

MANITOBA CLEAN ENVIRONMENT COMMISSION

BIPOLE III TRANSMISSION PROJECT

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APPEARANCES CONTINUED:

PINE CREEK FIRST NATION
Charlie Boucher
Warren Mills
John Stockwell

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1 Monday, November 5, 2012

2 Upon commencing at 9:00 a.m.

3 THE CHAIRMAN: Good morning, welcome
4 to this ballroom. I think this is a classic case
5 when you think of decor as going from the sublime
6 to the ridiculous. For students of history or
7 those of British descent, I wish you all a happy
8 Guy Fawkes Day. And we've got a long day ahead of
9 us, so I think we should probably get going.

10 Has everybody on the panel been sworn?
11 I'm not certain. Okay. I think we can get right
12 to it today. We've got, unfortunately, 12 hours
13 ahead of us. It will to be grueling, or
14 potentially grueling. I suppose if Hydro just
15 says yes to everything that's asked, it will make
16 it a lot easier and shorter, but I suspect that
17 won't happen.

18 We have a line-up of people who will
19 be cross-examining on biophysical information.
20 This is basically the information that was
21 presented last Monday, as well as the mammal
22 presentation which occurred on Tuesday morning.

23 So first up, Tataskweyak Cree Nation,
24 Mr. Keating?

25 MR. KEATING: Speaking from back,

1 (inaudible.)

2 THE CHAIRMAN: Today is cumulative
3 effects and all of the stuff related to
4 environmental assessment, including mammals,
5 birds, forests, trees, et cetera. Somewhere I had
6 that, but I can't find that now. Go ahead.

7 MR. KEATING: Sean Keating,
8 Tataskweyak Cree Nation. The first question is
9 with respect to trying to understand the nature of
10 cumulative effects, and I guess this is directed
11 to Mr. Osler.

12 As you know, there have been many
13 hydro projects in the Split Lake Cree resource
14 management area, beginning in the late '50s,
15 continuing on to the present time. They have had
16 adverse effects on resource harvesting, of course,
17 diminished resource harvesting. And in our view,
18 the Bipole III line will have additional adverse
19 effects on resource harvesting, maybe not
20 significant as defined by regulatory guidance, but
21 significant, or sorry -- significant in at least
22 the layman's interpretation of that term. How are
23 these additional reduced harvesting opportunities,
24 which we see as being caused by the Bipole III
25 line, the transmission line particularly, how are

1 they captured in the EIS? If they are not
2 cumulative effects, which they don't appear to be,
3 what are they?

4 MR. OSLER: Your focus, I gather, is
5 on resource harvesting in the Split Lake resource
6 management area. And your concern is -- we're
7 having a bit of trouble hearing -- the concern is
8 the issue of cumulative effects on resource
9 harvesting particularly from the Bipole III line,
10 correct?

11 MR. KEATING: Yes.

12 MR. OSLER: The basic analysis focuses
13 on the effect of the line on both the resources,
14 the various biophysical studies that have been
15 done, and then the harvesting activity, which is
16 under the socioeconomic heading. So today we have
17 here the people who can talk about the actual
18 biophysical resource impacts. And tomorrow we
19 will have resource harvesting. But they
20 interrelate to each other, so let's try and deal
21 with it now.

22 The basic analysis shows that the
23 effects on the resources, called typically small
24 by my colleagues to my right, because the area of
25 the habitat for each of the resources is very

1 minutely affected by the transmission line
2 right-of-way, and the extra access issues are not
3 deemed to be a big deal because they are typically
4 following disturbed areas already. That's the
5 summary of the analysis.

6 In the case of trapping, as you know,
7 there's compensation provided, and you are well
8 aware of that for any effects on trappers.

9 So we get down to traditional resource
10 harvesting by the members of TCN, for example, Fox
11 Lake Cree Nation in the area, or the Metis. And
12 in those cases, the essence of the analysis is
13 that, at this technical level, there does not seem
14 to be a major effect. It is acknowledged that
15 under section 35, in terms of the Crown dealing
16 with each of the First Nations and the Aboriginal
17 people and the Metis, there may be issues that
18 still need to be addressed under a rights based
19 discussion. But from the point of view of a
20 normal analysis, as you called it, for resource
21 harvesting from an environmental assessment point
22 of view, the conclusion is that there does not
23 seem to be or expected to be a material impact.

24 MR. KEATING: Thank you. Could we go
25 to chapter nine of the EIS? And before I

1 neglect -- I neglected to thank the panel for
2 accommodating me this morning due to my absence on
3 Thursday. Thank you.

4 So chapter 9, table 9.2-1, past and
5 existing projects and activities in the project
6 study area. And in that second column there's a
7 heading "Summary of Ongoing Effects Expected to
8 Measurably Change Over Time." Can you explain
9 what that means exactly with respect to past and
10 existing projects?

11 MR. OSLER: The chapter says that the
12 past and existing projects have been taken into
13 consideration in the analysis in chapter 8 before
14 we get to chapter 9. But it acknowledges that
15 there could be an interest that needs to be
16 addressed. If there is an ongoing trend that
17 changes over time in the future, from some of
18 these past projects, that people should be aware
19 of, either the situation is getting worse or the
20 situation is getting better, that type of a case.
21 So the headline is trying to capture that point.

22 MR. KEATING: I note that multiple
23 existing corridors is a project or activity. Why
24 wouldn't the past Hydro development on the Nelson
25 River and within the Split Lake resource

1 management area be one of those projects or
2 activities? All of these projects, I notice in
3 table 9.2-1 are indicated to be mainly addressed
4 in chapter 8. But, I mean, I would think that a
5 lot of these existing corridors are quite old, and
6 I'm not quite sure I understand what the ongoing
7 effects would be, but why wouldn't the past
8 hydroelectric development be one of these projects
9 or activities?

10 MR. OSLER: I think that question was
11 asked in one of the IRs. For whatever the reason,
12 the listing of projects that was made here focused
13 on what you might call past events that were
14 relatively recent, with the exception of the
15 heading that you're focused on right now, the
16 multiple corridors, some of which go back a long
17 time, well before hydro development.

18 In the IR answer the point is made all
19 of the past projects, whether they be listed in
20 this table or not, are considered by the
21 professionals to the extent they have any
22 relevance to the VECs. The hydro development, as
23 such in terms of the biophysical development, are
24 not having a big impact on transmission type of
25 developments. They are much more focused, of

1 course, on the waterways and future hydro
2 developments or anything like that that is on the
3 waterways, and the transmission lines don't tend
4 to interact with those types of effects. So that
5 may be the reason why it wasn't focused on here,
6 but it wasn't ignored, if it was at all relevant,
7 the professionals took them into account.

8 MR. KEATING: Thank you. Table 9.3-1,
9 potential coincidence of effects on biophysical
10 environment.

11 MR. OSLER: Mr. Keating, on this
12 particular table there was a correction filed in
13 an IR. You got the correction.

14 MR. KEATING: I was about to mention
15 that. I couldn't find it when I was looking for
16 it just before I came here. If you could point it
17 out to me, that would be helpful.

18 MR. OSLER: Okay. We actually -- I
19 think some people brought some extra copies. It
20 was in CEC round six, number 226.

21 MR. KEATING: I understand that one of
22 these boxes, or two of the boxes was incorrectly
23 identified?

24 MR. OSLER: Right.

25 MR. KEATING: Could you identify the

1 subsequent change?

2 MR. OSLER: Yes. And there was a
3 corrected -- the corrected tables were filed in
4 that answer along with the original, so you could
5 see the difference.

6 MR. KEATING: Yes, yes, I understand
7 that.

8 With respect to Keeyask
9 generation/transmission, under mammals and
10 habitat, it's indicated that there are potentially
11 non negligible cumulative effects.

12 MR. OSLER: Under which habitat?

13 MR. KEATING: Keeyask
14 generation/transmission, mammals and habitat, the
15 red square.

16 MR. OSLER: Yeah, okay.

17 MR. KEATING: Could you tell me what
18 those potentially non negligible cumulative
19 effects are? Which mammals are we referring to,
20 mammals with fairly large ranges like moose?

21 MR. OSLER: The potential is there for
22 moose, caribou, and I guess other species
23 theoretically. Caribou in particular are the one
24 that we focused on most in terms of potential
25 issues to examine.

1 MR. KEATING: Okay, thank you.

2 MR. OSLER: I think as I said in my
3 opening comment, that if you are looking at future
4 projects in a cumulative effects assessment, in my
5 opinion, one of the things you really want to
6 focus on are projects that are concurrently being
7 reviewed, as distinct from projects that haven't
8 even begun to get reviewed yet. And we all know
9 that Keeyask has got documents filed concurrently
10 with this project to be reviewed. So if ever
11 there was a case where you want to pay attention
12 to overlapping effects, it would be Keeyask and
13 the Bipole.

14 MR. KEATING: Yes. Table 9.3-2,
15 Potential Coincidence of Effects on Socioeconomic
16 Environment. You may have answered this question
17 already, but with respect to Keeyask, Keeyask
18 generation/transmission, if there may be
19 potentially non negligible cumulative effects to
20 mammals and habitat, why would resource use have a
21 checkmark beside it, indicating that there are no
22 adverse cumulative effects?

23 MR. OSLER: Fundamentally because the
24 focus, as I suggested, in the mammals' case was on
25 caribou as a threatened species. And the issue

1 there isn't hunting or resource use, it's
2 protection of a threatened species. So that was
3 perceived to be the most likely area that needed
4 to be carefully examined. I don't think -- my
5 colleagues on my right can discuss it -- but I
6 don't think anybody was focused particularly on
7 any overlap to do with Keeyask
8 transmission/generation with respect to the Bipole
9 in terms of potentially significant, but you can
10 ask my colleagues.

11 MR. KEATING: So the focus was on
12 caribou and not moose?

13 MR. OSLER: Right. And in that area,
14 as the documents discuss, there are various
15 species of caribou that potentially are relevant
16 to analysis, be it not just the case of the summer
17 resident herds in the area, or the potential
18 woodland caribou in the area, but also the barren
19 caribou there, the Pen Island, et cetera.

20 MR. KEATING: Okay. And this may be
21 where the correction was made with respect to the
22 IR, but in that same row, is there supposed to be
23 a checkmark beside culture and heritage?

24 MR. OSLER: Yes.

25 MR. KEATING: And why would that be?

1 MR. OSLER: Because essentially the
2 overlapping effects of Keeyask generation and
3 transmission and the Bipole in the area, it wasn't
4 perceived that the overall effects from Keeyask
5 added onto the effects from the Bipole would make
6 a material change to what was in chapter 8. In
7 other words, taking into account what's been
8 determined in the Keeyask assessments and the
9 agreements that exist in the case of the Keeyask
10 with respect to the First Nations in the area, it
11 wasn't perceived that the Bipole was adding
12 anything more from a cumulative point of view to
13 what was already assessed in chapter eight.

14 MR. KEATING: When you refer to the
15 agreements, you are referring to the JKDA in the
16 adverse effects agreements?

17 MR. OSLER: Sorry, I can't hear.

18 MR. KEATING: When you refer to
19 agreements, you are referring to the JKDA in the
20 adverse effects agreements?

21 MR. OSLER: Yes.

22 MR. KEATING: So are you saying that,
23 in terms of culture and heritage, that's why
24 there's a checkmark there, because of those
25 agreements?

1 MR. OSLER: I'm saying it's one of the
2 factors taken into account. I mean, it's a
3 socioeconomic variable, VEC, we can discuss it in
4 more detail tomorrow, but at a high level, it
5 didn't get to be assessed in chapter 8 to be
6 potentially significant. And the new
7 consideration that this line is bringing to bear
8 is the Keeyask project. And the Keeyask project,
9 as you know, has addressed its issues through the
10 JKDA in respect to the local First Nation. So it
11 wasn't perceived that there was some unforeseen
12 issues that were creeping up from the culture
13 point of view.

14 There also are not, from the
15 transmission side, issues raised in chapter 8 that
16 sort of pushed this particular VEC towards its
17 limits.

18 MR. KEATING: Okay. If those
19 agreements were not in existence, would there
20 still be a checkmark there?

21 MR. OSLER: I don't know. You'll have
22 to discuss it with the person that did the
23 analysis.

24 MR. KEATING: Okay. Thank you.
25 That's it. Thank you.

1 THE CHAIRMAN: Thank you, Mr. Keating.
2 Pine Creek First Nation?

3 MR. MILLS: Good morning,
4 Mr. Chairman. Warren Mills and John Stockwell for
5 Pine Creek First Nation.

6 THE CHAIRMAN: There's a fairly bad
7 echo in this room, so you'll probably have to
8 speak very closely into the mic.

9 MR. MILLS: I'll attempt to do that.
10 Just a few housekeeping points, Mr. Chairman, if I
11 may before we get into it. I have a conflict on
12 this Thursday, and I understand that Manitoba
13 Hydro is getting ready to make their Pine Creek
14 watershed presentation. So if I could ask that
15 that could be scheduled Tuesday, Wednesday, or any
16 time next week?

17 THE CHAIRMAN: Could you take that up
18 with the Commission secretary during a break and
19 see what might be possible?

20 MR. MILLS: I will, thank you.

21 Secondly, Mr. Chairman, as you know,
22 there's been a revision that has a significant
23 effect on Pine Creek First Nation. We are advised
24 that the TAC reviews have been completed. We
25 received an indication from your Commission that

1 they would be available on the provincial site,
2 the technical information would be available on
3 the provincial site. It has not as yet. We were
4 advised this morning we could obtain it from Elise
5 Dagdick, who is not present. Could I ask that
6 whatever mechanism to have the provincial response
7 to the route revisions be included in your site?
8 They are significant, and as we don't have the
9 opportunity to cross-examine them, in the very
10 least we'd like to get the information as quickly
11 as we can.

12 THE CHAIRMAN: Well, we don't control
13 what happens in the Department of Conservation,
14 but I'm sure that they will be posting that later
15 today.

16 As far as posting it to our site, 100
17 per cent of our staff is tied up in these
18 hearings. We have a very small staff, as you may
19 know, and they are all here. So we wouldn't get a
20 chance to post them until at least Friday.

21 MR. MILLS: We understand you have
22 them, Mr. Chairman. If you can make a copy
23 available for us, we'd appreciate it?

24 THE CHAIRMAN: We'll see what we can
25 do.

1 MR. MILLS: Another small detail, but
2 in reviewing all of this and in reviewing the
3 transcripts, I note that the start of every
4 transcript includes a list of appearances, and it
5 lists a group of people. And as I follow the
6 process, who is listed is not necessarily who was
7 in attendance or who spoke. And the list doesn't
8 seem to be growing cumulatively, so it would seem
9 to suggest that those were the appearances or the
10 people who were present of the day. And I'm
11 confident that if any of us reviewed that, we
12 would agree that they don't necessarily agree.

13 There is a statement that someone
14 certifies that these are a true and correct
15 transcript and record of the proceedings, and I
16 just observed that in many cases we have days
17 where people are alleged to have appeared and who
18 I don't believe they have been physically present.

19 THE CHAIRMAN: Well, if it's a major
20 concern, please take it up with the Commission
21 secretary.

22 MR. MILLS: Yeah. Thank you for those
23 points.

24 I guess I will address these questions
25 to Mr. Osler, and if he can refer them to where

1 they might go. Could we agree that proximity to
2 Bipole is probably the greatest parameter of
3 effect.

4 MR. OSLER: The greatest parameter of?

5 MR. MILLS: Of effect of Bipole?

6 MR. OSLER: In a general sense,
7 proximity to the line was used for screening
8 purposes in chapter nine. So, yes, it was sort of
9 one way of looking at it that was pretty useful
10 for most of the VECs.

11 MR. MILLS: Could we agree that
12 proximity to the line would be the greatest single
13 effect on a community? And as an example,
14 Shamattawa, I would agree, Bipole would have no
15 effect on it, TCN would have a significant effect
16 on it, the difference being proximity.

17 MR. OSLER: Well, the general
18 proposition of proximity, we just discussed. In
19 terms of communities, the concept of proximity is
20 perhaps useful in some cases and irrelevant in
21 others. But I think we want to look to see what
22 type of connections exist between this project,
23 including the converter stations as well as the
24 line, and the communities, and look to see how
25 relevant proximity is in practice.

1 MR. MILLS: Okay. Could you give me a
2 quality that a community might have that would
3 cause it to have a quality that would result in a
4 greater Bipole effect on a community? For
5 instance, the further north we go, would Bipole
6 have a greater or possibly a lesser effect on a
7 community?

8 MR. OSLER: I'm not --

9 MR. MILLS: I am thinking developed
10 versus undeveloped territory.

11 MR. OSLER: I'm not aware of a
12 rationale per se why because as we go north it
13 should have a more or less effect. I think I'd be
14 looking more for what I would call pathways of
15 effect between the project and the community. And
16 the biggest ones that have drawn attention have
17 been construction related activities for converter
18 station camps, which happen to be an effect that
19 we have drawn a lot of attention to in the north
20 because the big converter station in the north is
21 near the Gillam community and the Fox Lake Cree
22 Nation and a few other people.

23 MR. MILLS: Would the culture of a
24 First Nations community have any effect? Would
25 your group, and perhaps someone else could answer,

1 have you any indication that a Saulteaux or
2 Ojibway community would be greater affected by
3 Bipole than a Cree community? Is there any
4 cultural relationship of effect of Bipole?

5 MR. OSLER: I'm not aware of any
6 analysis that suggests that the effects are
7 different based on specific different communities
8 or Aboriginal groups.

9 MR. MILLS: Thank you.

10 MR. OSLER: Without -- I haven't seen
11 analysis written in that way. To the extent that
12 the factors people look at in their analysis and
13 the socioeconomic analysis end up being different
14 because they have received different information
15 from different communities, then the analysis
16 perhaps on review might reflect what you're
17 getting at, but I didn't read it that way.

18 MR. MILLS: I'm comfortable with
19 yeses, and nos, if you find any.

20 Would it be fair to say that a smaller
21 community would be more significantly affected by
22 the relationship to Bipole than a larger
23 community, or is there no connection as to
24 community size and Bipole effect?

25 MR. OSLER: It's potentially useful to

1 think that a given level of effect would have more
2 significance, more relevance to the overall
3 community, if it was a small community than a
4 large community.

5 MR. MILLS: Thank you. I realize
6 socioeconomic issues will be discussed tomorrow,
7 but could we agree that Bipole has a greater
8 effect the closer it gets to a community?

9 MR. OSLER: I think we just discussed
10 that a few minutes ago. It depends on the nature
11 of the effects. For a given effect that is
12 linking the Bipole to a community, it probably
13 makes sense to think that the closer the community
14 is to the Bipole, the more material the effect
15 might be.

16 MR. MILLS: So if --

17 MR. OSLER: I'd have to get down to a
18 specific effect in each case to talk about it
19 usefully.

20 MR. MILLS: So if, as we know the
21 Bipole made a significant route change last week,
22 and as we know that route change brought Bipole --
23 it more than halved the distance between the route
24 that's in the EIS, that we have been discussing
25 and considering as recently as last Thursday, we

1 now know that the route is significantly closer to
2 Pine Creek First Nation, our client. Could we
3 agree that that route change and the change in the
4 relationship and proximity will have changed the
5 effects on the community?

6 MR. OSLER: No, I couldn't agree to
7 that without talking to the people that do the
8 analysis. As I have said all the way along, I'd
9 have to look, or make sure that people other than
10 me have looked at what in practice is going on.
11 That question is a very factual question. I don't
12 know whether that degree of distance makes any
13 difference to the analysis.

14 MR. MILLS: Thank you. You'd have to
15 discuss with your peers.

16 MR. OSLER: Right.

17 MR. MILLS: Are you aware of any
18 consideration or review of the effects on Pine
19 Creek as a result of that route change? Have you
20 been involved in any specific discussions with
21 regard to moving the line 60 percent closer to
22 Pine Creek, and hey guys, what's this going to do
23 to the community? Are you aware of any such, or
24 possible conversations?

25 MR. OSLER: I have not been involved.

1 I'm aware that the various professionals have all
2 been asked to look at the effects of the route
3 changes. I am not aware of any results from that
4 analysis at this time.

5 MR. MILLS: So you yourself haven't
6 received any response or advice in that regard?

7 MR. OSLER: That is correct.

8 MR. MILLS: Are you aware of the
9 general proximity to Bipole of the First Nations
10 that it passes by?

11 MR. OSLER: Not personally, no. I
12 have not been involved in the study at that level.

13 MR. MILLS: If I told you that,
14 including the new route, that Bipole passes within
15 two and a half miles of Pine Creek First Nation,
16 would that surprise you?

17 MR. OSLER: No, because I had no
18 knowledge to start with.

19 MR. MILLS: So if I told you that with
20 the new route, Pine Creek is five times closer to
21 Bipole than War Lake, and ten times closer to
22 Bipole than York Factory, would those
23 relationships surprise you?

24 MR. OSLER: Not necessarily, no. I'm
25 sure there are some relationships along the line

1 that are closer than War Lake or closer than York
2 Factory, in terms of communities, including
3 aboriginal communities. But it's interesting, I
4 didn't have any knowledge of that before you gave
5 me the question.

6 MR. MILLS: Thank you. Could we agree
7 in general terms that proximity to a community,
8 Bipole's proximity to a community is proportional
9 to the effect that it has on the community? And I
10 may be re-asking a question, but I'm looking for a
11 little clearer response.

12 MR. OSLER: Well, I think I have been
13 quite clear. I have been saying, I can't give you
14 the answer you're looking for without knowing the
15 situation in the particular VEC. If you're
16 talking about Pine Creek, you're talking about
17 effects that flow from the HVDC line, correct?

18 MR. MILLS: Yes.

19 MR. OSLER: So the types of effect
20 that flow from construction and operation of the
21 HVDC line that's two and a half miles from a
22 community are going to be those that flow from all
23 of the analysis we're talking about during
24 construction and operation periods. In contrast
25 to a converter station, where the construction

1 activity goes on for five years, the construction
2 activity along any portion of the HVDC line will
3 be relatively brief, a matter of weeks, maybe for
4 over two different years.

5 MR. MILLS: Thank you.

6 MR. OSLER: And I have heard operation
7 effects will also be very minor. So that would
8 have a profound effect on the extent to which it
9 can have any effect at all on two and a half miles
10 away from a community.

11 MR. MILLS: Thank you. I'm not sure
12 who on your panel could answer these questions,
13 but I see in correspondence that the Department of
14 Fisheries indicated that Bipole III has no effect
15 on the fish in the 12 rivers, streams, creeks and
16 waterways that Bipole crosses in the Pine Creek
17 watershed. Has Hydro accepted that as fact, and
18 has Hydro undertaken any further study of the
19 effect of Bipole on the fish and the 12 waterways
20 that you cross in the Pine Creek watershed?

21 MR. OSLER: Do you want to deal with
22 it? Our fish expert will --

23 MR. K. MAZUR: Yes, that's right. We
24 are in agreement with the Department of Fisheries
25 and Oceans that oversees fish habitat under the

1 Fisheries Act. And to that effect, the Department
2 of Fisheries and Oceans has what they call an
3 operational statement that prescribes mitigation
4 that, if followed, there will be no measurable
5 effect to fish habitat.

6 MR. MILLS: Okay, thank you. One last
7 question on your study of the route, in particular
8 with regards to the revised route. I've got some
9 comfort that this has been discussed, so I trust
10 you'll be aware of this.

11 Bipole has now been moved
12 approximately two and a half miles from Pine
13 Creek. Has your group, and in particular
14 wildlife, gathered any information on any
15 significant animal farms or operations that exist
16 within that two and a half mile buffer? Is
17 Manitoba Hydro aware of what animal life is
18 currently on the ground between your new route
19 selection and the First Nation?

20 MR. SCHINDLER: If you could clarify
21 animal farms? Doug Schindler here. You mean like
22 actual game ranches or --

23 MR. MILLS: I understand from
24 Mr. Osler, I've got some comfort that you have
25 reviewed the effect of the route change. In that

1 review have you reviewed the farming that's going
2 on immediately around the new route and, in
3 particular, what's going on between the route and
4 Pine Creek?

5 MR. OSLER: In a general sense, the
6 people who are supposed to analyze it are doing
7 that. But we're a bit concerned here that this
8 may be a land use question more than a mammals
9 question, therefore, maybe we should discuss it
10 with the socioeconomic panel. But I'm not sure
11 what state everybody is at in doing their analysis
12 as well.

13 MR. MILLS: If I told you that the
14 largest bison herd in Manitoba is situated in the
15 two and a half mile buffer between Bipole III's
16 new route and the First Nation, would that come as
17 news to Manitoba Hydro?

18 MR. OSLER: I'm told it would not be
19 the type of thing the panel on my right deals
20 with, it would be a land use discussion. We'll
21 ask the land use people if they are surprised by
22 it or if they have uncovered it, or if they
23 haven't, we'll draw it to their attention.

24 MR. MILLS: Thank you. These are your
25 animal experts. I know that there are 5,000

1 buffalo on the land straddling the Slater Creek
2 between Bipole III and Pine Creek First Nation.
3 So I know that in that two and a half mile buffer,
4 there are 5,000 bison. Do your animal experts
5 know or have any sense of the waste produced by
6 5,000 buffalo annually?

7 MR. OSLER: The people to my right
8 don't. We will discuss it with our agricultural
9 expert and a few other people, but I doubt if they
10 do, because they probably don't come across it
11 very often. I can ask them.

12 MR. MILLS: If I told you that 5,000
13 buffalo are contributing 30,000 gallons of urine a
14 day to the Slater Creek, would that come as a
15 surprise to your animal experts?

16 MR. OSLER: I think the answer is yes,
17 because they told me they don't have any knowledge
18 on it.

19 MR. MILLS: So they are unaware of
20 what's going on in that now very tight two and a
21 half mile corridor between Bipole III and Pine
22 Creek; is that correct?

23 MR. OSLER: In respect to the bison,
24 the people on my right are not aware of it because
25 they don't study that. They are busy studying

1 anything else that they are supposed to be aware
2 of with respect to that same area you are just
3 talking about, but they haven't reached all their
4 conclusions yet.

5 MR. MILLS: Thank you.

6 THE CHAIRMAN: Mr. Mills, are these
7 bison privately owned or are they wild?

8 MR. MILLS: Mr. Olson (sic) is --
9 pardon my editorializing -- is playing fast and
10 loose with the granging (sic) versus feed lot
11 discrepancy in the Manure Act of Manitoba. And
12 there are fenced, 5,000 mature bison.

13 THE CHAIRMAN: But they are privately
14 owned?

15 MR. MILLS: Privately owned --

16 THE CHAIRMAN: Thank you.

17 MR. MILLS: -- in the two and a half
18 mile buffer between the new Bipole route and Pine
19 Creek.

20 Those are my questions, thank you. My
21 associate, Mr. Stockwell, has some points to
22 pursue and I'll clear the mic. Thank you,
23 Mr. Chairman.

24 THE CHAIRMAN: Mr. Stockwell.

25 MR. STOCKWELL: Thank you,

1 Mr. Chairman. My first question is to Mr. Osler,
2 and it concerns a question that Mr. Gibbons had
3 earlier. And I really didn't get an understanding
4 of how a matrix, or how the matrix works from ATK.
5 How do you gather the information that you need
6 and what information from the ATK is passed on to
7 Manitoba Hydro from the ATK? I mean, I understand
8 that the ATK is treated very confidentially and
9 that not everybody has access to read the ATK.
10 And in particular, I'm talking the ATK from Pine
11 Creek.

12 MR. OSLER: I am not the person that
13 could answer anything to do with the processes
14 that have been used to do with ATK. I think the
15 panel tomorrow is the one that would be able to
16 address the procedures and what type of
17 information was kept confidential and which
18 information wasn't. The people on my right could
19 discuss with you what information they received in
20 their respective areas from the ATK work.

21 MR. STOCKWELL: Yes. I understand
22 that aspect of it, but I understand also that the
23 ATK -- you have nothing to do with the ATK. But
24 what I'm interested in is how you handle the
25 results of an ATK. Like, if information comes

1 from an ATK on a particular issue, how do you get
2 that information and how do you process that
3 information through the various areas of
4 expertise?

5 MR. OSLER: I think I just answered
6 you that the person that could discuss how they
7 get the ATK and how they handle different --

8 MR. STOCKWELL: No, excuse me, I'm
9 going to interrupt you for a minute, because I'm
10 not interested in the information that goes into
11 the ATK, I am not interested in the ATK
12 information. What I am interested in is how you
13 take the information that comes out of the ATK.
14 Because I understand that that goes through a
15 matrix, or it's coded, and you take the
16 information, each bit of information on any
17 particular subject, and then you look at that
18 information and see whether it needs mitigation,
19 how it's going to affect mammals, birds, how it's
20 going to affect trapping, and so on.

21 MR. OSLER: The best thing I can do
22 for you is ask the people on my right to discuss
23 with you how they got the information and what
24 they did with it, because they were the ones that
25 received it, not me.

1 MR. STOCKWELL: The reason that I was
2 asking you is that you are the person who has
3 overall knowledge of how all of this stuff is put
4 together; is that not correct?

5 MR. OSLER: It would not be correct in
6 the context of the question you are asking. My
7 role is much more one of pulling together the
8 information after all these people have gone
9 through their analysis, and trying to make sure
10 that we have a consistent assessment process based
11 on the results of their analysis. You're asking
12 how they got the information that they used to get
13 their analysis, and that was not in my knowledge
14 base.

15 MR. STOCKWELL: But you would be aware
16 of any weak links in that whole process, would you
17 not?

18 MR. OSLER: Sorry, I couldn't hear one
19 word. Can you say that again?

20 MR. STOCKWELL: I said you would be
21 aware of any weak links in that process, is that
22 correct?

23 MR. OSLER: Not necessarily. I mean,
24 unless I became aware of it, I wouldn't be aware
25 of it, to be not facetious at all. If there is a

1 weak link, I am not aware of it, put it that way.

2 MR. STOCKWELL: I am curious about
3 this. The ATK is held. There may be some
4 significant concerns that the First Nation has.
5 How do those concerns get to the Hydro expert?

6 MR. SCHINDLER: Well, I guess I can
7 speak for the mammals component. In evaluating
8 the biophysical assessment of Bipole, ATK
9 information, I think I presented in our
10 presentation that it was in the form of results of
11 workshops -- I'm sorry, in the form of workshops
12 and ATK reports. And that ATK information was
13 utilized to, or was incorporated into our
14 evaluation of residual effects for each VEC
15 species. So we utilized what information was
16 available to us in the evaluation of the final
17 preferred route.

18 MR. STOCKWELL: If there was a major
19 concern in Pine Creek, and that major concern was
20 the watershed that affects Pine Creek, are you
21 aware that that is a major concern? Were you
22 aware, when you were doing the studies on Pine
23 Creek water -- watershed, excuse me -- were you
24 aware that the watershed, the levels of water in
25 the watershed and the levels of water in Pine

1 Creek itself were of grave concern to the
2 residents of Pine Creek?

3 MR. OSLER: I can ask, is there
4 anybody on this panel who was aware of the concern
5 that's just been set out in the investigations you
6 are doing? I mean, many of the people to my right
7 were dealing with issues that wouldn't necessarily
8 overlap with that. Was there anybody on this
9 panel who addressed that issue? If there's nobody
10 speaking, then there's nobody who specifically
11 addressed that particular concern in their
12 particular area of expertise.

13 And I will, given the silence here, I
14 will check with Hydro as to whether somebody else
15 who is doing hydrological type of work, or
16 somebody that isn't on this panel, who was aware
17 of it. The key concern for a watershed levels
18 issue is the extent to which the Bipole project
19 would have an impact on that aggravating concern.
20 And, you know, who in the team would have been
21 responsible for looking for that type of an
22 impact.

23 MR. STOCKWELL: Very good. The
24 community is some 1,300 to 1,600 that are resident
25 in the community, and there's another 1,300 that

1 live outside the community in Camperville and Duck
2 Bay. I would ask you, if you had concerns from
3 2,600 to 3,000 people about the watershed, should
4 that not get to your level, Mr. Osler?

5 MR. OSLER: In dealing with a concern
6 like that, the key question for the people that
7 worked on Bipole would be, what effects could this
8 project have on aggravating that concern? If it
9 has any, because of the nature of how seriously
10 these people are concerned about it, it would be
11 very relevant to find out and to address it. That
12 would be the way I would approach what you're
13 telling me.

14 It isn't obvious at first glance how
15 this project would have an ability to contribute
16 to that concern. But nonetheless, and I'm aware
17 from the transcript of the concern you are talking
18 about, nonetheless, once a community has that
19 level of concern, it's worth making very sure that
20 the project you're talking about isn't going to
21 contribute further to it.

22 MR. STOCKWELL: I would agree with
23 that.

24 Now, in the area of cumulative
25 effects, does that refer to the cumulative effects

1 of various Hydro projects only, or does that refer
2 to any cumulative effects that would occur to
3 something that was suffering from those effects,
4 or may be suffering from those effects?

5 MR. OSLER: It would be the latter.
6 The point of cumulative effects is to study --
7 well, as I said in the opening Monday, last week,
8 we are looking at valued environmental components.
9 And each one of them, we are interested in
10 understanding the extent to which they are under
11 stress from cumulative effects in the world even
12 without this project. And then we want to
13 understand if this project is going to, in any
14 way, aggravate or increase that stress. And in
15 the example that you are concerned with, the fact
16 that there is a cumulative impact without this
17 project on water levels and watershed issues in
18 the community is an example of a cumulative effect
19 on people who are concerned. And the key question
20 from a cumulative effects analysis would be to
21 recognize that and understand whether or not this
22 project is going to aggravate that at all.

23 MR. STOCKWELL: Very good. So the
24 fact that there's 5,000 buffalo in Pine Creek's
25 watershed, they are all very close to Pine Creek,

1 would that be a cumulative effect, or would that
2 only be a cumulative effect if Bipole did not
3 affect the amount of water that was going through
4 the watershed and rinsing 30,000 pounds of buffalo
5 urine or bison urine into Pine Creek?

6 MR. OSLER: Because of the hearing, I
7 didn't hear perfectly all of what you said, but
8 let me put back to you, whatever is going on
9 without this project, urine or otherwise, is
10 what's going on without this project. It's having
11 a series of effects that may be good, bad or
12 indifferent, or maybe very serious. The question
13 when looking at this project in a cumulative
14 effects analysis is to appreciate what's going on
15 without the project and to understand the extent
16 to which this project is going to change it at
17 all.

18 MR. STOCKWELL: Okay. With regards to
19 those effects, do Hydro experts actually go --
20 would they have gone to Pine Creek and looked at
21 conditions in Pine Creek that might be affected?

22 MR. OSLER: I can't answer that. But
23 there would be no reason to go unless they were
24 aware of a rationale for this project to have an
25 effect. There probably are lots of issues within

1 parameters some distance away from this project.
2 And the Hydro experts wouldn't go and investigate
3 each one of them. They'd go and look at the ones
4 that could be potentially affected by this project
5 from the basis of their knowledge of the project
6 and its effects.

7 MR. STOCKWELL: Okay. I'm going to
8 leave that for a while. I might come back to it.
9 But completely different question now, it's to do
10 with forestry. Is there somebody on the panel
11 that can answer forestry questions? They are not
12 very complicated.

13 MR. SZWALUK: I was looking at
14 vegetation, but there is a forestry discipline as
15 well.

16 MR. STOCKWELL: Very good. I notice
17 in the EIS that there's compensation available for
18 private landowners companies in the province. I
19 assume that's like stumpage fees that they would
20 lose if Bipole were affecting the forestry or
21 their forest lots. Is that correct?

22 MR. SZWALUK: I am not sure. Where
23 did that come from, sorry? Could you repeat that?

24 MR. STOCKWELL: There is compensation
25 for forestry companies or private landowners that

1 are involved in forestry, if Bipole is -- I assume
2 Bipole is removing trees and these trees have
3 economic value that landowners are compensated for
4 that, landowners or companies?

5 MR. DYCK: Good morning,
6 Mr. Stockwell. I am sorry, you might have to
7 repeat your question so I get it clear, please?
8 It's John Dyck.

9 MR. STOCKWELL: It's Mr. Dyck?

10 MR. DYCK: Yes.

11 MR. STOCKWELL: I had a question on
12 forestry. I just noticed, I was reading the
13 EIS -- can you hear me, or is there something I
14 can do to make it better?

15 MR. DYCK: I know that the hearing in
16 the back of the room is much better than here in
17 fact.

18 MR. STOCKWELL: Yes, I noticed the
19 same myself. I am having a very difficult time
20 hearing. At my age, my hearing isn't all that
21 acute. So I didn't know if it was me or if
22 something can be improved.

23 Anyway, the question was, there is
24 compensation I believe for companies that are
25 involved in forestry and private landowners that

1 are involved in forestry, and those people that
2 are losing trees to Bipole, there is compensation
3 for them; is that correct?

4 MR. DYCK: That falls under the
5 compensation policy that Manitoba Hydro has that
6 the property department takes care of, on private
7 land in particular. Anything that's Crown land,
8 Manitoba Hydro deals directly with the Crown on
9 that.

10 MR. STOCKWELL: So that would be yes?

11 MR. DYCK: Yes. Usually on the Crown
12 lands it's associated with a policy that the Crown
13 has, which is called the forest dimension
14 appraisal and valuation policy. And there's a
15 calculation that includes regular timber dues,
16 forest renewal fees, fire protection, and one
17 other one. But that's the formula basically. And
18 it's typically the same thing as what forest
19 harvesting companies pay.

