

MANITOBA CLEAN ENVIRONMENT COMMISSION

BIPOLE III TRANSMISSION PROJECT

PUBLIC HEARING

PRE-HEARING

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Transcript of Proceedings
Held at Winnipeg Convention Centre

THURSDAY, JULY 19, 2012

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APPEARANCES

CLEAN ENVIRONMENT COMMISSION

Terry Sargeant - Chairman
Pat MacKay - Member
Brian Kaplan - Member
Ken Gibbons - Member
Wayne Motheral - Member
Michael Green - Counsel to the Board
Cathy Johnson - Commission Secretary

MANITOBA HYDRO

Robert Bettner - Counsel
Shannon Johnson
Ed Tymofichuk

BIPOLE III COALITION

Brian Meronek - Counsel
Karen Friesen
Garland Laliberte
Ivan Holloway,
Sarah McEachern

CONSUMERS ASSOCIATION OF CANADA

Byron Williams - Counsel
Gloria Desorcey
Aimee Craft

MANITOBA METIS FEDERATION

Jason Madden - Counsel

MANITOBA WILDLANDS and SAPOTAWEYAK CREE NATION

Gaile Whelan-Enns

GREEN PARTY OF MANITOBA

James Beddome

PEGUIS FIRST NATION

Robert Dawson - Counsel
Mike Sutherland
Lloyd Stevenson

MANITOBA CONSERVATION

Ms. T. Braun
Ms. Elise Dagdick

TATASKWEYAK CREE NATION

Ron Lowe - Advisor
Sean Keating - Advisor

1 THURSDAY, JULY 19 2012

2 UPON COMMENCING AT 10:00 A.M.

3

4 THE CHAIRMAN: Okay. I think
5 everybody, or just about everybody is here, so we
6 will call the meeting to order. I have no idea
7 how long today's meeting will take. It could be
8 anywhere from a couple of hours to somewhat more.

9 Depending on how it looks around about
10 noon, we may or may not take a break for lunch.
11 If it appears that the meeting is moving towards a
12 conclusion, we will continue. If not, we will
13 take a break for lunch and come back after lunch.

14 You all received an agenda a couple of
15 days ago. The only item I would add is a point
16 number 5, and that's just a next meeting. We will
17 come to that at the end of the agenda.

18 I would like to start by having a
19 round of introductions. Please identify yourself
20 and the organization that you represent.

21 For those of you who don't know me, my
22 name is Terry Sargeant. I'm Chair of the Clean
23 Environment Commission and I'm also the Chair of
24 the panel for the Bipole review.

25 MR. MOTHERAL: Wayne Motheral,

1 commissioner.

2 THE CHAIRMAN: You will have to turn
3 the buttons on and off as it comes to you.

4 MR. GREEN: Mike Green, counsel to the
5 Commission.

6 MR. KAPLAN: Brian Kaplan, panel
7 member on the Commission.

8 MR. MERONEK: My name is Brian
9 Meronek, I'm here on behalf of the Bipole III
10 Coalition. I have my clients to the left of me,
11 the president of the coalition, Karen Friesen, and
12 to her left, vice president of the coalition,
13 Garland Laliberte. I'm joined by my partner and
14 colleague, Ivan Holloway, who is seated in the
15 first row, along with another lawyer from our
16 office, Sarah McEachern.

17 MR. BETTNER: Bob Bettner, counsel for
18 Manitoba Hydro.

19 MR. TYMOFICHUK: Tymofichuk for
20 Manitoba Hydro.

21 MS. JOHNSON: Shannon Johnson,
22 Manitoba Hydro.

23 MS. BRAUN: Tracy Braun, Environmental
24 Approvals Branch in the Department of Conservation
25 and Water Stewardship.

1 MS. DAGDICK: Elise Dagdick,
2 Environmental Approvals Branch.

3 MR. BEDDOME: James Beddome, Green
4 Party of Manitoba.

5 MR. SUTHERLAND: Mike Sutherland,
6 councillor, Peguis First Nation.

7 MR. DAWSON: Robert Dawson, the lawyer
8 for Peguis.

9 MS. WHELAN ENNS: Gail Whelan Enns,
10 director Manitoba Wildlands. I'm also here in the
11 room for Sapotaweyak First Nation, a client of
12 Whelan Enns Associates.

13 MR. LOWE: Ron Lowe, advisor for
14 Tataskweyak Cree Nation.

15 MR. KEATING: Sean Keating, advisor to
16 Tataskweyak.

17 MR. WILLIAMS: Good morning
18 Mr. Chairman, panel members. Byron Williams
19 representing the Consumers Association, Manitoba
20 branch. To my left is Ms. Gloria Desorcey,
21 executive director of the Consumers Association,
22 Manitoba branch. And to my right is my colleague,
23 Aimee Craft.

24 MS. MacKAY: Pat MacKay, a
25 commissioner with the Clean Environment

1 Commission.

2 MR. GIBBONS: Ken Gibbons,
3 commissioner.

4 MS. JOHNSON: Cathy Johnson, secretary
5 to the Commission. And on the phone we have Jason
6 Madden from the Manitoba Metis Federation.

7 THE CHAIRMAN: Thank you. I would
8 also like to remind you that we are, as we do with
9 all of our proceedings, recording today's
10 proceedings. So whenever you speak, I would ask
11 that you state your name, just for the benefit of
12 the recorder.

13 The first item on the agenda is
14 motions. You were given at your place a couple
15 of -- two or three pages. The first one is just
16 some changes that we are making to our process
17 guidelines. They are pretty minor in nature.
18 Actually, I noticed that one more that somehow or
19 other got deleted from this version, there was one
20 provision at the very end of our process
21 guidelines which stated "motions will not be
22 accepted following the close of the hearing."
23 That's basically redundant so we have deleted that
24 from the process guidelines.

25 The changes just say that motions, as

1 much as possible, should be served in time so we
2 can deal with them before the opening of the
3 public hearings. And also it said that, in the
4 previous version it said that motions would be
5 presented before the panel, which would imply the
6 hearing panel. That is not necessarily -- will
7 not necessarily be the case. So motions will be
8 presented before a panel of Commissioners which
9 may or may not be the same persons as on the
10 hearing panel.

11 I've also attached a practice
12 direction which just sets out some of the ways in
13 which the process motion would operate. I'm going
14 to ask for a little bit of feedback on the time
15 lines we have. In the past we've handled motions
16 on an ad hoc basis, we feel that there is a need
17 to put some parameters around the process. The
18 one thing I'm looking for a little bit of feedback
19 from you is on the dates, whether, you know, what
20 would be a reasonable time frame. The Manitoba
21 Court of Queen's Bench, which I identify towards
22 the bottom of the first page, has a 14-day period
23 for filing a motion and then a seven-day period,
24 time line for the proponent to respond to it.
25 Others have, as I noticed McKenzie Valley Review

1 board, ten days and two days, Manitoba PUB, six
2 days and three days. So somewhere in there,
3 perhaps ten and five, we are talking calendar
4 days. So if anybody has any comments on that, I
5 would like to hear them, what would be a
6 reasonable time frame for this? So anybody have
7 any comments on that or any thinking? If not, we
8 will just set it on our own.

9 MR. WILLIAMS: Mr. Chair, if I
10 might -- Byron Williams for the reporter.
11 Certainly we are fairly familiar with the PUB
12 process. I would just note with that, that while
13 that's maybe the general rule, experience suggests
14 that motions are often made in writing the day
15 before or the day of. So I just want to identify
16 that those rules are applied fairly flexibly.

17 From our client's perspective, we
18 certainly agree with the principle of timely
19 notice and fairness to the panel and to other
20 participants. The QB rules, from our client's
21 perspective, are probably a bit too strenuous. I
22 think the motion, certainly in our experience in
23 terms of administrative tribunals, tend to be a
24 lot less heavy in case law. And I would suggest
25 that's a factor suggesting a shorter time period.

1 Certainly six to seven days, in terms
2 of prior notice for the panel, our clients agree
3 would be entirely reasonable; 14 we think would be
4 demanding a bit too much, especially in the tight
5 time frames that we are looking at in this
6 particular hearing.

7 In terms of our receipt of information
8 from the other side, assuming that we were to make
9 a motion and Hydro was going to be the respondent,
10 we could certainly live with three days in a push,
11 in a pinch two days. So from our client's
12 perspective, we would lean towards materially less
13 than the QB rules and leave it to the judgment of
14 the Commission exactly where that mix is found.

15 THE CHAIRMAN: Just note,
16 Mr. Williams, the final clause in the practice
17 direction which does allow us to change any of
18 these dates upon request, and whatever is fair and
19 reasonable. So you think that seven and three
20 would be sufficient?

21 MR. WILLIAMS: Yes, and I would
22 strongly urge that 14 and 7 is too much.

23 THE CHAIRMAN: Thank you. Anyone
24 else? Mr. Bettner?

25 MR. BETTNER: Bob Bettner for the

1 record. From Hydro's perspective it is a little
2 bit like shooting in the dark. I tend to agree
3 with Mr. Williams, that perhaps 14 and 7 is a
4 little bit of overreaching, but I would like to
5 suggest that 10 and 5, or 10 and 4, would probably
6 be not a bad mid ground, because it is difficult
7 to know the nature and extent of the motions that
8 may be filed. Some of them may be quite simple,
9 some of them actually might be quite involved.
10 Just from my brief review of the record,
11 participants feel strongly about a number of
12 issues, and I would tend to think that there may
13 be a greater degree of preparation required in
14 order to generate a response, and perhaps even,
15 you know, review the matter and give the
16 Commission time to review all of the material as
17 well.

18 So I think in that vein, out of an
19 abundance of caution, I would suggest 10 and 5,
20 being mindful of your comment that the Commission
21 can always abridge those times in appropriate
22 circumstances.

23 THE CHAIRMAN: Thank you.

24 Mr. Beddome?

25 MR. BEDDOME: My comment isn't so much

1 on the time lines, although I appreciate that we
2 are trying to set out time lines, it is actually
3 on the changes to the motions that you made.
4 Basically that all motions will be presented
5 before panel commissioners. And when you say it
6 won't be the same persons, you used "may not
7 necessarily." That's fairly permissive language.
8 I think better would be an actual clear,
9 definitive statement that they will not be the
10 same as the Commissioners. It is just a matter of
11 process in ensuring that there is no -- you know,
12 whether truthfully or not truthfully that it may
13 in fact compromise the impartiality of the
14 Commission. So just as a matter of process, I
15 think it would be better if that was definitive
16 rather than permissive.

17 THE CHAIRMAN: I don't quite follow.
18 You are saying that it should be a different
19 panel?

20 MR. BEDDOME: Yes. I'm saying if you
21 are going to try a motion on a procedural issue,
22 it is better that the panelists be completely
23 separate from the Commission that will be deciding
24 on it. Because they are deciding on procedure
25 generally more than the Commission itself, I think

1 it could harm the impartiality, at least from the
2 perspective of some people, whether that's in fact
3 the truth or not.

4 THE CHAIRMAN: Thank you. Anybody
5 wish to comment on either the time lines or on
6 Mr. Beddome's point? Mr. Dawson?

7 MR. DAWSON: Thank you, Mr. Chairman.
8 I have a comment relating to the time lines. The
9 comments of Mr. Williams are entirely acceptable
10 to me, but I have concerns about overall access to
11 justice issues that the Commission might want to
12 be mindful of. Given that the mandate of this
13 particular body is to encourage public comment,
14 and by that necessarily it suggests that persons
15 need not necessarily be represented, nor have,
16 even those who are at the table needn't even have
17 any legal training. I'm a little concerned about
18 what seems to be the expectation that Hydro builds
19 into the receipt of documents. The notice of
20 motion that is set out in the proposed practice
21 direction could, in the hands of a layman, be very
22 brief but nonetheless compliant. To the extent
23 that it seems Hydro wants or expects those
24 documents to be substantive in the way of almost a
25 motion brief, it would make sense that the timing

1 should be more extensive. But I don't think
2 that's either appropriate or what I think, I'm
3 submitting, the Commission wants to do. To the
4 extent that really all that the Commission is
5 saying is, tell us what you want to argue, tell
6 us -- give notice to the other side so that it can
7 make a reply, and let's get on with it. The
8 shorter time frames are better. Mr. Williams has
9 put forward I think 7 and 3 or so, and discounted
10 the Queen's Bench approach. I would suggest that
11 shorter is better.

12 I do have one concern about applying
13 that rule blindly, and that relates to, unlike the
14 PUB hearing, many of the matters that come before
15 this Commission involve necessarily issues that
16 have nothing to do with people who conveniently
17 reside within driving or delivering distance of
18 the Commission's office. For those people, again
19 on an access to justice basis, who may not have
20 fax machines, who may not have email even, I'm
21 just a little concerned about giving them too
22 short a time.

23 So I think Mr. Williams' suggestion of
24 7 and 3 seems to be the appropriate number, I
25 would suggest. And I have no comments on the most

1 recent suggestion that was put forward relating to
2 the composition of the panel.

3 THE CHAIRMAN: Thank you, Mr. Dawson.
4 Anyone else?

5 MR. MERONEK: Mr. Chairman, Brian
6 Meronek. I endorse Mr. Williams' comments. If
7 the schedule for the hearing doesn't change, we
8 are really up against it in terms of timing. And
9 depending upon the motions brought and the
10 decisions of the Commission in that regard, it
11 could be really, really tight. So my
12 recommendation would be the 7 and 3, and if once a
13 party gets the motion and determines that they
14 need more time, then they should be able to come
15 before the Commission and attempt to convince the
16 Commission for a longer time. But I think it is
17 important to start shorter, go longer, depending
18 on the motion. Some of them will be simple in
19 terms of the material, some may be more
20 complicated, but we really, as you will see later
21 on today and probably know already, the timing is
22 very critical at this point.

23 THE CHAIRMAN: Thank you.
24 Ms. Whelan Enns.

25 MS. WHELAN ENNS: Gail Whelan Enns.

1 Just a quick question, and that is in the change
2 in the practice, change in the text, would you
3 please tell us all what "specified parties" means?

4 THE CHAIRMAN: Where are you,
5 specified parties or specified participants?

6 MS. WHELAN ENNS: Gail Whelan Enns.
7 On the top page of what you provided this morning,
8 near the bottom of the page:

9 "An opportunity will be provided for
10 specified parties to respond."

11 THE CHAIRMAN: That's actually a good
12 point and we should define that. Basically it is
13 the proponent and those designated as
14 participants, and I think I will change it to
15 specifically those words, so thank you for
16 bringing that to my attention.

17 Mr. Williams?

18 MR. WILLIAMS: Mr. Chairman, just two
19 additional thoughts. In terms of the Green
20 Party's comments in terms of the permissive
21 language on the cover page, our clients are
22 totally supportive of the language as it currently
23 stands. Panels are often called upon to make
24 procedural determinations. Our clients are not
25 uncomfortable with the language as worded.

1 Just one other matter I might suggest
2 for the panel's consideration. Again, it is hard
3 to predict what type of motions may be coming, but
4 one would certainly conceive of a motion for
5 adjournment. One could also conceive of motions
6 for further and better disclosure aimed at certain
7 particular information responses. One of those, a
8 motion for adjournment, certainly from my client's
9 perspective would clearly require an oral
10 proceeding. Our clients have some familiarity,
11 and my friend Mr. Meronek may disagree with me on
12 this point, I'm not sure, but whether at the CRTC
13 or the Public Utilities Board, in terms of motions
14 for further and better disclosure, those could
15 conceivably be targeted at 30 or 40 information
16 responses. And I shudder on our client's behalf
17 to think of the oral proceeding time associated
18 with that. Others may disagree. But certainly we
19 have seen in other tribunals, both Federally and
20 Provincially, where for that type of motion there
21 is an openness to a written process around
22 something like that. So just something for the
23 panel's consideration.

