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Warren Mills
John Stockwell

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1 Wednesday, November 7, 2012

2 Upon commencing at 9:00 a.m.

3 THE CHAIRMAN: Good morning. Welcome
4 to day 163. I'll be able to -- by observing eyes
5 drooping this afternoon, I'll know who stayed up
6 late last night watching election results.

7 But getting back to our business at
8 hand, we're continuing with the cross-examination
9 on socioeconomic issues and agricultural issues.
10 Ms. Hicks is back this morning, so I'm not sure, I
11 think there might have been one or two who missed
12 her yesterday who will want to cross-examine her
13 later today, as well as others who haven't had the
14 floor yet.

15 Right now, back to Mr. Meronek.

16 MR. MERONEK: Thank you, Mr. Chairman.
17 I believe we left off yesterday with my ears
18 ringing.

19 (OFF THE RECORD)

20 MR. MERONEK: Mr. Nielsen?

21 MR. NIELSEN: We tried the other
22 system but it seemed to have too much cross.
23 We'll have to see whether we can -- can you
24 understand me at all?

25 MR. MERONEK: I'm sorry, I didn't

1 understand that.

2 MR. NIELSEN: Well, I had that other
3 system that we tried earlier on and it didn't work
4 very well. So I'll have to try to be as clear as
5 I can using this mic.

6 MR. MERONEK: Fine. We'll muddle
7 through, I'm sure.

8 I believe you have a correction to
9 make from yesterday?

10 MR. NIELSEN: Yeah. When I said that
11 we had lines A, B and C in April, May of 2010, it
12 actually was the way my report suggested, that it
13 was in 2009. Because we talked about it later on,
14 and Manitoba Hydro had gone to public meetings in
15 the fall of '09 with those routes selected. So
16 I'm sorry about that.

17 MR. MERONEK: It's okay. So,
18 essentially you thought you were wrong, but you
19 were wrong, you were right?

20 MR. NIELSEN: That's basically it.

21 MR. MERONEK: Back to the 2009 report,
22 I understand that there were about, well, at least
23 14 routes that had been assessed by that point in
24 time?

25 MR. NIELSEN: It would be around that

1 number, yes.

2 MR. MERONEK: And you have, or at
3 least put into your July 2009 report, appendix C,
4 several maps associated with those routes,
5 demonstrating in various colours where those
6 routes were running; correct?

7 MR. NIELSEN: That's correct.

8 MR. MERONEK: And you didn't put them
9 into this report because those weren't the final
10 routes, but you have them in much larger form?

11 MR. NIELSEN: Yeah. The routes that
12 were picked on map 100 were developed from that
13 map, but they're not in colour and, therefore,
14 what I can probably do is do an undertaking to see
15 if I can come up with that map.

16 MR. MERONEK: No, that's not
17 necessary. But what I would like you to do for
18 me, if you can, can you identify for me which
19 route or routes, if any, from that report ended up
20 being routes A, B and C?

21 MR. NIELSEN: I can.

22 MR. MERONEK: Can you do that now or
23 is that by way of an undertaking?

24 MR. NIELSEN: Why don't I just do it
25 at the break? If I did it at the break then we

1 wouldn't -- can I do it at the break?

2 MR. MERONEK: Sure.

3 MR. NIELSEN: Yeah.

4 MR. MERONEK: Now, Mr. Nielsen, in
5 July of 2009, when this preliminary report -- I'll
6 call it the preliminary report, it's the first one
7 that you sent to Hydro -- was completed, one of
8 the issues with respect to routing was distance
9 from Bipoles I and II; is that correct?

10 MR. NIELSEN: That's correct.

11 MR. MERONEK: And as I understand the
12 report, initially there was a consideration that
13 the south loop of whatever route was going to be
14 chosen was going to be 40 kilometres, and then
15 there was a discussion about a hundred kilometres.
16 And according to your report, that never got
17 clarified; is that correct?

18 MR. NIELSEN: That's correct.

19 MR. MERONEK: Did that end up being a
20 consideration in choosing the alternate routes, A,
21 B and C?

22 MR. NIELSEN: I think the choice of
23 routes A, B and C had more to do with location in
24 the province. Where B was along the west side of
25 Lake Manitoba, A was on the Saskatchewan side of

1 Riding Mountain and Duck Mountain, and C went up
2 number 5 highway and past Dauphin.

3 MR. MERONEK: No. My question is, and
4 I apologize, I wasn't clear enough, with respect
5 to the southern portion of the route, did any of
6 your considerations in routing southern
7 agricultural Manitoba have anything to do with
8 distance from Bipoles I and II?

9 MR. NIELSEN: Well, the B line came
10 pretty close to it.

11 MR. MCGARRY: Good morning,
12 Mr. Chairman, Commissioners, Mr. Meronek.

13 I would just clarify, the separation
14 between Dorsey and routing was a consideration.
15 And you will see, as you get into the maps you
16 requested, that there were modifications done to
17 accommodate some of that separation as we got
18 close to Dorsey. Based on Mr. Nielsen's work,
19 there were some modifications by the time we got
20 to A, B, C.

21 MR. MERONEK: Thank you for that. But
22 I'm interested in Mr. Nielsen's perspective, his
23 understanding.

24 Mr. Nielsen, when you selected A, B
25 and C, as your alternate route, did you consider

1 Bipoles I and II, the separation from the southern
2 loop as a component in routing?

3 MR. NIELSEN: The only place I
4 considered it as a component was in the route
5 across the Red River Valley.

6 MR. MERONEK: I'm sorry?

7 MR. NIELSEN: The place we considered
8 it as a component was in the route across the Red
9 River Valley.

10 MR. MERONEK: But that's not something
11 that you ever identified as being a factor in your
12 report; is that correct?

13 MR. NIELSEN: That's correct.

14 MR. MERONEK: And you didn't think it
15 important enough to identify that as a factor in
16 routing?

17 MR. NIELSEN: Well, I think probably
18 one of the major main reasons B route was not
19 chosen, there was some housing projects to go in
20 that it passed through. And there was diagonal
21 lines, we had to take the diagonals out on that.

22 MR. MERONEK: You know, Mr. Nielsen,
23 we're going to be here a while, so I promise I'll
24 be very thorough in questioning you on final
25 determinations. But my question was quite simple.

1 You didn't think it important enough to put into
2 your final report any consideration of the
3 proximity of Bipoles I and II to the southern loop
4 of whatever routes were chosen?

5 MR. NIELSEN: Well, what happened in
6 the final route is that the route chosen was the
7 farthest one south, and so it had -- it was a fair
8 distance from Dorsey, quite a bit further than B
9 route.

10 MR. MERONEK: Now, one of the
11 considerations in the several routes before you
12 got to routes A, B and C, was the issue of Lorette
13 and the population density around Lorette;
14 correct?

15 MR. NIELSEN: Yeah, there was too
16 many -- lots of housing, lots of people.

17 MR. MERONEK: And you were alive to
18 that issue early on in your developing of
19 alternate routes, correct?

20 MR. NIELSEN: That's correct.

21 MR. MERONEK: Well before you selected
22 routes A, B and C; correct?

23 MR. NIELSEN: Yes.

24 MR. MERONEK: And so when you selected
25 routes A, B and C, you chose them knowing their

1 implications in relationship to their proximity to
2 Lorette; correct?

3 MR. NIELSEN: Lorette and Dufresne,
4 yes.

5 MR. MERONEK: Now, in terms of
6 developing your final report, we spoke yesterday
7 about ratings for tower placement. You also
8 looked at the project from the perspective of the
9 importance of tower placement as it related to
10 soil and agricultural use; correct?

11 MR. NIELSEN: That's correct.

12 MR. MERONEK: And in the categories
13 with which I am concerned, categories four through
14 seven, with respect to categories three to five in
15 terms of soil, you wanted to place the towers
16 beside the road allowance?

17 MR. NIELSEN: That's what my report
18 suggests, yes.

19 MR. MERONEK: And you wanted to place
20 the towers along any existing linear disturbance?

21 MR. NIELSEN: That's true.

22 MR. MERONEK: And you wanted to place
23 the towers along, as an alternative to, on the
24 half mile?

25 MR. NIELSEN: Right.

1 MR. MERONEK: And you wanted to avoid,
2 in categories six and seven, you wanted to avoid
3 them altogether because of livestock and
4 irrigation issues?

5 MR. NIELSEN: Right.

6 MR. MERONEK: But you couldn't do that
7 because the decision had been made to route the
8 line through that area to Riel; correct?

9 MR. NIELSEN: That's correct.

10 MR. MERONEK: And you would want to be
11 fairly fastidious then in making sure that
12 whatever route was chosen was the least offensive
13 to the people residing along that route. Would
14 you agree with that, sir?

15 MR. NIELSEN: I do.

16 MR. MERONEK: Now, one of the things
17 that you -- when you engaged in your route
18 selection, and fairly early on, you had identified
19 some Federal lands that were pasture lands, which
20 from a routing perspective would have been ideal
21 to choose; correct?

22 MR. NIELSEN: Well, I don't know
23 whether -- is that north of 16 where the PFRA
24 pasture is?

25 MR. MERONEK: I'm sorry?

1 MR. NIELSEN: Is that north of 16
2 where the PFRA pasture is?

3 MR. MERONEK: Yes.

4 MR. NIELSEN: I don't think it would
5 make much difference if you went through that
6 pasture or you took the route that we did now.
7 It's the same kind of land.

8 MR. MERONEK: I believe you indicated
9 in your report, or at least Manitoba Hydro
10 indicated that going through a common pasture land
11 would be good agricultural practice, but Manitoba
12 Hydro didn't want to go through Federal land; is
13 that not correct?

14 MR. NIELSEN: That's correct.

15 MR. MERONEK: So it wasn't your
16 decision?

17 MR. NIELSEN: It wasn't my decision.

18 MR. MERONEK: Now, after you submitted
19 your preliminary report to MMM Group, and then
20 through Manitoba Hydro, when did you prepare your
21 next report for submission to Manitoba Hydro?

22 MR. NIELSEN: Well, it was delivered
23 in January 2010, so it would have been prepared
24 probably in November, December, and with all the
25 data that goes into it.

1 MR. MERONEK: And that report isn't
2 before this Commission at this point?

3 MR. NIELSEN: It is. It's in the
4 middle of my agricultural technical report.

5 MR. MERONEK: Oh, I see, it's not a
6 discrete report?

7 MR. NIELSEN: I think it's -- well,
8 it's chapter whatever.

9 MR. MERONEK: It's contained in your
10 report?

11 MR. NIELSEN: It's in my agricultural
12 technical report.

13 MR. MERONEK: Now, in January of 2010
14 when you submitted this next installment, that's
15 when routes A, B and C were chosen; correct?

16 MR. NIELSEN: No, they were
17 actually -- maybe I'll let Pat answer that
18 question.

19 MR. MERONEK: I'm sorry?

20 MR. MCGARRY: He was just turning it
21 over to me for chronology of events here. And the
22 A, B, C routing was done in the summer of 2009 as
23 prep work for round three consultation. The
24 report Jim is referring to came into play in, as
25 he said, January 2010, as we were leaning towards

1 trying to select a preliminary preferred route.

2 MR. MERONEK: So Mr. Nielsen, routes
3 A, B and C were established by you; correct?

4 MR. NIELSEN: They were established
5 between Hydro, MMM and myself.

6 MR. MERONEK: But I want to know what
7 your role was, sir?

8 MR. NIELSEN: I presented the lines.

9 MR. MERONEK: So you presented your
10 preference to Manitoba Hydro, and that would have
11 been routes A, B and C?

12 MR. NIELSEN: Yeah, I presented my
13 preference. What happened in the selection of
14 lines, the factors that I had put together
15 relating to soil and tower placement actually
16 differentiated the lines quite well. And so there
17 was I think a tendency to pick the lowest number,
18 which was route B, and then the next two were I
19 think --

20 MR. MERONEK: Sir, we'll get to that,
21 sir. I just want, for the record, you to
22 indicate, if you can, that routes A, B and C as
23 alternatives were ones that were promoted by you
24 from an agricultural perspective?

25 MR. NIELSEN: Well, B was promoted by

1 me. The other two were picked because of
2 geographic location.

3 MR. MERONEK: Sir, you had 14 routes
4 and then you narrowed them down to three, correct?

5 MR. NIELSEN: That's right.

6 MR. MERONEK: And they were A, B and
7 C; correct?

8 MR. NIELSEN: That's correct.

9 MR. MERONEK: If you can put routes A,
10 B and C on the screen, please? Great, thank you,
11 Mr. McGarry.

12 And those represented, the green
13 represented route B, the magenta -- is it
14 magenta -- purple, one of the primary colours,
15 represented route C, and the pink represented
16 route A, more or less; correct?

17 MR. NIELSEN: Yes.

18 MR. MERONEK: And that was your
19 assessment based on your preliminary report,
20 correct?

21 MR. NIELSEN: That's correct.

22 MR. MERONEK: And in order to come to
23 the determination of narrowing it down to a
24 preferred route, you went through a process that
25 involved again rating for tower placement,

1 correct?

2 MR. NIELSEN: Yes.

3 MR. MERONEK: And in your report at
4 page 33, for the agricultural categories that are
5 reflected on the map on the screen, categories
6 four to seven, you had the same rating system that
7 you did in the preliminary routing analysis in
8 July of 2009; correct?

9 MR. NIELSEN: That's correct.

10 MR. MERONEK: But you had one change.
11 You now changed the rating description for
12 in-field of a tower placement on the quarter line
13 to 33 to 50 metres into the field. Do you see
14 that? Do you recall that.

15 MR. NIELSEN: What page is it on?

16 MR. MERONEK: Page 33 of your report,
17 sir?

18 MR. NIELSEN: Yeah, I rate it at a
19 four.

20 MR. MERONEK: And I take it that 33
21 metres represented the decision by Manitoba Hydro
22 to move lines from the roadway allowance -- sorry,
23 the road allowance to in-field by 33 metres to 42
24 metres?

25 MR. NIELSEN: I think probably I

1 should allow the engineering department to answer
2 that question, because the decision to move the
3 line into the field occurred after I presented my
4 report, after I had completed my report and given
5 it to Manitoba Hydro. So during that period of
6 time. Maybe we need to let one of the engineers
7 that's behind me here answer that question.

8 MR. MERONEK: No, I'm interested in
9 what you have done in your report, sir. And what
10 you're telling me is that you had a certain rating
11 description which got changed by Manitoba Hydro,
12 and you let it go at that; correct?

13 MR. NIELSEN: We decided that we
14 didn't need to redo all of the data.

15 MR. MERONEK: Not we, you were
16 advocating as much possible road allowance for
17 tower placement, which got rejected by Manitoba
18 Hydro engineers; correct?

19 MR. NIELSEN: That's correct.

20 MR. MERONEK: That was not your
21 decision?

22 MR. NIELSEN: That was not my
23 decision.

24 MR. MERONEK: And that's not a
25 decision you agreed with from an agricultural

1 routing perspective?

2 MR. NIELSEN: Well --

3 MR. MERONEK: Sir, yes or no?

4 MR. NIELSEN: It doesn't surprise me
5 that they did it.

6 MR. MERONEK: Yes or no, sir? That
7 was not, from an agriculture routing perspective,
8 as an agricultural professional, that was not a
9 preferred tower placement from your perspective?

10 MR. NIELSEN: It would have been
11 easier on the edge of the road allowance, yes.

12 MR. MERONEK: I'm sorry?

13 MR. NIELSEN: Yes, it would have been
14 easier on the edge of the road allowance.

15 MR. MERONEK: Not easier, but
16 preferable from an agricultural perspective?

17 MR. NIELSEN: Yeah, it would be easier
18 to farm around.

19 MR. MERONEK: All right. When you get
20 to determining, out of those three routes that are
21 on the screen A, B and C, you made a decision from
22 an agricultural perspective that route B was the
23 preferable one; correct?

24 MR. NIELSEN: Route B was the one with
25 the lowest score, so therefore we considered it to

1 be the better route. But it was impossible.

2 MR. MERONEK: At that point in time,
3 and in your report, you advocated route B?

4 MR. NIELSEN: I did.

5 MR. MERONEK: Now, when you made your
6 assessment, you were looking at all of the area
7 that's, from my perspective, that's on that map,
8 essentially from Riel to Long Plains; correct?

9 MR. NIELSEN: That's correct.

10 MR. MERONEK: That was one segment
11 that you were looking at from an agricultural
12 perspective?

13 MR. NIELSEN: That's correct.

14 MR. MERONEK: You didn't segment it
15 like Manitoba Hydro did in sections ten, 11, 12
16 and 13?

17 MR. NIELSEN: Well, we actually
18 approached it in the final report under those
19 segments.

20 MR. MERONEK: Sorry?

21 MR. NIELSEN: We did the final report
22 under those segments.

23 MR. MERONEK: Right. You were, from
24 an agricultural perspective, you were more content
25 to look at that whole area as one component,

1 correct, from Riel to Long Plains?

2 MR. NIELSEN: Well, it did appear as
3 if we -- we had to get there in some fashion, yes.

4 MR. MERONEK: You, in your report,
5 looked not at sections ten, 11, 12 and 13
6 discretely, you looked at a full route from Long
7 Plains to Riel, correct?

8 MR. NIELSEN: That's correct.

9 MR. MERONEK: And on that basis you
10 made a determination that route B was the
11 preferred route out of the three that are on that
12 screen, correct?

13 MR. NIELSEN: That was the lowest
14 score.

15 MR. MERONEK: And when you say lowest
16 score, you mean that route B was the shortest
17 length?

18 MR. NIELSEN: Yes.

19 MR. MERONEK: It had the best tower
20 placement rating in the sense that, in terms of
21 the number of angles of towers?

22 MR. NIELSEN: Yes.

23 MR. MERONEK: It had the best overall
24 agricultural rating?

25 MR. NIELSEN: Yeah, that would be

1 mostly because of the quality of the soil north of
2 16 highway.

3 MR. MERONEK: And it had the most
4 kilometres on road allowance?

5 MR. NIELSEN: I'd have to check that.

6 MR. MERONEK: Table eight of your
7 report, page 39.

8 MR. NIELSEN: Yeah, that's true.

9 MR. MERONEK: And it had the most
10 kilometres on the half mile line?

11 MR. NIELSEN: That's true.

12 MR. MERONEK: And it had the fewest
13 kilometres in-field?

14 MR. NIELSEN: That's true.

15 MR. MERONEK: And it had the fewest
16 kilometres of diagonal lines?

17 MR. NIELSEN: It was in the middle of
18 the diagonal, but you have to recognize we took
19 all the diagonals out.

20 MR. MERONEK: Diagonals weren't really
21 a reflection of a final decision as to whether A,
22 B and C, whether route B was chosen; correct?

23 MR. NIELSEN: No. That decision was
24 made after the A, B and C were chosen.

25 MR. MERONEK: Right. And it had the

1 fewest number of kilometres from an irrigation
2 perspective, correct?

3 MR. NIELSEN: Right.

4 MR. MERONEK: But that wasn't the
5 route that was finally chosen, correct?

6 MR. NIELSEN: Pardon?

7 MR. MERONEK: That was not the route
8 that was finally chosen?

9 MR. NIELSEN: That's correct.

10 MR. MERONEK: Manitoba Hydro, and
11 we'll talk about this later, decided to choose
12 different routes other than route B through
13 sections 10 to 13?

14 MR. NIELSEN: From Riel to Long
15 Plains, they chose a different route.

16 MR. MERONEK: Right. Now, when you
17 submitted this interim report in January of
18 2012 --

19 MR. NIELSEN: The second report, yes.

20 MR. MERONEK: Sorry, not 2012, 2010.

21 MR. NIELSEN: Yeah, but it was an
22 interim report, that's correct.

23 MR. MERONEK: Somewhere in and around
24 that time, in the spring of 2010, Manitoba Hydro
25 looked at the routes and decided to change the

1 tower placement from the road allowance to
2 in-field; is that correct?

3 MR. NIELSEN: That's correct.

4 MR. MERONEK: And the reasons that
5 were given to you had to do with concerns by the
6 engineers over vehicle collisions, correct?

7 MR. NIELSEN: Yes.

8 MR. MERONEK: And signage issues,
9 correct?

10 MR. NIELSEN: I think they were
11 concerned about the -- if they were going to
12 expand the road allowance or something there, they
13 could weaken the tower structure. And then there
14 was a clearance.

15 MR. MERONEK: Those were the two
16 reasons that were given to you that you have
17 articulated in your report, correct?

18 MR. NIELSEN: Well, page five there's
19 three different things.

20 MR. MERONEK: All right. What's the
21 third, sir?

22 MR. NIELSEN: That's clearance
23 violation. Maybe Sivee should talk to you about
24 that, he's the engineer that made the decision.

25 MR. MERONEK: No, I want to know what

1 you are being advised. And the advice to you was,
2 we don't want to choose that route, Mr. Nielsen,
3 because of concern over vehicle collisions,
4 concern over signage, and concern over clearance
5 issues; correct?

6 MR. NIELSEN: That's correct.

7 MR. MERONEK: All right. And did you
8 have a discussion with the engineers and say,
9 Mr. Engineer, do you realize that by putting the
10 towers in-field, you are requiring farmers to use
11 equipment of 400 to 600 horsepower with massive
12 wing spans, when they are harvesting at night, as
13 an impediment to working around towers. Did you
14 have that discussion, sir?

15 MR. NIELSEN: We did.

16 MR. MERONEK: And you would have
17 preferred that your decision would have prevailed,
18 correct?

19 MR. NIELSEN: Yes.

20 MR. MERONEK: Now, in your testimony,
21 and I think it's fairly profound and I want to
22 make sure I capture it correctly. At page 2477 of
23 the transcript, sir, you were asked by Ms. Mayor
24 to talk in terms of tower placement on
25 agricultural lands and to explain the decision for

1 towers south of highway 16. And your response is
2 and I quote:

3 "Well, just before I put my final
4 report in, the engineers at Hydro
5 decided that they were going to move
6 the line into the field 42 metres.
7 That would be at the centre of the
8 right-of-way. Now, that was not a
9 surprise at all because every other
10 project we have done, the line was
11 always in the field. And the only
12 disappointment that I did have was
13 that had we been able to do all the
14 analysis based on that, we decided not
15 to do any more analysis because we
16 thought that the outcome would be the
17 same."

18 MR. NIELSEN: That's correct.

19 MR. MERONEK: Let's just parse that
20 down, sir. Just before submitting your final
21 report would have been when?

22 MR. NIELSEN: Well, I submitted my
23 final report sometime in, just a minute, I would
24 think it was somewhere around July of '10.

25 MR. MERONEK: And the decision, as we

1 know, was to place the tower placement 42 metres
2 from the road allowance. And just stopping there,
3 sir. As I understand the configuration, the 42
4 metres is to the centre of the right-of-way?

5 MR. NIELSEN: That's correct.

6 MR. MERONEK: So that actually the
7 tower is not 42 metres from the road allowance,
8 it's closer by some six metres, correct?

9 MR. NIELSEN: Yeah, I think the tower
10 is eight by eight, isn't it?

11 MR. MERONEK: Right.

12 MR. NIELSEN: Yeah, it's about four
13 metres closer.

14 MR. MERONEK: So when we're talking
15 about moving equipment around a tower, we're not
16 talking about a 42 metre clearance, we're talking
17 about perhaps in the range of 38 metre clearance;
18 correct?

19 MR. NIELSEN: That's correct.

20 MR. MERONEK: And when you say it was
21 not a surprise because of every other project we
22 had done on the line was always in the field,
23 notwithstanding, sir, that you knew before you
24 submitted -- you took on this retainer, you knew
25 Manitoba Hydro's preference of 42 metres in-field;

1 correct?

2 MR. NIELSEN: That's correct.

3 MR. MERONEK: Notwithstanding that, in
4 your professional judgment you thought that was
5 not the appropriate way to go, correct?

6 MR. NIELSEN: I didn't have any say in
7 whether it went that way or not.

8 MR. MERONEK: That's becoming
9 painfully obvious. But my question is, knowing
10 that, you still advocated to Manitoba Hydro that
11 that was not an appropriate and acceptable, in
12 your mind, routing alternative?

13 MR. NIELSEN: That's correct.

14 MR. MERONEK: And when you were told
15 that it was going to be 42 metres in the field,
16 notwithstanding your best advice, you stopped
17 doing any more analysis?

18 MR. NIELSEN: Well, I think the reason
19 that we didn't do any more analysis was by that
20 time, like my report -- my apologies, my report
21 went in on July 15, 2011. By that time the
22 decision had been made that from Riel to Long
23 Plains would be the same route, didn't matter
24 whether you went A, B or C. And so I didn't think
25 that it was -- I didn't think we'd have any change

1 in the numbers particularly by doing another
2 detailed route analysis.

3 MR. MERONEK: So when you submitted
4 your final report and this change for routing was
5 dictated to you, you didn't do any more analysis
6 to determine the impact that would have on these
7 various routing alternatives; correct?

8 MR. NIELSEN: That's correct.

9 MR. MERONEK: Now, in your report, you
10 did an analysis of a preferential segment, and
11 that's at page 47 of your report?

12 MR. NIELSEN: Right.

13 MR. MERONEK: And the preferential
14 route that you identified in terms of that segment
15 from Riel station to Long Plains was alternative
16 route B; correct?

17 MR. NIELSEN: That's correct.

18 MR. MERONEK: And the very next page,
19 you start looking at, you identify the whole
20 route, okay. And you change in your report the
21 preferred route from alternative B to alternative
22 A. Do you see that, sir, the very next page?

23 MR. NIELSEN: Yeah, on the -- I still
24 think that in most cases here, I have referred to
25 B as the preferred route.

1 MR. MERONEK: I'm sorry?

2 MR. NIELSEN: I think I referred to B
3 as the preferred route.

4 MR. MERONEK: So that's a typo on page
5 48?

6 MR. NIELSEN: On which number?

7 MR. MERONEK: Page 47 identifies route
8 B as being your preferred route, correct?

9 MR. NIELSEN: That's correct.

10 MR. MERONEK: Very next page you say,
11 route A is the preferred route?

12 MR. NIELSEN: Is that in section
13 seven?

14 MR. MERONEK: That's from Riel station
15 through Long Plains.

16 MR. NIELSEN: In which number are you
17 trying to talk about?

18 MR. MERONEK: No, I'm talking about
19 number one on the bottom of the page. You're now
20 looking at complete routes. From Riel station to
21 AC 2, and the first component of that is Riel
22 Station to Long Plains, and you have alternative
23 route A as the preferred route? Have you an
24 explanation --

25 MR. NIELSEN: I don't see that in my

1 report. Maybe we'll have to check, because in my
2 report it doesn't say that.

3 MR. MERONEK: 7.6 preferential
4 complete routes from Riel station to AC 2. Have
5 you got that, sir?

6 MR. NIELSEN: Well, I've got number
7 one with B as the preferred route through the
8 Cowan bog.

9 MR. MERONEK: I'm sorry?

10 MR. NIELSEN: In 7.6, number one, with
11 alternative route B through the Cowan bog is what
12 I would define as the preferred route.

13 MR. MERONEK: Page 48 of what I have
14 received says, alternative route A from Riel
15 station through Long Plains. That's the report I
16 got.

17 MR. NIELSEN: Well, maybe we should
18 just check. Mine doesn't say that.

19 MR. MERONEK: Okay.

20 MR. NIELSEN: Let's have a look at it
21 at the break.

22 MR. MERONEK: Okay. Fair enough.

23 Now, just moving along from January
24 2010, or into the summer of 2010, when you stopped
25 doing your analysis, tell me what happened to the

1 routing selection process?

2 MR. NIELSEN: In the summer of 2010?

3 MR. MERONEK: Yes. You had -- you've
4 got your three routes that are shown on the
5 screen. You have selected route B. You were told
6 by Manitoba Hydro that the engineers preferred 42
7 metres in the field south of highway 16, and 33
8 metres in the field from the road allowance north
9 of highway number 16. What happened after that?

10 MR. NIELSEN: Well, we, John Dyck and
11 I actually flew all the three lines with aerial
12 photography and looked for any kind of impediment
13 to them. And we flew from Riel all the way around
14 to The Pas and then north of The Pas, and we flew
15 lines A, B and C. And where we -- I mean, we had,
16 I had aerial photography from I guess it would be
17 '98 to 2005 that we had at that time, that I
18 actually -- I had the routes plotted on the aerial
19 photography, and we simply flew beside where the
20 line was supposed to be. John had done a GPS
21 route. And then if we saw things that we didn't
22 like, then we took a look at them and made
23 corrections.

24 MR. MERONEK: Now, Mr. Nielsen, by
25 2010, by the summer of 2010, you had been working

1 on this project for about three years, correct?

2 MR. NIELSEN: Yeah.

3 MR. MERONEK: And you were well
4 familiar with the agricultural portion of south
5 Manitoba, correct?

6 MR. NIELSEN: I was.

7 MR. MERONEK: You worked there, you
8 taught about it, correct?

9 MR. NIELSEN: Yes.

10 MR. MERONEK: And you were pretty
11 satisfied by July of 2012, that route B was the
12 route that you think should have been placed,
13 should have been established as the route for
14 Bipole III, correct?

15 MR. NIELSEN: Well, that's --

16 MR. MERONEK: Yes or no?

17 MR. NIELSEN: It was changed by then.
18 I can't really answer you yes or no. It was
19 changed to miss Dufresne and Lorette, and the
20 decision was made to take the south route around
21 the Long Plains.

22 MR. MERONEK: Who made that decision,
23 sir?

24 MR. NIELSEN: Well, I think it was a
25 group decision made by John Dyck, Pat McGarry and

1 myself.

2 MR. MERONEK: Sir, route B was the
3 preferable route from a population perspective, in
4 your report you said that was the least offensive
5 route from a population density point of view;
6 correct?

7 MR. NIELSEN: Yeah.

8 MR. MERONEK: That was nowhere near
9 Lorette, correct?

10 MR. NIELSEN: No, it went down before
11 you got to Lorette.

12 MR. MERONEK: Right. So I don't
13 understand where Lorette comes into the picture as
14 now being an impediment that had to be corrected,
15 from your perspective?

16 MR. NIELSEN: From my perspective, it
17 was too difficult to get line A or C through
18 Lorette, and it needed to be moved east.

19 MR. MERONEK: You didn't have to worry
20 about line A or C, sir, because you were choosing
21 route B?

22 MR. NIELSEN: That was my
23 recommendation, but it wasn't what Hydro was going
24 to do.

25 MR. MERONEK: I see. So the decision

1 to abandon route B, and to go either route C or A
2 was Manitoba Hydro's decision based on other
3 considerations?

4 MR. NIELSEN: Yes.

5 MR. MERONEK: And you went along with
6 that, sir?

7 MR. NIELSEN: Pardon?

8 MR. MERONEK: You went along with it?

9 MR. NIELSEN: I went along with it?

10 MR. MERONEK: Right?

11 MR. NIELSEN: Well, we went along with
12 it, yes.

13 MR. MERONEK: And you allowed your
14 report, I suggest, to be compromised by the
15 decisions that Manitoba Hydro were making?

16 MR. NIELSEN: Well, I don't know
17 whether you'd call it compromised or not.

18 MR. MERONEK: Well, you're now
19 suggesting, sir, in your report the final
20 conclusion that the best route is route A. And
21 that is clearly inconsistent with what your
22 analysis demonstrated to you, correct?

23 MR. NIELSEN: Route B you mean?

24 MR. MERONEK: Yes.

25 MR. NIELSEN: Yes.

1 MR. MERONEK: So your report is
2 compromised from an agricultural perspective,
3 correct?

4 MR. NIELSEN: I don't know whether
5 you'd call it compromised or not, but all the
6 routes were there. And if Manitoba Hydro decided
7 they wanted to take a different route, then that
8 was their decision.

9 MR. MERONEK: Right. You wanted route
10 B. Manitoba Hydro said it wanted another route.
11 And in your final conclusion, you said that's the
12 preferable route?

13 MR. NIELSEN: That's true.

14 MR. MERONEK: Now, in your report,
15 sir, you talk about cumulative effects. And I'm
16 referencing page 105 of your report. Have you got
17 that, sir?

18 MR. NIELSEN: Yeah, I have it.

19 MR. MERONEK: And you indicate in your
20 report, and I'll read it, under cumulative
21 effects:

22 "The following shows a progression of
23 environmentally sensitive site
24 concerns from an agricultural
25 perspective. The sites are not

1 specific locations but the impact will
2 be significant through many kilometres
3 of transmission line placement."

4 Do you see that, sir?

5 MR. NIELSEN: Yeah.

6 MR. MERONEK: Do you still subscribe
7 to that proposition?

8 MR. NIELSEN: Pardon?

9 MR. MERONEK: Do you still agree with
10 that statement, sir?

11 MR. NIELSEN: Yes.

12 MR. MERONEK: And you identify several
13 items on that page, and I count them as
14 approximately nine in total, of cumulative effects
15 that will impact negatively on agricultural land
16 for the lifetime of the line. Would you agree
17 with that suggestion, sir?

18 MR. NIELSEN: My analysis of
19 cumulative effect was based on the impact on crop
20 production that would be right below the line.

21 MR. MERONEK: Right. And you have
22 identified at least nine, eight or nine areas
23 where there will be an ongoing negative effect on
24 agricultural land due to Bipole III, correct?

25 MR. NIELSEN: That's correct.

1 MR. MERONEK: Now, as I understand it,
2 that assessment was the cumulative effect or the
3 ongoing effect over the lifetime of the line of
4 Bipole III, just Bipole III; correct?

5 MR. NIELSEN: Yes.

6 MR. MERONEK: You did not do an
7 analysis of a cumulative effect of other
8 prospective future projects that may be on the
9 drawing board or contemplated by Manitoba Hydro in
10 Southern Manitoba; correct?

11 MR. NIELSEN: That's correct.

12 MR. MERONEK: Were you told not to?

13 MR. NIELSEN: We never discussed it.
14 It wasn't part of my mandate.

15 MR. MERONEK: You are aware, sir, that
16 because of your prior involvement, that there is a
17 potential for a ring around the southern part of
18 Winnipeg from Riel to LaVerendrye; correct?

19 MR. NIELSEN: Riel to Dorsey, yes.

20 MR. MERONEK: Sorry, Riel to Dorsey.
21 But you never reflected that possibility or that
22 potential project -- which, by the way, has been
23 identified in newsletters on the record here to
24 stakeholders as a potential project -- you never
25 contemplated the potential impact of that line on

1 the agricultural land as it relates to Bipole III,
2 correct?

3 MR. NIELSEN: That's correct. Once
4 again, that wasn't part of my mandate.

5 MR. MERONEK: And in the EIS, sir, in
6 the cumulative effects chapter, chapter 9, there
7 is a reference to Manitoba Hydro's ten year
8 development plan from 2009, in terms of that loop,
9 or a similar loop, the south loop, plus other
10 southern transmission line concepts that may
11 overlap the project.

12 Were you aware, sir, of those
13 particular future developments from Manitoba
14 Hydro?

15 MR. NIELSEN: Occasionally they might
16 have been discussed but, once again, reflecting an
17 opinion on that was not part of my mandate at all.

18 MR. MERONEK: And dealing with
19 cumulative effects, sir, for this project, you did
20 a table at page 103, or starting at page 103 of
21 Bipole III residual environmental effect
22 assessments; correct?

23 MR. NIELSEN: Are we still dealing
24 with cumulative effects?

25 MR. MERONEK: You prepared a table of

1 residual environmental effects?

2 MR. NIELSEN: Okay, I've got it.

3 MR. MERONEK: And on that two page
4 table, and I won't go through them all, they are
5 easily readable, but there are at least five
6 residual environmental effects that you reference,
7 including interference with cultivation,
8 management units split by line, field severance,
9 interference with irrigation, interference with
10 aerial spraying, and quality land taken out of
11 production, as being adverse residual
12 environmental effects?

13 MR. NIELSEN: That's true.

14 MR. MERONEK: And for the most part,
15 you considered them large in magnitude, correct?

16 MR. NIELSEN: In most cases, yes.

17 MR. MERONEK: And occupying several
18 hundred kilometres in geographic extent, correct?

19 MR. NIELSEN: That's correct.

20 MR. MERONEK: And in terms of
21 duration, the lifetime of the line?

22 MR. NIELSEN: That's right.

23 MR. MERONEK: Correct?

24 MR. NIELSEN: Yes.

25 MR. MERONEK: And continuous?

1 MR. NIELSEN: Yes.

2 MR. MERONEK: And irreversible?

3 MR. NIELSEN: Yes.

4 MR. MERONEK: Okay. If it was left to
5 your druthers, sir, would you consider then that
6 the impacts of Bipole III from an agricultural
7 perspective was not insignificant?

