

MANITOBA CLEAN ENVIRONMENT COMMISSION

BIPOLE III TRANSMISSION PROJECT
PUBLIC HEARING

VOLUME 31

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Transcript of Proceedings
Held at Winnipeg Convention Centre
Winnipeg, Manitoba
MONDAY, MARCH 11, 2013

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Pat MacKay - Member
Brian Kaplan - Member
Ken Gibbons - Member
Michael Green - Counsel to the Board
Cathy Johnson - Commission Secretary

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PINE CREEK FIRST NATION
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Warren Mills
John Stockwell

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1 Monday, March 4, 2013

2 Upon commencing at 9:00 a.m.

3

4 Monday, March 11, 2,013

5 Upon commencing at 9:00 a.m.

6 THE CHAIRMAN: Good morning. We'll
7 resume the hearing.

8 Do you have people still to come?

9 MR. SOPROVICH: We still have one
10 person, he is just trying to find a parking space.

11 THE CHAIRMAN: Okay. Then we'll put
12 resuming the hearings on hold.

13 Are there any matters that need to be
14 dealt with before we get to Wuskwi Sipihk?

15 Okay, Cathy?

16 MS. C. JOHNSON: Yes. As we discussed
17 on Friday, York Factory has actually requested
18 that their material be provided as a written
19 submission, so we will file that. We're just not
20 sure what the number is at this point in time. So
21 we'll get that to you when we get that figured
22 out.

23 THE CHAIRMAN: Any other preliminary
24 matters? Okay. We'll just go into a brief recess
25 and wait for the Wuskwi Sipihk person to find some

1 parking.

2 (Hearings recessed at 9:05 a.m. and
3 reconvened at 9:15 a.m.)

4 THE CHAIRMAN: Mr. Soprovich, we have
5 another presenter who was scheduled to go on later
6 this morning. He's here now. I think we'll hear
7 from him while we still await your fourth person.
8 You can probably stay right there and we'll have
9 this gentleman come up to the front table.

10 MR. TURENNE: Have you all got the
11 materials that I sent to the Commission prior to
12 today? You should have a package containing three
13 letters as well as a copy of the trapper
14 compensation policy?

15 THE CHAIRMAN: Yes, I have all of
16 that.

17 MR. TURENNE: Okay. That's good,
18 because I'll be referring to those throughout.

19 THE CHAIRMAN: We need to ask you to
20 promise to tell the truth, so I'll turn it over to
21 the Commission Secretary.

22 MS. C. JOHNSON: Could you please
23 state your name for the record?

24 MR. TURENNE: My name is Paul Turenne.

25 Paul Turenne: Sworn

1 MR. TURENNE: Thank you for having me
2 here today. As I said, my name is Paul Turenne.
3 I am the executive director with the Manitoba
4 Lodges and Outfitters Association. And just by
5 way of background, we represent the fishing lodges
6 and hunting and fishing outfitters in Manitoba.
7 So these are the people who provide fishing and
8 hunting guiding services, as well as accommodation
9 at lodges, that sort of thing. We are the
10 industry association for that sector. So it would
11 be similar to, for example, the Manitoba Hotel
12 Association or the Trappers Association. And so
13 we represent about a hundred outfitters and lodges
14 across the province, including a few that I will
15 be speaking about today.

16 And the substance of my presentation
17 here, the reason we're here today is we're going
18 to be asking the CEC to help us with a process for
19 compensating outfitters who are affected by the
20 Bipole project. We did go through Hydro, through
21 the proper channels first, and as you'll see in
22 the presentation, have not been happy with the
23 response. So that's why we're here today.

24 So just by way of background, we're
25 here representing two outfitters, mostly, it would

1 be, you know, anyone who is affected by the
2 project. We did go to the outfitters who received
3 letters from Hydro who are along the route, and
4 there were only two who expressed, you know,
5 concerns about it affecting their business. And
6 therefore, they would be the only two who
7 responded and are mentioned here today. But
8 theoretically, anything we're asking for could
9 apply to any outfitters in a similar circumstance.

10 And so the two outfitters, as you'll
11 see in your information package here today are
12 members of ours. One is called Adrenaline
13 Outfitters and the other is All Terrain Bear
14 Hunts. They are both bear hunting outfitters who
15 have allocations from the province in game hunting
16 areas 9 and 9A, which is the area around Thompson,
17 and so, of course, the area that is affected by
18 the Bipole III route.

19 And as I said, Hydro did send letters
20 out to the outfitters who are affected by the
21 rerouting. Those letters were dated
22 November 29th. And as I said, the MLOA made
23 attempts to contact all of the outfitters who are
24 on that list of people who were potentially
25 affected by the line. These two got back to us.

1 And it's worth noting that Hydro
2 actually invited our comment, invited us to be
3 part of the consultation process. And we took
4 them up on that offer and, you know, the result is
5 me being here today, unfortunately.

6 So just a little bit more background.
7 The two outfitters who we're talking about today,
8 one attended an open house in Thompson, the other
9 attended an open house in Winnipeg, both were in
10 December. And they personally directly expressed
11 their concerns to Hydro staff at those open houses
12 about them being affected. Primarily, we're
13 talking about the bear population, wildlife in the
14 area being affected by the project, and they
15 expressed those concerns, were invited to express
16 those concerns more formally through meetings,
17 letters.

18 I myself, Mr. McGarry here from Hydro
19 attended a meeting just before Christmas with one
20 of the outfitters. We expressed some of the
21 concerns. And subsequently some letters were
22 sent, formal letters to Hydro, individual letters,
23 each on behalf of each of these outfitters,
24 expressing the concerns and seeking compensation.

25 Now, just to be clear, we understand

1 and our outfitters understand the scope of the
2 project. We're not proposing a radical reroute or
3 blocking the project or anything like that. We
4 understand that no matter where it's run, someone
5 is going to be affected and some bears in some
6 areas are going to be affected. It happens to be
7 these two outfitters whose bears primarily are
8 going to be affected by this. And therefore,
9 accepting that, they ask only that they receive
10 some sort of compensation in order to be able to
11 adjust their businesses. Their businesses will be
12 negatively impacted by this. In essence, they are
13 going to be forced to relocate part of their
14 business in order to, you know, make up for the
15 fact that the bear population in the area is very
16 likely going to be scattered and unreliable
17 because of the project.

18 So that's sort of the background.
19 Sorry, just to back up a little bit. In the
20 package that you have, you'll see the response
21 that our outfitters received from Hydro as a
22 result of the letters that were sent at Christmas
23 time. And in both cases the response was,
24 essentially, take the loss, prove it to us after
25 the fact and we'll consider it. Which frankly is

1 not the answer we were looking for. So it's not
2 the approach we were looking for either,
3 especially given that we were invited by Hydro in
4 the first place to the consultation table. And
5 the response that we got from them was, you know,
6 we don't believe you, prove it to us after the
7 fact and we'll think about it.

8 So I will refer you to one letter in
9 the package, if you will, please? I believe it's
10 the first one in your package. It's a letter
11 dated -- sorry it's not, it's the last one in your
12 package, a letter dated December 31st written by
13 Adrenalin Outfitters to Hydro. Have we all got
14 that one?

15 THE CHAIRMAN: Yes.

16 MR. TURENNE: Okay. So the reason I'm
17 referring to this is I'm just going to talk to you
18 a little bit about what the concerns are, why we
19 feel that the project is going to have an
20 environmental impact on the bear population and on
21 these businesses.

22 So you'll see there's sort of a point
23 form list about three-quarters of the way down the
24 first page of the letter. And this outlines
25 specifically what some of the concerns with

1 respect to the bear population are. So you've got
2 increased traffic, you've got sort of an under
3 construction look now. We understand that most of
4 the construction activity itself will take place
5 in the winter time. The hunting season, by the
6 way, is the spring and the fall. That being said,
7 clearly you cannot undertake a project of this
8 scope and have everything disappear, you know, a
9 month after you stop building. There's, you know,
10 cut lines, there's equipment, there's machinery
11 and there is presence. There's people, there's
12 trucks, there's roads, there's, you know, a lot of
13 things going on even if, you know, the machines
14 aren't actually in the process of digging or what
15 the case may be.

16 Now, there's a concern here about a
17 reduction in the number of accessible bait sites.
18 When you're hunting bears in Manitoba, you know,
19 personal morals aside, there is some question in
20 Manitoba from time to time about the process of
21 bear baiting. That being said, it's a perfectly
22 legal activity that is very commonplace among bear
23 outfitters. This is how you hunt for bears in
24 Manitoba. You set up bait sites where the bears
25 come to eat, and you set up stands and trails near

1 those bait sites so that the hunter can be nearby
2 and intercept a bear that's coming to the bait
3 site.

4 So they are concerned that there's
5 going to be a reduced number of established bait
6 sites where they know bears are coming. They have
7 worked to get those bait sites going and establish
8 them as reliable, where they know that there's
9 bears that are coming to them. And of course,
10 they are afraid that that's no longer going to be
11 the case if, you know, there's roads that cut
12 through those trails, or construction activity
13 going on near those sites that the bears will no
14 longer come, therefore, they've got very little to
15 sell to their clients if there's no bears.

16 So you will see here too, they are
17 concerned that there are costs related to
18 relocating bait sites. So if they have to move
19 further away from the construction area, they are
20 going to have to take the time to cut trails,
21 re-establish bait sites. There still won't be any
22 certainty because, please understand, it does take
23 some time to establish a bait site as being a
24 reliable place where you know that the bears get
25 used to it, the bears know that it's there, and

1 therefore you eventually know that the bears are
2 there. So there is definitely some uncertainty
3 there.

4 And of course, primarily the concern
5 is that just the construction activity itself, the
6 presence, the traffic will simply drive the bears
7 away, deeper into the bush away from where they
8 are used to being.

9 And then a little bit further, right
10 at the bottom of that page here, you will see --
11 I'll just read to you, if you will. These
12 anticipated impacts include the extra time, effort
13 and labour required to find, scout and establish
14 new bait sites, potentially increased travel cost
15 to the new bait sites depending on their location,
16 and also a concern that the clients will not be
17 served a pristine wilderness style experience. Of
18 course, no one wants to hunt in a construction
19 zone. We're talking about primarily American
20 clients who come up, spend thousands of dollars,
21 which is money that comes into the Manitoba
22 economy from outside and stays here in northern
23 areas. And they don't want to come -- you know,
24 there's bears all over the place, they can go hunt
25 at the dump, you know, there's bears at the dump.

1 But no one's going to pay thousands of dollars to
2 come hunt at the dump. And the same is true of
3 wherever Bipole is going to be built, you know, if
4 there is, you know, machinery, tractors, people
5 driving around, no one is going to pay to come and
6 hunt in an area where there's all that kind of
7 thing going on.

8 So those are primarily the substance
9 of the concerns, other than the concern and the
10 uncertainty for the animal population itself. You
11 know, no one really knows what's going to happen
12 in terms of denning sites, equipment hitting, you
13 know, hibernating bears, dispersing animals, this
14 type of thing. There is very likely going to be
15 some long-term effects there.

16 We, in terms of the compensation, we
17 have not asked for any of these types of
18 intangibles or long-term effects, as you'll see
19 later on, it's mostly just sort of the short-term
20 readjustment to the construction period itself
21 that we're seeking some relief for, and whatever
22 the long-term effects may be, we're prepared to
23 accept them.

24 So those are the concerns. Sorry,
25 should I give an opportunity for questions before

1 moving on, or do you take the questions just at
2 the end?

3 THE CHAIRMAN: Just carry on for now.
4 We may interrupt you if we need clarification, but
5 we'll save most of the questions for the end.

6 MR. TURENNE: Okay. Fair enough.

7 So those are the concerns. Now, I'll
8 refer you to the trapper compensation policy that
9 Hydro has here as part of your package. And the
10 trapper compensation policy would suggest to me
11 that Hydro accepts that there will be a disruption
12 to the wildlife population, as well as to the
13 land-use infrastructure in the area.

14 If you'll look at page 11 of the
15 trapper compensation policy, it notes that
16 trappers may be compensated for damage from
17 construction activities to trails used for
18 trapping. Okay. So clearly Hydro accepts that
19 some of this activity is going to cause damage to
20 trails that the trappers use. The same would, of
21 course, be true of the trails that the outfitters
22 use, the bait sites that the outfitters use, the
23 tree stands that the outfitters use. If there's
24 damage from construction to trapping trails, it
25 follows that of course there would be damage to

1 outfitting trails too.

2 If you'll flip the page, page 12, the
3 very first line there, when there is an
4 anticipated reduction in trapping income due to
5 transmission construction activities -- key word
6 there is anticipated. Hydro clearly accepts that
7 there will be some reduction in revenue, some
8 effect from this project. And there's an
9 anticipated reduction, therefore, they are not
10 asking the trappers to take the loss and prove it
11 after the fact. They are anticipating it ahead of
12 time compensating them accordingly.

13 Also on page 12 here, you'll note
14 which is of interest to us, settlement packages
15 may be provided for the disturbance period based
16 on a formula. So here, again, the formula is
17 prescribed, it's ahead of time. You know, we
18 accept that there's going to be some disturbance,
19 here's the formula. We're asking for something
20 very similar. We'd like to be treated the same
21 rather than, you know, take the loss, prove it to
22 us afterwards. Okay.

23 And then finally on page 13, at the
24 very bottom, point 6, again, you'll see that Hydro
25 clearly accepts that there is going to be some

1 disturbance to the wildlife population because the
2 trapper compensation policy quotes five years; one
3 for clearing, one for construction, and of note,
4 three years for wildlife to adapt. Okay. So
5 we're talking about the exact same wildlife here.
6 Trappers can take bears in the same season that
7 outfitters can take bears. If it takes the bears
8 that the trappers are after three years to adapt,
9 one would assume that it follows that it also
10 takes the bears that the outfitters are after
11 three years to adapt. Okay.

12 So this is the compensation policy
13 that Hydro has in place already for trappers.
14 Now, if you'll look at the package that you were
15 given this morning, the response that our
16 outfitters got from Hydro to the requests for
17 compensation are drastically different than what
18 is being offered to the trappers.

19 You'll see here that -- give me one
20 second, please?

21 Yes, the very bottom of the letter to
22 the response of Adrenalin Outfitters, which I
23 believe is at the front of your package:

24 "In the case of a potential claim such
25 as yours, Hydro's policy is to review

1 any alleged claim for business
2 interruption or economic loss on a
3 case-by-case basis at the time when
4 the loss has been incurred and when
5 damages can be lost or proven."

6 Okay. So this is a Hydro policy,
7 internal one would assume, and basically they are
8 saying take the losses, incur them, and then prove
9 it to us after the fact. So Hydro is ultimately
10 giving itself, essentially, the power to determine
11 whether or not a loss has occurred. And you'll
12 note this letter came directly from Hydro's legal
13 department, not from Mr. McGarry, who did the
14 consultation with us. This is clearly not the
15 approach that's been taken with the trappers.
16 Okay.

17 Now, just to be clear, we're referring
18 a lot to the trappers. We want to be clear that
19 we feel that the trapper compensation policy is
20 just and proper and is right, and that they have
21 every right to it. We feel it's the right way to
22 proceed. And all we're asking is to be treated
23 the same way. It's not a question of the trappers
24 shouldn't be entitled to this. They absolutely
25 should, because of the effects that we have talked

1 about. And all we're asking is that we have
2 something similar in place, recognizing that it's
3 a similar industry. So don't feel that we don't
4 think the trappers deserve it, they absolutely do.
5 So we feel that they should take a similar
6 approach with us.

7 As I said, for the animals, the black
8 bear trapping season mirrors the black bear
9 hunting season in the north, in that area of the
10 north. You can actually hunt and trap at the
11 exact same time for black bears, meaning that in
12 some cases they may literally be going after the
13 exact same bears. So you may have trappers and
14 outfitters operating in the same areas, at the
15 same time of year, going after the same bears with
16 essentially different weapons, a trap versus, you
17 know, bow and arrow or a gun.

18 So how Hydro can say that wildlife
19 will need time to adapt when it comes to trappers,
20 but that somehow this isn't true of outfitters,
21 you'll note in the letter that they respond to
22 Cory Grant, who is the other outfitter in
23 question, that should be the second letter. They
24 list a bunch of point form things they are doing
25 to mitigate their effects on the bear population.

1 There is no mention of that whatsoever in the
2 trapper compensation policy. They are not saying
3 oh, no, no, don't worry, it's not going to affect
4 your animals. It clearly will. And these
5 effects, notwithstanding the fact that some of
6 them may well reduce the impact, I can't see how
7 there could be any argument that there wouldn't be
8 any impact at all when you've got a project of
9 this scope cutting a swath through the boreal
10 forest that, you know, there wouldn't be any
11 impact on the animals and, therefore, an impact on
12 the businesses that rely on those animals.

13 So, you know, we would say that the
14 reaction of the bears is going to be the same
15 regardless of whether you are talking about
16 trappers or outfitters going after those bears.

17 One other thing to note in the first
18 letter on the top of your package to Adrenalin
19 Outfitters, Hydro makes reference to the fact that
20 trappers' legal rights are being interfered with,
21 and this is sort of the reason that they cite for
22 there being trapper compensation and not outfitter
23 compensation. With respect, trappers have no more
24 legal right to the resource than outfitters do.
25 It's a different process. But at the end of the

1 day, registered traplines and outfitter
2 allocations are both controlled by the Province.
3 I'm not sure how much the panel knows about the
4 intimate details of registered traplines,
5 outfitter allocations. Essentially, in both cases
6 it's an allocation from the province where the
7 Department of Conservation and Water Stewardship
8 gives out essentially the right to use a section
9 of the Province. It's divided into game hunting
10 areas for outfitters and into trapline areas for
11 trappers, but there's no legal tenure, even in the
12 case of registered traplines. There is a process
13 where it can be reallocated and people can apply
14 for it, this kind of thing. It would be no
15 different than, for example, you know, logging
16 rights that are handed out to forestry companies
17 or whatever. It's essentially a licence to use
18 the natural resource in whatever area of the
19 province. And you are allocated a certain area,
20 you have to operate in that area. And so for one
21 thing, our outfitters are limited in that they are
22 only allowed to operate in certain areas. And if
23 Bipole happens to be cutting a swath through that
24 area, you know, they are kind of up the creek.

25 So we don't accept that trappers'

1 legal rights, as stated in the letter, are being
2 interfered with but outfitters are not. It's
3 essentially the same legal right. It's an
4 allocation from the Province. They don't hold
5 title to that land or anything. They are given
6 the right to operate on that land by the Province,
7 as are the outfitters.

8 And it's also worth noting that our
9 outfitters pay for this privilege. They pay the
10 province an annual resource tourism operator's
11 licence, and plus they pay \$100 per foreign
12 resident hunting licence that they sell. So every
13 guest that they have, they pay a hundred dollars
14 to the Province. And the theory behind that is,
15 you know, these guys are making use of a public
16 resource, i.e. the wildlife, to run a private
17 business, therefore, they are paying the people of
18 Manitoba for that right. So they are paying for
19 something that is now being scattered by this
20 project.

21 So, again, we reiterate here that, you
22 know, this is not a question of that we don't
23 believe the trappers' legal rights are being
24 interfered with or anything like that and that
25 they shouldn't receive the compensation, we're

1 arguing that it's essentially the same legal right
2 and that, you know, our folks are no different
3 than the trappers, even legally speaking.

4 And so despite the, you know, the
5 differences between the industries and the
6 seasons, whatever, we could argue about detail,
7 but clearly there's a completely different
8 approach being taken by Hydro here. It's 100
9 percent the opposite. The trappers are being
10 compensated up front. If you look at the, I think
11 it's page 14 of this trapper compensation policy,
12 there is a picture there of a happy trapper
13 signing an agreement. You know, everything is all
14 detailed here for them ahead of time.

15 And meanwhile, we go through the
16 proper channels, we are invited to consult. We
17 consult and ask for something that in our opinion
18 is not at all unreasonable. And we're told
19 essentially, take the loss, prove it, and then
20 Hydro will think about it.

21 So we're not saying that the
22 compensation formula has to be precisely the same,
23 that it's based on the exact same revenue, et
24 cetera. But we don't understand why the
25 approaches in the first place are so drastically

1 different, why they would treat one group as, you
2 know, yes, we want you, here you go, and they
3 treat another group as no, no, no, get out of
4 here. You know, prove it to us after the fact and
5 contact our legal department. Right? So we think
6 that approach is simply unfair.

7 It's worth noting that there were a
8 couple of media stories done about this in the
9 last week or so, one in the Free Press, one in the
10 Thompson Citizen. They interviewed some of these
11 outfitters about the situation. And each and
12 every one of the comments written by readers on
13 those stories were in support of the outfitters,
14 questioning why there would be such a drastically
15 different approach to similar user groups,
16 recognizing of course that online comments are not
17 even close to a scientific gauge. But still it
18 gives you an idea what the general public
19 sentiment would be, and that sentiment is that,
20 frankly, Hydro's approaching is wrong.

21 So even if we were to accept that our
22 outfitters were to prove their losses out after
23 the fact, which we don't accept, we question how
24 they would be able to even prove this anyways.

25 Cory Grant, who is the owner of All

1 Terrain Bear Hunts, told the paper in one of these
2 media interviews, in a tongue-in-cheek fashion,
3 what am I supposed to do, ask the bears to write a
4 letter explaining why they stayed away? Now, of
5 course, this is tongue in cheek, but there is some
6 truth in it. How in fact is he supposed to prove
7 that an outfitter's business was negatively
8 affected, if the bears are scattered and
9 dispersed, and not using the same trails and not
10 hitting the same baits? And you know, even if
11 they go a kilometre away in the deep forest where
12 there's no trails and everything, a kilometre
13 might as well be 500. So how is he supposed to
14 prove that the bears weren't coming this year
15 because of the construction project? Like he
16 said, you can't ask the bears to write a letter
17 explaining that after the fact.

18 An outfitter's business is putting
19 clients on to bears. If there are no bears there,
20 they are going to have unhappy clients, and those
21 clients will not rebook, those clients will not
22 tell their friends. A big portion of the
23 marketing for outfitting is word of mouth. You
24 know, friends who have come will tell their
25 friends, you know, I had a good experience with

1 this guy, we got a great bear. And so with that
2 word of mouth being as big as it is, are those
3 clients then going to write a letter to Cory after
4 the fact and say, I didn't tell my friends about
5 this because, you know, we didn't see any bears?
6 Are that person's friends going to write to Hydro
7 saying, I'm not coming because my friend didn't
8 see any bears?

9 So we don't accept that there's even
10 really a way to prove it after the fact. You
11 know, so we don't expect that they can take these
12 losses and then have any sort of quantifiable
13 proof that they can then present to Hydro to prove
14 that this is why the loss has occurred.

15 Okay. And just with that same
16 approach, with asking them to prove after the
17 fact, we feel that Hydro clearly doesn't show
18 respect or understand the process of what I was
19 talking about earlier, where it takes years to
20 establish bait sites, establish stands, establish
21 trails. You can't just show up and, lo and
22 behold, there's a bear. I mean, I don't know how
23 many of you have gone hunting before, but that's
24 not how it works. It's actually very difficult.
25 And the same, by the way, is true of trapping.

1 You can't just, you know, set a line and the bear
2 walks into it. It's a complicated process, it's a
3 very specialized skill. It takes years of
4 experience to develop. And you know, there's a
5 real science to it. And you know, these
6 outfitters in both cases have spent literally
7 years -- these are not new outfitters, these are
8 guys who have been operating over a decade in one
9 case and just about a decade in the other, and
10 they have developed their areas into sort of
11 reliable quality hunting areas. And they now fear
12 that all that work that they have put in over the
13 last several years is going to be, you know, cut
14 right through with bulldozers and backhoes. So
15 make no mistake, this project will have a profound
16 effect on those operations because of that.

17 Okay. And the final thing I'd like to
18 touch on is the fact that the whole process here,
19 the whole compensation process is in Hydro's hands
20 exclusively. Despite everything else, the entire
21 process from start to finish rests with Hydro.

22 If you'll note page 2 of the letter to
23 Adrenalin Outfitters, which again is the top of
24 your package, the very last line:

25 "Please indicate past and present

1 accounting business records to support
2 your claim to allow Manitoba Hydro to
3 determine if a loss has arisen
4 directly as a result of the Bipole III
5 project."

6 Okay. So obviously it's in Manitoba
7 Hydro's interest, financial interest to deny any
8 claims. If they are the ones deciding whether or
9 not there is a loss being taken, why would they
10 agree that there's a loss being taken if it's
11 going to come out of their own pocket? You know,
12 it only makes sense that if someone is asking you
13 whether you think that there is a loss, and it's
14 up to you to pay it, you're going to say, no,
15 there was no loss. So, clearly, they are going to
16 try and deny that there's any effect. That's what
17 they have done with the letter to Cory Grant
18 saying we are doing all these things, it's going
19 to mitigate it. So it's in their own -- and I
20 don't blame them, I would do the same in their
21 position -- it's in their own financial interest
22 to deny that there's going to be any effect.

23 So who is acting as an arbitrator in
24 that process? There's no third party here who can
25 question or challenge Hydro's arguments or version

1 of the events if the compensation and the losses
2 are ultimately up to them. You know, they are
3 going to say what they are going to say, and who
4 is going to question it?

5 So even looking beyond that, if our
6 outfitters do agree that, okay, sure, we'll take
7 the loss, we'll prove it to you after the fact.
8 Let's say they do get some letters and they have
9 some justifiable proof and they come to Hydro at
10 the end of the day and Hydro denies it again, what
11 recourse do we have then? The project is already
12 built, this Commission is over. There's really no
13 one to go to short of, you know, civil court. And
14 you know, these aren't huge operations, we're not
15 a huge operation, we're a non profit. You know,
16 we don't have the resources to, you know, file a
17 civil court claim against Manitoba Hydro and
18 defend it as the process drags on, et cetera. At
19 the end of the day, you know, the legal fees we
20 might pay for that process would eat up whatever
21 compensation there might be anyways.

22 So that's why we're here today. We're
23 thankful that there are public bodies like the CEC
24 who oversee these processes and can act on, you
25 know, behalf of the public. So we're asking you

1 today to take some element of this process out of
2 Hydro's control, so that at least there can be
3 some kind of oversight. And you know, if there is
4 some, you know, third party compensation body
5 established or whatever it may be, and they decide
6 at the end of the day that, you know, our
7 outfitters' claims aren't justified, fair enough,
8 we will accept that. But we can't accept it from
9 Hydro because they are, you know, the defendant
10 essentially. And you know, they are the judge,
11 jury, executioner, and that doesn't really make
12 any sense.

13 So we have gone through the proper
14 consultation process with them. We attended
15 meetings with Mr. McGarry. We sent letters. We
16 made, you know, a claim for what we felt was fair,
17 proper, not unreasonable compensation. We gave
18 them the opportunity to respond in due course.
19 You have seen the response that they gave our
20 outfitters. And frankly, we have no reason to
21 believe that their response is going to be any
22 different down the road, because it's in their
23 interest for it not to be any different. And so
24 that's why we're here today asking for your help.

25 THE CHAIRMAN: Thank you, Mr. Turenne.

1 Any questions from Manitoba Hydro?

2 MS. MAYOR: No, thank you.

3 THE CHAIRMAN: Thank you. Panel

4 members? Mr. Gibbons? Mr. Kaplan? Ms. MacKay?

5 MS. MacKAY: Just one question, around
6 the issue of how you tell if there's been a loss.
7 One of your outfitters is saying they are reducing
8 the number of reservations right away. But if you
9 didn't do that and continued to accept clients and
10 put them in the environment that you are
11 describing, one that is disturbed, and they don't
12 get a bear, do your outfitters have any -- it
13 would be anecdotal, but any anecdotal data of any
14 sort on whether people who come and don't get a
15 bear do come back another year?

16 MR. TURENNE: I can certainly ask
17 them. I wouldn't have that information off the
18 top of my head. Perhaps a better marker would be
19 that they could prove that those who do get a bear
20 do come back, or do tell their friends, and they
21 could certainly quote, you know, references
22 saying, you know, yes, I'm coming because, you
23 know, my friend in Illinois, or whatever the case
24 may be, got a bear and told me this was a great
25 spot and so here I am. There may be sort of more

1 quantifiable proof on that side of the equation.
2 But certainly I can ask them if it's something the
3 CEC feels is critical that, you know, if they
4 could produce some data about, you know, who comes
5 and doesn't get a bear and doesn't come back.

6 That being said, most of their clients
7 do get bears these days, at least because, you
8 know, they are good at what they do. So the
9 success rate is very high. I'm not suggesting
10 it's 100 percent, but it's very likely, you know,
11 85 to 90 percent plus.

12 But if it's something that you feel is
13 important, I'm sure we can ask them for that data.

14 MS. MacKAY: I don't think myself
15 there's any need to go that far, I just was
16 wondering if you had any information.

17 MR. TURENNE: I haven't off the top of
18 my head, I'm sorry, no.

19 MS. MacKAY: That's okay.

20 THE CHAIRMAN: Mr. Turenne, the
21 construction period itself will be relatively
22 short term. But how long do you think it would
23 take for the area to recover? I mean, you noted
24 in here the trapper compensation program is a five
25 year period. Do you think that would be a

1 reasonable time frame for the outfitters?

2 MR. TURENNE: Yeah, absolutely. As a
3 matter of fact, I think in the letter that
4 Adrenaline wrote to Hydro they asked for only
5 three years. It's not a matter of the area
6 recovering, it is a matter of the area adapting.
7 I don't think there is any question that the area
8 will be changed permanently by this project, both
9 in terms of just physical geography and also
10 access. The bears will adapt. They will move to
11 another area, they will find new denning sites,
12 our outfitters will establish new bait sites
13 elsewhere. It's a matter of short-term relief to
14 accommodate their efforts in the process. So,
15 yeah, three to five years is no problem.

16 And again, that's why we feel that
17 what we're asking for isn't unreasonable. We're
18 not saying we want compensation, you know, to
19 infinity and beyond because this is going to have
20 long-term permanent effects. As I stated earlier,
21 they are prepared to accept that there are
22 long-term effects, so long as the short-term
23 effects are properly compensated.

24 And I believe that what Adrenalin has
25 suggested where they say, you know, we know it's

1 going to take us some extra work to, you know, cut
2 new trails, establish new sites, we want to run
3 fewer clients during that time because we're not
4 sure how the bears are going to react, and because
5 it's going to take us more time to do these other
6 activities. So I think that's an entirely
7 reasonable approach to this.

8 THE CHAIRMAN: Do you know if any of
9 your outfitters had experience on Bipoles I or II?

10 MR. TURENNE: Certainly some of them
11 do, yeah.

12 THE CHAIRMAN: Did they have
13 experience at the time they were constructed, do
14 you know?

15 MR. TURENNE: I can't say. That was
16 sort of too long ago that some of the current guys
17 may not have been operating back then, or may not
18 have been operating in those exact areas. There
19 are bear operators who operate near Bipole I or II
20 now in the Interlake. But whether they were
21 operating, you know, decades ago when they were
22 built, I don't know.

23 THE CHAIRMAN: Thank you. To Hydro,
24 perhaps to Mr. McGarry directly, when we have the
25 panel up tomorrow to answer final questions from

1 this panel, will somebody from Hydro be able to
2 answer questions in respect of this?

3 MR. MCGARRY: Yes.

4 THE CHAIRMAN: Thank you very much.
5 Thank you, Mr. Turenne.

6 MR. TURENNE: If you don't mind, sir,
7 could I just ask a question quickly? I am just
8 curious about the process now in terms of when
9 this panel will be writing its report when the
10 hearings end up. I just want to give my guys a
11 sense of when we might hear some sort of response?

12 THE CHAIRMAN: We anticipate that
13 hearings will end this Thursday. The record may
14 stay open for a few days after that. And then we
15 have by law 90 days following that to submit our
16 report. So it's possible our report may go in a
17 little before the 90 days, but April, May, June,
18 so perhaps the end of May, early June.

19 MR. TURENNE: Can we reasonably expect
20 that there will be some response to us, one way or
21 the other, in that report?

22 THE CHAIRMAN: I honestly can't tell
23 you right now. That comes of deliberations by the
24 panel members. We've got dozens, if not hundreds
25 of issues on the plate before us. This is

1 obviously a legitimate concern to you and your
2 people, and we'll consider that very seriously in
3 our deliberation, but I can't give you any idea
4 what our decisions may be.

5 MR. TURENNE: No, no, no, I'm not
6 asking about the decision. I am asking whether
7 there will be reference to a decision whatsoever
8 with respect to this?

9 THE CHAIRMAN: I'm sure we'll make
10 reference to your presentation. How far we go
11 with it, I can't tell you.

12 MR. TURENNE: Thanks very much, I
13 appreciate it.

14 THE CHAIRMAN: You are welcome. Thank
15 you for coming out.

16 Okay. I'd like to welcome the folks
17 from Wuskwi Sipihk First Nation. I understand
18 that you would like to have a prayer or a
19 spiritual address before we begin your
20 proceedings, so I'll turn it over to whoever.

21 MR. ZASTRE: We'd like to ask Elder
22 Buddy Brass to get up and do an opening prayer.

23 THE CHAIRMAN: Thank you.

24 MR. BRASS: Good morning everybody,
25 it's an honour to be here with you this morning.

1 It is the first time I have been able to be at
2 these meetings, I'm really pleased to be here.

3 My name is Lawrence Douglas Brass, but
4 they call me Buddy, and I am an elder from Wuskwi
5 Sipiik First Nation.

6 I'd like to say a little opening
7 prayer for you this morning as we always do back
8 home. I would like to say it in my own language,
9 sorry about that.

10 453Opening prayer)

11 Amen.

12 THE CHAIRMAN: Thank you Elder Brass.

13 Mr. Soprovich, are you taking the lead
14 on this presentation?

15 MR. SOPROVICH: Mr. Stevens will speak
16 first, Elwood Zastre will speak second, and myself
17 third, and then Mr. Stevens, and then a closing
18 prayer.

19 THE CHAIRMAN: Okay. Before we
20 commence, we'll have to ask the two who will be
21 giving evidence to take the oath. You already
22 have, you took the oath in November and that
23 continues. So madam secretary.

24 MS. C. JOHNSON: Could you please
25 state your names for the record?

1 MR. STEVENS: Craig Stevens.

2 MR. ZASTRE: Elwood Zastre.

3 Craig Stevens: Sworn

4 Elwood Zastre: Sworn

5 THE CHAIRMAN: You may continue.

6 MR. STEVENS: I'd like to start by
7 going over a traditional language study that was
8 funded by Hydro, and work was completed by my
9 First Nation in regard to this study. So
10 basically what I am going to do is I'm going to go
11 over the report, like it's in Hydro's EIS. And
12 I'm just going to go over briefly and speak to the
13 major points in the report.

14 First of all, I'll give you a little
15 description of my community. Wuskwi Sipiik First
16 Nation is a First Nation located in the Swan
17 Valley area in west central Manitoba. It's made
18 up of a couple of communities, there is two main
19 communities with like three smaller adjacent
20 communities that's dispersed around the territory.

21 Like in my area, you know, we've got
22 mountains to the west, mountains to the south, we
23 got the Ducks to the south, the Porcupine
24 Mountains to the west, we got Swan Lake to the
25 east. So we're kind of trapped in a little area.

1 And in that area, we've got like a high amount of
2 development happening. It has been happening over
3 the course of the last 30 years, like an extreme
4 basis, you know, farmland development. We have
5 had LP come into our area and start logging
6 operations the mid '90s.

7 So basically, in my lifetime I've got
8 to watch my traditional land use shrink. Like we
9 used to go a long ways, all the way to the Ducks
10 for hunting, and the Porcupines, you know, there's
11 big game areas. There is the berry areas in those
12 locations that we used to utilize quite a bit.
13 But due to all the private land that has since
14 come into the valley due to development, we have
15 lost a lot of this area. So the traditional area
16 that still exists is very important to our
17 community in that sense that it is shrinking at an
18 increasing rate. So what's left there is we have
19 to try our hardest to protect what we've got.

20 I'd like to make a little quote from
21 my elder in regards to this.

22 "The more land the Nation loses, the
23 more lost the Nation becomes."

