

MANITOBA CLEAN ENVIRONMENT COMMISSION

BIPOLE III TRANSMISSION PROJECT
PUBLIC HEARING

VOLUME 33

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Transcript of Proceedings
Held at Winnipeg Convention Centre
Winnipeg, Manitoba
WEDNESDAY, MARCH 13, 2013

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APPEARANCES

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

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APPEARANCES CONTINUED:

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1 Wednesday, March 13, 2013

2 Upon commencing at 9:00 a.m.

3 THE CHAIRMAN: Good morning. I would
4 like to come to order. First on our agenda this
5 morning -- well, our agenda all day is closing
6 arguments -- first up is the Peguis First Nation.
7 And before we start with their presentation, we
8 will start with a prayer by Lloyd Stevenson, I
9 believe it is.

10 (Opening prayer)

11 THE CHAIRMAN: Thank you,
12 Mr. Stevenson.

13 Mr. Dawson?

14 MR. DAWSON: Good morning,
15 Mr. Chairman, members of the panel.

16 I would like to start by reminding the
17 panel why Peguis First Nation came before this
18 hearing and sought the opportunity to participate.
19 Peguis has concerns about three ways in which the
20 Bipole III project could or likely would affect
21 its interests. And a lot of the terms that I'm
22 going to refer to, of course, were defined by the
23 Peguis witness, Dr. Kulchyski. And for the sake
24 of convenience, later convenience for the panel
25 that might want to refer to where in the

1 transcript I'm making reference, I will
2 occasionally pepper my remarks with a transcript
3 page and line reference that might make your life
4 a little easier.

5 So I'm referring specifically to
6 Dr. Kulchyski's comments about what constitutes
7 reserve land, what constitutes TLE, that's Treaty
8 Land Entitlement land, the claim area, the TLE
9 claim area, as well as traditional lands that are
10 quite apart and separate from all of that. And
11 Dr. Kulchyski made reference to these and defined
12 these terms for us at 3830, line 12, and again
13 page 3834 and following in the transcript.

14 So what are the specific effects that
15 the Bipole project will touch upon? And I'm
16 repeating what I had said in my openings remarks
17 before these hearings began.

18 First, of course, the transmission
19 line crosses through traditional Peguis territory
20 and includes lands over which claims have not been
21 extinguished by Treaty 1 negotiations and
22 settlements.

23 Secondly, the transmission line
24 crosses through TLE notice area that belongs to or
25 is optioned, shall we say, to Peguis.

1 And then thirdly, the Riel converter
2 station itself would be situated within Peguis TLE
3 notice area itself.

4 And we have also expressed concern not
5 only about the way in which Peguis has been, I'm
6 tempted to say treated, but that suggests that
7 there is some deliberate malfeasance, has been
8 considered, shall we say, by Hydro, by the Crown,
9 relating both Bipole III, as well as future
10 related and even on projects that are not related
11 to Hydro. So for the reasons of the actual
12 effects upon Peguis relating to Bipole III, as
13 well as concerns that Peguis has about the
14 consultation process that proponents generally
15 appearing before this body, as well as the Crown,
16 may adopt toward First Nations, Peguis
17 specifically, these have motivated Peguis to come
18 before this panel.

19 And the approach that Peguis has tried
20 to take, I hope this panel appreciates, is to
21 bring a peculiar perspective. By peculiar I mean
22 the literal sense, meaning its unique view of the
23 problem. And the aim has always been to try to
24 help the Commission to make the best
25 recommendations and give the soundest advice when

1 making its report to the Ministers.

2 I think Peguis, unlike some of the
3 other participants in this hearing, recognize that
4 the obligations and the purpose of the Environment
5 Act cause us to engage in a balancing exercise.

6 If I remind myself the purpose of the
7 Environment Act, which is set out at section 1(1),
8 it tells us that the Act is intended to, and I
9 will quote:

10 "...ensure that the environment is
11 protected and maintained in such a
12 manner as to sustain a high quality of
13 life, including social and economic
14 development, recreation and leisure
15 for this and future generations."

16 Reading that, it is not a manifesto
17 that a 1960s hippie would want to grab on to with
18 his tie-dyed hands. This is intended, I think, as
19 a balancing act. On the one hand, there is a
20 reality, the harsh industrial reality that
21 developments have to occur, otherwise the economy
22 will suffer in Manitoba, otherwise the effects
23 upon Manitobans and the quality of their life will
24 diminish.

25 At the same time, the Environment Act

1 asks us to balance off those materialistic desires
2 against the reality that the environment, and
3 there is a special definition of environment which
4 refers to the obvious, air, land and water, but
5 also life, and one of the forms of life that it
6 expressly references at section 1(2) is human
7 life. So it wants the balancing act to take into
8 account that individuals will engage in -- will
9 promote the existence and flourishing of this and
10 future generations.

11 Some proponents -- I am sorry, some
12 participants have appeared before this panel and
13 left at least me with the impression that their
14 view is that Bipole is bad no matter how it is
15 structured, Bipole should never go ahead under any
16 terms. And it would be the submission of my
17 client that that is not the correct approach. The
18 Act requires a balancing. And the reason that
19 Peguis has come forward is it is concerned that,
20 as defined by the proponent's proposal, that
21 balancing has been tipped too far away from the
22 proper concerns and more toward the materialist
23 concerns that would say development is more
24 important, and at any cost, over the environment.

25 So, of course, these hearings have

1 been part of the public consultation process that
2 the Act prescribes. And it seems to make sense,
3 because I think that the Act is telling us that
4 there should be transparency, and that decisions
5 of magnitude such as whether or not and how the
6 Bipole III project should go ahead, should not
7 somehow depend upon the whim of a ministerial
8 decision. There has to be some sense that there
9 has been an opportunity for those who might be
10 affected, or those that see effects to come
11 forward. And I'm certainly not trying to belabour
12 the point, I'm just trying to put into context
13 what I'm trying to suggest this panel's job is.
14 So, obviously, it is to conduct these public
15 consultations that assist in environmental
16 decision-making.

17 And we know that the Commission
18 exists, as section 6(1) talks about, for the
19 purpose of developing and maintaining public
20 participation, as well as conducting the public
21 meetings or hearings, and then providing advice
22 and recommendations.

23 We also are well aware that the
24 recommendations that this panel make are not
25 intended to dislodge the responsibility of elected

1 ministers and elected politicians. The ultimate
2 decision rests with them. I would, however, not
3 want this panel to read that, nor do I think the
4 panel does, as somehow diminishing the influence
5 and impact that this panel can have. The reality
6 is that unless there is a significance to the
7 panel's recommendations, we have all engaged in a
8 very expensive waste of time and resources over
9 the past many weeks in having these hearings.

10 The other thing to note is that the
11 Environment Act expressly states that it is
12 complementary to and supports existing Provincial
13 planning and policy mechanisms. On that front,
14 and this is why from the beginning I have had
15 interest in the notion of the way in which the
16 Crown's constitutional duty to consult and
17 accommodate First Nations is relevant to this
18 process. But I have never gone so far as my
19 learned friend, Mr. Madden, to suggest that the
20 duty actually falls exclusively upon this panel.

21 At the same time, because the Act says
22 that such consultations would be, of course,
23 existing policy and planning mechanisms, the Act
24 expressly says that this panel has to appreciate
25 its part of that process.

1 So let me turn in light of that to the
2 specific Peguis concerns. Before I do that, and
3 just for the sake of the record, in one paragraph
4 or less, I will simply say that throughout this
5 hearing I have on occasion, and other participants
6 have also put before this panel concerns in the
7 form of objections in formal ways. Some of those
8 objections have never been dealt with. I don't
9 intend to go through and repeat all of those, they
10 are on the record. I will simply say that from a
11 procedural perspective, my client has not waived
12 any of the procedural objections that it has made
13 to this process, and it continues to believe that
14 there have been procedural irregularities and
15 flaws that could fatally affect any -- could
16 fatally affect the process that we have engaged
17 in. But let me turn now to the substantive
18 concern --

19 Sorry, just giving you the chance to
20 have a conversation, if you like.

21 THE CHAIRMAN: No, go ahead.

22 MR. DAWSON: When one gets older at
23 the bar, one appreciates that the decision maker's
24 pen starts moving, one waits until the notes are
25 finished, and when members of a collegial panel

1 wish to discuss something, the person making the
2 presentation should stop talking. So that's my
3 practice. So please feel free to have any
4 conversations you would like.

5 THE CHAIRMAN: I am sorry if I
6 interrupted your flow.

7 MR. DAWSON: You didn't at all. I
8 have endless flow.

9 So let me turn then to the substantive
10 submissions that my client makes. When I appeared
11 here in opening submissions, I said that first --
12 this is weeks ago -- I said that it was the
13 position of Peguis that the proponent, Manitoba
14 Hydro, has not engaged the public, especially
15 Aboriginal groups. Now, let me be clear that I'm
16 not planning to resurrect an argument that I made
17 in the pre-hearing stage about what that duty to
18 consult is and where it lies. This panel has made
19 its decision, and my client respects that for the
20 purposes of these proceedings, and may take a
21 different view in a different place, but for the
22 purposes of these closing submissions, I think it
23 is not appropriate for me to try and re-argue a
24 point on which this panel has made.

25 This Commission has already said --

1 well, we have already argued and so -- we have
2 already argued that this Commission is part of the
3 consultative process and the Crown is obligated,
4 to -- this Commission is part of the consultative
5 process that this Crown is obligated to undertake.
6 But we're going to put that aside and focus on the
7 comments that arise with respect to the engagement
8 that the proponent purports to have undertaken
9 with Aboriginal groups, and specifically those who
10 are affected.

11 We know from the comments of Hydro's
12 witness, Ms. Zebrowski, at page 8957, line 20 of
13 the transcript, that there are some problems --
14 that there is a desirability to consult Peguis and
15 other Aboriginal communities, Ms. Zebrowski talked
16 at that particular point about obtaining, among
17 other things, feedback on the economic benefits
18 that groups might seek. And Dr. Petch also gave
19 evidence on the usefulness of the consultation
20 process and her wish that more could have been
21 done.

22 So we have on the one hand that
23 desirable ideal that I'm painting of what the
24 proponent's own witnesses say could have been
25 done. And then there is the reality that the

1 evidence shows about the incompleteness of the
2 consultation.

3 Despite the effects that my client
4 says that Bipole III will have relating to Peguis
5 traditional land and its TLE notice areas, it is
6 shocking, I submit, that there is only passing
7 reference to Peguis in the entire thick EIS that
8 has been filed.

9 Indeed, Ms. Zebrowski confirmed my
10 view at page 872, line 23 of the transcript,
11 saying indeed there is only passing reference to
12 Peguis. Although Hydro itself has made a general
13 statement of inviting the Aboriginal communities
14 to engage, and note when I say engage, I'm
15 adopting the Hydro approach, saying not that it is
16 somehow involved in the duty to consult by the
17 Crown, but rather the Hydro approach to engage
18 with communities, Aboriginal communities included.
19 There is absolutely no evidence before this panel
20 that Peguis was one of those communities.

21 Ms. Zebrowski explained at page 974,
22 line 10 of the transcript, that this omission is
23 perhaps because, and I'll quote what she said:

24 "It was Manitoba Hydro's understanding
25 that Peguis First Nation was not

1 located within the project study
2 area."

3 It is Peguis' view that that is wrong.
4 I remind the panel that Dr. Kulchyski explained a
5 number of points. One, he argued, or set out
6 rather, that the traditional lands of Peguis go
7 well beyond finely defined borders. We also know
8 that Peguis has been a participant in these
9 proceedings, and presumably Peguis would not have
10 been allowed to do so unless this panel accepted
11 that it had some sort of interest at least,
12 however tangential. This panel recognized then
13 what Hydro did not.

14 We also know that Ms. Zebrowski at
15 page 877, line 15 of the transcript, said that
16 material relating to the EACP process went to
17 Treaty First Nations that were located within the
18 project study area. So she confirms that this is
19 a further explanation of why First Nations such as
20 Peguis, who claim an effect, although not being
21 strictly within the defined project study area,
22 weren't consulted.

23 The problem becomes even more intense
24 for other First Nations, especially when we
25 consider that line changes have occurred, and

1 there has been no evidence that the proponent went
2 back to any of these First Nations, or many of
3 these First Nations, and sought out further
4 consideration of these effects.

5 Accordingly, it is the submission of
6 Peguis that even to the extent that Aboriginal
7 communities were invited to engage, and let's be
8 clear, Peguis was not, the form of invitation was
9 inadequate and not comparable to the approach
10 taken to public, by that I will say non-aboriginal
11 consultations.

12 For example at page 880, line 8 of the
13 transcript, we know that Hydro did not solicit
14 interest from individuals living -- individual
15 First Nation members directly for the most part.
16 We say that -- Dr. Petch said that -- in contrast,
17 Dr. Petch explained at page 3552, line 20 of the
18 transcript, that she would prefer, and always for
19 ATK purposes, does deal with individuals directly
20 as opposed through leadership. In her line, it is
21 respect for the individual. This notion of not
22 approaching individuals directly who might be
23 affected, whether on Peguis or any other First
24 Nation community, is quaint and convenient, but it
25 does not necessarily do the job of making sure

1 that a representative voice is being put forward.

2 Dr. Kulchyski reminded us that when
3 dealing with First Nations, in his words and I
4 will quote him from page 3841, line 3 of the
5 transcript:

6 "You don't send off a letter. You
7 call people, you arrange a visit, you
8 go to them."

9 Now, of course, Hydro will respond, I
10 imagine, by saying for whatever reason, Hydro
11 chose to deal with the leadership of Aboriginal
12 communities, not the individuals. But even there,
13 none of the extra steps that we saw Hydro take
14 when dealing with non-aboriginal interests are
15 demonstrated. Even though Hydro itself
16 recognizes, as Ms. Zebrowski stated at page 856,
17 line 20 of the transcript, that there are indeed
18 challenges that Hydro recognized it would face
19 when engaging with northern communities. But
20 nevertheless, we know that when it came to
21 non-aboriginal communities, Mr. Joyal told us that
22 they used irregular sized postcards, that's page
23 317 of the transcript, line 12. Why irregular
24 sized post cards? It was because they wanted to
25 make sure that the message was noticed by people.

1 There was a direct mailing, Mr. Joyal told us at
2 page 2533, line 9 of the transcript, that was sent
3 to each individual landowner within half a mile of
4 the route. None of these similar effects were
5 made for either individuals, and to the extent
6 that First Nations were dealt with through their
7 leadership, it sounds like a letter went off, one
8 of -- literally, as Dr. Kulchyski's made reference
9 to the way the TLE and notice letters arrive at
10 band offices -- one of many pieces of
11 correspondence that every First Nation gets.

12 Mr. Gray in his testimony at page
13 2530, line 7, went on to give a further example
14 of, shall we say, the over and beyond kind of
15 service that Hydro was giving to potentially
16 affected non-aboriginal landowners, saying that
17 there were personal visits that were occasionally
18 made to affected lands. In his words, and I quote
19 them because it makes my point:

20 "Hydro didn't just wait for landowners
21 to come to them."

22 Well, that's very laudable, and it makes it very
23 difficult for any non-aboriginal affected person
24 to say that Hydro didn't take extra steps to make
25 sure that they were informed. But we don't see

1 that on the record in the evidence before this
2 panel with respect to Aboriginal groups.

3 So my first contention is that Hydro
4 did not do what it should, or could, when it comes
5 to making the effort to engage with Aboriginal
6 communities. It may have identified only some of
7 those communities, and of those that it
8 identified, it did not go beyond, it did not treat
9 them in the same way that it treated
10 non-aboriginal interests when seeking their
11 participation in this process.

12 Now, I will turn to those instances in
13 which consultation with Aboriginal groups actually
14 did take place. And I will suggest to you that
15 the evidence shows that that too was inadequate.

16 So our first problem, just to review,
17 is that Hydro didn't identify everybody in terms
18 of Aboriginal groups that it should contact and
19 deal with. Of the ones that it did identify, it
20 made minimal, or certainly lesser efforts than it
21 did when it came to dealing with non-aboriginal
22 interests. And now I'm turning to argue that
23 where it finally got these consultations going,
24 those in themselves were inadequate.

25 We start with Dr. Petch at page 3556,

1 line 7 of the transcript, where she answered my
2 question on cross-examination agreeing that really
3 there wasn't enough time to do a good job in
4 collecting ATK. That's telling, because both
5 Dr. Petch, the expert, as well as much of the rest
6 of the VEC panel that Hydro put forward, explained
7 the importance of collecting good data in order to
8 make its decision. Dr. Kulchyski was a little
9 more direct in his criticism of the EIS, saying at
10 page 3842, line 17, that he would have given it:

11 "A failing grade in first year
12 cultural anthropology or native
13 studies class."

14 The consultations then are incomplete
15 even where the groups have been identified. And I
16 appreciate that I'm cherry picking, shall we say,
17 from the transcript, but I'm going to anticipate
18 my learned friend's complaints from Hydro that
19 that perhaps I'm somewhat generalizing. I suggest
20 to you I'm not. I'm suggesting to you that I'm
21 certainly selecting my evidence simply because I
22 could be going through this transcript over the
23 next couple of days, entertaining undoubtedly the
24 panel with my discourse, but preferring instead to
25 speak in short submissive terms at this time.

1 So what is the effect of this, what
2 I'm going to label incomplete consultation? The
3 first effect is upon this process that the
4 Commission is engaged upon. First, there are
5 potentially unknown VECs. And I am just reminded,
6 by VECs of course I mean the valued environmental
7 components. In short, in putting it another way,
8 there might be issues that should be brought forth
9 for this panel to consider that we will never know
10 about, either because consultations, or what I'm
11 going to say, Hydro's term, engagements were not
12 undertaken, or they were undertaken inadequately.

13 And indeed Ms. Zebrowski at page 869,
14 line 16 of the transcript, admitted that unknown
15 VECs could indeed impact the process. Dr. Petch
16 reminded us also at page 3568, line 20 of the
17 transcript, that there is a role, an important
18 role for ATK in every step of the environmental
19 process. And she also said at page 3571, the
20 ideal would have been to have ATK from what she
21 has labeled as all 49 communities identified by
22 Hydro. And indeed, of course, Hydro has said that
23 it certainly valued the same kind of input from
24 non-aboriginal groups.

25 I will now turn to, very briefly,

1 another oversight relating to, and I say relating
2 to the consultation or engagement of Aboriginal
3 persons. There has been only passing reference,
4 and I do mean the most lightest reference of Crown
5 consultations. And again, I remind the panel that
6 I'm not trying to resurrect my argument to say
7 that this body has some role in dealing with Crown
8 consultations, but I do remember the remarks of
9 the Chairman at our pre-hearing conference on the
10 19th of July, 2012, where at page 34, line 1 of
11 the transcript, the Chair set I think the correct
12 standard for this panel in dealing with evidence
13 relating to Crown consultations. He said and I
14 quote:

15 "We asked...",
16 this is referring to a previous practice,
17 "We asked a representative of the
18 Crown who was charged with the
19 consultation process to come before
20 the panel and explain to the panel
21 what the Crown had been doing to
22 satisfy the panel that the duty to
23 consult has been carried out or was
24 being carried out. I recall that there
25 was to be a witness that the proponent

1 would have called and that name
2 appeared on one of the preliminary or
3 tentative schedules of this hearing
4 process, but that witness was never
5 called. To the extent that this
6 panel, correctly in my submission,
7 thinks that it is important to at
8 least be aware that Crown
9 consultations are taking place, that
10 evidence is simply not substantially
11 before this panel."

12 That does create a problem, because as
13 Dr. Petch pointed out at page 3564, line 16 of the
14 transcript, Hydro has apparently -- well, she had
15 assumed that such additional consultations, as
16 opposed to her engagement relating to ATK work,
17 would actually take place. Let's pause here and
18 say that it is not simply a matter that these
19 consultations may or may not have taken place.
20 But as Dr. Petch also said at page 3573, line 20,
21 when collecting this kind of information it is
22 important that they are done to accepted
23 standards.

24 At most, my learned friend for Hydro
25 will be able to tell this Board there is passing

1 references to the fact that somewhere, in some
2 way, there is a Crown that's talking to some
3 Aboriginal groups, but we have no detailed report.
4 And we certainly do not have, as Dr. Petch would
5 want, an elucidation of the standards that are
6 being used in engaging in that consultative
7 process.

8 So just before I move on, I have been
9 talking about the problem with consultation and
10 arguing that consultation of Aboriginal
11 communities, certainly in my client's case, has
12 been inadequate, if at all. I have said the first
13 problem is that Hydro has simply not identified
14 all of the groups that it should.

15 The second problem is, of those groups
16 that it has identified, it has failed to take the
17 same steps that it took with non-aboriginal groups
18 in attempting to engage those communities.

19 The third problem that I pointed out
20 was, even once it got a community somehow
21 involved, it did so inadequately.

22 And the fourth problem is that in
23 terms of the other forms of consultation, that is
24 Crown consultation, it simply hasn't happened, at
25 least on the evidence.

1 The second large problem that my
2 client sees with this process is that the
3 proponent has not correctly formulated the issues
4 for this panel to consider. I remember very, very
5 shrewdly, my learned friend for Hydro setting out
6 in his opening statement the comment that this
7 panel only had to answer five questions. And
8 indeed, if I were acting for a proponent, I too
9 would try and put blinders on a panel and tell
10 them, let me make your life simple, here is five
11 questions. So I'm going to play his game and try
12 and go through the five questions that he asked.

13 His first question essentially says,
14 does Hydro or did Hydro show that it has engaged
15 the public in a constructive and practical way?
16 Well, I have just been speaking at length with
17 respect to Aboriginal communities in Manitoba, and
18 the resounding answer is no.

19 The next question that my learned
20 friend put forward for this panel to consider at
21 the beginning of these hearings is, did Hydro
22 identify the correct VECs? That's essentially
23 what he said. Well, if you didn't engage in
24 proper and complete consultation, it is impossible
25 to say that there has been adequate consultation

1 and identification of all of the issues. So the
2 problem is here; did Hydro identify the correct
3 VECs? The answer is, we don't know.

4 I will give an example. I noted
5 Hydro's witness, Mr. Nielsen, at page 2528, line
6 24, when I asked him some clarification questions
7 relating to the possible lands and areas that
8 Hydro took into account when fixing VECs. And he
9 said that Hydro, for example, had chosen to focus
10 only upon, apart from reserves obviously, and
11 Aboriginal communities, it focused only upon lands
12 that had been actually selected from TLE claim
13 areas, not possible TLE selections that could
14 occur within that area.

15 So let me translate that. As this
16 panel heard from Dr. Kulchyski, by settlement with
17 the Crown, many First Nation communities have been
18 given the option, an option of first refusal to
19 make claims and acquire land that belongs to the
20 Crown in certain areas. And whenever the Crown
21 wants to develop that area, it has to give notice
22 to the First Nation. And the First Nation then
23 may exercise its right to acquire that land, or it
24 may pass on that acquisition.

25 Hydro focused only on the land that

1 Aboriginal groups actually have selected, even
2 though Aboriginal groups, under their TLE
3 agreements, can have many more years to consider
4 what lands that they would like to select.

5 An appropriate way to deal with VECs
6 and TLE notice areas would have been to focus on
7 the entire TLE notice area, because it is within
8 that entire area from which an Aboriginal
9 community may be entitled to select land. So
10 that's one problem.

11 The other problem relates to the
12 approach that Hydro took in identifying
13 traditional lands. My first example relates to
14 the TLE problem, and now we will talk about
15 traditional lands.

16 We know from Dr. Petch that there are
17 lands that First Nation communities have or are
18 using, and have done so historically, but without
19 actually occupying those lands. So it might be
20 that the land is a route from point A to point B,
21 it might be that the land is a transient point, it
22 might be a point that the land is simply of
23 passing usefulness or interest to a community.
24 The way in which Mr. McGarry at page 2536, line 2
25 of the transcript, said Hydro identified where

1 these traditional lands are, is to rely upon ATK.
2 But I have already pointed out the problems that
3 Hydro has infected its reliance upon ATK with. We
4 don't have an invitation to all affected
5 Aboriginal groups to come forward and participate
6 and put on display their ATK. Even where we do,
7 Dr. Petch tells us that she didn't have enough
8 time to do a proper study. So reliance upon ATK
9 to identify traditional lands is inadequate. And
10 that in turn further affects the identification
11 and weighing of the correct VECs.

12 An example of oversight that I can
13 report relying upon Dr. Kulchyski's evidence, in
14 the context of my own client, is the historical
15 significance, for example, of agriculture to what
16 was formally the St. Peters Indian band, which we
17 now know today is Peguis First Nation. If Peguis
18 had been consulted and if it had been drawn to the
19 attention of Hydro for calculation as part of its
20 VECs, that Peguis has a historical and traditional
21 interest in agriculture, and could therefore make
22 use of its TLE selections in future to acquire
23 agricultural lands perhaps to revive for its
24 future generations an agricultural practice, if
25 all of this had happened, that might have coloured

1 Hydro's approach differently. By overlooking
2 Peguis and its engagement, that information has
3 not been explored and that potential problem,
4 effect, and need for consideration is simply not
5 before this panel.

6 And I should say I'm relying not only
7 upon Dr. Kulchyski when it comes to Hydro, but I
8 also note that Dr. Petch had acknowledged those
9 same agricultural activities at page 3559, line 12
10 of the transcript.