8 MR. NIELSEN: Pardon?

9 MR. MERONEK: Would you agree, sir,
10 left to your own devices, that the overall impact
11 of Bipole III on southern agricultural Manitoba
12 was not insignificant?

13 MR. NIELSEN: The way I designed my
14 analysis, it was not insignificant. But that
15 isn't necessarily the way the whole project was,
16 looking at effects totally, was assessed.

17 MR. MERONEK: I understand that and
18 the Commission has heard a lot about that.

19 So at the end of the day, when
20 Manitoba Hydro says, chapter 8, page 248, that
21 from an agricultural productivity perspective,
22 that the overall impact is not significant, you
23 would disagree with that, sir?

24 MR. NIELSEN: I didn't write that
25 statement.

1 MR. MERONEK: And you would disagree
2 with it, because you couldn't write that
3 statement, right?

4 MR. NIELSEN: Probably not.

5 MR. MERONEK: I want to switch to
6 compensation for a moment. You did a piece on
7 compensation. I don't want to go through that
8 component of your report, but I just want to ask,
9 were you consulted by Manitoba Hydro compensation
10 people when it came to your observations about
11 compensation?

12 MR. NIELSEN: When you come to
13 compensation, that once again was not inside my
14 mandate. I did two pages on compensation, just
15 sort of to demonstrate that they use some of the
16 same factors in evolving compensation that I
17 thought were appropriate.

18 MR. MERONEK: One of the statements
19 you did make however, sir, was that the impact
20 would have a negative impact on the value of
21 agricultural land; correct?

22 MR. NIELSEN: That was a statement I
23 made, yes.

24 MR. MERONEK: And you believed that,
25 sir?

1 MR. NIELSEN: I mean, since I made
2 that statement, I have been told by Manitoba Hydro
3 that that's not correct.

4 MR. MERONEK: Okay. But based on your
5 experience, sir, you believe that putting a
6 transmission line of that magnitude through
7 valuable agricultural land would lower the land
8 value?

9 MR. NIELSEN: That's what I said.

10 MR. MERONEK: And it would also
11 increase insurance premiums, correct?

12 MR. NIELSEN: I think maybe Manitoba
13 Hydro should answer that question. Because it was
14 my understanding that if you had a tower, you had
15 to pay to have it fixed, but I don't
16 necessarily -- I think maybe I should let Manitoba
17 Hydro answer that question.

18 MR. MERONEK: But, sir, in your report
19 at page 77, that's what you said?

20 MR. NIELSEN: That's what I said, yes.

21 MR. MERONEK: And you believed that,
22 sir?

23 MR. NIELSEN: Yes. But I think
24 subsequently we found out that in many cases the
25 landowner doesn't pay for the tower.

1 MR. MERONEK: Insurance would be
2 increased by virtue of the decrease in yield,
3 correct?

4 MR. NIELSEN: Maybe ask that one
5 again?

6 MR. MERONEK: Sure. As I understand,
7 agricultural insurance is premised in some aspect
8 on the yield that is expected in any particular
9 acreage?

10 MR. NIELSEN: That's correct.

11 MR. MERONEK: And if that yield is
12 diminished, that impacts negatively on insurance
13 coverage; correct?

14 MR. NIELSEN: You mean on crop
15 insurance coverage, yes.

16 MR. MERONEK: Right. Now, you talked
17 a bit about advances in agricultural technology,
18 and you indicated that you thought a 120-foot
19 sprayer for now would be okay to go around a 42
20 metre clearance from a transmission line. I think
21 that was your evidence, correct?

22 MR. NIELSEN: Yeah. I think -- well,
23 as I said, I was at the farm progress show this
24 year and I was quite surprised to see a hi-boy
25 120-foot hi-boy sprayer and a hundred foot drill.

1 MR. MERONEK: That was the extent of
2 your assessment of what may be coming down the
3 pike in terms of agricultural technology?

4 MR. NIELSEN: I go to the farm
5 progress show every year. I see new technology
6 all of the time.

7 MR. MERONEK: Right. But you, looking
8 into the future, would agree with me, sir, that if
9 the equipment becomes larger, 42 metres into the
10 field, whether or not that's appropriate today,
11 clearly would be inappropriate tomorrow?

12 MR. NIELSEN: It may be.

13 MR. MERONEK: And once the line is in
14 place, that's the end of the matter, correct?

15 MR. NIELSEN: That's correct.

16 MR. MERONEK: Now, in terms of aerial
17 spraying, sir, you would agree that's a widespread
18 management practice?

19 MR. NIELSEN: Yes, it is.

20 MR. MERONEK: And it's an important
21 practice?

22 MR. NIELSEN: Yes.

23 MR. MERONEK: And at some point or
24 other in Southern Manitoba, would it surprise you
25 if I suggested that most of the farmers will

1 employ aerial spraying application at some point
2 or other?

3 MR. NIELSEN: No, it wouldn't surprise
4 me at all.

5 MR. MERONEK: But you didn't do any
6 studies to determine whether or not Bipole III,
7 the extent to which Bipole III will affect aerial
8 spraying operations; correct?

9 MR. NIELSEN: I discussed it with
10 aerial sprayers, and they suggested that it would.
11 Because I don't necessarily fly a plane but I have
12 hired lots of aerial sprayers, I have done lots of
13 consulting work based on misapplication by aerial
14 sprayers.

15 MR. MERONEK: Sure. Now, I think one
16 of the things that you said in your evidence, sir,
17 was that for wet conditions -- let me back up
18 here. Aerial spraying is certainly employed when
19 the fields are too wet, correct?

20 MR. NIELSEN: That's correct.

21 MR. MERONEK: And that's especially a
22 significant problem in the Red River Valley,
23 correct?

24 MR. NIELSEN: That's correct, but I
25 think I recognized that.

1 MR. MERONEK: Sure. And you suggested
2 as a potential mitigation or amelioration of that
3 problem that someone develop a thin track hi-boy?

4 MR. NIELSEN: Well, I don't know. I
5 was just speculating. And I think that's probably
6 a private sector initiative that should take
7 place. It probably will take place.

8 MR. MERONEK: It's my advice, sir,
9 that that's absolutely the worst thing that one
10 could do in wet conditions, is to have thin
11 treads.

12 MR. NIELSEN: Well, I guess everybody
13 is entitled to their own opinion.

14 MR. MERONEK: Now, in terms of
15 irrigation, sir, if you can just throw up on to
16 the screen the map dealing with irrigation
17 activities. It's map 400-06.

18 MR. NIELSEN: I have the map right
19 here.

20 MR. MERONEK: It's the next one, there
21 we go. That's great, thank you.

22 As I understand what that map
23 characterizes, Mr. Nielsen, is in the area that's
24 orange on the screen, red on the hard copy, that
25 represents poor irrigation potential?

1 MR. NIELSEN: The red area does, yes.

2 MR. MERONEK: The mustard colour
3 represents fair irrigation potential?

4 MR. NIELSEN: That's correct.

5 MR. MERONEK: And I guess the Dijon
6 mustard colour.

7 MR. NIELSEN: The lightest colour is
8 good irrigation potential.

9 MR. MERONEK: Yeah. Now, that's in
10 your analysis based on soil categories and
11 conditions, correct?

12 MR. NIELSEN: This came out of,
13 there's a sequence of studies done by the
14 University of Manitoba on irrigation potential for
15 soils, and that's where these lines came from.

16 MR. MERONEK: Do you know what year
17 that study was performed?

18 MR. NIELSEN: Probably in the last
19 six, seven, eight, ten years.

20 MR. MERONEK: So it's somewhat dated?

21 MR. NIELSEN: Well, I don't know
22 whether you can date soils on irrigation potential
23 or not.

24 MR. MERONEK: That's not to say, sir,
25 that in the area that's red, or I guess orange,

1 that irrigation doesn't take place. It's just
2 saying that it's not good irrigation?

3 MR. NIELSEN: Well, I think in a lot
4 of years there's enough water that it would be
5 considered to be irrigated, and lots of years
6 there's too much water.

7 MR. MERONEK: Sir, are you aware that
8 in Southern Manitoba, in those areas that are in
9 red and below, that there is in fact irrigation
10 going on?

11 MR. NIELSEN: Well, definitely below
12 the red area there is, because that's in that
13 Morden/Altona areas where they have a different
14 soil type.

15 MR. MERONEK: Right. So that
16 caricature there doesn't necessarily accurately
17 describe whether there is irrigation going on or
18 not going on, it's just the quality of soil that
19 you're talking about here; correct?

20 MR. NIELSEN: That's correct, it's
21 based on soil type.

22 MR. MERONEK: And irrigation to some
23 extent will depend upon, the use of irrigation
24 systems will depend upon, in the future, things
25 such as crop prices; would you agree, sir?

1 MR. NIELSEN: Well, probably, if they
2 stay high.

3 MR. MERONEK: Correct. If the trend
4 in the prices of certain crops go up, it makes it
5 more profitable for the farmer to employ
6 irrigation system devices; correct?

7 MR. NIELSEN: In the red area you
8 would have a much greater potential to salinize
9 your soil if you irrigated it, because the water
10 doesn't flow through it quite as easily as it does
11 in the sands.

12 MR. MERONEK: I understand that, sir,
13 but it doesn't make it impossible, correct? It's
14 being done now?

15 MR. NIELSEN: Yeah, okay.

16 MR. MERONEK: I want to turn to a
17 topic near and dear to my heart, liquid manure.

18 As I understand it, sir, you didn't
19 put the issue of liquid manure into your report
20 because that was a matter of detail that you
21 didn't think warranted any assessment?

22 MR. NIELSEN: That's true.

23 MR. MERONEK: All right. And so your
24 experience in terms of the application of liquid
25 manure, as I understand your evidence, sir, was

1 based on an observation of a farmer applying
2 liquid manure on his fields; correct?

3 MR. NIELSEN: Yeah, that's correct.

4 MR. MERONEK: When did you make this
5 observation, sir?

6 MR. NIELSEN: Well, I don't know. One
7 of the dozen times I was east of the Red River.

8 MR. MERONEK: I'm sorry?

9 MR. NIELSEN: I guess one of the multi
10 times I was east of the Red River in the fall.

11 MR. MERONEK: In the fall of?

12 MR. NIELSEN: I'm not sure which year
13 it was.

14 MR. MERONEK: It wasn't for the
15 purpose of this hearing then that you went out?

16 MR. NIELSEN: Pardon?

17 MR. MERONEK: Did you go out to look
18 at liquid manure application for the purpose of
19 testifying at this hearing?

20 MR. NIELSEN: No.

21 MR. MERONEK: Okay. When you went out
22 and observed, sir, did you go out and speak to any
23 farmers who were applying liquid manure to find
24 out the extent to which a Bipole III transmission
25 line may adversely impact on the farmer's

1 operations?

2 MR. NIELSEN: No.

3 MR. MERONEK: Now, you said in your
4 testimony that you were aware that there is
5 surface spraying of liquid --

6 MR. NIELSEN: Well, I'm not sure that
7 they allow that anymore, but I know that there are
8 tank machines with cultivator ties behind them,
9 and they have the umbilical cord on the back of
10 the cultivator, both injection systems.

11 MR. MERONEK: I was just going to say
12 that surface spraying is illegal.

13 MR. NIELSEN: Yeah, it's not allowed,
14 yeah.

15 MR. MERONEK: You have a section on
16 monitoring, sir?

17 MR. NIELSEN: I do.

18 MR. MERONEK: And just to back up, one
19 of the residual effects which you identified was
20 the damage that could be occasioned to
21 agricultural land in the summer time, correct?

22 MR. NIELSEN: Could you repeat that
23 question, please?

24 MR. MERONEK: Yes. In your residual
25 effects section, you identified a negative effect

1 for construction on agricultural land in the
2 spring or summer or fall, correct?

3 MR. NIELSEN: I think, yeah, we talked
4 about trying to do the construction period in dry
5 times or winter.

6 MR. MERONEK: In the winter. Are you
7 aware, sir, that Manitoba Hydro plans to construct
8 in agricultural Manitoba Bipole III in the summer
9 period?

10 MR. NIELSEN: I can't answer that
11 question.

12 MR. MERONEK: Now, just getting into
13 monitoring, one of the things that you identify on
14 page 100 in terms of monitoring is that in-field
15 line placement should be monitored, given Manitoba
16 Hydro's decision to move the line 42 metres into
17 the field; correct?

18 MR. NIELSEN: That's correct.

19 MR. MERONEK: And that's south of PTH
20 16, and 33 metres into the field north of PTH 16,
21 correct?

22 MR. NIELSEN: I think it should be
23 done both areas.

24 MR. MERONEK: So, is there any magic
25 in crossing the highway? It seems to suggest that

1 there's a magical line that would make the fields
2 on the immediate north side of PTH 16 less fertile
3 than on the south side of PTH 16?

4 MR. NIELSEN: Well, the soils north of
5 16 are simply not as productive as the ones south.

6 MR. MERONEK: So there's a magic line
7 right on that highway?

8 MR. NIELSEN: There appears to be. It
9 starts about three-quarters of a mile before you
10 get to 16.

11 MR. MERONEK: Okay. So if there was
12 fertile land north of PTH 16, for sure at 33
13 metres it would be impossible to have wide
14 equipment utilized; correct?

15 MR. NIELSEN: Well, I mean, the only
16 consideration should be, you probably would
17 consider moving it in further in the area between
18 Dauphin and Winnipegosis and in the Swan River
19 Valley, where the line actually is on productive
20 agricultural land.

21 MR. MERONEK: Okay. Now, why are you
22 suggesting, sir, that there be some monitoring of
23 the line from a perspective of placement of 42
24 metres within the road allowance? What could you
25 accomplish? The line is already built.

1 MR. NIELSEN: I think it's worthwhile
2 to understand whether or not there is a reduced
3 yield. That's really, you know, whether there is
4 a reduction in crop production underneath the
5 line.

6 MR. MERONEK: But if there's a one
7 time lump sum payment, then how does that assist,
8 sir? Are you suggesting that what Manitoba Hydro
9 should do is look at it every three to four years,
10 and if it looks like there's some further damage,
11 that there should be compensation at that point in
12 time?

13 MR. NIELSEN: No, I'm not suggesting
14 that. Compensation wasn't part of, as I said
15 wasn't part of my mandate. Could you ask Curtis
16 that question.

17 MR. MERONEK: Then I come back to
18 what's the point in monitoring if there's nothing
19 that can be done about it?

20 MR. NIELSEN: I guess if you monitor
21 something, you always learn something.

22 MR. MERONEK: And that same
23 observation would prevail for moving the
24 transmission line near a road allowance. If you
25 monitored that for three to four years, you might

1 learn something?

2 MR. NIELSEN: That's true.

3 MR. MERONEK: But the one thing you
4 did suggest, sir, when it came to irrigation, that
5 you had a lot of questions as to the impact of
6 Bipole III on pivot system irrigation, pivot
7 irrigation systems; correct?

8 MR. NIELSEN: Yes.

9 MR. MERONEK: And you recommended
10 there be a study to answer a lot of these
11 questions, correct?

12 MR. NIELSEN: Correct.

13 MR. MERONEK: And you know that
14 Manitoba Hydro has demured in that respect?

15 MR. NIELSEN: I don't know what
16 Manitoba Hydro has done in that respect.

17 MR. MERONEK: And you also talk about
18 monitoring crop production under the transmission
19 line, and that's for three to four years, because
20 you might learn something; is that correct?

21 MR. NIELSEN: Could you repeat that?

22 MR. MERONEK: Yes. In terms of crop
23 production under the transmission line, you were
24 suggesting that that gets monitored every three to
25 four years to determine crop loss. But, again,

1 that's just for the purposes of learning
2 something, correct?

3 MR. NIELSEN: Well, I think you always
4 learn something in relation to what you might do
5 the next time.

6 MR. MERONEK: All right. And the same
7 answer would prevail for examining a half mile
8 placement?

9 MR. NIELSEN: The half mile placement,
10 I thought maybe on the half mile placement you
11 might learn something about severance.

12 MR. MERONEK: Now, the last thing I
13 want to talk about is the part of your report that
14 identifies a number of structures, being houses,
15 barns and sheds, that are within a 270 metre
16 distance from Bipole III. And that starts at page
17 107.

18 MR. NIELSEN: Right.

19 MR. MERONEK: And as I count the
20 number of structures that you identified, it's 71
21 roughly, subject to check?

22 MR. NIELSEN: Yeah. I really don't, I
23 don't have -- I was asked to do that tabulation
24 and it was really done between Gabriel at MMM. So
25 we put the Hydro line on the new aerial

1 photography and went through and measured the
2 distances. The ultimate utilization of this data
3 would probably be by the compensation group.

4 MR. MERONEK: So you didn't have a
5 hand in developing this particular section, that
6 was just given to you?

7 MR. NIELSEN: I was asked to develop
8 the thing, because I had the aerial photography, I
9 had the lines on it, et cetera.

10 MR. MERONEK: And you have identified
11 71 structures?

12 MR. NIELSEN: That's right.

13 MR. MERONEK: Now, can you tell me how
14 270 metres was derived? It sounds like a very
15 precise number.

16 MR. NIELSEN: We started at the 200
17 metres and we went to 235, and then we finally
18 went to 270.

19 MR. MERONEK: What were you trying to
20 accomplish by these various distances?

21 MR. NIELSEN: I wasn't trying to
22 accomplish anything. I was only doing the work
23 that I had been asked to do.

24 MR. MERONEK: Do you know how many
25 structures would be impacted if that line was 275

1 metres?

2 MR. NIELSEN: No.

3 MR. MERONEK: It's my understanding
4 that this information is somewhat dated. It was
5 at least prepared prior to the Tourond adjustment.
6 Are you aware of that, sir?

7 MR. NIELSEN: I had nothing to do with
8 the Tourond adjustment in my report. My report
9 had already been filed prior to that happening.

10 MR. MERONEK: So you can't speak to
11 the accuracy of the structures that are identified
12 starting at pages 107 of your report?

13 MR. NIELSEN: That's just a Tourond
14 adjustment. It doesn't reflect there. The rest
15 of it is fine.

16 MR. MERONEK: When was this prepared,
17 sir?

18 MR. NIELSEN: Oh, I don't know,
19 sometime in the winter of '10, '11 probably.

20 MR. MERONEK: My understanding is that
21 it isn't accurate, that some, at least one
22 property is on there that isn't in the
23 right-of-way, and that there are some properties
24 that are in the right-of-way that aren't described
25 here. Can you speak to that, sir?

1 MR. NIELSEN: There was one house that
2 was, according to this, my report, that was 88
3 metres from the line, and they moved the line
4 north as per our recommendation.

5 MR. MERONEK: There's been no updating
6 of this report since you received it, correct?

7 MR. NIELSEN: Not since I put it in,
8 which was -- my apologies, it was July 15th, 2011,
9 not 2010.

10 MR. MERONEK: Okay. Thank you
11 Mr. Chairman. Those are my questions of
12 Mr. Nielsen. Maybe we could take a break.

13 THE CHAIRMAN: Thank you, Mr. Meronek,
14 and good idea, we'll take a break now for 15
15 minutes. And I assume you have questions for
16 others on this panel following the break?

17 MR. MERONEK: I do.

18 THE CHAIRMAN: Okay. We'll return to
19 you then.

20 (Proceedings recessed at 10:26 a.m.
21 and reconvened at 10:40 a.m.)

22 THE CHAIRMAN: Okay, we'll reconvene.
23 Mr. Meronek?

24 MR. MERONEK: I think we're missing
25 one panel member.

1 THE CHAIRMAN: Is Mr. Nielsen missing
2 in action?

3 MR. BEDFORD: He'll be back in a
4 moment. His understanding was Mr. Meronek had
5 finished his questioning. He's gone to the
6 washroom, he'll be back.

7 THE CHAIRMAN: Fair enough, we can
8 wait.

9 MR. MERONEK: Okay. Well, then I'll
10 ask some more questions of -- Mr. McLeod.

11 First off, just on a 30,000 foot level
12 question, has Manitoba Hydro tried to quantify the
13 potential compensation it may have to be obliged
14 to pay to farmers?

15 MR. McLEOD: We have some new budget
16 estimates reflecting what we guessed the
17 compensation might be.

18 MR. MERONEK: Is that anywhere on the
19 record, sir?

20 MR. McLEOD: I do not believe so.

21 MR. MERONEK: I understand that it's
22 at least incorporated, not discretely, but
23 incorporated in other expenditures in the overall
24 cost of the project, is that correct?

25 MR. McLEOD: I don't understand your

1 question.

2 MR. MERONEK: Well, I would assume
3 when Manitoba Hydro sets out to estimate the cost
4 of the project, that it would have incorporated it
5 into that cost and estimate as to the compensation
6 it may be exposed to for the land it takes by way
7 of easement --

8 MR. McLEOD: It is my understanding
9 that all costs for the project are included. I
10 would submit our budget estimates upwards, and I'm
11 assuming it would be included in the overall
12 budget estimates.

13 MR. MERONEK: Would there be a way of
14 determining what that number is?

15 MR. McLEOD: The property related?

16 MR. MERONEK: Yes?

17 MR. McLEOD: We probably could get you
18 our most recent one but, again, it might be a
19 little bit dated.

20 MR. MERONEK: If you wouldn't mind,
21 thank you, sir?

22 MR. McLEOD: As an undertaking. Now
23 that's just strictly the compensation to
24 landowners that you want to see?

25 MR. MERONEK: Well, whatever you have,

1 I don't know what Manitoba Hydro has.

2 MR. McLEOD: Well, we break ours down
3 into several groups, but we can, you know, like
4 labour and -- but we can put it strictly to what
5 the landowners, what we projected them being paid.

6 MR. MERONEK: Sure, that's who I'm
7 interested in.

8 MR. McLEOD: Okay.

9 MR. MERONEK: I want to spend some
10 time on the brochure that was provided to all and
11 sundry in terms of the, I guess we'll call it a
12 landowner compensation brochure. And for the
13 record, it's found in CEC Manitoba Hydro II 007K
14 and 007Q. Do you have that brochure?

15 MR. McLEOD: I believe I have a copy
16 of it, yes.

17 MR. MERONEK: Is that the latest and
18 greatest update of the compensation package?

19 MR. McLEOD: No, it would not be.
20 Some parts are and some parts aren't.

21 MR. MERONEK: This is November 2011,
22 and that's certainly what was being identified to
23 the public as what the compensation structure and
24 components were going to be. Is there something
25 more recent?

1 MR. McLEOD: Our compensation package
2 is updated, with regards to the structure impact
3 component, is updated annually to reflect the
4 current markets.

5 MR. MERONEK: Well, as we sit here
6 today, is there a different compensation package,
7 or amendments to the compensation package in this
8 brochure that you can share?

9 MR. McLEOD: The land easement
10 portion, it has not changed, it's still
11 150 percent of market value. The principle of how
12 we make our structure impact payments has not
13 changed. It's just that the manual, the schedule
14 related to it is updated annually.

15 MR. MERONEK: Okay. So there is not a
16 new package per se that would get disseminated to
17 stakeholders?

18 MR. McLEOD: They are given the most
19 current numbers during the individual discussions,
20 when we see them when we're discussing the
21 easement.

22 MR. MERONEK: Okay. Dealing with land
23 compensation as a component, as I understand it,
24 land compensation for the right-of-way is
25 predicated on a ratio of 1.3 times the assessed

1 value of the property, correct?

2 MR. McLEOD: No. As I have tried to
3 correct in the past, like in Niverville and in
4 previous appearances before the Commission here,
5 any reference to the assessment value or a ratio
6 is just a tool for this brochure, for the
7 landowners to try and get an idea of what the
8 market value of the land might be. And it is not
9 used as part of the actual determination of the
10 market value when we're talking to the landowner.
11 It was just a tool for the landowner.

12 MR. MERONEK: But this is a document
13 that went to every landowner, as I understand it;
14 correct?

15 MR. McLEOD: Correct.

16 MR. MERONEK: And it's certainly, in
17 terms of the calculation as an example is
18 something that's on the record as part of your
19 evidence; correct?

20 MR. McLEOD: Parts -- but you have to
21 look at the main driver in this would be our
22 referencing market value. And that was just a
23 tool to show how they could probably try and
24 determine what the market value of their land
25 might be. So it's still, at the end of the day,

1 it's 150 percent of market value.

2 MR. MERONEK: Okay. So we can forget
3 about any ratios of assessed value?

4 MR. McLEOD: Correct.

5 MR. MERONEK: In terms of construction
6 damage, as I understand it, it's based on current
7 price of crops times the number of acres times the
8 yield in bushels per acre?

9 MR. McLEOD: Correct, whatever the
10 damage is, we make whole. Sometimes if it's not a
11 crop damage but a compaction, or a damage that can
12 be repaired, we will repair it. But if it's a
13 loss like a crop damage, we pay the farmer the
14 loss according to his yields and prices.

15 MR. MERONEK: A couple of questions on
16 that. One, it's a lump sum payment, correct, one
17 time?

18 MR. McLEOD: The construction damage,
19 that is correct, because it's a one time damage.

20 MR. MERONEK: What about a situation
21 where the soil is compromised for greater than one
22 year? For example, in Mr. Nielsen's report, he
23 said the damage could accrue over the course of
24 three years. We're going to lead evidence to
25 suggest it could be over five years.

1 MR. McLEOD: And --

2 MR. MERONEK: I'm not finished. What
3 do you plan to do, if anything, in that respect if
4 it is a one time payment?

5 MR. McLEOD: As part of the
6 discussions with the landowner, and in past
7 practices what has happened, if it's determined in
8 the case of compaction ruining future yields, past
9 practices and past projects have looked at a three
10 year damage payment. Generally, in practice, it
11 works out 100 percent crop damage in the first
12 years, 50 percent crop damage in the second year
13 and 25 percent crop damage in the third year.
14 That doesn't mean it has to be that way, but
15 generally in the past that's how we have worked
16 that, and the farmers have been happy with that
17 kind of a category.

18 MR. MERONEK: Okay. In terms of
19 structure impact, as I understand it there's a
20 compensation schedule updated annually.

21 MR. McLEOD: Correct.

22 MR. MERONEK: And it's from the
23 Department of Agriculture?

24 MR. McLEOD: The schedule is made by
25 Manitoba Hydro staff using the Department of

1 Agricultural figures.

2 MR. MERONEK: Are you able to provide
3 us with a copy of the most current schedule that
4 Manitoba Hydro intends to use, and to the extent
5 that it uses Department of Agricultural data --

6 MR. McLEOD: Correct.

7 MR. MERONEK: -- describe how the
8 figures are derived?

9 MR. McLEOD: Yes. Our structure for
10 that schedule is disseminated and we can provide
11 the January 2012 schedule, if you want it.

12 MR. MERONEK: Thank you, sir.

13 In terms of ancillary damage, you have
14 conceded, sir, on the record, and quite properly
15 so, that aerial spraying is a new -- it's a
16 concept or a process that Manitoba Hydro was not
17 familiar with prior to this hearing?

18 MR. McLEOD: Correct. We have never
19 had to do one yet to this date.

20 MR. MERONEK: And that you are
21 initiating a new program?

22 MR. McLEOD: It's not a program yet
23 per se. Like I said, right now it may be just a
24 case-by-case basis, but we'll start at that and
25 work forward.

1 MR. MERONEK: So bearing in mind the
2 schedule for commencement of construction, are you
3 going to have some kind of a program in place that
4 landowners can look at to determine whether they
5 are getting a fair deal on ancillary damage for
6 impacts of aerial spray application?

7 MR. McLEOD: The ancillary damage
8 would have to be agreed to prior, or in
9 conjunction with signing of the easement
10 agreement. So if that is an issue with the
11 landowner, if they bring it forward as an issue,
12 then we would fully expect to have that negotiated
13 and agreed to at the time of signing of the
14 easement agreement.

15 MR. MERONEK: Okay. We'll get into
16 that a little later. But as I understand the EIS,
17 chapter three, there's a reference to payment of
18 up to 60 percent of fair market value ancillary
19 damage?

20 MR. McLEOD: That is no longer
21 accurate.

22 MR. MERONEK: That's been updated?

23 MR. McLEOD: Yes. That was used when
24 our compensation was originally 75 percent of
25 market value for land.

1 MR. MERONEK: I see. So it's now
2 what, 100 percent?

3 MR. McLEOD: We pay 150 percent of
4 market value for the land easement now.

5 MR. MERONEK: No, but I'm talking
6 about for ancillary damage?

7 MR. McLEOD: Ancillary damages will
8 be, whatever they are, that's what we'll pay.

9 MR. MERONEK: Now, I want to refer to
10 the page of the landowner compensation
11 information. It's under frequently asked
12 questions, and the subtitle is "Manitoba Hydro's
13 Compensation Policy Different Than in Past Years."
14 Do you see that?

15 MR. McLEOD: Yes.

16 MR. MERONEK: Under the second bullet,
17 it says:

18 "Upon signing of the easement
19 agreement, ancillary damage
20 compensation payments will be paid up
21 front along with the land compensation
22 payments."

23 And you avert to the ancillary damage
24 compensation. Do I understand this that there
25 will be, out of the four components, two of them

1 will be paid up front upon the signing of the
2 agreement?

3 MR. McLEOD: That is incorrect, not at
4 the time of signing of the agreement, but at the
5 time of registration of the agreement or at the
6 time Manitoba Hydro executes its rights, which
7 would be we'd have a licence and we would have to
8 enter the property to construct. So the two
9 triggers for that up-front payment, if that's the
10 word you want to use to define it, would be either
11 the registration of the easement, or our need to
12 enter the property to construct. At the time of
13 signing the agreement, we are giving the
14 landowners a \$225 non refundable advance against
15 future monies owed.

16 MR. MERONEK: So this statement in the
17 landowner compensation information booklet that
18 went out to everybody is inaccurate?

19 MR. McLEOD: Depends on your
20 definition of up front.

21 MR. MERONEK: Well, it says upon
22 signing of the easement agreement, that's pretty
23 clear.

24 MR. McLEOD: Yes. I might want to add
25 that this may be out of date because of recent

1 legislation. I think it's section 111 where there
2 was some procedures changed at Land Titles, and
3 registration of agreements has forced Manitoba
4 Hydro to postpone the initial payment to
5 landowners. Because what's happened with this
6 recent ruling is that if ownership changes before
7 we can register this easement, the agreement that
8 is signed is now void. So to ensure that we are
9 not paying the wrong landowner the due
10 compensation, we have now had to change our past
11 practice and we will pay when we -- we'll have to
12 pay upon entry for construction, or to pay to
13 register the easement.

14 MR. MERONEK: When is it anticipated
15 that, in Southern Manitoba, Manitoba Hydro will be
16 entering property to construct?

17 MR. McLEOD: The construction schedule
18 is out of my control and understanding at the
19 present time. I'm not sure if it's not until
20 2000 -- I think it's initially scheduled for 2014,
21 but it could be earlier.

22 MR. MERONEK: Right. From what you're
23 saying, whatever negotiations take place will have
24 to be consummated well before construction?

25 MR. McLEOD: That is correct. The

1 easement agreement has to be signed, yes, well
2 before construction.

3 MR. MERONEK: When is it anticipated
4 that Manitoba Hydro, what's the drop-dead date for
5 signing an easement agreement? Has Manitoba Hydro
6 contemplated that?

7 MR. McLEOD: We haven't set one at the
8 present time. We'd like to have all our -- we
9 would like to have all our interests finalized in
10 early '13, if we could.

11 MR. MERONEK: Right. So when you talk
12 about, we'll negotiate until we have a deal and
13 there's only been one expropriation, that's
14 predicated upon negotiations taking place and
15 being consummated fairly quickly; correct?

16 MR. McLEOD: That is correct.

17 MR. MERONEK: Now, what was the
18 purpose for a \$225 up-front non refundable
19 payment? Is that kind of like a door prize?

20 MR. McLEOD: Not necessarily, but we
21 would want to recognize that we had, usually on
22 transmission line projects in the past of this
23 nature, we had compensated the landowner some
24 portion of the monies at the time of signing the
25 agreement. So we felt that some form of

1 compensation had to exchange hands to make the
2 agreement binding. So rather than paying the
3 nominal \$1, we decided to pay \$225. There was no
4 value set to it.

5 MR. MERONEK: Just to sweeten the
6 deal, so to speak, as an inducement?

7 MR. McLEOD: Yeah, if you wish to use
8 that.

9 MR. MERONEK: Now, I understand, and
10 we'll get to Evolve momentarily, but when it comes
11 to Evolve, as I understand it, there is
12 documentation that it provides to the landowner,
13 which incorporates a schedule for structure
14 compensation; correct?

15 MR. McLEOD: I'm not sure exactly. I
16 believe they are given the easement agreement and
17 a sketch showing the easement area. And they
18 probably reference what these structure payments
19 might be. It's not that that's what they will be,
20 but that's a guideline.

21 MR. MERONEK: Well, I'm looking at a
22 document that says:

23 "The following four categories have
24 been determined to establish proper
25 compensation given..."

1 And it lists crop type, tangent structure and
2 tangent structure guide.

3 MR. McLEOD: It's a guideline, that's
4 correct. It shows that if the land type would be
5 cereal crop lands and so on, yes.

6 MR. MERONEK: Could you undertake to
7 provide a copy of that document?

8 MR. McLEOD: It's just -- what, their
9 listing of the compensations?

10 MR. MERONEK: It's a document under
11 Manitoba Hydro's logo. It says "Manitoba Hydro
12 Bipole III Compensation Details." And as I
13 understand it, it was provided by Evolve to
14 various prospective landowners, subject to
15 easement.

16 MR. McLEOD: All right.

17 MR. MERONEK: Now, speaking of Evolve,
18 I understand your evidence was that an RFP went
19 out and Evolve Surface Strategies Inc. was the
20 only taker?

21 MR. McLEOD: That is incorrect. There
22 was three companies.

23 MR. MERONEK: Sorry, they won the
24 beauty contest?

25 MR. McLEOD: Correct.

1 MR. MERONEK: And what was the
2 contract for, sir, what service were they supposed
3 to be providing?

4 MR. McLEOD: They are a land right
5 acquisition firm, and they are there to acquire
6 our interests. They take the place of our
7 internal staff, what we call a right-of-way agent.

8 MR. MERONEK: Okay. And was it up to
9 Evolve to train its own employees as to how to go
10 about approaching landowners?

11 MR. McLEOD: They are quite well
12 trained dealing with landowners, but we did hold a
13 two-day orientation session with them to teach
14 them aspects of the project.

15 MR. MERONEK: Okay. Did you give
16 Evolve any instructions as to what to say to
17 prospective landowners when they were approached
18 by employees of Evolve?

19 MR. McLEOD: We provided guidelines, I
20 believe, you know, just to stay within the realms.
21 I not really sure what you're -- a script, is that
22 what you're saying?

23 MR. MERONEK: Yes?

24 MR. McLEOD: A guideline or a script,
25 yes.

1 MR. MERONEK: Could you provide that,
2 sir?

3 MR. McLEOD: Yes.

4 MR. MERONEK: Would I be correct to
5 surmise that the employees of Evolve were paid on
6 the basis of commission?

7 MR. McLEOD: Pardon me?

8 MR. MERONEK: Would I be correct to
9 surmise that the employees of Evolve who contacted
10 prospective landowners are being paid on a
11 commission basis for sign-ups?

12 MR. McLEOD: That is not my
13 understanding. I believe they are being paid by
14 the hour, but I'm not sure to tell you the truth.

15 MR. MERONEK: Could you undertake to
16 inquire?

17 MR. McLEOD: I'm fairly certain they
18 are paid by the hour, but I can confirm that for
19 you.

20 MR. MERONEK: Okay.

21 MR. McLEOD: Now, there may be a
22 clarification under the terms of the contract
23 whether or not we can divulge how Evolve is paying
24 their people, but we'll have that confirmed.

25 MR. GRAY: I'd just like to clarify,

1 are you asking how Evolve pays its employees or
2 how Manitoba Hydro compensates Evolve?

3 MR. MERONEK: No, how Evolve pays its
4 employees, is it on a salary basis or is it on the
5 basis of commission for the people signed up?

6 MR. GRAY: Thank you.

7 THE CHAIRMAN: Mr. Meronek, how is
8 that relevant to the case before us?

9 MR. MERONEK: Well, it's relevant in
10 this sense, sir, that there's been a lot of
11 complaints about how people are being approached
12 and the kinds of things people are being told in
13 order to sign up these easement agreements. And I
14 think it reflects on the issue of compensation.