24 THE CHAIRMAN: Thank you. Any other
25 comments on this item, on the motions item?

1 Mr. Bettner?

2 MR. BETTNER: Bob Bettner for the
3 record. Just one caution, Mr. Chairman. If the
4 time frame is set at a fairly short one, the
5 Commission will have to have some flexibility in
6 terms of making itself available on probably
7 pretty short notice to deal with requests for an
8 extension of time, and that may be problematic.
9 So just in your deliberations, if you could just
10 bear that in mind that the logistics might
11 overtake us.

12 THE CHAIRMAN: Thank you. That is
13 something that we have already considered.

14 Any other comments on motions, on
15 either side of the item?

16 Just sort of further on Mr. Williams'
17 comments about the panel makeup, Mr. Beddome, it
18 would be extremely difficult to have a different
19 panel if motions come during the hearings, which
20 are allowed. I mean, we would like to deal with
21 substantive motions before the hearings start, but
22 once we get into hearings, there are or there may
23 be times when a party wishes to bring a motion.
24 It would be extremely difficult at that point to
25 have a different panel here. So I think -- we

1 won't close it off, we will give it some
2 deliberation after this meeting, but I think we
3 might be inclined to stay with it as it is. It
4 may be a different panel, but wherever possible it
5 will probably be the same panel.

6 MR. BETTNER: Mr. Chairman, with your
7 indulgence -- Bob Bettner for the record -- if we
8 are on a short time frame, service of a motion at
9 4:00 o'clock on a Friday afternoon could be a
10 little problematic, on a three day return. Thank
11 you.

12 THE CHAIRMAN: Thank you.
13 Mr. Beddome?

14 MR. BEDDOME: I think that just raises
15 a separate question. Are we talking business days
16 Monday to Friday, excluding holidays, or are we
17 talking calendar days?

18 THE CHAIRMAN: Typically we are
19 talking calendar days. My review of some of the
20 ones that are listed here and others as well, it
21 was calendar days.

22 Okay. Can we move on, on the agenda?
23 Before we do, Mr. Stevenson, you came in a couple
24 of minutes late. Could you identify yourself for
25 the record?

1 MR. STEVENSON: Lloyd Stevenson,
2 Peguis First Nation.

3 THE CHAIRMAN: Thank you. So we will
4 take these comments away and reconsider some of
5 the items around the motions -- or the motions
6 referenced in the process guideline as well as the
7 practice direction, and we will send it out to you
8 as soon as possible.

9 The next thing is date for a motions
10 hearing. This has been a typical practice with
11 major reviews conducted by the Clean Environment
12 Commission in the past. There were actually more
13 than one day of motions hearings for the Wuskwatim
14 process. We haven't finalized a date yet, but we
15 think we will finalize a date during the week of
16 August 27th. So we would ask that anyone who
17 wishes to bring substantive motions before the
18 panel file a notice of motion within whatever time
19 frames we come up with after today's meeting. So
20 probably ten or seven days, we will let you know
21 as soon as we can, but we would ask that once we
22 have picked a date, that you respect that and file
23 a notice of motion for that time.

24 Any comments on that? Mr. Meronek?

25 MR. MERONEK: Mr. Chairman, you are

1 just anticipating one motion date for everything?

2 THE CHAIRMAN: We would hope. It is
3 always possible at any time throughout the
4 hearings process for a party to bring a motion.
5 However, we would hope that participants would
6 respect the process, attempt to deal with
7 substantive motions before the hearing date, and
8 then any that might arise during the hearings are
9 more of an immediate and less substantive nature.
10 But hopefully we can deal with them all in one
11 day.

12 MR. MERONEK: I was looking more
13 towards the shorter end, if there were some
14 significant motions brought, that would really go
15 to the schedule, and depending upon the
16 deliberations and decisions of the Commission,
17 whether that required substantially more steps or
18 more information, whether or not the Commission is
19 flexible enough to hear a motion before August 27?

20 THE CHAIRMAN: Yes.

21 MR. MERONEK: Thank you.

22 THE CHAIRMAN: Mr. Dawson?

23 MR. DAWSON: Robert Dawson.

24 Mr. Chairman, I don't know whether this would be
25 helpful to the Commission in the context of

1 today's meeting, but echoing Mr. Meronek's concern
2 about the possibility of overloading a single
3 motions date, I note that sitting around the table
4 there are at least a number of the representatives
5 that have from time to time suggested the
6 possibility of bringing motions. Without
7 necessarily compelling anyone to disclose what
8 those motions are, or even necessarily committing
9 to bringing those motions, I wonder if it would
10 help the Commission just to do almost a straw poll
11 among the parties that are here today to see how
12 many motions might be contemplated. And that
13 might perhaps suggest, well, either help
14 Mr. Meronek's position, or confirm that these
15 motions that there are concerns over their length
16 of time would be perhaps unnecessary. Just an
17 idea.

18 THE CHAIRMAN: Not a bad idea,
19 Mr. Dawson. We will take it under consideration.
20 I will let Mr. Williams speak, as he had stuck his
21 hand up, and then I will make a comment or two in
22 that regard.

23 MR. WILLIAMS: Yes, thank you,
24 Mr. Chairman. Byron Williams, for the record.
25 Certainly in terms of the appropriate

1 date for a motions hearing, a critical date from
2 our client's perspective is July 31st, and the
3 opportunity to examine the state of the record.
4 Then if they are, to preempt a bit of Mr. Dawson's
5 discussion, if there were to be a motion for an
6 adjournment, that would flow from our client's
7 sense of the record at that time, whether it was
8 right for a hearing. And logistically, just
9 working off your August 27th date, let's assume
10 that a motion was heard there, I don't have enough
11 hubris to assume it would be successful, but it is
12 possible. If, you know, even with a prompt
13 turnaround, our experts would have already spent a
14 lot of time preparing for an October 1st hearing.
15 So certainly in our client's internal calendar, we
16 were looking at a motions date preferably in the
17 middle of August. So that's certainly just
18 speaking for our clients, where they were
19 thinking, with a relatively rapid turnaround after
20 an examination of the state of the record on, as
21 it stands on July 31st.

22 THE CHAIRMAN: Thank you. And I would
23 just repeat my response to Mr. Meronek, that we
24 are certainly flexible enough to hold earlier, if
25 we get notices of motion in sufficient time.

1 Just on your point, Mr. Dawson, rather
2 than put participants on the spot in this forum, I
3 might suggest -- and if other participants
4 disagree, they can say so -- I might suggest that
5 the Commission will canvass all participants at
6 the beginning of next week in that regard and ask
7 how many are seriously thinking of filing notices
8 of motion, how many, and without -- and perhaps
9 get a general direction on what their motions
10 might be. We will keep that confidential within
11 our walls until such time as the actual motions
12 are filed.

13 Yes, Mr. Madden?

14 MR. MADDEN: I think one of our -- I
15 would say that from our perspective, and we have
16 been documenting this on the record, that we will
17 be wanting to bring forward a motion sooner rather
18 than later, and I think potentially identifying
19 dates in this procedural time frame -- we think
20 the October 27th date is leaving it far too late.
21 Similar to comments from others, we will be
22 looking for the filing as of July 31st, but what
23 we received to date, we are pretty certain that
24 the perspective of Hydro is not going to change in
25 what they need to provide. So maybe identifying

1 potential dates in the early part of August would
2 be beneficial. I can -- I don't know the extent
3 of the motion that we would be bringing, but I
4 definitely know that it would be -- there will be
5 great issues around timing and the inability of
6 our experts to prepare for filing their reports on
7 September 15th, based upon the current record as
8 it stands. And we don't have a feeling that
9 that's going to substantively change by July 31st.
10 So potentially identifying a date in the week of
11 August 6th, or subsequent, that could potentially
12 work for our participants. I think it may be
13 helpful at this procedural conference.

14 THE CHAIRMAN: Thank you, Mr. Madden.
15 I would note that when we initially set up today's
16 meeting, July 19th, we had been lead to believe
17 that we would be receiving one or more motions in
18 early July or late June, and had thought that
19 today might be a motions hearing. When we didn't
20 receive any motions, any notices of motion by the
21 beginning of last week, I believe it was, it was
22 then that we decided to inform you all that today
23 would not be a motions hearing.

24 But we are --

25 MR. MADDEN: Can I ask a question?

1 And I guess this relates to in particular my
2 client not filing a motion, that I think one -- we
3 didn't want to file anything that was premature.
4 We wanted to understand what the Commission is
5 actually doing with respect to how it saw the
6 deficiencies being addressed, as well as whether
7 it saw that the EIS was in -- met the requirements
8 of the scoping documents. And I guess having an
9 understanding of that is what we hope to garner
10 from today. And then it would be easier to craft
11 a motion with an understanding of that, rather
12 than just guessing. So I would gather -- so I
13 guess -- and this was left from the last
14 procedural conference, clearly the CEC has
15 identified a series of deficiencies with the EIS,
16 so that Hydro needs to provide additional filings
17 on those issues, that Hydro is going to be
18 providing additional filings on those issues, is
19 it to be done through the IR process? There was
20 no clarity on that. And I think that it was
21 premature to bring a motion until we received
22 clarity on that. So I just wanted to make it
23 clear that the reason that we called for a
24 procedural conference sooner was to try to
25 understand the thinking or what the Commission was

1 doing with respect to those issues.

2 THE CHAIRMAN: Thank you. And I
3 appreciate that. We will, in the next item on the
4 agenda, get into some discussion about the state
5 of the EIS and also time lines between now and
6 October 1st.

7 To go back to your almost initial
8 comment, Mr. Madden, we are certainly open to
9 holding a motions hearing earlier in August than
10 August 27th, if we receive notices of motion in a
11 timely manner after July 31st.

12 MR. MADDEN: I know we wanted to
13 indicate on the record that in the spirit of
14 attempting to see if there could be collaborative
15 solutions, or a better understanding of how the
16 CEC was proceeding, that is the reason why, and
17 also awaiting some of the responses from Hydro,
18 that's the reason that a motion was not brought as
19 of yet. But those issues that were raised in my
20 client's previous letters, today we are attempting
21 to see if they can be resolved through a
22 procedural conference. If they can't be resolved
23 through a procedural conference, we will be
24 bringing a motion on those issues.

25 THE CHAIRMAN: Okay. Thank you.

1 Any other comments on motions hearing
2 date? Mr. Dawson?

3 MR. DAWSON: I don't wish to belabour
4 this and I'm just going to raise it in the event
5 that it is helpful to the Commission, but of
6 course you, Mr. Chair, are completely entitled to
7 shut me down on this.

8 It seems from the discussion that I've
9 heard so far there are two kinds of motions that
10 are considered. One I'm going to label show
11 stoppers, and these are motions that might be
12 brought, that if successful would push back the
13 hearing process. The other would be what -- and
14 I'm not trying to be pejorative -- but routine
15 motions. These might be motions for disclosure on
16 IR 1, 2, 3.

17 With respect to the second category of
18 routine motions, it seems that those could all be
19 adequately collected on one date that the
20 Commission could set at any particular time.

21 With respect to the show stopper
22 motions, these seem to involve, frankly, not all
23 of the parties, but rather the proponent and the
24 moving party itself. If I understand correctly,
25 and please do correct me if I'm wrong, it seems

1 that the Commission is prepared to entertain show
2 stopper motions at any time, and would not
3 necessarily be collecting them all to be heard on
4 the same date. I realize that that approach, if
5 it were to occur, creates scheduling and
6 coordination problems for the Commission and the
7 panel, I appreciate that. The advantage, however,
8 to that approach would be to give necessary
9 flexibility. If the Commission were inclined to
10 proceed by that analysis, namely show stopper
11 motions affecting primarily the moving party and
12 the proponent, those could be brought within a
13 range of dates. To the extent that the moving
14 party and the proponent suggest that the length of
15 those motions will not fill a full day, motions
16 could be combined if the schedule suits, but
17 otherwise it would perhaps give the flexibility
18 that many of the parties around this table are
19 seeking to bring their motions either sooner, or
20 in due course, or later.

21 I don't know if that's a helpful
22 approach, but if it is, then what I would suggest
23 at this point is that Commission, I assume, has a
24 date in mind for routine motions. Simply throw
25 that out to make sure it works for people in a

1 reasonable way. And with respect to the show
2 stopper motions, simply say that the Commission
3 will provide a range of dates between which the
4 hearings would be held, and that necessarily would
5 require the filings of the notice of motion as
6 well as the reply pursuant to the new practice
7 direction.

8 It is just an idea, I don't know if it
9 is helpful.

10 THE CHAIRMAN: Thank you, Mr. Dawson.
11 I think your separation of the two is helpful. I
12 don't think, though, that we would be terribly
13 open to having any number of different hearing
14 dates to hear show stoppers. I don't see much
15 value in arguing the same thing and having the
16 panel consider the same motion or a very similar
17 motion on a number of different occasions. So I
18 would think that we would pick one date, perhaps
19 earlier in August, perhaps somewhere in the middle
20 of August, where we would entertain show stopper
21 motions, as you call them, and then a date later
22 in August, probably in that week of August 27, to
23 deal with routine matters.

24 Mr. Dawson?

25 MR. DAWSON: Again, I don't want to

1 belabour the point. Let's assume that that's the
2 way that the Commission decides it wants to
3 proceed. And I certainly agree that to the extent
4 that motions are similar or seek related or
5 overlapping relief, they should be collected
6 together. And this brings me back perhaps to my
7 earlier suggestion of briefly canvassing the room
8 just to see what people are inclined to do. And I
9 don't want to presume the schedule of this morning
10 and take too much time. So, again, Mr. Chair, you
11 will of course cut me off if you think that's
12 inappropriate. But I can indicate to you on
13 behalf of my client, its primary concern is one
14 that it has already put forward and that relates
15 to its status, constitutional status as an
16 Aboriginal group that is necessarily entitled to
17 be consulted and accommodated with respect to
18 environmental developments that will impact its
19 lands, or lands that fall within its notification
20 area.

21 I had written, as the Commission will
22 know, to the Commission office asking if there
23 would be an opportunity to reconsider what I
24 understand was an earlier decision not to grant
25 sufficient participant funding, so that it would

1 entitle or enable my client to test the evidence
2 in a meaningful way and participate in the
3 process.

4 Mr. Chairman, you wrote back
5 indicating that it was the view of, well, I assume
6 the Commission, that no such duty existed. There
7 are alternate arguments. And perhaps to the
8 extent that you are prepared to answer this
9 question, I can simply move along and not even
10 have to bring a motion. So with your permission,
11 I will put the question and of course, you,
12 Mr. Chairman, may choose simply not to answer it.

13 I have your point with respect to the
14 Commission and the duty to consult, but may I ask,
15 will the Commission take into account when it
16 gives advice and recommendations to the Minister
17 whether or not participants such as Aboriginal
18 groups have had their duty to be consulted and
19 accommodated discharged by the Province or the
20 Crown? And to the extent that the answer to that
21 is yes, one show stopping motion may be
22 unnecessary.

23 THE CHAIRMAN: I would think that the
24 answer will be yes.

25 MR. DAWSON: Thank you. And I

1 apologize for taking so much time, but I think
2 ultimately my brief soliloquy may save us many
3 hours in due course.

4 THE CHAIRMAN: Thank you.
5 Mr. Bettner.

6 MR. BETTNER: Bob Bettner for the
7 record. Mr. Chairman, if time permits, I might
8 suggest that we could loop back to this topic once
9 we get through the agenda item of time lines to
10 October 1.

11 THE CHAIRMAN: Sure.

12 MR. BETTNER: Now having gone through
13 that, it might be helpful.

14 THE CHAIRMAN: Not a bad idea. So
15 unless there are any other sort of compelling
16 comments on motions, I would like to move along to
17 the next item on the agenda, which is the
18 pre-hearing process, more specifically the current
19 state of the EIS, particularly as participants see
20 it, our remaining IR process, including a second
21 round, and then time lines to October 1st. I
22 think these are all, aside from the second round
23 of IRs, I think these are all more or less
24 related. So be freewheeling in your comments.
25 Mr. Madden.