11 I won't repeat many of the arguments
12 that my learned friend for the Consumers
13 Association puts forward in his attack relating to
14 the problems that VECs create generally, in terms
15 of balancing one against the other, in terms even
16 of identifying what a VEC is. I will simply say
17 that that argument neatly dovetails with the
18 concerns that I'm putting forward, so I would
19 adopt that particular approach.

20 Returning to the questions that my
21 learned friend for Hydro put to the board, the
22 first one you will remember in the opening
23 submissions was, did Hydro engage the public in a
24 constructive and practical way? And I have said
25 the answer is no. Did Hydro identify the correct

1 VECs, is the way I'm translating his second
2 question. And I'm saying there is no way to know,
3 simply because there is inadequate consideration.

4 The third question that my learned
5 friend for Hydro put forward was, are Hydro's
6 conclusions about the significance of impacts
7 sound? I don't need to belabour this point and I
8 think I can simply say, how could they be? If you
9 have not correctly collected the information that
10 you need in order to identify what the problem is,
11 and if once dealing with the problem, you have
12 overlooked or at least not satisfied yourself that
13 you are aware of all of the relevant issues, how
14 can your conclusions about impacts be sound?

15 The fourth question that my learned
16 friend asked was, has Hydro balanced the competing
17 interests? And again, the answer is simple and
18 straightforward. If all of the competing
19 interests are not known due to an inadequate
20 consultation process, how can they possibly be
21 confirmed as balanced?

22 And the fifth one relates to the
23 ability of Hydro to manage this project going
24 forward. And on that point, it seems that I can
25 rely upon the submissions of other parties to

1 answer that question as no.

2 So now I return to my learned friend's
3 own words, and he closed his submission by saying
4 that if Hydro didn't answer all of his five
5 carefully selected questions with a yes, then it
6 fell to this Commission to make recommendations to
7 the Minister. And I note that at page 21 of the
8 transcript of my learned friend's comments.

9 So I'm willing again to play his game.
10 I'm submitting that the five questions that he
11 himself has put before this panel do generate
12 questions, or answers that are no. So what are
13 the recommendations that this panel should be
14 putting forward?

15 My first view is that the problem that
16 I'm outlining in these particular proceedings
17 surely is not unique, and it is further not simply
18 a matter of it not being unique in the sense that
19 it is a Bipole III problem only. I would go
20 further and say that it is not even a Hydro
21 problem only. The problem relating to
22 consultation and engagement of Aboriginal
23 communities touches upon literally every kind of
24 proponent that could possibly come before this
25 board. To the extent then that it would assist

1 and clarify in future, I submit that it is within
2 the jurisdiction of this panel to make specific
3 recommendations to the Minister relating to the
4 development of not only a procedure that will deal
5 with today's problem, but going forward.

6 Some proponents before this panel have
7 bluntly stated their plans to go to court. And I
8 certainly say that my client has received advice
9 and is aware that court action is always open as
10 an option. But I think with more of a cooperative
11 approach and less of a petulant noise making
12 approach, my client would rather resolve problems
13 using the existing mechanisms that could be
14 improved, than sit here and petulantly tell this
15 panel that unless you do X, well, we are off to
16 the Court of Queen's Bench. I'm not ruling that
17 out, but I'm not saying that that's our first
18 choice. Our preference is to work cooperatively
19 with the process.

20 So in that spirit, and relying upon my
21 initial position that it is within the mandate of
22 this board to make recommendations to the Minister
23 that would assist not only in dealing with the
24 oversights that I have outlined in this
25 proceeding, but as well as in future proceedings,

1 our first submission is that the CEC should
2 recommend a procedure that actually and explicitly
3 incorporates consultations by the Crown in to the
4 environmental assessment program.

5 It follows from this that our biggest
6 problem, and our meaning not just my client's but
7 everyone in this room, has been that these
8 consultations should have started, as the law
9 indeed requires, at the initial conception of this
10 project. It is disruptive and unfair to this
11 Commission for participants to come before it and
12 clamor that the Crown, over which this Commission
13 has no control, has or has not done something that
14 it should. It would be much better that
15 consultations should start early and that they
16 should be substantially complete by the time these
17 kinds of hearings are convened. So that's a point
18 on timing.

19 In terms of the process of
20 consultation, it is acknowledged and it should be
21 respected that First Nations, my client included,
22 have reasonable preferences as to the way in which
23 these consultations should take place. I'm not
24 going to belabour this hearing by setting those
25 out. I will simply say in a general way that any

1 consultation process that this panel might suggest
2 to the Minister should include a respectful
3 approach and consideration of the consultation
4 preferences of those First Nations who are being
5 consulted.

6 And finally, in terms of this
7 particular kind of a procedural recommendation, it
8 is important not only that there should be an
9 appropriate framework or structure in place, but
10 also that those who are staffing that framework
11 for the Province -- and I do not mean this
12 Commission staff, I mean Provincial staff --
13 should of course have appropriate and sensitive
14 training in consultation, accommodation, and
15 Aboriginal traditions and law. Because it makes
16 very little sense to put forward, as occurred in
17 the past, when the law changed as a result of,
18 among other things, many Supreme Court of Canada
19 decisions implementing or imposing or recognizing
20 the Crown's duty to consult, many governments
21 simply didn't get it. They knew there was a
22 consultation process, but they didn't understand
23 how it should happen. So just having the process
24 in place is inadequate. The persons who staff it
25 have to know what to do with that process.

1 Now I will turn to more substantive
2 recommendations that this panel might consider in
3 the context of Peguis. Because of the nature of
4 the inadequate Hydro consultations, not the duty
5 to consult by the Crown, my client is deeply
6 concerned about the impacts that this project
7 could have upon its traditional revival of
8 agricultural activities, as well as the ongoing
9 construction and operation of the Riel converter
10 station, and any environmental concerns arising
11 out of the ground electrodes.

12 On the one hand, this panel could
13 simply say, why didn't you bring forward evidence
14 as part of these proceedings to expressly target
15 specific plots of land? And the reason is that a
16 broader approach might be more appropriate. So
17 our recommendation is that the Minister should
18 engage in an evaluative consultation with Peguis
19 First Nation relating to its TLE notice area,
20 focusing especially upon possible agricultural
21 lands that might be affected and upon the ongoing
22 operation and construction of the Riel converter
23 station.

24 In short, we are suggesting that
25 before a licence issue, the Minister should, as

1 part of Crown consultations, do what Hydro should
2 have done before this panel, by seeking out
3 Peguis, by putting forward these concerns, and
4 eliciting comments from Peguis.

5 It follows from all of this, and I
6 understand that following me, Chief Glen Hudson of
7 Peguis First Nation will also have further
8 specific points that he has decided to put
9 forward. I would simply say that the other
10 further consultative recommendation that this
11 panel should put forward relates to the way in
12 which any report that it makes to the Minister
13 should be dealt with.

14 I started these submissions by saying
15 it is critically important to recognize that this
16 Commission plays a significant role in balancing
17 the environmental considerations against what I
18 have labeled, for lack of a better word, material
19 concerns. And to that extent the need for
20 transparency is obvious.

21 So one recommendation that I think
22 this panel might appropriately make is that, upon
23 receipt of its report, the Minister would disclose
24 that report automatically. This does a number of
25 things. One, it helps the proponents recognize

1 how this panel has received their comments, and
2 allows them perhaps to augment or supplement any,
3 especially for Aboriginal groups, consultation
4 process that they themselves are already engaged
5 in. But it also, frankly, if I may say,
6 recognizes the contribution that this panel makes
7 by writing what I expect will be a considered and
8 weighted consideration of all of the evidence that
9 it has heard. It does very little good to the
10 participants or to the process of the
11 administration of justice if the reports of this
12 panel are simply buried and don't get released
13 promptly.

14 The second procedural recommendation,
15 and I think I have already mentioned this, would
16 be that the Crown should complete its Aboriginal
17 consultations and accommodations before any
18 licence might issue.

19 And the final concern that this panel
20 should have, and I think might appropriately be
21 set out in recommendations, is to raise the red
22 flag, shall we say, about the way in which these
23 projects come before this Commission. I will
24 take, without necessarily criticizing, Hydro as an
25 example. It is engaged in a number of projects.

1 From the perspective of many, they are very much
2 related. But nonetheless, the construction of a
3 dam, the construction of a converter station, the
4 construction of a transmission line perhaps for
5 improved service to United States markets, all of
6 these individual projects being related should
7 arguably be dealt with by this Commission as one
8 large project. By breaking them down into
9 piecemeal, the perception, if not the reality,
10 that is transmitted to the public, to
11 participants, to stakeholders, and others who
12 might be interested, is arguably that Hydro gains
13 an advantage that allows it to move forward with
14 its projects with more ease, or without specific
15 disclosure or consultation than it might attract
16 if it went through these processes by combining
17 all of them together.

18 In these proceedings, for example, we
19 were precluded from considering obviously Keeyask.
20 We were precluded from considering, for example,
21 the NFAT approach. This may or may not be
22 appropriate, but it does raise the question of
23 what might, what further information might have
24 come forward that would have been helpful to this
25 Commission in putting forward its recommendations?

1 It is most important to provide information,
2 that's what a participant's job is in these
3 hearings. It is not so much to derail the
4 process. And the best way to put forward informed
5 information is not to try and pigeonhole or
6 piecemeal the analysis, but rather to deal with it
7 as all related projects at the same time. That
8 gives this panel the opportunity to see how the
9 pieces fit together in an obvious and deliberate
10 way.

11 Before I introduce Chief Glen Hudson,
12 I will just pause and say that I would like to
13 thank the panel for their obvious attention and
14 preparation throughout these hearings. It goes
15 without saying, and I'm sure does not come as news
16 to anyone on the panel, that the staff of this
17 Commission have been invaluable to me
18 specifically, but I have seen also their service
19 throughout to the participants. And for anyone
20 who thinks that civil servants have a cushy 9:00
21 to 5:00 or 8:30 to 4:30 job, they obviously aren't
22 aware that the board secretary has been writing
23 emails, and responding more particularly to emails
24 distressingly well after what should be a civil
25 servant's quitting time. And this is a service

1 over and beyond, so I thank them. And, of course,
2 I'm obliged to Hydro and all of the other
3 participants for their cooperation in the
4 discussions that have lead up to this.

5 Failing any questions, Mr. Chairman,
6 that concludes my submission.

7 THE CHAIRMAN: Thank you, Mr. Dawson.
8 Thank you for your comments. I would like to
9 return them and thank you for your participation
10 and contributions to this process. You've always
11 been well prepared and erudite and well spoken,
12 and a good participant in this process.

13 I just want to make a couple of
14 comments. Your comment near the end about
15 releasing the report immediately; the standard
16 practice is that the report will be released in
17 full approximately ten days after we deliver it to
18 the Minister. So it does become public. Changes
19 don't happen in that ten-day period. We don't see
20 it again. We deliver it to the Minister then he
21 will release it.

22 Your comment about the consultation
23 evidence, we did have Mr. Gord Hannon, a senior
24 official of Manitoba Justice, come before the
25 motions hearing in August last year and describe

1 the section 35 process. We felt that that was
2 sufficient and that there wasn't need to repeat
3 that during these hearings, as the motion hearing
4 evidence is part of our record.

5 My third comment is, you might want to
6 be careful in this room about making aspersions
7 about 1960's hippies. There are one or two quasi,
8 or proto, or want-to-be hippies, at least back
9 then, sitting in this room.

10 Thank you very much and please bring
11 Chief Hudson forward.

12 MR. DAWSON: If I may say that if this
13 panel is purporting to rely upon comments that
14 Mr. Hannon made at our pre-hearing conference of
15 the 19th of August, I simply remind the panel that
16 I had said at that time that if that were to be
17 evidence, I wanted to cross-examine that witness.
18 I still want to cross-examine that witness. If
19 this panel for a moment plans to rely upon
20 Mr. Hannon's words, in any way, I want him to
21 answer my questions as evidence on these
22 proceedings. And it would be my submission that
23 the failure to do so is a fundamental breach of
24 natural justice that would fatally undermine this
25 process, that would derail entirely the validity

1 of the entire consultative process, and would
2 certainly result in the kind of court action that
3 I was trying not to threaten.

4 THE CHAIRMAN: Thank you, Mr. Dawson.

5 MR. DAWSON: Now I will step aside.
6 We are very fortunate to have with us Chief Glenn
7 Hudson who, of course, is the chief of those who
8 are members of the Peguis First Nation, and he has
9 comments prepared by his advisors that he would
10 like to put forward. So I will step aside. And
11 thank you again, Mr. Chairman.

12 THE CHAIRMAN: Welcome Chief Hudson.
13 Our process requires that you make an oath to
14 speak the truth. I will ask the Commission
15 secretary to administer that.

16 CHIEF HUDSON: How did you want me to
17 do that?

18 THE CHAIRMAN: It is part of our
19 process, sir. I am sorry, how? She will just
20 direct you, it is very simple.

21 MR. DAWSON: Mr. Chairman, let's be
22 clear that this is not a witness, that this is --

23 THE CHAIRMAN: He is giving evidence.

24 MR. DAWSON: No, he is make a closing
25 submission. If he were a witness, first of all,

1 procedurally, if Chief Hudson's remarks are to be
2 taken as evidence, then properly first he would
3 have to be open to cross-examination if any
4 participant or the proponent chose to do so.

5 THE CHAIRMAN: Well, if you have read
6 our procedural guidelines, you will know that
7 that's not the case, that closing arguments are
8 not subject to cross-examination.

9 MR. DAWSON: Thank you then.

10 CHIEF HUDSON: I usually, when I do
11 speak, I usually tell the truth so...

12 THE CHAIRMAN: I have no doubt that
13 you would say anything but -- but it is merely
14 part of our practice, and we have done it with
15 other people who have spoken in final argument.

16 CHIEF HUDSON: Thank you. First of
17 all, I want to thank our elder Lloyd for saying
18 the opening prayer this morning. I also want
19 to --

20 THE CHAIRMAN: Can you speak more
21 closely into the mic, please?

22 CHIEF HUDSON: I also want to thank
23 the Commission for giving me the opportunity to
24 present not only facts, but certainly our thoughts
25 in terms of how development has impacted our

1 people and certainly our community.

2 I will begin, first of all, in
3 recognizing our Treaty 1 territory that we are in
4 today, and certainly state that we are the
5 original signatories of Treaty, that being the
6 very first signatory of Treaty throughout this
7 country. And the intention of that Treaty was
8 always to live in peace and harmony with people
9 that come to our territories and certainly come to
10 our lands. And certainly, I think our history
11 shows that, as a people, but certainly there have
12 been many grievances that have come forward in
13 terms of us as a people in dealing with society.
14 I just want to make those opening statements.

15 But in terms of, you know, the Bipole
16 III project and certainly, you know, the Clean
17 Environment Commission, I want to once again thank
18 you for the opportunity for making these closing
19 statements. I will begin with obviously the duty
20 to consult and certainly the Environmental Impact
21 Statement.

22 When the Environmental Impact
23 Statement was contemplated and being developed
24 there was little or no thought to engage First
25 Nations in the development of the Environmental

1 Impact Statement, nor was there any positive duty
2 exercised by the Provincial Crown to ensure that
3 the duty to consult and accommodate First Nations
4 was engaged.

5 And certainly the Supreme Court of
6 Canada case involving the Haida Nation stated that
7 the Crown's duty to consult with First Nations is
8 engaged or triggered when the Crown has knowledge,
9 real or constructive, of the potential existence
10 of Aboriginal right or title, and contemplates
11 conduct that might adversely impact it.

12 Furthermore, there are Treaties at
13 issue here. And the court held in Mikisew that
14 the Crown will also have notice of the Treaty's
15 contents. And certainly on surrendered lands
16 beyond the reserve boundaries, the court stated
17 that the Crown has a duty to act honourably, which
18 included the duty to consult and accommodate.

19 In another case from the Supreme Court
20 of Canada in Adams, the court stated that in a
21 legislative scheme, Crown policy or Crown practice
22 and actions, the rights of Aboriginal people must
23 be taken seriously. Such a scheme must do more
24 than simply establish a licensing or other
25 resource management system in the public

1 interests, specifically any legislative or
2 regulatory scheme must be devised in consideration
3 of what Aboriginal or Treaty rights might be
4 affected. There must be evidence of any attempt
5 by the Crown to accommodate and give expression to
6 the rights in question. In absence of such
7 accommodations, the Crown risks a finding that an
8 infringement cannot be justified.

9 After inordinate time has lapsed, the
10 Provincial Crown has made a half-hearted attempt
11 to engage Peguis in the consultation process, and
12 this was after the Environmental Impact Statement
13 had been issued, clearly breaching the standard
14 set out in the Haida Nation. The capacity to
15 engage in meaningful consultation was severely
16 compromised when the Provincial Crown drastically
17 reduced the consultation budget to a mere nominal
18 amount after a six month wait.

19 I will also speak on the unilateral
20 action of the Crown in terms of Aboriginal rights.
21 Most Aboriginal rights court cases were initiated
22 as a result of the unilateral action by the Crown.
23 The Supreme Court of Canada in Mikisew had some
24 harsh language where the Crown acted unilaterally,
25 or with the argument that the Crown is entitled to

1 act unilaterally. There in the Minister's
2 argument is a strong advocacy of unilateral Crown
3 action, a sort of this is surrendered land, and we
4 can not do it with what we like approach, which
5 not only ignores the mutual promises of Treaty,
6 both written and oral, but is also the antitheses
7 of reconciliation and mutual respect.

8 Furthermore, in Haida, the court
9 addressed an unacceptability of the Crown acting
10 unilaterally in making decisions affecting the
11 rights of indigenous peoples. Crown decisions
12 must now be made together with First Nations in an
13 effort to govern future action between the
14 parties -- interaction between the parties. The
15 court took exception to the Treaties as a finished
16 land use blueprint, and described the Treaties as
17 vehicles to explain the relationship to govern
18 future interaction between the Crown and First
19 Nations. It is underscored, the requirement for
20 the Crown to continue the process of
21 reconciliation and the need for ongoing
22 consultation and accommodation of Treaty rights.

23 The next thing I will comment on is no
24 extinguishment clause of Treaty 1, of 1871. The
25 Peguis First Nation is a member of Treaty 1 signed

1 in 1871. And the Treaty 1 area covers most of
2 southern Manitoba. What is unique about Treaty 1
3 is the lack of an extinguishment clause to other
4 lands outside of the boundary of Treaty 1.
5 Accordingly, Peguis has asserted and continues to
6 assert that it still possesses the rights of
7 Aboriginal title, Aboriginal rights, and
8 indigenous rights in those lands outside of Treaty
9 1 territory.

10 The Supreme Court of Canada in Adams
11 made the following statement on Aboriginal rights.

12 "Where an Aboriginal group has shown
13 that a particular practice, custom, or
14 tradition is taking place on the land
15 that was integral to the distinctive
16 culture of that group, then even if
17 they have not shown that their
18 occupation and use of land was
19 sufficient to support a claim of title
20 to the land, they will have
21 demonstrated that they have an
22 Aboriginal right to engage in the
23 practice, custom or tradition.

24 Furthermore, in Adams the court
25 concluded that the Crown cannot use

1 section 1 of the Constitution Act of
2 1982 as an override to justify
3 infringement of section 35 rights."
4 I will now comment on Peguis Treaty
5 Entitlement Agreement of 2008 and the Natural
6 Resources Transfer Act of 1930. But before I do
7 that, I did want to make another statement, I
8 guess, with respect to the Treaty areas. And this
9 was previous discussion with the former president
10 and CEO of Manitoba Hydro. And one question I did
11 ask him was, did he know the Treaty areas
12 throughout the Province of Manitoba, that being
13 Treaty 1, 2, 3, 4, 5, and 10? And he did not. He
14 did not. And yet I guess this individual is the
15 president and CEO of the largest Crown corporation
16 here in Manitoba, and certainly impacts many of
17 the Treaty areas, including Treaty 1, and through
18 5, in terms of development of Hydro's projects.

19 As far as the Peguis Treaty
20 Entitlement Agreement of 2008 and the Natural
21 Resources Transfer Act, article 1 of the NRTA has
22 trust provisions that state, subject to any trust
23 and to any other interest area than that of the
24 Crown, Peguis and other First Nations view these
25 trusts that apply to First Nations are based on

1 Aboriginal entitlement, Aboriginal rights, and
2 unfulfilled Treaty rights. Despite the sacred
3 nature of the Treaty and the honour of the Crown
4 in respecting and implementing the Treaty, there
5 are instances where Treaty and Aboriginal rights
6 have been abrogated and infringed upon.

7 Accordingly, Peguis is of the opinion that those
8 infringements are a breach of the trust conditions
9 found in NRTA.

10 Article 11 of the NRTA puts the onus
11 on the Provincial Crown to set aside lands for
12 transfer so the Federal Crown can meet its
13 obligation under Treaty and Treaty entitlement
14 agreements.

15 And today, I know that we had spoken
16 on Treaty entitlement, Treaty land entitlement
17 agreements specifically, we do have a right, first
18 right of refusal that was commented on, in terms
19 of selecting lands in our notice area as a
20 priority, but also selecting lands in our Treaty 1
21 areas, and also selecting lands throughout the
22 entire Province of Manitoba. And certainly with
23 this project going forward, those selections
24 certainly won't be available to us. And as part
25 of that agreement we were supposed to have the

1 first right of refusal.

2 So I just want to continue in terms of
3 article 13 refers to the rights of First Nations
4 to hunt, trap and fish. And certainly these
5 rights are now enshrined in Section 35 of the
6 Constitution.

7 The Federal Crown and the Provincial
8 Crown and Peguis First Nation concluded our Treaty
9 Land Entitlement Agreement in 2008. One of the
10 major obligations in the agreement is for
11 Provincial Crown to provide Crown lands to Peguis,
12 up to 55,000 acres. Despite this provision in the
13 agreement, Peguis views the actions, including
14 Bipole III actions of the Provincial Crown, as an
15 attempt to frustrate the implementation of the TLE
16 agreement. Lands that should be available for
17 selection are continually being encumbered by
18 third parties and, indeed, Crown Corporations.

19 Therefore, the spirit and intent of
20 this agreement is sadly lacking on both, on behalf
21 of both governments. If these material breaches
22 in the agreement continue, then Peguis will take
23 the position that it is not bound to the releases
24 found in the agreement, and the TLE notification
25 area described in the agreement is ignored at

1 times, like Bipole III planning, reviews,
2 proceedings, and possible licensing, thus
3 prejudicing Peguis' efforts in implementing the
4 2008 agreement.

5 I will comment on the United Nations
6 Declarations on the Rights of Indigenous Peoples.
7 The United Nation Declaration was adopted by the
8 UN General Assembly on September 13th, 2007, after
9 many years of drafts and negotiations. Canada had
10 refused to sign the declaration, and finally three
11 years later, on November 12th, 2010, Canada
12 endorsed the declaration.

13 Like other international human rights
14 declarations, the UN Declaration on the Rights of
15 Indigenous Peoples provides an authoritative
16 source of governance for all institutions of
17 society, including legislators and government
18 departments, courts, human rights bodies and
19 public institutions such as universities. In
20 signing the declaration, Canada committed to the
21 Federal Government as well as the provincial
22 governments to uphold the declaration.

23 Manitoba has never objected, and
24 Peguis assumes Manitoba Crown understands it is a
25 part of Canada's endorsement of the UN

1 declaration. The UN declaration sets standards
2 for member states to meet. The UN declaration has
3 46 articles, as well as the preamble for the
4 purpose of this hearing, some articles are
5 referred to, such as article 19 where it states:

6 "Shall consult and cooperate in good
7 faith with indigenous peoples
8 concerned in order to obtain their
9 free, prior and informed consent
10 before adopting and implementing
11 legislative or administrative measures
12 that may affect them."

13 Article 24 states:

14 "Indigenous peoples have the right to
15 their traditional medicines and to
16 maintain their health practices,
17 including the conservation of their
18 vital medicine plants, animals and
19 minerals."

20 Article 26 states:

21 "1. Indigenous peoples have the right
22 to lands, territories and resources
23 which they have traditionally owned,
24 occupied or otherwise used or
25 acquired.

1 Indigenous peoples have the right to
2 own, use, develop and control lands,
3 territories and resources that they
4 possess by reason of traditional
5 ownership or other traditional
6 occupations or use, as well as those
7 in which they have otherwise
8 acquired."

9 Number 3 states that:

10 "Shall give the legal recognition and
11 the protection to these lands."

12 Article 28 indicates:

13 "Indigenous peoples have the right to
14 redress by means that can include
15 restitution, or when this is not
16 possible, just, fair and equitable
17 compensation for the lands,
18 territories and resources which they
19 have traditionally owned or otherwise
20 occupied or used, and which have been
21 confiscated, taken, occupied, used or
22 damaged without their free, prior,
23 informed consent."

24 And I just want to I guess make
25 another statement with respect to that particular

1 article. And in going back, I don't think it is
2 any -- it is not unknown, I believe, throughout
3 our First Nations communities, non First Nation
4 communities, and certainly throughout the province
5 and probably Canada, that historical development
6 involving Hydro has impacted certainly Peguis
7 First Nation. And today, you know, we hear about
8 the flooding in our communities dating back to the
9 late '60s, and early '70s, and certainly flooding
10 our lands not only at current day Peguis, but
11 certainly flooding lands in our former St. Peters
12 Reserve, which we do have lands along the Red
13 River, you know, with respect to that article,
14 certainly there has been a lot of damage that has
15 occurred to our community, our people, and
16 certainly our progress in moving forward as a
17 nation.

