstated it, and I'm not
11 saying First Nations need a veto, but there needs
12 to be proper recognition and proper balancing, and
13 I don't think we're finding that yet.

14 I want to say something about
15 property, about the whole idea of property.
16 Because in a sense, property is a legal fiction.
17 I mean, I have a house. I can't bring that house
18 in here and show it to you. I could show you a
19 picture of the house. I can show you a deed or a
20 title of the house, but I can't actually bring the
21 house. The house is just sitting there, okay.
22 Ownership of land is simply a collection of rights
23 to use that land, perhaps exclusivity of that
24 land. Ownership in the western sense, in the land
25 title sense, is simply a legal fiction. And I am

1 emphasizing this because I want to introduce you
2 to, or kind of get you used to a concept. I want
3 to put things in perspective.

4 Now, this is not a contest, I'm
5 saying, between property owners and non-property
6 owners, or this is not a contest between property
7 owners and people who would simply like to go on
8 Crown land and do their thing. Okay. And this is
9 the default that we often fall into, the idea that
10 property ownership, that legal fiction recognized
11 in land titles is conveying a concrete ownership
12 or identity to property which is somehow stronger
13 or more meaningful or distinct from the First
14 Nations' interest in land.

15 What I'm saying to you, okay, is that
16 property ownership is just a legal construct. And
17 First Nations' interest in land is different from
18 that legal construct, but it is also valid
19 intellectually, spiritually, legally. So I'm not
20 saying this is a conflict between property rights
21 and Crown land users. Wrong way to do it. It's a
22 conflict -- if there is a conflict, and I'll argue
23 that it's not -- between rights, real rights, and
24 I'll recognize real rights of property owners
25 whose titles are in land titles, and rights which

1 are Aboriginal rights, which are Indigenous rights
2 and Metis rights and Treaty rights, and rights
3 which go back to use of land for hundreds, for
4 thousands of years, rights which are inextricably
5 related to, bound into culture and identity. So
6 much so that if you take the land out, you break
7 identity, you break culture, you do an injury.

8 So I'm saying Indigenous rights are
9 real rights, they are as real as the land title
10 designations. Aboriginal title is meaningful and
11 relevant and has to be recognized. It is
12 constitutionally recognized. It has tradition and
13 history and all of that. And I want to say this
14 is not a contest, this is not a tug of war. We're
15 not getting two parties coming into a room and
16 battering away at one another. What I am saying
17 to you is that these rights must be respected,
18 each in their own way, and they must be balanced.
19 And they will need different kinds of balancing,
20 different kinds of recognition and accommodation.

21 Now, this is kind of getting me into
22 the area of mitigation. And going back to
23 Mr. Berrien, the Southeast Stakeholders witness,
24 he said something that kind of struck with me. He
25 said, compensation is the worst form of remedy,

1 it's paying for damage. Okay, yeah, whatever, I
2 can kind of see his point. But what Mr. Berrien's
3 mistake was, he assumed that First Nations rights
4 were the same kinds of rights. And I would say
5 it's very different. And so a right, compensation
6 may be the worst form of remedy, but it's a real
7 remedy for private land rights. But that doesn't
8 work necessarily for First Nation rights and
9 interests. You can wreck a farmer's field, and at
10 the end of the day you can go to that farmer and
11 you can say, okay, this was your land, this was
12 the value of your land, this is the value or the
13 cost, the sale price of that land, this is the
14 value of the crops you were going to pull off,
15 here's a cheque, we're good.

16 You can't really do that for a First
17 Nation interest, for an Indigenous interest. You
18 can't go to a family and say, all right, we're
19 just going to muck up your seneca patch roots and
20 the places you used to pick berries, you know,
21 where you taught your children to snare rabbits,
22 and we're going to assign a value to that, which
23 is all part of your culture and identity, and here
24 is a cheque. It just doesn't work that way. And
25 this is kind of why I went into this whole sort of

1 like legal fictions and, you know, rights here and
2 rights there, and the fact that both of these
3 things have legal identities but they're
4 profoundly different legal identities, because we
5 have to balance them but they don't balance in the
6 same way.

7 So when we're looking at the impacts
8 on Aboriginal or Indigenous interest, you have to
9 recognize the unique character of those interests,
10 and weigh them.

11 Mr. Berrien said share the pain. And
12 I think the flaw was that, no, you don't share the
13 pain, you don't share the pain in the same way.
14 It's not compensatible in the same way, the
15 remedies aren't the same.

16 For a First Nation, and Metis and
17 Indigenous interests and rights, I'm going to say
18 to you that the impacts are greater with more and
19 more land gone and the ability to practice
20 whittled away, if these rights are fundamentally,
21 and fundamentally different, and so interwoven,
22 how meaningful is just a phrase like sharing the
23 pain, or just go move some place else? That needs
24 to be part of your considerations.

25 My recommendation on this front is

1 that the best approach to indigenous rights is to
2 avoid infringement. You have to look at it and
3 understand it in different ways, respect and
4 understand that it's real and meaningful, and that
5 it has to be handled and treated in different
6 ways. And I'm not saying veto, I'm just saying
7 respect it, don't tread on the land.

8 Now, again, I'm going to give Hydro
9 kudos. The transmission line is 70 per cent Crown
10 land -- or 70 per cent private land and 30
11 per cent Crown or public land. Could be worse. I
12 think the sentiment of my clients, of the Peguis
13 First Nation is that's not necessarily the
14 happiest outcome, but it's potentially perhaps
15 liveable. Certainly, they are going to oppose any
16 move to move that east. They will certainly
17 oppose, and I am certainly opposing and putting it
18 on the record, we are against any increase to the
19 use of Crown land, any increase to the use of
20 public land. We argue that it should be minimized
21 from this. We are certainly not agreeable or
22 supportive to that land being expanded. And again
23 my point is, there's less and less Crown land
24 left, and there is so much more difficulty in
25 compensating or replacing or adjusting for

1 Indigenous rights. And I'm going to say private
2 land, I'm going to be blunt, it's just more easily
3 remedied. I'll also say private land is already
4 impacted. You know, farmers use pesticides and
5 fertilizers, and they till the soil and they
6 create monocultures, and all of this creates
7 disturbed land. And so I think Hydro just has
8 less substantial impact there. And so you have to
9 consider these things when trying to find your
10 balance. These are questions you need to ask
11 yourselves.

12 Now, I thank you, I thank you so much
13 for your patience. I want to just move on to make
14 a few specific recommendations and suggestions.
15 And my comments so far have been about recognition
16 and respect. And you know, sometimes we hear
17 about consultation and sometimes we hear about
18 engagement, and sometimes we hear about
19 reconciliation. And I'll tell you as a lawyer,
20 lawyers make a big deal about that kind of thing.
21 We are masters of finessing and nitpicking and
22 splitting hairs. But I'm going to say something
23 in very practical terms: It's all the same damn
24 thing. Okay. Engagement and reconciliation and
25 consultation all have that same route, that same

1 spirit, the same intent, and that spirit and
2 intent is recognition and respect. That you
3 recognize that First Nations are out there, that
4 they have an interest, a culture, a livelihood,
5 that they have this history, that they have this
6 engagement, this process, this intimacy with the
7 land and the environment and respect for that.
8 And not respect as in, hey there, how are you
9 doing, but respect in how we deal with them and
10 how we deal with that land.

11 And if those two concepts are kept in
12 mind, everything else seems to come clearer, and
13 all the details, all the technical legal wording,
14 all the technical tests put out by the Supreme
15 Court, it all comes back to that.

16 And so I suggest that's what you need
17 to keep in your mind as a panel.

18 Now, as I said, we have some specific
19 recommendations. First, there is a concern. Now,
20 based on the past, based on history, and I know
21 this isn't in evidence, but there are other
22 hearings, there have been other transcripts, there
23 have been other outcomes. We're concerned that if
24 a licence is issued that all the work, all the
25 evidence, all the recommendations and the advice

1 and all you have heard will simply fall by the
2 wayside. The licence is there, they'll just go
3 ahead. So I think the panel needs to make
4 recommendations or suggestions that are
5 incorporated into the terms of the licence; i.e.
6 that, you know, it has to be a conditional licence
7 and those conditions must be recommendations and
8 suggestions from the panel.

9 Second recommendation I think has to
10 deal with transparency. If an MMTP licence is
11 issued, then that licence must be public, and
12 changes to that licence have to be made in public
13 with review process, with negotiation, with
14 transparency.

15 As I understand it, and I wasn't
16 around for that, this may have happened in Bipole
17 III, that after a licence was issued there were
18 changes made to the licence in a non-transparent
19 process, in a private process, in an
20 administrative process. Well, if that happens,
21 then your work is worthless, my work is worthless,
22 this effort has been worthless. Because if things
23 happen in the dark or in secret, and the licence
24 can be changed after the fact, then what's it
25 worth? What are we doing here? You know, if all

1 that we have done can be undone by some bureaucrat
2 at some later point in the process, question mark?

3 Regarding the Commission itself, you
4 have already heard my comments about tobacco and
5 the respect that you have shown, and again, I will
6 reiterate my gratitude for that. Regarding the
7 Commission itself, I would suggest a stronger role
8 for the Commission to become more independent, to
9 have greater resources. And I would say that the
10 Commission should have the ability to call
11 witnesses, that the Commission should have the
12 ability to deal directly with the technical
13 advisory committee, or even to hear from them
14 formally, to engage with the Federal Government,
15 and to report and to hear evidence on whether
16 Hydro is going to act on technical advisory
17 committee recommendations. I see the work of the
18 Commission as bridging the process, which is
19 sometimes quite disconnected. And I think that
20 there is great potential for the Commission to tie
21 things together, to make sure that the process is
22 continuous so that things don't get dropped out.
23 And I think maybe this comes back to my comment on
24 transparency, because when you have gaps in the
25 process, that little gap of transparency, things

1 do fall out.

2 Now, getting onto stuff that my
3 friend, Mr. Beddome, has said and Ms. Pastora has
4 said, and I think you're going to hear this again
5 and again from different people, I'm going to talk
6 about monitoring and independent monitoring. And
7 I'll say, with all of my compliments to Hydro,
8 with all of the respect, and it's genuine respect
9 I have for Manitoba Hydro for the efforts which it
10 has made, I don't believe, and my clients do not
11 believe Hydro can monitor itself. That's just,
12 you know, basic conflict of interest 101, that's
13 just common sense. Independent monitoring is
14 vital. And on the field of monitoring, we have
15 field studies still going on, they are still
16 ongoing.