24 This can kind of speak to all First Nations across
25 Canada. You can see a lot of these issues go

1 across the country, but most of these issues are
2 due to the loss of our land, the use of our land,
3 like in regards to everyday living, but also in
4 regards to traditional lifestyles. And you know,
5 like hunting is a major way of lifestyle in my
6 community, as well as gathering. And areas are
7 going to be destroyed, very critical areas,
8 because we have seen too much of our resource area
9 be destroyed, that they are not usable any more.
10 Now there's a farmland where there used to be a
11 berry picking area. Now there's a farm where
12 there used to be some salt licks for the big
13 games. You've got farmers clear-cutting across
14 creeks that used to be spawning creeks, so the
15 fish ain't coming back. You've got marsh lands
16 being drained and cleared out for farmland. So
17 now we lost the waterfall that come with that, and
18 all the plant life associated with those areas.
19 And so like with this Bipole line coming through,
20 it's almost like a nail in the coffin from where
21 we stand. You know, it's more loss of use. And
22 they are going to be going through about 200
23 kilometres of our tradition territory, smack dab
24 down the centre, not along the edge, but in
25 between our two communities which are about

1 10 miles apart. So this line is going to be right
2 down the middle about five miles from each
3 community. It's something that we're going to be
4 seeing everyday for the rest of our lives.

5 And we're used to seeing nature.
6 We've got a beautiful valley where we come from.
7 Like eco tourism is a big part of the valley
8 because of the pristine, the nature you see there,
9 the beautiful hills, we got a lot of lakes, there
10 is hunting, there is gathering, there's all these
11 different things. There's a tourist site.
12 There's cultural sites that are going to be lost
13 with this line coming through.

14 You know, when they did their EA, from
15 my experience a good EA is done on the ground.
16 You walk this line, you see what's there and you
17 document what's there. From what I have had to
18 deal with this Hydro, in my experience, from what
19 I have seen of it, you've got a guy flying by in
20 an airplane who is doing environmental assessment,
21 how is he going to see what's on the ground? How
22 is he going to know what he is going to affect?
23 It makes no sense to me how you can do an
24 environmental assessment from your office or from
25 an airplane, especially when you want to know

1 you're going to be disturbing on the land.

2 I can give a little example of that.

3 When LP came into our territory in the '90s, we

4 put opposition to it because there was no

5 consultation done with our First Nation, no one

6 came to ask what we thought of it. So we tried to

7 push it where we were dealt with at least, you

8 know, on a fair footing with everybody else. But

9 basically we were kind of pushed to the back. And

10 since then, LP has done a lot of work in our

11 valley. We've seen the degradation of water, we

12 have seen loss of habitat for a lot of the

13 critical animals that we rely on as First Nations

14 people. You know, like the economy is a big thing

15 in this country, but more so in First Nations

16 where there's hardly any economy. So, you know,

17 like on these traditional resources, there's a lot

18 more importance than just the cash volume that you

19 see getting thrown around by Hydro all the time.

20 Oh, yeah, we'll give you a thousand bucks, you can

21 walk away and we'll destroy this land, it's all

22 good. But what's my children going to be doing

23 when they grow up and they can't get taught the

24 ways of my ancestors because we lost all this

25 land?

1 You know, like everyday, we fight the
2 fight where Canada is trying to take our rights
3 away as First Nations people. And this is just
4 more of the same, we lose more of our land, we
5 lose more of our rights to our land, we lose more
6 of our rights to being First Nations.

7 And as Hydro is a big company, they
8 don't got a good track record in Manitoba amongst
9 First Nations people to start off with. So it's
10 kind of hard to believe them when they say there's
11 not going to be no impacts, you know, when like a
12 neighboring First Nation to the north that's from
13 our same tribe, but they had their nation flooded
14 where they can see their ancestors' bones floating
15 at the bottom of Cedar Lake once in awhile.
16 That's because of Hydro. They told them, you
17 know, we'll give you a good place to live, we'll
18 take care of you. But I guess that's taking care
19 of them. And I hate to see that for my people. I
20 hate to see my ancestors, like my ancestors' bones
21 getting dragged up on to the side of a hill
22 because they want to clear a corridor there.

23 Like the thing you guys call cultural
24 artifacts, to me that's my ancestral artifacts,
25 that is my ancestors' proof in the ground that we

1 were there. That is the proof in the ground that
2 we lived and died there. That's the proof in the
3 ground, in my eyes, that that's where I belong, to
4 that land, and that land belongs to my people.

5 As the Government of Manitoba seems to
6 have no power over these guys, you know, like
7 during the consultation process, a lot of times we
8 have asked can Manitoba, as the governing body,
9 direct Hydro to deal with some of these issues
10 like more proactively? But like a lot of times
11 you get these answers, I don't know or we're not
12 sure, we'll have to find out.

13 You know, same thing with Hydro. You
14 ask them questions, they are like, I don't know,
15 we'll have to get back to you. On a number of
16 cases, we have got told a number of times -- we
17 have come up against like a brick wall trying to
18 get information, because nobody seems to know
19 anything.

20 If they want to come through our land
21 and destroy our land, they should know what they
22 are doing before they come and do it. But a lot
23 of times you ask them questions, and we don't have
24 that information for you, I'm sorry, we can't pass
25 it on to you. You know, I've got to talk to my

1 bosses before I can let you know. You know,
2 there's all kind of comments you hear all the
3 time.

4 So in regards to that, I guess, like
5 the main issues my people had with this Hydro line
6 is, first of all, as one of my councillors said,
7 no one came to us and asked what we thought of it
8 in the beginning. It wasn't until it was decided
9 that the line is going in that they said, you
10 know, we're putting the line here, what do you
11 think?

12 So we start the consultation process,
13 and during this whole consultation process, like
14 Hydro through the whole -- put that thing in to a
15 flux by making mistakes where they had to come
16 back and make these changes. You know, if you're
17 not doing your job properly, you're going to make
18 mistakes and you're going to have to make changes.
19 That's because they weren't on the ground seeing
20 what was there in the beginning. And even now
21 with the changes, there's nobody there checking
22 what these changes are going to affect. You know,
23 basically they took a map and said, we will draw a
24 line here and that's where we will put it. We
25 avoid Moose Meadows, let's destroy everything else

1 around there. So with a little bit more First
2 Nations' input and more local people input, I
3 think they would have had an easier time.

4 My First Nation stands to oppose this
5 line until such a time as Hydro comes to deal with
6 us as a nation and try to work out some agreement
7 with our people for the loss of use of traditional
8 land, for the loss of use of passing on the
9 culture where people through these traditional
10 areas, you know, for the loss of use of sustenance
11 of food, that that is important to our people.

12 You know, there is a lot more value to
13 this land than cash. I said that before, there's
14 cultural value, there's traditional value, there's
15 esthetic value. That's one thing that's going to
16 be ruined from us is our view of our valley. Like
17 if you guys ever been there, you'd see it so
18 beautiful. If you're going to be seeing this big
19 200-foot high structure going through the middle
20 of the valley, that's going to be a loss of a lot
21 of revenue for a lot of businesses that rely on
22 eco tourism. People come there because they like
23 the natural of it. You know, it's nature at its
24 best. But the more development that happens, the
25 more that the nature is lost and the more we're

1 going to lose these type of opportunities. And in
2 an economy that's sagging, you don't want to lose
3 too many economic opportunities. Especially with
4 First Nations whose goal is to achieve economic
5 prosperity, this goes backwards. This is taking
6 us 20 years to the past where Hydro can just come
7 and do anything they want, any time they want, to
8 First Nations land. It's happened many times to
9 the north of us. And this is like the cherry on
10 the cake. It's going to break the -- it's going
11 to bring everything coming down. Maybe I'll use a
12 comment that you guys are more familiar with, it's
13 the straw that broke the camel's back, that is
14 what it is going to be.

15 You see Idol No More movement across
16 this country and it's gathering strength. You see
17 First Nations starting to stand up for themselves.
18 This is just going to push First Nations a little
19 bit more in that direction if they are not dealt
20 with.

21 So I guess in regards to that, I'd
22 like to bring up another point in regards to our
23 community interest zone. You know, right now
24 Manitoba is currently in the process of going
25 through Treaty Land Entitlement with a bunch of

1 First Nations. They drew up these circles called
2 community interest zones. And the government
3 said, anything happens within this community
4 interest zone that is going to affect you, we'll
5 come and deal with you on a nation-to-nation basis
6 so they can get our concerns and that they can
7 kind of look out for our best interests. We don't
8 see too much of that happening. We don't see the
9 government looking out for anybody's best
10 interests but their own. Because Hydro puts money
11 into their campaign pockets, so that's why they
12 look out for themselves. It's the big businesses
13 that's going to prosper here, it's not the people.

14 And I hope you guys, as the panel
15 here, you guys see it's going to destroy a nation,
16 like you're going to destroy people's lives, you
17 are going to destroy people's livelihoods, you are
18 going to destroy a traditional way of life that's
19 been in this country for thousands of years,
20 that's unique in this world, that is unique in
21 this country. Nowhere else in this world can you
22 go and find what you find here in Canada when you
23 come to First Nations people. It is unique that
24 way.

25 The more we become civilized, the more

1 it seems like we're going backwards. There used
2 to be a time when my people were never hungry. We
3 never had to worry about it, we all prospered.
4 But now in the civilized world we're living in
5 poverty and third world conditions while the rest
6 of Canada prospers, and they make billions and
7 billions of dollars off our resources that we
8 don't get to see nothing, you know. All we get to
9 see is the destruction of it.

10 So that's where my First Nation stands
11 on this issue, is there's so many areas that have
12 slipped through the crack that Hydro has never
13 even brought up. Like the fact that the Kettle
14 Hills country, it's where the prime blueberry
15 country is in Manitoba, probably in Western Canada
16 for that fact. A lot of people come there, right,
17 from Alberta right to Ontario, they come there to
18 pick berries, like First Nations people. Like
19 they've got land in this area, it belongs to our
20 First Nation. We chose that land to help protect
21 it because there's a limit to how much land you
22 can take. We can only take little areas to
23 protect, we can't protect it all.

24 And that's where a body such as
25 yourselves here can step up that role of

1 protecting these areas for people such as us that
2 don't have the money and the power that Hydro does
3 to hire the best lawyers and the best that money
4 can buy, to make people like me look small and
5 tiny and that our words are insignificant and not
6 heard.

7 I guess with that, I'd like it pass it
8 on to my counterpart here and let him say what he
9 has to say.

10 MR. ZASTRE: Good morning everyone.
11 My name is Elwood Zastre, I'm a member of Wiskwi
12 Sipiik First Nation. I also sat on the board for
13 the Red Deer Shoal River block, which is a very
14 big block in the area where the Bipole III is
15 coming through. It's a major -- it runs right
16 through from overflowing right up to Kettle Hills
17 that way. That's a big area.

18 For ourselves at Wuskwi Sipiik, we
19 have our area for trapping, which I'm not too
20 familiar with. I live a bit out of Wuskwi Sipiik
21 area there, which I have been trapping in area 12.
22 And this line that's coming through there, I don't
23 know what effect it's going to have on our
24 animals. But according to some of the elders, our
25 martins, our fishers, weasels, squirrels, it's

1 going to throw them off their cycle of where they
2 travel, what kind of foods they have, what their
3 cover is in that area.

4 What I'd like to see is, like my
5 counterpart there, Craig was saying, we should do
6 a ground walk or something, instead of from the
7 air, to go down there.

8 At one time, a few years back I was an
9 outfitter and I had a business, Easy Outfitters.
10 And when LP came in the '90s, like they didn't
11 consult us much on stuff, and they'd call us into
12 a meeting. And one of the questions I asked, I
13 said, I'm an outfitter and there's a lot of salt
14 licks that I know about, I can show you them on
15 the map, I was wondering if you guys can have a
16 buffer zone around the salt licks because these
17 animals have been coming here for years, where my
18 elders told me where these salt licks were. They
19 said, yeah, we can do that. And then the
20 following year I went back to my area where I put
21 my tree stands in, all that's left is the three
22 trees that I had my stand on and everything else
23 is cut right around it, it's wide open. And then
24 the next couple of years after that, the animals
25 are not there no more because everything is taken

1 away from them.

2 So everybody could say, like Hydro or
3 anybody could come in and say, yeah, we'll take
4 care of that, but yet when the work is done, it's
5 not done properly.

6 What I'd like to see is, I don't know
7 how I'd explain it, but they should stick to their
8 word on stuff like that because we depend on that,
9 we depend on our animals. The last few years
10 trapping wasn't that good, but it's starting to
11 come back again. So now we have to watch, because
12 people are depending on that.

13 Where we live on our First Nation we
14 don't have much work. Trapping, fishing, that's
15 all going to come into effect for us. We've got
16 to start utilizing these things because it's
17 coming back in higher fur prices, better fish
18 prices and all that.

19 Hopefully, with this line coming
20 through, we'll get more compensation from Hydro.
21 They will come work with us as First Nation people
22 and the surrounding people in our areas.

23 The Manitoba Trappers Association is
24 the MRTA, I don't know if they are involved with
25 them yet, but we are a branch up from them. We

1 all have local fur committees in our First
2 Nations, and then we go to the main one and that's
3 the one we deal with. I don't know why they are
4 not sitting here today, but they should have been
5 here, from the Manitoba Trappers' Association, in
6 this Commission.

7 As for members of First Nations,
8 there's a lot of off-reserve First Nations in our
9 area. As for myself, I'm from one of them, and
10 there's lots all around in that area. And now the
11 Metis people got the right as Aboriginals, so
12 that's another big concern. We have to let them
13 know -- Bipole III, for it to be safe for our
14 people, for everybody, not only our people but
15 everybody, to have a safe, to make it safe for,
16 you know, not just for the money, it has got to be
17 safe for all the people, all our First Nations
18 people.

19 We do all our gathering. Like Craig
20 said, we do our gathering for blueberries, we got
21 sweet grass, wild ginger, rat root, we got all of
22 those in them areas.

23 I work out of The Pas, and I was up
24 north in all these communities. I work up there,
25 and I'm looking at these other transmission lines

1 that are going through. And I looked down there,
2 down that transmission line and all I could see is
3 orange the whole length of that line. Sprayed
4 with some kind of a chemical killed everything. I
5 don't know why they did that. Animals eat that
6 stuff, moose, deer eat the fresh growth that's
7 coming up. Sure, they can go in there and cut it
8 and replant it, and it is good for the animals.
9 But you spray that chemical, it will never come
10 back. Because Manitoba Hydro used that on the
11 sides of the road back home, and I think they
12 stopped it now because people are complaining
13 about it, because that affects the animals.

14 So that's kind of my concern there. I
15 was just getting into this. I didn't really
16 prepare myself much, but that's how I feel right
17 now for what's happening with Bipole III.

18 Thank you very much.

19 THE CHAIRMAN: Thank you.

20 MR. SOPROVICH: I'll just set up my
21 presentation here.

22 THE CHAIRMAN: How long do you
23 anticipate your presentation will be, Mr.
24 Soprovich?

25 MR. SOPROVICH: How long do I have?

1 THE CHAIRMAN: You actually have a
2 fair bit of time, but I'm just sort of trying to
3 gauge when we should take a morning break.

4 MR. SOPROVICH: I can't see it being
5 more than 30 to 40 minutes.

6 THE CHAIRMAN: Well, then perhaps we
7 should take our break first and then you can set
8 it up while we break, and we'll come back in 15
9 minutes.

10 MR. SOPROVICH: That will be fine.

11 (Hearing recessed at 10:21 a.m. and
12 reconvened at 10:34 a.m.)

13 THE CHAIRMAN: Okay. I'd like to
14 reconvene. Mr. Soprovich.

15 MR. SOPROVICH: Thank you. My name is
16 Dan Soprovich. I am Lands Manager with Wuskwi
17 Sipiik First Nation and I'm here presenting on
18 behalf of the Nation on the proposed Bipole III
19 transmission line.

20 Some 200 kilometres or so of the
21 proposed Bipole III line would pass through
22 traditional territory of Wuskwi Sipiik First
23 Nation. The line would be sited across the road
24 from already selected Treaty land entitlement
25 lands and would be viewed by many members of the

1 Nation on a daily basis. The presence of the line
2 would limit the ability of the nation to select
3 the remaining lands owed to it under the terms of
4 the Treaty land Entitlement.

5 Despite the fact that the line would
6 impact on the Nation in many ways, we have not
7 been involved in the Clean Environment Commission
8 process until today, and we do not come here
9 prepared to speak in full, respecting how the line
10 would impact the Nation. This is because Nation
11 concerns are being addressed principally via the
12 Section 35 Consultation process with Manitoba
13 Conservation and Water Stewardship, a process that
14 provides funding to the Nation to assist its
15 efforts in making government aware of impacts to
16 its rights.

17 The Nation had completed a tour
18 meeting and had scheduled a second community
19 meeting when we had to suspend the consultation
20 process in early December after the Commission
21 suspended hearings. Suspension of the
22 consultation process has resulted in a number of
23 difficulties and inefficiencies and additional
24 material to review and consider with the attendant
25 additional time and cost to the Nation. Since the

1 suspension of the consultation process, we have
2 been in negotiations with Conservation and Water
3 Stewardship to access additional funding in
4 recognition of the additional cost to the Nation
5 and we have not yet resumed our consultation
6 process.

7 I'm going to speak briefly to the
8 scale of the transmission line. Prior to
9 beginning the consultation process, I asked
10 community members how high the tower on the
11 proposed transmission line would be and how wide
12 the right-of-way would be. The first two answers
13 were something like 20 feet high and 400 yards
14 across, and 300 feet high and 20 yards across.
15 Clearly people in the community were not aware of
16 the scale of the proposed transmission line.
17 Consequently, we decided that it was important for
18 at least some community members to have a real
19 world understanding of the scale of the proposed
20 development. We attempted to obtain funding
21 through the consultation process for a trip to
22 Grand Rapids to look at the existing Bipoles, but
23 were unsuccessful. So we decided to take a trip
24 up there anyhow and look at the right-of-ways and
25 the infrastructure, one is a little bit to the

1 north of Grand Rapids and to the west, and it
2 shows where the right-of-way crosses in through
3 here. And also we looked to the south, so we can
4 see the Bipole crossing in through here.

5 Now to aid our understanding of the
6 scale of this development, we requested the
7 heights of the towers in the two areas that we
8 were going to examine. For Conservation and Water
9 Stewardship, Manitoba Hydro provided the following
10 responses: Firstly, Hydro has previously advised
11 that the height of the guyed wire towers varies
12 from 33.8 to 47.2 meeters, fairly wide range. I
13 have asked if they can provide some specific
14 heights or at least a tighter range of heights for
15 the towers in the immediate Grand Rapids area and
16 pass this on if they are able to provide it. Then
17 later, we received the communication: "I spoke
18 with our design team and due to terrain and
19 spanning of highways and waterways, the towers in
20 this area are approximately 32 to 38 metres."
21 This information, while of some use, was really
22 quite unsatisfactory in relation to our goal to
23 understand the size of the infrastructure that
24 would actually be or is proposed for the Bipole
25 III. Where we requested exact heights, Manitoba

1 Hydro would do more than provide a range.

2 I'm going to talk a bit about spraying
3 with chemicals. Members of Wuskwi Sipiik First
4 Nation are very concerned relative to Manitoba
5 Hydro's use of chemicals to control trees or for
6 other purposes. The nation's people continue to
7 pick berries and gather medicinal plants and drink
8 water from the land and people are concerned about
9 contaminants in their food and water. Spraying
10 the line would eliminate the use of lands by the
11 Nation for such purposes, thereby further eroding
12 the land base available for people to practice
13 their traditional use.

14 When we were in Grand Rapids, we
15 observed a number of areas where spraying had
16 occurred on the Manitoba Hydro right-of-ways. And
17 this is just one example. You can see the brown
18 shrubs and small trees had been sprayed and killed
19 with chemical in the right-of-way. I can see no
20 reason for these areas to have been sprayed given
21 that the larger vegetation consisted of small
22 shrubs that would never have become tall, and
23 small trees no more than approximately two meters
24 high. So what Hydro is doing here, in this
25 example, and all the other areas around Grand

1 Rapids that we saw where areas had been sprayed on
2 the rights-of-way, is they are just broadcasting
3 the chemical. Places where the plants would never
4 get large, they are spraying. No reason to do
5 that. They are not taking a selective approach,
6 they are just spraying the entire line.

7 So I suspect that it is just simpler
8 from a management perspective and perhaps
9 cost-wise for Manitoba Hydro to spray the whole
10 line.

11 Wuskwi Sipiik First Nation does not
12 support the use of chemicals to control vegetation
13 on the line and expects Manitoba Hydro to use
14 alternative means of control as has been done for
15 transmission lines in other jurisdictions in
16 Canada.

17 I'm going to talk briefly about the
18 place. In past times and today, the people of
19 Wuskwi Sipiik First Nation have lived and
20 travelled in the vicinity of the Porcupine
21 Mountain and lands to the east, north and south.
22 Today the administrative centre of the Nation is
23 near Swan Lake and east of the mountain. So what
24 we're looking at is this area here, fairly close
25 to the lake. Swan Lake is just to the east, to

1 the right there. Some people actually live in
2 this area as well. What we have here is we have
3 not only the administrative -- we have a band
4 office in there, we have a health office, a number
5 of residences are in there, and also the school is
6 there.

7 On a daily basis, well, that's the
8 administrative centre. There's also another piece
9 of land here, right there, and that's just to the
10 east of highway 10. And that's where quite a few
11 residences are there. There is some, about 40
12 families in there. And on a daily basis, because
13 people work out here and people go to school, what
14 you see is there's a road going this way, like
15 this and people travel back and forth, both coming
16 from the community on the highway and from other
17 areas, back and forth between this area.

18 Now a place called Charlie Audy's
19 Corner, which is this place right here, that's
20 where that road that's going east/west crosses
21 another road going north/south, that particular
22 intersection is called Charlie Audy's Corner. Now
23 the transmission line would cross the main road
24 there. So the transmission line would come from
25 the north along this road, past Charlie Audy's

1 Corner and head south. So it would be
2 perpendicular to this main road that people travel
3 on.

4 So Charlie Audy was a chief held in
5 high respect in the community, perhaps the one
6 held in the greatest respect. And in fact, some
7 of his offspring have gone on to be chief and
8 councillors as well.

9 So how would that affect the nation
10 just in terms of the view scapes that we see?

11 This is a picture I took yesterday.

12 Unfortunately, it wasn't a very good day for
13 taking pictures. This is from a half a kilometre
14 to the east towards the lake from Charlie Audy's
15 Corner, and it's looking west toward the Porcupine
16 Mountain. Unfortunately, it's not to scale for
17 one thing. I didn't quite get the camera right.

18 So the mountain, the Porcupine
19 Mountain is kind of this area through here, this
20 kind of darker area. It's obscured at the top of
21 it to some degree too because we had clouds that
22 day. So the top of the mountain is actually
23 obscured by clouds. In real life this would be
24 much larger, if you are sitting there looking at
25 it with the eye, it would be larger.

1 Of course, this is a winter picture.
2 Maybe I will just have Craig Stevens speak briefly
3 to what he sees over the course of the year when
4 he travels back and forth looking towards the
5 Porcupine Mountain from that place?

6 MR. STEVENS: Just in relation to the
7 area of the picture, this is about the halfway
8 point between both communities, about five miles
9 from the highway community and from the main
10 community along the lake. But basically when you
11 are coming up to the hill, you've got like a long
12 unobstructed view of the mountain. It's about
13 like at least a good 30 kilometre view. It's very
14 beautiful, very pristine looking mountain. You
15 can see a few little cuts here and there from LP,
16 but for the most part they cut on top of the hill.
17 And you know, like that's something that words
18 cannot express the beauty of this, you know, at
19 any time of the year. Like whether it be winter,
20 fall, spring or summer, there's always something
21 beautiful to look at in that direction.

22 And then coming down, you know, you're
23 coming towards the back country where our main
24 community is, it's kind of right at the edge of
25 the back country. And after that there is no

1 roads, after our community, it is all -- if you
2 want to get around, you've got to go by boat or
3 you've got to walk, unless you grow wings and fly
4 maybe, but that's not possible. But just about
5 half a mile from this picture, that's where the
6 line is going to be. So you can see if this line
7 goes there and I was coming up, I won't even be
8 able to see my mountain anymore, that I grew up
9 with all my life.

10 That is what makes me feel at home,
11 when I leave here and I go home, as soon as I see
12 those mountains, I feel at home. I feel a sense
13 of big relief to be home in my own country, in my
14 own homeland. And something like that is going to
15 obstruct some of that view, and it's going to take
16 away some of that feeling that you feel. I don't
17 know if you understand it. But go to a different
18 country and hang out there, and come home and see
19 how you feel when you get home. That's the
20 feeling I'm talking about. Like there's no home
21 but home, and that feeling is in here. And I
22 don't want no one to come and wreck my home.
23 Basically, that's what I'm saying. I don't go
24 around and I don't view the destruction of the
25 environment in really good light.

1 Like, they seem to do too many
2 negative impacts to my community in regards to all
3 this clearing. This used to be all forest, what
4 you're looking at, but now it's all fields. And
5 when I was a kid, most of that was forest still.
6 I'm in my late thirties now. So in 30 years I
7 have seen such a degradation of my traditional
8 land, it's almost unrecognizable from when I was a
9 child to now. So I thought I would share that.

10 MR. SOPROVICH: Thank you, Craig.

11 So looking the other way, on this
12 particular picture it's again a half a kilometre
13 from Charlie Audy's Corner, only now this is to
14 the west of Charlie Audy's Corner looking east
15 towards the lake.

16 Did you want to speak to that as well,
17 Craig?

18 MR. STEVENS: Just from here to about
19 two miles until you hit the marsh land area is
20 basically where we're kind of in the middle. It's
21 really prime habitat for waterfall and whatnot,
22 and it's also good moose country for the feeding
23 habitat. It's a lot of marsh land, a lot of
24 aquatic plants and whatnot.

25 So with this line being here where it

1 is, it's going to mess up a lot of the migration
2 routes of the geese. For example, when they are
3 coming from the north in the fall time, when they
4 are going south, they you these hills as way
5 points. And then they come over the hills and
6 then from there they fly down into the valley,
7 into these marsh land areas.

8 And with this big 200-foot high pole
9 in the way, that's going to really affect how they
10 come down into these areas, and it is going to
11 affect the successes of our hunters, you know.
12 Like if the geese are flying twice as high as they
13 were before, they are going to be harder to hit,
14 or else they are going to find alternative ways to
15 get to those areas by flying somewhere else and
16 coming in from a different direction.

17 So, like once again, it's more than
18 aesthetic value there, there's cultural value,
19 there's like human needs, you know, like humans
20 need to eat. You need land to be able to get food
21 to grow or to hunt, you know, and the more you
22 wreck it, the less it's going to be able to
23 provide for you. And the more you destroy it, the
24 less it's going to provide from you.

25 So once again, that's a little bit of

1 my input on that area.

2 MR. SOPROVICH: Thank you, Craig.

3 So as you have heard, the Bipole would
4 substantively alter the view scapes at Charlie
5 Audy's Corner and throughout the nation's
6 traditional territory. Our place would be changed
7 forever and certainly not for the better.

8 One ponders questions like, why is the
9 line not proposed adjacent to towns like Swan
10 River or Minitonas or Winnipegosis, and does
11 Manitoba Hydro view the backyard of the nation to
12 be of less value than that of the town folk?

13 I was involved in a recent
14 environmental assessment in BC wherein we
15 conducted visual assessment in areas where the
16 Shishalh Nation expressed concern over impacts to
17 the view escape, and I provide a citation to some
18 of that work there.

19 Manitoba Hydro should have conducted
20 similar assessment in relation to impacts to
21 Wuskwi Sipihk First Nation's visual environment.

22 I want to talk about some of the
23 meetings we have had with Manitoba Hydro process
24 in terms of particularly meeting notes. So when
25 the Nation meets with Conservation and Water

1 Stewardship during the consultation process,
2 government provides a draft record of the meeting
3 for review within several days. The Nation is
4 afforded the opportunity to review the record and
5 to clarify inaccuracies, omissions and the like.
6 This is good environmental assessment process, and
7 consistent with the process that was used during
8 my work on the BC environmental assessment.

9 The leadership and staff of the Nation
10 met with Manitoba Hydro prior to Christmas, and
11 Hydro also came into the community to deliver an
12 open house in the new year, and we thank Hydro for
13 that.

14 On both occasions, Mr. Craig Stevens
15 sitting here next to me, community coordinator of
16 the consultation process, requested that Manitoba
17 Hydro provide the meeting notes to the Nation.
18 Manitoba Hydro did not do so. Rather we see the
19 record of the leadership meeting within Hydro's
20 supplemental report, and have seen no record of
21 the open house. Because Manitoba Hydro has not
22 allowed the Nation the opportunity to review, the
23 meeting records must be viewed solely as
24 reflecting Hydro's perception of discussions.

25 For example, and I have the record of

1 the leadership meeting here, with respect to
2 Hydro's record of the first meeting, Craig Stevens
3 noted the following. While Hydro indicated
4 regarding the game hunting area 19 area, Wuskwi
5 Sipiik First Nation indicated that the area is
6 used by the community for berry picking. So moose
7 is not the only relevant issue here. Wuskwi
8 Sipiik First Nation had also indicated that the
9 same thing applied to Red Deer River area and
10 Mafeking areas.

11 Where Manitoba Hydro indicated
12 Manitoba Hydro explained the environmental
13 inspector, environmental monitor and community
14 liaisons positions, it was Mr. Stevens' view that
15 the positions were touched on but not explained.

16 With respect to the second meeting, I
17 was unable to find a record of the meeting and I'm
18 unsure if Manitoba Hydro has filed a record. If
19 there is a record, the record should have noted,
20 for example, the following: Manitoba Hydro and
21 its environmental assessment attempted to survey
22 American Marten, which is a small member of the
23 weasel family, attempted to survey American Marten
24 by looking for tracks in the snow from an
25 airplane.

1 At the meeting, Craig Stevens
2 indicated something to the effect that, our elders
3 do not believe that it is possible to tell the
4 difference between marten and fisher tracks from
5 an airplane. Just to qualify that, a Fisher is a
6 larger member of the weasel family, and you see
7 some fairly close -- what you can see is that with
8 a small female Fisher and a large male marten,
9 it's sometimes very difficult to impossible to
10 tell the tracks apart in the snow. And this is on
11 the ground.

12 Secondly, one person at the meeting
13 expressed concern relative to the effect of noise
14 from line, citing past experience and problems for
15 a line near Thompson. This is a couple of
16 examples I threw out from the meeting. There were
17 many concerns and issues discussed and addressed.
18 But, again, I haven't seen those meeting notes
19 yet.

20 So given that Conservation and Water
21 Stewardship clearly understand what good process
22 is, we must assume that Manitoba Conservation and
23 Water Stewardship does not have standards that
24 proponents like Manitoba Hydro must follow.

25 The Nation recommends that the Clean

1 Environment Commission recommend that Conservation
2 and Water Stewardship develop standards and that
3 proponents of development be required to follow
4 them. And this is specific to communications.

5 Now, in the recent BC project that I
6 was involved in, the Shishalh Nation was directly
7 involved in the review and writing of the First
8 Nation's section of the proponent's application
9 for environmental assessment certificate.

10 Manitoba Hydro's Aboriginal
11 traditional knowledge, ATK report number 1, in
12 table 5, indicates that Wuskwi Sipihk First
13 Nation's interests are located within Hydro's
14 region 3. So region 3 is this area here, this
15 area to the north. Hydro's region 2 is this area
16 to the south.

17 What's important here to note from
18 this particular figure is the southern boundary of
19 the region 3, you can sort of make out Swan Lake.
20 Swan Lake runs about like this, kind of like that.
21 So the boundary goes actually right through Swan
22 Lake.

23 Important is that the Kettle Hills
24 area, that I'll discuss later, is located to the
25 south of Swan Lake. And including berry picking

1 areas -- the bottom line is, well, there's a
2 highway that goes from Cowan out to Camperville
3 right there, and Wuskwi Sipihk First Nation makes
4 use of significant amounts of region 2.

5 So anyhow, the basis for Hydro
6 developing region 3, and actually in the table it
7 indicates that Wuskwi Sipihk First Nations'
8 interests are within region 3, is on the basis of
9 the information derived from participating
10 communities.

11 So, again, it's important to note that
12 the Kettle Hills and surrounding area have been
13 used by Wuskwi Sipihk First Nation and other First
14 Nations in the past and are used in the present.

15 And this is why, when we look at it --
16 so here's a map showing, this is what's called the
17 community interest -- this circle is what's called
18 the community interest zone of the Wuskwi Sipihk
19 First Nation. What we can see here, this is the
20 main reserve out at the lake. This is Swan Lake,
21 so we can see Swan Lake coming down here. And
22 this green area there, that's actually reserve
23 lands now that Wuskwi Sipihk selected during the
24 Treaty Land Entitlement process. The two kind of
25 pink areas, one to the west and one to the

1 northeast, are selections in progress.

2 So you can see that the nation
3 selected these lands, obviously very important for
4 the nation. And you can see these are south of
5 Swan Lake, well within this region 2, and contrary
6 to what Hydro indicated within its environmental
7 impact assessment, or statement.

8 And of course, Wuskwi Sipihk selected
9 these lands to protect them from development so
10 that First Nation peoples can continue to use the
11 lands.

12 So the reality is, again, that Wuskwi
13 Sipihk First Nation peoples make use not only of
14 region 3, but also a substantial portion of
15 Hydro's region 2. And indeed during our tour
16 meeting -- so our tour meeting was -- what we did
17 was we had a number of participants, people from
18 the community, elders, resource users and some
19 youth, that what we did was we put them on a bus
20 and we went to areas where the proposed Bipole III
21 transmission line would cross, would be accessible
22 to us. Unfortunately, we had a big snow by the
23 time we got this off the ground and we couldn't go
24 to a few places we got to. However, this highway
25 that you see here is what I'm calling the

1 Camperville Highway. This is the highway from
2 Cowan, Cowan is to the west and Camperville will
3 be to the east here. And this line is where the
4 Bipole -- and this is the alternate route, the new
5 route that was proposed, this is where it would
6 cross the highway. And it shows the location of
7 the line in the vicinity of the highway.

8 And during that tour meeting, when we
9 stopped -- we actually stopped here where it
10 crossed the highway. Some of you may have
11 actually heard something about a certain buffalo
12 fence and a bison ranch. Actually, the south side
13 of this is fenced right off, right along the
14 highway, as soon as you get out of the road
15 allowance.

16 So when you stop there, one of the
17 participants noted the presence of mineral licks
18 in close proximity to the proposed line. So the
19 point here is that this is well outside of Hydro's
20 region 3, and members of the nation have local
21 knowledge of mineral licks right in this area.

22 Another thing I'd like to point out,
23 at least five traditional land use and occupant
24 studies have been conducted, and these demonstrate
25 Wuskwi Sipiik First Nation's use of region 2.

1 So getting back to process, if Hydro
2 had done something as simple as coming to the
3 community and asking if region 3 reflected an area
4 of interest to the nation, its error would have
5 been corrected.

6 I'd like to talk briefly about the
7 focus of the assessment. What strikes one in
8 particular when examining Manitoba Hydro's
9 approach to the assessment is the lack of data
10 from along the proposed right-of-way, when the
11 right-of-way is the area that will be subject to
12 by far alterations to the environment. Further to
13 this, perhaps the bulk of the data are developed
14 by remote sensing means. And such data are
15 subject to the inherent problems and errors in the
16 absence of validation from the ground. For
17 example, and this is right out of Hydro's
18 terrestrial ecosystem and vegetation technical
19 report. Again, if we look at this, there is the
20 main community with the administrative centre near
21 the lake. The road, and it goes like this, right
22 down here, and there's Charlie Audy's Corner.

23 Now, according to this map, this is
24 Hydro's map, the brown areas are cultivated lands.
25 So by cultivated lands -- unfortunately, there's

1 no definition as to what each of these various
2 vegetation types actually mean, but the cultivated
3 lands I am presuming are lands that are probably
4 cereal crop, so wheat, oats, whatever, canola,
5 that type of thing.

6 And according to Hydro's map, all this
7 light green stuff all through here, that's what
8 they call herbs. Now, my definition of probably
9 what herbs are, are some kind of combination of
10 grasses and flowering plants and that type of
11 thing.