20 MR. STOCKWELL: Okay. That would be
21 yes, there is compensation for private companies
22 and landowners?

23 MR. DYCK: For landowners there is,
24 and the Crown has its fees. They are just regular
25 fees.

1 MR. STOCKWELL: They are just regular
2 fees?

3 MR. DYCK: Yes.

4 MR. STOCKWELL: But that would be
5 compensation, would it not? Compensation, I
6 understand, would be payments that are made in
7 lieu of some economic benefit that's gleaned
8 from -- would be gleaned from the trees? In other
9 words, if Hydro goes and cuts a nice big spruce
10 tree down, and it's on land that say Louisiana
11 Pacific has the right to cut the trees on that
12 land, that Louisiana Pacific would receive some
13 form of compensation or money for cutting down
14 that tree? That's a yes or no answer.

15 MR. DYCK: Is that on Crown land or
16 private land?

17 MR. STOCKWELL: Crown land.

18 MR. DYCK: The fees just go to the
19 Crown, that's it.

20 MR. STOCKWELL: The fees just go to
21 the Crown?

22 MR. DYCK: It's just regular fees that
23 the Crown assesses, yes.

24 MR. STOCKWELL: Okay. So LP doesn't
25 get any of that? They are not compensated at all

1 for it?

2 MR. DYCK: No, no, no. The forest
3 companies are not compensated.

4 MR. STOCKWELL: But the Crown would be
5 compensated?

6 MR. DYCK: It's the Crown that
7 assesses the fees, yes.

8 MR. STOCKWELL: Okay. Are you aware
9 of any compensation at all to First Nations for
10 trees that might be cut down by Bipole? Is there
11 a compensation program?

12 MR. DYCK: Not that I'm aware of.
13 Crown land is Crown land, it goes to the Crown.

14 MR. STOCKWELL: Very good. But you
15 are allowed to pick up firewood?

16 MR. DYCK: Again, Manitoba
17 Conservation has policies on gathering firewood,
18 and usually permits are required. I know that
19 they request Aboriginal folk to also have permits,
20 but there's no fees associated with that for
21 Aboriginal communities.

22 MR. STOCKWELL: Very good, thank you.

23 Mr. Schindler, is Manitoba Hydro, are
24 you or -- I think you did the study on mammals, is
25 that correct, or were responsible for the study on

1 mammals?

2 MR. SCHINDLER: Yes, myself and
3 Wildlife Resource Consulting Services conducted
4 the mammal assessments, yes.

5 MR. STOCKWELL: Did you visit Pine
6 Creek yourself, or did you have people that were
7 visiting Pine Creek, the First Nation?

8 MR. SCHINDLER: There was part of the
9 study team that visited that area and did field
10 studies within that particular region.

11 MR. STOCKWELL: Were they in the
12 community of Pine Creek, on the reserve, did they
13 set foot on the reserve?

14 MR. SCHINDLER: I believe not, no.

15 MR. STOCKWELL: Would there have been
16 any prohibition from them going to the reserve and
17 asking questions or getting help? Would Hydro
18 have told them not to go on to the reserve?

19 MR. OSLER: We're not aware of any
20 prohibitions of the type you are talking about. I
21 mean, there was a process of actively trying to
22 collect information, get information, receive
23 information from various communities.

24 MR. STOCKWELL: So that's a no?

25 MR. OSLER: That's a no, not aware.

1 MR. SCHINDLER: I would just add to
2 that that the biophysical team did work with the
3 ATK people that were doing some of the interviews
4 and so on. I don't have the specific information
5 of when they may or may not have been in a
6 particular community, but we did work with the ATK
7 study team in developing certain questions, so
8 there was some contact there.

9 MR. STOCKWELL: I understand the ATK's
10 are confidential, and I know that you would not be
11 reading the ATK's, but is there any method of
12 getting information from the ATK to you, or to who
13 is responsible for doing the study on mammals
14 directly from the First Nation?

15 MR. SCHINDLER: The other specialists
16 can speak to this as well, but we were provided,
17 and I think I indicated this in our slide
18 presentation, that ATK materials in the forms of
19 results of workshops and a number of reports were
20 provided to us in terms of allowing us to
21 incorporate that information into our assessment
22 of residual effects for the FPR.

23 MR. STOCKWELL: I'm aware of some
24 information from the community itself because I
25 actually go to the community quite often and I

1 talk to the people there, and I'm aware just
2 through natural common conversation that there
3 have been increased sightings of predators in Pine
4 Creek, increased sightings of wolves, cougars and
5 bears. And this is just recently, over the past
6 few years. Were you aware of that?

7 MR. SCHINDLER: Without reviewing the
8 Pine Creek ATK information, the majority of the
9 information that we got was regarding harvesting,
10 wildlife harvesting, and some notes on trapping
11 and hunting activities in the area.

12 Specific to your comment there, I
13 would have to check, but I don't believe there was
14 specific information on that particular item.

15 MR. STOCKWELL: Okay. So that would
16 be a no? Very good, thank you.

17 MR. SCHINDLER: You're welcome.

18 MR. STOCKWELL: I don't see Mr. Kuzdak
19 here. Can somebody field the question for
20 Mr. Kuzdak?

21 MS. MAYOR: He is part of the
22 socioeconomic panel, so he will be available
23 presumably tomorrow for questions.

24 MR. STOCKWELL: So that will be part
25 of socioeconomic?

1 MS. MAYOR: Yes.

2 MR. STOCKWELL: My goodness, I think I
3 have run out of questions for now, but I believe
4 Mr. Mills has something to say. Thank you very
5 much.

6 THE CHAIRMAN: Thank you,
7 Mr. Stockwell.

8 MR. MILLS: Thank you, Mr. Chairman, I
9 will be brief.

10 We have in front of us ten Hydro
11 experts, all capable of discussing the effect of
12 the line. We have a significant route revision
13 that moves the line significantly closer to my
14 client's lands. We have as yet been unable to
15 access the TAC information in that regard. We
16 have held in the community four community
17 meetings, one Hydro/Province meeting, six
18 provincial meetings. Our Chief and Council, with
19 no funding or support whatsoever from CEC, and no
20 funding or support whatsoever for John and I, have
21 done a significant amount of work based on an
22 original route. Now the route has changed. The
23 TAC reviews of those changes aren't available to
24 us. I was told they'd be somewhere on Friday.
25 They weren't. I was told I might get them today.

1 Okay, perhaps. Hydro has all of these skills and
2 abilities, sitting opposite of us --

3 THE CHAIRMAN: Do you have questions?

4 MR. MILLS: I do. Do you feel this is
5 fair?

6 THE CHAIRMAN: Well, I can't comment
7 on that at this point. But I have noted and I did
8 note this last week, that there would be an
9 opportunity after some time has passed to allow
10 people to assess the changes to the route. There
11 will be a specific opportunity to address the
12 concerns around the route changes.

13 MR. MILLS: Mr. Chairman, as you know,
14 we have attended faithfully. We have had our
15 Chief and Council here. We have attended your
16 evening meetings. We have participated within the
17 rules that you have laid out for us.

18 Now the game has changed. We have a
19 lot of unwinding and rework to do to get our
20 client to a point of understanding. Would you
21 reconsider a request to fund Pine Creek First
22 Nation for this process?

23 THE CHAIRMAN: I am not going to
24 address that in this forum.

25 MR. MILLS: What forum would you

1 address it in, Mr. Chairman?

2 THE CHAIRMAN: Not this one.

3 MR. MILLS: Could we meet at lunch, at
4 coffee?

5 THE CHAIRMAN: We'll do it off the
6 record.

7 MR. MILLS: Today, please?

8 THE CHAIRMAN: We'll talk about it,
9 Mr. Mills, not in this forum, no.

10 MR. MILLS: We're in an incredibly
11 compromised position, Mr. Chairman. The route is
12 now closer to Pine Creek than perhaps any other
13 First Nation. All of the effects that these
14 gentlemen have the skills and abilities to
15 discuss, we need to understand, react, and
16 respond. And I feel that the plate is turned
17 upside down and the marbles are running off for
18 us, and we need your consideration and assistance,
19 because I say for the last time, and I realize we
20 are on a tight schedule, but Mr. Chairman, I think
21 we could all acknowledge this process at this
22 point in this configuration is not fair to Pine
23 Creek First Nation.

24 THE CHAIRMAN: Thank you, Mr. Mills.

25 MR. MILLS: Thank you, Mr. Chairman.

1 I'm available for meetings at any time.

2 THE CHAIRMAN: We will break for a
3 break in about 25 minutes.

4 Mr. Madden, are you ready to go?

5 MR. MADDEN: Mr. Osler, you would
6 agree with me that the purpose of an EA is to
7 assess the total project effects?

8 MR. OSLER: The purpose of the EA is
9 to understand the effects of the project in all of
10 the different environments and components that we
11 discussed, yes.

12 MR. MADDEN: And that's the project in
13 its entirety?

14 MR. OSLER: Yes.

15 MR. MADDEN: So if you don't know
16 aspects or parts of the project, how are you able
17 to complete a thorough environmental assessment?
18 So, for example, access roads are yet
19 undetermined, borrow pits are yet undetermined.
20 Those are parts of the project. It would be like
21 saying, there's the mine, there is the tailing
22 pond, but we aren't going to tell you where the
23 tailing pond is. Would you agree with me that you
24 need to understand, or you need to have knowledge
25 of all aspects of the project in order to conduct

1 a thorough environmental assessment?

2 MR. OSLER: No, not in the context of
3 what you just gave me, I wouldn't agree.

4 MR. MADDEN: So you don't think that
5 borrow pits, access roads are parts -- relative
6 components of this project?

7 MR. OSLER: I'm saying to you, I don't
8 agree that you have to know everything in order to
9 assess a project. The question comes down to,
10 what do you need to know about the project and
11 what items are handled normally and effectively
12 later on in the process? And that gets into the
13 question of what level of project definition do
14 you need to do an effective environmental
15 assessment. And it's one of the challenges for
16 each assessment.

17 MR. MADDEN: So you don't think that
18 you need a level of project definition for a
19 transmission line of this size in going into
20 sensitive areas that, in particular, let's say we
21 have already recognized there's constraints on the
22 west side corridor, that having a thorough
23 understanding of what additional elements of the
24 project may be put in that area is necessary?

25 MR. OSLER: I can't answer the

1 question, it's so broad. If I am looking at a
2 transmission line, we'd go through exhaustive
3 experience trying to locate a route. But in the
4 process of locating a route, we end up with a
5 right-of-way. The final definition as to where we
6 might put a tower in that right-of-way, as we have
7 said over and over again, has some degree of
8 flexibility. There are various issues as to how
9 you might actually protect rare plants or deal
10 with things you don't know about yet, but you can
11 find out when you're constructing, to do with
12 heritage resources. So there are a lot of things
13 that you don't know in terms of final precision at
14 the stage of an environmental assessment, not just
15 for a transmission line, but albeit for any
16 project. And I have said out front, that's one of
17 the challenges in an environmental assessment, is
18 the state of knowledge you have and is it adequate
19 for the purposes of a project description, because
20 you don't know everything and things do change in
21 the course of people finalizing a project.

22 MR. MADDEN: And so for the purposes
23 of this environmental assessment, Hydro is of the
24 position that specificity about those aspects of
25 the project, i.e. access roads, borrow pits, et

1 cetera, are not needed in order to undertake a
2 thorough environmental assessment?

3 MR. OSLER: Yes.

4 MR. MADDEN: Is that consistent with
5 other jurisdictions?

6 MR. OSLER: It may or may not be.
7 Each detail might be a little differently held and
8 attributed in different jurisdictions.

9 MR. MADDEN: In developing your model,
10 you didn't look at other jurisdictions of whether
11 they would actually require all aspects of the
12 project to be defined?

13 MR. OSLER: No jurisdiction anywhere
14 requires you to define all aspects of a project
15 because it would be mission impossible. Every
16 jurisdiction everywhere understands that projects
17 evolve a bit, and there has to be a focus on the
18 key issues that are relevant to assessment of this
19 type, which is often done in the state that they
20 haven't completed all the engineering. But in
21 terms of something very specific like access
22 roads, for example, which you raised, do you know
23 the place of access roads? In this jurisdiction,
24 transmission lines have been licensed and reviewed
25 in environmental assessment without people

1 defining precise access roads that aren't known at
2 the moment. I'm aware in the Yukon, where I
3 worked on a transmission line, that the Commission
4 there was quite interested in understanding access
5 roads, and that created its own issues. So a very
6 specific thing in very different circumstances
7 might lead to different assessments. But in this
8 jurisdiction, this is not at all unusual, this is
9 how Wuskwatim transmission was done, this is how
10 other transmissions have been done. And the
11 people who do the work will tell you, I can't
12 figure that out until I've got a contractor in the
13 field, how we might do access roads. I mean, it's
14 mission impossible for me to give you that
15 accurately today.

16 MR. MADDEN: But it hasn't been
17 mission impossible in other transmission projects
18 that are out there, that have done environmental
19 assessments, in particular, when there's areas of
20 sensitivity and concern identified?

21 MR. OSLER: The way to deal with the
22 areas of sensitivity and concern in this
23 submission is to identify them and lay down the
24 ground rules as to how they have to be dealt with
25 when somebody makes their final determination of

1 an access road. So if there's a particular area
2 of concern that needs to be paid attention to,
3 then the company should be aware of it and pay
4 attention to it. That's a bit different than
5 telling the company to tell you at this stage,
6 without a contractor, where every single access
7 road all the way along the 1,300 kilometres will
8 be.

9 MR. MADDEN: But you are attempting --
10 I just want to point out, you are attempting to
11 frame it, it's an impossible task. It's not an
12 impossible task, if you staggered it. So for
13 example, I agree with you, knowing where you're
14 going to be in the south right now at this moment,
15 when you haven't started building, is pretty
16 challenging. But if you have 18 segments, or
17 maybe I'm wrong, that the construction is broken
18 down in 18 segments, having that information of
19 where you're going to put it prior to you moving
20 onto the next segment in a let's say staggered
21 licence, that's not an impossible task, is it?

22 MR. OSLER: I am having difficulty
23 hearing at times. But if you're asking me, as you
24 proceed along the line, if you know certain things
25 as you go through each segment? Is that the

1 question?

2 MR. MADDEN: Yes.

3 MR. OSLER: That would be sort of in
4 the field constructing it?

5 MR. MADDEN: Right. And prior to you
6 proceeding with construction, that those being
7 provided to regulators, that is not an impossible
8 task, correct?

9 MR. OSLER: Before you actually do
10 something in the field, somebody has to figure out
11 what it is they want to do, and they would tend to
12 do that segment by segment. So, you know, there
13 is a sequence to how decisions are made by
14 contractors.

15 MR. MADDEN: So to follow that through
16 then, you're asking approval for a project based
17 upon an environmental assessment that doesn't
18 include all of the project's components, because
19 they aren't yet known?

20 MR. OSLER: It doesn't include all the
21 project's details.

22 MR. MADDEN: But they are components
23 of the project, sir?

24 MR. OSLER: I'm accepting your point
25 that there are elements that are not unusual for

1 this jurisdiction, it's the way it's been done
2 transmission line after transmission line. There
3 are elements that get resolved later that are not
4 part of the environmental assessment at this
5 stage.

6 MR. DYCK: If I may add a little bit
7 to this?

8 MR. MADDEN: I don't need to --

9 MR. DYCK: I have some relevant
10 information here. There is a whole suite of
11 mitigation measures that Manitoba Hydro --

12 MR. MADDEN: I'm not asking a question
13 about mitigation now, sir. I think I have an
14 answer to my question, I'm good.

15 MR. DYCK: It does apply in this case,
16 sir.

17 MR. MADDEN: I'm not asking questions
18 about mitigation right now, I'm asking questions
19 about the environmental assessment and how it was
20 undertaken.

21 MR. DYCK: It has to do with the
22 project components. The project components that
23 you're speaking about at the borrow pits access,
24 for example, those are very well understood
25 components that Manitoba Hydro has a lot of

1 experience with. They are very small in scale.

2 MR. MADDEN: Sir, I think I'm not -- I
3 am going to be asking a whole series of questions
4 about small in scale and all of those -- of how
5 borrow pits are identified, so let me get to that
6 part. I have asked my question, I've got an
7 answer, I don't need further clarification on it.

8 I want to move on now to -- I think at
9 page 2171 in the transcripts, you make a statement
10 about saying, look, this environmental assessment
11 isn't over until it's over, there still can be
12 changes needed as additional information becomes
13 available. Did I understand you correctly on
14 that?

15 MR. SCHINDLER: Yes.

16 MR. MADDEN: I was asking Mr. Osler.

17 MR. SCHINDLER: I didn't know if you
18 were looking at me.

19 MR. MADDEN: No. Sorry, Mr. Osler?

20 MR. OSLER: It was me that made the
21 statement, correct?

22 MR. MADDEN: Yes.

23 MR. OSLER: And I said yes.

24 MR. MADDEN: So if additional
25 information becomes available, you may have to go

1 back and reassess components of the project?

2 MR. OSLER: Potentially -- the purpose
3 of hearings like this, the purpose of all the
4 reviews that go on is to make sure that all of the
5 information that is possible to have bearing on
6 the subject is brought forward. The point of the
7 whole exercise has to be that there's always a
8 possibility that something new will emerge from
9 the process that will cause you to have to
10 reassess something. That was my point.

11 And we have seen in the course of this
12 process, from the time the documents were filed,
13 the reroutings that people are talking about.
14 That's an example of the type of thing that can
15 emerge through the process. So, as a
16 practitioner, I just make the comment in closing,
17 it's not over until it's over.

18 MR. MADDEN: And when you did the
19 initial assessment, the contemplation of the moose
20 closures in what I'm calling the south of Red Deer
21 Lake area, was that factored into the
22 environmental assessment? Because in the EIS, it
23 doesn't seem to be referenced.

24 MR. OSLER: I'll let others who deal
25 with the mammals, you know, deal with the

1 question. But the point at issue is, it is known
2 today. Whether it was known back then or when it
3 was known --

4 MR. MADDEN: I think my question is,
5 was it known and incorporated when you actually
6 did the environmental assessment? Was it factored
7 in?

8 MR. OSLER: I'll let others comment
9 but -- it was known?

10 MR. SCHINDLER: Yes.

11 MR. OSLER: Okay. So it was known.

12 MR. MADDEN: How was it factored in?
13 Where in the EIS does, or your technical reports,
14 does it acknowledge that and factor it in, because
15 we weren't able to see that? Can you provide us
16 direction on that?

17 MR. SCHINDLER: I believe the closures
18 were mentioned. I can dig through and we can find
19 the reference if it's there. But the assessment
20 on moose was based on our knowledge of the moose
21 populations in the area. And, of course, there
22 was new information that was provided to us post
23 filing, and that information was certainly brought
24 to light and has been incorporated into the route
25 revisions and subsequent assessment that is being

1 undertaken now.

2 MR. MADDEN: So how was it
3 incorporated?

4 MR. SCHINDLER: The point would be
5 that the closures, whether we know that areas are
6 opened, are closed, but the effects that were
7 predicted or concluded on moose were the fact that
8 an area is under closure and areas under stress,
9 we assess the effects on moose, not on the
10 closures.

11 MR. MADDEN: But your analysis is that
12 it's within a range of acceptable threshold. And
13 so my question to Mr. Osler, and you can answer as
14 well, sir, is in those areas, would you not agree
15 with me that probably the moose populations have
16 reached their acceptable thresholds, hence the
17 closures?

18 MR. OSLER: On the question of a
19 threshold, which you have asked a few times on
20 this, the fact that there's a closure demonstrates
21 that the population is under stress, et cetera.
22 And in that sense, in a layman's sense, it's
23 reached a threshold to the point where the
24 Conservation Department says, let's all get
25 together and not hunt these animals because they

1 are under stress. Okay.

2 From the point of view of doing an
3 environmental assessment of the Bipole III
4 project, that fact by itself, in my discussions
5 with the people to my right, doesn't change the
6 analysis one iota. Because, essentially, the
7 characteristics of moose that were described in
8 their presentation last week, moose versus
9 caribou, the characteristics of moose are that
10 they have an ability to regenerate if they are not
11 being over hunted. And therefore, from the point
12 of view of the ability of that population to
13 rejuvenate, the point of the closure should work.

14 The characteristics of the
15 transmission line adding to the stress should not
16 be a factor in terms of their long-term
17 sustainability as a population in the area. The
18 closure is an issue of resource management, not an
19 issue that affects the analysis by the mammals
20 experts. It's a different type of threshold.
21 It's a threshold for what you have to do to manage
22 the resource from the point of view of hunting,
23 versus a threshold that's being impinged upon
24 because of a project like the Bipole III project.

25 MR. MADDEN: But you're essentially,

1 you are adding to -- the VEC is under stress, i.e.
2 mammals, in particular moose -- you are adding to
3 that, there will be effects from the project. So,
4 for example, where the line goes, if there is
5 already people -- if the population is already
6 stressed and there is an increased number of
7 harvesters using the area, when you add in a
8 transmission line, there is going to be a loss of
9 that area. Those harvesters have to go somewhere
10 else, right? So there may be increase in where
11 they are going to get the moose or where they are
12 harvesting, because that area during construction
13 is inaccessible. And we know, and I'm not
14 debating on whether the moose come back or any of
15 those sorts of things, but there will be effects.
16 If I understand you correctly, you're saying,
17 well, putting in the line is not going to do
18 anything. It will do anything. Behaviour
19 patterns will change. Moose, locations where
20 moose are will change. Your analysis has to
21 consider that those changes will occur, correct?

22 MR. OSLER: The analysis has to
23 consider the changes that will occur due to the
24 project. And those changes, the point from the
25 analysis is, those changes in an area where we

1 have closure and people are not allowed to hunt,
2 the population is already being protected by a set
3 of measures to stop people from hunting them. So
4 the fundamental point that the analysis, that the
5 experts are after is not whether the population is
6 going to suffer any type of a short-term effect at
7 all. It's discussed that during construction
8 there will be some disturbance in the area where
9 the construction occurs, et cetera. But the
10 question they are really fundamentally focused on
11 is, is this population going to be affected in the
12 longer run, its sustainability, et cetera, because
13 of this project? If the closure stays in place,
14 for example, and people are not allowed to hunt
15 them, then all the access related issues that one
16 normally worries about are not material in that
17 area. The issue --

18 MR. MADDEN: I've got to ask you on
19 that. So essentially you're saying, because the
20 Aboriginal people, in the name of conservation,
21 have agreed to suspend their constitutional
22 rights, on the back of that, that's kind of a
23 bonus for Hydro because they are saying, look it,
24 the closures are there, they can't hunt there
25 anyways, so no matter what we do, there is no

1 effect?

2 MR. OSLER: I'm not trying to be cute.
3 I'm saying if you carry through --

4 MR. MADDEN: Sir, that's what your
5 argument boils down to if you follow it through
6 logically.

7 MR. OSLER: It's what the facts boil
8 down to when you follow through it logically.
9 Essentially, if the closure is there, and you tell
10 it to a mammals expert, they will tell you, fine,
11 that means what? It means --

12 MR. MADDEN: I've got the answer I
13 need from you.

14 MR. OSLER: Good.

15 MR. MADDEN: I want to move on to
16 regulatory significance. This is a new
17 "consultant speak" that I haven't seen in other
18 proceedings just yet, and I want to unpack it a
19 bit and understand exactly what you mean. So I'm
20 going to go to your transcripts, it's at page
21 2173, and you say:

22 "So we found it useful to start
23 calling it regulatory significance
24 that we use for screening of residual
25 effects. It really comes down to two

1 things. The context for the VEC, what
2 other stresses it's subject to, what
3 state it is in, and the intensity of
4 effects that this project is going to
5 have on the VEC."

6 Are you -- and this is, and I have read your
7 transcripts and I can't quite understand what
8 you're saying. So are you saying that regulatory
9 significance is, if on the other side it doesn't
10 equate to someone being charged or fined, or that
11 it's not defined in some sort of legislation or
12 regulatory thing, that this would be, this would
13 go over, that it needs to hit that level in order
14 for you to deem it regulatory significant? I'm
15 not -- I'm really having -- I'm struggling with
16 understanding what you're meaning.

17 MR. OSLER: Okay. It doesn't mean
18 what you just asked me.

19 MR. MADDEN: Okay. So what does it
20 mean?

21 MR. OSLER: It is, to take the
22 Chairman's phrase, "consultant speak" in the sense
23 that I could probably make that comment in many
24 different places, and people would ask me the same
25 question that you're asking me, what are you

1 talking about, this regulatory significance?

2 The phrase came out of work on the
3 Keeyask project and working with the First Nations
4 who were partners in that project. And their
5 concern about the use of the word "significance"
6 which in their experience was "baffle gab" when it
7 gets used in regulatory work. I mean, we're going
8 through these projects and we're talking about all
9 these things. We got 30, 40 VECs, and every one
10 of them you go through this analysis and you end
11 up saying it's not significant. And from a
12 layman's point of view, a First Nations' point of
13 view, holistic culture's point of view, it just
14 makes no sense, they are all significant at one
15 level.

16 So working with the partners in the
17 Keeyask project, and trying to be sensitive to
18 this matter, the phrase regulatory significance
19 became the phrase that gets used, and it gets used
20 a lot in the Keeyask EIS. And I guess I'm guilty
21 of importing it in here. There are many
22 colleagues around me who have been saying, Cam,
23 what the heck are you talking about, this
24 regulatory significance? But they weren't exposed
25 to the same experience I have just given you.

1 For ordinary people, I don't care, it
2 wasn't just First Nation people, I can think of
3 some people that have no Aboriginal rights at all
4 who would be equally baffle gabbed by the process.

5 The word significance is hard to
6 understand when it gets used over and over again
7 and everything is not significant. But in a
8 regulatory sense, it has great meaning, and so we
9 adopted that word. Maybe we'll evolve to a better
10 word. But it's not an attempt to baffle anybody,
11 it's an attempt to recognize the extent to which
12 the language we are using makes communication
13 difficult with people that are not in the
14 professional game.

15 MR. MADDEN: So if I follow the logic
16 through, or what you're actually saying is, it's
17 used to -- because I appreciate the point,
18 significance is in the eye of the beholder. For
19 the entire population of Bipole III, the moose
20 harvest probably isn't that significant. If
21 you're looking at one community like Pine Creek, a
22 community like my client, you affect that, it's
23 significant. But we don't want you to dilute down
24 or I guess -- and I'm speaking on this because I'm
25 trying to understand what you're conveying is that

1 it diminishes the concept. You are attempting to
2 use the language to illustrate, look it, what
3 we're looking at is regulatory significance, we
4 aren't looking at it from a perspective of the eye
5 of the beholder.

6 MR. OSLER: That would be a good way
7 to put it. And the only thing I'd say is -- I
8 mean the technical Canadian environmental
9 assessment guides would say the significance is
10 supposed to be an objectively assessed exercise,
11 not a question of personal point of view, not a
12 question of public opinion, it's supposed to be an
13 objective exercise.

14 Okay. When somebody is being affected
15 by a project, in my experience, that's not all
16 that convincing to them, you know, they have their
17 own perspective on it, whether it's the
18 Charleswood Bridge that's being built and they
19 happen to have a house near there, or it's near a
20 First Nation.

21 MR. MADDEN: Or Metis community.

22 MR. OSLER: Or Metis, exactly, any
23 Aboriginal people. But it goes beyond rights is
24 my point. Ordinary people who have no rights can
25 have these questions very seriously. But the

1 people who do this work seriously try to be
2 objective, to put out standards and do
3 measurements that will help them and help
4 Commissions and help clients know when something
5 has passed a threshold. In many cases, they do
6 not have a threshold in law, which is the way you
7 put your question to me at the beginning, that
8 doesn't get us off the hook. You've still got to
9 try to come to grips with it as objectively as
10 possible.

11 MR. MADDEN: But all you were looking
12 at is a regulatory significance aspect. So I
13 guess going back to that point, you also
14 recognize -- your point kind of illustrates the
15 challenges of understanding effects on Aboriginal
16 rights in an environmental assessment process,
17 because it does look at it from an objective
18 perspective, whereas Aboriginal rights are only
19 held by subsets of the broader population that you
20 may be assessing. Correct?

21 MR. OSLER: Well, I'm not comfortable
22 with the question because I think, although the
23 team here doesn't assess Aboriginal rights, as you
24 have heard, it's not part of the environmental
25 assessment, it's part of the consultation by the

1 Crown. My understanding is that that consultation
2 process deals with an objective set of realities
3 that there are rights, and they either exist or
4 they don't exist, and people have to come to grips
5 with them. It's not just a question of
6 subjectivity. So that would be my only concern
7 with the way you asked me.

8 MR. MADDEN: But you didn't undertake
9 an assessment on rights?

10 MR. OSLER: No, the environmental
11 assessment doesn't undertake an assessment on
12 rights.

13 MR. MADDEN: The Crown has to
14 recognize those?

15 MR. OSLER: The Crown has to do that,
16 yes.

17 THE CHAIRMAN: Mr. Madden, would this
18 be an opportunity to take a break?

19 MR. MADDEN: Absolutely.

20 THE CHAIRMAN: Thank you, 15 minutes.

21 (Proceedings recess at 10:32 a.m. and
22 reconvened at 10:48 a.m.)

23 THE CHAIRMAN: Mr. Madden?

24 MR. MADDEN: So this is the panel that
25 we'll be questioning for vegetation, amphibians,

1 trapper's compensation as well?

2 THE CHAIRMAN: Well, trapper
3 compensation will be tomorrow under the
4 socioeconomic panel. The other items, yes.

5 MR. MADDEN: I want to go back to your
6 statement from October 29, it's in the transcripts
7 at 2174. And you give your description about
8 regulatory significance and you say the sentence:

9 "It really comes down to two things,
10 the context for the VEC, what other
11 stresses is it subject to, what state
12 is it in, and the intensity of the
13 effects that this project is going to
14 have on the VEC."

15 So I want to go to that statement
16 "what other stresses it is subject to." So
17 mammals, and in particular moose, are a VEC for
18 the purposes of Hydro's assessment, correct?

19 MR. OSLER: Yes.

20 MR. MADDEN: Sorry?

21 MR. OSLER: Yes.

22 MR. MADDEN: And so if I understood
23 you correctly in your previous answers, your
24 response was, well, we don't need to look at how
25 the resource is being managed because that falls

1 within Manitoba Conservation's bailiwick, but
2 don't you need to look at it? Because clearly
3 there's other stresses the VEC is subject to.

4 MR. OSLER: I agree that you need to
5 look at all the factors that affect the VEC,
6 including Manitoba Conservation's practice.

7 MR. MADDEN: I can barely hear you,
8 sir, sorry?

9 MR. OSLER: I agree that you need to
10 look at all the factors that stress the VEC, in
11 this case moose, including the management
12 practices of the Conservation Department. I mean,
13 I wasn't intending to suggest you ignore them. In
14 fact, I think my point earlier was if they closed
15 the hunting in the area, that should be taken into
16 account. It means there isn't hunting stress at
17 the moment in that area.

18 MR. MADDEN: But in Manitoba Hydro's
19 IR responses to the Manitoba Metis Federation,
20 when we continue to raise these issues, Manitoba
21 Hydro's response in those IRs was, this isn't
22 our -- that falls within the jurisdiction of
23 Manitoba Conservation. We hear you, we understand
24 the point, but we don't have to look at it in the
25 context of our EIS because we aren't the

1 responsible authority.

2 MR. OSLER: I can understand that in
3 the dialogue on this matter that might be the
4 impression that -- what we're talking about right
5 now -- that the IR is saying we don't have to pay
6 attention to it.

7 My understanding of the IRs answers is
8 that you have nothing more than Manitoba Hydro
9 saying, we don't manage the resource, we can't do
10 the management function, you have to talk to the
11 Conservation Department. But that isn't the same
12 thing as saying for Mr. Schindler to ignore the
13 fact that it's closed at the moment, or that there
14 are hunting stresses, that hunting stresses have
15 created issues for the moose. He can look at
16 that, and if it's relevant to his assessment he
17 should look at it. The fact that it's being done
18 by Manitoba Conservation doesn't get it out of the
19 box anymore than if Manitoba Conservation was
20 failing to do its job and to manage the resource,
21 that could be something you could point out.
22 Manitoba Hydro can't solve that. But if it was a
23 well known fact that that was what was happening
24 in the jurisdiction, then I presume the
25 professional would draw that point out.

1 MR. MADDEN: But wouldn't you need to
2 incorporate that into your threshold analysis?
3 Because unless Mr. Schindler can point me to an
4 area where he does it within his technical report
5 or within the EIS, that isn't factored into the
6 threshold analysis. The closures are not factored
7 into the threshold analysis.

8 MR. OSLER: Okay. Now we're talking
9 about a specific event, closures, and the evidence
10 being that --

11 MR. MADDEN: No, I don't think it's an
12 event. I think, here's the thing, that the
13 closures, it's kind of like do you have a cold or
14 do you have the symptom of a cold? The interest
15 is there is a population, using your language,
16 under stress. The response to that stress is the
17 closures. It's not -- they are connected. So the
18 core issue that I am making the point on is, the
19 VEC is under stress, so that needs to be factored
20 into the threshold analysis.

21 MR. OSLER: All the relevant
22 information should be factored in, nobody is
23 disputing that. The issue we are talking about
24 here is which threshold is relevant for the
25 purposes of the environmental assessment of this

1 project with respect to moose, in the area that
2 you are worried about? The facts are that the
3 moose are under stress in the short-term. They
4 have passed a threshold, if you want to use a
5 language like that, such that Manitoba
6 Conservation and the rights based communities have
7 agreed to have a closure. Those are the facts, as
8 I understand them.

9 MR. MADDEN: And you would agree with
10 me, some threshold has been met already in order
11 to precipitate the closures, correct?

12 MR. OSLER: Right, yes. And the
13 problem, again we get into language, yes, in
14 normal language a threshold has been met. The
15 question for Mr. Schindler, and for the
16 environmental assessment team, is that threshold
17 relevant to the assessment of the Bipole III
18 project effects in this area on moose?

19 MR. MADDEN: You're saying, no, it is
20 not?

21 MR. OSLER: And I am saying, to the
22 best of my understanding of their analysis, no, it
23 is not.

24 MR. MADDEN: Excellent. Let's move
25 on. At page 2190 of the transcripts you talk

1 about the routing was based upon, we looked at
2 issues around Aboriginal lands defined in the EIS
3 as reserves and that are currently identified in
4 TLE selection. And I am going to ask the Chair's
5 direction on this. There is a report about TLE
6 and land selection, and I don't know if Mr. Osler
7 is the appropriate individual to talk about that.
8 Although I don't know who is actually speaking to
9 that report in Hydro's line-up. So maybe these
10 questions can be reserved for there. But no one
11 has presented on that technical report yet and it
12 is of interest and concern to my client.

13 MR. OSLER: I would suggest that the
14 socioeconomic panel would have access to the
15 people who would answer a question like that.

16 THE CHAIRMAN: Ms. Mayor?

17 MS. MAYOR: Could you repeat which
18 technical report?

19 THE CHAIRMAN: Treaty land
20 entitlement.

21 MS. MAYOR: Ms. Zebrowski will be here
22 tomorrow with the socioeconomic panel, so it may
23 be that she would be able to answer those
24 questions.

25 MR. MADDEN: I don't think

1 Ms. Zebrowski wrote the report. Who wrote the
2 report?

3 MS. MAYOR: We'll go back and look.
4 Perhaps you can move on for now and we'll take a
5 look and we can converse --

6 MR. MADDEN: I just want to hark it
7 and make sure that I'm going to have a kick at
8 this can at some point in time, and understand who
9 is the can.

10 So I want to move on to, you would
11 agree with me there is a difference between
12 Aboriginal traditional knowledge collected in the
13 context of routing versus then using Aboriginal
14 traditional knowledge in the context of what is an
15 impact assessment? Do you agree with me that
16 those are two distinct concepts? So, for example,
17 you may try to -- you may use ATK information in
18 order to try to avoid as much as humanly possible
19 in the route. But then once you have parked on
20 it, and I think Mr. Neufeld eloquently described
21 it, at some point in time you just have to get on
22 with it. So finally you get on with it, you say
23 the route is -- but then at some point in time you
24 need to go back and go, okay, we have made
25 decisions and no one is ever going to be happy

1 with all of those decisions, but we now need to go
2 back and assess what's the specific impacts to
3 those communities, or to domestic use? And I
4 don't see in your environmental assessment where
5 that's done. There is a clear articulation of
6 saying, and I think this is debatable and we'll
7 talk about this tomorrow, that ATK was integrated
8 into the site selection process. But then there's
9 not an impact assessment process done based upon
10 the ATK information.

11 MR. OSLER: Okay. I understand your
12 question to be that, what's the difference in how
13 we use ATK for route selection versus impact
14 assessment, is that in essence --

15 MR. MADDEN: Well, first can you
16 answer the question, do you agree that there is a
17 difference?

18 MR. OSLER: Listening to your
19 question, I'm not sure I can agree because I'm not
20 sure what you're getting at.

21 MR. MADDEN: I'm just asking about the
22 general principle. There's a difference
23 between -- if you have information ahead of time
24 and you're planning a project, you will try to
25 incorporate that information into what your

1 ultimate project looks like. Once you do then
2 have a project, there's a need to look at, okay,
3 we couldn't satisfy everyone but now we have to do
4 an impact assessment of what actually does that
5 project, as we have constructed it, do to the
6 various groups?