17 The environmental protection plans are
18 incomplete, and there may be reasons for some of
19 those incompleteness, but they are incomplete.
20 There may be business confidentiality issues to
21 some of them, but there's also a public interest
22 that needs to be balanced. And I have certainly
23 made suggestions to Hydro for disclosure. And I
24 hope that after this hearing they will continue to
25 consider that suggestion.

1 I would certainly hope the Commission
2 perhaps considers a recommendation to Manitoba
3 Hydro that where it has environmental protection
4 plans with private contractors, that there be
5 specific provision for disclosure of those plans.
6 And whatever arrangements need to be made to
7 respect the privacy or business confidentiality of
8 private contractors, that's fine. But certain
9 things need to be disclosed.

10 The monitoring component that they
11 have talked about is unfinished. And I have
12 cross-examined extensively on that, Ms. Beddome
13 has cross-examined, Ms. Pastora, we have submitted
14 on that. Right now all we really have is a
15 commitment, or maybe even only an intention for
16 monitoring. Well, that's a vital part of this
17 thing, that is absolutely essential. And they
18 just haven't built that yet. And you can't just
19 say, well, we're going to do it because, you know,
20 that's the way you go off a cliff. You know, yes,
21 they'd like to sit down and have a meeting with
22 Peguis and SCO and Dakota and other parties.
23 Well, we've already heard a little bit of evidence
24 about a meeting in March that took place, which
25 doesn't seem to have turned out terribly well in

1 terms of getting that process moved along.

2 And so on behalf of my clients, I
3 would say this is one of those things you do
4 before, not after, because if you wait till after,
5 it may be never.

6 I think grass roots engagement in
7 monitoring is absolutely vital. First Nations
8 need to have a role. When I say grassroots, it's
9 no disrespect to say Southern Chiefs'
10 Organization, or AMC, or representative
11 organizations or tribal councils, and certainly no
12 disrespect to the MMF. But grassroots is vital.
13 The parties, the people that they need to be
14 talking to in monitoring should be the people that
15 are living out there, the people that are going
16 out there, the communities at the most basic
17 level, and I would say at First Nation levels.
18 Organizations can facilitate this, but engagement
19 needs to be at a First Nation level, and I'm going
20 to emphasize that strongly.

21 Mike Sutherland emphasizes that First
22 Nation engagement, grassroots engagement is vital,
23 it's crucial with respect to archeological sites.
24 And if you think about it for a second, that's
25 transparently obvious. I mean, who better to know

1 where, you know, the grave sites are, or the
2 ceremonial sites are than the people who are right
3 there? That can't be identified, you know, from a
4 national office in Winnipeg or somewhere else.
5 And grave sites are only the tip of the iceberg.
6 If you're asking, you know, how land is actually
7 used, and if you're asking how monitoring will be
8 affected, it's there.

9 I'm suggesting a recommendation of
10 joint participation in setting up the monitoring
11 program, and joint participation in selecting
12 monitoring, I'm strongly suggesting. It's crucial
13 that First Nations and Metis have a say, have a
14 genuine say, not just an opportunity to consult or
15 contribute or have some input, but they are
16 partners, not secondaries, i.e. that it's not a
17 decision that Hydro can make by itself, if that's
18 clear.

19 Monitoring needs to be comprehensive.
20 Mike Sutherland talked about this, he talked
21 about, you know, the land is literally different
22 from spring to summer to fall. And if you're
23 going to be monitoring, you literally have to be
24 out there several times a year. He said
25 environmentally sensitive sites should be

1 monitored. Mike Sutherland said a website should
2 be maintained, kept up to date, provision for
3 feedback. And there he was again talking about
4 transparency, he was talking about openness and
5 being public. Because, frankly, monitoring is
6 carried on in secretive -- the raw data, the raw
7 information is not available to First Nations or
8 the public. How can we trust it? The process has
9 to be out in the open. And monitoring itself,
10 alone, is not sufficient, there needs to be
11 follow-up. I mean, you know, if effects are
12 determined or discovered, they need to be
13 addressed. If you're doing monitoring, and this
14 monitoring is not determining effects, then that
15 monitoring is flawed. If you are doing monitoring
16 and you identify things and do nothing about them,
17 or decide they are not worth doing stuff about
18 them, well, what's the point? The whole point of
19 monitoring is mitigation, the whole principle is
20 we want healthy land. And I believe Hydro wants
21 healthy land as much as Manitoba does and as much
22 as OCN does -- oh, sorry, Peguis does.

23 And it has to be ongoing. And one of
24 the things I heard from Manitoba Hydro was they
25 were planning to monitor for like, you know, one

1 or two years, two years for some things, one year
2 for other things. And I had a problem with that
3 in cross-examination. I say I still have a
4 problem with that right now. I mean, you have
5 animals, bears and elk and muskrats and beaver and
6 wolves and coyotes and deer and moose, none of
7 them have a one-year life cycle. You have a lot
8 of plants that have multi year life cycles. The
9 balance of plants in an area changes over a period
10 of years. One or two years of monitoring, that's
11 not going to do the thing. You have a facility,
12 you have a transmission line and a right-of-way
13 that is intending to exist in, effectively,
14 perpetuity. It exists as long as it's going to
15 exist. They don't have a decommissioning plan for
16 it, so that's pretty much open ended. So
17 monitoring needs to be open ended. And you know,
18 maybe it doesn't have to be as intense at the
19 tenth year as in the first, or the first few
20 years, but it's a lifetime commitment for the
21 facility.

22 And I think that's a recommendation
23 that I want to hear or see from the Commission,
24 with all due respect.

25 And we want participation. And

1 Mr. Sutherland has talked about that, he's talked
2 about that regularly, and the Chief has talked
3 about that, and participation in multiple ways. I
4 mean, we want participation in monitoring, yes, we
5 want more people to be available to be out there
6 doing monitoring, to be able to contribute to
7 monitoring. We want participation in the process
8 of setting up a monitoring program, and
9 participation in implementing that program. We
10 want participation in terms of being able to
11 review or access that data. And for Peguis, we
12 also want that participation in jobs, in
13 employment, in opportunities, not just in
14 monitoring, but in construction, and in
15 maintenance and in mitigation.

16 The First Nation has a lifetime
17 commitment. The First Nation members, the
18 Indigenous people who are there have a lifetime
19 commitment to this land, and this land will be
20 changed by Manitoba Hydro. And that is a lifetime
21 commitment that Manitoba Hydro is making. So we
22 want to be there for that lifetime. And we want
23 an opportunity, because we're going to lose things
24 no matter what.

25 One of the ways that we can maybe put

1 something back is, for participation in keeping
2 the lines clear, participation in employment
3 opportunities, not just for construction but for
4 that future. That's an example.

5 Outcomes, progress, it needs to be
6 evaluated, it needs to be a live thing. And this
7 is I guess the point that I keep coming back to,
8 that the land is a live thing, that the
9 relationships to the land are the live things,
10 that the Hydro project is going to be a live
11 thing. It's not just going to be two weeks of
12 construction and then you forget about it. It's
13 going to be there for a long time. And these
14 lives, these living things, this continuation
15 needs to be addressed in a unified way. Nobody is
16 going to go away.

17 I used to work a long time ago with
18 Cross Lake and Norway House and the Northern
19 Flood, and one of the things I came to understand
20 there, and one of the things Hydro had trouble
21 with way back when, was Hydro back then just
22 wanted it all to go away. They thought, you know,
23 we'll come, we'll build our dams and that's it.
24 But the people weren't going away. And as much as
25 the people were upset and damaged and confronted

1 by the Hydro dams, the Hydro dams weren't going
2 away. And so both sides literally over time had
3 to do the laborious process of learning to live
4 together, learning to balance each other. And up
5 in the north, because of the scars that were done,
6 because of the way it was done, because of the
7 mistakes and the lack of consultation and the
8 tragedy -- and I say tragedy because people
9 died -- it's going to take a long time up there.
10 Maybe it can be done different here.

11 Mr. Beddome has suggested that the
12 licence should not be issued until the process,
13 the entire process is complete, NEB hearings and
14 the formal Federal consultations and so forth.
15 And I will join with him in that recommendation as
16 well. And I will not speak more for it because he
17 has articulated it in a manner that, frankly, I
18 can't add anything to.

19 So I want to thank the Commission for
20 hearing from Niigaan Sinclair, from Mike
21 Sutherland, from our Chief, from Wade Sutherland,
22 I want to thank the Commission for hearing from
23 the evidence of the Peguis First Nation, and
24 hearing our submissions and considering our words
25 today. And I want to thank the Commission for

1 hearing from Dakota, from the Southern Chiefs,
2 from the Manitoba Metis Federation, from all the
3 participants. I know that it's been a long
4 process and an ordeal, and I know that it's a new
5 world and a new playing field and that we are all
6 learning on this journey and finding our way, even
7 Manitoba Hydro, I want to thank them. Because
8 they have come a long way. And even if I say they
9 have much further to go, I respect the fact that
10 they are on this journey with us.

11 And so this is my submission. Thank
12 you very much.

13 THE CHAIRMAN: Thank you very much,
14 Mr. Valdron, for sharing those thoughts with us.
15 And as I mentioned earlier, this will certainly be
16 of great assistance to us in our deliberations.
17 Thank you. And I'm wondering if you can pass on
18 our thanks to Mr. Sutherland, I think he's left,
19 at least I don't see him there, so if you could
20 pass that on for us. And of course, I know he was
21 speaking on behalf of the Chief, so you could
22 thank him as well.

23 Any questions of clarification from
24 the panel? All right. Thank you very much.

25 MR. VALDRON: Thank you.

1 THE CHAIRMAN: All right. That brings
2 us to Manitoba Wildlands, and Ms. Whelan Enns.

3 Just before we start, we would
4 normally have a break in about a half hour. Do
5 you mind that kind of a break? I don't know how
6 long you're going to be speaking.

7 MS. WHELAN ENNS: I appreciate the
8 question, Mr. Chair. I don't mind a break. If
9 you want to sort of, you know, tell me five
10 minutes before we are about to have a break, that
11 would help. I could complete what I'm dealing
12 with at the time, but I will be longer than a half
13 hour.

14 THE CHAIRMAN: All right. Why don't
15 we do that, and then in about a half hour I'll
16 give you five minutes or so before.

17 MS. WHELAN ENNS: Thank you.

18 THE CHAIRMAN: All right, thanks.

19 MS. WHELAN ENNS: Gaile Whelan Enns
20 for Manitoba Wildlands. And if I get croaky, and
21 I might today, I'll drink some water along the
22 way.