12 Unfortunately, these are really
13 cultivated lands, all these lands all through
14 here. Those are cereal crops that are in there.
15 So, obviously an error here. It's a pretty -- you
16 would think it would be pretty easy to tell
17 between something called herbs and cultivated
18 lands, but certainly in this area it was not
19 possible for Hydro to do so. Again, this speaks
20 to failure to actually get on the ground and look
21 what is there. As best as I could understand from
22 looking through the report, the so-called truthing
23 of the vegetation types is done by an airplane
24 going somewhere around a hundred, 120 kilometres
25 per hour at a kilometre above the ground. So this

1 is the type of errors you see when you follow
2 these types of assessment practices.

3 So, you know, given something as
4 obvious as this in terms of obvious error, you
5 know, one has to question the accuracy of the
6 entire vegetation base map.

7 Now, at the time that Manitoba Hydro
8 began its assessment, the Federal Government, if
9 it had been involved, would have expected
10 something to the effect that the impact statement
11 would include a scope of assessment on the
12 potential direct and cumulative effects that can
13 be reasonably traced to some aspects of the
14 project and its impacts. The key words here are
15 "can be reasonably traced to some aspect of the
16 project and its impacts."

17 In the context of the proposed line,
18 the focus should have been on right-of-way, as
19 that is where the impacts would primarily occur.
20 Sampling should have occurred primarily in and
21 near the proposed right-of-way, with some sampling
22 within the local study area as a function of the
23 resource being examined. For example, for plants
24 the great majority of samples should have been
25 from the proposed right-of-way or in close

1 proximity, because that is where the direct
2 effects will primarily occur. However, if one
3 examines where plants were sampled, for example,
4 for the Interlake plain ecoregion -- this pinky
5 area is what's called the Interlake plain
6 ecoregion. So one observes that few of the
7 samples actually came from the right-of-way. If
8 you were to look at this thing closely, what you
9 would find would be that most of those samples are
10 well off the right-of-way, as best as we can tell
11 from this.

12 Furthermore, with respect to the
13 vegetation sampling, the number of samples given
14 the amount of line proposed for the ecoregion, and
15 we're probably talking somewhere around 200
16 kilometres or so, is inadequate, and particularly
17 so if one were to consider this to be science,
18 that is with due consideration to generating valid
19 estimates, statistics and adequate sample size.

20 The bottom line is that we know a
21 little bit about plants in the local study area
22 from the assessment, but virtually nothing about
23 plants where the great bulk of the impact to
24 plants would occur. Let us be clear, this is not
25 science being practiced here, but environmental

1 assessment Manitoba style.

2 It is clear this was a rushed job,
3 with the approach of primarily desktop review --
4 while the approach of primarily desktop review
5 might at this point have been warranted for
6 examination of three line options and segment
7 options, it is not appropriate for assessment of
8 the final preferred line. It very much looks like
9 Manitoba Hydro simply ran out of time in relation
10 to some kind of imposed deadline. Because the
11 next step should have been to take a close look at
12 the preferred option. Instead what we observed
13 here is, for example, within the terrestrial
14 ecosystem and plant technical reports, statements
15 or excuses like not all communities are
16 represented as a result of time allowed for
17 sampling. There is a right way to do things.

18 I want to focus now on the cultural
19 resources of Wuskwi Sipiik First Nation.
20 Unfortunately, the heritage resources technical
21 report is not clear. And as best as we can
22 understand it, Manitoba Hydro conducted little
23 ground evaluation for evidence of cultural
24 resources on the proposed right-of-way. Rather,
25 as we understand it, the evaluation primarily took

1 a modeling approach. The failure to find so few
2 new sites is almost certainly a reflection of the
3 inadequate methodology employed by Manitoba Hydro.
4 That is, when one does not employ proper
5 methodology to look for these resources, one can
6 be assured that one will not find anything, or
7 find little, with the resulting conclusion of few
8 or no impacts. As stewards of the nation's
9 cultural resources, such methodology is inadequate
10 and not acceptable.

11 Of relevance to the nation's concerns,
12 please see Appendix A, some notes and concerns
13 regarding the heritage resources technical report,
14 special emphasis on the Swan River Valley,
15 produced by Mr. Gary Wowchuk on our behalf.

16 Among the obvious concerns include the
17 following: Incomplete review of the literature
18 and archives; lack of area specific predictive
19 models and lack of information respecting modeling
20 limitations and testing, failure to adequately use
21 local people who have knowledge of resources;
22 failure to allocate an appropriate level of time
23 and money given the potential to impact the
24 resources; use of the methodology as described
25 that would be hard to replicate, standards of

1 methodology are fundamental to archeological
2 endeavour; recognition or lack thereof of the
3 value of the Lake Agassiz beach ridges. And just
4 to speak to that, as best as I understand it,
5 these beach ridges would have been used
6 extensively for trout as the water receded.

7 And I don't know if you want to speak
8 to this, Craig?

9 MR. STEVENS: Okay. The one thing
10 that maybe I can make clear with these Lake
11 Agassiz beaches is that there is a lot of
12 artifacts found in these locations, as they were
13 kind of -- they were open in the past, and so it's
14 made it easier to hunt game there. If you see a
15 deer, you're going to be able to shoot him with a
16 bullet, and if he's in the middle of the bush you
17 can't see him.

18 The berries grow on these sandy ridges
19 because it's the right kind of environment for
20 them.

21 You know, like our arrows, or our
22 weapons or tools are made from rocks, they are
23 found along these areas, along these hills where
24 the sandy ridges are. So there is a lot of value
25 to these Lake Agassiz beaches that's not even

1 spoken to here. Like historically, and even
2 today, you know, that's prime berry picking areas,
3 or medicinal plant picking areas, all these
4 ridges. Just to make you guys aware.

5 MR. SOPROVICH: Thank you, Craig.

6 Following up on the concerns: Failure
7 to indicate the extent to which ground
8 investigation occurred. So per Mr. Wowchuk,
9 within the report it doesn't even say the extent
10 to which it actually went in on the ground,
11 actually looked on the ground. Is it 1 percent,
12 .5 percent, 80 percent? Unknown. That is per the
13 report by Mr. Wowchuk, and this is quoted right
14 out of the report:

15 "What percentage of the right-of-way
16 was actually visited on the ground and
17 tested? The phrase not accessible and
18 time constraints...",

19 again, time constraints

20 "...was used quite often. What
21 percentage was not accessible and why
22 was not enough time given to properly
23 conduct the investigations?"

24 Area 5, Bell River crossing, this is
25 an area where we're talking about the new

1 alignment here, where it crosses the Bell River
2 fairly close to Highway 10.

3 While several references were cited,
4 the significant ones were not. The two most
5 notable missing references were, "Matthew H. Hill
6 1965, An Archeological Survey in the Glacial Lake
7 Agassiz Basin in Manitoba," and C. Thomas Shay and
8 L. Cole Wilson 2004, The Bell Site: A Late
9 Woodland Site in Northwestern Manitoba."

10 Area 6, and these areas are specific
11 to the appendix that you have, so I guess you
12 could refer to them, if not now, at a later time.
13 And I believe you should have those appendices, or
14 the appendix.

15 Area 6, the Old Fort area was never
16 mentioned as such in the Heritage Resources
17 Technical Report. It was mentioned as a place of
18 interest or potential where all river crossings
19 were. The Old Fort area is one of the most
20 significant fur trade related areas in Manitoba
21 and it is cited in Hudson Bay archives.

22 Inappropriate reliance on mitigation
23 versus being proactive. That is redesign. Use of
24 weak methodological standards. That is per
25 Mr. Wowchuk, Manitoba Provincial regulations are

1 being followed which are widely recognized as
2 being well below all of our neighbouring
3 provinces. Manitoba lacks explicit standards,
4 unlike, for example, Ontario's 2011 Standards and
5 Guidelines for Consultant Archaeologists. And I
6 provided the reference there for you so can look
7 directly to that document.

8 Following up with the observations on
9 Mr. Wowchuk, let us compare Manitoba Hydro's
10 assessment to the BC assessment that I was
11 recently involved with, and I've got a link there
12 for you.

13 For this particular assessment, for an
14 area that included steep mountainous terrain and
15 various proposed linear developments, for example,
16 transmission lines, penstocks, there were two
17 primary aspects to the archeological inventory and
18 impact assessment conducted by the Shishalh Nation
19 and archeology team.

20 Initially, the entire project area
21 will be subject to systematic foot traverse.
22 However, based on the results of the office review
23 and observations made during field work, it was
24 determined that specific infrastructure
25 developments would not require a systematic foot

1 traverse due to an assignment of low archeological
2 site protection. An assignment of a low
3 archeological site potential was based upon a
4 specific infrastructure development being located
5 within an area considered to be inconclusive to
6 human occupation or use.

7 These criteria include the presence of
8 excessive slope, greater than 20 percent, poor
9 access, an impassible terrain, disturbance from
10 previous development activities, that is timber
11 harvesting, road construction, Hydro transmission
12 line construction, that remove potentially
13 cultural bearing matrix, or lastly that the area
14 in question had already been subject to
15 archeological assessment during previous
16 archeological studies that have produced negative
17 results.

18 With that said, even where areas were
19 steep, assessment did occur via helicopter. For
20 example, a large extent of the CC Creek component
21 area was assessed by helicopter during the 2009
22 assessment, as this area was judged to have low
23 potential to contain archeological sites due to
24 steep and rough terrain based on the field
25 workers' review. Systematic foot transverses were

1 conducted along the shore line and outlet CC Lake,
2 including the proposed flood surcharge area.

3 So here is an example of -- this
4 particular development was a small Hydro run of
5 the river lake storage hydro development,
6 50 megawatts, and they were doing this kind of
7 assessment on the ground.

8 Secondly, phase 2 of the assessment
9 consisted of archeological field work. All
10 infrastructure developments assigned a medium or
11 greater archeological site potential rated during
12 the office review phase, phase 1, were subject to
13 a preliminary field reconnaissance. Land forms
14 identified within a development zone that were
15 considered conducive to human occupation or use,
16 that is flat terraces or knolls adjacent to
17 rivers, lakes and/or other sources of potable
18 water and rock shelters were subject to systematic
19 pedestrian survey. Where considered necessary,
20 landscapes were subjected to subsurface shovel
21 testing. Systematic foot transverses were
22 selected. Infrastructure development zones were
23 completed by a crew of two who were spaced
24 approximately 10 to 30 metres apart.

25 Locations slated for infrastructure

1 development situated adjacent to lakes were not
2 surveyed during this assessment, as the initial
3 assessment had been conducted up to a distance of
4 30 metres beyond lake shore.

5 Crews searched for evidence of past
6 cultural activity, for example, shell midden
7 deposits, culturally modified trees, cultural
8 depressions, scatters of lithic tools or lithic
9 waste, fire altered rock, osteological remains,
10 food waste, historic refuse, and structural
11 remains.

12 While conducting foot traverses,
13 stands of mature trees in areas with Western Red
14 Cedar were examined for evidence of cultural
15 modification.

16 Thirdly, systematic subsurface shovel
17 testing and subsurface probing was conducted for
18 buried archeological remains at locations within
19 the project area that had high probability for
20 past human activity. That is beach and extinct
21 terraces, raised and sheltered knolls, areas
22 adjacent to lakes and streams, et cetera.

23 All matrix removed was passed through
24 a three millimetre screen to increase the
25 likelihood of uncovering cultural material.

1 The number of these subsurface tests
2 were selected in the field after visual inspection
3 of potential use areas. A total of 31 tests was
4 completed at two locations. Shovel testing was
5 not conducted at the remaining locations due to
6 lack of testable deposits and/or the assignment of
7 low archeological site potential.

8 Survey locations were plotted on
9 development maps, georeferenced using the
10 hand-held GPS and photographed.

11 So let's put that in the context of
12 Wuskwi Sipihk First Nation. Despite the fact that
13 many areas that would be crossed by the proposed
14 Bipole right-of-way would have been extensively
15 used by First Nations peoples, Hydro conducted as
16 best as one can tell, very little on the ground
17 survey. This is a substantive deficiency of
18 Hydro's assessment and the Nation must act in
19 accordance with its obligation to protect these
20 components of its culture, which are both
21 important and relevant to the present members of
22 the Nation.

23 With respect to the archeological
24 inventory and impact assessment conducted by the
25 Shishalh Nation, the following is also noteworthy:

1 Investigations evaluated the heritage resource
2 significance as outlined in the BC Archeological
3 Impact Assessment Guidelines.

4 So, again, while BC, like Ontario, has
5 assessment guidelines, Manitoba has no such
6 guidelines. Consequently, in the absence of
7 standards from the regulator, development
8 proponents cannot be held to account, and work is
9 inconsistent from project to project.

10 Secondly, where recommendations for
11 the management of archeological resources that
12 could potentially be impacted by the proposed
13 development are required, a specific list of
14 redesigned options has been proposed. Important
15 here is the reference to redesign to eliminate --
16 and eliminate is the word -- or mitigate impacts.

17 Thirdly, an Archeological Resources
18 and Cultural Use Sites Monitoring and Management
19 Plan will be in place during project construction
20 operations. Important here is the existence of
21 the stand-alone plan to manage for and mitigate
22 for resources and cultural use sites that might be
23 discovered during construction and the activities
24 associated with other phases. As a simple matter
25 of respect, the Shishalh Nation was involved in

1 the development of the plan.

2 Wuskwi Sipihk First Nation views it to
3 be critical to examine the proposed right-of-way
4 and other infrastructure on the ground, and we'll
5 be submitting a funding proposal to Manitoba Hydro
6 to allow the Nation to conduct such an
7 investigation.

8 I'd like to speak briefly to the
9 survey method for marten, just as an example. I
10 say this as an example of what I call snake oil
11 environmental assessment.

12 Most of us are likely aware of the
13 expression snake oil. Wikipedia defined, snake
14 oil is an expression that originally referred to
15 fraudulent health products or unproven medicine,
16 but has come to refer to any product with
17 questionable or unverifiable quality or benefit.

18 For its assessment of the impact on
19 the Bipole development on American marten, Hydro's
20 approach was to identify areas of potential
21 importance to mammals, a winter aerial mammal
22 transect survey was undertaken along the entire
23 lake of the FPR to determine the distribution and
24 relative abundance of VEC mammal species,
25 including moose, elk, wolverine and marten.

1 All surveys were conducted using fixed
2 wing Super-Cub Aircraft with highly experienced
3 observers.

4 Now, trappers with many decades of
5 experience cannot always tell the difference
6 between marten and fisher tracks on the ground,
7 for example, between a large male marten and a
8 small female fisher. And in fact my
9 understanding, and I'm going to ask Elwood to
10 maybe speak to this, my understanding in my work
11 with trappers, and I have been on the ground with
12 trappers with many decades experience, but often
13 you actually even look at how far the track sinks
14 into the ground in terms of determining which
15 species it is. The reason for that is that the
16 actual foot size of marten and fisher are similar
17 in size, but the marten is a much smaller animal.

18 Do you want to speak to that, Elwood?

19 MR. ZASTRE: Like Dan was saying
20 there, the marten and the fisher, that is very
21 identical when it comes to a large male marten and
22 a small female fisher. When you're going through
23 your trapline and hanging the -- I think the big
24 spruce where they eat the squirrels all the time,
25 and it's very hard to tell the difference between

1 them sometimes, unless you see them is the only
2 way that you can tell the difference. And I don't
3 know how anyone could see a marten track from a
4 pit's wing when you have a hard time going through
5 your trapline on a skidoo, and you look on the
6 side when you are travelling and you see tracks,
7 you actually have to stop and look at these animal
8 tracks to see what kind they are, take a very
9 close look at them. That's just like even a
10 weasel and a squirrel, it's hard to tell the
11 difference between them. So a ground walk on this
12 Bipole III would be what you need to survey all
13 these animal tracks and that, see what kind of
14 animals that are in there.

15 MR. SOPROVICH: Thank you, Elwood.

16 So again, this is why during the open
17 house with Hydro, Mr. Craig Stevens indicated
18 something to the effect that our elders do not
19 believe that it is possible to tell the difference
20 between marten and fisher tracks from the
21 airplane.

22 Hydro's method of determining the
23 distribution and relative abundance of marten from
24 an airplane is the equivalent of snake oil
25 environmental assessment.

1 Noteworthy from Hydro's Mammals
2 Technical Report is the omission of any reference
3 to scientific literature in support of a method
4 that was used for marten.

5 If one digs this a little bit, one
6 comes to understand that it is likely so, because
7 the methodology is not recognized by scientists.
8 For example, Zielinski and Kucera, in their
9 "American Marten, Fisher, Lynx and Wolverine:
10 Survey Methods for Their Detection," (1995) do not
11 mention survey from aircraft as a valid method for
12 those species. Similarly, British Columbia's RIC
13 Standards for the survey of marten do not mention
14 aircraft as a valid method. And this comes from
15 the inventory methods for marten and weasel,
16 Standards for Components of British Columbia's
17 Biodiversity, No. 24, 1998.

18 Finally, I conducted a search of the
19 scientific literature using the database
20 Zoological Record, and that did not reveal one
21 publication for the period 1980 to 2013, using
22 search terms marten survey airplane, marten survey
23 aircraft, marten aircraft, or marten Super-Cub.

24 So as best as I can see, there's
25 absolutely no scientific literature to support the

1 use of this method.

2 So for scientists, methodological
3 standards are critical because results and
4 conclusions will be a function of the choice of
5 methodology. Some decades ago, the Province of BC
6 developed standard methods to be used during
7 surveys and assessments, so as to ensure that data
8 could be collected according to acceptable valid
9 practices. Unless a credible scientific argument
10 can be made, adherence to these standards is a
11 requirement for doing assessment in BC.

12 Unfortunately, in Manitoba,
13 Conservation and Water Stewardship have no such
14 standards, for example, respecting the survey of
15 American Marten. Consequently, in the absence of
16 standards, it appears that virtually any kind of
17 method is acceptable to the government regulator,
18 irrespective of whether scientifically valid or
19 not.

20 Given that Conservation and Water
21 Stewardship generally lacks standards respecting
22 the collection of data on on biota and other
23 resources, the Commission should recommend that
24 the Manitoba Government develop standards. And
25 that should Manitoba not have the resources or

1 technical expertise to develop such standards,
2 that Manitoba review and adopt standards that have
3 already been developed in other provinces and
4 jurisdictions at significant cost. So, for
5 example, BC's RIC standards.

6 I want to speak briefly to Moose
7 Meadows. As earlier noted, we do not come
8 prepared to speak fully to the new proposed
9 alignments, including that which would bypass the
10 core of the Moose Meadows area. This is because
11 there remains the need to complete the
12 consultation process with the community. However,
13 at this juncture, there is good reason to be
14 skeptical of Hydro's conclusions relative to moose
15 in its supplemental report. In particular, and
16 without evaluating the information in detail, one
17 must be skeptical of Hydro's conclusion that in
18 terms of access effects on moose, it would be
19 better to locate the line in the middle of a
20 relatively inaccessible wintering area versus in
21 relatively close proximity to existing access
22 infrastructure.

23 It appears that Hydro fails to
24 understand the critical importance of effective
25 moose refugia in a landscape that is under

1 considerable pressure from forestry and other
2 activities.

3 Respecting the conclusions on the
4 relative value -- I'm just going to stop for a
5 second. I will ask Craig also to speak to this
6 issue of the location of the alternative route
7 versus putting the route through the core of Moose
8 Meadows.

9 MR. STEVENS: Okay. Moose Meadows is,
10 it's a critical habitat for moose, there is no
11 doubt about that. It's a feeding plain, it's a
12 breeding plain, it's a large area that's largely
13 untouched by all the local population, whether
14 they are First Nations, Metis, or non Aboriginals.
15 But in the area, we all respect this area as a
16 unique place where the moose can come and
17 propagate and eat and be safe. There's no
18 development there of any sort.

19 So with the new line getting put into
20 place, basically, you know, they are kind of, like
21 you are weighing two things, but it's going to be
22 just as much of an impact to the moose as much as
23 the Moose Meadows line was, due to the fact that
24 in the winter, the moose come out of the hills due
25 to the high snowfalls out there, and they come

1 down to the broad plains and the valley where it
2 is much more room to turn around, much easier
3 grazing for them. They get away from wolves and
4 stuff easier than if they are trapped in five foot
5 deep snow in the hills.

6 So with this being opened, it's going
7 to put access to these back country areas, where
8 the moose usually are untouched and safe. And
9 lately with the moose collapse in our area and the
10 stoppage of moose hunting, you know, this is like
11 the primary concern to us, you know. Like our
12 First Nation, we lead the way on the moose closure
13 thing. We banished moose hunting on our own lands
14 so we could encourage Manitoba Government to
15 follow suit to do the same thing. So a lot of
16 times the Province, like the government, they are
17 aware of the issues but they don't have the
18 gumption to stand up and fight for their own
19 people when it comes to dealing with companies
20 like Hydro, or any big companies for that matter.
21 Because like I said earlier, it's who's got the
22 money, who's got the power, and that's what makes
23 the decisions. And unfortunately, First Nations
24 don't got the money and the power, because we got
25 our land taken from us a long time ago and we are

1 still fighting to this day to protect these areas.

2 So like there's a lot more things I
3 can speak to on the issue, but I'm going to kind
4 of stay focused on the moose thing for now.

5 MR. SOPROVICH: Thank you, Craig.

6 Secondly, respecting the conclusions
7 on the relative value of habitats within the local
8 study areas of the two options. We have not yet
9 reviewed the habitat models used by Manitoba.
10 However, we do note the following: Such models
11 have been shown to typically fail, at least per a
12 literature review to approximately 2004 in
13 relation to Hydro's Wuskwatim development. And
14 you can see my March 16, 2004, presentation of the
15 CEC titled, The Valuation of Wildlife Habitat in
16 Manitoba Hydro's Assessment of the Wuskwatim
17 Development." So I cite that presentation.

18 And secondly, one has to wonder about
19 the quality and accuracy of the base data used to
20 drive the habitat models, given that as indicated
21 earlier, Manitoba Hydro has been unable to
22 distinguish between cultivated fields and herbs in
23 large areas south and north of Charlie Audy's
24 Corner. If the base data are inaccurate, the
25 models are likely to be flawed.

1 I want to speak very briefly to
2 cumulative effects. Within the Nation's
3 traditional territory, and again you have already
4 heard some discussion about from Mr. Stevens, in
5 particular relative to how the Nation's
6 traditional territory has been impacted by
7 agriculture and other development over time.
8 Within the Nation's traditional territory, the
9 proposed Bipole line will pass through forest
10 management units 10 and 11. There is good reason
11 to believe that there has been an unsustainable
12 allocation of fibre from the deciduous dominated
13 ecosystems of the two FMUs. That is cutting
14 forests at too fast a rate. With the arrival of
15 Louisiana Pacific Canada in the mid '90s, the
16 hardwood annual allocation -- by hardwood,
17 forestry terms that means Balsam, Poplar,
18 Trembling Aspen and White Birch. The hardwood
19 allocation cuts, annual allowable cuts for the
20 nearby FMUs 13 and 14, that is for the Duck and
21 Porcupine, were fully allocated -- that's with LP
22 arriving on the scene -- despite First Nations,
23 scientists, members of the environmental community
24 and others concluding and stating that the
25 allocation was not sustainable.

1 And I can tell you right here that
2 Chief Charlie Audy spoke up strongly about this.
3 And Elder Buddy Brass has spoken to this many
4 times. Elder Buddy Brass, at the time LP showed
5 up, said these cuts are not sustainable, you
6 cannot cut the forests at this rate.

7 So some nine years later, the
8 so-called sustainable annual allowable cut was
9 reduced by 36.1 percent for FMU 13, and that is
10 the Ducks, and 30.4 percent for FMU 14, that's the
11 Porcupine Mountains. And this happened when the
12 province, when timber supply analysis was
13 completed by the province.

14 Now respecting FMUs 10 and 11, in the
15 nation's territory where this line will pass,
16 respecting these two forest management units, the
17 Province has not conducted the timber supply
18 analysis since the fibre was fully allocated in
19 about 1995.

20 If history repeats itself, the
21 so-called sustainable Annual Allowable Cut of the
22 two FMUs will be reduced by a similar proportion,
23 if not by greater.

24 The bottom line is that for the areas
25 that the Bipole line will pass through, there's a

1 high probability the forestry industry has been
2 allocated amounts that are not close to being
3 sustainable. This has very serious implications
4 to the environments of the area, from ovenbirds,
5 to moose, to water yield and so on and so on. The
6 Bipole line would exacerbate the problem.

7 That's the end my presentation. I
8 also refer you to, you know, when you get the
9 chance, taking a look at Appendix A, which is the
10 report by Gary Wowchuk. Thank you very much.

11 That said, I think Mr. Stevens may
12 have some further closing remarks.

13 MR. STEVENS: I'd like to thank you
14 guys again for this opportunity to lay my Nation's
15 concerns in front of you guys for everybody in
16 this Province to understand what we're facing as a
17 community, as a First Nation. But again, I'm
18 going to kind of go back to the study that was
19 done by the First Nation for Manitoba Hydro. And
20 I'll try to pull up here the target area, if he
21 can find it. He'll just pull up an overall
22 general view.

23 Okay. This was the study that was
24 funded by Hydro. It was funded in 2011. And at
25 the time, at the proposal development, we felt we

1 had to submit this in a matter of weeks or we're
2 going to miss out our opportunity to do this land
3 use study, to have our concerns at least
4 documented to some degree.

5 I know like we selected 10 percent of
6 our animal population, which is a very small
7 number. If you want to get a full understanding
8 and knowledge of how we use the land, it would be
9 scientifically feasible, I think, to incorporate a
10 higher number than 10 percent. It shows -- like
11 the thing, it doesn't show the full extent of our
12 traditional territory with this map, because
13 basically what we tried to do is focus around the
14 community, is kind of direction we were given.
15 You know, this is where it's going to affect you
16 the most, this is where you should talk about it.

17 Like our traditional land comes
18 basically from the overflowing river in the north,
19 this is in the bog area. It is off the map. It's
20 about another 50 kilometres north I'll say, 40
21 kilometres north, and it extends all the way down
22 to the Valley River in the south. It goes from
23 Lake Winnipeg in the east to the Saskatchewan
24 border in the west. That's the extent of what we
25 claim as traditional territory and where we use

1 the land as traditional territory.

2 So the project right from the
3 beginning, it was rushed. There was not enough
4 time given to properly document all this
5 knowledge. Like for example, a lot of our elders,
6 they wanted to take this to sites on the land but
7 had to limit them to one site. We can only show
8 you one because we've got to get this done today.
9 Like we've got four weeks to finalize this report
10 or to get this project done. So a lot of the
11 people, they felt like they could have shared a
12 lot more knowledge but there wasn't enough time,
13 not enough on the ground. You know, like it's
14 mostly out of an office doing this stuff. If you
15 want to get proper information you've got to be
16 out there to see what's there. You can't just
17 guess. Otherwise you're doing what Hydro is doing
18 with their EIS, you're guessing and you're getting
19 a lot of mistakes, delays and whatnot.

20 That's one thing that I really wanted
21 to bring to attention. There's only 10 percent of
22 my people's knowledge that's on this map.

23 Since then, we have lost some of those
24 people. You know, they are elders, they passed
25 away in the past two years and that knowledge is

1 going to be sorely missed because they would have
2 loved an opportunity like this to pass on this
3 knowledge to the youth in such a manner that we
4 can share it with other people, you know. Because
5 First Nations people are kind of the people, we
6 learn by seeing. That's our education process.
7 We see, we learn. And this is the way we pass on
8 our knowledge to our youth. We teach them. We
9 take them out on the land. We show them. For
10 example, if we're going to show them how to fish,
11 we'll show them how to fish, not just tell them.
12 We don't look at a book and say this book will
13 teach you how to fish, we go out there and show
14 them how to fish so they know how to fish. If
15 they are going to hunt, we teach them how to hunt
16 so they know how to hunt.

17 Now it's in the same regard when it
18 comes to medicinal plants. It's not something you
19 know today or something that you can know over 10
20 years, it's something that takes generations to
21 acquire this knowledge. Like a lot of these
22 medicinal plants, the knowledge is thousands of
23 years in the making for us to realize the full
24 extent of how this healing herb can heal us
25 properly. It's not something that we just figured

1 out overnight or looking in a book. It's
2 something that we practice and practice until we
3 perfected it.

4 So a lot of these areas that we're
5 going to lose. Like, for example, like I know a
6 few scientists that I work with, I asked them do
7 you know what a bottle berry is? It's something
8 that my people have picked in the past. I'm not
9 sure if any of you are familiar with this. These
10 scientists, I asked, they didn't know what it was.
11 First time they heard of it. But over the last,
12 well in the course of my lifetime, I see the areas
13 where these berries grow, can be wiped out and now
14 I only know of one location of where they can be
15 found which is unfortunately very close to the
16 Bipole line located in the Red Deer River area.

17 So you know, like there are so much
18 lost traditional knowledge for a lot of these, you
19 know, specialized plants, they are rare plants. A
20 lot of them, like First Nations people have
21 knowledge of this. If you guys want to understand
22 how this stuff works and how they interact with
23 our people, you guys have got to be willing to
24 give us that opportunity to put it down for you
25 guys to understand. If you want to learn

1 something, if you go see doctor, you don't see a
2 doctor who passed with 10 percent, you see the guy
3 who passed with 100 percent who knows what he's
4 talking about otherwise you can end up dead. It's
5 the same thing with Indian knowledge. You want to
6 get the most knowledge you can to make the most
7 informed decision you can. You don't take pieces
8 of knowledge and then assume you know everything.
9 Which in this case is what I think Hydro must have
10 done because they no problems, moose no problems,
11 and right now we're going through a moose closure
12 because of them almost getting wiped out. And I
13 don't know if Hydro was unaware of this? It was
14 on the news, it was in the papers, but they said
15 no moose problems.

16 So you know, when Hydro pays for
17 something, it's basically they get what they want.
18 It's not what needs to be done. We were rushed
19 all the way through the project. There was not
20 enough money to do the project to the full extent,
21 there was not enough time to do the project to the
22 full extent. And all the time, we felt the rush
23 from Hydro that this needs to be done now, not
24 take your time and do a good job. But no, get it
25 done and get it over to us right now.

1 I just want to make that aware to the
2 province and to the people in this room that, you
3 know, as the money provider, they have a lot of
4 power to push and pull these to suit their nature
5 so that, you know, they have a lot less
6 information than they could possibly have. So it
7 makes it easier for them to prove that what they
8 are saying is accurate and easier for them to
9 prove my words as inaccurate because I don't have
10 100 percent of my people's words there to prove
11 what they are saying is true. I've got
12 10 percent. They've got their scientists.
13 Scientists will say whatever the guy who pays them
14 to say. That's just the bottom line. If you work
15 for somebody, you do what they tell you and that's
16 the way it is. No matter where you are, whether
17 you're in China or Canada or America, you work for
18 your boss and that's who pays your bills.

19 So just want to make you guys aware of
20 these issues that we have to face as a community
21 doing this project. You know, like we did a
22 couple number, like four other traditional
23 knowledge studies in the past which weren't quite
24 as indepth. We target that 10 percent of our
25 people because they are small projects. You know,

1 just kind of like us getting our feet wet,
2 learning the ropes, trying to understand how we
3 can gather people's knowledge. And those have
4 more information than this Hydro study. You know,
5 because those actually took the time. You know,
6 you take time, you talk to people, you don't just
7 give them a date to share their knowledge, you
8 give them the time they need whether it's going to
9 be a day or a week, you give them the time to
10 share that knowledge. And the thing with Native
11 traditions is like it's oral. Like a lot of it is
12 oral from the elders to us and they speak it.
13 It's not something that they can pull out of the
14 book and say here, it's all in here. No, because
15 it's all up here. And for them to speak that,
16 they'd better take the time to put it in order
17 because they live long lives. So in order to them
18 to speak accurately, they take their time to speak
19 so they print that makes sense to us. Youth,
20 there are younger people that are taking this
21 knowledge and to learn it so we can have a chance
22 to pass it on and that it's accurate information
23 that we're passing on, not doctored information,
24 not false information or not information that's
25 empty. You know, it doesn't have the weight of

1 the knowledge with it, it's just words.

2 So that being said, I'd like to thank
3 you for the time for myself and for my partners
4 here to come and speak and to lay these issues out
5 before you guys and I hope you guys make some good
6 decisions on this. And other than that, thanks.

7 THE CHAIRMAN: Thank you, Mr. Stevens.
8 Mr. Williams, what did you have in mind?

9 MR. WILLIAMS: I don't have any
10 questions to the presenters, I know that's not
11 intended. But just in terms of the powerpoint
12 presentation, I'm not sure my client has received
13 it. If we have and I have missed it, I apologize,
14 but there's some information on there that we
15 would be interested in. And also Appendix A, I am
16 not sure we have received that either. So on
17 behalf of our client, we'd certainly appreciate if
18 the First Nation could make that available with
19 the Commission's guidance.

20 THE CHAIRMAN: We don't have Appendix
21 A either. So would you be able to make the
22 powerpoint presentation and Appendix A available?

23 MR. SOPROVICH: It was the powerpoint
24 presentation. Was there a second thing?

25 THE CHAIRMAN: Appendix A.

1 MR. SOPROVICH: Okay, yes.

2 THE CHAIRMAN: Now, Manitoba Hydro, do
3 you have any questions?

4 MR. BEDFORD: No.

5 THE CHAIRMAN: Any members of the
6 panel have questions? Mr. Gibbons.

7 MR. GIBBONS: Yes, I want to thank the
8 panel sitting before us for coming here today and
9 bringing us this information. I found it very
10 interesting. And what I have by way of questions
11 might be more of a clarification of some of the
12 things that you talked about so that I can better
13 understand the situation.

14 One of the things that's notable and
15 it actually was even more noticeable, I should say
16 noticeable rather than notable, in that last map
17 was that your First Nation's land currently is
18 quite fragmented. And I'm wondering in terms of
19 the whole TLE that your First Nation is discussing
20 with the government, can we judge from that that
21 your access to certain of the hunting, gathering,
22 trapping, fishing areas, and so forth, is affected
23 by the current economic and geographic situation
24 there? On the other hand, you have this
25 fragmentation that's occurring but you also, I

1 think in addition to that, I'm guessing are
2 encountering access issues. There are lands that
3 you can't get to or that you don't have access to.
4 There's more to it than what we're seeing here I
5 think?

6 MR. STEVENS: Like the main reason our
7 land are so fragmented and diversified across this
8 valley is due to the amount of private ownership
9 of land. As development has increased since the
10 70's to now, a lot of our traditional land is
11 swallowed up by farmers, by the RMs, by these
12 ecological protected areas, by Louisiana Pacific
13 logging company, there's all these different
14 organizations that swallow up parts and parcels of
15 our traditional land. And never with any
16 consultation, never with any heads-up except for a
17 letter after the fact saying this land has been
18 allocated to this, whatever, you know.

19 Like in the course of my eight years
20 dealing with a lot of these issues, I seen this
21 time and time again where like no one ever came to
22 us to say we're going to take this land from you
23 guys, we're going to use it for some purpose. It
24 just happened. And that's the reason we're so
25 spread out, is because we took land where it was

1 available and where we have a strong traditional
2 connection to it. There is more lands we would
3 like to select, but unfortunately, you know, like
4 the whole TLE process is not, like it's not a
5 perfect process. The government likes to drag its
6 butt a lot of times. Like we select, how do you
7 say, there is interest there, we pick it because
8 we have a traditional value there. Usually it
9 takes, you know, 15 years after the fact we still
10 haven't completed our TLE. And we selected most
11 of these lands in the first five years. So for
12 the past 10 years, we have been waiting for the
13 government at the provincial and at the federal
14 level to catch up, to move these lands forward to
15 reserve so we can look at economic prosperity.
16 There is a lot of economic opportunities where we
17 are.

18 We're in a unique region in all of the
19 world. We've got a little bit of mountains, a
20 little bit of the forest, Canadian Shield, a
21 little bit of the prairie lands to the south, a
22 little bit of the lake country, the cottage
23 country. It's a very diverse where we live. And
24 this park land region is very unique around the
25 world. You know, it's made by the glacial Lake

1 Agassiz and by the glaciers themselves, so that's
2 where the uniqueness comes from. Like no where
3 else will you find this type of land anywhere in
4 this world, no where else. And to destroy it
5 without doing a proper assessment what you're
6 going to destroy just seems wrong. Like you don't
7 have to be a First Nation person to see it as
8 wrong, it can't be right.

