

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, MAY 10, 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  
Kelly Dixon - Counsel to the Board  
Cathy Johnson - Commission Secretary

## MANITOBA HYDRO

Douglas Bedford - Counsel  
Shannon Johnson  
Pat McGarry  
Trevor Joyal  
Mona Pollet Smith

## BIPOLE III COALITION

Sven Hombach - Counsel  
Karen Friesen  
Garland Laliberte

## CONSUMERS ASSOCIATION OF CANADA

Byron Williams - Counsel  
Gloria Desorcey  
Joelle Pastora Sela

## MANITOBA METIS FEDERATION

Jason Madden - Counsel  
Marci Riel  
Sandi Faber Routley

## MANITOBA WILDLANDS

Gaile Whelan-Enns

## GREEN PARTY OF MANITOBA

James Beddome

## PEGUIS FIRST NATION

Lloyd Stevenson

## SAPOTAWEYAK CREE NATION

Gaile Whelan-Enns

1 THURSDAY, MAY 10, 2012

2 UPON COMMENCING AT 1:30 P.M.

3

4 THE CHAIRMAN: Okay, I would like to  
5 start as close to on time as possible, so if  
6 stragglers come in, they come in.

7 My name is Terry Sargeant for those  
8 who may not know me. I'm the chair of the  
9 Manitoba Clean Environment Commission and I will  
10 be chairing the panel for the Bipole III hearings.

11 I would like to welcome you all here  
12 this afternoon. Thank you for coming out. Most  
13 of what we will be dealing with this afternoon  
14 will be procedural, as well as just initiating a  
15 couple of other steps in the review process.  
16 Hopefully, it won't be too dry, but it is stuff  
17 that we need to cover and it is important that we  
18 cover it.

19 I would like to start by asking the  
20 other members of the panel who will be involved in  
21 this review to introduce themselves, starting with  
22 Wayne.

23 MR. MOTHERAL: Hi, I'm Wayne Motheral,  
24 former president of the Association of  
25 Municipalities and a retired farmer.

1                   MR. KAPLAN: Hi, my name is Brian  
2 Kaplan. I used to be retired, I'm not any longer,  
3 but when I wasn't retired I worked for the  
4 Attorney General's Department and I ended up for  
5 35 years being director of regional prosecutions  
6 and education for the department.

7                   MR. GIBBONS: Hi, I'm Ken Gibbons,  
8 former U of W prof in Political Science and  
9 long-time commissioner of the CEC.

10                  MS. MacKAY: I'm Pat McKay, retired  
11 professor of Entomology at the University of  
12 Manitoba, and commissioner for the CEC.

13                  THE CHAIRMAN: Thank you. One thing I  
14 should note, in a moment or two we are going to go  
15 around the table and ask you to introduce  
16 yourselves. You have to push the button on the  
17 mic stand in front of you, push it on to speak and  
18 then turn it off afterwards, please.

19                  Sitting immediately to my right is  
20 Cathy Johnson, who I am sure you all know, and  
21 believe me, over the next however long this  
22 proceeding takes from now until we conclude our  
23 hearings, you will all get to know Cathy very  
24 well. She is really the one -- she is the  
25 commission secretary, she is the one who runs the

1 Clean Environment Commission.

2                   Having said that, I would like to  
3 start perhaps with Doug and go around the table,  
4 and please state your names and who you represent  
5 or which organization you represent.

6                   MR. BEDFORD: My name is Doug Bedford.  
7 I work in the legal department of Manitoba Hydro,  
8 and one of my assignments from Manitoba Hydro is  
9 to provide the legal representation for the Bipole  
10 III project. And with the Chair's permission, I  
11 will introduce some of my colleagues who are here  
12 today and save them the effort to speak.

13                   To my immediate left is my colleague  
14 in the legal department, Janet Mayor. Janet and I  
15 will be sharing the workload for this Bipole III  
16 hearing.

17                   Immediately to Janet's left is  
18 Ms. Shannon Johnson. Shannon has recently become  
19 the manager of the licensing and environmental  
20 assessment department within the Transmission  
21 Division of Manitoba Hydro, and it is that  
22 department that has had the primary responsibility  
23 to develop the environmental assessment work for  
24 Bipole III.

25                   Across the room from me is Mr. Pat

1 McGarry who works in the licensing and  
2 environmental assessment department at Manitoba  
3 Hydro. Mr. McGarry, in the last five years, has  
4 spent more time with the Bipole III project than  
5 he has with his wife.

6 Next to him is Mr. Trevor Joyal, who  
7 is a colleague of Mr. McGarry's, environmental  
8 specialist in our department at 820 Taylor.

9 And somewhat obscurely in background,  
10 Ms. Mona Pollet Smith. Ms. Pollet Smith works for  
11 InterGroup. They are a consulting firm that has  
12 been providing advice and consulting with Manitoba  
13 Hydro on some aspects of the Bipole III project.

14 THE CHAIRMAN: Thank you.

15 MS. FRIESEN: Good afternoon, my name  
16 is Karen Friesen and I'm a farmer from southern  
17 Manitoba in the Niverville area. And I'm also  
18 president of the Bipole III Coalition, who is a  
19 hopeful participant at the Clean Environment  
20 Commission hearings.

21 MR. HOMBACH: Good afternoon, my name  
22 is Sven Hombach, I'm an environmental lawyer at  
23 Fillmore Riley. I am appearing as counsel for the  
24 Bipole III Coalition.

25 MR. LALIBERTE: I'm Garland Laliberte,

1 I'm Dean Emeritus of the Faculty of Engineering,  
2 University of Manitoba, and vice president of the  
3 Bipole III Coalition. My name is Jason Madden, I  
4 am legal counsel for the Manitoba Metis  
5 Federation.

6 MS. RIEL: Marci Riel, I am the Hydro  
7 liaison for the Manitoba Metis Federation.

8 MS. ROUTLEY: Sandi Faber Routley, the  
9 natural resources coordinator for Manitoba Metis  
10 Federation.

11 THE CHAIRMAN: Coming around to you.

12 MR. STEVENSON: Good afternoon, my  
13 name is Lloyd Stevenson, I'm with the Peguis First  
14 Nation. I'm here with Gaile Whelan-Enns. I will  
15 let Gaile introduce herself when it is her turn.

16 We are here just to be part of the  
17 total process. We wanted to be part of the  
18 process going back for many years, so we feel that  
19 it is time that we got involved in these matters  
20 that concern our lands, our peoples and our way of  
21 living.

22 MR. BEDDOME: James Beddome, Green  
23 Party of Manitoba. We are wanting to take various  
24 looks at this.

25 MS. WHELAN-ENNS: Gaile Whelan-Enns, I

1 think I have three things to say, I will say them  
2 quickly. I'm here, as Mr. Stevenson indicated, as  
3 technical support for Peguis First Nation. I'm  
4 also here as technical support for Sapotaweyak  
5 First Nation. Chief John was not able to be here  
6 today. And our environmental organization,  
7 Manitoba Wildlands, is registered as a participant  
8 also.

9 MR. WILLIAMS: Good afternoon,  
10 Mr. Chairman and members of the board. Byron  
11 Williams, Public Interest Law Centre, and I will  
12 take the liberty of announcing the people who  
13 appear with me. To my left is Ms. Gloria  
14 Desorcey, she is executive director of the  
15 Consumer Association of Canada, the Manitoba  
16 branch. And to my right, and I have given the  
17 spelling to the court reporter, is Ms. Joelle  
18 Pastora Sela, who is a University of Ottawa  
19 student of law. And we look forward to  
20 participating, Mr. Chairman.

21 MS. DIXON: Kelly Dixon, beside me is  
22 Mike Green, and we are counsel for the commission.

23 THE CHAIRMAN: Thank you. You have an  
24 agenda in front of you. I want to make -- add one  
25 item to the agenda, and it will be in between



1 items 3 and 4. I just want to spend a few minutes  
2 talking about environmental impact statement  
3 issues. So if we can please add that to your  
4 agenda?

5           The other thing I would like to -- you  
6 will note that at the far end of the room we have  
7 a couple of technical people. One of them is our  
8 sound person, the other of whom is a court  
9 reporter. We record everything that we do, and we  
10 provide verbatim transcripts. But to help out the  
11 court reporter, I would ask that when you speak  
12 during the next hour or two that we are here, when  
13 you turn on your mics, please state your names.  
14 She doesn't know very many of you yet. She  
15 probably will get to know us all very well over  
16 the time of the hearings, but it helps her when  
17 she is transcribing the verbatim recordings.

18           Okay. The next item on the agenda  
19 then is distribution of the contact list, and has  
20 that gone out to everyone?

21           MS. JOHNSON: I will get everybody's  
22 name here.

23           THE CHAIRMAN: Okay. What we are  
24 going to do, Cathy has prepared sort of a  
25 tentative contact list. She will talk with each

1 of you before you leave, just to make sure that we  
2 have the right contact for your organization.

3 We will limit the official contacts  
4 for each organization to three, and they will be  
5 the people that -- those that end up on this list  
6 that Cathy compiles will be the three contacts for  
7 each organization. By having three there is  
8 backup. If one of you isn't able to receive  
9 information, others in your organization get it,  
10 however, three also keeps it reasonably manageable  
11 for us to manage a list.