7 MR. OSLER: I think that we can agree
8 that once you have selected a route in this case,
9 you have to do an assessment, and the assessment
10 requires you to bear down on specific information
11 and perhaps expand on it, as required. Because
12 you now know that you're not trying to avoid
13 something, I mean, you're not trying avoid -- pick
14 a route, you've got a route, and you really want
15 to understand in more detail and more depth the
16 effects of that route on the VEC. So I would
17 describe it that way, if you're comfortable with
18 it. It's another level of detail, it's another
19 level of depth that you're supposed to think
20 about, going to the extent that it's relevant to
21 your assessment.

22 MR. MADDEN: And I agree with that,
23 how you have worded it, I think that's a fair
24 statement of it.

25 So the issue would be for a Bipole III

1 project study area that's as large as the
2 backwards banana, you are casting the net wide
3 initially. And that's through collection of ATK.
4 And then once you actually have a route, you need
5 to go back and see what those direct impacts may
6 be.

7 Now, would you agree with me that the
8 collection of ATK that's done for casting the net
9 wide may be different than an ATK type of
10 information that you need to collect in order to
11 assess impacts?

12 MR. OSLER: I think they might be the
13 same types of information, but the level of detail
14 may be different, if that's -- if we can agree on
15 that?

16 MR. MADDEN: Right. So you aren't --
17 you need to kind of look at, okay, so now where
18 the line is, what would the specific impacts be?

19 MR. OSLER: Right. And we're talking
20 at a conceptual level. I mean, if somebody for
21 some reason collected all the information that's
22 relevant in the first part of it, and they just
23 have to examine that segment of what they have
24 already collected, then we both agree that that's
25 okay. But it's conceivable that somebody could go

1 at a lower level of intensity in what they are
2 collecting while they are busy selecting routes,
3 and then go to a more detailed level later on with
4 the people that are directly affected or the
5 resources that are directly affected. I'm not
6 testifying which they did, I'm agreeing with you
7 conceptually that these all make sense.

8 MR. MADDEN: Yeah. You're in charge
9 of the overall environmental assessment, and I'm
10 trying to get some understandings of the core
11 concepts of what Hydro did.

12 MR. OSLER: Right.

13 MR. MADDEN: So you would agree with
14 me then that the information that you may collect
15 by casting the net wide, in order to get a
16 representative sample of the yellow banana, may be
17 different than what you need to get in order to
18 look specifically at constraints or targeted areas
19 where communities may be directly affected?

20 MR. OSLER: We agree that it may be
21 different. The question is, in fact, what are the
22 facts for the VEC, what was in fact done? And
23 that will be a subject for the people that know
24 about ATK to deal with.

25 MR. MADDEN: So I want to now go to --

1 you spoke earlier this morning, and I think it was
2 with TCN's representatives, about in understanding
3 the cumulative effects from Keeyask, what was
4 considered is the joint development.

5 MR. OSLER: JKDA, Joint Keeyask
6 Development Agreement.

7 MR. MADDEN: Right. Can you explain
8 to me what those agreements are?

9 MR. OSLER: At a high level,
10 agreements between Manitoba Hydro and the First
11 Nations in the vicinity of the Keeyask project
12 with regard to what the project is, how it would
13 be developed, and how adverse effects on each of
14 them would be addressed through separate adverse
15 effects agreements relating to the JKDA.

16 MR. MADDEN: Is there agreement with
17 the Metis community in that area?

18 MR. OSLER: No.

19 MR. MADDEN: And why?

20 MR. OSLER: That's not a question I
21 can help you with.

22 MR. MADDEN: Fair enough. But you use
23 those agreements in the analysis of cumulative
24 effects of saying, look it, that project, we
25 recognize there were cumulative -- we recognize

1 there were effects because they are called adverse
2 effects agreements, correct?

3 MR. OSLER: Correct.

4 MR. MADDEN: And so you use in your
5 analysis for Keeyask that you rely on those
6 agreements in order to demonstrate that, well,
7 there are adverse effects, but they have been
8 addressed either through mitigation, offsetting
9 compensation in some cases.

10 MR. OSLER: Right. And I was
11 answering a question from the representative from
12 Tataskweyak Cree Nation who was asking me
13 specifically about the effects on them in their
14 resource management area.

15 MR. MADDEN: What I'm trying to
16 understand is, how did you use those agreements in
17 your assessment on cumulative effects in relation
18 to Bipole III? Because in chapter 9 you point to
19 those as that, but you just admitted that there is
20 one community up there that you don't have
21 agreements -- that there aren't agreements with.
22 So how do you grapple with that, or do you just
23 say, well, there's no impacts on the Metis?

24 MR. OSLER: The question was to do
25 with culture, but in general I think the only

1 point about the JKDA and the adverse effects
2 agreements is that they are noted because they
3 come with the project called Keeyask. So if
4 you're going to think about the effects of Keeyask
5 on certain groups of people, you should take into
6 account the agreements that relate to that project
7 and those people. That's about all it has a
8 bearing on.

9 And the extent to which either project
10 has an effect on the Metis community, for example,
11 is obviously not addressed in those agreements.
12 And therefore, remains a question that to the
13 extent that there are effects on that community
14 that can be assessed and understood, they remain
15 to be assessed.

16 The overall socioeconomic effects
17 assessment doesn't tend to go and focus on the
18 effects on any one community per se, like a Metis
19 versus Fox Lake versus TCN. The agreements may,
20 but the assessment certainly doesn't.

21 MR. MADDEN: Oh, but it does. You
22 filed supplemental materials on Fox Lake, and you
23 illustrate in your EIS, in particular around
24 Gillam and the converter stations, that, you know,
25 one, that these are the areas where you recognize

1 there will be impacts. And part of your EIS
2 goes -- or Manitoba Hydro's EIS goes in great
3 details in the description of the Fox Lake
4 community and other affected communities in and
5 around Gillam.

6 MR. OSLER: There was joint work done
7 that lead to the analysis that got filed with
8 those communities, but I don't think you will see
9 an assessment per se in Keeyask saying, here is a
10 VEC called the Fox Lake community's culture, and
11 what's the effect on the Fox Lake community's
12 culture? It's still a VEC culled culture.

13 MR. MADDEN: I'm not attempting to say
14 it's the community. I am saying there was work
15 done in order to understand the relevant VECs,
16 that the effects would have on the First Nations.

17 MR. OSLER: I agree completely, that
18 there was, through the partnership arrangements
19 and the agreements, there was lots of work done
20 with each of the partnership members to understand
21 how the project affected them, in order for them
22 to agree to become partners.

23 MR. MADDEN: And in Bipole, that was
24 done to a certain extent as well in the
25 supplemental filings for Bipole around describing

1 the Fox Lake community in relation to the
2 converter station in and around Gillam?

3 MR. OSLER: Right. But essentially
4 the supplementary filing in that regard was to
5 make sure that on the record of this hearing was
6 the material that was separately made available in
7 July on the Keeyask project so that, you know,
8 there wasn't a gulf between the two hearing
9 records. That was the fundamental -- so that this
10 information that had been collected for the other
11 project was at least being made available on the
12 record for this project.

13 MR. MADDEN: But it wasn't used in the
14 context of the environmental assessment?

15 MR. OSLER: No, it wasn't used
16 initially because it wasn't available, if you want
17 to put it that way. And then the conclusions in
18 the supplementary filing is it supports the
19 overall conclusions of the environmental
20 assessment with regard to socioeconomic effects.
21 That was the general drift of it.

22 MR. MADDEN: And in that material,
23 though, there is no analysis on the impact on the
24 Metis community, because that hasn't been done in
25 the Keeyask project?

1 MR. OSLER: There is not a specific
2 agreement process that sets out the same types of
3 things as you find in the JKDA and the adverse
4 effects agreement, with the Metis, so there is no
5 reporting on that. To the extent there are
6 studies that are carried out between Manitoba
7 Hydro and the Manitoba Metis, or any element of
8 it, those are reported on in both Keeyask and in
9 Bipole, but those are different processes.

10 MR. MADDEN: What are those, sorry?

11 MR. OSLER: Well, there have been
12 agreements where people have gone to collect
13 information between Manitoba Hydro and the Metis,
14 Manitoba Metis Federation.

15 MR. MADDEN: What are you talking
16 about?

17 MR. OSLER: I am talking about, you
18 know, your --

19 MR. MADDEN: The self-directed study
20 for Bipole III?

21 MR. OSLER: Yes.

22 MR. MADDEN: But that's the only study
23 you are talking about?

24 MR. OSLER: That's the only one I'm
25 aware of, yes.

1 MR. MADDEN: Just so I'm clear, that
2 supplemental filing that was provided in June or
3 July was just to make the Commission aware that
4 this work had been done on Keeyask, it wasn't that
5 this work had been done on Keeyask and we have
6 incorporated it into the environmental assessment?

7 MR. OSLER: It became part of the
8 record for this hearing's environmental
9 assessment. We're really into socioeconomics on
10 this, but it becomes part of it. And it's
11 relevant because the assessment here in that
12 particular area of this whole project, and because
13 of the converter station in particular, the
14 assessment that we had derived from the Bipole III
15 last November was that we should be paying
16 attention, closely, to overlaps of Keeyask and
17 Bipole in that area, construction related period
18 in particular, particularly as they may affect the
19 communities you and I were just talking about
20 right now. So since we had made all those
21 assertions and assessments, it seemed relevant to
22 make sure that the filings that were made in
23 Keeyask, in the beginning of July, were also
24 brought into this transcript, and that there was
25 any cross checks made, that whether this

1 assessment done for Keeyask in any way changed the
2 conclusions that were in the Bipole filings from
3 last November. And the conclusion in general was,
4 no, they didn't change the conclusions of the
5 assessment.

6 MR. MADDEN: But you would agree with
7 me that that supplemental filing doesn't include
8 any information specific to the Metis?

9 MR. OSLER: I'm not aware that it
10 doesn't, but it may. I haven't reviewed it in
11 detail, from that particular point of view. I can
12 check if you like, but I'm not aware that it
13 should have any specific brand new information
14 that would derive from some new source that we
15 haven't talked about.

16 MR. MADDEN: I guess my point is that
17 you're saying, look it, we brought in this
18 additional information from Keeyask to proffer, or
19 hold, support our analysis. That what we've done
20 in Keeyask helps us or, you know, is consistent
21 with the analysis done in Bipole III, but you
22 acknowledge that that analysis in Keeyask doesn't
23 include specific information on the Metis?

24 MR. OSLER: Well, we're getting into
25 an assessment of what's in Keeyask.

1 MR. MADDEN: I'm not asking for an
2 assessment on Keeyask. I am asking -- you're
3 relying on that information, you're holding it out
4 to say, look it, we're bringing in this stuff from
5 Keeyask to show you that it just validates our
6 socioeconomic analysis in Bipole III. When you
7 bring in that information, it doesn't include
8 information on the Metis. That's all I want a yes
9 or no answer to?

10 MR. OSLER: The Keeyask process
11 collected information with respect to the Metis
12 just like the Bipole process, and I don't think
13 the sections that we filed had any particular new
14 information on the Metis. But I will double-check
15 to find out if I'm wrong.

16 MR. MADDEN: Would you be surprised if
17 it didn't include any information on the Metis?

18 MR. OSLER: No, not particularly.

19 MR. MADDEN: In your testimony at page
20 2192, you indicated that ATK was incorporated at
21 the very initial stages of the Bipole III routing
22 process. Do you stand by that statement, very
23 initial? What do you mean by very initial?

24 MR. OSLER: I think I was speaking in
25 generalities, so I don't think I had a specific

1 time or, you know, period.

2 MR. MADDEN: Okay. And I know that
3 Ms. Petch is going to -- and I'm going to
4 extensively go here.

5 I guess when I read transcripts and
6 see derived by statements, it's got very initial,
7 to me that would indicate that right out the gate,
8 we had ATK information and that was being
9 integrated into the CEA process. That's not
10 really the case, correct?

11 MR. OSLER: Well, we say right out of
12 the gate --

13 MR. MADDEN: I'm talking like 2008?

14 MR. OSLER: I can't get into that
15 today, I can check it. But what I would be
16 speaking of is that in an assessment process, when
17 you get out the gate, you go and ask people for
18 information about what you're talking about. So
19 you don't have it yet, you start. And when I say
20 initially, I would be saying that in the process
21 of having laid out routes and having talked to
22 people about we can do all these different things
23 in this area, that ATK, like other information,
24 was being brought to bear as soon as it was
25 possible to do so in order to assess the options

1 for those routes. That's about all I was getting
2 at.

3 MR. MADDEN: So when you're saying
4 initial stages, what do you mean by initial
5 stages?

6 MR. OSLER: What I just described,
7 effectively.

8 MR. MADDEN: So from your
9 interpretation, would that probably be before the
10 route is identified in April 2010?

11 MR. OSLER: Sorry, I don't have that
12 type of knowledge. My involvement is much later
13 in the process. I'm just talking at a general
14 level that in doing the route selection process,
15 like collecting any source of information, I know
16 ATK was given an importance and people were
17 bringing it to bear so that they could assess the
18 different options.

19 MR. MADDEN: But clearly you're
20 talking about the overall environment, you just
21 don't know what -- when you make that statement,
22 you just don't know what actually you're basing
23 that statement on, what does initial stages mean?

24 MR. OSLER: No, I just explained to
25 you what I meant by initial stages and I stand by

1 that.

2 MR. MADDEN: Okay. You also talk a
3 bit about -- so we attempt to mitigate and then,
4 finally, for affect compensation where there's
5 unavoidable residual effects such as occurs to
6 trappers or landowners, there's compensation,
7 correct?

8 MR. OSLER: Correct.

9 MR. MADDEN: And so there is -- and in
10 the concept of the trapper, your analysis is that
11 that individual should be compensated, but there's
12 no understanding about whether that trapper, how
13 they contribute to the Aboriginal community that
14 they may be a part of. It's only looked at from
15 an individual perspective, not from what is the
16 impact on the community at large, from the
17 Aboriginal community?

18 MR. OSLER: In general I would agree
19 that trapper compensation focuses on the owner of
20 the rights for trapping and not, you know, nothing
21 more than that in the sense that they deal with
22 the owner of the rights.

23 MR. MADDEN: So when you hit residual
24 effects, landowners are compensated, trappers are
25 compensated. We know now that CDI is not

1 considered any form of compensation. If
2 there's -- within the chapter 8 there's an
3 acknowledgment that there are residual effects on
4 Aboriginal communities in relation to domestic
5 use, why is that not compensated?

6 MR. OSLER: Sorry, could you just ask
7 the last part of that again?

8 MR. MADDEN: Sure. You have
9 identified residual effects that can't be
10 compensated for.

11 MR. OSLER: Right.

12 MR. MADDEN: There's compensation for
13 landowners, there's compensation for individual
14 trappers, but there's not compensation for
15 Aboriginal communities, even though your EIS
16 acknowledges there will be residual effects on
17 Aboriginal communities' domestic use. That's the
18 language used. There are some. So, for example,
19 it says there's some elements of vegetation that
20 are non mitigable. We will be taking out some
21 areas of the blueberry patch, we will be taking
22 out some gathering areas, we will be taking out
23 some hunting areas, there's no question about
24 that. But those don't need to be compensated for.

25 MR. OSLER: So your question is, why

1 not?

2 MR. MADDEN: Yes?

3 MR. OSLER: I don't have a specific
4 answer in the sense of why has policy evolved the
5 way it has, but clearly the focus of understanding
6 is that trappers have some specific rights, and
7 landowners clearly have some very specific rights.
8 And if you're going to interfere with those, the
9 compensation flows, and that's been long
10 established.

11 MR. MADDEN: But you would agree with
12 me, Aboriginal communities have specific rights
13 too?

14 MR. OSLER: Yes, I can see that
15 thought process. So the question is, given that
16 there are rights, you know, if the Aboriginal
17 community can establish that these rights are
18 being infringed on then of course through the
19 Crown process, otherwise that matter has to be
20 addressed. And we have seen cases in resource
21 projects where agreements do emerge for adverse
22 effects, and you have discussed with me already
23 some of them on another project, Keeyask project.
24 So I'm not going to get into trying to understand
25 something that is way beyond my level of

1 understanding as to exactly why this might emerge
2 here and that might not emerge there, or whether
3 it might emerge in the future in some situations.
4 The bottom line in each case, if you look at the
5 history, is that one has to find clear evidence of
6 an effect that is compensable for, in order for
7 parties to go anywhere. And if such evidence
8 exists and there's a right involved, my
9 professional judgment is that probably some day it
10 will evolve into a compensation process. But you
11 have to solve the problem of evidence in order to
12 do it.

13 MR. MADDEN: Okay. But in chapter 8
14 there is an acknowledgment that there is residual
15 effects when it comes to heritage, there's
16 residual effects when it comes to domestic use.
17 Now -- and I acknowledge that it's not
18 significant, and in the context of the EIS, I
19 acknowledge that. But your EIS does state that
20 there are residual effects that would affect
21 Aboriginal peoples, such as domestic use, such as
22 heritage.

23 MR. OSLER: Right. But as you have
24 just finished making sure I am reminded of, they
25 don't find them significant, they find them small,

1 et cetera. And that goes to the heart of my
2 point. If a professional is looking at it, if
3 there is a possibility of an effect that might be
4 measurable, then they have to say so. But that
5 doesn't mean they have evidence that would let
6 somebody go about getting into a compensation
7 process.

8 MR. MADDEN: Well, I don't think you
9 are an expert on those sorts of things, but I do
10 think that the point that you validated, though,
11 is that there are residual effects from this
12 project. We'll go back to my example previously,
13 it's in the eye of the beholder of whether it's
14 significant to an Aboriginal community.

15 MR. OSLER: I agree that the experts
16 analysis shows that there are some measurable,
17 because they are not calling them negligible, they
18 are discernible effects. But I ask you to ask
19 them how they would measure them, in order to
20 actually help anybody sort the type of thing you
21 are getting at.

22 MR. MADDEN: I guess, and since you
23 asked, I'll give an example. We are compensating
24 for, or Manitoba Hydro is compensating for
25 landowners who have to look out their windows and

1 see kind of ugly towers on their lands, and that's
2 part of -- for the easement that's used.

3 Now, clearly, already within Bipole
4 III we have had Ms. Petch talk about how there's
5 areas of, you know, blueberry patches, or
6 important areas of gathering or community places
7 that Aboriginal communities continue to use, and
8 there will be transmission lines through them.
9 And so that is a -- and those transmission, it's
10 not going to stop the use, and it may be only for
11 a brief period of time, but it is going to have an
12 effect. There is a loss there. So I agree with
13 you, it's hard to quantify that loss, it's hard
14 to, you know, compare apples to oranges, but the
15 reality is that aesthetics matter for landowners
16 and they may also matter for Aboriginal peoples,
17 correct?

18 MR. OSLER: Correct.

19 MR. MADDEN: So Hydro's current
20 compensation system in relation to Bipole III
21 doesn't provide for that to Aboriginal
22 communities?

23 MR. OSLER: We have not heard of any
24 specific compensation that deals with the types of
25 things you have just been talking about. On the

1 other hand, we do know that --

2 MR. MADDEN: That's good. I think
3 that that answers my question. I want to move on
4 to, when you talk in the transcripts about that --
5 when you are assessing VECs, you also have to
6 consider, and I'm going to use your language, in
7 the societal sense -- this is your testimony:

8 "And in the societal sense we can talk
9 about the same thing, people that are
10 vulnerable, that are particularly
11 sensitive to certain types of changes
12 given their circumstances and their
13 current context, or that have a low
14 capacity to adapt to certain types of
15 change."

16 In that are you talking about aboriginal peoples
17 or are you talking generally? Because it's not
18 clear in your testimony, but I would assume you
19 are talking about it in the context of the -- and
20 I'll just remind you -- in the converter station
21 that, look it, there's impacts that may occur to
22 Aboriginal peoples and they may be more acute for
23 them than it is for the broader public.

24 MR. OSLER: Okay. The point in
25 general applies to people, regardless whether they

1 are Aboriginal. There were cases in the floodway
2 where people had had lands flooded through policy
3 that were -- had high degrees of sensitivity, and
4 that was noted. They were in that sense
5 vulnerable.

6 In the case of the community I was
7 referring to around the converter station in this
8 project, the history that I was referring to was
9 that the Fox Lake Cree Nation has had experience
10 of construction projects in the past that was
11 anything but good from the point of view of the
12 effects on the people, their women, and many
13 things. And that type of vulnerability has been
14 made very clear by them to Manitoba Hydro, to
15 people that work in the field, and I think to this
16 Commission. So that, you know, that is an
17 example, Aboriginal or not is not perhaps the key
18 point. These people have been affected in the
19 past and they are going to be very sensitive to
20 the fear that they are going to be adversely
21 affected again in the future. So please pay
22 attention to this and be sensitive to it.

23 MR. MADDEN: And the same could be
24 extrapolated in, let's say on that west side
25 corridor, a community that derives a significant

1 portion of its income from a blueberry patch, as
2 well as from commercial fishing and other
3 things -- this isn't just in the north -- there is
4 vulnerable Aboriginal, there's acute impacts on
5 Aboriginal peoples in other parts of the province
6 as well. Would you agree with me?

7 MR. OSLER: Correct. And frankly,
8 again, Aboriginal or non Aboriginal, whether it's
9 a farmer or a community of Metis and First Nation
10 people harvesting a blueberry patch, or whether
11 it's people fearful of construction up near the
12 converter station, in each case I submit that a
13 project -- proponent doing this type of a project
14 has to deal with each of those people in their
15 current situation and try and find the best way to
16 mitigate and calm and make sure that the fears
17 that they have are being addressed to the best of
18 their ability.

19 MR. MADDEN: And in the Bipole III
20 situation, how is that done? We've just gone over
21 in saying, look at compensation, we don't have a
22 policy in relation to that. We have also heard
23 from Ms. Zebrowski that, you know, we're willing
24 to talk, but there's no commitment on how you
25 would move forward on assessing those adverse

1 effects and arriving at an arrangement.

2 So from the EIS perspective, Hydro's
3 position is that's not required? Because it seems
4 a little contradictory to your point of saying,
5 look it, we know they are there, it's just how
6 does the EIS propose to deal with those?

7 MR. OSLER: Well, there are many
8 instruments, not just compensation. There's
9 mitigation, there's how you interact with the
10 people, there's how you carry out your project.
11 And they will be different perhaps for dealing
12 with different people in different situations.
13 The experience of the corporation in dealing with
14 farmers is one group of people. And they say they
15 have only had to do an expropriation on, I think
16 one occasion I hear, which is sort of saying, our
17 experience is that we keep talking until we work
18 something out. That's what it tells me.

19 MR. MADDEN: But you'd agree with me
20 that there are formal processes in place to get to
21 those agreements with farmers?

22 MR. OSLER: Right.

23 MR. MADDEN: Trappers?

24 MR. OSLER: That's what we're coming
25 to, there are formal processes that we can point

1 to in certain circumstances.

2 MR. MADDEN: And those aren't in place
3 when it comes to Aboriginal peoples?

4 MR. OSLER: No, I don't agree as a
5 broad statement. I mean, the corporation deals
6 directly with Manitoba Metis, it deals directly
7 with other Aboriginal people.

8 MR. MADDEN: I guess my point -- I
9 don't dispute that -- I don't dispute that there
10 are discussions, I don't dispute that there's
11 actually mitigation statements that say, we'll
12 talk to them, we'll develop EPPs, we'll meet with
13 them. But there's no formalized process that's
14 committed to. There is a formalized process -- I
15 can hold up the trapper policy and I can hold up
16 the landowners policy, and I may not agree with
17 it, but at least I understand where it's going to
18 get me. The commitment around Aboriginal peoples
19 is extremely vague, to say the least, or non
20 existent?

21 MR. OSLER: I don't like either word,
22 but I think that each situation merits being paid
23 attention to. And the one that I focused on a lot
24 is the situation in the Gillam area.

25 MR. MADDEN: Sorry?

1 MR. OSLER: In the Gillam area. And
2 using your same language, well, there isn't a
3 formal process that I can take off the shelf that
4 says, how is Manitoba Hydro going to coordinate --

5 MR. MADDEN: But you'll agree with me,
6 there is a contractual commitment that is there?

7 MR. OSLER: Well, there is --

8 MR. MADDEN: Based on the ISA?

9 MR. OSLER: There are some agreements
10 historically that Manitoba Hydro has to --

11 MR. MADDEN: And Manitoba Hydro is
12 following those? I am saying that they have to
13 get to -- we have already heard that they don't
14 commit that they are ever going to get to, but
15 there is something that the Fox Lake people are
16 relying on in order to get to a process?

17 MR. OSLER: There is, but --

18 MR. MADDEN: So I don't think you can
19 draw the analogy.

20 MR. OSLER: Well, all I'm trying to
21 make the point is that whether you have an
22 agreement like the one you are citing or not,
23 there still are major challenges in coming up with
24 what will be effective in dealing with the
25 concerns that I have laid out during the

1 construction period. Whether I'm dealing with a
2 blueberry patch, you know, let's come up with the
3 right processes with the people in that area that
4 they can be reasonably assured that the blueberry
5 patch is going to keep being able to be used by
6 them. Compensation and agreements have a role,
7 but they are not the be all and end all. I've
8 seen people who have agreements and still have
9 serious problems with each other.

10 MR. MADDEN: I can agree with you on
11 that. I think you have answered my question
12 but -- so I now want to move onto plants. And I
13 don't know who answers.

14 MR. OSLER: Plants?

15 MR. MADDEN: Plants.

16 MR. OSLER: Okay. It's not me.

17 MR. MADDEN: What's your name, sir?

18 MR. SZWALUK: My name is Kevin
19 Szwaluk.

20 MR. MADDEN: There are some areas that
21 Bipole III will go through where plants will be
22 lost, blueberry patches will be lost. You'll
23 agree with me on that?

24 MR. SZWALUK: No, sir, actually I
25 don't think the berry plants will be lost. There

1 may be an initial effect from tree removal, but
2 not lost.

3 MR. MADDEN: Okay. So it's not that
4 they are lost, but you can't mitigate -- they will
5 be gone, you can't mitigate them?

6 MR. SZWALUK: Sorry.

7 MR. MADDEN: You would agree with me
8 that they will be gone, you can't mitigate them,
9 the loss?

10 MR. SZWALUK: Yes, we can mitigate the
11 loss.

12 MR. MADDEN: Okay. Then let me take
13 you to the EIS that says, and I'm on page 8-65,
14 and it says:

15 "Other project components such as the
16 converter station, construction power
17 station, construction camp, borrow
18 sites, will have complete removal of
19 vegetation and therefore non
20 mitigable."

21 You also say on that same page, well, not you but
22 the EIS says:

23 "The 66 metre right-of-way will be
24 cleared of trees and shrub vegetation,
25 while wildlife vegetation will be

1 sparsely treed bogs, will be less
2 effected from fragmentation as the
3 result is less over storey removal."

4 And then you go on in the paragraph to say:

5 "Mitigation measures were not
6 identified as fragmentation effects
7 are non mitigable for transmission
8 lines, converter station, construction
9 camp, borrow sites, access roads, as a
10 result of vegetation clearing. The
11 issue is addressed in the assessment
12 of the project effects and the VECs
13 for vegetation that are reviewed in
14 subsequent sections."

15 So it's a little bit contradictory to
16 say that they are not -- that they are mitigable,
17 sorry.

18 MR. SZWALUK: Which effects are you
19 talking about?

20 MR. MADDEN: I am talking about the
21 loss of potential plants, blueberry crops, along
22 where the final preferred route is.

23 MR. SZWALUK: Okay, correct. We
24 identified mitigation for that.

25 MR. MADDEN: You sorry?

1 MR. SZWALUK: We identified mitigation
2 for that.

3 MR. MADDEN: But you can't mitigate
4 it, it will be gone. That vegetation will be
5 gone. That's what this paragraph says
6 essentially. Mitigation measures were not
7 identified as fragmentation effects are non
8 mitigable.

9 MR. SZWALUK: That's fragmentation,
10 sir.

11 MR. MADDEN: Right. So in relation to
12 vegetation, though, there are some non mitigable
13 effects?

14 MR. SZWALUK: That's correct.

15 MR. MADDEN: And how do you compensate
16 for those non mitigable effects, for the
17 Aboriginal peoples who rely on that plant's life?

18 MR. SZWALUK: Well, what was non
19 mitigable was a residual effect, that's what we
20 identified was residual.

21 MR. MADDEN: So when I'm reading in
22 the EIS that there are residual effects, that is
23 where this assessment is?

24 So I guess I'm going to go back to
25 Mr. Osler's point. Removing a certain blueberry

1 patch or area of use for the large banana area
2 wouldn't be of concern. Removing that from Metis
3 and First Nation communities, who may extensively
4 rely on them in a specific quadrant of the line
5 could be significant?

6 MR. SZWALUK: We didn't identify that
7 as significant, sir.

8 MR. MADDEN: You don't think that's
9 significant?

10 MR. SZWALUK: Well, some of these ATK
11 polygons are very large, and a transmission line
12 going through there might not necessarily be a
13 worst case scenario. You might improve conditions
14 for some species such as blueberries and that was
15 identified.

16 MR. MADDEN: But you don't have that
17 information, you don't know. Mr. Osler just
18 finished saying, look it, there was information
19 used for ATK, but then going back on it in
20 relation to the actual impacts, you don't know
21 that right now? Like you can make that statement,
22 but you don't know -- well, we still don't even
23 know what the route is. But you don't have that
24 pinpoint site specific data in some quadrants of
25 the line?

1 MR. SZWALUK: No, that's correct.

2 MR. MADDEN: So then it becomes very
3 challenging to say it's not significant. I guess
4 it goes back to my statement of it's in the eye of
5 the beholder. It may not be significant in light
6 of the larger line, it may be significant in light
7 of the way the Aboriginal peoples who are in and
8 around those areas use that territory. Would you
9 agree with me on that?

10 MR. SZWALUK: Sorry, could you repeat
11 that, please?

12 MR. MADDEN: Sure. Would you agree
13 with me that in areas where there's vegetation,
14 blueberries, plant life, that are extensively
15 relied on by Aboriginal peoples, that removal and
16 loss of that could be significant to them?

17 MR. SZWALUK: No, we don't feel that
18 that's a significant effect.

19 MR. MADDEN: You don't feel that
20 that's a significant effect for the purposes of
21 the EIS?

22 MR. SZWALUK: That's correct and
23 that's what we have identified --

24 MR. MADDEN: No, no, that's good. And
25 so trapper compensation is tomorrow. And so the

1 only other one on this panel is amphibians,
2 correct?

3 THE CHAIRMAN: Correct.

4 MR. MADDEN: I'm done.

5 THE CHAIRMAN: Thank you, Mr. Madden.

6 MR. BERGER: Do you have any questions
7 on birds?

8 MR. MADDEN: I have no questions on
9 birds.

10 THE CHAIRMAN: Mr. Meronek, we will
11 probably split your portion because we'll break
12 for lunch in about 25 minutes.

13 MR. MERONEK: I was moved by
14 Mr. Berger's plea for questions, so I'm going to
15 start with him.

16 Mr. Berger, as the panel would say,
17 these are questions for clarification.

18 MR. BERGER: Yes.

19 MR. MERONEK: Firstly, I noticed in
20 the massive volumes of studies on birds that there
21 wasn't a section for the Canada Goose. Is that
22 correct?

23 MR. BERGER: That is correct.

24 MR. MERONEK: Can you tell the
25 Commission why Canada Geese were eliminated from

1 this process of examination?

2 MR. BERGER: Canada Geese were
3 initially used during the alternative route
4 selection process as one of ten VECs selected
5 initially. We do describe effects on Canada Geese
6 as may be associated with the waterfowl group. So
7 as Mallard is the VEC for that particular group,
8 the potential habitat related effects or mortality
9 concerns are in fact covered by Mallard.

10 MR. MERONEK: Are you suggesting, sir,
11 by that that the predilection of the Canada Goose
12 in all respects equates to that of the Mallard, so
13 that that would be an appropriate surrogate for
14 examination?

15 MR. BERGER: What I'm saying, sir, is
16 that -- and I agree in not all respects where a
17 Canada Goose and Mallard may in fact use slightly
18 different habitats. However, with respect to
19 potential wetland use or issues concerning
20 mortality, there are similarities, yes.

21 MR. MERONEK: Just in the order of
22 magnitude of population, and I only anecdotally
23 know this by virtue of the count that I have of
24 Canada Geese that land on my yard, but it's a
25 significant population -- there I go,

1 significant -- in relation to Mallards, Canada
2 Geese would be a bigger population, wouldn't it?

3 MR. BERGER: I believe that is
4 correct, however, I would have that subject to
5 verification.

6 MR. MERONEK: And the Canada Geese
7 flyway is fairly prodigious along the length of
8 the projected Bipole III area, is that correct?

9 MR. BERGER: Sorry, sir, was your
10 question Canada Geese are present along the length
11 of the Bipole III project area?

12 MR. MERONEK: Their migration path?

13 MR. BERGER: That is correct, their
14 migration path is prevalent in certain areas of
15 the Bipole III project area.

16 MR. MERONEK: I know it's certain
17 areas. But I'm saying for a good portion along
18 the proposed Bipole III route, you will find the
19 Canada Geese migration path?

20 MR. BERGER: That is correct. You
21 will find migration pathways, and where Canada
22 Geese might breed in the project study area.

23 MR. MERONEK: What about the Blue and
24 Snow Goose, is that again represented by Mallards
25 in terms of a VEC?

1 MR. BERGER: With respect to potential
2 effects related to the project, it is. However,
3 Snow Geese, of course, would pass through the
4 project area and would not nest in the project
5 area.

6 MR. MERONEK: Okay. They are not
7 discretely -- they haven't been discretely
8 examined by you in your report, is that correct?

9 MR. BERGER: Sorry, sir?

10 MR. MERONEK: Blue and Snow Geese have
11 not been discretely assessed by you in your
12 report, correct?

13 MR. BERGER: That is correct. They
14 have not been discretely assessed in the report.

15 MR. MERONEK: What about White
16 Pelicans?

17 MR. BERGER: Numerous White Pelicans,
18 in fact, were observed during the field studies,
19 and we do have information from the CDC on where
20 White Pelican colonies are located. And I should
21 add that even for Snow Geese, there is information
22 available with respect to potential populations or
23 numbers, but they were not specifically assessed
24 in the effects assessment.

25 MR. MERONEK: What about Tundra Swans?

1 MR. BERGER: At the time that the
2 effects assessment was drafted, Tundra Swan were
3 considered by Manitoba Conservation as being
4 extirpated. And since that time, the Tundra Swan
5 population has been recognized as endangered. We
6 do have limited information on Tundra Swan --
7 sorry, my mistake. I mean Trumpeter Swan, not
8 Tundra Swan. Tundra Swan were not specifically
9 looked at, no.

10 MR. MERONEK: What about Ptarmigans?

11 MR. BERGER: We do have some limited
12 information on Ptarmigans, but the potential
13 effects that the project may have on such Grouse
14 species would be considered under the Grouse
15 family group.

16 MR. MERONEK: So there was no discrete
17 assessment of Ptarmigans in the report?

18 MR. BERGER: Subject to verification,
19 I believe that is correct.

20 MR. MERONEK: I want to move to bird
21 strikes, and I think you confirmed in your
22 testimony viva voce, and as well Manitoba Hydro
23 has indicated in the EIS that there's virtually no
24 data for bird strikes in Manitoba, is that
25 correct?

1 MR. BERGER: There is limited
2 information coming from Manitoba on potential bird
3 wire collisions. I am currently aware of four
4 studies, and Manitoba Hydro relies primarily upon
5 other literature to assess the significance of
6 bird collision mortality.

7 MR. MERONEK: My understanding from
8 chapter 8 of the EIS at page 184 was that there
9 was virtually no data for bird strikes in
10 Manitoba. Has that been -- is that correct or
11 not?

12 MR. BERGER: I believe the term I used
13 there was there was a paucity of data with respect
14 to bird wire collisions. However, I am aware of
15 four studies in Manitoba that have taken a look at
16 bird wire collisions.

17 MR. MERONEK: Would you be able to
18 undertake to provide those studies?

19 MR. BERGER: Yes, I can do an
20 undertaking to provide the studies that I'm aware
21 of.

22 MR. MERONEK: Can you tell me now what
23 the date of the latest study was?

24 MR. BERGER: Sorry, say again, please?

25 MR. MERONEK: Are you able, at this

1 point, to tell me what the latest date -- or what
2 the date of the latest study was?

3 MR. BERGER: I'm aware of two studies
4 that have occurred approximately between 1995 and
5 1997. And I was involved in monitoring for the
6 Rosser/Silver project myself. As well as there is
7 ongoing monitoring for bird wire collisions
8 associated with the Wuskwatim transmission line
9 project.

10 MR. MERONEK: Now, from Rosser to
11 Silver, I am learning a lot of geography of
12 Manitoba, but I don't know where Rosser to Silver
13 is. Can you enlighten me?

14 MR. BERGER: It currently goes from
15 the Rosser Station to near highway, I believe it's
16 highway seven -- my apologies, highway six, and
17 goes north.

18 MR. MERONEK: And how long is that
19 line?

20 MR. BERGER: I would have to do an
21 undertaking to check that particular length of
22 line, if you are so inclined?

23 MR. MERONEK: Thank you. There has
24 been no data collected for Bipoles I and II
25 relating to bird strikes, is that correct?