15 THE CHAIRMAN: Thank you. And if you
16 can divulge that, I would allow that undertaking.

17 MR. McLEOD: No problem.

18 MR. MERONEK: Now, actually it's a
19 follow-up to one of your questions, sir. In terms
20 of the easement agreement, I think the Chair
21 asked -- the Commission has heard and I have heard
22 from my clients that there have been
23 representations made that this is a done deal,
24 that it's a virtual certainty that the licence
25 will be granted, or words to that effect. And the

1 Chair asked whether there was an escape clause
2 anywhere which would neuter that kind of a
3 representation? And I think the answer was that,
4 from your perspective, the landowners are to be
5 told that it's certainly conditional on getting a
6 licence from this Commission; correct?

7 MR. McLEOD: I missed the last portion
8 of that statement?

9 MR. MERONEK: It's conditional upon
10 getting approval?

11 MR. McLEOD: That is correct.

12 MR. MERONEK: Now, you're not denying
13 though, sir, that there have been representations
14 made which would contradict the suggestion that
15 landowners are being told that signing of the
16 easement agreement is conditional upon approval?

17 MR. McLEOD: I'm not understanding
18 your question at all, sorry.

19 MR. MERONEK: You're not in a position
20 to dispute those who have come before the
21 Commission and said that they are being told that
22 this is a done deal virtually?

23 MR. McLEOD: Because I was not there,
24 I cannot confirm nor deny. But in past
25 conversations with Evolve, they have stated to me

1 that they have never used those words in their
2 conversations with the landowners.

3 MR. MERONEK: It's my advice as well,
4 sir, that on the night before the Niverville
5 hearing, representatives of Evolve were contacting
6 landowners to have meetings the next day, while
7 the hearings were going on, to sign them up for
8 easement agreements. Do you know anything about
9 that, sir?

10 MR. McLEOD: Yes, they were probably
11 making phone calls. That could be true.

12 MR. MERONEK: For the next day when
13 the hearings were going on in Niverville?

14 MR. McLEOD: I am not sure when they
15 were booking their appointments. But, yes, they
16 would have been phoning the people at that same
17 time period.

18 MR. MERONEK: Sir, there's nothing in
19 the easement agreement, as I read it, that says
20 that the signing of this easement agreement is
21 conditional upon approval.

22 MR. McLEOD: That is true.

23 MR. MERONEK: Okay.

24 MR. McLEOD: I may add, though, if the
25 landowner had requested something in writing from

1 Hydro to state this, I instructed Evolve to say
2 that we would provide that to them.

3 MR. MERONEK: It's my understanding
4 that the people who were going out to sign up for
5 easement agreements were not advising the
6 landowners that this is a legal document and they
7 should seek out legal advice before signing. Can
8 you comment on that, sir?

9 MR. McLEOD: I can't answer that,
10 sorry.

11 MR. MERONEK: That's not something
12 that Manitoba Hydro advised Evolve to tell its
13 employees when they were contacting landowners?

14 MR. McLEOD: I'm sorry, I missed it
15 again?

16 MR. MERONEK: That isn't an
17 instruction that Manitoba Hydro made to Evolve
18 when Evolve employees were going out and
19 contacting landowners?

20 MR. McLEOD: I'm not sure of the
21 specifics of what Evolve is stating to them, but
22 in past practices, as a right-of-way I do
23 myself -- I'm sure that Evolve must be stating it
24 as well -- is that when you describe this
25 agreement you're telling them it's going to be

1 something that's registered on their title as a
2 caveat. And that should be direction enough to
3 understand that this is a legal document.

4 MR. MERONEK: So the answer is no, you
5 don't know?

6 MR. McLEOD: Exactly, I don't know
7 specifically.

8 MR. MERONEK: Now, in terms of land
9 values, I believe you indicated that on the basis
10 of three reports, Manitoba Hydro has come to the
11 conclusion that there isn't any diminution in land
12 value as a result of transmission lines being
13 built on agricultural land. Is that correct?

14 MR. McLEOD: That's correct.

15 MR. MERONEK: And those reports were
16 provided in Manitoba Hydro VI 295, that's the
17 information request number, and there are three
18 reports and they are all done by Manitoba Hydro
19 staff, correct?

20 MR. McLEOD: I believe the Stenhouse
21 report was external. Just one second.
22 Mr. Stenhouse's report was external to Hydro.

23 MR. MERONEK: Which one is that?

24 MR. McLEOD: That's the one based on
25 rural agricultural land prices.

1 MR. MERONEK: And that one was done in
2 1990, correct?

3 MR. McLEOD: The date sounds correct.

4 MR. MERONEK: Yes. And that was from
5 LaVerendrye to Emerson, correct?

6 MR. McLEOD: One second. South of
7 Winnipeg, correct.

8 MR. MERONEK: And that was a twin
9 wooden pole and a 230 kV line?

10 MR. McLEOD: To the specifics of the
11 report, but, yeah, it would have been with the
12 transmission line of some sort.

13 MR. MERONEK: Yeah, right. So that's
14 the only report for rural Manitoba that you have,
15 correct?

16 MR. McLEOD: For agricultural, yes.

17 MR. MERONEK: Because the other two
18 dealt with residential property in Birds Hill,
19 correct?

20 MR. McLEOD: Yes, rural residential.

21 MR. MERONEK: But confined to Birds
22 Hill, correct?

23 MR. McLEOD: Correct -- just one
24 second. I believe it might be both sides of the
25 river, but I'll confirm.

1 MR. MERONEK: Well, I read the report,
2 sir.

3 MR. McLEOD: It's basically in Birds
4 Hill and West St. Paul.

5 MR. MERONEK: Okay. And that first
6 report was 1992, and then there was a follow-up in
7 that same area in 2011?

8 MR. McLEOD: Yes, the 2011, it's a
9 monitoring study that's ongoing.

10 MR. MERONEK: But so far that's what
11 you are relying upon?

12 MR. McLEOD: Correct.

13 MR. MERONEK: Now, I think this is in
14 your bailiwick, Mr. Gray, and it's the whole issue
15 of one time lump sum payment versus an annual
16 payment. As I understand your evidence, the
17 predilection of Manitoba Hydro is not to pay
18 anything more than a one time lump sum payment
19 because of administrative ease and cost. Did I
20 capture that correctly?

21 MR. GRAY: There are factors as to why
22 we have a preference for a lump sum one time
23 versus annual, correct.

24 MR. MERONEK: And that's
25 administrative ease and cost, correct?

1 MR. GRAY: There is some
2 administration cost. There is legislation issues
3 with freedom of information. There are some
4 issues to deal with potential negotiations. There
5 is failure to reach an agreement. There are, you
6 know, the number of payments that are compounded.
7 There are different factors that we considered in
8 making the basis for our decision to go lump sum.

9 MR. MERONEK: Unless I missed it, sir,
10 I'm hearing these factors for the first time.
11 That's the first time that I have heard about
12 these different considerations on the record.
13 Other than the fact that you indicated previously
14 that you would be concerned about searching a
15 thousand titles and making sure that the proper
16 person got the proper payment, correct?

17 MR. GRAY: In the presentation that I
18 made in Niverville, the question came up as
19 whether or not Manitoba Hydro could make annual
20 payments. And I made reference that, in fact, we
21 believe we could make annual payments.

22 MR. MERONEK: Sure.

23 MR. GRAY: And basically, I don't
24 recall specifically referencing the administrative
25 burden specifically, that there were factors that

1 were considered. I equated an example. I guess
2 maybe perhaps, and maybe this is the time I should
3 do this, and I will leave it to you to decide, is
4 to clarify what an annual payment would be?

5 MR. MERONEK: You've got the mic.

6 MR. GRAY: Okay. Basically what we
7 consider, I guess the first question was, could we
8 make annual payments? And the answer was yes,
9 Okay. Is it easy? And I said it's not practical,
10 there are some difficulties in that.

11 Specifically where we would be able to
12 make an annual payment that would make it in the
13 best interest of both the landowner and Manitoba
14 Hydro, would be in the area of the damages and the
15 structure payment. We believe the land
16 compensation payment, or the payment for the
17 easement would be best to be a lump sum up-front
18 payment, like most land transactions are. We also
19 believe, and Mr. Curtis addressed it, the issue on
20 construction damages and ancillary, how they would
21 have to be dealt with as part of due compensation.

22 The question that came up, is it easy
23 to make a payment? It is difficult for the
24 reasons I have explained.

25 In addition to that, some of the

1 things too would be the issue on how they would be
2 made, how they would be reviewed, and landowners
3 advising Manitoba Hydro of, you know, changes in
4 ownership and so on and so forth. So the
5 culmination of these factors are all things as to
6 why we have a preference for a lump sum payment.
7 But we do have the option. We could -- we could
8 work around and make it an annual payment on a
9 portion of the compensation package.

10 MR. MERONEK: Manitoba Hydro has
11 several hundred thousand customers, doesn't it?

12 MR. GRAY: Manitoba has several
13 hundred thousand customers?

14 MR. MERONEK: Yes, sir.

15 MR. GRAY: Correct.

16 MR. MERONEK: And a lot of the
17 customers move around on a regular basis, correct?

18 MR. GRAY: Correct.

19 MR. MERONEK: And it's probably an
20 administrative nightmare to try to determine who
21 owes what and when; correct?

22 MR. GRAY: Correct.

23 MR. MERONEK: Here we have, what, 400,
24 500 landowners, maybe a thousand titles; correct?

25 MR. GRAY: Yes, correct.

1 MR. MERONEK: And rural landowners
2 aren't prone to be moving around everyday, are
3 they, sir?

4 MR. GRAY: I'm not sure. Landowners
5 move, whether they are rural or they are urban,
6 all the time.

7 MR. MERONEK: All right. And clearly
8 you can put into play a system whereby if you're
9 going to get an annual payment, that the person
10 who is receiving the annual payment must
11 demonstrate that they still own the land, correct?

12 MR. GRAY: Please repeat that, I
13 didn't hear you?

14 MR. MERONEK: Clearly, you can put
15 into place a program whereby, before someone gets
16 paid on an annual basis, they have to demonstrate
17 that they are still the landowner entitled to the
18 payment; correct?

19 MR. GRAY: Yes, we could put in a
20 program for that.

21 MR. MERONEK: And clearly, if a
22 landowner is being impacted negatively over the
23 course of several years, it would be more fair to
24 the landowner to have that compensation damage
25 reviewed on a more regular basis, in order to

1 capture accurately the loss to that particular
2 landowner. Would you agree with that, sir?

3 MR. GRAY: That could be arranged.

4 MR. MERONEK: The other thing is it's
5 my understanding, sir, that a lump sum payment is
6 taxable in the year it's received. Are you
7 familiar with that?

8 MR. GRAY: I cannot comment on the tax
9 situation.

10 MR. MERONEK: You haven't looked into
11 that?

12 MR. GRAY: We have looked into it, and
13 we were advised that the payment -- I'm going to
14 just make a reference here.

15 MR. McLEOD: Might I jump in? We have
16 been instructed that the payment, although
17 reportable, we are unable as Manitoba Hydro to
18 determine whether or not what portion of it is
19 taxable. That's between the landowner and their
20 accountant.

21 MR. MERONEK: Thank you. Those are my
22 questions.

23 THE CHAIRMAN: You are done with
24 everybody on this panel?

25 MR. MERONEK: Well, I don't have to

1 be.

2 THE CHAIRMAN: Well, I just wanted to
3 clear things up. Thank you, Mr. Meronek.

4 MS. MAYOR: Mr. Sargeant, there were
5 two questions that were asked by Mr. Meronek to
6 Mr. Nielsen this morning, and I believe
7 Mr. McGarry may have some clarification to tie off
8 that loose end from this morning.

9 THE CHAIRMAN: Good, thank you.

10 MR. MCGARRY: Yes. The question was
11 related to routes on the map before you, how they
12 evolved into becoming routes A, B and C in the
13 subsequent routing step.

14 Mr. Nielsen and I have conversed, and
15 although we don't have mapping overlays for you
16 directly, we can see from the maps in his
17 technical report that in Southern Manitoba -- I'll
18 try and point out to you the routing here. That
19 route, that route and this one here did become
20 part of the A, B, C. There was some slight
21 modification, especially at the Red River in
22 trying to determine a Red River crossing. But in
23 general, Mr. Nielsen's work was the basis of
24 selecting A, B, C, with some slight modification.

25 There was a second question which I'll

1 turn over to Mr. Nielsen, regarding on page 48
2 section 7.6, bullet number one. Perhaps he'd like
3 to read that and give his response?

4 MR. NIELSEN: Just as a point of
5 clarification, the 7.61 says alternative route A
6 from Riel station to Long Plains, and follows
7 alternative route B from Long Plains segment down
8 through segment BB 3, which is the Cowan bog, and
9 onto AC 2. And it's defined as the preferred
10 route.

11 MR. MERONEK: Thank you.

12 MR. NIELSEN: My apologies for not
13 recognizing that.

14 THE CHAIRMAN: Thank you.

15 Mr. McGarry, this is off on a tangent
16 but as the Chair I can do that. We have heard
17 reference this morning and on other occasions to
18 LaVerendrye, which I think is a substation. Can
19 you show us on that map where it is?

20 MR. MCGARRY: I'm afraid I can only
21 give you a rough idea. I don't have the exact
22 station location.

23 THE CHAIRMAN: Even a rough idea is
24 good enough.

25 MR. MCGARRY: I think Mr. Neufeld will

1 do a better job than that, but somewhere in this
2 quadrant corner of the city.

3 THE CHAIRMAN: Not far from Oak Bluff?

4 MR. MCGARRY: Yes.

5 THE CHAIRMAN: That's good enough for
6 me. Thank you.

7 Don't get too excited Mr. Williams, I
8 think -- Mr. Keating, I think, do you have some
9 questions for this panel? And I believe you also
10 have, I thought you had some personal issues that
11 you wanted to leave this afternoon. I understand,
12 I was informed you had some issues that you wanted
13 to leave this afternoon, so if you can come up now
14 and do this?

15 MR. KEATING: Sean Keating,
16 Tataskweyak Cree Nation. Thank you to the panel.

17 As noted these questions are directed
18 to Ms. Hicks. And I refer to the presentation,
19 the presentation entitled "Socioeconomic Effects
20 Assessment Overview." I refer to slide 29, Bipole
21 III line, resource use, domestic resource use?

22 MS. HICKS: Yes.

23 MR. KEATING: In the EIS I notice
24 there was little reference to any of the
25 self-directed studies in the assessment of impacts

1 upon domestic resource use. And I was just
2 wondering, as a general question, what was the
3 process for incorporating any of the content of
4 the self-directed studies into the EIS assessment
5 of impacts upon domestic resource harvesting?

6 MS. HICKS: Most of the ATK studies,
7 either the workshop or self-directed, were looked
8 at by each of the specialists, was my
9 understanding. And then in going through the
10 specialist reports, we pulled what was pertinent,
11 sort of a summary into chapter eight.

12 MR. KEATING: Okay, thank you. I go
13 to the next slide, and I just want to understand
14 what the restrictions are on hunting and fishing,
15 the fourth bullet?

16 MS. HICKS: The first bullet?

17 MR. KEATING: Hunting and fishing by
18 project personnel prohibited.

19 MS. HICKS: Basically, yes, project
20 personnel are prohibited from hunting and fishing,
21 and they are also prohibited from having firearms
22 at the work camps.

23 MR. KEATING: Right. But where
24 exactly are they prohibited from hunting?

25 MS. HICKS: Around the project area,

1 anywhere in the vicinity of the project area.

2 MR. KEATING: You mean the project
3 area, anyone that works at these construction
4 camps, while they are at the camp, will not be
5 able to hunt anywhere in the project study area?

6 MS. HICKS: They will not be able to
7 hunt or fish in that area while they are employed
8 by Manitoba Hydro, yes.

9 MR. KEATING: What about when these
10 workers are not at the construction camps, when
11 they are on their days off, does the normal regime
12 just apply then? And I assume that Aboriginal
13 people will still have preferential hunting and
14 fishing rights?

15 MS. HICKS: They can't bring firearms
16 to the work camps. They can't have them in their
17 possession. So therefore they cannot during their
18 off time -- when their employed they stay at the
19 camps and they are not allowed to hunt and fish.

20 MR. KEATING: Right, but I'm referring
21 to when they are not in the camp. I assume, I
22 don't know the exact schedule, but I understand
23 workers are in the camp for ten days roughly, and
24 then they are off for three or four days. I'm
25 referring to those three or four days when they

1 are not in the camp?

2 MR. ELDER: Hi, it's Rob Elder
3 speaking here. Yes, the camp schedule will be
4 based on the BNA, and we anticipate a good portion
5 of the workforce will be flying in and out to
6 site, and on their days off they will be flying
7 back south.

8 MR. KEATING: Sorry, I'm actually
9 having a hard time hearing you. Can you repeat
10 that? I'm sorry.

11 MR. ELDER: So your question was, will
12 there be any hunting pressures from the workers on
13 their off days? Yes, we anticipate a big chunk of
14 the Keewatinoow workforce will be from out of the
15 region. They will be flown up to site, bused to
16 Keewatinoow. While at site, there will be no
17 provisions for any personal firearms or anything
18 like that. And then on their off days, they will
19 be flown back down to the south. So your
20 question, will they go hunting in the Gillam area
21 on their days off? We don't anticipate that.
22 They will be back down in the south.

23 MR. KEATING: I'm sorry, when you say
24 the south, what do you mean exactly?

25 MR. ELDER: Well, we don't think they

1 will be -- most of the workforce will not be from
2 the Gillam area.

3 MR. KEATING: But what about Thompson
4 and surrounding communities?

5 MR. ELDER: We don't anticipate --
6 they will be, certainly the hiring preferences
7 will be, the first preference will be the northern
8 folks, but even that, we think the bulk of the
9 workers will come from non in the north, so they
10 will be flown into Gillam and bused to site.

11 MR. KEATING: You said the bulk of the
12 workers will be hired from where?

13 MR. ELDER: Well, we will go through
14 the hiring preferences as indicated in the BNA.
15 And so once you get down to those further hiring
16 preferences, they will be from the rest of
17 Manitoba, and we anticipate we will get there
18 pretty quickly. So if workers aren't allowed to
19 have their guns on site, they have no personal
20 vehicles at site, then on their days off, they
21 will be flying back to wherever home is for them.

22 MR. KEATING: What about workers in
23 the mobile construction camps?

24 MR. ELDER: Again, there will be no
25 allowance of hunting -- or of firearms in the

1 site.

2 MR. KEATING: But, again, sorry, I'm
3 referring to days off?

4 MR. ELDER: If they are off of the
5 construction site, they will be under the same
6 rules as anybody else in Manitoba as far as
7 hunting goes.

8 MR. KEATING: Thank you. Restrictions
9 on fishing aren't noted in the EIS. When I read
10 those presentations, this is the first time that I
11 saw that. What restrictions on fishing are we
12 talking about?

13 MS. HICKS: I will have to take a look
14 at the EIS because I think there was something in
15 here.

16 MR. KEATING: It's not a particularly
17 big deal.

18 MS. HICKS: You know what, I am sure
19 it is here. Can we maybe just check it out and
20 then come back to you with a number?

21 MR. KEATING: Sure. My next question
22 concerns assessment of impacts from the
23 construction of the Bipole III line on personal,
24 family and community life and services. And I
25 guess I refer to slides 32 and 34.

1 MS. HICKS: Okay.

2 MR. KEATING: I was just curious why
3 there were no potentially significant adverse
4 effects determined with respect to the impact of
5 the construction of the Bipole III line on the
6 environmental components I just mentioned, as
7 opposed to the finding of three potential
8 significant effects with respect to the
9 Keewatinoow converter station?

10 For much of the northern line, from
11 the converter station down south of Thompson,
12 Thompson is the only fairly large community in the
13 area. And I understand that clearing and
14 construction of the line in the north will take
15 place over two or three winters. And it strikes
16 me, I don't have the exact numbers, but there were
17 workers for the clearing, anywhere from 10 to 50 I
18 think, and then workers for the actual
19 construction of the line, anywhere from 20 to 100
20 perhaps.

21 And it seems to me that over three
22 winters, there will be quite a few outsiders in
23 the vicinity of Thompson, where a lot of First
24 Nations people live, including Tataskweyak Cree
25 members. And I just wanted to know why the

1 potentially significant adverse effects on
2 services, and personal, family and community life
3 with respect to the Bipole III line were not
4 determined?

5 MS. HICKS: It's quite different in
6 the case of the Bipole III line, because, again,
7 winter will only be occurring in the winter
8 seasons, and basically workers are going to be
9 housed in mobile camps and they won't be in any
10 one mobile camp for that long. Like it's going to
11 be progressing along the length of the line. So
12 it's not like Keewatinoow, where you have this
13 workforce that is going to be in place for how
14 many years -- five or more. In the case of the
15 Bipole III line, it's going to be winter only and
16 it's going to move, the activity is basically
17 moving. So it's a different issue.

18 MR. ELDER: I guess just to add to
19 that, in the area that you're referring to, one of
20 the mitigating strategies for the clearing and
21 grubbing is we're looking at DNC contract with
22 TCN. The more TCN members in that area doing that
23 work, the less workers from outside the areas we
24 have to bring in.

25 MS. HICKS: I found the reference to

1 the restrictions on fishing. It's in chapter 8,
2 page 278. And I can read it for you, if you want?

3 MR. KEATING: Sure.

4 MS. HICKS: "Existing sport fishing
5 regulations, in addition to
6 restrictions to fishing by contractors
7 will be sufficient to address any
8 changes in fish pressure. Therefore
9 the impact of the construction of the
10 Keewatinoow converter station and
11 facilities is negative, small in
12 magnitude, project footprint, local
13 study area and geographic extent,
14 short-term in duration and therefore
15 not significant."

16 MR. KEATING: Does that pertain to
17 restrictions on fishing by camp personnel?

18 MS. HICKS: Yes, personel and
19 contractors.

20 MR. KEATING: Okay. Well, my mistake
21 I apologize for missing that.

22 MS. HICKS: I knew it was in there
23 somewhere I just couldn't find it readily either.

24 MR. KEATING: My last question
25 pertains to slide 40. I would just like an

1 acknowledgment that it's also contemplated that
2 there will be discussions with Tataskweyak Cree
3 Nation in addition to Fox Lake Cree Nation?

4 MR. ELDER: I think there is already
5 discussions ongoing and they will continue,
6 certainly.

7 MR. KEATING: Thank you.

8 MS. HICKS: Thank you.

9 MR. KEATING: That's all.

10 THE CHAIRMAN: Thank you, Mr. Keating.
11 I don't know if there's any special arrangement
12 among the participants, Mr. Williams?
13 Mr. Stockwell? Who has about 15 minutes? Okay go
14 for it.

15 MR. WILLIAMS: Just mindful of the
16 witness, perhaps it might even be possible to
17 get -- we may be able to release them but I guess
18 we'll see after. You'll have questions, of
19 course.

20 THE CHAIRMAN: We have hours of
21 questions.

22 MR. WILLIAMS: Yes. After I rudely
23 pushed to the front of the cue, Ms. Hicks, I want
24 to assure you I have no questions about the
25 colours magenta or Dijon. Although, I was very

1 impressed with Mr. Meronek for knowing what those
2 colours were.

3 Just to follow up briefly on a
4 question that the Chair posed to you last week,
5 after your presentation, with regard to your
6 socioeconomic study and mental health data. It
7 would be accurate to suggest to you that if we
8 looked at your report, it does not present
9 baseline indicators for perceived life stress;
10 agreed?

11 MS. HICKS: Correct.

12 MR. WILLIAMS: I am just going to ask
13 you to speak up, Ms. Hicks, for my benefit and
14 perhaps for the benefit of the court reporter, who
15 I think has been pretty busy.

16 And it would be accurate as well to
17 suggest to you that your report does not present
18 baseline indicators for self-rated mental health?

19 MS. HICKS: That's correct.

20 MR. WILLIAMS: Moving to infectious
21 diseases.

22 MS. HICKS: Can I respond to why it's
23 not there?

24 MR. WILLIAMS: It is a free country,
25 Ms. Hicks, absolutely.

1 MS. HICKS: Thank you. Stress and
2 anxiety comes, potentially can come because of
3 project -- concerns about a new project that
4 people might fear for how that might impact their
5 lives. Anxiety about new things happens all the
6 time. But in this case, people have, I think in
7 some previous hearings for this Bipole project,
8 have expressed concerns about anxiety. But there
9 are no direct biophysical links to those
10 uncertainties.

11 What Manitoba Hydro is trying to do is
12 look at these concerns, and they are committed to
13 finding ways to mitigate these to make it better
14 for people so that they are less anxious. But
15 there is not an environmental effect from the
16 project that can be attainable or assertable to
17 mental well-being.

18 MR. WILLIAMS: Now, Ms. Hicks, in
19 terms of your expertise, do you profess to be an
20 expert in the health impact effects of large
21 natural resources driven projects?

22 MS. HICKS: I have looked at the
23 literature in terms of projects which have
24 conducted these sorts of effects studies.

25 MR. WILLIAMS: Just so I'm clear, just

1 going back to your curriculum vitae, I believe you
2 have a masters in geography?

3 MS. HICKS: Correct.

4 MR. WILLIAMS: And recognizing that
5 you have read some learned articles, my question
6 was more specific. Are you presenting yourself as
7 an expert in the health impact effects of large
8 natural resources projects like this?

9 MS. HICKS: No, I'm not an expert.
10 But based on my experience in doing these type of
11 projects since 1989, and looking at what other
12 people have done when they actually have done
13 these sorts of risk assessments, I don't see a
14 linkage between this project and the need to have
15 a human health risk assessment.

16 MR. WILLIAMS: And we'll come back to
17 that. And again, analytically, Ms. Hicks, are you
18 able to -- without asking you to elaborate, you
19 understand the difference between a human health
20 risk assessment and a health impact assessment?

21 MS. HICKS: Yes.

22 MR. WILLIAMS: Okay. So when you used
23 the words human health risk assessment just now,
24 you misspoke. Because really what we're talking
25 about now is health impact assessment, agreed?

1 MS. HICKS: Agreed.

2 MR. WILLIAMS: So we will come back to
3 that, and we will come back to the literature in
4 just a second or two.

5 Let's chat about infectious disease
6 transmission. It would be accurate to suggest to
7 you that your report does not present baseline
8 indicators for gastrointestinal disease outbreaks;
9 agreed?

10 MS. HICKS: That's correct.

11 MR. WILLIAMS: And it would again be
12 accurate to suggest to you that your report does
13 not present baseline indicators for current rates
14 of sexually transmitted disease in the area?

15 MS. HICKS: That's correct.

16 MR. WILLIAMS: Okay. Now, you made
17 reference to the literature, and would I be
18 correct -- let me try this again. In your
19 preparation for this project, would you have had
20 reference to the filing, the National Energy
21 Board's filing manual in terms of environmental
22 and socioeconomic assessment?

23 MS. HICKS: Yes, I actually was a
24 project coordinator for the Glenboro Rugby Harvey
25 international transmission line, which got its

1 approval from the National Energy Board in 2002, I
2 believe.

3 MR. WILLIAMS: Okay. So you are
4 familiar with their guidelines, guide A 2,
5 environment, environmental and socioeconomic
6 assessment?

7 MS. HICKS: Yes.

8 MR. WILLIAMS: Okay. Can we agree
9 that sociocultural effects on local communities
10 associated with projects such as this can arise
11 from various sources, one of which is an increase
12 in temporary residents within an area?

13 MS. HICKS: Can you repeat that again?
14 I'm sorry, I didn't quite follow your logic.

15 MR. WILLIAMS: I'm not sure if it's my
16 logic or the Natural Energy Board's, but let's
17 work through it.

18 Can we agree that sociocultural
19 effects on local communities can arise in the
20 context of projects such as these from increases
21 in temporary residents within an area?

22 MS. HICKS: Correct.

23 MR. WILLIAMS: And we can agree as
24 well that sociocultural effects on local
25 communities, in the context of a project such as

1 this, can arise from the location of construction
2 camps near local communities; agreed?

3 MS. HICKS: Correct.

4 MR. WILLIAMS: And again, you'll agree
5 with me that in the context of construction
6 projects such as this, another potential source
7 for sociocultural effects might be a significant
8 increase in personal income at the community
9 level? Might be good effects, might be bad
10 effects.

11 MS. HICKS: Correct.

12 MR. WILLIAMS: And another potential
13 source in the context of projects such as these
14 for sociocultural effects on local communities can
15 be the uneven distribution of personal income at
16 the community level?

17 MS. HICKS: Correct.

18 MR. WILLIAMS: And again, another
19 potential source, in the context of projects such
20 as these, for sociocultural effects on local
21 communities can arise from disruptions to cultural
22 traditions and institutions; agreed?

23 MS. HICKS: Correct.

24 MR. WILLIAMS: And considering the
25 potential sources for sociocultural effects we

1 have just discussed, you would not disagree that a
2 potential effect is stress on family and community
3 cohesion?

4 MS. HICKS: There is no direct pathway
5 in terms of the project, the biophysical part of
6 the project in terms of the mental stress. That's
7 not an effect from the project.

8 What we have done is, what we have
9 taken is we have looked at, for example, impacts
10 on emergency health response. We have looked at
11 impacts on healthcare services provision. We have
12 looked at noise, we have looked at dust, we have
13 looked at vibration, we have looked at EMF, we
14 have looked at all those factors. That's what we
15 have looked at, because there is a pathway to
16 effect on people.

17 MR. WILLIAMS: So it is your opinion
18 and your advice under oath that the National
19 Energy Board has not provided guidance to
20 practitioners that the potential effect from the
21 sources we just discussed could include stresses
22 on community, family, and household cohesion?

23 MS. HICKS: What I gauge from the NEB
24 guide, and it is a guide, was that it's almost
25 like a screening, a step where you're screening.

1 So you go to step one, you go to step two, and if
2 then if you don't feel you -- go to step four, if
3 you don't have to based on your project, you make
4 that decision, then you don't go to step four,
5 which would be a human impact assessment.

6 MR. WILLIAMS: And again, you meant to
7 say health impact assessment?

8 MS. HICKS: Correct, sorry.

9 MR. WILLIAMS: Let's just be clear in
10 terms of the guidance from the National Energy
11 Board, though, Ms. Hicks. Given the effects that
12 we discussed, you would not disagree that the
13 National Energy Board guidance documents identify
14 a potential effect from the sources we discussed
15 in terms of stresses on community, family and
16 household cohesion; agreed?

17 I'm just asking you what the National
18 Energy Board has provided guidance about,
19 Ms. Hicks.

20 MS. HICKS: Yes, it does acknowledge
21 that.

22 MR. WILLIAMS: Ms. Hicks, I'm not
23 looking for necessarily the most recent figures,
24 but I just want to get a sense of populations
25 within Gillam, Bird, and Keewatinoow. And I just

1 want to make sure that the figures I discern from
2 your EIS, Ms. Hicks, are in the ballpark.

3 Ms. Pollet Smith, it's page 3-113, if
4 you're looking.

5 And Ms. Hicks, you can accept these
6 subject to check if you want to just --

7 MS. HICKS: Just one sec, let me just
8 find them.

9 MR. WILLIAMS: Ms. Hicks, if you're
10 looking for two references, because I just want to
11 make sure we're ballpark, one is chapter three,
12 page 113. And the other one, Ms. Hicks, will be
13 page 8-299. And just to move the process along,
14 you could accept them subject to check.

15 MS. HICKS: Sure.

16 MR. WILLIAMS: And Mr. Osler is very
17 sharp, he'll make sure if I --

18 If we're talking about the estimate of
19 the Fox Lake Cree Nation community at Bird, circa
20 June 2011, would it be around 134 persons, subject
21 to check?

22 MS. HICKS: Subject to check, yes.

23 MR. WILLIAMS: And if we're talking
24 about the population of Gillam, not based on --
25 let's say the 2006 census, you'd agree subject to

1 check, it's in the range of 1,200 persons?

2 MS. HICKS: Yes, subject to check.

3 MR. WILLIAMS: And let's divide
4 Keewatinoow, first of all, in terms of its
5 construction, we can estimate that the start-up
6 camp workforce would be approximately 350 persons
7 at its peak, subject to check? That's actually in
8 your --

9 MS. HICKS: Yes.

10 MR. WILLIAMS: And then once the main
11 camp is built, and we're looking at its peak
12 including both construction at Keewatinoow and
13 transmission combined, at that point in time we're
14 talking peak of around 500?

15 MS. HICKS: That's correct.

16 MR. WILLIAMS: Ms. Hicks, I thank you
17 for your time. Mr. Chairman, members of the
18 panel, thank you.

19 THE CHAIRMAN: Thank you very much
20 Mr. Williams. Just a few minutes to 12:00. How
21 much time do you have, Mr. Stockwell?

22 MR. STOCKWELL: Not long.

23 THE CHAIRMAN: Okay.

24 MR. STOCKWELL: On slide 29 that
25 Mr. Keating referred to, what does this say about

1 domestic resources, the use and the benefits that
2 come from domestic resources? Basically, the
3 question is, is there any sharing of these
4 domestic resources with First Nations?

5 MS. HICKS: I don't quite understand
6 your question. Could you repeat your question,
7 please?

8 MR. STOCKWELL: On slide 29 you are
9 talking about domestic resource use.

10 MS. HICKS: Yes.

11 MR. STOCKWELL: The question is quite
12 simple, is there any sharing of these resources,
13 or the benefits of these resources with First
14 Nations?

15 MS. HICKS: Well, most of the domestic
16 resource use, and how it was written, and the
17 various studies in the workshop, that information
18 came from First Nations that chose to either
19 undertake with Northern Lights Heritage Services a
20 workshop, or chose to do self-directed studies.
21 So this would be information that First Nations
22 themselves have put together, along with Northern
23 Affairs communities and the Metis Federation.

24 MR. STOCKWELL: We established
25 yesterday that many times, or many instances, the

1 information that was gathered from the ATK was not
2 actually passed through or did not get through to
3 the EIS. Do you have any comments on that?

4 MS. HICKS: I think what the
5 protocol -- I wasn't particularly involved, but I
6 think the information from the self-directed
7 studies, as well as the workshop results, were
8 given to the team of specialists. The team of
9 specialists then would look at what information
10 was pertinent to their discipline. And then the
11 chapter in the EIS, chapter 8, ends up summarizing
12 that information.

13 If you look back in, like the land use
14 technical report, for example, there's a lot about
15 domestic resource use in there. There's the
16 Berger technical report, I think has some
17 information about domestic resource use. So the
18 information derived was given to each of the
19 individual disciplines to take a look at, and then
20 chapter 8 is just basically a summary of -- more
21 of an overall picture.

22 MR. STOCKWELL: Do you think you
23 missed any of these elements in your study?

24 MS. HICKS: I didn't do a study, I
25 compiled from what I had.

1 MR. STOCKWELL: Okay, very good.

2 MS. HICKS: And I believe that there
3 will be more information, and I think there's a
4 presentation forthcoming on it, in terms of the
5 Environmental Protection Plan and areas where
6 First Nations or Northern Affairs communities, the
7 Metis Federation, may request that a particular
8 site be protected in some way or avoided. So
9 there is more detail down the road.

10 MR. STOCKWELL: Good. Thank you.

11 MS. HICKS: Thank you.

12 MR. STOCKWELL: We heard from the
13 agricultural area, and actually from you earlier
14 that there is negotiation with landowners as far
15 as whether or not a tower is going to go in their
16 land, or where it's going to be placed. Does that
17 occur also with First Nations?

18 MS. HICKS: I think a Hydro person
19 might be better to answer that, but my
20 understanding is Hydro does tower spotting where
21 there are issues of concerns.

22 MR. ELDER: I think, as Ms. Zebrowski
23 has already indicated, we are talking to a number
24 of the First Nations, including Pine Creek.

25 MR. STOCKWELL: Sorry, I'm not getting

1 all of that?

2 MR. ELDER: As Ms. Zebrowski has
3 already indicated, we are talking to a number of
4 the First Nations communities, and I think Pine
5 Creek is one of those.

6 MR. STOCKWELL: While you're on the
7 mic, I have a question for you. Mr. Keating
8 brought it up, the working on the Bipole line.
9 And you mentioned that you're making every effort
10 to work with TCN in that area, and that they would
11 essentially become custodians of the Bipole
12 project, or the clearing project and the
13 maintaining project in their own area.

14 MR. ELDER: I don't think that's what
15 I said. I said one of the mitigating factors in
16 that area is that we have been talking with TCN
17 about a direct negotiated contract to do that
18 work.

19 MR. STOCKWELL: Yes. And if it's just
20 put in slightly different language, they could
21 become the custodians of their own area, of the
22 maintenance and clearing of Bipole in their own
23 area?

24 MR. ELDER: I wouldn't context it like
25 that.

1 MR. STOCKWELL: Well, essentially
2 that's what's happening. You're saying the more
3 TCN people are involved in the clearing and
4 maintaining of the line, the better.