23 Our closing statements have
24 essentially three or four parts. I am going to
25 start with what I have been handwriting, which are

1 one-offs in terms of possible recommendations in
2 relation to the MMTP project, the EIS, what we
3 have heard during the hearings. I'm then going to
4 move to some recommendations and some capsules, if
5 you will, and comments from the three Manitoba
6 Wildlands experts. I have a dedication, and I
7 also have some comments for the Consumers
8 Association of Canada. So that's three or four
9 parts, depending on how we count.

10 I guess it's probably worth opening
11 with a comment that the provisional order for
12 Manitoba Wildlands with respect to our
13 participation in these proceedings and hearings is
14 quite specific about review of the EIS. So within
15 our capacity, that's what we have worked on,
16 including with a fair bit of help from the
17 research team at Alyson McHugh's offices in B.C.
18 We also are the only environmental organization
19 involved in the hearing, so that puts a little bit
20 of a motivation and focus on our response to the
21 EIS also.

22 Because I have got part of the way
23 through what is actually a prepared document, and
24 also in handwriting, what you're going to hear in
25 the first part of my presentation to you as

1 closing statements may have a little repetition
2 and may not be in the order it will finally be in
3 when it's keyed in. So I thought I'd say that
4 ahead of time.

5 When I was speaking in opening
6 statements, I was referring to some possible
7 myths. Myths are like sets of assumptions that
8 aren't questioned, right, that sometimes, in fact,
9 are inherent in a project or a process, but then
10 sometimes are a detractor, or turn out to be not.
11 So there are, again, some myths in what I have to
12 say. I'm going to start with assumptions about
13 data and information that has been used as the
14 basis for this EIS. And this is an observation we
15 have made in numerous written responses to licence
16 reviews in Manitoba and also in previous hearings.
17 And that is we're in a closed system here. We do
18 this for a number of weeks together. And we are
19 also on the receiving end of, and knowledgeable of
20 what has been filed. So we assume that the data
21 that we have and that the data that's the basis
22 for what is in the EIS is the data that is. So I
23 hesitate to make any more references to
24 Mr. Rumsfeld and his point. Okay. So the absence
25 of data should be noted. And we should avoid

1 assuming that the data used is all the data
2 available or all the data needed particularly when
3 we're thinking about what could be a 50, 60, 70 or
4 80 year life for a system that's international,
5 where I would suggest data is going to be needed
6 all along the way, and new data is going to be
7 extremely important.

8 So we heard a fair bit of comment
9 about the same point in terms of the Bipole III
10 EIS, and I believe there has been an improvement
11 in this area by Manitoba Hydro, but it's still
12 fairly important to remember that we don't
13 necessarily have all the information at any one
14 point in time where that's it, that's all.

15 We would recommend then for you to
16 consider recommending that Manitoba Hydro continue
17 to incorporate ongoing species and plant fieldwork
18 into everything that is involved in the life cycle
19 monitoring for the MMTP project, with public
20 reporting both during construction, and as I said,
21 during the life of the project.

22 Each time I turn a page here I'm
23 moving onto another one. I have to write big to
24 be able to read my own writing.

25 Next observations and suggestions have

1 to do with the public registry. So our online
2 public registry with respect to the Environment
3 Act, though also certain areas of public policy
4 are in the public registry, still has a six-way
5 split in terms of subscribing to notices and,
6 therefore, being notified. And there is still no
7 all-in subscription option. So that sounds like a
8 petty thing, but I would suggest it would make a
9 fair bit of difference with respect to projects
10 and decisions that the CEC is mandated to review.
11 It's a simple but fundamental thing in terms of
12 people being able to access information. Because
13 most of the large projects, class 3 projects, for
14 instance, that would come your way, and some class
15 2s, are in more than one of the six splits. Okay.

16 So the other thing, of course, about
17 the public registry is that it only links this
18 EIS. So there is no requirement to date, or
19 commitment by Manitoba Hydro to maintain public
20 access to its EIS products over time.

21 So the contents also on the Manitoba
22 Hydro website regarding MMTP are not consistent
23 with what is on the public registry page, you
24 know, less the EIS for MMTP. This is a repeat
25 observation and recommendation, if you will, from

1 the Keeyask hearings for Manitoba Wildlands. So
2 we'd really look forward to a recommendation
3 requiring and recommending transparent standards
4 for Manitoba Hydro to actually keep its EIS
5 products online.

6 And I am going to tell a very short
7 story about how I learned to think about this,
8 which has to do with Wuskwatim. So when the CEC
9 was mandated to do public meetings in the regions
10 and in Winnipeg to arrive at the EIS standards for
11 the Wuskwatim project, both transmission and
12 generation, it turned out that nobody could get
13 their hands on the previous documents. And you
14 know, it was a very interesting thing where the
15 Chair of the CEC at the time had to actually put a
16 pause in the timeline for those public meetings
17 and the report back to arrive at the EIS
18 guidelines for Wuskwatim, because several of us
19 had been doing everything we could to get the
20 documents we needed in terms of previous EIS
21 standards out of the government records. So that
22 was my first really significant eye opening in
23 terms of why it matters 10 years later or 15 years
24 later or 5 years later.

25 The third observation I wanted to make

1 for you today has to do with the fact that
2 Manitoba Hydro has experts. They have internal
3 experts, and we know who they are, and they come
4 into the hearings and we see their CVs. And they
5 have external experts who are sometimes then also
6 on those panels. But they have experts with
7 respect to the MMTP EIS who we haven't seen or
8 heard from. And there have been, since January
9 and where the opportunities have presented
10 themselves, requests from the participants for the
11 experts in certain areas, including the routing
12 methodology used for MMTP, to make themselves
13 available. So it hasn't happened. I wanted to
14 basically say also, this compliment to the CEC
15 that during the Lake Winnipeg Regulation hearings,
16 it was extremely helpful in a variety of ways,
17 including just in terms of one's stamina after
18 four weeks of hearings, for the CEC expert to
19 present. So everybody in that room, and
20 presumably anybody who has accessed on the website
21 of where the transcript is sent, has since learned
22 a great deal about reservoirs and, therefore, Lake
23 Winnipeg, from the CEC expert in that hearing. So
24 what I'm wanting to suggest to you is that you
25 might consider making a recommendation in your

1 report that Manitoba Hydro needs to make its
2 experts available. And otherwise, it would be
3 great to see the CEC being able to do that more in
4 the future.

5 The next observation I wanted to make
6 to you is about the technical advisory committee.
7 We went back and forth a little bit about
8 technical advisory committee regarding MMTP, and I
9 think the participants understand the distinction
10 in terms of whose responsibility is what in the
11 regulatory process.

12 On the other hand, being a survivor, I
13 have actually participated in a CEC hearing where
14 Federal Government experts have been brought in,
15 where a hearing has been adjourned in order to
16 arrange that and where Federal experts have been
17 brought in. And it seems to me, I have also sat
18 in hearings where there really could have been
19 benefit to all parties for a Provincial expert to
20 be brought in. And that might logically be
21 somebody from the TAC, or somebody from the same
22 branch of the same Department of Manitoba
23 Government who is knowledgeable in the same areas.

24 Sitting here, I want to say I have
25 actually experienced Federal experts twice, and

1 one of them is quite recent, it's the McCain's
2 hearings. So that recommendation, should you
3 choose to make it, is to consider steps that
4 might, in fact, increase both Provincial and
5 Federal Government experts being available to us
6 all.

7 I recognize that that might need to be
8 something separate, or ideally even before the
9 hearing. You know, there's a variety of
10 possibilities. I'm not being prescriptive here at
11 all.

12 I would also, at the same time, it
13 connects to the TAC a little bit in my mind -- I
14 would also like to suggest the CEC consider -- and
15 this would be a significant change in procedure,
16 but I think it might be time to consider whether
17 or not your information request process be public.
18 Many regulatory bodies across the country, in
19 fact, do this. And as it sits now, IRs are not
20 public as such. I recognize that Manitoba Hydro
21 is moving in this direction and starting to post,
22 so this is not a criticism, but rather asking you
23 to think about the bigger picture as a regulatory
24 body.

25 The next observation has to do with

1 the fact that our funding request for an
2 independent life cycle analysis regarding the
3 greenhouse gases from MMTP was not funded. We
4 acknowledge that. This is the fourth time that
5 Manitoba Hydro has included what our utility
6 considers relevant for an LCA, a life cycle
7 analysis, in a project EIS. And we submit once
8 again it's incomplete.

9 We'd recommend that the CEC look
10 carefully at the Manitoba Environment Act clause
11 that requires the greenhouse gases from a project
12 to be accounted and available and verified as an
13 ingredient in any licensing decision. And we note
14 that on day two of these hearings, Manitoba Hydro
15 panel speakers agreed with our question that MMTP
16 decisions would, in fact, abide by the Environment
17 Act in Manitoba.

18 Next observation is a little
19 repetitive also, it's come up in previous
20 hearings. Most of us in this room swear to be
21 truthful when we speak, when we present. And we
22 understand that members of the Law Society in
23 Manitoba are bound by the standards of the Law
24 Society. So we're a little bit at a loss as to
25 how one solves this, but if Manitoba Hydro makes

1 an error in cross-examination, in this case
2 cross-examination of Manitoba Wildlands expert,
3 then we consider it essential for Manitoba Hydro
4 to, in fact, acknowledge that factual error and
5 just carry on. And it didn't happen. So this has
6 to do with the challenge in cross-examination of
7 that amount of generation from the Hoover Dam
8 compared to the Manitoba system, and the stats,
9 the information of the Hoover dam was one-third
10 accurate would be one way of saying it. So the
11 numbers were off. And we'd like to ask the CEC to
12 give some thought to how you can basically make
13 sure that when something like that happens in the
14 room that it actually comes forward and is dealt
15 with, or just simply direct the, you know, the
16 proponent and their legal counsel to make sure
17 they deal with it. There was certainly
18 discussion, and the stats and the correct numbers
19 were handed to the legal counsel.