1 MR. BERGER: That is correct, as far
2 as I'm aware of.

3 MR. MERONEK: Do you have an
4 explanation as to why no study would have been
5 undertaken with respect to Bipoles I and II?

6 MR. BERGER: I would be uncertain as
7 to why specific studies were not conducted along
8 Bipoles I and II. However, as I indicated to the
9 Commission, that Manitoba Hydro relies on the
10 experience of other facilities, including the
11 Avian Powerline Interaction Committee, and
12 materials that could be sourced from there in
13 order to consider the effects of such projects.

14 MR. MERONEK: Never mind from Manitoba
15 Hydro's perspective, but from your perspective as
16 a scientist, would you have expected that an
17 assessment of Bipoles I and II would have been
18 helpful to you in making a determination of issues
19 such as bird strikes in Manitoba?

20 MR. BERGER: Generally, with respect
21 to my opinions as a scientist, we do rely on
22 information and data in order to understand what
23 potential projects there might be from such things
24 as bird wire collisions, and irrespective of there
25 not being information for Bipoles I and II, there

1 is lots of source information when it does come
2 down to potential bird wire collisions. And those
3 sources extend outside of Manitoba, as well as
4 worldwide.

5 MR. MERONEK: It's my understanding
6 that Whooping Crane deaths, about a quarter of
7 their deaths are related to bird strikes. Is that
8 a percentage you can agree with?

9 MR. BERGER: Yes, I believe I recall
10 that relative figure.

11 MR. MERONEK: Now, in your testimony,
12 you talked about deflectors or diverters reducing
13 bird strikes, and you seem to be fairly
14 comfortable with an assessment that the placement
15 of diverters or deflectors would -- have been
16 shown in the literature to reduce bird strikes
17 from 50 to 80 percent. Did I capture that
18 collectively?

19 MR. BERGER: Yes, that is correct.
20 There is a process used, starting from the
21 selection of the alternative routes through
22 understanding where potential staging areas are
23 and/or migration routes, including the Whooping
24 Crane, which is not expected to occur in our
25 project study area based on the known migration

1 routes. And that if there are further
2 considerations for mitigation, they certainly do
3 include the use of bird deflectors, which in the
4 literature actually range even broader than the 50
5 to 80 percent, although those that I did review
6 appear to suggest that that is the reduction in
7 potential mortality.

8 MR. MERONEK: Now, are those studies,
9 studies which examined all sorts of weather and
10 all types of visibility, to your knowledge?

11 MR. BERGER: Many of these studies are
12 actually conducted over long periods of time and
13 they, in fact, would consider averages for things
14 such as weather. However, those types of events
15 do occur and there can be potentially additional
16 effects related to those circumstances. However,
17 as far as I understand, these are the long-term
18 averages in the reduction of potential mortality.

19 MR. MERONEK: And you are coming to
20 that conclusion solely based on having reviewed
21 these studies, is that correct?

22 MR. BERGER: That is my understanding,
23 correct.

24 MR. MERONEK: Would you undertake to
25 provide the studies upon which you rely to come to

1 the conclusion that 50 to 80 percent reduction in
2 bird strikes have been demonstrated by the
3 application of diverters or deflectors?

4 MR. BERGER: I certainly can, sir, but
5 there is one summary study I believe that was
6 cited in one of the IRs, and it's either Boristos
7 or -- no, not -- I will undertake that, sir, but
8 there is a range provided in summary in one of the
9 interrogatories.

10 MR. MERONEK: Now, with respect to
11 mortality, I think you indicated that anything
12 outside of a measurement of from zero to 18 birds
13 per kilometre would be, in your words, excessive;
14 is that correct?

15 MR. BERGER: Sorry, sir, between zero
16 and 18 would be excessive?

17 MR. MERONEK: Zero and 18 birds per
18 kilometre, anything beyond that would be
19 excessive, in your view?

20 MR. BERGER: I believe I did indicate
21 that there are studies with the APLIC that have
22 waterfowl mortalities in particular that exceed
23 that zero to 18 range, that is correct.

24 MR. MERONEK: I think maybe it's the
25 acoustics here. My understanding of your evidence

1 was that you were of the belief that if anybody
2 suggested that bird strikes would occur in greater
3 than 18 birds per kilometre, that would be an
4 overstatement, or did I misunderstand your
5 evidence?

6 MR. BERGER: Sorry, sir, could you
7 please clarify what you're asking?

8 MR. MERONEK: Yes. I understood your
9 evidence to be that you gave a range from zero to
10 18 birds per kilometre as an appropriate level of
11 mortality from bird strikes, and that any study
12 that suggested a greater amount of bird strikes
13 should be treated with some, my words, scepticism?

14 MR. BERGER: There are a number of
15 ranges reported in the literature from zero to 18.
16 There is a number of reports between three and
17 five. When you consider what might be the
18 biological significance or effect beyond 18, or
19 even those that may be considered high, such as
20 Yannis' (ph) work at about 69 birds per kilometre,
21 the biological effect as may be measurable on that
22 population is still not significant.

23 MR. MERONEK: You'll agree, sir,
24 however, there are studies that would suggest bird
25 strikes more in the magnitude of 125 birds per

1 kilometre?

2 MR. BERGER: I have seen such studies,
3 yes, sir.

4 MR. MERONEK: Thank you, Mr. Chairman,
5 those are my questions on birds. It's almost
6 12:00, so I think maybe we should break.

7 THE CHAIRMAN: Sure. Good point. We
8 will do that. So we'll break for lunch right now
9 and please come back at 1:00 o'clock.

10 Mr. Williams?

11 MR. WILLIAMS: Thank you and good
12 morning, Mr. Chair and members of the panel. Just
13 for the board's secretary and others in terms of
14 timing, after reviewing last week's transcript and
15 our pending expert evidence, I think for the first
16 time in history, my estimate of time for
17 cross-examination may be overestimated. So just a
18 heads up to other examiner's that I don't
19 anticipate to be taking as long as previously
20 indicated. I am going to guess in the range of an
21 hour to an hour and 20 minutes.

22 THE CHAIRMAN: Thank you,
23 Mr. Williams. We're always glad to hear news of
24 less time rather than more time.

25 So on our current schedule following

1 you is Manitoba Wildlands and Green Party. So
2 Mr. Beddome, if you're ready to go mid to late
3 afternoon.

4 MR. BEDDOME: That won't actually be
5 possible. I'm away at class this afternoon and
6 will be coming back at 7:00 p.m. I'm wondering how
7 we might deal with that.

8 THE CHAIRMAN: Let's talk about it off
9 the record.

10 MR. BEDDOME: Okay, much appreciated.
11 I was going to address the Commission secretary at
12 the break.

13 THE CHAIRMAN: Okay. We'll break then
14 until 1:00 o'clock.

15 (Proceedings recessed at 11:58 a.m.
16 and reconvened at 1:00 p.m.)

17 THE CHAIRMAN: Do you have some
18 undertakings that you wish to bring up now or
19 later?

20 MS. MAYOR: Mr. Beddome has to get to
21 class, so it's fine, we can do it after.

22 MR. BEDDOME: Thank you.

23 THE CHAIRMAN: No problem. We have
24 had some accommodations made to allow Mr. Beddome
25 to both get his cross-examination in and get to

1 his class. What is the class?

2 MR. BEDDOME: First Nations water
3 rights.

4 THE CHAIRMAN: Very important class to
5 be taking then.

6 MR. BEDDOME: It definitely is,
7 followed by clinical family law, which I don't
8 know if it's as important I suppose, but it's
9 interesting nonetheless.

10 THE CHAIRMAN: Mr. Beddome will go
11 first, then we'll return to Mr. Meronek.

12 Mr. Dawson has indicated he's got five minutes
13 worth of questioning. Then we'll go with
14 Mr. Williams, who has indicated that he will be
15 very brief, uncharacteristically. So there is a
16 chance we may not be sitting this evening, which
17 I'm sure nobody will object to.

18 Following Mr. Williams, of course will
19 be the panel.

20 If it appears that we're going to
21 conclude maybe a little after 5:00 or so, we will
22 extend it. If it appears that there may be an
23 hour or more left at 5:00 o'clock, we will come
24 back this evening for however long is necessary.
25 So that's all very much in the open, or up to how

1 the afternoon progresses.

2 Ms. Mayor?

3 MS. MAYOR: With respect to our
4 socioeconomic panel then, we will not begin this
5 evening if we had time?

6 THE CHAIRMAN: No, we will not.

7 MS. MAYOR: Okay, thank you.

8 THE CHAIRMAN: We'll start up with
9 them first thing tomorrow morning.

10 MS. MAYOR: Thank you very much.

11 THE CHAIRMAN: Okay, Mr. Beddome.

12 MR. BEDDOME: Thank you very much.

13 And thank you very much for the accommodation to
14 Ms. Mayor, Mr. Meronek, the Commission and the
15 panel.

16 I am hoping I'm not going to step on
17 Mr. Meronek's toes. We had a little bit of debate
18 over who owns the rights to the line, the straw
19 that broke the caribou's back. I'm going to pick
20 up where he left off a little bit with birds. So
21 some of the questions I think you agreed to answer
22 by way of an undertaking in terms of studies, so
23 I'm assuming that will be circulated to all
24 participants, just for clarification?

25 THE CHAIRMAN: As always.

1 MR. BEDDOME: Okay. I just -- now,
2 you say 18 birds per kilometre is a high number.
3 Correct, Mr. Berger? It's sort of your --

4 MR. BERGER: That is the upper end of
5 the range that are reported for many studies.

6 MR. BEDDOME: And on the upper range,
7 just to extrapolate, and to make life easy I have
8 used around 1,400 kilometres versus 1,384, but
9 that will be more than 25,000 bird mortalities per
10 year, correct? 25,200 to be exact?

11 MR. BERGER: Yes, I don't have a
12 calculator but I trust your calculations. If it
13 is the upper range of 18, which I don't believe it
14 would be, that upper range would be in about that,
15 correct.

16 MR. BEDDOME: Exactly. And just to
17 once again stay rounded, so I know these aren't
18 perfect, I did the numbers for five and ten, which
19 would be very easy for you to calculate on sort of
20 a 1,400 basis. So that will be 7,000 to 14,000
21 mortalities per year, correct?

22 MR. BERGER: I would accept that, yes.

23 MR. BEDDOME: So, do you think that
24 that would be a reasonable range then to estimate?
25 That's going from five to ten. You gave a range

1 of zero to 18, which is a large range, but where
2 do you think is sort of the median? Do you have
3 any idea what you would expect, what that range
4 would be?

5 MR. BERGER: Although I can calculate
6 those numbers, I have not done so yet. However, I
7 would expect that the forested areas would be
8 substantially smaller than some of those upper
9 ranges based on what species might be there. Some
10 of those upper ranges, without mitigation, would
11 in fact be more prevalent in wetland areas and
12 anything that might be associated with staging, I
13 don't believe the grassland numbers would be that
14 high.

15 MR. BEDDOME: Okay. So that helps.
16 And the reason for forested regions is because the
17 birds tend to fly above the trees, right? Is that
18 sort of the general reason why it would be lowest
19 in the forested region? Am I understanding that
20 in layman's terms?

21 MR. BERGER: Yes, you have part of it.
22 Some of the birds in the forest would be more
23 often flying underneath the transmission lines, as
24 they live in the forest. If there would be a
25 movement area, they would much more likely fly

1 above the transmission line.

2 MR. BEDDOME: And so what would be the
3 implications? I certainly am aware that bird
4 populations extend across the continent and
5 beyond. But 7,000 to 14,000 potential bird
6 mortalities, in your opinion, I mean, I guess
7 maybe it would be helpful to break it down by any
8 species breakdowns, if there is, just to sort of
9 give an idea just, you know, of that number, which
10 species would be expected to face the highest
11 mortalities, or if there's any sort of
12 distribution of that breakdown?

13 MR. BERGER: As I suggested on the
14 29th in my presentation, I believe that most of
15 those mortalities would likely be associated with
16 waterfowl and waterbirds, although there are other
17 species such as Grouse that might be included in
18 that total. And there would be other species as
19 well, but those two groups, waterfowl and other
20 waterbirds and Grouse would probably be the most
21 likely involved.

22 MR. BEDDOME: So do you think the
23 waterfowl would be about half of the mortalities?
24 Do you have any kind of rough idea as to what that
25 would be?

1 MR. BERGER: No, I'm sorry, sir, I
2 don't have a rough guestimate of what that might
3 be. Although those are the species that are much
4 more frequently reported in the literature.

5 MR. BEDDOME: And I'm assuming the
6 same is true for the Grouse?

7 MR. BERGER: For Grouse species, it's
8 primarily reported as Ptarmigan. There is not a
9 lot of reports on Sharp-tailed Grouse and Ruffed
10 Grouse mortality. However, they are Grouse, so I
11 would suspect that their mortality rate would be
12 higher than other bird species.

13 MR. BEDDOME: And the significance of
14 this, would this be 5 percent population loss per
15 year, .001 population loss per year? Any idea of
16 that either? If you don't, that's fair enough as
17 well, but I'm just curious.

18 MR. BERGER: Considering that there
19 are over approximately 100,000 Sharp-tailed Grouse
20 in the Province of Manitoba, and likely to be more
21 Ruffed Grouse, the potential mortality that would
22 be related to bird wire collisions, albeit small,
23 would be much considerably less than 1 percent of
24 the population.

25 MR. BEDDOME: Thank you. Now, just

1 maybe a quick clarification at page 2, I guess it
2 was 2,243 of the transcript, and I think you don't
3 need to necessarily turn to it. But you indicated
4 that about 70 percent of bird mortalities are due
5 to vehicles and building collisions, correct?

6 MR. BERGER: I believe that's correct,
7 yes.

8 MR. BEDDOME: And that would not
9 include hydro transmission towers?

10 MR. BERGER: No. The approximation
11 for transmission lines would be in the order of
12 approximately 15 percent.

13 MR. BEDDOME: So transmission lines
14 are roughly just, you know, for straight
15 clarification, roughly account for about
16 15 percent of bird mortalities then, on average?

17 MR. BERGER: I believe that to be
18 correct, but there is a wide range and those
19 percentages are what they are, they are coarse.

20 MR. BEDDOME: Now, in terms of
21 measuring bird mortalities, and I know Mr. Meronek
22 touched on this, but this is a substantially long
23 line through a substantially large area of the
24 province, particularly of the northern section
25 being rather sparsely populated. Can you comment

1 on the ability and/or inability, therefore, to
2 effectively monitor mortalities? What would it
3 take to get a good accounting of the mortalities,
4 to actually observe mortalities on the line once
5 it's in operation?

6 MR. BERGER: Sorry, for which bird
7 species?

8 MR. BEDDOME: Well, I mean, that's
9 sort of my general question. We have a 1,400
10 kilometre long line, in many cases, in fairly
11 sparsely populated portions of the province. I'm
12 just assuming it would be a considerable challenge
13 to monitor that entire length of the line for 365
14 days a year, even during peak breeding seasons, or
15 peak staging seasons, or the whatever the case may
16 be, to determine the mortality. I mean, you
17 referenced a couple of studies, but what was their
18 methodology in terms of trying to measure that?

19 MR. BERGER: In terms of monitoring
20 effort, it wouldn't be unreasonable to monitor or
21 try to monitor a 1,400 kilometre transmission
22 line. As part of the monitoring and follow-up,
23 Manitoba Hydro has indicated that there will be
24 monitoring efforts and that that level of effort
25 has not yet been put forth.

1 MR. BEDDOME: So it's completely
2 unfeasible to monitor the full line, and I do
3 understand that, that would be a significant
4 undertaking. And the level of monitoring hasn't
5 been determined. What would you suggest would be
6 an appropriate level of monitoring, as an expert
7 in birds?

8 MR. BERGER: We would intend to
9 monitor environmentally sensitive sites where the
10 most probability is of it in fact being affected
11 by bird wire collisions. And it would be some
12 effort related to sampling a number of those
13 sites, but we don't have any determination of what
14 that might be yet. But, in fact, Manitoba Hydro
15 is going to be monitoring bird wire collisions,
16 yes.

17 MR. BEDDOME: Okay. The other
18 question, just sort of the wide variance on the
19 effectiveness of diverters and aviation markers,
20 and you comment on that I believe at 2,248 of the
21 transcript. You have a variance of 50 to
22 80 percent, but possibly going to as much as 30 to
23 95 percent on effectiveness?

24 MR. BERGER: That is correct.

25 MR. BEDDOME: So it's very much

1 uncertain as to what the effectiveness of these
2 mitigation measures would be? Like that's a wide
3 range, so it is hard to know if -- let's say the
4 number was 10,000, if you'd reduce it to 7,000,
5 you know, of what it would have been otherwise
6 without the use -- versus if you'd reduce it all
7 the way down to 500 if you were to get, you know,
8 to the -- if the effectiveness is between 30 and
9 95 percent, on that broader range, let's say the
10 number of bird mortalities is, for ease of numbers
11 sake 10,000, how would that then impact on the
12 high and the low range of the number of
13 mortalities?

14 MR. BERGER: Some of those wider
15 ranges -- in fact, the lower ranges come from
16 European studies where I'm not entirely sure how
17 comparable those bird populations are, and the
18 particular circumstances that may be associated
19 with those reduced effectiveness, in fact, would
20 calculate into that wider range. We would expect,
21 however, with, you know, a 50 to 80 percent
22 reduction in mortality, that those numbers would
23 be quite reasonable in areas where the higher
24 levels of risk of mortality are expected.

25 MR. BEDDOME: And just for

1 confirmation, I think you dealt with it, that's
2 largely wetland regions, marshes, et cetera? I
3 think you dealt with this in the transcript,
4 that's largely wetland regions, marshes, et
5 cetera, correct? You kind of went at length of
6 some of the important --

7 MR. BERGER: Yes, that's correct.

8 MR. BEDDOME: The only last question,
9 I think you commented on this, but what was the
10 level of ground studies done on birds again? Can
11 you just provide a real quick overview of the
12 number of on the ground surveys that you did for
13 bird studies, versus just habitat modeling?

14 MR. BERGER: The number of point
15 counts conducted I believe was in the range of
16 plus 4,000 -- 4,000 plus.

17 MR. BEDDOME: And certainly that's a
18 good number of studies. You indicated that you
19 have participated in the Manitoba Bird Atlas. Can
20 you comment on perhaps the need for better data,
21 and what the Bird Atlas is trying to accomplish,
22 maybe how even this tied into that, and just your
23 general thought on the volume of data that we have
24 on bird species, particularly in the northern half
25 of the province?

1 MR. BERGER: Certainly. There are
2 several studies that are going on across Canada
3 and North America which already include things
4 such as the breeding bird surveys, which can be
5 used as an index for population increases or
6 declines. And Manitoba has been an active
7 participant in that for a long period of time. As
8 well, there is smaller research projects going on
9 in Manitoba. But that being said, of the billions
10 of birds that we could possibly have in Manitoba,
11 there are certainly areas where Manitoba is not
12 well studied.

13 Manitoba Hydro is supporting the
14 Manitoba Breeding Bird Atlas. There is a need for
15 future studies to get to understand where the
16 species are located in the province, in particular
17 where they might be nesting. And this type of
18 information would be useful in the future for
19 other projects, in addition to Manitoba Hydro's
20 work.

21 MR. BEDDOME: I know there has been
22 many studies, but I guess the larger Bird Atlas
23 study may be -- when would you expect some of
24 these studies to conclude and publish their
25 results?

1 MR. BERGER: Sorry, sir, which studies
2 are you referring to?

3 MR. BEDDOME: As I said, I know you
4 mentioned several of them. You said there's the
5 larger Bird Atlas survey being done in Manitoba,
6 and that is a regional project, so I guess if you
7 want to break them out individually as to the
8 conclusion dates and publishing, if applicable?

9 MR. BERGER: The Manitoba Breeding
10 Bird Atlas is a five-year venture with Bird
11 Studies Canada. I believe they started in 2010,
12 would be concluding in 2015, if I'm not mistaken.
13 The breeding bird, the Canadian wide breeding bird
14 surveys has been going on since the 1940's, I
15 believe.

16 MR. BEDDOME: So this five year study,
17 it's slated to conclude -- I didn't catch the
18 year, maybe I missed it?

19 MR. BERGER: Sorry, sir, I can't hear.

20 MR. BEDDOME: You said it was a five
21 year study and it was slated to conclude, I didn't
22 catch the year, sorry?

23 MR. BERGER: Well, that would be 2014.
24 It started in 2010 for five years.

25 MR. BEDDOME: And is it fair to say

1 that given the timing of the EIS, being 2011 in
2 December when it was initially filed, that much of
3 the data and the information garnered from that
4 study was therefore not included in the EIS and
5 the technical reports?

6 MR. BERGER: That is correct. It is
7 acknowledged in the EIS that that particular study
8 was in its infancy.

9 MR. BEDDOME: And had it been done a
10 few years earlier, or had we been coming forward
11 with this licence a few years later, do you think
12 you'd be in a better position to quantify and/or
13 understand the various risks associated with this
14 project?

15 MR. BERGER: I believe with such data,
16 it would improve our understanding of potential
17 project effects. Although, given our
18 understanding of birds and their habitats, and
19 with literature, I believe that we do have a good
20 grasp of what those project related effects might
21 be in terms of potential habitat loss, mortality,
22 predator effects, that sort of thing.

23 MR. BEDDOME: All right. Thank you
24 very much, Mr. Berger. You'll be happy to know
25 that I have no more bird questions to quack at

1 you.

2 I actually want to move along to
3 mammals. It's sort of a similar question. And I
4 think Mr. Madden dealt with this, so I guess it
5 would be directed towards you there,
6 Mr. Schindler.

7 In terms, the vast majority of the
8 studies, and correct me if I'm wrong on this so
9 for, excluding caribou, but for moose, American
10 marten, beaver, elk and wolverine, not including
11 the Grey Wolf actually, were the habitat model
12 studies that we previously talked about, correct?

13 MR. SCHINDLER: That is not
14 necessarily true. There were a fair number of
15 aerial surveys on moose in the northern portion of
16 the study area. There were aerial track surveys
17 conducted for American marten and wolverine
18 because of the vastness of the area. And there
19 were also a number of trail camera trials, and
20 some summer and winter track and sign surveys that
21 were conducted as well.

22 MR. BEDDOME: Okay. So there was
23 largely aerial and camera surveys, but not any on
24 the ground in terms of personnel surveys, would
25 that be fair to say?

1 MR. SCHINDLER: No, I don't think so,
2 because one of our major studies, particularly on
3 fur bearers, involved the actual engagement of
4 trappers, people that live on the land, work on
5 the land, and that was an indirect component for
6 the Wuskwatim project that we fit into the Bipole
7 project, that provided us with some very good
8 information on fur bearer movement and abundance,
9 and looking at effects pre construction and post
10 construction of the Wuskwatim line.

11 MR. BEDDOME: Okay. Well, thank you.
12 That clarification is somewhat helpful.

13 Turning along to Mr. Osler, there is a
14 couple of comments that you make in the
15 transcript, and I don't necessarily think you'll
16 have to fully address them. I can read them
17 verbatim, but essentially in 2172 and 73, you
18 comment on the concept of the baseline being the
19 world without the project versus the world with
20 the project. And then at 2207 and 2208, you make
21 some comments about past projects such as Lake
22 Winnipeg Regulation and Churchill River Diversion.
23 So essentially what I want to look at is, would I
24 be correct in assuming that impacts, the
25 historical impacts from Lake Winnipeg Regulation,

1 Churchill River Diversion, and other past Hydro
2 projects form part of the baseline, as they have
3 already occurred and, therefore, are not part of
4 this project? Is that correct?

5 MR. OSLER: Yes.

6 MR. BEDDOME: And do you think it
7 would be fair to say, however, that
8 notwithstanding that these are past projects, that
9 these projects have had significant impacts on the
10 ecosystems in the area?

11 MR. OSLER: Yes.

12 MR. BEDDOME: And so it becomes -- do
13 you think it would also be fair to say that -- and
14 maybe this question, I guess I should get a quick
15 clarification from the Chairman. I don't want to
16 step outside of the biophysical category, but
17 Mr. Osler's presentation sort of straddles the two
18 subject matters. So I'm wondering if I can return
19 to that, some of this area, this questioning, but
20 try to keep this refined to the biophysical area
21 when we do questioning on socioeconomic effects.

22 THE CHAIRMAN: Yes.

23 MR. BEDDOME: I'm sure you understand
24 because your presentation straddles both.

25 MR. OSLER: I'll be here for the

1 socioeconomics, so I'm not going away.

2 MR. BEDDOME: I will reserve and I
3 won't necessarily ask all of those questions. I
4 guess what I was sort of -- what sort of struck
5 me, though, is that then this project is an
6 integral part of our entire hydroelectric system,
7 including Lake Winnipeg Regulation, Churchill
8 River Diversion, the hydroelectric dams we have
9 built along the Nelson River and along the
10 Saskatchewan, et cetera, that would be correct to
11 say, right?

12 MR. OSLER: In which context are you
13 thinking of now? Of the hydro-electrical system
14 in Manitoba, or ecology?

15 MR. BEDDOME: I guess generally. I
16 mean, the impacts, you have already accepted that
17 there's impacts on the ecology. And I guess what
18 I'm getting at is, you know, you talk about this
19 line, this isn't a point source, this is a long
20 line. So a lot of the environmental effects were
21 dealt with through site selection. That's your
22 general position, correct?

23 MR. OSLER: Correct.

24 MR. BEDDOME: But this project in
25 itself ties into a number of other projects, both

1 past and existing projects. So in terms of
2 assessing, wouldn't there be some logic in looking
3 at it broader, as the overall impact? And I guess
4 today, as I said, I'll probably return to this
5 when we talk socioeconomic, but today I am just
6 talking more specifically refined to biophysical.

7 MR. OSLER: I'm still not sure really
8 what you're asking. The context of cumulative
9 effects is to say, whether we're building a road
10 or a transmission line or whatever, we should
11 understand the context in which it's occurring in
12 terms of a baseline that reflects the extent to
13 which the environment has already been modified by
14 other activities before this project.

15 So a cumulative effects assessment
16 thought process, in fact, in my perspective
17 environmental assessment requires you to take into
18 account for the valued environmental components
19 you are looking at, what state are they in, how
20 much have they already been affected by other
21 activities that occurred before you brought this
22 project along? So in that sense it doesn't really
23 matter whether I'm looking at this project or any
24 other project, I have to take that contextual
25 point of view, that perspective.

1 In the case of building a highway
2 system, it's part of a bigger system, yes. In the
3 case of building a transmission line in Manitoba
4 that's called a Bipole line, it's certainly
5 part -- it's called III for a reason, there was a
6 I and a II, and it's part of a system. But in
7 terms of assessing it for the purposes of what
8 we're talking about, we're trying to understand
9 the incremental effect that this project is going
10 to have compared to what the world would have been
11 like without it.

12 MR. BEDDOME: And I understand you're
13 looking for the incremental effect. I guess my
14 point would be that the drive for and the need for
15 this project is somewhat based on past
16 developments, which are having an impact but
17 aren't necessarily drawn into your baseline. And
18 in that way it might -- there could be a logical
19 argument as to trying to analyze the two together.
20 Would you not agree with that?

21 MR. OSLER: I don't think I understand
22 it, therefore, I can't agree with it.

23 MR. BEDDOME: Without the past
24 developments, we wouldn't necessarily be needing
25 to develop Bipole III, so the two connecting

1 together -- and while I understand that
2 incrementally this project per se, but however to
3 me the environmental impacts of the past tie into
4 this almost as a continuous -- on a continuous
5 basis, because of the past impacts we now need
6 this line. Do you follow that?

7 MR. OSLER: Not in the context of what
8 I'm thinking of from the point of view of my job
9 here. But I follow that you're thinking that
10 these things flow one from the other as sort of a
11 thought process, that you wouldn't have a Bipole
12 III if you hadn't had something before it. I get
13 that. But the challenge that somebody has tried
14 to do an assessment of a project is -- very rarely
15 do we have a project that's de novo for an area.
16 There's often a lot of stuff that's gone on.
17 MacKenzie Valley Pipeline might be an good example
18 of something that is pretty special in that
19 context. But in Manitoba, in terms of
20 hydroelectric development, it's not a new idea and
21 it's not a new project. So how do we assess this
22 project's effect? How does it make the world
23 different compared to what would have happened
24 without it? And in that sense, that's our job,
25 that's what we have to try and figure out.

1 We also have to keep in mind the
2 extent to which the past projects have already
3 created change that affects VECs, and trying to
4 help understand the extent to which those VECs are
5 going to be significantly, in a regulatory sense,
6 affected by this project, we have to understand
7 how much they have already been affected by other
8 projects, or would be affected by other projects
9 without this project.

10 MR. BEDDOME: Okay. And as you talk
11 about significant effects, I imagine one of the
12 commissioners, Commissioner Gibbons will likely
13 return to it, but certainly he was asking some
14 questions of you that I thought were quite
15 interesting, after your presentation, that
16 basically dealt with, if the duration of the
17 impacts are relatively short, then it's not going
18 to get to be potentially significant. And further
19 to that -- well, I guess first, you recall that
20 conversation, right, that's the questioning asked
21 by Commissioner Gibbons at the end of your
22 testimony?

23 MR. OSLER: I generally recall it. I
24 don't have it in my mind specifically, but, yeah.

25 MR. BEDDOME: I think I can find the

1 page number for you, if you want?

2 MR. OSLER: I don't have the
3 transcript in front of me, but go ahead with the
4 question.

5 MR. BEDDOME: Well, it seemed like the
6 Commissioner made a very valid point in that,
7 2216, you comment that you could make the argument
8 that rather than using a 45 year sort of term that
9 a ten year may be better, and that would actually
10 change impacts -- where you mentioned American
11 Marten. I'm curious if you had used that ten year
12 frame versus a 45 year frame, if that had impacts
13 in any of the other VECs that were identified?

14 MR. OSLER: It was an example of a
15 sensitivity, and the one I highlighted -- we went
16 through a sort of sensitivity review -- that was
17 the one that got the highlight in terms of its
18 effect potentially in terms of the ranking, how it
19 could be affected. I can check whether there was
20 anything else, but that was the one that I
21 highlighted for a reason.

22 MR. BEDDOME: So that would change the
23 sensitivity of the analysis, so it might
24 fundamentally alter the outcome of your cumulative
25 effects assessment as well as your sustainability

1 assessment?

2 MR. OSLER: No. What it would do is
3 I mean -- the process of the assessment using
4 those criteria is a screening process. And in
5 fact, it says, okay, we can rely upon this process
6 of thinking to figure out what we really need to
7 pay attention to out of all these 60 plus VECs in
8 terms of particular sensitivities, particularly in
9 the context of other projects. It would change
10 that, and it would mean that American Marten
11 should be paid a bit more attention to, and make
12 sure that when we look at it more closely, there's
13 nothing there that gives concern that this
14 particular VEC is going to be stressed by this
15 project. That was done. And the answer is no,
16 it's still not a significant effect on the
17 American Marten.

18 But that's the point of the exercise,
19 is to screen out the ones that need to be paid
20 attention to, and make sure that you don't have --
21 my point in my presentation was, looking at the
22 methodology used in the Bipole study, where might
23 it be seen to be a bit different than some other
24 methodologies that have been used in Manitoba?
25 And I highlighted that, generally speaking, it was

1 pretty much the same as the ones we're using
2 elsewhere, but in the terms of duration, the
3 median term was extending out to 50 years. And in
4 the context of other projects I can cite, that
5 median term might well be a much shorter time
6 period, such as ten years. If that was the case,
7 if somebody was to make an argument that we should
8 use a shorter time period just for consistency, if
9 nothing else, what difference would that make to
10 the screening? And that's where I came up with
11 the American Marten.

12 MR. BEDDOME: And so you guys
13 performed a full analysis as to what difference it
14 would make if you ran the screening at a ten year
15 median term effect versus a 45 year effect, is
16 that correct?

17 MR. OSLER: Essentially, yes.

18 MR. BEDDOME: Is that provided in the
19 technical reports?

20 MR. OSLER: No, it's done for the
21 purposes of, you know, the final presentations
22 here, as a help to the Commission and the
23 intervenors so that we can understand it.

24 MR. BEDDOME: By way of undertaking,
25 would it be possible to get a copy of that sort of

1 alternative assessment done on the basis of ten
2 years versus 45 years?

3 MR. OSLER: Yeah. What I'll do is
4 confirm whether there are any other VECs than the
5 American Marten that fell into that category.

6 MR. BEDDOME: Mr. Berger, I misspoke,
7 I had one more quack question for you here. In
8 the 1970s and '80s, wildlife biologists were very
9 concerned about the number of Canvasback ducks.
10 How is that population doing now?

11 MR. BERGER: In most cases, most
12 waterfowl species are in fact increasing, and
13 there is one species that I know of that is still
14 in decline. I believe those are Scaup, but I
15 would have to check on the Canvasback statistics
16 to see whether or not they were increasing,
17 decreasing or stable. So I would take that as an
18 undertaking for a quick check.

19 MR. BEDDOME: Thank you. That was
20 going to be my next question. And then the second
21 one, were Canvasback ducks specifically studied,
22 were they targeted specifically, included in your
23 birds technical report?

24 MR. BERGER: There were Canvasback
25 that may have been detected during the field

1 studies, but that is not one of the valued
2 ecosystem components that would, in fact, fall
3 under waterfowl and waterbirds for the effects
4 assessment.

5 MR. BEDDOME: Thank you. I'm sorry I
6 said I'd let you go and I had other questions, but
7 you were begging for bird questions earlier.

8 MR. BERGER: I'm happy to oblige.

9 MR. BEDDOME: I just have a couple
10 more quick questions for Mr. Osler. The first
11 thing to note is, you got involved in this project
12 in the spring of 2011; correct?

13 MR. OSLER: Correct.

14 MR. BEDDOME: Was there any
15 consultants or anyone else working on the
16 cumulative effects prior to your involvement?

17 MR. OSLER: I believe that the --
18 there were many different people working on
19 cumulative effects, as well as all the other
20 effects. I mean, there is lots of analysis going
21 on before I was involved.

22 MR. BEDDOME: But you are unaware if
23 there was any other consultants retained prior to
24 yourself to perform a cumulative effects and/or
25 sustainability effects assessment?

1 MR. OSLER: Well, each one of the
2 professionals beside me was retained to do all
3 sorts of things, including provide the information
4 for cumulatives and other effects assessment as
5 their technical analysis shows that they were
6 doing. There were certainly lots of consultants
7 hired before me who were busy trying to pull
8 together this study.

9 MR. BEDDOME: And I guess this is a
10 quick question, but I think it's fairly obvious to
11 all the biological people. Would it be fair to
12 say that obviously the baseline of no development
13 would have less impact than the development of the
14 line itself? Is that not correct? I mean, for
15 each of the biological people, I think it's a
16 fairly obvious question but just for
17 clarification? So a baseline of not having the
18 line at all would have less impact than building
19 the line? I think Mr. Meronek asked a very
20 similar question of Mr. Schindler.

21 MR. OSLER: I think in terms of the
22 whole point of the assessment is, if there is
23 going to be an impact, it won't occur if we don't
24 build the line. Therefore, to the extent this
25 line has any effect on anything, it won't occur if

1 we don't build the line.

2 MR. BEDDOME: The only reason I asked
3 that, Mr. Osler, is I just note on slide two of
4 your presentation, that from your perspective,
5 environmental assessment follows after assessment
6 for need for the project. That's correct?

7 MR. OSLER: I think I said, when
8 looking at that slide, that everything gets laid
9 out looking like it's very linear. That's not
10 necessarily how the world unfolds when people are
11 doing work. But you don't get retained to start
12 working on a project to do an assessment unless
13 somebody believes there's a need for the project.
14 Whether they finalize that determination or not is
15 another matter, but there has to be some rationale
16 to spend the money to do work like this.

17 MR. BEDDOME: But it just seems to me,
18 it seems, you know, as you said, there were
19 studies undergone for a while and you weren't
20 retained until spring of 2011. So, you know,
21 obviously the assessment was preformed over the
22 summer and into the fall. In your mind, wouldn't
23 best practices indicate involving you earlier in
24 the process for this assessment?

25 MR. OSLER: There are lots of people

1 who can do assessments. I was brought in to help
2 finalize the report, not to do all the stuff that
3 was done for years before that. There were people
4 who had done scoping documents, the Government of
5 Manitoba had reviewed them, long before I was
6 around, that had the methodologies and approach.
7 So, I mean, I don't think best practice would
8 require somebody to retain me in the first place.
9 And secondly, if I can be of help helping in
10 somebody finalize the process, I am happy to try
11 and do so.

12 MR. BEDDOME: I'm glad you mentioned
13 the scoping document, because you made some
14 comments and you might be able to help me a little
15 bit on that. So the first thing that you
16 mentioned was that the cumulative effects
17 assessment was done as per the guidelines and the
18 regulations, and the old Canadian Environmental
19 Assessment Act, being old, being the one that was
20 recently replaced in the most recent -- not the
21 most recent, but this past spring on the next
22 budget bill.

23 MR. OSLER: There are references in
24 the scoping document to what you're calling the
25 old Act, yes.

1 MR. BEDDOME: And I think you seem to
2 indicate that you follow, or the EIS at least
3 indicates, and I think you indicated in your
4 presentation that you built the assessment on the
5 basis of the standard that had been done under the
6 old CEA Act?