18 And to provide an example, just
19 recently, you know, we've had to date still 190
20 people out due to flooding, going back two and a
21 half years. And there is families that have been
22 split up, separated as a result of being evacuated
23 and relocated, but also problems with respect to
24 Child and Family Services that have come as a
25 result of these evacuations. And I'm referring to

1 that specifically because, again, of the damages
2 that have been caused as a result of our free and
3 prior and informed consent on development.

4 So getting back to the articles, I do
5 want to state on article 29 that indigenous
6 peoples have the right to the conservation and
7 protection of the environment, and the
8 productivity capacity of their lands, or
9 territories and resources.

10 And being the Chief of Peguis First
11 Nation, certainly we have undertaken sustainable
12 practices in terms of our development going
13 forward. And more specifically, I'm speaking on
14 our housing and our infrastructure development.
15 Today we are building a \$19 million, or
16 \$17 million arena, and we have incorporated
17 geothermal, which cuts down on the hydro
18 consumption and certainly the costs associated
19 with such consumption. And also incorporated that
20 within our housing this year. And going back and
21 speaking with Hydro, certainly, you know, there is
22 a need there to cut back on our consumption. And
23 which coincides with their ultimate goal and
24 outcome is exports of energy. And certainly I
25 think we have to and continue to maintain our

1 position as being sustainable people. And that's
2 something we have -- we have a responsibility, not
3 only of the lands and certainly the environment
4 that the animals live and where our medicines are,
5 but to a society. And that's something that we
6 practice today.

7 The UN declaration also provides
8 guidance to members, states, and to the government
9 departments, the rights of indigenous people. It
10 also provides a framework for justice and
11 reconciliation in applying existing human rights
12 standards to the specific historical, cultural,
13 and social circumstances of indigenous peoples.

14 I will now comment on our world view
15 as Anishinaabe people, and certainly in dealing
16 with Mushkiki, which is medicines. Culture,
17 traditions and teachings of the Anishinaabe are
18 transmitted and shared in a number of ways. And
19 one of these ways is the (Aboriginal language
20 spoken) or sacred narratives, plants, animals that
21 are usually referred to as our grandfathers.

22 The Anishinaabe have a fundamental
23 belief in the Creator who has made all things.
24 Accordingly, all of the Creator's creation is
25 considered sacred. When a plant is harvested,

1 tobacco is usually offered to the spirit of the
2 plant, and that plant, which is usually a medicine
3 is asked to heal the person who is in need of
4 healing. The medicine plants and trees are the
5 pharmacy of the Anishinaabe people. Some plants
6 and trees are used in ceremonial purposes such as
7 sage, sweet grass, cedar and tobacco. These four
8 are the main ceremonial medicines used in
9 cleansing and purification. The balance between
10 preservation and destruction of these sacred
11 medicine and plants is at a very fragile low. The
12 development of projects must be cognizant of the
13 Anishinaabe world view on the sacredness of these
14 plants and trees.

15 The Anishinaabe all strive to achieve
16 (Aboriginal language spoken), which is a long,
17 productive and healthy life. In doing so, the
18 Anishinaabe strive to walk the red path and
19 maintain the red circle, the circle of life. This
20 journey is a learning journey where Anishinaabe
21 respects the sacredness of life, including plants
22 and animals. If a plant or animal is harvested,
23 tobacco is offered to that spirit and the Creator.

24 It is incumbent upon the Anishinaabe
25 to protect these plants and trees from

1 indiscriminate destruction. And the use of
2 herbicides along the corridor of Bipole III will
3 exacerbate that destruction. Some of my, I guess
4 practices in going back, again, it refers to our
5 sustainable practices in terms of the medicines
6 that we use. And certainly, I did comment on the
7 sustainable energy practices that we also are
8 currently undertaking.

9 But in my concluding statements, I
10 will make the following. The Crown has materially
11 failed in its duty to consult and accommodate
12 Peguis, and the Crown duty was performed in an
13 inadequate and improper manner. Peguis was
14 constructively excluded from the participation in
15 the design of the EIS. The EIS was not a
16 completed statement, and became a rolling draft
17 with amendments and additions that caused undue
18 hardship on the participants. The Crown and the
19 Clean Environment Commission did not adequately
20 acknowledge the Aboriginal and Treaty rights of
21 Peguis First Nation. The capacity of Peguis First
22 Nation to fully participate in Bipole III, the EIS
23 reviews and CEC hearings was prejudiced by the
24 lack of adequate funding that is seen as disparate
25 treatment. The inordinate low number of First

1 Nations at the CEC hearings is a reflection of the
2 lack of due diligence on behalf of the Crown.

3 I guess I just wanted to pause here
4 and certainly make a statement. When we do have
5 consultation involving our people and our First
6 Nation, it is usually that that consultation
7 occurs with our people, the grassroots people.
8 And going back when Treaty was signed, the Treaty
9 commissioners came to us and had those discussions
10 and dialogue in our community. And certainly
11 that's something we acknowledge, but also
12 something that we continue to try and communicate
13 with groups that are impacting us in one way or
14 another. Because you need to hear, not only from
15 like myself as chief, or certainly our
16 representatives, but also the people themselves,
17 because there is such diverse issues within any
18 community. And I just wanted to make that
19 statement.

20 The capacity of Peguis First Nation in
21 terms of the inordinate low number of
22 participation at the CEC hearings is a reflection
23 of the lack of the due diligence on behalf of the
24 Crown.

25 Another statement is the Crown and the

1 CEC must be more inclusive, especially where
2 Aboriginal entitlement and Aboriginal rights are
3 asserted.

4 In Bipole III the project cannot focus
5 only on the transmission line. It must consider
6 and include the converter stations, the ground
7 electrode sites that are integral to the overall
8 project. To omit the converter stations will
9 impugn the integrity of the project and bring the
10 CEC hearings into disrepute.

11 I guess just, again, in making that
12 statement, I take the example of a car. Certainly
13 in a vehicle you have one outcome, it is to get
14 you from point A to point B. But in order to do
15 that, in order to accomplish that you have to have
16 tires, you have to have an engine, and you also
17 have to have gas or fuel to do that. But also you
18 need a driver. And certainly in making a
19 comparison here, as far as this project is
20 concerned, you know, you need all of these
21 components to achieve one result. And that's why
22 these projects certainly need to be considered as
23 one, based on the overall outcome of what they are
24 trying to achieve.

25 The other statement is based on the

1 foregoing, and based on the just and fairness.
2 Peguis, in all conscience, cannot recommend the
3 Bipole III for licensing. Peguis First Nation
4 recommends that the CEC recommend that Manitoba
5 Hydro return to Bipole III and do all of the work
6 identified during the reviews and these hearings.

7 Peguis recommends the CEC do not
8 recommend a licence until all deficiencies,
9 including the fulfillment of our land rights and
10 our respective rights.

11 And just in closing, I do want to
12 certainly thank, you know, the CEC for giving me
13 the opportunity to present, and certainly giving
14 me the opportunity to be here today, again, in
15 Treaty 1 territory. This is our land and
16 certainly this is our home, and has always been
17 our home, and will continue to be our home going
18 forward for many, many years to come.

19 So I just wanted to make these
20 statements today, March 13th, here in the Province
21 of Manitoba with respect to these hearings.
22 Miigwech.

23 THE CHAIRMAN: Thank you very much,
24 Chief Hudson. Thank you for those comments. And
25 we welcome your participation here this morning,

1 and we welcome the privilege of conducting these
2 hearings in your traditional Treaty area.

3 I would like to repeat the comments
4 that I made to Mr. Dawson earlier. I thank Peguis
5 First Nation for its participation and
6 contributions to this process over the past many
7 months. So thank you again for coming out today.

8 We will take a 15 minute break and
9 then return with the next participant.

10 (Hearing recessed at 10:38 a.m. and
11 reconvened at 10:52 a.m.)

12 THE CHAIRMAN: I hate to break up the
13 party at the back of the room, but I think we need
14 to get back to work. Could we come to order,
15 please?

16 I hate to break the news so early in
17 the day, but I suspect we will not be finishing
18 earlier today, in fact, I suspect me may be going
19 overtime. Bipole Coalition will begin their
20 closing arguments in a moment. Mr. Meronek has
21 indicated that he will probably go past noon. I
22 do not want to break up the presentation by taking
23 a break at that time. So as long as it is -- he
24 feels he will be done in the 12:15 to 12:30 area,
25 so we run through until then, and then take our

1 break and come back an hour later, which may
2 necessitate going on beyond 5:00 o'clock today.
3 But I would rather do that than add any more days
4 to this process.

5 So, Mr. Meronek, the floor is yours.

6 MR. MERONEK: Thank you, Mr. Chairman.

7 Good morning, members of the panel.

8 I have a few preliminary comments to
9 make. One is, so much evidence, so little time.
10 How do you take 7,000 odd pages of transcript and
11 distill it down into an argument of about an hour
12 and a half? And the answer is you don't. But
13 mercifully, for Ms. Mayor's benefit, I am down to
14 one binder.

15 Secondly, if I sound harsh at
16 junctures in my presentation, I don't want anybody
17 to take it personally, these are just matters of
18 advocacy, they are not meant to cast aspersion on
19 anybody's character.

20 Thirdly, most of the material that I
21 will be dealing with, I won't be quoting
22 transcript pages, but you can rest assured that
23 whenever I make a factual assertion, that it has
24 come out of the evidence that has been presented
25 on the record in the testimony of the witnesses

1 that I have presented before the Commission. I
2 may make some specific references to cites.

3 Lastly, I do not have the resources or
4 the time to have presented an argument that I can
5 disseminate in advance. But certainly the
6 Commission can certainly reflect on it on the
7 record by reading the transcript after.

8 Having said that, let me just say at
9 the outset that this is a difficult situation for
10 everybody. Given the impenetrable decision by
11 other forces, I mean by the powers that be on
12 Broadway, who questionably decided to advocate the
13 west side versus the east side solution. Having
14 said that, and to borrow Mr. Madden's analogy,
15 that ship has sailed, it has already hit the
16 iceberg. But I want this Commission to understand
17 that when it comes to talking about costs in this
18 proceeding, don't forget about the fact that that
19 decision alone cost about a billion dollars.

20 Now, it is difficult from everybody's
21 perspective. How is it difficult from the
22 proponent's perspective? We suggest that Manitoba
23 Hydro, because of the decision to move to the west
24 side, has really had to make a silk purse out of a
25 sow's ear. It essentially had to place a square

1 peg into a round hole.

2 We feel, as do others, that it is a
3 very questionable proposal from an environmental
4 perspective. We feel it is an escutcheon on an
5 already challenged and fragile environment. Make
6 no mistake about it, we fervently believe that
7 Manitoba Hydro staff has done a yeoman's job,
8 given the really difficult instructions. But from
9 our perspective, it is not a question of
10 presenting a satisfactory solution that answers
11 all ailments, it is about selling the best choice
12 out of lesser evils.

13 From the participants' perspective,
14 and there are many, you can segment the problems
15 into the north, the central part of the province
16 and the south.

17 In the north you are dealing with
18 First Nations and the MMF. And in that connection
19 it is about resisting a further assault on their
20 culture, their way of life, their bread basket.
21 Their backyard has taken so many body blows it is
22 distressing to appreciate how much more they can
23 tolerate.

24 In terms of the central part of the
25 province, I call it the bottleneck section, and

1 that again deals with First Nations and the MMF.
2 And lots has been said about that and more will be
3 said by CAC. The primary assault on that section
4 of the line are such VECs as caribou, moose,
5 birds, lands, especially the Pine Creek First
6 Nation, but others as well. And in our view, it
7 is inconceivable that Manitoba Hydro can come to
8 the conclusion that the impacts are not
9 significant and are of short term.

10 We are here to deal primarily with the
11 south. It is the one mega VEC that didn't even
12 receive the cold courtesy of a sideways glance, in
13 our respectful submission. Again, Manitoba Hydro
14 has been dealt low cards by the choice of Bipole
15 III. Given the choice to go on the west side,
16 where does it go? It has to go through
17 agricultural land. Manitoba Hydro had zero choice
18 in that connection. And in that connection, the
19 unadulterated fact is that the agricultural sector
20 is being impacted seriously and negatively in a
21 discernible, vivid and measurable way.

22 Therefore, what does Manitoba Hydro
23 do, what is its modus operandi? I suggest it is
24 three-fold. First of all, it assumes that it is
25 not a big footprint problem, hence the

1 calculation, the formula seven metres times seven
2 metres times a number of transmission towers
3 equals 25 or 50 hectares of damage.

4 Secondly, and this came through with
5 Mr. Nielsen's evidence, he said where do you go?
6 No matter where you go you are going to impact
7 somebody, so we have to go somewhere. And I
8 suggest in going somewhere, you had to take into
9 account other considerations other than
10 agriculture in order to come to the choice that
11 you can package as a reasonable solution.

12 And lastly, the MO of Manitoba Hydro
13 was to say, well, compensation is the answer.
14 Let's throw some one time payments at the farming
15 folks, and they will be happy and go away. And
16 that's why you have so little emphasis on
17 agriculture. Essentially, it is comprised of, I
18 think I said this in my opening statement, about
19 eight pages in chapter 6. It is dealt with in
20 chapter 7 as one out of 27 criteria. It is dealt
21 with in chapter 8 in some 18 pages. And it is
22 dealt with in the agriculture report of
23 Mr. Nielsen. Out of all of that material, that's
24 the kind of assessment that's been made.

25 Now, the Commission is faced with a

1 dilemma. What does it do? The first option is
2 status quo, just refuse the application. Some
3 would argue that this proposal be stopped in its
4 tracks, full stop.

5 Well, the Coalition doesn't support
6 Manitoba Hydro's proposal because it recognizes
7 the legitimacy of the reliability concerns, just
8 not the emphasis. The Coalition will not be
9 advocating the status quo.

10 What is the second option? The second
11 option is to approve the Environmental Impact
12 Study as amended. I doubt that anybody in this
13 room, other than Manitoba Hydro, would advocate
14 that position. There are too many uncertainties,
15 there is too many unknowns, there is too much
16 evidence of long-lasting significant adverse
17 impacts on important VECs.

18 One of the troubling factors that I'm
19 sure Mr. Williams will elaborate upon later is the
20 issue of cumulative effects. We believe there
21 hasn't been an acceptable cumulative effects
22 assessment, notwithstanding the narrative of
23 Mr. Hegmann. It kind of reminded me of my first
24 year in philosophy, good old Dr. McCarthy, he
25 spoke in a profound way, but I didn't understand a

1 word he said. And I got that impression with the
2 mushy language that we heard yesterday and in
3 other days of testimony. If one were cynical, one
4 could argue that what was presented in chapter 8
5 and chapter 9 was somewhat arbitrarily conceived,
6 that it built a foundation around a pre-conceived
7 result. Hence, in our view, the cumulative
8 effects assessment is suspect. And I will say
9 more about that later when it comes to the
10 agricultural sector.

11 What else can the Clean Environment
12 Commission do? Well, it can bless the proposal,
13 with licensing conditions or recommendations. In
14 our view, conditions should only be imposed where
15 the end result can not be achieved without some
16 continuing safeguards in place, or where future
17 events need to have some structure around them to
18 preserve the integrity of the project from an
19 environmental perspective. Conditions should not
20 be introduced in a leap of faith that known
21 significant deficiencies can be corrected in the
22 future or *M and S through the inflection of time.

23 What is another option? The option
24 for the Commission is to send the proposal back
25 for some major changes, recognizing the

1 fundamental defects before this Commission. The
2 Bipole Coalition supports this last approach
3 fervently and strenuously and with a conviction
4 supported by the evidence.

5 Some of the recommendations, to get to
6 the end of that story, should be prepare a more
7 complete cumulative effects study. We are of the
8 strong belief that there is no point in having an
9 environmental assessment hearing that speaks only
10 of the present projects or projects that are
11 already in the hopper for regulatory review.
12 Projects which have reached a certain degree of
13 advancement, where a positive intent has been
14 demonstrated by Manitoba Hydro, and which will
15 have a direct or indirect impact on this project,
16 must be included in such an assessment.

17 And also I was struck by some of the
18 environmental impacts which have been either
19 ignored, or looked at in passing. One dealing
20 with birds, and that was the issue of geese.
21 Geese are not a VEC, but it is implausible that it
22 would be eliminated. Is it because there are so
23 many geese that it is a measure of crowd control
24 or population control by putting Bipole III up?
25 The evidence is that there could be a demonstrable

1 negative effect on geese, yet they have not even
2 been included in a VEC.

3 Climate change and the impact on the
4 environment has received very little publicity.
5 And yet that's one of the major aspects of concern
6 in the environment in the future.

7 I was struck by the comment by
8 Mr. Hegmann the other day dealing with forest
9 fires. Forest fires naturally are an issue. And
10 he says that there is fire modeling available. I
11 never heard of that, but clearly it is not in this
12 particular case, and if fires are indeed a
13 significant threat to the environment, to the
14 habitat, then why is there not fire modeling?

15 Pine Beetles, that was mentioned by
16 Mr. Collinson. It is a huge eastward advancing
17 problem. Those little wretched creatures are
18 moving from B.C. to Alberta, and they have invaded
19 Saskatchewan now such that they are threatening
20 the boreal forest in Saskatchewan. There is
21 really no study in dealing with the impact of Pine
22 Beetles on the forest before this Commission.

23 In terms of what we are proposing, we
24 feel that the suggestions that we have made or are
25 about to make represent the only prudent and long

1 lasting panacea to this vexing environmental
2 conundrum facing this Commission. We believe it
3 is the most efficient and logical solution to
4 placate most of the constituents or stakeholders.

5 In terms of the Bipole III
6 reconfiguration that we are proposing, the reasons
7 are unassailable. It is not controversial from a
8 feasibility perspective to relocate Bipole II, and
9 then build Bipole III, it is only an issue of
10 time. In other words, Manitoba Hydro has stated
11 in-house that relocating Bipole II is an enhanced
12 reliability move. And notwithstanding the
13 protestations of Manitoba Hydro, something must be
14 done by 2025 by its own report.

15 The Coalition approach achieves, one,
16 enhanced reliability over Manitoba Hydro's
17 proposal. It is less costly, as I will
18 demonstrate later on. And from an in-service
19 date, there is a good chance that it can be
20 accommodated or dealt with faster than the Bipole
21 III project, considering that Riel station is
22 already in the works.

23 And for that you can go back to the
24 Manitoba Hydro exhibit 118 at page 33, when it
25 talks about the in-service date for relocation as

1 being quicker than Bipole III.

2 Lastly, but most importantly, it
3 resolves and eliminates the serious encroachment
4 of the present proposal in the Southern Manitoba
5 agricultural sector.

6 Speaking of agriculture, we want to
7 emphasize over and over again that compensation is
8 not an acceptable substitute for avoidance, it is
9 a last resort when all else fails.

10 Now, in terms of the route selection
11 process, and this seems like eons ago that we went
12 over this, the Coalition has shown that the
13 impacts of the present routing on agricultural,
14 particularly in Southern Manitoba, are far more
15 intrusive than Manitoba Hydro has understood, and
16 far more consequential than Hydro admits, even
17 today after all of the evidence that's been
18 submitted. This situation has arisen in part
19 because Hydro chose to override the advice of its
20 agricultural consultant -- and I will get into
21 that later -- in part because the methodologies
22 used for the route selection were flawed, and in
23 part because the descriptors used for the various
24 parameter ranges were inappropriate.

25 The outcome of this flawed process was

1 that serious shortcomings for many route segments
2 were classified as not significant and were
3 incorporated in the project plan. The resulting
4 impact of the line on landowners is multifaceted.
5 For example, a serious example, you have heard
6 about aerial application of crop protectants. We
7 placed evidence before the panel that there is a
8 major constraint on the farmers' ability to safely
9 protect their crops from weeds, insects and
10 disease. The safety concerns are not just for the
11 operator but also for the public, including
12 neighbours going about their daily routines.
13 Hydro has indicated no willingness to accept full
14 liability for property damage liability, even
15 though it is Hydro that's introducing the risk to
16 the existing landscape.

17 I have spoken already about the small
18 footprint. We have done some calculations, and it
19 is not 50 hectares or 125 acres which is at issue,
20 it is a much, much greater footprint. The
21 capitalized value of the farms in Southern
22 Manitoba that could be affected, not potentially
23 affected, they will be affected, the issue is how
24 much, and how do you measure that? Well, you
25 can't measure it. It is impossible. But as an

1 order of magnitude, we have put on the record that
2 it could be as much as a billion dollars. If you
3 reflect the fact that with aerial spraying, you
4 are looking at a no fly zone of approximately a
5 mile on each side of the right-of-way for a
6 substantial length of the line, over agricultural
7 land, for the length of the life of the line,
8 which is anywhere from 50 to 80 to 100 years.

9 The Coalition has presented
10 considerable evidence explaining the impact of mid
11 field towers on the efficiency of field
12 operations. The lines proposed reveals a major
13 disregard for this impact. The impact costs both
14 money and time. It contributes to extra operating
15 costs because of the time it takes to navigate
16 large equipment around towers so that all acres
17 are covered.

18 It also introduces a new high risk
19 element to field operations. The Coalition has
20 testified that current cropping practices require
21 a minimum of ten field passes per season with
22 equipment that is very wide, and is routinely
23 guided by auto steer and GPS technologies. These
24 technologies do not recognize objects such as
25 transmission towers, and require manual override.

1 Field operations are frequently conducted by young
2 family members and by less than fully experienced
3 employees, often in dusty conditions or at night
4 time. The transmission towers introduce a new
5 safety risk to field operations.

6 In terms of environmental impacts, the
7 Coalition provided evidence that mid field towers
8 also produce environmental consequences because of
9 the impossibility of avoiding double and even
10 tripe overlap in the vicinity of the towers. Mid
11 field tower placement results in excess of
12 fertilizers and chemicals, and in some
13 circumstances animal manure in the area, all of
14 which can be carried off in surface water which
15 can infiltrate to groundwater.

16 Farmers work hard to be good
17 environmental stewards of their land. Mid field
18 towers reduce some of their good work. They leave
19 the farmer exposed to the possibility of
20 regulatory penalties in the case of animal manure
21 management and possibly in the future in the case
22 of fertilizers and chemicals.

23 We have heard about noxious weeds.
24 The Coalition has explained to the panel and to
25 Hydro that the area in the tower footprint

1 represents a safe haven for noxious weeds. If the
2 towers are remote from a roadway, these areas are
3 essentially inaccessible as far as weed control
4 during the growing season is concerned, and so the
5 weeds can grow and multiply, spreading their seeds
6 throughout the entire field. This phenomena has a
7 yield depressing effect on current crop and also
8 on future crops.

9 It also introduces a need for
10 additional chemical and/or cultural control
11 measures in the current year and in future years,
12 increasing expenses and demands on management
13 time.

14 We have also heard about crop
15 insurance and revenue stability programs. I won't
16 talk too much about it, but there is an impact in
17 that regard. The same with risk property and
18 liability insurance. It puts the farmers at risk
19 with respect to those particular aspects.

20 We heard a lot about manure
21 management. And we were disturbed to learn from
22 Hydro's expert agricultural witness that on the
23 basis of his roadside surveillance, he considered
24 the injection of liquid manure in a field to be
25 not sufficiently different from normal tillage

1 operations to warrant any special consideration of
2 that practice. However, the risk associated with
3 the lateral force of an eight inch supply hose
4 trailed behind injection machinery drawn by a
5 400-horsepower or even more powerful tractor, the
6 tension by 16 or more tonnes of liquid manure in
7 the hose and dragged into contact with the mid
8 field tower should be obvious. The risk may
9 manifest itself as property damage to the tower,
10 the hose, the pump, the injection machinery, or
11 even as an environmental spill.

12 More importantly, in some areas which
13 the line will traverse, for example in the RM of
14 Hanover, every other acre is committed to manure
15 application. Injection of liquid manure product
16 from dairy and hog operations is a method of
17 application preferred by the regulator, and it has
18 become the predominant method that is used in
19 Manitoba. Dairy and hog farmers who inject liquid
20 manure into their own fields, in fields rented for
21 that purpose, are required by law to file manure
22 management plans to Manitoba Conservation, and are
23 subject to random audits and huge fines for
24 practices that depart from the plan or are
25 otherwise non-complaint with manure management and

1 mortality regulations. The impossibility of
2 avoiding double and triple application of manure
3 in the immediate vicinity of towers, without
4 leaving significant areas with no application
5 places these farmers in a vulnerable legal
6 position.

7 We have heard about shelter belts.
8 Unfortunately, shelter belts were classified as
9 part of the forestry value environmental
10 component, where they were a relatively
11 inconsequential component of a category dominated
12 by commercial forest interests and appeared to
13 have no impact on the assessment.

14 Irrigation. The Coalition expressed
15 concern about the failure of the EIS to adequately
16 consider the impact of the line, both on lands
17 presently irrigated and on lands that could be
18 irrigated in the future. That concern was
19 exacerbated by the failure of the EIS to recognize
20 any assessment of the number of acres presently
21 under irrigation, is vastly understated by a
22 factor of three or four by data that consider only
23 the acres covered in only a single year. The cost
24 of irrigation equipment and the need to rotate
25 crops makes it necessary for the equipment to

1 follow the crop that produces the best benefit
2 cost ratio. With a three to four year crop
3 rotation, the number of acres that could be
4 impacted by a Bipole line would be three or four
5 times the number of acres impacted in any given
6 year. The EIS has not taken into adequate account
7 the extent to which technology, market forces,
8 climate change will bring new acres, new crops,
9 new varieties into irrigated production. Many
10 constraints that the line will create for
11 irrigation have not been understood or have been
12 missed completely in the EIS and the technical
13 report on agriculture.