20 Next observation has to do with
21 archaeology. Civil society organizations and
22 advocates are known for having very high
23 expectations, and I'm very aware of how little
24 money there has been for public or government
25 funded archaeology in Manitoba, compared to the

1 way, for instance, that funding and that staffing
2 was in the '70s and '80s and the early '90s in
3 Manitoba. So again, this is not to be
4 unreasonable, but rather to state that we're still
5 disappointed in the attitude from Manitoba Hydro
6 regarding archaeology and MMTP. And I think this
7 observation then goes to the fact that nothing is
8 finite, as we sit here today, or as the EIS is
9 filed, or as your report to cabinet is finalized
10 and goes forward. Archaeology, for instance, and
11 sacred sites, as Indigenous people often term
12 them, are going to be relevant right through
13 construction and right through operation. And
14 particularly this assumption and wish for such a
15 wide corridor makes me more uneasy. So I don't
16 know whether or not there is an assumption that
17 this region that MMTP would go through is already
18 heavily developed, and whether that effects
19 thoroughness, or whether there's an assumption
20 that this is on the First Nations to identify
21 anything that's archaeology/sacred sites and that
22 needs to be dealt with.

23 I'm making this comment also because
24 of the correspondence and e-mail exchanges from
25 our office regarding an Aboriginal village site

1 that was identified partially on the right-of-way
2 for Bipole III, and about a third or a half of a
3 kilometre from our family home in Roseau
4 territory.

5 The exchanges were worrisome and a
6 little bit enlightening, because I think that
7 there's a tendency to be cavalier because, I don't
8 know, maybe this is because this is on private
9 land, or because this is just transmission, I have
10 not ever sorted it out. But we're simply not
11 confident that there's been enough attention to
12 archaeology and sacred sites with respect to MMTP.

13 We would welcome a possible
14 recommendation from you then that the CEC be quite
15 specific in your report regarding archaeology and
16 sacred sites, both during the construction and
17 operation and life cycle of this potential
18 project.

19 The next observation here for you
20 that -- I put VCs or VECs on the top of the page.
21 So it's been clearly stated by our expert Dennis
22 Woodford that the right-of-way was not valued in
23 the methodology for routing. The right-of-way
24 needs to be a VC. Something needs to give here.
25 It's not valued. The emerging language for valued

1 components in an EIS or assessment for an
2 environmental licence is concerning because we
3 have lost the environment word. If you look at
4 the list of VCs for this project, fewer of them
5 are environmental, if you look at the full list.
6 And we'll have a couple of observations about that
7 in a while.

8 But the concern here is the combining
9 of what formerly were VECs into one VC, there's a
10 couple of instances this for MMTP, actually
11 provides a way to limit assessment and potential
12 impacts.

13 So there's a potential recommendation
14 here. And that would be for the CEC to review
15 other EIS products, recent, for Manitoba Hydro for
16 transmission, and subsequent licences to see
17 exactly what the pattern is in terms of VECs
18 versus VCs. I think they need to be thoroughly
19 looked at.

20 You have heard a great deal of very
21 well thought through comments about monitoring.
22 And it's a privilege actually to hear the
23 amount -- the presentation and the amount of
24 thought that's going into monitoring this project
25 through this life cycle by affected communities

1 and other participants. What we're not hearing,
2 though, is what Manitoba Hydro will do about
3 monitoring results again. You have heard this
4 comment already today. This is what adaptive
5 management requires. And our expert, Alyson
6 McHugh, who is active in project and ecosystem
7 monitoring, her advice is to make sure that
8 monitoring is active, transparent, independent,
9 results in the changes or actions or mitigations
10 needed, and that everybody knows what's going on,
11 not just reports.

12 So, again, a possible recommendation
13 would be for your recommendations about monitoring
14 to be specific. And as I said, you've got lots of
15 help on this so far. And rather than simply
16 adopting the good intentions of Manitoba Hydro
17 licence, I think, in this EIS and in its
18 presentations here, I think we could all help each
19 other and, therefore, help the region and the
20 project in terms of monitoring.

21 The next observation I have for you is
22 regarding your report overall, and we'd like to
23 suggest that if the CEC funds, and that is by
24 selecting a participant, their topic, their
25 expertise, or hears from an expert brought forward

1 to a hearing, then your report needs to include
2 that independent expert's content and main advice.

3 You might consider the use of the
4 space in your reports as a three-way split between
5 the proponent, and what the proponent has said and
6 is recommending about its project, the
7 participants and what the participants and their
8 experts have said and are recommending, and then
9 what you as a panel with the CEC concludes and is
10 recommending. Now, that's a different structure
11 than your reports are and, again, it's just a
12 hopeful thought.

13 I think that you would, in fact, find
14 that you'd build confidence in the CEC taking this
15 approach, most particularly among First Nations
16 and Indigenous communities in Manitoba. That you
17 would, in fact, because your website's very
18 accessible and it's been getting more
19 comprehensive and stronger all the time, so if you
20 think over time rather than just the end product
21 and just the end decision, then thinking about
22 this kind of approach means that you would also be
23 educating, helping your audiences learn, including
24 potential next participants. So that's just a
25 hopeful one.

1 I wanted to make a couple of quick
2 comments about the great -- I wanted to say
3 quickly that the Great Northern EIS was released,
4 we're on the U.S. Minnesota part of the project,
5 transmission project, was released in May 2017.
6 And the first thing that happens is their public
7 utilities Commission in Minnesota requires the
8 proponent to provide a public explanation of their
9 EIS in over 20 locations in the State and in the
10 project region. So the MMTP EIS is now three
11 years or so old, and there's a gap also in the
12 timeline regarding -- or since the PUB's review
13 and recommendations that it be built. So when I
14 saw this I thought, well, we've never done that in
15 Manitoba, boy, that could make a heck of a
16 difference. The conversion or associated approach
17 the CEC has done, including, for instance,
18 recently on the Lake Winnipeg Regulation hearings,
19 because the CEC went into the communities. So I'm
20 basically asking you to consider whether there's a
21 better sequence.

22 You're hearing from lots of speakers
23 in closing statements about what maybe should be
24 earlier in the process. So the question is
25 whether there's a better sequence or a better

1 approach for the public and the affected
2 communities, and whether this kind of access to
3 the EIS would make a difference overall in terms
4 of when it came down to hearings and your
5 responsibilities.

6 I have one more, I think, then I'm
7 going to be at five minutes. Okay.

8 So this is about the terms of
9 reference for your hearings. We all know that the
10 terms of reference that came to us all in
11 February, albeit they sat somewhere since last
12 October, are quite specific, including with the
13 Canadian Environmental Assessment Agency's
14 standards for First Nation Aboriginal content in
15 your review. So I think your first question then
16 potentially is whether what Manitoba Hydro's
17 engagement with and intentions regarding First
18 Nations and Aboriginal people fulfilled that part
19 of your terms of reference.

20 And then second part of that question
21 is whether your hearings and the content in your
22 hearings go far enough in fulfilling what was
23 added to the terms of reference and clearing what
24 the Federal Crown is looking for.

25 You also at the same time, of course,

1 need to be sure that the Sustainable Development
2 principles and guidelines were fulfilled by the
3 EIS, and the presentations by Manitoba Hydro, and
4 the content overall in terms of your hearings. So
5 we would again hope for a recommendation from you
6 that you confirm quite literally in your report
7 that this addition, and what's totally completely
8 in the terms of reference but very specifically
9 what was added to your terms of reference, that
10 you confirm in your report that it's been
11 fulfilled.

12 Now, Mr. Chair, I'm going to stop
13 because I think I am pretty close to the five
14 minute. Okay.

15 THE CHAIRMAN: All right, thank you.
16 and we'll continue with Ms. Whelan Enns' closing
17 arguments at 3:00 o'clock. Thank you.

18 (Proceedings recessed at 2:45 p.m and
19 reconvened at 3:00 p.m.)

20 THE CHAIRMAN: All right. It being
21 3:00 o'clock, we're going to resume and
22 Ms. Whelan Enns, it's all yours again.

23 MS. WHELAN ENNS: Thank you. I'm going
24 to return to the observations I was making to the
25 CEC panel, including with respect to potential

1 licence for the MMTP.

2 We believe it's time for the
3 responsibilities of the EA and licensing branch
4 and Manitoba Sustainable Development to
5 acknowledge and include hearings content and
6 results, including your recommendations, should
7 there be a licence issued for the MMTP. We don't
8 necessarily, and this is sort of a citizen-based
9 kind of comment, but we really don't necessarily
10 need another licence for a very expensive project
11 written as if the CEC hearings and report did not
12 occur. So this is about acknowledging the work of
13 all of us, but in particular the work of the CEC.
14 And it's a little startling to look at a licence
15 for one or \$2 billion project, it's hard to keep
16 track these days, where it states at the top of
17 the licence that it's based only on the EIS, which
18 at that point in time, of course, is multiple
19 years old and has been adjusted a lot, including
20 through the hearing process.

21 We also don't necessarily need another
22 Manitoba Hydro transmission project licence
23 changed multiple times with no public
24 notification, no public process, and no context.
25 So you may want to ask your legal counsel, your

1 staff to take a look at the Bipole III public
2 registry licence area to see what's happened.

3 Our office was unable to obtain an
4 updated Bipole III licence for the purpose of our
5 research leading into this review and these
6 hearings, because they just don't do that
7 apparently after they make all -- well, a few
8 dozen changes.

9 So we would really welcome a
10 recommendation from the CEC specifying that any
11 licence issued be clear about what it's based on,
12 and that not just or only being the old EIS. And
13 also specifying that you'd like to make sure that
14 any licence changes actually have a public process
15 notification posted before they happen and so on.

16 The obvious observation, of course,
17 would be that there's any number of communities
18 that might be affected one way or another by
19 changes in terms of the clearing of this
20 right-of-way, et cetera, et cetera.

21 And then the third part of this hoped
22 for recommendation is also obvious, and that is
23 that you consider recommending that licences, when
24 they have been changed multiple times, are in fact
25 actually updated and available. Thank you.

1 Next observation has to do with
2 tornadoes. Manitoba Hydro staff, when I
3 questioned them, appeared not to think it matters
4 to know about the history of the weather events in
5 the region where MMTP is intended as
6 infrastructure. That sort of surprised me. And I
7 was of course asking questions in advance of our
8 climate change expert coming in.

9 So I thought I would just basically
10 tell you all that I have experienced personally
11 two tornadoes that in fact originated from and
12 crossed the region and crossed where this
13 right-of-way will be and so on. So the first one
14 was five years ago in the third week of June,
15 driving 200 and 246 -- this is St. Mary's Road
16 forever until it dead-ends -- where I had to
17 basically make a decision on the trajectory of a
18 tornado that was coming at me, whether I should
19 stop and hope -- go in the ditch or outrun it, how
20 fast I could drive a car, and I basically decided
21 to outrun it. But it was coming at a trajectory
22 and from the region that we are talking about.
23 Okay.