12 The CEC will not be acting as  
13 secretary to any of your organizations. Any  
14 information that we send out, I will repeat  
15 myself -- I have been repeating myself a lot today  
16 and, believe me, some of this information is going  
17 to be repeated at future pre-hearing meetings and  
18 in the hearing as well -- but any information, we  
19 will send out information to the three people on  
20 the contact list. If you want more in your  
21 organization to receive it, it is up to you to  
22 forward it on to them. We won't take any longer  
23 cc lists than the three.

24 It is also your responsibility to  
25 ensure that whatever electronic devices you are

1 using, whether it is computers, an Ipad, an Ipod,  
2 a Blackberry, or whatever, that it is compatible  
3 with what we send out. We use a Government of  
4 Manitoba system which is widely and readily  
5 available, and it shouldn't be a problem for any  
6 of you. If your machine, whatever it is, can't  
7 receive it, then we can't change anything, you  
8 will have to change your machines. I suspect that  
9 shouldn't be a problem for anybody, anybody with  
10 good email systems and good smart phones should be  
11 able to receive what we send out.

12           The addition that I've added to the  
13 agenda, EIS issues, some of you who have already  
14 begun to review the Environmental Impact Statement  
15 may have found deficiencies in the information  
16 provided. We have, and we know that others have.  
17 We are preparing -- we have met with Hydro people  
18 and informed them that we have found these  
19 deficiencies -- we are preparing and we are  
20 coordinating with others a list to send to Hydro  
21 of the holes that we see, and we will try to give  
22 some direction on how we think that those holes  
23 should be filled. So what I would ask of you, if  
24 you have such information available already, I  
25 would ask that you share it with Cathy as soon as

1 possible. I'm not talking about the details, you  
2 know, minor details or even a lot of details, I'm  
3 talking about big picture items where you may have  
4 found deficiencies in various parts of the  
5 Environmental Impact Statement. We have  
6 undertaken to start sharing some of this material  
7 with Manitoba Hydro before the end of next week,  
8 at least some of it, and share all of it with them  
9 by the end of May. So, please, if you have that,  
10 share it with us, if you will, and we will get to  
11 Hydro as quickly as possible so they can attend to  
12 patching those holes or filling them up.

13                   Again I repeat, if you find, you know,  
14 there is a problem here, if you have an idea of  
15 how that problem should be addressed, send that  
16 along to Cathy as well. Cathy will be working  
17 with others to get this information compiled and  
18 sent over.

19                   Any questions in that regard? I'm not  
20 asking about what you have found, but just in  
21 general on the process.

22                   MR. BEDDOME: James Beddome. I just  
23 was kind of curious, you are saying you are hoping  
24 to have everything forwarded in terms of  
25 deficiencies by the end of May. What would you

1 expect to be a turnaround time, and I guess it is  
2 a question for Hydro, but a turnaround time for  
3 Hydro and how that might fit into the rest of the  
4 schedule in terms of when interrogatories start?  
5 Because if there are deficiencies and it is going  
6 to be improved, it is almost best that we review  
7 what would be the final version of EIS or closest  
8 to as possible.

9 THE CHAIRMAN: We will come to some of  
10 that, James. In the IR process, which we will  
11 talk about in a little while, we have asked Hydro  
12 to get the responses back no later than six weeks  
13 before the start of hearings. When we met, Cathy  
14 and I met yesterday with the vice president for  
15 Manitoba Hydro, we weren't talking specific dates,  
16 but hopefully by the end of July, which on our  
17 current hearing calendar is about seven weeks  
18 prior to the start of the hearings. But we want  
19 it to be with sufficient time that participants  
20 and panel members and others can digest the  
21 information and understand it before we get into  
22 the hearings.

23 MR. BEDDOME: But then in terms of  
24 interrogatories, that might be after  
25 interrogatories are first filed. There will be a

1 second round of interrogatories then?

2 THE CHAIRMAN: We will talk about that  
3 later, maybe.

4 MR. BEDDOME: Thank you.

5 THE CHAIRMAN: This in a sense is,  
6 what I'm talking about right now is more the big  
7 picture items than the IRs or the interrogatories,  
8 whatever terms you want to use, but the  
9 interrogatories will still go forward as well.

10 I would like now to turn to this  
11 binder, which I think you all have, and it is our  
12 process guidelines. This is probably the result  
13 of, certainly not steady work but on and off work  
14 over probably about the last four or five years.  
15 From time to time Cathy and I have turned our  
16 minds to this stuff and a few months ago we  
17 finalized it, but we also consider these to be  
18 living documents so they can change any time, but  
19 we will let you know if we change the process  
20 guidelines.

21 I'm going to take you through this,  
22 not in detail, don't worry, but it still will take  
23 a little bit of time, it might be a little dry.  
24 Also, if you have questions as we go along, feel  
25 free to interrupt. I'm not concerned about that.

1                   Starting off at page 1, which is just  
2   the preamble, I'm just going to take you  
3   through -- we expect that any of you that are  
4   participants or representing participants will  
5   have read this at least once before we get into  
6   the hearings and have a good understanding of it.  
7   If it becomes evident that you haven't, well, we  
8   may be nasty to you during the hearings if you  
9   haven't bothered to read this stuff. I'm not  
10  going to go through everything. I expect you to  
11  read it, but I will point out a number of key  
12  areas.

13                   The first is 1.05 on page 3, and that  
14  is that participants are not to have any direct  
15  contact with any member of the hearing panel.  
16  That's a basic provision in codes of conduct for  
17  conflict of interest for a hearing panel in an  
18  inquiry model. Don't contact any of us directly.  
19  It goes on to say, if you have any questions,  
20  issues, concerns, direct them to the commission  
21  secretary, Cathy. She is going to send cards  
22  around so you have all of our contacts if you need  
23  to get ahold of her.

24                   Page -- flipping over to page 7, item  
25  2.07, which is pre-hearing meetings, that's what

1 we are doing today. There will be at least one  
2 more of these before we begin the hearings. The  
3 at least one more will be about 3 weeks before the  
4 hearing starts, and it will in part be to remind  
5 you of the deadline date for submissions of  
6 documents and other information that you will be  
7 using during the hearing reviews.

8 This just sets out the agenda items  
9 that may be on a pre-hearing meeting and we really  
10 don't need to go into that very much.

11 On page 8 we have motions and  
12 information requests, I'm going to skip over that  
13 now and come back to them when we get to them on  
14 the agenda.

15 Page 11, order of proceedings, it  
16 just -- and there is a practice direction that  
17 comes along later that just sets out who we hear  
18 from in more or less what order as we get into the  
19 hearings. There is a bit about submissions. A  
20 little further down, production and inspection of  
21 documents.

22 And then on page 12, a reference to  
23 appendix A, the practice direction, disclosure,  
24 witnesses and 14-day rule, which I will talk about  
25 briefly when we come to it.



1                   Page 14, those of you who have been in  
2 hearings know that we do swear people in, we don't  
3 use a courtroom swearing in, but we do ask you to  
4 promise that the evidence you give will be the  
5 truth.

6                   Representation, participants can  
7 self-represent or they can engage professional  
8 representation if they want. There is no  
9 restriction on that.

10                  Time limits for presentations; for the  
11 most part presentations are 15 minutes long.  
12 Participants, of course, who are taking a much  
13 bigger part in these proceedings will have  
14 significantly more time. And we will ask that as  
15 we get closer to the hearings and as you get your  
16 presentations prepared, you give us some  
17 indication as to how long your presentations, your  
18 witnesses, et cetera, will take so that we can  
19 again have some sense in how to schedule how much  
20 time we are going to need.

21                  Written briefs; on the bottom of page  
22 15, we do invite and include written presentations  
23 by anybody, by any of you or by any member of the  
24 public. That becomes part of the official record.

25                  Actually back up a couple of pages, on

1 that previous page, evidence at the top of page  
2 15, I'm not going to go through it but you should  
3 be cognizant of the regulations in respect of  
4 evidence.

5           Also on page 17, you should be aware  
6 of the issues with witnesses. Procedurally, on  
7 page 18 through 19, we do allow objections.  
8 Cross-examination is noted here as well, we will  
9 come to it in a few minutes, there is a practice  
10 direction on cross-examination. And the last  
11 point on page 19, closure of record, typically the  
12 record will close on the last day of hearings but  
13 there have been occasions in the past where we  
14 have allowed a couple of days for submission of  
15 further written evidence.

16           Page 20, the one to highlight is the  
17 report. We are required by law to submit our  
18 final report to the Minister 90 days after the  
19 record is closed.

20           Starting the next page is an index of  
21 the practice directions. The first one is about  
22 party status, and we described the different  
23 parties to the proceedings, panel, proponent,  
24 participants, presenters, and the general public.  
25 And the general public really are the same as

1 presenters except slightly less formal, they don't  
2 have to let us know ahead of time. Presenters, we  
3 ask them to let us know ahead of time if they want  
4 to make a presentation. The general public, at  
5 certain times, not on every day or every second  
6 day, but at certain times we will set aside an  
7 afternoon or an evening for members of the public  
8 to come and state their piece. This practice  
9 direction sort of describes the rights and  
10 responsibilities of the various parties of  
11 participants and of presenters. One thing  
12 particularly to note is that only participants, as  
13 well as the proponent and the panel, of course,  
14 will be allowed to cross-examine or ask questions  
15 of other participants or of the proponent.  
16 Presenters, the general public, there will be an  
17 opportunity for the general public to ask  
18 questions of the proponent but they will not be  
19 allowed to get into what we might describe as a  
20 cross-examination.