7 MR. OSLER: Correct.

8 MR. BEDDOME: And so the one thing, I
9 just was surprised and I just was wondering if you
10 could walk through and, you know, is, you know,
11 you found that through the setback regulations
12 there was no responsibility for Navigation, or
13 with the Department of Fisheries. Can you just
14 sort of do a quick walk through of why that was?
15 It's something that I have kind of wondered.
16 You've got to understand, you read the scoping
17 document saying it's going to apply, and then you
18 read the EIS and you see it doesn't apply. So
19 maybe if you can just outline that for my benefit,
20 that would be appreciated.

21 MR. OSLER: It's not unique to
22 Manitoba or this particular transmission project.
23 If you are doing a transmission project here or,
24 take Yukon, another case in point, and you are
25 going to cross the river or you're going to --

1 cross a river is probably a good point, there are
2 a whole bunch of accepted terms and conditions
3 that as long as you say you're going to meet them,
4 the DFO and the Navigable Waters people will say,
5 fine, we don't need to do a specific assessment of
6 your project. You've just got to agree to meet
7 these conditions. Set-backs from the water,
8 highest water level I think is how it's worded,
9 but the aquatics experts can comment, the way in
10 which you set back your construction, you protect
11 the riparian habitat.

12 MR. BEDDOME: Do you know, in general
13 terms, what those conditions are, those set-back
14 conditions are, et cetera?

15 MR. OSLER: I would pass to Mr. Mazur
16 in terms of understanding the specifics. But my
17 point to you is, there are these basic terms and
18 conditions, and if you meet them you don't need to
19 have -- it doesn't trigger an assessment under the
20 Canadian Environmental Assessment Act, whether you
21 are in another jurisdiction or you are in
22 Manitoba, it's got nothing to do with where you
23 are located.

24 MR. BEDDOME: I do understand that.
25 It was more I was just wondering for

1 clarification, there was lots of references to it.
2 If Mazur in sort of layman's terms can say, these
3 are the general requirements of set-back
4 conditions. I believe it's a regulation under the
5 old CEA Act, if I am not mistaken, but a general
6 description would be appreciated.

7 MR. K. MAZUR: I know for any
8 transmission line, the Department of Fisheries and
9 Oceans have mitigation identified. They don't
10 actually -- well, the set-back identified is
11 beyond the ordinary high water mark, is the mark
12 that's identified for tower placements and
13 vegetation clearing.

14 Now, we in our mitigation with
15 Manitoba Hydro have gone beyond that to apply some
16 provincial guidelines for riparian area
17 management.

18 MR. BEDDOME: Which provincial
19 guidelines would those be?

20 MR. K. MAZUR: The forest management
21 guidelines for riparian areas.

22 MR. BEDDOME: That's appreciated. I
23 think that kind of answers, although I still have
24 a few questions. But I think you have given me a
25 general answer that helps enough.

1 If I could just go to the Bipole III
2 transmission terrestrial ecosystem and vegetation,
3 and it would be page 8, and the second slide on
4 page 8, project effects continued?

5 MR. SZWALUK: Sorry, what page, sir?

6 MR. BEDDOME: Page 8, sir. There's
7 two slides of project effects, and project effects
8 continued is the slide that I'm looking at. At
9 least I believe it's eight, it's not numbered,
10 I'll just double-check to make sure my counting is
11 right. Yeah, eight.

12 MR. SZWALUK: Okay.

13 MR. BEDDOME: Just a real quick
14 comment here, and it shouldn't take very long.
15 You indicate that wetlands may be affected,
16 correct? It says it right on the slide, very top
17 bullet, wetlands may be affected?

18 MR. SZWALUK: That's correct.

19 MR. BEDFORD: Would any of those
20 wetlands be connected to streams eventually making
21 their way into river systems?

22 MR. SZWALUK: That's possible.

23 MR. BEDDOME: Is it also possible that
24 there could be minnows or any other sort of fish
25 breeding in those wetlands that could potentially

1 be impacted, that may eventually at some point
2 make their way further downstream into a larger
3 watershed?

4 MR. SZWALUK: It's possible but not
5 very likely.

6 MR. BEDDOME: That actually concludes
7 my questions. I definitely appreciate it and
8 we'll be back for the socioeconomic panel. Thank
9 you very much.

10 THE CHAIRMAN: Thank you, Mr. Beddome,
11 and please enjoy your class.

12 Mr. Meronek?

13 MR. BERGER: If the Commission
14 pleases, I do have those Canvasback numbers that
15 were asked about.

16 THE CHAIRMAN: Go ahead, sir.

17 MR. BERGER: The Canvasback is mostly
18 above the long-term averages in Canada from the
19 past decade, following periods of decline in the
20 1980s and 1990s. In Manitoba, however, the
21 changes from the long-term averages are down by
22 about minus six.

23 THE CHAIRMAN: Thank you.

24 Mr. Meronek, taking up where you left
25 off?

1 MR. MERONEK: Mr. Berger, I understand
2 you have a couple of answers for me?

3 MR. BERGER: Yes, two questions that
4 you asked earlier, what was the length of the
5 Rosser/Silver transmission line, and it is
6 approximately 125 kilometres. And secondly, just
7 subject to verification, yes, Canada Geese are
8 about three times the number of Mallards.

9 MR. MERONEK: Thank you, sir.

10 Now, Mr. Chairman, I am going to be
11 asking some general questions of Mr. Osler this
12 afternoon. Most of my cumulative effects
13 questions relate to socioeconomic matters, so I'll
14 reserve those until tomorrow.

15 But Mr. Osler, since you were retained
16 in the spring of 2011, up until the EIS was filed
17 in December of 2011, can you tell me what role you
18 played in finalizing the EIS?

19 MR. OSLER: Prior to June 2011?

20 MR. MERONEK: No, I understand that
21 you were engaged in the spring of 2011. And
22 between that point in time and when the final EIS
23 was filed on December 1, I believe, 2011, just
24 indicate to me what role you played in the
25 finalization of that EIS?

1 MR. OSLER: I assisted Hydro in
2 reviewing the approach to the assessment and the
3 final write-up, and the final pulling together of
4 all the materials. That would be chapter 4.
5 Assisted them in the review of the assessment, the
6 conclusions that Hydro was putting together in
7 chapter 8. And assisted them by putting together
8 drafts of the cumulative effects assessment,
9 chapter 9.

10 MR. MERONEK: And I take it from that
11 that all of the template, as it were, had already
12 been developed by Manitoba Hydro before you became
13 involved?

14 MR. OSLER: Certainly, what you see in
15 the scoping document, which Manitoba Hydro gave
16 the government, that was long before I was
17 involved. And the type of expert analysis that
18 you see in the technical reports shows that they
19 had templates for significance in cumulative
20 effects analysis that were in place long before I
21 was involved. Some of those we -- and I don't
22 even remember now which we tweaked, but we didn't
23 necessarily always go with everything that was
24 there before, but there was a need to work within
25 a framework, you are quite correct.

1 MR. MERONEK: I'm having a little
2 trouble hearing, so if you could perhaps move
3 closer to the mic? As I understand the steps that
4 were taken, first of all, there was a route site
5 selection process?

6 MR. OSLER: Correct.

7 MR. MERONEK: The second stage was
8 that several alternative routes were selected,
9 correct?

10 MR. OSLER: Correct.

11 MR. MERONEK: And then the final
12 preferred route was selected?

13 MR. OSLER: Yes.

14 MR. MERONEK: And at that point in
15 time an environmental baseline was set up?

16 MR. OSLER: Oh, I think that they were
17 working on the baseline material before that. The
18 process is a bit more iterative than what you
19 described in the way you just did. But certainly
20 the process of finalizing the baseline information
21 for the selected route and, you know, getting it
22 all in order would proceed once you knew where
23 that route was.

24 MR. MERONEK: I didn't mean to portray
25 that it had just commenced, but the baseline was

1 established by that point?

2 MR. OSLER: Right, in order to do the
3 assessment you have to have the baseline.

4 MR. MERONEK: The VECs that were
5 relevant to the project were then identified?

6 MR. OSLER: I think they evolved
7 during the route selection process. I wasn't
8 there, but the diagram we have used notes that
9 during the route selection process there were
10 criteria for constraints and opportunities that
11 were not disconnected from what later on became
12 VECs, they reflected different parts of the
13 environment. Environmental components were
14 understood well back that they had to study a wide
15 range of environmental components. I don't know
16 exactly when they finalized the VECs, but I
17 suspect it was largely underway before the route
18 was finalized, because it's just the way people
19 think.

20 MR. MERONEK: What I was attempting to
21 get you to agree to, sir, is that until the final
22 preferred route was selected, you couldn't
23 establish precisely all of the relevant VECs or
24 the extent to which they may be considered?

25 MR. OSLER: I think that would be

1 fair.

2 MR. MERONEK: And as I understand it,
3 in order to choose the appropriate relevant VEC,
4 there were three aspects, one through
5 environmental assessment consultation process,
6 that would have been one aid?

7 MR. OSLER: Yes.

8 MR. MERONEK: Professional judgment
9 would have been a second one?

10 MR. OSLER: Yes.

11 MR. MERONEK: And similar projects
12 would have been a third one?

13 MR. OSLER: Yes.

14 MR. MERONEK: Could you identify what
15 similar projects were being referred to in terms
16 of identifying the appropriate and relevant VECs?

17 MR. OSLER: Well, this was done before
18 my involvement, so maybe some of the other members
19 of the panel could focus on the extent to which
20 that criteria had any relevance to the selection
21 of their VECs. But I would assume that they'd be
22 looking at things like the Wuskwatim transmission
23 project and other projects that people had
24 experience with.

25 MR. MERONEK: I'm really not

1 interested in assumptions. If you'd like to take
2 it by way of an undertaking, if you could identify
3 what similar projects were utilized as an aid to
4 determine relevant VECs, I'd appreciate that?

5 MR. OSLER: We can undertake to
6 confirm that there were some other similar
7 projects and what they were.

8 MR. MERONEK: Now, I understand that
9 three out of 67 VECs made it to the big show, that
10 is chapter 9; is that correct?

11 MR. OSLER: I think four maybe.

12 MR. MERONEK: Sorry?

13 MR. OSLER: Four made it in the sense
14 that the caribou were, by the time we finished the
15 cumulative effects assessment, the caribou were
16 paid attention to, and there were three
17 socioeconomic ones.

18 MR. MERONEK: Okay, four. In order to
19 determine which VECs made it to the final
20 cumulative assessment, I understand there was a
21 high level screening process established or
22 implemented to determine which VECs made it
23 further into chapter 9, is that correct?

24 MR. OSLER: Yes. To be examined in
25 chapter 9, though, the only tests were, is there a

1 measurable effect expected on the VEC as distinct
2 from negligible, and is it adverse? And most VECs
3 by far met those two tests. So in order to get
4 considered in chapter 9, those were the two
5 screens that were applied.

6 MR. MERONEK: The high level screening
7 analysis, as I understand it, involved the issues
8 of direction, magnitude, geographic extent,
9 duration, and overall significance. Is that
10 correct?

11 MR. OSLER: Right, the significance
12 assessment process involves those variables. And
13 ultimately, in terms of getting high level
14 attention in the sense of the four we end up
15 talking about, those criteria are very important.
16 But the formal question you asked me, was what was
17 screened out to get to chapter 9, and I gave you
18 the answer. The two things that were screened out
19 were those that were deemed, on the direction
20 test, they had no measurable effect, they were
21 negligible. So they didn't want to consider them
22 anymore. And secondly, were they adverse or
23 positive? If they were positive, we didn't
24 consider them in chapter 9.

25 MR. MERONEK: And as I understand it

1 in terms of environmental effects, where they
2 could be expressed quantitatively, they were?

3 MR. OSLER: Yes.

4 MR. MERONEK: Now, can you give me an
5 example, when you say quantitatively, are there
6 any examples in the biophysical realm where there
7 were quantitative environmental effects measured?

8 MR. OSLER: The one that comes to my
9 mind relates to the mammals and the discussions we
10 have had at some extensive degree, the
11 conversation has focused on the quantification of
12 habitat and the extent to which it's affected, and
13 how important that habitat is in terms of the
14 habitat in the area, that's important to say the
15 woodland caribou or a particular herd, and how
16 much this route that's finally selected would --
17 what percentage of that habitat would be impacted?
18 That's one type of quantitative assessment that
19 you have heard, and is used quite frequently in
20 the biophysical realm. Looking at the area on the
21 ground that's affected by something, what
22 percentage is it of a characteristic group that
23 defines the VEC in question?

24 There have been other quantitative and
25 analysis developed, subsequently again in the

1 caribou case, to look at, well, where is this VEC
2 at quantitatively in terms of degree of
3 disturbance through all the past projects, and how
4 much will this project add to that degree of
5 disturbance. And Mr. Schindler went through
6 percentages and compared them to some guides from
7 Environment Canada. So that was a quantitative
8 type of assessment. My colleagues could perhaps
9 give you some more, but --

10 MR. BERGER: If I could add to that?
11 The bird habitat assessment was also done
12 quantitatively where habitat loss or alteration
13 would have been expected in the 1 to 2 percent
14 within the local study area. And if we compare
15 the local to the project study area it would be
16 significantly less than 1 percent. And that was a
17 quantitative analysis.

18 MR. MERONEK: Thank you for that. And
19 where it was impossible to quantify an
20 environmental effect, a qualitative method or
21 methods were employed, correct?

22 MR. OSLER: Correct.

23 MR. MERONEK: And who established or
24 developed what qualitative measures or methods
25 were to be used? Would it be the individual

1 expert or experts involved in any particular VEC?

2 MR. OSLER: Generally speaking, yes.

3 MR. MERONEK: And chapter 8 identified
4 residual effects after mitigation efforts were
5 undertaken, correct?

6 MR. OSLER: Correct.

7 MR. MERONEK: And the significance
8 determination was made for each VEC, is that
9 correct?

10 MR. OSLER: Right, based on the
11 residual effects.

12 MR. MERONEK: Now, in terms of the
13 significance determination, who made that
14 determination? Was it the expert or experts
15 involved in each VEC?

16 MR. OSLER: Ultimately, the
17 determinations were made in chapter 8 by Manitoba
18 Hydro. They were informed always by the
19 individual expert. You will find individual
20 experts in many cases in their technical reports
21 had already done some assessments. But I think in
22 the vegetation report, it's very clear that they
23 knew the final determination to be made in the
24 Manitoba Hydro report. But essentially the
25 experts provided the information on the

1 quantitative type of analysis we were just talking
2 about, and were integral working with Manitoba
3 Hydro on what does all this mean? But the
4 criteria that were finally adopted and the review
5 of it, the responsibility for it rested in the
6 final analysis of Manitoba Hydro.

7 MR. MERONEK: So it was Manitoba Hydro
8 which ultimately assumed responsibility for
9 determining whether a particular VEC was
10 significantly or not significantly impacted
11 adversely?

12 MR. OSLER: Based on the advice they
13 had received, yes.

14 MR. MERONEK: Now, what would happen
15 in a case where -- first of all, in dealing with a
16 VEC, explain how the impact of a VEC is assessed
17 in terms of the project itself? And by that, I
18 mean, is it assessed against the whole length of
19 the project study area?

20 MR. OSLER: Yes and no, in the sense
21 that in some cases you will get information -- it
22 certainly is assessed all throughout the whole
23 area of the project, yes. But the question I
24 suspect you're getting at is, well, what happens
25 to a VEC that extends over a very wide area? Do

1 we worry at all about the extent to which the
2 overall picture hides some problems and some
3 specific segments?

4 MR. MERONEK: Actually, it was just
5 the opposite. I'm thinking of a situation where
6 you may have a VEC which is impacted severely
7 along a certain segment of the project but not
8 along the whole length of the line. And how does
9 Manitoba Hydro deal with making an assessment, an
10 overall assessment on that basis?

11 MR. OSLER: Okay. I think we're
12 getting at the same issue. So the way the
13 biophysical people will typically be doing it is
14 looking to see whether there is any particular
15 area where the VEC is vulnerable. They are
16 looking at the whole line, if the VEC is over the
17 whole line, but they are looking for the spots
18 where there could be a significant adverse effect
19 on the VEC. This is very clear when you're
20 dealing with herds of caribou. It may not be as
21 clear when you're dealing with something like
22 vegetation. But I can let the experts on
23 vegetation explain that they are paying attention
24 and looking for the areas where there could be an
25 effect. And they're not trying to mask it by the

1 1,300 and 1,400 kilometres of the whole line and
2 saying, well, overall there isn't that big of an
3 effect but I ignored the fact that it was
4 critically impacted by one particular area.

5 MR. MERONEK: So. Firstly, if I heard
6 you, and secondly, if I understood you, a
7 particular scientist might say, boy, in my area
8 there is a real adverse effect. But then would
9 Manitoba Hydro take that and say, well, it may be
10 in one area but over the whole project it's not so
11 negative. Is that the way it worked?

12 MR. OSLER: No.

13 MR. MERONEK: Well, then explain to me
14 how it worked?

15 MR. OSLER: The way I just said it.

16 MR. MERONEK: I'm sorry, sir, I didn't
17 hear you, and bear with me because of the
18 acoustics.

19 MR. OSLER: I'm repeating it, though.
20 As in the analogy as to caribou herds or the
21 discussion that went on about moose, the experts
22 looked at the issue throughout the line, but they
23 were looking for any areas along the line where
24 there could be a problem for a caribou herd or a
25 group of moose. They weren't subsuming it by some

1 averaging over all the 1,400 kilometres. And the
2 evidence they had given you in the last week has
3 been focused on that type of analysis, and they
4 would be quite happy to discuss specific areas,
5 game hunting area, 14, 14 A, or the Wabowden
6 caribou herd or whatever.

7 And Manitoba Hydro certainly never
8 misunderstood that that's what the experts were
9 supposed to do or overrode and said no, no, no,
10 we'll just look at the whole thing and not pay
11 attention to what's happening in this area or that
12 area along the line.

13 The techniques for doing this can
14 differ, and the explanations needed can differ for
15 the different VECs. And the one I'm most
16 comfortable in explaining is the one I just did.
17 If you want to pursue it on some other basis, then
18 we should get the expert involved to discuss it
19 with you.

20 MR. MERONEK: No, I fear I'm not going
21 to get too much farther on this one, so I'll wait
22 for specifics tomorrow.

23 In terms of the high level screening
24 analysis, in terms of direction, positive or
25 negative is pretty straightforward. But there are

1 some definitions in terms of magnitude. Can you
2 advise me as to who developed those definitions?

3 MR. OSLER: The definitions used in
4 chapter 4 probably were -- they were a combination
5 of a bunch of us summarizing definitions that had
6 been used in other projects, and definitions that
7 had been used to date by the team in the work that
8 they had been doing. In terms of magnitude, they
9 particularly covered the possibility that you
10 would not have established thresholds and you
11 might have to use some other standards in order to
12 understand the magnitude. So that type of wording
13 had been used in the Wuskwatim transmission and
14 generation project, the EIS's, and the floodway
15 EIS's.

16 MR. MERONEK: Would it be -- would I
17 be correct in assuming that these definitions had
18 already been developed prior to your engagement?

19 MR. OSLER: I'd have to triple check.
20 There were elements of them that were certainly
21 there, and we were trying to make sure that the
22 wording was as close as possible to what was being
23 used in other EIS's, and not sort of unique, but
24 we had to respect what was there. The biggest
25 example of what was there is the duration one,

1 those concepts were there and we worked with them.

2 MR. MERONEK: All right. Just in
3 terms of magnitude, the definition of small is no
4 definable or measurable effect below established
5 threshold of acceptable change.

6 MR. OSLER: Correct.

7 MR. MERONEK: Define established
8 threshold of acceptable change? Can you do that?
9 I know you gave examples, but is that a definition
10 that comes from somewhere?

11 MR. OSLER: Not to my knowledge. It
12 is saying that if in a particular discipline there
13 is a known established threshold, in the sense
14 that it's recognized in regulations or it's
15 recognized as criteria by Environment Canada, or
16 by other government groups, then please make sure
17 we are aware of it and we are applying it. If
18 some body like that doesn't have an established
19 criteria, then we can't find it, we can't use it.

20 MR. MERONEK: Right. So I think you
21 mentioned yesterday, or maybe it was Monday,
22 probably Monday, that health was one of them,
23 noise was another?

24 MR. OSLER: I mentioned that I believe
25 there were noise thresholds that people can apply

1 up to some limits, I'm not up to the details of
2 it. And the case I mentioned was mercury in fish
3 and consumption ground rules that Health Canada
4 would use and people apply when it's safe to eat
5 the fish that have mercury in it.

6 MR. MERONEK: Would it be safe to say,
7 other than those examples, really there wasn't a
8 threshold of acceptable change by which to measure
9 whether the magnitude was small or not?

10 MR. OSLER: Well, no, I'm not sure
11 that I have covered every discipline. In the case
12 of the woodland caribou, we have had a discussion
13 about whether Environment Canada's thresholds for
14 cumulative disturbance at 35 percent going up to a
15 bit higher percentage to sort of set a range,
16 whether that's a threshold or not. It's certainly
17 one that has been provided by people outside of
18 the team here in Environment Canada. So it can be
19 considered as a threshold that's available for
20 people to pay attention to. There may be others
21 in other disciplines that I am not aware of.

22 MR. MERONEK: If there isn't an
23 established threshold of acceptable change, then
24 to determine whether something is small or not
25 would be a subjective decision made by whoever

1 made the decision, correct?

2 MR. OSLER: The process used attempts
3 to be objective by laying out ground rules.
4 Philosophically, I can see that we can have an
5 argument over, if it isn't an acceptable
6 established set of rules, how do we know that the
7 objective rules that somebody has laid down is not
8 something more than just their subjective belief?
9 But you'd have to deal with each professional. I
10 can assure you that the people involved think of
11 it as being objective. It's a very, very small
12 level of change to the extent that they can
13 understand it in their discipline, and they can't
14 see how it would have a measurable effect on the
15 sustainability of the VEC.

16 MR. MERONEK: Moving on to geographic
17 extent and the project site/footprint, it's
18 defined as a low level effect. What is low level
19 effect? How is that defined?

20 MR. OSLER: In practice, it was
21 defined as confined to the right-of-way or the
22 component site area.

23 MR. MERONEK: But that's kind of
24 tautological, isn't it? You've got low level
25 effect confined to the area where direct effects

1 would occur. What is low level effect?

2 MR. OSLER: Low extent, you asked me
3 in terms of geographic extent.

4 MR. MERONEK: So again that would be a
5 subjective assessment by whomever made that
6 assessment?

7 MR. OSLER: No, sorry, we're
8 misunderstanding each other. The definition of
9 low means it's confined to the right-of-way. That
10 may be just the way in which it's been written.
11 It says "and." And so in this particular EIS we
12 use the words low, moderate, and high for the
13 degrees of extent, but essentially they are quite
14 defined, footprint, local study area, project
15 study region.

16 MR. MERONEK: All right. Then local
17 study area, it's got 4.8 kilometre band. How was
18 that established?

19 MR. OSLER: That was long before my
20 time, but it was a study area of extent, and maybe
21 the biophysical people can explain the rationale.
22 It's not uncommon in transmission lines to talk
23 about a corridor outside of the 66 metre
24 right-of-way, to talk about say a 3-mile wide or
25 4.8 kilometre wide band. If you're talking in

1 miles, it's one and a half miles on each side of
2 the right-of-way. So I'm not aware of how the
3 team developed this way back in terms of a study
4 area, but it's not at all uncommon in my
5 experience to see that type of thing in
6 transmission assessments.

7 MR. MERONEK: Now, local study area is
8 defined as moderate extent. Again, that sounds
9 like a subjective definition, is it not?

10 MR. OSLER: It's simply developing a
11 scale, and the scales that people use in the
12 environmental assessment for geographic extent
13 usually go from the project site itself to some
14 band around it that's relatively close to the
15 broader region. So the band that's somewhat close
16 was defined in this case to be the local study
17 area. If I'm looking at some other studies I've
18 seen experience of, the local study area might in
19 fact be a bit broader than just this nicely
20 defined area we have here. The result of defining
21 it this way is to mean that as soon as you get
22 outside that area, that 4.8 kilometre area, if you
23 have an effect that's tending to extend beyond it,
24 you're in the high level effect area. So keeping
25 it to just that size is actually conservative.

1 MR. MERONEK: Is there a text or
2 literature, or some kind of precedent that one
3 could look to, to determine what appropriate
4 environmental assessment definitions should be
5 used in a cumulative effects assessment?

6 MR. OSLER: There are guides for both
7 significance and for cumulative effects. They
8 will leave you lots of latitude as to how you
9 actually apply it. And all I can tell you in this
10 case is that the methodology used here is totally
11 consistent with what's been used in the other
12 Manitoba Hydro projects that we've seen.

13 MR. MERONEK: And the other Manitoba
14 Hydro projects to which you refer are what,
15 Wuskwatim?

16 MR. OSLER: Wuskwatim and the Keeyask
17 one that's just been filed.

18 MR. MERONEK: Okay.

19 MR. OSLER: When you're looking at a
20 discipline, people will study an area that may be
21 broader by far than what we're calling the local
22 study area. Mr. Schindler certainly studied a
23 much broader area. But the terminology here was
24 developed a long time ago, long before I came
25 along, and it was called the local study area for

1 certain reasons. And it became the median
2 criteria under geographic extent. It does not
3 mean, it could be a poor piece of communication,
4 it does not mean that's the only area that
5 somebody studied, or the team all confined their
6 studies to this little area.

7 MR. MERONEK: So what you're telling
8 me is that these definitions were developed by
9 Manitoba Hydro and others prior to you coming
10 along on the scene?

11 MR. OSLER: Local study area certainly
12 was a defined term going way back.

13 MR. MERONEK: Now duration --
14 short-term is defined as a low level effect that
15 occurs once or is limited to site preparation or
16 construction?

17 MR. OSLER: Correct.

18 MR. MERONEK: What if you had a high
19 level effect over a short period of time, where
20 does that fit in?

21 MR. OSLER: I think one thing this
22 language on here is showing me that it's deficient
23 on or is not communicating well is, we use low,
24 medium and high, but it does not mean that we are
25 talking about low magnitude or medium magnitude or

1 high magnitude in conjunction with extent. All
2 we're trying to say is this is low duration,
3 medium duration or high duration, okay, to start
4 with. And low duration means it's a time period
5 you'd see in the definition.

6 MR. MERONEK: Was the 50 years for
7 medium duration selected prior to you being
8 engaged?

9 MR. OSLER: Yes.

10 MR. MERONEK: Intuitively, that seems
11 just from a layman's perspective a heck of a long
12 time to be termed medium. Do you have any
13 comments on that?

14 MR. OSLER: I agree. That's why I
15 highlighted it in my opening comments, and it's
16 not consistent with Wuskwatim or the Keeyask,
17 that's one of the other comments I have made. On
18 the other hand, I have seen in the other EIS's,
19 the Darlington nuclear one, for example, where
20 people have used this type of length of time. So
21 I'm not saying it's out of the box and wild. I
22 can see why somebody might think this way. But in
23 the context of practice that I have been used to,
24 it seems long. And I would want to test it, as I
25 discussed, to see whether the answers we're giving

1 are very sensitive to that particular variable.

2 MR. MERONEK: It just appears to me
3 with all these definitions that any result could
4 be achieved by way of a manipulation of the
5 definitions. Would you agree with that?

6 MR. OSLER: I agree that one of the
7 problems is that this type of complexity makes it
8 look that way, and that unscrupulously used,
9 inconsistently used between different projects,
10 you can get yourself in trouble. One of my
11 focuses is to try and make sure that it is
12 consistent, so that I can explain if there are
13 deviations or contest for them, so that we're not
14 accused of, you know, revising the methodology to
15 suit the project in a wrong sense rather than a
16 good sense.

17 MR. MERONEK: I want to move to the
18 issue of future projects. And as I understand the
19 evidence, both written and oral, the only
20 future -- current and future projects and
21 activities that were considered were ones that
22 were constructed or planned to be constructed, or
23 though not approved are in a planning/approval
24 process preparatory to be constructed or carried
25 out. Is that correct?

1 MR. OSLER: Well, the first set of
2 projects that were identified met what you're
3 talking about. I'm just trying to double check
4 the second group, prospective future projects and
5 activities not yet approved or not yet in the
6 planning process. There were a list of projects
7 such as Conawapa that were considered, but they
8 were identified to be quite a different category
9 of future projects than projects such as Keeyask.

10 MR. MERONEK: But I'm correct, I have
11 zeroed in on the definition of what future
12 projects were considered and which weren't, by
13 virtue of what I have just read, correct?

14 MR. OSLER: Sorry, could you just read
15 it again, just to make sure I haven't missed it?

16 MR. MERONEK: And I'm just
17 referencing, I'm sure it's in the EIS, but I'm
18 looking at Manitoba Hydro VI 223 at page 79, and
19 I'll just read:

20 "For current and future projects and
21 activities, the cumulative effects
22 assessment focused on other projects
23 that have already been approved and
24 are being constructed or plan to be
25 constructed/carried out, or though not

1 yet approved are in planning/approval
2 processes preparatory to being
3 constructed or carried out."

4 MR. OSLER: Yes.

5 MR. MERONEK: Now, who placed those
6 restrictions on whether a future project or
7 activity was to be considered in a cumulative
8 effects? Was that you, or was that assessment
9 made prior to your involvement?

10 MR. OSLER: I was involved intimately
11 in the final tables that you see, in trying to
12 sort out which projects we should be focused on
13 given the practice we have done elsewhere. So,
14 yes, I was intimately involved in that. They had
15 future projects that each of the disciplines had
16 been looking at. There are long lists of them in
17 the various technical reports. But to try and
18 provide them consistently in the main EIS, I was
19 intimately involved in that discussion.

20 MR. MERONEK: It sounds to me, again
21 intuitively, that those restrictions don't really
22 fit well into the definition of future project,
23 but fit more into current projects. Would you
24 agree with that?

25 MR. OSLER: No.

1 MR. MERONEK: Can you supply any
2 authoritative cumulative effects assessment source
3 which would support such kind of a restriction in
4 looking at future projects from the perspective of
5 cumulative effects?

6 MR. OSLER: Yes. The general guide,
7 the Canadian Environmental Assessment guide makes
8 the point that you're looking at projects that are
9 reasonably certain. Of course, the Act itself
10 talks about projects that will occur, but a
11 reasonably certain -- which is defined in practice
12 by the practitioners in the guides as projects
13 that are meeting the very tests, that half of what
14 you read off, projects that are in a review
15 process where there are filings and they are under
16 examination. So that's well recognized to be a
17 future project, not an existing project, in the
18 way people use the language, and one of the guides
19 that people give you to use in making sure that
20 you are paying attention to it.

21 How far you go beyond that is
22 recognized to be an area that depends on the
23 nature of the work you are doing and what you're
24 trying to look at. But the practice of looking at
25 projects that are in a planning stage that are

1 reasonably well known is a reasonably well
2 recognized practice, not only in terms of the
3 other projects that we're talking about,
4 Wuskwatims and Keeyasks, but elsewhere. But it is
5 a matter for people to discuss and debate as to
6 how far into the future you should go with the
7 projects, and that will be recognized in the same
8 guide.

9 MR. MERONEK: I fully appreciate that
10 it would be best practice to look at future
11 projects which are defined in the manner in which
12 you have defined them. My question was, can you
13 provide any environmental source, reliable,
14 credible source which would eliminate projects
15 which are outside those restrictions?

16 MR. OSLER: I'm not sure I understand
17 what you're getting at, because the guide I just
18 gave you makes the point you should focus on
19 future projects using these types of criteria.
20 Implicit in telling you to focus on something
21 using these criteria is, in my view, saying these
22 other projects are not the types of things,
23 whatever they may be, that you need to focus on.
24 Whether they be excluded or not is a semantics
25 game. I mean, what did we actually look at is the

1 key question. And we looked at the projects that
2 met a criteria. Are they in a regulatory process?
3 Are they in a clearly defined planning process?
4 Can we talk about them intelligently, and do they
5 overlap with this project in terms of their
6 effects?

7 MR. MERONEK: I can tell you, sir, I'm
8 not talking semantics, I'm talking about any
9 principles of environmental law or environmental
10 assessment which would support the proposition
11 that you do not examine projects other than those
12 which are defined in the manner Manitoba Hydro has
13 defined them?

14 MR. OSLER: Well, I've answered it to
15 the best I can, sir.

16 MR. MERONEK: Okay. Now we'll talk
17 about some projects tomorrow, but for the sake of
18 today's discussion, explain Conawapa to me? It
19 would appear that it was half pregnant, it was
20 partly in and partly out. Can you explain how
21 that worked?

22 MR. OSLER: Well, it was listed in the
23 second category of the two future types of
24 projects. It was called a prospective future
25 project because it's not in a regulatory process.

1 It was described to the extent that a description
2 was available and needed for the purposes of this
3 assessment. And the professionals involved took
4 into account that information and were asked to
5 examine whether there were potential overlapping
6 effects from the Conawapa project as we have been
7 able to define it for the purposes of this
8 discussion, and if so, to include it in their
9 cumulative effects assessment. And I understand
10 that that indeed was done per se the caribou
11 assessment as an example.

12 MR. MERONEK: But it was only used
13 partially, as I understand it? In other words, it
14 concentrated on construction impacts or workforce
15 and infrastructure impacts?

16 MR. OSLER: Well, one of the areas for
17 sure that it was used for was estimates of
18 construction workforce and all the overlaps and
19 the socioeconomics, you are correct. But when
20 somebody is looking at it from the caribou point
21 of view, I don't think they are just focused on
22 the construction, they are looking at the extent
23 to which the information base they have suggests
24 that the physical changes to the environment
25 relating to the Keeyask/Conawapa project would

1 appear to be material in doing an overall
2 assessment of disturbance that would affect the
3 caribou populations that are relevant in that
4 area, which are more than just -- there are about
5 three different populations at least that are
6 relevant in that area. So I'm not aware that it
7 was limited to just construction when everybody
8 used the consideration of Conawapa when thinking
9 about cumulative effects.

10 MR. MERONEK: Well, I'll refer you to
11 Manitoba Hydro III 091, which indicated that the
12 Conawapa Generating Station was partially included
13 for socioeconomic effects because the information
14 was limited. So it sounds to me like it was only
15 partially incorporated into the assessment for
16 cumulative effects?

17 MR. OSLER: Okay. I can see where
18 you'd take that language, and it was brought into
19 the socioeconomic analysis to the extent that it
20 could be using the information base that was
21 available. I think that's what somebody was
22 trying to say.

23 MR. MERONEK: But also in the EIS it
24 was indicated that Conawapa is scheduled to be in
25 production in 2015. So I'm assuming from that

1 perspective that it's in the planning stage?

2 MR. OSLER: Sorry, sir, you said 2015,
3 did you?

4 MR. MERONEK: I did.

5 MR. OSLER: It's supposed to be in
6 production in 2015?

7 MR. MERONEK: Yep?

8 MR. OSLER: Must be a typo somewhere.

9 MR. MERONEK: Well, at least started
10 in 2015, I am sorry, construction will begin in
11 2015. I misspoke.

12 MR. OSLER: Okay. It is in a planning
13 stage or we wouldn't even have considered it in
14 the second future group of projects, obviously,
15 yes. I mean, there is planning activity going on,
16 but it's at a totally different stage than a
17 Keeyask project where an EIS was being completed
18 at the time that Bipole's EIS was being completed
19 and has now been filed.

20 MR. MERONEK: Okay. Again, who made
21 the determination in terms of the extent to which
22 Conawapa would be reviewed in this process.

23 MR. OSLER: The determinations that
24 went into these tables involved myself, but it
25 involved Manitoba Hydro and other advisers. There

1 was a lot of time and attention spent on these
2 tables and their content, and ultimately Manitoba
3 Hydro finalized it.

4 MR. MERONEK: Okay. Just a couple of
5 more projects. One, just generally speaking, are
6 forestry operations. And again, the narrative
7 indicates that the forestry operations were
8 included to a limited extent because Hydro didn't
9 know exactly what those operations would be. Have
10 I got a fair precis of how forestry operations
11 were dealt with?

12 MR. OSLER: And they are under the
13 planning, the second group like Conawapa, right?
14 I think I would leave it to Mr. Schindler or
15 indeed Mr. Dyck, if he's around, to discuss how
16 they actually used forestry. The summary that's
17 here is what it is, but these are the gentlemen
18 that actually looked at forestry plans and used
19 them in their analysis. Mr. Schindler?

20 MR. SCHINDLER: I think we discussed
21 this in our presentation for cumulative effects on
22 boreal woodland caribou, that we utilized,
23 although the time frame was set at five years for
24 caribou, we utilized the long-term planning
25 horizon information that was available from Tolko

1 Industries, which included long-term protections
2 of forest extraction areas. And we know that
3 these areas are quite large compared to the areas
4 that are actually harvested from year to year. So
5 we did incorporate some of the long-term planning
6 activities of the forestry companies, and we also
7 buffered it by an extra 500 metres around those
8 areas to compensate for disturbance to boreal
9 caribou.

10 MR. MERONEK: What I was trying to get
11 at, probably awkwardly, was that forestry
12 operations are being left to future environmental
13 review, correct? Because you can't precisely
14 figure out the extent to which the operations may
15 be in effect?

16 MR. OSLER: I want to try and be clear
17 here. Mr. Schindler is saying that they take a
18 plan that's available and they look at it to see
19 what they can see, and it stretches out 20 years.
20 The extent to which that plan can change over that
21 20 year time period through all sorts of
22 procedures is not something that Mr. Schindler is
23 aware of, but you can imagine that various changes
24 could occur. So those are the facts as to how the
25 information is used in the assessment.