24 The second instance is actually when I
25 was a brand new Manitoban, brand new to Red River

1 Valley, and didn't know anything about tornadoes,
2 so I was watching one from the second floor of my
3 house and then from the front porch. It's a
4 tornado that also came -- and I could draw these
5 angles, these trajectories, if it's of any
6 importance, but definitely came from the southeast
7 region and across where this right-of-way and
8 where this infrastructure would go. And it took
9 out a good portion of the Village of Augibny at
10 the time, and that was in 1970s. So knowing what
11 the past significant and extreme weather events in
12 the region were should also be part of actually
13 monitoring and keeping track of them as they
14 happen. And I don't mean just in the hundred
15 metres. This is a responsibility in terms of
16 public infrastructure and management overall. So
17 there's a whole set of new responsibilities, I
18 would suggest, in terms of the increase in climate
19 change factors and extreme weather events.

20 So the recommendation, or hope for
21 recommendation would be to require Manitoba Hydro
22 to, in fact, both build the history of extreme
23 weather events in this region and then track them
24 and report about them. And it would be public.
25 And that would include, you know, tracking these

1 new wind walls, these Derecho -- I'm sorry, I have
2 no idea -- and hail, and ice storms and tornadoes
3 and high winds and, you know, all of the above.

4 I warned -- well, I was warning
5 myself, but anyway I did say some of these might
6 be out of order when I started. So the next
7 information here in front of me has to do with
8 just why is Manitoba Wildlands here? Why do some
9 of us keep turning up? We are quite sure that
10 Manitoba Hydro's opening statement was a
11 measurable improvement in content and tone. But
12 one of the reasons I keep turning up is because
13 I'm still not hearing the acknowledgment and
14 respect for civil society. And civil society in
15 this case can include independent scientists,
16 environmental organizations, faith organizations.
17 You could have a couple of unions decide they want
18 to come and talk to you this publicly about a
19 project. So I'm still waiting to hear that.

20 I also wanted to relay that two of the
21 interns in our office attended an MMTP routing
22 workshop in the spring, right after the Keeyask
23 hearings ended. So, again, that's some time ago
24 now. And I decided not to attend myself and to
25 send these two recently trained natural science

1 based, well-educated smart ones who survived the
2 Keeyask hearings and all of that research and so
3 on. And they went for what was almost a full day
4 workshop. They thoroughly enjoyed who was there
5 and the make-up of the people in the room. But
6 they came back to the office, I don't know, 3:30
7 or 4:00 o'clock that afternoon, pretty upset,
8 because they didn't think that the VEC should be
9 combined, and they didn't see that there was a
10 rationale for that. They didn't feel that what
11 was being discussed in terms of the VCs and the
12 routing methodology was specific enough to
13 Manitoba, let alone that region. They were
14 concerned about the fact there wasn't a VEC
15 specific to water, waterways, marshes, wetlands
16 and so on, separate and on its own. And they were
17 concerned because it was very hard to ask a
18 question and be taken as, you know, a valid person
19 asking a question, that there wasn't enough
20 science basis to the discussion in the room and
21 the presentation. And they just basically sat
22 down and said, well, they weren't listening. So I
23 made them tea and I told them that that's why I
24 sent them. That if I had gone in the room I might
25 have, in fact, had biases, but I wanted to really

1 know how two recently trained science grads,
2 U of M, would think and feel about a routing
3 workshop for the MMTP.

4 So reasons why we're here and why we
5 continue to be here. We're always here for best
6 possible information and decision-making in terms
7 of taking care of Manitoba's environment. We're
8 also always here in terms of best possible
9 understanding and application of public policy.
10 And it's no surprise that transparency and access
11 to information is pretty consistently in our
12 reasons for participation.

13 We also aim to inform and assist the
14 CEC in your responsibilities. And we also try to
15 be able to support the primary messages from other
16 participants. And we hope for improvement in the
17 EIS, CEC processes, life cycle, entire life cycle
18 of projects to achieve better decisions. And
19 frankly, it's for all of us. We all have our
20 roles, our mandates for being in the room and part
21 of the reviews, but it's for all of us.

22 Now, I have a couple more of these and
23 then I'm going to shift to our experts, just to
24 let you know where I'm at.

25 One of the other things that was in

1 our proposal that Manitoba Wildlands was not
2 funded for, and again you're going to immediately
3 think I have already spoken about this, I did
4 partially, was the ability to compare former,
5 other EIS products regarding transmission projects
6 and their licences. So we would really be
7 inclined to recommend to you to give some thought
8 to recommendation about you -- and this can be
9 specific to MMTP or overall -- and that is you
10 might want to commission a comparison.

11 I did have some help last winter and
12 spring from a volunteer who spent some time to
13 start work on this for us. And we found, we were
14 finding differences and some unique things to do
15 with VECs and VCs, in both the St. Vital complex
16 EIS, and I may not have the exact correct name
17 here, but the East Side Lake Winnipeg transmission
18 project EIS, and then what's in the MMTP EIS, they
19 are all transmission. So there are some very wide
20 open questions here. But the volunteer was seeing
21 some strengths in the other two that she was not
22 seeing in the MMTP EIS. Again, we got started, we
23 didn't get all the way there.

24 The next observation I wanted to make
25 has to do with self-assessment. We are all aware

1 of the system we use across Canada where the
2 proponent's filing its assessment of its project.

3 And we know that the regulatory system has
4 requirements for what they put in their EIS.

5 Now, you may or may not remember, it's
6 a few weeks ago, but on day two of the hearings, I
7 asked the Hydro panel where the terms of reference
8 for the scoping document came from, and they did
9 not have an answer, so that's why I told you the
10 Wuskwatim story. Because there was a time in
11 Manitoba where the EIS standards were a public
12 process and, you know, you'd have retired
13 engineers for Manitoba Hydro, retired profs,
14 scientists from one of the universities, civil
15 society organizations, a whole range of people,
16 including retired feds, assisting in terms of what
17 those standards would be. And then they would, of
18 course, be finalized. So we don't really know,
19 and we should know more specifically where we got
20 the start of all of this. Regulatory bodies, of
21 course, also assess the projects and the EIS or
22 EI, and plans are submitted, and the public and
23 the affected communities review, and the civil
24 society and affected communities should be
25 involved sooner, and you are hearing this pretty

1 consistently from others.

2 And the public registry posting should
3 be timely. We often have pretty long time gaps
4 between when something is received and when it's
5 actually posted in the registry.

6 So our request of you is for you to
7 consider the risks and the benefits to
8 self-assessment in respect to MMTP, because that's
9 what's in front of us, and make recommendations
10 that might in fact help mitigate the risks from
11 self-assessment.

12 Now, potentially all of your
13 recommendations could fall under this rubric, but
14 I wanted to basically try to describe this. We
15 know when our self-assessment system fails us in
16 Canada, and I'm making a really sort of
17 overarching comment here, and that is we know
18 because things end up in court. We know because a
19 project will, in fact, end up being a major
20 discussion at election time, or because a cabinet
21 minister or somebody decides to retire themselves
22 over a project. We know when self-assessment has
23 failed, and/or other factors in the regulatory
24 process have failed. You've also heard from other
25 participants about things that need to happen

1 before a licence would be issued for the MMTP
2 project. And you have heard thoroughly about this
3 from others. So I wanted to basically just concur
4 and indicate that in particular in an
5 international project this matters, and that far
6 too often consultations and public information are
7 still being gathered and still being talked about
8 when a licence is already put in place.

9 The next thing I want to do -- and
10 that's the end of the one of, or one per
11 observations and requests, I believe, for your
12 recommendations -- is to take a little break from
13 that and give you my dedication for my closing
14 statement rather than doing it at the very end.

15 So some of the people in this room
16 will remember the dedication attached to my
17 Manitoba Wildlands closing statements for the
18 Keeyask hearings. But I think it's relevant to
19 state it again today, starting with the fact that,
20 like most of us in the room, I'm a very lucky
21 Canadian. And lucky Canadians, I think have an
22 obligation, or I hope have an obligation, feel an
23 obligation to speak up when needed and play a role
24 and help in decision-making in our society.

25 So I personally, some of my family in

1 back of the room, and Manitoba Wildlands itself
2 would not be here today if it weren't for our
3 Mi'kmaq ancestors. If they had not kept my
4 Acadian ancestors alive, starting in 1654, we
5 wouldn't be here. This material and all forms of
6 support, including intermarriage, continued
7 through the deportations by the British, and
8 caused an exodus to the land (inaudible) in Quebec
9 and into Ontario with the (inaudible).

10 So today I wanted to salute Rose
11 Richard -- as they say in Southern Ontario,
12 Richard, it's a terrible pronunciation of
13 Richard -- Kelly, who was the only survivor among
14 80 in her clan who did not die of cholera after
15 fleeing the British cleansing of Aboriginal
16 villages after the Papineau rebellion. Her story
17 has been important to me from the time I was about
18 grade 2 or 3. I think it's important to know
19 where we have been as people and as a society, and
20 these days it matters to also dedicate our
21 efforts, it matters to me anyway, to also dedicate
22 our efforts in this hearing to my Muslim
23 ancestors. Until recently our families'
24 assumption was intermarriage was only in the 13th
25 century. Since the last of my (inaudible)

1 relatives died last year, it has become clear that
2 my grandfather was searching for his Muslim
3 ancestors before World War I.

4 So the point I'm making is that our
5 people survived or you wouldn't be in this room,
6 and we wouldn't be doing what we do. And I just
7 thought that I'd again dedicate, the same way as I
8 did for the Keeyask hearings, and ask you all to
9 think on the same track a little bit.

10 Manitoba Wildlands -- I'm watching the
11 time -- though I'm inclined to agree with
12 Mr. Valdron, Manitoba Wildlands, we had three
13 experts in the hearings. The first one to present
14 to you was Dennis Woodward, and the second one was
15 Alyson McHugh, and the third one, and I thank the
16 secretary of the CEC for answering my questions
17 on -- the subject was Paul Beckwith, who was in
18 the Lake Winnipeg Regulation hearings for Manitoba
19 Wildlands also on climate change. Paul was added
20 to our outline of evidence and our plan for the
21 hearings, and he is not funded by the CEC, we just
22 basically -- became apparent that the need was
23 going to be there once we had been through the
24 EIS.

25 I'm going to basically go into their

1 recommendations a little bit each, again watching
2 the time. And then as I said earlier, I'm going
3 to finish up with a response to the CEC.