21 Pre-hearing meetings; well, we sort of  
22 touched on that. Information requests; there is a  
23 practice direction here that describes information  
24 requests -- sorry, I'm on page 32. This describes  
25 the information request process, the what, the

1 who, the how. It includes guidelines, and on page  
2 34 it sets out a general format for them. We will  
3 come back to this in a few minutes when we come to  
4 the IR process on the agenda.

5           Order of proceedings I described  
6 before and we don't really need to go through it  
7 today. But I would encourage you to read it so  
8 that you understand our process. Well, very  
9 quickly, it starts off with general matters, the  
10 director from the environmental licensing branch  
11 will make a presentation of what steps have been  
12 covered up to that point. The proponent will then  
13 spend anywhere from a few hours to a day or so  
14 describing the project. And then we begin with  
15 the participant involvement, cross-examining,  
16 initially cross-examining the proponent on their  
17 proposal, and then getting into presenting their  
18 witnesses and having them cross-examined by  
19 others.

20           I would note a slight change from past  
21 proceedings. We are going to ask all participants  
22 to have an opening statement just to give some  
23 description of what they are going to do. We  
24 expect this to be very brief, five or ten minutes.  
25 In fact, we will limit it to about five or ten

1 minutes. But all participants will be asked to  
2 have an opening statement. And probably right  
3 after -- where do we put it in -- early in the  
4 process anyway, probably right after Hydro has  
5 made its presentation, or before that. Before  
6 that, there you go -- before Hydro or the  
7 proponent has made their presentation, we will ask  
8 you to do that.

9 MR. WILLIAMS: Mr. Chairman, Byron  
10 Williams, Public Interest.

11 THE CHAIRMAN: Yes.

12 MR. WILLIAMS: Just in terms of the  
13 order of cross-examination, will commission  
14 counsel proceed first or has that been determined  
15 yet?

16 THE CHAIRMAN: I think we come to that  
17 in here somewhere, I seem to recall that. I would  
18 think that commission would go first. And on that  
19 point, Byron, we will probably, as much as  
20 possible, commissioners and panel members will ask  
21 the questions as opposed to commission counsel.  
22 That's a bit of a change from past practice as  
23 well.

24 We will go through the participant  
25 presentations, witnesses, et cetera, as well as

1 the general public presentations. And then again  
2 in the final day or two we will have final  
3 argument. Each participant will be given a  
4 specific amount of time, it won't be extremely  
5 lengthy but it won't be too brief either, we  
6 haven't determined that time yet. And then we  
7 will hopefully close the record, be finished with  
8 the hearing process anyway.

9 Any questions on the order of  
10 proceedings? It is pretty well laid out in here.  
11 And it should, once we get into the hearing, it  
12 should flow fairly naturally.

13 Turning to page 40, this is one that I  
14 want to stress is extremely important. We call it  
15 the 14-day rule. We will require that 14 days  
16 before the start of the hearings documents, any  
17 documents that you plan on using, any documents in  
18 your presentation, as well as an overview of your  
19 presentation, and a list of any witnesses along  
20 with their credentials, we don't need a 35-page  
21 academic CV, but a half a page or so just to let  
22 us know who the expert that you are bringing is.  
23 This stuff all has to be in 14 days before the  
24 hearings commence. If it is not in 14 days  
25 before, you will not be allowed to use it. We

1 have been a little -- past panels have been a  
2 little loosey-goosey in this. No more. This will  
3 be strictly enforced. And that's one thing you  
4 will hear me repeat many times over the next few  
5 months. So please remember that one.

6                   Page 43, summons to witnesses. We do  
7 have the authority to issue a summons if you want  
8 to bring a witness before us. We have never --  
9 well, I shouldn't say never -- but in my  
10 experience we have never used it. I would expect  
11 that we wouldn't have to use it, but we make the  
12 provision for it anyway.

13                   Page 45, cross-examinations and  
14 questions. I want to stress very strongly,  
15 something else I will repeat many times, the  
16 second paragraph under rules about  
17 cross-examinations, they must be done in a  
18 respectful manner and no intent to embarrass any  
19 other party. Any disrespectful cross-examination  
20 I will shut down immediately. So please remember  
21 that. It is simply -- it is not necessary, it has  
22 occurred in the past, it is not necessary, it  
23 doesn't add to the process, and we won't allow it.  
24 So there are a few more comments about  
25 cross-examinations, I would ask that you have a

1 look at those.

2 Page 47, calculation of time is pretty  
3 straightforward. If we say the hearings are going  
4 to start on a Wednesday, 14 days before that is  
5 the Wednesday two weeks before. It is calendar  
6 days not business days. If we ask for you to  
7 submit documents and it turns out that it is a  
8 holiday, the next day will be the deadline.

9 There is a brief practice direction  
10 about representatives, basically just saying it is  
11 the participants' choice, privilege to engage, or  
12 their right rather to engage a representative. At  
13 the bottom there is reference to a code of conduct  
14 which is on page 64, we will come to it in a  
15 moment or two. And all representatives are  
16 expected to abide by the code of conduct.

17 Copies, we will talk about that on the  
18 agenda today and we will discuss issues around  
19 copies. One thing on page 50, who makes the  
20 copies? Participants, major parties are  
21 responsible for making copies themselves on their  
22 own -- at their own expense. We do provide to  
23 make copies for members of the public who have --  
24 who come in with a written presentation. We will  
25 help members of the public, but participants are



1 expected to make copies at their own expense.  
2 Most, if not all, of the participants will have  
3 received participant assistance and that includes  
4 the costs of copying.

5           On page 52, actually it is just an  
6 index, there are a couple of tips, just some  
7 guidelines. Most of you are experienced with our  
8 process or similar processes so you don't really  
9 need these tips, but we put them in here for  
10 others who may be less experienced.

11           The last thing in this booklet that I  
12 would like to touch on is a code of conduct for  
13 parties and representatives. It is basically  
14 fairly straightforward. There is a fair bit of  
15 detail, but we just expect that you will all  
16 engage in the best of conduct, you will all  
17 understand and abide by the procedural rules that  
18 we set out. We ask that if you have any sense of  
19 conflict on the part of any of the parties,  
20 conflict of interest or bias or unfairness on the  
21 part of any of the other parties or on the part of  
22 any members of the panel, that you bring that to  
23 the attention of the commission secretary as soon  
24 as you learn of it.

25           Confidentiality; for the most part

1 everything that comes before us goes on the public  
2 record. There may be, although I don't think it  
3 has happened in my experience, there may be  
4 occasions when some information comes forward that  
5 the presenter of that information wishes to be  
6 kept confidential. It would probably only apply  
7 to proprietorial information that the proponent  
8 might bring forward. I can't see it happening in  
9 this round of hearings. That's about the only  
10 type of thing that we would ask be kept  
11 confidential.

12 Communication, and this is a  
13 repetition of what I said earlier, do not  
14 communicate directly with any of the panel  
15 members.

16 Post hearing, once we close the record  
17 there is no point in trying to contact us because  
18 it won't do any good. Once the record is closed,  
19 it is closed.

20 Now, I think that's about it in  
21 respect to this procedural guide. Any questions  
22 or comments? Yes?

23 MR. STEVENSON: Lloyd Stevenson,  
24 Peguis. On 2.03 at page 68 you talk about bias,  
25 conflict of interest. Should that include

1 procedural fairness, and if we have any reason to  
2 believe that there may be bias or conflict or  
3 procedural fairness, that doesn't deny us our  
4 right to QB applications as well?

5 THE CHAIRMAN: I'm sorry, it doesn't  
6 deny you the right to --

7 MR. STEVENSON: Go to Queen's Bench.

8 THE CHAIRMAN: I don't think anything  
9 denies you the right to go to Queen's Bench.

10 MR. STEVENSON: Thank you.

11 THE CHAIRMAN: I think that legal  
12 option is available to anybody. Gaile?

13 MS. WHELAN-ENNS: Gaile Whelan-Enns.  
14 This is just a question about communication and  
15 the lists that you mentioned. In the hearing time  
16 period, will documents be available  
17 electronically? There is two ways to ask that,  
18 because another way to ask it of course would be  
19 whether the list will continue to operate in terms  
20 of being able to share electronic versions? It is  
21 a lot of paper, it is a lot of information, hence  
22 the question.

23 THE CHAIRMAN: It actually comes up  
24 under the copies, item 5 in this agenda. We will  
25 talk about that, and we want everything to be

1 submitted electronically, and that will be shared  
2 with the three people from each group on the  
3 lists.