1 The general comment is made, I believe
2 in the EIS, that these types of projects, to the
3 extent that they are regulated like the Conawapas,
4 will be subject to future environmental reviews.
5 So that's an important factor to keep in mind.
6 They will get tested in the same way this is being
7 tested, taking into account the effects of Bipole
8 at the time they have to be reviewed.

9 MR. MERONEK: That's where I was
10 headed, sir. Just like in mining, the assessment
11 is that it's difficult to predict, and planned and
12 possible future process are subject to their own
13 environmental scrutiny. And that's in chapter 9,
14 page 11.

15 MR. OSLER: Yes, and that's the point
16 I was just discussing.

17 MR. MERONEK: It seems to me with that
18 kind of analysis that for the most part, other
19 than a couple of projects that have been
20 scrutinized here, Manitoba Hydro is leaving it up
21 to future environmental assessment bodies to sort
22 things out. Would that be fair?

23 MR. OSLER: At one level, yes.

24 MR. MERONEK: And so it begs the
25 question, why even look at future projects at all?

1 Why are you even having a cumulative effects
2 assessment, other than for current and past
3 projects, if an environmental body down the road
4 is going to look at it?

5 MR. OSLER: It's a good question that
6 some people ask. The word future projects, as we
7 discussed earlier, includes projects that are
8 currently under regulatory review. And one of the
9 things that the whole process is supposed to try
10 and make sure it deals with is make sure you don't
11 have two projects going through review process at
12 the same time and not paying attention to each
13 other. Keeyask and Bipole would be a classic, in
14 my experience, of exactly two projects in
15 concurrent review. Once you get beyond projects
16 that are reasonably in the hopper and you get to
17 the Conawapas of the world, or the future mines
18 that might be developed and stuff, it's a very
19 good question as to how much can the information
20 base that's available help anybody make a decision
21 today on the project at hand? And that's one of
22 the key challenges of cumulative effects
23 assessment. And you'll probably hear different
24 debates about the extent to which somebody thinks
25 that's the right place to draw the line, and other

1 people think we should do more strategic
2 assessments of all sorts of different project
3 opportunities in the future.

4 My view is, the problem with trying to
5 get an assessment is complicated enough, and the
6 more we can stick to stuff that we have reasonably
7 good information base on, the better it seems to
8 be for everybody that has to make decisions.

9 MR. MERONEK: Thank you, sir. Those
10 are my questions. I will let the record show that
11 I will not allow anybody to come before me again
12 out of turn, I think I just drank out of
13 Mr. Beddome's glass.

14 THE CHAIRMAN: I hope he's healthy.
15 Mr. Dawson, do you want to -- perhaps we'll hear
16 Mr. Dawson and then take a short break before
17 Mr. Williams.

18 MR. DAWSON: I have a proxy question
19 which had been forwarded to me. Mr. Osler, could
20 you confirm that when you consider the standards
21 by which you assess or make environmental
22 assessments, you are not referring to any
23 statutory or regulatory prescribed standard?

24 MR. OSLER: Generally speaking, I'm
25 not. I wouldn't exclude one if it exists.

1 MR. DAWSON: Thank you. And the
2 remainder of my questions will be my own and they
3 are directed at Mr. Szwaluk, if I may?

4 In your direct evidence, Mr. Szwaluk,
5 you had referred to the, well, the considerations
6 that you used in considering the possible selected
7 alternative routes, am I correct?

8 MR. SZWALUK: That's correct.

9 MR. DAWSON: And you at first said
10 that you would, well, the transcript actually says
11 and there's no need to turn to it, but constraints
12 were identified and considered including areas of
13 high ecological importance. And I'll just
14 continue, just for the summary purpose. Then the
15 next step involved identification of valued
16 environmental components. And then the words you
17 used were, these were identified and used to
18 assist in the evaluation of alternative routes.
19 Now, the only reason I wanted to read it in was
20 you were speaking in the passive tense,
21 constraints were identified, considered VECs were
22 identified. Who did this identifying?

23 MR. SZWALUK: I did the identification
24 with the group that I worked with.

25 MR. DAWSON: Sure. So this wasn't

1 simply code for you're not responsible for the
2 findings, you were giving evidence saying that you
3 were actually responsible for those findings and
4 had a part in it, am I correct?

5 MR. SZWALUK: Sorry, how do you mean
6 the findings?

7 MR. DAWSON: Well, you were the one
8 who identified the constraints and you were the
9 one who considered them?

10 MR. SZWALUK: That's correct.

11 MR. DAWSON: Okay. Was there any
12 extent to which you were simply handed the
13 parameters and told that they applied to your
14 work, as opposed to being allowed to exercise your
15 own expert judgment and develop your own
16 parameters?

17 MR. SZWALUK: We developed the VECs
18 and the constraints by ourself.

19 MR. DAWSON: You identified what, I'm
20 sorry?

21 MR. SZWALUK: The VECs and constraints
22 for the alternatives.

23 MR. DAWSON: So you and your group
24 developed that, am I correct?

25 MR. SZWALUK: That's correct.

1 MR. DAWSON: Okay. I'd like to turn
2 to blueberries just quickly. Your direct evidence
3 spoke about the rejuvenation of blueberries,
4 whether by mowing or fire, and how you assessed
5 this in relation to route selection. Am I right?

6 MR. SZWALUK: No, this was not taken
7 into consideration for route selection.

8 MR. DAWSON: It was not taken into
9 consideration, okay.

10 MR. SZWALUK: Blueberries came later.

11 MR. DAWSON: But they do feed into
12 your VECs, am I correct, or not?

13 MR. SZWALUK: Well, yes, they do with
14 the ATK sites, absolutely.

15 MR. DAWSON: Now, your mention of ATK
16 jumps way ahead to where I wanted to go with my
17 question. And that is, if I can put a few words
18 together to just speed the process along, you have
19 given evidence about how you approach and consider
20 blueberries. In fact, I noticed that you have
21 even made reference in your written technical
22 report to wild berry harvesting in Manitoba. But
23 when you do this, you are looking at it from a,
24 shall we say scientific or a botanical
25 perspective, you're not looking at it from the

1 socioeconomic perspective; am I correct in that?

2 MR. SZWALUK: We looked at it from a
3 botanical point of view.

4 MR. DAWSON: So you were more worried
5 about how the construction and operation of the
6 proposed transmission line would impact the plant
7 as a plant?

8 MR. SZWALUK: Not -- well, as a plant,
9 can you rephrase your question?

10 MR. DAWSON: Sure. You considered,
11 for example, whether in constructing the towers,
12 individual construction workers might, for
13 example, destroy a berry patch, but you were not
14 concerned, and I don't say this in any judgmental
15 way, just factually, you were not concerned with
16 how the destruction of that berry patch might have
17 socioeconomic impacts. That wasn't your job.

18 MR. SZWALUK: No, we prescribed
19 mitigation for these ATK sites. If you are
20 referring to blueberries specifically,
21 transmission lines can actually have a favourable
22 response for blueberries, as I indicate in my
23 report. Is that what you're asking, sir?

24 MR. DAWSON: No, I may be misleading
25 you in attempts to keep within the time that I

1 said. Where I'm going with this is, there were
2 specific constraints that you accepted as a
3 botanical expert, and let a number of other
4 considerations, socio-economical, fall by the
5 wayside. And it's not that you didn't do your
6 job, it was simply that it was beyond the scope of
7 what you, as a botanical expert, were supposed to
8 do. Am I fair to characterize it that way?

9 MR. SZWALUK: Well, we focused on the
10 constraints, the high level constraints that we
11 felt were important during the initial stages of
12 the project. And those were species of concern
13 and those were grassland prairie areas. There
14 were some other constraints involved, as you
15 identified as well.

16 MR. DAWSON: But you weren't looking
17 at socioeconomic concerns, if we can use that?

18 MR. SZWALUK: No, I was not looking at
19 socioeconomic.

20 MR. DAWSON: And you had left that to
21 other experts to come to that determination, just
22 as they in turn would have relied upon you for
23 your botanical expertise?

24 MR. SZWALUK: Okay, I guess that's
25 fair to say, but we weren't trying to leave

1 anything out in terms of botanical importance, if
2 you are referring to blueberries there, sir.

3 MR. DAWSON: I'm referring more to
4 leaving out socioeconomic aspects of the blueberry
5 plant, as opposed to trying to say that you
6 somehow in a negatively critical way overlooked
7 something or dismissed something. I'm just trying
8 to figure out the scope of what you did, and then
9 ultimately to see how you plug into the big
10 picture. So that's why I'm phrasing it this way.

11 MR. SZWALUK: Okay.

12 MR. DAWSON: So I am on the right
13 track, is that fair to say?

14 MR. SZWALUK: Well, yeah, but we
15 didn't purposely leave out -- it sounds like
16 you're making reference we left something out when
17 we did the high level assessment. We did not do
18 this when we were looking at the alternatives. We
19 identified constraints, we identified VECs, we
20 brought in ATK later in the process as it became
21 available, and then we assessed it.

22 MR. DAWSON: What was the connection
23 then, when you say you brought in ATK later in the
24 process?

25 MR. SZWALUK: When ATK became

1 available, once we had the preferred route, then
2 we incorporated it into the vegetation and
3 technical, or the ecosystem report.

4 MR. DAWSON: So what kind of ATK would
5 have an impact upon your botanical expertise in
6 selecting a route?

7 MR. SZWALUK: When this information
8 became available, we identified -- there was a
9 mapping process that was done through the ATK
10 process, and certain areas were mapped out and
11 some of these had blueberry areas. Where they
12 did, we overlaid this with the right-of-way and
13 the local study area, and we determined what the
14 effect would be from the clearing of that
15 right-of-way, and we compared it to the local
16 study area. So we did not ignore this, we
17 identified this as a VEC. And all these areas
18 that were identified were also environmentally
19 sensitive sites. And we prescribed a number of
20 mitigation measures for these, such as there was
21 winter clearing, low disturbance in these areas,
22 and selective tree cutting in these areas. So we
23 feel that these blueberry areas that you're asking
24 about will not be greatly affected, maybe for the
25 first year, but with the removal of tree cover in

1 these areas, berries will likely flourish in these
2 areas.

3 MR. DAWSON: Sure. So this is the
4 answer that I'd expect from the botanical expert.
5 And I note your reply back to me, and I don't say
6 this at all in an unfavorably critical way, your
7 reply back to me does not say, and Aboriginals
8 will be able to use these areas as a gathering
9 place, Aboriginal groups will be able to make use
10 of them in their traditional ways, Aboriginals may
11 be able to incorporate this into their diet, that
12 is the wild berries that they collect. None of
13 these comments are coming back from you, and the
14 reason is because that just wasn't your job?

15 MR. SZWALUK: Well, our job was to
16 identify these sites when they became available to
17 us, and we prescribed mitigation for these to
18 reduce the effect on these areas.

19 MR. DAWSON: To deal with the
20 conservation aspects and the general welfare of
21 the plant, as a plant?

22 MR. SZWALUK: Yes, that was my job as
23 a biologist to look out for these areas. I feel
24 these areas are very important. I'm a berry
25 picker myself, I use the land. So I prescribe

1 mitigation as a professional judgment, what
2 mitigation would have least effect on these areas.

3 MR. DAWSON: I'm sure you did. So you
4 at some point wrote your report and gave your
5 testimony here based upon the conclusions that in
6 your expert opinion you arrived at. Am I correct
7 to say that especially in preparing your report,
8 you knew that your opinion would merge or be part
9 of a package that Mr. Osler and his office would
10 ultimately consider in producing the EIS?

11 MR. SZWALUK: Sorry, are you asking me
12 if this was going to be incorporated into the EIS
13 as a package?

14 MR. DAWSON: Am I correct that apart
15 from the fact that your technical report is part
16 of the EIS, it's not -- you didn't personally
17 write any of the chapters of the EIS, am I correct
18 in that?

19 MR. SZWALUK: The technical report
20 is --

21 MR. DAWSON: Not the technical report,
22 the EIS. You didn't write any of the EIS, did
23 you?

24 MR. SZWALUK: Some of my information
25 directly went into the EIS.

1 MR. DAWSON: Somebody copied the
2 information that you wrote and put it into the
3 EIS. You didn't write part of the EIS?

4 MR. SZWALUK: Well, I gave a hand in
5 providing information to this, yes, but I didn't
6 write the EIS.

7 MR. DAWSON: Exactly what part did you
8 write that then would have been sent on? I think
9 what you're saying is that you wrote a report,
10 right?

11 MR. SZWALUK: That's correct.

12 MR. DAWSON: And you sent that report
13 up the chain, right?

14 MR. SZWALUK: That's correct.

15 MR. DAWSON: And somebody up the
16 chain, I'm not necessarily saying Mr. Osler, but
17 someone at that area looked at your report, am I
18 correct?

19 MR. SZWALUK: That would be correct.

20 MR. DAWSON: That would be what?

21 MR. SZWALUK: Correct.

22 MR. DAWSON: I am sorry, with the
23 sound I heard that would be incorrect. That would
24 have been a more interesting answer frankly.

25 They looked at your report, they also

1 got technical reports from other experts,
2 including the gentlemen seated to your left,
3 correct?

4 MR. SZWALUK: That would be correct.

5 MR. DAWSON: And then at that point,
6 somebody who is looking at this report or somebody
7 working in that area would begin to draft the EIS
8 itself, am I correct?

9 MR. SZWALUK: That's correct.

10 MR. DAWSON: And what you're telling
11 me is that excerpts or sentences, or if we
12 rearrange the letters in your report, all of the
13 words actually formed part of the EIS?

14 MR. SZWALUK: That would be correct.

15 MR. DAWSON: So let's go back to the
16 question that I asked, which was, you didn't
17 actually write the EIS, you sent up words that
18 were copied and put into the EIS at best?

19 MR. SZWALUK: That's correct.

20 MR. DAWSON: All right.

21 THE WITNESS: When your report was
22 being considered by those who would ultimately
23 write the EIS, to what extent were you involved in
24 how your opinions would be weighed?

25 MR. SZWALUK: I'm not sure on what

1 you're asking there, sir.

2 MR. DAWSON: You formulated certain
3 conclusions in your report, yes?

4 MR. SZWALUK: Yes.

5 MR. DAWSON: And you sent those up the
6 chain of command for consideration, right?

7 MR. SZWALUK: That's correct.

8 MR. DAWSON: And other experts would
9 have done the same, correct?

10 MR. SZWALUK: Correct.

11 MR. DAWSON: And at some point there
12 would have been a collection of expert opinion on
13 varying topics before the person who was putting
14 together the EIS, and that person had to interpret
15 and apply your conclusions, right?

16 MR. SZWALUK: Okay.

17 MR. DAWSON: Now, you didn't have
18 input, or did you, on how your opinions and your
19 conclusions would form part of the EIS?

20 MR. SZWALUK: Well, when this was
21 being assembled, I reviewed this. I was asked for
22 my professional judgment on this, as well as ATK,
23 I was asked about moving my section of ATK into
24 resource use. And I said that's okay because
25 there's overlap there. So in that aspect, yes, I

1 was asked and I had input.

2 MR. DAWSON: Did you work directly in
3 collaboration with, for example, Dr. Petch, who
4 wrote an ATK, or whose company wrote an ATK on
5 Aboriginal knowledge?

6 MR. SZWALUK: Yes, I worked with
7 Dr. Petch.

8 MR. DAWSON: Okay. Did you have any
9 input into Dr. Petch's conclusions or how she
10 wrote her ATK report?

11 MR. SZWALUK: I'm not sure in what
12 capacity she used my report, sir.

13 MR. DAWSON: No, I am saying -- you
14 said you worked with her?

15 MR. SZWALUK: I worked with her on the
16 project, yes, but I don't know if she took any of
17 my conclusions into consideration for her part.

18 MR. DAWSON: So you didn't directly
19 collaborate with her, for example?

20 MR. SZWALUK: Not in terms of writing,
21 no, sir.

22 MR. DAWSON: You wrote your report,
23 she wrote her report, you were both on the same
24 team, but that's the extent of what we're talking
25 about, is that what you're saying?

1 MR. SZWALUK: Yes.

2 MR. DAWSON: You didn't go bowling
3 with her, for example.

4 MR. SZWALUK: No, sir.

5 MR. DAWSON: Okay. Now, you said you
6 agreed with the way in which your report had been
7 used. If you had had objections to the way your
8 report had been used, were you allowed to express
9 them? You can say you don't know.

10 MR. SZWALUK: Yes, I would agree to
11 that, but the objections that would be in there
12 are pretty much directly from my technical report,
13 so I'd be objecting to my technical report.

14 MR. DAWSON: So you had no need to
15 object to the way in which your opinions and
16 conclusions were incorporated into the EIS?

17 MR. SZWALUK: Unless something was
18 phrased differently, and then I caught that, I
19 would object to something like that. But I don't
20 recall that, sir.

21 MR. DAWSON: Okay. But you didn't
22 have the final say as to how your opinion would be
23 used in the EIS, am I correct?

24 MR. SZWALUK: Well, Manitoba Hydro
25 prepared the document, so they had the final say.

1 MR. DAWSON: Right. So you were the
2 hired gun, you were the expert on which they
3 relied. You turned over your report and then
4 Manitoba Hydro did what it did with it?

5 MR. SZWALUK: That sounds right.

6 MR. DAWSON: Those are my questions.
7 Thank you, Mr. Chair.

8 THE CHAIRMAN: Thank you, Mr. Dawson.

9 We'll break for about ten minutes or
10 so. When we come back we'll hear from
11 Mr. Williams. When Mr. Williams is concluded,
12 we'll take another short break so the panel can
13 determine which areas we might have some final
14 questions in. So come back in about ten, 12
15 minutes.

16 (Proceedings recessed at 2:54 p.m. and
17 reconvened at 3:07 p.m.)

18 THE CHAIRMAN: Okay, can we reconvene,
19 please?

20 MR. WILLIAMS: Thank you, Mr. Chair
21 and members of the panel. Before starting, I
22 should just thank my client, Ms. Desorcey for
23 being here again today, and to also note on the
24 CAC table is Professor Fitzpatrick, who those of
25 you who were here during the Wuskwatim hearing

1 would have seen her in the back taking notes for
2 her doctoral thesis. Professor Fitzpatrick is
3 apparently on sabbatical, and strangely she chose
4 to show up here, so I give her credit for that. I
5 am not sure I would have made the same choice.

6 In terms of the Hydro panel, I don't
7 expect to have any questions for Mr. Schindler, or
8 despite his tremendous enthusiasm, Mr. Berger.
9 Most of my questions will be focused on cumulative
10 effects assessment, directed at Mr. Osler and to
11 some degree to Mr. Mazur and Szwaluk.

12 And for the panel, the only two
13 documents that I think you will require are the
14 CAC Manitoba supporting materials dated
15 November 5, 2012, which I'm going to guess is CAC
16 exhibit number 5. And if you do happen to have at
17 hand chapter 9 of the Environmental Impact
18 Statement, the cumulative effects, that would be
19 of some use as well.

20 Mr. Osler, good afternoon.

21 MR. OSLER: Good afternoon.

22 MR. WILLIAMS: And I am having trouble
23 hearing you already, so I'm a little soft spoken
24 and I'm sure you are tired, so let's both agree to
25 stay close to the mic. Agreed, sir?

1 MR. OSLER: Agreed.

2 MR. WILLIAMS: And Mr. Osler, I have
3 looked over your lengthy resumé. Would I be
4 correct, sir, in suggesting to you that in terms
5 of environmental assessment research, including
6 cumulative effects analysis, it would be accurate
7 to say that you have not published any peer
8 reviewed articles in the journal Impact Assessment
9 and Project Appraisal?

10 MR. OSLER: Correct.

11 MR. WILLIAMS: Similarly, sir, it
12 would be accurate to say, again in terms of
13 environmental assessment, including cumulative
14 effect analysis, that you have not published any
15 peer reviewed articles in the Journal of
16 Environmental Assessment Policy and Management?

17 MR. OSLER: Correct.

18 MR. WILLIAMS: And would it be
19 accurate to say, sir, that you have not published
20 any peer reviewed scientific papers on
21 environmental assessment research over the last 30
22 years?

23 MR. OSLER: Correct.

24 MR. WILLIAMS: Similarly, sir, it
25 would be accurate to say that you have not

1 published any book chapters on environmental
2 assessment or cumulative effects analysis; agreed?

3 MR. OSLER: Yes.

4 MR. WILLIAMS: And sir, you do not
5 serve as an editorial board member on journals
6 such as impact assessment and project appraisal;
7 agreed?

8 MR. OSLER: Yes.

9 MR. WILLIAMS: Now, sir, are you aware
10 that that's the journal of the International
11 Association for Impact Assessment?

12 MR. OSLER: Not personally.

13 MR. WILLIAMS: Similarly, sir, you did
14 not serve as an editorial board member on a
15 journal such as the Environmental Impact
16 Assessment Review; agreed?

17 MR. OSLER: Agreed.

18 MR. WILLIAMS: Mr. Osler, would I be
19 correct in saying that you have not served as a
20 consultant with the Canadian Environmental
21 Assessment Agency?

22 MR. OSLER: Correct.

23 MR. WILLIAMS: And you have not served
24 as a consultant with the National Energy Board,
25 sir?

1 MR. OSLER: Correct.

2 MR. WILLIAMS: Sir, you received your
3 M.A. in economics in the late 1960s?

4 MR. OSLER: Correct.

5 MR. WILLIAMS: You do not hold a Ph.D?

6 MR. OSLER: Correct.

7 MR. WILLIAMS: Sir, we won't ask this
8 today, but at some point in time I've got to check
9 on why you didn't continue with your legal career.
10 I'm sure it would have been a bright one.

11 Now, Mr. Osler, you have been working
12 with Manitoba Hydro on planning for the Wuskwatim,
13 Keeyask and Conawapa hydroelectric generating
14 stations since 1999; agreed?

15 MR. OSLER: Agreed.

16 MR. WILLIAMS: And you had a bit of a
17 discussion earlier with Mr. Meronek and
18 Mr. Beddome, but you were not available for work
19 on BP III, or Bipole III prior to 2011; agreed?

20 MR. OSLER: I was not retained for
21 such work prior to that time, that's correct.

22 MR. WILLIAMS: I believe in your oral
23 evidence you used the words were not available,
24 but it's simply the fact you were not retained
25 prior to 2011?

1 MR. OSLER: Correct.

2 MR. WILLIAMS: And leaving aside any
3 work you might have done in the late '80s or early
4 '90s on a third Bipole transmission line, as a
5 consultant for Hydro, would it be accurate to say
6 that in terms of the west side of the project, the
7 west side version of Bipole III, your involvement
8 prior to 2011 was limited?

9 MR. OSLER: Yes.

10 MR. WILLIAMS: Sir, in terms of
11 chapter 9 of the Environmental Impact Statement,
12 being the cumulative effects chapter, were you the
13 primary author of that chapter?

14 MR. OSLER: Yes.

15 MR. WILLIAMS: And so the conclusions
16 there are yours?

17 MR. OSLER: No, the conclusions in the
18 EIS are Manitoba Hydro's, but I don't disagree
19 with the conclusions that are there.

20 MR. WILLIAMS: In terms of -- and
21 thank you for that, sir. Just so I know, who is
22 Manitoba Hydro, for the purposes of making those
23 conclusions? Who do you answer to? Who draws
24 those conclusions?

25 MR. OSLER: There was a team of senior

1 people who ultimately took responsibility for
2 putting the project out. I don't know how
3 Manitoba Hydro would describe it, I'd leave it to
4 them, but there was a strategic group of people
5 that included the manager of the department and
6 others who took responsibility, along with their
7 legal counsel and along with other external
8 advisers.

9 MR. WILLIAMS: Thank you for that.
10 And Mr. Osler, just again if you can speak closer
11 to the mic, and I'll try and do the same.

12 But you agree with the conclusions in
13 chapter 9, sir?

14 MR. OSLER: Yes.

15 MR. WILLIAMS: And in terms of
16 reaching your opinions on those conclusions, would
17 it be fair to say that the primary evidentiary
18 basis for your conclusions were the technical
19 reports provided by the various experts from
20 various disciplines, sir?

21 MR. OSLER: Not directly because I
22 didn't deal with the technical reports. I dealt
23 with the people who were pulling together chapter
24 8, and putting together the analysis in chapter 8
25 of the effects on the biophysical and

1 socioeconomic environments. And then we focused
2 on chapter 9 being written after chapter 8 had
3 been developed. And at that time I wasn't aware
4 of what status these technical reports were in.
5 They were a separate body of work that I did not
6 get involved in at all. I relied upon the people
7 who were in Manitoba Hydro pulling together the
8 information to make sure they had pulled together
9 the information from these technical experts. We
10 had some very good discussions on a couple of
11 occasions with Mr. Schindler and other people over
12 specific issues as required in the socioeconomic
13 field. I probably had more direct involvement in
14 some of the discussions simply because there was
15 overlaps with Keeyask. But I wasn't reading
16 technical reports, I want to be very clear about
17 that, I wasn't even sure they were ready yet.

18 MR. WILLIAMS: So, sir, the technical
19 reports themselves, you would not be familiar
20 with?

21 MR. OSLER: That would be correct.

22 MR. WILLIAMS: And even as they apply
23 to cumulative effects assessment?

24 MR. OSLER: That would be correct.

25 MR. WILLIAMS: Of course though, sir,

1 you would have reviewed those cumulative effects
2 elements of the technical reports to ensure they
3 complied with best practice.

4 MR. OSLER: Not directly. I reviewed
5 the analysis we had available, the screening
6 process we went through, and the information I was
7 given as to what were the outputs coming from the
8 professionals in each area. And the people who
9 were dealing with this were checking with the
10 professionals in each area to make sure that the
11 statements they were putting into the EIS were
12 statements that would not lead to conflicts with
13 the professionals. But I wasn't doing that
14 personally, I was dealing with how to help pull
15 the whole thing together in the final analysis,
16 and checking through questions; has this been
17 examined, has that been examined, what's the
18 evidence on this?

19 MR. WILLIAMS: So you were the author,
20 sir, but you were not responsible for oversight of
21 the cumulative effects practitioners within their
22 specific fields?

23 MR. OSLER: That would be fair.

24 MR. WILLIAMS: Who, sir, in Manitoba
25 Hydro would have been responsible for the

1 technical oversight of the cumulative effects
2 practitioners within their particular fields?

3 MR. OSLER: Well, ultimately the
4 management team and the senior staff at Manitoba
5 Hydro were responsible for the technical reports
6 being put together by the experts. I'm not aware
7 of the specific structures that Manitoba Hydro
8 used over time, but in this hearing you have seen
9 Mr. McGarry, he was certainly one of the people
10 responsible for pulling together that stuff.

11 MR. WILLIAMS: Can you indicate, sir,
12 whether there was someone within Manitoba Hydro
13 with expertise in cumulative effects assessment
14 who was responsible for the oversight of these
15 professionals within their various technical
16 areas?

17 MR. OSLER: In the general sense of
18 expertise in doing assessments, the senior staff
19 of Manitoba Hydro have the expertise they have. I
20 don't think there's anybody who claims to be a
21 specialist on cumulative effects.

22 MR. WILLIAMS: Do you, sir?

23 MR. OSLER: No, I don't claim to be a
24 specialist on how you would apply it for mammals
25 or for vegetation or anything else. I'm a person

1 that helps pull together and manage an overall
2 process.

3 MR. WILLIAMS: Mr. Osler, in terms of
4 the cumulative effects assessment, chapter 9 of
5 the EIS, I wonder if I can just direct your
6 attention to page 9-1? Do you have that, sir?

7 MR. OSLER: I have it.

8 MR. WILLIAMS: And I'm going to have
9 to show my age and lift my glasses to read this.

10 Sir, in terms of the first paragraph,
11 would it be fair to say that the cumulative
12 effects assessment for this project was conducted
13 with consideration of guidance provided by, one,
14 the BP III scoping document; two, the Canadian
15 Environmental Assessment Act circa 1992; and
16 three, review of other guidance documents for
17 cumulative effects assessment?

18 MR. OSLER: Correct.

19 MR. WILLIAMS: And one of those
20 guidance documents, sir, was the Cumulative
21 Effects Assessment Practitioners Guide of Hegmann
22 et al from 1999; agreed?

23 MR. OSLER: Agreed.

24 MR. WILLIAMS: Sir, in terms of other
25 guidance documents, there is no bibliography for

1 this chapter. Can we agree on that?

2 MR. OSLER: Yes.

3 MR. WILLIAMS: Did you have reference,
4 sir, to the joint publication of the Alberta
5 Environment, Alberta Energy and Utilities Board,
6 and the Natural Resources Conservation Board
7 titled "Cumulative Effects Assessment and
8 Environmental Impact Assessment Reports Required
9 Under the Alberta Environmental Protection and
10 Enhancement Act."

11 MR. OSLER: At the time that chapter 9
12 was prepared, no.

13 MR. WILLIAMS: In terms of guidance
14 documents, sir, did you refer to the Canadian
15 Council of Ministers of the Environment, the 2009
16 publication, "Regional Strategic Environmental
17 Assessment in Canada, Principles and Guidance"?

18 MR. OSLER: At the time this was
19 prepared, no.

20 MR. WILLIAMS: In terms of guidance
21 documents, sir, did you have reference to Baxter
22 and Ross and Spaling, their 2001 study, "Improving
23 the Practice of Cumulative Effects Assessment in
24 Canada," from the journal Impact Assessment and
25 Project Appraisal?

1 MR. OSLER: At the time this was
2 prepared, no.

3 MR. WILLIAMS: Did you have reference,
4 sir, to the publication of Canter and Ross from
5 2010, "State of Practice of Cumulative Effects
6 Assessment and Management, the Good, the Bad and
7 the Ugly," in Impact Assessment and Project
8 Appraisal?

9 MR. OSLER: At the time this was
10 prepared, no.

11 MR. WILLIAMS: Sir, are you aware that
12 the two leading international scientific journals
13 on environmental assessment practice are
14 Environmental Impact Assessment Review and Impact
15 Assessment and Project Appraisal?

16 MR. OSLER: I'm aware that they are
17 certainly leading international journals, yes.

18 MR. WILLIAMS: Can you identify, sir,
19 any specific articles from these journals, either
20 of these journals, that you place reliance on in
21 writing chapter 9?

22 MR. OSLER: No.

23 MR. WILLIAMS: Now, sir, one of the
24 guidance documents you rely upon again is
25 Hegmann's Cumulative Effects Assessment

1 Practitioner's Guide; agreed?

2 MR. OSLER: Agreed.

3 MR. WILLIAMS: In your view, sir, does
4 this document represent state of the art in
5 cumulative effects assessment in Canada?

6 MR. OSLER: It represents the last
7 official guide that came out of the Government of
8 Canada to guide practitioners in doing cumulative
9 effects assessment, but it is dated.

10 MR. WILLIAMS: And so would it be fair
11 to say, sir, that you do not consider it state of
12 the art?

13 MR. OSLER: I consider it the best
14 guide that the Government of Canada has been able
15 to provide, but the art itself, I acknowledge, is
16 something that keeps developing. And there are a
17 wide range of views in many of the articles that
18 you have cited as to how it should evolve.

19 MR. WILLIAMS: Sir, you are aware
20 within the learned literature that one criticism
21 of Hegmann et al is that the guidance manual fails
22 to address how best to scope cumulative effects?

23 MR. OSLER: I'm not sure specifically
24 that I'm aware of that as a key attack on that
25 guide, but I acknowledge that that's an item for

1 debate among people as to how best to scope
2 cumulative effects assessment.

3 MR. WILLIAMS: Okay, thank you. One
4 last question, and Mr. Szwaluk, you might want to
5 listen to this one as well. Mr. Osler, in
6 preparing chapter 9 of the EIS, would you have
7 considered Harriman's report towards a conceptual
8 framework for integrated resource management on
9 electric utility transmission right-of-ways?

10 MR. OSLER: Did I consider it? No.

11 MR. WILLIAMS: Mr. Szwaluk, would that
12 have been a report that you are familiar with?

13 MR. SZWALUK: No, I'm sorry, I'm not
14 familiar with that report.

15 MR. WILLIAMS: Mr. Osler, and I'm
16 going to share a definition with you, so have pen
17 at hand, and I'm going to see if you agree with it
18 or not. Can we agree that cumulative change can
19 be understood as a result of combined threats to
20 VECs via multiple environmental pathways emerging
21 from biological, chemical, physical and
22 psychosocial stressors over space and time?

23 MR. OSLER: We can agree that
24 cumulative change can be understood as a result of
25 the combined threat to a VEC through all the

1 pathways that can affect it. You have listed a
2 bunch of them. I don't think the author probably
3 intended them to be limiting, but there's a wide
4 range of pathways that they have discussed. The
5 point is it is through all the pathways that could
6 affect and stress the VEC.

7 MR. WILLIAMS: And I thank you for
8 that, sir. Just as well, at the end of that
9 definition was over space and time, and we can
10 agree on that as well, sir?

11 MR. OSLER: Yes. I'm not sure how you
12 effect something except over space and time, but
13 okay.

14 MR. WILLIAMS: And here I was thinking
15 I was being profound, sir.

16 And are you aware that cumulative
17 effects have been described as death by a thousand
18 cuts?

19 MR. OSLER: I'm aware of that, yes.

20 MR. WILLIAMS: And really that's based
21 on the notion that a significant adverse effect
22 can result over time due to the culmination of
23 seemingly small and insignificant actions; agreed?

24 MR. OSLER: That is the concept, yes.

25 MR. WILLIAMS: And you would not

1 disagree that the most devastating environmental
2 effects may result from the combination of
3 individually minor effects of multiple actions
4 over time?

5 MR. OSLER: I would not disagree that
6 that is a possibility, and it's one of the types
7 of possibilities that motivates people to try and
8 do cumulative effects assessment.

9 MR. WILLIAMS: Thank you, sir, and
10 again I'm just going to remind you to, and I'll do
11 the same, I'm not trying to be critical.

12 MR. OSLER: I can hear you, it's me
13 that's causing the trouble, sir. The questions
14 are making me move back.

15 MR. WILLIAMS: And conceptually,
16 sir -- maybe conceptually is the wrong word
17 here -- colloquially, sir, in terms of cumulative
18 effects, what can seem like a mere drop in the
19 bucket can, in conjunction with other drops in the
20 bucket, have quite a significant impact; agreed?

21 MR. OSLER: That is the concept that
22 you were discussing, and it is conceived of as a
23 possibility that we have to watch out for.

24 MR. WILLIAMS: I thank you for that.
25 Based on your knowledge of the literature, sir,

1 are you aware of such terms as the shifting
2 baseline problem or the "new normal"?

3 MR. OSLER: Yes, in the general sense
4 of a concept that we accept change and it becomes
5 the new normal, the world we're living in. And
6 therefore, when we look at a new project we only
7 assess it against "the new normal". And that
8 would not be consistent with what the concepts are
9 underlying cumulative effects. And the diagram I
10 gave in my presentation, I distinguished between
11 the normal and the baseline to try and get the
12 point across that, in a conceptual sense, we are
13 trying to understand the extent to which we moved
14 away, particularly in the biophysical field,
15 something called normal, normal being unaffected
16 by human projects and activities. And the
17 baseline has to be acknowledged to be something
18 that reflects what has shifted from that normal
19 and, therefore, we should be aware of how far away
20 we are from something that, in the language you
21 and I are using, was the original normal.

22 MR. WILLIAMS: And I thank you for
23 that, sir. And staying at a conceptual level, the
24 problem with adopting current conditions as normal
25 is that we fail to consider current conditions

1 relative to past conditions in evaluating the
2 nature and significance of cumulative change.
3 That's the issue?

4 MR. OSLER: That is in essence the
5 issue.

6 MR. WILLIAMS: And from the
7 perspective of those who in the literature
8 criticized "the new normal," from their
9 perspective you would agree it is important to
10 evaluate the significance of a project's effects
11 from the perspective, sir, of the additional
12 stress placed on VECs that are already stressed by
13 other sources. Can we agree on that?

14 MR. OSLER: Yes.

15 MR. WILLIAMS: Mr. Osler, you might
16 want to pick back up chapter 9 of the EIS. I
17 think I have a number of fairly straightforward
18 questions, but those may be famous last words.

19 Without giving you a specific
20 reference page yet, Mr. Osler, broadly speaking,
21 can we agree that cumulative effects assessment as
22 a process consists of a few core stages,
23 including, one, scoping; two, effects analysis;
24 and three, effects management? You addressed two
25 of those three in your reports.

1 MR. OSLER: I can accept that as a
2 useful way of talking, yes.

3 MR. WILLIAMS: Can we agree, sir, that
4 the scoping phase is critically important because
5 it determines all that will be included and all
6 that will be excluded when evaluating a project's
7 contribution to the process of change and impacts
8 on VECs?

9 MR. OSLER: I agree that it can be, if
10 scoping is done narrowly or constrictively, it can
11 be critical to what comes afterwards. If the
12 scoping is more principled and not so
13 constraining, it doesn't necessarily have that
14 effect. So it depends on the approach you take to
15 scoping. And I give you as an example, if I said
16 I only want to look at projects five years ago and
17 five years into the future and to heck with
18 anything else, that would be a constraining
19 scoping. If I told you I want you to make sure
20 you pay attention to any projects in the past and
21 the current projects that could affect this VEC
22 and stress it, without trying to give you a time
23 line, that wouldn't be a constraining scoping
24 exercise.