1 MR. MADDEN: Mr. Chair, I must have
2 missed -- can you go back to the answer of yes?
3 What was it specifically -- it was quite a lead up
4 to the question. I would like to have a clear
5 understanding of what you answered yes to?

6 THE CHAIRMAN: Mr. Dawson asked me if
7 the Commission, in its recommendations to the
8 Minister, would take into consideration whether or
9 not the Crown has fulfilled its duty to consult.
10 Do I have that correct, Mr. Dawson?

11 MR. DAWSON: Yes, you do, Mr. Chair.

12 MR. MADDEN: And how, I'm sorry, and
13 so you answered yes to that. And how, based upon
14 what record would you make that determination on?
15 The EIS? Because it comes, in other regulatory
16 hearings that I have been a part of, that is done
17 by either a Crown putting in a consultation record
18 or the proponent putting in a record, and then the
19 decision maker assessing that, you know, to say,
20 yes, we believe that the duty has been fulfilled
21 up and to this point. And I'm just not sure what
22 that would be based upon.

23 THE CHAIRMAN: Let me just relate to
24 you the experience from the Wuskwatim hearings.
25 When this became an issue during the hearings, we

1 asked a representative of the Crown, who was
2 charged with the consultation process, to come
3 before the panel and to explain to the panel what
4 the Crown had been doing to satisfy the panel that
5 the duty to consult, which falls upon the Crown,
6 had been carried out or was being carried out.

7 MR. MADDEN: Our only point on that
8 would be then, and I guess this will possibly be
9 dealt with in a motion, is that the law has
10 evolved since 2004, and greater clarification on
11 how the roles of administrative tribunals, in
12 particular in the Carrier Sekani case, has -- the
13 Supreme Court of Canada had an opportunity to
14 elaborate on how it sees that playing out. I
15 think that -- I just want to get an understanding.
16 Is the panel, the Commission thinks that it is the
17 same -- is planning on operating the same as it
18 did in Wuskwatim?

19 THE CHAIRMAN: Well, I don't want to
20 get into a long legal debate today on this issue.
21 I have read Carrier Sekani as well, and I think
22 that it is fairly clear that the duty to consult
23 does not fall on administrative tribunals, but I
24 don't really want to get into that debate today,
25 Mr. Madden.

1 MR. MADDEN: Going back to my initial
2 point, the reason that the MMF requested this
3 procedural conference was to get greater clarity
4 on these issues, so that when motions are brought
5 they are not -- they have at least an
6 understanding of what the Commission's positions
7 are. So that's all I'm asking for clarity about.

8 I concur that the duty does not fall
9 to the administrative tribunal and it doesn't need
10 to undertake consultation. The question around
11 whether it has to assess whether consultation has
12 taken place or to look at those issues I think is
13 a separate question.

14 THE CHAIRMAN: Yeah. But my reading
15 of Carrier Sekani, it doesn't really decide that
16 question.

17 MR. MADDEN: Correct. But I think one
18 of the things that we will bring forward in a
19 motion is that the Crown decision-maker is
20 planning on relying on the record generated
21 through the CEC process in order to make
22 determinations. So the CEC, our perspective would
23 be remiss to attempt to exclude and not look at
24 that issue when the Minister ultimately is going
25 to be looking at the Crown and Aboriginal

1 consultation process that's been undertaken by
2 Manitoba Conservation, as well as the information
3 generated, gathered, tested through the CEC
4 process.

5 THE CHAIRMAN: Well, that's correct.
6 I mean, the Minister, or the Crown in concluding
7 its duty to consult process will certainly look at
8 the recommendations and conclusions that come out
9 of the CEC hearings, as you've stated.

10 MR. MADDEN: Okay.

11 THE CHAIRMAN: It is not something
12 that we are going to ignore by any stretch, but it
13 is not a major task of the CEC in these hearings.

14 MR. MADDEN: But you aren't going to
15 exclude us raising issues around the potential
16 impact of the project on rights, way of life,
17 outstanding claims of Aboriginal people?

18 THE CHAIRMAN: I can't give you a
19 definitive answer on that today.

20 MR. MADDEN: Okay.

21 THE CHAIRMAN: Any other comments,
22 Mr. Madden?

23 MR. MADDEN: No.

24 THE CHAIRMAN: Anyone else wish to
25 comment on that matter right now?

1 Mr. Laliberte.

2 MR. LALIBERTE: Garland Laliberte. Do
3 we know what stage section 35 consultations are at
4 today?

5 THE CHAIRMAN: No. I know that they
6 are under way, but I do not know where they are
7 at.

8 MR. BETTNER: Mr. Chairman, Bob
9 Bettner for the record. It would strike me that
10 the Crown consultation effort will not be
11 concluded by the time the Commission reports.
12 History seems to suggest that to us. And that as
13 you have observed, the report of the Commission
14 and its recommendations will be but one input into
15 that consultation process to be added to the
16 information that the Crown has acquired directly
17 through interaction with various Aboriginal
18 groups. And that at the end of the day, the
19 decision-makers will have the report of the
20 Commission, they will have a separate Crown
21 consultation report and any other representations
22 that have been made to it. And at that point they
23 will come to make their decisions.

24 THE CHAIRMAN: That's my understanding
25 as well, Mr. Bettner. I met with the Crown

1 counsel, or one of the Crown counsel responsible
2 for overseeing this process a year, year and a
3 half ago, and he relayed the process exactly as
4 you've stated, that it won't be concluded by the
5 time we report in good part because our report
6 forms part of their consideration.

7 MR. MADDEN: I would just add a few
8 comments to that, Mr. Chair. Part of what this
9 Commission is tasked with is to make a
10 recommendation to the Minister based upon the
11 record before it. And we would submit that based
12 upon the evidence put forward by Aboriginal groups
13 in relation to the duty, I think that the CEC is
14 obligated or needs to consider whether it believes
15 the duty has been fulfilled, or whether there is
16 sufficient work or comment on that issue. It may
17 not be determinative, but there is a decision
18 point or a decision being made vis a vis whether
19 to recommend that the project proceed to the
20 Minister through this process. And this is the
21 vehicle that has been, you know, this is the only
22 opportunity or vehicle for Aboriginal groups to
23 essentially test the evidence that Manitoba Hydro
24 has put forward and to test the EIS.

25 So I think that we will want to

1 further elaborate on that, but I don't think that
2 not commenting on how the Commission, based upon
3 the evidence before it, sees whether the duty has
4 been fulfilled can be ignored.

5 THE CHAIRMAN: Well, I can't tell you
6 today what our recommendations to the Minister
7 will be, we are months away from coming to those
8 conclusions. But it is certainly open to you and
9 all participants and others through the hearing
10 process to challenge the proponent and what the
11 proponent has stated in their EIS.

12 MR. MADDEN: Right. And I just wanted
13 to provide clarification that I think that the
14 articulation put forward by Manitoba Hydro's
15 counsel is not quite correct from our perspective,
16 and so -- but, yes, and we will be using the
17 process to introduce that evidence and to raise
18 those points before the Commission and ultimately
19 the Commission will decide.

20 THE CHAIRMAN: Thank you. Any other
21 comments on this item? Ms. Whelan Enns?

22 MS. WHELAN ENNS: Gail Whelan Enns. I
23 wanted to make a couple of quick comments on an
24 information basis that may help the discussion in
25 the room. One of the things that I was reminded

1 of by the Chair's comments regarding the Wuskwatim
2 hearings was that there was an entire day motions
3 hearing in January 2003, on one single topic,
4 which was response to IRs and lack of disclosure
5 of information by Manitoba Hydro. And it took a
6 day.

7 There was also a comment regarding the
8 Wuskwatim consultations. I should preface that
9 I'm not a lawyer, but rather an observer and
10 sometimes a technical assistant to these matters,
11 but there certainly are Aboriginal groups in this
12 province who are quite sure that the Wuskwatim
13 consultations were not and have not yet been
14 completed, and that includes, of course, the fact
15 that both Crowns and the utility are signatories
16 to the Northern Flood Agreement also. So the
17 number of rounds of, and requirements or
18 obligations of consultations is greater and was
19 not completed, again, passing it on. There is
20 then of course the question in terms of the NFA
21 section 9A consultations with respect to Bipole
22 III and where they are at and whether they have
23 started or not.

24 To agree with Mr. Madden, the law has
25 certainly changed, again a non-lawyer speaking,

1 and so has the Manitoba Government policy with
2 regards to Aboriginal consultations. So it has
3 changed dramatically since 2004. The newest
4 interim version is as of 2009. So that at the
5 very least would be the context that we are
6 talking today. Thank you.

7 THE CHAIRMAN: Thank you. Any more on
8 Aboriginal consultations?

9 Perhaps now we can turn to item 3 on
10 the agenda, the pre-hearing process, state of the
11 EIS time lines between now and October 1st.
12 Everybody happy? I don't see any hands sticking
13 up. Do we move along to item 4 next?

14 MR. WILLIAMS: Sorry, Mr. Chairman, I
15 thought you were asking whether we were happy with
16 how we had done on item number 2.

17 Certainly our clients have some --
18 mindful of I think you opened up the conversation
19 to wide ranging or using words to that effect. My
20 clients do have an outline of their comment that
21 might assist the panel, which we had debated
22 whether to provide it, but we are prepared to
23 provide it to the panel and others, if it were to
24 be of assistance.

25 THE CHAIRMAN: I'm sure it would.

1 Perhaps I should change that to, I'm sure it
2 might.

3 MR. WILLIAMS: I would reserve
4 judgment, Mr. Chairman.

5 THE CHAIRMAN: Mr. Beddome, you had a
6 comment?

7 MR. BEDDOME: I just had a couple of
8 different comments, and some of it kind of ties
9 into time lines, but I think two are sort of
10 intertwined in that way.

11 The one comment would be, a lot of the
12 EIS will have statements that say this will be
13 subject to further studying and engineering
14 design, or some sort of statement that alludes to
15 further study or alludes in some cases, and we
16 just received them today, because the Consumers
17 Association put forward a request for a lot of
18 different reports that you weren't able to find
19 and now have just been provided to us. And even
20 the IRs themselves that have been responded to
21 have only recently been responded to. So with the
22 20th deadline and so many of these sub reports, it
23 gets difficult to assess. As a general comment on
24 the EIS when you are like, "and this will be
25 subject to further study." Well, you read it and

1 you are like, well, what is that further study?
2 How is it going to take place? Where will that
3 information be shared, et cetera? And it just
4 makes it harder to judge impacts accordingly. I
5 think that's one of the things that I see with the
6 EIS as sort of a pattern.

7 THE CHAIRMAN: Thank you.

8 Mr. Williams, do you want to turn to your outline?

9 MR. WILLIAMS: Yes, thank you,
10 Mr. Chairman, I think we might both have our mics
11 on. I certainly won't move the panel through it
12 word by word. I do want to just describe what is
13 in the outline, just for the panel's benefit.
14 What our clients have done is taken, selected
15 extracts from the information requests, either
16 posed by the Commission already, and I will come
17 to that in a second, or presented later on by CEC,
18 which have not yet been proposed to Manitoba Hydro
19 because they are, in our client's respectful
20 views, representative of the state of the record.
21 So what we have done, they are not the whole
22 information requests, they are just an excerpt
23 from it. And what we have put beneath -- and
24 those are represented by individual bullets -- and
25 what we have put beneath that is the status of the

1 response, whether there was a response already
2 provided, or whether it is outstanding, just as
3 the panel looks forward. So we have tried to pull
4 out of the information requests material that we
5 think might be helpful to the panel in its
6 discussion of the state of the EIS. We have got
7 it double sided.

8 Hopefully, at the top of page one,
9 just inside the cover page, we think is an
10 appropriate starting point for the Commission and
11 it is -- where were the filings back in May? And
12 the best expression of that from our client's
13 perspective is found in a letter from the
14 Commission to Mr. Madden on June 14th, when it
15 outlined significant deficiencies, at least from
16 the letter that's certainly how we interpreted it,
17 in the EIS. So that's the first bullet on page
18 one. So that's our starting point.

19 So the next question is, where are we
20 today? And I think an eloquent expression of that
21 is found going to the second bullet, in a preamble
22 to the CEC, IR series 5, addendum 2, and we have
23 bold some language there. It seems to be common
24 throughout this environmental assessment, EA,
25 there is a lot of detailed information but not a

1 great deal of substantive analysis. And there are
2 some important leaps of faith that are not
3 possible to follow and are frequently highly
4 dubious as stated. So that's a preamble to
5 actually the information requests. No response
6 was submitted. But that certainly is consistent
7 to a significant degree with our client's
8 perspective, not only of how the record was as it
9 stood in May, but the record as it stands today.

10 I won't direct -- certainly the other
11 excerpts on page 1 are there for you to read. On
12 page 2 our clients do want to identify the second
13 bullet, that's question 188. Again, there is a --
14 again, these are preambles to the Clean
15 Environment Commission information requests.
16 There is, referring to a statement of Hydro on
17 page 69 that transmission lines may be considered
18 as very low impact developments. We have bolded
19 the language from the information request
20 preamble:

21 "...is without basis and is highly
22 subjective."

23 And again this is a question that begged an answer
24 and that answer has not yet been attempted by
25 Hydro. And we think that kind of characterization

1 of the record found in that preamble is helpful.

2 Still on page 2, the very next bullet,
3 question 150, the word missing is something that
4 we've inserted, but what follows it, the load
5 forecast and power resources plans which underlie
6 the chart on page 2. Still at this late date,
7 July 22nd, we don't have the load forecast and a
8 response to that information request. And from
9 our client's perspective, that is central
10 information.

11 If one looks at the 2017, which
12 appears to be a critical date for Manitoba Hydro,
13 the year 2017, in which the forecast deficit is
14 1500 megawatts, that seems to be driving some of
15 the alleged urgency with this particular project.
16 Where is the load forecast to substantiate it?
17 Our clients on that specific point are concerned
18 because this board will be aware that the Public
19 Utilities Board in January of this year said some
20 highly unflattering things about load forecasting
21 at Manitoba Hydro. It said it was overoptimistic.
22 So a central piece in terms of the timing of the
23 project is still not available to our analysts at
24 this late date, and really central to driving the
25 timing of the project.

1 So from our client's perspective, it
2 being July 19th, the hearing starting in October
3 at this point in time, that's the type of critical
4 missing information that is not available.

5 The very last bullet on page 2, I've,
6 on behalf of my clients, polled from question 156.
7 And getting again to one of the threshold
8 challenges with this filing, there is a lot of
9 information but there is no -- or a summative
10 synthesis is required in order to develop useful
11 and meaningful guidelines and minimize
12 environmental impacts.

13 I guess, as a general point, from our
14 client's perspective, when they look at
15 environmental assessment best practice, it
16 typically involves three steps; a description of
17 baseline environmental conditions, step 1, and
18 Hydro has done a lot of that, there is a lot of
19 that there.

20 Stage 2 is an analysis of project
21 construction and operation impacts by science and
22 social disciplines. That's not in the outline,
23 Mr. Chairman, if you are looking.

24 And stage 3 is consideration of future
25 biophysical and social environmental conditions.

1 Certainly if one thinks of an
2 environmental assessment in that kind of
3 comprehensive approach, stage 1 Hydro has done a
4 relatively good job from our client's perspective,
5 but stages 2 and stages 3 are deficient, and
6 deficient at this late date.

7 Just moving on in the bullets, I will
8 let you skip over page 3 and draw your attention
9 to page 4. The pages are numbered at the bottom
10 if persons are having trouble following along.
11 You will see a bullet referred to as question 104,
12 the first bullet on page 4. There again is a
13 statement from a preamble:

14 "The cumulative effects assessment
15 appears to be deficient, the
16 methodology may be flawed."