4 MS. WHELAN-ENNS: Good news.

5 THE CHAIRMAN: Any other questions or  
6 comments on procedures?

7 MR. BEDDOME: This is just a small  
8 one, but I notice in your pre-hearing requirements  
9 you don't actually -- you say that there would be  
10 email notice, but there is not a time line. I  
11 know that things were tight and I understand the  
12 email, but I am wondering if for the future we  
13 could just establish a standard practice of seven  
14 days notice for the next pre-hearing meeting so  
15 that it is not coming with a day or two days  
16 notice for some people.

17 THE CHAIRMAN: That's a very good  
18 point, and we will do our best to do that. I  
19 think we did, when we interviewed the different  
20 applicants for participant assistance a week and a  
21 half ago, we indicated that there probably would  
22 be a pre-hearing in early May. I'm not sure if we  
23 had a date then, but we did say fairly early May.  
24 But your point is good, James, and we will  
25 certainly do our best to ensure that you have at

1 least seven days notice, if not more.

2 MR. BEDDOME: I know you guys are  
3 working hard.

4 THE CHAIRMAN: This time it just got  
5 tight, and any number of other things, this was  
6 pretty well the only date that we could do it.  
7 But, you know, we have got a pretty good turnout  
8 in spite of the short notice. In fact, we have  
9 the full turnout that we expected. Any other  
10 questions or comments before I move on?

11 Okay. The next item on the agenda is  
12 the number of copies. And I will just say that  
13 with rare exceptions all documents or submissions  
14 that you wish to use must be submitted  
15 electronically. The rare exceptions would be if  
16 you have large maps or oversized paper with  
17 specific diagrams on them, you can submit them in  
18 paper form. We would still ask that the rest of  
19 that particular presentation be submitted  
20 electronically.

21 In the case that you are submitting  
22 stuff on paper, the commission, and I want you all  
23 to note this, the commission requires 10 copies  
24 for us, and you must provide at least one copy to  
25 each of the other participants. We will, in the

1 next few days or week or so, inform you as to who  
2 or what other specific participant groups there  
3 are, but you must provide at least one copy to  
4 each group. If you are providing them  
5 electronically, it is just as easy to put all  
6 three contacts from each group on your list.

7 Yes, Jason?

8 MR. MADDEN: Jason Madden. Do you  
9 have a res system or live-link system for filing,  
10 or is it just a simple email, and is there a  
11 requirement to get confirmation back from the  
12 secretary saying you filed, or is it just proof of  
13 the email being sent is sufficient?

14 THE CHAIRMAN: I think proof of email  
15 being sent is sufficient. We would ask in that  
16 regard, we would ask that you send stuff as an  
17 attachment and not in the body of the email. That  
18 way it is relatively simple for us or for others  
19 to forward it to other people. Also to save it  
20 for our record, it is much easier to save an  
21 attached document to our record. We are bound by  
22 law to keep records of this stuff for decades.

23 MR. MADDEN: Is there a website that  
24 is actually created that posts all of the  
25 materials or is it just we are sharing it

1     digitally?

2                   THE CHAIRMAN:   At the present it is  
3     shared digitally but that is something we will  
4     look into if we have spare time, if Cathy has  
5     spare time.

6                   MR. WILLIAMS:   Mr. Chairman, Byron  
7     Williams.  I understand that we are to file all  
8     documents electronically.  Is it the expectation  
9     that we will provide paper copies as well, as well  
10    as the expectation that Hydro will be providing  
11    paper documents of all documents?

12                  THE CHAIRMAN:   I would say no, that as  
13    long as they are provided electronically, that's  
14    sufficient.

15                  MR. WILLIAMS:   And certainly  
16    Mr. Chairman, we will work subject to the will of  
17    the commission.  From our client's perspective,  
18    especially because our offices are relatively  
19    small and we are dealing theoretically with at  
20    least experts in different jurisdictions, it would  
21    be helpful to receive from Manitoba Hydro paper, a  
22    number of paper versions, certainly for our  
23    specific clients, or should we be making that  
24    request to Manitoba Hydro?

25                  THE CHAIRMAN:   I don't see any problem

1 in you making that request directly. In the case  
2 that Manitoba Hydro responds and provides those  
3 documents, we would ask that Manitoba Hydro  
4 provide electronic copies to the commission  
5 secretary. And that goes for any other parties,  
6 if you request something of one of the other  
7 parties and they share it, that it should also  
8 come to us. James?

9 MR. BEDDOME: Just a really quick  
10 comment, which is I appreciate you wanting files  
11 attached, but I don't know for any other Smart  
12 Phone users in there, it is actually beneficial if  
13 people both attach it and copy the text into the  
14 body of the email. Because if you have to  
15 download a pdf, sometimes it can be rather time  
16 consuming for a large pdf file, whereas if you  
17 have the text, you can scroll it on your screen.  
18 It is just a comment that I often do on documents  
19 and I just wanted to bring that forward.

20 THE CHAIRMAN: Some of you are much  
21 more electronically knowledgeable than I am. We  
22 will certainly take that into consideration, but  
23 it can become a bit of a problem for us in saving  
24 it for the record, but we will --

25 MR. BEDDOME: Well, mine isn't for the



1 record. I am indicating that attaching a pdf or  
2 word doc or whatever format you are using, it is  
3 more just for the text of it for sharing, I guess.  
4 It just depends if some of the presenters in this  
5 room are willing to do it, adopt it as a practice,  
6 it may benefit everyone in the room when you get  
7 it both ways.

8 THE CHAIRMAN: As long as we get it  
9 both ways, it is not a problem. Gaile?

10 MS. WHELAN-ENNS: Gaile Whelan-Enns.  
11 I wanted to agree with the lawyer for the Public  
12 Interest Law Centre, paper is extremely valuable  
13 and helpful, particularly if you are sitting down  
14 between, say the evening or the morning before a  
15 1:00 o'clock start, getting a group of people to  
16 in fact get ready for that day of the hearings.  
17 So it is very helpful, it has made a difference so  
18 far with Bipole III materials in the EIS in terms  
19 of having the paper and the electronic EIS. So I  
20 wanted to agree with PILC. I also -- this is just  
21 sort of a quizzical comment, I think I sent it to  
22 the secretary in question -- it doesn't matter.  
23 If we are aiming for less paper in the room and  
24 electronic, then we are talking about hearing  
25 rooms where there will be a lot of computers and a

1 lot of laptops and a lot of tech and equipment in  
2 the room. So the comment I wanted to make, of  
3 course, is wherever the hearing is held, and I  
4 know you are also going to be on tour, it is going  
5 to be absolutely essential to have enough power,  
6 enough outlets, have the ability to have 20 or 30  
7 laptops in the room.

8 THE CHAIRMAN: I think at this point  
9 we will take it under advisement. If it is easily  
10 attainable, yes. If not, then we may expect you  
11 to have sufficient battery power. But we will  
12 look into that. That's the best we can commit to  
13 at this point. Any other question on copies?

14 Moving on, motions. As we went  
15 through the process document I noted that we would  
16 come back to motions. On page 8 of the process  
17 document, item 2.08 is motions. It just sets out,  
18 it says the Commission will accept motions  
19 respecting procedural matters from the proponent  
20 and participants. Motions must be prepared in  
21 writing with sufficient copies to allow  
22 distribution to all panel members and the other  
23 parties as designated by the Commission secretary.  
24 Where possible, notices of motion should be  
25 prepared and delivered to the Commission before

1 the opening of a hearing session. I will come  
2 back to that. The motion must set out the precise  
3 relief sought, the grounds to be argued, including  
4 reference to statutory provisions or rules, and  
5 the documentary evidence to be used or relied  
6 upon. Motions will be presented before the panel.  
7 An opportunity will be provided for at least  
8 specified parties to respond. And then the  
9 Commission may allow, dismiss or adjourn the  
10 motion in whole or in part. And motions, of  
11 course, will not be accepted following the close  
12 of the hearing.

13 Just in respect of motions, I would  
14 ask very respectfully that motions be submitted  
15 sooner rather than later, particularly if it is a  
16 matter of some significance. We don't want to be  
17 dealing with a major motion on the opening day of  
18 the hearings. We would ask they be submitted even  
19 a couple of months before the start of the  
20 hearings, we will have a special day to hear the  
21 motion, a day or two, whatever is required to hear  
22 the motion and deliberate on it.

23 This has been used in past practice.  
24 In fact, the day after I was appointed to the  
25 Clean Environment Commission, I sat on a half a

1 day motions hearing where we heard a number of  
2 motions. That was probably two or three months  
3 before the hearing started.

4 I would also point out that any  
5 motions that are apparently frivolous or that are  
6 designed to disrupt the proceedings won't be  
7 welcomed with kind hearts and openness, and may be  
8 rejected on that basis. That, of course, would be  
9 a judgment call.

10 Any questions on this issue?

11 MR. HOMBACH: Sven Hombach, Bipole III  
12 Coalition. Mr. Chairman, at this point has a date  
13 for the hearing of pre-hearing motions been set  
14 and we are working back from the date in terms of  
15 timelines, or do you expect all participants to  
16 get any motion materials in and the Commission  
17 will set a hearing date at that point?