25 MR. WILLIAMS: Thank you for that,

1 Mr. Osler. Leaving aside the August 2012 caribou
2 supplemental report, leaving that aside, in terms
3 of the territorial ambit of the cumulative effects
4 analysis within the EIS, it would be accurate to
5 say that the spatial boundary considered for the
6 cumulative effects assessment is the Bipole III
7 project study area?

8 MR. OSLER: Yes, that is what the
9 chapter 9 says. I have made the observation that
10 despite what it says there, the caribou people,
11 before they looked at the August report were
12 looking at herds that went beyond that region, and
13 they knew that. So the chapter in that sense
14 didn't fully reflect what some of the people were
15 doing.

16 MR. WILLIAMS: Let's leave aside
17 caribou.

18 MR. OSLER: Right. Aside from
19 caribou, I think the spatial boundary would be the
20 project study region.

21 MR. WILLIAMS: Okay. So that would be
22 on the map to your left, the yellow area?

23 MR. OSLER: That's what some people
24 refer to as the backwards banana, yes.

25 MR. WILLIAMS: I can barely see the

1 yellow, sir, so I'm not able to agree with the
2 banana description, but I'll take Mr. Madden's
3 word on that.

4 Sir, in terms of your scoping
5 exercise, and I don't think you need to turn
6 there, but if you want you can have tables 9.21 et
7 al nearby. And I'm not asking for elaboration,
8 just a high level -- you essentially canvass three
9 streams of projects and activities for the purpose
10 of scoping, those being past and existing projects
11 as set out in table 9.21, future projects and
12 activities set out in table 9.22, and perspective
13 future projects and activities as set out in table
14 9.23. Do I have that generally right, sir?

15 MR. OSLER: Generally right.

16 MR. WILLIAMS: Just a couple of
17 questions of clarification. At this point I'd
18 like you to turn to your check list, the table at
19 9.3-1 at page 9-14, sir?

20 MR. OSLER: Are we dealing with the
21 corrected version?

22 MR. WILLIAMS: I'm not sure
23 Mr. Williams was aware there was a corrected
24 version.

25 MR. OSLER: Can we make sure that

1 Mr. Williams has a copy of the answer to CEC
2 number 6-226, please?

3 MR. WILLIAMS: I thank Ms. Pollet
4 Smith for her assistance.

5 MR. OSLER: There was an error
6 discovered, Mr. Williams, in how this table had
7 been finally printed, and this particular CEC
8 response provided the old tables and the corrected
9 ones. So I did mention it earlier today, I think
10 one of the first questions I got, that it is
11 important that we start from this part.

12 MR. WILLIAMS: And I thank you, sir,
13 and I don't think it will affect my question, but
14 just to make sure we're on the same page, I would
15 be looking then at the table 9.31 revised, which
16 is an attachment to CEC Manitoba Hydro 6-226;
17 agreed?

18 MR. OSLER: Agreed.

19 MR. WILLIAMS: Now, sir, in terms of
20 this table, and just to make sure I understand
21 this, under Bipole III project, the fifth entry
22 down is forestry operations and road development?

23 MR. OSLER: Yes.

24 MR. WILLIAMS: And the sixth is
25 mineral licence area exploration; agreed?

1 MR. OSLER: Agreed.

2 MR. WILLIAMS: And later in the table
3 towards the very bottom, I see these repeated
4 again under future forestry operations and future
5 mineral licence. Do you see that, sir?

6 MR. OSLER: Yes.

7 MR. WILLIAMS: Just to make sure my
8 clients, and more importantly my witnesses
9 understand that, in the top part of the table, the
10 reference to forestry operations and mineral
11 licence exploration refers to past and existing
12 projects, where at the bottom of the table it
13 refers to future forestry operations and future
14 mineral licence exploration; agreed?

15 MR. OSLER: Agreed. And the revised
16 table recognize that and put those two headings
17 along the side to try and help people because it
18 wasn't clear in the original one.

19 MR. WILLIAMS: If I would have been
20 paying attention, Mr. Osler, I would have caught
21 that sooner. I thank you for that clarification.

22 Sir, directing your attention back to
23 table 9.2-1 found at page 9-5?

24 MR. OSLER: Yes.

25 MR. WILLIAMS: There is a reference

1 there on the middle of that table to a past and/or
2 existing project being multiple existing (utility)
3 corridors such as water pipelines, fibre optics
4 lines, and provincial highways and roads, winter
5 road development; agreed?

6 MR. OSLER: Agreed.

7 MR. WILLIAMS: Sir, I'm correct in
8 suggesting to you that this category does not
9 capture the linear development known as Bipoles I
10 and II?

11 MR. OSLER: You would be correct.

12 MR. WILLIAMS: And leaving aside
13 caribou, it would be accurate to say that the
14 assessment upon which chapter 9 was based did not
15 consider the effect of the Bipoles I and II, sir?

16 MR. OSLER: I'm afraid that it
17 wouldn't be accurate, because although this is how
18 this table is written and all the people who took
19 part in doing it, to the extent that Bipole I and
20 II had a cumulative effect in an area that a
21 professional was concerned about, I am fairly
22 positive the professional would look at it
23 independently in this table. The general thinking
24 here was that Bipole I and II are outside the
25 study region and they are not something that would

1 have an overlap with this project. But it did not
2 give somebody carte blanche because it wasn't in
3 this table not to think about it, if they thought
4 in their professional opinion the existing
5 environment was stressing a VEC, and part of that
6 existing environment that was stressing was
7 Bipoles I and II.

8 MR. WILLIAMS: And you're confident,
9 sir, based upon your exhaustive review of the
10 technical reports presented by the witnesses, the
11 experts?

12 MR. OSLER: I'm confident that the
13 professionals involved were looking at anything
14 that would stress the VECs they were worried
15 about, and we were trying to summarize in a table
16 here the past and existing projects that seemed to
17 me to be listed. And there are some good
18 criticisms of this list, that they don't seem to
19 take account of the CRD and LWR. And maybe
20 another good criticism is that the list should
21 have shown that if it did have an effect, Bipole I
22 and II should be kept in mind too. So this is a
23 summary of the projects that we thought -- we knew
24 people were looking at a wide range of projects,
25 but we thought these were the past and existing

1 projects that needed to be highlighted and focused
2 on. And we have had some good criticisms of that
3 in the process of this review.

4 MR. WILLIAMS: And in terms of your
5 highlighting and focusing, it was your
6 professional opinion that Bipoles I and II, that
7 linear development did not need to be focused in
8 this table?

9 MR. OSLER: Yes, those of us who are
10 sitting looking at this didn't think of this as an
11 overlapping project, for the very reason it was
12 supposed to be kept well away from Bipoles I and
13 II, but that's an assumption. When you look at it
14 in the cold light of day afterwards, maybe it
15 should be identified as part of the existing
16 landscape in case questions like this arise.

17 MR. WILLIAMS: And of course,
18 mathematically, sir, in terms of the final
19 preferred route, Bipoles I and II end up within 20
20 kilometres at one point in time, and within 40
21 kilometres at close to 200 kilometres, sir?

22 MR. OSLER: Yes, and that's the type
23 of thing that the hearing has heard, and it's the
24 type of thing you want to make sure, where it
25 comes in with any distance that people talk about,

1 there are not cumulative effects that are
2 relevant. I'm not aware of any, but it's a good
3 question.

4 MR. WILLIAMS: Mr. Osler, can we agree
5 that a cumulative effect on a VEC may be
6 significant, even though each individual project
7 specific assessment of the same VEC concludes that
8 the effects are insignificant?

9 MR. OSLER: Yes.

10 MR. WILLIAMS: Would you like me to
11 repeat that, sir?

12 MR. OSLER: No, I don't want to you
13 repeat it. Yes, I agree with it.

14 MR. WILLIAMS: And that indeed is a
15 fundamental principle of cumulative effects
16 assessment?

17 MR. OSLER: One of them, yes.

18 MR. WILLIAMS: And can we agree as
19 well, sir, that the cumulative effect on a VEC
20 must be approached from the perspective of the
21 total effect on the VEC?

22 MR. OSLER: I think to use the phrase
23 the assessment is VEC focused, in other words, you
24 are looking at the world from the point of view of
25 the poor VEC.

1 MR. WILLIAMS: And I thank you for
2 answering the question better than it was posed.
3 Thank you, sir.

4 Probably to Mr. Mazur, but Mr. Osler,
5 feel free to chime in.

6 Mr. Mazur, I wonder if you could turn
7 to CAC, what I believe is Exhibit 5, which is the
8 supporting materials filed on November 5, 2012.
9 Do you have that, sir?

10 MR. K. MAZUR: Yes, I have it in front
11 of me.

12 MR. WILLIAMS: Sir, I'm having a
13 problem with hearing you. I am not having a
14 problem with your answer, just with hearing you.

15 And Mr. Mazur, perhaps we can start by
16 turning to page 12, which is -- by page 12, I mean
17 marked in the top right-hand corner in messy
18 handwriting.

19 Mr. Mazur, do you have that?

20 MR. K. MAZUR: I have it now, yes.

21 MR. WILLIAMS: And without -- that's
22 probably -- you'll agree with me that that appears
23 to be an excerpt from the North/South Consultants
24 report, aquatic environment technical report;
25 agreed?

1 MR. K. MAZUR: Agreed.

2 MR. WILLIAMS: Now, in terms of the
3 intersection of the preferred route with water
4 courses, am I correct in suggesting to you, sir,
5 that it would be 317 water courses that were
6 intersected by the preferred route; agreed?

7 MR. K. MAZUR: Yes, agreed.

8 MR. WILLIAMS: And if one were to look
9 at these 317 water courses, sir, without asking
10 you to elaborate for the purposes of your report,
11 you classified a number of them as no fish
12 habitat, a number as well as marginal, and a
13 number as important in terms of fish habitat;
14 agreed?

15 MR. K. MAZUR: Well, we classified the
16 site, so where the transmission line right-of-way
17 would cross.

18 MR. WILLIAMS: So in terms of where
19 the right-of-way crossed the water course, you
20 classified those 317 sites, some as no fish
21 habitat, some as marginal, and some as important;
22 agreed?

23 MR. K. MAZUR: Yes, agreed.

24 MR. WILLIAMS: And in terms of the
25 ones that you concluded were important, you

1 identified 78 sites where the preferred route
2 crossed the water course; agreed?

3 MR. K. MAZUR: Yes, 78 sites were
4 identified as important fish habitat.

5 MR. WILLIAMS: And Mr. Mazur, not in
6 any way being critical, but I'm still having
7 trouble hearing you, so keep speaking loudly,
8 please, sir.

9 Now, just flipping back to page 7
10 marked in the top right-hand corner. And sir, I'm
11 not going to ask you to identify all of them, but
12 we can agree that one of the potential effects to
13 aquatic habitat flowing from construction and
14 maintenance activities related to the preferred
15 route as it intersects these water courses would
16 include the potential for erosion of banks with
17 steep slopes as a consequence of disturbing the
18 vegetative cover?

19 MR. K. MAZUR: Well, stream banks in
20 many cases are under constant erosion, that's what
21 rivers do, they erode. The removal of vegetation
22 along the stream bank can enhance erosion.

23 MR. WILLIAMS: Okay, thank you. Can
24 we also agree that another potential effect would
25 be for increased local and downstream suspended

1 and stream bed sediment resulting from increased
2 bank erosion?

3 MR. K. MAZUR: If stream banks are
4 eroding and sediments being disturbed and
5 suspended, and the stream is flowing, it may go
6 downstream.

7 MR. WILLIAMS: Yes, sir, and I was
8 asking, and that's a potential effect of the
9 construction as the preferred route intersects the
10 water courses; agreed?

11 MR. K. MAZUR: Yes, we identified that
12 as a potential effect.

13 MR. WILLIAMS: Okay. And another
14 potential effect of that intersection is the
15 potential loss of cover habitat along stream
16 margins due to removal of or damage to riparian
17 vegetations; agreed?

18 MR. K. MAZUR: That is another
19 potential effect that is identified.

20 MR. WILLIAMS: Okay. Now, sir, I'm
21 not sure we need a particular page, but perhaps
22 page ten in the top right-hand corner would
23 assist. And I'm sure you have memorized your
24 report, sir, but in the section 6.4 part of this
25 report, we're in the potential cumulative effects

1 part of the report; agreed? If you need to check,
2 check on page 8, sir.

3 MR. K. MAZUR: Yes, agreed.

4 MR. WILLIAMS: Now, in terms of
5 cumulative effects, sir, for the aquatic
6 environment study, you were focusing on surface
7 water quality and fish habitat; agreed?

8 MR. K. MAZUR: Yes, those were the two
9 VECs.

10 MR. WILLIAMS: And so if we think of
11 these 317 water course crossings of the preferred
12 route, and the two VECs, can we conceive of the
13 water course crossing as the potential stressor of
14 water quality and fish habitat?

15 MR. K. MAZUR: You mean the actual --
16 we divide it into components of overhead
17 transmission line, if it's clearing, stringing of
18 the conductors, maintenance of vegetation, the
19 actual vehicle crossing, if required. So there
20 are a number of components.

21 MR. WILLIAMS: Sir, just going to the
22 language of the VECs, though, it's the
23 construction activity associated with the
24 construction and maintenance of this transmission
25 line as it intersects with the water course that

1 is the potential stressor of water quality and
2 fish habitat; agreed?

3 MR. K. MAZUR: Yes, that's where the
4 stress comes from, yes.

5 MR. WILLIAMS: Now, sir, in terms of
6 your cumulative effects analysis for the VECs of
7 surface water quality and fish habitat, am I
8 correct in suggesting to you that -- let me back
9 up for a second, sir. I don't want you to move
10 forward from today's baseline condition, in your
11 answer, into the future. What I want to do is,
12 with your baseline, ask you in terms of the VECs
13 for cumulative effect analysis being surface water
14 quality and fish habitat, I am going to suggest to
15 you that the report does not indicate whether,
16 leading up to the baseline, VEC conditions have
17 been deteriorating, relatively stable, or
18 improving over time; is that correct, sir?

19 MR. K. MAZUR: In the aquatics
20 technical report we provided a discussion of the
21 conditions at the sites of the preferred route.
22 We did not provide a background leading up at
23 those sites.

24 MR. WILLIAMS: So when we look at
25 those VECs, as they would have evolved up to the

1 baseline that you started from, your report does
2 not provide insight into whether their condition
3 has been deteriorating, relatively stable, or
4 improving; agreed?

5 MR. K. MAZUR: No, I would disagree
6 with that. When we conduct a site visit, we
7 assess the site for its current conditions. And
8 if we see just current existing disturbances,
9 something that would have degraded the fish
10 habitat, or have improved it, if there was an
11 improvement made, we would note that in our
12 assessment.

13 MR. WILLIAMS: Sir, there's no place
14 in your report where one can look at a
15 quantitative evolution of the VEC of surface water
16 quality or fish habitat leading up to the
17 baseline; agreed?

18 MR. K. MAZUR: I would agree there's
19 no quantitative analysis of condition change over
20 time. There would be some qualitative description
21 of a number of well studied streams. With that
22 said, there may be some quantitative information,
23 some numbers, but it's not set out in the way that
24 you are alluding to.

25 MR. WILLIAMS: I'm going to suggest

1 it's not set out at all, sir. Do you disagree?

2 MR. K. MAZUR: I do believe we provide
3 a background at the site, as part of our fish
4 habitat assessment is to gather existing
5 information at that site, previous studies,
6 previous enhancement projects, so, yes, in our
7 initial fish habitat assessments.

8 MR. WILLIAMS: Now, sir, if I looked
9 at your aquatic report, can we agree, leading up
10 to your baseline again, that it does not examine
11 whether water quality parameters changed over time
12 in the study area due to river crossings?

13 MR. K. MAZUR: We did provide some
14 information on previous water quality data on a
15 number of -- only a handful of sites that it was
16 available for. But I would agree in general that
17 we do not provide that quantitative information on
18 all 317 stream crossings. But where available, we
19 provide information.

20 MR. WILLIAMS: Leading up to the
21 baseline, sir, is it accurate to say that your
22 report does not establish a mathematical
23 relationship between increasing number of river
24 crossings as they may affect the water quality
25 parameters?

1 MR. K. MAZUR: I don't believe the
2 data is available that documents the increasing
3 numbers of water course crossings on a particular
4 stream with changes in water quality or fish
5 habitat parameters.

6 MR. WILLIAMS: Sir, going to page 9
7 near the top right-hand corner of CAC 5, under
8 section 6.4.2. Sir, first of all, without asking
9 you to elaborate, you're talking about the
10 potential future generating station projects
11 including Conawapa and Keeyask; agreed?

12 MR. K. MAZUR: Yes, that's correct.

13 MR. WILLIAMS: And you note that the
14 main residual effect resulting from the
15 construction and operation of hydroelectric
16 generating stations is the inundation of the lower
17 reaches of tributaries; agreed?

18 MR. K. MAZUR: Yes, as it relates to
19 the Bipole III preferred route.

20 MR. WILLIAMS: And that inundation can
21 result in changes in water levels and the flow
22 regime and, therefore, fish habitat; agreed?

23 MR. K. MAZUR: Yes, I believe that's
24 what it says. And as indicated on page 53, it is
25 typically restricted to the lower reaches of those

1 water bodies and the floor base.

2 MR. WILLIAMS: Now, sir, in this
3 report, as it reflects to our immediately
4 preceding discussion, would I be correct in
5 suggesting to you that in your analysis you do not
6 present a threshold in terms of acceptable water
7 levels, i.e. a minimally acceptable level for
8 flow?

9 MR. K. MAZUR: Do you mean flow in the
10 streams affected by a proposed generating station?

11 MR. WILLIAMS: Yes, sir.

12 MR. K. MAZUR: No, we do not provide
13 that sort of information. And that relates to, I
14 guess it relates to fish habitat in those streams
15 and what changes in flow will affect fish habitat.
16 And that's an analysis we do not undertake.

17 MR. WILLIAMS: I apologize for my
18 messiness, Mr. Chairman.

19 Mr. Mazur, I don't want you to think I
20 was unhappy with your answer. That was just pure
21 clumsiness that lead me to that.

22 Would it be also fair to say in terms
23 of this analysis that flow reductions due to the
24 project, in combination with other future
25 hydroelectric generation projects, are not

1 specified or explicitly analyzed as part of the
2 cumulative effects analysis?

3 MR. K. MAZUR: I think I stated that
4 the last --

5 MR. WILLIAMS: I was too busy dropping
6 my materials, sir. Thank you for that.

7 Turning to page 10 at the top right,
8 sir, section 6.44, roads, can you see that, sir?

9 MR. K. MAZUR: Yes, I see it.

10 MR. WILLIAMS: And you make the point
11 that the -- not quoting exactly, but that the
12 development of access roads and other roads have
13 the potential to affect water quality and fish
14 habitat at stream crossings; agreed?

15 MR. K. MAZUR: Yeah, I think we are in
16 agreement that roads can affect fish habitat.

17 MR. WILLIAMS: Now, I want to move
18 away from the baseline, sir, and kind of look
19 forward now. In terms of this report, can we
20 agree that there is no prospective cumulative
21 effects analysis of future stream crossings for
22 access roads and provincial highway and winter
23 road development?

24 MR. K. MAZUR: I think when we think
25 about overhead transmission lines, the effects are

1 not measurable to fish habitat. And that is why
2 the Department of Fisheries and Oceans doesn't
3 want to review these. If you follow their
4 prescribed mitigation, they are happy to see an
5 Excel spreadsheet with a list of stream crossings,
6 no review, because the risk is so low to fish
7 habitat. So considering that, when we try to look
8 at that in addition to other more significant
9 effects, we come back to transmission lines and
10 this absolutely non measurable effect.

11 MR. WILLIAMS: It's just a drop in the
12 bucket?

13 MR. K. MAZUR: It's not measurable
14 against our VEC.

15 MR. WILLIAMS: Now, sir, let's go back
16 to my question, and I have your answer for the
17 last point but let's have you answer my question.
18 In terms of this section of the report, you would
19 agree that there is no prospective cumulative
20 effects analysis of future stream crossings for
21 access roads and provincial highway and winter
22 road development; agreed?

23 MR. K. MAZUR: We know that, because
24 fish habitat is federally regulated and section 35
25 of the Fisheries Act will not permit the harmful

1 alteration or destruction of fish habitat,
2 compensation must be applied if it's a road or any
3 other development that affects fish habitat. So
4 there will be no net loss of productive capacity
5 of those fish habitat. So when we look at roads,
6 if a road is built, a new road is built and a
7 culvert is placed, and there's an infill, that has
8 to be offset so there will be no net loss of fish
9 habitat. When we consider that, in light of the
10 non measurable effects of an overhead transmission
11 line, that's where our assessment came from.

12 MR. WILLIAMS: Okay. And I have your
13 answer. Would you like to answer my question,
14 though. Is the answer no?

15 MR. K. MAZUR: Can you restate it?

16 MR. WILLIAMS: No, I'm going to ask
17 the same question and this time I'd like you to
18 answer it, with respect.

19 In terms of this report, you would
20 agree that there is no prospective cumulative
21 effects analysis of future stream crossings for
22 access roads and provincial highway and winter
23 road development; agreed?

24 MR. K. MAZUR: We did consider future
25 roads in the area surrounding the transmission

1 line, for what we knew, and our understanding of
2 those roads and the potential for impacts on fish
3 habitat. Is it detailed in this section? No, but
4 we did consider that in our evaluation.

5 MR. WILLIAMS: Okay, thank you.

6 Mr. Szwaluk, I'd like you to turn to
7 page 17, which you'll agree is an excerpt of your
8 vegetative report -- or excuse me, of your
9 terrestrial ecosystem and vegetation technical
10 report, sir?

11 MR. SZWALUK: I agree, sir.

12 MR. WILLIAMS: And Mr. Beddome might
13 have asked a question on this, but your report
14 identifies that the total area of all wetlands
15 along the local study area is roughly
16 137,701 hectares. It's up in the top of that
17 page.

18 MR. SZWALUK: Thank you. Yes, I
19 agree.

20 MR. WILLIAMS: And I apologize for not
21 directing you there. And you also identify that
22 there is 1,456 hectares of wetlands along the
23 preferred route; agreed?

24 MR. SZWALUK: Agreed.

25 MR. WILLIAMS: And if we flip over,

1 sir, to page 19 marked in the top right-hand
2 corner, under wetland communities, and
3 specifically section 3.2 to 5, the first
4 paragraph, the last sentence. Without asking you
5 to elaborate, sir, we can agree that you identify
6 several threats to wetlands, including
7 agricultural run-off, drainage, forest activities,
8 off-road vehicles, peat extraction and
9 right-of-way activities; agreed?

10 MR. SZWALUK: Agreed.

11 MR. WILLIAMS: And, Mr. Szwaluk, just
12 in terms of where I'm going with my question, I
13 just want to make clear that I am not looking
14 forward perspectively. In terms of the baseline,
15 can we agree that as it relates to -- that your
16 analysis does not present a characterization of
17 the wetland area in the past measured, for
18 example, by percentage wetland cover or area?

19 MR. SZWALUK: Sorry, sir, you're
20 asking me that we didn't include --

21 MR. WILLIAMS: I'll ask it again,
22 sorry, and I apologize Mr. Szwaluk. But you have
23 identified today a certain amount of hectares of
24 wetland along the local study area and along the
25 preferred route; agreed?

1 MR. SZWALUK: Agreed.

2 MR. WILLIAMS: Moving back in time
3 from that baseline, can we agree that your
4 analysis does not present a characterization of
5 the wetland area in the past measured, for
6 example, by percentage of wetland cover or area?

7 MR. SZWALUK: I think to answer that
8 question, you're referring to the past, but in our
9 report we're not referring to the future here, but
10 we did a calculation of all the wetlands in the
11 technical report. We have that information
12 available, if that's what you are referring to?

13 MR. WILLIAMS: Okay. Just so I can
14 understand, sir, leading up to this baseline,
15 you've done an analysis of changes to percentage
16 of wetland cover over time?

17 MR. SZWALUK: Not changes, we just
18 calculated the area of these wetlands in the local
19 study area.

20 MR. WILLIAMS: And that's my question,
21 sir. So you haven't looked at the changes to
22 wetland cover over time leading up to the current
23 new normal?

24 MR. SZWALUK: No, sir, we didn't look
25 at those changes.

1 MR. WILLIAMS: And you have not, sir,
2 addressed rates of conversion from the past to the
3 new normal either; agreed?

4 MR. SZWALUK: Agreed. But if I can
5 step forward, I'd like to say, yes, we did
6 identify the effects on wetlands, but we did
7 prescribe mitigation for these wetlands.

8 MR. WILLIAMS: I understand that, sir,
9 and I appreciate that. So we can agree that your
10 analysis does not present the comparison of past
11 wetland areas to the current condition?

12 MR. SZWALUK: That's correct.

13 MR. WILLIAMS: Okay. Sir, turning to
14 page 24 -- and Mr. Szwaluk, I'm not trying to
15 trick you with this next question, and it's not in
16 the materials -- I'll just ask the question and
17 then you may want to have reference to page 86 of
18 your report as well. I haven't presented that to
19 you, though. But at page 24 we see table 36,
20 which is generally intended to describe and
21 present a cumulative effects assessment of valued
22 environmental component, a summary just at a high
23 level, sir, that's what you're trying to do here?

24 MR. SZWALUK: That's correct.

25 MR. WILLIAMS: And you can see the

1 third line under VEC, there's reference to plant
2 species/communities important to Aboriginal
3 people; agreed, sir?

4 MR. SZWALUK: That's correct.

5 MR. WILLIAMS: And sir, when you move
6 over one column to the heading environmental
7 indicator, for this same VEC, being plant
8 species/communities important to Aboriginal
9 people, you see an environmental indicator
10 identified as area of habitat or plant used for
11 medicinal food and cultural uses. Do you see
12 that, sir?

13 MR. SZWALUK: Yes, I do.

14 MR. WILLIAMS: Now, notwithstanding
15 that indicator, sir, am I correct in suggesting to
16 you that no area calculations were determined for
17 traditional plant harvesting and gathering
18 locations along the right-of-way?

19 MR. SZWALUK: That's incorrect. We
20 calculated that information and that's included in
21 the technical report.

22 MR. WILLIAMS: Okay. The reason I
23 asked, sir, and that's where page 86 would be
24 helpful -- and I don't have the reference
25 specifically there, but there's a statement on

1 that page saying, although no area calculations
2 were determined for traditional plant harvesting
3 and gathering locations along the ROW, general
4 harvesting and gathering directions were
5 identified in the self-directed studies.

6 MR. SZWALUK: That's true. That's for
7 self-directed studies, but we calculated for the
8 ATK process.

9 MR. WILLIAMS: Okay. Just to make
10 sure I understand this, sir, did you conduct area
11 calculations for areas of habitat or plant used
12 for medicinal food and cultural uses?

13 MR. SZWALUK: If that information was
14 available, yes, we did.

15 MR. WILLIAMS: Okay. Thank you.

16 Mr. Chair, if you'll give me one
17 second, I just have to confer with my client for a
18 second. Mr. Chair, I thank the board and Hydro
19 panel for their assistance. Thank you.

20 THE CHAIRMAN: Thank you,
21 Mr. Williams. We'll take a break for about five
22 minutes while the panel considers their questions.
23 So we'll come back at 25 after, please.

24 (Proceedings recessed at 4:18 p.m. and
25 reconvened at 4:26 p.m.)

1 THE CHAIRMAN: Can we reconvene,
2 please? Okay. We'll turn to some questions from
3 panel members. Ms. MacKay?

4 MS. MacKAY: Mr. Szwaluk, I just have
5 a couple of areas I'd like to ask some questions
6 in. In your technical report and in the EIS and
7 your presentation the other day, you referred to
8 mitigation of, I think in your slide it was
9 particularly prairie sites or grassland sites, but
10 mitigation of disturbed sites by replanting with
11 native vegetation. I'm wondering if you could
12 tell me a little bit about where the native
13 vegetation that's going to be used is going to
14 come from, and who it's likely to be that will be
15 re-establishing that vegetation?

16 MR. SZWALUK: Okay. Thank you for the
17 question. I think I have some information here I
18 would like to refer to, please?

19 MS. MacKAY: Sure.

20 MR. SZWALUK: This was one of the
21 questions that was addressed in CEC MH VI 321.
22 And you were asking about some of the sources that
23 possibly could be used to revegetate these areas?

24 MS. MacKAY: Yes.

25 MR. SZWALUK: I identified Brett Young

1 Seeds and Interlake Forage Seeds, these are
2 companies that have seeds for revegetation.

3 MS. MacKAY: Do they actually deal in
4 native species? I looked at the Brett Young
5 website and I didn't find it very helpful in that
6 regard, and I don't know about the other one.

7 MR. SZWALUK: I believe they do,
8 because I was referring to this information when I
9 was looking for native seed sources. I believe
10 they do.

11 MS. MacKAY: There are places also I
12 think in the EIS that refer to revegetating with
13 native species for much more northern sites, and
14 I'm wondering if that's really feasible. Would
15 you be able to obtain species that could go into
16 borrow sites or other areas that would actually
17 survive in northern habitats?

18 MR. SZWALUK: Not knowing their exact
19 species list, I would think that some of the
20 northern areas you would be able to seed probably
21 strictly with grasses. Other vegetation that
22 potentially could be brought in would be some tree
23 species, maybe from nurseries, that potentially
24 would do well, the spruces and possibly some
25 shrubs.

1 MS. MacKAY: But you are not aware if
2 there are sources for northern adapted biotypes or
3 anything of that sort?

4 MR. SZWALUK: I would suggest if that
5 needed to be done, probably -- local nurseries
6 probably would have species suitable for those
7 northern areas.

8 MS. MacKAY: Okay, thank you. Another
9 question around the issue of fire. I know you
10 can't comment on what Hydro's attitude to managing
11 fire would be, that would be a question for
12 somebody else. But let's assume for the moment
13 that Hydro will want to do a certain amount of
14 fire suppression along that right-of-way in order
15 not to endanger the function of Bipole III. Did
16 you look at the issue of changes in community
17 structure and change in seral stage that might be
18 impacted by fire suppression along that line, and
19 perhaps the vertebrate people can also maybe
20 answer whether that change is likely to have any
21 impact on the organisms, the mammals particularly
22 I would think who are using that habitat. So I
23 guess you first, Mr. Szwaluk?

24 MR. SZWALUK: Are you referring to
25 natural events of fire, or fire as an effect of

1 the transmission line from build-up of slash?

2 MS. MacKAY: No, no, I'm just
3 referring to the fact that Hydro is unlikely to
4 want fires coming right up to the transmission
5 line, so they are going to be suppressing natural
6 forest fires, I would guess. Now they may correct
7 me later. But if fire is suppressed routinely
8 along that line, then the community of plants and
9 the ages of the trees, for example, in those
10 communities is going to get higher. They will get
11 older, and the balance of vegetation will change,
12 and that may have an impact on the mammals and
13 perhaps the birds that are in those communities.

14 Did you look at how fire suppression
15 might impact the plant community?

16 MR. SZWALUK: No, that wasn't looked
17 at. I would think that Manitoba Hydro would
18 suppress any fires anywhere near the structures.
19 Fires in the area would absolutely change the
20 composition of vegetation.

21 MS. MacKAY: Perhaps Mr. Schindler
22 could address whether he thinks this would have
23 any impact on the mammals that will be using the
24 forested areas and how wide a swath this might be?

25 MR. SCHINDLER: I guess, first of all,

1 I'm not aware of any fire suppression activity
2 that's conducted by Manitoba Hydro. Fire
3 suppression in Manitoba is conducted, from my
4 knowledge, by Manitoba Conservation, and they've
5 got what they call Heletack bases or fire bases
6 established at strategic locations in Northern
7 Manitoba, and they have initial attack teams that
8 action particular fires. And when fire starts to
9 occur, they are dispatched just like a regular
10 fire unit and they suppress fires. And through
11 initial attack, many of the fires are suppressed
12 when they are very small. So the occurrence of
13 fire across the landscape is quite variable. And
14 we actually looked at that as part of our caribou
15 assessment, looking at the fire patterns. And
16 quite often, in remote areas at least -- and like
17 the majority of fire starts are through lightning
18 causes, and occasionally you can get many, many
19 starts particularly as a storm goes through. It's
20 very unpredictable to know when and where those
21 fires will occur. And you get a combination of
22 many small fires that perhaps get suppressed. But
23 there is more of a trend now with fire
24 suppression, there is some research that shows
25 with fire suppression you get a lower frequency of

1 small fires and a higher frequency of large fires,
2 where in a natural regime you get perhaps more
3 medium sized fires. But fire definitely changes
4 the landscape in terms of the mammal composition
5 that you will find, you know, like the caribou is
6 the atypical example of old growth forest, where
7 moose and other species that like young
8 regenerating succulent vegetation, the species
9 composition will really change within those fire
10 areas. But it really depends on the size and
11 location.

12 MS. MacKAY: Do we know anything about
13 fire suppression around Bipoles I and II,
14 certainly in, for example, cottage country, where
15 fire gets anywhere near the cottage, the Province
16 tries very hard to save that building. I would
17 assume that the Province would do the same along
18 Bipoles I and II, and will be likely to do the
19 same along Bipole III. If this is the case, then
20 has this issue been addressed at all in the
21 cumulative effects assessment?

22 MR. SCHINDLER: I won't be able to
23 address the latter part of your question, but the
24 first part of your question, it would be available
25 to the Commission. There are maps that Manitoba

1 Conservation have that shows the priority of fire
2 fighting across the province and how they will
3 initiate an attack or suppression, depending on
4 the zone. And commercial forestry areas and
5 cottage areas are right up there. But that is a
6 possibility to get that map from Conservation.

7 As far as cumulative effects on fires
8 go, I could speak a little bit in terms of the
9 caribou. And I think I provided testimony that we
10 did not include fire as a disturbance factor
11 within the caribou assessment. And I discussed
12 the great variability of fires across the
13 landscape that, you know, you could have, you
14 could go 20, 30 years without a fire, and then
15 subsequently have very large fires that affect the
16 landscape.

17 MS. MacKAY: Thank you. I just have
18 one more question of Mr. Mazur. When you selected
19 VECs for the reptiles, it was the skink and the
20 garter snake; is that correct?

21 MR. K. MAZUR: Yes, that's correct.

22 MS. MacKAY: At the time that these
23 were being selected, I think you said that the
24 common snapping turtle has recently been listed as
25 a species of special concern by COSEWIC but not

1 listed under SARA, the Species at Risk Act. It's
2 my understanding that it has now been listed under
3 SARA, and I would guess that if you had used it as
4 a VEC, that there would have been a number of
5 mitigating measures that you would have wanted to
6 include. What would mitigate problems for the
7 snapping turtle? Do you have any idea at this
8 point?

9 MR. K. MAZUR: Because they tend to
10 occupy larger rivers, or medium to large size
11 rivers, and nest in close proximity to the
12 shorelines, mitigation for fish habitat would
13 largely offset. And we had considered that early
14 on, we looked at the snapping turtle and thought
15 it's really going to be covered off by fish
16 habitat.

17 MS. MacKAY: I think there are
18 probably some other issues that would be missed,
19 issues like speeds on roadways that the turtles
20 are going to need to cross for nesting and so on.
21 I think there are a number of things that might
22 have been missed.

23 Just in relation to the reptiles and
24 amphibians, I'm wondering, my last question I
25 think, what do you think the impact is likely to

1 be, if any, of work during the winter at crossings
2 on the over-wintering amphibians, frogs and so
3 on -- turtles as well I would guess actually, who
4 are wintering at the bottoms of the riverways or
5 the waterways you are crossing?

6 MR. K. MAZUR: Well, for the most
7 part, the amphibians, there is only one that
8 winters in deep water, and that is the leopard
9 frog, the species is Boreal Chorus, and wood frogs
10 over-winter on upland sites. Other amphibians
11 burrow, such as salamanders, so they are not in
12 the water.

13 In terms of crossings, I think the
14 only issue that would potentially come into play
15 is where you've got a sizable enough water course
16 that you're going to have over-wintering animals
17 in the water. And an ice bridge has to be built
18 so deep that it freezes to the bottom, which is
19 unlikely. If the water course is large enough to
20 support over-wintering amphibians and reptiles,
21 winter crossing by construction crew which is, you
22 know, it's a one time event, wouldn't have any
23 effect.

24 MS. MacKAY: Thank you.

25 THE CHAIRMAN: I'd just like to follow

1 along one question that Ms. MacKay asked, and
2 that's just about fire. I don't think any of you
3 can answer it because it's a technical question.
4 I may have missed it somewhere along the line, but
5 perhaps somebody from Hydro can respond the next
6 time they are on the stand. Is there any, or what
7 is the risk to Bipole I, II or III from the
8 significant forest fire? I realize it's all
9 steel, but still I'm sure there might be some
10 impact between -- we heard that there was concern
11 in Southern Manitoba by forest fires, and that has
12 an effect like ionizing the air. It could
13 certainly affect the concrete in the foundations.
14 So if somebody could respond to that at some
15 point, it would be helpful?

16 MR. NEUFELD: Given the types of
17 material that are used for the towers, as we know
18 to be steel, the conductor steel, the concern
19 isn't really on the actual infrastructure. It's
20 just that when the line is exposed to significant
21 amounts of smoke and the area becomes ionized, as
22 you indicated, that line will trip out. And when
23 that line trips out, and if it's carrying
24 2,000 megawatts, it has a fairly detrimental
25 impact to the rest of the interconnected AC

1 system. And it can force other lines to trip,
2 causes a need perhaps to make emergency calls to
3 MISO for imported power.