5 MR. ELDER: I think the context was,
6 how are we mitigating workers in that area.

7 MR. STOCKWELL: Yeah.

8 MR. ELDER: And part of the response
9 to that is, the more TCN members that are working
10 on that, the less workers from outside of that
11 area have to be brought in.

12 MR. STOCKWELL: Exactly. And the same
13 thing would apply to Pine Creek, I would say, the
14 best thing that could happen would be if Pine
15 Creek members became custodians of the watershed
16 as far as Bipole is concerned. Would you agree
17 with that?

18 MR. ELDER: Sorry, I don't follow what
19 the question is?

20 MR. STOCKWELL: Would you agree with
21 the statement that, if we could get Pine Creek
22 workers working in the clearing of Bipole in their
23 own watershed, in the watershed that drains
24 through Pine Creek First Nation, it would be a
25 good thing?

1 MR. ELDER: Yes, it would be a good
2 thing, yeah.

3 MR. STOCKWELL: They would essentially
4 become part of the custodial care of that area, of
5 the watershed?

6 MR. ELDER: Again, that's your term.
7 I think if your question is, if we can employ as
8 much of the local people as possible, certainly
9 that would be our goal.

10 MR. STOCKWELL: Great.

11 Just back to Ms. Hicks. We were
12 talking about negotiation with landowners in the
13 south as far as that was concerned. And one of
14 the things you mentioned earlier was that Hydro
15 negotiates until settlement with farmers. And I
16 would assume that Hydro would also negotiate with
17 First Nations in the same way, and in the same --
18 with the same care. Would that be correct?

19 MR. ELDER: Yes, I think we have
20 already, as Ms. Zebrowski has already stated
21 earlier, we continue to work with the First
22 Nations that are affected and will continue to.

23 MR. STOCKWELL: I have a couple of
24 questions on First Nation crops. I believe that
25 the First Nations are harvesting things like rat

1 weed and cranberry bark, and various barks of
2 other plants that grow in their area, and they are
3 actually selling these plants or these materials
4 that they gather. Would these be considered a
5 crop?

6 MS. HICKS: You know what, I am not an
7 agricultural expert. I can't -- the only thing I
8 know is that plants that are important to
9 Aboriginal people have been identified through the
10 ATK process, and there are various measures to
11 protect those in terms of what might or might not
12 be done if they are in the vicinity of the
13 right-of-way. But I don't know if these are crops
14 or not. Jim Nielsen, our agricultural person, we
15 could probably ask him.

16 MR. ELDER: Maybe if I could add to
17 that, James Matthewson will be doing a
18 presentation later about the next steps in the
19 Environmental Protection Process. Part of that is
20 to sit down with the various communities and
21 identifies issues of concern. So I'd suggest, if
22 it's all right with you, leave that question for
23 Mr. Matthewson.

24 MR. STOCKWELL: What I'm getting at
25 is, of course, there's all kinds of compensation

1 for farmers in the south that are producing crops,
2 and I just want to make sure that First Nations
3 have compensation plans in place for that as well.
4 Is that fair?

5 MR. ELDER: I'd be really speaking
6 out -- I have never even heard of the two plants
7 you are talking about. So sorry, let's --

8 MR. STOCKWELL: Just suffice it to say
9 that First Nations do have crops and they are --
10 they have an economic impact. And some of these
11 crops are also sustenance crops, but there are
12 crops that have an economic impact. And I'm not
13 even going to mention the small berry we had been
14 talking about forever, that also has an impact.

15 MS. HICKS: There is a plan in place
16 with some of these things going forward.
17 Obviously not to affect them would be the ideal
18 case, but where you have to affect them, there
19 will be forthcoming discussions on that. If
20 something is important to a community, in my
21 experience, I have never had Manitoba Hydro not
22 talk to a community. If you have a concern, you
23 need to bring it forward and get the right people
24 talking to you.

25 MR. STOCKWELL: Okay. I just want to

1 make sure that it's not considered something other
2 than a crop in that respect, as far as the
3 compensation respect is concerned.

4 MS. HICKS: Even if it isn't a crop,
5 it's a resource that's important to your
6 community, right? So that's something that needs
7 to be brought to Manitoba Hydro's attention. If
8 it's a resource or a crop, if it's something
9 that's valuable to your community that might get
10 affected, you need to make sure that Hydro knows
11 that so then you can work out a plan or
12 mitigation, or whatever that might mean.

13 MR. STOCKWELL: Okay, very good.
14 Thank you.

15 THE CHAIRMAN: Mr. Stockwell, I'm not
16 cutting you off, but it is lunch time, I'm just
17 wondering if you have one or two questions --

18 MR. STOCKWELL: Five minutes.

19 THE CHAIRMAN: Five minutes and that
20 will be it?

21 MR. STOCKWELL: You can cut me off in
22 five.

23 THE CHAIRMAN: I don't want to cut you
24 off. You know, if it's going to be more than five
25 minutes, we'll give you an opportunity later to

1 pursue these.

2 MR. STOCKWELL: Okay. The questions I
3 have are relatively straightforward.

4 THE CHAIRMAN: Okay, five minutes.

5 MR. STOCKWELL: If the answers can be
6 straightforward, we're good.

7 THE CHAIRMAN: Go ahead.

8 MR. STOCKWELL: Ms. Hicks, are you
9 aware of the water concerns in Pine Creek? Are
10 you aware of the septic situation as far as health
11 is concerned, that the septic tanks are saturated,
12 and any water additional to what's already in Pine
13 Creek is going to cause problems, or will
14 exacerbate a septic situation, a negative septic
15 situation?

16 MS. HICKS: The only thing I have
17 heard about that was that Manitoba Hydro was
18 working with Pine Creek in terms of that issue.
19 I'm not familiar with the details at all. I
20 understood that Manitoba Hydro was working with
21 Pine Creek about that, and that there had been a
22 meeting or something. But that's the extent of my
23 knowledge.

24 MR. STOCKWELL: That's the extent of
25 my knowledge as well.

1 So were you in contact with Aboriginal
2 Affairs concerning the water and wastewater
3 reports that they give? They give a rating for
4 each First Nation.

5 MS. HICKS: No, I was not. I'm
6 assuming that if Manitoba Hydro and Pine Creek are
7 talking about that, though, that somebody at Hydro
8 would have been responsible for that.

9 MR. STOCKWELL: Well, just to clarify,
10 it's not a question but just to clarify, we have
11 talked about it but we don't have anything
12 substantial that's happening about it. And we're
13 concerned about that, very concerned about that.

14 MS. HICKS: Okay.

15 MR. STOCKWELL: I was also concerned,
16 or I also was interested in your answer to
17 Mr. Williams on stress and anxiety, and I'm sure
18 that Pine Creek is suffering from a lot of stress
19 and anxiety. How would you suggest that we
20 address that?

21 MS. HICKS: Well, I think through your
22 continued discussions with Manitoba Hydro, as I
23 said, there's not a direct -- the stress and
24 anxiety that a potential project might cause
25 people is not a direct link. There's not a direct

1 link between the biophysical effects of the
2 project and that. But what Manitoba Hydro is
3 trying to do through mitigation, and just
4 communicating with people on these issues where
5 they have a concern, that's the best way to deal
6 with it. It's not a direct project effect. But
7 that being said, it's still being -- obviously
8 Manitoba Hydro doesn't want people to be overly
9 stressed. So I would say continue working with
10 Manitoba Hydro as the project moves through in
11 terms of protection plans and in terms of what the
12 issues are is the best way, communication.

13 MR. STOCKWELL: Very good. That's my
14 questions. Thank you, Mr. Chairman.

15 THE CHAIRMAN: Thank you very much,
16 Mr. Stockwell.

17 In a couple of minutes we're going to
18 break for lunch, but first Mr. Beddome hasn't had
19 his kick at the can at this panel, and
20 Commissioners may have some questions as well.

21 Mr. Beddome, if you could let the
22 Commission secretary know off the record which of
23 the panel members you would like to ask questions
24 of, that includes these people as well as the
25 agricultural and land compensation people. I will

1 canvass the panel members and see who we would
2 like to ask questions of. And we'll have them
3 recalled for, I'm not sure when, perhaps later
4 this afternoon, perhaps tomorrow, perhaps who
5 knows.

6 This afternoon immediately after lunch
7 we're going to have a presentation on the Pine
8 Creek watershed study, which will be followed
9 immediately by cross-examination on that
10 presentation lead off by the Pine Creek
11 consultants.

12 At 3:00 o'clock we have what might be
13 called order of the day, because of the
14 availability of a witness. The Peguis First
15 Nation is bringing Peter Kulchyski as their
16 witness. He will make his presentation. As that
17 is part of Peguis's presentation, Dr. Kulchyski
18 will be subject to cross-examination by the
19 proponent, by other presenters, and by questions
20 from the panel.

21 Depending on how long the Pine Creek
22 watershed study and the Peguis presentation take,
23 we may get to the Environmental Protection Plan
24 today, I suspect not.

25 So break for lunch, come back at 1:15

1 sharp, please?

2 (Proceedings recessed at 12:12 p.m.
3 and reconvened at 1:15 p.m.)

4 THE CHAIRMAN: We will reconvene.
5 This afternoon we'll start with the Pine Creek
6 watershed study, which will be followed
7 immediately by cross-examination on that
8 presentation. I don't believe any of these
9 panelists have been sworn, so madam secretary?

10 MS. JOHNSON: Could you please state
11 your names for the record?

12 MR. SLOTA: Phillip Slota.
13 Phillip Slota: Sworn.

14 MS. KOENIG: Kristina Koenig.
15 Kristina Koenig: Sworn.

16 MR. TEKLEMARIAM: Efrem Teklemariam.
17 Efrem Teklemariam: sworn.

18 MS. KOENIG: Good afternoon,
19 Mr. Chairman, Commissioners, participants and
20 members of the public.

21 As I mentioned, my name is Kristina
22 Koenig, and I am a civil engineer that specializes
23 in water resource engineering at Manitoba Hydro.
24 I am the section head of the hydrologic and
25 hydro-climatic study section, and I also have a

1 masters degree in water resources engineering. I
2 had been with Manitoba Hydro for approximately six
3 years, and I report directly to the water
4 resources engineering department manager,
5 Mr. Efrem Teklemariam. And I supervise a group of
6 engineers and a technician. Mr. Phillip Slota is
7 an engineering in training in my section, I'm just
8 going to let them briefly introduce themselves.

9 MR. SLOTA: And my name is Phillip
10 Slota, and as Kristina mentioned, I am an engineer
11 in training in the hydrologic and hydro-climatic
12 study section of the water resources engineering
13 department in Manitoba Hydro. I have been working
14 in this position since 2011. I have completed a
15 bachelors degree in civil engineering at the
16 University of Manitoba in 2009, and I am currently
17 a graduate student completing a masters degree in
18 water resources engineering, specifically focusing
19 on hydrologic modeling, at the University of
20 Manitoba as well. I am a registered member in
21 training with the Association of Professional
22 Engineers and Geoscientists in Manitoba,
23 anticipating full membership and professional
24 designation in the coming year.

25 MR. TEKLEMARIAM: Good afternoon,

1 Mr. Chairman, Commissioners, participants and
2 members of the public. My name is Efrem
3 Teklemariam. I am a water resource professional
4 engineer from the University of Manitoba. I am
5 the department head of water resources engineering
6 in Manitoba Hydro. I have experience in the
7 field, which Ms. Koenig is going to present, over
8 25 years, national and international. And I have
9 a masters degree in water resource engineering
10 from the Netherlands and the University of
11 Manitoba, I have a fellow of engineers Canada
12 designation.

13 MS. KOENIG: Today I'm going to give
14 you a presentation from the watershed study that
15 was conducted for the Pine Creek watershed. This
16 is the same presentation that was presented by
17 Mr. Slota to the community of Pine Creek First
18 Nations at the section 35 Crown consultation
19 meeting on October 11. All three of us were
20 present at this meeting.

21 An outline of the presentation is as
22 follows. I will start off providing you with some
23 background on what initiated this study. Then I
24 will go over the scope and the general
25 methodologies followed. Following that I will

1 present the results and discuss our analysis and
2 findings. Then I will end with the summary of our
3 main conclusions.

4 So late September it was brought to
5 our attention that Pine Creek First Nations had
6 raised a series of concerns regarding the
7 construction of Bipole III. They were related to
8 wild flora and fauna habitat, vegetation control,
9 and river flooding.

10 Water resources engineering was
11 specifically asked to undertake a study to
12 investigate the concerns related to river
13 flooding. Specifically, we were asked to
14 investigate Pine Creek First Nations concerns that
15 the clearing for the Bipole III project would
16 increase flows to the rivers which flow to their
17 community.

18 Our study was broken into two parts.
19 The first part consisted of a preliminary
20 investigation where we delineated the watersheds
21 that were under investigation and calculated the
22 total area of the watersheds. We then identified
23 the proposed Bipole III line that crosses through
24 these watersheds and calculated the total amount
25 of area that would be cleared along the Bipole III

1 line. Following that, we identified the land
2 cover types along the Bipole III line and the
3 entire watershed. Then we conducted a literature
4 review on studies related to run-off response,
5 poor stream flow and line cover clearing. This
6 process helped us develop a hypothesis that we
7 could test for the second part of our study.

8 The second part of our study involves
9 setting up a watershed model which can simulate
10 the stream flows within the watershed. So we
11 conducted a verification analysis to ensure that
12 the model was simulating the flows correctly, and
13 then we conducted a sensitivity analysis to
14 examine how sensitive the watershed is to changes
15 to the land cover along the Bipole III line.

16 So this slide here shows the
17 watersheds around the community of Pine Creek
18 First Nation. The location of the community is
19 shown in light green along Lake Winnipegosis. The
20 watershed boundaries shown in the greeny-brown and
21 were delineated by the Prairie Farm Rehabilitation
22 Administration Department of the Federal
23 Government. These watershed boundaries outline
24 the area of land where all the water drains to the
25 same place, Lake Winnipegosis. There are four

1 rivers and one creek that flow out to Lake
2 Winnipegosis. Going from north to south, they are
3 as follows: The Drake River, the North Duck
4 River, the Sklater River, the Pine River, and then
5 Wellborn Creek. Three of these five rivers, the
6 North Duck, the Sklater River and the Pine River
7 run through the Community of Pine Creek and out to
8 Lake Winnipegosis.

9 The location of the proposed Bipole
10 III right-of-way is shown in dark green. It
11 crosses a total of 12 waterways, which are a
12 combination of these rivers and their tributaries.
13 The line which represents Bipole III on this
14 figure is not to scale and it is just shown for
15 the purpose of location.

16 So the area of the North Duck, Sklater
17 and Drake watershed shown on the top is 1,265
18 square kilometres. And the area of the Pine River
19 watershed, so on the bottom, is 1,285 square
20 kilometres. So combined the total area of both of
21 these watersheds is 2,550 square kilometres. The
22 length of the Bipole III line that crosses this
23 watershed is 41 kilometres, and the clearing width
24 with a guyed tower is 62 metres. Therefore, the
25 total potential area of the clearing with the

1 guyed tower for Bipole III is 2.5 squared
2 kilometres, which is about .1 percent of the total
3 watershed area.

4 Just to put things into scale, 2.5
5 squared kilometres of proposed clearing is
6 equivalent to this corner of the community. It
7 makes about 3 percent of the total property area
8 covered in the community on this figure.

9 One thing to note that this .1 percent
10 or 2.5 square kilometres of clearing is a
11 conservative estimate because it does not take
12 into account the fact that the land that is going
13 to be cleared, there's already land that's going
14 to be cleared for agricultural purposes, it
15 doesn't take into account there will be buffer
16 zones along these 12 waterways which we just
17 described, nor does it take into account that,
18 depending on the tower installed, the width could
19 be smaller, so up to 45 metres. So the total area
20 could be, well, less than the 2.5 square
21 kilometres.

22 Vegetation cover does play a role in
23 the generation of run-off. It's related to the
24 leaf area index, which affects transpiration
25 and/or evaporation of precipitation. It can also

1 affect snow accumulation and melting. The type of
2 vegetation also influences the surface roughness
3 of the watershed, which can affect the timing of
4 the run-off reaching the outlet.

5 Research concludes that in this order,
6 vegetation influences water yields from the
7 source, coniferous forests, then deciduous
8 forests, brush, then finally grass. Since there
9 will be some clearing for the Bipole III line, we
10 wanted to see what type of vegetation was present
11 along this line.

12 Generally speaking, there are five
13 major land cover types along this watershed which
14 we will look at on this slide. Starting at the
15 headwaters, so the highest elevation, we find
16 coniferous forests shown in dark green on this
17 map. They are comprised of trees like black and
18 white spruce, as well as jack pine.

19 This transitions to mixed forests, so
20 a combination of coniferous and deciduous forest.
21 So spruce, birch, poplar shown in brown.

22 Moving to the lower part of the
23 watershed, we start to see agricultural croplands,
24 which are shown in orange.

25 Then we see a lot of deciduous forest

1 in light green which are comprised of poplar,
2 birch, shrub, and tends to be more sparse.

3 Finally, up in the north we start to
4 see wetlands which are comprised of pine and
5 spruce stands.

6 Examining location of the Bipole III
7 line, we can see that the predominant land cover
8 along this line is deciduous forests, so poplar,
9 birch and spruce and shrubs, with some
10 agricultural field and wetlands.

11 So we decided to conduct a scientific
12 literature review on clearing of land cover and
13 how it affects stream flow. We found that changes
14 to land cover can affect run-off potential. And
15 like I mentioned, they are in the order of
16 coniferous forests first, deciduous forests,
17 brush, and then grass cover.

18 The magnitude of the change and
19 increase in run-off is directly proportional to
20 the area cleared. So cutting of a minimum of 15
21 to 30 percent of a watershed is typically required
22 to even start to see a detectable change in stream
23 flow in a watershed.

24 These changes are most sensitive in
25 small watersheds, so watersheds that are less than

1 a hundred square kilometres. And extreme flood
2 events are less sensitive to tree removal than
3 average events.

4 So just to summarize our preliminary
5 analysis, we found that the total watershed area
6 around Pine Creek First Nation community is 2,550
7 square kilometres. The watershed will be
8 considered larger since it's greater than a
9 hundred square kilometres.

10 Bipole III will require less than 2.5
11 square kilometres, which is approximately
12 .1 percent of the total drainage area. And as I
13 mentioned, this is a conservative number.

14 The land type along the Bipole III
15 line is predominantly sparse deciduous forest,
16 with some already cleared agricultural fields and
17 some wetlands. So it also has some open areas
18 that does not require clearing.

19 And research shows that we need a
20 minimum of 15 to 30 percent of a watershed forest
21 to even start to see a detectable change in
22 run-off. Therefore, the Pine Creek watershed is
23 quite large relative to the area to be cleared for
24 Bipole III, and based on the existing type of land
25 cover that will be cleared, it is anticipated that

1 the effects of the clearing would be undetectable.

2 This information was used to form the
3 hypothesis that we use for our watershed modeling
4 exercise.

5 The second part of our study involves
6 setting up a watershed model to test our findings
7 from our preliminary analysis. So when we
8 conducted this watershed modeling exercise, we are
9 fortunate to have the developer of the Wakelin
10 watershed model, who is a retired professor
11 emeritus from the University of Waterloo present
12 in our office, Dr. Nicholas Cowan. He was in our
13 other meetings, but during this time he was able
14 to oversee the watershed modeling work.

15 A watershed model is basically a model
16 that can describe the effects of vegetation, soil
17 and topography on the movement of water within a
18 watershed. Based on our preliminary analysis, we
19 could see that the clearing for Bipole III was
20 very small. And based on the existing land cover
21 type, the sparse deciduous trees with open
22 agricultural fields and some swamps, the run-off
23 response is anticipated to be undetectable. So we
24 had to think about the various types of
25 hypothetical projects that could be developed in

1 the same area and could have a detectable change
2 on the stream flow. We wanted to see what type of
3 project could cause the maximum possible run-off
4 down the same location as the proposed Bipole III
5 line. But we still kept in mind that we didn't
6 expect to see any large changes, since research
7 has shown we need that 15 to 30 percent of
8 clearing before we're going to see any detectable
9 changes. And we were still only working with a
10 clearing of .1 percent of the total watershed.

11 Since run-off is affected by surface
12 roughness and losses through evaporation and
13 transpiration, it stands to reason that an
14 impervious land class, for example a paved road,
15 might have measurable changes to stream flow,
16 unlike Bipole III which has a lot of pervious land
17 cover types. So we tried to model this impervious
18 road scenario.

19 This slide provides some details
20 regarding the modeling study. We used the
21 WATFLOOD hydrological model, which is a semi
22 physically based distributive model that can
23 simulate stream flows within a watershed.

24 The three rivers we will focus on for
25 this presentation are the North Duck, the Sklater

1 and the Pine River. These are the rivers that
2 flow through the Community of Pine Creek First
3 Nation out to Lake Winnipegosis.

4 Over time, the water that flows
5 through these rivers makes its way to Lake
6 Winnipegosis, to Lake Manitoba, to Lake St.
7 Martin, to Lake Winnipeg, down the Nelson River,
8 and then finally out to Hudson's Bay.

9 So in order to model the direction of
10 flow, we needed to provide it with elevation data.
11 We used LIDAR data which was produced by the
12 Province of Manitoba's land initiatives group.
13 This figure here shows the elevation profile over
14 the watershed. The red/orange colours show the
15 headwaters are characterized by steeper slopes
16 which have an elevation drop of approximately 155
17 metres over seven kilometres.

18 The green is a moderate slope and has
19 an elevation drop of about 200 metres over 10 to
20 12 kilometres. And the blue colour represents the
21 elevation drop of about 150 metres over 37
22 kilometres.

23 We also obtained information from the
24 Prairie Farm Rehabilitation Department on stream
25 networks and information from the Province on the

1 various agricultural drains and ditches. The land
2 cover obtained from GeoBase, the climate data was
3 obtained from Environment Canada.

4 We specifically used Cowan, Ethelbert
5 and Dauphin. Roblin was not used for the study
6 due to the large amount of missing data during the
7 analysis period.

8 So there are two active Water Survey
9 of Canada flow gauges in the watershed which are
10 used to calibrate, validate the model. These are
11 located on the North Duck and on the Garland River
12 shown here on the slides. So we use these two
13 stations to calibrate and validate the model.

14 Now I'm going to talk about that
15 calibration.

16 Here we can see the calibration
17 results over the period of 1996 to 2002, at those
18 two stream flow gauges. So the X axis is the time
19 scale and the Y axis is flow measured in cubic
20 metres per second. The top graph is for the North
21 Duck River and the bottom graph is for the Garland
22 River.

23 The black line shows the observed
24 flows that were measured on the gauges on the
25 rivers at these locations. These stream flow

1 gauges are generally only installed during open
2 water season.

3 The red line shows the simulated flows
4 that were produced by the watershed model. The
5 purpose of the calibration phase is to adjust the
6 parameters of the model so it is capturing the
7 timing and volume of the observed stream flows.
8 These plots demonstrate that generally the model
9 is able to capture the trends of the stream flow.

10 An independent validation period is
11 required to ensure the model performs as well as
12 it did during the calibration phase without any
13 further adjustments. This gives us an indication
14 of how well the parameters were chosen.

15 Here we can see the valuation results
16 over 2003 to 2010 at those same two stream flow
17 gauges. The X axis is the time scale and the Y
18 axis is stream flow measured in cubic metres per
19 second. The top graph is for the North Duck River
20 and the bottom graph is for the Garland River.
21 And again, the black line shows the observed flows
22 that were measured at the gauges, and the red
23 shows what was simulated by the hydrological
24 model. As with the calibration period, it can be
25 observed that overall the model is able to capture

1 the trends in the stream flow for these two
2 rivers.

3 On this slide, we will go over the
4 results of this hypothetical sensitivity analysis
5 that we conducted. We are presenting the results,
6 like I mentioned, for the three rivers that run
7 through the community of Pine Creek First Nations,
8 the North Duck, the Sklater, and the Pine River.
9 The results are shown at their outlets, so where
10 the river meets Lake Winnipegosis.

11 The top graph is the North Duck, the
12 middle is the Sklater River and bottom is the Pine
13 River. The simulations were run from 1996 to
14 2012, and we are measuring stream flow on the Y
15 axis in cubic metres per second.

16 The red line is what is simulated with
17 the current land cover conditions, and the black
18 line, which is nearly impossible to see because it
19 pretty much lines up with the red line, shows what
20 the simulation would be like if it was replaced
21 with an impervious land cover type.

22 We found that with this impervious
23 simulation, the changes were 0.003 CMS at North
24 Duck, and 0.004 CMS at the Sklater River, and
25 0.007 CMS at the Pine River. These changes would

1 be undetectable in the field, which supports
2 forest hydrology research that states you need a
3 minimum of 15 to 30 percent of clearing in a
4 watershed before you are going to start to see any
5 detectable changes in the stream flow. And here,
6 again, we were dealing with a scenario of
7 .1 percent of the total watershed being cleared.

8 So, even if you use an impervious land
9 path where water is able to travel out to the
10 stream as quick as possible, and you would expect
11 to see the most changes, because we were dealing
12 with an area so small, we cannot detect that.

13 In conclusion, the area to be cleared
14 by Bipole III is approximately 2.5 square
15 kilometres, which is .1 percent of the total
16 watershed. And this is a conservative number
17 since there will be buffer zones in place along
18 the waterway crossings, and there will be areas
19 such as agriculture fields which will not require
20 additional clearing.

21 The watershed modeling sensitivity
22 analysis showed that with an impervious land cover
23 path, the run-off response was between 0.003 CMS
24 and .007 CMS, which is undetectable in the field.

25 The Bipole III line is not an

1 impervious land cover and will have vegetation
2 such as shrubs, grasses, and agricultural fields
3 that will generate in the years to come. And over
4 time, some trees will even be able to grow back to
5 certain heights. So these land covers have
6 surface roughness, they have losses to
7 evaporation, transpiration and infiltration.

8 Therefore, based on the total area to
9 be cleared, the .1 percent of the total watershed
10 and the land cover types that will be cleared,
11 it's anticipated that the change in run-off by
12 Bipole III will be undetectable.

13 Again, this is supported by the
14 literature on forest hydrology which clearly
15 states you typically need 15 to 30 percent of
16 clearing of a forest in a watershed before you
17 even start to see any detectable changes in stream
18 flow, and this is definitely not the case for
19 Bipole III.

20 So before we go to questions, I would
21 like to clarify an example that I believe has come
22 up in past hearings. And there's been reference
23 to an ice cream pail of water. So I'd like to put
24 this into context. One ice cream pail per second
25 was presented as an example for the hypothetical

1 road impervious sensitivity study we conducted.

2 There was no reference made to this one ice cream
3 pail being the scenario for Bipole III. To try
4 and clarify this, I will use the Sklater River as
5 an example.

6 The Sklater River, with that
7 hypothetical road scenario, showed a change of
8 0.004 cubic metres per second of stream flow.
9 .004 CMS is so small it is nearly impossible to
10 detect in the field. So the math was broken down,
11 and it is hard to visualize, so the math was
12 broken down to 0.001 CMS is equivalent to one
13 litre per second. And four litres is the same as
14 a large ice cream pail. So to visualize it,
15 that's how it was put into context. So,
16 therefore, changes at the outlet of Sklater River
17 due to this hypothetical road example was compared
18 to the addition of one ice cream pail in a river
19 that has 581.5 ice cream pails flowing out into
20 Lake Winnipegosis. When, like I said, this is an
21 undetectable number out in the field because the
22 area being cleared is too small.

23 Thank you for your attention. And I
24 guess now we will open for questions.

25 MR. GIBBONS: I do have a question of

1 clarification, and that is when we're looking now
2 at the slides, top and bottom of page 7, and I
3 suppose more so the one at the top. When you
4 eyeball these charts, it strikes me that the fit
5 between observed and computed, at least to me, is
6 not as good as what I was hearing by way of a
7 narrative. I'm wondering if, for those of us who
8 have a statistical bent, whether or not
9 statistical tests were done, for example, goodness
10 of fit measurements of that sort, and what the
11 correlations might have been and what the
12 significance levels were for those?

13 MS. KOENIG: I'm going to let Phil
14 answer that question because he specifically ran
15 the watershed model.

16 MR. GIBBONS: Okay.

17 MR. SLOTA: If you'll just give us a
18 second, we're pulling up the numbers here.

19 Again, my name is Phillip Slota.

20 So to answer your question, yes
21 statistics were used to assess goodness of fit.
22 So the primary statistic that was used is the
23 Nash-Sutcliffe score of determination.

24 Right. So we have our numbers here.
25 So for the calibration phase, the Nash-Sutcliffe

1 score for the north Duck River was 0.56, and the
2 Nash-Sutcliffe score for the bottom on the Garland
3 River near the Duck was 0.3.

4 For the validation phase, we got
5 similar results, so the Nash for the North Duck
6 was 0.44, and the Nash for the Garland River near
7 the Duck River was 0.36.

8 MR. GIBBONS: Do you have P levels for
9 those, significance levels? Wouldn't there be a
10 significance test on that to see if that was
11 outside the range of random association?

12 MR. SLOTA: No, we don't have a P
13 value. So this statistic is a measurement based,
14 essentially taking a look at the co-efficient
15 determination against the mean absolute error. So
16 it's a score that varies between negative one and
17 one.

18 MR. GIBBONS: In your view, the .56
19 for example would be a strong correlation then.

20 MR. SLOTA: It would be a correlation
21 suitable for the sensitivity analysis that was
22 conducted.

23 MR. GIBBONS: Okay. Thank you.

24 MR. MOTHERAL: Thank you. When
25 there's a statement through forest watershed that

1 15 to 30 percent of a watershed is required to
2 have a statistical difference, I'm trying to wrap
3 my brain around that, because I am visualizing,
4 I'm looking at a hill that's wooded. And I take
5 30 percent of the trees out from one area, that
6 would certainly be a significant amount of water
7 coming down, and could even be erosion. I'm
8 trying to get my mind around the huge amount of
9 number of trees that it would take to be
10 significant. Do you understand what I'm getting
11 at?

12 I'm a prairie person and trees prevent
13 a lot of erosion.

14 MR. SLOTA: Yes. So maybe we can put
15 that in context, so that 15 to 30 percent of the
16 land cover clearing, so these numbers are based on
17 studies in scientific literature which essentially
18 are watershed skill experiments. So visualizing
19 it on a single hill slope stand, perhaps would
20 seem a little bit more extreme.

21 As Kristina mentioned in her
22 presentation, that attenuation and effect is
23 proportional to the size of the watershed. So a
24 small slope responds differently than a large
25 watershed. And that's mainly because of the

1 processes involved. So run-off is attenuated by
2 stream flow response. So when you scale to a
3 larger watershed, that effect is not significant,
4 it sort of teases out.

5 MR. MOTHERAL: Thank you. How many
6 ice cream pails of water would it take to be
7 significant in that case? You went into quite a
8 few calculations, maybe this is just one more.
9 I'm saying that, but I don't really know if I want
10 to know the answer.

11 MR. SLOTA: We do have an answer for
12 you, we're just switching to it. I guess Kristina
13 could answer that. She has the numbers in front
14 of her.

15 Oh, I'm sorry, as a point of
16 clarification, we don't have the statistical
17 significance, we have the detectability percentage
18 numbers. I'm not sure if you're still interested
19 in that?

20 MR. MOTHERAL: No, that's fine. Thank
21 you.

22 MS. MacKAY: Actually, I would be
23 interested in the detectability numbers.

24 MS. KOENIG: So out in the fields,
25 typically the gauges have different relative error

1 depending on the gauges out. So these types of
2 gauges, we did our research on them and they
3 typically have about up to 5 percent error allowed
4 in the field. So lfor the Sklater example it's
5 .12 CMS, and we were looking at .004 CMS.

6 MS. MacKAY: Thank you.

7 THE CHAIRMAN: Mr. Mills.

8 MR. MILLS: We're anxious to get at
9 it.

10 THE CHAIRMAN: I'm sure you are.

11 MR. MILLS: Thank you, Mr. Chairman.
12 And I'd like to thank Manitoba Hydro for making a
13 presentation specifically to address our concerns.
14 It's appreciated.

15 I do note that the presentation you
16 have given has had some additional material
17 provided from the one we received in Pine Creek
18 and I thank you for that.

19 MS. KOENIG: I'd like to confirm that
20 this was the same presentation that was presented.
21 Phillip Slota presented it, but I presented it
22 here.

23 MR. MILLS: It doesn't matter. When
24 was this study completed?

25 MS. KOENIG: The modeling work, is

1 that what we're referring to?

2 MR. MILLS: Yes, the conclusions, when
3 were they arrived at?

4 MS. KOENIG: Do we need a specific
5 date?

6 MR. MILLS: Approximately?

7 MS. KOENIG: They definitely were
8 concluded before we came up to Pine Creek
9 community, which was on October 11th, I believe.

10 MR. MILLS: So had Manitoba Hydro or
11 your department done any water modeling or any of
12 this study work prior to us raising it as a
13 concern? You can just answer yes or no.

14 MS. KOENIG: Our department does a lot
15 of modeling work. Specifically on Pine Creek
16 First Nations. No, we did not start the modeling
17 work.

18 MR. MILLS: None of this study had
19 been done prior to it being raised and us talking
20 about it October 11th?

21 MS. KOENIG: Correct.

22 MR. MILLS: Okay. When Mr. Dyck spoke
23 up in front of this process on October 4th, and
24 responded adamantly to my question on four
25 occasions that there would be no effect on the

1 Pine Creek watershed, what information would he
2 have had to base that statement if no modeling had
3 been done prior to October 11th? Had you provided
4 him with any modeling information prior to October
5 4th?

6 MS. KOENIG: So I can't speak
7 specifically for Mr. Dyck, so I don't know exactly
8 what he had --

9 MR. MILLS: Speak for your department,
10 had you provided any information prior to October
11 4th to Hydro staff with regards to the effects of
12 the Bipole III and the Pine Creek watershed?

13 MS. KOENIG: I believe Mr. Dyck has
14 the exact same access to the literature as we do,
15 so he would have had access to the same
16 literature, journal articles.

17 MR. MILLS: So it wasn't based on your
18 work? That statement couldn't have been based on
19 your work, could it?

20 MS. KOENIG: It wouldn't have been
21 based on the second phase of our study, but his
22 conclusions would have been drawn from the
23 preliminary analysis that we conducted that was
24 based on the scientific literature that everyone
25 had access to.

1 MR. MILLS: When was that preliminary
2 analysis available?

3 MS. KOENIG: Could you please rephrase
4 your question?

5 MR. MILLS: You just made reference to
6 your preliminary analysis. Was there an analysis
7 prior to this analysis, and if so, when was that
8 it? And if there wasn't, why are you making
9 reference to something? You're confusing me. I
10 understood --

11 THE CHAIRMAN: Let her answer the
12 question.

13 MS. KOENIG: Thank you. I believe
14 that Mr. Dyck probably did his -- I cannot speak
15 for him, but I can speak to my assumptions. He
16 has access to the same scientific literature that
17 we would have. So if he was coming to a panel, to
18 a hearing, he would have done his own research to
19 understand the impacts. We would have not
20 provided him per se, our department, these journal
21 articles for him to make the conclusions. But I'm
22 sure he has his own access to these articles and
23 can make his own conclusions.

24 MR. MILLS: So when he made that
25 statement on October 4th, your department had not

1 provided him with any modeling studies or data or
2 information?

3 MR. TEKLEMARIAM: That's correct.

4 MR. MILLS: Not correct.

5 MR. TEKLEMARIAM: That's correct.

6 MR. MILLS: That is correct. Thank
7 you.

8 MR. MCGARRY: I'd just like to add to
9 that.

10 MR. MILLS: No, that's fine. Thank
11 you.

12 MR. MCGARRY: Well, I think on behalf
13 of the proponent and our expert witness, Mr. Dyck,
14 he and I had discussed this, and the hypothesis,
15 conventional wisdom, if you know something about
16 hydrology, would suggest the conclusion he came
17 to, although untested.

18 MR. MILLS: Thank you.

19 What model package or software do you
20 use?

21 MR. SLOTA: For this study
22 specifically?

23 MR. MILLS: For the study you
24 presented to us?

25 MR. SLOTA: It was the WATFLOOD

1 hydrologic model.

2 MR. MILLS: Okay. Have you looked at
3 any of the other available modeling software? Are
4 you familiar with the Wren's software that LP has
5 used to model the same area?

6 MR. SLOTA: I am familiar with the
7 Wren's model, yes.

8 MR. MILLS: Of the available software,
9 would you agree with me that the one you used
10 would provide the most favourable conclusion for
11 Hydro?