9 If they are going to do something,
10 they are going to do it right. There's a right
11 way, there's a wrong way. Just like my partner
12 said, there's a right way and a wrong way to do
13 things.

14 Unfortunately Hydro's wrong way has
15 lead to this delay where we're sitting here today
16 still dealing with this. Hydro's lack of
17 commitment to do on the ground EIS surveys is
18 another reason we're sitting here today. To save
19 money probably. But in the long run, I don't
20 think they're saving too much because they are
21 delaying everything. They should have just did a
22 good job to begin with and things would have been
23 more smoother.

24 I hope that answers your question. I
25 didn't mean to be too long-winded but I was trying

1 to give you the understanding of what we face as a
2 TLE nation, trying to purchase land and trying to
3 select the land within our territory that's not
4 available to us even though there are strong
5 cultural ties to it.

6 MR. SOPROVICH: Could I speak briefly
7 to that as well? Just to give you a real world
8 example with respect to access, there may be
9 traditional trails used for a long time. And all
10 of a sudden something happens and maybe the
11 loggers aren't aware of it or whatever. But all
12 of a sudden, that area where that trail went
13 through gets cut and all the trash, I'll use that
14 word that's more of a forestry term, all of the
15 large branches and everything gets scattered over
16 that cut-over and there's the trail gone. Because
17 you can't really access through that thing once
18 you've got all that stuff on there in a lot of
19 cases because there is a lot of material. So
20 that's just a real world example of how access can
21 be lost.

22 And secondly, speaking to the TLE
23 issue, there's lands in this nation purchased back
24 in 1999 still not able to get into reserve status.
25 We're dealing with these issues right now.

1 MR. GIBBONS: Two more questions.
2 One's fairly specific and it does ask you to sort
3 of visualize a scenario. I have no idea if this
4 is technically possible. But when I saw the photo
5 of the road leading towards Duck Mountain, a
6 thought that crossed my mind is if it were
7 possible to put, and I'm speaking of a possibility
8 here both technically and I suppose to some
9 extent, economically, to put a line under ground,
10 how much of it would have to be under ground to
11 take away what I think, and I may be putting words
12 in people's mouths when I say this, but to take
13 away that visual scar that would affect the view
14 of the Duck Mountains? Would five kilometres be
15 enough, 10 kilometres or is it for the full length
16 of that 200 kilometre cut-through?

17 MR. STEVENS: Just for clarification,
18 it's the Porcupine Mountains that we were looking
19 at.

20 MR. GIBBONS: Porcupine, sorry.

21 MR. STEVENS: Just to answer your
22 question, like I guess you'll be saving the eyes.
23 But the other side of the coin is we've got
24 history and heritage in the ground. And who's
25 going to be documenting all this as it's being

1 discovered and being pulled up? Because like
2 where I come from, everywhere you'll find
3 artifacts. Every farmland you're going to find
4 arrow head or a spear or something that was
5 created by my ancestors. Not one spot do we walk
6 a mile without finding nothing. Like this area
7 was so widely used that anywhere you do
8 development, guaranteed you're going to find a
9 cultural artifact. There are so many farmers in
10 our area that have a stash of these cultural
11 artifacts. I know they are not supposed to do
12 stuff like that but they do it. They have two,
13 three, 4,000 arrow heads hidden in their basements
14 and they show their buddies. It's all over. If
15 you're going to be, like it's a tough thing, you
16 know, you're going to trade one evil for another
17 evil. Should we disturb our ancestors' spirits?
18 I don't think so. But should we suffer ourselves
19 needlessly, I don't think so either. That's a
20 tough question to answer.

21 Just to let you know how I think and
22 how I feel about it.

23 MR. GIBBONS: Thank you. And then the
24 last question, and it's hard sometimes to be brief
25 about this kind of thing. But if you had

1 mentioned earlier, and I think all of you had said
2 more or less the same thing, that if Hydro had
3 come to you before they had decided on a final
4 route, in other words, the idea that in the view
5 of the community, they came too late, what might
6 have the community have said? I don't know if any
7 of you feel comfortable speaking for the
8 community. Or at least what would you have said
9 to them if they came to you before that decision
10 was made and maybe a couple of key ideas that you
11 think they might have missed because they came to
12 you so late?

13 MR. STEVENS: I think that they would
14 have, that we would have requested Hydro to work
15 closely with us in our area so that they were
16 properly educated on what they were going to be
17 disturbing, that they were properly educated on
18 the way my people live, the way our culture is.
19 Because we are First Nations, First Nations in BC
20 and First Nation in Manitoba and First Nations
21 even in Northern Manitoba are not all the same
22 just because we are all First Nations. Our
23 culture is different from nation to nation. And
24 small aspects that maybe you guys can't see but we
25 see them as First Nations people. It's like, I

1 don't know how to put this in a more clear
2 example, but maybe it's like a French man and an
3 English man, how they see differences in
4 themselves. That's how we would see differences
5 in ourselves too.

6 And to us, you guys are all
7 non-Aboriginal but you guys would be French and
8 you'd be English and you'd be whatnot. So you
9 know, there is that way of looking at things. And
10 I think if they would have been more educated,
11 they would have been more aware of what they were
12 going to disturb, they would have probably been
13 more likely to make the lesser evil of the choices
14 in where to put this line and put it in a place
15 that would have at least impacted our community
16 rather than right smack down in the middle of our
17 two traditional communities. No where do I see it
18 running through anybody's main communities as it
19 does through ours. It kind of skirts around the
20 edges of everybody else. It goes right through
21 the middle.

22 And that's why I'm here today because
23 I don't want my children growing up seeing
24 something like that that has no benefit to us,
25 that's going to destroy our land. What's my

1 children supposed to get out of that? More loss
2 of land? More loss of use traditional territory.
3 More loss of food, who we are as people of the
4 First Nations, more loss of our culture just so we
5 can meet the needs of people in America, to turn
6 on lights and heat up their homes? It makes no
7 sense to me.

8 MR. GIBBONS: Thank you very much.

9 MS. MacKAY: I'm not sure that you can
10 answer this for me, but it's clear that you feel
11 there were some serious problems with process
12 here. But I'm also wondering if, and I'm not
13 asking you to tell me where it should go, but do
14 you believe that if you had worked earlier with
15 Hydro, you could have found a route for this
16 through that area that would have satisfied you?

17 MR. STEVENS: I think that if they
18 would have worked with all the three local First
19 Nations within our traditional area here, because
20 there's one to the north, Sapotaweyak Cree Nation,
21 there's Pine Creek Nation to the south and our
22 nation, if they would have met with us and say you
23 know what, we want you guys to work with us so we
24 can develop a route through your territory here, I
25 don't see why that would have not worked. It's

1 just lack of planning and lack of foresight on
2 Hydro's part. We're always willing to work with
3 people, you know, to build our country up. We're
4 part of Canada, too. We want to be accepted as
5 part of Canada. A lot of times we always get
6 relegated to the backburner as First Nations. We
7 can't bring them up because it will burn your
8 fingers if you do. So you deal with these things
9 within the national spotlight.

10 If people were more willing to work
11 with First Nations, First Nations wouldn't be
12 where they are today in a big hole in the country,
13 in one of the richest countries in this world.

14 I don't know if that answers your
15 question. But from where I stand, I think that's
16 the way I see it.

17 MS. MacKAY: So I'd be correct then in
18 interpreting your attitude to be that you don't
19 object to the concept of a Bipole III, you just
20 object to where it is right now and how it got
21 there?

22 MR. STEVENS: That's kind of a mixed
23 feeling for me because I'm a little
24 progressive-minded, like myself, I know that
25 there's progress, you know. Unfortunately we've

1 got to suffer, cultural peoples, like minorities,
2 we've got to suffer the environment, the animals,
3 the plants in order to make progress. I
4 understand that. I understand all that. And in
5 order for First Nations to get out of, like out of
6 the poor house, so to speak, we have to understand
7 to move with the times. We can't live in the
8 past. We've got to understand our past because
9 we've got to move forward.

10 But there is no understanding of the
11 past there. You know, like what Hydro is doing,
12 is just doing more of the same thing they did 130
13 years ago when they pushed us off our land and
14 stuck us in the swamp and say that's your reserve.
15 We'll take all of the good land and give you the
16 swamp. They are doing all the same thing.

17 Nowadays, Manitoba Hydro is the Indian
18 agent. They are coming there disbursing people
19 out of the way so they can put their line through
20 there. They don't care who gets hurt as long as
21 their profit is made.

22 They knew they were going to build
23 this line before they even come out to the public,
24 they knew it because you plan ahead. When you run
25 a business, you plan ahead. Probably they knew

1 this in the '80s or the '90s they are going to do
2 a Bipole III. Why didn't they start doing like
3 preparation work at that time, dealing with First
4 Nations saying, you know, we are going to be
5 expanding our operations because the demand for
6 energy is going to keep climbing. And we've got
7 good energy rates so we're going to expand. I
8 think a lot of our First Nation would have been on
9 board if they were included in this whole planning
10 process instead of getting left out to the last
11 all the time. It's always we don't get looked at
12 until something bad is happening.

13 You know, maybe it's time this country
14 as a whole, not just Manitoba but everybody sort
15 of look at First Nations in a more progressive
16 way. If you work with us, we'll work with you and
17 we can do something great there.

18 MS. MacKAY: Thank you.

19 THE CHAIRMAN: I'm going to ask a
20 question you may not be able to answer. You have
21 indicated earlier more than once that you haven't
22 completed your review or haven't had an
23 opportunity to complete your review of the
24 re-routing of the Bipole through your area. Are
25 you able to say at this time whether you prefer

1 one over the other?

2 MR. SOPROVICH: No.

3 THE CHAIRMAN: Okay, thank you. That
4 was the only question I had.

5 So I thank you for coming here today
6 and for your presentation. I believe from your
7 earlier comment, Mr. Soprovich, that Elder Brass
8 would like to say a closing prayer; is that
9 correct?

10 MR. SOPROVICH: That's correct.

11 THE CHAIRMAN: We'll wait for a moment
12 or two. I want to deal with some procedural
13 issues before we break for lunch. And then once
14 I've dealt with that, we'll ask Elder Brass to say
15 the closing prayer.

16 We'll break for lunch now. We have
17 the afternoon scheduled for Manitoba Metis
18 Federation. Mr. Madden has indicated to us that
19 because of some media commitments, he may not be
20 able to get here until 1:30. He had indicated
21 1:30 to 2:00 and we told him 1:30, no later. So
22 perhaps we'll be a little lucky and start earlier
23 or he'll show up a little earlier, so I'd ask you
24 to show up about 1:15 and hopefully we can get
25 going at that time.

1 So as soon as we have had the closing
2 prayer, we'll break until 1:15.

3 Elder Brass?

4 MR. BRASS: Thank you. First of all,
5 I'd like to thank Manitoba Clean Environment
6 Commission for having us here and everybody that's
7 here, I thank them here too. So I'll go ahead and
8 say my prayer in my own language. Thank you.

9 453Closing Prayer)

10 Amen.

11 Proceedings recessed at 12:02 p.m. and
12 reconvened at 1:30 p.m.)

13 THE CHAIRMAN: Okay. We will
14 reconvene. We have an MMF afternoon, evidence
15 being submitted by the MMF and then their final
16 argument.

17 I would be remiss if I didn't start
18 off the afternoon by not offering the
19 congratulations of the Clean Environment
20 Commission to President Chartrand and to
21 Mr. Madden for their accomplishments last week.

22 So Mr. Madden, over to you.

23 MR. MADDEN: We are going to start off
24 this afternoon by President Chartrand making a few
25 initial comments, and then I may have questions

1 that follow. Does he need to be sworn in again
2 or -- and he will be referring to a series of
3 materials that are at the back. My understanding
4 is that the panel does have copies.

5 THE CHAIRMAN: Yes.

6 MR. MADDEN: If people want additional
7 copies, they are at the back of the room.

8 Ms. Johnson, does he need to be sworn
9 back in?

10 THE CHAIRMAN: He doesn't have to be
11 sworn in. It stands through the life of the
12 hearing.

13 MR. MADDEN: Okay. So, President
14 Chartrand, did you want to begin?

15 MR. CHARTRAND: Thank you,
16 Mr. Chairman. Good, no one is going to swear at
17 me, it is a good start.

18 I do thank you for your kind words, it
19 is a very great day for the Metis people of
20 Manitoba and the Metis Nation as a whole.

21 I must state, I requested to come back
22 to this particular committee to express the
23 position and findings that we have right from the
24 horse's mouth, I will use that phrase in a
25 quotation statement, instead of me sending a

1 letter indicating my issues of concern again, what
2 I believe to be a lack of follow through and
3 commitment made at this particular table here the
4 last time I was here.

5 So I thought it would be fitting for
6 me to be here so that the Commissioners themselves
7 can ask me questions if they wanted to get more
8 clarity on it from me, not hearing from
9 second-hand of documentation or information, and
10 at the same time to share some more clarity with
11 the litigation team that represents Manitoba
12 Hydro, on the reference to our discussion and
13 somewhat jousting back and forth statements last
14 time.

15 As you are aware, the last time I was
16 here, I echoed very strongly again the lack of
17 consultations that took place with the Metis
18 people of Manitoba, the lack of consideration that
19 Hydro gives to the Manitoba Metis Federation as a
20 representative body of Metis people, and try to
21 circumvent us through mayors and councils or
22 institutions and separate bodies, just to say that
23 there happens to be a Metis person there, at least
24 we spoke to the Metis. And I wanted to share that
25 with you again, because I indicated and I asked

1 the Commissioners, and I hope you had the time and
2 opportunity to be briefed on the Northern Affairs
3 Act, as I referenced to you regarding community
4 consults and what their jurisdiction and mandate
5 is.

6 I am, in no way, opposed in any
7 fashion Hydro not to consult with mayors and
8 council, because they have a jurisdiction when it
9 comes to their community versus the administration
10 and operation of a town or village, whether it is
11 the usage of extra passageways in the roads or
12 infrastructure of their operation, of course, they
13 need to be consulted. But when it comes to the
14 matter of the facts of my people, they have no
15 jurisdiction, which is pointed out black and white
16 in the Northern Affairs Act, the arrangement, the
17 agreement that they are under.

18 It is however somewhat disturbing for
19 me, the last time I was here -- and again, I thank
20 Mr. Bedford for his kind words regarding my
21 doctorate that I received the last time I was
22 here, and I do really sincerely thank him for
23 that. But I was also very happy when I left here
24 in the sense that maybe, finally, before a body,
25 Hydro has decided to sit down and consult with the

1 Metis through the MMF, who is a legal
2 representative body of the Metis people. The
3 Supreme Court of Canada recognizes us for sure, a
4 Crown corporation should do the same. In fact,
5 lower courts have recognized it too. But it is
6 quite disturbing when that doesn't happen.

7 I know letters are written back and
8 forth by the legal teams to each other. We
9 have -- also one of the things I'm quite pleased
10 about, I trained my officials in my office to
11 follow up on every conference call, every phone
12 call, every email, that we keep documentation of
13 that, so in the future it is important for
14 evidentiary material if it is ever needed.

15 So when I left here last time,
16 Mr. Chair and Commissioners, I had the goodwill
17 feeling inside me that, okay, finally something is
18 going to happen. There is going to be
19 consultations, there is going to be clear issues.
20 There is some serious matters at stake for my
21 people. And we use these particular areas quite
22 openly, quite strongly, and it has gone on for
23 generation upon generation. I myself as a child
24 used them, and I still use them today, getting to
25 be a senior citizen pretty soon, I hope, another

1 12 years.

2 When I look at the state of when I

3 left, and I think you were probably under the same

4 impression, that we would resolve some of these

5 outstanding matters. It did not happen,

6 Mr. Commissioner. In fact, we found ourself in a

7 bureaucratic boondoggle, I will call it, in the

8 sense of back and forth emails and phone calls.

9 You know, it was in my view the best case scenario

10 of why things don't work. But what really didn't

11 impress me, I have had a chance to meet with the

12 president of Hydro, I met the Minister of Hydro

13 since the last time we met here with the

14 Commission, since I have been here last time as a

15 witness at the Commission, and I'm meeting with

16 the Minister of Hydro again tomorrow. I spoke to

17 the Premier this morning regarding some of these

18 issues, also my concern. But it was clear to me,

19 and I echoed this sentiment loud and clear, I

20 think -- and no disrespect to the Crown, we are

21 talking Hydro, has found itself in a very -- in a

22 placement where I think they believe they don't

23 have to do it. It is just a matter of -- and I'm

24 not trying to be disrespectful, I'm telling you it

25 from my eyes as a political leader who has been an

1 activist for 30 years. I see Hydro looks at the
2 Metis as something, a casualty of war if you want
3 to call it that phrase, or just a casualty of
4 process. Because at the end of the day, I think
5 the complacency that Hydro finds itself is, we are
6 going to get the environmental licence anyway. I
7 am not saying that to be disrespectful, I am just
8 telling you what I see. I could be absolutely
9 wrong but I don't think I am.

10 I said to you here as Commissioners,
11 and in front of Hydro, that I do support Hydro. I
12 do. I believe in Hydro, in its future for this
13 province. I do believe it is a necessity of how
14 it needs to undertake the economic opportunities
15 that do exist and how, in the long run, it would
16 help all Canadians, Manitobans, and its end also,
17 our business partners in the United States or
18 whatever, that at the end of the day it is good
19 for Manitoba. But I will not, and I made it very
20 clear to Hydro and I made it clear to this
21 Commission, do it at the sacrifice of my people.

22 And what we are here about today is, I
23 want to talk about a little bit if I can,
24 Mr. Commissioner, it is not about the money, it is
25 not about any source of revenue that should come

1 out of this, it is the impact of the environment
2 and what will it do to our people? We saw what
3 happened to us in 1960. I made reference to that
4 in an interview yesterday. In 1960, they plowed
5 down our Metis community and just got rid of it,
6 in the dams that took place in Grand Rapids. And
7 people are suffering from that. Nobody has ever
8 dealt with that yet to this day. It is
9 unfortunate that it did happen.

10 And Hydro basically felt they didn't
11 have to consult with us, they didn't have to talk
12 to us, and they still believe they don't have to
13 talk to us.

14 I was also under the impression, and
15 this is my own personal impression, that again, as
16 I said, the Commissioners are appointed by the
17 Province and you have a tough job in front of you,
18 a very important job in front of you as
19 Manitobans, to make a call, to make a judgment
20 call on what your recommendations will be.

21 But one of the founding, I hope,
22 principles of it will be is Hydro doing just for
23 all Manitobans, not just the majority, inclusive
24 of the minority? The minority's rights are no
25 lesser than the majority. And I think it is

1 essential that we look at what Hydro has done.
2 And I told this directly to the president; how can
3 a commitment be made at this level in front of
4 Commissioners, and that Hydro did not fulfill its
5 commitment that they would do the consultations
6 with us? We can blame back and forth, emails and
7 people making meetings. I told this directly to
8 the president, I said, Scott, you could have
9 picked up the phone, if there was an issue I would
10 have fixed it immediately, if you want to blame my
11 office, it would have been done instantly. And no
12 one picked up the phone. And I told the vice
13 president, neither did you.

14 So we echoed to you, and I can show
15 you email after email after email if you want
16 evidence here of the constant discussion that took
17 place.

18 One of the challenges that we face,
19 Commissioners, is this: Hydro has operated in
20 this tunnel in the sense of village, reserve by
21 reserve, that's their mentality. And I echoed
22 that with the president, that in the federation we
23 operate in a completely different structure. And
24 we have about 80 communities that we base our
25 citizens living in. And those citizens are

1 effectively, and will be affected by Hydro
2 development in the mass majority, because that's
3 where we live in those particular areas.

4 And when I spoke to Hydro, I made it
5 very clear to them that in the discussions that we
6 have and the formula that we use is probably the
7 most productive and cost effective action that
8 Hydro could ever create a partner with. And I
9 will give you a scenario, if I can,
10 Mr. Commissioners. I will use where I come from,
11 Duck Bay, Manitoba.

12 One of the things that took place
13 right after this is we asked to put together
14 proper consultations on the effects in the Kettle
15 Hill area. It is a traditional area that's been
16 used for generation after generation after
17 generation, and will be used hopefully for
18 generations to come. And we utilize it for all
19 sorts of purposes. One is cultural. Second is
20 berries, medicinal, wood. We use it for hunting.
21 It is something very, very important to us and it
22 really pales to the importance of it in the bigger
23 scale. But when we looked at how the Hydro looks
24 at it, and this is a good example for you to grasp
25 what I'm trying to get at, my point in the village

1 by village, in this tunnel they operate in, and
2 they don't want to get out of it for some reason.
3 They said they want to consult. We put together a
4 proposal quickly, after some jousting, we put in a
5 proposal, said it is going to cost \$153,000 to do
6 this and we can hopefully have it for the
7 Commissioners by January 28 was the deadline.

8 That didn't pan out, they come back
9 with the response and said, we will give you
10 \$10,000, and we will even set up the meetings for
11 you if you want, and we will talk to the two or
12 three communities.

13 What they weren't grasping, and that's
14 the tunnel vision again, is that there is about 20
15 of my communities that use this place without
16 question every year. I know them, I go there, I
17 see them. They stay out there for two months,
18 many of them. They use it throughout the full
19 year, but in the summer they are there for about
20 two months. I know who they are and I know what
21 communities they come from.

22 We do not have a reserve. We don't
23 operate in that little corner, little circle, that
24 is not the way we live.

25 They can talk to Pine Creek reserve,

1 they can talk to Indian Birch, which I hope they
2 did, and Pelican Rapids and their reserve, which
3 uses that particular area. But I have over 20
4 communities in that circle that my Metis people
5 live in that actually use it full time, all of the
6 time. They have done it for generations. But
7 talking to Duck Bay and Camperville alone would
8 not sustain the importance of democracy to make
9 sure that all of my people knew what was
10 happening, the effects to the future, I had to
11 talk to all the other 18 of them.

12 Hydro looks at it, I talked to two
13 communities that should be satisfactory. Nowhere
14 can I ever support that, ever can that ever take
15 place. That's not consultations, that's just a
16 fast, quick going, instead of cooking a meal you
17 go through McDonald's to grab a quick meal.

18 So it is just unbelievable that here
19 is something that's worth billions of dollars, and
20 Hydro is caught up on a little tunnel that they
21 don't have to do it.

22 My message inside there is that I
23 think, and this is what I said politically in my
24 office -- is it because Hydro feels that the
25 Commissioners will still approve it anyway,

1 because this is too big a project and we are a
2 small piece of it; or B -- the Crown is asking the
3 Province to give them a licence and the Crown --
4 and I said this to our lawyer -- aren't they in
5 conflict? The province owns this, in some ways
6 Manitobans, I am supposed to own it myself, but
7 they are the ones asking the province to give them
8 approval for an environmental licence, but yet
9 they believe that they don't have to fulfill their
10 constitutional legal obligation.

11 And the environmental impact will have
12 great effect on us, Mr. Commissioner. I swear,
13 and I will swear again, it will have immense
14 damage to us.

15 I have got a resolution 8 here. I had
16 a meeting, we fortunately had our own meeting with
17 the Federal Government in partnership with the
18 Province on a different issue called resolution 8.
19 Resolution 8 is something that I spoke to you
20 about regarding the way our community governments
21 operate. We have 80 community governments called
22 locals, then we have seven regions in our
23 Province, and then we have the Provincial head
24 office in Winnipeg. Out of that structure comes
25 our democracy of governance.

1 It was clear from all of the 80
2 communities and 3,000 citizens that are
3 representative people that came in to our assembly
4 unanimously approved Resolution 8, that no one
5 local can tie into another community that would be
6 impacted. It was very important to them. Duck
7 Bay couldn't tie in Camperville, Camperville
8 couldn't tie in Spur or Swan River, where people
9 live, or surrounding, et cetera, et cetera, or
10 Mafeking or Birch River. Those are all Metis
11 communities our people live in. They are not
12 dominated 100 per cent by Metis, but we have a
13 good chunk of Metis people living there. And that
14 one community could not tie them in, for example,
15 to Kettle Hills, which is one of the Bipole III
16 diversions. It would act -- it would take the
17 consultations of ensuring that they all had to
18 understand what was happening. That's what
19 Resolution 8 meant.

20 So we had a gathering on February 24,
21 Mr. Commissioner, and at that time we had
22 communities from, I think it was about 50
23 communities that came in, or 40 communities, and
24 some of them impacted in the particular areas.
25 And they all again ratified that, given that

1 Hydro's lack of sitting down and consulting with
2 them and advising them what the damages and
3 effects could be, that they are giving me
4 direction to litigate, and to move forward and
5 immediately press upon litigation to put a stop to
6 what is happening here -- not this Commission
7 itself, but the advancement of Hydro and Bipole
8 III.

9 So I got my marching orders also from
10 my governance system to advance that. I'm trying
11 desperately, and I told the Premier today point
12 blank, I said I don't want to fight with Hydro,
13 but I said, you can not keep on pushing me back
14 and pushing me back and expect me, as a leader, to
15 fail my citizens and fail my people. I said, we
16 can't be the one, the sacrificial group that has
17 to pay the price, ignoring our needs and our
18 pressing issues because Hydro has to fulfill a big
19 multi-billion dollar arrangement here that's going
20 to hopefully save our province and our financial
21 economic engines. But at the end of the day, we
22 are not going to be that sacrificial lamb.

23 I also wrote to Valcourt, which I will
24 share, I will leave here and I hope the
25 Commissioners have a chance to read it. Because

1 it talks about I think where this all stems from,
2 Mr. Commissioners. And I know if you look at the
3 Northern Flood Agreement, we were told point blank
4 we weren't a part of it, because back in that
5 time, if you look at December 16, 1977, the
6 governments were taking the position, both Federal
7 and Provincial, that Metis weren't rights bearing
8 people, because they made Constitution changes in
9 1982, but we were rights bearing people at that
10 time.

11 So the Northern Flood Agreement
12 stemmed that the Hydro and the Province would sit
13 down with bands and negotiate impact of those
14 bands and settle with those bands, and the Metis
15 would just watch. And that was the position of
16 the NFA, and it carries and haunts the system. I
17 raised that with the president and I raised that
18 with the Minister, and I will be raising it again
19 with him tomorrow, that NFA itself may be the
20 force of the tunneling system that operates at
21 Hydro, that forces them not to look at the Metis
22 community or MMF.

23 Last night we were here too, we talked
24 about showcasing evidence of, is there really a
25 fair and equitable process happening when it comes

1 to financial contributions by Hydro to ensure that
2 they do their due diligence? And I think
3 Mr. Bedford and I had a jousting match regarding
4 how much money was paid to First Nations, and I
5 said 2 million, he said, no, 1 million, we went
6 back and forth. But I had the privilege of going
7 to -- getting a document just to see numbers, that
8 was Freedom of Information, and actually it was
9 2.3 million that was paid in total to the five --
10 one, two, three, four, five -- six entities in
11 total for Bipole III consultations. Subtract the
12 441 for the Metis from 2010, these are 2011/12,
13 which I will leave for the Commissioners to look
14 at, the total amount will be about 1.9 million
15 spent on First Nations on consultations of Bipole
16 III. But when you look at it -- and this is the
17 point, Mr. Chair, if I can, I tried, and I hope I
18 did, and if I didn't, I failed if I didn't
19 properly express to you my sentiments about how
20 Hydro looks at it in a singular vision.

21 When you look at Fox Lake Cree Band,
22 for example, and I use this number here, they were
23 paid total \$798,596.95 for consultations on Bipole
24 III. And Hydro said, well, we gave the Metis the
25 same thing, we give you \$441,250 is what the

1 number is. But what they are not showing the
2 Commissioners is that Fox Lake is one band. I'm
3 serving maybe 30, 40, 50 communities that are
4 going to be affected in that Bipole III diversion.
5 So, in fact, maybe up to 80 communities, but I'm
6 only get 441.

7 I'm not here to argue about the money,
8 but I want to show you that there is not a balance
9 here at all. Far from the truth of a balance.
10 Because if I did the same thing that they want to
11 go in by a tunneling system of one community, I
12 would have to have probably 798,000 to every
13 community, and bring in my 60 communities and
14 times that by 798,000 per community. It would be
15 a nightmare for Hydro, it would be nightmare for
16 our economy, it would be crazy, it would be
17 ludicrous.

18 So in my view I offered them probably
19 the most equitable way of how we do business. And
20 instead, we seem to have hit a brick wall.

21 I don't blame Mr. Bedford sitting here
22 or his legal team, nor do I blame the president of
23 Hydro. I indicated to Mr. Scott, I think the
24 challenge lies is your policies are having a
25 hinderance to this process. But your policies are

1 going to cost everybody a lot of time, a lot of
2 money and a lot of litigation.

3 There is no doubt in my mind, at this
4 point in time, my people have told me point blank,
5 litigation must happen -- if this thing continues,
6 and they did not consult with us, they did not
7 tell us the effects of the damage that's going to
8 happen to our generation to come and the
9 generation after, if this damage is so great and
10 you sit by and watch it happen, then we want you
11 to stop it.

12 Now, what they are asking me to do is
13 stop a \$3 billion initiative, 3 billion. It goes
14 against the principles of my belief in the economy
15 sense of supporting Hydro because of the magnitude
16 of its size, because it is good for Manitoba. But
17 it doesn't go against my principles of protecting
18 my people, which comes first at all times.

19 I say to myself, and I told Mr. Scott,
20 we could have maybe resolved this. Maybe we could
21 have came before this Commission and we could have
22 done consultations. But instead when you asked us
23 to put a budget together, which we did, because it
24 is not money wasted on us, it is those experts
25 that cost money. You know what experts cost, they

1 cost a lot of money. To get those people in to do
2 a proper job and to consult with all of those
3 communities that are going to be affected, it
4 costs 153. I said, you threw back a \$10,000 --
5 this is what you are willing to pay to talk to 22
6 communities, whatever you can afford out of
7 10,000. I was thinking to myself, you are talking
8 about 3 billion. You are playing nickels and
9 dimes or pennies with our province? Tell me where
10 that makes sense?

11 So there is so much effects that are
12 going to occur here, Mr. Commissioners. My people
13 are going to be affected, there is no question
14 about it. The Hydro dams are scaring -- the
15 transmission lines are scaring my people already.
16 They are saying that it is going to affect the
17 wildlife. We have already made -- I'm trying to
18 think the proper language -- concessions on stop
19 moose hunting in those particular areas. We have
20 done that. Nobody else would, we were first at
21 the bat, and we came to show that conservation is
22 number one to us. Now we see that this is going
23 to affect our moose habitat, without question, our
24 deer, our wildlife. And it is going to definitely
25 affect our berries, our opportunities to

1 continue -- people are already fearful right now
2 because there are complaints that our blueberries
3 are a lot smaller. They don't know if it is the
4 environment that has changed on us or what is
5 happening.

6 Now, with the transmission line
7 coming, we are hoping that Hydro can give us
8 assurances with any study or possible idea that
9 the damages won't be there, and here is why, so we
10 can tell the people, you know, this is something
11 that we can trust because here is evidence. But
12 we have nothing to go back to, I have nothing to
13 go back to my people, Mr. Chair. I have nothing
14 to show them that can guarantee me, I can show
15 them to trust me as their leader, to trust me in
16 confidence to support this development. I have
17 nothing. And for what?

18 You gave us an opportunity,
19 Mr. Commissioner, all four of you gave us a
20 chance, go back and fix this problem. We can
21 point fingers back and forth all we want. At the
22 end of the day, it wasn't done. But I came here
23 personally as the president to tell you one phone
24 call could have solved this by Hydro phoning me.
25 It would have been done. If they want to blame

1 us, they can blame us all they want, but I have
2 got evidence to defend myself too. But at the end
3 of the day, it did not happen.

4 Now they are going to come before you
5 and say support us to move ahead through the Clean
6 Environment Commission, forget the Metis, they
7 will be the consequence of our actions, they are a
8 small minority, the effects won't be that great,
9 ignore them.

10 I asked my lawyer today, has there
11 ever been a Clean Environment Commission body that
12 has ever ruled against Hydro? I don't know. And
13 he said I don't think so. I said, I would love to
14 know, I wish we knew that answer, because I would
15 love to tell the Commissioners, maybe you will be
16 the first body to tell these guys you can't just
17 do what you want anymore. It is not right, it is
18 not fair, you are a multi-billion dollar company,
19 and if you can't figure out to deal with people in
20 my province, including yours, in the Province of
21 Manitoba, then you have a problem.

22 You guys have been at this game a
23 long, long time. Hydro is not a beginner, it is
24 not brand new, they have been at this game a long,
25 long time.

1 When you ask them, did they consult
2 with First Nations, they will give you numbers and
3 they will give you a process. They can snap their
4 fingers and it will be done. When it comes to us,
5 ask them that same question. I guarantee they
6 can't. I get less than 1 per cent of the total
7 budget they have spent on First Nations, and
8 that's secondary, but it just shows you where the
9 mindset is for Hydro when it comes to the Metis
10 people. We are just the casualties of war, and I
11 use that as an example. Because it is just
12 unbelievable that this can happen in this
13 beautiful province that I love and believe in so
14 much.

15 I think that Hydro had the chance to
16 fix -- you gave us that chance and they have not
17 fulfilled that. I'm asking this Commission, this
18 is going to affect my people greatly, and I'm
19 asking you to say no to the environmental -- give
20 us a chance again, tell them to go back to the
21 drawing board. This is worth \$3 billion. If they
22 can't fix a small problem, I don't know how they
23 can move forward with the process. Because
24 without question, if this thing moves ahead, you
25 will see me in a courtroom. And I do not want to

1 go to a courtroom, I have been in a courtroom long
2 enough, too dam long to be honest with you. And
3 I'm tired of fighting in the courts all of the
4 time when common sense prevails.

5 I think the opportunity is there, I
6 told that to the Premier this morning, I said I
7 think you have a chance, Mr. Premier, you and I
8 can fix this problem. Let's find a solution, the
9 solutions are there. But if Hydro continues to
10 just ignore my people and disrespect them, we will
11 fight to the end. We will protect our people.

12 And we know without question in this
13 room, and they admit it themselves in their
14 evidentiary documents, some of the stuff they put
15 forward, that there is going to be effect,
16 guaranteed, without question. Guess whose people
17 is going to be affected -- right here, our people.
18 Why should our people keep on paying the
19 consequence for this? It can not happen,
20 Mr. Commissioners, I plead with you, I ask you to
21 bring forth the position to say no. You will go
22 back, you are a multi-billion company that has
23 been around for a long time. You should have the
24 solutions, you have the ability, you should
25 definitely have the tools to do consultation. If

1 you don't, then you guys are in trouble. Then our
2 economy is in trouble and our business is in
3 trouble.

4 I close my comments with that. And I
5 state again for evidence, they spent 223 million
6 on First Nations people since 1999, and they spent
7 Metis, 2 million, 3 million. That shows you
8 numbers, shows you where we sit on the Totem pole.
9 And from our perspective, Hydro needs to be told,
10 you could be the big guy but the small guy has
11 rights too.

12 Thank you, Mr. Commissioner.

13 MR. MADDEN: And I just have a few
14 questions. There is an additional letter. Can
15 you maybe just explain the two letters, the one
16 from February 29th, which I don't actually think
17 was the 29th, I think it was February 28th, unless
18 it was a leap year -- incompetent legal counsel --
19 and the one from March 6th, can you just explain
20 those two letters for the Commissioners?

21 MR. CHARTRAND: February 29th, which
22 is supposed to be February 28th, and March 6th
23 is --

24 MR. MADDEN: March 6th is the letter
25 to Minister Macintosh and Chomiak.

1 MR. CHARTRAND: I may not have it in
2 front of me. I left it in my office. Do you have
3 a copy that I can look at to verify that's the
4 document?

5 Yes. Well, there is two letters, one
6 the February 29th, which, correct, should be
7 February 28th -- it wasn't a leap year -- is an
8 actual response to Mr. Bedford. Mr. Bedford wrote
9 to our lawyer, who in return wrote back and
10 expressed point blank addressing the points that
11 were raised by Mr. Bedford in his letter.
12 Mr. Bedford made certain statements, certain
13 issues, and our lawyer responded back trying to
14 address the segments of our issues and concerns,
15 and trying to showcase that consultations could
16 have happened but here is why it didn't happen.
17 So it gives you that perspective on it.