14 Now, what are some of the financial
15 impacts? There are several major financial
16 impacts, and I will list them. They include, as I
17 mentioned, aerial spraying constraints, efficiency
18 of field operations, regulatory penalties
19 associated with environmental impacts in the
20 vicinity of the towers, spread of noxious weeds,
21 crop insurance and revenue stability coverage
22 levels, property damage, liability insurance,
23 manure management, shelter belts, irrigation and
24 drainage.

25 As I have indicated, it is virtually

1 impossible to predict the financial impact of
2 these factors over the lifetime of the line, given
3 the parameters of whether the line is 50, 60, 80,
4 or even 100 years. The main reason is that
5 prediction of financial impacts are so illusive
6 that agricultural markets are continuously in a
7 state of flux, and technology is continually
8 changing. Just as in the case of irrigated
9 production, the EIS has not taken into account
10 adequate -- sorry, has not taken into adequate
11 account the extent to which technology, market
12 forces and climate change will bring new crops,
13 new varieties into irrigated production. Neither
14 has it reflected how these forces will impact on
15 all production, whether it be under irrigation or
16 not.

17 The reason that Hydro has not taken
18 these factors into account is that they can not be
19 predicted over a time span as long as the life of
20 the line. Which is why a one time up-front lump
21 sum payment is an inappropriate model for
22 compensating for these impacts.

23 We know, however, that Manitoba Hydro
24 has set aside a mere \$34 million for all of the
25 land acquisition and property licensing and

1 damages. We suggest that is a paltry sum in
2 comparison to the risks that are facing the
3 farmers now and in the future.

4 There are also non-financial impacts.
5 It pulls at one's heartstring to hear about the
6 First Nations and their plight, but let's not
7 forget the agriculture sector. The presentations
8 that were made in the various rural communities
9 were heartfelt, they were sincere, and they were
10 compelling. It is not a consideration that can be
11 measured in dollars. It was manifest as emotion,
12 including sadness, confusion, anger, and even
13 tears expressed in presentations at Portage,
14 Niverville and Winnipeg. Farm families are
15 attached to the land, to their farm yards and to
16 their homes, in one sense, in the same way that
17 urban dwellers are attached to their homes and
18 yards. But they are also attached in a different
19 way through intergenerational commitment. That is
20 why the government recognized century farms, often
21 the product of four, even five generations, years
22 of effort and emotion, blood, sweat and tears go
23 into keeping the land productive, with the
24 objective of leaving the land in even better
25 condition for the next generation. Farmers are

1 proud of their farms and develop ties to their
2 land and an emotional bond that's cemented by
3 years of hard work and sacrifice. And it is not
4 surprising that they react emotionally when the
5 fruits of the labour, intended in many cases to be
6 enjoyed by their offspring, are in any way
7 threatened or compromised.

8 I won't spent too much time on the
9 public relations aspect, but I do harken back to
10 the early days of the hearing in terms of the
11 public consultation process. We say it was
12 critically flawed. The process had reached the
13 fourth and final consultation stage before most
14 landowners, whose lands would be traversed by the
15 line, learned about it. By that time the planning
16 process was so far advanced, and Hydro was so
17 entrenched in its commitment to the preliminary
18 preferred route, that only relatively
19 inconsequential changes, many of which were made
20 earlier in the process, were made in the final
21 preferred route, which was announced a few months
22 later.

23 Admittedly, a limited number of
24 consultation occurred earlier, prior to the choice
25 of the preliminary preferred route, with a small

1 percentage of the farmers who learned through mass
2 communication. But that consultation simply
3 resulted in line alignment further into the
4 fields, a situation as undesirable from a field
5 operation point of view as the situation before
6 consultation.

7 The Coalition has pointed out that the
8 final round consultation was scheduled, not on an
9 individual, but collective basis at different
10 locations, in large part in August, September, and
11 early October, exactly the worst time of the year
12 to get the farmer's attention.

13 There were lots of clues during the
14 review process of the extent to which Hydro has
15 underestimated the impacts of the line on
16 agriculture, and how seriously Hydro has
17 misunderstood the resistance to Bipole III. The
18 anger that was both expressed and suppressed as
19 rural presenter after rural presenter tried to
20 explain why they didn't want the line in their
21 area seemed not to register on Hydro. But there
22 is still time to turn this project around because
23 the line is not yet built. If the intent is to
24 avoid possibly billions of dollars of financial
25 impact on farm families in the future, many

1 possibilities will open up. But once it is built,
2 it is too late.

3 The Coalition believes that the
4 continuum from avoidance to mitigation to
5 compensation is one where compensation is the last
6 resort. Unfortunately, in too many cases where
7 the preferred, final preferred route would cross
8 the rich farmlands of Southern Manitoba,
9 compensation is not only the first choice, it is
10 the only choice offered by Manitoba Hydro. The
11 Coalition argues that alternatives to the final
12 preferred route through Southern Manitoba must be
13 found. In identifying a new route, the Coalition
14 submits that it is imperative that the detailed
15 routing of the line, wherever it is finally built,
16 be designed to eliminate all of the shortcomings
17 identified by the Coalition's expert, Mr. Berrien.

18 Examples of improvement that are
19 available include, one, to the extent possible
20 replacing mid field alignments that are within 42
21 metres of the field edge with property line
22 alignments; two, taking advantage of existing
23 linear disturbances to the maximum extent
24 possible; three, elimination of mid field routing
25 for several miles of line to avoid a single

1 building site; and four, elimination of mid field
2 routing to avoid derelict building sites for which
3 there is no re-development plan. It will require
4 more on the ground reconciliation of whatever
5 routing options are under consideration.

6 So that's some of the identified
7 shortcomings of the present proposal for avoiding
8 in a future route alignment and in tower
9 placement.

10 Now, I want to get back to cumulative
11 effects as relating to agriculture. As I've
12 stated previously, we think it is a major flaw in
13 the EIS. I'm sure it will be dealt with in
14 consummate detail with Mr. Williams, but we have
15 the following observation. We believe, wittingly
16 or unwittingly so, the current cumulative effects
17 sections 8 and 9 are structured to eliminate the
18 impact of future projects by way of an arbitrarily
19 narrow definition. We harken back to the
20 screening process, which was a high level process
21 to develop chapters 8 and 9. These high level
22 screening -- this high level screening analysis
23 involved issues of direction, magnitude,
24 geographic extent, duration, and overall
25 significance. We found that where it was

1 impossible to quantify the environmental effect,
2 qualitative method or methods were employed.
3 Those quality of measures, or methods were usually
4 left up to the individual expert involved in a
5 particular VEC. And I just pause for a moment to
6 suggest there were hardly any measurable
7 quantitative VECs that were identified to this
8 Commission.

9 What was determined to be significant
10 was left up to Manitoba Hydro staff who were
11 informed by the individual expert. However, make
12 no mistake about it, the final responsibility
13 rests with Manitoba Hydro.

14 In terms of magnitude, those
15 definitions by and large were prepared by Manitoba
16 Hydro staff. There are two consequences relating
17 to the cumulative effects component which bears on
18 agriculture. One, no matter how you measure it,
19 the agricultural sector is significantly adversely
20 impacted for the life of the line. Not only is
21 the evidence of the agricultural panel of the
22 Coalition uncontroverted in most cases, it is also
23 supported in large measure by Manitoba Hydro's own
24 expert, Mr. Nielsen. While Mr. Nielsen attempted
25 to justify some of his inconclusions, it is clear

1 that he was of the view that there will be a
2 long-term significant adverse impact on
3 agriculture. That's in his report and I will get
4 to it later.

5 Mr. Nielsen, in his assessment, wanted
6 to make certain that the transmission lines went
7 through the least intensive agricultural land,
8 including next to road allowances where possible
9 on a mile line, using a half mile to avoid
10 irrigation areas in farmland, using existing
11 linear disturbances such as road allowances and
12 drainage ditches, avoiding diagonal lines where
13 possible, avoiding in-field placement where there
14 was created a management split unit, avoiding
15 irrigated lands. He stated at transcript pages
16 3614 to 16, those were his objectives.

17 Unfortunately, for reasons that can
18 only be described as myopic and faulty, Manitoba
19 Hydro engineers disregarded these objectives and
20 essentially abandoned the criteria for the most
21 part by placing towers in the worst possible
22 position, and that is in the field.

23 Especially for routes 10 through 13,
24 Mr. Nielsen's choice was countermanded by Manitoba
25 Hydro which selected another route. To add insult

1 to injury, Manitoba Hydro used one out of 27
2 criteria for agriculture in the entire 230
3 kilometre route, which was absolutely dominated by
4 agricultural considerations. Mr. Nielsen wanted
5 to avoid areas where livestock and irrigation were
6 issues, but he couldn't do that because the choice
7 had already been taken away from him. He mentions
8 that at transcript page 3639.

9 The decision by Manitoba Hydro
10 engineers to move the line 33 metres in-field
11 north of PTH 16, and 42 metres south of PTH 16 was
12 a decision made after Mr. Nielsen had made his
13 professional conclusions known. That's found at
14 transcript page 3645.

15 From an agricultural perspective, the
16 decision of Manitoba Hydro engineers was the least
17 preferable. That's found at transcript page 3646.

18 Mr. Nielsen made his assessment in an
19 appropriate way by looking at sections 10 through
20 13, as a full route from Long Plain to Riel, and
21 not arbitrarily breaking it into various discrete
22 sections. That's found at transcript page 3648.

23 The route that he chose had the best
24 agricultural rating and had the most kilometres on
25 the road allowance, and had the most kilometres on

1 the half mile, and it had the fewest kilometres on
2 diagonal lines. That's found at transcript page
3 3649.

4 The reasons he suggested that were
5 given for the changes were the engineers' fear of
6 vehicle collisions and concerns over signage. He
7 had discussions with Manitoba Hydro engineers and
8 indicated the difficulties farmers would have in
9 using equipment of 4 to 600-horsepower with
10 massive wing spans, harvesting at night and
11 attempting to work around towers, but apparently
12 to no avail. That can be found at transcript
13 4652.

14 The most startling aspect of his
15 evidence was that once the decision had been made
16 by Manitoba Hydro, he went along with it and
17 didn't bother to do any further analysis.

18 He stated at page, transcript page
19 3652, the only disappointment that he had was that
20 he had not been able to do all of the analysis
21 based on other projects he was involved in, and he
22 decided not to do any more analysis because he
23 thought that the outcome would be the same.

24 Mr. Nielsen's report, even though he
25 had a difficult time mouthing these words, was

1 essentially compromised, not only because Manitoba
2 Hydro went against his advice, but because his
3 report was not independent after Manitoba Hydro
4 made the decision to use different routes.

5 Now, Mr. Nielsen attempted a
6 cumulative effects assessment on agriculture,
7 maybe not in the language that the professionals
8 in that discipline use, but he did make a
9 compelling analysis. And the most compelling
10 aspect of his report appears at page 105, of his
11 report where he states:

12 "The following shows a progression of
13 environmental sensitive site concerns
14 from an agricultural perspective. The
15 sites are not specific locations but
16 the impact will be significant through
17 many kilometres of transmission line
18 placement."

19 That's page, transcript page 3664.

20 He then goes on to identify eight or
21 nine areas where there will be an ongoing negative
22 effect on agriculture land due to Bipole III. And
23 he indicates that these cumulative or ongoing
24 effects will be felt over the lifetime of the
25 line.

1 He didn't do a cumulative effect on
2 other projects, because that was not his mandate,
3 such as he didn't review a potential southern loop
4 or any other project in the agricultural area. He
5 did, however, indicate that there are five
6 residual environmental effects, including
7 interference with cultivation, management unit
8 splits by line, field severance, interference with
9 irrigation, interference with aerial spraying, and
10 quality of land taken out of production, all being
11 adverse residual environmental effects which were
12 large in magnitude, occupying several hundred
13 kilometres in geographic extent for the lifetime
14 of the line. That's found at transcript page
15 3667. And I invite the Commission at its leisure
16 to review his report at pages 103 to 105.

17 More importantly, he disagreed with
18 the analysis of Manitoba Hydro in chapter 8, page
19 248, where Manitoba Hydro states that from an
20 agricultural productivity perspective, the overall
21 impact is not significant. And that could be
22 found at transcript pages 3668 and 3669.

23 He indicated that from his perspective
24 there would be a negative impact on the value of
25 agricultural land. He also indicated that

1 construction should take place in the winter, not
2 in the spring or summer or fall, which is contrary
3 to Manitoba Hydro's intentions.

4 He further suggested that there be a
5 study done on the impact of Bipole III on pivot
6 irrigation systems, which Manitoba Hydro has
7 refused to do. That's found at transcript page
8 3683.

9 Now, what about -- the second point is
10 what about current and future projects? I know
11 the Chair wondered where I was going in some
12 respects, but let me come to the point on this.
13 In looking at the definition of current and future
14 projects, which Manitoba Hydro has indicated
15 should be reviewed in a cumulative effects study,
16 the definition is this, and I quote, this is found
17 at transcript page 3217 and 18:

18 "For current and future projects and
19 activities, the cumulative effects
20 assessment focused on other projects
21 that have already been approved and
22 are being constructed or plan to be
23 constructed/carried out, or though not
24 yet approved are in planning/approval
25 processes preparatory to being

1 constructed or carried out."

2 Again, it seems to be a definition that is
3 somewhat fudged. But even Mr. Osler's
4 interpretation of good environmental assessment
5 practice includes looking at projects that are, A,
6 in the planning stage; B, that are reasonably well
7 known; C, that overlap with current projects in
8 terms of effects. And you can find that evidence
9 at transcript pages 3220 and following.

10 By that definition, the export tie
11 line that we spoke about just this week must be
12 reflected in a CEA.

13 Now, with respect to that line,
14 assuming it goes in, it traverses 123 kilometres
15 of prime agricultural land, including the sector
16 that we are dealing with. It crosses over or
17 under Bipole, which is another strong indicia for
18 terminating Bipole III elsewhere.

19 And if you look at the Alberta CEA
20 requirements and look at what reasonably
21 foreseeable projects, at page 22 of that report
22 that Mr. Williams submitted yesterday, you will
23 see by any definition that this tie line project,
24 however it plays out, should be included.

25 I just want to go to page 22

1 momentarily and quote:

2 "Reasonably foreseeable projects
3 should include the following
4 categories of projects unless there is
5 a particular circumstance to warrant
6 their exclusion: Approved, currently
7 undergoing regulatory review, about to
8 be submitted for review, officially
9 announced by proponent, directly
10 associated with the project under
11 review, not directly associated but
12 induced if the project is approved, or
13 identified in a development plan for
14 the area. A rationale should be given
15 for excluding specific future projects
16 and activities that appear to fit one
17 of the above categories."

18 So Manitoba Hydro says this line is
19 high level, they don't know where it is going to
20 go ultimately, it depends on the export contracts.
21 We say in legal terms, "huey." Manitoba Hydro is
22 a long way down the path to applying for an
23 environmental assessment licence. By
24 Mr. McGarry's account it is 2015. The in-service
25 date is scheduled for 2020. That's found in the

1 capital expenditure forecast. It is in the
2 capital budget. And the implications of a major
3 line anywhere near Bipole III is troubling by any
4 measure.

5 I harken back to the statement of
6 Dr. Noble at pages 4868 and I quote:

7 "So at a minimum we would suggest that
8 all other Hydro projects and
9 transmission lines should be
10 considered, at least within the class
11 of projects, if not other
12 disturbances. At a minimum, these
13 shouldn't be dismissed when we are
14 looking at the magnitude of the
15 effects."

16 And a couple of examples, the Dorsey to Portage
17 transmission line project is not included because
18 of no spatial overlap.

19 The point is that it is affecting
20 these same VECs. So it is affecting agricultural
21 land, it will potentially affect aquatic habitat
22 and wildlife crossings, and easements are noted
23 for the Dorsey-Forbes project. They are the same
24 VECs. So there is a cumulative effect. The
25 question is, is it significant not to dismiss it

1 as not having any effect?

2 The same sort of example for the
3 Keeyask Generating Project. In the reports being
4 considered negligible, but not addressing the
5 total or cumulative effects on the VEC when we
6 consider other activities on those VECs.

7 So some examples to illustrate what it
8 is that we are getting at with this particular
9 component.

10 Two other ones, and the top one we
11 found interesting in terms of the terminology.
12 The new international transmission line is not
13 included because of minimal spatial overlap, and
14 no incremental effects. Well, we thought that's
15 kind of funny, because if there is minimal spatial
16 overlap, there is still spatial overlap, so there
17 is still a potential for a cumulative effect.

18 Again, to reiterate my point, the size
19 of the individual effect doesn't matter, it's the
20 total effect. Incremental effects are cumulative
21 effects, I mean, that is exactly what we are
22 talking about. So we found it odd that this one
23 would be dismissed. And again, you know, not
24 being able to predict a new international
25 transmission line, we are likely dealing with

1 effects on the same VECs, wetlands, agricultural
2 lands, and so on.

3 Manitoba Hydro says it hasn't any
4 studies to share. I find that difficult to
5 believe. But, in any event, this panel needs to
6 do one of two things; either seek better
7 information on Manitoba Hydro's plans vis a vis
8 the southern agricultural sector with respect to
9 these projects, or make certain that the Bipole
10 III line plan is detoured in favour a less
11 intrusive route.

12 Of course, the Coalition would prefer
13 the latter. It is another strong indicator for
14 keeping the line out of our backyard.

15 A brief comment on Conawapa. This I
16 found fairly flummoxing. And it is the fact that
17 Conawapa was partially considered and partially
18 not considered. It is the old half pregnant
19 analogy. It is in the planning stage with an
20 expected construction date of 2015, but for some
21 reason it has been left to further environmental
22 assessment bodies or reviews. And it begs the
23 question that's been asked already, why have a CEA
24 in the first place? Even Mr. Osler agrees that
25 when you get into the Conawapa world, the

1 challenge is how much can the information base
2 that is available help anybody make a decision on
3 the project at hand? And that's at transcript
4 page 3228.

5 Now, having dealt with the reasons for
6 getting out of our backyard, let me talk about the
7 solution that is being proffered by the Coalition.
8 There are two major aspects to the position. One
9 is a relocation of Bipole II by 2017. And by
10 relocation we don't mean moving the equipment
11 physically, we mean building Bipole II at Riel.
12 The evidence of Mr. Derry and Mr. Woodford in
13 BCP's 10 and 11 bear that out in spades.

14 Let's just stop and talk about Mr.
15 Derry and Mr. Woodford for a second. These are
16 experienced, credible people. They have been
17 around the block, not with just a passing interest
18 at Manitoba Hydro, they were intricately involved
19 in Bipoles I and II. They know what they are
20 talking about. And they have no vested interest
21 in these proceedings. Their mantra is simply to
22 do what is right. And we have to bear in mind
23 that this project is being sold on the basis of
24 reliability and security. It is not being sold on
25 any other basis. Whether, in fact, that's the

1 truth or not is beside the point, that's what has
2 to be sold, and that's what has to convince this
3 Commission to accept this proposal. It is an
4 issue of reliability. And that comes out right
5 from the get go. In the letter that
6 Mr. Tymofichuk sent to Tracey Braun to introduce
7 the EIS, and it is included in the EIS, and it is
8 a letter dated December 1, 2011, and I quote in
9 part:

10 "The Bipole III project is required to
11 ensure the reliability and security of
12 Manitoba's transmission and power
13 supply system."

14 In the introduction to the EIS in
15 section 1.1, the first paragraph:

16 "The purpose of the proposed Bipole
17 III transmission project is to provide
18 enhanced reliability to Manitoba
19 Hydro's system and to reduce the
20 severity of the consequences of major
21 outages."

22 In section 1.2, first paragraph:

23 "The identification of the project as
24 the best solution to improve the
25 reliability of Manitoba Hydro's system

1 was a result of work done over many
2 years by a number of engineers
3 employed in the transmission business
4 unit of Manitoba Hydro, in
5 consultation with specialists in the
6 field."

7 And lastly in the scoping document, in part it
8 states:

9 "The existing transmission system is
10 vulnerable to the risk of a
11 catastrophic outage of either or both
12 Bipoles I and II in Interlake corridor
13 and/or the Dorsey Station due to
14 severe weather, fire, sabotage and
15 other unpredictable events."

16 And dare I use those out of bound words, "needs
17 and alternatives," in that section, under
18 introduction of section 2.1:

19 "This chapter describes the urgent
20 need to ensure the reliability and
21 security of Manitoba's power supply
22 and reviews the various alternatives
23 for meeting that need."

24 Let me repeat:

25 "...and reviews the various

1 alternatives for meeting that need."

2 And I will get into that in more detail later.

3 Now, the issue we have with Manitoba
4 Hydro is the size and the urgency of the problem,
5 not the nature. Manitoba Hydro has emphasized the
6 nature and urgency of the risk by developing and
7 foisting upon us what I call the Armageddon
8 approach. It is the George W. Bush approach, the
9 fear of weapons of mass destruction. If we don't
10 do Bipole III now in the manner proposed, there
11 will most certainly be catastrophic consequences.
12 They do that by way of exaggeration. They do it
13 by way of a worst case scenario for outages at
14 Dorsey, up to three years; tornadoes, one in 17
15 years; corridors, six to eight weeks outage. And
16 they support it by various probability studies.
17 Probability studies, that's an interesting
18 discipline.

19 If you look at the probabilities with
20 respect to winds, on three different occasions in
21 the study, between Manitoba Hydro and Teshmont,
22 the probabilities of outages caused by wind are 1
23 in 200, 1 in 250, and 1 in 300. You can look at
24 information requests Manitoba Hydro VII 386. The
25 problem with these studies is that there have been

1 no studies dealing with average probabilities,
2 average duration loss, and sector impact.

3 Now, what Manitoba Hydro has done is
4 they have gone back into history, past events to
5 support the proposal for the future. And they
6 emphasize two major events. One was the
7 September 5, 1996 wind downburst where there was a
8 failure of 19 towers, two kilometres north of
9 Dorsey. But let's note in that, Dorsey is the
10 most severe and dangerous risk. We acknowledge
11 that. And our solution immediately addresses this
12 risk by splitting Bipole II off from Bipole I.
13 That reduces the risk by 50 per cent. Not only
14 does Manitoba Hydro not address Dorsey directly by
15 dealing with that fact, that there is still 3800
16 megawatts of power left at Dorsey that are exposed
17 even if Bipole III is built. It would only reduce
18 the reliability factor by one-third, whereas our
19 proposal, if Dorsey went down, will reduce the
20 impact by 50 per cent.

21 In terms of the corridor damage
22 presented by that event, the damage was repaired
23 in days. The winds occurred in the off season --
24 not the off season -- in the off peak load season,
25 they were accessible for repair, the cost of

1 repair was not substantial, and the outage was
2 dealt with by the way of import power.

3 That windstorm, however
4 catastrophically it was categorized, did not
5 motivate any action on the part of Manitoba Hydro.
6 It took 11 years to bring this project forward.

7 Let's look to June of 2007. That's
8 the Elie tornado, 30 kilometres north of Dorsey.
9 No one could debate the fact that a direct hit at
10 Dorsey would have dire consequences. But, again,
11 it doesn't -- this proposal doesn't address the
12 Dorsey issue. There is no protection for Dorsey
13 by this proposal, which is very strange planning
14 indeed when the most vulnerable equipment is left
15 untouched. Moreover, by moving Bipole III to the
16 west, Manitoba Hydro is inviting a risk increase
17 rather than reducing it. Just look back at the
18 tornado alley illustration that Mr. Collinson
19 introduced, and try to explain, rhetorically
20 speaking, why you would go right back into the
21 vortex of tornado alley?

22 In other words, the risk of outage is
23 not alleviated. The logic is fuzzy. It goes
24 thusly, let's put more infrastructure in harm's
25 way, but hopefully we can diversify the risk.

1 The interesting thing is that there
2 has been very little discussion on corridor
3 outages in any Manitoba Hydro literature on the
4 record prior to the EIS. And let's go to the
5 testimony of Mr. Tymofichuk on October 1, starting
6 at transcript page 93. He talked about Quebec, he
7 talked about North Dakota, Ontario, Hurricane
8 Katrina, Japan tsunami, New Zealand earthquakes,
9 Washington and Virginia outages, Manitoba
10 Floodways, the Balkans War, Warroad, Minnesota and
11 Saskatchewan. And I stop and I pause and I say,
12 if we had to contingency plan for all of these
13 worldwide events, we would be bankrupt in no time.

14 Specifically, when it comes to close
15 to home considerations, Dorsey, in 1996 there were
16 19 towers that collapsed. They used wooden poles,
17 so there was a total power re-establishment in
18 four days and an intermittent power interruption
19 for the next two weeks. With respect to the
20 tornado, there have been upgrades made at Dorsey
21 to an F3 tornado along with fire upgrades. With
22 respect to corridors, there have been ice storms
23 up north, but engineers have stabilized towers.
24 There have been forest fires, but Manitoba Hydro
25 has learned from the experience and they have

1 better real time monitoring. With respect to ice
2 storms in 1997, '83, '84, '91, they caused
3 distribution system damage, but not Bipole I and
4 Bipole II.

5 This has been an issue for many years.
6 Mr. Woodford testified that they have been in
7 discussions since the 1970s, when Dorsey was
8 built. The observation is that with respect to
9 the Dorsey situation, the Coalition relocation
10 proposal can be done, supposedly in a quicker
11 fashion, to a greater degree of reliability. It
12 is feasible and it has been recommended by
13 Manitoba Hydro in its exhibit 118.