12 MR. SLOTA: I'm not sure I understand
13 your question. Could you rephrase it please?

14 MR. MILLS: I'm aware of three
15 modeling systems, packages that can be used to
16 provide what you just shared with us.

17 MR. SLOTA: Yes.

18 MR. MILLS: Will you agree with me
19 that the package you used would be the one that
20 would provide the most favourable, or least net
21 change? To be blunt, did you shop the modeling
22 system in order to get one that you would give you
23 the results you were looking for?

24 MR. SLOTA: Based on the situation and
25 the type of analysis that was required, we found

1 that the WATFLOOD model would be suitable for the
2 study that was undertaken.

3 MR. MILLS: Why would it be suitable
4 to Manitoba Hydro?

5 MR. SLOTA: Because of its
6 composition, being a physically based distributed
7 model, for analysis of change in land cover it
8 would be suitable for this type of application.

9 MR. MILLS: Are you familiar with the
10 Wren's?

11 MR. SLOTA: I have not used it
12 personally, but I do know what the Wren's model
13 is, yes.

14 MR. MILLS: Yes. Just for
15 information, Louisiana Pacific has done all of
16 this same work with the Wren package and there's
17 some disparity.

18 You indicated that your modeling was
19 based on a 62 metre right-of-way, yet we have
20 heard consistently from Manitoba Hydro that the
21 right-of-way is 66 metres. Would you agree that
22 you have underestimated the area by 7 percent?

23 MR. SLOTA: Sir, the right-of-way is
24 66 metres, but the clearing width within the
25 right-of-way for a guyed tower is 62 metres.

1 MR. MILLS: That strikes us as odd
2 Mr. Penner's tender documents, when he asks for a
3 clearing contract, refers to 66 metres, and I'm
4 told by some folks that considering the accuracy
5 of bush clearing, that perhaps 68 or 69 metres
6 would be a more indicative cut. Would you agree
7 with me?

8 MS. KOENIG: I did the exact same
9 calculation with the 66 metres and it still comes
10 out to about .1 percent of the total watershed
11 area, with the rounding.

12 MR. MILLS: Now you have raised
13 another question. Hydro's told us all along the
14 clear-cut is 66. You have presented information
15 based on 62, but you also did it for 66. Is that
16 fair to say?

17 MS. KOENIG: The range I believe I
18 presented with the different towers can range
19 between 45 and 62.

20 MR. MILLS: Okay. You indicated that
21 the Bipole III route that you shared with us
22 crossed 12 waterways; is that correct?

23 MS. KOENIG: Correct.

24 MR. MILLS: Are you aware of the
25 proposed route change?

1 MS. KOENIG: Yes, we are.

2 MR. MILLS: Did you model that route
3 change?

4 MR. SLOTA: Yes, we did.

5 MR. MILLS: But you provided us with
6 the original presentation because that's what I
7 asked you to do?

8 MR. SLOTA: Yes.

9 MR. MILLS: Thank you. Did you find
10 any significant difference between the original
11 and the revised change?

12 MR. SLOTA: No, we didn't.

13 MR. MILLS: Could you provide us with
14 the same presentation on the revised route change
15 that you have provided us with the old route?

16 THE CHAIRMAN: Mr. Mills, to what end?

17 MR. MILLS: I'd just like to have it,
18 sir. They told me they haven't found any
19 difference, but we understand that the GHA 19A
20 proposed route revision is proceeding, or may well
21 be as Hydro's preferred route. And we'd just like
22 the information we have to in fact reflect the
23 route that we're probably considering.

24 THE CHAIRMAN: Yesterday morning we
25 had some discussion about what information in

1 respect of environmental assessment Hydro might
2 undertake on the route changes. I think that your
3 request could form part of that assessment.

4 MR. MILLS: Okay. Well, Mr. Chairman,
5 it doesn't matter, but you had indicated to me
6 yesterday that if we needed to call anyone back to
7 discuss it, I'd rather not bring them back, I'd
8 rather just hear that it's the same and they are
9 going to give us the information. That was my
10 point. Thank you.

11 THE CHAIRMAN: I assume you'll get the
12 information, in what form is up to Manitoba Hydro.

13 MR. MILLS: Thank you.

14 We haven't had the access to the
15 knowledge that you have, so I'm going to ask you
16 some questions. I think one of my friends
17 yesterday referred to taking a ride on Hydro's
18 back, and I'm just looking for a little better
19 understanding.

20 Of all of the water that will come
21 down out of the watershed on an annual basis, we
22 have information that indicates that about
23 75 percent of that water will come during what we
24 refer to as the wet months, May and June. Would
25 you agree with that, just generally?

1 MR. SLOTA: I wouldn't be able to give
2 you an exact percentage, but certainly those
3 months are typically wetter than the rest, yes.

4 MR. MILLS: If we kick that number
5 around, you wouldn't have any real problem with
6 that.

7 MR. SLOTA: I would have to verify it.
8 I'm not certain.

9 MR. MILLS: Our sense based on the
10 water type report is that 75 percent of the stream
11 flow occurs during two months.

12 And I'm going to jump around because
13 some things came up. Were similar watershed
14 reports done on any other Bipole III crossings?
15 No?

16 MS. KOENIG: No, they were not.

17 MR. MILLS: Okay. Thank you. We
18 appreciate that you have shown us that respect.

19 So your last slide, sensitivity to
20 land cover change, I have all kinds of questions
21 we'll go through, but we'll probably just be
22 disagreeing. So let's move along and cut to the
23 chase.

24 This is our observation. Phil, you
25 indicated .003 in the North Duck, .004 in the

1 Slater, and .007 on the Pine River as being what I
2 referred to as the deltas. Those are really small
3 numbers?

4 MR. SLOTA: Those are the changes,
5 yes, that's correct.

6 MR. MILLS: The delta, and those are
7 cubic metres per second, correct?

8 MR. SLOTA: Yes.

9 MR. MILLS: So, Phil, here's my
10 problem and help me to understand this. If I take
11 the arithmetic mean of those three, and just for
12 spits and giggles, I multiply .0047 times 12
13 watersheds. And if I multiply that by 60 seconds
14 in a minute, and then 60 minutes in an hour, and
15 then 24 hours in a day, and then 365 days in a
16 year, I get a number. And as you and I just
17 discussed, probably 75 percent of that number
18 might occur in 2 months. So if I take that number
19 and multiplied that times .75, and then if I
20 divide that by two, if I say the two flood months
21 are pretty similar, I end up discovering that
22 670,000 cubic metres per month in flood season
23 would be added to the existing flow. And if I
24 look at the size of this room, and understand that
25 this room is about 36,000 cubic metres, the data

1 seems to indicate to me that in the month of May,
2 that the floodwater you describe, or the delta
3 that you describe, would fill this room 19 times.

4 Now, we can debate that, okay, and we
5 can re-kick the numbers, but did you do any study
6 downstream of Bipole III with regards to the
7 hydrology, groundwater, lake level, creek level?

8 MS. KOENIG: No, we did not.

9 MR. MILLS: So you have no knowledge
10 of the existing water conditions downstream of
11 Bipole III?

12 MR. TEKLEMARIAM: We didn't consider
13 any water quality study for this one.

14 MR. MILLS: Are you familiar with the
15 historical data on lake levels at Pine Creek that
16 these 12 waterways contribute to?

17 MS. KOENIG: I'd just like to clarify
18 the 12 waterways. There's 12 tributaries that get
19 crossed in total with it, but there's not 12
20 rivers that are going out.

21 MR. MILLS: Okay. So isn't it true
22 that if you have water flowing down a watershed,
23 and I love the example of Mr. Motheral of the
24 hill, isn't it true that if the lake levels are
25 high, that water flowing down into those lake

1 levels in fact don't penetrate the lake fill, but
2 they back up some distance into the waterways?

3 MR. SLOTA: If you are referring to a
4 backwater study, that is outside of the scope.

5 MR. MILLS: And none were done, okay.

6 Well, the problem we have right now in
7 Pine Creek First Nation is the community is
8 bloated and saturated, hence our concern and the
9 reason for all of this. If I told you that to dig
10 a grave we need two, 2-inch gas water pumps to
11 empty the hole, that might help to put it into
12 perspective for you.

13 We believe that the information
14 available that hasn't been referred to, such as
15 the Watertight report, which I had previously
16 provided to Hydro, and you may well have read it,
17 makes many statements. Water yield and peak flow
18 can change following forest harvesting, increase
19 in annual water yield of zero to 60 percent are
20 reported. Magnitude of increases and peak flows
21 are proportional to the area harvested, which we
22 agree with you. You made that presentation. The
23 Watertight report concludes that, and it used the
24 Wren software, as you know, it concludes that the
25 additional water in the watershed is directly

1 proportional to the area harvested. And that it
2 doesn't matter how much or how little you harvest,
3 if you harvest you will add some water. Your
4 models indicated .0047 if I take the average.

5 Well, Phil, this is Pine Creek today,
6 and it doesn't really matter how much water the
7 Hydro right-of-way adds. If I pour any into that
8 full container, I'll have a mess.

9 And I ask you again, is it not fair to
10 say, based on your model and the deltas you showed
11 us, that the Hydro right-of-way clearing will not
12 only have little regenerative growth, but will in
13 fact contribute to the downstream water? Is it
14 your position that there will be no water added to
15 the Community of Pine Creek as a result of the
16 right-of-way clearing? Yes or no, Phil?

17 MR. SLOTA: So to answer your
18 question, yes, water would be added, but the
19 numbers that I presented are not detectable in the
20 instrumentation that's used to measure stream
21 flow. And I also want to address --

22 MR. MILLS: They are not detectable in
23 a second, but are they detectable in a minute, or
24 an hour, or a day, or a week, or a month, or a
25 year?

1 MR. SLOTA: Right. I was going to
2 continue onto that. So your analogy assumes a
3 bathtub condition in which there's no outlet. But
4 as Kristina presented, all water through Pine
5 Creek does flow through the rivers and tributaries
6 to Lake Winnipegosis, exiting through the Waterhen
7 River to Lake Manitoba, where it enters the
8 Fairford River, where it enters Lake St. Martin,
9 where it enters Lake Winnipeg, where it flows out
10 the Nelson River to Hudson Bay. So there is no
11 restriction at the community which prevents water
12 from exiting, so it doesn't accumulate in the
13 manner that you are --

14 MR. MILLS: It's your professional
15 opinion that if the lake level is higher than the
16 stream level, that the lake level will not hold
17 water back in the watershed? Is that what you
18 just told me?

19 MR. SLOTA: What I'm suggesting is
20 water can still flow out. Certainly, there are
21 potential for backwater effects, but that is not
22 within the scope, and it will not accumulate and
23 be fully restricted.

24 MR. TEKLEMARIAM: And it's not
25 attributed from Bipole III.

1 MR. SLOTA: Yes, the lake level would
2 not be affected.

3 MR. MILLS: Well, we'll present it in
4 information, but I will tell you for your
5 information that Mr. Topping of the Province of
6 Manitoba Water Stewardship would strongly disagree
7 with you. When we get flood levels from the
8 Province, they give us a clear indication that if
9 the lake levels are higher than the stream levels,
10 that the flood level will not be at the stream
11 level but will ultimately rise to the lake level.

12 MR. TEKLEMARIAM: Mr. Mills, we are
13 not here to contemplate what the Province do or
14 may not do with Winnipegosis. We are here to
15 demonstrate the incremental effect of a Bipole III
16 that transects to your community.

17 MR. MILLS: Well, with respect, we
18 could debate this a lot longer, but I sense that
19 we had been given a brief opportunity to discuss
20 this with you, and we thank you.

21 I just want to ask you in closing,
22 would you not agree with me that .0047 cubic
23 metres per second, multiplied by the waterways, by
24 the minutes, by the hours, by the days, by the
25 year, create a significant amount of water, all of

1 which passes through Pine Creek First Nation?

2 MR. TEKLEMARIAM: It is our
3 professional opinion, based on our study we
4 conducted, the influence of Bipole III, no.

5 MR. MILLS: So we have a unit of
6 measure per second. Am I missing a time warp? If
7 something happens once a second, does it not
8 happen 60 times in a minute?

9 MR. TEKLEMARIAM: No, the water is
10 flowing at the second.

11 MR. MILLS: I see. That's
12 fascinating. Okay. Well, we disagree, but we'll
13 be back to that with our presentations later.
14 Thank you.

15 THE CHAIRMAN: Mr. Mills, what was the
16 total that you came up with when you multiplied it
17 out by seconds and minutes and hours, et cetera?

18 MR. MILLS: Mr. Chairman, using the
19 delta of the numbers they gave us, the arithmetic
20 average, pardon me, .0047, I arrived at
21 1,778,000 cubic metres. They indicated and they
22 agreed with me, and I will present information
23 later, that 75 percent of that will probably flow
24 in two months. So if you share that over months,
25 it's our position that we'll provide later, that

1 670,000 cubic metres per month in flood season,
2 May and June, which is the worst time to receive
3 additional water, would be received by the
4 community. And to put that in some perspective,
5 that's this room filled 19 times, in flood season,
6 into a saturated community.

7 Thank you, Mr. Chair. I believe my
8 associate has some other questions.

9 MR. STOCKWELL: Thank you,
10 Mr. Chairman. These are pretty easy questions.

11 Could we go to your slide on watershed
12 model development, page 6 at the bottom? There
13 are two blue stars there, one at the extreme north
14 end of the Duck Mountain, I guess, and one about
15 halfway on the eastern side of the watershed.
16 What are those two points?

17 MR. SLOTA: So those two points
18 represent the hydrometric stations that were used
19 in the calibration and validation portion of this
20 watershed modeling study.

21 MR. STOCKWELL: It appears to me that
22 those two points are on the fringes of the
23 watershed. And one of the points is actually not
24 really significant to us because it's on a river
25 that doesn't come through Pine Creek. Is that

1 correct?

2 MR. SLOTA: No, that's not correct.
3 Those two watershed -- or pardon me, those two
4 hydrometric stations are on rivers which are
5 tributaries to ones which flow into the community
6 of Pine Creek. So the Garland River is a
7 tributary of the Pine River, which does enter the
8 community. And the one on the north side is on
9 the North Duck River, which is the main stem which
10 also reaches and runs through the community to
11 Lake Winnipegosis.

12 MR. STOCKWELL: The position of the
13 data point at Cowan, is there much influence from
14 precipitation as -- from the mountain effect in
15 Duck Mountain at that point?

16 MR. SLOTA: If you could clarify? So
17 you're asking whether or not the precipitation at
18 Cowan is influenced by orographic effects?

19 MR. STOCKWELL: What I'm questioning
20 is the validity of two points that seem to be on
21 the fringes of that watershed. So you're taking
22 two points, and those are the only two points that
23 I'm understanding you collected data from?

24 MR. SLOTA: Our stream flow data was
25 collected.

1 MR. STOCKWELL: Your stream flow data
2 was collected from those two points?

3 MR. SLOTA: Yes.

4 MR. STOCKWELL: Okay. And the North
5 Duck point, it's close to Cowan, I understand?

6 MR. SLOTA: Yes.

7 MR. STOCKWELL: And Cowan should be
8 out of the mountain effect for precipitation; is
9 that correct?

10 MR. SLOTA: It would be hard to say.
11 I mean, it's to a certain effect, but in
12 consideration the WATFLOOD model does understand
13 that there are orographic effects to
14 precipitation. So in the distribution of
15 rainfall, even if rain data is collected in area
16 which is not mountainous, it can distribute it
17 over a mountainous part of the watershed model by
18 understanding the precipitation lapse rate, which
19 is -- it's a pretty common published value. So it
20 takes measurements and it corrects for mountainous
21 effects in regions of the watershed which would
22 have that sort of influence.

23 MR. STOCKWELL: Okay. So the data
24 that you got, was that data that you collected
25 yourself, or was it data that's provided by

1 another organization?

2 MR. SLOTA: So, to speak on the
3 different types of data, so stream flow data is
4 obtained from the Water Survey of Canada. So
5 that's a Federal gauge publicly available to
6 everyone. And the weather information available
7 from Environment Canada, so another Federal
8 agency.

9 MR. STOCKWELL: Okay. So you're quite
10 confident that whatever data you started with,
11 whether it's on the fringes of the watershed or
12 not, the results from your study, or from this
13 modeling, you are very confident in?

14 MR. SLOTA: Well, when you say
15 fringes, I mean, there are headwaters of the
16 watershed, and the land covers that are
17 incorporated within the two watersheds combined
18 are representative of the overall watershed.

19 So the benefit of WATFLOOD model is it
20 is a physically-based distributive watershed model
21 where stream flow response is based upon land
22 cover type and slope and aspect, and other sort of
23 influential parameters. So the idea is, if you
24 can calibrate the watershed model and it acts
25 representatively at the two areas where you're

1 gauging it, it will also act accordingly for the
2 rest of the watershed model. So we believe that
3 the two gauges are representative of the
4 hydrologic response of the overall watershed.

5 MR. STOCKWELL: Okay. If I look at
6 this particular, this map, and I see the Sklater
7 River, and I see the Pine River, right where it
8 says Sklater River basin, the Pine River would be
9 on the lower portion? That would be the Pine
10 River?

11 MR. SLOTA: On the south.

12 MR. STOCKWELL: South of that, and the
13 Sklater River would be north. And those two
14 rivers come right out of the Duck Mountain.

15 MR. SLOTA: All of the watersheds come
16 out of the Duck Mountain.

17 MR. STOCKWELL: Well, not so much on
18 the North Duck. The Duck Mountain is considerably
19 lower in elevation, say just west of Cowan, than
20 it is at these two rivers that we're talking
21 about; correct?

22 MR. SLOTA: I would have to verify,
23 I'm not sure what the question is here?

24 MR. STOCKWELL: Okay. I'm just saying
25 that these two rivers are coming right out of the

1 Duck Mountain. The point that you use for data
2 entry, or the data that you take from the Cowan
3 point and the data that you take from the Garland
4 River are not -- those rivers are not coming
5 directly out of the Duck Mountain. So what I'm
6 saying is, those two rivers, they contribute a lot
7 of water into Pine Creek, and there's no direct
8 measurement on those rivers. I mean, everything
9 that you are doing as far as the study is
10 concerned is based on a computer model; is that
11 correct?

12 MR. SLOTA: No. So those gauges are
13 used for calibration and validation on the model.
14 So those are the two points of the watershed we
15 have. Where we make our conclusions are from the
16 outlets, so those are different locations.

17 And to say that the results are just
18 based upon what a computer tells us is false as
19 well. So as we mentioned before, there is also
20 preliminary investigation where we use scientific
21 literature to shape our understanding of what we
22 would expect, and form a hypothesis. And in
23 addition to the computer results and our
24 engineering judgment, we reached these
25 conclusions.

1 MR. STOCKWELL: Okay. I am going to
2 leave that aside.

3 The scientific literature, what
4 industry does that come from mostly? What
5 industry commissions scientific literature as far
6 as watersheds are concerned? What industries in
7 general?

8 MR. SLOTA: Well, quite a few of them
9 are peer reviewed scientific journals, so they
10 would be a combination of academia industry and
11 other sources. The journals are exactly that,
12 they are scientific journals.

13 MR. STOCKWELL: For the review of
14 journals, what journals did you use? Did you use
15 journals coming from forestry, did you use
16 journals coming from agriculture, did you use
17 journals that were purely academic?

18 MR. SLOTA: Well, it ranges. Some are
19 academic and some have industry basis. I can
20 provide you the list of the exact references, if
21 you'd like?

22 MR. STOCKWELL: It might be of
23 interest, but probably not necessary. But what
24 I'm getting at is, if your literature is based, or
25 literature came from sources based on forestry,

1 forestry has its own slant on things, as does
2 anybody that would benefit from --

3 THE CHAIRMAN: You're making argument
4 rather than asking questions.

5 MR. STOCKWELL: Sorry. I'll move on
6 here. I had just one final question.

7 Is it Dr. Cowan?

8 MR. SLOTA: Yes, Dr. Nicholas Cowan.

9 MR. STOCKWELL: He's contacted by
10 Hydro to conduct other water studies, I am assuming,
11 is that correct?

12 MS. KOENIG: Yes, he's working with us
13 on some watershed studies.

14 MR. STOCKWELL: Good.

15 And you mentioned that there was one
16 percent of the total watershed, or less than one
17 percent of the total watershed that would affect
18 Pine Creek, that the Bipole III would clear less
19 than 1 percent?

20 MS. KOENIG: .1.

21 MR. STOCKWELL: .1 percent, sorry. In
22 that calculation, did you subtract all of the
23 agricultural land and all of the cleared land
24 already?

25 MS. KOENIG: No.

1 MR. STOCKWELL: You did not subtract
2 that. So if you did subtract that agricultural
3 land, it would be considerably more than 1
4 percent?

5 MS. KOENIG: No, it would be less.

6 MR. SLOTA: It would be considerably
7 less.

8 MR. STOCKWELL: Considerably less than
9 1 percent, of the cleared land? In other words,
10 if agriculture land is cleared and roadways and
11 whatnot are cleared, you did not account for that?

12 MS. KOENIG: When we did the
13 calculation, we calculated the area that Bipole
14 III line would clear.

15 MR. STOCKWELL: Pure area?

16 MS. KOENIG: Pure area, but it did not
17 include the buffer zones, it did not include the
18 already cleared areas, it did not include the open
19 agricultural fields. So if you were to include
20 them, that area would be smaller than 2.5 squared
21 kilometres.

22 MR. STOCKWELL: If you did include it,
23 it would be smaller?

24 MS. KOENIG: Correct.

25 MR. SLOTA: Yes.

1 MR. STOCKWELL: That's all I have, and
2 I think Mr. Mills has another question.

3 THE CHAIRMAN: Thank you.

4 MR. MILLS: John and I have just spent
5 seven months in flood remediation work in the
6 community, and we have been cleaning up after
7 water. So if this issue seems to cut us a little
8 close, we apologize.

9 Phil, one of the issues of cause and
10 effect is, if there is an effect, how do we
11 mitigate it? We may disagree on the calculation
12 of any water being contributed to Pine Creek First
13 Nation, but let's set our disagreement aside and
14 let's talk about mitigation of increased water
15 flow.

16 Are any of you comfortable talking
17 about that subject?

18 MR. TEKLEMARIAM: It's not part of the
19 scope of the work we did.

20 MR. MILLS: Okay. Well, help me out.
21 Let's talk about it for a minute and maybe between
22 us we might be able to answer some questions. And
23 I think it's important that we put in perspective
24 what we're questioning you on.

25 The Bipole III route revision has

1 placed Bipole approximately two and a half miles
2 from the edge of the First Nation. You have seen
3 the revised route, I take it?

4 MS. KOENIG: Yes.

5 MR. MILLS: Okay. Well, trust me, and
6 if you need me to substantiate it, I'll give you
7 an undertaking that I'll do that. But there is
8 currently a 5,000 head of buffalo herd penned
9 within that two and a half mile space between the
10 new Bipole route and the community. And a
11 Mr. Salmon and the Province, as the bison expert,
12 tells us that those animals are contributing about
13 205 tonnes of waste a day. And they are
14 straddling the Sklater.

15 So if my argument holds, and if during
16 may and June we are adding this additional flow of
17 water, and if it is passing through two and a half
18 tonnes daily of animal waste, I'm assured that
19 bison make the same mess that cattle do, so it's
20 apples to apples. There's a joke deep in there if
21 you look for it. What do you folks think some
22 possible mitigation might be? What could we do if
23 we are pushing additional water through that
24 situation? Do you have any advice or help for us
25 as water specialists?

1 THE CHAIRMAN: Mr. Mills, you're
2 asking them a question based on a supposition, and
3 I think their position is that the additional flow
4 will be negligible.

5 MR. MILLS: Okay.

6 THE CHAIRMAN: And as I said a day or
7 two ago, I'm not sure that these buffalo or bison,
8 though certainly a significant environmental
9 concern, I don't think they are relevant to Bipole
10 III.

11 MR. MILLS: Well, I think effects are
12 cumulative.

13 THE CHAIRMAN: And you'll get a chance
14 to argue that.

15 MR. MILLS: If we --

16 THE CHAIRMAN: Yes, thank you.

17 MR. MILLS: I take it I'm done?

18 THE CHAIRMAN: Well, I'm assuming, you
19 said you had one question. If you have a relevant
20 question, go ahead.

21 MR. MILLS: No, thank you.

22 THE CHAIRMAN: Thank you.

23 Mr. Williams?

24 MR. WILLIAMS: I am not sure I'll
25 drink from this water.

1 Just one question for the panel. By
2 way of undertaking, could you provide the
3 bibliography for the peer reviewed literature that
4 you relied upon for your preliminary analysis into
5 the tree cutting impacts, please?

6 MS. KOENIG: Sure.

7 MR. WILLIAMS: You're shrugging your
8 shoulders in an affirmative matter, which I think
9 means yes?

10 MR. SLOTA: Yes, yes.

11 MR. WILLIAMS: Thank you for that.

12 THE CHAIRMAN: Thank you. Mr. Dawson?

13 MR. DAWSON: Thank you, Mr. Chairman.

14 It's the middle of the afternoon in
15 the middle of the week, so nothing makes us more
16 sleepy than statistics, except me. I am excited.

17 Mr. Slota?

18 THE CHAIRMAN: I thought you meant
19 that except that you made us sleepy.

20 MR. DAWSON: Sleep is for the weak,
21 Mr. Chairman. I look forward to these days where
22 the hearings will start at 7:00 in the morning and
23 go on till 9:00 at night.

24 THE CHAIRMAN: The Chair will be
25 absent.

1 MR. DAWSON: Mr. Slota, you made
2 reference to our friends, Noah and Sutcliffe, and
3 their efficiency, it is also abbreviated as NSE;
4 am I right?

5 MR. SLOTA: That would be correct.

6 MR. DAWSON: And that's the
7 quantitative statistic that you selected to
8 evaluate and test your modeling of the water flow;
9 am I right?

10 MR. SLOTA: Yes, that was used to
11 evaluate goodness of fit.

12 MR. DAWSON: And you would agree with
13 me that there are other quantitative statistics by
14 which to test and evaluate watershed modeling.

15 MR. SLOTA: Certainly, yes.

16 MR. DAWSON: And would some of those
17 be the percent bias which is also known as P bias?

18 MR. SLOTA: I have heard of that one,
19 yes.

20 MR. DAWSON: Have you also heard of
21 RSR, which is actually the ratio of the route mean
22 square error to the standard deviation of the
23 measured data?

24 MR. SLOTA: I can't say I'm completely
25 familiar with that one, but it makes sense, in

1 that abbreviation RSR.

2 MR. DAWSON: I'm sorry, I didn't hear
3 the end of your answer?

4 MR. SLOTA: I haven't heard it
5 abbreviated as RSR, but I follow you.

6 MR. DAWSON: All right. I just didn't
7 want to keep talking about the ratio, et cetera,
8 so RSR. For each of these there are standards,
9 and I'll explain what that means in a second, by
10 which model simulation can be judged as
11 satisfactory. For example, your colleague, and I
12 think you yourself in your direct evidence refer
13 to your own standard, the NSE, the Noah Sutcliffe
14 Efficiency, and said that anything above .5, I
15 think you said that, no? But you made reference
16 to one answer which came back that it was .54 and
17 you thought that was a good number?

18 MR. SLOTA: Yes.

19 MR. DAWSON: And is there a standard,
20 a number above which or equal to which or greater
21 than which for the NSE that means your results are
22 fine?

23 You realize if this were an exam,
24 there would be no consulting with other witnesses.

25 MR. SLOTA: I suppose I'm lucky this

1 is not an exam.

2 I don't know if I can put it, frankly,
3 but it would depend on the application in which
4 you're judging it.

5 MR. DAWSON: Well, in this particular
6 instance, you told us that .54 on NSE was a useful
7 number, and you indicated results were something
8 you rely upon?

9 MR. TEKLEMARIAM: I can answer that
10 one.

11 MR. DAWSON: You're not getting extra
12 credit you realize.

13 MR. TEKLEMARIAM: That's okay. To put
14 it in the record, Mr. Slota explained that we did
15 use these numbers relative to sensitivity. It's
16 in the record of what he's saying. What he meant
17 is that if you put two -- overlay two processes
18 and the difference between the two. If you are
19 talking now that absolute value, the answer would
20 be different.

21 MR. DAWSON: So on the relative value
22 then, it was a relative value of .54?

23 MR. TEKLEMARIAM: The goodness of the
24 fit for the sensitivity analysis will be .54.

25 MR. DAWSON: Okay. How low could that

1 number have gone before it would have become
2 problematic then?

3 MR. SLOTA: Well, you'd have to depend
4 on it, but certainly something less than zero
5 would be unsuitable, as zero would indicate that
6 using simply a long term average would be
7 providing as much precision. So that would be
8 equal to a guess. So the further you move towards
9 1, the more confidence you have with it. So it is
10 a sliding scale.

11 MR. DAWSON: On NSE, 1 is perfect,
12 right?

13 MR. SLOTA: Correct.

14 MR. DAWSON: When you said .54 in this
15 context was a useful number for us to look at,
16 let's draw the line. If the number had come out
17 at .53, would it still have been okay for us to
18 talk about it?

19 MR. SLOTA: I would say so, yes.

20 MR. DAWSON: How low can we go before
21 eyebrows should go up? How far away from 1 can we
22 deviate?

23 MR. SLOTA: I mean, it would be a
24 judgment call. I don't know if I could quote you
25 with a specific number.

1 MR. DAWSON: Okay. While we're
2 talking about significance, statistical
3 significance and testing that, I'm just going to
4 ask these questions expecting you to tell me no.
5 In your engineering training, did you ever hear of
6 something called regulatory significance?

7 MR. SLOTA: No, not to my knowledge.

8 MR. DAWSON: No, no, of course not.
9 And did you ever use the phrase not insignificant?

10 MR. SLOTA: I mean, sure, I've read
11 that in engineering.

12 MR. DAWSON: I realize perhaps talking
13 to your spouse or something like that, but I'm
14 talking about as a professional term bandied about
15 when testing and evaluating standards, not
16 insignificant?

17 MR. SLOTA: Well, I mean, in terms of
18 statistics, when you're testing a null hypothesis,
19 not insignificant would be a very common thing.

20 MR. DAWSON: All right. And if I can
21 go, madam, to your third slide, please, which was
22 headed Project Background? And I don't want to
23 belabour this point too long.

24 So we are at Project Background is the
25 slide. And I just want to, since you have put it

1 out there, the first line says that Manitoba Hydro
2 is aware of concerns of potential Bipole III
3 impacts to Pine Creek First Nation. And you have
4 also said in your direct evidence support of this
5 slide that Pine Creek brought to Hydro's attention
6 its concerns about Bipole III impacts. Do you
7 remember that?

8 MS. KOENIG: Correct.

9 MR. DAWSON: I don't think your mic is
10 on. Could you say it again?

11 MS. KOENIG: I believe I did say
12 something in that term, yes.

13 MR. DAWSON: So it was Pine Creek
14 itself that came forward and drew Hydro's
15 attention to these concerns that it had?

16 MS. KOENIG: Yes.

17 MR. DAWSON: Am I correct to assume
18 that Pine Creek had the chance to make known its
19 concerns to Hydro, because it was Hydro that was
20 engaged with Pine Creek as part of its
21 consultation process?

22 MS. KOENIG: Can you rephrase that
23 question?

24 MR. DAWSON: Sure. Is it the fact
25 that Pine Creek's comments came to light in the

1 context of the fact that Hydro was engaged with
2 Pine Creek to determine the impacts of Bipole III
3 upon the community?

4 MS. KOENIG: Are you saying we engaged
5 in the study because of the concerns?

6 MR. DAWSON: Yes.

7 MS. KOENIG: Yes, that's correct.

8 MR. DAWSON: And those are my
9 questions, Mr. Chairman. Thank you very much.

10 THE CHAIRMAN: Thank you, Mr. Dawson.
11 Anyone else have questions of these witnesses on
12 this presentation? Ms. Whelan Enns?

13 MS. WHELAN-ENNS: Good afternoon.

14 These questions are from Manitoba
15 Wildlands, just two or three quick ones if I may.

16 We have had a variety of discussions
17 in the hearings to date about the zone, the impact
18 zone the Bipole III corridor is in. And the most
19 recent data from Manitoba Hydro in terms of
20 mapping is 4.5 kilometres wide. So I want to just
21 make sure we all heard you correctly that your
22 analysis and studies are on the 62 or 66 metre
23 wide corridor only?

24 MR. SLOTA: No, the study was for the
25 entire Pine Creek watershed. What we did in terms

1 of the right-of-way is simulate the effects of the
2 tree removal for the clearing. But in terms of
3 analysis, it was for the entire watershed, so that
4 would be much larger than that.

5 MS. WHELAN-ENNS: I take the
6 correction and I recognize the information in
7 terms of the whole watershed.

8 My question, though, has to do with
9 whether or not your emphasis then was on the
10 impact from the right-of-way for the Bipole III
11 corridor?

12 MS. KOENIG: Our analysis was on the
13 clearing of the Bipole III right-of-way,
14 essentially.

15 MS. WHELAN-ENNS: When you use the
16 term right-of-way, are you referring to the tenure
17 being granted Manitoba Hydro for the right-of-way
18 under the Crown Lands Act, or are you referring to
19 the right-of-way in Manitoba Hydro's data and
20 mapping? They are not exactly the same.

21 THE CHAIRMAN: How is that relevant?
22 We're talking about a 66 metre wide right-of-way.

23 MS. WHELAN-ENNS: I'll move on.

24 THE CHAIRMAN: Yes.

25 MS. WHELAN-ENNS: The reason that I'm

1 asking the question in terms of the 4.5 kilometre
2 width is because there's a fair bit of impact
3 there also that can affect drainage. This is
4 borrow pits, access roads, clearing in order to be
5 able to in fact create the corridor. So I will
6 take your answer as the emphasis was on the
7 right-of-way?

8 MS. KOENIG: (Witness nodding)

9 MS. WHELAN-ENNS: Thank you.

10 In listening closely, and I appreciate
11 you being here today, I think it was important to
12 have this presentation. I have -- I wondered
13 about the question from Mr. Dawson about not
14 insignificant conclusions. So I want to know if
15 you will tell us then, in your responsibilities,
16 the three of you in your unit inside Manitoba
17 Hydro, whether you have had any involvement in
18 terms of the overall conclusions in assessment in
19 terms of Bipole III, or whether you stayed
20 basically only on water? And this might be a
21 question for Mr. McGarry.

22 MS. KOENIG: Our department
23 specifically looked at this one study related to
24 river flooding. So we did not have input directly
25 into the EIS.

1 MR. MCGARRY: Good afternoon,
2 Ms. Whelan Enns.

3 We compiled the EIS, as you know, in
4 December of 2011. This particular study wasn't
5 part of that. It came to us through Pine Creek
6 for review. And so we have conducted that review
7 specific to that request.

8 MS. WHELAN-ENNS: Thank you.

9 THE CHAIRMAN: Thank you.
10 Mr. Beddome.

11 MR. BEDDOME: Thank you very much,
12 Mr. Chair. I won't be longer than five minutes
13 likely. I just have a couple quick points, I just
14 wanted to clarify.

15 THE CHAIRMAN: Thank you.

16 MR. BEDDOME: James Beddome, Green
17 Party of Manitoba.

18 Thank you very much for coming. I am
19 going over some things that have already been said
20 but it is just my way of sort of -- you only
21 performed the study near Pine Creek, correct?

22 MR. SLOTA: Yes, this study is just
23 for the Pine Creek watershed.

24 MR. BEDDOME: So along, you know, the
25 remainder of the rest of the entire right-of-way

1 there is obviously going to be some clearing.

2 You'd accept that, right?

3 MR. SLOTA: Yes, there would be
4 clearing outside of this watershed, yes.

5 MR. BEDDOME: So there could be
6 impacts somewhere else further up the watershed
7 where you guys haven't performed this study?

8 MS. KOENIG: There is clearing that
9 would occur outside the watershed, but we did not
10 conduct studies outside. The total drainage area
11 of Manitoba Hydro system is approximately
12 1.2 million square kilometres.

13 MR. BEDDOME: 1.2 million.

14 MS. KOENIG: So this was just
15 conducted for the Pine Creek watershed.

16 MR. BEDDOME: So in terms of studying
17 other watersheds, that wasn't done?

18 MS. KOENIG: Correct.

19 MR. TEKLEMARIAM: It won't make any
20 difference, particular for this study, whether it
21 was delineated to the watershed. If there is any
22 effect of --

23 MR. BEDDOME: Sorry, I'm just having
24 some trouble hearing you.

25 MR. TEKLEMARIAM: Whether there is

1 effect upstream, downstream of the watershed study
2 we conducted wouldn't make any difference, because
3 it's delineated within that boundary of the
4 watershed effect of the Bipole III, for that
5 particular area.