17 And one notes that a response to this particular
18 question, a critical question in our client's
19 submission, has not been yet attempted. But
20 that's a key issue from our client's perspective.

21 At this late date, if we don't have,
22 certainly to whoever wrote this information
23 request, a satisfactory cumulative effect
24 analysis, that should be of pressing concern to
25 all parties.

1 On page 5 at the top, one of my
2 favorite information requests by the Commission,
3 20(a), requesting a detailed community health
4 assessment. Why would we want such a thing?
5 Well, the question puts it aptly, with the
6 objective of identifying and mitigating potential
7 adverse social effects, while also identifying
8 community socio-economic and health benefits, and
9 2, opportunities for local residents. The two key
10 objectives of community health assessment and
11 requesting the community health assessment. Not
12 to say that it would all be negative for Manitoba
13 Hydro, there is a lot of opportunities presented
14 by this project, but they are not presented as
15 part of a community health assessment.

16 So there is the request. Hydro has
17 presented a commentary on that, and I will be
18 quite quick, Hydro has provided a commentary on
19 that, but our interpretation of that answer is
20 they are declining to provide a detailed community
21 health assessment. And I pulled out selectively a
22 quote from it.

23 "It would not make sense and it is not
24 feasible."

25 That would have been, as a threshold document my

1 clients could have expected to have seen that back
2 when this proceeding started. They would expect
3 to see it today. And they wonder seriously how
4 this process can continue without it. And not to
5 say that this would be an entirely negative
6 document, in fact, in some it might be favorable
7 to Hydro's position, but it is not there. And it
8 is generally accepted that's a central process.

9 Just -- I have identified on behalf of
10 our clients key missing studies as they currently
11 are, key missing analysis. At the bottom of 5,
12 page 6, we just do want to identify for the panel
13 that there is also key missing baseline
14 information, apart from the load forecast. We
15 have requested, and these are information requests
16 that were presented to the Clean Environment
17 Commission, we are not sure if they will be
18 forwarded or not, but we certainly on behalf of
19 our clients have requested them, baseline air
20 quality data metrics for nitrous oxide,
21 particulate matter, issues like that, basic
22 information one would have expected to have been
23 filed long ago.

24 Similarly at the top of page 7, other
25 relevant baseline health indices, including

1 cancer, heart and respiratory disease rates, one
2 you would normally expect to be filed much, much
3 sooner.

4 At the top of page 8 is probably the
5 last bullet that I want to draw to the Panel's
6 attention in my oral comments. The proposed
7 information request of CAC, and again the
8 preamble, and we bolded the first paragraph,
9 echoing the words of a prior Commission preamble:

10 "The cumulative effects assessment is
11 very vague, generic and qualitative,
12 et cetera, and certainly Hydro's
13 conclusions are not defensible on the
14 basis of the CEA."

15 THE CHAIRMAN: Where did this come
16 from?

17 MR. WILLIAMS: This is an information
18 request posed to the Clean Environment Commission,
19 the number that's been presented to the
20 Commission, that's a preamble from it. So
21 clearly, as I said just a few minutes ago, that
22 has not been forwarded to Hydro. This is a CAC
23 conclusion based on the advice of our experts.

24 So from our client's perspective,
25 there is at least six pieces of core information

1 outstanding at this late date. This is not set
2 out in our outline -- I will just finish this
3 orally, Mr. Chairman -- a quantitative cumulative
4 effects analysis that realistically addresses the
5 cumulative impacts of this project. So that's a
6 quantitative cumulative effects analysis.

7 Secondly, a human health risk
8 assessment that appropriately identifies and
9 assesses sources of health risk other than EMF,
10 which has been well done by Hydro to its credit,
11 in our client's view. Baseline air quality data
12 metrics, which I articulated before. Certainly
13 from our client's perspective we are still missing
14 in material areas an in-depth and reliable
15 quantitative assessment of biophysical impacts. We
16 still don't have, from our client's perspective,
17 number 5, an analytic basis for Hydro's costing
18 estimates, and item 6 which I averted to earlier,
19 the load forecast and power resource plans on
20 which Hydro relies.

21 So from our client's perspective the
22 original filing contains deficiencies, the record
23 in its current state contains sufficient
24 deficiencies. We are not confident from our
25 client's perspective that Hydro can correct this

1 record by July 31st. Our clients are frankly
2 tempted to make a motion for an adjournment for
3 today, made returnable for today. And then my
4 client instructed me quite properly to give Hydro
5 its chance, let's see where we are on July 31st.

6 So if we get a more comprehensive
7 filing as of July 31st, our clients still have the
8 perspective that really we will almost be at the
9 initial filing stage, and we haven't truly had a
10 true first round of information requests. So that
11 raises, from our client's perspective, two
12 fundamental questions in terms of the state of the
13 EIS -- three I guess. Can the record be
14 corrected? If it can't by July 31st, what does
15 that say, secondly, about the ability of funded
16 participants and others to know the case they have
17 to meet, to develop their case theory, and to
18 prepare their evidence and submissions by mid
19 September? And I will confess to the Board that I
20 certainly had a sleepless night earlier this week
21 in the sense of, can we actually fulfill our
22 funding obligations within the hearing and the
23 record as it currently stands? Are we able to do
24 what we said we would do for the Commission?
25 Based on the state of the record today, our

1 clients would say no. Maybe the record will be
2 resurrected as of July 31st.

3 That begs the question of the ability
4 of the Commission to fulfill its mandate. Again,
5 from our client's perspective, we see three
6 implications from those wide ranging comments.
7 One, unless the record is substantially better as
8 of July 31st, that this Commission is likely to
9 face a motion for adjournment. Secondly,
10 certainly there will be a motion from our clients
11 for further and better disclosure. And third,
12 that our clients will be seeking a true first
13 round of information requests, regardless of what
14 it does with the other two matters. Because from
15 our client's perspective, July 20th or July 19th,
16 still not even having core load information, they
17 are expecting that there will be material
18 information requests which they would consider to
19 be true first round information requests.

20 I apologize for the length, Mr.
21 Chairman, but I hope those comments are helpful.

22 THE CHAIRMAN: Thank you. You don't
23 need to apologize for the length, we are not on
24 any strict time lines today, as opposed to during
25 the hearings.

1 Anyone else wish to comment in this
2 regard?

3 MR. MERONEK: Thank you, Mr. Chairman.
4 I clearly am not as prepared as Mr. Williams. I
5 would apologize, but as the Commission is well
6 aware, we are kind of Johnny-come-lately to the
7 process. We've barely been at it for about six
8 weeks. And no disrespect to the Commission, the
9 funding has really required us to recalibrate our
10 experts and it has taken a long time to get them
11 on board in a restructured way.

12 So what we have done is, and I have
13 emailed a set of information requests this
14 morning, which probably you haven't had a chance
15 to look at it, I would be surprised if you did,
16 plus a letter outlining some deficiencies and
17 omissions.

18 I would echo Mr. Williams' remarks
19 with respect to the state of the record. From our
20 perspective of having just engaged our routing
21 expert from Alberta, Mr. Berean (ph), he has
22 indicated to me, and I won't read it in the
23 record, but it is certainly in our letter of
24 July 19, has indicated at least three routing
25 omissions in terms of lack of information for the

1 Commission to be able to really determine what the
2 impact of these transmission lines are,
3 particularly on our clients who are landowners and
4 farmers. In a nutshell, his assessment is, you
5 can't just draw a line through a map and be
6 satisfied that you have hit -- that you have
7 anywhere close to the information that you require
8 in order to determine the impact, you need much
9 more information, including aerial maps and
10 precise locations of towers and matters of that
11 nature as an integral and fundamental part of the
12 filing. And he was quite surprised that that was
13 omitted.

14 So I just cobble that on to what
15 Mr. Williams said in terms of the state of the
16 record.

17 Further examples that are of
18 consequence to us really relate to a lot of the
19 technical reports. In the EIS there were some two
20 and a half pages or more of technical reports.
21 And the Commission asked a couple of very good
22 questions. One is, what was the reliance on those
23 reports, if any? Because we all know that they
24 were submitted in November of 2011, and the EIS
25 was submitted to Conservation on December 1. If

1 you are a speed reader, I suppose, and you can
2 discern all of those technical reports and
3 regurgitate it into a final statement, that's one
4 thing. But it begged a lot of questions, and we
5 received fairly glib answers.

6 And what the Commission also wanted to
7 ascertain is what conclusions because -- what
8 conclusions, if any, were relied upon by Manitoba
9 Hydro? But for one technical report dealing with
10 greenhouse emissions, that wasn't answered. So we
11 will be wasting our powder in information requests
12 re-asking the questions and getting the
13 information, and then being stuck with not being
14 able to ask any more questions.

15 Mr. Williams' client has asked for
16 substantial relevant technical reports dealing
17 with the issue of the potential security problems
18 with respect to Bipole I and Bipole II. And he
19 can quote better than I, but those technical
20 reports were asked for a long time ago. They have
21 been reasked again on July 11, and we in our
22 latest IRs are asking for those reports and other
23 reports too. These are not reports with a lot of
24 pictures and big print. These are serious
25 technical reports which go to the issue of what is

1 the state of the record. And it is not
2 appropriate and it is not -- in my experience in
3 regulatory matters -- not sufficient to have them
4 being asked for in information requests and then
5 just left on the record.

6 We have filed today as well about nine
7 pages of information requests dealing with the
8 needs for and alternatives to, outside of the east
9 side conundrum, which are very technical. And the
10 question could be, well, why didn't you ask for
11 them before? And one of the answers is, well, the
12 deadline isn't until tomorrow; and secondly, I
13 certainly wasn't in a position to be able to vet
14 them and understand why they were being submitted.
15 But having said that, they are very, very
16 technical, they are very precise, and they beg a
17 lot of information which will require a lot more
18 elaboration in order for our experts to be able to
19 respond appropriately in terms of meeting our
20 theory of the case.

21 So I don't think it comes as any
22 surprise to the Commission that we are of the view
23 that this record is not complete, and that an
24 information request process will not correct the
25 dilemma that we are faced with.

1 And at the very least, the other thing
2 I would like to say is, I haven't assessed the
3 number of information requests that haven't been
4 answered, but I can tell you that of the ones that
5 we have seen, there are a lot of them where there
6 are quantitative questions posed and qualitative
7 answers given, such as a modest impact, or not
8 significant impact, or in absolute value terms it
9 is not great. In our respectful submission,
10 that's not adequate in completing the record so
11 that the Commission can make pertinent
12 recommendations to the Minister.

13 So we subscribe to the comments of
14 Mr. Williams, and likewise are very concerned
15 about the state of the record as it presently
16 stands. Thank you.

17 THE CHAIRMAN: Thank you, Mr. Meronek.
18 Mr. Dawson?

19 MR. DAWSON: If I can follow upon
20 Mr. Meronek who describes himself as
21 Johnny-come-lately and introduce myself as
22 Johnny-come-today, it occurs to me that the
23 discussion that we are having now very much
24 relates to ultimately the way in which this
25 Commission wishes to portray itself. An

1 unflattering and -- an unflattering interpretation
2 of the Environment Act and the mandate that this
3 Commission has could see it really as nothing more
4 than a body that collects anecdotal comments and
5 is essentially a gossipmonger that gathers in
6 stories from people as to how they are going to be
7 impacted by the way in which an environmental
8 project will unfold, and then it sends off its
9 view on these gossipy comments to the Minister and
10 that's the end of it. And if that's what this
11 Commission is about, and not for a moment do I
12 think the Commission thinks it is that, nor do I
13 think that anybody in this room does, then
14 probably it is all right just to say that there is
15 a deadline that we have to meet, there will be
16 hearings on a certain date, come forth, tell your
17 story, and we will muddle through and make our
18 recommendations as a Commission to the Minister.
19 But the reality, and I'm sure that the Commission
20 members and everyone in this room agrees that the
21 Clean Environment Commission fulfills a
22 significant and essential role in the overall
23 environmental legislative framework that the
24 Government of Manitoba has put forward.

25 In order for this Commission to do its

1 job, it needs to be sure that those who are
2 appearing before it are in turn doing their job.
3 As someone who sometimes myself sits on
4 administrative tribunals, one is always sensitive
5 not only to doing the right thing but also
6 ensuring that the right thing is seen to be done.
7 And I will suggest that where a number of
8 participants, and in this room it seems that there
9 are at least four of them, Mr. Williams,
10 Mr. Meronek, and Mr. Madden on the phone, and
11 indeed Peguis, I'm appearing on behalf of Peguis,
12 who have concerns about the process. And I would
13 suggest, therefore, that where reasonable parties
14 have substantive concerns, the onus effectively
15 shifts. It should not be these parties who are
16 coming before the Commission to say, in order for
17 the Commission to do its job and to preserve its
18 reputation, we need an adjournment, or the quality
19 of the record ought to be improved. I'm
20 suggesting that the Commission itself ought to be
21 taking the lead and saying that given that there
22 are these reasonable concerns that have been
23 voiced, and some of them have been highlighted
24 only today, why is it that this hearing must
25 proceed at the specific pace that had originally

1 been proposed? Where is the great urgency that
2 comes forward?

3 Now, of course, Hydro will tell us
4 that there is a business requirement. If business
5 efficacy ruled the day, justice would almost never
6 be done. And the practical reality is, Hydro, if
7 it knew its business case, could have come forward
8 much earlier and began this process.

9 Participants who are helping the
10 Commission to discharge its statutory function
11 should not be precluded from doing the job that
12 the Commission requires and expects participants
13 to do. We are not here merely to provide flimsy
14 guesses, anecdotal evidence, gossip. The
15 Commission is not merely a collector and
16 commentator upon the casual comments that it
17 happens to have overheard. It is an
18 administrative tribunal that fulfills a
19 significant, important and essential function.
20 And I will suggest that the correct approach in
21 light of the comments that we have heard today,
22 and earlier, would be to say to Hydro, why, why
23 must we proceed at this particular pace? And I
24 would hope that the Commission would do that.

25 And I note, practically speaking, that

1 the concerns over motions in our earlier topic of
2 discussion would entirely evaporate. Because it
3 seems that all of the show stopping motions have
4 to do with the inability of participants to
5 participate effectively and help the Commission do
6 its job.

7 Thank you, Mr. Chairman.

8 THE CHAIRMAN: Thank you, Mr. Dawson.
9 Yes, Mr. Madden?

10 MR. MADDEN: I would echo what the
11 other participants have said so far. I think we
12 set out in various letters to the Commission, as
13 well as Manitoba Conservation, our concerns about
14 what we see as a preliminary threshold issue, does
15 the EIS in its current state meet the requirements
16 set out by the June 2010 scoping document? And we
17 would say implicitly by some of the -- by the
18 Commission's letter back to the Manitoba Metis
19 Federation, that clearly that hasn't been met,
20 there has been no determination on it. And we say
21 it is a fundamental issue of procedural fairness.

22 And this happens quite often in joint
23 review panels as well as other regulatory
24 proceedings, is that a sufficiency analysis is
25 done prior to the IR process in order to ensure

1 that all of the parties are asking questions on a
2 full and complete record. And what we do not have
3 in this situation is any determination or
4 understanding of whether the CEC or Manitoba
5 Conservation is of a mind that the current EIS
6 filled by Hydro meets that scoping document. And
7 we think that's a fundamental threshold issue that
8 needs a determination. And we can not sift
9 through responses from IRs to somehow make a
10 determination or to guess whether those IRs have
11 fulfilled the initial requirements set out by the
12 scoping document. The scoping document needs to
13 mean something, and we have a question on what is
14 the EIS that's actually being reviewed? We
15 recognize that environmental assessment is an
16 iterative process. But on basic, well established
17 legal principles on environmental assessment, as
18 well as on procedural fairness, the parties need
19 to know what record our experts, as well as our
20 clients, are looking at. And I think, as I have
21 outlined in a series of letters, that's a
22 condition precedent prior to proceeding further in
23 this review process. Because it puts us at a
24 completely unfair -- in an unfair position to have
25 to somehow guess whether those deficiencies have

1 been met through the IRs that have been posed to
2 Manitoba Hydro. And I guess it may be debatable,
3 and if at the end of the day the CEC and Manitoba
4 Conservation say no, the EIS that was filed by
5 Hydro, we think it meets the requirements of the
6 scoping document, then that's a debate that we may
7 have, but a determination on that needs to be
8 made. We need to have an understanding of, is
9 that scoping document irrelevant.