4 We were initially, in our office,
5 troubled by the lack of -- and this has happened
6 before -- review of any alternatives in terms of
7 the transmission towers, the infrastructure and
8 the options. And there was -- this didn't happen
9 in the PUB review either. Okay. So we also had
10 questions about the existing, from the 1980 or so,
11 Manitoba Hydro transmission line into Minnesota
12 that's in the same region. So Dennis Woodford
13 talked with us a little bit, including about the
14 unusually wide ROW and planning for up to
15 1500-megawatt rating or capacity for the line, and
16 then offered to come into the hearings with us.
17 He provided on this weekend a summary in terms of
18 the main concerns at this point, or
19 recommendations that he would have. So this is in
20 addition to his report and his presentation
21 slides.

22 His first observation is that
23 right-of-way width and value were ignored by
24 Manitoba Hydro in their alternative corridor
25 evaluation model, and in chapter 5 of the EIS,

1 that the area of the RoW has absolutely no value
2 in the methodology for routing. And his concern
3 then is that there is substantial routing of
4 right-of-way through wildlands and that the trees
5 removed from an unnecessarily hundred metre wide
6 RoW will destroy and unnecessarily impact the
7 wildlands and reduce carbon sequestration. A
8 narrow RoW that requires less clearing -- sorry, a
9 much narrower RoW requires less clearing.
10 Manitoba Hydro must properly evaluate the
11 additional adverse impact on the environment that
12 this wide RoW means, and stop placing no value on
13 its RoW in the way that this methodology seems to
14 have dictated.

15 The second observation from him is
16 that a meeting in Dublin last week, by the
17 International Council of Large Electric Systems,
18 where the world's experts in electrical power
19 transmission met, he shared the information of
20 having been here as an intervenor for Manitoba
21 Wildlands, and reported there and heard there that
22 there's other regions in the world where public
23 acceptance of overhead transmission lines is a big
24 challenge, particularly given the need to expand
25 the grid.

1 In these countries various
2 transmission line designs are put forward and
3 selected out of a competition. This ensures a
4 better chance of social acceptance, and is in
5 stark contrast to what Manitoba Hydro has included
6 in its EIS chapter 2, where only one design is
7 presented and there's absolutely no choice offered
8 to the public or concerned communities. His
9 observation is it's not acceptable.

10 The third item he sent on the weekend
11 has to do with their cross-examination of himself,
12 Mr. Woodford, where they made a point the
13 transmission tower structures with a hundred
14 square metre footprint placed 400 metres apart was
15 more important for farmers to operate machinery
16 than having more frequent lower profile tubular
17 steel towers, at 200 to 250 metres, and a smaller
18 footprint. They provided no evidence that this is
19 the preference of the farmers showing them -- a
20 farmer showing them the design of the tubular
21 steel structure, you know, as in they didn't do
22 that, they didn't bring it into the discussion.

23 So he's done some research since and
24 he's basically saying that if the 400 metre span
25 distance between towers is an absolute necessity,

1 the conductor technology is available that can
2 enable a low profile tubular steel towers be
3 located 400 metres apart, with low sag, the same
4 tubular steel towers be located 400 metres apart
5 with low sag, mid span ground clearance and
6 minimum swing out, so that the RoW width can still
7 be significantly reduced. Such conductors have
8 less losses and can withstand tensile strengths so
9 the low tubular towers can have that 400 metre
10 span that seemed to be an issue.

11 His fourth point, another point in
12 cross-examination of Mr. Woodford by Manitoba
13 Hydro was the foundations of tubular steel low
14 profile towers may not be easily accommodated with
15 the soil types in the MMTP region that the RoW
16 would be traversing. They stated that European
17 soil may be more consistent and much more feasible
18 for tubular steel foundations than the soil types
19 of Manitoba, particularly southeast Manitoba. In
20 doing so they neglected to consider the 400 kV
21 singular circuit tubular steel transmission line
22 in Norway, where the train is not consistently
23 European and has been in service for 11 years.
24 It's unthinkable, quoting Mr. Woodward here, that
25 civil engineers could not solve problems that

1 foundations for tubular steel towers -- that
2 appear where a varying -- excuse me, having
3 trouble with this sentence. It is unthinkable
4 that civil engineers could not solve any problems
5 that foundations for tubular steel towers present
6 or that would appear with varying soil types.

7 His fifth point is that he wishes to
8 emphasize that the MMTP line rated at
9 1500 megawatts is a costly extravagance that's not
10 necessary. Manitoba Hydro should take advantage
11 of the 21 month delay -- and we've heard this from
12 him in his presentation -- in terms of the Keeyask
13 time line and delay the MMTP line as well. And so
14 doing so, they should do a redesign and look at
15 reducing the voltage to 230 kV, and see if their
16 intended contracts with Minnesota Power could be
17 accommodated on this less costly transmission line
18 with this existing 230 kV connection that they
19 already have in place with Minnesota Power. They
20 must also consider the potential possibility of
21 interconnections to the west, as in west of
22 Manitoba to Saskatchewan, as it's now being
23 studied through the regional electricity
24 cooperation and strategic initiative
25 infrastructure initiative. If this study shows

1 benefits for electricity export sales to other
2 Canadian markets, Manitoba Hydro must seriously
3 examine dropping the MMTP rating to 230 kV, saving
4 on the extravagant expenditures they can ill
5 afford, and anticipate requirements of the
6 National Energy Board, that there is no other
7 market in Canada that can use the surplus energy
8 that Manitoba Hydro has.

9 Above all, a low profile visually
10 pleasing 230 kV line with tubular steel structures
11 must be seriously considered using 400 metre
12 spans, if necessary, with a better chance of
13 social acceptance and significantly reducing
14 environment impact.

15 Now, I will make sure you have his
16 notes. And what I have previously given you in
17 the transcript so far in terms of observations and
18 possible recommendations you will also receive
19 notes.

20 The second expert that we had here in
21 the hearings was Alyson McHugh from Lillooet, B.C.
22 We would like to thank Alyson McHugh and her
23 family who were all here, in Winnipeg, at their
24 own added expense while she was presenting and
25 participating in the hearing. Ms. McHugh's small

1 daughter and her father are members of one of the
2 group of Hydro impacted First Nations for whom
3 Ms. McHugh provides scientific, biological and
4 ecosystem assessment services. Ms. McHugh's staff
5 team assisted Manitoba Wildlands with research,
6 information requests, and planning for our
7 participation in the hearing. She is, as was
8 clear during the hearings, dedicated to
9 maintaining the natural world for the First
10 Nations she supports.

11 An example of a non-valued ecosystem
12 service, to use that phrase, these First Nations
13 may lose soon is their salmon. Another example of
14 a non-valued ecosystem service these First Nations
15 may lose, because of seismic activity in the
16 Fraser Valley, is their water quality. We will
17 consider today's contents -- we will consider the
18 contents from Ms. McHugh's report and presentation
19 and be forwarding to you notes that aren't just
20 handwritten.

21 I am going to quickly go through some
22 of her recommendations.

23 We were listening to, and this is
24 pretty much the same pattern as in the Keeyask
25 hearings, we were listening to things that are new

1 to think about from Alyson McHugh. And the
2 research supported what she was basically saying,
3 which is that it's time to think about what the
4 benefits are to the people, the health of the
5 people and health of the ecosystem or the natural
6 world, from the project. She found that these
7 ecological benefits were not expressed clearly, or
8 just were difficult to find in the MMTP EIS. She
9 was returning through her presentation to net
10 benefits with a fair bit of repetition. So she
11 had found, for instance, enhancement of critical
12 habitat for one bird species in her review of the
13 EIS, but she wasn't finding any clear intention or
14 description of management approaches that would
15 actually, well do the opposite to mitigation
16 potentially, in fact, improve the situation.

17 She was saying to us, though, that
18 having found the golden-winged warbler plan and
19 intention, that that needs to be extended to all
20 the species affected and potentially affected,
21 listed or not listed, already endangered or not
22 yet endangered.

23 As a public Crown corporation that
24 belongs to all of us, one of her main conclusions
25 was that Manitoba Hydro's project and

1 infrastructure should be able to confer benefits
2 to ecosystems and humans alike, that that is very,
3 very different than what the thinking has been to
4 date.

5 She was also talking to us about the
6 kind of linkages that are not yet adequately
7 identified and that are going to increasingly, and
8 we could tack this onto climate change, but
9 increasingly need to be identified and understood
10 in environmental assessments, and that's the links
11 between human health and health of the
12 environment. Again, major consistent message in
13 what she was talking about while she was here.

14 She had some suggestions in terms of
15 how to increase the effectiveness of the EIS
16 process, both now and during the life of the
17 project, focusing on VCs that, in fact, encompass
18 the determinants of human health and well-being
19 that are a part of the ecology, are a part of the
20 ecosystems. Cataloging and tracking the ways
21 changes to the environment were directly or
22 indirectly, by the way, impacting human health,
23 and start to facilitate having a better
24 understanding of the health services that are
25 going, that might in fact be required -- sorry,

1 that may in fact be provided by biodiversity and
2 how there may in fact be increased risks. So she
3 and I discussed, you know, the possibility of
4 three or four examples in the southeast region of
5 Manitoba. And we stayed on ticks because it needs
6 to start being -- ticks and other diseases carried
7 by, Lyme and other diseases carried by ticks need
8 to be in the EIS projects and filings.

9 She was also, in fact, talking about
10 how there will need to be, you know, very thorough
11 documentation reporting and transparency on
12 everything that blinks, environment health and
13 human health.

14 More steps she was suggesting, and
15 there's a quote here that she used that I think
16 might be worth reading into the record.

17 "Focuses on changes in the
18 availability of critical ecosystem
19 services like the quality of wood,
20 water and food, changes in land and
21 water use that affect biodiversity,
22 and then those changes potentially
23 altering the transmission of vector
24 borne zoonotic and other infectious
25 agents. Focusing on reducing

1 uncertainty regarding effects of
2 changes on frequency and intensity of
3 extreme weather events and how they
4 affect the systems in the region and
5 in the project region. Making
6 intentional decisions and design for
7 environment and human health benefits
8 as part of the responsibility and
9 outcome for the project. To
10 facilitate key actions before
11 ecosystem services disappear and/or
12 ecosystem changes occur that cannot be
13 reversed. And then to build on the
14 resources and capacities in the
15 communities, locally, inside all of
16 the organizations affected by or
17 involved with MMTP."

18 Now I'm turning a couple of pages. I
19 wanted to go again back to her main message, and
20 that is that we have been basically making
21 decisions about infrastructure and large projects
22 and industrial projects and so on, that have all
23 in fact been degenerative. That is, she's
24 basically pointing to the fact that we identify
25 how much damage is going to be okay, how much

1 change in the landscape or in the water system or
2 in the forest is acceptable, and based on the
3 assumption that we're going to basically still be
4 okay in that natural system.