14 Let's look at the other alternatives
15 considered by Manitoba Hydro. Very interesting.
16 And this is found in the EIS chapter 2, page 9.
17 The criteria used by Manitoba Hydro to consider
18 these other alternatives were project cost,
19 implications during outage, ability to minimize
20 cost during non-catastrophic outage, and future
21 growth. There were two options given; one,
22 natural gas fire generation; and two, importing
23 power. Both options were rejected as being very
24 costly and not compatible with other factors. All
25 other alternatives were considered but quickly

1 discarded. They totally ignored the realistic
2 options that were found and studied extensively in
3 the 2010 report. They have set up a straw man
4 alternative to make Bipole look impeccable. It
5 was a top down, not a bottom up approach to
6 alternatives. And it begs the question, why were
7 more pertinent and contemporaneously studied
8 options not advanced? Why was the 2010 HVDC study
9 not disclosed as part of the filing, or at least
10 the options that were listed therein not
11 incorporated in the EIS for consideration?

12 Now Mr. Bedford escapes the penalty
13 box in that regard. He certainly eloquently
14 indicated the reasons why in this hearing that
15 exhibit 118 was not introduced beforehand. But in
16 my respectful submission, Manitoba Hydro gets five
17 minutes for boarding. Of all of the technical
18 studies dealing with reliability, it was the most
19 pertinent, the most timely, because it was right
20 in the middle of the EIS, it was in the fall of
21 2010. Why was it not submitted? I suggest the
22 answer is simple; Manitoba Hydro had made up its
23 mind already.

24 But in order to sell a solution which
25 it is now thrusting upon the Commission, it had to

1 do two things. It had to set up a straw man
2 alternative to make Bipole III look vastly
3 superior. So what it did, it suggested two
4 alternatives, which I submit, anybody with a pulse
5 would have rejected. And it had to ignore the
6 more relevant study which examined in detail, in
7 the privacy of closed doors, unexposed to public
8 scrutiny, the more pertinent options which should
9 have been examined by this panel, including those
10 options of interest to the CEC, being relocation
11 and those which were promoted by the Coalition
12 engineering experts.

13 Well, the flaccid retort by Manitoba
14 Hydro when confronted with its own prior report
15 was to state, well, this report was done for a
16 different purpose. It had to do with future of
17 northern generation. Well interestingly, the
18 report emphasizes reliability as an important
19 factor. It talks of technical complexities. It
20 doesn't over-emphasize new generation. As a
21 matter of fact, it says if Bipole is not doable,
22 Manitoba Hydro should fast forward to consider the
23 relocation of Bipole II.

24 In any event, whether the purpose was
25 more broad or not, for the very issue that we are

1 dealing with, that is reliability, it
2 unequivocally acknowledges that the CEC posited
3 alternative and the Bipole Coalition options are
4 equal, if not, superior for reliability purposes.

5 Lastly, I say so what if it was done
6 for a different purpose? It doesn't change the
7 results. Manitoba Hydro says the report doesn't
8 take into account the corridor loss, that's the
9 big flaw, the fly in the ointment for this report.
10 Well, let's look at the report. Sure, it doesn't
11 even mention corridor losses as a consideration,
12 but if Manitoba Hydro is doing a study setting out
13 the pros and cons of reliability options, one
14 would think that the corridor factor would have
15 been considered, if it was relevant to any
16 reliability solution. The report doesn't reject
17 any option on the basis of reliability because the
18 corridor option is not considered. For example,
19 the report doesn't have a big caveat emptor
20 warning, please reader beware that these
21 conclusions do not reflect any considerations of
22 the corridor outage risks. I will say more about
23 that later on.

24 But the conclusion is the report was
25 relevant, it was valuable for the options

1 explored, it ought to have been provided
2 voluntarily, it would never have seen the light of
3 day but for the Bipole Coalition, and it is
4 unhelpful to Manitoba Hydro's position. In fact,
5 it trumps whatever evidence Manitoba Hydro post
6 facto wants to illicit by way of reconstruction as
7 to the choice when it comes to reliability.

8 I want to talk about the superiority
9 of the Bipole III Coalition proposal. The report
10 of which we have been -- I have been speaking at
11 length, supports the advancement of this option.
12 It demonstrates that it is not a pie in the sky
13 design conjured up by mad scientists. It was
14 initiated by Manitoba Hydro, not just in 2010, but
15 going back several years, at least as it related
16 to the relocation of Bipole II. And it shows
17 that, and I harken back to BPC 10, figure 1-3, by
18 2025, if Manitoba Hydro spends \$3.28 billion in
19 Bipole III for reliability, we get that for eight
20 years. That's a very expensive proposition. Then
21 Manitoba Hydro has to do something, it has to
22 spend more money, build more infrastructure at a
23 substantial cost because it can't sit idly by and
24 do nothing.

25 It did concede, at page 14 of the EIS,

1 chapter 2, that by 2025 that reliability factor
2 becomes a problem again. Not only that, but you
3 waste much money in terms of refurbishment costs,
4 whether it is \$543 million or half of that by
5 waiting to relocate Bipole II, which has been
6 considered as a future potential, in any event,
7 you waste that money.

8 In terms of reliability, Manitoba
9 Hydro's own study shows that the Coalition
10 solution is superior for three reasons. One,
11 there is greater reliability. The evidence
12 discloses that by 2025, by relocating Bipole II to
13 Riel, and building Bipole III, the reliability is
14 enhanced to 2050 versus what has been proposed
15 here. And it is less costly. How? Because if
16 you delay Bipole III by eight years you take the
17 carrying costs associated with spending \$3.28
18 billion, minus the carrying costs of relocating
19 Bipole II and you come out, according to BPC-10,
20 savings of over \$1 billion. That pays for the
21 relocation. That alone makes it less costly.
22 That doesn't take into account the infrastructure
23 associated with what has to be done in 2025. If
24 there is new generation, then it is a \$4.1 billion
25 proposition. If it is not a new generation, then

1 perhaps it is a tie line which is \$204 million,
2 according to CEF 2012, page 18, plus the
3 refurbishment. Not to mention the fact that the
4 Manitoba Hydro assessment does not take into
5 account the considerable amount of money that will
6 be expended in land compensation for farmers who
7 are detrimentally impacted. The math isn't even
8 close.

9 Now lets go to the Bipole I, II
10 corridor problems that Manitoba Hydro trumpets.
11 First let me re-emphasize that we are talking
12 about a eight year risk, 2017 to 2025. The
13 problem being that for eight years between the
14 relocation of Bipole II and the building of Bipole
15 III there is a risk of corridor outage. What are
16 those risks? The risks, whatever they are, have
17 been present ever since Bipole I and Bipole II
18 were joined in 1985. Now Manitoba Hydro will say,
19 I'm sure, well, but the deficiency has increased
20 over time.

21 Let's look at figure 1-4, which is
22 within the EIS report filed, and it has been in
23 our expert's report. If you look at it, in the
24 leisure of your own homes, you can add these
25 little squares, and they represent 200 megawatts.

1 And if you look at 1995, the deficiency was
2 850 megawatts. If you look at 1997 or 8, it was
3 1100 megawatts. If you look at 2000 it was
4 900 megawatts. If you look at 2005, it was 1200
5 megawatts. This problem has been around for a
6 long time. Not to say it is not a problem, but
7 Armageddon, I don't think so.

8 The point of fact is this: Manitoba
9 Hydro has not deemed it fit to address these
10 corridor problems for 22 years. So one must
11 question how much of a risk are we dealing with.
12 And as stated by Manitoba Hydro in its report, in
13 information requests, Manitoba Hydro VII, 386 at
14 page 11, transmission lines are relatively
15 straightforward in terms of restoration. It is
16 the widespread events which may overwhelm supplies
17 at hand.

18 Let's look at the vulnerability of the
19 lines. Manitoba Hydro is talking worst case
20 scenario. They are talking peak months when it
21 comes to risk. Those peak months are December to
22 February, most likely January. What are the
23 issues? Well, they are not tornadoes, and they
24 are not forest fires and they are not wind storms,
25 and they are not ice storms. Those things do not

1 happen in peak load months. You can't have those
2 phenomena in those peak loads. Therefore, the
3 load is not going to be 100 per cent. The
4 likelihood of wind storms and ice storms are more
5 around the off shoulder months when the peak load
6 is around 80 per cent. And the deficit in those
7 months, as shown in figure 1-7 of Mr. Derry's
8 presentation are anywhere from 200 to
9 400 megawatts in 2017 to 2018. And the
10 200 megawatts is the load that -- 400 is the
11 forecast, which we say is excessive. But in any
12 event, in 2024, 2025, the problem becomes
13 600 megawatts to 900 megawatts. That's less than
14 what we have been dealing with over the last 22
15 years.

16 History has shown there has never been
17 an outage of any consequence in Bipoles I and II,
18 since Bipoles I and II were built, which approach
19 anything close to the estimates being thrust upon
20 us. Every one of these incidents were fixed
21 within days at a cost of a fraction of the cost of
22 building Bipole III.

23 Let's look at the off peak risks in
24 storms and tornadoes, that's between June and
25 August. If there is a line outage, it is 65 per

1 cent of peak load. Therefore Manitoba Hydro has
2 plenty of excess to call upon between 2017 and
3 2025. And you can see that in figure 1-9 in Mr.
4 Derry's presentation, where the maximum deficit at
5 offload is 200 megawatts in 2025. Up to that
6 point in time it is in a surplus position. And
7 tornadoes are in the south where access to the
8 facilities is the greatest. We are not talking
9 about tornadoes up north. Most of the majority of
10 the line is not susceptible to tornadoes,
11 therefore, we are only looking at a small portion
12 of the line in close proximity to Manitoba Hydro's
13 facilities.

14 And as Mr. Gibbons pointed out, we are
15 talking about separation of Bipole I and II for a
16 segment of the line. So if you move Bipole II
17 over, you can go up 100 kilometres or wherever,
18 and you have got separation in the most vulnerable
19 section of the Interlake that deals with
20 tornadoes.

21 What are the costs? The costs
22 demonstrated on the record are for 1996, \$11
23 million. In 2011 for Dorsey, \$6.6 million.
24 Compare that to the \$322 million in carrying costs
25 to build Bipole III between 2017 and 2025 where

1 there is that risk of outage.

2 Probably be another half hour, Mr
3 Chairman, and I prefer to plow on while I am hot.

4 THE CHAIRMAN: We have a problem with
5 the transcriber.

6 MR. MERONEK: I will talk faster, but
7 you better transcribe this accurately.

8 Let's talk about the worst case
9 scenario versus the reasonable case scenario. The
10 worst case scenario is the end game justification
11 by Manitoba Hydro for advancing its proposal.
12 Manitoba Hydro never presents a reasonable case,
13 according to Mr. Woodford. It is a worst case
14 scenario in the worst location in terms of line
15 restoration, with the worst weather conditions,
16 with the highest probability of outage. A
17 reasonable case would include good inventory
18 restoration practice to reduce downtime, and a
19 study of the risk of wind storm causing damage
20 through the forested portion of the line, and
21 that's at page 6219 of the transcript. Manitoba
22 Hydro said, well, Bipole Coalition hasn't done any
23 studies about that. Well, it is not incumbent
24 upon us to do studies, it is Manitoba Hydro's job
25 to do those studies.

1 Let's talk about ice storms. The
2 evidence established by Mr. Woodford is that ice
3 storms occur roughly between minus five and plus
4 five degrees Celsius. That's not contested on the
5 record. And these studies have demonstrated that
6 conductors in the lines heat up to nine degrees
7 Celsius and, therefore, rain doesn't freeze. And
8 even if they did, there are devices in Quebec,
9 which it has had in use for years, to prevent
10 freezing. If anybody knows about ice storms, it
11 has to be Quebec. And with respect to shield
12 wires and insulations and towers, they should be
13 designed to withstand icing conditions. Again
14 Manitoba Hydro is talking about peak months. But
15 most of the events which caused widespread outages
16 don't occur in peak months. Furthermore, if there
17 was an ice storm, God forbid, the distribution
18 lines go down, we are in much bigger trouble with
19 Bipole I and Bipole II.

20 So what is the conclusion of Manitoba
21 Hydro? Let's build a \$3.28 billion project, maybe
22 \$4 billion, depending on whether you use LCC or
23 VSC, to deal with the worst case scenario, with
24 very low probabilities, with other ways to restore
25 the lines, even though there has been an outage

1 one time in 40 years. The conclusion of the
2 Bipole Coalition is do a modern risk assessment to
3 look at the worst case scenario, the more probable
4 scenario, try to evaluate the risks associated
5 with that scenario, then plan accordingly, bearing
6 in mind the cost and benefits of each. That is
7 found at Mr. Woodford's testimony at transcript
8 page 6359. It is worth noting, I think I have
9 said this before, that even Teshmont states that
10 the extent of damage can vary greatly. Manitoba
11 Hydro has not done any studies concerning the
12 probabilities for the expected average duration of
13 an outage, or the outage is lasting for a specific
14 duration, and that's found in information
15 requests, Manitoba Hydro's VII 384.

16 Let's talk about the relocation of
17 Bipole II to Riel. Again the concern that
18 Manitoba Hydro has is for eight years. And it
19 says that the risk of separating Bipoles I and II
20 without spare transportation is significant.
21 Again, I reiterate, it is a risk that Manitoba
22 Hydro would have been willing to consider if
23 Bipole III was not doable, according to the 2010
24 report.

25 Secondly, does the risk include

1 shutting down Bipole III before the Bipole II
2 location is complete? If it does, that's not what
3 we are proposing. If it doesn't, then the risk
4 becomes much, much less. In any event, these
5 considerations ought to have been dealt with in a
6 study.

7 There is another concern addressed by
8 Manitoba Hydro that in the absence of a DC
9 connection to Riel from Dorsey, there is no
10 parallel to deal with a failure of a 100 kilometre
11 line. Mr. Woodford addresses that in his
12 presentation. He says by leaving the old existing
13 Bipole II converter in place at Dorsey, operatable
14 but not in service, it would be used to parallel
15 Bipoles I and II without any additional DC line
16 from Dorsey to Riel. The concern is that if the
17 new Bipole II at Riel, the overhead line or cable
18 used to connect back to Dorsey should fail, then
19 paralleling would not be possible without the
20 second Riel to Dorsey line. Leaving a functioning
21 old Bipole II inverter at Dorsey will serve the
22 purpose of applying paralleling for failure of the
23 DC line section from Riel to Dorsey.

24 I want to move over to issues
25 associated with Bipole III, as posited by Manitoba

1 Hydro, in terms of relocating Bipole III to
2 LaVerendrye. First of all, Manitoba Hydro said
3 there was an electrical problem. Initially
4 Manitoba Hydro said that LaVerendrye was the wrong
5 location, that was the testimony given on
6 November 22. But subsequently Mr. Woodford
7 suggested that the problem is solved by a 500 kV
8 AC line to Dorsey from Riel, the southern ring.
9 Furthermore it is indicated in the CIGRE paper
10 2012, which suggests the southern ring for the 500
11 kV AV line from Riel to Dorsey. That's found in
12 BPC-11. And Mr. Mazur acknowledged in
13 cross-examination that if a 500 kV line is
14 contemplated, it would suffice. As a matter of
15 fact, it is in the capital expenditure forecast in
16 2012.

17 They also suggest, or Manitoba Hydro
18 also suggested there is a geographic problem, it
19 is too close. Mr. Mazur states that it is even
20 more of a concern than the risk of a Bipole I and
21 II outage at Dorsey because of wind bursts within
22 27 kilometres. That is such a gossamer argument.
23 What are the odds of knocking out two converter
24 stations 21 kilometres apart? What is it, 1 in
25 4,000, I suggested to Mr. McGarry? Manitoba Hydro

1 hasn't performed any studies to identify that
2 probability. How can it be more dangerous to have
3 two converter stations 21 kilometres apart, than
4 two Bipoles at one station? Besides the obvious
5 solution to the problem is to move the station to
6 a more appropriate location, as suggested by Mr.
7 Woodford and by Mr. Mazur. And I harken back to
8 Manitoba Hydro exhibit 118, which talks in terms
9 of relocation from at or near LaVerendrye, or
10 further along the southern ring.

11 There has been mention of converter
12 control problems and resonance problems. I won't
13 go into that, very few people in the room would
14 understand it, including myself. The point is
15 these are technical difficulties. They are not
16 showstoppers in terms of feasibility. They are
17 things that have to be dealt with by Manitoba
18 Hydro, in any event, dealing with any
19 construction.

20 The requirement by 2025 is disturbing.
21 Manitoba Hydro in its IR says it has no specific
22 plans to address reliability beyond 2025. And
23 that's found in information request VII-417(e).
24 Yet the report, exhibit 118, states that HVAC line
25 may well be needed beyond 2025 for expanded

1 domestic growth. There are three options. You
2 build Bipole III and relocate Bipole II later.
3 That was an option that was advanced in the
4 report. You build a 500 kV AC line in Bipole III.
5 That was shown in the report as well, and it is
6 found at BPC-10, figure 1-3C. Or you build Bipole
7 II and you hedge your bets. You do nothing, you
8 wait and see what happens. Maybe you use an
9 import line, maybe you do something else.

10 Such a vague approach is of no
11 assistance to this Commission. The fact is if you
12 are going to do something comparable to what that
13 study suggests, you do something substantial. If
14 it doesn't turn out to be a HVAC line for 3 --
15 sorry if it doesn't turn out to be a HVAC line at
16 \$4.18 billion, Manitoba Hydro exhibit 43, then
17 what is left? You have to import power for
18 reliability purposes. And the concept is, per
19 Manitoba Hydro's rebuttal, that with a 500 kV time
20 line that can access 550 megawatts, that solves
21 the problem. A, it comes at a cost, and B it only
22 provides reliability out nine years. If you take
23 750 megawatts, you divide that by the estimated
24 growth of 83 megawatts per year, you get nine
25 years. It brings you out to 2034. It does

1 nothing for the next 16 years.

2 What is even more disconcerting is the
3 suggestion by Manitoba Hydro through Mr. Mazur
4 that Bipole III is superior to Bipole II in 2025,
5 because Bipole III is available at
6 2,000 megawatts, on the slim chance that Bipole I
7 and Bipole II goes down. For the life of us we
8 can't understand that logic. The simple fact of
9 the matter is this: If Bipole I and II go down,
10 there will be 2000 megawatts of capacity in Bipole
11 III. If the Bipole Coalition scenario comes to
12 pass in 2025, if Bipoles I and II go down, there
13 is 200,000 megawatts of capacity, because you
14 still have Bipole III. It is the same risk.

15 But you have the added risk in the
16 overall picture by the Manitoba Hydro suggestion
17 when you deal with Dorsey, because that risk only
18 goes down by a third, whereas our suggestion goes
19 down by 50 per cent. So if you take the wash with
20 respect to the outage of the Bipole I and II in
21 2025, and you combine that with the risk of outage
22 of Dorsey, the overall risk in the Bipole
23 Coalition scenario is less.

24 I want to deal lastly on this topic
25 with costs, and then I will wrap up. If you

1 relocate Bipole II versus build Bipole III, the
2 cost is 27 to 31 per cent less, depending upon
3 whether you use a LCC or a VSC. That's at
4 \$1.2 billion of relocation costs. If you enhance
5 that to 1.35, that we talked about in rebuttal,
6 revamped to 1.6, you are still up over a billion
7 dollars, you are still paying for the cost of
8 Bipole III with the relocation first. And bear in
9 mind these costs that have been put before this
10 Commission are two years old. No doubt they will
11 go up. And the numbers that I have mentioned are
12 without refurbishment.

13 Now, if you build Bipole III, and have
14 a Bipole II relocation in 2025, worst case
15 scenario -- best case scenario, if you have
16 \$4.67 billion, which we agreed upon in
17 cross-examination with Mr. Mazur would be the cost
18 of the Bipole Coalition, cost of its suggestion,
19 and you compare that to \$3.28 billion using VSC,
20 plus the .54 million dollars refurbishment, the
21 differential is about \$850 million more.

22 If you use the worst case scenario,
23 the \$4.67 billion, using the \$3.98 billion cost if
24 you use LCC, plus the .54 billion for
25 refurbishment, you come up with \$4.52 billion, or

1 a \$15 million differential. You reduce the
2 differential by taking out the southern link, the
3 southern loop of \$84 million. Manitoba Hydro says
4 well, you can't take that out. We say you do take
5 it out because they are going to put that in in
6 any event, it is going to be in another project,
7 so don't put it in these costs, then you are know
8 down worst case scenario to \$766 million. You
9 offset that against the infrastructure costs in
10 2025, and -- in any event, you have to take into
11 account the massive costs that you are saving by
12 relocating Bipole III out of the agricultural
13 land.

14 Now, it is 12:30, Mr. Chairman, I
15 wouldn't mind coming back and spending a few more
16 minutes just to wrap up.

17 THE CHAIRMAN: You will be welcome to
18 come back. But we will have to break now for
19 technical reasons. We are required by law to
20 transcribe every word of our hearings, and we
21 would hate to leave out any of your words, so we
22 will break now and come back at 1:30, and
23 Mr. Meronek will have a few minutes at that time
24 to conclude.

25

1 (Hearing recessed at 12:30 p.m. and
2 reconvened at 1:30 p.m.)

3 THE CHAIRMAN: Okay. Let's come to
4 order. Mr. Meronek, back to you.

5 MR. MERONEK: Thank you, sir, I'm just
6 going to briefly wrap up on the issue of costs and
7 then go into my conclusion.

8 There is another way to skin the cat
9 here in terms of comparing costs, which I want to
10 indicate to the Commission. Comments that you
11 made, Mr. Chairman, to Mr. Mazur dealing with
12 refurbishment compared to the relocation of Bipole
13 II to Riel, I was reminded that it's not the
14 relocation of Bipole II, but the relocation of the
15 terminus of Bipole II to Riel, for those who may
16 have been confused by that. But in any event, you
17 questioned Mr. Mazur on the costs of
18 refurbishment, and he agreed that it was in the
19 range of 272 million, versus the relocation costs,
20 Manitoba Hydro had calculated 1.6 billion. I
21 think we agreed that it's more like 1.35 billion
22 if you take out underground, which we haven't
23 mentioned, but I will mention.

24 So the problem here is that just
25 refurbishment without Bipole III costs doesn't

1 cover the loss of Dorsey, where the relocation of
2 Bipole II from Dorsey to Riel does. Therefore,
3 the proper comparison would be the Hydro
4 alternative of 3.28 billion, plus refurbishment
5 costs of .54, or 3.82 billion versus relocation
6 costs of \$1.4 billion including the hundred
7 kilometres overhead line. And when you compare
8 those annual charges, we've already seen the
9 \$322 million figure annually. The cost of
10 relocation would be, on a net present value,
11 \$123 million approximately, leaving a difference
12 of \$199 million a year in savings, extrapolated
13 over the eight years, you get into your plus
14 billion dollar figure which pays for the Bipole
15 III project.

16 And lastly, I mention again the
17 landowners compensation, which has not been
18 factored in anywhere, and it's prodigious.

19 In conclusion, as part of my
20 concluding remarks, I want to speak for a moment
21 on the compensation package as a last resort. I
22 haven't really discussed that too much. The
23 compensation program presently before the
24 Commission is predicated on a one-time payment,
25 notwithstanding the evidence is clear that there

1 will be permanent damage sustained over the
2 lifetime of the line.

3 In terms of the annual versus one lump
4 sum payment, the only justification Manitoba Hydro
5 had for lump sum payment was administrative ease.
6 Such an administrative impediment pales by
7 comparison to treating landowners fairly and
8 decently. Annual payments can be made, they are
9 made in other jurisdictions, particularly Alberta,
10 and they are made by other private utilities,
11 pipelines, wind turbine folks.

12 Manitoba Hydro, in its evidence at
13 transcript page 3716, has agreed that a system
14 could be put in place where factors going into the
15 make-up of annual payments can be reviewed over a
16 period of time, say five years, to keep pace with
17 changing economic considerations.

18 Lastly, I just want to make one
19 comment with respect to a suggestion that Manitoba
20 Hydro made that, look, even on relocation, there's
21 going to be agricultural land traversed, so what
22 you gain on the merry-go-round, you're going to
23 lose on the swings. I would say in answer to
24 that, yes, there may be some agricultural land
25 impacted. There can't be any absolute avoidance.

1 But to the extent that there are lines north of
2 the city, one can see that those lands may not be
3 as intensively agriculturally categorized as what
4 we are talking about. To the extent that they
5 have to traverse agricultural land, they can be
6 located along existing right-of-ways.

7 I take you back to Mr. Ennis's
8 presentation which is the black line that
9 Mr. Derry pointed out in figure 1-1. Even with
10 respect to the CEC suggestion, or not suggestion,
11 but the one that the Commission was looking into,
12 appeared to be for a substantial length of that
13 line just south of Lake Manitoba, which we all
14 know is fairly marginalized at this point in time
15 in terms of agricultural productivity. But the
16 point is, it's not for the participants to select
17 the correct path, it's for Manitoba Hydro to
18 repeat the exercise and come up with an overall
19 plan that's suitable.

20 The last thing I want to say on
21 compensation is there is some concern about
22 consumer protection. In terms of inducing people
23 to sign up, it's urged that the Commission
24 recommend an easement agreement which clearly
25 stipulates that independent legal advice should be

1 sought before signing, and that the agreement
2 itself states that it's conditional upon obtaining
3 environmental licensing approval.