10 Now we are in a unique sort of
11 position of there isn't comprehensive
12 environmental assessment legislation in Manitoba
13 to provide us answers on this, but we think from a
14 natural justice, procedural fairness basis, that
15 the parties need to know whether the regulators
16 themselves or the decision makers believe that the
17 EIS in its current form is sufficient.

18 Moving on from that first point is why
19 we actually think that a determination needs to be
20 made prior to continuing on. And we would hope
21 that the CEC, on its own volition, would adjourn
22 until it made a determination, and all parties,
23 based upon Hydro's responses on July 31st, of
24 whether the EIS in its current form meets the
25 scoping document requirements.

1 On the second issue that the MMF
2 brings forward is that one of the reasons we
3 believe the EIS in its current form is
4 insufficient and doesn't meet the requirements of
5 the scoping document is because it does not
6 address any of the impact -- it does not even
7 identify the Metis community correctly. And we
8 believe, based upon a reading of the EIS, that
9 that was requirement of Hydro to include in the
10 EIS.

11 And I'm not going to belabour that
12 point, I think we have set it out in letters, and
13 we have also put it in our information requests.
14 And we think that until that information is
15 actually gathered and provided to the CEC, as well
16 as the Crown, that the review process shouldn't
17 proceed.

18 And going back to I think the points
19 that others have brought, we will be moving
20 forward on a motion, but we would hope that based
21 upon our submissions today and based upon even
22 the, I think, concerns that the Commission has
23 raised itself in various letters or
24 interrogatories, that an adjournment of this
25 matter needs to take place in order to get a full

1 understanding and appreciation of what the record
2 is, so that everyone can participate fairly in an
3 informed and intelligent manner in this assessment
4 process. And I think those are our two key
5 points.

6 THE CHAIRMAN: Thank you, Mr. Madden.
7 Thank you. Any other comments? Ms. Whelan Enns?

8 MS. WHELAN ENNS: Gail Whelan Enns.
9 Again, not a lawyer, but a quick response on some
10 of the things that have been said with regards to
11 the EIS. And here is a very basic example that is
12 evident in what materials we have received to
13 date, and that is the preferred route, if you look
14 at the map scale, not being the topic of the
15 moment, if you look at the maps, the preferred
16 route, good portions of it, I don't know, I want
17 to say more than a quarter, maybe as much as a
18 third or 40 per cent, is against or at the outside
19 edge of the original study area. So logically
20 this might mean that we are looking at a preferred
21 corridor and an EIS supposedly about the preferred
22 corridor where a considerable amount of data and
23 information is missing, because this information
24 is only about the study area. So if you move it
25 practically to the edge and outside of the study

1 area, what have we received?

2 I wanted to generally thank CAC and
3 Byron Williams for the product they brought us and
4 the information they brought us today, to say that
5 Manitoba Wildlands agrees with the position and
6 what they have had to say, and we certainly agree
7 with those questions and responses or non
8 responses, including those that came from our
9 office.

10 There has been a little bit of comment
11 from me previously, and this goes to capacity to
12 deal with the material and the IR process, but we
13 really do need an answer from the utility about
14 what the variances are, when you aggregate six,
15 eight or ten sets of data in desk studies and
16 technical studies. It is the same comment, if you
17 will, the same concern as finding ourselves with a
18 preferred corridor that is in many areas right up
19 against the outside of the study area. We need to
20 know whether your conclusions, combining these
21 many sets of data, much of which is private and
22 not available for analysis, we need to know
23 whether your conclusions are a 10 per cent
24 variance or a 40 per cent variance, or whether
25 that varies depending on which data you use for

1 different conclusions. It is impossible to tell.

2 One of the concerns in our office, and
3 it does have a little bit to do with Manitoba
4 Wildlands not being funded and just trying to keep
5 up, is that this IR deadline of the 20th of July
6 is right after today, and we have new material
7 today. So aside from the larger issues, and they
8 are significant in terms of scheduling and so on,
9 we would respectfully suggest that the 20th of
10 July deadline be moved back, even if that's for
11 two or three or four days. Okay. And I won't go
12 into that, but there it is. We keep receiving
13 stuff at a late date, have to look at the IRs that
14 have already been asked before you finish what you
15 are going to file.

16 It is I think fairly important for all
17 of us to know when Manitoba Hydro is going to
18 respond to the supplemental filing requests from
19 the EALB in Manitoba Conservation. So we are well
20 past two months since that request for
21 supplemental filing to the EIS was made, and there
22 has been no response. So we have chunks of the
23 EIS that we actually haven't seen, again not to
24 discount or contradict anything that's been said
25 so far with respect to the larger issues.

1 And I also wanted to agree with, again
2 non-lawyer speaking here, but I wanted to agree
3 with everything that's been said about the scoping
4 document. This is the first class 3 development
5 under the Environment Act in Manitoba that has
6 been handled where the scoping document exercise
7 in 2010, starting in January or so, was in fact
8 the tool, if you will, the mechanism to arrive at
9 the standards for the contents and the delivery of
10 the environmental impact statements for a class 3
11 project. It is the first time, and it sounds from
12 the other participants like it is not necessarily
13 a success. We truly need to know. So I agree
14 completely with Mr. Madden's questions. And I
15 would like to point out the really obvious silly
16 thing, and that is the scoping document is clearly
17 referenced in the EIS, so I guess it is fair game
18 for questions, but the larger issues are what is
19 before us now.

20 I'm going to stop, I think -- I'm
21 trying to figure out, Mr. Chair, whether it is
22 also worth putting into the record -- and I guess
23 I'm deciding that it is worth putting into the
24 record that a decision has been made, action not
25 yet occurred, but a decision has been made by

1 Manitoba Conservation for a further supplemental
2 filing request regarding the Bipole III EIS to
3 Manitoba Hydro. Now, all I can -- this is why I
4 hesitate, but all I can say is that I was in a
5 formal meeting with the director of Aboriginal
6 consultations with respect to Bipole III for the
7 Manitoba Government last Friday morning and we
8 were informed -- the nature of the meeting I'm
9 sorry is privileged -- but we were informed that
10 there will be a further supplemental filing coming
11 forward. And given who was informing us of that,
12 I think it is a reasonable assumption that that
13 supplemental filing request for Manitoba Hydro
14 will have to do with the need to complete the EIS
15 information with respect to Metis communities,
16 Aboriginal peoples, First Nations, and the
17 anywhere from 20 to 30 plus communities affected
18 by Bipole III. So basically there is big chunks
19 of the EIS we haven't seen yet.

20 Thank you.

21 THE CHAIRMAN: Thank you,
22 Ms. Whelan Enns. Mr. Beddome.

23 MR. BEDDOME: James Beddome for the
24 record, Green Party of Manitoba. I want to be
25 supportive of the submission of the Consumers

1 Association of Manitoba and also the numerous
2 submissions throughout. I think that there is a
3 need to bump back the dates. I'm not going to
4 belabour the point. I think it has been well
5 established by almost everyone here today that
6 there are a number of places where there is a lack
7 of information, and I comment on that when we set
8 handing out the CEC stuff. We don't know the
9 siting of the towers or if there is further
10 studied. In terms of the Teshmont Consulting
11 reports and other reports that were given out
12 today, I think they are likely to stem some
13 information requests from the Green Party of
14 Manitoba's approach. So once again I second Ms.
15 Whelan Enns's comments that we might need to bump
16 back this 19th deadline, because we just got the
17 Teshmont Consultant reports, and they might stem
18 some questions, but obviously it will take time to
19 review them.

20 There are a number of places where
21 that's a continuing pattern. We heard that
22 earlier in the discussion over First Nation
23 consultation, the consultation report is going to
24 come after the hearings. I think what we have is
25 a bit of an issue of sequence, and that some of

1 this beginning information needs to be laid out
2 first before the Commission can really move
3 forward very well. And to that I would add in the
4 July 6th edition of the Winnipeg Free Press, Bruce
5 Owen was able to get a quote from Dave Chomiak
6 that there is going to be an NFAT analysis that is
7 going to look at Bipole III, Keeyask and Conawapa
8 together. They just haven't announced it yet.

9 I think that's good, but we don't know
10 when that process is going to be. I think that
11 process could inform this. As we tried to make
12 clear in our comments to the Environmental
13 Licensing Branch that we circulated to the
14 participants here, you have to look at the whole
15 picture together, and if I can use an analogy, you
16 wouldn't buy the property, lay the foundation on a
17 house and then not complete building. If you are
18 going to lay the foundation, you are essentially
19 making the decision to build the entire house.
20 And I think that's what you could look at Bipole
21 III as being in combination with Conawapa and
22 Keeyask, at least to a certain extent.

23 And that brings sort of one of our
24 central concerns that I did raise in the May 10
25 hearing, and I haven't yet got an answer, but when

1 I asked about market information, and we see the
2 Consumers Association talk about the need for the
3 power resource plan, I don't have the time to be
4 as detailed as them with this great nine page
5 report, but your response was in terms of the
6 economic information, I guess if you could find
7 market information that dealt with the Environment
8 Impact Statement, then it is a valid point. So
9 the problem, Mr. Chairman, is that you made these
10 comments too, if it is in the EIS it is relevant.
11 But if I can read from the EIS here:

12 The preparation of the EIS required
13 the assembly and assessment of a wide
14 variety of studies and opinions. Some
15 of them provided by specialists
16 retained by Manitoba Hydro, some of
17 them provided by citizens of Manitoba
18 at public forums, some of them
19 provided through meetings and
20 contractual arrangements with
21 aboriginal communities, First nations
22 and the Manitoba Metis Federation.
23 There was no ready consensus on many
24 important issues. Manitoba Hydro has
25 attempted in this EIS to set out

1 fairly the opinions given to it, but
2 (and emphasis added here) the EIS, in
3 the end, is Manitoba Hydro's
4 "statement", about the project and it
5 reflects Manitoba Hydro's judgment
6 after weighing opinions and evidence
7 on the issues.

8 So the point being, and of course
9 Manitoba Hydro is going to do this, why wouldn't
10 they, you are going to retain a report, you are
11 going to write a report in a way that's favorable
12 to you. I would question the competency of their
13 consultants if it wasn't put forward in such a
14 way. But then to just to rely on the EIS
15 needlessly limits the scope, so that the broader
16 issues can't necessarily be tried.

17 Further to Mr. Dawson's point, the
18 role of this Commission is to simply offer
19 recommendations to the Minister, it doesn't make
20 formal decisions, and I would note that the
21 Commission, inside your terms of reference, the
22 Commission may at any time request that the
23 Minister of Conservation review or clarify these
24 terms of reference. So you may want to look into
25 what this larger NFAT analysis that Mr. Chomiak

1 recently announced is going to be, and it may be
2 better to schedule it first before we move forward
3 with these hearings, it would also allow time for
4 perhaps the consultation report to be closer to a
5 finalized position where other participants can
6 review it.

7 And I think that's really one of the
8 most vital aspects in the review. And I guess I
9 will be forthright, I have been contemplating a
10 motion in regards to that issue in terms of what
11 is the relevance, what is germane and what is not
12 germane. And it has to a certain extent limited
13 that we put any information requests, because we
14 have kind of been contemplating it, and just to
15 give one quick example; so your comment was it has
16 to be in the EIS. When we had applied for funding
17 there were a couple of issues that we tried and
18 your response says that some of them were outside
19 of the scope. One of them, I am not saying that
20 we are necessarily going to pursue, was we
21 questioned whether a review under the Canadian
22 Environmental Assessment Act should or should not
23 be required. Now that's referenced explicitly in
24 the EIS as well as in the scoping document.
25 However, market information is not.

1 Now your letter did indicate to the
2 Green Party of Manitoba, which one of our issues
3 we identified as outside of the scope. And I am
4 not saying that I don't understand the logic
5 behind saying, that's a Federal licensing
6 decision, not a Provincial licensing decision and
7 we are a Provincial body, I certainly do, but it
8 means the guidance you have given us is if it is
9 in the EIS it is relevant, and if it not it isn't,
10 doesn't seem to comport with the very reality that
11 I said in terms of what about the larger economic
12 issues that are outside of the EIS.

13 I think that more or less concludes
14 it, but just I think bumping back the hearings
15 would make sense. I would like us to maybe
16 consider trying to find a date for myself that
17 would help in my own scheduling. I'm currently
18 arranging my schedule to be available for these
19 hearings, so if there is going to be an
20 adjournment motion it could make considerable more
21 difficulties in my completing my law course work.

22 THE CHAIRMAN: Thank you, Mr. Beddome.
23 I would just like to note that both Mr. Beddome
24 and Mr. Dawson have noted that in the statute the
25 Clean Environment Commission is just a

1 recommendation body, that the Minister will take
2 our advice and then do with it as he will. I
3 would point out that historically the Minister has
4 accepted virtually all of our recommendations. It
5 is a rare day when our recommendations don't go
6 into effect as if they were mandatory. The one
7 that comes to mind that wasn't included in the
8 licence related to recreational provisions on the
9 floodway. It was not something that substantively
10 altered the way the floodway operated. So
11 although the statute does say that we make
12 recommendations to the Minister, we do carry a
13 significant amount of weight. In fact, probably
14 one heck of a lot.

15 Any other comments on this?

16 Mr. Williams?

17 MR. WILLIAMS: Just a very quick point
18 of clarification. The Green Party referred to the
19 comment attributed to the Minister in the Free
20 Press. My understanding is that subsequently his
21 spokesperson retracted the Bipole NFAT part of
22 that statement. Because I was quite excited when
23 I originally saw that, and I think that's been,
24 I'm not sure it has become public but I think it
25 has been retracted.

1 THE CHAIRMAN: Thank you for that
2 clarification. Any other comments on this? I'm
3 sure that Hydro may want to respond at some point,
4 but before they do, does anybody have anything to
5 add to this? Mr. Bettner?

6 MR. BETTNER: Thank you, Mr. Chairman,
7 Bob Bettner for the record. I kind of feel like
8 somebody who has been hit by eight shotgun blasts
9 almost simultaneously right now. But I guess to
10 start with where we are, the current state of the
11 EIS, just for the record, the material which was
12 distributed now brings us to 188 responses to
13 questions that have been vetted by the Commission
14 and 46 responses to the TAC, along with the
15 reports that had been requested. By our count,
16 based on what has been sent to us to date, there
17 are 117 still to come, most of which have been
18 completed and are just being reviewed. And we are
19 confident that we will have all of those responses
20 by the original July 31st deadline.

21 Now what happens after today in terms
22 of what we understand are the number of questions
23 that you may have received, and the number of sub
24 parts and the detail within them, we will have to
25 wait and see what comes out. We suspect that

1 there could be as many as 350 more questions that
2 have come your way.

3 Just to go back to some of the
4 comments -- and there should be, we also will be
5 filing by July 31st as well a supplemental on
6 caribou, some errata, and additional material on
7 the socio-economic aspects.

8 Cumulative effects is still being
9 vetted, but we expect if there is something to
10 come, it will come shortly after that date.

11 We are also mindful of the fact that
12 in the Commission's process there is provision for
13 a second round of IRs flowing from the materials
14 that have been filed, which should move to deal
15 with a number of the concerns that have been
16 raised.

17 It occurs to me as well that in this
18 context each of the parties around the table has
19 specific areas of interest. And I'm not sure that
20 it is possible for anyone to satisfy all of the
21 questions and all of the requirements that those
22 interested parties will have. And that, sir, I
23 think is the reason we have the hearing, and
24 that's the reason that you and your fellow
25 commissioners are impaneled, is to weigh the

1 competing points of view and deal with those
2 issues.