6 MR. BEDDOME: But what about other
7 watersheds?

8 MR. TEKLEMARIAM: It won't affect to
9 that Pine Creek watershed area.

10 MR. BEDDOME: But those other, like --

11 MR. TEKLEMARIAM: It's not part of the
12 scope of the work.

13 MR. BEDDOME: Okay. Has there been
14 concerns anywhere else in terms of the
15 right-of-way that you are aware of, or maybe it's
16 a better question for Mr. McGarry, but in terms of
17 similar watershed issues from clearing?

18 MR. MCGARRY: It hasn't been brought
19 to our attention like this one. But in terms of
20 scoping and developing VECs and the issues to
21 study for the assessment, effects on water run-off
22 was not one of them.

23 MR. BEDDOME: So it would have to be
24 something that would have to be brought to your
25 attention for it to be studied further?

1 MR. McGARRY: If we thought it was
2 required. And at the outset we didn't. And I
3 think the study has helped to demonstrate the
4 limitation, the effect of clearing on run-off
5 related to what we're proposing for Bipole III.

6 MR. BEDDOME: And just one last really
7 quick question, which is notwithstanding that you
8 guys feel that the impacts would be insignificant,
9 are there any engineering techniques in terms of
10 right-of-ways that might help mitigate? So I'm
11 thinking, and I'm not an expert here, but I am
12 thinking if you built up a small berm of dirt or
13 something near the edge of the right-of-way, if
14 that would have an impact on slowing water flow?
15 I'm speculating here, so if you guys are aware of
16 any technologies or methods that could mitigate
17 that, I'm just curious?

18 MR. McGARRY: Actually, part of the
19 mitigation measures is for riparian set-backs, or
20 riparian buffers rather, that do protect stream
21 banks and provide a bit of buffer for run-off
22 accumulation if it's coming down a slope or off
23 the right-of-way. So I believe that would
24 certainly help in terms of mitigating issues
25 related to run-off.

1 MR. BEDDOME: Thank you.

2 THE CHAIRMAN: Thank you, Mr. Beddome.

3 Are there any other participants who wish to
4 question? I think we have covered most of the
5 room.

6 So thank you very much for your
7 presentation.

8 Now, it's about 20 to 3:00.

9 Mr. Dawson, your witness is here I believe. Would
10 you be prepared to go in five minutes or so?

11 MR. DAWSON: At your call.

12 THE CHAIRMAN: Okay. Rather than call
13 another panel up here for 20 minutes of cross, why
14 don't we start with your witness in about five,
15 six minutes. We'll let these people get off, and
16 you get ready and then we'll go.

17 (Proceedings recessed at 2:45 p.m.
18 and reconvened at 2:50 p.m.)

19 THE CHAIRMAN: As I noted earlier,
20 this is the first of our presentations. It is put
21 in at this time because of the availability of the
22 witness. Mr. Dawson will be leading direct
23 examination of the witness. Before we do that I
24 would ask the commission secretary to swear the
25 witness in.

1 Peter Kulchyski: Sworn

2 THE CHAIRMAN: Welcome again.

3 MR. KULCHYSKI: Nice to see you again.

4 MR. DAWSON: Thank you, Mr. Chairman.

5 Good afternoon, Dr. Kulchyski. If at any point
6 you have difficulty in hearing me or anyone else,
7 please do feel free to ask that person to repeat
8 or to speak louder. We'll try our best to
9 accommodate.

10 MR. KULCHYSKI: The earphones help a
11 lot.

12 MR. DAWSON: Let me start very quickly
13 to deal with you as for your qualifications as an
14 expert. You have provided your curriculum vitae
15 to the panel, but I'd like to highlight certain
16 qualifications that you've set out there, and I'll
17 do that, if it's all right with the panel, for
18 speed purposes, and also a cross-examination
19 purpose.

20 You hold a Ph.D. in political science
21 from York University and your dissertation was on
22 Aboriginal politics in Canada, correct?

23 MR. KULCHYSKI: That's right. The
24 thesis was completed in 1988. I started graduate
25 school in 1980. So I just want to say that's more

1 than 30 years of reading Aboriginal politics, law,
2 history and culture.

3 MR. DAWSON: Before going to graduate
4 and post-graduate studies you received an honours
5 Bachelor of Arts in political science from the
6 University of Winnipeg, correct?

7 MR. KULCHYSKI: I am a proud graduate
8 of the University of Winnipeg.

9 MR. DAWSON: And before that you had
10 attended and graduated from a residential school
11 in Cranberry Portage, Manitoba, correct?

12 MR. KULCHYSKI: That's right.
13 Frontier Collegiate -- I just want to pause there
14 for a moment. I went there from grade 9 to 12.
15 It's a government run residential school. It's
16 not listed on the residential schools sort of
17 list. But it did -- I'm a non Aboriginal person.
18 Part of the reason why I got into doing what I'm
19 doing is because I attended a residential school.
20 And from a very early age I thought there is
21 something wrong with the way things are going on
22 here in the country.

23 MR. DAWSON: All right. You are
24 currently a full professor in the Department of
25 Native Studies at the University of Manitoba?

1 MR. KULCHYSKI: That's right.

2 MR. DAWSON: And you have previously
3 been the head of that department here at the
4 University of Manitoba, as well as a comparable
5 department at Trent University?

6 MR. KULCHYSKI: Correct.

7 MR. DAWSON: And in advising graduate
8 students on their thesis and dissertations, you
9 have done work relating to what today is known as
10 Peguis First Nation?

11 MR. KULCHYSKI: Yeah. About four
12 years ago I was on an advisory committee for a
13 masters thesis by a young man named Paul Burrows,
14 and it was a thesis on the relocation of the St.
15 Peter's reserve.

16 MR. DAWSON: And the St. Peter's
17 reserve is connected to Peguis how?

18 MR. KULCHYSKI: That is the former
19 name of the people who now live at Peguis.

20 MR. DAWSON: Have you done any
21 volunteer or pro bono work that's relevant to your
22 appearance here today?

23 MR. KULCHYSKI: I want to emphasize I
24 have taken in my career any opportunity where
25 invited to an Aboriginal community to go to an

1 Aboriginal community. I've done a lot of
2 workshops, a lot of proposal writing, a lot of
3 legal advising to communities all across Canada,
4 especially the Northwest Territories, northern
5 Manitoba, Nunavut and northern Ontario. And I've
6 tried to help communities out by doing pro bono
7 work, but in every community I learn about their
8 situation, I live with families, I see what the
9 sort of quality of life is like in the community,
10 and it allows me to kind of assess things and not
11 just have sort of a book learning knowledge, but a
12 more pragmatic, down to earth knowledge of what
13 life is like in Aboriginal communities.

14 MR. DAWSON: Speaking of book
15 learning, in advance of your testimony today
16 pre-filed evidence has been provided to the panel
17 and participants including three articles by a
18 Peter Kulchyski. Are you able to confirm that
19 you're the author of those three provided
20 articles?

21 MR. KULCHYSKI: Yes, I am. One thesis
22 on Aboriginal rights I wrote in the early '90s,
23 one, Aboriginal Rights Are Not Human Rights, I
24 wrote, published within the last year. And that's
25 to show that over the course of my professional

1 career I have been interested in Aboriginal and
2 Treaty rights issues. And the third one, I will
3 just step back, was actually partly based on my
4 testimony to the Clean Environment Commission
5 around the Wuskwatim project.

6 MR. DAWSON: So let's turn from you
7 then and turn to Bipole III. I'd like to start
8 with some basic concepts, if we can, that will
9 provide a context for the panel to the concerns
10 that Peguis First Nation is expressing throughout
11 these hearings.

12 Let's start very simply, just tell me
13 what does it mean when we talk about a First
14 Nation?

15 MR. KULCHYSKI: Well, a First Nation
16 is a non Metis, non Inuit Aboriginal community.
17 And I say that because not all of them are listed
18 within the Indian Act. The more conventional
19 answer is the First Nation is what we used to
20 formally call an Indian Band under the Indian Act.
21 So, a community of indigenous people, not Metis,
22 not Inuit in Canada.

23 MR. DAWSON: Now First Nations, of
24 course, are involved with lands. And we often
25 here reference to things like reserves, TLE lands,

1 TLE notification zones, traditional lands. Could
2 you go through those terms and explain to the
3 panel what they mean at a very high level?

4 MR. KULCHYSKI: Sure. My answer will
5 have to be a little bit longer. I will start with
6 reserve lands and traditional lands and then the
7 TLE process fits within those. So technically
8 reserve lands are defined by the Indian Act as
9 lands held by the Crown for the use and benefit of
10 the indigenous people of the First Nation. So
11 they are lands set aside for First Nations
12 communities basically, and have been the land base
13 of First Nation communities for many years.

14 In Western Canada we're familiar with
15 the reserves having been set up through the Treaty
16 process. The treaties established reserve lands
17 that will go to First Nations. But there are many
18 places, for example British Columbia, where there
19 was no Treaty process but reserve lands were still
20 set up so that First Nations communities would
21 have something of a land base in those places. So
22 they are not necessarily tied to treaties.

23 Of course, First Nation -- reserve
24 lands have now been seen to be kind of be sui
25 generis by the Supreme Court, I think especially

1 the Garin decision of the mid 1980s has gone a
2 long ways towards sort of redefining how we look
3 at reserve communities. And I don't think that
4 kind of technicality needs to concern you. But
5 they are basically relatively small areas of land
6 within a traditional land use area that are meant
7 for the sole use of the First Nations people who
8 traditionally live there.

9 Traditional territory is the land that
10 the First Nation used and occupied, according to
11 the courts they would say around the time of first
12 contact with Aboriginal people and used and
13 occupied them exclusive to other First Nations
14 use. I myself actually argue that, you know,
15 there are no rigid lines on traditional Aboriginal
16 land use patterns, so that there's some mutual use
17 of lands that share between different First
18 Nations, and that I would say they are lands used
19 and occupied by the First Nation from time
20 immemorial, for a long, long time. So the
21 traditional territory is much larger than the
22 reserve lands.

23 And maybe here I'll say one, I think,
24 very important point in relationship to
25 traditional territories. Particularly here in

1 Manitoba, but in the reserves that were set up by
2 treaties. Since 1990, the Sioui case at the
3 Supreme Court of Canada established that we should
4 read treaties in a liberal and generous manner,
5 rather than the narrow legalistic literal
6 interpretation that had been given to the treaties
7 for most of the previous hundred years. Just to
8 say the Supreme Court was saying we should respect
9 these documents more. We can't just let what was
10 written in English by lawyers in the 1800s govern
11 how we understand the treaties. And the Supreme
12 Court was quite clear about that.

13 The treaties themselves say that the
14 First Nation will be able to practice their
15 avocations of hunting, trapping and fishing in
16 their traditional territories as long as they are
17 unoccupied Crown lands.

18 It's my own view that that really is
19 opening a window, if we were to take a liberal and
20 generous interpretation, we would say that the
21 First Nations really should be seen as co-owners
22 of their traditional territories and co-managers
23 of their traditional territories. We should be
24 setting in place regulatory regimes that take
25 seriously the traditional territories of the First

1 Nations in Manitoba, and don't assume, okay, they
2 have got their reserve lands they have ceded and
3 surrendered their other lands, they have no
4 interest in those lands. They do have an interest
5 in those lands. And if we're going to respect the
6 treaties properly following the guidelines that
7 have been established by the Supreme Court, we
8 would have to acknowledge that they have a
9 co-management role in what happens on Crown lands
10 that are part of their traditional territories.

11 Now, in the establishment of the
12 treaties, there were all sorts of irregularities
13 in the 1870s, '80s and '90s. And so eventually as
14 a result of the Calder case in the '70s, the
15 Federal government set up a process called a
16 specific land claims process, and that's evolved
17 now into what we call Treaty Land Entitlement.
18 What Treaty Land Entitlement means is if there was
19 an unfulfilled or broken promise specific to lands
20 made during the course of the Treaty, the First
21 Nation has a process to try and do something to
22 compensate for that, get the lands back or get
23 some compensation for the lands that they lost.

24 Of course, Peguis First Nation has a
25 number of different kinds of Treaty rights

1 entitlement claims. They have a claim for
2 compensation over the fact that the whole reserve
3 was moved from the former site near Selkirk or St.
4 Peter's up to its present site in Peguis, which is
5 really -- I quote the prominent Manitoba historian
6 Gerald Friesen when I say that's a story every
7 Manitoban should know about, and that should be in
8 the textbooks of grade school Manitoba history,
9 the horror story of the relocation from St.
10 Peter's to Peguis.

11 But they also have Treaty rights
12 entitlement cases based on the fact that the
13 numbers of people who signed on to the Treaty at
14 the time. The size of the reserve was based on
15 the number of people counted. Peguis was in the
16 unusual situation where the Federal government
17 recognized they already had individual private
18 held lands by Peguis members. That wasn't
19 supposed to be included within the reserve. But
20 some of those individuals were left out of the
21 count in establishing the size of the reserve base
22 and so that also lead to a Treaty Land Entitlement
23 case.

24 So Treaty Land Entitlement lands are
25 lands that are selected by a First Nation in order

1 to settle a claim for compensation for some
2 irregularity that happened in the past in the
3 treaty.

4 Then the last part of this is a TLE
5 notification zone, and that's basically showing an
6 area usually within the traditional territory, for
7 some exceptional reasons it can be out, but
8 usually within the traditional territory where the
9 First Nation is interested in selecting treaty
10 lands that it's entitled to as a result of a
11 process.

12 So in quick terms, traditional
13 territory is the large area of use and occupancy
14 by First Nations historically. Reserve lands are
15 the lands that were set up most often by a treaty
16 that are almost like municipal areas, much smaller
17 areas of lands, that the First Nation community
18 occupies today. Treaty Land Entitlement lands are
19 lands that are granted to it as a result of broken
20 or unfulfilled promises in the treaties, and
21 Treaty Lands Entitlement notification is an area
22 of land from which they intend to select Treaty
23 lands entitlement that they are entitled to.

24 MR. DAWSON: When you are referring to
25 Treaty Land Entitlement lands or notification

1 zones, I've been making reference to them as TLE
2 lands, TLE notification zones, they are the same
3 thing, are they?

4 MR. KULCHYSKI: They are the same
5 thing. It is a lot easier to say TLEs.

6 MR. DAWSON: In your answer in
7 describing these various categories of lands and
8 land rights, you have glanced upon some of the
9 other rights and entitlements that come to First
10 Nations relating to these categories. Is there
11 anything that you'd specifically like to add to
12 that?

13 MR. KULCHYSKI: Well, I guess what I
14 would say is in fact in my early article from the
15 1990s, I'm one of the first scholars who pointed
16 out that Aboriginal rights don't derive from
17 Aboriginal title, that Aboriginal title is a form
18 of Aboriginal rights. Aboriginal title being
19 Aboriginal land ownership. So I've made -- I've
20 always been associated with making the case which
21 was later accepted by the Supreme Court of Canada,
22 I wish it were under my influence, but I don't
23 suspect so, that Aboriginal rights are based on
24 Aboriginal culture first and foremost, and we
25 should see Aboriginal rights as the Supreme Court

1 from 1996 on has said, Aboriginal right is any
2 practice, activity or custom that's integral to
3 the distinctive Aboriginal culture. So I myself
4 am associated with the argument which is now an
5 accepted legal doctrine in Canada, that Aboriginal
6 culture and all of the things which we're only
7 starting to discover really become attached to
8 that is a critical element of Aboriginal rights
9 that needs to be protected.

10 So, you know, if you -- it's not
11 simply a narrow question of our land title, which
12 is very important to Aboriginal rights, but there
13 are much broader questions about cultural survival
14 I would say that we get into. If I can maybe make
15 one point in relationship to this. At a very
16 broad level, you know, I'm of Polish and Ukrainian
17 identity, and I don't speak Polish or any
18 Ukrainian, and I have -- I eat Polish, I like
19 cabbage rolls and perogies. Food is one of the
20 last things to go culturally among any of us
21 actually. Language is one of the first things to
22 go. And that might be sad for me personally, but
23 it's not a global tragedy. You know, there are
24 other places in the world where the Polish and
25 Ukrainian culture and language are thriving in

1 Poland and in the Ukraine. We pride ourselves on
2 a multi-cultural society, but not all cultures in
3 this multi-cultural society should be treated
4 equally.

5 If the Cree language and culture
6 disappears from Manitoba, it disappears from the
7 world. It's gone forever. There's no other place
8 where these particular distinctive languages and
9 cultures get practiced. So that's why we have a
10 special, you know, we have Aboriginal rights
11 especially acknowledged within the constitution,
12 and we have I think a special duty as Canadians to
13 make sure that Aboriginal cultures belong and
14 thrive in this, their only homeland. If they
15 disappear from here, they are gone from
16 everywhere. And I think that's both a privilege
17 to be the homeland of these cultures, but also a
18 responsibility, and the courts have come to
19 recognize it as a legal responsibility.

20 MR. DAWSON: Let's turn to Peguis
21 First Nation itself. We started off by
22 distinguishing reserve lands, TLE lands, TLE
23 notification zones and traditional lands. Do any
24 of these categories of lands and land entitlements
25 relate to Peguis First Nation itself?

1 MR. KULCHYSKI: Peguis First Nation is
2 involved in all of these categories. So they have
3 a reserve, they have a traditional territory, they
4 have TLE lands and they have a TLE notification
5 zone.

6 MR. DAWSON: To the extent that you'd
7 like to talk about it, roughly where, not
8 precisely, but where is the Peguis First Nation
9 reserve lands?

10 MR. KULCHYSKI: The reserve lands are
11 to the west of Lake Winnipeg, a little bit north
12 and west of the city.

13 MR. DAWSON: And the traditional lands
14 that you have made reference to for Peguis First
15 Nation, what would be the extent of those?

16 MR. KULCHYSKI: I couldn't say in
17 square acres or kilometres or anything, but
18 roughly speaking, you know, to the south along the
19 southern part of Lake Winnipeg around, you know,
20 where St. Peter's reserve was originally located
21 and where the current community of Selkirk is.
22 It's a broad swath of land, I would say, to the
23 south of Lake Winnipeg around the modern City of
24 Winnipeg.

25 MR. DAWSON: Okay. We'll return to

1 the TLE lands in just a moment. But I am
2 wondering in terms of the EIS that's before this
3 panel, have you had the opportunity to review
4 relevant sections of the EIS and identify whether
5 parts of the Bipole III project would be situated
6 on or near Peguis lands of any sort?

7 MR. KULCHYSKI: I have looked through
8 a couple of the sections or chapters of the EIS,
9 so I have a sense I think of the relevant
10 sections. And I have noticed that the Riel
11 converter station and the right-of-way I guess for
12 the hydro transmission line cross over the Peguis
13 TLE notification zone, and also parts of the Riel
14 converter station are in the zone and parts of it
15 are in the traditional territory of the Peguis
16 First Nation.

17 MR. DAWSON: Was there any specific
18 map within the EIS filing documents that you found
19 capturing that?

20 MR. KULCHYSKI: Yeah, there was a
21 technical report called Lands of Special Interest
22 and TLE. And I think map 21 was the one. Have I
23 a copy of it here? Yes, map 21.

24 MR. DAWSON: I don't think anyone
25 needs to turn to that. Just for the sake of the

1 record, you're saying that map 21 of the technical
2 report entitled "Lands of Special Interest and
3 TLE" set out the location of the transmission
4 line, the Riel converter station as it relates to
5 Peguis First Nation lands in the TLE zone?

6 MR. KULCHYSKI: That's right.

7 MR. DAWSON: Okay. Let's turn to
8 Hydro's ATK. In its evidence, Hydro has tried to
9 give the impression that it has engaged with
10 Aboriginal communities that might have an interest
11 in the Bipole III project. Are you familiar with
12 those parts of the EIS that discuss ATK?

13 MR. KULCHYSKI: That's one of the
14 parts of the EIS that I concentrated my reading
15 on, so I have some familiarity with it, yes.

16 MR. DAWSON: I should digress here and
17 just for the sake of clarity ask you the question
18 that if I don't, I expect my learned friends will,
19 and that is whether you have had the opportunity,
20 even though you're here to speak about the
21 interests of Peguis First Nation specifically,
22 whether you have the opportunity to read the
23 entire EIS filing, the transcripts of oral
24 evidence that have been given up to date as part
25 of these hearings, as well as all of the exhibits

1 that have been filed?

2 MR. KULCHYSKI: Well, first of all,
3 I'm going to say I'm appearing here on a pro bono
4 basis, so I never intended to read that whole, you
5 know, area of documentation. I had hoped to read
6 the whole EIS before my testimony or at least to
7 be able to sort of say that I have looked through
8 it carefully. But my understanding was there were
9 continued filings and things were changing, and so
10 I thought I'd wait until I see something that's
11 called the final, final, final version.

12 I learned this lesson a little bit
13 when it came to the Wuskwatim partnership
14 agreement. We were seeing drafts, and I thought
15 it's a waste of time to be working on drafts and
16 providing my opinion on drafts. I want to see the
17 final copy, then that's worth my time to work on
18 it. So I kind of kept delaying thinking I'll wait
19 until I see something that's called a final, final
20 copy. And then I realized I'm getting close to
21 when I'm going to appear, so I'd better just read
22 what's in front of me. So that limited my reading
23 scope more to I think it's chapter 6 and chapter 8
24 about looking at the social and cultural impacts,
25 and the traditional knowledge assessments or

1 Aboriginal traditional knowledge reports that were
2 developed in consultation with it.

3 I do want to say, though, looking
4 through the EIS generally, a couple of things.
5 And two we'll be talking about. But one is I
6 couldn't find a specific place where they talk
7 about Aboriginal and Treaty rights. I couldn't
8 find a chapter called Aboriginal and Treaty rights
9 in the document, at least in what I could find
10 online. And that to me is kind of -- there's
11 reference to Aboriginal and Treaty rights within
12 the documents here and there. I couldn't find a
13 section that dealt with impact on Aboriginal
14 Treaty rights, the value of Aboriginal and treaty
15 rights, what an Aboriginal and Treaty rights based
16 approach to pursuing environmental and social
17 impact assessment might be. And, you know, I may
18 have missed it, but if it's not there, you know, I
19 would urge the CEC, we've got to start raising the
20 profile of Aboriginal and Treaty rights within the
21 province. We have to start showing some respect
22 and realizing that it's one of the foundations of
23 this province and our ability to respect them,
24 meaningfully to implement them in this generation
25 is going to be one of our defining tasks in the

1 ways in which we will be understood historically
2 as having succeeded or failed in building a
3 province that works for everybody.

4 So I think the profile of Aboriginal
5 and Treaty rights, at least even if it's in there,
6 it's hidden a bit. It should be raised. These
7 are impacts that are very significant for
8 Aboriginal communities through northern and
9 southern Manitoba. And I think in looking at
10 environmental and social impacts, there should be
11 some front and centre place where Aboriginal and
12 Treaty rights are absolutely laid out.

13 The other parts of the report that I
14 concentrated on were the social impacts on
15 Aboriginal communities and Aboriginal traditional
16 knowledge and the cultural impacts.

17 MR. DAWSON: So turning to those ATK
18 reports that you just mentioned, can you tell me,
19 did you find an ATK report on Peguis First Nation?

20 MR. KULCHYSKI: No.

21 MR. DAWSON: Did you find any mention
22 of the Peguis First Nation in the EIS?

23 MR. KULCHYSKI: Well, just that
24 technical report lands of special interest and
25 TLE, which sort of confirms the summary that the

1 Peguis notification zone I think is listed in that
2 map, so there's an awareness that there's a TLE
3 notification zone there.

4 MR. DAWSON: But that's the extent?

5 MR. KULCHYSKI: That is the extent of
6 what I saw, yes.

7 MR. DAWSON: Are you aware that Hydro
8 says that it solicited 49 Aboriginal communities
9 to provide ATK as part of the EIS, but less than
10 half responded?

11 MR. KULCHYSKI: I read that in the ATK
12 assessment, the first one, and they also included
13 in their appendices, very helpful, a copy of the
14 letter that was sent to the communities from
15 Manitoba Hydro, so I took a look at that. I must
16 say, I mean I hope more was done than that,
17 because you send a letter, you know, by fax or by
18 mail with Manitoba Hydro on it to an Aboriginal
19 community on such an important matter and expect
20 people who are often still working in a
21 face-to-face oral cultural context to be jumping
22 up and down over that and responding to you, when
23 just urgencies of daily living are what command
24 most people's attention in band offices. It's
25 probably -- well, it is actually, from our

1 academic knowledge, the worst possible way of
2 initiating any kind of a traditional knowledge
3 study. You don't send off a letter. You know,
4 you call people, you arrange a visit, you go to
5 them, you explain to them what you're doing, and
6 then hopefully people have a realization of what's
7 going on and decide to participate: So I hope
8 something like that happened.

9 But from the report that I saw is they
10 sent out these letters. They got a few responses,
11 five initially and then eventually another 14
12 communities joined them. And I should say of
13 those communities six of them are basically
14 barrows or very near or around barrows. So I
15 would say rather than 19 communities, we're
16 talking about maybe 13 communities. The meetings
17 for those communities were all held in the barrow
18 community hall. So it's really not a very good
19 way, or I would say it's the worst possible way.

20 Also given this Manitoba Hydro status
21 in many of the northern communities, just their
22 logo on the letter saying we want to do
23 traditional knowledge surveys isn't necessarily
24 going to warm some people up. There is what I
25 once called a legacy of hatred. You know, you get

1 into Northern Manitoba, and I have travelled now
2 widely in these communities, there are a lot of
3 people for whom the words Manitoba Hydro are --
4 you know, it doesn't have a very good reputation
5 given its past. So not a good way to initiate
6 these kind of studies.

7 MR. DAWSON: Do you have any comments
8 on the ATK that Hydro actually did file, even
9 though it hasn't collected any from Peguis First
10 Nation?

11 MR. KULCHYSKI: I have a lot of
12 comments. And I should say first in the EIS in
13 chapter 6, there's a section that refers to sort
14 of the cultural effects of the proposed
15 transmission line. And I would say as a scholar
16 who teaches, this will get a failing grade in the
17 first year of Cultural Anthropology or Native
18 Studies class. I can tell you right off the bat
19 as a scholar the first thing we look to is the
20 bibliography. So if you look at the chapter 6
21 bibliography on culture and heritage what you'll
22 see are a bunch of archeological reports. And
23 one, maybe arguably two, cultural anthropology
24 reports. One of them is called Cultural
25 Anthropology. The proper reference material isn't

1 there, but it's a first year cultural anthropology
2 textbook from 1987. I can tell you as someone who
3 works in this field, that's 25 years ago, that's
4 around when Aboriginal traditional knowledge
5 really became a serious subject of academic study,
6 and a lot has happened in the last 25 years.

7 So there are all kinds of biases in
8 terms of the way the material is gathered. If you
9 look at the list of questions that's asked,
10 there's 174 questions on the list. As far as I
11 can tell, they are all asked in English. No where
12 in the report does it say they use a few Cree
13 language terms here and there. No where in the
14 report does it say they conducted these or had any
15 translation or used any Aboriginal language in the
16 conduct of these. So again the most knowledgeable
17 traditional knowledge holders will be people whose
18 first language is other than English. They are
19 being asked a series of 174 questions, mostly
20 about sites and specific locations. And, you
21 know, so the idea that a trail in itself might be
22 culturally significant is not something really
23 contemplated by the people gathering Aboriginal
24 traditional knowledge.

25 I travelled to Grand Rapids,

1 Misipawistik First Nation. My friend Gerald McKay
2 took me on the old trail along which now the dried
3 river bed that, you know, have been moved thanks
4 to Manitoba Hydro. And there are trails which are
5 not marked anywhere which really should be
6 heritage trails in Manitoba, because he tells me
7 they have been used for hundreds and hundreds of
8 years, were traditionally used. And so the power
9 of walking in the place where your ancestors
10 walked, where your great, great, great ancestors
11 walked, is something that Aboriginal communities
12 have in Northern Manitoba that's not captured by
13 this.

14 In those 174 questions that are asked,
15 somewhere in the middle, somewhere there someone
16 says, do you know of any sacred sites? And in
17 fact, none of this research I can see captured
18 anything that deserves to be called a sacred site.
19 It is kind of like in the middle of a long
20 interview, if someone said, tell me an intimate
21 detail about your first sexual experience? You
22 know, you are being interviewed by a stranger in
23 your second language, and you are expected to
24 reveal, you know, stuff that's very, very close to
25 you. It actually doesn't happen.

1 I have worked with elders, I have
2 worked with elders for a long time. And the
3 longer you work with them, the more trust you
4 build, the more knowledge you can gather. These
5 kind of swooping in and doing, you know, 174
6 questions in two hours and coming out, it's not
7 the way to gather traditional knowledge.

8 Particularly, if it's not done in the language.

9 Another concern that I have -- I
10 should also say, you know, I have the greatest
11 respect for Virginia Petch, the archeologist, she
12 is trained as an archeologist who has worked with
13 many First Nation communities and done really
14 admirable service to First Nations communities in
15 Canada. But in spite of my respect, I have to say
16 certainly this particular study was engaged in
17 using 25 year old premises that we have now long
18 surpassed. And much of what I am talking about
19 is, my concerns about the study come from the fact
20 that, you know, there's a whole new generation of
21 scholars who she does not cite. Her sources, you
22 know, she says this is cultural anthropology
23 research. She cites mostly commonly Fikret
24 Berkes, who is trained in environmental studies,
25 also a highly revered colleague of mine. I love

1 his work, but he is not a methodological innovator
2 when it comes to cultural anthropology. He
3 borrows the latest innovations from cultural
4 anthropology. Peter Usher, who is trained as a
5 geographer also, you know, similarly uses stuff he
6 gets -- she doesn't actually cite nowhere in the
7 report, you know, many of the really compelling
8 contemporary scholars around traditional
9 knowledge.

10 So I would say the Aboriginal
11 knowledge reports do better than the Environmental
12 Impact Statement. The Environmental Impact
13 Statement would not pass first year university
14 course on traditional knowledge. The Aboriginal
15 knowledge reports themselves would pass. There's
16 more recent material quoted there, and some of the
17 better things that are said there don't get
18 captured in the Environmental Impact Assessment.

19 You know, in the first Aboriginal
20 knowledge report they talk about really the
21 subtleties of the changes to Aboriginal culture
22 and how the landscape, the changing of the
23 landscape by Bipole will cause loss of memory,
24 because landscape is a key pneumatic device. That
25 doesn't appear anywhere that I can tell in the

1 Environmental Impact Statement.

2 But sort of back to my concerns with
3 the reports, my biggest concern is that it's now
4 long been recognized, in the last 25 years, that
5 Aboriginal knowledge comes to us in a narrative
6 form. Western enlightenment reason works in an
7 analytical form -- there's a philosopher named
8 Lyotard who argues this, but I think it's now
9 widely accepted. We take our knowledge through
10 bits of data. We try and abstract from it and we
11 try and take deliberate pieces from it. And
12 that's how all of this Aboriginal traditional
13 knowledge has been gathered. But traditional
14 knowledge doesn't work that way. It works through
15 narratives, through stories. And in fact you need
16 almost as much a literary bent as an analytical
17 bent to try and get knowledge from these stories.

18 So let me give you an example. I
19 worked with a Dene elder who has now passed away.
20 One of the first times I met him he told me a
21 story of a war between a southern medicine man and
22 a northern medicine man. I will always remember
23 how he told me, you know, the arrow from the south
24 pierced the heart of the guy from the north. And
25 I walked away from him and I said, and why did he

1 tell me that story? Like what am I supposed to
2 learn out of that?

3 A year later I realized that actually
4 he was talking about what was exactly politically
5 going on in the Northwest Territories at that
6 time, which was a division around land claim
7 issues between the northern First Nations and the
8 southern Dene First Nations in the Northwest
9 Territories. Like a year later the coin dropped,
10 he was actually using that story to tell me
11 something about, you know, it wasn't about magic
12 arrows, it was about the political divisions
13 within his own communities.

14 Now, if you analyze it, I'm going to
15 read you a section from the first traditional
16 knowledge report, their methodology. This is from
17 page 20 of the Bipole III ATK, the first one.
18 They say:

19 "By a system of coding particular
20 components of a narrative it may be
21 transformed into another form of
22 representation. The code word is
23 therefore a rule for organizing
24 primary information, just as Cree
25 Anishinaabe and other syllabics are

1 code for certain sounds and vowels
2 that hold meaning."

3 Actually, these are two different orders of
4 representation, the example doesn't work, but I
5 don't have the time to get into explaining that.

6 "The frequency of code words and their
7 subsets are then arranged according to
8 emerging cultural themes that are
9 deeply embedded in the value systems
10 of a cultural group. These themes
11 then are expressed as measurable
12 indicators that are considered to be
13 representative of culture in general.
14 A cultural indicator is a single
15 measure that can be quantitatively
16 expressed and which captures a key
17 aspect of culture."

18 So, hence, you have 174 questions
19 trying to solicit data. You know, if you want
20 tradition knowledge, you'll listen to an elder who
21 will tell a story, and the bites of information in
22 the story will more often than not have nothing to
23 do with actually why the elder is telling you that
24 story, what they are trying to communicate. The
25 story of why the wolverine turned to stone or when

1 the wolverine turned to stone might be told for
2 many different reasons. A narrative is told
3 situationally. So who is telling the story, who
4 is listening to the story, the context is
5 important.

6 None of these things are addressed, or
7 there doesn't seem to be an awareness that these
8 things matter in the Aboriginal traditional
9 knowledge reports that you have. You're dealing
10 with Aboriginal traditional knowledge gathering
11 techniques that might have been used successfully
12 15 to 20 years ago, that I would say really are
13 not, you know, have largely been discredited.
14 Because we've come to understand, A, that time and
15 trust are probably key elements. Working from
16 within the language is probably a key element.
17 And, you know, working with narrative knowledge
18 and thinking about the overall meaning of
19 narrative knowledge is a key element.

20 I'm going to give you two more
21 examples just to show that this is a real concern.
22 I worked in Fort Good Hope in the Northwest
23 Territories, and I have still work there, I have
24 been going back there since 1984. Beautiful
25 little community if you ever get a chance to go

1 there.

2 They used to have a municipal council
3 that the local white people basically ran, and the
4 band never worried about it, and they had a band
5 council. And the municipal council decided the
6 hill behind the community would be a good place to
7 build a transmission tower so they could get
8 better television reception. So they sent a
9 bulldozer up the hill to build a transmission
10 tower.

11 It was not a moose hunting territory,
12 it was not a berry picking territory. They talked
13 to local people. Nobody used it for any
14 functional purpose that they could write down.
15 Off went the bulldozer. Local people who told me
16 the story, we saw this bulldozer going up the
17 hill, we charged up the hill and stood in front of
18 it. You're not going to tear down the top of this
19 hill. This is where we take our children, from
20 here we can see the other hill, that's where
21 Yamoriah turned to stone. From here we
22 traditionally walked inland hundreds of miles and
23 told stories along the way that would help us
24 remember where these trails went. This is a very
25 important place for us. Even when talking to me,

1 they wouldn't describe it as a sacred place. I
2 might call it a sacred place, they wouldn't call
3 it that. None of the questions that she asked,
4 except what is the sacred site in the middle of
5 all of this, would have got at that knowledge,
6 would have got at that information. It just is
7 not capturable by the categories that were being
8 used.

9 Another example I want to make that's
10 more pertinent to Manitoba is Cree and Plains
11 Aboriginal peoples traditionally had -- I know for
12 sure large boulders were sacred objects for them.
13 And I have encountered people who have told me
14 about large boulders that are sacred objects. In
15 looking through the knowledge that was gathered, I
16 didn't see reference to a single one of those, not
17 one. And you know, so that tells me that the kind
18 of information that you're capturing, because of
19 the techniques you are using, in fact, there's
20 very little around -- there's a bit around sacred
21 spaces, but not a lot of information about sacred
22 spaces because they are not using the kind of
23 approach that's going to generate that sort of
24 material.

25 Lastly on this -- but I just want to

1 quote from the actual EIS. Just on chapter 8
2 which deals with the mitigation approaches that
3 they are using, they talk about the Riel converter
4 station. On page 356 of chapter 8 they say, there
5 does not appear to be any potential impact to
6 culture at the Riel converter station site. There
7 does not appear to be any potential impact to
8 culture at the Riel converter station site.

9 And a few paragraphs up they talk
10 about the social impacts, and they say there
11 doesn't appear to be any aesthetic impact at the
12 Riel converter station site.