4 Lastly, with respect to underground
5 cables, it's not a solution that we're necessarily
6 urging upon the Commission. We found it was
7 incumbent upon us to advance objective evidence on
8 the use of underground cables, and I think you got
9 that evidence. The net result of that evidence,
10 which was essentially not controversial, is that
11 underground cable is in use worldwide, it's
12 feasible, it's more costly by a factor of four to
13 five times overhead lines. There are logistical
14 issues to overcome, but the technology is
15 improving rapidly, and the capacity to manufacture
16 and deliver is increasing as well. And there are
17 no issues really with the actual life expectancy
18 of the cables. It really gives the Commission a
19 much better appreciation of the use of underground
20 cables, if not for this project, then for future
21 projects.

22 Let me just sum up by saying, Manitoba
23 Hydro emphasizes its statutory obligations to meet
24 the load. But let me recite the mission
25 statement, visions and goals of Manitoba Hydro.

1 That's located in the EIS at sections 1.3.1, and I
2 quote:

3 "Manitoba Hydro is a Crown corporation
4 and is owned by the Province of
5 Manitoba. Manitoba Hydro's mandate is
6 to supply power adequate for the needs
7 of the Province of Manitoba and to
8 promote economy and efficiency in the
9 development, generation, transmission,
10 distribution, supply and end-use of
11 power."

12 In our respectful submission, that
13 mandate is best achieved by sending a proposal
14 back for Manitoba Hydro to reassess the southern
15 portion of the route. In that assessment,
16 Manitoba Hydro should be obliged to propose a
17 Bipole II relocation first, and then a Bipole III
18 construction by 2025. At the very least in terms
19 of timing, if that is not suitable, then if it's
20 found that Bipole III must proceed, send it to
21 LaVerendrye or a station nearby. Keep it out of
22 our backyard. And include in the analysis the
23 cumulative effects of relevant projects, because
24 if you don't have the full picture, the sum
25 doesn't equal all the parts. And then lastly,

1 recommend a comprehensive compensation package
2 where the interference with landowners is
3 inevitable, with annual payments and a review
4 every five years of the indicators used to
5 determine annual payments.

6 Let me just say that, again, this
7 Titanic analogy is getting a lot of play here, but
8 this is the tip of the iceberg. There are several
9 projects, as the Commission is well aware, that
10 are coming down the pike. This Commission has an
11 excellent opportunity to establish the ground
12 rules for an acceptable EIS proposal. I'm
13 confident that this panel will take advantage of
14 that opportunity.

15 Let me just say that it's been a
16 privilege to appear before the Commission on
17 behalf of the Bipole Coalition. They are
18 spectacular people, they are committed, they have
19 tremendous integrity, and they have the courage of
20 their convictions to come forward against long
21 odds and put forth a compelling case, in my view.

22 Lastly, let me say that we got off to
23 a rough start, I think. But over the course of
24 time, I found it in difficult circumstances a
25 privilege to appear before the Commission. I want

1 to thank Manitoba Hydro. They've been very, very
2 cooperative. We all have different opinions as to
3 what's important, what isn't, but I think the
4 Commission has a fairly good handle on all the
5 necessary information to come up with the right
6 decision. And I thank you.

7 THE CHAIRMAN: Thank you very much,
8 Mr. Meronek. In return, I'd like to thank you for
9 your participation in this process. I know you
10 came in at a slightly late date, but took it on
11 very well and represented your clients
12 exceptionally well.

13 I want to also thank your clients who
14 I agree did a very good job. They were dedicated
15 and dogged and sincere and respectful, and they
16 have contributed a lot to this process.

17 For those of us who have to wade
18 through all of this over the next few weeks to
19 make decisions, maybe they contributed too much
20 because it's just a lot more issues that we have
21 to take under consideration. Seriously, though, I
22 think you and your Coalition have done an
23 excellent job. And I thank you all.

24 MR. MERONEK: Thank you.

25 THE CHAIRMAN: I'm going to take a one

1 or two minute time out.

2 (Hearing recessed at 1:40 p.m. and
3 reconvened at 1:41 p.m.)

4 THE CHAIRMAN: Actually, at his
5 initiative, Mr. Williams before lunch offered to
6 switch his time, and if the Sapotaweyak
7 representatives were here, to let them go first.
8 They are indeed here and we will hear from them
9 now, and then hear from Mr. Williams after that.

10 Chief, if you could come up to the
11 front, please?

12 Will you just introduce yourself to
13 for the record please and then proceed?

14 MR. GENAILLE: Chief Genaille,
15 Sapotaweyak Cree Nation.

16 (Cree spoken)

17 I spoke in my language just to
18 reflect, as my position as Chief. When Treaty 4
19 was signed, we were part of the key band. There
20 is a time when negotiations of Treaty, there was
21 no boundary of Saskatchewan and Manitoba, but our
22 Treaty traditional territory. So we lived the
23 lifestyle, springtime, summer time, fall time and
24 winter time, and we lived off the land, lived off
25 the medicines that Mother Earth offers, feeding

1 off the animals, which animals live off the
2 medicines. And that in turn sustained us. We did
3 not need any money. Money was no value. Today,
4 money is no value. If I could see somebody walk
5 into the bush, any amount of money, who would they
6 give it to? It's that connection, that spiritual
7 connection that we have with Mother Earth that the
8 newcomers are not going to ever, ever going to
9 connect.

10 When treaties were signed the
11 newcomers were offered some land, we would share.
12 So as I look at this medallion, this medallion is
13 over a hundred years old. I see a Queen on one
14 side, I see First Nation's person on one side, and
15 a newcomer. And on the bottom you see what they
16 are going to use the land for, which is to seed
17 the land, seeding the land, farming.

18 Today's day, it's going to be used for
19 destruction, destruction of basically what the
20 previous person said, for money, for economic
21 value for the Province of Manitoba. What kind of
22 economic value is that going to give to my people?
23 When treaties were negotiated, it was based on
24 good faith. I tried the avenue of good faith,
25 both with this Commission. The first time I

1 approached the Commission, it was done at the
2 hearing of a proposal I submitted. The amount
3 requested would actually tell the story of how
4 it's going to impact us. It was approved, but
5 only approved in the amount of 38,000. We did not
6 accept the 38,000. How can a person, how can a
7 community adequately explain what's going to come
8 of this project?

9 So it's a message you can give to the
10 Minister. Sapotaweyak Cree Nation, under Treaty
11 4, was not properly adequately funded to
12 participate in this hearing.

13 As I approached the Ministers with
14 duty to consult and accommodate, once again I went
15 through their avenue, and once again I was given
16 an opportunity to apply for funds. Once again,
17 broken promises.

18 So as I relay this message to my
19 people, my people are not properly accommodated.
20 So how can the Province consult through me to
21 accommodate them? So you can relay that message
22 to them also, we went through that avenue.

23 They directed me to Manitoba Hydro.
24 Once again, Manitoba Hydro funded us for a
25 knowledge study. Once again, we requested for so

1 much what we would need. And to that effect, they
2 partially funded one area, one area that's
3 significant to us. They didn't fully fund us. So
4 this line that's coming through our Treaty
5 traditional territory does not cover in fact the
6 whole area that's going to be impacted.

7 These impacts are going to be long
8 lasting, not only my generation and my children,
9 my grandchildren also. It's with that being said
10 I would have to advise the Clean Environment
11 Commission to tell the Minister, and also the
12 Province of Manitoba, Sapotaweyak Cree Nation has
13 not been properly consulted and accommodated. The
14 impacts that are going to be sustained with this
15 project has not been fully understood by my people
16 or for myself.

17 I come from a generation of people
18 that used to be nomadic, going back and forth.
19 For myself, I am truly grateful I can still have
20 that opportunity to go into my yard, because it's
21 clean, to my Treaty traditional territory, hunt,
22 harvest medicine, and actually still live off the
23 land. I could actually say I could still live off
24 the land, which is very good.

25 Once I see my brothers from the south,

1 I see all the Crown lands gone, all held by
2 landowners, title owners of resources. They don't
3 have the prosperity that I do, that my people do.

4 So with this project coming through my
5 Treaty traditional territory, I am not for it, and
6 I'm not going to be for it until the Province of
7 Manitoba -- until Hydro comes to my area, to ask
8 and to tell what is going to be the impacts. I am
9 for an economy of what you call Manitoba, I am for
10 progress. But at the same time, I have to speak
11 for my people and what we stand for, and what we
12 have to live for, which is the medicines, the
13 animals and Mother Earth.

14 That is a story I cannot tell, because
15 I cannot explain it to you for which you will
16 understand. When somebody doesn't have nothing,
17 doesn't own nothing, what do they have? They have
18 nothing. After I'm done on Mother Earth, when I
19 go onto the spiritual journey, what am I going to
20 have? I will take nothing with me. Who will I
21 leave behind as the memories of who I was, what I
22 did, and what I leave for my children, my
23 grandchildren? That is what I got to look for.
24 And that is what I got to protect. I have to
25 speak on their behalf. That is the only thing

1 that I can give.

2 There is a lot of recommendations I
3 would like to provide, but how can you provide
4 recommendations to somebody that doesn't
5 understand? How could you provide recommendations
6 to somebody that doesn't want to understand?

7 So as I speak here, I hold the
8 medallion I was given as part of Treaty, the use
9 and benefit of unoccupied Crown land. Once
10 Manitoba Hydro gets this unoccupied Crown land, I
11 cannot use it anymore. The damage that will be
12 done in that area is going to be significant.
13 What is the dollar figure on that area?

14 The fish and the animals -- the fish
15 spawn at certain areas. I was going to tell that
16 story, but because we are not properly funded, I
17 cannot tell that story.

18 As our people still eat the animals
19 from the land, I could have told that story too.
20 When an animal gets disturbed in this Treaty area,
21 his home, where he lives off the land, he moves
22 on, doesn't come back. Why? Because there is
23 something foreign in that place. So I have to
24 speak for that animal who is not able to speak
25 here at this hearing. I have to speak for that

1 fish, the fish whose habitat has been disturbed,
2 the spirit of that plant that has been disturbed.

3 So these are the things that were promised in
4 treaties. I'm not here to negotiate treaties.
5 I'm not here to give my consent also with this
6 project that's trying to be shuffled along.

7 There was a group of people that came
8 from Manitoba Hydro in my area. They called it
9 round tables. What is a round table? They called
10 them open houses. What is an open house?

11 Back in December I tried to go into
12 Parliament to speak on some issues that we had.
13 What happened? We were stopped at the door. And
14 yet I look at a coin, a coin with the settlers
15 that was in good faith, a handshake saying we will
16 share the land. And yet I wasn't even allowed,
17 along with my fellow chiefs, my fellow leadership,
18 to be able to speak on issues, or also law that
19 will impact our Treaty traditional territories.
20 So is that good faith?

21 On the other side you have the Queen.
22 The Queen embraced us when we signed the treaties.
23 Right now the Premier does not represent the
24 Queen. The Minister responsible for Hydro and
25 Crown lands do not represent the Queen.

1 In my Treaty traditional territory, I
2 am the one that represents the land. So it's with
3 mixed emotions that I come here. At the same time
4 I'm for progress, at the same time I am not for
5 it. When I go back to my people, I will tell them
6 that we will be waiting, we'll be waiting with
7 open arms again, not only from what we want to
8 tell, but what we want to hear, what are those
9 impacts? So that's some message that you can give
10 to the Minister.

11 Treaty 4 is a big area, our
12 traditional territory is a big area. From my
13 father and mother sides, there's more than half of
14 the family that's buried in my Treaty traditional
15 territory. Where exactly? I don't know. Because
16 back then it was living off the land, and when you
17 passed away in that area, you were buried in that
18 area.

19 From time to time I go back into the
20 bush alone, sometimes I could feel them in that
21 area. So what happens when they get disturbed?
22 What is the price to pay when they get disturbed?
23 What culture would approve of one culture
24 desecrating cemeteries? Where does that
25 borderline cross? Would somebody like it if I

1 built my house on a cemetery? Would somebody like
2 it if I bulldozed a cemetery? Of course not.
3 It's not right.

4 So when we talk about our Treaty
5 traditional territory, the place where I live,
6 it's a big area. And it's an area I'd like to
7 preserve for my children and my grandchildren and
8 the generations after.

9 So when you go make your speech or
10 your write-up, whatever recommendations you make
11 to the Minister, you have to inform them that
12 Sapotaweyak Cree Nation was left out of this whole
13 process, other than myself attending.

14 This is the second instance I came to
15 speak. The first time I came to speak in
16 November, I wasn't accommodated. It was in my
17 language. And no disrespect to the person that
18 transcribed my language, as I come from the Plains
19 Cree, there were some errors done, some errors
20 that were significant. So I could think back when
21 the Treaties were done, when that translator
22 translated for my old people that signed Treaties
23 to the newcomers, to the representatives of the
24 Crown, there was errors. But that value still
25 holds, which is we have a Treaty, Treaty with the

1 Crown.

2 So if this Clean Environment
3 Commission makes recommendation that it's okay for
4 a licence to be approved, they are going to be
5 breaking that Treaty. Treaties were signed for us
6 to uphold, to be in good nature with the
7 newcomers. I, for myself, do not want to break
8 Treaty. When Treaties were signed, there was a
9 pipe among us. The pipe represented the spiritual
10 side of it, both the ones that passed on and also
11 the children that are coming.

12 So with that being said, I don't want
13 to take much of your time, for I could speak here
14 for a long, long time.

15 (Cree spoken)

16 THE CHAIRMAN: Thank you very much,
17 Chief Genaille. Thank you for taking the time to
18 come in today and appear before us and say those
19 words. Thank you.

20 Mr. Williams, just one word, or more
21 than one word but one brief comment. We will need
22 to take at least one break during your
23 presentation, so you won't get a solid three
24 hours, but we'll add the break time to whatever
25 you need. And we will continue today until you

1 are finished.

2 MR. WILLIAMS: And I thank you. I'm
3 not sure if the break was intended for me or for
4 your sore ears but either way --

5 THE CHAIRMAN: Or other needs.

6 MR. WILLIAMS: I provided two
7 documents, one is supporting materials for our
8 submission today and the other is a document
9 titled "Haste, Uncertainty and Risk." And for
10 those of you, and I'm sure most in the room who
11 are truly appalled at the use of paper that I have
12 contributed today, I am as well, but I think it's
13 important to get our message across. And I have
14 sworn a solemn vow to plant a tree for every
15 exhibit that I hand out today.

16 THE CHAIRMAN: This alone represents a
17 number of trees, I would think.

18 MR. WILLIAMS: The title of the
19 overview is "Haste, Uncertainty and Risk, The
20 Bipole III Story." And that title was chosen
21 carefully. I think many persons in this room
22 suspect that this was an Environmental Impact
23 Statement that was assembled in some haste. It
24 doesn't bear the hallmarks of the typical Manitoba
25 Hydro quality. And so I chose that word "haste"

1 because often when one acts in haste, at a
2 subsequent point in time you have to repent. And
3 so that's a cautionary note off the bat.

4 The word "uncertainty" was chosen
5 because, of course, when we're trying to predict
6 the future there's always uncertainty. And when
7 we're trying to assess the impact of a major
8 capital development on complex ecosystems and
9 equally complex communities, there is an inherent
10 uncertainty. But of course in this case, given
11 the less than typical quality of the Manitoba
12 Hydro Environmental Impact Statement, it adds to
13 that uncertainty when the quality of the
14 proponent's submission is not up to its usual
15 standard, additional uncertainty is created.

16 And the word "risk" was chosen as well
17 quite consciously, and risk really has been
18 Manitoba Hydro's theme through this hearing. They
19 have attempted to translate a legitimate issue of
20 risk relating to reliability into what I think my
21 learned friend Mr. Meronek described as Armageddon
22 scenario, or a doomsday scenario, tsunamis and
23 wars in the Balkans.

24 Our clients do not intend to detract
25 from the legitimate objective of Manitoba Hydro in

1 terms of reliability, but they wish to point out
2 that there were other risks. Risk to communities
3 and to First Nations that are already under severe
4 stress, risk to endangered species, risk to
5 complex ecosystems, and risk to the credibility of
6 the environmental assessment process in this
7 province if we don't give due consideration to
8 this project.

9 Now, I'm not sure if Mr. Osler is
10 here, I don't see him here. He's very fond, I'm
11 turning to page 2 of our outline, but he's very
12 fond of the new normal. But our clients believe
13 it's important to look back in time. And I'm sure
14 my friend, Mr. Bedford, will appreciate a sense of
15 history.

16 And our clients want to emphasize
17 their understanding of the mixed legacy of
18 historic hydroelectric development in this
19 province. And it would be unfair of our clients
20 not to note that there have been significant
21 economic and social benefits from Manitoba Hydro's
22 hydroelectric development in this province. The
23 farm that I grew up on, electricity was a big deal
24 when it came to the farm. I'm not as old as the
25 Chairman of this panel so I can't remember it, but

1 my parents have certainly have advised me of it.

2 So there is, in fairness to Manitoba
3 Hydro, a significant and positive economic and
4 social benefit that has accrued to Manitobans for
5 hydroelectric development.

6 But those benefits have come at a
7 material cost to our environment, and in
8 particular to the traditional peoples so
9 intimately connected to it. And when our clients
10 look back in history and try and understand what
11 went on, and try to understand what was at the
12 root of that social and economic devastation, we
13 see on the Lower Nelson and in other parts of this
14 province, they think that there are at least three
15 or four factors that may have been in play. One
16 was a failure to listen, to enter into sincere
17 dialogue, especially with our First Nation people.
18 A sense perhaps as well that what is good for
19 Manitoba Hydro is good for Manitoba. And clearly
20 at those times, in those times in the '60s and
21 '70s, we didn't have the environmental
22 decision-making process, or the tools that we have
23 today. Not to suggest that our tools or
24 legislation are perfect today, but it's a much
25 more sophisticated process, with more robust tools

1 and technical insight than certainly was in play
2 in those days.

3 And perhaps if we look at this mixed
4 legacy, perhaps there was a touch of hubris as
5 well, a bit of overconfidence in our capacity to
6 manage large scale development amongst complex
7 ecosystems and amongst complex peoples.

8 So that legacy outlined in our
9 client's submission endures to today. We can
10 still point to Manitoba Hydro with pride. But we
11 can, and have to recognize that its operations
12 have had a profound and deleterious impact on
13 ecosystems, and a profound and deleterious impact
14 on many First Nations, including those of Fox
15 Lake, TCN and York Factory. And those adverse
16 impacts have damaged the Hydro brand, and they
17 underlay a continuing vulnerability to that Hydro
18 brand in the American market-place.

19 I am not that prone to hyperbole, from
20 time to time I may indulge, but at page 4 and for
21 a couple more pages, with my client's
22 instructions, I have described this as perhaps the
23 most important recommendation the CEC has ever
24 made. The Chair and others with a more rich
25 history may disagree, but certainly we want to

1 tell you why we think this is such an important
2 decision.

3 First of all, this is a big project,
4 the first of our Bipoles to undergo an
5 Environmental Impact Assessment to our client's
6 knowledge, a huge project cutting a 1400 kilometre
7 swath through the province, from the Lower Nelson,
8 through the parklands, through the rapidly
9 disappearing land of the Wuskwi Sipiik First
10 Nation, through the Metis bread basket, in the
11 backyard of Pine Creek First Nation, and through
12 the agricultural heartland, through the family
13 farm of young Shandra Rempel, and through some of
14 the richest farmland in our province and in our
15 country. And the focus of that area, that much of
16 our own Provincial "Buy Manitoba" strategy aimed
17 at sustainable local food development.

18 Our clients, turning to page 5 of the
19 outline, consider this to be among the most
20 important recommendations the CEC has ever made,
21 because raised squarely in this hearing are some
22 key environmental issues. I don't think one could
23 outline a more stark contrast in approaches to
24 cumulative effects analysis than those presented
25 by Drs. Noble and Gunn, as compared to the more

1 limited approach of Mr. Osler.

2 Your decisions in this hearing and the
3 issues in this hearing may have significant
4 impacts upon an endangered species, the boreal
5 woodland caribou, a species under significant
6 stress in our province. And the development,
7 coupled with other developments, may have impacts
8 on another animal, the moose, which is in
9 precipitous decline in certain locations in the
10 western region of our province.

11 There is an interesting environmental
12 issue raised in the debate between Dr. Lee and
13 Ms. Hicks. Ms. Hicks' advice, as we understand
14 it, is that we can safely ignore and fail to
15 address the mental health stresses engendered by
16 development. She argues that there's no pathway
17 between development and the mental stresses
18 associated with it.

19 Our clients, and Dr. Lee, one of the
20 foremost practitioners in health impact assessment
21 in North America, disagree.

22 And there's a central question in this
23 hearing as well. Much of Hydro's strategy to get
24 its environmental impact statement over the hump,
25 to get it approved, resides with adaptive

1 environmental management. And the question in
2 this proceeding, in our client's submission, is
3 whether modern adaptive management approaches can
4 be successful in the context of a flawed impact
5 assessment, and a failed cumulative effects
6 analysis, and when we have incomplete insight into
7 the corporation's vegetative management and
8 wildlife corridor plans.

9 It's also a very important
10 recommendation from the CEC, and in fairness to
11 Hydro, because certainly Hydro is motivated at
12 least in part by a sincere desire to address
13 reliability issues.

14 And as Mr. Meronek said near the end
15 of his submission, this is one of the most
16 recommendations this Commission will make, because
17 Bipole III is the carefully selected first in line
18 of a series of closely interrelated developments.
19 This package of developments have the potential to
20 reap the cumulative effects whirlwind, with
21 particular effects upon highly stressed
22 communities and severely impacted landscapes.

23 It's an important recommendation, but
24 from our client's perspective, a tremendous
25 opportunity for this Commission, to make a

1 decision that steers environmental assessment on
2 the right path in Manitoba, and in doing so,
3 assist the public interest, and whether Hydro
4 likes it or not, Manitoba Hydro.

5 So recognizing that it's a long day
6 and I do have a long story to tell, but I thought
7 I would get to the end and tell you, give you the
8 highlights of our client's recommendations, and
9 then seek to justify them. So in a way, we're
10 coming to the end of the story and then we'll go
11 back to the middle.

12 So at page 7, and running for a few
13 pages in our outline, are really what our clients
14 consider an overview of their key recommendations
15 in this proceeding. And they are inviting the
16 Commission to make express findings and express
17 recommendations based upon this outline. They are
18 inviting the Commission to expressly find that
19 Manitoba Hydro experiences ongoing challenges, and
20 in hearing and reconciling the voices of the
21 community, including our First Nations people, the
22 Metis and rural Manitoba. And certainly not all
23 of the responsibility lies with Manitoba Hydro,
24 but these challenges, and our clients invite the
25 Commission to find, are in part related to the

1 failure to incorporate these voices at an early
2 stage in the dialogue, and in part to a failure to
3 identify who represents these communities.

4 Our clients invite this Commission to
5 find, in a number of ways, that Manitoba Hydro's
6 application is not consistent with best practices.
7 They invite you to find that the conclusions of
8 Manitoba Hydro's cumulative effects analysis are
9 suspect, given the lack of reliable supporting
10 evidence, the dearth of quantitative analysis, and
11 the absence in most cases of qualitative
12 reasoning. They invite you to find, turning to
13 page 8, that Manitoba Hydro's current approach to
14 cumulative effects analysis appears disconnected
15 from modern best practice.

16 With regard to Manitoba Hydro's
17 evidence, with regard to the endangered species of
18 boreal woodland caribou, our clients ask this
19 Commission to conclude that material flaws
20 continue to exist in Hydro's assessment of the
21 impacts on caribou. Two of the most notable of
22 these flaws are its failure to assess Lambda for
23 the Reed Lake herd, and its failure to evaluate
24 future risks associated with one of the two
25 primary predators of caribou, especially young

1 caribou, which are bear.

2 Our clients ask the Commission to find
3 that major gaps continue to exist in Hydro's
4 assessment of potential health impacts, including
5 those related to mental health, stress, infectious
6 disease, and gastrointestinal disorder. And our
7 clients ask the Commission to conclude that
8 Manitoba Hydro, to the detriment of its wildlife
9 analysis, has adopted an impoverished and one size
10 fits all approach to its determination of
11 significance.

12 Our clients ask the Clean Environment
13 to conclude that Hydro, at the very early stages
14 of this process, chose a perplexing approach to
15 route selection that ultimately impaired the
16 quality of its environmental assessment. And they
17 ask this Commission to find in two particular
18 areas that this project, in combination with past,
19 present and future developments, is likely to have
20 significant adverse effects, first of all, on the
21 traditional land and people of Fox Lake, TCN and
22 York Factory, and secondly, upon modern
23 agricultural practice as conducted in the southern
24 part of the Bipole III route.

25 Our clients also ask this Commission

1 to conclude that this project, in combination with
2 past, present and future developments, may have
3 potentially significant adverse effects on the
4 berry patch and other traditional harvesting
5 practices, particularly as practiced in the Metis
6 bread basket and the Pine Creek backyard, and may
7 have potentially significant adverse effects on a
8 moose population that is in precipitous decline in
9 parts of the parkland region.

10 One of the big themes of this paper is
11 uncertainty. And our clients ask this Commission
12 to expressly conclude that significant and
13 unresolved uncertainty exists with regard to the
14 following key areas: One, the potential
15 likelihood of other significant adverse cumulative
16 effects, given the poor quality of the existing
17 cumulative effects analysis. Two, the likelihood
18 of significant adverse effects on boreal woodland
19 caribou, given the identified challenges in
20 Hydro's analysis. Three, the impact of
21 significant landscape features, such as bison
22 enclosures on a moose population in precipitous
23 decline. Four, the question of whether modern
24 adaptive management approaches can be successful
25 in the context of flawed impact analysis, a

1 fatally flawed cumulative effects analysis, and an
2 incomplete insight into vegetative management and
3 wildlife corridors.