18 THE CHAIRMAN: We haven't set a  
19 hearing date for motions. Our thinking at the  
20 present time is that we will wait until hearings  
21 are submitted, but we may choose to specify a  
22 date, which would probably be -- well, summer is a  
23 real pain in the butt, but we will probably have  
24 to find some time in mid to late August when most,  
25 if not all, of us are available to hear the

1 motions. We may do it that way. We may set a  
2 date and expect you or anybody else to submit it  
3 in advance of that date.

4 MR. HOMBACH: Thank you.

5 THE CHAIRMAN: Any other questions on  
6 motions?

7 Okay, the IR process. On the same  
8 page in the process guideline there are a couple  
9 of paragraphs, three or four paragraphs about the  
10 IR process. As well in the practice directions,  
11 and we did go through it fairly briefly, in the  
12 practice directions we set out how, sort of the  
13 who, what, how of the IR process. And was the  
14 sheet handed out yet?

15 MS. JOHNSON: Yes.

16 THE CHAIRMAN: Now, you have all  
17 received today a one-page just information request  
18 process. Some of you may use the word  
19 interrogatory. We are often getting, not only  
20 here but in other forums that I work with, people  
21 want to use as little legal language as possible.  
22 Interrogatory doesn't mean much to a lot of  
23 people, so we choose to use the term information  
24 request. This sets out the specific process for  
25 information requests. And basically the

1 information request process is open as of now. We  
2 would ask that information requests be submitted  
3 to Cathy, her email address is at the bottom of  
4 the page, and no later than March 31st ---pardon  
5 me, May 31st.

6 We did discuss earlier, I think  
7 particularly in response to you, James, my earlier  
8 request to let us know, if you have any big  
9 picture concerns in respect of the EIS to let  
10 Cathy know as soon as possible. That's separate  
11 from the IR request. The IR request is something  
12 that has been on the table all along. Most, if  
13 not all, of you have been aware that this would be  
14 coming. So you have between now and May 31st to  
15 submit the information requests.

16 We would ask Manitoba Hydro to respond  
17 as quickly as possible. We would hope -- well,  
18 not only hope, we would ask that it be no later  
19 than six weeks after the start of the hearings.

20 You did ask if there would be a second  
21 round of information requests, and we have  
22 discussed this and essentially we have chosen to  
23 leave it open. If any party receives a response  
24 that they feel to be insufficient, they should  
25 bring it to our attention, our being the panel,

1 through Cathy. We will look at it, and if we  
2 agree, we will then allow a second round. So it  
3 will be open, but it is not necessarily part of  
4 the process.

5           Now, I think, you know, if you read  
6 some of the documents, in particular the practice  
7 direction, what we do is questions -- information  
8 requests come into us, we look at them, more  
9 specifically we ask our consultants to look at  
10 them. Questions that we consider to be germane,  
11 relevant, we will forward, but we will also group  
12 together anything that's repetitive, we are not  
13 going to send over the question from three  
14 different organizations. And we will manage the  
15 system. We will not tolerate hundreds of  
16 frivolous questions coming in, as has happened in  
17 the past. So we ask that information requests be  
18 serious. We will ultimately be the ones that  
19 decide whether or not they go forward to the  
20 proponent for response. James?

21           MR. BEDDOME: Anywhere in the  
22 guidelines where we can find what criteria you use  
23 to determine what is germane and what isn't  
24 germane?

25           THE CHAIRMAN: No, basically within

1 the terms of reference, or within the bounds of  
2 our terms of reference. I think that it should be  
3 fairly obvious, if they are legitimate questions,  
4 if you identified -- and in the practice direction  
5 we set out a format, we ask that you identify  
6 where in the document your concern is, discuss it  
7 a little bit, and then pose the question. If it  
8 is relevant to what is in the EIS, then it is  
9 almost certainly germane and not frivolous.

10 Gaile or -- sorry, I think Byron was  
11 flashing first, then Gaile and Sven.

12 MR. WILLIAMS: Mr. Chairman, I  
13 certainly object to the suggestion I was flashing.

14 THE CHAIRMAN: I was talking about the  
15 red light in front of you.

16 MR. WILLIAMS: Okay, now that we have  
17 clarified that. Byron Williams. I have a  
18 relatively lengthy comment about the information  
19 request process. Just analytically, when my  
20 clients look at the record, there is what has  
21 already been filed. There is potentially  
22 additional filings to the extent that the filing  
23 is arguably incomplete. And there are also  
24 documents referenced in the initial filing which  
25 have not been provided. If one looked, for



1 example, through chapters 2 and 3, there is  
2 probably eight or nine reports of Manitoba Hydro  
3 that aren't on the record. So one preliminary  
4 observation about the information process that's  
5 currently presented is, while it will provide the  
6 clients, our clients with an opportunity to pose  
7 information requests on what has already been  
8 filed, they wouldn't have an opportunity, at  
9 least, or it is not clear whether they will have  
10 an opportunity in terms of either more complete  
11 filings or the documents which are relevant to  
12 Hydro's submissions but which have not yet been  
13 provided. So that's one preliminary concern of  
14 our clients. And certainly, our clients would  
15 suggest certainly in terms of the missing  
16 documents that it might be possible for Hydro to  
17 file them certainly much sooner than the end of  
18 July. They are documents that they presumably  
19 relied upon in developing their material and  
20 certainly one would expect them to have them near  
21 at hand.

22 My clients do have a couple of  
23 concerns, both with the start date for the  
24 information request process and the expectation  
25 that Hydro will file within six weeks of the start

1 of the hearing. In terms of the start date,  
2 certainly the experts that we have preliminarily  
3 retained have done some preliminary work, but we  
4 have instructed them not to take further steps in  
5 terms of information requests because of the  
6 uncertainty around participant funding. So,  
7 essentially we did enough work to prepare our  
8 participant funding application and have not been  
9 in a position to do anything more because there  
10 was no certainty that we could pay our  
11 consultants. So that's one timing challenge. In  
12 particular, I would note that one of my experts --  
13 my experts -- my client's experts, Mr. Harper, has  
14 some regulatory proceedings, a number of them, but  
15 his time frame in late May may not be there. So  
16 that will pose a challenge for our clients, and  
17 certainly if the Commission would be open to  
18 considering extending that time frame by a couple  
19 of weeks, that would allow our immediate  
20 challenges to be addressed.

21 In terms of kind of the end date, the  
22 expectation of when Hydro is to file, certainly  
23 I'm not as familiar with the Commission process  
24 than other regulatory processes, so I would be  
25 more familiar with the process where intervenors

1 have three or four weeks to present their  
2 information requests, and the utility in question  
3 has roughly a month to respond. So it is a bit  
4 tighter from the intervenors' side and a bit more  
5 generous from the utilities' side, and certainly  
6 that's at the Commission's discretion. But at the  
7 back end certainly that poses some challenges for  
8 our clients in terms of the development of expert  
9 reports. If there are indeed reports that are  
10 not, or information responses that are not  
11 complete, which our experts are relying upon in  
12 preparation of their expert evidence, certainly we  
13 would have to make a motion, or I would alert the  
14 Commission to that fact, seek guidance from the  
15 Commission, and that may imperil our experts'  
16 ability to meet the 14-day time period. So from  
17 our client's perspective, certainly if we could  
18 suggest a bit more generosity on the start date,  
19 and a little tighter requirement on the end date,  
20 that would be certainly welcomed by our clients.

21 THE CHAIRMAN: Just let me clarify  
22 things, Byron. You are suggesting that what you  
23 are calling the start date, May 31st, be extended  
24 a couple of weeks?

25 MR. WILLIAMS: Yes.

1 THE CHAIRMAN: So June 14th or 15th --  
2 do you have a calendar?

3 MR. WILLIAMS: Roughly that,  
4 Mr. Chairman. I know Mr. Harper's schedule opens  
5 up, I don't have his schedule right in front of  
6 me, but that's about when his schedule opens up.

7 THE CHAIRMAN: And you are asking that  
8 the responses come back more quickly?

9 MR. WILLIAMS: Yes.

10 THE CHAIRMAN: What would you suggest,  
11 four, six weeks? I mean, if we -- given that this  
12 is July, would end of July meet your concerns?

13 MR. WILLIAMS: It would certainly be  
14 of great assistance, Mr. Chairman. You can  
15 never -- the more leeway we have, obviously the  
16 better it works. Hydro has got the opposite  
17 problem because they are going to be receiving a  
18 lot of information requests. But that would be of  
19 assistance.

20 THE CHAIRMAN: Well, we won't come to  
21 any conclusive changes yet, but we will hear  
22 comments from others.

23 MS. WHELAN-ENNS: Thank you. Gaile  
24 Whelan-Enns again. Often Byron is fairly astute  
25 and quick on these kinds of concerns, so I'm going

1 to be brief. But there is no ability on the part  
2 of our two clients to do work right now. So we  
3 are obviously not -- you know, participant funding  
4 is not a topic that is on the agenda today, but  
5 there is no ability to go forward and do work  
6 until that. So that uncertainty is there. There  
7 is some things you can do in readiness, as Byron  
8 was pointing out, but that's a reality.