13 Now, I have to ask, if they haven't
14 done a traditional knowledge survey of any sort
15 with Peguis, how would they know that? If there
16 were a boulder at the Riel converter site that
17 happens to be a sacred boulder, as far as they
18 know it would be something to be bulldozed, no
19 attention would be paid to it whatsoever, if they
20 haven't done the work.

21 So I don't know how they can say there
22 does not appear to be any proposed impact to
23 culture at the Riel converter station site. You
24 know, that's a more kind of -- they haven't done
25 the basic information gathering. The information

1 that they have gathered I think has been done, you
2 know, the next wave of scholarship around
3 indigenous knowledge is being conducted by
4 indigenous people, and we are learning a lot from
5 that scholarship. Neil McLeod's book on Cree
6 narrative memory is a good outstanding example.
7 Peter Cole's, Richard Atleo's work. There's a
8 whole generation of scholars who are now changing
9 even the way that I think of things. And we had
10 an earlier generation of scholars that are not
11 cited, that aren't a part of the bibliographies
12 that you're seeing.

13 So you're getting stuff that looks
14 scholarly, but it's stuck in the scholarly past.
15 You're getting material that focuses on material
16 culture, on physical culture, rather than on
17 practices and rather than on intangible culture.

18 There's an acknowledgment that
19 intangible exists. They cite the United Nations,
20 but they don't really have a good methodology for
21 capturing that intangible culture.

22 And so I have fairly strong opinions
23 about the weaknesses, unfortunately, of the, you
24 know, the Aboriginal traditional knowledge
25 reports.

1 MR. DAWSON: It's been mentioned that
2 this is not the first time that you have had the
3 opportunity to review the work that Hydro has done
4 in its interaction and treatment of First Nations
5 in Manitoba. And we don't want to stray too far
6 off away from the current EIS, but could you just
7 briefly mention -- I noted the Chair had greeted
8 you with reference to a previous appearance, but
9 could you just briefly mention what your previous
10 work, previous contributions to considerations of
11 Hydro's work has been?

12 MR. KULCHYSKI: Sure. Well, really it
13 probably started with my testimony here to the
14 Clean Environment Commission when we were
15 discussing the Wuskwatim project. But since then
16 I think I have, you know, I published editorials
17 in the Free Press, I have published articles in
18 Briarpatch and Canadian Dimension Magazine. I
19 have published scholarly articles such as the
20 one -- but, you know, I referred to Hydro issues,
21 there is a more recent article that just came out
22 in a book that appeared last month. So I have,
23 you know, produced a fair amount of scholarly work
24 around Manitoba Hydro and the impact of the
25 Churchill River Diversion, the impact of the dam

1 built at Grand Rapids, on Aboriginal communities.

2 You know, I suppose largely speaking I'm seen in

3 Manitoba as a voice that's challenging or even

4 attacking Manitoba Hydro on these issues.

5 Actually, I like to think of myself as

6 a friend of Manitoba Hydro because I'm trying

7 to -- I think some things need to change for the

8 long-term future. The Aboriginal communities are

9 going to be there, they are going to see these

10 impacts, they are going to pass on the knowledge

11 of these impacts to the next generations in a way

12 that the rest of us may not. We go on to other

13 lives, to other places. The Aboriginal

14 communities remain present in their own locations.

15 You know, I think sooner or later -- well, I'm

16 going to put it in starker terms. I just got back

17 from a couple of trips last spring to Tataskweyak,

18 and I was hearing frequently that Tataskweyak is a

19 progressive, prosperous community that has been

20 working with Manitoba Hydro, you know, from the

21 Northern Flood Agreement, to their implementation

22 agreement, to the present. It's a horror story.

23 And you know, I invite you -- don't go to

24 Thompson, go to Tataskweyak, go to the place

25 called the Brocks in Nisichawayashik, you know, go

1 to some of these communities where they are in
2 such desperation for housing they are building
3 housing on foundations of plywood, where, you
4 know -- the social impact elements of this EIS
5 report are shocking to me, because I have been to
6 some of these communities. We're dealing with
7 nothing short of a social catastrophe, nothing
8 short of a social catastrophe.

9 And I have gone to non Hydro affected
10 communities, and there's some beautiful
11 communities in Northern Manitoba. The economic
12 indicators don't look great, but the social
13 indicators look much better, and just the feel you
14 get in those communities is much better. You go
15 to the Hydro affected communities and it's a sad,
16 sad sight. It outrageous me, actually.

17 We need to change our paradigm, we
18 need to change our model. We need to be doing
19 more. It can start with seriously looking at the
20 Treaties and thinking about what a liberal and
21 generous interpretation of the Treaties would
22 really mean, including the Northern Flood
23 Agreement as a Treaty. But I also think, you
24 know, I've talked about the Peace of the Braves.
25 To be frank, I was opposed to the Peace of the

1 Braves when it was signed, but I think it's a much
2 better kind of arrangement than what we're seeing
3 in Manitoba. But now I am not even talking about
4 the Peace of the Braves, I'm just talking about we
5 cannot, you know, in conscience, if we have a
6 conscience, I don't think we can continue with
7 business as usual.

8 If you go into these communities and
9 live with the people for a while, you don't come
10 away with the thinking, we can be proud of what's
11 happened over the last 20 or 40 years. We come
12 away with it thinking, this is a really sad state
13 of affairs. We are dealing with social
14 pathologies, we are dealing with something that
15 deserves to be called a social catastrophe.

16 You don't have to trust me. You know,
17 I didn't look at that element of the report until
18 recently. I was at a conference on the mid north,
19 all of the mid norths of the Provinces, British
20 Columbia, Alberta, Saskatchewan, Manitoba,
21 Ontario, Quebec. Do you know who ranks lowest on
22 the socioeconomic indicators in the mid north of
23 all of Canada? Manitoba and Saskatchewan are
24 virtually tied for last place, virtually tied for
25 last place. We have the worst socioeconomic

1 indicators. Northern Manitoba, Northern
2 Saskatchewan are worse off than Northern Alberta
3 and Northern British Columbia. We can make
4 excuses, but I think we hold it within our power,
5 we have the resources, we have the ingenuity, we
6 have the ability to do better. And I think we
7 have a moral or an ethical obligation, we must do
8 better, we have to do better. We can't leave
9 generations going the way things have gone.
10 That's why I do this work.

11 I don't -- I'm not opposed to Hydro as
12 an organization, I'm not opposed to mining
13 companies, I'm happy, anyone who wants to talk to
14 me, I'm happy to talk to them. And I will talk to
15 them for free like I'm talking to you for free. I
16 don't want money out of this. I want people to
17 get some basic points and change the way of
18 behaving, I think we have to change our behaviour.

19 Peguis is a good example. If we
20 actually respect the fact that we are crossing
21 through their traditional territory, we should be
22 asking them, are there -- and we should let them
23 carry on a traditional knowledge assessment. We
24 should let them look closely at the route, take
25 their elders along the route, see if there's

1 boulders, see what other things they might be able
2 to identify.

3 It's very rare, it may be impossible
4 that so far, you know, we've changed any of our
5 engineering plans because of an Aboriginal sacred
6 site. We flooded Wasakijacks chair (ph), we
7 flooded the footprints, two of the most powerful
8 sacred sites in Northern Manitoba. We profess
9 that we have freedom for religion, but if it's
10 Aboriginal religion, it is paganism, we don't care
11 about it, we don't care about boulders, we don't
12 care about sacred falls, we don't care about
13 things. I think we have to start caring.

14 And so I'm back to living here in
15 Manitoba, I guess I'm not inclined to be quiet
16 about these issues. But I want to be a friend.
17 You know, I want to try and work constructively to
18 show different models, to try and find better ways
19 of doing things.

20 MR. DAWSON: Thank you, Dr. Kulchyski,
21 that concludes my direct examination of this
22 witness, Mr. Chairman.

23 THE CHAIRMAN: Thank you, Mr. Dawson.
24 Manitoba Hydro, do you have any cross-examination
25 of Dr. Kulchyski?

1 MR. BEDFORD: No, thank you.

2 THE CHAIRMAN: Thank you. Any of the
3 other participants, Mr. Mills?

4 MR. MILLS: I just need a couple of
5 minutes.

6 THE CHAIRMAN: Mr. Beddome, were you
7 moving to get up?

8 MR. BEDDOME: No, I think we're good.

9 THE CHAIRMAN: Thank you. Any of the
10 panelists have questions?

11 I have one anyway. Could you describe
12 briefly the Peace of the Braves?

13 MR. KULCHYSKI: Sure. In Quebec you
14 have a roughly parallel situation, you have --
15 actually the Cree communities, Swampy Cree, as the
16 Cree in Northern Manitoba are, and you have Hydro
17 developments that have affected them.

18 They hadn't signed a Treaty, and that
19 actually, unfortunately, has proven to be to their
20 advantage. Because they signed a Northern Flood
21 Agreement in the mid 1970's, that was considerably
22 more generous -- their agreement was called the
23 James Bay and Northern Quebec Agreement, which was
24 a land claim, a comprehensive land claim, or a
25 modern Treaty. And in Manitoba we had the

1 Northern Flood Agreement.

2 They recognized, you know, soon after
3 it was signed, that elements of it weren't being
4 implemented. And in the '90s, when the government
5 of Quebec decided it would expand hydro
6 development, the Cree basically used the resources
7 they had to oppose that hydro development. And
8 eventually after pretty much a decade long
9 struggle, a premier of Quebec said, we've got to
10 change things, we can't go on like this, and we
11 need the Cree on side if we're actually going to
12 go ahead with another phase of hydro development.
13 So they sat down with them and negotiated what has
14 been called the Peace of the Braves. And the
15 Peace of the Braves is basically a \$3.5 billion
16 agreement, \$70 million paid over 50 years that
17 reopens after the 50 years is done.

18 The communities did not put in their
19 own equity. They don't borrow money in order to
20 get that money, they are just given the money. So
21 it's not like the arrangements we have here, the
22 partnership models where you basically take the
23 money you were given to compensate you for the
24 last hydro development, borrow some more money,
25 and become a co-owner and then, you know,

1 hopefully you make a profit in the future.

2 In the Peace of the Braves, the Cree
3 in Quebec are starting to get paid already
4 \$70 million a year, a considerable amount of
5 money, and don't worry about whether the project
6 succeeds or fails. And they have agreed and been
7 honourable partners, they have refused to oppose
8 the hydro projects there. And so, you know, I'm
9 told I am comparing apples and oranges or that I'm
10 making a false comparison.

11 I should also say I talked to a
12 negotiator for the James Bay Cree. They were
13 offered an equity arrangement. That was one of
14 the possible deals that was on the table for them,
15 and they rejected that deliberately. So they were
16 offered the kind of deals that were given here and
17 they rejected it.

18 Here, on the other hand, we're not
19 offering a range of models, we offer one model.
20 We are offering now these partnership agreements
21 and, you know, the implementation agreement kind
22 of approach. It's a one size kind of fits all.
23 And so you're basically again kind of ransacking
24 the future of the community. The money that you
25 get to compensate for the damage that was done,

1 now you're investing and hope that sometime in the
2 future, you know, you'll get back sufficient
3 revenue so that maybe the next generation will be
4 able to live better, which is what Nisichawayasihk
5 is hoping for.

6 And frankly I hope, I really
7 sincerely, deeply hope that I was wrong when it
8 comes to the Wuskwatim agreement. I hope it works
9 out for that community. I don't want to see them
10 suffer any more than they have suffered. But I
11 feel bad about the fact that they are waiting
12 right now for benefits to flow to them. In
13 Quebec, they are not waiting for benefits to flow
14 to them.

15 And so I guess one of the reasons why
16 I think we haven't dealt well with Aboriginal
17 communities, when I spoke about the Peace of the
18 Braves last time, people weren't talking about it
19 in Manitoba, it was like there was no other option
20 that people knew about.

21 Since I work in a variety of
22 jurisdictions, I know what is going on in
23 negotiations in various places. So I say, why
24 isn't this being talked about here? Why is there
25 just the same public debate? This is something

1 that should be looked at, this model seems to
2 be -- I talked to a band councillor from
3 Tataskweyak who had visited communities on the
4 James Bay Cree side. And you know what he said to
5 me? He said to me it looked like paradise
6 compared to Tataskweyak. And, you know, they are
7 troubled communities as well, but they are doing
8 much, much better than our communities. The work
9 that I saw statisticians produce shows that
10 statistically, but you just go into those
11 communities and you can feel it. You can feel it
12 in what the kids, how the teenagers you run across
13 on the streets are treating you. It doesn't take
14 you long actually staying with the families in
15 these communities to know if you're in a healthy
16 community or an unhealthy community.

17 So the Peace of the Braves represents
18 one alternative model that we're doing everything
19 we can not to seriously consider here in the
20 Province of Manitoba, and I think it's something
21 that we should be seriously considering.

22 THE CHAIRMAN: Thank you.

23 Ms. Whelan-Enns?

24 MS. WHELAN-ENNS: My apologies

25 Mr. Chair, we had the challenge of acoustics in

1 this room so I was out of earshot when you asked
2 for others to ask questions.

3 I need to clarify then which voice I'm
4 in here, that is I have some additional questions
5 that the adviser for Peguis First Nation, who is
6 in the audience today, has suggested I ask. So I
7 am making sure that Dr. Kulchyski and Mr. Dawson
8 know that, and that that's reflected in the
9 transcript. Thank you.

10 In case I missed it, if I may, did you
11 describe in your remarks today the Royal
12 Proclamation?

13 MR. KULCHYSKI: No, I didn't.

14 MS. WHELAN-ENNS: Would you please,
15 briefly?

16 MR. KULCHYSKI: Sure. Briefly is hard
17 because I'm actually working on a book on the
18 Royal Proclamation, so I can go on for a long
19 time, but I know that you are tired.

20 I will say briefly, the Royal
21 Proclamation is kind of called the treaty of
22 treaties. The Royal Proclamation comes from 1763,
23 from the end of what in the British tradition we
24 called the Seven Years War, what the Americans
25 call the French and Indian War. And it was

1 sponsored by the northern superintendent general
2 of Indian Affairs, a guy named Sir William
3 Johnson.

4 The basic idea was the British Crown
5 was realizing that the colonial governments --
6 they had an interest in acquiring more land. All
7 they wanted to do was basically access as much
8 land as possible, and so they wouldn't hesitate to
9 bribe, do whatever they could. They didn't have
10 to pick up the cost of an Indian war, they didn't
11 have to pick up the cost of Pontiac's rebellion
12 that had happened a few years earlier.

13 So, you know, Johnson basically wrote
14 the colonial office, they agreed with him and they
15 said, we need to do something to show that the
16 colonial governors shouldn't be in charge of
17 dealing with Aboriginal people. The highest level
18 of government which can see the interest of not
19 having a war, should deal with Aboriginal people.
20 And it will do so on the basis of respecting
21 Aboriginal land rights. Sir William Johnson said
22 then, you won't have a rebellion, you won't have
23 warfare as long as you respect their land rights.

24 So the Royal Proclamation sets out,
25 acknowledges that Aboriginal people have ownership

1 of their land to the west of the headwaters that
2 flow into the Atlantic Ocean, and says that if the
3 Aboriginal people want to surrender their land,
4 they have to do so using due process and for
5 compensation.

6 Now, the Royal Proclamation is
7 reaffirmed in the Constitution Act of 1982,
8 section 25 specifies that the Royal Proclamation
9 is one of the parts of Aboriginal and Treaty
10 rights that our Constitution reaffirms has never
11 been revoked. So it has the status of a legal
12 statute that's never been revoked and is one of
13 the founding Constitutional documents of Canada.

14 MS. WHELAN-ENNS: Thank you. Again, I
15 believe that I did not hear this, but take a
16 correction. I wanted to ask you whether you're
17 familiar with the requirements on Manitoba Hydro
18 with regards to Manitoba First Nations that are in
19 place by certain U.S. State governments in
20 relation to energy sales?

21 MR. KULCHYSKI: I know that, I believe
22 the State of Minneapolis passed a requirement for
23 reporting on, I think the social impact of, and
24 well-being of the communities on an annual basis,
25 of the hydro affected communities.

1 MS. WHELAN-ENNS: We like those
2 Minnesota words, so I think you meant Minnesota as
3 a State?

4 MR. KULCHYSKI: Yeah, sorry.

5 MS. WHELAN-ENNS: And I myself am not
6 sure about Wisconsin, and whether there's a
7 similar requirement?

8 MR. KULCHYSKI: I know that there had
9 been some talk from the environmental community of
10 agitated perpetual requirement, but I don't know
11 if it has proceeded.

12 MS. WHELAN-ENNS: Thank you. There's
13 a couple of questions here that have to do with
14 Treaty 1. And again, I'm doing my best to phrase
15 it. Would it be accurate to say then that the
16 entire Treaty 1 area in Southern Manitoba is a
17 combination of overlapping traditional use and
18 occupancy areas?

19 MR. KULCHYSKI: Yes.

20 MS. WHELAN-ENNS: Does that mean then
21 that the traditional use and occupancy, for
22 instance, of Peguis First Nation could well extend
23 widely within the Treaty 1 area?

24 MR. KULCHYSKI: Yeah. I mean, it
25 could conceivably even extend outside the Treaty 1

1 area. I haven't seen any research about
2 traditional land use and occupancy by Peguis. So
3 there are often cases where the Treaty boundaries
4 don't necessarily correspond to the traditional
5 land use boundaries. But certainly with those
6 Treaty boundaries themselves, or widely within
7 them would be a part of the traditional land use
8 area.

9 MS. WHELAN-ENNS: An analogy may be,
10 and feel free to correct me, or take this as a
11 question, the same would be true in terms of the
12 regulated trapline districts to cross Northern
13 Manitoba, that there's a lot of overlapping --

14 MR. KULCHYSKI: That's right.

15 MS. WHELAN-ENNS: -- traditional use?

16 MR. KULCHYSKI: Yeah.

17 MS. WHELAN-ENNS: Thank you. Again, a
18 question from the adviser here today with us, and
19 I'll phrase it as a question because that's
20 essential here.

21 Are you aware that there are 13
22 locations of Peguis lands recovered as a result of
23 the settlement on the legal surrendered claim?

24 MR. KULCHYSKI: I know that there are
25 some recovered, I don't know the exact amount or

1 where they are.

2 MS. WHELAN-ENNS: I understand it is
3 13 and that they are examples of lands that were
4 not ever sold or dispensed with one way or
5 another --

6 MR. KULCHYSKI: Correct.

7 MS. WHELAN-ENNS: -- in terms of
8 different tenure by the Crown, and that they had
9 been regained. And many of these, this set of 13
10 in particular, are in and around Selkirk and where
11 the St. Peter's band was.

12 MR. KULCHYSKI: I knew that some of
13 them was happening, and I'll say I'm glad to know.

14 MS. WHELAN-ENNS: Thank you. I'd like
15 to ask you what -- and again, if this had been
16 covered, either of you can stop me -- what
17 responsibility, Dr. Kulchyski, do you believe a
18 public utility such as Manitoba Hydro holds --
19 this is an overall encompassing question, if you
20 will -- with regard to First Nations, both overall
21 and in respect to Hydro projects?

22 MR. KULCHYSKI: Well, I think its
23 responsibilities are primarily to communities
24 affected by the Hydro projects. But I would say
25 Manitoba Hydro has redesigned the watershed of

1 Northern Manitoba. And I think that's affected in
2 some ways almost every community in Northern
3 Manitoba. For example, we don't think of Tadoule
4 Lake as a Hydro affected community, but people of
5 Tadoule Lake use the Churchill River, which is
6 completely redesigned as a result of Manitoba
7 Hydro's activities. So there are a lot of
8 communities that aren't on our map as Hydro
9 affected communities that actually have been
10 affected by Hydro.

11 And you know, I have been trying to
12 study the history of this. I mean, one of the
13 things that strikes out in the history of this is
14 it was a dean of engineering at the University of
15 Manitoba in the early 1970's who said, why are we
16 flooding South Indian Lake for power that we won't
17 need possibly for 20 years? In fact, it was the
18 Keeyask dam which we'll be talking about in the
19 near future. And he said we're taking this
20 community that has an independent livelihood that
21 is doing very well and we are threatening to
22 reduce them, as actually we did reduce them to
23 really a terrible situation. And there was a very
24 strong, I think, powerful warning given back then.

25 I had always thought the engineers are

1 responsible for this. But when I look back at it,
2 it was a dean of engineering who was one of the
3 most vocal critics of the first wave of Churchill
4 River Diversion development. And you know, I want
5 to go back and read his speeches, and I looked at
6 some of his work, because he was I think bang on.

7 I think the utility has a
8 responsibility. Part of the issue is, what
9 happens is we get -- they are focused on material
10 impacts and individual impacts. So where they can
11 show, where an individual can show my trapline was
12 affected because it was flooded, where you can
13 show a material impact as an individual, you can
14 gain compensation. And it can be a laborious
15 difficult process. But my boat was wrecked, this
16 happened, so they will do something for you.

17 And this actually in a certain sense
18 sometimes pits individuals in communities against
19 other individuals. And I've seen that happening
20 where people are saying, you know, this is my
21 traditional territory, because they know they will
22 be eligible for compensation, and another family
23 saying, no, it's our traditional territory, we're
24 the ones who deserve compensation. So you have
25 that kind of dynamic that gets set in place by the

1 way in which the compensation regime operates, and
2 because it's entirely focused on, you know,
3 material observable impact.

4 So the impacts on culture and the
5 overall socioeconomic impacts, the cumulative
6 community impacts don't get looked at and don't
7 get addressed. And so that's why I'm here to say,
8 20, 30, 40 years later, you can now look at those
9 communities, and if you can tell me that they are
10 doing well, with a straight face, after spending
11 some time with them and living with some families,
12 you know -- we'll have a long conversation, but I
13 don't think anybody who goes there and lives there
14 and stays there can say that. And I don't think
15 you could necessarily say that 40 years ago.

16 And if you go to small communities
17 like, you know, even Tadoule Lake, which itself
18 was traumatized, or Lac Brochet or Gods Lake
19 Narrows, which are relatively, or Poplar River
20 which are relatively untouched comparatively by
21 Hydro, you find a different dynamic in the
22 communities. And they have their social issues,
23 but it's just not as appallingly bad as most of
24 them that I've visited that have been affected by
25 Hydro.

1 And you know, Hydro doesn't deserve
2 sole responsibility. People there are still
3 responsible for their own lives. Government of
4 Manitoba is responsible. The Federal Government,
5 I think bears a large measure of responsibility
6 constitutionally. But Hydro has resources, has an
7 ability to engage with those communities in much
8 more constructive ways, you know, has an ability
9 to actually do something about what's going on,
10 and has an ability to be a proponent for doing
11 more. You know, I don't know why we don't have,
12 you know, it would be maybe unpopular, but we
13 should be talking about, you know, I don't know, 2
14 cents a month on our Hydro bills that go directly
15 to an infrastructure fund that supports, you know,
16 the road to Tataskweyak. Drive on the road to
17 Tataskweyak, it's a terrible road. And so I no
18 longer take my own personal vehicle on the road to
19 Tataskweyak, I rent a four wheel drive. I have a
20 four wheel drive but I don't want to take it on
21 the road, I will take a rental car on the road.
22 It should have as good a road as any northern
23 community, and Hydro has the capacity to do that
24 sort of thing, to build up -- so at least the
25 material infrastructure of these communities, the

1 housing, the schools, the roads are comparable to
2 non Aboriginal communities in the same area.

3 You know, the school in Tataskweyak
4 right now, they are using trailers. And I have
5 been told by teachers that the kids are playing
6 with mouse droppings in the classrooms. I'm
7 telling you we are getting to -- when I say a
8 social economic catastrophe in the communities,
9 their children in their classrooms dealing with
10 mouse droppings on their desks, this is not a good
11 situation. This is a community that Hydro has
12 been engaged with for a long, long time.
13 Somewhere, sometime, someone has to stand up and
14 say, okay, we have been trying this, maybe it's
15 time to try something different.

16 That's what I'm urging upon people,
17 for free, I'm happy to come and give some
18 suggestions and do consultations and to do
19 whatever the heck I can to see if things can be
20 changed around, any time, any place, anywhere,
21 whatever.

22 But Hydro is certainly one of the
23 responsibilities -- one of the prime bearers of
24 responsibility for what's been happening in many
25 of these communities.

1 MS. WHELAN-ENNS: Thank you. I have
2 one question left, Mr. Chair. And I'll ask
3 Mr. Dawson and Dr. Kulchyski to assess whether
4 it's been answered previously, and that is to ask
5 you your overall impression of this EIS. Now,
6 I've heard your comments on specific sections of
7 it, and also the identification of absence of
8 certain sections. But I wanted to, and was asked
9 again to ask you your overall impression of the
10 EIS.

11 MR. KULCHYSKI: Just those sections
12 that I know, I'm just going to reiterate just to
13 be clear that, you know, I don't think it
14 adequately deals with Aboriginal and Treaty
15 rights, it certainly doesn't give the adequate
16 providence, and where I can find them I don't
17 think adequately shows respect and deals with
18 them. So that's one area.

19 I think the social economic areas of
20 the report which deal with, you know, they talk
21 about families, I think that's a travesty in many
22 respects. It's a white-washing of what's going on
23 there. And you do any social impact assessment
24 study, you look at the work that is done by
25 credible academics, and you go and look around in

1 those communities. What you are reading on paper
2 has no bearing on the reality that's on the ground
3 in those places.

4 And then the cultural elements of the
5 report are sadly laughably weak, laughably weak,
6 would not pass a first year university class for
7 their bibliographies and for substantively their
8 understanding of culture, the importance of
9 culture, what's being done around culture, and
10 what needs to be done in terms of mitigating
11 cultural damage. You know, I would say not even
12 in a first grade of trying to understand that, at
13 university level, trying to understand that.

14 So those elements of the report, which
15 are the ones that I'm concerned with, you know,
16 are either absent, really a white-washing, or
17 quite appallingly inadequate.

18 MS. WHELAN-ENNS: Thank you very much.
19 Thank you, Mr. Chair.

20 THE CHAIRMAN: Thank you
21 Ms. Whelan-Enns.

22 Mr. Mills, you've had your couple of
23 minutes to prepare.

24 MR. MILLS: Doctor, I appreciate your
25 presentation. I have just a couple of quick

1 questions. There's a quote that rings with me.
2 The First Nation members involved felt that the
3 process had not listened to them. Does that ring
4 a bell to you?

5 MR. KULCHYSKI: Honestly, I can't say
6 that it does, but I have broad sense.

7 MR. MILLS: It was one of the
8 conclusions of the CEC hearing with regards to the
9 LP clearing above Pine Creek, and it's always rung
10 with me. Thank you.

11 One quick question. Pine Creek First
12 Nation is part of Treaty 4; correct?

13 MR. KULCHYSKI: As far as I know, yes.

14 MR. MILLS: And you're familiar with
15 the Treaties?

16 MR. KULCHYSKI: Yes.

17 MR. MILLS: And Tataskweyak, Split
18 Lake, War Lake, what Treaty are they signature to?

19 MR. KULCHYSKI: Well, two things, one
20 is that's within the Treaty 5 territory, they are
21 a signatory to Treaty 5, but Tataskweyak is in an
22 unusual situation that's not widely known in
23 Manitoba.

24 MR. MILLS: Okay.

25 MR. KULCHYSKI: Let me just explain

1 that because it's important. When the chief was
2 handed the Treaty to sign, he was handed the wrong
3 document. He was handed an individual adhesion
4 rather than the group adhesion. That mistake was
5 never corrected. So, in fact, actually,
6 Tataskweyak has never signed on Treaty 5 and the
7 lands surrender provisions of Treaty 5.

8 MR. MILLS: Okay. It's southern
9 Aboriginal legend that Manitoba Hydro treats their
10 northern relationships preferentially to their
11 southern relationships. And although you have
12 described the disappointment you have experienced
13 at Tataskweyak, and I agree with you, I have been
14 there and participated in that. Within the
15 Treaties, is there any basis or reason to cause
16 the Crown or Hydro to treat a Treaty 5 band
17 differently than a Treaty 4 band? Are there any
18 exclusions, or is there any historical basis on
19 which central bands would be treated differently
20 than northern bands?

21 MR. KULCHYSKI: The wording in
22 Treaties 1 and 2 is somewhat different. Treaty 3
23 gives us the wording that we then find in Treaty
24 4.

25 MR. MILLS: Let's talk about 4 and 5?

1 MR. KULCHYSKI: I'm just saying. But
2 basically Treaties 4 and 5 are pretty much the
3 same and there's no reason why they should be
4 treated differently.

5 MR. MILLS: None whatsoever?

6 MR. KULCHYSKI: I mean, there could be
7 in the sense of if the elders in Treaty 4, you
8 know, have a different understanding of the oral
9 history of the Treaty, if their culture is
10 substantially different and they are looking for
11 different things, then from the Aboriginal side
12 there might be some different kinds of demands
13 that come. But we'd need research to show that.

14 MR. MILLS: So if we were making a
15 presentation with regards to Pine Creek's
16 situation, would we be on good grounds to argue
17 that -- I should stop using this expression --
18 apples to apples issues of northern First Nations
19 should be addressed similarly to Pine Creek's
20 situations?

21 MR. KULCHYSKI: Sure.

22 MR. MILLS: You'd agree with that?

23 MR. KULCHYSKI: I'd agree with that.

24 MR. MILLS: That's great. Thank you
25 very much. And by the way, I really appreciated

1 your presentation.

2 THE CHAIRMAN: Thank you, Mr. Mills.

3 Any other questions of Dr. Kulchyski? Questions
4 from the panel? Mr. Gibbons.

5 MR. GIBBONS: Dr. Kulchyski, thank you
6 for your presentation. I very much appreciate it.

7 You mentioned something which I'm not
8 sure we have heard before in the hearing process.
9 Perhaps we have and I've either, in the jumble of
10 material that we're getting, I had forgotten it,
11 or I didn't understand it at the time. But you
12 mentioned that the current compensation practice
13 can lead to internal conflict, in the sense that
14 as an example, two different families might claim
15 land as their traditional territory, both in
16 pursuit of compensation for the loss of, some loss
17 of usage of that land.

18 Does that apply to trapping, for
19 example? And the reason I ask that is because
20 there are registered traplines, and I don't think
21 we have heard that there has been any great
22 conflict over the claims made for registered
23 traplines. But, again, that may be because I'm
24 not fully grasping the complexity of the issue.
25 Do you have anything -- and I'm not suggesting

1 that you necessarily do know this, but if
2 possible, do you have anything to add to that, to
3 our understanding of that?

4 MR. KULCHYSKI: Two things I would
5 add. One is, from my understanding of Cree
6 history, the Cree themselves had very elaborate
7 and careful systems for allocating trapping areas,
8 and that's a part of their traditional culture,
9 that then overlap with the Manitoba regulatory
10 scheme. So when Manitoba said, come register your
11 trapline, they knew whose areas were whose areas,
12 and registered traplines often according to
13 traditional use. And so there tends to be, I
14 think, a much clearer sense of who is responsible
15 for the stewardship of a particular area, one
16 might say. And I haven't personally heard of any
17 conflicts over that, but that doesn't mean that it
18 hasn't happened.

19 MR. GIBBONS: That's good. Thank you
20 very much.

21 THE CHAIRMAN: Mr. Williams, did you
22 have a question? You seemed to indicate --

23 MR. WILLIAMS: Just one, Mr. Chairman.
24 And I was pondering the relevance, but I shall ask
25 it.

1 THE CHAIRMAN: Believe me, if it's way
2 off base, I'll let you know.

3 MR. WILLIAMS: Yeah, I thought you
4 might.

5 Professor, you were asked by one of my
6 colleagues to compare Treaty 3, or 4 and 5, excuse
7 me. Would it be accurate to say that when we look
8 at Treaty 1 as compared to some of the later
9 numbered treaties, such as 3, 4, and 5, that one
10 particular distinction is the absence of a blanket
11 extinguishment clause beyond the meets and bounds
12 of the Treaty territory?

13 MR. KULCHYSKI: Yeah. Well, in fact
14 the numbered Treaties generally -- I mean this
15 gets interesting when you look at modern land
16 claims, which is kind of why some of my own work
17 has been more relevant to Manitoba than I thought
18 it would be. Because I worked on the modern Dene
19 Metis claim, the Yukon claim, and they keep
20 refining what we call the extinguishment language.
21 And so in refining it, you look back and realize
22 some of the errors they made. So for one thing,
23 none of the treaties, Treaties 1 through 11, to my
24 knowledge surrender water. Water isn't mentioned.

25 Water is mentioned in modern treaties.

1 In the extinguishment of the Saulteaux Treaty, what
2 was called the Saulteaux Treaty, there's a
3 surrender to land and waters. In the early
4 Treaties, they only talk about land.

5 They also in the early Treaties, as
6 you have said, they describe, you know, a very
7 specific area of land. And sometimes the First
8 Nations signing the Treaties may have had use and
9 occupancy rights beyond those land areas, as I
10 have known different First Nations in Manitoba to
11 start telling me that they might be eligible for a
12 comprehensive land claim because they haven't
13 surrendered traditional lands that were outside of
14 the Treaty area. And I have seen a couple of
15 instances in Manitoba where that's been the case.

16 MR. WILLIAMS: I just want to follow
17 that particular thought one more step. You'll
18 agree with me that the latter numbered Treaties
19 starting with number 3 have extinguishment within
20 the meets and bounds of the Treaty territory and
21 any blanket extinguishment clause beyond?

22 MR. KULCHYSKI: Yes.

23 MR. WILLIAMS: You'll agree with me
24 that Treaty 1 does not contain that blanket
25 extinguishment clause beyond the meets and bounds

1 of Treaty 1?

2 MR. KULCHYSKI: I don't think it does.

3 MR. WILLIAMS: Thank you.

4 THE CHAIRMAN: Thank you,
5 Mr. Williams.

6 Okay. Thank you very much for taking
7 the time to come here this afternoon
8 Dr. Kulchyski. It's always interesting to hear
9 your presentations.

10 MR. KULCHYSKI: Good luck with your
11 deliberations.

12 THE CHAIRMAN: Thank you.

13 It's just after 4:00 o'clock, I know
14 that Mr. Beddome has approximately 45 minutes of
15 cross-examination of the socioeconomic panel, and
16 panel members have a few questions. So maybe we
17 can take five minutes and swap the panels

18 (Proceedings recessed at 4:06 p.m. and
19 reconvened at 4:11 p.m.)

20 THE CHAIRMAN: Can we take our places,
21 please? We'll reconvene. Mr. Beddome?

22 MR. BEDDOME: Thank you very much,
23 Mr. Chairman, and thank you very much panelists.

24 Just one quick point of clarification,
25 Mr. Chairman. I indicated about 45 to an hour,

1 I'm going to do my best to keep it into 45 minutes
2 because I am aware of the time, but I just wanted
3 to state that up front. I was also just wondering
4 if I can get the panelists to just sort of
5 indicate their name for the record, if that would
6 be possible.

7 MS. HICKS: Elizabeth Hicks.

8 MR. McLEOD: Curtis McLeod.

9 MR. GRAY: Glenn Gray.

10 MR. PENNER: Glenn Penner.

11 MR. ELDER: Rob Elder.

12 MR. BEDDOME: I just would note that
13 Ms. Petch, Mr. Nielsen, and Mr. Osler aren't
14 available.

15 THE CHAIRMAN: That's correct.

16 MR. BEDDOME: I was aware of
17 Mr. Neilsen and Ms. Petch, but Mr. Osler is also
18 not available to sit at the panel.

19 MS. MAYOR: That's correct. He had
20 other arrangements. He's out of town. If there's
21 information that you want to put forward, we could
22 undertake to provide the answers to you.

23 MR. BEDDOME: Well, it's just that
24 part of the cross-examination I had prepared
25 included Mr. Osler, and I had actually addressed

1 when I first cross-examined Mr. Osler in regards
2 to biophysical effects, is there going to be a
3 chance to have him brought back in. I only had a
4 couple of small questions of Ms. Petch and
5 Mr. Nielsen, so I'm happy to oblige on that one.

6 MR. BEDFORD: Mr. Osler told me he's
7 back, I think at the end of next week, so the
8 hearing doesn't end before the end of next week,
9 and I'm sure that we can find some time when he
10 can come back.

11 MR. BEDDOME: For the record,
12 Mr. Chairman, I'm going to reserve the right to
13 recall Mr. Osler.

14 THE CHAIRMAN: That should keep you
15 down to 45 minutes or less today.

16 MR. BEDDOME: Well, I think it will
17 because it will cut a couple of the questions off,
18 so I suppose that works beneficially.