4 And they also think that, or recommend
5 that the Commission should conclude that
6 significant and unresolved uncertainty exists with
7 regard to whether we can achieve a substantial
8 reliability benefit while mitigating the impact of
9 the preferred route in the southern portion of the
10 province.

11 On that point, I just want to stop for
12 a minute and just make sure we're not
13 misunderstood. Our clients are very supportive of
14 the direction, whether it's the CEC southern route
15 or the Bipole III southern route. They are not
16 satisfied that the record of this proceeding gives
17 us certainty that this is necessarily the way to
18 go. They think certainly it's a direction that
19 they'd like to see matters proceed, and they
20 certainly would applaud Hydro being sent back to
21 do some more homework.

22 THE CHAIRMAN: More homework on those
23 two options?

24 MR. WILLIAMS: Among other things,
25 yes, Mr. Chair.

1 In terms of more homework, our clients
2 seek from the Commission a recommendation that
3 based on the state of the present record, the
4 project should not be approved, and that Manitoba
5 Hydro should be directed to return, do its
6 homework and complete a cumulative effects
7 assessment consistent with modern best practice.
8 That it should be directed to complete its
9 cumulative effects assessment in terms of the
10 impacts on boreal woodland caribou, that it should
11 be directed to revisit its analysis in the Pine
12 Creek backyard and the Metis bread basket,
13 particularly with regard to the bison enclosure,
14 which appears to our clients to have been not
15 understood and under examined.

16 Our clients believe that before Hydro
17 returns to seek approval, it should be directed to
18 complete an active adaptive management plan for
19 wildlife corridors, access, vegetative management,
20 and independent monitoring, in concert with
21 Manitoba Conservation, affected First Nations and
22 the MMF. And that Manitoba Hydro should be
23 directed to further examine the CEC and Bipole III
24 options for mitigating the impact of the preferred
25 route, at least in the southern portion of this

1 province.

2 We'll more strenuously address what
3 our clients can expect to be Manitoba Hydro's
4 objections to the recommendations, but just very
5 briefly, we do expect Manitoba Hydro's first
6 response to the concerns articulated by CAC
7 Manitoba, as set out at page 12, to be that,
8 disregard the flaws, disregard the imperfect
9 analysis, all will be healed by robust adaptive
10 management and aggressive regulation by
11 Conservation. And our clients will and do
12 strenuously disagree with that assertion. And
13 they say that expert evidence in this hearing
14 clearly indicates that the key element of a
15 successful adaptive management plan is proper
16 impact assessment and proper cumulative effects
17 assessment.

18 Adaptive management plans are there to
19 correct some uncertainty and to adjust and to
20 adapt, but foundational to good adaptive
21 management is proper impact assessment and proper
22 cumulative effects assessment. And our clients
23 say that has not been done.

24 Our clients also anticipate Manitoba
25 Hydro to say, turning to page 13 of the outline,

1 that a delay of a year or two years will put it
2 and us at an unacceptable risk in terms of
3 reliability.

4 Now, certainly from our client's
5 perspective, my friend Mr. Meronek dismantled that
6 argument fairly successfully already, but at a
7 high level, our clients would point out simply
8 that Hydro is largely responsible for this
9 situation, by rushing to an environmental
10 assessment with an analysis that was obviously
11 flawed. And they would note that dating back to
12 Limestone, dating back to the late 1980s, Manitoba
13 Hydro has consciously deferred partial or full
14 reliability solutions for a variety of reasons,
15 including economics at the time of Limestone, and
16 making the choice to defer what it called the
17 attractive Bipole II relocation, in part due to
18 the pursuit of export related opportunities
19 related to northern generation.

20 Our clients also point out that the
21 reliability of the load forecast underlying the
22 alleged 1500-megawatt deficit in 2017 is suspect.
23 And certainly they will provide authority for
24 Manitoba's Public Utilities Board questioning that
25 load forecast.

1 So I had given you the intro, I have
2 given you the end of the story. Before moving
3 into the story, our clients do have some
4 acknowledgments that should and must be made.

5 First of all, they are very grateful
6 for the support provided through the province,
7 through the participant funding process and the
8 participant funding award. Our clients are often
9 critical of environmental legislation in Manitoba.
10 The one area where our province can be justifiably
11 proud is on participant funding.

12 Like many others, our clients owe a
13 tremendous debt of gratitude to Ms. Johnson and
14 the CEC staff, Joyce and Amy, who I call Jamie.
15 And I do want to extend my appreciation to my
16 colleagues at Manitoba Hydro, including but not
17 limited to the legal team, Ms. Johnson and Trevor,
18 we call him Mr. Trevor. I know he has a last
19 name, but he's our go-to source when we need
20 documents from Hydro. And we want to just single
21 out Manitoba Hydro for a moment, and the team that
22 I articulated, because certainly in our experience
23 they have been unfailingly courteous. And we give
24 Ms. Johnson in particular credit for being
25 generous and really innovative in allowing our

1 expert witnesses access to their adaptive
2 management team, in the middle of a hearing, which
3 I think is unprecedented in my experience. And
4 certainly my friend, Mr. Bedford, he and
5 Ms. Mayor, who I have the utmost admiration, we
6 appreciate the generosity of their commentary at
7 the conclusion of their cross-examination of Dr.
8 Gunn and Dr. Noble.

9 And I wanted to single out my client
10 and also, she's not really a volunteer, but
11 Ms. Desorcey has been here quite a bit. And also
12 those volunteers, the Pine Creek guys as I call
13 them, who have been a real source of entertainment
14 and insight in the course of this hearing.

15 In the next section of our argument,
16 I'm going to really move into focusing on how we
17 might approach weighing the evidence and the
18 credibility of certain witnesses in this
19 proceeding. Just as a starting point, though, and
20 I know Manitoba Hydro doesn't like to delve into
21 the academic literature, but our clients would be
22 remiss if they didn't note three particular
23 challenges that this panel or any panel may face
24 in assessing any environmental impact statement,
25 not just in this province, not just in this

1 country, but whenever you've got a proponent with
2 vested interest at stake.

3 Challenge number one is defensive
4 routines. This was identified by Drs. Diduck and
5 Fitzpatrick in their evidence. And they note that
6 in the literature a number of writers have
7 identified how in organizations defensive routines
8 can develop that can block learning by people in
9 organizations and by organizations. There is a
10 tendency to hide mistakes. There is a tendency to
11 profess a certitude that we don't really have.
12 There is a tendency to protect turf, resources and
13 prestige.

14 Dr. Gunn highlighted another
15 phenomena, while recognizing the literature, and
16 that is the rationality routine, or the
17 rationality ritual, as she describes it, which is
18 simply put the tendency to rationalize by whatever
19 means necessary the proponent's own views on what
20 is important to include in the CEA.

21 Challenge number 3, which I have
22 adverted to before, is uncertainty. But it's
23 important to understand the myriad layers of
24 uncertainty implicit and expressed in
25 environmental assessment. There is an uncertainty

1 with regard to the extent of impacts of human
2 activities on complex systems, especially with
3 regard to large scale projects covering an array
4 of eco zones.

5 That uncertainty also stems from the
6 facts that these impacts are felt at more than one
7 scale. They are felt at a local scale, a regional
8 scale and a national scale. And there can also
9 be -- and this is particularly important for
10 species like caribou -- lags in space and time
11 between an intervention and the resultant effect.
12 And certainly in our client's submission, the
13 inherent challenges of uncertainty can be and have
14 been exacerbated by defensive routines and the
15 rationality routine.

16 Our clients also have a sense, and
17 this isn't a statement from one of their witnesses
18 but it was well expressed in the course of the
19 hearing, that this is an environmental assessment
20 that kind of got off on the wrong foot right from
21 the start. And there is a suggestion more, not
22 really as a question, but just meant to be devil's
23 advocate in the transcript saying, if you just
24 selected a preferred route first, a full detailed
25 environmental analysis or assessment of that route

1 rather than, you know, three or four or five
2 different options, you might have been able to do
3 a more complete job on the one route. And I can't
4 step behind the speakers thinking to understand
5 truly what they meant. But certainly for our
6 clients, that statement was emblematic of their
7 concern, and for them articulated a discomfort
8 they have had with the overall quality of this
9 Environmental Impact Statement, a discomfort that
10 they suspect many in this room are failing.

11 So page 18, we turn our attention to
12 just an introduction to weighing the expert and
13 other sources of information. And this has been
14 an intriguing proceeding from our client's
15 perspective, because in their view there has
16 really been five different and distinct key
17 sources of information. One has been
18 correspondence from the Province, and I know the
19 Province gets a lot of criticism, but our
20 clients -- and I'm sure some of it's deserved --
21 but our clients have watched with appreciation the
22 efforts of the Province in the western bottleneck
23 and also in the Wabowden region. And whether we
24 come to an ultimately different position, they do
25 appreciate their efforts in that regard. So

1 that's been one source of information.

2 Another has been public participation
3 research by Hydro, and over the last few days,
4 this hearing has seen a rich display of that,
5 whether it's the grizzled veterans like Mr. Derry
6 or the young guns like Dr. Gunn, or the fabulous
7 Ms. Stewart from the Manitoba Metis Federation.

8 And another critical source of
9 information, and I call it First Nation ATK, I may
10 be misdescribing it. I'm speaking to some of the
11 really outstanding research performed by Fox Lake
12 and the Tataskweyak Cree Nation in particular,
13 funded I am assuming by Manitoba Hydro, which has
14 really been outstanding in our client's
15 perspective. And certainly we have had insight
16 from witnesses presented to support Manitoba
17 Hydro. And something that I'm quite jealous
18 about, a number of leaked documents that appear to
19 be going to Mr. Meronek and not to me, but there's
20 been considerable insight from those documents.

21 And it's perhaps important to ask
22 ourselves, because in a way it goes to the
23 credibility of the EIS at page 19, how many times
24 key insight in this proceeding -- this is at page
25 19 -- have come from outside the EIS? Why did it

1 take the Clean Environment Commission first round
2 IRs to convince Mr. Schindler to redo his
3 November 2011 caribou analysis? Should we have
4 had to rely on Mr. Mills to identify the potential
5 impact of a massive bison development on a moose
6 population in precipitous decline? Should we have
7 needed the Department of Conservation to advise
8 Mr. Schindler that the moose population in certain
9 parts of the province were in precipitous decline?
10 Should we have needed a leaked Hydro document to
11 tell us that relocating Bipole II to Riel was an
12 attractive option and "worthy goal"? Should we
13 have needed Dr. Murray Lee and Ms. Marla Orenstein
14 to tell Ms. Hicks, the Hydro witness, that she
15 should be looking at community mental health?

16 And again, as we move towards the wane
17 of witnesses, we ask this Commission to step back
18 from the minutia of the hearing, and ask
19 yourselves which witnesses have offered more
20 analytically consistent and reliable evidence? Is
21 it Ms. Stewart who gave evidence on large mammals
22 on behalf of the MMF, or Mr. Schindler? Was it
23 Dr. Gunn and Dr. Noble on cumulative effects, or
24 Mr. Osler? Was it the Fox Lake Cree Nation on
25 cumulative effects, or Mr. Osler?

1 And indeed, my clients say that given
2 the quality and integrity of their presentations,
3 our clients have often wondered whether the Fox
4 Lake Cree Nation, whether Manitoba Hydro should
5 consider retaining their experts for its next EIS.

6 Our clients believe, Mr. Chairman and
7 other members of the panel, it is important that a
8 signal be sent to Manitoba Hydro and to other
9 proponents that they have an obligation to come to
10 a Clean Environment Commission with a vastly
11 different and a vastly improved product than was
12 presented in the Bipole III EIS.

13 That being said, our clients do want
14 to offer a shout out in a complimentary way to a
15 couple of Manitoba Hydro witnesses. On
16 November 8th, Mr. Ortiz and Mr. Matthewson
17 provided, in our client's view, probably the
18 strongest presentation of the hearing on behalf of
19 Manitoba Hydro, on adaptive management and
20 vegetative management. Not that our clients don't
21 have concerns, but it was a strong piece of work.
22 And certainly they acknowledge that Dr. Petch has
23 made some candid and principled observations, and
24 those were highlighted by my friend, Mr. Madden,
25 in his closing submissions on Monday.

1 So our clients for the next 20 or so
2 pages are going to be talking about cumulative
3 effects. And as a starting point, as an entree
4 into cumulative effects in this proceeding, our
5 clients are going to raise the threshold question.
6 On which witnesses do we place more reliance? Do
7 we prefer the evidence and the expertise, the
8 candor and the insight of Drs. Gunn and Noble, or
9 do we prefer the evidence proffered by Mr. Osler
10 and Mr. Hegmann?

11 I'm going to start with Drs. Gunn and
12 Noble. There's no doubt of their high
13 qualifications. Dr. Noble is the author of the
14 book on impact assessment, and they publish and
15 edit in leading journals. But they have a lot of
16 practical experience, not just in academia, but on
17 the ground, significant experience with Hydro and
18 with advising proponents and governments. And
19 apart perhaps from Mr. Ortiz, is there anyone in
20 this hearing who has more expertise on vegetative
21 management than Dr. Gunn? Six years, six years on
22 the line researching the BC Hydro transmission
23 lines and vegetative management was a key reason
24 she was retained by CAC Manitoba. And Dr. Noble,
25 a gifted academic, but extensive experience

1 working with proponents and with government in
2 high level environmental assessment, working with
3 Nalcor, the hydro project in British Columbia,
4 other proponents currently -- I said British
5 Columbia, I meant Newfoundland -- and other
6 proponents in British Columbia, conductor of a
7 major regional assessment in the Great Sands in
8 Southwestern Saskatchewan. And between the two of
9 them, advisors to a variety of government and
10 regulators, including the National Energy Board
11 and, of course, the Provincial Ministers.

12 And I make this point because Manitoba
13 Hydro's witnesses somehow seem to suggest that
14 Gunn and Noble are trapped in the ivory towers of
15 the University of Saskatchewan, not that I think
16 they actually have ivory towers there. But these
17 are persons who had been on the ground with
18 proponents, with government, undertaking complex
19 cumulative effects assessment, and really so well
20 respected that their advice to the Provincial
21 Ministers it's really the gold standard in terms
22 of what we aspire to.

23 At page 23, in terms of assessing the
24 qualifications of Gunn and Noble, we suggest as
25 well that they are on the right side of acceptable

1 and best practice. And this dispute between
2 themselves and Mr. Hegmann in terms of VEC centric
3 approach to cumulative effects assessment was
4 surprising to our client, because certainly they
5 believe that Mr. Hegmann is an outlier in terms of
6 this debate. And that on the side of Gunn and
7 Noble are such luminaries as Ross and Dunker.

8 And it's important to recall as well
9 that Gunn and Noble, their advice is quite
10 consistent with direction and insight given by
11 this Clean Environment Commission. And you don't
12 need to turn there, but simply I draw to your
13 attention that this Commission did a lot of good
14 work on cumulative effects assessment in the
15 Wuskwatim decision. And at tab 5 of the
16 supporting materials, and you don't need to turn
17 there, I just want to draw it to your attention,
18 our clients have included a lot of the guidance
19 from the Commission in its Wuskwatim decision.
20 And we draw a clear line of demarcation between
21 Gunn and Noble and Mr. Osler and Mr. Hegmann in
22 this regard. Gunn and Noble clearly read this
23 information and incorporated it into their
24 evidence, taking insight from the best practices
25 as designated in this jurisdiction. Osler clearly

1 read it, we would suggest did not follow it, and
2 Mr. Hegmann just simply didn't read it.

3 And if you would turn to page 1 of the
4 supporting materials, you'll see just a laundry
5 list of the actual documents that Gunn and Noble
6 reviewed in preparing their expert evidence for
7 this Commission. And on the left-hand side,
8 you'll see the Environmental Impact Statement
9 chapters that they reviewed. And on the
10 right-hand side you will see more fundamentally,
11 more importantly, the EIS supporting documentation
12 and reports that they reviewed, critical documents
13 where much of the so-called cumulative effects
14 assessment performed by Manitoba Hydro actually
15 resides. And as you'll see when we get to
16 Mr. Osler and Mr. Hegmann, you'll see again a key
17 distinction. Gunn and Noble dug out the details,
18 they delved into the nooks and crannies of
19 terrestrial ecosystem and vegetative technical
20 reports. They dug into what the technical experts
21 actually said. And then they asked, are the
22 conclusions in chapter 9 of the Hydro CEA actually
23 supported by the evidence found in these technical
24 reports? And by and large they said no. So
25 that's Gunn and Noble.

1 And we do want to draw a contrast
2 between them and Mr. Osler and Mr. Hegmann. At
3 page 24, no doubt Mr. Bedford will blush when I
4 put his poetic words in here, but you will see
5 rarer words than you ever see in a regulatory
6 proceeding. And I give Mr. Bedford credit for his
7 candor and courtesy in offering them.

8 It's our client's submission that the
9 evidence of Gunn and Noble has not been
10 successfully tested or challenged by Hydro,
11 whether in cross-examination or in rebuttal
12 evidence. And certainly you'll see on page 24,
13 some very generous words by Mr. Bedford, saying
14 this is well-reasoned, well presented, and that
15 they have contributed greatly to the value of this
16 hearing. And our clients frankly could not agree
17 more. So that's Gunn and Noble.

18 At page 245, in terms of weight to be
19 given to their views, we draw contrast with
20 Mr. Osler. Now, who is Mr. Osler? Well, it's
21 noted at the top of page 25, he was the primary
22 author of chapter 9 of the Hydro EIS, the CEA, or
23 cumulative effects analysis.

24 And as you'll see on page 25, there is
25 an interesting dialogue that I'm entering into

1 with Mr. Osler on this page. Because our client
2 was trying to understand how, in their view, there
3 could be such a disconnect between what chapter 9
4 said and the path to chapter 9 found in the
5 technical reports, and in chapter 6 and chapter 8
6 of the EIS. Because the conclusions did not seem
7 to be borne out by the analysis.

8 And so at the top of page 25 you'll
9 see me asking Mr. Osler:

10 "Who is managing this? Was there
11 someone within Manitoba Hydro with
12 expertise in cumulative effects
13 assessment who was responsible for the
14 oversight of these various technical
15 areas?"

16 And Mr. Osler candidly admitted at lines 20 and
17 21:

18 "I don't think there's anybody who
19 claims to be a specialist in
20 cumulative effects."

21 So I asked him:

22 "Do you, sir?"

23 And again, quite candidly Mr. Osler agreed, or
24 confirmed:

25 "No, I don't claim to be a specialist

1 on how you would apply it for mammals
2 or for vegetation or for anything
3 else. I am a person that helps pull
4 together and manage an overall
5 process."

6 And we applaud Mr. Osler's candor in admitting
7 that he's not an expert. And we note as well that
8 that's borne out by his publishing track record
9 which doesn't demonstrate any work in that area
10 over the last 30 years.

11 At page 26, we identify another
12 surprising revelation from Mr. Osler, and that's
13 that he did not read the technical reports.

14 At the top of the page, starting about
15 line 16, I put to him the suggestion that the
16 primary evidentiary basis for your conclusion were
17 the technical reports provided by the various
18 experts. And Mr. Osler, again, candidly admitted:

19 "I didn't deal with the technical
20 reports, I dealt with the people who
21 were pulling together chapters."

22 And you'll see later in the page:

23 "I wasn't reading technical reports."

24 And just to confirm at the bottom:

25 "The technical reports themselves you

1 would not be familiar with?"

2 Mr. Osler: "That would be correct."

3 "And even as they apply to cumulative
4 effects assessments?"

5 "That would be correct."

6 So that's Mr. Osler.

7 And let us turn at page 27 to

8 Mr. Hegmann. Because, again, we are in this
9 weighing exercise of credibility. There is no
10 doubt that Mr. Hegmann is one of the leading
11 experts in this field in Canada. Certainly, we
12 think Dr. Noble and Dr. Gunn stand up with anyone,
13 but if you pick the top six, Hegmann is going to
14 show up, and so is Noble. He's clearly an expert.
15 But in this proceeding on February 18th,
16 Mr. Hegmann provided the most unusual expert
17 report. And I have only been in this business for
18 20 years. I used to be young, handsome, I'm not
19 either anymore. I don't recall seeing an expert
20 like this. No bibliography, only one footnote,
21 and a reference to CEA.

22 He relies upon the practitioner's
23 guide, but not one specific citation pointing us
24 to a page in the practitioner's guide. And for
25 Mr. Hegmann, an Albertan intimately involved with

1 the oil sands, not one reference to that leading
2 guide that we have in Canada, the Alberta
3 Cumulative Effects Assessment document, not one
4 reference.

5 And for those of you who are maybe
6 junkies in cumulative effects assessment, you may
7 be aware that generally Mr. Hegmann is a fabulous
8 writer. There's a great article he has written
9 recently, "From Alchemy to Reason." But his
10 report on February 18th was curiously muted for
11 the colourful author of "From Alchemy to Reason."
12 Just pull out these words from his transcript.

13 "The CEA for the Bipole III
14 transmission meets requirements of the
15 guide. On at least this basis, the
16 CEA is not deficient and meets current
17 practice."

18 Hardly an enthusiastic endorsement, and certainly
19 not the colourful prose one would expect from
20 Mr. Hegmann.

21 So our client suspected that something
22 was amiss. And clearly in cross-examination
23 yesterday, we found out what was amiss. This was
24 a report written in haste, finalized on
25 February 18th. Mr. Hegmann confirmed he was

1 retained to provide this rebuttal in early
2 February.

3 Strangely, without reference to the
4 guidance offered by the Clean Environment
5 Commission, he confirmed he did not review the
6 analysis of the Clean Environment Commission in
7 the Wuskwatim report. Now, normally when an
8 expert is speaking to a particular jurisdiction,
9 that would be the first thing they do, seek
10 guidance from that jurisdiction. What else did
11 Mr. Hegmann confirm? He confirmed that he did not
12 review any of the technical reports.

13 In our client's submission, and we say
14 this with the greatest of respect, because
15 ordinarily Mr. Hegmann is -- certainly he's a
16 leading professional, but this is not consistent
17 with his standards. And in essence, he violated
18 the two most fundamental principles of offering
19 expert evidence. Don't offer an opinion, don't
20 offer a judgment, don't seek to buttress a
21 document unless you are familiar with the
22 underlying evidence. And don't offer an opinion
23 until you have reviewed the guidance from the
24 expert tribunal in the jurisdiction in which you
25 testify.

1 And if you turn to tab 2, page 3, for
2 those who don't have tabs in the supporting
3 materials -- actually, it starts at page 2. Our
4 client has prepared just kind of a summary
5 responding to Mr. Hegmann. And we're not going to
6 draw you through this in burdensome detail,
7 because it's rather lengthy, but it's there for
8 your pleasure. But we do want to highlight some
9 aspects of this paper. So, first of all, if you
10 could turn to page 3?

11 THE CHAIRMAN: Three at the bottom or
12 three at the top?

13 MR. WILLIAMS: Three at the top in the
14 right-hand corner. I am sorry, all my references
15 will be to the top right-hand corner.

16 And first of all to remind you again,
17 Mr. Hegmann only assessed Hydro's cumulative
18 effects analysis against the practitioner's guide.
19 But if you look at that big paragraph on page 3
20 towards the bottom, you will see what Hydro has
21 told us in its EIS, how it was going to judge its
22 cumulative effects assessment. And toward the
23 bottom of that paragraph:

24 "It will be based on CEA guidance as
25 well as best and current practice,

1 including the consideration of
2 regional and strategic environmental
3 assessment."

4 So just moving up to the paragraph
5 above that, kind of the third paragraph on page 3?
6 So here is the difference between Gunn and Noble,
7 Gunn and Noble as compared to Hegmann, they base
8 their report in part on the guide, but they also
9 refer to and used other sources of good practice.
10 The guide is still useful, but it's authored 14
11 years ago. And certainly in discussion with the
12 Chair yesterday, Mr. Hegmann seemed to concede
13 that it was due for an update. There have been
14 many advances in practice and understanding since
15 then. And more importantly, Hydro claims to have
16 used the guide, but also to have used other good
17 practice guidance. So Mr. Hegmann very carefully
18 and narrowly circumscribed his assessment, and
19 more narrowly certainly than Hydro suggested that
20 it would be guided.

21 At page 4 and 5 in the top right
22 corner, we address in a bit of detail
23 Mr. Hegmann's suggestion that it's more
24 appropriate to use a project centric as opposed to
25 a VEC centric approach. And certainly at the

1 bottom of page 4, our clients highlight some of
2 the things that we covered in cross-examination.
3 Certainly, it's our client's view that best
4 practice guidance overwhelmingly suggest a VEC
5 centric approach. And Cantor and Ross, at the
6 last paragraph on page 4, explicitly state that a
7 VEC based perspective is desirable.

8 Again, on page 5 at the top right, we
9 even cite guidance from the CEA practitioner's
10 guide, which certainly our clients believe
11 implicitly supports their position, as well as
12 guidance from Dunker. And certainly from our
13 client's position, Mr. Hegmann is swimming against
14 the tide with this project centric approach.