4 THE CHAIRMAN: Thank you. Mr. Kaplan,
5 a question?

6 MR. KAPLAN: Just one, and I'm going
7 to address it, if I could, to Mr. Szwaluk.

8 Mr. Szwaluk, you'll be happy that I
9 was taught a principle at law school, and this
10 principle, sir, applies to me, not to you, and
11 that principle is labelled as the kiss principle,
12 which stands for "keep it simple stupid" referring
13 to me. I'd like you to accept, if possible, three
14 facts. Number one, I like blueberries. Number
15 two, that in our hearings outside the City of
16 Winnipeg, a number of Aboriginal folks spoke very
17 passionately about blueberry patches and how
18 important they were to them. And number three,
19 sometime today, it could have been hours and hours
20 ago, in the cross-examination by Mr. Madden, he
21 asked you questions about blueberry patches and
22 blueberries in general, and you gave a couple of
23 answers, and I'm not sure I have it noted properly
24 and, therefore, by clarification if I could ask
25 you, are blueberry patches that we're talking

1 about outside the City of Winnipeg relative to
2 Aboriginal folks going to be destroyed by anything
3 that Bipole III is going through?

4 MR. SZWALUK: Thank you for the
5 question. From I guess the literature review and
6 my experience with blueberries; blueberries, for
7 good berry production you often require either
8 fire or some type of disturbance mechanism. And
9 blueberries have shown to really do well in clear
10 cuts. These are areas where I pick, as well as
11 fire areas that have had a fire history. But
12 what's unique to blueberries is the growth gets
13 better when the competition goes down. So if
14 there's a lot of pine cover -- for instance,
15 blueberries like to grow in sandy soils, sandy
16 loam soils. This is what they prefer. They are
17 also found in areas that are associated commonly
18 with Jack Pine. But if you go into these areas,
19 you won't see a lot of berry production. You'll
20 see the plants there but you will not see the
21 berry production. Also because these plants are a
22 little bit older, they are not going to produce
23 berries because of the shading from Jack Pine.

24 So when clearing happens blueberries
25 usually -- for instance, if there is clear-cutting

1 or any type of fire or mowing, berries put all
2 their efforts the following season into the
3 vegetative portion of the plant. So what would
4 happen the following year, you would see all the
5 growth going into the stems, into the leaves. And
6 then the following season you would probably see
7 flowers coming out. And if they are pollinated,
8 you'll get berries that fall.

9 So in terms of blueberries, in my
10 experience, this is just my judgment as well and
11 what I have read from literature, a type of
12 disturbance can be favourable for a crop of
13 blueberries.

14 Does that answer your question, sir?

15 MR. KAPLAN: Almost. Will Bipole III
16 destroy blueberry patches as they now exist in
17 areas outside Winnipeg that are subject to, I
18 assume, perhaps ATKs or Aboriginal folks who have
19 spoken about the concern of their blueberry
20 patches, not what will happen in a year, but will
21 Bipole III, if the line starts going through or
22 near these patches, be destroyed?

23 MR. SZWALUK: I don't think destroyed,
24 but I did identify it as an effect initially,
25 because when there's clearing there, there's going

1 to be effect. You're probably not going to see a
2 berry production that year and it might take a
3 couple of years. But, yes, there's an effect, but
4 it could be a positive effect. And we prescribed
5 a mitigation for all of these areas. And I know
6 that Manitoba Hydro is going to work with these
7 communities. We identified winter clearing so
8 you're not affecting the berry patches, so you're
9 not grubbing these areas and turning up the roots
10 and destroying the plants. That's suggested in
11 mitigation, to retain the under storey vegetation,
12 to use low disturbance methods to remove trees in
13 these areas. If that is done, I honestly feel
14 that these berry areas will prosper under the
15 transmission line.

16 MR. KAPLAN: But not immediately, it
17 will take time?

18 MR. SZWALUK: No, because there will
19 be some sort of disturbance in there and I
20 recognize that, that is an effect.

21 THE CHAIRMAN: Mr. Madden?

22 MR. MADDEN: I would just draw the
23 attention, and this is a bit contradictory to what
24 the witness just said, that if you actually look
25 at Mr. McGarry and Mr. Dyck's presentation, they

1 have gone through and said on page 28 of it,
2 Swan-Pelican traditional berry picking area not
3 avoidable. And it's in that slide presentation
4 they have identified the areas where they are
5 going to disturb -- and I'm not going to debate on
6 the -- I think that there's other literature that
7 disagrees with what the witness just said, but
8 I'll just point to that, that these areas have
9 been identified. There are -- there will be
10 losses.

11 THE CHAIRMAN: Thank you, Mr. Madden.
12 Mr. Mills?

13 MR. MILLS: Mr. Chairman, Manitoba
14 Hydro went to great length to describe the amount
15 of herbicide that will be used to clear the
16 right-of-way and to maintain it. And this
17 gentleman's references to blueberry growth in
18 response to Mr. Kaplan's terrific question has not
19 tied in the use of herbicides, and I think it
20 needs to be addressed.

21 THE CHAIRMAN: Thank you.

22 MR. KAPLAN: Thank you, Mr. Chair.
23 Based on the question that Mr. Mills asked, I
24 would follow up on that one to ask perhaps,
25 Mr. Szwaluk, what you have to say as far as

1 herbicides dealing with again berries?

2 MR. SZWALUK: It was identified in the
3 technical report that herbicides shouldn't be
4 sprayed to control tree growth. And as I
5 understand, Manitoba Hydro will be providing a
6 presentation on this, maybe this week or next
7 week, on herbicides and maintenance.

8 I do know that from my reading in the
9 literature that they use an integrated vegetation
10 management approach to control vegetation such as,
11 well, weeds and trees. They do selectively spray
12 for weed problems. But it's understood that
13 Manitoba Hydro will be working with these
14 communities and not to spray in these areas. It
15 was identified in my presentation not to have
16 these berry areas sprayed. I wouldn't want them
17 sprayed where I pick. And Manitoba Hydro will be
18 talking about that.

19 THE CHAIRMAN: Thank you.

20 Mr. Gibbons?

21 MR. GIBBONS: Thank you. The
22 questions that I want to pursue relate to the
23 issue of fragmentation. And I have some, several
24 shall we say, hopefully it won't take too long to
25 get through these. But they each touch, I think,

1 on a different aspect of the fragmentation
2 question.

3 One is that in the report itself it
4 was stated that fragmentation was most often
5 quantified by measuring its proportional impact on
6 specific habitat patch areas. I think that's a
7 paraphrase perhaps rather than a quote, but close
8 enough. The question I have in that regard is
9 whether or not this measurement of proportional
10 impact was done? If so, where might we find that
11 information? If it wasn't done, can we get some
12 explanation as to why it wasn't?

13 I think perhaps directed to Mr. Osler,
14 but he may need to farm that one out to someone
15 who has that specialty, I'm not sure.

16 MR. BERGER: Good afternoon,
17 Mr. Gibbons. The patch density assessment was
18 done in fact during the alternative route
19 assessment process, and that was one of the 27
20 plus one measures that were used to take a look at
21 the alternative routes. What was done was the
22 vegetation communities, as measured by the LCCEB,
23 such as forest, different forest types,
24 grasslands, shrub lands were in fact measured in
25 terms of their patch density, and those densities

1 in fact were used as part of the route selection
2 process.

3 MR. GIBBONS: I'm hoping Mr. Madden
4 doesn't have the copyright on this word, but I'm
5 thinking of unpacking here. As part of the matrix
6 then, it's difficult to assess what that might
7 have been, what might have been the impact in a
8 more generic way. Is there any overview of what
9 that value was, that I used the term proportional
10 I guess, separate from how it interacted in the
11 individual routing choices? In other words, do we
12 know what the overall density patterns were as a
13 result of the changes that were projected?

14 MR. BERGER: We produced that patch
15 density by segment and comparatively by eco
16 district. I do not have that information
17 available.

18 MR. GIBBONS: The eco district might
19 be sufficiently -- I guess the word I'm looking
20 for here is something that's more of a
21 comprehensive term, and that may be sufficient. I
22 don't recall it being in the tech reports or
23 whatever. Do you know if that information was
24 provided in the tech reports, just so I can always
25 go back and check, or is it the case that you may

1 have it on file but it didn't make its way into
2 the publication?

3 MR. BERGER: That information did not
4 make it into the technical report, no.

5 MR. GIBBONS: Is it possible to get
6 that as an undertaking? I mean, not today but --

7 MR. BERGER: That information was
8 considered in the alternative routing process and
9 became part of that matrix evaluation. I believe
10 Mr. McGarry had indicated that -- well, the
11 materials that were supplied were used as part of
12 that assessment. I could take that as an
13 undertaking to supply that information, if the
14 Commission so wishes it.

15 MR. GIBBONS: Thank you for that.
16 This next question may well relate to that. It
17 may be simply another dimension of that same
18 concern.

19 There are the two methods of mapping
20 patches intersecting and so forth, and they were I
21 think mentioned in the report. But the mapping,
22 or the quantification that takes place in the
23 mapping process doesn't seem to actually appear in
24 the EIS, at least not in a way that we were able
25 to detect. Is it possible to get the mapping or

1 the -- I'm using the term mapping/quantification
2 here actually -- can this mapping/quantification
3 be summarized for the final preferred route for
4 each of the 13 segments and provided to the panel?
5 And if I can connect that back to the earlier
6 point, if we could get that information based on
7 the segments as opposed to eco districts, that
8 might be -- it might take care of both of those
9 issues in a comprehensive way, as part of an
10 undertaking again?

11 MR. SCHINDLER: Yes, I think between
12 Mr. Berger and myself and some of the other
13 specialists, we can put together a summary of the
14 various core communities and the fragmentation
15 aspects. There's the fragmentation report that
16 did look at the FPR to assess particular sections
17 that were less fragmented than others. That data
18 is readily available, and then there's the core
19 community information that could also be -- so
20 that's a very reasonable request.

21 MR. GIBBONS: Thank you. The next
22 question, in this case I'm not sure what to do
23 with the question, but it's one that does cause us
24 at least some reason to query. And that is,
25 forest habitat was not a VEC like the others, and

1 as a result, because it wasn't a VEC, is it fair
2 to say then that we have no cumulative effects
3 assessment regarding the loss of forest habitat?
4 In other words, there is a sense here that if it
5 doesn't become a VEC, it's out of the picture. So
6 the question then is -- if you want I'll turn
7 around the statement and ask if there's
8 agreement -- there was no cumulative effects
9 assessment regarding the loss of forest habitat,
10 agreed or disagreed, at least not that showed up
11 in the report?

12 MR. OSLER: Certainly forest habitat
13 is not a VEC in the sense of a biophysical habitat
14 discussion, so there's no cumulative effects
15 assessment on it as a VEC. I am just sort of
16 querying whether or not we have available
17 information as a resource use forestry activity,
18 and I will inquire about that to see whether or
19 not, you know, from the resource use side the
20 question has been asked. Because it could well be
21 that it's been asked from the point of view of
22 forestry activities. And I'll get back to you on
23 that tomorrow. But certainly it's not a VEC, you
24 are quite right, in terms of the biophysical, and
25 it won't get assessed from the point of view of

1 cumulative effects assessment.

2 MR. GIBBONS: I think the reason
3 that's asked is that if it's not a VEC, it's a
4 little bit more difficult then to assess the
5 impact of fragmentation I think. I think that's
6 the feeling behind that particular perspective.

7 MR. OSLER: And I think I'd like
8 people to check, to the extent to which way they
9 are looking at it from the point of view of the
10 factors that effect fragmentation, because they
11 did an assessment of fragmentation. Did they take
12 into account the changes in forest habitat? Even
13 though we didn't have it as a VEC, we did discuss
14 and study the subject of fragmentation. And if it
15 came up then, please, we'll come back and advise
16 you how it was addressed in that context.
17 Fragmentation per se wasn't a VEC either, but it
18 was a subject of serious study.

19 MR. GIBBONS: Okay. Thank you again
20 for that. Continuing along the same line, and
21 this again could be tied to the other mapping, so
22 this could all be put together, I suppose, in a
23 way that might make it a little bit onerous in
24 terms of gathering this information. But can it
25 be possible to provide similar mapping along the

1 entire FPR in terms of the intersections between
2 the FPR -- well, let's call them the forest
3 intersections of the FPR. And in that light,
4 there was mention at some point about three
5 registered wood lots, and we're curious as to
6 where they might be. And perhaps they could show
7 up in the context of that kind of mapping?

8 MR. OSLER: We'll look at how to put
9 together the information you are looking for. I
10 think if we get down to the wood lots, there may
11 be ability in the socioeconomic group to comment
12 on that. I'll find out. But I think your
13 question is more dealing with fragmentation along
14 the route and pulling together the information
15 that you're talking about in a summary form that
16 you can see quickly. Have I got it right?

17 MR. GIBBONS: Yes. I think that's a
18 fair summary.

19 And the last element I'll add to that
20 by way of a summary mapping process is whether we
21 could get locations where the proposed FPR
22 parallels the existing linear developments?

23 MR. OSLER: Yes.

24 MR. SCHINDLER: Just out of
25 clarification then, you are interested in section

1 by section, correct, like some summary that would
2 indicate which areas would be, like one section
3 would be more fragmented than this particular
4 section, or you are interested in a particular hot
5 spot or --

6 MR. GIBBONS: I think along the length
7 of the line, I think if we have it devised by
8 section or segment it will allow us to look at
9 that kind of question and perhaps generate further
10 questions in a week or two. But I think we need
11 that mapping to have a sense of that.

12 The last question for me does not
13 relate specifically to the mapping. And if my
14 memory of my old high school and university days
15 math and moving from Imperial to metric
16 measurements are at work, I actually have a
17 conversion or two here I'll throw out. I may well
18 be wrong here, I don't know. But the last element
19 relates to the idea that there appear to be 41
20 kilometres, square kilometres of upland forest
21 habitat that will be lost. And here I may be just
22 proving my own ignorance on metric measurements,
23 but as I interpret that, that's 4,100 hectares of
24 land equivalent to approximately 10,000 acres of
25 upland forest that will be lost. Can we get a

1 sense from your own data as to what -- again as an
2 undertaking, I don't know that anyone would know
3 this off the top of their head -- but what
4 percentage of upland forest habitat in the local
5 study area does this 41 square kilometres,
6 4,100 hectares, roughly 10,000 acres represent?
7 It's one thing to speak of the absolute term, but
8 what does it represent as a percentage of that
9 upland forest habitat?

10 And in this particular case, relating
11 only to the first six sections of the FPR local
12 study area, sections one through six, in other
13 words, were you -- would you be able to, not were
14 you -- and perhaps you did, I'm not suggesting
15 that you didn't, but if you did, great -- if not,
16 could you quantify the loss of forest habitat in
17 those six sections due to the FPR, as well as past
18 and future projects or activities as part of this
19 notion of cumulative effects assessment? Now that
20 part relates only to the first six.

21 MR. OSLER: Could I just be clear that
22 the 41 square kilometres you're talking about,
23 that you want to get a percentage of the upland
24 habitat, the percentage is only applying to these
25 first six segments?

1 MR. GIBBONS: Yes. The 41 square
2 kilometres, now I may be wrong in this, and again
3 reading a lot of these reports things are starting
4 to jumble a little bit. But anyway, the 41 square
5 kilometres of upland forest habitat strikes me as
6 probably being, as part of a general upland forest
7 area, I think typically we're only going to find
8 that in the first six sections, but I may be wrong
9 about that, but that's why we were looking.

10 MR. OSLER: I would like to get that
11 confirmed, yes, okay. And then when you are
12 talking about the loss of forest habitat, you're
13 looking at the local study area in the first six
14 sections, that's the area you are looking for?

15 MR. GIBBONS: That's right. The
16 answer to this, yes.

17 MR. OSLER: Okay.

18 MR. GIBBONS: Thank you. That's it
19 for me.

20 THE CHAIRMAN: Thank you, Mr. Gibbons.

21 I have a few questions that may jump
22 around a little bit, but perhaps not. I'd like to
23 ask a few questions about cumulative effects
24 assessment. And there's a trigger that a
25 cumulative effects assessment, at least in your

1 process, only happens when there's a residual
2 negative effect found in respect of a VEC. Is
3 that correct?

4 MR. OSLER: Correct.

5 THE CHAIRMAN: So if there's no
6 residual effect, then there's no cumulative
7 effects assessment?

8 MR. OSLER: Correct.

9 THE CHAIRMAN: And then cumulative
10 effects, and I think you answered this in response
11 to Mr. Gibbons, so cumulative effects assessment
12 is not undertaken on an environmental component if
13 it's not identified as a VEC?

14 MR. OSLER: Yes.

15 THE CHAIRMAN: So specifically
16 Mr. Gibbons referred to forest habitat, earlier
17 today I believe it was Mr. Meronek asking
18 questions about Canada Geese. So, I mean, there
19 could be any other number of environmental
20 concerns that might pop up along the line, and
21 they might be relatively minor, even very minor.
22 I mean, Mr. Williams I think talked about drops of
23 water into a full bucket, Mr. Beddome was talking
24 about the straw on the caribou's back, as he put
25 it. Isn't it possible to miss an environmental

1 effect that in combination with other impacts or
2 effects could be significant by using this
3 approach?

4 MR. OSLER: It is, I have to say it is
5 possible. The practical problem is whether any
6 other approach would be effective in dealing with
7 the problem you are talking about. Because the
8 problem in essence is, I have a situation where we
9 have no residual effect from this project, but in
10 the back of somebody's mind is the concept that
11 there's still an effect somehow or other. Because
12 if there was no effect, we would all agree I don't
13 need to talk about it anymore. We do have to
14 focus on something, it has to have some link to
15 the project. So we're talking about that very
16 small effect that the experts tell me is not even
17 measurable and is not, therefore, considered
18 further in the assessment, which is the nature of
19 the questions I was getting I think from at least
20 one of the cross-examiners. And I can't tell you
21 that, if there is an effect but we can't measure
22 it, I can't tell that you there isn't some
23 possibility under certain circumstances that this
24 might lead to that thing that people are worried
25 about, which is the thousand drops, a thousand

1 cuts, and eventually the big problem, okay. But
2 what's my alternative in terms of trying to help
3 the Commission or help the client or anybody else
4 solve this problem? If the expert tells me that
5 we can't measure it, we can't measure it for this
6 project. And how do we, therefore, ask the expert
7 to go about proceeding to analyze this thing, to
8 tell the Commission or tell the client that there
9 could be a potential of the thousand cuts in this
10 instance coming home to roost?

11 Now, I guess there could be
12 theoretical ways in which an expert can go about
13 thinking about that, by talking about models and
14 looking at the VEC and seeing at what point does
15 the VEC pass the threshold. But in the practice
16 that I've seen, despite all this discussion that
17 we sometimes have, the practice of screening out
18 something that there is no residual effect, it
19 isn't adverse, is not uncommon at all. I mean,
20 Darlington used it, other people have used it as a
21 practical measure of saying, I've got to find out
22 what we need to focus on in this instance.

23 So as a practitioner I think it makes
24 sense, I would like to see the academics who have
25 the time for this to find the instances where this

1 type of screening causes a problem. And secondly,
2 to help advise the practitioners, the experts, how
3 they could actually in practice deal with the
4 problem. Because it does bother people. It
5 bothers the practitioners, it bothers clients, and
6 it bothers commissioners, because they do not want
7 to have this happen. But how do we find the
8 problem, how do we address it is what I'm getting
9 at.

10 Given -- the big challenge is focus on
11 what is important in the end for the sake of
12 everybody that's involved in this exercise, and
13 get to the bottom of something that can be useful.
14 And the screening process is, believe it or not,
15 designed to try and help get to the bottom of what
16 are the VECs that we need to pay attention to.

17 The concept of VECs to start with is
18 intended to try and help everybody focus on where
19 there are -- I am going to use that consultant
20 speak -- pathways that affect something that is
21 important to scientists, people, or whatever. But
22 I have to say at my age and stage in life, we have
23 to have some humility, that that does not prove
24 that we can't be wrong. Which is the way you
25 asked me the question to start with, I mean, we

1 can be wrong. Now the question is, what can we do
2 better and how to do it.

3 THE CHAIRMAN: Well, taking the
4 thousand cuts, if we have identified cuts as a
5 VEC, and there's one cut caused by Bipole III,
6 that's not going to have any residual, or
7 significant residual impact. But if you add that
8 on top of the 999 cuts that were already there
9 from other projects, doesn't it then have some
10 significance from a cumulative perspective?

11 MR. OSLER: Well, the caribou where we
12 had some numbers and some discussion and detail is
13 a good example. The woodland caribou in the three
14 ranges that Mr. Schindler talked about have all
15 been affected by past developments, and he gave
16 some estimates of that. And he discussed how
17 close they were coming to a threshold that may or
18 may not be a great threshold, but it comes from
19 Environment Canada, and he used it in his
20 analysis. He then discussed how much difference
21 Bipole III would make in terms of moving towards
22 that threshold, or moving within the threshold.

23 In my experience that type of analysis
24 is better than you usually get in terms of trying
25 to help somebody understand how much effect has

1 happened in the past, where are we in terms of
2 getting close to some point that we should be
3 concerned about, and how much effect is this
4 project going to make incrementally? And in fact,
5 the examples he gave, even if he had suspicions
6 about the relevance of the criteria as applied in
7 every instance, the examples he gave had two of
8 the ranges below the 35 percent threshold, and
9 one, the Reed range, if I'm not mistaken, is much
10 higher than that, somewhere in the 40's. And yet
11 the effect of the Bipole III project in that
12 particular range, if my memory is correct, was
13 probably the smallest of the three ranges he was
14 looking at. So there you go.

15 Incrementally, the project is having a
16 residual effect in each case. It's in the VEC
17 game, it's being studied. And we're looking here
18 at cumulative effects as best we can. We have
19 these pieces of evidence in front of us when we're
20 finished. And yet we're still debating at the
21 professional level, is this criteria the right one
22 or not, which is not uncommon. Is it applicable
23 in this instance as distinct from generally? By
24 the way, what about that Reed one where we have
25 less than one percent, I think it was .0

1 something, is that something that the Commission
2 and the client and everybody else should be
3 worried about?

4 So what I'm worried about, what I'm
5 trying to facilitate is when we're finished all
6 this, have we got something that people can use to
7 make decisions. And that's about one of the best
8 examples I've seen of at least some numbers and
9 information in focusing down, and you'll have to
10 be the judge of how good it is for the type of
11 decisions you'll need to make.

12 And Manitoba Hydro has the same
13 problem from the point of view of looking at the
14 route and looking at the options. But it's as
15 good as it gets in terms of some experience I have
16 seen. At least we have some criteria, we have
17 some numbers, and we have an incremental effect.
18 And the judgment of the practitioner says, in the
19 end this is not a significant effect from this
20 project on that VEC in those circumstances. But
21 it's fully examined in this hearing.

22 THE CHAIRMAN: Thank you, Mr. Osler.

23 I'm going to change my questioning.

24 I'm going to talk about VECs and selection of
25 VECs, we have heard a lot about how they are

1 selected, but I want to ask specifically about a
2 handful of them and wonder why they were selected.
3 In some cases like elk, they rarely come into
4 contact with the FPR or the area around the FPR.
5 In other areas, like the skink and the hawk, they
6 don't come in contact with the FPR at all. And in
7 a few cases like, I think two of the skippers, the
8 ottoe and unca, I think they are called, the
9 Sprague's Pipet, the Burrowing Owl, they are all
10 believed to be extirpated in Manitoba, so why were
11 these even considered as VECs?

12 MR. OSLER: Mr. Chairman, could we go
13 practitioner by practitioner, please, on that one?

14 THE CHAIRMAN: I'm sorry?

15 MR. OSLER: Could each of the
16 practitioners deal with the elements, because I
17 think that's the only way we're going to get
18 quickly to where you're wanting to get to.

19 MR. SCHINDLER: I can certainly start
20 with the elk question. Looking at the large study
21 area that encompasses the Bipole III project area,
22 looking at that area in terms of the elk ranges
23 that are scattered throughout the areas, the
24 importance of elk, to look at some of the criteria
25 for the VEC selection, you know, importance to

1 people, you know, acting as an indicator species
2 for certain habitats, et cetera, it really fit
3 well as a VEC because of the study area. And the
4 fact that there were many core areas of elk, the
5 importance to people, it just so happens that the
6 FPR really, really avoided elk as a VEC. So from
7 that perspective, I think the FPR as selected
8 avoided the majority of elk areas. There were
9 certainly a lot of alternative routes that were in
10 very close proximity to very, very important elk
11 areas. So I think that would be the main criteria
12 why it was selected as a VEC.

13 MR. OSLER: As we go to the next
14 person, I think one of the points that emerges is
15 that the VEC process preceded the selection of the
16 final route, which I may not have been very clear
17 on in an answer to an earlier question. So that
18 the VECs may in the end not be as relevant when
19 you look at the final route. But let's keep
20 going.

21 Did you have some on birds?

22 THE CHAIRMAN: There were questions
23 about birds, there was Ferruginous Hawk and the
24 Sprague's Pipet and Burrowing Owl. I mean, I can
25 understand your response, Mr. Osler, your last

1 comment in some of the cases, and I understand
2 Mr. Schindler's explanation, but why animals and
3 butterflies that are extirpated in Manitoba?

4 MR. BERGER: Mr. Chairman, all three
5 of those species that are identified are listed as
6 threatened and/or endangered. The Burrowing Owl
7 occupies short pastureland areas, and it was to be
8 representative of those pastureland, grassland
9 types. In one respect, I may have biased
10 selection of the selection of Burrowing Owls,
11 because we did in fact find one in the Bipole III
12 project area back in 2009, which we reported to
13 Manitoba Conservation, well aware that their range
14 has been retreating to Southwestern Manitoba and
15 may in fact be extirpated, but there are programs
16 that are trying to recover that particular
17 species. So it was of scientific concern and
18 that's one of the reasons -- or the reason why
19 Burrowing Owl was selected as the VEC.

20 For Sprague's Pipet, that is
21 certainly -- also it has a different habitat
22 requirement. It is found in intermediate
23 grassland types. It is supposed to be widely
24 distributed in the project area. And although we
25 didn't find any, there is still a sufficient

1 population I think in Manitoba to, in fact,
2 consider the Sprague's Pipet.

3 Ferruginous Hawk, again that species
4 has retreated to Southwestern Manitoba and is
5 listed. We also did find a pathway in 2009 where
6 Ferruginous Hawks, one Ferruginous Hawk was found
7 migrating through the Lenswood area, I believe,
8 and towards, I believe it was the Duck Mountain.
9 So there was a connection, albeit limited. That
10 was probably one of the reasons why we also
11 selected Ferruginous Hawk as a VEC.

12 THE CHAIRMAN: Thank you.

13 MR. K. MAZUR: As for the two
14 skippers, the ottoe and the unca skipper, as well
15 as the Prairie Skink, initially in the constraints
16 identification, the Shilo and the Spruce Woods
17 area, sandy soil prairie habitats were flagged as
18 being really important for a number of species at
19 risk. And so we moved forward with those VECs.
20 And the Prairie Skink doesn't occur right within
21 the FPR, I believe the closest known record is
22 four kilometres, but there's very suitable habitat
23 within the FPR. There's a small area, but
24 nonetheless there is. And I think I had said last
25 week that routing had avoided the majority of

1 skink habitat.

2 As for the two skippers, there are
3 historic observations for those two species in
4 that same habitat type. So the selection of those
5 two was closely linked to the important nature of
6 sand prairie habitats. And we move forward with
7 those because there is that type of habitat within
8 the final preferred route.

9 THE CHAIRMAN: Thank you. I have one
10 last question, and it again changes topics.

11 This specific quote comes from the
12 mammals technical report, but it's more of a
13 general question. But in the mammals technical
14 report it's stated on page 119:

15 "Species which avoid cleared areas
16 such as Marten will also be strongly
17 affected by habitat fragmentation.
18 Activities involving clear-cutting and
19 creation of roads are anticipated to
20 strongly contribute to these efforts.
21 A small but long-term cumulative
22 effect is expected."

23 How can something be strongly twice and then end
24 up being small?

25 MR. SCHINDLER: 119?

1 THE CHAIRMAN: Section 8.2 of the
2 mammals technical report, page 119. And I don't
3 have that in front of me, I just have the excerpt
4 in another document.

5 MR. SCHINDLER: I'm not seeing it on
6 119, but I think I can just -- I think there is
7 evidence that Marten are subject to some type of
8 effect as a result of clearing. Those words may
9 be strong, maybe a little bit strong to be quite
10 honest with you. I think quite frankly looking at
11 the literature for Marten, there is quite a
12 varying degree of determined effects that are
13 documented through literature and studies, that
14 Marten in some cases are found to use forest
15 openings for feeding and foraging if in fact there
16 is a good prey base there. And they have also
17 been seen to be affected by fragmentation at very
18 high levels on a landscape, and they can be
19 affected quite significantly. So I think in
20 combination of when landscapes get very, very
21 fragmented, and again those thresholds are quite
22 variable in the literature, that it can be quite
23 negative for Marten. But it's sort of a landscape
24 type thing.

25 THE CHAIRMAN: But it's not so much

1 the Marten specifically that I'm curious about,
2 it's just that, you know, how can there be a
3 strong effect and a strong contribution to these
4 effects, but then the conclusion is that the
5 effect is small? Maybe it's a conundrum?

6 MR. SCHINDLER: It sounds like a
7 conundrum of sorts, but I believe in the amount of
8 fragmentation that exists where the FPR is
9 located, and then following existing linear
10 features, et cetera, the effects of that
11 fragmentation on the landscape are much less. So
12 it may be a poor use of the word strong in that
13 particular case.

14 MR. OSLER: What we can do, Marten got
15 a bit more attention in the sense of the scaling,
16 it got to be moderate, right, for some of these
17 reasons. So let us find the quote and see if we
18 have anything else we want to offer to you on it.
19 Because, you know, I think I flagged it in my
20 presentation that it was one of the few mammals
21 that ended up with a moderate scale effect.
22 Therefore, to draw it to everybody's attention
23 that came out of it. Some of that type of
24 language was what was behind it, but I think it
25 would behoove us to find the quote and see if

1 there's anything more we can offer to help you on
2 it.

3 THE CHAIRMAN: Thank you.
4 Mr. Gibbons?

5 MR. GIBBONS: Yes, it's really a
6 follow-up to the last question, and it has to do
7 with the question of significance. And it's my
8 understanding, and here I'm going to refer to
9 birds because this is where I have some
10 information available to me, that in -- and this
11 is a reference by the way to section 8.2.7.4 in
12 the EIS. There's a listing of the 17 VEC bird
13 species, and then in that listing the percentage
14 of the local study area, et cetera, by the HVDC
15 line, by the HV collector lines, et cetera, that
16 are affected.

17 Now, my understanding of standard EA
18 practice, and standard is perhaps a soft word
19 here, I'm not sure, someone may want to speak to
20 this. But nonetheless, as I understand standard
21 EA practice, habitat alteration of less than
22 1 percent is generally considered to be not
23 significant. Greater than 10 percent, and there
24 is one case where the figure is over 10 percent,
25 is considered significant. And presumably

1 somewhere between 1 percent and 10 percent is
2 what, somewhat significant? I'm not quite sure.
3 But I don't think the literature is terribly clear
4 in that regard.

5 Nonetheless, in that list of birds
6 that appear there, many of them are over
7 1 percent. Common Night Hawk, 2.3.9 percent by
8 the HVDC line, and almost 7 percent near the AC
9 collector lines and so on. When you look at the
10 Sandhill Crane, 1.42 percent by the HVDC line, but
11 11.42 percent by the AC collector lines. And that
12 11 percent puts it above the 10 percent mark that
13 I referred to earlier. And yet in the table later
14 on, table 8.2-9, it's stated, and here again I
15 think I'm paraphrasing, not quoting, that the
16 overall residual effect on Sandhill Crane and
17 Common Night Hawk is not significant. And this is
18 I think tied to the earlier point as to why some
19 words like strong may be used, in other cases, the
20 data, the quantitative data seems to exceed
21 certain standards but the report comes back as not
22 significant.

23 And I'm not sure if that's a question
24 or a comment, Mr. Chairman, but I think it alludes
25 to the difficulty there is at times reading the

1 report and understanding what it takes for
2 something to reach the significant level of
3 concern.

4 MR. OSLER: Just a comment to start
5 with. You are correct that in some analyses of
6 some terrestrial activities, terrestrial impacts,
7 the types of tests that you have talked about,
8 1 percent very small, and somewhere between 1 and
9 10 percent might be called medium, and something
10 over 10 percent might be called something you've
11 got to pay attention to. The key question that
12 gets asked when somebody starts that type of
13 analysis is, well, what is the area over which
14 we're measuring the percentage? And that's where
15 this, the VEC specific analysis becomes pretty
16 important. Because if you take a small enough
17 area, you can get a pretty big percentage pretty
18 quickly. If you take a larger area, then all of a
19 sudden you are accused of the percentages all look
20 very small because you're measuring against a
21 large area. So that's one of the technical issues
22 the professional has to pay attention to when
23 somebody starts quoting percentages.

24 The other thing is that the analysis
25 that people would like to see often is the type of

1 analysis again that you saw with the caribou,
2 which is how bad is the situation right now before
3 we start this project? Are we at 1 percent, are
4 we at 3 percent? Where are we with respect to
5 this particular VEC and the disturbance to date?
6 And I don't think you will see anything, beyond
7 the caribou and a few other specific instances,
8 you won't see that here because it's so hard to
9 do.

10 Now I'll let Mr. Berger comment on how
11 these numbers may flow from this situation here.
12 But I don't know what the percentages would be a
13 percentage of is what I'm warning you of.

14 MR. BERGER: Those particular
15 percentages relate to the physical habitat lost on
16 the transmission line right-of-way compared to the
17 local study area. Reasonably, we might expect
18 some other types of effects to occur and would, in
19 fact, extend through a portion of the local study
20 area. But where we try to describe what the
21 habitat loss effects might be on a population of
22 birds, obviously you need a much broader
23 comparison area.

24 In this particular case, the Bipole
25 III project study area would be equivalent to the

1 regional study area, and those numbers in fact
2 would be very, very small compared to the extent
3 of effects as prescribed in the local study area.

4 MR. GIBBONS: If I may, just as a
5 follow-up for clarification, when it says for the
6 Sandhill Crane that 11.42 percent by the AC
7 collector lines being the area affected, what is
8 that telling us?

9 MR. BERGER: That's telling us that
10 there's going to be a loss or alteration for that
11 particular VEC within the physical right-of-way
12 itself. So if it was Sandhill Crane habitat to
13 begin with, that area will obviously be quite
14 open. They do require open environments. So I
15 might consider that an alteration of Sandhill
16 Crane habitat where, in fact, it will become more
17 open on the transmission line right-of-way. So
18 11 percent of the Sandhill Crane habitat, as may
19 be compared to the local study area, physically
20 might be affected.

21 So as Sandhill Crane population will
22 be extending much beyond that local study area,
23 any comparison which could be made to either
24 habitat or more of a regional Sandhill Crane
25 population, in fact, would be very, very small.

1 And that measure would be used such as in the
2 practitioner's guide to be less than the 1 percent
3 measure.

4 THE CHAIRMAN: This brings us to the
5 end of today. I'm rather impressed we managed to
6 get finished in about an hour and a half less
7 time, actually three and a half hours I guess
8 sooner than we had anticipated. I would note that
9 last Friday when the Commission secretary and I
10 looked at the schedule, we have added time on
11 Thursday morning. So Thursday will be a 9:00 to
12 9:00 day. Unfortunately, I'm not sure that we'll
13 be able to shorten Thursday as we have today.
14 We'll see, but I suspect not.

15 Tomorrow morning we will start with
16 the cross-examination on socioeconomic
17 presentations. We're scheduled to adjourn at
18 5:00 o'clock tomorrow. I would certainly hope
19 that we can conclude the cross-examination between
20 9:00 and 5:00 tomorrow.

21 Ms. Johnson, do you have documents to
22 register?

23 MS. JOHNSON: Yes. I also have a
24 comment about tomorrow. Ms. Hicks won't be
25 available tomorrow for most of the afternoon after

1 11:00, so we'll have to have her cross-examination
2 on Wednesday.

3 THE CHAIRMAN: Okay. We can work
4 around that.

5 MS. JOHNSON: Yes. I have a couple of
6 documents to put on file. Mr. Williams asked for
7 the brainworm article. I have circulated that,
8 and it's CEC number 5; as well as Mr. Williams'
9 supporting material from today is CAC number 5.

10 (EXHIBIT CEC 5: Brainworm article)

11 (EXHIBIT CAC 5: Mr. Williams'
12 supporting material)

13 THE CHAIRMAN: Ms. Mayor, did you have
14 some stuff to take care of today or would you --

15 MS. MAYOR: We can do it tomorrow
16 morning, there's a fairly lengthy list of answers.

17 THE CHAIRMAN: Okay, thank you. Okay,
18 we'll adjourn for the day and see you all bright
19 and early tomorrow morning at 9:00 a.m.

20 (Proceedings adjourned at 5:37 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

I, DEBRA KOT, 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.

Debra Kot
Official Examiner, Q.B.

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