9                   What I was trying to do, Mr. Chair, is  
10 I was thinking about the beginning date of the  
11 hearings. And I'm not sure whether or not we have  
12 heard that, and I know we are going to get to  
13 schedules. But if we are moving back from that,  
14 and some things that are overlapping and very  
15 specific time periods and expectations and so on,  
16 then if the hearings are going to start in the  
17 last week in August, six weeks prior to that is --

18                   THE CHAIRMAN: They are not going to  
19 start in the last week of August.

20                   MS. WHELAN-ENNS: Thank you. We have  
21 moved back.

22                   THE CHAIRMAN: I don't think we ever  
23 suggested the last week of August. We will come  
24 to that in a few minutes.

25                   MS. WHELAN-ENNS: Fair enough. So I

1 was looking at your information request in terms  
2 of no later than six weeks prior to the hearings,  
3 response on IRs, and wanted to basically say that  
4 a four week turnaround is quite standard and it  
5 has been in the past for IRs for class 3 projects  
6 in Manitoba. The other thing, of course, is that  
7 the proponent can answer IRs progressively, right,  
8 when they have an answer ready, they provide it  
9 and so on. That can make a tremendous difference  
10 also.

11 I like what you are saying in terms of  
12 being able to avoid duplication and improving  
13 process on IRs, and like PILC and their client,  
14 would really like to avoid having any kind of  
15 reason for frustrations that would cause a motion  
16 hearing on this kind of thing. So I agree with  
17 that, but right now it looks like the expectation  
18 on the part of participants needs a little bit  
19 more generosity, I like the term, and then a  
20 little bit more clarity. I also do remember  
21 Manitoba Hydro answering IRs progressively and I  
22 think that's pretty healthy. So that's it.  
23 Middle of June makes sense. Thank you.

24 THE CHAIRMAN: Sven.

25 MR. HOMBACH: Sven Hombach, Bipole III

1 Coalition. Mr. Chairman, my clients share the  
2 concerns raised by Mr. Williams, and to some  
3 extent the concerns raised by Ms. Whelan-Enns. My  
4 clients have applied for participant assistance  
5 but that matter has not been adjudicated yet. My  
6 clients intend to retain experts. Until my  
7 clients have received confirmation as to what the  
8 funding levels are, those retainers cannot be  
9 finalized. And I respectfully submit to the panel  
10 that for the IR process to be fruitful and  
11 informative, there has to be a time frame that  
12 would allow for expert input into those IRs.  
13 Based on that, certainly an extension of time is  
14 needed past May 31st for experts to be retained to  
15 conduct the work and to assist in the preparation  
16 of IRs. I believe that the June 14th or June 15th  
17 date could be workable. I believe it might be  
18 still a bit ambitious, depending on when our  
19 clients would receive a confirmation as to what  
20 funding levels are, if any.

21           The second concern would be that it  
22 appears the IR process will take place  
23 contemporaneously with the deficiencies list  
24 process, and that will invariably lead to a  
25 situation where the participants in the room would

1 have to issue IRs based on the EIS as it currently  
2 stands, when that will not be the final EIS. It  
3 looks like additional evidence would certainly be  
4 submitted by Manitoba Hydro and there would have  
5 to be some process for experts and for my client  
6 and for other participants to obtain additional  
7 information with respect to those filings before  
8 the hearing. So I would submit that it is  
9 necessary to extend the deadline for filing IRs.  
10 Mid June could be workable, but the process would  
11 certainly have to build in a second round of IRs  
12 sometime in the summer after an amended EIS report  
13 has been filed.

14 THE CHAIRMAN: Thank you. Any other  
15 comments on this? Would Hydro -- any other  
16 comments on this?

17 MR. BEDDOME: James Beddome, Green  
18 Party of Manitoba. Just basically the same thing,  
19 we are in the same position. I don't know how  
20 many other participants are in that same position,  
21 but at the time when you are waiting for funding  
22 you are kind of at a standstill. Thank you.

23 THE CHAIRMAN: Mr. Bedford?

24 MR. BEDFORD: By way of just a  
25 reminder to us all, the process that's presented



1 to us is that once the information requests are  
2 written they are delivered not to Manitoba Hydro,  
3 as has been the case in past hearings, they are  
4 delivered, as the process suggests, at first  
5 instance to the Clean Environment Commission. My  
6 understanding is upon receipt of however many of  
7 these information requests there are, they will be  
8 read by one or more of the commissioners of the  
9 Clean Environment Commission, and they will be  
10 read with the view of culling out ones that are  
11 duplicative, culling out ones that are arguably  
12 not relevant, and then they will be sent by the  
13 Clean Environment Commission to Manitoba Hydro.  
14 So if one adjusts the schedule forward to mid  
15 June, I'm not the spokesperson for the work  
16 schedules of the people that work at the Clean  
17 Environment Commission, we have to factor in that  
18 time frame to allow that process to be done, and  
19 then they will arrive at Manitoba Hydro. And yes,  
20 I can confirm that periods of about a month, about  
21 four weeks, about six weeks are all that we are  
22 going to be able to tolerate in this process for  
23 my client to read them, to distribute them to a  
24 variety of employees and consultants, and to  
25 develop and prepare answers.

1                   And we can in a four week period, if  
2 we get an answer done in the first 24 hours, I  
3 don't see why we couldn't forward an answer in the  
4 first 24 hours, but we will require at least that  
5 month's period. So when I add up the number of  
6 weeks in the month of July each year, I see that  
7 by extending the process by two weeks we will be  
8 delivering those IRs about six weeks before the  
9 start of the hearing, the end of July to the first  
10 week of August. But it is all when thinking about  
11 revisions of the schedule, remember that we now  
12 have that new part of the process, which is the  
13 Clean Environment Commission reads these in the  
14 first instance.

15                   THE CHAIRMAN: If you prefer we can go  
16 back to the old way, dump them all on you.

17                   MR. BEDFORD: I'm prepared to go back  
18 to the old way if I also have the discretion to  
19 cull out the ones that I don't think are relevant.

20                   THE CHAIRMAN: I think you should  
21 probably leave that to us. We may be less biased  
22 in that regard.

23                   Can I put it -- what you are saying,  
24 Mr. Bedford, on behalf of Manitoba Hydro is that  
25 you could work with the June 15 date with a

1 delivery date of July 31st?

2 MR. BEDFORD: Yes, if the June 15 date  
3 is the date they arrive at Manitoba Hydro.

4 THE CHAIRMAN: Well, I don't think  
5 they arrive to Manitoba Hydro on June 15th. It  
6 would probably take us a few days to do our  
7 initial vetting of them, so you would probably end  
8 up with five, five and a half weeks.

9 Okay. So then I think we will set  
10 those dates. June 15th is the final date for  
11 submission of IRs. Again, that is an absolute  
12 date and that's not at midnight on June 15th,  
13 that's by about 4:00 o'clock in the afternoon on  
14 June 15th.

15 And we will ask Manitoba Hydro to have  
16 responses back to all of us by July 31st, again by  
17 4:00 o'clock in the afternoon on July 31st.

18 Mr. Hombach, your points about  
19 additional information and perhaps requiring a  
20 second round are very valid points. And we won't  
21 commit to any dates specifically to a second round  
22 of IRs, but once we see that further information  
23 and if there are supplemental filings, we will  
24 almost certainly have a second round, but we will  
25 have to wait and see the dates. It may be very

1 short on both sides. We might only be able to  
2 give parties a week to submit the IRs, a week or  
3 so. I'm just pulling stuff out of the air right  
4 now. It will be a short process, and Hydro may  
5 only have three or four weeks, and that would get  
6 them to us two weeks before the hearing starts  
7 hopefully.

8 Gaile?

9 MS. WHELAN-ENNS: Gaile Whelan-Enns.  
10 This is just a thought, I'm starting to visualize  
11 IRs, and it is a process comment, but a specific  
12 request to Manitoba Hydro. And that is it would  
13 help a great deal in terms of the onus on  
14 participants to have responses to IRs that are not  
15 cross-references. Okay. I think it matters a  
16 great deal for the answer to the IR to be the  
17 answer to the IR, rather than a cross-reference  
18 that says go to chapter such and such and such and  
19 such and read a section where there is four or  
20 five things listed that somehow contain the answer  
21 to the IR. So I think this would help all  
22 parties. Okay. It is a suggestion, a request.

23 THE CHAIRMAN: Thank you. And I'm  
24 sure that the officials from Manitoba Hydro have  
25 heard that. I would also ask -- other parties in

1 this discussion the last few minutes have asked  
2 that Manitoba Hydro send their responses  
3 progressively. I would also ask that participants  
4 send your questions in to us progressively. If  
5 you have questions ready right now or next week or  
6 in two weeks, send them in to us. We don't  
7 want -- the whole process which will be a benefit  
8 to everybody will go a lot more smoothly if we  
9 don't have 1,000 IRs dumped one day. If we get 50  
10 a day for the next 20 days, that's a lot, but we  
11 can deal with them more easily than all at once.  
12 So be considerate on both sides, if you are asking  
13 for consideration, be considerate coming forward.

14 James?

15 MR. BEDDOME: James Beddome, Green  
16 Party Manitoba. I was just going to ask if it  
17 would maybe be possible, I know you guys want a  
18 vetting process and to get rid of duplicates, and  
19 maybe this will make it more challenging, but as  
20 you guys receive them, for the benefit of Manitoba  
21 Hydro, maybe as soon as possible you can review  
22 them, sending them over to Hydro. And in that  
23 way, similar to your comment, the process will  
24 move faster. I know it might make the duplication  
25 challenge a bit more difficult but it may speed up

1 the process.