18 The other one, of course, I wrote is
19 March 6th to both Macintosh and Chomiak, Macintosh
20 is to issue the licence and Chomiak is in response
21 for Hydro. I have indicated to them again there
22 is a serious issue at stake here, there is a
23 serious matter between us and Hydro, and of course
24 which will result in the Province having a role to
25 play, and at both times we believe we need to deal

1 with this as quickly as possible.

2 I have been trying, Mr. Commissioners,
3 as I said, to find a way, our solution to move
4 ahead and support the end project as it may be.
5 But in the meantime, I'm hoping, I'm giving enough
6 reference to a legal precedence, examples of what
7 is out there and what is happening, that the
8 Provincial Government themselves, both would come
9 to the conclusion that there is a problem here and
10 we need to fix it. That's the two letters for you
11 to look at.

12 I also wrote one to Valcourt, which is
13 dated February 27th, 2013. Valcourt is the new
14 Minister responsible for Aboriginal Affairs in
15 Canada that would deal with the Northern Flood
16 Agreement and the situation that's taking place
17 right now in Manitoba.

18 You know what, if I can,
19 Mr. Commissioner, I do apologize, I was going to
20 say my last comment, but I -- we are supposed to
21 be the kings when it comes to Hydro in this
22 country. We dominate that issue of being
23 innovative and creative and being a force to
24 reckon with when it comes to hydro sales and hydro
25 development. I got a copy of the Ontario long

1 term energy plan.

2 MR. MADDEN: I think that there may
3 have been a mistake, I don't think that we
4 distributed the Valcourt meeting, the Valcourt
5 letter, so we will get that out to people.

6 THE CHAIRMAN: I have it.

7 MR. MADDEN: Okay. Perfect. I think
8 those --

9 MR. CHARTRAND: We will make sure I
10 get you a copy. If you want it translated, I can
11 get it translated for you also. Thank you for
12 clarifying that.

13 But if I can, Mr. Chair, I brought
14 Ontario's long term energy plan, I thought I would
15 bring that along just for the Commissioners to
16 look at. I leave this behind, it is a quick
17 document. I will turn to Aboriginal communities.
18 It says here that, in fact, The province of
19 Ontario, regarding new transmission lines, they
20 are committed to meeting the duty to consult with
21 First Nations and Metis communities, in fact they
22 are signing an agreement with the Metis Nation of
23 Ontario, which is my counterpart in Ontario. It
24 goes:

25 "Ontario will encourage transmission

1 companies to enter into partnerships
2 with Aboriginal communities where
3 commercially feasible and where these
4 communities have expressed interest.
5 The government will also work with the
6 OPA to adjust the aboriginal energy
7 partnership program currently focused
8 on renewal energy projects to provide
9 capacity funding for Aboriginal
10 communities that are discussing
11 partnerships on future transmission
12 projects."

13 MR. MADDEN: What page is that on?

14 MR. CHARTRAND: That will be page 49
15 under section 5, Aboriginal communities.

16 So it just tells you a small -- maybe
17 I'm wrong when it comes to my understanding of how
18 Hydro projects are in its mass, but I do brag
19 somewhat about ours in this country, that we are
20 not a fly-by-night little organization, we are
21 quite a big organization. But if Ontario can come
22 up with a policy and a recommendation from their
23 energy plan, I'm sure that Manitoba Hydro can come
24 up with one too.

25 So, as I said, at least in Ontario

1 they are recognizing the Metis. And Ontario does
2 not have a historic community like we do in
3 Manitoba with the Red River Settlement and the
4 Metis people founding this province. Yet we don't
5 have one for Metis in this province, which we
6 don't. Hydro can't produce one either. They do
7 not have -- their idea of sitting down with the
8 Metis is to get around to mayors and council
9 because there has to be a Metis elected somewhere.

10 And that's why I keep on encouraging
11 you to read the Northern Affairs Act. And they
12 know full well that at the end of the day -- as I
13 said, they have been playing that checker game for
14 a long time, and the chess game is coming to an
15 end I hope, where they can't keep on trying to
16 showcase that they actually talked to somebody
17 that happened to be Metis, so they actually did
18 their proper due diligence and consultations.
19 Because at the end of the day, I think they have a
20 responsibility. And let's understand this, I
21 close off again with this, this is a
22 multi-multi-billion dollar company. And if it
23 can't figure out a problem of a small nature of
24 this nature, then there is something wrong with
25 that company, or else it has too much -- they are

1 giving me words today, I was trying to think of a
2 word, trying to be considerate at the same time
3 and respectful to Hydro. But I don't think they
4 are too -- I hope they are not too complacent
5 already -- but just to believe that they do not
6 have to do it anyway because they will still get
7 their licence anyway. Like are they that -- how
8 do I say it, what is the word that I'm looking
9 for -- I will let the Commissioners figure out
10 that word -- but are they that bold to believe
11 that they don't have to worry, even though they
12 know they are not consulting, they will admit to
13 you they didn't consult with us, they can not say
14 they did, but they still think you will give them
15 the licence anyway. And that is what I am saying,
16 I hope you are the first Commission body that will
17 say, no, we are not going to let that happen in
18 our province.

19 So I will leave you that, unless there
20 is more questions?

21 MR. MADDEN: No, that's good.

22 MR. CHARTRAND: Mr. Commissioners?

23 THE CHAIRMAN: I have one or two
24 questions, President Chartrand.

25 You've asked whether the CEC has ever

1 said no to Manitoba Hydro. The answer to that is
2 no, in large part because this is only the second
3 Manitoba Hydro proposal that has ever come before
4 the Clean Environment Commission, Wuskwatim being
5 the first. And that was because of changes to the
6 Environment Act in the late '80s that required
7 this type of a hearing for Hydro projects.

8 I would just like to take you back to
9 the Wuskwatim experience, and you may have to help
10 me with my memory. You said earlier that you are
11 still 12 years away from being a senior citizen.
12 Unfortunately, I have already passed that, so my
13 memory might not be quite as good as yours. But I
14 seem to recall that you made a presentation before
15 the Clean Environment Commission at the Wuskwatim
16 hearings on behalf of Metis, did you not?

17 MR. CHARTRAND: I think I'm getting
18 deaf, I didn't hear your question. I didn't hear
19 myself -- I have a hard time hearing you.

20 THE CHAIRMAN: Did you -- during the
21 Wuskwatim hearings, in fact I believe it was in
22 one of the northern communities, you made a
23 presentation on behalf of the MMF, did you not?

24 MR. CHARTRAND: I'm not sure to be
25 honest with you. My memory is hopefully not going

1 away. If somebody can tell me where, tell me a
2 community and I might get --

3 THE CHAIRMAN: I'm not certain. I
4 think it was either Thompson or The Pas.

5 MR. CHARTRAND: It could have been one
6 of my vice presidents also representing the MMF, I
7 am not sure.

8 THE CHAIRMAN: It doesn't really
9 matter, but what I do recall is that someone, I
10 believe it was you, made a presentation on behalf
11 of the MMF during the Wuskwatim hearings, much the
12 same as you have done this afternoon, just saying
13 that in the opinion of the MMF, Manitoba Hydro had
14 not fully consulted.

15 Now, I don't have the Wuskwatim report
16 in front of me, but I seem to recall that one of
17 our recommendations was that Manitoba Hydro go out
18 and conduct those consultations with the MMF prior
19 to getting into full tilt construction of the
20 Wuskwatim. Do you know if that ever happened?

21 MR. CHARTRAND: I'm trying to reflect
22 back now. No disrespect, I'm trying to reflect
23 back. We met on so many occasions on this matter,
24 Brennan and myself. At the end I'm sure it was
25 clearly -- I think after the effects is when we

1 continued to move on the consultations. And there
2 was discussions, there was meetings, but it was
3 lead more or less by the president himself. So
4 there was definitely dialogue that took place.
5 And we came to an arrangement and agreement how we
6 could move ahead supporting each other, but at the
7 same time learning from this lesson. That I
8 remember clearly. And Mr. Brennan can verify that
9 if you call him in as a witness.

10 We did indicate that this will be a
11 lesson learnt.

12 Because if you will recall my comments
13 last time, in this hearing, I expressed, I did
14 speak a little bit about Wuskwatim. And I did
15 talk about the arrangement made with Hydro is that
16 they consulted already with the First Nations.
17 And the deal of partnership, and I use this
18 Ontario as an example of creating one, that deal
19 was already -- everything was given away, there
20 was nothing left there to sit down and say, talk
21 about partnership after, how do we work together,
22 is there ways that we can support each other
23 respecting economy effects that we can probably
24 assist on, given the fact that we are affecting
25 your territory or affecting your usage of the

1 area, we can compensate it different ways of jobs
2 and opportunities.

3 And so that discussion, I know clearly
4 with the president, is that we would learn from
5 that. That would not happen the next go around.
6 And the next go around is here and it did happen
7 again. We are not consulted again. And that's
8 why I get so, I would say lost in such a -- we are
9 talking about a multi-billion dollar agreement
10 here, multi-billion dollar expense, and yet we
11 seem to be caught in a little cycle of, we don't
12 have to consult with the Metis people. I don't
13 understand that for the life of me. And if
14 somebody can explain to me why they don't have to
15 consult with me, and it makes sense, then I will
16 concede and walk away. But there is nothing that
17 I see or can come to grips with where my people
18 are not as important as anybody else in this
19 province. I just can't understand it.

20 THE CHAIRMAN: By any chance did you
21 and Mr. Brennan put these lessons that you are
22 going to learn down on paper? Are they in an
23 exchange of letters or --

24 MR. CHARTRAND: What we did is that
25 one of the things that we talked about, that was

1 the beauty of it, some of the changes in the
2 agreements afterwards at the bureaucratic level,
3 but I expressed to Scott himself, and Scott liked
4 what I just expressed. I said we hired a liaison
5 officer, so if there are issues that pertain to
6 how do we move ahead, one of the things that we
7 are supposed to do is that a liaison officer would
8 work with us, and work with the communities to try
9 to coordinate a process. But that's not
10 happening. In fact, Hydro's position now is that
11 the coordinator position may be something else.
12 And we are saying no, no, that was the entire
13 discussion that Bob and I had, was that the
14 coordinator would be used to assist us in ensuring
15 that the communities that could be affected could
16 be easily more collectively put together so we can
17 address it in a more effective and financial
18 expedient matter. So that was the issue.

19 In fact, I just spoke with Hydro on
20 this issue on our liaison officer. We haven't got
21 no funding for it yet. This is now March, my
22 funding is supposed to be April. As I said, we
23 are talking a multi-billion dollar company and
24 they haven't given my \$100,000 for the full
25 position yet for this year, I am paying for it.

1 So that's okay, I told them if you don't want to
2 give me it, then so be it. But the point at the
3 end of the day is that we are supposed to start
4 creating a new model.

5 I was invited, if I can, Mr. Chair, I
6 was invited by Brennan to participate in the
7 writing of procurement strategy. And that didn't
8 happen. I understand Hydro is rewriting some of
9 their Aboriginal portfolio inside there, and I
10 was -- Bob advised me very clearly that I would be
11 part of that process, to help with my insight, and
12 what could be a better opportunity for ourselves
13 and Hydro.

14 So we seem to have been pushed out.
15 And I think it is because there is -- either they
16 don't want to understand, or get out of the system
17 that they are in, or the process that they are
18 accustomed to, or they just don't want to -- they
19 can't get out of this mentality that Metis are
20 rights bearing people and are also as important as
21 First Nations. I don't know what it is. Only
22 Hydro can answer that question why it is. In
23 fact, I was told by the president that he has to
24 get direction from the province.

25 So I told that to the Premier today.

1 I said my understanding from my last meeting I
2 said with Mr. Thompson is that they are waiting
3 for your direction. He said, I didn't know that,
4 let me find out, and he is going to get back to me
5 on that.

6 So why the two are talking and waiting
7 for each other to tell who to do what when it
8 comes to us, I don't understand that. I'm sure
9 they are not waiting to ask what they do with
10 First Nations.

11 So does that tell you they have a
12 process? Obviously they don't if they are still
13 both waiting for each other to tell each other how
14 they deal with the Metis people. Because they
15 don't know how to deal with us, they have not
16 figured out -- in my view they don't want to
17 figure out how to deal with us.

18 THE CHAIRMAN: You've asked us today
19 to say no to Manitoba Hydro. I'm obviously not
20 going to make a decision on that here, now, but is
21 there a middle ground anywhere, do you see a
22 middle ground?

23 MR. CHARTRAND: Well, I always
24 believe, and my record shows that for the last 17
25 years that I have been president, my record shows

1 that I believe there is always a way to seek an
2 answer. And I have always believed that there is
3 a positive instead of a negative. And there
4 probably is a way. I just can't say off the top
5 of my head how, because I don't know if they -- I
6 think one way maybe is for the Clean Environment
7 Commission to say, okay, we are going to give you
8 another chance Hydro, go back and do it. Don't
9 come here and think you are going to just ignore
10 the Metis people, and you are going to put us in a
11 position where we have to choose your
12 multi-billion company over a small little bunch of
13 Metis half breed communities out there. It is not
14 going to happen. That is the issue.

15 I think there is a solution, but I
16 think the solution will be -- I don't have the
17 power myself personally at this point in time,
18 unless the courts help me, to stop Hydro and to
19 ask them to do the right thing. But I think the
20 Clean Environment Commission has that power right
21 now to say, no, you did not do your job, you had
22 so much opportunity, so much time, and yet you
23 didn't do it. So if you think you are going to
24 come by us and get a licence, you are not getting
25 it. Go do it and come back and we will probably

1 give you it.

2 I told this to the president, and I
3 echo it here loudly and clearly for everybody to
4 hear me, I said I will be your biggest ally,
5 because I believe in it. But I said if you keep
6 on ignoring my people's rights and concerns, you
7 are going to see me as your enemy, not your
8 friend. I would rather be a partner than an enemy
9 to be honest with you.

10 THE CHAIRMAN: If we were to make some
11 recommendations about Metis consultation, what
12 boundaries would there be? I mean,
13 consultation -- I mean, just engaging in
14 consultation doesn't necessarily sort of define a
15 beginning and an end, or the "what" that should be
16 consulted about. How would we set some limits on
17 it? I'm not saying only with the Metis, but with
18 any group of people, consultation can go on
19 forever. How would we define it or put some
20 limits to it?

21 MR. CHARTRAND: But consultation
22 shouldn't go on forever.

23 THE CHAIRMAN: Of course not.

24 MR. CHARTRAND: I think in my view
25 there is processes and mechanisms that are already

1 in place that set the principles of how
2 accommodations and consultations work. And
3 definitely there has got to be not just consulting
4 with them, I think the people have a right to know
5 before they move ahead. And if you do
6 consultations, and I think I spoke last time -- am
7 I correct, unless somebody stop me -- I spoke on
8 Victory Nickel. And they did consultations and
9 they went to the communities, they listened to
10 people's concerns. I have never got a response
11 back as to how they addressed those concerns.
12 People had concerns about how does it affect them,
13 how does it affect this, how does it affect that?
14 There has never been a written response back, this
15 is the solution, this is the answer, hopefully
16 this will comfort you. And I think that's going
17 to be the essential piece that has to happen.

18 For example, I'm not going to go into
19 detail, Hydro will say you are wrong, we are not
20 going to spray. But spraying has been talked
21 about, what if they start spraying and affect our
22 berries? I can't tell them they are not going to
23 spray. Hydro can say, well, we are not going to
24 spray right now, but what is stopping them that
25 they won't? You know, and how it affects the

1 animals at the same time? But that is not the
2 issue, I am just giving it as an example.

3 So I think what is paramount here, if
4 Hydro were to be told, you know, this is a
5 constitutionally protected people, and there is a
6 system and there is a government body that sits
7 there, and they sign self-government agreements
8 with the Province of Manitoba which the Crown
9 reports to, they sign self-governments agreements
10 with the country of Canada, which at the end of
11 the day we are all Canadian citizens. There is a
12 Supreme Court ruling that recognizes them, there
13 is court rulings like the Goodon says the MMF --
14 in fact, I gave you guys this evidence last time,
15 the Aboriginal Justice Inquiry, and that's strong
16 evidence that you guys have got there, the
17 Aboriginal Justice Inquiry point was very clear,
18 Hydro must consult with the Manitoba Metis
19 Federation. It says that in black and white. And
20 if I recall 100 per cent right now, I can back it
21 up too and get the documentation if you want. It
22 was very clear, and I can remember Mr. Justice
23 Gord Mackintosh, who is now the Minister that is
24 going to be responsible for this, when he pulled
25 it out of the library shelf and said, it is still

1 in plastic, we are going to -- we tore off the
2 plastic, every recommendation in the Aboriginal
3 Justice Inquiry will be supported by my
4 government, and it was ratified by his government.
5 It was also further echoed by Minister Robinson
6 and the Premier himself.

7 So if you look at that very point
8 blank, it says to consult the Manitoba Metis
9 Federation. Why is Hydro still delaying or
10 denying that they have to do that?

11 I said is that because they believe
12 they don't have to, because they will still get
13 their licence anyway? I don't know.

14 From my view, I think the simple way,
15 Mr. Commissioners, is to make them do it. And
16 there is processes that can easily be drafted, and
17 there is a solution here, and it is not going to
18 be endless, it is not going to be forever, and it
19 is not going to be costly. I am telling you that.
20 Like, for example, I said what, about 20
21 communities for 153,000. I could have had that
22 done for blueberry patch already, I could have had
23 it done. I could have brought here a document for
24 this Commission, for this body to look at.

25 But instead they try to nickel and

1 dime and say, we will give you 10,000 to talk to
2 your communities. How can I now as a leader, and
3 if you were in my shoes, how can you, one of your
4 Commissioners if you were sitting in my place, go
5 tell the 1800 communities that use this place,
6 well, we couldn't consult with you, we talked with
7 Duck Bay and Camperville and apparently they are
8 okay with it, so you guys better be okay with it.

9 It may not be, they may have different
10 issues. One may be medicinal, one may be berry,
11 one may be hunting, one may be forest. So I have
12 got to have a balance of making sure the people
13 have a right to know. They pay taxes, they are
14 hard working people, they have that right.

15 And if Hydro can't, for the life of
16 me, figure it out, as I said, a multi-billion
17 dollar company can't figure it out, then that
18 company has got a problem. If I was in their
19 shoes, I would have fixed this problem before I
20 came in here, I guarantee that, without question.

21 THE CHAIRMAN: Do you have any
22 questions? Thank you.

23 MR. CHARTRAND: It rests on your
24 shoulders, Mr. Chair and Commissioners. I do
25 plead on behalf of my people, I hope that this

1 environmental body will -- not to try to hurt
2 Hydro in any disrespectful way -- will say no.
3 Because based on the very fabric of what we stand
4 for as Manitobans and Canadians, there is a law,
5 there is processes, there is a constitution, there
6 is guidances that have taken place, and Hydro is
7 not exempt from it no matter how big they are, and
8 they should not get away with this. And if they
9 don't believe that they have to consult with the
10 Metis people, and they believe they can just walk
11 around us just because we are part of the
12 casualties of war, because we are a small
13 minority, then it will be a crying shame in this
14 Province of Manitoba. Because I fight too hard
15 and I believe too hard. My people went to war by
16 the thousands sacrificing themselves to protect
17 Canada even though we got mistreated. In 1960,
18 you buried my town, Grand Rapids. And yet you
19 look at the veterans from Grand Rapids that went
20 there. They weren't hesitating to protect this
21 country and protect this province. But if they
22 don't get that same respect here and now in the
23 new millennium, then we have a problem.

24 I think Hydro has evaded its
25 responsibility and it should be held accountable

1 for that. As I said, if a multi-billion dollar
2 company can't solve this, then I don't know how
3 they can get the licence to move forward. They
4 have a serious personal problem inside. I rest my
5 case.

6 Again, I thank you. Thank you for
7 your time. I do appreciate the leniency to allow
8 me to speak as long as I have.

9 Again, thank you for your kind words.
10 And it is a great day for Metis people and our
11 time has come.

12 THE CHAIRMAN: We will probably give
13 you a chance to speak a little bit more, because
14 this is part of a presentation, Manitoba Hydro
15 does get an opportunity to ask a question or two
16 of you.

17 Mr. Bedford?

18 MR. BEDFORD: Good afternoon,
19 Mr. Chartrand.

20 MR. CHARTRAND: Good afternoon.

21 MR. BEDFORD: We, of course, first met
22 on November 14th.

23 Mr. Sargeant started us off this
24 afternoon by acknowledging a very important
25 decision that was issued by the Supreme Court of

1 Canada on Friday, and the acknowledgment of course
2 included recognition of a lot of hard work and
3 persistence on the part of you and the Manitoba
4 Metis Federation and Mr. Madden. So I would like
5 to expand on the acknowledgment that Mr. Sargeant
6 gave on behalf of the Clean Environment
7 Commission, and I speak I think safely not just on
8 behalf of my colleagues from Manitoba Hydro, but
9 on behalf of everyone in the room here today when
10 I observe that I think it a good thing if the
11 Supreme Court of Canada has now helped us all to
12 see through the glass more clearly than in earlier
13 times.

14 A very successful American once said,
15 and I quote:

16 "If there is any one secret of
17 success, it lies in the ability to get
18 the other person's point of view and
19 see things from that person's angle as
20 well as from your own."

21 Let's see, Mr. Chartrand, if I
22 understand things from your angle or from your
23 eyes.

24 First, I understand that you and the
25 Manitoba Metis Federation would like to be

1 recognized as the government of the Metis citizens
2 of Manitoba, be so recognized by my client,
3 Manitoba Hydro, and by the Province of Manitoba;
4 is that correct?

5 MR. CHARTRAND: Say it again one more
6 time?

7 MR. BEDFORD: You and the Manitoba
8 Metis Federation would like to be recognized as
9 the government of the Metis citizens of Manitoba,
10 by my client, and by the Province of Manitoba?

11 MR. CHARTRAND: We are the government
12 of the Metis people of Manitoba, whether you
13 recognize it or not, we are.

14 MR. BEDFORD: And a concern you have
15 is a belief that to this date you and the Manitoba
16 Metis Federation, and the people that you
17 represent, have largely been ignored. Have I got
18 that correct?

19 MR. CHARTRAND: Say again?

20 MR. BEDFORD: That you believe that to
21 date the people that you represent, you yourself
22 as president of the Manitoba Metis Federation,
23 have largely been ignored, particularly by my
24 client?

25 MR. CHARTRAND: Yes.

1 MR. BEDFORD: And further that you
2 believe to date that that failure to engage with
3 the Manitoba Metis Federation and with you shows a
4 lack of respect on the part of Manitoba Hydro?

5 MR. CHARTRAND: Are you saying that I
6 say that Manitoba Hydro has lack of respect for
7 MMF?

8 MR. BEDFORD: Yes?

9 MR. CHARTRAND: Yes.

10 MR. BEDFORD: And you believe that one
11 of the origins of the lack of respect is the
12 failure on the part of my client, Manitoba Hydro,
13 to acknowledge the collective rights of the Metis
14 people?

15 MR. CHARTRAND: Yes.

16 MR. BEDFORD: And further you believe
17 that the Northern Flood Agreement should be
18 amended to include as a signatory the Manitoba
19 Metis Federation?

20 MR. CHARTRAND: Well, if there is a
21 process available for that, I definitely would
22 like to look into it.

23 MR. BEDFORD: Now, the items that I
24 have just gone through, I know and you know are
25 not all of the issues, but can I fairly conclude

1 that they are the key objectives?

2 MR. CHARTRAND: Um-hum, part of the
3 key objectives. Remember that Hydro is not only
4 one aspect, Bipole III is just one of many that's
5 coming, and many have passed.

6 MR. BEDFORD: Now, let's look at the
7 other person's angle for a moment, the Manitoba
8 Hydro point of view. And I will remind you that
9 when you were here on November 14, 2012, you asked
10 us all, I know rhetorically and I quote from the
11 transcript:

12 "Why does Hydro have a difficult time
13 coming to a conclusion to recognize
14 our government?"

15 And also on November 14, you told us that you
16 would love to know the strategy of Hydro but did
17 not know it.

18 So I'm going to suggest to you that
19 this is your lucky day and your ship has indeed
20 arrived. And with your assistance, we will try
21 and make some progress in understanding the
22 Manitoba Hydro angle, the other person's point of
23 view.

24 Firstly, the obvious, you know of
25 course that my client, Manitoba Hydro, is a Crown

1 corporation, correct?

2 MR. CHARTRAND: Yep.

3 MR. BEDFORD: And you, like most
4 Manitobans, know that every year the business and
5 the expenses and the ledgers of Manitoba Hydro are
6 subject to a review by a committee of the
7 Legislature of the Province; correct?

8 MR. CHARTRAND: Yep.

9 MR. BEDFORD: And also you and many
10 Manitobans know that every several years, again
11 the business and the expenses of Manitoba Hydro
12 are minutely scrutinized by the Public Utilities
13 Board; correct?

14 MR. CHARTRAND: Yep.

15 MR. BEDFORD: And you know that my
16 client is the subject of frequent media attention?

17 MR. CHARTRAND: Yeah, lately I have
18 seen a lot of it.

19 MR. BEDFORD: And do you know also
20 that my client is the subject of interest from
21 independent organizations like the Canadian
22 Taxpayers Association?

23 MR. CHARTRAND: Say that again, are
24 subject to what?

25 MR. BEDFORD: Subject to the scrutiny

1 and attention of independent organizations like
2 the Canadian Taxpayers Association?

3 MR. CHARTRAND: I think they are
4 subject to all -- I myself am a taxpayer, so I
5 think I have the right.

6 MR. BEDFORD: And of course, Manitoba
7 Hydro, being a Crown corporation, is subject to
8 Freedom of Information legislation?

9 MR. CHARTRAND: Yep.

10 MR. BEDFORD: So would you agree with
11 me that what you and I have just worked through is
12 a description of a corporation that has a culture
13 geared to accounting to the public, because it's
14 every day in the public eye and it is subject to
15 all of those processes that I described?

16 MR. CHARTRAND: No different than
17 mine.

18 MR. BEDFORD: So whatever agreements
19 you and your colleagues at the Manitoba Metis
20 Federation might seek to enter into with Manitoba
21 Hydro, it will be well advised in approaching the
22 negotiation to be sensitive to Hydro's sensitivity
23 about public scrutiny? Correct?

24 MR. CHARTRAND: I guess it would be a
25 mutual respect.

1 MR. BEDFORD: We can safely and
2 logically conclude that part of Manitoba Hydro's
3 strategy in dealing with the Manitoba Metis
4 Federation, or probably with anyone else, will in
5 part be based upon the facts of its public life
6 that we just worked through, the facts being all
7 of the public attention that it is subject to;
8 correct?

9 MR. CHARTRAND: Well, it depends on
10 how you are going to use that question. Because
11 in my view, I think, Mr. Bedford, it should
12 resonate its historical coordination of how it
13 actually has evolved and worked with others. And
14 I think it would quite easily be able to come to a
15 conclusion as to how it has not worked with the
16 Metis people. Continue.

17 MR. BEDFORD: Now you have alluded to
18 them, but we should pause for a moment and
19 recognize, of course, that Manitoba Hydro has
20 existing relationships that include contractual
21 relationships with a number of First Nations;
22 correct?

23 MR. CHARTRAND: Well, I know only
24 whatever I can -- obviously I have not gotten
25 every agreement from Hydro on the First Nation

1 agreement from you directly. The only thing that
2 I have been able to see is what others have been
3 able to extract from Freedom of Information. So
4 whether it is made public, I don't know where it
5 is. If you have it, I have not seen them.

6 MR. BEDFORD: Well, many of the
7 agreements, I can tell you, are on the Manitoba
8 Hydro website where they are available for the
9 public to read. But an example of such a
10 relationship would be Manitoba Hydro's
11 relationship with the Tataskweyak Cree Nation;
12 correct?

13 MR. CHARTRAND: I can't say correct
14 because I don't know that, I have not seen it.

15 MR. BEDFORD: You know, of course,
16 that the Tataskweyak Cree Nation is also a
17 signatory to the Northern Flood Agreement?

18 MR. CHARTRAND: Okay.

19 MR. BEDFORD: Another example of such
20 a relationship would be with York Factory First
21 Nation?

22 MR. CHARTRAND: I see you gave them
23 20 million. Okay.

24 MR. BEDFORD: They, of course, are
25 also a signatory to the Northern Flood Agreement?

1 MR. CHARTRAND: Okay.

2 MR. BEDFORD: A further example would
3 be Fox Lake Cree Nation, a First Nation that's
4 appeared before this particular hearing?

5 MR. CHARTRAND: Yes, you gave them 40
6 something million, yep.

7 MR. BEDFORD: So if we are trying to
8 understand the strategy of Manitoba Hydro, one
9 thing that we should take into account in our
10 planning and deliberations about the other
11 person's point of view is that whatever agreements
12 Manitoba Hydro is asked to enter into with the
13 Manitoba Metis Federation, well, those agreements
14 with the Manitoba Metis Federation are going to
15 have to be sensitive to the existing contracts and
16 relationships Manitoba Hydro has with other First
17 Nations, are they not?

18 MR. CHARTRAND: You will have to
19 explain that a little bit more to me.

20 MR. BEDFORD: Well, my client, if we
21 are trying to understand its strategy, we can
22 safely conclude will not be able to enter into
23 contracts with the Manitoba Metis Federation that
24 contradict or are inconsistent with commitments
25 that it has with, for example, Tataskweyak Cree

1 Nation, Fox Lake Cree Nation?

2 MR. CHARTRAND: Well, I think then you
3 have a major problem, because what you have then
4 just described is that, given the fact that you've
5 done all of your negotiations with the First
6 Nations peoples and recognized the governance of
7 the First Nations people and signed with them
8 directly, then they have taken, of course,
9 positions of their traditional lands, which could
10 be all by now the entire Province of Manitoba,
11 which then would leave me to state that any effect
12 in signing with me would have a contradictory
13 effect with the First Nations. So really, at the
14 end of the day, you are saying, sorry, we already
15 signed with all of the bands, they already took
16 all of the land, you have got no place to go.
17 That's really what the bottom line would end up
18 with your question.

19 MR. BEDFORD: Well, to continue in the
20 spirit of trying to understand the other person's
21 point of view, Manitoba Hydro point of view, I
22 will remind you that an affidavit that you swore
23 was filed in this hearing on November 14, and
24 there is a paragraph in that affidavit where you
25 tell us all that the Manitoba Metis Federation

1 currently has a membership of "approximately
2 40,000". Do you recall that being in the
3 affidavit?

4 MR. CHARTRAND: You are talking about
5 the affidavit in the Goodon case?

6 MR. BEDFORD: No, it is an affidavit
7 that you swore that's been filed in this
8 proceeding.

9 MR. CHARTRAND: Yes, 55,000 now
10 registered adults, registered at the Metis
11 Federation.

12 MR. BEDFORD: There hasn't been an
13 increase in your membership since November 14,
14 2012, of 15,000?

15 MR. CHARTRAND: Well, let me correct
16 for the record, if somebody put 40,000, I let that
17 slip. I do apologize. There was 55,000
18 registered voters that are 18 or over at the
19 Federation. In fact, I just echoed that to your
20 president several weeks ago.

21 MR. BEDFORD: I would like to be fair
22 with the witness. Would you like to look at the
23 affidavit?

24 MR. CHARTRAND: I will look at the
25 affidavit. If it says 40,000, it is obviously a

1 mistake. But hypothetically, 40, 50, so work
2 those numbers. If my lawyer put 40,000, he was
3 supposed to put 55, then I will talk to him later.
4 He had problems with numbers, he put February 29th
5 as a date and it is not a leap year. Okay,
6 continue.

7 MR. BEDFORD: I had occasion on the
8 weekend to read your affidavit, and I note that
9 also on the record you repeated the 40,000 number.
10 So it appears twice in the evidence on November
11 the 14th, 2012.

12 I also had occasion recently to look
13 at some Statistics Canada information, and I will
14 summarize for you what I learned from looking at
15 it. And that is that in 2006, according to
16 Statistics Canada, 72,000 Manitobans indicated
17 that their heritage was Metis. There is
18 additional information that's been published by
19 Statistics Canada that indicates that the Metis
20 population of Manitoba is expected to grow after
21 2006 at the rate of 3 per cent per year. So I
22 calculate that as of this year, 2013, there are
23 about 90,000 Manitobans of Metis heritage who
24 declare themselves to be Metis. And having
25 understood that the membership currently of the

1 Manitoba Metis Federation was 40,000, I could see
2 that your current membership is something less
3 than 50 per cent of the Metis citizens in
4 Manitoba.

5 So returning to trying to understand
6 the other person's angle or point of view, when it
7 comes to dealing with Manitoba Hydro, if you are
8 at the Manitoba Metis Federation, you, maybe me as
9 well, are going to have to find a way to convince
10 Manitoba Hydro that the Manitoba Metis Federation
11 is more than a representative body, but a
12 government of the Metis people, notwithstanding
13 that there does appear to be a significant number
14 of Metis citizens in Manitoba who are not members
15 of the Manitoba Metis Federation, and accordingly
16 I conclude and suggest to you, do not vote in
17 elections of Manitoba Metis Federation and
18 presumably do not directly benefit from the work
19 and agreements negotiated by the Manitoba Metis
20 Federation.

21 MR. CHARTRAND: Let me share with you
22 something. And this is where I think Hydro has
23 now demonstrated their true lack of not
24 understanding the Metis government. Firstly,
25 statistically, let's use 40,000, I can use 55, and

1 I can prove that, but let's use 40,000. My lawyer
2 made a mistake, let's use that number.

3 Statistically, if you knew the
4 Federation you would know that's all adults, all
5 40,000 are adults. Statistically, the 72,000 that
6 you are using, that's children and adults. So if
7 you want to use statistical numbers, you should, I
8 encourage you to, maybe that's why you guys are in
9 trouble financially, but if you look at this for a
10 second, statistically, if you look at the amount
11 of children and you use the formula, especially
12 when it comes to Metis and Aboriginal peoples, we
13 have a large population of children, large. So
14 you statistically start looking at numbers, you
15 will give one adult to one child process. And so
16 you will go close to 80 already, or go close to a
17 high of 75,000, but you start looking at, you can
18 not use that -- and I hope the Commissioners are
19 picking this up very quickly -- you can't use
20 Stats Canada numbers of 72,000 and say MMF, you
21 only got 40,000. I'm talking voters, 18 and up.
22 We don't keep statistical of our membership of
23 children. We have a different methodology for
24 that. So Stats Canada can quickly help you with
25 that, Mr. Bedford, that those numbers will be much

1 more.

2 The second part, if you go on the
3 voting, I think 50 per cent of our country
4 sometimes doesn't vote. So I don't know if the 50
5 per cent or not is representative of the amount of
6 government in this country neither. Just the
7 Province of Manitoba statistically, we are lucky
8 if we are past 60 per cent, I don't know what
9 happens to the other 40 per cent then, if they are
10 not represented bodies, if the government doesn't
11 represent them. I don't think so. I think
12 democracy is very clear in this country. And if
13 you have the right to vote, we make sure we have
14 80 ballots, we are the only ones in Canada, let me
15 say, and I was proud to tell the Commissioners
16 last time I was here, we are the only people in
17 Canada that have a ballot box, a democratic system
18 where I as the president, I have to champion
19 myself right across from here to Churchill. I
20 don't have a riding to run in, I run the entire
21 province.

22 So statistically if you look at
23 numbers, that is the worst scenario capability
24 that you can ever use when it comes to whether a
25 government is representative of a body based on

1 the democracy of the total amount of votes.
2 Because then sometimes I think Canada would not
3 have democracy, because less than 50 per cent, or
4 close to less than 50 per cent would not vote.

5 So let's not use those. Statistically
6 you need to get your numbers straight, because the
7 Stats numbers you are using, 72,000 are inclusive
8 of children. And I bet out of the 72, half of
9 children or more.

10 MR. BEDFORD: Well, thankfully Stats
11 Canada was of help to me on this issue. The
12 number, I will remind you, that I'm using is about
13 90,000 because I accept Stats Canada's 3 per cent
14 growth rate. The rate is high, according to Stats
15 Canada, because more and more Manitobans are
16 feeling comfortable in self-declaring their Metis
17 heritage.