5 The quote she used here on this
6 subject is:

7 "We take earth's materials, make them
8 into stuff we want, use it for a while
9 and toss it away. It's a one-way
10 system that runs counter to the world
11 and it's devouring the resources and
12 the sources of our own sustenance."

13 And this is Raworth 2017.

14 As you will remember she also -- and
15 we had, you know, pretty thorough communication
16 with Bob Gibson about using his materials and what
17 we were going to do with it and so on. And he
18 recommended and assisted in terms of the use of
19 the recent Federal EA expert panels report. And
20 one of their concluding recommendations and
21 observations is that:

22 "It's time for commitments to positive
23 contributions to sustainability to be
24 the result of self-assessment, EIS,
25 regulatory reviews and licensing

1 positions. Sustainability should be
2 central to Federal IA, impact
3 assessment, to meet the needs of
4 current and future generations,
5 Federal IA should provide assurance
6 that approved projects, plans and
7 policies contribute to a net benefit
8 to environment, social, economic,
9 health and cultural well-being.

10 That's at page 20 in the report.

11 And then finally her recommendation
12 then is that this MMTP EIS submission needs to
13 present evidence that the current approach in
14 interacting with the planet, including the way we
15 exploit natural resources and assess consequential
16 impacts for projects like the MMTP, needs to
17 change to reflect a new holistic and
18 interdependent relationship with the earth. And
19 she provided sources, and in terms of the
20 planetary health scientific work that's going on.

21 Now, there's nothing in Ms. McHugh's
22 science content, in what she brought to the CEC,
23 or her practice based report or presentation that
24 suggests an either/or approach to ecosystems and
25 ecosystem services.

1 We would like to suggest a
2 recommendation, and I know this is for the future,
3 but we'd like to suggest that the CEC include in
4 its experts and advisers looking forward natural
5 scientists to assist you in your reviews. And if
6 you had a panel member like Mr. Nepinak, and a
7 natural scientist sitting side by side, then I
8 think we'd have some fairly interesting things
9 happen in terms of traditional knowledge and
10 western science in the hearing.

11 So that's a simple way of pointing out
12 that Alyson McHugh is a biologist. She is a
13 scientist, and the CAC expert is not a scientist.
14 So you have two very different disciplines making
15 recommendations to you here. And that -- I'm
16 turning the page to make sure, in case I'm out of
17 order.

18 Mr. Beckwith, as I said, was a
19 decision to bring in an expert about climate
20 change because we saw a need after seeing the LCA
21 report and climate content in the EIS. We're very
22 hopeful that we will all soon see a combination,
23 and if not, it's not that difficult for a
24 proponent like Manitoba Hydro to actually run
25 their models and say, this is probably the

1 conservative outcome, and here is what the
2 potential accelerated climate change impacts or
3 outcome might be, where we'll actually in fact see
4 them as both, and more thoroughly present in the
5 EIS.

6 So as you know, Mr. Beckwith teaches
7 at both the University of Ottawa and Carlton
8 University. He is an engineer first and then a
9 physicist, and mostly teaches geography and
10 climate change at these two universities. He
11 blogs, he posts his lectures and his videos, and
12 he recently took up tornado chasing in the U.S.,
13 which was his appointment as soon as we were
14 finished in his Skype presentation. He is also
15 currently assessing the May 2017 weather events in
16 Eastern Canada, particularly the flooding in and
17 around the Ottawa area. And as I said, we
18 basically made the decision to bring him in.

19 Now, he did find when he was in
20 tornado alley in the United States that these
21 singular tubular transmission poles are what's
22 being installed. He sent me a couple of photos so
23 I'll provide them to, you know, I'll make sure
24 that they are provided to the panel, because he
25 was there. I think he took them in Texas or

1 Oklahoma. Anyway, I'll provide them to you. And
2 he certainly would like to agree with Dennis
3 Woodford and make recommendations that you would
4 consider carefully the variety of factors in terms
5 of how, what alternative might in fact be
6 considered in terms of the construction of the
7 infrastructure for MMTP.

8 Now I'm going to talk quickly -- I
9 just checked the time.

10 You will remember that Mr. Beckwith
11 was fairly clear about how climate history over
12 the last century in Manitoba is used as a basis
13 for future changes, and that it's increasingly a
14 methodology that's prone to errors and
15 uncertainties because of rapid climate change, as
16 he discussed. The variability has increased
17 against and across time scales, so this is why he
18 was talking about weather whiplashing and the
19 way -- well, the City of Winnipeg had almost
20 freezing temperatures one week and 25 or 30 the
21 next week, and then back to cold again and so on.
22 So weather wilding and weather whiplash are terms
23 that are being used among scientists for the kinds
24 of changes and events we're expecting where --
25 hmm, we're experiencing and going to be expecting

1 because of what's happening with the jet stream
2 waves. And he was thorough in his information
3 about the jet streams.

4 He also talked a little bit about the
5 summer of March 2012 and the heat wave across
6 North America, the growing season starting five
7 weeks early, snow pack loss, river flows stopping
8 in the summer, and the stage set for the droughts
9 that happened in 2012.

10 His third, and he has 17 of these so
11 I'm going to jump down through the page rather
12 quickly, Mr. Chair, and remind the panel that
13 there are 17 observations and recommendations from
14 him. They are the same at the end of his report
15 as at the end of his slides, same content. Okay.

16 So he's making a comment also about
17 the downscaling of the global circulation climate
18 models, GCMs, to a specific region and how this
19 made sense, except that they are based on a slow
20 varying and linear climate system and can be risky
21 to rely on because of rapid change. Okay.

22 He also was quite specific about the
23 results of changes in water temperature in Lake
24 Winnipeg, increased humidity and increased storm
25 activity, which I would say goes back five to

1 eight years already in and around the lake. He
2 was very specific about it being necessary to pay
3 attention to what's going on in the reduced
4 discharge of the Saskatchewan River and the
5 glaciers that feed it, in particular, the Peyto
6 Glacier, which has lost 70 per cent of its ice
7 mass. He was pretty emphatic, I think, about the
8 Prairie Province Water Management Agreement and
9 the need to be very aware of the circumstances
10 Manitoba sits in as a result of the agreement, and
11 also very aware that it is a very old 1950s PFRA
12 Agreement that may, in fact, need a thorough look
13 at in relation to climate change.

14 Mr. Beckwith also informed us that the
15 1981 to 2010 three decade span that Manitoba Hydro
16 used as the baseline for its climate report for
17 MMTP is actually not a baseline, because of the
18 amount of climate change already occurring both in
19 the global system and affecting Manitoba. So it
20 makes sense to also analyze 1970 to 2000. I would
21 have to check, but I think 1970 to 2000 was what
22 was used for Keeyask by Manitoba Hydro. So
23 basically if you use more normal, recent decades,
24 and called them your normal and your baseline,
25 1980 to 2010, then you're (inaudible) climate

1 change in the previous decades.

2 He indicated to you also the ways that
3 the MMTP grid can be tested by extreme weather
4 events, and that included the converter stations
5 and infrastructure. And he also was -- he came
6 back to, and here we go, came back to Lake
7 Winnipeg temperature and humidity, temperature
8 going up and humidity increasing, and tornado
9 risks. He was quite specific, and this is
10 probably a learning area for a few of us in the
11 room about D-E-R-E-C-H-O-S, Derechos, these
12 straight-line winds that are as strong as a
13 tornado but do not have tornado motion, and how
14 they are increasing in different locations in
15 Canada, including on May 19th of 2017 in New
16 Brunswick.

17 One of the things that he put better
18 words to than I ever could was the dangers of
19 continuing to talk about 1 in 100, 1 in 1,000, 1
20 in 500 events, and how that's all based on past
21 weather or past seismic or past geological events,
22 and that basically, you have to basically rely on
23 not just the models but also the observations of
24 the events to be able to get past that particular
25 practice.

1 Now, I have added a reminder here
2 about the region where MMTP is located, and that
3 is that the indicators for significant flooding in
4 the Red River Valley in Manitoba historically,
5 over the last 200 plus years now, actually include
6 storm activities, precipitation activity and snow
7 activity in Southeastern Manitoba, which is the
8 MMTP region. So, again, fairly easy for you to
9 get a little bit more input on that, but I think
10 it's worth pointing out that it touched on region
11 a lot of ways, and this is just one of them.

12 There is some repetition in his 1
13 through 17 in terms of overreliance on the IPCC
14 models, and I have already touched on that. He's
15 already pointed out that the Prairie Climate Atlas
16 is a very good set of products, but it's also
17 based on combining the models, and that a good
18 companion would be, in fact, also using the
19 events.

20 Now, my addition then in terms of his
21 notes and his 17 observations and recommendations
22 for you is that the GCMs, the models as they are
23 used and the data that goes into them are
24 accurate. But it's clearly turning out that the
25 timelines that are being attached to the results

1 of running the models are accelerating way ahead
2 of IPCC projections or the projections of any
3 organization using several of these models at the
4 same time. And the proof right now, of course, is
5 what's going on in the Arctic, Antarctic and
6 Greenland in terms of melts.

7 Thank you, Mr. Chair. Good, we're
8 watching the clock.

9 Now, Manitoba Wildlands does not have
10 legal counsel at these hearings. We did not have
11 any information from the participant in terms of
12 their concerns or their interpretation of what
13 Alyson McHugh brought to you. If you take a look
14 at the transcript, you'll see that she
15 consistently, through a fairly lengthy
16 cross-examination, said, no, that's not what I'm
17 saying. So we have an either/or kind of situation
18 perhaps, but she never at any time said that
19 ecosystem services are all monitorized. Okay.
20 And she was consistent in her answers to that line
21 of questioning. And it is certainly not, it's not
22 primary in what she was bringing to you.

23 I'd have to be -- well, I would be
24 negligent if I didn't basically ask who was being
25 disrespectful. Because this morning we heard

1 closing statements about how her presentation was
2 disrespectful. That's I think a little bit
3 beyond. And again, we have a situation, we have
4 an expert who clearly told you that she's not a
5 scientist and doesn't do biology and doesn't do
6 botany and doesn't do fieldwork and so on. It was
7 very, very clear in terms of her qualifications
8 and her knowledge, which I respect, you know.
9 Dr. Fitzpatrick has been very productive and very
10 helpful in previous hearings, you know. But
11 that's why you've got a suggestion that you need
12 scientists to help you when something like this
13 happens in the hearings. And I just think we
14 might be just a bit past one of the CEC's
15 principles in terms of how we operate here.