19 So I'm going to start with Ms. Hicks.
20 At page 2394, starting at line 16, and this was in
21 response to negotiations, a question Mr. Kaplan
22 asked. You indicated:

23 "...Hydro would just continue to
24 negotiate to see if they could come up
25 with a deal with that landowner, and

1 if not, although I think it's very
2 rare, if not, Manitoba Hydro does have
3 the right to expropriate."

4 You go on to say --

5 THE CHAIRMAN: Slow down a touch.

6 MS. HICKS: Where exactly are you?

7 MR. BEDDOME: In the transcripts, page
8 2394, you were asked a question by Commissioner
9 Kaplan, and it basically dealt with expropriation
10 and negotiating with producers. And so the quote
11 that is most important is, you say, and so this
12 now the end of line 19:

13 "In my career in doing these types of
14 projects since 1989, I actually don't
15 recall one case that Manitoba Hydro
16 has expropriated."

17 MS. HICKS: Which is the page number,
18 sorry?

19 MR. BEDDOME: Transcript 2394.

20 MS. HICKS: Yeah, page?

21 MR. BEDDOME: 2394 in the transcript,
22 it's at the bottom starting on line 16 through 22.

23 MS. HICKS: Okay, I'm there.

24 MR. BEDDOME: You recall making that
25 statement, correct?

1 MS. HICKS: Correct.

2 MR. BEDDOME: Now, the first thing,
3 and maybe it's better directed towards Manitoba
4 Hydro, but by way of undertaking, would it be
5 possible -- you are obviously talking about your
6 own personal experience with Manitoba Hydro?

7 MS. HICKS: I am talking about my
8 experience as a professional working for Manitoba
9 Hydro since 1989 on projects that I have worked
10 on.

11 MR. BEDDOME: I guess to me, I was
12 curious, and maybe if Hydro could deal with this
13 by way of undertaking, would be an indication if
14 any lands were expropriated for Bipoles I and II,
15 and also an indication of the number of
16 expropriations per year performed perhaps, since
17 1989 was the start date that you listed. I mean,
18 I know you're making it on your own personal
19 basis, but I'm wondering if we cannot substantiate
20 that? I'm assuming the legal department keeps
21 records for that.

22 MS. HICKS: Curtis might be able to
23 provide an answer whether or not that is doable.

24 MR. BEDDOME: Yeah, Mr. McLeod can
25 answer that or can deal with that by way of

1 undertaking. That's fair enough.

2 MS. MAYOR: This has already been
3 provided by way of an answer to an undertaking.
4 There was only one, and it wasn't related to
5 Bipole I and II.

6 MR. BEDDOME: It was not related to
7 Bipole I and II?

8 MS. MAYOR: That's correct.

9 MR. BEDDOME: Or I, sorry, I don't
10 know that I heard you.

11 MS. MAYOR: There's only been one
12 expropriation, in memory of everyone involved, of
13 an expropriation. It was not in relation to
14 Bipole I and II.

15 MR. BEDDOME: Okay. Thank you for
16 that.

17 Now, the reason I started there,
18 Ms. Hicks, is would you not agree that because
19 Manitoba Hydro has the ability to expropriate, and
20 even though that has not necessarily been
21 exercised, in terms of negotiating, having that
22 ability to expropriate sort of creates a certain
23 amount of leverage on the side of Manitoba Hydro
24 to force landowners to come to a settlement?

25 MS. HICKS: Based on my experience

1 and, again not all hydroelectric projects go
2 smoothly, based on any projects that I have been
3 on, Riel reliability improvement initiative would
4 be a good one. Wherever Hydro needs to acquire
5 houses, like they go as far as they possibly can.
6 They do not want to expropriate, in terms of my
7 dealings with Hydro, they go to any extent that
8 they can to make sure that they can come to some
9 sort of agreement which is beneficial to the owner
10 of the property or house.

11 MR. BEDDOME: And I understand that
12 they do everything they can to negotiate it. But
13 from the perspective of the landowner, even if I
14 was to, let's suppose I was to retain legal
15 counsel, I'm assuming legal counsel would let me
16 know that eventually they could expropriate, or
17 even if I didn't have legal counsel, maybe I'm
18 aware of that.

19 So from the perspective of a
20 landowner, yes, they may want to negotiate and may
21 want to deal with particular concerns, but to a
22 certain extent they know that it's almost in their
23 best interest to come to an agreement, because the
24 power of expropriation sits there as a hammer over
25 their heads, so to speak.

1 MR. McLEOD: Under the rules of the
2 Expropriation Act, any entity that expropriates an
3 interest from another person has to make due and
4 fair compensation to that landowner. And at the
5 end of days, that process will make sure that the
6 owner is fairly compensated. And those rules are
7 not set by Manitoba Hydro.

8 MR. BEDDOME: They are set through the
9 Expropriation Act, correct?

10 MR. McLEOD: Yes, correct.

11 MR. BEDDOME: And while I understand
12 that, I don't know if we've got to the substance
13 of my question, which is just that, yes, they may
14 be compensated for expropriation, but it means
15 that they need to come to some arrangement on
16 compensation. If they were going to go all the
17 way through fighting the expropriation through the
18 courts, I would say that's going to add
19 considerable costs, so they may look at it and go,
20 on the one hand, I got to spend a bunch of money
21 to fight this, on the other hand, I can just try
22 to make the best deal possible. Do you think that
23 might explain why there's such a low number of
24 expropriations?

25 MR. McLEOD: No. I believe our

1 compensation policy and practices duly and fairly
2 compensates the landowners, and the landowners
3 realize that, that we're giving them due
4 compensation.

5 MR. BEDDOME: Okay. I think I have
6 addressed that point well enough. I think
7 Mr. McLeod indicated the compensation is
8 calculated at 150 percent of market value,
9 correct?

10 MR. McLEOD: The land portion of the
11 package, yes, that's correct.

12 MR. BEDDOME: For the portion of
13 occupied land, thank you for the clarification.

14 Once again, I guess I would ask if I
15 was a landowner, would you agree that land has
16 increased in value significantly over the past
17 decade?

18 MR. McLEOD: Depending on the region
19 and area, yeah, most lands have increased in
20 value.

21 MR. BEDDOME: And so even if I'm
22 getting 150 percent, if I feel over time my land
23 is going to increase in value, that 150 percent
24 from the landowner's perspective may not be due
25 compensation. Would you agree with that?

1 MR. McLEOD: No, we were only taking
2 an interest in buying an easement and they still
3 own the land. So that value is still there in the
4 land for them to have.

5 MR. BEDDOME: I guess what I am
6 saying, though, if they are -- sure, it's by way
7 of easement, so they still own the property, but
8 they no longer have use of that property, they are
9 being compensated --

10 MR. McLEOD: No, that's incorrect as
11 well. They have full use of the property except
12 for the areas where the structures are located.
13 So they can farm in and around those properties.
14 So in some of the examples I have given, let's say
15 on one mile of easement where we're affecting
16 approximately 26 acres of land, the actual
17 footprint of those structures on there have an
18 effect on maybe anywhere from two to two and a
19 half acres. And that's not total effect, that's
20 just partial or 100 percent. So they still have a
21 full 100 percent use of, you know, 24 of the
22 26 acres for farming, if you're relating it to
23 farming.

24 MR. BEDDOME: But it's still an
25 inconvenience nonetheless?

1 MR. McLEOD: Well, that's true. But
2 they are compensated for that inconvenience as
3 well under the structure impact compensation if
4 the land is farmland.

5 MR. BEDDOME: Okay. Once again I
6 guess I'm regretting that Mr. Nielsen's not here,
7 but sort of in some of my reviews -- it's just
8 sort of, from my perspective, I was sort of
9 wondering about, you know, he mentions -- and
10 Mr. Meronek certainly canvassed this, but he
11 mentions that, you know, highway 16, sort of a
12 firm line between highway 16 and number 1 in terms
13 of value of agricultural lands. There's also some
14 comments in terms of likelihood of irrigation.
15 But that's based on agriculture as it is now,
16 correct?

17 MR. McLEOD: When it comes to
18 compensating and setting a market value for the
19 land, no part of that agricultural study or that
20 basis is what we base the market value of the
21 lands. Ours are all based on sales of land that
22 we garnered the information from land titles. So
23 if the land has the value of potentially being
24 irrigated, it would show up in the market value of
25 the land and they'd be paid accordingly. We don't

1 establish saying, all lands north of 16 are worth
2 this much money. We actually go in, research the
3 sales, compare them, and pay them accordingly.

4 MR. BEDDOME: Well, I understand that.
5 It's more on the basis, let's see if I can -- he
6 talks about it being less intensive agriculture.
7 He notes at page 246 about there was a bunch of
8 new irrigation sort of south of highway 16 and
9 number 1. And I guess the reason of the question
10 is, so if we were to build a tower, and let's say
11 it's north of 16, or it doesn't really matter
12 where it is in Manitoba, if that person then
13 wanted to put a pivot irrigation system in their
14 field, there is a chance that it might be
15 impacted, correct?

16 MR. McLEOD: That would be to do with
17 the agricultural report, but generally if the --

18 MR. BEDDOME: Is it best that we wait
19 until when Mr. Nielsen is available?

20 MR. McLEOD: If you want to direct
21 that, but as a sub to that question, if it's a
22 pre-existing irrigation system and we come in
23 there and we're going to be affecting it, we will
24 help mitigate that issue and pay for redesign and
25 relocation or reinstallation of that to make it so

1 our towers will have the least amount of impact on
2 that irrigation system. But when you're talking
3 overalls and generalities, I think it would be
4 best to direct the question to Mr. Nielsen.

5 THE CHAIRMAN: Mr. Beddome, that's
6 already been addressed in previous testimony in
7 either Niverville or Portage la Prairie.

8 MR. BEDDOME: Okay. I appreciate
9 that.

10 If I can just make one further
11 comment, and I guess maybe it would be better if
12 we can deal even via e-mail with Mr. Nielsen.
13 It's just that, I understand that in the case of
14 pre-existing that you would have compensation. My
15 question is more about what happens if someone
16 down the road wanted to convert that land? And I
17 have some of the similar questions for other
18 operations. It's not simply pivot irrigation, but
19 land uses and practices may change over time.
20 Would you agree with that, right?

21 MR. McLEOD: Yes, over time, yes
22 practices have changed.

23 MR. BEDDOME: So if someone had a
24 tower on their land, and later, after the fact,
25 wanted to install a pivot system, that could in

1 fact cause an inconvenience?

2 MR. McLEOD: It may or may not. It
3 all depends on how you design the system and how
4 the structures are located on each property. It's
5 hard to say if it would automatically be a
6 problem.

7 MR. BEDDOME: Okay. Thank you. That
8 helps with that. I'm going to return now to
9 Ms. Hicks, and just going to go over a couple of
10 quick points here. And I can run through it
11 faster so we can save some time. But on page 14,
12 you provide a breakdown of the jobs associated
13 with Riel, 640 person years, not including
14 contract or supervisor staff or management staff
15 through Manitoba Hydro?

16 MS. HICKS: Yes.

17 MR. BEDDOME: And you go back to the
18 full time staff for Riel on page 18 being 45
19 persons. I'm just going to run through them all,
20 because I do want to be mindful of time here.

21 Then on 31 you deal with the
22 transmission line being 4,819 person years. Then
23 and I think -- let's see if I can find the slide,
24 I think you said 11 and a half persons in terms of
25 operation for that?

1 MS. HICKS: That's correct.

2 MR. BEDDOME: And then we go to slide
3 45, you do Keewatinoow at 920 person years, not
4 including contract, supervising staff, et cetera.
5 And the full-time staff there is, I believe on
6 slide 58 to be 42 persons, and 30 on site on a
7 daily basis?

8 MS. HICKS: Right.

9 MR. BEDDOME: Just a couple of
10 questions stemming from all those. The first
11 thing is, is a person year about 2,000 hours of
12 labour? Is that how it is calculated?

13 MS. HICKS: I would have to defer to
14 Manitoba Hydro, as they put the numbers together,
15 but my understanding is that approximately -- an
16 individual person does approximately work 2,000
17 hours a year.

18 MR. BEDDOME: And that's --

19 MS. HICKS: I'm not quite sure that's
20 the number that Manitoba Hydro used. I would
21 assume it is. I don't know if one of you can
22 answer this?

23 MR. ELDER: It's roughly that, but if
24 you want to see the calculation, we can certainly
25 provide that.

1 MR. BEDDOME: Yeah, that would be
2 great. I wanted to make sure I was understanding
3 the concept correctly.

4 MR. ELDER: It's roughly how many
5 hours in a year, how many hours a person works.
6 You take, for Keewatinoow, for instance, based on
7 the BNA, you take away the time they'd be away
8 from site. And there's a formula for that too, to
9 determine how many person years.

10 MR. BEDDOME: That's based on the BNA,
11 would that also include Riel?

12 MR. ELDER: No, Riel, as we had stated
13 earlier, won't be under the BNA, so the formula
14 would be slightly different.

15 MR. BEDDOME: And for transmission, it
16 would be different and it would stop halfway
17 through? I mean, you know, you kind of tweaked me
18 a little bit.

19 MR. ELDER: What we've said already on
20 the record is that the northern station will be
21 built under the BNA, and we have provided
22 information on that. The transmission line will
23 be built under the transmission line agreement.

24 MR. BEDDOME: Okay.

25 MR. ELDER: And so the southern

1 station is not under the BNA.

2 THE CHAIRMAN: Mr. Beddome, why do we
3 need this degree of detail?

4 MR. BEDDOME: Because I'm going to go
5 into the questions later, I am just trying to make
6 sure we understand what they are. We can agree
7 roughly 2,000 hours, being 40 hours a week, 50
8 weeks with two weeks holidays?

9 MR. ELDER: Roughly.

10 THE CHAIRMAN: I think that's enough
11 detail.

12 MR. BEDDOME: It's just that they are
13 saying it's slightly different, so I'd like to
14 know the exact calculations, Mr. Chairperson. So
15 let us continue to move here so we don't get to
16 5:00 p.m. too soon.

17 The reason that I just wanted to
18 calculate that was there's a lot of short-term
19 jobs and position terms of this. Is there any way
20 of giving a general breakdown, you know, of
21 average term work is two to three months, or is it
22 six months, or is it all over the place?

23 MR. ELDER: I think for the
24 Keewatinoow and the Riel site, we have done that
25 and the workforce breakdowns that were provided in

1 the EIS. They break down by quarter what type of
2 workers and where they will be working.

3 MR. BEDDOME: Okay. And so now in
4 terms of -- I'm wanting to know, out of all of
5 these, if Hydro has any targets as to Aboriginal
6 employment? And not just looking at Keewatinoow
7 would be under the BNA, but also looking at the
8 Riel, as well as the transmission target, is there
9 any percentage targets set by Manitoba Hydro?

10 MR. ELDER: If you're asking, is there
11 a hard number put on that? No. Certainly,
12 especially in places like Keewatinoow and the
13 northern areas, our goal is to hire as many
14 Aboriginal people as possible, and we'll put the
15 mechanisms in place to do that. But there's not
16 hard numbers put on it, if that is your question.

17 MR. BEDDOME: Well, it may be hard
18 numbers -- is that a recruitment study that you
19 apply to Southern Manitoba?

20 MR. ELDER: Yes, we have already said
21 that in the south we'll have hiring preferences
22 for Aboriginal folks, yes.

23 MR. BEDDOME: Is it possible we can
24 expect a reporting similar to the Wuskwatim
25 project, to give a breakdown of that?

1 MR. ELDER: During the project as it's
2 going on, is that what your question is?

3 MR. BEDDOME: Yes.

4 MR. ELDER: By all means, yes.

5 MR. BEDDOME: Okay.

6 Also just wanted to -- I mean, the
7 comment was made earlier today that indicates that
8 in people working up north, in many cases they are
9 coming from Southern Manitoba. You would agree
10 with that, Ms. Hicks?

11 MS. HICKS: That statement was made
12 today, yes.

13 MR. BEDDOME: But in your study, did
14 you undertake looking at that as well in terms of
15 seeing what percentage of workforce was coming
16 from Southern Manitoba to Northern Manitoba, or
17 even out of province?

18 MS. HICKS: No, Manitoba Hydro did the
19 study, the economics study.

20 MR. BEDDOME: Manitoba Hydro did the
21 study of that, okay. So you built your analysis
22 on the basis of that study, would that be correct
23 to say?

24 MS. HICKS: Correct, it is part of the
25 EIS.

1 MR. BEDDOME: Okay. And so then I
2 guess I have to direct it towards Hydro, but is
3 there any idea of what percentage we can expect
4 out-of-province workers? Or maybe if you don't
5 have a hard number, it would be fair to assume
6 that there will be some out-of-province workers?

7 MR. ELDER: I think, as I stated
8 earlier, I think it's fair to assume that there
9 won't be enough northern workers to do all the
10 work for the Keewatinoow station, the next, then
11 there's seven tiers in the BNA, the last of those
12 tiers is non Manitobans. So we'll certainly
13 exhaust, first and foremost, the northern
14 communities. And then we'll work our way down to
15 the south. And if there's not enough workers,
16 then, yeah, we will be looking out-of-province.

17 MR. BEDDOME: Do you think it's likely
18 that there will be some out-of-province workers on
19 the job?

20 MR. ELDER: Given the current markets,
21 there's a probability of that.

22 MR. BEDDOME: Fairly strong
23 probability?

24 MR. ELDER: I can't tell you today.

25 MR. BEDDOME: Okay. Thank you. I

1 guess Ms. Hicks, I think, was the one that did the
2 socioeconomic analysis, but I guess my question
3 about that is, if there are some out-of-province
4 workers, would that minimize any of the positive
5 economic effects to a certain extent?

6 MS. HICKS: If there were some,
7 obviously, I mean ideally you would like to have
8 the jobs to go to Manitobans, but I know in the
9 case of Wuskwatim, like there were certain
10 technical aspects of the job that you needed to
11 take people from out-of-province. But by and
12 large, I think most of -- correct me if I'm wrong,
13 Rob -- but a lot of the work was actually
14 Manitoban people. And I think Rob just said
15 that's what they strive to do, Manitobans first,
16 and then if the work pool is short, then you might
17 end up going out-of-province.

18 MR. BEDDOME: So this --

19 MR. ELDER: Maybe just to add to that.
20 One of the real challenges is types of workers and
21 certain trades. You know, there's a huge demand
22 for carpenters right now across North America. So
23 when you're looking for carpenters, they are tough
24 to find. So I suspect what we'll find is certain
25 trades, there will be adequate supply either in

1 the north -- probably not in the north but in
2 Manitoba. But other trades that are in very high
3 demand across the country, we may be bringing in
4 out-of-province workers.

5 MR. BEDDOME: Okay. I was just wanted
6 to just, Ms. Hicks, at the end of your
7 presentation, and I'll go through it a bit of an
8 overview again too, but you essentially conclude
9 with -- slide 61, and your last bullet point is
10 essentially with mitigative measures and ongoing
11 and adaptive management, adverse residual effects
12 are not expected to be significant from a
13 regulatory perspective. That was in your
14 presentation?

15 MS. HICKS: Correct.

16 MR. BEDDOME: You also go through, I
17 don't think you have to go through the whole
18 transcript, but at 2370 you indicate measures such
19 as signs at intersection trails at Wuskwatim,
20 2372, hunting and fishing restrictions, 2379 camp
21 rules, 2381 to deal with intoxication on camp.
22 And I'm going to return to some of these, but I'm
23 just outlining them for you.

24 You are agreeing with the general
25 description, is what I am saying, as to some of

1 these mitigation effects. Is that correct?

2 MS. HICKS: Correct.

3 MR. BEDDOME: Now, the reason I ask
4 that is, I'm just wondering if you're familiar
5 with the famous quote by the famous baseball
6 player and coach, Yogi Berra, who said in theory
7 there is no difference between theory and
8 practice, in practice there is. Are you familiar
9 with that quote?

10 MS. HICKS: No, sorry.

11 MR. BEDDOME: I thought it was a
12 worthwhile quote. And the reason why I asked if
13 you are familiar with it is, although these
14 mitigation measures are intended to deal with
15 consequences, it's difficult to think that, you
16 know, in theory it works and we can get 100
17 percent compliance, but in reality I think we're
18 probably going to fall somewhere short of that.
19 Would you agree with that?

20 MS. HICKS: You know what the key to
21 this is, there are a lot, obviously, of mitigation
22 measures for different things like ambulance,
23 medical, policing services and all that, and it's
24 what has happened in Gillam where everybody is
25 working together. And I think that part of the

1 key answer of this is, obviously, Hydro has a
2 vested interest in Gillam, so does Fox Lake and so
3 do others. It's the coordination and the groups
4 working together, which already seems to be
5 happening with respect to the Gillam harmonization
6 plan. So what's critically important is the
7 adaptive management and the monitoring that's
8 going to be put into place, which I think will be
9 talked about more tomorrow.

10 So, therefore, if things aren't
11 working out as we feel that they should, then that
12 will be caught and something will be changed to
13 make it work.

14 MR. BEDDOME: But you would agree that
15 100 percent compliance with various camp rules is
16 probably an unrealistic assumption?

17 MS. HICKS: I would agree, but then
18 there are protocols in place that if, you know,
19 something goes wrong that shouldn't go wrong,
20 somebody does something that they shouldn't do,
21 there are ramifications for those actions.

22 MR. BEDDOME: Okay. And so fair
23 enough, but let's just go through some of these on
24 a more individual basis. At 2384 on the
25 transcript, I don't think I need to give you a

1 line number, you may also be able to find it in
2 your presentation, but you talk about the
3 implementation of cultural awareness programs, and
4 you mentioned as it was done at Wuskwatim?

5 MS. HICKS: Correct.

6 MR. BEDDOME: But are you aware that
7 yesterday morning, Ms. Mayor stood up and
8 delivered an undertaking that, in fact, indicated
9 it wasn't, in fact, feasible for there to be
10 implementation of cultural awareness in every
11 circumstance because of the short-term nature of
12 the employment. Were you aware of that?

13 MS. HICKS: I don't believe I heard
14 that yesterday. I was only here partly yesterday.
15 But my understanding from people at Hydro is
16 overall that the cultural awareness training for
17 Wuskwatim was successful. But I didn't hear the
18 details of the undertaking, I'm sorry, or the
19 response.

20 MR. BEDDOME: So when you referenced
21 it, that was building on your basis of your
22 understanding Hydro in terms of -- you didn't look
23 into the specific details of the cultural
24 awareness program and its implementation with
25 regards to Wuskwatim yourself when developing the

1 report?

2 MS. HICKS: Well, I was working on the
3 Wuskwatim project so I did have knowledge. And
4 then subsequently we did talk to people at
5 Manitoba Hydro, and they had confirmed what I said
6 in that they gauge the awareness training as
7 successful.

8 MR. BEDDOME: So in working on the
9 Wuskwatim project, you decided to implement this
10 cultural awareness program, but you weren't
11 necessarily there to follow-up to see its
12 implementation. Would that be correct?

13 MS. HICKS: I was not in charge of the
14 program, no. I believe it was a Hydro person.

15 MR. BEDDOME: But you helped design
16 the program, correct?

17 MS. HICKS: Actually, I did not design
18 the program either.

19 MR. BEDDOME: Okay. Just you're
20 familiar from working on other projects?

21 MS. HICKS: Right.

22 MR. ELDER: Okay. Maybe if I could
23 just add, Mr. Beddome, that program at Wuskwatim
24 was designed by the First Nations in that area.
25 And that's certainly the intent for Keewatinoow,

1 is it will be designed in conjunction with Fox
2 Lake.

3 MR. BEDDOME: And I definitely
4 appreciate that, but my question was more -- and
5 maybe you heard Ms. Mayor's comments or maybe you
6 are aware that there wasn't in fact 100 percent
7 compliance in terms of not all personnel were able
8 to take a cultural awareness training course. Is
9 that not correct?

10 MR. ELDER: Yeah. The question was,
11 was 100 percent of the people trained, and I think
12 her answer was no, and she explained what the
13 limitations were.

14 MR. BEDDOME: No, I appreciate that.
15 Are you familiar with the Yogi Berra quote?

16 MR. ELDER: No, I'm not.

17 MR. BEDDOME: Do you see the relation?
18 I am surprised you're not, it's a very famous
19 quote, but I suppose that's just me. I'm not even
20 a baseball fan.

21 All right. We'll move along here, or
22 I guess we will move back, but once again
23 Ms. Hicks' testimony, at 2383, and I think you
24 also have a slide that talks about this, but you
25 talked about rigorous enforcement and consequences

1 at camp for impaired driving; correct?

2 MS. HICKS: Correct, I recall saying
3 that.

4 MR. BEDDOME: Okay. Now, what are
5 those rigorous penalties going to be? I'm going
6 to assume firstly they are going to be charged
7 right, prosecuted under the law?

8 MS. HICKS: I'm just going to find the
9 slide, sorry. This is what -- sorry, you're
10 referring to the monitoring plan to be implemented
11 in discussion with First Nations in the vicinity,
12 and the tracking of vehicles going through the
13 access gate?

14 MR. BEDDOME: I believe that's it.

15 MS. HICKS: I found it.

16 MR. BEDDOME: What slide are you
17 looking at?

18 MS. HICKS: I'm actually looking at
19 the transcript, page 93.

20 MR. BEDDOME: I have 2383, I think you
21 might have mentioned it elsewhere. Yes, you're
22 going to have security staff aware and trained, to
23 the best of my memory, as to catching impaired
24 driving. But I guess my question was, you say
25 there is going to be rigorous enforcement of

1 consequences at camp for impaired driving. What
2 are those consequences? So the first one is they
3 are going to be charged to the full extent of the
4 law, correct?

5 MS. HICKS: I would assume if they are
6 impaired driving, yes, they would be.

7 MR. BEDDOME: And will there be any
8 additional effects, in terms of they are instantly
9 fired from the site, not to return again? What
10 are these -- you know, I like the sound of these
11 consequences, but are there additional
12 consequences beyond the extent of the law from
13 Manitoba Hydro's perspective that you were made
14 aware of in drafting this report and presentation?

15 MS. HICKS: I would have to defer to
16 Manitoba Hydro in terms of their past experience
17 in other projects such as Wuskwatim, or we can
18 take it as an undertaking.

19 MR. ELDER: We're still developing the
20 camp rules. I don't have Wuskwatim's in front of
21 me, but those types of incidents would be not
22 termination from an employment, but they would be
23 terminated from the camp. And if they don't have
24 a place to live, they don't have a place to work,
25 so their contractor lets them go and they are sent

1 home. So I don't have the exact number at
2 Wuskwatim, but I know it was significant, the
3 number of people that were asked to leave camp. I
4 was quite surprised when I heard the number.

5 MR. BEDDOME: Could you provide those
6 numbers?

7 MR. ELDER: Certainly, we can.

8 THE CHAIRMAN: I don't think that's
9 relevant.

10 MR. BEDDOME: I think it gives a
11 percentage.

12 THE CHAIRMAN: I don't think it's
13 relevant. Please move on.

14 MR. BEDDOME: Okay. I mean,
15 obviously, I just note for the record my
16 objection, I think it is relevant if it is going
17 to say there are severe consequences, and if past
18 practices are going to be indicative of future
19 practices.

20 But moving along and keeping on the
21 issue of roads, it's slide 33, and in the
22 transcript as well. But you mentioned that
23 Manitoba Infrastructure and Transportation is
24 planning to upgrade older sections of highway
25 number 10. And you're essentially hoping that it

1 will be completed prior to construction of Bipole
2 III, correct?

3 MS. HICKS: I believe that's the
4 intent, yes.

5 MR. BEDDOME: And what if it's not?

6 MS. HICKS: I believe that is the
7 intent and I believe that that will be done in
8 advance.

9 MR. BEDDOME: And if it was to run
10 behind or delay, would the project itself be
11 delayed?

12 THE CHAIRMAN: Again, you're asking
13 something based on a supposition and it's really
14 impossible to --

15 MR. BEDDOME: Well, I am asking if
16 there's a contingency plan in the event that road
17 construction isn't done. I think it's almost a
18 common adage that road construction tends to run
19 behind, so I'm just wondering if there is in fact
20 a contingency plan for that?

21 THE CHAIRMAN: If you can, answer it.

22 MS. HICKS: I would have to ask
23 Manitoba Hydro if they have a contingency plan.

24 MR. PENNER: No, I don't think there
25 is any concerns about the highway not being

1 completed. If the highway is still under
2 construction while we're there, we'll mitigate any
3 concerns.

4 MR. BEDDOME: I don't know if you have
5 it on the slide too, but similar mention, I think
6 it is on the slide, one second. At 2382 in the
7 transcript, Ms. Hicks mentioned, and it was in the
8 slide, but 64 to 70 percent increase on PR 280,
9 and 100 percent traffic increase on PR 290. Do
10 you recall that, Ms. Hicks?

11 MS. HICKS: Yes, I think that's
12 correct.

13 MR. BEDDOME: I just wanted to know,
14 is that just Bipole III, or is that looking at it
15 in the context of a cumulative effects assessment?

16 MS. HICKS: I will have to double
17 check, but I believe that was Bipole III, but I
18 will have to double check.

19 MR. BEDDOME: So if other projects,
20 and this is certainly something you addressed in
21 your report, were to overlap tightly the presently
22 planned, such as Keeyask and Conawapa, that might
23 in fact increase that traffic level beyond what
24 the roads capacity is?

25 MS. HICKS: I will have to double

1 check on the numbers.

2 MR. BEDDOME: Okay. If you could take
3 that as an undertaking, that would be appreciated.

4 MR. ELDER: Mr. Beddome, I can add to
5 that. I know from Keeyask, access is through PR
6 280, but not through Gillam and -- if the project
7 is approved -- but the work that is going on is
8 accessed through Thompson, whereas Keewatinoow is
9 access through Gillam, so different parts of PR
10 280. There will be some commonality on anything
11 that's trucked up to site on the piece from
12 Thompson to the Keeyask turnoff, but the Keeyask
13 traffic won't be going past that point, if that
14 helps.

15 MR. BEDDOME: Yes, it does. And a
16 quick question I guess for Ms. Hicks, or maybe if
17 one of the panelists wants to answer, you consider
18 the Riel converter station part of this project?

19 MS. HICKS: Yes, I do.

20 MR. BEDDOME: Okay. And even though
21 it was licensed under a separate licence, and I
22 mean my understanding they are moving the
23 transformers in as of this past Sunday?

24 MS. HICKS: No, the Riel converter
25 station, actually Riel station was licensed as a

1 different project. What it does is, the lands
2 that Riel station is currently sitting at with the
3 transformers coming on is a separate project.
4 Riel converter station, the equipment required for
5 it will have to be added in once the project gets
6 its licence. They are two separate projects.

7 MR. BEDDOME: And I do understand
8 that, so I am just trying to wonder --
9 conceptually, though, you did say you thought Riel
10 was part of Bipole III?

11 MS. HICKS: Riel converter station is
12 part of Bipole III.

13 MR. BEDDOME: Now, Mr. Chairman, I am
14 at a bit of a loss here because I wanted to go
15 over to Mr. Osler and return to where we were, I
16 guess was it November 5th, and I'm wondering if
17 I'm going to be given that opportunity?

18 THE CHAIRMAN: You will be,
19 Mr. Beddome, probably late next week or the
20 beginning of the following week. We may have to
21 go beyond time so everybody else in the room might
22 be upset at you for keeping us late.

23 MR. BEDDOME: Well, it's not my
24 intention to keep people late, but I did wait
25 patiently all day.

1 THE CHAIRMAN: I'm being a bit
2 facetious, because I have at least one question
3 for Mr. Osler in this regard as well.

4 MR. BEDDOME: I just had several that
5 I wanted to tie in.

6 THE CHAIRMAN: But when Mr. Osler is
7 back in town, we will find a time that's
8 appropriate and works for him, so that you and I
9 can ask questions of him, and perhaps other panel
10 members.

11 MR. BEDDOME: I appreciate that.
12 Thank you very much.

13 THE CHAIRMAN: That's it. Thank you.

14 Any questions of panel members of
15 these folks? This will be our last kick at these
16 cans.

17 The panel may have some questions at a
18 future date of Mr. Nielsen, and perhaps of
19 Mr. Gray, but not this evening -- well, obviously
20 Mr. Nielsen because he is not here. Any
21 questions?

22 MS. MacKAY: I have a small question
23 around fishing, which is not much mentioned in the
24 EIS, but did show up in Ms. Hicks' presentation in
25 conjunction with hunting.

1 It's easy to manage the hunting and
2 preventing visitors from stressing wildlife as a
3 food for the Aboriginal population in that area by
4 telling people they can't bring their guns. How
5 will the prohibition on fishing be managed? It
6 seems unlikely that you can say they can't bring
7 their fishing rods.

8 MS. HICKS: It's not quite as easy,
9 but I do have something in the documentation that
10 we found this morning in response to a similar
11 question. Now, I just have to re-find it.

12 MR. ELDER: Ms. MacKay, that is a real
13 good point. The other piece for Keewatinoow, and
14 that's where the major workforce is going to be,
15 is the work area itself is going to be quite
16 large, probably 20 to 30 kilometres. And our
17 thinking is if the workers don't have personal
18 vehicles there, and they are not allowed to fish
19 on the work site per se, then it's a long way to
20 get to the fishing hole 30 kilometres away. So if
21 they are local people there and they fish there
22 anyways, they will have their personal vehicles.
23 But if they are workers coming into the area, they
24 won't have their personal vehicles there. So
25 we're thinking that will help suppress some of

1 them.

2 MS. MacKAY: Would there be any
3 intention, if someone coming in from outside
4 struck up a friendship with local people, would
5 the prohibition still extend to that visitor, or
6 that person coming from outside?

7 MR. ELDER: No, then we would just
8 rely on Manitoba Conservation rules for fishing
9 and that. But we have had really preliminary --
10 and one of the First Nations has asked if there's
11 a potential opportunity for a catch and release
12 program, for instance, as part of the camp
13 operations contract. You know, we've talked about
14 some of those possible opportunities, but just in
15 concept only.

16 MS. MacKAY: Thanks.

17 MR. ELDER: You're welcome.

18 THE CHAIRMAN: Any other questions?
19 Okay. So I think sometime next week or earlier
20 the following week, we'll have some questions for
21 Mr. Osler, Mr. Nielsen and Mr. Gray, possibly
22 Mr. Gray. So we'll let Hydro know well in
23 advance.

24 I think that brings us to the end of
25 the day. We're actually surprisingly ahead of

1 schedule. Tomorrow we've got a bit of a
2 complicated day, and I'm not quite sure what's
3 going to happen. We have Swan Lake and Fox Lake
4 in the morning I believe -- so we do have Swan
5 Lake and Fox Lake in the morning. Sapotaweyak
6 after lunch, and then that will be followed by the
7 EPP monitoring presentation, hopefully at about
8 2:00 o'clock tomorrow afternoon. And then in the
9 evening we have a number of citizens who have
10 indicated that they wish to make presentations.
11 So tomorrow I think is going to be pretty
12 grueling, so I hope everybody gets a good night's
13 sleep tonight, there's no election to keep us up
14 late.

15 MS. JOHNSON: More documents.

16 THE CHAIRMAN: More documents to
17 register.

18 MS. JOHNSON: MH 88 is the Pine Creek
19 watershed study. PFN number 1, that's the Peguis
20 presentation, the CV's filed September 17th;
21 number 2 is the Treaty Entitlement Agreement,
22 number 3, is R versus Sioui; number 4 is the
23 Prairie Forum article; number five is Treaty
24 research report for Treaty 1 and Treaty 2; number
25 6 is the Power Struggles Hydro Development and

1 First Nations reference; number seven is the
2 document titled Unjust Relations, Aboriginal
3 Rights in Canadian Courts; and number eight is the
4 Riel Proclamation of 1763.

5 (EXHIBIT MH 88: Pine Creek watershed
6 study)

7 (EXHIBIT PFN 1: Peguis presentation,
8 CV's filed September 17th)

9 (EXHIBIT PFN 2: Treaty Entitlement
10 Agreement)

11 (EXHIBIT PFN 3: R versus Sioui)

12 (EXHIBIT PFN 4: Prairie Forum
13 article)

14 (EXHIBIT PFN 5: Treaty research
15 report for Treaty 1 and Treaty 2)

16 (EXHIBIT PFN 6: Power Struggles,
17 Hydro Development and First Nations)

18 (EXHIBIT PFN 7: Unjust Relations,
19 Aboriginal Rights in Canadian Courts)

20 (EXHIBIT PFN 8: Riel Proclamation of
21 1763)

22 THE CHAIRMAN: Thank you. Any other
23 business to take care of? Okay. We are adjourned
24 until 9:00 a.m. tomorrow morning.

25 (Proceedings adjourned at 4:55 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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