18 What I also learned from looking at
19 the Stats Canada material is that in Manitoba the
20 ratio of children to adults is one child to every
21 three adults. So when I took the difference
22 between about 90 --

23 MR. CHARTRAND: Metis children, or
24 Canadian children? Canadian adults or Metis
25 children?

1 MR. BEDFORD: Fair comment. I did not
2 break down and I didn't see the breakdown for
3 number of children in Metis families as opposed to
4 other families, but I worked with what was
5 available.

6 MR. CHARTRAND: I will take you
7 somewhere else, there is five or six kids in the
8 house, but we will go visit that another day. Go
9 ahead.

10 MR. BEDFORD: Well, you will
11 understand that I continue to have a concern about
12 the numbers. But the reason that I raise the
13 numbers with you, Mr. Chartrand, was not to prove
14 whose statistics are correct. The challenge that
15 I think both my client has and the Manitoba Metis
16 Federation has is the challenge of understanding
17 the other side's point of view. And I will
18 suggest to you, see if you agree with me, that one
19 giant step to successful negotiation, and indeed
20 reconciliation, is to understand the other party;
21 correct?

22 MR. CHARTRAND: Well, in fact I agree
23 in a sense that we need to understand each other.
24 But, obviously, you already have a position that
25 you have taken, given your synopsis of what you

1 have just categorized your view, that Hydro takes
2 the position that we are not the representative
3 body for all of the Metis people because all the
4 Metis people don't vote for us.

5 Secondly, you are saying by numbers
6 alone, and you are talking about potential
7 statistical numbers, and I just gave an example
8 where -- thank God I asked the question, is it
9 Metis people that you are talking about
10 statistically? And you said no, because it is not
11 Metis people, three to one ratio, it is non
12 Aboriginal society that, no disrespect, have a
13 lower threshold when it comes to the amount of
14 children versus the Metis. We have large amount
15 of families with large amount of children. But
16 goes back to the reference I think, Mr. Bedford,
17 it is very clear that the Metis understanding by
18 yourselves already has been positioned by
19 yourselves, that we are not the government body,
20 we are not the representative body that you should
21 be speaking to. You already have made that
22 conclusion by just your questions.

23 So that I think maybe stems where the
24 problems lies, that you do not believe that we are
25 a representative body of the Metis people. And I

1 would quickly generate to you a number
2 statistically for the Commissioners here. And
3 these are -- one of the things that I'm good at is
4 numbers, and hopefully I'm better at a bunch of
5 other things. But particularly this one, if you
6 look at the First Nation popular vote in their own
7 reserves, the ratio is sometimes at 30 per cent.
8 And are you telling me that yet you sit down with
9 chief and council and you respect their governance
10 of less than 30 per cent, but you still respect
11 them as a governing body?

12 So it comes to a question, I don't
13 know what formula Hydro is going to be using to
14 come and quantify whether I'm their truly
15 representative elective body of the Metis people.

16 The Supreme Court of Canada can
17 recognize that we have got standing when every
18 government tried desperately through the
19 litigation team to recognize that we are not the
20 right entity that represents the Metis people, and
21 that somebody else should be taking this case
22 forward, unanimously agreed by the highest court
23 of this land.

24 Let me correct you on something else,
25 one more step further. The Goodon case, where the

1 Provincial Government of Manitoba, which you are
2 part of a Crown corporation, is clear, that
3 40,000, I know where the lawyers get it from now.
4 If you look at the Goodon case that took place in
5 Brandon, that was how many years ago, that's where
6 the 40,000 comes from. They must have just pasted
7 that in there. As I said, I'm very good at
8 numbers. That 40,000 was a number that was
9 questioned over and over by the litigation team
10 representing the province in the Goodon hunting
11 case.

12 If you look at the decision made by
13 the judge at the end of the day, it said clearly,
14 without question, the Metis Federation is the
15 representative body of the Metis people in
16 Manitoba. This is a judge. If the law of the
17 land is recognizing us as the official body, and
18 Hydro as the Crown is saying, you don't meet my
19 quantified positions of what represents a
20 representative body, I think that's where the
21 problem then lies, Mr. Bedford.

22 MR. BEDFORD: Let's go back to the
23 question I posed to you when we began talking
24 about the Metis population of Manitoba. I will
25 suggest to you, Mr. Chartrand, that one of the

1 very, very few things that Doug Bedford does
2 reasonably well in life is that he chooses his
3 words very carefully, particularly when I'm
4 working in trials and hearings. So the way I put
5 the matter to you was that we are going to have to
6 find a way to convince, I didn't say to you the
7 conclusion has been formed, that my client is
8 stubborn and not open to dealing with the issue.
9 What I was endeavoring to do was to say that if we
10 want to understand my client's point of view that
11 this is an issue, and we, I said we, not just you,
12 we are going to have to find a way. So part of
13 the message that I would like us all to think
14 about is the importance of listening to one
15 another. And if we are going to be successful in
16 the future, we really do need to work to
17 understand each other's point of view.

18 And when I say understand, can you
19 agree with me that understanding does not
20 necessarily mean that we will agree with one
21 another on all points, but we can try hard and we
22 can succeed in understanding one another's points
23 of view, even though we ultimately may on some
24 issues find, for various reasons, we have to agree
25 to disagree.

1 MR. CHARTRAND: If I can say,
2 Mr. Bedford, I think you have done a great service
3 this afternoon, in the sense of clarifying to me
4 why you have not consulted with me, why you have
5 not consulted with my government on behalf of my
6 people. Which then tells me at the end of the
7 day, I no longer have to prove my argument to this
8 Commission, this body. Obviously by the facts you
9 distinguished just recently in your references to
10 each segment and each category of the election,
11 total amount of votes, et cetera, et cetera, all
12 the way down, that is probably why no
13 consultations took place with us.

14 So when I begged and I pleaded with
15 the Environmental Commission body to say no, or to
16 tell us to take a break and go back and talk
17 again, maybe that leads me to finally understand
18 that there was no consultations, Mr. Chairman.
19 And this goes to show why, because Hydro is still
20 trying to figure out whether we are the true body
21 to speak to. And I think it needs to either go
22 back to the Provincial Government, and maybe
23 that's why Mr. President, Mr. Thompson told me
24 point blank, I need direction from the province.

25 So we are in a very difficult

1 position, obviously. If my government -- let me
2 read something if I can, just for the record,
3 because the question was posed by my friend. And
4 this is the Supreme Court of Canada. "As
5 discussed below, the action advanced is not a
6 series of claims for individual relief, and that's
7 an issue we fight with Hydro, but individuals. It
8 is rather a collective claim for declaratory
9 relief for the purposes of reconciliation between
10 the descendants of the Metis people in the Red
11 River Valley and Canada. The Manitoba Act
12 provided for individual entitlements to be sure.
13 That does not negate the fact that the appellants
14 advance a collective claim of the Metis people
15 based on a promise made to them in return for
16 their agreement to recognize Canada's sovereignty
17 over them. This collective claim merits the
18 allowing the body representing the collective
19 Metis interest to come before the court. We grant
20 the MMF standing."

21 So if the Supreme Court of Canada can
22 recognize that we are the collective body, the
23 true body to represent the Metis people of
24 Manitoba, and a Crown corporation that has a
25 problem based on some statistical formulas that

1 have not been ever properly ever measured against
2 anybody else, but in a sense being used not to yet
3 determine if they should even talk to us yet. So
4 that I think begs the question, as I say, I thank
5 Mr. Bedford for his honesty and his straight
6 forwardness on the issue. It is clear at the end
7 of the day, now I know why Hydro is not consulting
8 with us. I thank you very much for that because
9 it gives me good clarity on decision.

10 MR. MADDEN: Just for the Commission's
11 assistance, that's paragraph 44 of the decision of
12 the Manitoba Metis Federation V Canada, the
13 decision that was released from the Supreme Court
14 of Canada on Friday.

15 MR. BEDFORD: Mr. Chartrand, I will
16 suggest to you that when you and I look back at
17 say the last ten years of agreements or no
18 agreements between Manitoba Hydro and the Manitoba
19 Metis Federation, it is not the best of track
20 records, is it?

21 MR. CHARTRAND: Yes.

22 MR. BEDFORD: And a wise independent
23 person, taking into account that track record, I
24 suggest to you would have no confidence that the
25 Manitoba Metis Federation and Manitoba Hydro are

1 going to reach prompt agreements on matters
2 critical to each of them any time soon?

3 MR. CHARTRAND: I don't agree. It
4 depends on leadership. My door is open. I'm
5 willing to sit down with Mr. Thompson and I'm
6 willing to sit down Mr. Chomiak. Mr. Chomiak can
7 come to a discussion, how do we solve this
8 problem, how do we go over the hill?

9 The challenge I face is that I'm
10 fighting this alone, and I'm hoping that
11 eventually places like this will understand where
12 we are finally coming from, and loud and clear
13 support that it is coming to an end.

14 MR. BEDFORD: And of course, in the
15 last ten years, Manitoba Hydro has not refused to
16 sit down, not refused to meet. There have been
17 countless meetings, correct?

18 MR. CHARTRAND: There has been
19 meetings for sure.

20 MR. BEDFORD: The challenge has been
21 that the meetings have not resolved or met the
22 objectives of either side, have they?

23 MR. CHARTRAND: Say that again, Doug?

24 MR. BEDFORD: The meetings that have
25 taken place have not resulted in agreements that

1 meet the objectives of either the Manitoba Metis
2 Federation, that we went through earlier, nor
3 resolved the concerns of my client, have they?

4 MR. CHARTRAND: No and yes. Because
5 firstly, I think it is unfair to say that Hydro
6 has not been able to sit down and come to terms
7 when they want to. A good example is Summerberry,
8 I raised this last time I was here, Summerberry
9 negotiations that took place. And that was a
10 positive resulted arrangement for Duck Bay and
11 Camperville, who were being told point blank by
12 Hydro that they were not going to be considered as
13 part of the claimant package, and at the end of
14 the day, they did. And it shows if you sit at a
15 table -- and Mr. Brennan and I sat at a table, and
16 we came to a conclusion. His last task, I don't
17 know if you remember correctly, maybe you don't,
18 Mr. Bedford, but his last task he actually -- it
19 was 5:30 at night on his last day of office, he
20 and I finalized the Summerberry, it was a go
21 ahead. So it can be done. Is the willing there?
22 Is the willing there? And that's the real
23 question. And obviously right now, I guess now I
24 understand that the willing is not there, because
25 I'm not seen as the body that should be the true

1 spokesman on behalf of the Metis people.

2 MR. BEDFORD: Turning to the route
3 revisions that have been the subject of last
4 week's testimony and some of this morning's
5 evidence, I understand that your members are
6 fearful because they, in the particular areas
7 where the route revisions are to take place, they
8 have seen a serious decline in moose; correct?

9 MR. CHARTRAND: Say the last part, I
10 missed the last part?

11 MR. BEDFORD: That your members are
12 fearful --

13 MR. CHARTRAND: I heard that, yes.

14 MR. BEDFORD: -- generally about the
15 project, and particularly the route revisions in
16 the areas north of Dauphin, south of the Pas,
17 where the revisions have been assessed, because
18 they have experienced a serious decline in the
19 moose population?

20 MR. CHARTRAND: No, that's just part
21 of -- part and parcel there is -- as I said, you
22 can not look at just one segment of something, you
23 have to look at the holistic component when you
24 are dealing with these kinds of issues.

25 As I said, there are some -- I have to

1 be very cognizant myself, even as the Metis
2 leader, that some people don't hunt, but some
3 people pick berries, some people use it for
4 medicinal, they are all very sectorial needs of my
5 people, and I have to be cognizant of that, it's
6 not just moose. It definitely has an effect,
7 there is a population that's going to be affected
8 in a certain way. But each one uses these
9 particular areas in a different way.

10 There is also cultural and spiritual
11 components built in there. They are talking about
12 where there has been whole graveyards that still
13 exist there. So there is different segments of
14 people's needs and views. That's why I said,
15 consultations are important to get them, to
16 understanding full well so everybody knows how
17 they could potentially be affected, and how they
18 could find a way to mitigate that concern by
19 solving the problem. I would never just say it is
20 just about the moose.

21 MR. BEDFORD: So if there is
22 persuasive evidence that the construction of a
23 high voltage transmission line is going to cause
24 further significant loss in the numbers of moose
25 in these areas, then this project should not be

1 approved, right?

2 MR. MADDEN: Mr. Chairman, I don't
3 understand where these questions are going.
4 Mr. Chartrand wasn't answering questions in
5 relation specific to moose or the thresholds of
6 those issues. I think that the cross-examination
7 should be based upon what he has actually
8 testified about today.

9 THE CHAIRMAN: Fair enough. I think
10 that's a good observation.

11 Mr. Bedford, I was having a bit of
12 trouble with direction as well, so perhaps we
13 might focus on what President Chartrand said
14 before us earlier this afternoon.

15 MR. BEDFORD: Well, I rather thought I
16 was doing that, Mr. Sargeant, given that he said
17 his people, meaning the members of his
18 organization, were fearful about the project, and
19 he explained that the origin of their fear --

20 MR. MADDEN: But I think the issue is,
21 you are asking technical questions. And with
22 respect, Doctor Chartrand knows a lot, but those
23 are issues that we have put forward experts on to
24 talk about those issues. So the idea that you are
25 asking Mr. Chartrand to answer those questions, I

1 just don't see the relevance of it. And he didn't
2 speak to those issues in his direct.

3 MR. BEDFORD: Well, we won't belabour
4 the point. My recollection is, of course, that he
5 did. And my understanding is this is an
6 environmental hearing. We are dealing with route
7 revisions regarding a transmission line corridor.
8 And we have all been told that one of the key VECs
9 in the areas in question is moose. However, as I
10 said, I won't belabour the point beyond that.

11 President Chartrand, at the end of the
12 day our collective motto should be "conservation
13 first, rights second." Do you agree?

14 MR. CHARTRAND: Conservation first,
15 rights second, yes. And I will only agree for
16 this purpose, and I want this for the record. Our
17 rights are as paramount as anybody else, but the
18 issue for us -- and it pertains to a certain
19 segment, Mr. Chair. I have to agree on the
20 segment when we talked about harvesting for our
21 people, our elders told us that conservation must
22 be number one. And the purpose behind that is
23 that if we win a right, for example, hunting at
24 the time we are talking about, and I spoke on the
25 previous engagement on this, that if there is

1 nothing left to hunt, then what did we win?
2 That's why conservation is very fundamental to our
3 people, because we need to preserve for the next
4 generation. But I think each have their own equal
5 value and it always depends on the circumstances.

6 MR. BEDFORD: Thank you. No further
7 questions.

8 THE CHAIRMAN: Thank you, Mr. Bedford.
9 Mr. Madden, any re-direct?

10 MR. MADDEN: I just have two quick
11 questions.

12 Mr. Chartrand, or President Chartrand,
13 people who are identified in the census, how did
14 they get identified?

15 MR. CHARTRAND: Say again?

16 MR. MADDEN: How does somebody get
17 identified as Metis in the census?

18 MR. CHARTRAND: Of Canada?

19 MR. MADDEN: Yes?

20 MR. CHARTRAND: In fact, it is
21 self-declared identification. People have to --
22 and let me share, if I can, Mr. Madden, with this
23 issue, because we are the ones nationally, the
24 Metis, that fought vigorously with Stats Canada,
25 because if you look at -- and I can bring

1 statistical documents to share with Hydro very
2 quickly -- the previous numbers as they came to
3 describing the amount of Metis population was so
4 small. And the reason is there has never been a
5 specific attempt by Census Canada to push for a
6 Metis census to see how many Metis people we have.

7 The reason you see that big spurt of
8 Metis population that occurred is because we
9 pushed it and we got Canada to specifically hire
10 Metis -- what do you call those people that walk
11 to your houses --

12 MR. MADDEN: Enumerators.

13 MR. CHARTRAND: They are called
14 something, whatever you call them, they go to your
15 house and have a paper and they ask you -- what do
16 they call those people?

17 MR. MADDEN: Census takers.

18 MR. CHARTRAND: Yes. And they went
19 and they actually hired Metis people to
20 specifically do that. And that's why you see that
21 spike, because we had a bunch of children all of a
22 sudden that we get that number. But, yes, they do
23 it by self-declaration. We were fortunate to use
24 our numbers.

25 MR. MADDEN: Has the Supreme Court of

1 Canada set out a test for how you actually
2 identify who is Metis?

3 MR. CHARTRAND: Yes. In fact, in
4 Powley the test is very clear. You have to
5 self-declare, have genealogy, you have to prove
6 your strong connection to the homeland.

7 MR. MADDEN: It is more than just
8 self-declaration then?

9 MR. CHARTRAND: Yes, definitely.
10 Stats Canada numbers can definitely be -- because
11 if people don't know what they are, sometimes they
12 will say they are Metis. So it depends on the
13 question, but in Powley it is very specific.

14 MR. MADDEN: So people that are
15 identifying in the Canadian census as Metis, they
16 don't have to provide a genealogy to the census
17 takers?

18 MR. CHARTRAND: No, they don't have to
19 provide any genealogy whatsoever.

20 MR. MADDEN: So, Mr. Sargeant could
21 identify as Metis for the purpose of the census,
22 and we wouldn't know whether -- we would have no
23 idea of whether those individuals really are Metis
24 pursuant to the test set out by the courts, or
25 not?

1 MR. CHARTRAND: No, you would not
2 know, not based the way Census Canada connects it.

3 MR. MADDEN: I have nothing further.

4 MR. CHARTRAND: Okay. Any more
5 questions?

6 THE CHAIRMAN: I was just going to let
7 Mr. Madden know that I do have Franco Manitoban
8 ancestors. I have never checked to see if there
9 was any Metis.

10 MR. CHARTRAND: You better start
11 checking it.

12 THE CHAIRMAN: After Friday maybe I
13 will.

14 You had some closing comments,
15 President Chartrand?

16 MR. CHARTRAND: Yeah. I'm just trying
17 to remember the exact quote from Mr. Bedford and
18 for Hydro, before I leave here. I will probably
19 botch it, I wish I had my -- I should have told
20 somebody to bring it here.

21 I want to close off with a quote, as
22 close as I can to what Riel said.

23 "In its smallness, it had its rights,
24 and the greater had its rights, but
25 because they are greater, its

1 rightness were no greater than the
2 small."

3 So that's a very important sentiment
4 that I'm sending to Hydro and to the Province. My
5 discussion with Mr. Chomiak will be a lot more
6 clearer tomorrow. Obviously that where the
7 problem lies, why consultation does not take place
8 with my people is because Hydro has still yet to
9 determine they are going to agree or recognize --
10 and that will be the first for me in this country,
11 the Crown is going to come tell me that they are
12 going to decide whether they are going to -- Crown
13 corporation that is to come and tell me that they
14 are going to recognize that I'm the body that
15 should be officially spoken to.

16 I have signed many self-government,
17 tripartite self-government agreements with Canada.
18 I took over Child & Family Service mandate
19 province wide. I have a hunting regime of laws
20 that are passed in this province by recognized --
21 my laws are used by conservation officers as
22 official laws of my people. I don't know what
23 more I can do -- go to the Supreme Court of Canada
24 to be recognized as the official MMF governing
25 body of my people, Mr. Chair. But if a Crown

1 corporation such as Hydro says we don't know
2 whether you are the right person to speak to right
3 now, you have got your own answer yourself.

4 So I do plead with this body. I think
5 there is a solution, Mr. Chair, I am sincere about
6 that. I always believe there is an answer, and
7 there is always one if you look for it. And I
8 think the time it will only be sought for is the
9 time that they realize that they just can't get
10 what they want at all times unless they do the
11 right thing. I think that's the message that
12 needs to be coming out of this hearing. We need
13 to hear it loud and clear from -- and I plead with
14 my colleagues, the Commissioners sitting here, the
15 Metis people are asking for your support. They
16 are asking you to do the solid thing of indicating
17 very loud and clear to Hydro, you are a
18 multi-billion dollar company, if you can't solve
19 this problem, you have got a big, big problem
20 ahead of you. And it is going to be bigger than
21 this Commission hearing.

22 As I said, I don't want to end up
23 being in the courts, but if that's where I have to
24 go, I will go to put a stop to this and to get
25 justice for my people.

1 At the end of the day, I just think it
2 would be such a failure for us as Manitobans. I'm
3 a proud Manitoban and to be a failure -- my people
4 also would be strong supporters of growth in our
5 province. But to see that this body believes they
6 don't have to consult with my people, just because
7 they don't want to recognize us, tells you that
8 the Clean Environment Commission would be doing
9 injustice by giving them a licence to go ahead,
10 knowing full well that they -- just as they told
11 us right now -- they are not recognizing us
12 because of who we are right now. They haven't
13 come to terms with that yet.

14 So hopefully one day they will, and
15 maybe this is the body that gets them to go on the
16 right path.

17 Thank you, Mr. Commissioner, I thank
18 you for your patience, I thank you for your kind
19 words. I thank Hydro also for their kind words of
20 commending us on the recent win and victory in the
21 Supreme Court of Canada. I look forward to, as I
22 said, a very good future for the Metis people in
23 this province. And I also look forward to one day
24 getting the respect we deserve as people. So
25 thank you very much.

1 THE CHAIRMAN: Thank you very much,
2 President Chartrand.

3 I hope our grilling over the last
4 couple of hours hasn't dampened your spirits, I am
5 sure it has not.

6 Let's take a 15 minute break and then
7 come back with Mr. Madden.

8 (Proceedings recessed at 3:05 p.m. and
9 reconvened at 3:20 p.m.)

10 THE CHAIRMAN: Could we reconvene,
11 please.

12 MR. KEATING: Sean Keating,
13 Tataskweyak Cree Nation. On October 29, 2012 the
14 CEC ruled after objections from Hydro and PCN that
15 the document referred to by President Chartrand
16 this afternoon, the letter from R.D. Bettner,
17 Hydro, to the Canadian Taxpayers Federation, the
18 CEC panel ruled that was not admissible as an
19 exhibit, as I recall, mainly on the grounds of
20 irrelevance. Because a lot of those costs are
21 comprised of different payments which don't
22 exactly correspond to what the MMF is seeking, so
23 they can't really be compared. I would ask if the
24 CEC would confirm that that letter is not an
25 exhibit to form part of this record?

1 THE CHAIRMAN: What is your concern,
2 Mr. Keating?

3 MR. KEATING: Because -- well, because
4 the panel had previously ruled that it wasn't
5 admissible, and I don't understand what is
6 different about the situation now.

7 THE CHAIRMAN: Okay. Mr. Madden.

8 MR. MADDEN: I think it is admissible
9 now because Mr. Bedford has made it relevant. Mr.
10 Bedford, in his correspondence that is in the
11 record in response to the MMF, uses terms such as
12 the MMF's request is unreasonable. In fact, he
13 goes as far to ask the CEC to opine on what has
14 been -- what they consider a fair and reasonable
15 offer. And Manitoba Hydro has made it relevant.
16 Manitoba Hydro -- we stayed away from that, we
17 respected the CEC's decision, but you don't get to
18 cherry pick, and you don't get to throw out
19 accusations that are scurrilous, unfair and not
20 completely transparent. And so that issue, Hydro
21 has made it relevant. So, it is a completely
22 different ball game from our perspective, and it
23 is unfair that the MMF doesn't get to respond in
24 kind when Hydro makes the financial requests that
25 the MMF has made deemed to be unreasonable. So if

1 Hydro wants to remove that documentation from its
2 supplemental filings, MMF would have no objections
3 to that, and have them removed from the record and
4 their websites, et cetera, et cetera. But if not,
5 it is fair game. And in fact, it would be unfair
6 to the MMF for Hydro to put up such insinuations
7 and not have -- and the MMF not be allowed -- and
8 I just want to make this clear; this is a public
9 document that the MMF pulled off of a website. It
10 had media coverage on it, it is not -- there is
11 nothing confidential in this information. A Crown
12 corporation responded to a piece of legislation
13 under the Freedom of Information Act, and that
14 document is simply being put in the record, and
15 why it is relevant is it dispels the comments that
16 Hydro has made that the MMF's financial requests
17 are unreasonable, unreasonable in comparison to
18 other funding provided in Bipole, but also
19 unreasonable in comparison to what Hydro has spent
20 on engaging the First Nations that it deems to be
21 actually governments or representatives of people
22 versus how it has engaged the Manitoba Metis
23 Federation. And in fact Mr. Bedford has stepped
24 into it even further today by directly asking
25 President Chartrand questions in relation to those

1 issues. And that is what makes it different, and
2 that is why we would ask the CEC to reconsider its
3 previous decision on this issue, and allow the
4 document to be entered as an exhibit.

5 THE CHAIRMAN: Mr. Bedford.

6 MR. BEDFORD: Firstly, Mr. Keating's
7 memory is of course correct, we had this debate in
8 October, you made a ruling regarding this letter.
9 Secondly, the letter which I wrote to Mr. Madden
10 on January 18th makes no reference whatsoever to
11 this correspondence from my colleague, Mr.
12 Bettner, to the Canadian Taxpayers Federation. So
13 it is very much a tenuous leap of logic to suggest
14 that somehow I, in that letter, have made this
15 other letter suddenly relevant to the proceedings.
16 And nowhere have I suggested, nor has anyone else
17 suggested, that a proposal to be paid some money
18 to do some assessing for route revisions is
19 somehow comparable to the payment of any of the
20 monies that are in that chart that I know
21 accompanies the letter to the Canadian Taxpayers
22 Federation. If one is going to convince a trier
23 of fact that this Canadian Taxpayer's letter is
24 relevant, one really has to do a much better job
25 of connecting the dots, with respect.

1 THE CHAIRMAN: Mr. Keating, do you
2 have any other comments?

3 MR. KEATING: Well, just one comment.
4 Just because that document is in the public domain
5 doesn't mean that it is relevant to the purpose at
6 hand. There are lots of public documents out
7 there, but they are not necessarily relevant.
8 Thank you.

9 THE CHAIRMAN: Mr. Bedford, just the
10 amounts of money on this piece of paper, what do
11 they relate to?

12 MR. BEDFORD: My understanding is they
13 relate to payments to various recipients,
14 obviously First Nations, that include payments to
15 fund negotiations, payments pursuant to adverse
16 effects agreements that have been entered into,
17 payments made pursuant to other commitments that
18 Manitoba Hydro has to the various groups. One of
19 the challenges that my client has with the
20 particular information is that it is, to use a
21 colloquial phrase, very much apples and oranges.
22 It is not a list of amounts of money paid to
23 engage with Manitoba Hydro strictly on Bipole III.
24 It is not a list of monies paid to various
25 recipients to do simply ATK studies, some of that

1 is included in some of those payments, and it
2 certainly, to repeat, is not payments made
3 strictly related to Bipole III. Those amounts of
4 money paid over a number of years, frankly with
5 respect to Tataskweyak Cree Nation whom
6 Mr. Keating represents, and Fox Lake Cree Nation,
7 have more to do, as I understand, with the Keeyask
8 project than they do with the Bipole III project.

9 THE CHAIRMAN: Would monies spent or
10 distributed by Manitoba Hydro for consultation on
11 Bipole III, would they be included in that top box
12 or would some or all of them be somewhere else?

13 MR. BEDFORD: I understand, Mr.
14 Sargeant, that the numbers in the top box are not
15 all inclusive of all monies paid by my client for
16 Bipole III to the communities in question. Part
17 of the challenge is sometimes monies are paid
18 pursuant to process agreement, and sometimes the
19 monies are paid in order to fund preparation of an
20 ATK study. You commissioners have seen the
21 product of the monies paid for ATK studies to a
22 number of communities. The subject of paying
23 process monies to facilitate the hiring of lawyers
24 and consultants to conduct meetings are somewhat
25 different, and to repeat, I'm informed that the

1 numbers in the box are not all inclusive. So to
2 try and draw conclusions or make comparisons with
3 those numbers is not a good exercise in which to
4 engage.

5 THE CHAIRMAN: Thank you, Mr. Bedford.
6 Okay. We will take this under advisement. We are
7 not going to rule on it today, we would like to
8 have a look at the transcript from October 29, was
9 it, Mr. Keating? And then we will consider this
10 afternoon's comments and we will come back in the
11 next day or two with a decision. Obviously we
12 won't register these documents as exhibits today.

13 Okay.

14 MR. MADDEN: Ms. Johnson, did we want
15 to proceed with registering the other documents
16 now or at the end?

17 MS. JOHNSON: At the end.

18 THE CHAIRMAN: Mr. Mills seems to have
19 something.

20 MR. MILLS: Thank you, Mr. Chairman.
21 Two points, we have just heard that the document
22 in question includes funds provided for ATK use.
23 It is on the record that Pine Creek asked Ms.
24 Zebrowski if funds were ATK, for additional ATK
25 was available to them and she said no. So I think

1 the matter speaks to her earlier testimony.

2 As well, Mr. Bedford said earlier
3 today that he agreed with Mr. Chartrand, that
4 consistent agreements need to be had by all, and I
5 think that a significant part of any agreement are
6 funds involved. And if Mr. Bedford is going to go
7 on the record and assure us that it is a concern
8 of Hydro that agreements be consistent, I think it
9 is important that we understand the financial
10 numbers that Hydro deals with. So Pine Creek
11 believes that the document is germane in that
12 Hydro has made two, albeit, indirect references to
13 it in their evidence, and we ask you to consider
14 that, thank you.

15 THE CHAIRMAN: Thank you, Mr. Mills.
16 Mr. Madden.

17 MR. MADDEN: I have handed out an
18 overview of a closing argument that I'm going to
19 give today on behalf of MMF. Our final written
20 submission will come either tomorrow or first
21 thing on Wednesday. My written closing argument
22 is much shorter, and hones in on really what we
23 would like, or we would hope that the CEC leaves
24 with understanding the MMF's concerns, and the
25 written submissions will far more in detail

1 document the technical issues, as well as build
2 out some of these concepts in today's submission
3 further.

4 I want to start by saying that the MMF
5 has participated in the hearing in its entirety as
6 a funded participant, and we thank the Commission
7 for the opportunity. And to be clear, the MMF's
8 recommendation for the Commission is that it not
9 recommend to the Minister that a licence be issued
10 at this time. We think that the CEC should ask
11 Hydro, or should tell the Minister that there is
12 information still required, details still
13 required, prior to being in a position where it
14 can recommend that a licence be issued. And I'm
15 going to detail that much further. That's on I
16 think the technical side of the EIS, and we will
17 go through what was in the scoping document, what
18 information was provided, how that in some cases
19 wasn't assessed properly, as well as some of the
20 challenges we see in how Hydro undertook the EIS
21 assessment in relation to the significance in the
22 eye of the beholder methodology, as well as
23 others.

24 That's the first point and I think
25 that's the pure, I guess, a straightforward on the

1 EIS and the scoping document.

2 The second point that we want to raise
3 is this, I call it the consultation shell game
4 that's ongoing, and that the CEC is an unfortunate
5 bystander to. And I think seeking some direction
6 on this and asking the Minister and the Manitoba
7 government for some direction on this would be
8 helpful, because I think that we've all been kind
9 of messy in how we understand consultation, and
10 I'm talking big C consultation with Aboriginal
11 people, should be undertaken, and I want to talk a
12 bit about that, how we understand it, because we
13 think that this project has a problem. In fact,
14 we think this project has a big problem. And in
15 fact, I've drawn the analogy to, and I -- Bipole
16 III right now, as far as we can see it is the
17 Titanic. We can all see the iceberg up ahead, and
18 the CEC, luckily for it, is not on the boat. The
19 CEC is one of the ports that the Titanic stops by
20 before it hits the iceberg. And we hope that the
21 CEC recognizes that this is the Titanic coming
22 through, and I think that one of the things that
23 President Chartrand has conveyed is that what the
24 MMF can see is a big problem for the community it
25 represents, and it won't be as President Chartrand

1 said today, collateral damage to the iceberg. So
2 what we hope is that when it stops in this port,
3 and we recognize you don't issue the licence, all
4 you can do is make recommendations to the
5 Minister. That you say before you -- don't issue
6 a licence right now, and here is some corrections
7 we think you need to do before it can come back to
8 us or before you can issue a licence.

9 And I want to also make this point,
10 and I think that President Chartrand has
11 documented it in the past, but I think what we've
12 all learned on Friday, and what I think what we
13 have all learned as children is that promises are
14 important. And in the MMF case, it was a promise
15 made back in 1870 to the Manitoba Metis. But I
16 also want to take it to the promise that was made
17 following the Aboriginal Justice Inquiry
18 Commission, by the government. And the Aboriginal
19 Justice Inquiry Commission, and I think that is
20 extremely important, because Manitoba -- this
21 province has a history, we talk about the NFA but
22 we sometimes forget where the NFA comes from.

23 The Northern Flood Agreement comes
24 from a very difficult, unhappy, devastating and
25 shameful history of Hydro development in this

1 province. It is an attempt, and I think that some
2 of the signatories to it will say it has helped in
3 putting the ship back on a better course, but
4 there is a history there. And when the Aboriginal
5 Justice Inquiry undertook its assessment of what
6 are the challenges we see in the history between
7 Aboriginal peoples and other Manitobans and the
8 Manitoba government, they identified that one of
9 the biggest challenges was how resource
10 development is undertaken in this province. And I
11 have got to say that the Aboriginal Justice
12 Inquiry's recommendation was quite ahead of its
13 time. In fact the NFA was quite ahead of its
14 time. The courts have now caught up to that. The
15 legal basis that my clients now rely on in the
16 courts are exactly what is embedded in this
17 inquiry recommendation, and I think it is helpful
18 to read it. Any future major natural resource
19 developments not proceed unless and until
20 agreements or treaties are reached with Aboriginal
21 peoples and communities in the region, including
22 the Manitoba Metis Federation and its locals and
23 regions, who might be negatively affected by such
24 project in order to respect their Aboriginal
25 treaty or other rights in the territory concerned.

1 And that's the AJIC's recommendation
2 which was then subsequently adopted by the NDP
3 government. And that, interestingly enough, the
4 current Minister of Manitoba Conservation and
5 Water Stewardship is the Minister who agreed to
6 that, and agreed to it on behalf of the province.
7 So I don't think it should be lost on anyone for
8 the CEC to remind Manitoba of its promises to
9 Aboriginal people. And this is one of them, and I
10 think that this is one of them that comes from a
11 recognition that if those agreements aren't in
12 place, problems arise. The devastation and the
13 damages that flowed from previous flooding and
14 from previous Hydro development, they can happen
15 again. And, in fact, we think that -- Mr. Bedford
16 may disagree with me -- but I don't think that
17 what has previously happened is any different than
18 what is happening now. Now all we have is the
19 expert reports telling us we have a problem. But
20 if you don't actually do anything with what the
21 expert reports are telling you with the problems,
22 whether it is the damages to the blueberry patch
23 or whether it is the perfect storm that's
24 happening in the bread basket for the Manitoba
25 Manitoba Metis Federation, how are we any better

1 than the pre-NFA days? And I believe that what is
2 embedded in that promise and what is embedded in
3 that recommendation that's been adopted by the
4 government should mean something.

5 And we would ask that the CEC remind
6 the province of its commitments to Aboriginal
7 peoples who are impacted by natural resource
8 developments, and ensure that those agreements are
9 in place prior to any licence. And we think that
10 that combines to one of the reasons why the
11 project shouldn't be recommended at this time.

12 So we don't make these recommendations
13 lightly. But the concerns about this project are
14 significant. Yes, it is \$3.2 billion estimate.
15 Yes, it is about keeping the lights on in
16 Winnipeg. But I think President Chartrand's point
17 of the rights of the small shouldn't be sacrificed
18 of the large, that's the point. And while it may
19 not be significant to Manitobans generally, what
20 Bipole III brings for the Metis in particular, is
21 significant. It is extremely significant. And I
22 think that the evidence before this panel shows
23 that.

24 So we also say that there is
25 substantial uncertainty about the project's

1 routing. We still aren't quite sure. I read the
2 transcripts from last week of exactly what is
3 before the Commission, whether the Manitoba
4 government has directed that these are -- in fact,
5 if you read Mr. Bedford's comments from back in
6 November, he says we have been instructed to
7 implement these route corrections.