3 As I listened to everyone around the
4 table, it is obvious that there are significant
5 divergences of viewpoint and significant
6 divergences of what would constitute satisfactory
7 information in the context of a Bipole III
8 project. I would suggest that the Commission, and
9 I'm certain that they will be, will be mindful of
10 the fact that there is -- there will be a desire
11 and almost a natural tendency to expand the scope
12 of the hearing to a number of other issues that
13 may not specifically relate to the Bipole III
14 project, which I would note has not been advanced
15 in conjunction with any generation activity, but
16 rather as a matter of system integrity and
17 reliability.

18 And I think from the perspective of
19 one of -- a topic that's near and dear to
20 Mr. Williams' heart, that being the NFAT
21 proceedings, and I'm sure he was excited to read
22 that comment in the paper as well. I'm not sure
23 that in this case, and the manner -- the basis on
24 which this project is advanced stands on the same
25 footing at all as a generation project which is

1 being driven by external factors and has to
2 balance a number of competing economic factors.
3 But the scope of that -- the scope of our
4 discussion on that will ultimately be in your
5 hands.

6 We have -- just to pick up on a
7 comment that you made about your recommendations,
8 Mr. Chairman, that is my recollection of the
9 record as well, although I do recall that there
10 were several recommendations emanating from
11 Wuskwatim which the government declined to act on,
12 which I think it felt were not directly relevant
13 to the Wuskwatim generating project, but that's
14 simply my recollection.

15 THE CHAIRMAN: I think you may be
16 right that there were, and they have done that on
17 other hearings if they are not relevant to the
18 environmental licence. And we often will make
19 recommendations that we note are not in licensing
20 recommendations. Wuskwatim also had that strange
21 bird where we had the PUB, plus the CEC hearings
22 under the same umbrella. We made recommendations
23 on the PUB side that were not included in the
24 environmental licence because they didn't directly
25 relate to the environmental licence. But I think

1 anything that was relevant to the environmental
2 licence was included, if I recall.

3 MR. BETTNER: That's quite correct,
4 Mr. Chairman, but I wanted to make sure that
5 everybody was alive to that distinction.

6 THE CHAIRMAN: Yes, I think in the
7 Wuskwatim report we didn't know that some
8 recommendations were non-licensing That is now a
9 habit in our reports.

10 MR. BETTNER: I think we will be --
11 you are being requested by virtually every party
12 here to take on the role of the arbiter of the
13 sufficiency of the EIS. And following from my
14 previous comment about the ability to satisfy all
15 parties, I think one of the things that will
16 happen is that with the information request
17 process, because it is not possible to anticipate,
18 you know, everybody's issue in writing an EIS,
19 just the same as one doesn't try and anticipate
20 the argument of your opponent, that through that
21 process, and if we have to get there, motions
22 pertaining to better disclosure -- we will get
23 there, and there will be a record that will be
24 sufficient for the Commission to proceed with its
25 work. Whether that is satisfactory to the

1 participants is a completely different question
2 and goes to the root of the hearing.

3 THE CHAIRMAN: That's the job of the
4 five us at the head of the table.

5 MR. BETTNER: Exactly, Mr. Chairman.

6 THE CHAIRMAN: Mr. Madden, could you
7 hold for a moment, please?

8 MR. MADDEN: Sure.

9 MR. BETTNER: Thank you, Mr. Chairman.
10 Being mindful of the policy of the Provincial
11 Government on consultation and the analysis of
12 Treaty and Aboriginal rights, I think those issues
13 have to be directed to the Crown consultation
14 unit. We could spend forever, frankly,
15 Mr. Chairman, debating issues of Treaty and
16 Aboriginal rights and impacts, and how those
17 rights are impacted.

18 From our perspective, the job in an
19 EIS is to investigate and comment upon and draw
20 some conclusions on how will the proposed activity
21 impact the activities of individuals within the
22 study area. And the issue of the rights is the
23 matter to be dealt with by the Crown in its
24 consultation, and as you have observed, informed
25 by the findings of the Commission and the material

1 in the EIS on the recommendations that you forward
2 to them.

3 I don't think I will rise to -- I am
4 sorry, Mr. Madden -- I don't think I am going to,
5 if I can describe it that way, take the bait from
6 Mr. Williams in the speech that he filed this
7 morning. I would like to go back and actually
8 look at the source documents and where the
9 emphasis is added and the interpretation that he
10 has put on a number of things. So we have it, we
11 will look at it, but I'm not going to debate the
12 issues with him because some of them are quite
13 frankly philosophical.

14 THE CHAIRMAN: Thank you. I don't
15 mean to cut you off right now, Mr. Madden, but
16 there is a need for some of us at this table to
17 have a biology break, so I would like to adjourn
18 for about five minutes, and we will come back and
19 carry on.

20 And Mr. Bettner, are you finished for
21 now?

22 MR. BETTNER: Subject to --

23 THE CHAIRMAN: We will take off with
24 Mr. Madden as soon as we return.

25 (RECESS TAKEN)

1 THE CHAIRMAN: Could we come back to
2 the table, please? Thank you.

3 Mr. Madden, we sort of rudely cut you
4 off.

5 MR. MADDEN: Thank you, Mr. Chair. I
6 just want to go back and make two points. One
7 commenting on your comment about that parties are
8 asking the CEC to make a determination about the
9 sufficiency of the EIS in relation to the scoping
10 document. I would just raise that if you go back
11 to the terms of reference that the CEC has, the
12 Minister asks for a review of the EIS.

13 I think what is unclear to us, and I
14 think that the CEC needs to operate within its
15 jurisdiction, it is not that through this
16 iterative process that it hopes to get to a
17 sufficient EIS. I think that clarification needs
18 to be sought from the Crown or from the Minister
19 of whether the Minister himself, and Manitoba
20 Conservation, is of a mind that the current EIS is
21 in a sufficient form to meet the requirements of
22 the scoping document. And I think there is clear
23 opportunity within the terms of reference for the
24 CEC to ask for clarification in relation to the
25 terms of reference.

1 And I think in the letter that we
2 wrote to -- that the Manitoba Metis Federation
3 wrote to Environmental Licensing on July 2nd, we
4 are asking that question, is when you are
5 asking -- when the Minister is asking the CEC to
6 review an EIS, what EIS is it? Is it the EIS
7 that's transmitted as of December 2011, because
8 the Minister is of the mind that that EIS meets
9 the requirements of the scoping document, or is it
10 some future iteration of the EIS based upon
11 information requests from Manitoba Conservation?
12 That lack of certainty or clarity on this issue is
13 what creates the procedural unfairness towards the
14 parties. I think it is not just a simple punting
15 it to, oh, we agree to disagree with what the EIS
16 is, we just want to know what the rules of the
17 game are. We just want to know what our experts
18 should be reviewing and we shouldn't be forced to
19 guess. That's our point.

20 It is not an issue that we have
21 philosophical differences with Manitoba Hydro
22 about what an EIS should be. The Crown, as a
23 regulator and a decision maker, has the
24 responsibility to provide fairness to the parties
25 so they know what they are reviewing. That's our

1 point.

2 And I think it shouldn't be -- it
3 can't be that it gets kicked further down the
4 road. There needs to be an understanding about
5 what we are reviewing. And we have raised this in
6 previous letters about none of us have resources
7 that can fund an iterative -- that can effectively
8 participate in an iterative process that goes on
9 forever. We want to know what is Hydro relying on
10 and does that meet the scoping document
11 requirements? We think we need an answer to that.

12 I don't actually think that the CEC
13 can provide an answer to that on its own volition.
14 I think the Minister and Manitoba Conservation
15 need to answer whether they believe that the EIS
16 of December 2011 meets the scoping document
17 requirements. That's required for fairness.

18 I think the second point, going to
19 Manitoba Hydro's discussion around that the EIS is
20 only for identifying potential impacts on
21 individuals, I think that's just a fatally flawed
22 position. And we say it for this reason:
23 Manitoba Conservation and the Crown ultimately is
24 going to be relying on the EIS to make a
25 determination about the impact of the project on

1 rights, way of life, et cetera, of Aboriginal
2 people. So this idea that Manitoba Hydro doesn't
3 have to provide that information within the EIS,
4 or contemplate it within the EIS, is fundamentally
5 incorrect. In fact, it is inconsistent with
6 letters that have come from the Crown on what the
7 EIS should be able to address. And one of the
8 letters in particular from Manitoba Hydro -- from
9 Manitoba Conservation in August of 2011, and this
10 is a direct quote from the Deputy Minister:

11 "As part of the project planning
12 process and as a requirement of
13 provincial licensing, Manitoba Hydro
14 has also advised that it will be
15 preparing an EIS that will assess
16 project impacts, including potential
17 adverse effects on the exercise of
18 Aboriginal and Treaty rights."

19 We can provide this letter, I think it has
20 actually been sent out to all Aboriginal
21 communities, it is a letter from the Deputy
22 Minister on this.

23 So that's why the MMF, and I'm sure
24 other Aboriginal groups, are meaningfully
25 participating within this process in good faith,

1 because it is a review of the EIS, and those
2 issues need to be contemplated and need to be
3 dealt with within it.

4 And if this is a slip of the pen from
5 Manitoba Conservation, or a mistake, then we need
6 to understand that. Aboriginal people can't be
7 put into the position that we are trying to find
8 the duty, it is a game of whack-a-mole, that we
9 just can't figure out who will actually deal with
10 the interest. That is unfair, and that's exactly
11 what the case law says that Aboriginal people
12 shouldn't be forced to do, is to have essentially
13 passing the buck of the duty and having no place
14 where we can actually have it meaningfully
15 addressed.

16 So I want to re-emphasize that point,
17 that we need to have clarity on this issue. And
18 quite frankly I don't agree that we could be
19 dealing with this forever. This is dealt with in
20 regulatory processes all across the country, since
21 the duty to consult and accommodate was recognized
22 by the Supreme Court of Canada in 2004. So it is
23 not sufficient to say, oh, well, we just don't
24 know how to deal with it. All we are asking for
25 is clarity on how it is going to be dealt with.

1 And then we will use that vehicle in order to make
2 sure our views are known. But it is unfair to
3 essentially not have clarity around it or to avoid
4 the discussion on it.

5 THE CHAIRMAN: Thank you, Mr. Madden.
6 A number of your questions, I'm not in a position
7 to answer. I would assume that you will be
8 getting a response to your letter to the director
9 from either the director or another representative
10 of the Minister. In respect to which EIS is under
11 review, you make a good point that the Minister
12 sends us terms of reference at a similar time when
13 the EIS is filed, but our practice has always been
14 that the EIS we are reviewing is the one that may
15 or may not have been amended and has been further
16 clarified by the proponent. So it includes the
17 IRs and any supplemental filings that come in
18 after the terms of reference are sent to us.

19 MR. MADDEN: But I don't think that's
20 clear in the terms of reference.

21 THE CHAIRMAN: No.

22 MR. MADDEN: If that's an
23 assumption -- I guess our point is that if we want
24 to challenge the issue around -- well, I guess we
25 are already in July, we are supposed to have our

1 expert reports filed by September 15. We still
2 don't know what we are essentially reviewing, what
3 we are asking our experts to review, because we
4 have no -- if they like it, if you don't like it,
5 disagree with it. This is the EIS we are
6 reviewing based upon the record that's before you
7 and, you know, if you have a disagreement with
8 that you can pursue judicial review. If not, at
9 least this is the record we are looking at, this
10 is what your experts should look at, and this is
11 what ultimately the CEC will make its
12 determination on.

13 I don't think it is a stretch to ask
14 for clarity on those issues. In fact, I think it
15 is a requirement of a quasi-judicial body to
16 provide it to the participants. They may not like
17 it, they may not agree with it, but we need
18 certainty around that before we go off and spend
19 public funds on having experts review a
20 reiteration of the EIS that may be dramatically
21 changed by a future Hydro response to an IR. That
22 does not seem pragmatic, practical, reasonable, or
23 fair.

24 THE CHAIRMAN: Well, I think our past
25 practice has been consistent and it hasn't posed a

1 problem.

2 MR. MADDEN: Well, what we are saying
3 is, it is posing us a problem. If the issue is
4 that -- Manitoba Hydro's position is that the EIS
5 in its current form doesn't have to include
6 specific information about the Metis community
7 based upon their read of the scoping document,
8 then the Manitoba Metis Federation wants to know
9 that, and we may pursue alternative remedies based
10 upon the scoping document to say someone needs to
11 look at this issue. And if it is not going to be
12 within the EIS, then how is it going to be done?
13 And we need clarity on this, you know. I know
14 your past practices may not have fully dealt with
15 it. The law has evolved, has developed, there is
16 greater understanding of what is required by
17 virtue of the duty, and we need to get clarity on
18 this issue because we can't continue to guess, it
19 is unfair.

20 THE CHAIRMAN: Well, I said earlier
21 that we are not going to debate the issue of who
22 conducts or who fulfills the Crown's duty to
23 consult at today's session. And I'm not sure what
24 more the CEC can provide you by way of
25 clarification. I know you have written to the

1 director asking for clarification in respect to
2 the scoping document and I assume you will be
3 receiving a response on that.

4 MR. MADDEN: Well, the terms of
5 reference for the panel have a clear articulation
6 that the panel can seek clarification from the
7 Minister on these issues.

8 THE CHAIRMAN: Yes.

9 MR. MADDEN: I had hoped to have
10 receipt of a letter from Manitoba Conservation
11 prior to this procedural hearing so at least we
12 would have an understanding about what the issues
13 are. We would request that the CEC make that
14 recommendation as well, and until you have an
15 answer on that issue of whether the current EIS is
16 sufficient to meet the requirements of the scoping
17 document, that this process not continue, or be
18 adjourned until you have an answer to that.
19 Because it is not fair to participants to have to
20 sift through IRs to figure out whether a scoping
21 document has been met.

22 THE CHAIRMAN: Well, in part that's
23 the purpose of this whole proceeding, including
24 our public hearings.

25 MR. MADDEN: That is not. If you read

1 your terms of reference, the requirements of this
2 proceeding is to -- and I will use the exact
3 language from the terms of reference because we
4 put it in our July 2nd letter -- is to review and
5 evaluate the -- to review and evaluate the
6 Environmental Impact Statement and the proponent's
7 public consultation summary. All we are asking
8 for is what is the Environmental Impact Statement?
9 There has to be a time when Manitoba Hydro cannot
10 add in additional iterations or modifications or
11 responses to IRs, that everyone understands this
12 is your EIS, we are going to review it and make
13 recommendations based upon whether it meets the
14 requirements or not. It can't be a completely
15 iterative process that no one has a concept of
16 what is going to come out tomorrow through an IR
17 to address these issues.

18 That is our interpretation of your
19 terms of reference. Is that -- it is not to get
20 to a final EIS that may meet requirements, it is
21 to review the EIS. And all we are asking is, what
22 is the EIS? And if the position is that the one
23 that was filed back in December 2011, with the
24 supplemental information, is the EIS in its
25 entirety, then that's fine. But we need to have

1 clarity on what we are reviewing.

2 THE CHAIRMAN: Well, I think I said
3 earlier that that is what we are reviewing, the
4 EIS as amended by the responses to IRs as well as
5 supplemental filings.

6 MR. MADDEN: And so we have no idea --
7 but that's not what your terms of reference say.

8 THE CHAIRMAN: Well, our terms of
9 reference, with all due respect, are somewhat
10 boilerplate. We want them to be not too specific
11 because we don't want the terms of reference to
12 limit our ability to conduct a full review of all
13 of the issues before us.