2 THE CHAIRMAN: That's a good  
3 suggestion. I'm sure that's something that we  
4 could do. You know, if we get a question about  
5 ABC point one, and we send it over and then we get  
6 two more, we obviously won't send them over,  
7 something to that effect. I think we could do  
8 that as well.

9 MR. HOMBACH: Sven Hombach, Bipole III  
10 Coalition. Procedural question; does the panel or  
11 does commission counsel intend to issue IRs on  
12 behalf of the Clean Environment Commission?

13 THE CHAIRMAN: Yes. But again they  
14 will be grouped in, we will -- you know, ours will  
15 be grouped in with all of the others so that they  
16 won't be repetitive.

17 Any other questions? Yes?

18 MR. BEDDOME: Just assuming, this is  
19 just a quick one, but obviously IRs are subject to  
20 the Freedom of Information Privacy Protection Act  
21 of Manitoba?

22 THE CHAIRMAN: Yes. Well, everything  
23 that comes in to us goes on the public record,  
24 so...

25 MR. BEDDOME: I guess the reason I ask

1 is there has been some difficulty in the past  
2 obtaining particularly market information in  
3 regards to Hydro, which has indicated that that's  
4 confidential information such as, you know -- and  
5 I just wanted to know, you know, where are we  
6 going to get cut off or not cut off?

7 THE CHAIRMAN: I guess if you can find  
8 market information dealt with in the Environmental  
9 Impact Statement, then it is a valid point.

10 MR. BEDDOME: I might be jumping ahead  
11 to other issues, but I did want to bring this up,  
12 which is that firstly the terms of reference  
13 indicate that we would abide by the guidelines of  
14 sustainable development. And I think principle  
15 number 1 is integration of economic and  
16 environmental decision making, I think, and I can  
17 only speak for the Green Party of Manitoba and our  
18 position where we really looked at a lot of  
19 renewables beyond hydroelectric in southern  
20 Manitoba, how that might add to our liability. I  
21 know there are other participants here who want to  
22 talk about different routages and running it on  
23 another side of the province, et cetera, and I  
24 know the EIS was drafted in such a way so that  
25 those considerations really weren't taken in. And

1 if I could comment, I guess I would just say there  
2 is a couple of points to this. One is that under  
3 the Environment Act, ultimately the discretion  
4 stills rests with the Minister. So if the purpose  
5 of this hearing, which I understand them to be, is  
6 to sort of create a social contract or to create a  
7 greater public acceptance of Manitoba Hydro's  
8 process, then I think there needs to be a bit of a  
9 broader review that looks at the entire  
10 development of the hydroelectric system in  
11 Manitoba. I have indicated that I looked at the  
12 development of the Nelson and Burntwood as a  
13 single project. And I am looking under the terms  
14 of reference that the Commission may at any time  
15 request that the Minister of Conservation review  
16 or clarify these terms of reference. So I think  
17 it might be beneficial to the hearings if the  
18 Clean Environment Commission was to take the  
19 position to the Minister that we really want to  
20 review this and review whether the public has any  
21 concerns, the concerns aren't which one of the  
22 best three west side routes exist, but rather it  
23 is much broader, larger scale questions. Thank  
24 you.

25 THE CHAIRMAN: Thank you. We will



1 take that under advisement. Any other questions  
2 or comments on this regard?

3 Okay. Next item on the agenda then is  
4 hearing schedule and -- well, I want to talk  
5 fairly openly about some of our thinking over the  
6 last number of weeks and over the last couple of  
7 days. And we have tentatively, and even in my  
8 notes I have got tentatively bold and underlined,  
9 set the hearing dates to start on September 19th.  
10 What that would entail -- and a lot of stuff is  
11 driven by availability of space -- it would entail  
12 three days of hearings in the City of Winnipeg.  
13 The next week there would be no hearings, and that  
14 is only because there is no space available, or  
15 nothing convenient. I mean, we could probably get  
16 a community hall in St. Norbert or something, but  
17 we don't see that as convenient for our hearings.  
18 So there would be nothing the last week of  
19 September. We would resume the first week in  
20 October with a week in Winnipeg.

21 Now, in the last couple of days as a  
22 number of issues have come to our attention in  
23 respect of the EIS, and today in just discussions  
24 about the IR process, it has been suggested to me  
25 that, given that there are only three days of

1 hearings scheduled for the last two weeks of  
2 September, if we were to scratch those three days  
3 and put them on at the end, it would allow two  
4 more weeks for preparation, it would allow two  
5 more weeks for Manitoba Hydro to respond to stuff,  
6 it would allow two more weeks for the parties to  
7 prepare in response.

8                   Now, I'm throwing this out, I see some  
9 quizzical looks. If you don't like that  
10 suggestion, if you want to stick with  
11 September 19th, we are quite prepared to do that,  
12 but we saw it as a way that wouldn't extend the  
13 hearings by very much, we would add those three  
14 days at the end, but it would allow more upfront  
15 time. Any comments in that respect?

16                   Mr. Williams?

17                   MR. WILLIAMS: Yes. Thank you,  
18 Mr. Chairman. It would be helpful to know which  
19 dates the Commission is looking at for Winnipeg  
20 following that? I guess I'm, as usual, double,  
21 perhaps tripled booked with regulatory proceedings  
22 before the Public Utilities Board in October and  
23 then perhaps in mid November. So we are trying to  
24 keep other tribunals up-to-date.

25                   THE CHAIRMAN: Right now we are

1 tentatively looking at the 29th, 30th and 31st of  
2 October. If we add the three days from September,  
3 it would take us into perhaps the 5th or 6th or  
4 7th of November.

5 MR. WILLIAMS: And so Mr. Chairman,  
6 just so I understand, we are looking for a week of  
7 hearings in Winnipeg roughly October 1st through  
8 5th, and then other parts of the province, and  
9 then resuming in Winnipeg the 29th, 30th and 31st,  
10 and then subsequent dates in November?

11 THE CHAIRMAN: That's correct.

12 MR. WILLIAMS: I think from our  
13 clients' perspective that's not a problem.

14 THE CHAIRMAN: Anyone else?

15 MR. HOMBACH: Sven Hombach, Bipole III  
16 Coalition. Being in private practice, I agree  
17 with Mr. Williams' concerns, I have the same issue  
18 of juggling clients. My clients agree that  
19 scrapping the first three days in September and  
20 tacking them on at the end would be much more  
21 workable. My one procedural question was whether  
22 all of the expert evidence from both Manitoba  
23 Hydro and from the participants around the table  
24 would be presented in Winnipeg, or whether the  
25 Clean Environment Commission intends to have any

1 of those hearing dates in other locations?

2 THE CHAIRMAN: The only expert  
3 evidence we would anticipate hearing outside of  
4 the City of Winnipeg would be if there was an  
5 expert in Thompson or The Pas, and happens to live  
6 there or has based his or her expertise on stuff  
7 in that area. For the most part, and by most I  
8 would say 98 per cent part, the hearings outside  
9 of the city are intended just to hear community  
10 concerns, not expert evidence. So with very rare  
11 exceptions, all expert evidence would be presented  
12 and heard in Winnipeg.

13 MR. HOMBACH: Thank you for that  
14 clarification.

15 MS. WHELAN-ENNS: Gaile Whelan-Enns.  
16 I'm just counting slowly, are these three day  
17 hearing weeks?

18 THE CHAIRMAN: No. I think our  
19 anticipation right now is that the first week, the  
20 first week of October would be four or five days.  
21 The following week after Thanksgiving there will  
22 be a day to a day and a half in Gillam. And  
23 because of Thanksgiving being on Monday, and  
24 certain logistics, that's really all we could do  
25 that week. The following week we would have, and

1 we haven't picked the date or even the order, but  
2 we would have one day in Thompson and one day in  
3 The Pas. The next week -- and these will be in  
4 this order -- Monday, Wednesday, Friday, Dauphin,  
5 Portage la Prairie, Niverville. And then the last  
6 week of October we would be back in Winnipeg for  
7 three to six or seven days, probably more. If we  
8 are going to drop those three in September, we are  
9 looking at six or seven days back in Winnipeg.

10 MS. WHELAN-ENNS: Thank you. The  
11 reason I was asking is, again, I was counting in  
12 terms of your target, your assumption in terms of  
13 the number of days for hearings in Winnipeg. I'm  
14 seeing sort of nine to 12 days, depending on how  
15 long those weeks are. Is that fair?

16 THE CHAIRMAN: Well, we are on --  
17 yeah, I suppose we are looking at five plus about  
18 six or seven, so yes.

19 MS. WHELAN-ENNS: Thank you.

20 THE CHAIRMAN: Manitoba Hydro have any  
21 comments on that schedule?

22 MR. BEDFORD: I think we could work  
23 with the revision.

24 THE CHAIRMAN: It gives you more time.

25 MR. WILLIAMS: Sorry, I may have

1 interrupted. Just one additional comment, and it  
2 is hard to anticipate how much time will be  
3 required for each panel of -- I have had the  
4 opportunity certainly to see the proposed Bipole  
5 III intervention, and certainly just -- I think  
6 that there may be time stresses in terms of that  
7 nine to 12 day figure that -- certainly in our  
8 planning we are building in a bit of a contingency  
9 for an extra day or two. If there is three or  
10 four panels from one intervenor, for example, that  
11 might take at least three days one would expect.  
12 So certainly our clients anticipate a potential  
13 time stress in terms of having enough Winnipeg  
14 days.