8 And we provide cites for that in the
9 letter that was recently sent to the Ministers,
10 and I will just draw -- I gave mine to President
11 Chartrand. It is in letter to Minister Chomiak,
12 as well as Minister Macintosh where we cite this
13 is what Manitoba Hydro's counsel came back and
14 said. Now we see that Manitoba Hydro is saying,
15 well, we don't think that some of these route
16 changes should occur. We agree with that. But we
17 also want to make the point that consultations
18 haven't even happened with the Metis community on
19 those route adjustments so we can understand what
20 those impacts are, so we can intelligently be here
21 and say, no, we actually agree with Hydro on not
22 going as far into the Kettle Hills or we agree
23 with Hydro on Wabowden. That hasn't happened with
24 the Metis, and that needs to happen.

25 I want to make this point and I think

1 that President Chartrand was stating it this
2 morning, what is the problem with Hydro's approach
3 is that Hydro fails to see that the Metis are a
4 collective. And I think that this is something
5 that the Metis have struggled with since Canada
6 became Canada, is that's what the MMF case was
7 about, we will deal with First Nations, with
8 Treaties and we will deal with them collectively,
9 and we will deal with you through the land grants
10 or scrip. We will deal with you as individuals.
11 And this is the struggle. You see it playing out
12 here today. By virtue of looking at a people that
13 way, you miss the people. And that is the
14 challenge with this project and with how Manitoba
15 Hydro has conducted itself, and this is why we say
16 this project is on the same route as the Titanic.

17 And the cite from the transcripts is
18 at footnote one from the letter of March 6 to
19 Minister Chomiak and Macintosh. So we say that
20 there is uncertainty with respect to the route
21 routings. And in fairness, Hydro comes and says,
22 look it, we actually think there is significant
23 heritage and cultural issues at stake here from
24 the affected Aboriginal peoples. But don't you
25 think that the Aboriginal peoples should have

1 probably had the opportunity to comment on it, not
2 saying that we have got 15 days to do it, and this
3 may have substantial consequences to an area that
4 you have used for before this province was a
5 province?

6 We also think that we do not have an
7 understanding of the full scope and locations of
8 the project's components, access roads, marshaling
9 yards, burrow pits, et cetera, and we say that's
10 important. We say that's important in particular
11 when the routing is going through bottleneck
12 areas, where we know there is congestion, we know
13 there are already environmental stresses. And so
14 having an understanding of what those additional
15 access roads are is fundamental to the project.

16 You will see that we've provided, as
17 well, the guidelines for Ontario's Environmental
18 Assessment. Mr. Chair had asked for some guidance
19 on this previously. We would point out that Mr.
20 Osler, Manitoba Hydro's expert on some of these
21 issues, said yes, the Yukon regulators are very
22 interested in that because they understand that
23 access roads are important, in particular when you
24 are talking about pristine areas or in particular
25 when you are talking about areas that are already

1 under stress. And what Hydro says is trust us, we
2 will figure it out, because this is the way we've
3 always done it in Manitoba. Just because it is
4 the way you have always done it doesn't mean it is
5 right and doesn't mean it is a good way to do it.
6 So we point to other jurisdictions saying in order
7 to assess the project impacts, you need to
8 understand that.

9 And related to that, I want to take
10 you to the March 6 letter from our expert
11 responding to the enhanced -- the moose
12 enhancement assessment from MSCS. And it is on
13 the first page, and I think this is important as
14 we get into understanding the components. So
15 Manitoba Hydro I think heard what our experts said
16 about how there need to be some target thresholds
17 for linear disturbances. And what Manitoba Hydro
18 then says is, okay, let's look at what those
19 disturbances are in these different areas and we
20 will pick a number and we will say that's the
21 threshold. So they pick .04, and I'm talking
22 about for GHA 19A, they say .04 is the threshold
23 for linear disturbances that we have set with
24 respect to moose. Fine. Whether we agree on that
25 threshold or not, what is very clear from this

1 entire process is that Hydro sets the thresholds,
2 it has not engaged other stakeholders or
3 constitutional rights holders in understanding
4 significance in setting those thresholds, and
5 that's its choice. I think the reality is that
6 where environmental assessment is today in a lot
7 of other jurisdictions and what you heard from
8 Dr. Cormers, as well as Ms. Stewart, is that in
9 particular other stakeholders should be engaged in
10 setting those targets in setting that level of
11 significance.

12 But what I just want to point out on
13 going back to why it is important on where the
14 access roads are, or if Hydro is using existing
15 access roads, .4 is set in GHA19, their own report
16 says we are already at 0.366 kilometres squared
17 for the final preferred route. For the adjusted
18 preferred route we are at .367. But we don't know
19 where the access routes are, we don't know if they
20 are using existing railroad roads, we don't know
21 if they are using existing access, so how in these
22 areas where there is constraints, in these areas
23 where we have problems, where they are saying we
24 have now set a threshold, but they are saying give
25 us a licence and we will figure it out afterwards.

1 It is a little bit too late for the Metis to
2 assess, once they say, well, we are here, we have
3 to get access to the line. That's the whole point
4 of the environmental assessment. Environmental
5 assessment is to have knowledge beforehand to
6 predict what is going to happen. If you don't
7 have the knowledge, you can't predict.

8 And that's what Hydro is saying, Hydro
9 is saying trust us, and what the Manitoba Metis
10 Federation is saying, we don't, and we say that
11 the CEC shouldn't either. Because how this should
12 be done is those are relevant project components
13 and should be assessed as a part of the
14 environmental assessment. And we say that there
15 is other jurisdictions that asked for it, and we
16 would say that's consistent with common practice
17 in relation to how transmission is done. Granted,
18 it may not be how Manitoba Hydro has historically
19 done it, but not every other jurisdiction has a
20 monopoly like still exists within the Province of
21 Manitoba, because they have learned that sometimes
22 those monopolies don't allow for true testing and
23 effective environmental assessment of the projects
24 that those monopolies are pursuing. And I think
25 that's why we do now have the CEC as well as some

1 of the other mechanisms that have been put in
2 place more recently in Manitoba.

3 But as the Chair said in the summer,
4 this is an iterative process and we are learning
5 as we go. And this is one of the things that we
6 want this Commission to know, is that when other
7 transmitters go for applications before other
8 regulatory bodies, they provide a full project
9 description and that includes where those access
10 roads are.

11 I think it will be helpful -- I will
12 go now just to actually the -- I may not have it.
13 The Ontario EA document, in our written
14 submissions we identify where specifically in that
15 document it outlines what is required for a
16 project description.

17 And I think it is on page -- it is on
18 page 29. And it says -- and it is under
19 conducting a screening, and this is essentially
20 how an initial screen is done in order to
21 determine how an environmental assessment will
22 take place. And it says, the proponent begins the
23 screening stage by preparing a description of the
24 project for the purposes of the screening process.
25 In describing the project the proponent must

1 include all phases and components of the project,
2 including construction, operation and retirement
3 of the project. It is inappropriate for
4 proponents to break off or piecemeal a larger
5 project in separate components or phases, each
6 part addressed as a separate project, therefore
7 the construction and operation of related
8 facilities, such as an access road or fuel
9 handling facilities and associated activities such
10 as construction, traffic, discharge of cooling
11 water or waste disposal are to be included as a
12 part of the project description. Furthermore,
13 plans for future expansions of the project that
14 are known at the time of the environmental
15 screening process is to be applied shall be
16 considered as a part of the project.

17 And this is the guide to environmental
18 assessment requirements for electricity projects
19 from the Province of Ontario, and the policy is
20 from 2001.

21 So, we say that these uncertainties do
22 not allow this Commission to have enough
23 information to understand what the effects of the
24 projects are going to be. These issues lend
25 themselves to the need for additional information

1 and assessment to take place before any
2 authorization can be recommended.

3 More importantly, though, from the
4 MMF's perspective, what we have here and you have
5 heard us from the start of the hearing, and I
6 think we have been consistent throughout, is it is
7 not just about moose, it is about we want to
8 understand what is going to happen to the Metis
9 bread basket. And this is an area that is
10 extensively relied upon by the Metis, that know it
11 is under pressure, know so much so that they are
12 willingly allowing infringements to their
13 constitutionally protected rights because they
14 know, as President Chartrand said, if we don't
15 work together we are going to have nothing left.
16 But the point is that Manitoba Hydro shouldn't
17 then be allowed to take advantage of that. And
18 what we see is them saying, well, don't worry, it
19 is not really going to affect moose. But they
20 missed the point, they miss the point that this is
21 an area of important concern to an Aboriginal
22 people that's under stress, and that we need to
23 understand what is going on. And the idea of
24 saying, well, it is just all based on hunting. We
25 don't think that the expert evidence lends itself

1 to that, and in fact our expert evidence
2 contradicts that specifically.

3 In particular in these areas, some of
4 them are extremely important to the Metis, the
5 areas such as up in Gillam and region, in the
6 bread basket, in the area in which is now the
7 postage stamp province, which was subject to the
8 Manitoba Metis Federation land claim, none of the
9 MMF's concerns in those areas have been addressed
10 meaningfully. And the EIS and Manitoba Hydro's
11 own experts acknowledge there will be impacts on
12 Aboriginal resource and domestic use and culture
13 that can't be mitigated. We aren't arguing about
14 that. They have at least said, yeah, there is
15 going to be problems, but what they then say is we
16 don't think it is going to be significant, because
17 Mr. Osler has diced and sliced the material in
18 such a way that nothing is significant. But the
19 reality for the Metis is, and you need to
20 understand this, that perspective of the
21 Aboriginal people, the small in the large, it is
22 significant. And we are going to talk a bit about
23 some of the direct evidence that you have heard
24 about the significant effects that Bipole III is
25 going to have.

1 We also say that the project is going
2 to impact Metis rights, interests and claims, yet
3 those haven't been addressed by the Crown or
4 Manitoba Hydro, and it is presently what we are
5 calling the consultation shell game, because
6 Manitoba Hydro dances on the pin head and says, we
7 don't talk about rights, we can't talk to you
8 about that, so we can't develop mitigation
9 measures with you that deal with rights because
10 that's the Crown's jurisdiction. The problem is
11 that the Crown is not assessing the impacts
12 either. So what you have is, you have by virtue
13 of the shell game, the Metis are vulnerable. And
14 no one is actually looking at what the impacts
15 are. Because Manitoba Hydro says, yes, there is
16 residual effects. We can't mitigate them. But we
17 aren't compensating for them, or we aren't doing
18 anything with them, we have just identified them.
19 Now, we have said that in our broader analysis
20 they aren't significant, but we haven't looked at
21 that from the Aboriginal perspective.

22 You have heard extensive information
23 about how the project is going to actually affect
24 Aboriginal rights, interests and claims of the MMF
25 as well as other Aboriginal communities, but we

1 have this information gap where no one said, you
2 know -- Chief Justice Binnie in the Mikisew Cree
3 case said consultation isn't just about blowing
4 off some steam -- we had a meeting, they got to
5 air it all out, now we are done. What
6 consultation is about, and what the Supreme Court
7 of Canada has recognized in the Haida and Taku
8 cases and has elaborated on since 2004 when those
9 cases were released, it is not just called
10 consultation, it is called consultation and
11 accommodation. And it is when you identify that
12 there is going to be impacts, you have to
13 accommodate, it is not just about blowing off some
14 steam, checking off a bunch of boxes and having
15 meetings, but then never actually addressing those
16 interests.

17 And one of the challenges we do have
18 within the Province of Manitoba is how the
19 Manitoba government I would say rolls out how it
20 does its consultation. I can accept the point
21 that the Manitoba government says, no, we will do
22 the consultation. Manitoba Hydro don't do it, we
23 will take care of it. Fine. You want to do it,
24 do it. But we can tell you clearly that the
25 Manitoba government isn't doing it. And in fact,

1 the information provided through Manitoba Hydro,
2 which is supposed to then feed into the Crown
3 consultation process, doesn't give the Crown the
4 information it needs in order to do an impact
5 assessment on rights. And so what we continue to
6 do, and as you can see by the exchanges between
7 Mr. Bedford and myself, is that the Aboriginal
8 people keep on butting their heads against the
9 Hydro wall, frustrated of saying here is the
10 problems, but Hydro says -- and it is just, I use
11 the example of, I don't know if anyone is Star
12 Trek fans -- is the Borg, right? It is just the
13 Borg, it keeps going forward. It will assimilate,
14 but it doesn't know how to actually deal with the
15 issues that it keeps on getting hit by.

16 Now, we wouldn't say that it is not
17 that Hydro is unsophisticated and it doesn't know
18 how to do it, in fact it does know how to do it
19 and it does know how to do it quite well, when it
20 wants to. And you can see that on the chart that
21 was provided on Keeyask and Wuskwatim, as well as
22 what has happened in other projects. Adverse
23 effects agreements are entered, in some cases
24 partnerships. But that doesn't happen here,
25 because as President Chartrand said, Manitoba

1 Hydro is waiting for some direction on it.

2 The problem is that, and I will accept
3 the idea that the CEC doesn't have the duty to
4 consult, that that hasn't been delegated to them.
5 But the point that I make is you are an
6 administrative tribunal that operates within
7 constitutional norms, including the charter,
8 including Section 35, and what you are -- and what
9 you have heard through this, you are the only ones
10 that are getting this evidence before you, the
11 Aboriginal people are putting it forward, it is
12 being tested. And you can see the problems. I'm
13 going to talk a bit about that.

14 You can see, okay, we see these gaps.
15 And you are asking us to recommend a project in
16 good conscience when we know that Aboriginal
17 people are going to be negatively impacted, and
18 the proponent has offered no suggestions on how to
19 mitigate those impacts, because they say we don't
20 deal with rights, that's not our jurisdiction,
21 whereas the Crown isn't doing its job either.

22 And so you have the Titanic. And it
23 is not as if this hasn't happened on a multitude
24 of other projects, but we are raising it here, we
25 want it on the record, we want it very clear, and

1 we want the CEC to at least say there is a
2 problem. We see the problem because we have seen
3 the evidence, and we aren't going to recommend
4 that this project be given a licence because this
5 issue needs to be addressed.

6 Now, the CEC should also say, we are
7 not the ones to address it, but we know as an
8 administrative tribunal that recommending a
9 project that has the potential to significantly
10 impact Aboriginal rights is not consistent with
11 constitutional norms. We know that Section 35
12 exists, we know that there is rights there, we
13 know that there is going to be impacts on those
14 rights, the EIS and the Aboriginal peoples have
15 told us that. But -- so we can't recommend a
16 project until those issues are resolved. They are
17 not our issues to resolve, but the Crown better
18 deal with them before we are being asked to give a
19 recommendation because we are not going to be
20 culpable in it.

21 Now, we say these rights and interests
22 can't be ignored in a project that's going to be
23 one of the largest infrastructure projects built
24 in the province in the generation, and it is also
25 going to be potentially a gateway for Bipole IV,

1 as well as other disturbances in areas that are
2 important to Aboriginal people.

3 So on page 3 of my argument, I just
4 want to put some of these components together
5 because we recognize that the CEC doesn't have the
6 duty. But Section 35 recognizes that there is
7 Aboriginal rights, the constitution is the supreme
8 law of Canada, and those rights are recognized and
9 affirmed. The honour of the Crown, and this is
10 from the Haida case, the honour of the Crown
11 requires that these rights be determined,
12 recognized and respected.

13 Section 35 is in an empty box, the
14 courts have said that. And what the Supreme Court
15 of Canada has developed is saying look it, we have
16 developed a framework that in order to not allow
17 what we see happening in this case, where we know
18 that there is impacts, and accommodation, or
19 meaningful consultation hasn't occurred, we've
20 created a process, a re-balancing, whereas the
21 Crown, the previous arguments were, well you go,
22 go to court, prove you have got the right and then
23 come back. What the Supreme Court of Canada says
24 is that is an impossible task for the Aboriginal
25 communities. Some of these cases take 30 years to

1 get to the Supreme Court of Canada. And in that
2 interim period, the losses are substantial and
3 irreparable. And the idea that we can allow that
4 to happen? We can't. So they have created the
5 duty to consult and accommodate, and we set out
6 the test at paragraphs 20 and 25 from Haida.

7 But I think there is a basic point
8 here, is that the Court says, put simply, Canada's
9 Aboriginal peoples were here when Europeans came
10 and they were never conquered, many bands
11 reconciled their claims with the sovereignty of
12 the Crown through negotiated treaties, others
13 notably in British Columbia have yet to do so.

14 The potential rights embedded in these
15 claims are protected by Section 35 of the
16 Constitution Act, 1982. The honour of the Crown
17 requires that these rights be determined,
18 recognized and respected. This in turn requires
19 the Crown acting honourably to participate in
20 processes of negotiation. While the process
21 continues, the honour of the Crown may require it
22 to consult and where indicated, accommodate
23 Aboriginal interests.

24 That's what the court has crafted.
25 And in the most recent Manitoba Metis Federation

1 case, they have hooked the Metis into that. They
2 have always said Aboriginal, and what they have
3 made abundantly clear is that this obligation is
4 owed equally to the Metis, and in particular from
5 the MMF case, owed to the Manitoba Metis.

6 So the point here is that that
7 consultation and accommodation has to happen
8 before projects are approved. It doesn't -- in
9 the example of the Haida, everyone is well aware
10 if you ever been to the Vancouver airport, those
11 giant totem poles that you see, those are from
12 Haida Gwaii, and the Haida rely on those, those
13 are the giant red cedars. And the Haida have been
14 in litigation, not as long as MMF, but they are
15 going on 16 years, about title litigation on Haida
16 Gwaii, which essentially are the Queen Charlotte
17 islands. And what essentially the underlying
18 principle of saying, look it, if we have to wait
19 until their title litigation happens, and
20 Weyerhauser continues to get to clear cut, what do
21 they win at the end if those trees that are so
22 instrumental or valuable to their culture are
23 gone? And we have the exact same things here with
24 respect to the blueberry patch, with respect to
25 how the Aboriginal people, in particular the Metis

1 community, use their resources or the bread basket
2 in the west side corridor.

3 I will just say, this wouldn't be an
4 issue if it went underneath the lakes, went on the
5 east side of Manitoba, but the point is someone
6 made a strategic decision, and you are going down
7 the west side, and this is where the Metis bread
8 basket is. So you don't just get to drive by it
9 and say, well, you are the unfortunate Aboriginal
10 people that get to be the collateral damage. The
11 point is those impacts need to be understood,
12 assessed, avoided, mitigated or accommodated, and
13 that hasn't been done with respect to Bipole III.

14 So we find ourselves in the same
15 position with respect to the blueberry patch, the
16 Berlin Wall-like mitigation measures that will be
17 increasingly limited Metis access and harvesting
18 opportunities in the bread basket, and also going
19 to be traversing Crown lands where the Metis are
20 already subject to land claims and future
21 negotiations.

22 So the point that we are saying is
23 these are the issues that arise, and we have just
24 taken three, and our arguments detail them more,
25 but we just want to illustrate what those problems

1 are. And why we say until they are resolved, this
2 project shouldn't be recommended.

3 So I want to not delve too much into
4 who are the Aboriginal people that the Manitoba
5 Metis Federation represents. I have included some
6 quotes from the Supreme Court of Canada in the
7 argument, and I think this is important about who
8 this people are, and I think the quote from Goodon
9 is helpful. The Metis community of Western Canada
10 has its own -- and I'm on page 5 of my argument --
11 the Metis community of Western Canada has its own
12 distinct identity as the Metis of this region were
13 the creature of the fur trade, and as they were
14 compelled to be mobile in order to maintain their
15 collective livelihood. The Metis community was
16 more extensive, for instance, than the Metis
17 community described in Sault Ste. Marie. The
18 Metis created a large inter-related community that
19 included numerous settlements located in present
20 day southwestern Manitoba, into Saskatchewan,
21 including the northern Midwest United States.
22 This area was one community, as the same people
23 and the families used the entire territory as
24 their homes, living off the land and only
25 periodically settling at a distinct location when

1 it met their purposes.

2 And I want to make this point, and

3 this is why President Chartrand goes on and on

4 about Hydro's model of looking at us as discrete

5 little settlements or little villages is wrong.

6 It misses the point. This is why we took the

7 Goodon case in Manitoba, because after Goodon --

8 after the Supreme Court of Canada case in Powley,

9 what the province wanted the Manitoba Metis

10 Federation to do is, hey, can we just apply a

11 cookie cutter and draw some circles around dots in

12 the Province of Manitoba, and we will call those

13 communities? And the Metis, rightfully so,

14 because they have been vindicated in every

15 litigation that they have taken forth in Manitoba

16 today, you are missing our perspective, that's not

17 our community, those dots, the community is

18 larger. And the courts have repetitively agreed

19 with the Manitoba Metis Federation on that point.

20 So this idea of how then Hydro says, well, that's

21 not how we would like you to be consulted, can't

22 we just buy some coffee and some doughnuts for a

23 few people in a Town Hall here, talk to a few

24 Metis individuals, and hey, that's how we will

25 look at the community.

1 We say that is fundamentally wrong,
2 and it underlies the conflict you see between the
3 MMF's proposal and Hydro's response. Because
4 Hydro's response is well, this is how we do it
5 with farmers, and this is how we do it with land
6 owners, and why can't it work with how we do it
7 with you guys? You live in northern
8 administrative councils, you are in these villages
9 and towns, and we will just go talk to you that
10 way. It misses the point.

11 I can agreed that we are supposed to
12 understand each other's perspective, but I want to
13 make this point; Manitoba Hydro's perspective is
14 wrong. The courts have made it clear, the Supreme
15 Court of Canada has made it clear, and I find it
16 arrogant that a Crown corporation says, no, we
17 know better and we are going to still do it this
18 way. Fortunately the Manitoba government has at
19 least paid attention to these court cases and
20 said, yeah, let's go sit down and negotiate a
21 harvesting agreement. And no, we are not asking
22 you to carve up dots, we are actually looking at
23 your entire community. But Manitoba Hydro somehow
24 still thinks, well, no, we will set the rules, and
25 if you don't fit in the slots too bad, so sad.

1 That is unacceptable to the Manitoba Metis
2 Federation.

3 I have also included some quotes in
4 the case from the most recent MMF case that I
5 think are helpful, and I'm not going to read them,
6 but I think what is embedded in what I think is
7 one of the most colourful paragraphs in that
8 entire decision is paragraph 140 which is on page
9 6 at the bottom. This is what the court
10 summarizes, and I definitely think we are not
11 talking about Section 31 today, and a
12 constitutional provision made in the process of
13 nation building, but it is the same issue that's
14 playing out again. Sure, there is a promise there
15 about your rights, but we aren't going to
16 implement it in a meaningful way. They say:

17 "What is at issue is a constitutional
18 grievance going back almost a century
19 and a half. So long as the issue
20 remains outstanding, the goal of
21 reconciliation and constitutional
22 harmony, recognized in Section 35 of
23 the Charter and underlying Section 31
24 of the Manitoba Act, remains
25 unachieved. The ongoing rift in the

1 national fabric that Section 31 was
2 adopted to cure remains unremedied.
3 The unfinished business of
4 reconciliation of the Metis people
5 with Canadian sovereignty is a matter
6 of national and constitutional import.
7 The courts are guardians of the
8 constitution and as in Ravndahl
9 Kingstreet cannot be barred by mere
10 statutes from issuing a declaration on
11 a fundamental constitutional matter.
12 The principles of legality,
13 constitutionality and the rule of law
14 demand no less."

15 The point here is you have the same
16 thing playing out. And while it is not going to
17 be a constitutional rift, an unfinished business,
18 it is going -- it is a legal problem. And I think
19 that what we are asking the CEC to do is to be
20 cognizant of this legal problem and to flag it for
21 the province and say it is not our legal problem,
22 and we are not going to solve it, but we are not
23 going to be complicit or willfully blind to this
24 issue either, because these peoples, this process
25 matters. We are here. This is a public process.

1 We believe in the integrity of it. The MMF has
2 dedicated a lot of time and its own resources, in
3 addition to funding that's been provided, to be
4 here and to make these voices heard, because we
5 believed in the CEC. It is only the second time
6 that this process has been used. But if it is not
7 going to be an effective public process, if the
8 people who are, who use it, feel that it is
9 nothing more than an ability for Hydro to get
10 exactly what it wants without having to deal with
11 the significant issues that are being raised by
12 the participants --

13 On page 7, and I added this in because
14 I think that it is helpful to include this to I
15 think counteract some of Mr. Bedford and his
16 client's misunderstandings about the Manitoba
17 Metis Federation. And I will acknowledge that
18 that 40,000 number is actually from an exact quote
19 in the Goodon case. And I don't know if I
20 actually -- if it is actually included in
21 President Chartrand's affidavit in a paragraph, I
22 will have to take a look at it, or whether I have
23 actually clipped the Goodon case. But at the
24 third bullet on page 7, this is where that number
25 comes from. And it does come from 2007, when we

1 were in trial at Goodon. And this is what the
2 court said.

3 "The Metis community today in Manitoba
4 is a well organized and vibrant
5 community. Evidence was presented
6 that the governing body of the Metis
7 people in Manitoba, the Manitoba Metis
8 Federation, has a membership of
9 approximately 40,000, most of which
10 reside in Southwestern Manitoba."

11 So this is the court saying this is
12 the governing body. And then flowing from that
13 the government signs a harvesting agreement with
14 that governing body.

15 President Chartrand brought you to the
16 Supreme Court of Canada's decision that says:

17 "The collective claim merits allowing
18 the body representing the collective
19 Metis interests to come before the
20 court. We would grant the MMF
21 standing."

22 Put all of that together, but Manitoba
23 Hydro goes, I ain't so sure. I'm sorry, but it is
24 unacceptable that a Crown corporation thinks it
25 knows better than the courts, than the government,

1 and through that arrogance doesn't then
2 effectively consult with the people that are
3 impacted by this project.

4 So I want to move on to the Metis
5 community's concerns. And on page 8, I
6 outlined -- and this is how our final written
7 submissions are structured, it is going to be very
8 much a line with what the scoping document says
9 and on issues of site selection, and socioeconomic
10 impacts, traditional use, heritage resources,
11 rights and land claims, assessing significance,
12 mitigation measures, monitoring and follow-up of
13 program. But I want to focus today to give you
14 two practical examples about how this is the
15 Titanic, and how the evidence actually illustrates
16 the problems.

17 So the shell game is important to
18 understand, because what the MMF is attempting to
19 do is, we will raise this wherever, whenever, and
20 however we can. And while Mr. Bedford may not
21 like my exuberance on it, and may think that my
22 language is challenging on it, the problem is that
23 if your client has been raising this for a year,
24 in multiple process, in letters to the Minister
25 which the CEC has before it, and no one is

1 responding, Manitoba Hydro isn't responding, we
2 acknowledge the CEC can't deal with the issue, and
3 the Manitoba Government isn't even responding to
4 the letters, what would you do? And this is the
5 shell game that the honour of the Crown we say is
6 entirely missing from the process. Because
7 Manitoba Hydro, as the agent of the Crown, is
8 saying we don't have the duty. The Crown is
9 saying we don't have that information in order to
10 assess impacts. And what happens is no one is
11 doing anything.

12 So as the Crown's agent, Manitoba
13 Hydro claims it hasn't been delegated any
14 procedural aspects of the duty. So as a result of
15 that, so it hasn't collected information assessing
16 impacts on distinct Aboriginal communities. You
17 have seen the stuff, it winds it all together.
18 So, for example, one community may use something
19 this way, another community may use it this way,
20 they may have different socioeconomic impacts, but
21 that stuff is discombobulated. It is essentially
22 all put into an ATK study that Manitoba Hydro's
23 own expert says, oh no, no, no, in my professional
24 judgment, I wouldn't call that an ATK study.
25 Because she knows it is not. Because it is a mess

1 of all of these different individuals, and having
2 no concept or correlation back to who are the
3 rights bearing communities. Now this document is
4 produced for the Crown corporation process. How
5 on earth are you ever going to assess, or get it
6 straight? It is like you have thrown a bunch of,
7 you know, yarn in a basket and, okay, now figure
8 it out. And maybe I will accept that that may be
9 naivety, or not completely understanding, or just
10 an attempt to try. But the confusion that ensues,
11 and the inability to then assess impacts based on
12 the communities is problematic. And we are
13 raising it here, and we think that the evidence
14 shows that that's a problem.

15 The EIS doesn't consider Aboriginal
16 rights or assess impacts on those rights. So
17 that's fine if saying, look it, the EIS isn't
18 supposed to do that. But then where is it being
19 done? And because -- I can just tell you this,
20 the Manitoba Conservation has not put a
21 significant amount of money in producing all of
22 this documentation. They are going to be relying
23 on the EIS. They rely -- they said, we are going
24 to rely on this documentation. While you are
25 nudging the Titanic out of port and saying, well,

1 we don't have the information either. Because you
2 haven't asked the proponent to gather it or
3 collect it in an intelligent way. So we don't
4 know how you are going to assess impacts in the
5 future when the information we have before you
6 doesn't give you that. And unless you are
7 producing it in a separate process, you've got a
8 problem. And that's what President Chartrand in
9 his letters and my letter to Mr. Bedford
10 illustrate. There is this information gap, and we
11 are flagging it, and no one is paying attention to
12 it.

13 The projects proposed mitigation
14 measures do not address impacts on rights, or even
15 deal with the actual rights bearing Aboriginal
16 communities that will suffer impacts. Because
17 Manitoba Hydro does it, we aren't the Crown, we
18 aren't dealing with Section 35 rights, so it won't
19 engage in a discussion on mitigation measures
20 around how do you protect those rights?

21 So the Aboriginal communities are
22 stuck in this catch 22. Because the Crown doesn't
23 have the information, and Manitoba Hydro says we
24 don't have to deal with it. So no one is dealing
25 with it. And this is another one of the fatal

1 flaws in the project.

2 And the residual effects that have
3 been identified have not been addressed or
4 compensated. Manitoba Hydro acknowledges there
5 are mitigation measures that will not completely
6 deal with the negative impacts. And they just
7 leave it at that.

8 So Mr. Osler, their expert, had gone
9 through extensively, this is how we get to it, and
10 so we get to the end and there is going to be
11 residual impacts with the landowners, so we
12 compensate. Right. They say the same thing with
13 trappers, okay, we get to the end so we
14 compensate. But Manitoba Hydro has identified
15 there is going to be these residual impacts to the
16 Aboriginal communities, and that's where it sits.
17 And the Crown is not accommodating. And the Crown
18 says, well, we can't deal with those issues, those
19 are mitigation measures that Manitoba Hydro should
20 be dealing with.

21 So the Metis are caught in a catch 22.
22 And our point here is just to lay out the record
23 and make sure that everyone is well aware of the
24 shell game that's being played. And as President
25 Chartrand said, but it won't be on the back of the

1 Metis this time.

2 So I just want to draw your attention
3 to the -- Manitoba Hydro's own experts have said,
4 so did you ever undertake an assessment on rights?
5 And this is my questioning to Mr. Osler. He says,
6 no, the environmental assessment doesn't undertake
7 assessment of rights, the Crown has to recognize
8 those, the Crown has to do that, yes.

9 Well, we are here to tell you the
10 Crown hasn't done it. In fact, the Crown doesn't
11 have the information to do it, and the Crown has
12 some sort of inertia, because it can't even
13 respond to letters about what it is going to do
14 with the information.

15 Ms. Petch does the same, makes the
16 same statement, we told people that we weren't
17 talking to them about rights because it is outside
18 of our expertise. But it is a bit of dancing on a
19 pinhead, don't you think? Well, we could not, we
20 had to be instructed by Manitoba -- we had been
21 instructed by Manitoba that we were not to address
22 Aboriginal rights in Section 35, that we were to
23 stay within the bounds of traditional knowledge.

24 So that's fine, but if the Manitoba
25 Government is telling you not to deal with those

1 issues, and not giving clear instructions to the
2 proponent about how to collect information it can
3 then use in the Crown consultation process, or is
4 producing that information in the Crown
5 consultation process itself, how on earth is the
6 assessment ever going to be done? And the reality
7 is, it is not. And that's where we get to the
8 Titanic.

9 So you have also heard about the
10 impacts to the bread basket, the blueberry patch,
11 and that the EIS doesn't deal with the Metis
12 community as a distinct group or assess impacts on
13 the collective. It knows, based on the EIS, there
14 will be significant residual impacts to Aboriginal
15 communities that can't be impacted, and that the
16 EIS's determination of significance doesn't
17 incorporate the perspective of Aboriginal
18 communities and discrete impacts on them.

19 The CEC knows all of this. So the
20 question is, what are you going to do with it?
21 Now, we are not saying that you have the duty to
22 consult or that you have to fix it, but we are
23 saying that in good faith and in good conscience,
24 as an administrative tribunal, you can't just be
25 willfully blind to the problem that you see before

1 you. And it is why we say you have to get to the
2 conclusion of saying, based upon us not having
3 this information, we can't recommend it to the
4 Minister at this time. And also giving
5 instruction of saying, we need this information
6 from the Crown before we, as a public institution,
7 can say -- because the idea that a public
8 institution, when it knows that Section 35 is
9 there, when it knows that the honour of the Crown
10 is at stake and these interests are there, and
11 when the institution itself knows that these
12 impacts are there, and it looks at the EIS and
13 says, yes, they are residual and no one has dealt
14 with them, how on earth can you just nudge the
15 boat further and say, not our wicket, the next
16 wicket? We say you can't. We say you don't have
17 to fix it, but we say you have to comment on it
18 and you have to flag it.

19 And we say you have to do this based
20 upon a court case from the Supreme Court of Canada
21 called the Conway decision, and we have provided
22 copies. The Conway decision is about whether
23 administrative tribunals can grant Section 24
24 remedies, or charter rights, Section 24 remedies.
25 And the jurisprudence says that -- what

1 essentially the court comes to the conclusion of
2 is, yes, administrative tribunals can grant those
3 remedies.

4 I am not asking for a Section 24
5 remedy, my client is not asking for a Section 24
6 remedy. But what we are saying is, you have to
7 look at -- you can't nudge the ship further when
8 you know there is a problem with the
9 constitutional issues here. That would be a
10 dereliction of duty, and that would be
11 inconsistent with the obligations of an
12 administrative tribunal that operates under the
13 Constitution of Canada.

14 And I just want to draw the CEC's
15 attention to paragraph 78 of the Conway decision
16 which says, the jurisprudence evolution leads to
17 the following two observations. First, that
18 administrative tribunals with the power to decide
19 questions of law, and from who constitutional
20 jurisdiction has not clearly been withdrawn, have
21 the authority to resolve constitutional questions
22 that are linked to matters properly before them.

23 Now, we are not asking you to. We are
24 not asking to you make a determination about
25 whether the duty has been filled, or on a

1 constitutional issue, but the second part is what
2 is important. And secondly, they must act
3 consistently with the charter and its value when
4 exercising their statutory functions. It strikes
5 me as somewhat unhelpful, therefore, to subject
6 every such tribunal from which a charter remedy is
7 sought to an inquiry about asking whether it is
8 competent to grant a particular remedy within the
9 meaning of Section 24.1.

10 But I want to go back to that sentence
11 of this: They must act consistently with the
12 charter and its values when exercising its
13 statutory functions. And we put this in the
14 context of, you know what the law is, you know
15 that there is Aboriginal rights impacted, you have
16 evidence before you. And we say that you can't be
17 blind to that and say "next wicket", when you have
18 evidence also before you that the next wicket
19 isn't dealing with the issue. Now, if the next
20 wicket does deal with the issue, that's fine. But
21 we would say that the CEC has to put that within
22 its decision, it has to talk about the problem
23 that you see with this project as it currently
24 stands in relation to Aboriginal rights. Now --
25 and we say that you have actual knowledge based on

1 the evidence that there will be impacts to rights.

2 Now, I want to move into the bread
3 basket and talk a bit about why the MMF has been
4 so on about this. And I guess what the MMF's
5 traditional land use and knowledge study shows is
6 you have a significant Metis population within
7 Manitoba, rightfully so, based on the history of
8 this province. And they use a specific geographic
9 area as their pantry, and they have historically
10 and they continue to. And this pantry or the
11 bread basket is what many in urban Winnipeg use in
12 order to continue to be connected to the land, to
13 continue to be connected to their culture, and in
14 order to feed their families. And the idea, the
15 fact that Bipole III goes down that west side
16 versus the east side, or versus some other
17 location, causes great concern to the MMF.

18 And President Chartrand, I'm not going
19 to read his quote, says this is the main bread
20 basket left for us. This is -- I want to bring
21 the Commission's attention to the Mikisew Cree
22 case, in our elaboration of our submissions will
23 highlight that, but location is important. And
24 also in the West Moberly case in British Columbia
25 about caribou, it is the issue of saying, they

1 don't -- Hydro stood up and said, well, we don't
2 have a plan B. Well, neither do the Metis and
3 neither do other Aboriginal peoples that rely on
4 this area.