14 MR. MADDEN: I just do not think
15 that's a procedurally fair process to the
16 participants. In fact, the CEC in recommendation
17 7.8 in the Wuskwatim recommendations, you raised
18 it with the government saying we made
19 recommendations to enact environmental assessment
20 legislation, provide guidance to proponents,
21 consultants and practitioners. None of that has
22 been done. The parties are put in the same
23 position as they were seven years ago, and we are
24 still left with a process that is extremely
25 challenging and unfair to participants. And I

1 guess all we are asking for is clarity on that,
2 and I guess it will be a determination on what we
3 do with that. But I don't -- an EIS is not an
4 iterative process up until the final IR response
5 is received.

6 THE CHAIRMAN: Well, you know, I stand
7 to be corrected, but I think an EIS is very much
8 an iterative process. I would also note that you
9 read the recommendation from the Wuskwatim
10 hearings, and that was a recommendation that was
11 clearly not a licensing recommendation. And while
12 we can make those recommendations, we don't have
13 the power or the authority to implement them, and
14 the government for its own reasons has, at least
15 to date, not implemented that recommendation, or
16 other similar ones.

17 MR. MADDEN: And we submit that we
18 would want to have an understanding -- I guess the
19 CEC needs to make a request to the Minister to
20 provide clarification on what Environmental Impact
21 Statement is being reviewed and whether the
22 current one that's provided is sufficient to meet
23 the scoping document.

24 THE CHAIRMAN: I disagree with you
25 that we need to make that request of the Minister,

1 because this has been our standard practice. You
2 are new to the Manitoba process. I think it works
3 well and I think it works fairly.

4 MR. MADDEN: We would strongly
5 disagree, and I think that your own
6 recommendations illustrate that it probably
7 doesn't work well. Why would you make -- if it
8 was perfect, why would you make the recommendation
9 back in 2004 to essentially say, we need greater
10 clarity and guidance on these issues?

11 THE CHAIRMAN: Well, I didn't say it
12 was a perfect process, but I said given what we
13 have before us, it works well.

14 MR. MADDEN: So I guess in closing, we
15 are back to until -- we disagree with that
16 position and we await the response back from
17 Manitoba Conservation. But if that is the CEC's
18 position, that all of the information that comes
19 out from the IRs -- and I think there needs to be
20 a distinction, I think people are inflating two
21 ideas. There is a difference between an
22 Environmental Impact Statement and an
23 Environmental Assessment. And the Environmental
24 Impact Statement is what the proponent provides as
25 part of the Environmental Assessment. And we need

1 to understand what that Environmental Impact
2 Statement is.

3 And the point that I'm making is that
4 the Minister's terms of reference say that you are
5 supposed to look at the Environmental Impact
6 Statement, not a broader environmental assessment
7 that may be iterative and may add additional
8 information to that.

9 And then I guess going back to our key
10 point that was in our previous letter is that if
11 it is the position that the iterative process adds
12 to the record, and that we need to consider these
13 things as well, it is impossible for us to have
14 our expert reports done by September 15, when we
15 still don't know what the final EIS -- what the
16 final record may look like.

17 THE CHAIRMAN: Okay. We will take
18 those comments under advisement. Thank you.

19 There were a number of people who
20 indicated they wanted to speak.

21 Mr. Stevenson, I think you were first?

22 MR. SUTHERLAND: Sutherland.

23 THE CHAIRMAN: Sutherland, sorry.

24 MR. SUTHERLAND: For the record, Mike
25 Sutherland, councillor, Peguis First Nation.

1 I guess we are getting close to the
2 end of the agenda here, so I wanted to make a
3 couple of statements. The first one is reference
4 to Manitoba Hydro's representatives, section 35.
5 As you all know, and certainly First Nations know
6 that Manitoba Hydro is a subsidiary company or
7 directly related, affiliated to the Province. So
8 I don't think that section 35 is eliminated from
9 this whole process. And going along with it, that
10 we are in consultation with the Mines Branch in
11 regards to peat mining in our area. And
12 approximately three years ago, Peguis developed
13 its own consultation policy, and the Province has
14 recognized that policy, and it has been utilized
15 in the consultations that we are going through
16 right now with the peat mining process. And we
17 expect that consultation policy to be utilized in
18 this process as well, that Peguis has developed.
19 And the Province, Minister of Conservation was
20 given that policy to distribute to the rest of the
21 branches throughout the Provincial Government.

22 Mr. Chair, you talked about
23 recommendations and, you know, I think it is
24 imperative that you make those recommendations to
25 the Province, or the Minister of Conservation,

1 that section 35 be completed before this process
2 is done. You know, we talked about section 35 and
3 this whole process, and I heard around this table
4 today that it is started, but according to us
5 consultation has not started until all
6 participants, including Peguis First Nation receive
7 funding. And until today, under section 35, for
8 Bipole III, we haven't received a dime. So how
9 can consultation be started or initiated, you
10 know, when we haven't received a penny to move
11 forward, yet we are incurring debt in preparing
12 for consultation, but we haven't received
13 anything.

14 This morning I got an email in regards
15 to the participant funding for CEC, Peguis,
16 35,000. We haven't signed no contract, we haven't
17 agreed to that funding. As far as we are
18 concerned, that's quite a slap in the face to be
19 given much less than what everyone else was given.

20 I think it has to be known that
21 Peguis' traditional territory is vast. And I
22 heard it said before and it was said to me by Ruth
23 Christiansen, how does this affect Peguis First
24 Nations? Well, we all know that Bipole III starts
25 in the north and it comes down the west side of

1 the Province, but it finishes right here. And
2 this is the heart of our traditional territory.
3 And I think you have to be reminded of that. Our
4 traditional territory goes as far west as the
5 Riding Mountains, as far south as the Turtle
6 Mountains, down into the United States, Red Lake,
7 Minnesota, as far east as Sault St. Marie, and all
8 the way back up the Winnipeg River system. The
9 proof is within the archives of Manitoba as well,
10 not only with our oral and traditional gatherings,
11 but it is there.

12 And we also have a TLE notification
13 zone which has to be recognized as well. And
14 that's vast.

15 So I think there is a lot of things
16 that are happening and a lot of presumptions are
17 being made, and we want to go on record to say
18 that we are not taking that lightly. Until, you
19 know, our recommendations right now is that these
20 hearings be set aside until we deal with section
21 35 first. And we all know as soon as there is a
22 letter or any indication that you are coming into
23 our traditional territory for anything, section 35
24 is initiated, before an EIS, CEC hearings, or
25 anything else. And as far as we are concerned,

1 section 35 has been violated again and again and
2 again and has not been recognized.

3 You know, one of the things I wanted
4 to ask, Mr. Chair, is the terms of reference, who
5 developed those?

6 THE CHAIRMAN: They are developed by,
7 to my understanding, I'm not involved in the
8 developing of the terms of reference, obviously
9 they come to me after the fact. They are
10 developed by the Minister, or by officials in the
11 Minister's office.

12 MR. SUTHERLAND: Okay. And the
13 proceedings or the policy in regards to the
14 proceedings of the CEC, who developed that?

15 THE CHAIRMAN: The process guidelines?

16 MR. SUTHERLAND: Yes.

17 THE CHAIRMAN: We do those, the
18 Commission does those.

19 MR. SUTHERLAND: Do you ask for any
20 input from outside sources that are going to be
21 affected by these guidelines, like First Nations
22 or anyone else, Metis?

23 THE CHAIRMAN: No, because they are
24 really just process guidelines that govern the
25 conduct of hearings.

1 MR. SUTHERLAND: All right. Thank
2 you.

3 THE CHAIRMAN: Thank you,
4 Mr. Sutherland. Mr. Williams, I think you were
5 next.

6 MR. WILLIAMS: Just a small point of
7 clarification to a comment of my friend,
8 Mr. Bettner. I think he had some questions about
9 bolding in certain of the documents the CEC handed
10 out. And I had intended to speak to that, but if
11 I hadn't, those are Mr. Williams' editorial
12 boldings. The text itself is drawn from the
13 information requests, with exception, if you see
14 the word missing, that would be an insert from our
15 clients, and just again the interpretation of
16 whether the response has been attempted again
17 would flow from CAC Manitoba, but the text is from
18 the information requests, or preambles to.

19 My friend, Ms. Craft, my colleague,
20 Ms. Craft -- on behalf of our client we do have
21 some thoughts on the duty to consult and
22 accommodate that we could share in this process or
23 could share in writing, depending on the desires
24 of the panel.

25 THE CHAIRMAN: I think as long as it

1 is not getting into a debate or argumentative, we
2 would like to hear it.

3 MS. CRAFT: Thank you for that,
4 Mr. Chair. As is likely obvious, our clients are
5 not seeking consultation or accommodation on their
6 behalf, they are not an Aboriginal peoples and
7 don't represent any Aboriginal organizations. So
8 these comments are very much based on the comments
9 that have been made today by representative
10 organizations.

11 I think some things that the
12 Commission may want to consider when approaching
13 this consultation and accommodation question
14 that's been put squarely before the Commission,
15 without giving a lesson on the duty to consult and
16 accommodate, or going through any of the case law,
17 I think three principles are important to
18 recognize in this particular circumstance, and
19 have already been alluded to by some of the
20 parties.

21 First of all, this is a Crown duty,
22 and that's been acknowledged already this morning.
23 Some of the procedural aspects, though, of that
24 duty can be delegated, and that's something that
25 we will want to consider in this particular

1 circumstance in relation to the Commission. And
2 the third is that the potential impacts on Treaty
3 and Aboriginal rights, the goal of consultation
4 and accommodation is really to mitigate and
5 accommodate those impacts.

6 So those are the three legal
7 principles that I would ask you to keep in mind
8 when considering this. And based on the comments
9 this morning, I think there are two ways of
10 approaching this in terms of what is squarely
11 within the wheelhouse of the Clean Environment
12 Commission. And you have heard the question from
13 Mr. Dawson, is the CEC going to be entertaining
14 whether or not the duty has been discharged by the
15 Crown with respect to this particular project
16 that's being put forward? And that flows from the
17 Carrier Sekani or Rio Tinto line of cases. And
18 that question I think is squarely before the Clean
19 Environment Commission. And I think you have
20 answered it positively that you will be
21 considering whether or not that duty has been met.
22 But I think there may be another element to keep
23 in mind going forward, and I expect that this will
24 likely come up in some of the discussions around a
25 motion relating to consultation and accommodation.

1 I think this goes to what is within the Crown's
2 wheelhouse, which we started to allude to this
3 morning, and what might be delegated as a
4 procedural aspect.

5 Now, explicit delegation and implicit
6 delegation I think is at play here. And as an
7 information gathering body, the CEC may be looked
8 at to gather some of the information that will be
9 relied on for the Crown's discharge of their duty,
10 and how they are approaching the gathering of the
11 information that they are going to rely on to
12 discharge their duty. And if the CEC is going to
13 be exercising some of that function, then I think
14 strong attention has to be paid to what
15 information is being gathered through the CEC
16 process on Bipole III that relates to potential
17 impact on Treaty and Aboriginal rights, without
18 necessarily the CEC having to make determinations
19 on that. And I think that's something that has
20 been addressed in the pre-hearing conference, that
21 the CEC is not looking at making determinations,
22 or exercising accommodation measures, if that
23 falls within the Crown's wheelhouse, but to the
24 extent that the record of the CEC is going to be
25 relied on for making determinations on

1 consultation and accommodation, then we have to
2 give some particular attention to what goes on the
3 record in terms of potential impacts and the
4 information that's going to be relied on by the
5 Crown. And that might fall within that procedural
6 delegation, that duty to gather some of that
7 information.

8 So those are preliminary thoughts that
9 I'm just suggesting that the Clean Environment
10 Commission might want to think about in
11 anticipation of these potential motions relating
12 to consultation and accommodation.

13 And I will leave it at that for now.
14 Thank you, Mr. Chair.

15 THE CHAIRMAN: Thank you. Just one
16 note of clarification, we are not looking to see
17 that the Crown duty has been met, but that it is
18 being conducted. Because met would assume that it
19 is completed, whereas we have been advised that it
20 wouldn't be completed until after we get our
21 reports. Just a fine point.

22 MS. CRAFT: I expect that will be
23 discussed when the motion is put forward.

24 THE CHAIRMAN: Thank you.
25 Mr. Bettner, I think you were next.

1 MR. BETTNER: Thank you, Mr. Chairman,
2 Bob Bettner for the record.

3 Just further to Ms. Craft's comments,
4 I would, in the event there are motions pertaining
5 to Crown consultation, I would expect that the
6 Crown will be in attendance in a fairly
7 significant way.

8 THE CHAIRMAN: One would hope.

9 MR. BETTNER: Pardon me?

10 THE CHAIRMAN: One would hope.

11 MR. BETTNER: Now, and I will be
12 brief, I just want to deal with some of
13 Mr. Madden's comments about, you know, what it is
14 we are dealing with.

15 In the terms of reference delivered to
16 the Commission, the Minister of Conservation, and
17 I'm reading from the background, has decided that
18 the assessment of this project will include a
19 review by the Commission. And then under the
20 mandate of the hearings it says:

21 "The Commission shall conduct the
22 hearings in general accordance with
23 its process guidelines respecting
24 public hearings."

25 And then when you turn to those guidelines, they

1 speak explicitly to the information request
2 process, and in fact that the information
3 requests, when I look at section 2.09:

4 "Copies of the approved information
5 request as well as the responses will
6 be placed on the public record and
7 will be part of the record of the
8 proceeding."

9 So I would suggest that it is all the
10 information, it is the entire body of information
11 that's brought forward for consideration.

12 You know, the question of time lines I
13 think is our next topic on the agenda and whether
14 people are feeling pressured or squeezed, we will
15 get to.

16 THE CHAIRMAN: Thank you. And do
17 people wish to make specific comments on time
18 lines or has it has been -- it has generally been
19 part of your commentary on this part of the
20 debate. Ms. Whelan Enns?

21 MS. WHELAN ENNS: Gail Whelan Enns,
22 thank you, Mr. Chair. I was not moving as fast as
23 you, sir, so I just wanted to just make a couple
24 of quick comments in terms of IR process and what
25 is left before us. I wanted to make sure that we

1 heard Manitoba Hydro correctly, regarding
2 referring any matters to do with Aboriginal
3 consultations to the unit. And I believe I heard
4 the word unit, that would refer to the Aboriginal
5 and Northern Affairs Department, and the unit of
6 about six or eight staff there who deal with
7 Aboriginal consultations in the Province. In
8 fact, there would be one person there assigned to
9 all of this, because by cabinet minute and
10 direction, it is the Department of the Manitoba
11 Government who holds the regulatory responsibility
12 for any such project that may require the
13 obligation to consult to be triggered that
14 conducts and/or is responsible for that Aboriginal
15 consultation process.

16 So we are in an interesting dynamic in
17 terms of the structure of the Manitoba Government,
18 because in this case then the laws, acts and
19 regulations that pertain are also Manitoba
20 Conservation. So the contracting and activity
21 that's going on on section 35, et cetera, is
22 through Manitoba Conservation, not through NA.
23 And I thought that would be worth a quick comment.

24 Otherwise, I was glad to hear Manitoba
25 Hydro also refer to the common points of view and

1 the, repeat, uncommon comments from participants
2 in the room. I think that it is plausible that
3 participants will not be very divergent when it
4 comes to motions. They certainly were not through
5 the Wuskwatim process, despite the wide range and
6 variety of mandates and participants. There was
7 pretty much unison when it came to motions.

8 Otherwise I have copies here with me
9 of the May 10th request from Manitoba
10 Conservation, from the EALB, for the supplemental
11 filing on the EIS. And I think that this is a
12 matter that should be of genuine concern to all of
13 us, because we don't actually have the pieces of
14 the EIS yet. And we are two months and ten days
15 or so later in terms of a response from Manitoba
16 Hydro to this request, and required additional
17 information in a letter from the EALB under the
18 Environment Act is real. And it hasn't been
19 responded to as far as I know, you know, public
20 registry, going online taking a look yesterday,
21 those kinds of steps we can take in our office.
22 Thank you.