16 So there's a lack of conservation
17 biology knowledge here, in the response from the
18 other participant, and perhaps that expert -- it's
19 my assumption, and I'm asking you to take a look
20 at that transcript in terms of that
21 cross-examination again, and reminding you that
22 the EA expert for the Consumers Association was
23 very clear that she wasn't coming at this from a
24 scientific basis. What we saw, and the science
25 changed, she didn't do any of that. I think the

1 term was, I don't do any of that.

2 Otherwise, a couple little tags here.

3 I am not able to read the numbers on
4 the CAC slides, but I am in coordination and
5 cooperation among Provincial, Federal -- 16,
6 excuse me, I'm looking everywhere but the right
7 place, and I was about to be corrected. Thanking
8 the secretary here.

9 So number 16 has some combined
10 concepts that don't combine because of the
11 responsibilities. So cooperation among Federal,
12 Provincial and Indigenous jurisdictions makes
13 perfectly good sense. On the other hand,
14 engagement is the responsibility of the proponent
15 and consultation is the responsibility of the two
16 Crowns. So what the three levels of government
17 cooperated on could well be, how is engagement
18 going to be handled, and how is notification, and
19 what's the time line on the two rounds of
20 consultation and so on. This certainly hasn't
21 happened for MMTP. But combining it all looked to
22 me like a bit of a mix that had some risk to it,
23 hence the comment.

24 Otherwise, we have always supported
25 the CAC's work at the hearings, for years and

1 years. And we would say if there's any specific
2 questions you have of our expert, you know, to
3 document them, anything you want to ask them, feel
4 absolutely free to do that.

5 I am only left with my thank yous, and
6 they are thorough. Thank you to the panel. Thank
7 to CEC staff. Thank you to Cathy Johnson for
8 everything she does, in her job description and
9 beyond to support participants. Thank you for
10 Mr. Green's advice on one particular issue this
11 time. And we all pretend that the technical
12 writer is not here, but thank you in advance. And
13 thank you to participants and Manitoba Hydro.

14 MS. MAYOR: Mr. Chairman, before
15 Ms. Whelan Enns sits down, it's rare to have an
16 objection at this stage of a hearing in final
17 argument, but I feel compelled to do so, and I'm
18 loathe to do so, but I apologize. I felt it
19 necessary.

20 Ms. Whelan Enns, during her final
21 argument, was beginning to provide new evidence
22 from two of her experts, Mr. Woodford and
23 Mr. Beckwith. The evidence was not in their
24 reports, it was not given during their testimony,
25 and she's indicated that she's going to be filing

1 more information from them. And it's Manitoba
2 Hydro's position that we then don't have the
3 ability to review them or to comment on them, and
4 as such they shouldn't be allowed as part of the
5 evidence at this juncture. So I just wanted to
6 raise that with you at this juncture. Thank you.

7 THE CHAIRMAN: All right.

8 Ms. Whelan Enns, do you have something to say in
9 response?

10 MS. WHELAN ENNS: Sure. I think
11 perhaps it would be best to separate the two
12 experts to be able to answer Ms. Mayor.
13 Everything I had in front of me now and used in
14 closing statements for Mr. Beckwith is exactly the
15 same 17 observations and recommendations at the
16 end of his report, at the end of his slides. If
17 she objects to the information about tornado
18 alley, then we can pass on providing the photo.
19 That would be the new item that comes to mind.

20 MS. MAYOR: Yes, we do have an
21 objection to new evidence being introduced at this
22 point. We're in final argument.

23 THE CHAIRMAN: All right. You said
24 you were going to divide this in two?

25 MS. WHELAN ENNS: Well, I just meant

1 that I wanted to speak to Mr. Beckwith and to
2 Mr. Woodford.

3 THE CHAIRMAN: Okay. So you're going
4 to go on now?

5 MS. WHELAN ENNS: Just quickly, yes.
6 So there is some new information in what
7 Mr. Woodford provided me on the weekend in terms
8 of this meeting in Europe. That and the 400 metre
9 span, those are two pieces of information that are
10 new. Right. And so we can certainly, I don't
11 know if you retract them at this point, Mr. Chair,
12 but it's also fairly straightforward to provide
13 this information in a final submission rather than
14 in closing statements.

15 THE CHAIRMAN: All right. Anything
16 more to add?

17 MS. MAYOR: No. Simply that that's
18 all new evidence that should not be introduced.
19 And I realize she's saying we can provide it in
20 different ways, it's new evidence and it shouldn't
21 be allowed at this point in time, in our
22 respectful submission. Thank you.

23 THE CHAIRMAN: All right.

24 Ms. Whelan Enns has mentioned two
25 areas, one related to Mr. Beckwith and that was

1 the evidence concerning tornado alley. And the
2 other was from Mr. Woodford, and that had to do
3 with the, I believe, the different tower
4 configurations. Were they the same two areas you
5 were referencing, Ms. Mayor?

6 MS. MAYOR: Yes, I was, and there was
7 also some evidence from Mr. Beckwith about towers
8 and towers design, which would be new evidence
9 and, in addition, he's not qualified to provide.

10 THE CHAIRMAN: Okay. Did I understand
11 correctly, Ms. Whelan Enns, that you are willing
12 to, obviously it's on the record, but you are
13 willing to --

14 MS. WHELAN ENNS: Mr. Chair, okay,
15 sorry.

16 THE CHAIRMAN: -- you're willing to
17 not file information, I know that's maybe not the
18 best way to put it, but anyway, so you wouldn't be
19 filing information on either of those two topics
20 with us. Is that correct?

21 MS. WHELAN ENNS: Yes, I'm agreeing.

22 THE CHAIRMAN: You are willing to do
23 that?

24 MS. WHELAN ENNS: I am agreeing to not
25 file anything new.

1 THE CHAIRMAN: Okay.

2 MS. WHELAN ENNS: All right. And
3 again, I will take a close look at Mr. Beckwith's,
4 the transcript and Mr. Beckwith's 17 suggestions
5 and recommendations to make sure about anything
6 that was new.

7 THE CHAIRMAN: Would that resolve the
8 matter from your perspective, Ms. Mayor?

9 MS. MAYOR: If there's no new evidence
10 being filed, we're fine with that.

11 THE CHAIRMAN: All right. Okay.
12 That's good then. Have you concluded then?

13 MS. WHELAN ENNS: I have, Mr. Chair,
14 and I meant all my thank yous.

15 THE CHAIRMAN: All right. Thank you
16 very much for your careful presentation. And as
17 I've said to the others, that will certainly help
18 us in our discussions as we prepare a report. So
19 thank you very much, Ms. Whelan Enns.

20 Two things I wanted to raise now.
21 Mr. Toyne would normally be next here. It might
22 be best if you came up because you'll need a mic.
23 Would it be acceptable to you to put off your
24 final arguments until the morning, or at least the
25 start of them until the morning?

1 MR. TOYNE: Mr. Chair, I think in the
2 circumstances that would make the most sense. I
3 suspect I'll take my full 90 minutes. And in
4 fairness, my understanding is that Mr. Bedford
5 will be doing the closing submissions tomorrow,
6 and my preference would be that Mr. Bedford would
7 be here for that so that he's able to respond to
8 any additional arguments that are raised outside
9 of the written material I provided. So I think in
10 fairness to Mr. Bedford and his colleagues that
11 are working on the material that I provided
12 earlier, that I should start tomorrow morning.

13 THE CHAIRMAN: All right. That's
14 good, that's acceptable. That be preferable. So
15 we'll do the Southeast Stakeholders Coalition
16 final arguments tomorrow morning.

17 Secondly, my understanding is that
18 although they did not have closing arguments, that
19 Dakota Plains Wahpeton Oyate would like to make a
20 short statement.

21 MR. MILLS: Two minutes.

22 THE CHAIRMAN: Yes, come on up. Go
23 ahead, Mr. Mills.

24 MR. MILLS: Thank you, Mr. Chairman,
25 and you thought you were done with me.

1 On behalf of Dakota Plains, Chief
2 Smoke and his Council of Elders, John Stockwell,
3 my wise and silent associate and I would like to
4 thank you. We also thank everyone involved in the
5 process, and we say sincerely we have learned from
6 all of you, all of our peers in the room, Hydro
7 and the Commission. The ability to participate
8 you have given us Mr. Chairman is truly
9 appreciated. We hope we have met our commitment
10 to you, and we observe with some interest that it
11 was exactly six months ago today that we met with
12 you to discuss getting this process started. We
13 have certainly got a lot done in six months.

14 We give particular thanks to your
15 secretary, Cathy Johnson, for putting up with us
16 and shepherding us through the process.

17 We must acknowledge and appreciate
18 Manitoba Hydro. We worked with their contribution
19 through Bipole and we observed the clearly very
20 high quality of the Manitoba Hydro EIS and their
21 panel contributions. We appreciate the hard work,
22 and we say with sincerity well done. We may not
23 necessarily agree with the conclusions they reach,
24 but we certainly thank them for their description
25 of that path.

1 With regards to their EIS, we actually
2 read it, we reviewed it, we considered it. And in
3 keeping with our clearly stated position on
4 biomass, we assure the panel we will now be
5 returning Manitoba Hydro's EIS to them for
6 recycling.

7 It's all been said by others far wiser
8 than us, so we simply say that our report to the
9 CEC has been delivered. We ask that our 13
10 comments be fairly considered.

11 And in closing Mr. Chairman, we are
12 done. You have much work to do. We wish you good
13 luck and God speed.

14 THE CHAIRMAN: Well, thank you very
15 much, Mr. Mills, for those fine words, and we'll
16 take it all into consideration as well. Even if
17 it was short, it's still helpful to us, so thank
18 you.

19 All right. Are there any procedural
20 matters to address, or filings?

21 MS. JOHNSON: Yes, we have a couple of
22 documents, CAC 012 is the presentation we saw this
23 morning, and DPWO 004 is Dakota Plains closing
24 comments that we just received.

25 (EXHIBIT CAC-12: CAC presentation)

1 (EXHIBIT DPWO-04: Dakota Plains
2 closing comments)

3 THE CHAIRMAN: All right. Thank you,
4 Ms. Johnson. In case we don't get the time
5 tomorrow, I think the whole panel would also thank
6 you, the way several of the participants seem to
7 have done today. So thank you.

8 All right. We are adjourned until
9 9:30 tomorrow morning, right back here. Thanks.

10 (Adjourned at 4:04 p.m.)

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