5 So the idea that we don't have to
6 extensively consult and accommodate when you are
7 making use of these areas, we say can't be
8 sustained.

9 Now, Manitoba Hydro may refer to it as
10 bottleneck, we refer to it as the Metis
11 community's pantry, gathering place and home. And
12 this perspective in the EIS is completely missing.
13 From large animal harvesting to berry picking in
14 this region, it sustains the Metis community
15 culturally, spiritually, and for harvesting
16 purposes we think that the evidence shows that.
17 And the TLUKs also just confirms that.

18 And I want to emphasize, if Manitoba
19 Hydro essentially came to the MMF and said, look,
20 we want to understand how Bipole III is going
21 impact you. What the MMF says, we can't just go
22 to one little village and say, we talked to a few
23 people here to understand the impacts. And this
24 is what the MMF always understood, and quite
25 honestly, this is how I believe the consultation

1 process, the wheels began to fall off, is the MMF
2 did that TLUKs, it says, look it, we have got to
3 look at a much larger community, and so what we
4 are going to do is we are going to do a
5 statistically valid sampling of that community to
6 get an idea of how they use the land. And so we
7 had to essentially send out forms to everyone, we
8 got responses back, then took a sampling based
9 upon that in order to get a representation. And
10 it is not a perfect representation, but it at
11 least shows you patterns. And what the patterns
12 show is the significance of the bread basket to
13 the Metis community.

14 Now, Hydro walks away and says, hey,
15 there is the assessment, all we have to do is --
16 it is kind of like Lite-Brite, we just put up what
17 the maps show against what our rates show and say,
18 hey, you didn't kill a moose there, we are clear.
19 They miss the point.

20 The issue that the MMF has been on
21 about since that initial study came back in
22 saying, okay, now we show what the usage patterns
23 is, now we have to undertake an impact assessment
24 of where that usage is. And it is not as simple
25 as just holding up the map and holding up the

1 route and saying, I think we are okay. That is
2 where the disconnect comes from, and that is what
3 illustrates that the EIS doesn't undertake an
4 assessment. Those putting up a TK study, and
5 Ms. Larcombe's testimony talks about this, putting
6 up a TK study towards where a project is and
7 saying, I don't see any X's here, is not an
8 assessment.

9 Manitoba Hydro doesn't seem to grasp
10 that what is needed is to understand then how the
11 collective uses those bottlenecks or those areas
12 of concerns, what the relationships are. And you
13 don't get it by having a community meeting where
14 four people show up. And that's what is missing,
15 it is missing in the Crown process. The MMF has
16 continued to raise it with the Crown saying, this
17 is what needs to happen now. Consultation just
18 doesn't end when you get a traditional land use
19 study. But no one is listening. And we say that
20 that's problematic and will likely lead to future
21 delays of the project.

22 So the bread basket is a part of the
23 Metis way of life, and it is a fundamental
24 concern. And we have evidence from the witnesses
25 talking about how they continue to use the lands,

1 how important hunting and gathering is for them,
2 and also we have illustrated of that mobile
3 lifestyle of what the court in Goodon is talking
4 about, of how the Metis see this as one community,
5 that that continues to exist today.

6 You had the panel from Duck Bay talk
7 about how, you know, she is essentially a hotel,
8 because all of the family from Winnipeg come back
9 up to Duck Bay for their hunting. And that's how
10 the Metis continue to use this territory. And it
11 is not trivial for them. This is a people, an
12 Aboriginal people, one of the founding Aboriginal
13 peoples of this province, and this is how they use
14 the land. And the same respect that's being shown
15 up in -- with First Nation partners in relation to
16 Keeyask, or other projects like that, just because
17 they are in the south doesn't mean that that
18 understanding of how they use the land should be
19 ignored.

20 So I want to talk a bit about the
21 berry patch. And just using the berry patch is
22 one example about how there is going to be
23 irreparable harm to the Metis community, and how
24 that is not addressed adequately in the EIS, it is
25 not addressed in Hydro's mitigation measures, and

1 it also isn't being addressed by the Crown.

2 So we have included some quotes about
3 how, some testimony from how the communities have
4 used that territory. And on page 13, Ms. Campbell
5 talks about how it is an important place, and she
6 talks about how it was an important place
7 historically, but how it continues to be, because
8 now we live here and I teach my grandchildren, I
9 have nine grandchildren of my own, so occasionally
10 we go picking to still -- just for our use. But
11 some people still sell the berries, because people
12 like blueberries, they are nutritious. Like fresh
13 blueberries, you can't ask for anything better, or
14 moose meat, and all of the things that come from
15 the land.

16 What she is talking about is how this
17 territory is important, and how also the
18 relationships aren't just about blueberries, but
19 it is about their stories, about how they grew up,
20 and about where they got married. And similar to
21 those Red Cedars, you destroy that, there is not
22 another berry patch somewhere else.

23 And from the Metis perspective -- in
24 addition, Mr. McGarry last week, where the Chair
25 asked a question about the blueberry patch, he was

1 still unsure exactly what the scope of the
2 blueberry patch was. And in our written
3 submissions we will highlight that. He said,
4 well, we think it is here. Well, you know there
5 is going to be these impacts to Aboriginal people,
6 don't you think you probably want to have that
7 scoped out, or ask the Aboriginal people to scope
8 it out? Because Hydro's impression of where that
9 blueberry patch exists to what the evidence that
10 you have before you is, is not the same. Manitoba
11 Hydro is saying, well, we are just clipping
12 through the western corner of it. Well, when you
13 actually see the descriptions from how the Metis
14 community describes what the berry patch is -- and
15 it may not be where exactly the berry patch is, it
16 is how they see their relationship to the land,
17 how they understand that area. And from the Metis
18 perspective, it is not just going through a little
19 part of that area, it is going through the core or
20 the heart of that area. And I think whether you
21 want to debate on exactly how it is cut, or
22 exactly where it goes through, the concept of that
23 perspective is entirely lost and is not included
24 in the EIS.

25 And so I want to go on and talk

1 about -- this is what you see the Aboriginal
2 community facing, or the Metis community facing on
3 page 14, they are saying, well, Richard Genaille
4 is talking about, do you think there is anxiety
5 about Bipole III? There is, yeah, because what
6 I'm talking about, they don't know, the big thing
7 they don't know. Like they don't know where it is
8 coming through, and he continues on and he says
9 because -- like you try to explain it to them and
10 they don't know, it is going to affect them,
11 because like Gloria was saying, like where we used
12 to go, like all of the line is going through. It
13 has a bearing on them because that's the actual
14 places where they grew up, the different families
15 from the communities of Duck Bay, Pine Creek and
16 Camperville. And I go, well, do you think a giant
17 transmission line going through it is a nice
18 addition to those areas? And he of course says
19 no.

20 The point being that this is those Red
21 Cedars for these people. And Hydro's consultation
22 program clearly hasn't been effective when the
23 people themselves don't exactly know where it is
24 going through. And to a certain extent, Hydro's
25 own witnesses don't have a complete concept about

1 where it is going through either. We think that's
2 a problem. And I want to go on and say that --
3 let's just start with that point, that there is a
4 problem on that and the evidence clearly shows it.
5 But then let's go further and see what else the
6 evidence shows.

7 So let's say that Hydro is right, and
8 it is only going through -- final preferred route
9 is only going through a western corner of the
10 berry patch. But the evidence from Hydro's own
11 witnesses, Ms. Petch says -- and so Hydro is
12 saying, look it, we are just cutting a corner, and
13 the blueberries may come back. And one, they have
14 no -- there is no solid commitments that spraying
15 won't be done throughout this entire region. But
16 also the evidence shows that even if Hydro says we
17 aren't spraying, people won't go there. And
18 Ms. Petch is the one that actually provides that
19 evidence. It is in volume 17. And I ask:

20 "Did you hear in the ATK that even if
21 there is no spraying there is still a
22 reluctance of people to go picking
23 there because --

24 Yes, many times it was mentioned that
25 people felt or perceived that there

1 would be contamination. Medicinal
2 pickers also told us that they would
3 not pick near transmission lines
4 because the power of the plant would
5 be lost.

6 So even with the fact that it may be
7 going directly through the patch, and
8 that this may not be completely
9 destroying, you know, there will be
10 residual effects by virtue of people's
11 behavioral change to adapt to the
12 realities, rightfully or wrongfully,
13 perceptions that you don't pick in
14 transmission routes or near
15 transmission routes?

16 Yeah, that's correct."

17 So Hydro can say all it wants of
18 going, well, we are only cutting through a little.
19 But what you are going to have is a dead area, an
20 area of this important landscape that the people
21 will avoid. And that's a loss to those people.
22 And you are essentially creating a dead zone and
23 the Metis are being put in a lose/lose situation.

24 And I think that Manitoba Hydro's own
25 evidence acknowledges that those impacts are not

1 avoidable, and chapter 8 confirms that there is
2 going to be residual impacts from domestic use.
3 Yet these impacts are not addressed or compensated
4 in any way the same way that other residual
5 impacts are compensated.

6 So Mr. Osler says, this is the process
7 that we follow, he says, on page 15 of my brief.

8 "The mitigation measures that we are
9 talking about through the SSEA process
10 include effect avoidance, which is
11 usually driven by route selection
12 process, effect minimization through
13 the mitigation, or other measures we
14 can take when we are actually in a
15 particular location, final design,
16 final features. And finally effect
17 compensation will apply to remedy
18 unavoidable residual adverse effects
19 such as occurs in trappers'
20 compensation policy or landowners'
21 compensation policy."

22 So others are compensated. And here
23 is for the Metis -- I think the discussion is even
24 had of, can we avoid it in its entirety? But we
25 know based upon the EIS there is going to be

1 residual effects, but they don't go to that next
2 step with the aboriginal communities that are
3 impacted. They just say, well, too bad, so sad,
4 and that's where it is left. And this is the
5 problem that we want to bring to the Commission's
6 attention. And it is significant because this is
7 just one example of when Hydro then steps back and
8 says, well, we don't think it is significant. But
9 the EIS doesn't contemplate at all how the actual
10 people use it on the ground.

11 And I think this indifference is
12 adequately captured in the questioning that I had
13 with their vegetation expert. And that's at the
14 bottom of page 15. And I ask him:

15 "Right. So in relation to vegetation,
16 though, there are some non mitigable
17 effects?"

18 That's correct

19 And how do you compensate for those
20 non-mitigable effects for Aboriginal
21 people who rely on that plant life?

22 Well, what was non-mitigatable was a
23 residual effect, that's what we
24 identified was residual."

25 And so I go:

1 "So when I'm reading the EIS that
2 there are residual effects, that is
3 where there is an assessment. So I
4 guess I'm going to go back to Mr.
5 Osler's point, removing a certain
6 berry patch from an area of use, from
7 the large banana area, wouldn't be of
8 concern, removing that from Metis and
9 First Nations communities who may
10 extensively rely on them in a specific
11 quadrant of the line could be
12 significant.
13 We didn't identify that as
14 significant, sir."

15 And then he goes on and says, and I ask again:

16 "Sure. Would you agree with me that
17 in areas where there is vegetation,
18 blueberries, plant life that are
19 extensively relied on by the
20 Aboriginal peoples, that removal and
21 loss of that could be significant on
22 them?"

23 And he says:

24 "No, we don't think that's a
25 significant effect.

1 You don't feel that that's a
2 significant effect for the purposes of
3 the EIS?

4 That's correct and that's what we have
5 identified."

6 How can you miss that point when your
7 own -- how can you put that together with the
8 evidence of Virginia Petch? We may have problems
9 with the ATK, but we think that she probably did
10 interview some First Nations and Metis people in
11 the area, and she grasped that. Our ATK studies
12 grasped that as well. Yet Manitoba Hydro doesn't
13 consider it significant. And this is the problem
14 with the EIS.

15 So we go further and we think that
16 this is what illustrates -- and I think that
17 others will do a far better job than us on
18 attacking the cumulative effects analysis and the
19 actual effects analysis done by Mr. Osler, but
20 here is what we think is just a giant red flag
21 about why we think this Commission should have
22 problems with the affects assessment.

23 So we then -- so I then ask, or maybe
24 beforehand I asked Ms. Petch, what does she think
25 the effects are? And I asked:

1 "Given the fact that you talk quite
2 poignantly and describe in your report
3 the importance of these areas to those
4 communities, that these are, as you
5 know, I think that you used the
6 language, this is where people went in
7 the old days, this is where people
8 went and had weddings, this is where
9 people have been buried. In the eyes
10 of these communities, it is pretty
11 significant?

12 Yes, it came out time and time again
13 that this was a very significant area,
14 and probably the most significant
15 along the route."

16 That's Ms. Petch's statements on
17 cross-examination. And then I go on and ask her:

18 "Okay. So you've just told me this.
19 How do you get then to the analysis in
20 chapter 8 of saying not significant?"

21 So she goes on -- so I ask:

22 "And so can you walk me through then
23 how in your report, not in your
24 report, but in the EIS, then given
25 this information, which I think is

1 supported also by the self-directed
2 studies you get, or Manitoba Hydro
3 gets to the conclusion domestic
4 resource use and that impact is not
5 significant?"

6 And then she adds:

7 "From a regulatory perspective."

8 And I say:

9 "Can you unpack that for me?"

10 Trade marked. And her response is:

11 "That's outside of my expertise. But
12 there will be, from what I understand,
13 there will be a process to deal with
14 these kind of things.

15 But Ms. Petch, you are the expert in
16 this area, you are the one that
17 Manitoba Hydro is holding out saying
18 that this is the traditional knowledge
19 and you have come to this conclusion.

20 So from that, do you agree with the
21 conclusion that it is not significant?

22 From a cultural perspective, I think
23 that these things are going to be very
24 difficult to mitigate. Some of them
25 may be impossible to mitigate?"

1 That's the question I asked.

2 "Some of them you can't put a value
3 on."

4 So this really goes to the problem of
5 how can you rely on the effects assessment that is
6 in the EIS, when clearly Ms. Petch, who is their
7 expert on this issue, doesn't agree with it? She
8 wouldn't come to that conclusion. What she
9 essentially says is, well, I have handed it over
10 and someone else comes up with the designation.
11 But what the evidence shows is that there will be
12 significant impacts, and the EIS doesn't
13 acknowledge that.

14 So I just want to point out that this
15 contradicts how Mr. Osler explains the process
16 that they have gone through. So page 17, this is
17 a quote from Mr. Osler that he is saying:

18 "The magnitude question comes down to,
19 I mean, in my experience magnitude in
20 many ways is the core of what you are
21 talking about. It is the intensity
22 variable that makes the big
23 difference. How you measure it in
24 each case for each VEC, though, is a
25 professional expert's job, is to tell

1 me, or you know, I do it for this one
2 versus that one."

3 What he essentially is saying, the experts are
4 supposed to tell me. Well, this is what the
5 expert tells you, but yet you still get to a
6 conclusion that it is not significant. And we
7 just say this is just one of the many examples of
8 how the EIS and its assessment is problematic, and
9 that it doesn't address how -- it doesn't
10 incorporate the Aboriginal perspective, and it
11 doesn't address what the impacts on Aboriginal
12 communities are. So it can't be relied upon as
13 that.

14 Our point is that this just further
15 illustrates of how -- well, it may be a nice
16 binder and look like it is professionally done --
17 when you start to dig underneath, it really
18 illustrates that it is a house of cards of how it
19 has been sliced and diced together on some of
20 these issues.

21 And I'm only dealing with it from my
22 client's perspective on how a few different issues
23 that are of importance to the Metis are lost in
24 the EIS assessment.

25 I want to go on to moose hunting and

1 talk a bit about how that essentially plays out as
2 well. I'm not going to go -- you have the
3 evidence that we have put in here, and we will put
4 it in our final written argument as well, the
5 evidence that shows how important the area is to
6 the Metis, the testimony that you have from the
7 Metis community members, as well as the testimony
8 that you have from Pat Larcombe who undertook the
9 TLUKs study on behalf of the Metis, on behalf of
10 the MMF. But I just want to unpack again what
11 Hydro is essentially saying is extremely
12 problematic. And it is almost perverse, it is
13 almost -- Mr. Osler says:

14 "Well, I'm not trying to be cute on it
15 but this is essentially how an EIS is
16 undertaken. And yeah, we get some
17 benefit by the fact that no one is
18 hunting in the area. We don't have to
19 be concerned about it."

20 And he says:

21 Well, I can see why you get upset by
22 that, but this is how we see the
23 process."

24 But I want to build this out even further about
25 what is even more troubling about what Manitoba

1 Hydro and Manitoba Conservation, how they are
2 essentially planning to respond, or potentially
3 planning to respond to the fact that this issue is
4 playing out. So we know that there is trouble, or
5 there are problems with the moose populations in
6 these GHAs. They are closed.

7 And let's just be clear here, Metis
8 rights and First Nation rights are being infringed
9 right now, they are being infringed because no
10 rights are absolute, and the Sparrow test sets out
11 that rights can be justifiably infringed. And one
12 of the ways that those rights can be justifiably
13 infringed is in the name of conservation. In this
14 case, in addition to just that being in the name
15 of conservation, the Aboriginal people themselves
16 have been the ones in this area asking for some of
17 these things because they have seen the
18 populations go down.

19 So what we have is a willing
20 infringement. But let's just be very clear here,
21 and we want the panel to understand this,
22 constitutional rights are being infringed right
23 now in this area. They are being infringed
24 justifiably because of conservation, but they are
25 being infringed nonetheless.

1 So the idea that a Crown agent such as
2 Manitoba Hydro, or the Crown itself can then take
3 advantage of that in order to say, get a project
4 through like Bipole III, is extremely problematic.
5 And this plays out in how Mr. Osler, as well as
6 Manitoba Hydro, explains it saying, well, we
7 acknowledge that there is going to be impacts
8 during construction. And I'm now going to go up
9 to page 22, and it is the quote at the bottom, and
10 this is from Mr. Osler. He is saying:

11 "The analysis has to consider that the
12 changes that will occur due to the
13 project, and that those changes, the
14 point of the analysis is those changes
15 in an area where we have closure and
16 people are not allowed to hunt, the
17 population is already being protected
18 by a set of measures to stop people
19 from hunting them. So the fundamental
20 point of the analysis that the experts
21 are after is not whether the
22 population is going to suffer any type
23 of short term effect, it is discussed
24 that during construction there will be
25 disturbance."

1 So they have acknowledged here that even during
2 construction there is going to be additional
3 disturbances and challenges. But the question,
4 and again I'm at the bottom of page 22 in my
5 submissions, but the question they are
6 fundamentally focused on is:

7 "Is the population going to be
8 affected in the longer run, its
9 sustainability, et cetera, because of
10 the project? If the projects stays in
11 place, for example, and the people are
12 not allowed to hunt, then all of the
13 access related issues that one
14 normally worries about are not
15 material to in the area."

16 So what you really see here though is, well, we
17 don't have to worry about it, we've already got
18 closures. So we are going to rely on that willing
19 infringement of the right in order to benefit, and
20 we are going to exclude that from the VEC
21 analysis.

22 We say that that's wrong. And our
23 expert outlines how, in the determination of
24 significance and also in the determination of
25 magnitude, you have to understand the

1 stakeholders' perspective.

2 Now, to add insult to injury, what
3 Manitoba Hydro and Manitoba Conservation are now
4 proposing is saying, okay, well, we have heard you
5 so, one, we think it is all about hunting. And in
6 these areas you are already suspending, or
7 allowing the infringement of your harvesting
8 rights of moose. So what we are going to add is
9 Berlin wall-like mitigation measures. We are
10 going to put in gates, we are going to put in
11 cameras, we are going to ratchet up access. So to
12 do our project, we are essentially going to make
13 it harder for you to have access, and also likely
14 decrease other harvesting opportunities that you
15 may use in order to allow for our project.

16 And we just say that that's wrong. We
17 say that it is the idea that those increased
18 mitigation measures, what is not being -- it may
19 be mitigating one thing, but the negative effect
20 of it is you are actually infringing the Metis
21 right even further. And we say that can't be
22 sustained and that that shouldn't be allowed by
23 virtue of the fact that the Metis have actually
24 been willingly not exercising their
25 constitutionally protected rights in these areas.

1 THE CHAIRMAN: Mr. Madden, I would
2 like to interrupt. You had indicated that you
3 would need an hour and a half for your closing.
4 We are now at an hour and a half. How much longer
5 do you think you might be?

6 MR. MADDEN: What time is it?

7 THE CHAIRMAN: It is 5:00.

8 MR. MADDEN: I will wrap up in 15?

9 THE CHAIRMAN: 15 minutes, we will
10 turn off the mics at 5:15.

11 MR. MADDEN: I should have had -- in
12 most courts you get little lights, and I didn't
13 realize --

14 THE CHAIRMAN: Yes.

15 MR. MADDEN: So I think I'm going now
16 to -- in our written submissions we outline how
17 our evidence from our experts contradicts that of
18 Joro Consultants, and we find that some of the
19 positions taken about that wolf predation has no
20 impact, and this is all about hunting,
21 unsustainable, and that are not consistent with
22 the reality that actual additional information is
23 needed in this area.

24 And we also just want to make the
25 point that we feel that we have been prejudiced by

1 the fact that this enhancement report was only
2 provided seven days prior to the recommencement of
3 these hearings. And we have been on about this
4 for quite some time. And I think that we put in
5 our initial response and then didn't -- we haven't
6 had a chance to test that information. And in
7 fact, in Ms. Stewart's letter, she says that there
8 is still substantial problems with it. And I
9 think from the testimony last week you also heard
10 that they still have gaps in some areas, in
11 particular 19A and I think it is 14A.

12 Our point is that we still don't have
13 answers to these questions. And since you don't
14 have answers, we don't think that the project can
15 be recommended. This is just too important. It
16 is too important to Metis communities. I think it
17 is too important to the First Nations communities
18 in the area, and I think that it is too important
19 to all Manitobans about this area. And I think
20 that given the significance of this issue, that
21 Manitoba Hydro should have provided those
22 documents at least on January 28th, when they
23 filed the other materials. And since we haven't
24 had the opportunity to test that, we decided -- we
25 requested cross-examination, but at the end of the

1 day we said we can't, because Ms. Stewart said we
2 need to dig into this information. So what we
3 want to just point out is that clearly Manitoba
4 Hydro has acknowledged that there was deficiencies
5 in how they did it. That's why they went ahead
6 and got the additional information. Now we should
7 at least have the opportunity to test that
8 additional information. And we can't do that
9 within seven days.

10 On significance, I just want to refer
11 to the real point, and I think -- and this is at
12 the top of the page 20. Ms. Stewart raises this
13 point in many cases, continuously. She goes:

14 "Manitoba Hydro has concluded that the
15 effects are what they perceive as
16 acceptable, but I would ask what about
17 the other parties? It doesn't appear
18 that Manitoba Hydro has worked
19 collaboratively on approach to
20 significance determination, and other
21 parties or stakeholders or groups that
22 might be affected by the project, and
23 this would be of general good
24 practice. Manitoba Hydro hasn't
25 considered what the Metis might

1 consider as an acceptable level of
2 change that can be seen."

3 And if you go down three paragraphs she says:

4 "I think Manitoba Hydro needs to use
5 an alternative definition of
6 magnitude, one that can be supported
7 by the data. And I think they should
8 collaborate with other groups on
9 determining significance and really
10 come up with relevant magnitude
11 criteria with respect to moose, and
12 probably with respect to other VECs as
13 well."

14 And I just want to raise this point
15 that this is not that we are from Saturn making
16 this recommendation. This happens all over other
17 jurisdictions. In President Chartrand's
18 materials, we have included agreements that are in
19 place in northern -- in the northern territories
20 that allow for multi-parties to be a part of these
21 monitoring, but also on the part of determining
22 thresholds. Because I think that the language
23 that Mr. Osler adopted, or one of the experts
24 adopted is that this is all in the eyes of the
25 beholder. Well, it is very nice to be -- if you

1 were Manitoba Hydro -- in their eyes. But the
2 reality is that these are important areas to other
3 user groups, some of them having constitutional
4 rights. And the idea that they are completely
5 excluded from the significance, we say can't be
6 supported. And we just want to say this: We
7 don't think it can't be supported when you read
8 the terms of reference for the scoping document.
9 Our evidence will -- our written submissions will
10 focus on that. But this is, the societal
11 acceptance, all of those principles, why were they
12 collecting Aboriginal traditional knowledge? If
13 they weren't worried, or if the province wasn't
14 worried or concerned about how it is going to
15 affect Aboriginal people, why collect it?

16 So the point is that I simply do not
17 agree that a meaningful assessment of impacts on
18 Aboriginal people is simply attaching a TK study
19 to the back of the EIS. And to be quite frank,
20 that is all Manitoba Hydro has done with this
21 project.

22 We also think that the evidence
23 doesn't support that there aren't other multiple
24 factors that are playing into the moose situation
25 in the west side corridor. And we've provided

1 Ms. Stewart's evidence on that. And we believe
2 that -- looking at some of the mistakes that I
3 have highlighted, or the misinformation that were
4 in some of the Joro's consultant reports that were
5 brought out in cross-examination, as well as the
6 credibility of Ms. Stewart, we think that some
7 of -- that that evidence should be preferred. And
8 that Ms. Stewart isn't criticizing, what she is
9 saying is, this is what others do, and this is
10 what you need to do. And Manitoba Hydro is doing
11 this in isolation. And we think the evidence
12 shows that and we think it is problematic.

13 I want to quickly just move on to
14 socioeconomic effects. And I'm not going to go
15 into this. Just simply that we put together on
16 page 24 where one of the requirements are that you
17 are supposed to look at the communities impacted,
18 and they do no assessment on socioeconomic impacts
19 on the Metis community. In fact, when I asked
20 Ms. Hicks directly, it is quite stark, her
21 responses.

22 Moving on to page 25, and this is
23 about identifying impacted communities, and this
24 is really the discussion or the interchange that
25 you saw between President Chartrand and

1 Mr. Bedford today about Manitoba Hydro saying,
2 well, we will pick and choose who to consult with,
3 we will pick and choose whether we think you are
4 government, or whether we think you are worthy
5 enough for us to have a relationship with. And we
6 get our guidance from -- I don't know what the
7 assessment is, but we will make those
8 determinations. We asked the one recommendation
9 that we think is imperative for the CEC to make in
10 addition is, proponents should not be making these
11 decisions by themselves. The Crown has the duty.
12 The Crown needs to identify who the potentially
13 impacted communities are. Because if not, you
14 have exactly what you saw with Mr. Bedford, I have
15 looked at the census data and I don't think you
16 are legitimate. The Supreme Court of Canada may
17 think so, the government may think so, but I don't
18 think that you are the one we should be talking
19 to.

20 The duty to consult has a two part
21 test. The first part is, is there a duty? And in
22 order to identify whether there is a duty, you
23 need to know who the rights holder is. And the
24 second part is whether the duty has been
25 fulfilled, and that's an assessment based on

1 reasonableness.

2 The first part of the test is based on
3 correctness. They have to have the community
4 correct and the proponent shouldn't be feeling
5 around in the dark to try to figure it out. And
6 whether the Crown wants to maintain it, wants to
7 maintain jurisdiction for the consultation, they
8 need to tell the proponent who you should be
9 talking to, and it can't be discombobulated from
10 each other. And that is -- you will see,
11 Mr. Chair, you asked why am I on about this? I'm
12 on about this because a court won't like it. A
13 court won't like that it is essentially willful
14 blindness of the Crown saying, go ahead and talk
15 to whoever you want, we don't care. We are going
16 to use that information that you produce in order
17 to assess impacts, but once we get the
18 information, we can't make hide nor hair of it in
19 understanding what the communities are, we get
20 things like Manitoba Hydro's TK study.

21 So we outline this point and we go
22 into it in great detail, but we think that it is a
23 fundamental flaw with how Manitoba operates, and
24 we think that Manitoba Hydro shouldn't be the one
25 making determinations about who it thinks it

1 should consult.

2 With respect to trappers, we just want
3 to make two points. One, what Manitoba Hydro
4 completely misses as well is that the losses to
5 trappers are collective, there is collective
6 losses to the community as well, not just to
7 individual trappers.

8 Then the other is with respect to, we
9 think that independent legal advice, or some third
10 party organization needs to assist the trappers,
11 needs to be there to assist trappers in
12 understanding the legal documents that they are
13 essentially being asked to sign by Manitoba Hydro.
14 And we have outlined that evidence as well.

15 On page 28 we talk about the
16 uncertainty of the project components. And I
17 think I spoke a bit about that at the beginning,
18 and we elaborate on that a bit more.

19 So my final closing points are this:
20 The MMF urges the CEC not to recommend the project
21 at this time. We think there is fundamental
22 questions about the project that remain
23 unanswered, even what is the current route. There
24 is important components of the project that remain
25 unknown and un-assessed. Meaningful environmental

1 assessment of the project based on the scoping
2 document has not happened, including ensuring
3 significance determinations reflect societal
4 values and incorporate the Aboriginal perspective.
5 There is not clarity on the mitigation measures.
6 How are you going to be able to recommend a
7 project when you don't entirely know what the
8 mitigation measures are? Those discussions are
9 still ongoing between Manitoba Conservation and
10 Manitoba Hydro, or at least we understand they
11 are.

12 Most importantly from the MMF
13 perspective, the CEC knows this project will cause
14 significant adverse effects to Metis rights, but
15 those collective impacts have not been meaningful
16 assessed or addressed, not by the Crown, not by
17 the CEC.

18 So we say that the CEC can't, in good
19 conscience, recommend the project where these
20 issues haven't been addressed, and there is no
21 certainty that they are going to be addressed.
22 This would be a breach of its obligations as an
23 administrative tribunal that is guided by
24 constitutional norms.

25 For the record, we adopt the

1 recommendations from our experts on what should be
2 put in place, but we want to make this point, we
3 don't even think we are there yet. So often, and
4 in our final written submissions, we will have all
5 of those included as an appendix, those are the
6 recommendations from Ms. Supernaut, Larcombe, and
7 Ms. Stewart. The MMF adopts all of them, but we
8 don't believe we are at a stage where a licence
9 should be granted.

10 And Manitoba Hydro must go back and do
11 what it said it would do, what it was required to
12 do under the scoping document. And it needs to
13 meaningfully assess the entire project. And it
14 needs to meaningfully engage the impacted Metis
15 community to understand, assess, avoid and
16 mitigate those effects.

17 The CEC has a choice to make, if it
18 lets the ship that's destined for the iceberg
19 continue, or does it make recommendations that
20 will allow for reassessment and a course
21 correction that will benefit all involved?

22 MMF urges that the CEC not recommend
23 the project. The stakes are simply too high for
24 all of the parties involved, and being willfully
25 blind to the course of Bipole III is unacceptable

1 to all.

2 So with that, the MMF thanks the
3 Commission again for the opportunity to
4 participate in the hearings. And we will, as we
5 said, be filing our far more extensive written
6 submissions on Wednesday, but we hope that our
7 presentation today illustrates these problems.
8 Because these problems aren't just specific to
9 these issues, they transcend of what the overall
10 problems are with the EIS, from the MMF's
11 perspective.

12 THE CHAIRMAN: Thank you, Mr. Madden.
13 I hope your final documents aren't too far more
14 extensive, because I think that members of the
15 panel might be getting close to reading fatigue.

16 I understand that this will be your
17 last appearance before this hearing, so I want to
18 thank you for your participation over the last
19 number of months. It has been of the highest
20 standards. So I suspect we will see you again
21 next go round.

22 MR. MADDEN: Most likely.

23 THE CHAIRMAN: Madam secretary?

24 MS. JOHNSON: We have a number of
25 documents collected up today. The letter to

1 Mr. McGarry from the Outfitters is WPG 17. The
2 response to Mr. Grant is WPG 18. The response to
3 Adrenalin Outfitters is WPG 19. Mr. Soprovich's
4 presentation is WPG 20. The Wuskwi Sipihk First
5 Nation Traditional Land Use and Occupancy Report
6 is MH 119. The response to undertaking to
7 Mr. Mills is MH 120. The response to undertaking
8 to Mr. Gibbons is MH 121. A letter dated
9 March 2nd from MMF regarding the moose report is
10 MMF 21. The report from Ms. Stewart is MMF 22.
11 The letter dated February 29th to Mr. Bedford from
12 MMF is number 23. The resolution of the MMF is
13 number 24. The letter dated March 6th to the two
14 ministers is MMF 25. The letter of February 27th
15 to the Federal Minister of Aboriginal Affairs and
16 Northern Development is MMF 26. The Conway case
17 is number 27. The Manitoba Metis Federation
18 versus Canada is number 28. The Guide to
19 Environmental Assessment Requirements for
20 Electricity Projects from Ontario is MMF 29. And
21 Mr. Madden's overview of his closing arguments is
22 MMF 30.

23 MR. MADDEN: And the long term energy
24 plan, is that -- Ontario's long term energy plan?

25 MS. JOHNSON: Okay. That would be 31.

1 MR. MADDEN: And just so I understand,
2 Ms. Stewart's initial response, or response
3 without the assessment is 22, and the letter
4 from -- sorry, is --

5 MS. JOHNSON: Information gaps is
6 number 22.

7 MR. MADDEN: Okay. And the letter of
8 March 6th is?

9 MS. JOHNSON: I have March 2nd.

10 MR. MADDEN: Maybe it is March 2nd.

11 MS. JOHNSON: March 2nd is 21. And
12 then we will deal with the taxpayers' letter
13 before the week is over.

14 (EXHIBIT WPG 17: Letter to
15 Mr. McGarry from Outfitters)

16 (EXHIBIT WPG 18: Response to
17 Mr. Grant)

18 (EXHIBIT WPG 19: Response to
19 Adrenalin Outfitters)

20 (EXHIBIT WPG 20: Mr. Soprovich's
21 presentation)

22 (EXHIBIT MH 119: The Wuskwi Sipihk
23 First Nation Traditional Land Use and
24 Occupancy Report)

25 (EXHIBIT MH 120: Response to

1 undertaking to Mr. Mills)
2 (EXHIBIT MH 121: Response to
3 undertaking to Mr. Gibbons)
4 (EXHIBIT MMF 21: Letter dated
5 March 2nd from MMF reg moose report)
6 (EXHIBIT MMF 22: Report from
7 Ms. Stewart)
8 (EXHIBIT MMF 23: Letter dated
9 February 29th to Mr. Bedford)
10 (EXHIBIT MMF 24: Resolution of MMF)
11
12 (EXHIBIT MMF 25: Letter dated
13 March 6th to two ministers)
14 (EXHIBIT MMF 26: Letter of
15 February 27th to the Federal Minister
16 of Aboriginal Affairs and Northern
17 Development)
18 (EXHIBIT MMF 27: Conway case)
19 (EXHIBIT MMF 28: Manitoba Metis
20 Federation versus Canada)
21 (EXHIBIT MMF 29: The guide to
22 Environmental Assessment Requirements
23 for Electricity Projects from Ontario)
24 (EXHIBIT MMF 30: Mr. Madden's
25 overview of closing arguments)

1 (EXHIBIT MMF 31: The long term energy
2 plan)

3 MR. MADDEN: Just one other question,
4 with our written submissions I refer to other case
5 law. Copies to be provided as well -- or I can
6 refer to cases without them being entered as
7 exhibits; correct?

8 THE CHAIRMAN: I think so, as long as
9 they are clearly cited. If you rely significantly
10 on those cases, perhaps provide most, if not all,
11 of the case, but I don't think that we need bags
12 and bags of cases that --

13 MR. MADDEN: All right.

14 THE CHAIRMAN: Okay. We are getting
15 close to finish for the day. Tomorrow we have,
16 first thing in the morning we have what we are
17 calling leftovers, which are panel, final panel
18 questions for Manitoba Hydro officials. I'm not
19 sure how many there will be, I don't think it will
20 take us terribly long.

21 Following the morning break --
22 presumably we will fill up the time until the
23 morning break. Following that, Manitoba Hydro
24 will present its rebuttal. And then in the
25 afternoon we should get into some of the closing

1 statements from other participants.

2 That brings today to an end. Thank

3 you all, good night.

4 (Adjourned at 5:20 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

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

Cecelia J. Reid
Official Examiner, Q.B.

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