23 THE CHAIRMAN: Thank you.

24 Mr. Laliberte.

25 MR. LALIBERTE: Thank you, Garland

1 Laliberte.

2 I just wanted to talk a little bit
3 about, I guess it is a comment that's going to
4 bridge the agenda here between the process and
5 time lines. It is -- we first received an EIS
6 back in December that over time we realized was,
7 in our view is quite deficient. There was
8 uncertainty initially whether the technical
9 reports should be regarded as part of the EIS or
10 not part of it. In time we learned that they are
11 considered to be part of it, notwithstanding
12 Hydro's disclaimer that it didn't necessarily
13 accept any of the conclusions of those technical
14 reports. So there was that uncertainty.

15 What we have now is an IR process that
16 is part way through, which has only 11 days left
17 for completion with the present time lines. Hydro
18 has responded to only a part of the IRs sent to
19 it. We have learned that they received 188 but
20 they have not responded to all of those. We
21 learned this morning that there could be as many
22 as 350 more. And it seems to me that it is
23 unrealistic to expect the participants to respond
24 to information that is really so incomplete at
25 this stage. And probably, if it is complete by

1 the 31st of July, will probably be of a quality
2 similar to some of the responses that we have
3 received to date from Hydro, which I personally
4 regard as deficient.

5 So it is, in my personal view, unfair
6 to put the responsibility on the participants to
7 basically respond to an information base that is
8 soft and changing. And it is particularly
9 difficult for us to know when to turn our
10 consultants loose. We are working, in our case,
11 on 58 cents on the dollar. We can't waste any
12 money asking our consultants to respond to
13 something that's basically not final yet. Yet, on
14 the other hand, if we don't give them work to do,
15 we miss opportunities to feed information into
16 this process.

17 So I just wanted to, I think my
18 comment bridges the deficiencies in the IR process
19 and in the EIS itself, yet at the same time I
20 think it leads to the discussion on time lines,
21 which in my view the present time lines can simply
22 not be met in a reasonable way.

23 THE CHAIRMAN: Thank you. Before I
24 recognize Mr. Beddome, I would just like to test
25 the room a bit. Three quarters of an hour ago I

1 thought we were moving towards a conclusion, but
2 now it looks like we may not be. If we can wrap
3 this up within about a half hour, I will continue.
4 If not, I think we need to take a break. General
5 will -- do we continue and do we think it will end
6 within half an hour?

7 MR. MERONEK: Mr. Chairman, it seems
8 to me painfully obvious that one of the bugaboos
9 here in terms of time lines is to come to grips
10 with precise dates for precise things. You almost
11 need the official from the NHL to come in and do
12 scheduling. And I, quite frankly, I have a
13 pressing engagement which isn't going to impact on
14 the Commission, so I can't stay for the afternoon,
15 but it would seem to be counter productive to at
16 this point circle the wagons and find out what
17 everybody's schedules are like and what they
18 should, what they contemplate in terms of
19 schedules.

20 So let me make this recommendation.
21 Why don't we, through the chair, go back and
22 provide schedules that each party thinks are
23 appropriate, and have the Commission have that
24 information before it so that they can deliberate
25 sooner rather than later as to how it sees the

1 universe unfolding.

2 THE CHAIRMAN: Perhaps we could start
3 that off by sending a bit of a schedule out for
4 the next two to three months. Mr. Beddome.

5 MR. BEDDOME: Mr. James Beddome, Green
6 Party of Manitoba for the record. I just had two
7 general comments before I wanted to talk in time
8 lines.

9 The one was just, I think it is worth
10 noting and perhaps I missed it from Mr. Madden, I
11 was just a few minutes late getting back here.
12 Just basically the way that these hearings have
13 been called is somewhat out of the norm as what
14 would be usual. And by that I mean the terms of
15 reference were issued almost immediately after the
16 EIS was filed. In previous involvement I have had
17 in providing comments in different environmental
18 assessments, typically you wait until you get
19 objections from the public, and on that basis then
20 you would often call hearings. I know it is not
21 outside of the Act, I certainly looked through it,
22 so I'm not saying it is outside of the Act itself,
23 but I think it is outside of the norm. I think
24 that is important to put on the record.

25 And just in terms of time lines, I

1 think realistically, and I think that I'm being --
2 not almost providing even enough time. I think
3 given all of the things that we have had people
4 make statements about the fact that the reports
5 are incomplete, or that there needs to be more
6 information, that I think there is going to be at
7 least a need for a month to six weeks more in
8 terms of adjusting the schedule, in terms of a
9 second round of IRs. And I think even that's
10 being quite optimistic. And if you start pushing
11 to six or eight weeks, you start pushing the
12 hearings into over December, which is probably not
13 going to be the best time to try to get everybody
14 together. I don't know if everybody wants to sit
15 here on Christmas Eve or something, and give
16 presents.

17 THE CHAIRMAN: I can't think of
18 anything more enjoyable than sharing Christmas Eve
19 with you.

20 I don't think that the process has
21 been abnormal this time. In fact, and I stand to
22 be corrected, I have looked at this, but I don't
23 have it with me, I think that we got the terms of
24 reference on the floodway long before the EIS was
25 filed. I'm not certain of that, but I think that

1 was the case. So I don't think that the process
2 in that respect is out of the normal.

3 Again, being mindful of the time,
4 Mr. Meronek has suggested that maybe we are going
5 around in circles, and I'm putting words in his
6 mouth at this point, and that if we were to send
7 out a draft schedule of what we see over the next
8 few months, then we could get a response from each
9 of you as soon as possible, and that might give us
10 some more direction in that regard.

11 Mr. Williams?

12 MR. WILLIAMS: Our client, sir, are
13 certainly fine with Mr. Meronek's insightful
14 suggestion. A threshold question our clients
15 would appreciate some advice from Manitoba Hydro
16 on, though, is what is the magic in an October
17 date? And presumably what is the magic in a 2017
18 date? That would be helpful to our clients to
19 understand the prejudice that might flow to
20 Manitoba Hydro from that date. Certainly our
21 clients look at when the export contracts are
22 coming due, 2020, 2021. They are looking at
23 Keeyask dates, so they are trying to understand
24 the -- after being without Bipole for that long,
25 what the crisis is for Manitoba Hydro, and whether

1 it is the alleged 1500-megawatt deficit or
2 otherwise. That would be helpful. Apart from
3 that, that would help us in future deliberations.

4 THE CHAIRMAN: I just note, before we
5 hear a response from Manitoba Hydro, that the
6 October 1st date was actually set by the
7 Commission. We initially -- and our scheduling of
8 hearings is just guided by past experience. The
9 time from when we get the terms of reference, the
10 EIS, the participant assistance program, and what
11 is a reasonable time to commence the hearings.
12 Initially we had looked at starting shortly after
13 Labour Day. We then moved it to the third week in
14 September. And as you know, at the last meeting
15 we decided to move it another week and a half or
16 two to give Hydro a little more time to respond to
17 all of the IRs.

18 Is somebody from Hydro prepared to
19 respond to the magic of 2017?

20 MR. TYMOFICHUK: Mr. Chair, again
21 Tymofichuk for the record.

22 Let me begin by stating that the
23 electrical infrastructure, the grid, in any
24 jurisdiction in the world, amongst other critical
25 infrastructure, such as telecom, transportation,

1 health and safety, security, governments are a
2 critical infrastructure. Everyone will agree that
3 the electrical infrastructure is at the top of the
4 list, because when it falters and fails, the
5 others do so as well.

6 Let me go back a couple of weeks,
7 maybe three weeks to Washington DC, Virginia, and
8 surrounding areas. When the power goes off and
9 the temperature is in excess of 100 degrees
10 Fahrenheit, people and society suffers.

11 It may not be the case here in
12 Manitoba, it just doesn't get quite as hot, except
13 for today. We would suffer in winter time.

14 Our system, our DC system supplies
15 roughly 70 per cent of the electricity from the
16 north. If it fails, we are in deep trouble. We
17 have known this for some time. We have been
18 warned by mother nature a number of times. The
19 most, and largest warning was the Elie tornado in
20 2007. The failure of both DC lines on
21 September 5, 1996, it was probably a bigger
22 warning. So we are vulnerable. We are exposed to
23 what could happen. And we have a deep
24 responsibility to all of Manitoba, and once
25 characterized the DC system as the lifeline of

1 Manitoba, not just the lifeline of Manitoba
2 Hydro's system. So we are working as hard and
3 diligently as we can to build in redundancy to
4 secure electricity supply for all of Manitoba.

5 And that's a schedule that we have set
6 quite some time ago for the in service date, 2017.
7 If the front end slips, the front end meaning the
8 regulatory time line, we will be in great
9 difficulty meeting that 2017 date, and we will be
10 exposed for another year.

11 I could go on with other examples to
12 put before you today. The disaster in Japan, we
13 have had others in North America, where people in
14 society suffer when that critical infrastructure
15 is in trouble.

16 So in summary, Mr. Chairman, it is the
17 security of supply that we are trying to achieve
18 here. We have no spare tire. Thank you.

19 THE CHAIRMAN: If I can play devil's
20 advocate, and I have raised this point with
21 Mr. Bedford and with Ms. Neville, you have known
22 for at least 20 years that you needed Bipole III,
23 and now suddenly it is urgent.

24 MR. TYMOFICHUK: Mr. Chairman, our
25 load continues to grow, the urgency grows with the

1 load. So there wasn't quite that urgency, we had
2 spare capacity in the two Bipoles. Thank you.

3 THE CHAIRMAN: Okay. I would like to
4 sort of move towards a wrap-up. I had mentioned
5 at the outset a second round of IRs, and we would
6 like to propose -- we are assuming that Manitoba
7 Hydro will respond to the first round by
8 July 31st, and we would suggest a second round,
9 that they be filed by August 17th, and that
10 responses from Manitoba Hydro come by August 31st.

11 Now, does that give anybody any severe
12 heartburn?

13 MR. BEDDOME: Jim Beddome, Green Party
14 of Manitoba for the record.

15 In terms of scheduling then, we would
16 still have to have all of our presentations put
17 together, if we stuck with October 1st, by
18 September 15th then, right? So that would provide
19 about two weeks time from the close of the second
20 round of IRs for participants to put their
21 submissions together?

22 THE CHAIRMAN: I think it would be
23 September 17th. That's only a couple of days
24 though, so not worth quibbling.

25 MR. BEDDOME: Okay, September 17.

1 THE CHAIRMAN: We would also note that
2 as long as a substantive description of your
3 submission is submitted by October, or
4 September 17, it is always open to you to make
5 changes, adjustments to that before you actually
6 present it before the panel.

7 MR. MADDEN: Mr. Chair, those time
8 lines are not reasonable for us to be able to have
9 an expert report prepared in time. I think it has
10 become clear that if the current hearings are not
11 pushed back, and as well as based upon what we
12 have received from Hydro already in response to
13 previous IRs, that more likely than not we are
14 going to have to bring motions to get better
15 disclosure, and also questions around whether the
16 minimum filing requirements have been met even
17 with the finishing of those IRs. So I just don't
18 think that those time lines are realistic.

19 THE CHAIRMAN: Thank you, Mr. Madden.
20 Mr. Bettner?

21 MR. BETTNER: Bob Bettner for the
22 record. With respect to your proposal for round
23 twos being delivered by the 17th, and responses
24 due by the 31st, it is a little tight, but
25 probably manageable, assuming that we are not

1 going to end up with a number of sort of
2 restatements of round one questions, you know,
3 that have been shifted 30 degrees and asked again
4 because they didn't like the first answer, leaving
5 aside whether or not there is issues about the
6 completeness of the answer.

7 So I would think in part the efficacy
8 of that time line will depend a little bit on the
9 Commission itself in terms of its vetting of the
10 questions.

11 THE CHAIRMAN: We will do our best to
12 ensure that there are no duplications.

13 You should also know, though, that the
14 more insufficient the response is, then the less
15 there is on the record for the Commission to
16 consider when we get into our decision making
17 rounds.

18 MR. BETTNER: Thank you, Mr. Chairman.

19 Just one more bit of clarification,
20 and it has to do with the July 31st deadline and
21 how that will be impacted, depending on the number
22 of questions that the Commission has received and
23 ultimately decides to send over to us, and that we
24 can't comment on today.

25 THE CHAIRMAN: No, but as long as you

1 realize that any extensive or significant delays
2 beyond that date will threaten the October 1st
3 date.

4 MR. BETTNER: Okay.

5 MR. MADDEN: Mr. Chair, is that new
6 time line based upon the assumption that Hydro
7 will have responses to all IRs in the first round
8 by July 31st?

9 THE CHAIRMAN: Basically, yes.

10 MR. MADDEN: And what if that's not
11 the case?

12 THE CHAIRMAN: We'll see how late, or
13 how far beyond July 31st the responses come in.
14 And as I just said to Mr. Bettner from Manitoba
15 Hydro, that any significant delays beyond
16 July 31st may well threaten the October 1st start
17 date. Okay.

18 I think by way of sort of a wrap-up,
19 we will, the Commission will put on paper some of
20 the dates that I've just set out, as well as some
21 other tentative dates for motions hearings, both
22 one on the -- how did you phrase it, Mr. Dawson,
23 the drop dead?

24 MR. DAWSON: I would never say drop
25 dead. Show stopper, and I'm charging a royalty in

1 the form of funding for my client.

2 THE CHAIRMAN: Okay. Submit invoices
3 and we will see what we can do.

4 But we will -- the time table will
5 include a tentative date for show stopper motion
6 hearings, as well as for general -- how did you
7 put it -- mundane ones?

8 MR. DAWSON: The Dawsonesque phrasing
9 was routine. I could sit next to you, Mr. Chair.

10 THE CHAIRMAN: Certainly not mundane.

11 By way of a next meeting, without
12 precluding what may come of any of these motions,
13 we will hold another pre-hearing meeting on the
14 week of September 10th, probably early in that
15 week, obviously depending on what happens at
16 motions hearings that date may not be carried
17 through.

18 So unless there are other really
19 important things that people want to say, I think
20 we have pretty well covered everything that we
21 need to today. But I will throw it open and
22 please be brief.

23 MR. MERONEK: Mr. Chairman, with the
24 caveat that this isn't totally important, I will
25 proceed briefly. It seems that the participants

1 have been required to articulate who their panels
2 are going to be and who their experts are going to
3 be to testify. I haven't seen that with the
4 proponent. And it would seem to me that it is
5 only fair and appropriate at an early opportunity
6 we determine who is going to be on the witness
7 panel, what the panels are and what they are going
8 to speak to, so that we can properly prepare.

9 THE CHAIRMAN: Very fair question, and
10 I will ask Manitoba Hydro to undertake to respond
11 to that as soon as possible.

12 Anybody else? Ms. Whelan Enns?

13 MS. WHELAN ENNS: And just a little
14 moment of repetition, we would appreciate a
15 deadline moving past tomorrow, given the number of
16 IRs and documents and things that have landed
17 today in terms of the first round of filing IRs.
18 The initial request was not for a dramatic change
19 in the amount of time, but rather two or three
20 days.

21 THE CHAIRMAN: I don't think that we
22 will grant that. There will be a second round.

23 Anyone else?

24 Okay. Well, thank you all for your
25 time this morning. There was much good discussion

1 today. It will certainly inform us as we move
2 forward.

3 I would ask that anybody contemplating
4 notices of motion, please turn your minds to it
5 PDQ, and please get them into us in early August,
6 because the motions hearing date will be sometime
7 in mid August.

8 Thank you all, and have a happy lunch.
9 And this adjourns the meeting today.

10 (Adjourned at 1:00 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

I, CECELIA J. REID, a duly appointed Official
Examiner in the Province of Manitoba, do hereby
certify the foregoing pages are a true and correct
transcript of my Stenotype notes as taken by me at
the time and place hereinbefore stated.

Cecelia J. Reid
Official Examiner, Q.B.

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