15 THE CHAIRMAN: We realize this. We  
16 have been through a number of these proceedings,  
17 we know that. Our guestimates are based on our  
18 best guesses, on past experience, but we also know  
19 that it can go over. Which, you know, may pose  
20 problems for some parties if we have to go a  
21 little later into November, but there is really  
22 not much we can do about it.

23 MR. BEDDOME: James Beddome, Green  
24 Party of Manitoba. I just want to make a quick --  
25 growing up in rural Manitoba myself, I just want

1 to make a quick comment, which is I think it would  
2 be helpful if at the start of most of the rural  
3 hearing dates, if the proponent was at least to  
4 make a brief presentation outlining things for the  
5 benefit of rural residents that are not going to  
6 be in Winnipeg at least getting an overview.

7 THE CHAIRMAN: That is standard  
8 practice. You know, it is not extensive, it will  
9 probably be a half hour to an hour. But certainly  
10 that's past practice. Anyone else? Any other  
11 comments on hearing dates?

12 So I would take it then that we will  
13 plan and still tentatively, maybe not quite as  
14 bold and underlined, but we will plan tentatively  
15 to commence the hearings on October 1st. Any  
16 other questions on hearing dates?

17 That brings us to the last item on the  
18 agenda, which is any other issues or questions  
19 that any of you may have of us?

20 Doug?

21 MR. BEDFORD: The present plan that I  
22 intend to follow for Manitoba Hydro, which is in  
23 accordance with your guidelines, is to spend  
24 probably a good part of the very first day  
25 presenting a description of the project and a

1 summary of major conclusions in the EIS. And I  
2 will do that with a panel of witnesses, largely  
3 Manitoba Hydro employees from various departments.  
4 But with respect to this project, key topics of  
5 real concern and interest are Woodland Caribou,  
6 socio-economic impact of large construction work  
7 forces in the Gillam area. And I'm toying with  
8 the idea of thinking it is perhaps more helpful to  
9 everybody concerned if we don't include in the  
10 initial day's presentations our caribou expert's  
11 material, but we target bringing him in on a  
12 different day when perhaps participants who have a  
13 keen interest in caribou and want to present  
14 evidence on caribou as well would bring their  
15 expert witness on that day. So, for example, a  
16 given date in October when we are sitting, we all  
17 know well in advance that that morning will be  
18 devoted to hearing the evidence of Manitoba Hydro  
19 and of participants on the subject of Woodland  
20 Caribou, and arguably the socio-economic impacts  
21 in Gillam. There might be one or two other  
22 topics. I'm not proposing that we chop up the  
23 hearing for each specialty and each topic so that  
24 it becomes too scattered and too chaotic, but  
25 sometimes it is helpful if one hears both sides of



1 the story, if there are both sides on the subject  
2 of Woodland Caribou on the same day, as opposed to  
3 Manitoba Hydro slotted that in on October 1, and  
4 three weeks later one hears a different caribou  
5 expert. It's something to think about rather than  
6 make a final decision today.

7 THE CHAIRMAN: We certainly won't make  
8 a decision today, but that's a very good  
9 suggestion. I think it is something that we would  
10 probably all welcome and we will certainly keep it  
11 in mind as we are planning the hearing process.

12 MR. HOMBACH: Sven Hombach, Bipole III  
13 Coalition. I would like to make a brief comment  
14 in response to what Mr. Bedford said.  
15 Unfortunately, there is a flip side to that  
16 suggestion, to the extent that there are experts  
17 involved that will testify to more than one of  
18 those issues. While it might be tempting to break  
19 the hearing into topics from a perspective of  
20 keeping it all together, it has the potential to  
21 drive up costs and require more than one  
22 attendance for experts, especially if those  
23 experts are residing outside of Winnipeg. That  
24 could influence the funding requirements of my  
25 clients. It might impact other participants as

1 well. And I would just suggest that if the Clean  
2 Environment Commission is considering that  
3 approach, that they would give some thought on the  
4 logistics that would be involved with respect to  
5 the witnesses.

6 THE CHAIRMAN: Good comments. I think  
7 that -- I'm not going to make too many commitments  
8 here but I think it is possible to work both ways.  
9 I would suggest that if we were to have a day that  
10 is more or less a caribou day, that needn't be the  
11 only day that we address caribou issues. So that  
12 if we had Manitoba Hydro's caribou expert,  
13 somebody else's caribou expert, and a third  
14 expert, but yours was not available that day,  
15 whenever your expert was in town, we could go back  
16 and hear his issues around caribou. So I think it  
17 can be worked. I said earlier that I wasn't going  
18 to make any decisions, or firm decisions in this  
19 regard, we will work with all of you in that  
20 regard as we move forward. But thank you for your  
21 comments.

22 MS. WHELAN-ENNS: Gaile Whelan-Enns.  
23 I wanted to agree with the Bipole III Coalition,  
24 there are any number of listed endangered and at  
25 risk species that are part of the process here in

1 terms of reviewing the EIS and thinking about what  
2 the expert information is and how that applies  
3 then to this corridor.

4           The other thing I wanted to say  
5 quickly is that I'm glad to hear that Manitoba  
6 Hydro has set their minds and their work and  
7 attention on Woodland Caribou. Clearly moose are  
8 every bit as important in this review. It depends  
9 on whether you want to say more or less, but we  
10 really do need to learn everything that we can  
11 about the effect of this project and project area  
12 on moose also.

13           THE CHAIRMAN: Thank you. Jason?

14           MR. MADDEN: I think just one issue  
15 that we want to raise, and we -- I don't know how  
16 this exactly is going to come out, but we want to  
17 flag it, is around the Crown's consultation  
18 obligations that we have with Aboriginal people.  
19 It would be helpful to understand what the CEC's  
20 position or understanding with respect to that  
21 issue is. We may not necessarily agree with it  
22 and we may look to other means to try to get  
23 clarity on that. I don't know what will be the  
24 trigger, I think some of our IRs may be deemed  
25 irrelevant or something like that to essentially

1 say, well, we don't have to look at those issues,  
2 that's Manitoba Government's jurisdiction or  
3 ultimate responsibility. But I just want to flag  
4 it so it doesn't come out of the blue to people,  
5 and I don't necessarily know if we will do it by  
6 way of motion or how it will come out, but I think  
7 it is an issue. And if the CEC does have an  
8 opinion about that at this point in time, or will  
9 have one, I think it will be -- that would be  
10 helpful and it may help us figure out how we get  
11 the issue before, or how we essentially react to  
12 what the determination is or how the assessment  
13 is.

14 THE CHAIRMAN: We have given this a  
15 fair bit of consideration. We don't have a firm  
16 or a legal position on that at this time. There  
17 is -- our extensive, there is extensive work going  
18 on by other branches of the Manitoba Government in  
19 regard to the Section 35 consultations. What our  
20 role in that is or will be, we think it will be a  
21 smaller, very minor role, but we haven't come to a  
22 final resolution of that.

23 MR. MADDEN: We just raise it, as you  
24 said, like we don't want to be hit out of the blue  
25 on certain things, it clearly is an issue that

1 everyone is live to.

2 THE CHAIRMAN: Yes, we are. Any other  
3 questions, comments?

4 MS. WHELAN-ENNS: Gaile Whelan-Enns.  
5 I just wanted to thank the MMF for their comments.  
6 I think in the interest of all parties, clarity in  
7 this regard is going to matter. And one of the  
8 risks is motions, which again we would like to  
9 avoid. But the most recent set of discussions,  
10 and I'm thinking both with respect to Peguis,  
11 looking over my shoulder at Mr. Stevenson, and  
12 also Sapotaweyak First Nation, so there is already  
13 a very specific thing that is going on in terms of  
14 the activities for consultations, and that is it  
15 is not just section 35. This is a non-lawyer  
16 speaking where one of my clients, not in the room,  
17 but there is already a significant challenge  
18 because of this narrowing of, and referring to the  
19 allegation to consult and the approach being taken  
20 as having to do with section 35 full stop. Thank  
21 you.

22 THE CHAIRMAN: Any other questions,  
23 comments?

24 We will have a brief report of some of  
25 the decisions that we came to today, specifically

1 the one that we changed around the IR dates, but  
2 any others. We will look at picking a firm date  
3 for motion hearings. We will have at least one  
4 more pre-hearing meeting, as I indicated earlier,  
5 probably about three weeks before the commencement  
6 of the hearing, so that would be early September.

7 On the participant assistance funding,  
8 we should probably be able to let you know  
9 tomorrow the results of that process.

10 Anything else? Okay. Well, thank you  
11 all very much for coming out today and I look  
12 forward to seeing you all over the next many  
13 months.

14 (Concluded at 3:12 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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