15 At page 6 at the top -- and we'll move
16 through this fairly quickly -- we simply point out
17 that while Mr. Hegmann seems to embrace the new
18 normal, in doing so he is disregarding advice and
19 guidance from this Commission in Wuskwatim,
20 section 7.46. In Wuskwatim, the Commission said:

21 "Using existing commissions as the
22 baseline absorbs the effect of past
23 projects, thus missing the opportunity
24 for any corrective or impact avoidance
25 actions needed for VECs."

1 So, again, his advice we think is contrary to best
2 practice in this jurisdiction and others.

3 At pages 6 to 8, we highlight what our
4 clients consider to be -- what we call the
5 elephant in the room. And that's really never
6 addressed by Hegmann. If you go to the bottom of
7 page 6, one of the most telling criticisms by Gunn
8 and Noble of Hydro's analysis was the absolute
9 disconnect between chapter 9, the conclusions, and
10 the technical reports at chapter 6 and 8. And
11 their concern was the lack of supporting evidence,
12 the quantitative analysis, and quantitative
13 analysis or qualitative reasoning to support the
14 Hydro CEA conclusions.

15 And the point our clients make is that
16 Mr. Hegmann was simply not in a position to
17 comment on this because he didn't do the work. He
18 didn't read the technical reports. He didn't read
19 the underlying analysis on which the conclusions
20 were purportedly based. And that's a key
21 distinction between our clients, between Drs. Gunn
22 and Noble and Mr. Hegmann.

23 At page 10 and 11, towards the bottom,
24 and I won't draw you through it, but Hegmann
25 appears concerned -- Gunn and Noble criticized

1 Hydro for basing their study area on a linear
2 corridor. He says that's common practice.

3 Our clients refute Mr. Hegmann with
4 the example from his own practitioner's guide.
5 And that discussion is at the bottom of page 10
6 and it goes on to page 11, and it's there for you
7 to read. But certainly in their view he is
8 refuted by his own practitioner's guide. And
9 you'll recall, if you'll turn to page 13 and 14,
10 that Mr. Hegmann said, when you are looking at
11 prospective developments, you should only look at
12 those of which we are almost certain. And as I
13 pointed out in cross-examination with Mr. Hegmann
14 yesterday, that advice is just inconsistent with
15 the best practice in his own jurisdiction. And we
16 put in the quote from the Alberta Energy and
17 Utilities Board at the bottom of page 13 and the
18 top of page 14. They warn against the risks
19 associated with the Hegmann approach, because such
20 seemingly more solid predictions almost certainly
21 underestimate cumulative effects by neglecting the
22 current understanding of what is reasonably
23 foreseeable.

24 So again, we point out that Hegmann's
25 narrow approach certainly appears inconsistent

1 with the advice from his own jurisdiction.

2 Turning to page 32 of our outline, so
3 we're back to the overview. Our client has to say
4 certainly that they consider cumulative effects
5 analysis to be amongst the most important issues
6 in this proceeding, and they are extremely
7 disturbed and disappointed that on perhaps the key
8 issue of this proceeding, Manitoba Hydro has
9 chosen to present a non expert, and an expert who
10 has just had a couple of weeks to prepare his
11 written report, neither of who read the technical
12 reports.

13 And certainly our clients will be
14 asking this Commission to find that Mr. Osler, by
15 his own admission, is not qualified to offer
16 expert evidence in terms of CEA. And that in
17 areas of critical dispute, the opinions of
18 Dr. Gunn and Dr. Noble are to be preferred to the
19 evidence prepared by Manitoba Hydro.

20 I won't focus on page 33, except to
21 note that we have inserted on that page some
22 quotes from Ms. Stewart, who testified on behalf
23 of the MMF, and certainly she was very supportive
24 of the conclusions of Gunn and Noble.

25 On page 4, we offer some insight from

1 the Fox Lake Cree Nation, which we again say is
2 very supportive of the conclusions of Gunn and
3 Noble in terms of cumulative effects.

4 So that's kind of how our clients view
5 whose evidence should be preferred in terms of
6 cumulative effects. I am going to spend a few
7 minutes on the details in terms of this and direct
8 your attention to page 35 of our outline.

9 Again, I don't think anyone on this
10 panel needs a primer or a re-introduction to
11 cumulative effects, but here are some of the wise
12 words of Gunn and Noble about why cumulative
13 effects matter, and how, and what are the
14 potential consequences when we allow proponents
15 and regulators to get away with bad cumulative
16 effects process.

17 And Dr. Noble uses the example of the
18 oil sands where bit by bit, bite by bite, cut by
19 cut, with the tyranny of small decisions, we went
20 through water withdrawal from 12 million cubic
21 metres per year to 595 million, over just a few
22 decades, and again the experience in Southwest
23 Saskatchewan. Simply highlighting why this type
24 of analysis is so critical, and indeed most
25 critical in proper modern environmental

1 assessment.

2 And at page 36, Dr. Noble, we present
3 a quote from Dr. Noble asking the question, how
4 could this happen? How did we get in these
5 circumstances? And he notes, and this is about
6 the sixth line down in the paragraph:

7 "Often when there's a project, it's
8 deemed as marginal or relatively
9 insignificant when compared to the
10 magnitude of other changes on the
11 landscape, or the magnitude the
12 project impacts are measured against
13 or compared to the impacts of other
14 things, as opposed to measuring them
15 in addition to the impacts of other
16 things, or it's argued to be the
17 responsibility of other proponents or
18 future projects to address cumulative
19 effects."

20 These words sound uncandidly familiar. Echos of
21 the Hydro technical reports, echos of chapter 9,
22 these represent many echos of those words.

23 And at page 37, we present one of the
24 most critical conclusions of Gunn and Noble. And
25 they say consistently in Hydro's technical reports

1 and their analysis, cumulative effects are viewed
2 incorrectly and interpreted incorrectly. And the
3 cumulative effects assessment consistently
4 examines the significance of the effects compared
5 to the effects of other disturbances as opposed to
6 in addition to other disturbances, the total
7 effects.

8 And if you're looking for recent
9 evidence of that, take a glance back at the
10 evidence presented by Mr. Schindler and Mr. Rettie
11 in their moose assessment just this week and see
12 what they were doing. And then you'll see those
13 same errors repeated again and again.

14 At page 38, we highlight what I think
15 most persons in this room would agree, that
16 cumulative effects assessment is central to good
17 environmental assessment. You can't do good
18 environmental assessment without assessing
19 cumulative effects in our client's submission.
20 And again, we put some helpful quotes from Gunn
21 and Noble on that page.

22 So how did Gunn and Noble address
23 cumulative effects in their report? And I direct
24 your attention to page 39 of the outline. Because
25 both Mr. Osler, way back on November 22nd, and

1 Mr. Hegmann in his little report of February 18th,
2 seem to be suggesting somehow that Gunn and Noble
3 were aiming too big, they were trying to do a
4 regional assessment.

5 Those allegations, in our client's
6 respectful submission, are rebuked and rebutted by
7 the language chosen by Gunn and Noble. And you'll
8 see this on page 39 of our outline. Expressly on
9 the transcript on page 4819, they say:

10 "We didn't adopt a regional and
11 strategic assessment, which is a very
12 high standard."

13 And if you go to the bottom of that page, you will
14 see how they are judging Hydro's assessment. Gunn
15 and Noble state at page 4822 of the transcript:

16 "We observe that the cumulative
17 effects assessment doesn't meet a
18 minimum standard based on our analysis
19 of good practice in cumulative
20 effects."

21 Then they go on to say:

22 "We certainly don't believe that it
23 meets the standard that was set out in
24 the environmental assessment itself in
25 terms of the regional or the strategic

1 or the best practice guidance that is
2 available."

3 So here is what you have. If you'll
4 just remind yourself at the start of chapter 9 of
5 the cumulative effects assessments, Hydro itself
6 said, you know, we're going to do this big fancy
7 CEA, you know, with reference to regional
8 standards. And Gunn and Noble, contrary to
9 Hydro's allegations, said, no, that's aiming way
10 too high. We're not going to judge you by that
11 standard, we're going to judge you by the minimum
12 acceptable standard. And by the way, you do not
13 pass that standard.

14 And Mr. Chair, just if you are looking
15 for where Hydro said it was going to do a regional
16 assessment, et cetera, that's in the scoping
17 document for the EIS, section H-8 which states:

18 "The cumulative effects assessment
19 will be defined in the EIS and will be
20 based on CEA guidance as well as best
21 and current practices, including the
22 consideration of regional and
23 strategic environmental assessment
24 approaches."

25 And the simple point I'm making is that Gunn and

1 Noble did not judge them by that standard. They
2 said, hold on, that's way too high, that's not
3 fair to ask you. We're asking you to perform
4 minimally acceptable best practice, minimally
5 acceptable standards.

6 And so certainly from our client's
7 perspective at page 40, Mr. Hegmann and his report
8 of February 18th seem to suggest that there were
9 only one or two major criticisms by Gunn and Noble
10 of the CEA analysis performed by Hydro. From our
11 client's perspective, this was just not the case.
12 And certainly we'll go through in some detail
13 their overarching concerns with the cumulative
14 effects analysis. But certainly it's our client's
15 submission that this is not a case where Hydro can
16 velcro together its cumulative effects assessment
17 and limp over the minimally acceptable standard.
18 It's not there. This is a fundamentally impaired
19 cumulative effects assessment, beyond repair.

20 Mr. Chair, mindful of your break, I
21 can work through to the end of this section, and
22 then you'll be glad to get off cumulative effects
23 I'm sure.

24 THE CHAIRMAN: In about 15 minutes?

25 MR. WILLIAMS: Yes, I think 15 to 20

1 minutes.

2 THE CHAIRMAN: Good.

3 MR. WILLIAMS: So why do Gunn and
4 Noble and why do our clients -- this is page 41 of
5 the outline -- why do they say that this is a
6 fundamentally flawed CEA?

7 They point to, first of all, a number
8 of errors in scoping, and look at what was
9 excluded. Gunn and Noble say that one of the more
10 notable project's omissions or disturbances was
11 the omission of the Bipole I and II right-of-way.
12 Because obviously that's another major linear
13 disturbance within range of the proposed linear
14 development, with the exception of caribou
15 excluded. And certainly closely proximate for
16 many hundred kilometres linear disturbance,
17 certainly one would have expected in a minimally
18 acceptable cumulative effects assessment, to be
19 included. And certainly our clients, and we'll
20 come to this later, note some very insightful
21 observations by the TCN, Tataskweyak Cree Nation,
22 at page 5463 of the transcript, very supportive of
23 the need to include Bipole I and II in the
24 transcript.

25 Our clients note as well that excluded

1 from the CEA analysis performed by Hydro was
2 prospective modeling of natural disturbances such
3 as fire and flood. And you see on page 41 again
4 that reference from our witnesses, the CAC
5 Manitoba witnesses, saying you would have expected
6 this to be done there. But just draw your mind
7 back to Mr. Hegmann yesterday. He was clear that
8 fire modeling is something that could and would
9 be, certainly could be done. And if you go to the
10 supporting materials, page 38, in the top
11 right-hand corner, and that should be tab 3, you
12 will see what the Alberta advice is at the bottom.
13 And the very last paragraph talks about that when
14 you are designing facilities, you may wish to
15 design them to withstand one in 100 year flood
16 levels, earthquake, and forest fires. And in the
17 middle of the paragraph, a key paragraph from one
18 of the leading guidance documents in this country,
19 the same precautionary principle applies to the
20 assessment of cumulative effects. And it goes on
21 to suggest that these be considered to see if they
22 alter the impact of project impacts or projects
23 for mitigation.

24 And this is a key concern identified
25 by Gunn and Noble. And when we get back to the

1 caribou cumulative effects assessment, you'll see
2 again that they did not do prospective modeling
3 for fire. And again, that's a significant concern
4 we have with that specific approach.

5 So there is a couple of scoping
6 failures, failure to look at the two most
7 analogous and key linear disturbances in the
8 region. And certainly if you think of that being
9 Bipole I and II, and when you think of that and
10 when you think of how important habitat
11 fragmentation and habitat loss is, why wouldn't a
12 minimally acceptable cumulative effects assessment
13 walk down that path?

14 On pages 42 through 45, you'll see I
15 went a bit excessive on the failure to include
16 proper vegetative management. I certainly did so
17 at Dr. Gunn's insistence. She highlighted in her
18 report, her written report and her expert oral
19 evidence, a critical scoping failure with the
20 exclusion of different vegetative management
21 scenarios. And I have highlighted via italics on
22 page 42 of the outline some of Dr. Gunn's words.

23 Now, that is not considered a
24 significant feature activity contributing to
25 environmental stress, notwithstanding her view

1 that it is a core determinant of the level of
2 stress that will be put upon the environment over
3 the course of the lifetime of the right-of-way.
4 She describes it as the primary determinant. Yet
5 where are the consideration of different
6 vegetative management scenarios in the cumulative
7 effects assessment?

8 And before we leave this page,
9 Dr. Gibbons, I know you had some questions for the
10 Hydro panel yesterday about where on the record
11 this vegetative management stuff was. So I put in
12 at the bottom of that page some references for the
13 transcript where it appears.

14 At page 43, we begin to explain why
15 Dr. Gunn considers the exclusion of vegetative
16 management scenarios so important. And I'm not
17 going to spend a lot on page 43, except for
18 actually we are going to be supportive of Manitoba
19 Hydro on one point here. Dr. Gunn has done
20 fabulous work in this area. The board was the
21 beneficiary of her review of the literature that
22 was provided in November. And Dr. Gunn does agree
23 with Manitoba Hydro that herbicides, if carefully
24 selected and carefully applied, can be a valuable
25 tool. And certainly Dr. Gunn is of the view that

1 the end game is to be without herbicides, or
2 that's certainly a legitimate objective. But as
3 one transforms from the big mess, you know, caused
4 by the initial cut, certainly Dr. Gunn's research
5 out of British Columbia and her review of the
6 literature does provide some support to Manitoba
7 Hydro in its argument that herbicides, if
8 carefully selected, carefully applied, can be a
9 valuable tool.

10 One of the points we make on page 43
11 is that vegetative management is so important
12 because it provides an opportunity over time to
13 create a stable diverse vegetative community and
14 provide some opportunities to alleviate
15 fragmentation events and secure animal crossings,
16 if properly tailored. But the thrust of
17 Dr. Gunn's evidence, and why she considers this so
18 important is it's got to be tailored to the
19 individual locations.

20 But where is Hydro's vegetative
21 management plan? Where is their proposed active
22 learning? Where is considerations of the
23 implications of different scenarios and cumulative
24 effects assessment? It's not here. And that
25 certainly, in Dr. Gunn's view and in our client's

1 view, is a critical shortfall.

2 And on page 44, we just make the point
3 that vegetative management is important, not just
4 for land base resource values, but also water
5 based resource values. And here is where, as
6 Dr. Gunn explained it to me, I started to get it.
7 And she points out that vegetative maintenance can
8 be one of the most important tools, at page 44 --
9 she does, I do -- in protecting water courses.
10 And she notes that while provinces may have a
11 mandated riparian buffer zone, that minimum is not
12 always good enough, and that there are different
13 scenarios, or different options utilities can
14 choose to impose a higher standard around riparian
15 areas, adopting a wider buffer zone, areas where
16 you're not allowed to cut beyond perhaps
17 provincial boundaries, areas where you're not
18 allowed to operate heavy equipment. And that can
19 make a meaningful difference, perhaps the most
20 meaningful difference in preserving the integrity
21 of water zones and stream beds.

22 And so Dr. Gunn's point is absent from
23 the CEA of Hydro, is consideration of different
24 approaches that might be used in vegetative
25 management and their impacts.

1 So I have gone on about vegetative
2 management because it was something that was
3 difficult for me to grasp. So at page 45, I just
4 want to highlight the key points.

5 Vegetative management is a key
6 mechanism which can exacerbate or ameliorate the
7 stress on the ecosystem. Different vegetative
8 management scenarios were simply not discussed in
9 Hydro's cumulative effects assessment. Vegetative
10 management plans cannot be properly developed or
11 assessed in the absence of a proper impact
12 assessment and informed dialogue with affected
13 communities. To design that path for the caribou
14 to feel safe going from one side to their other
15 side, that requires a lot of detailed knowledge on
16 the ground that is only available with the proper
17 impact assessment. And certainly detailed
18 vegetative management plans were not available for
19 review.

20 At page 46, I won't dwell on this,
21 only to identify there is some supportive
22 commentary from Ms. Stewart, again, on my current
23 obsession of vegetative management.

24 At page 47, we identify another key
25 failure in terms of the cumulative effects

1 assessment, the failure to re-evaluate
2 insignificant effects in combinations with effects
3 of other projects, a key element of proper
4 adaptive cumulative effects assessment. And at
5 the top of this page, you see the quotation from
6 Gunn and Noble noting that the Bipole CEA should,
7 but it does not rationalize that some
8 insignificant project effects may actually need to
9 be elevated to the status of significant adverse,
10 when considered in combination with the effects of
11 other projects.

12 And at the bottom of that page, I have
13 simply put in an illustrative example from
14 Dr. Gunn of how that type of proper best practice
15 cumulative effects assessment might transfer
16 wolves from a species that is not having
17 significant adverse effects to one that is. And
18 that's simply the point, she articulates it better
19 than I ever could.

20 Page 48 is actually some helpful
21 language from the practitioner's guide and indeed
22 from Mr. Osler, but I won't dwell on that.

23 At page 49, we simply highlight the
24 conclusion from Gunn and Noble that, again, a
25 concern that the cumulative effects analysis of

1 Manitoba Hydro was a spatially ecologically
2 restricted approach, which they consider to be
3 inconsistent with best practice.

4 Page 50 is a related point, the
5 problem isolation paradigm. And this is a point
6 made by Dr. Gunn, saying not only is this project
7 spatially and geographically limited in terms of
8 the study area, but Hydro made the error of
9 further compartmentalizing this into 13 segments.
10 And that's known in the literature as the problem
11 isolation paradigm. And the problem with it is,
12 and this is in the quote that's highlighted in
13 italics toward the bottom of the page:

14 "When you do that you tend to miss
15 some really key dynamics that exist at
16 that larger scale, life sustaining
17 dynamics between the component parts
18 that are never looked at."

19 And that's simply good advice from Dr. Gunn and
20 Noble, and yet another significant error in the
21 Hydro cumulative effects approach.

22 At pages 51 through 54, we revisit a
23 debate that Dr. Gibbons had with Manitoba Hydro
24 yesterday, and that the Clean Environment
25 Commission had with Manitoba Hydro during the

1 Wuskwatim proceeding, the criticism that Manitoba
2 Hydro is ignoring the past and creating the new
3 normal. And the quote on page 51 highlights the
4 fundamental concern of Dr. Noble with this unsound
5 practice. And he points out that this could be a
6 never-ending cycle, and I put these words in
7 italics.

8 "And so if we were to look forward to
9 a future development or a future
10 project, if they were to adopt the
11 same model, then any impacts of Bipole
12 would be again completely absorbed in
13 the baseline."

14 And Dr. Gunn just reminds us that that's a problem
15 when we look at what happened, that's a problem
16 when we looked at what happened in the Athabasca
17 region or the southwest region of Saskatchewan.
18 We kept resetting the bar at the new normal and
19 missed the big picture, the incremental cuts, the
20 death by a thousand cuts, bit by bit, moving the
21 baseline and obscuring the picture.

22 Page 52 just puts some additional
23 gloss on that, and I'll leave that to your reading
24 pleasure.

25 But at page 53, Noble gets to the

1 heart of this problem and, again, I put it in
2 highlights.

3 "This problem of absorbing adverse
4 past effects into the current baseline
5 condition precludes possible
6 remediation, restoration or mitigation
7 for VECs that may already be in an
8 unhealthy or undesirable condition."

9 This is the flawed ossified analysis that
10 Mr. Osler and Mr. Hegmann would have you believe
11 is current acceptable practice.

12 Members of the panel, I've just got
13 the wrong page here, but if you turn to page 32 of
14 the supporting material, this is an excerpt from
15 Mr. Hegmann's and Mr. Ross's practitioner's guide.
16 And at the bottom, you're going to see a reference
17 to a case study of Alliance Pipeline landscape
18 indicators. And you have heard in this hearing
19 Manitoba Hydro say, well, we can't do it, we can't
20 establish thresholds, we can't analyze trends over
21 this big linear project. Well, here is what
22 Hegmann's guide said way back in 1999. Let's look
23 at this linear province Alliance Pipeline, and
24 let's look at the landscape indices employed. And
25 those are set out in bullets at the bottom of this

1 case study: Access density, stream crossing
2 density, cleared areas, edge areas, core area.
3 And so those are the things that way back in 1999
4 the practitioner's guide said you should be, you
5 know, minimally acceptable, acceptable practice,
6 that's what you should be looking at.

7 And so returning to our outline at
8 pages 54 and 55, here you have Dr. Noble saying, I
9 wasn't expecting the world from Manitoba Hydro, I
10 wasn't expecting the new Jerusalem, I wasn't
11 expecting the most gold plated cumulative effects
12 assessment, I was expecting them to reap the low
13 hanging fruit, the stuff that Hegmann way back in
14 1999 said you could do. And you see this quote by
15 Dr. Noble on page 55 toward the top of that page.

16 "So the question then that we ask, and
17 we thought that was an obvious, or
18 very low hanging fruit to grab on to,
19 what's the relationship between the
20 number of stream crossings in the
21 study area and changes in water
22 quality or changes in habitat over
23 time? How have stream crossings
24 affected water quality parameters?
25 What's the relationship between past

1 stream crossings and the fragmentation
2 of aquatic habitat?"

3 Good standard practice way back in the
4 1990s, low hanging fruit, the type of questions
5 that you would have expected to see asked and
6 answered in the technical analysis, the parameters
7 specifically cited by Hegmann. But these were
8 obvious questions that Noble points out were not
9 asked and not answered. And that really, for our
10 client, highlights the error of Mr. Osler and
11 Mr. Hegmann not going back to the technical
12 reports, not looking is there an examination, as
13 you suggested, way back in 1999 of how to look at
14 these issues?

15 The last couple of points before I
16 invite the panel to take a break is turning to
17 page 57 of our outline. Way back in the Wuskwatim
18 decision in 2004. The Clean Environment
19 Commission said to Hydro, when you're doing the
20 prospective analysis of cumulative effects, we
21 think you are too limited just looking 10 years
22 out. And Noble concludes that we found this
23 assessment to be even more restrictive than the
24 ten-year period in terms of supporting analysis
25 for cumulative effects.

1 So that's a point that he makes that
2 it appears Hydro has disregarded the advice and
3 recommendation of this tribunal in Wuskwatim.

4 And more fundamentally, going back to
5 that elephant in the room, he makes the point, and
6 I just give a couple of examples on pages 57 and
7 58, that the conclusions that appear in chapter 9
8 of the Hydro CEA part of the EIS just can't be
9 supported when you go back to the technical
10 documents. And there's a quote on that page,
11 being page 57, and again a couple of other
12 examples on page 58. And again, these highlight
13 the danger of Hegmann drawing conclusions about
14 the analysis without relying upon the underlying
15 reports.

16 At page 59, we have already talked
17 about the failure to adopt a VEC centric approach.
18 And Mr. Meronek has previously discussed the
19 failure to consider other Hydro related projects.

20 So just to sum up in this section, our
21 client's assertion, strongly supported by the
22 independent expertise of Drs. Gunn and Noble, is
23 that this is a fundamentally flawed CEA. It
24 doesn't pass minimally acceptable standards.

25 So what are the implications of this

1 for the EIS? And here's a question on page 60
2 posed to Dr. Gunn.

3 "In your view, in an environmental
4 assessment, how important is a
5 cumulative effects assessment?
6 The importance of it perhaps couldn't
7 be understated. There just simply is
8 no way to truly understand the
9 significance of any project if you
10 don't look at it within the context of
11 the other developmental pressures in
12 the area."

13 And certainly it's our client's
14 submission that a flawed CEA denies a trier of
15 fact the opportunity to determine whether there
16 are significant adverse effects.

17 And, Mr. Chair, at page 61, I think
18 this is a question, I have only pulled out a piece
19 of your question. This is at page 61 of the
20 outline. You pursued this issue with Dr. Gunn.
21 And I have to say, I didn't really like your
22 question, I wasn't sure I was going to like the
23 answer. And you asked:

24 "If a cumulative effects assessment is
25 badly or even fatally flawed, does

1 that make the whole environmental
2 assessment badly or fatally flawed?"

3 And I highlight this quote because I wasn't really
4 keen on the question, but I want you to look
5 carefully at the answer. Because initially I
6 thought Dr. Gunn was saying, no, the EIS isn't
7 flawed. But I urge you to read this quote more
8 carefully. Because what she says is:

9 "No, because they are really two
10 different things. A project impact
11 assessment is to assess direct
12 effects, and you can do that well and
13 you should do that well. A cumulative
14 effects assessment is not focused on
15 the direct immediate project effects,
16 it is focused on a different class of
17 effects known as cumulative effects.
18 So you could do it very well, you
19 could do a direct impact assessment
20 very well and still miss the CEA."

21 And I want to be clear, Mr. Chairman, that this
22 point is not misunderstood. Ms. Gunn's answer was
23 directed toward distinguishing between direct
24 impact assessment and cumulative effects
25 assessment. Her point being that you could do a

1 direct impact assessment very well and still miss
2 the CEA. She was not suggesting that an
3 environmental impact statement could be saved even
4 if the CEA was fundamentally flawed.

5 When I saw your question and I saw the
6 no, I was scared. But as I read her answer more
7 carefully, I think that's important when you see
8 that answer to reflect on that.

9 And Mr. Noble caught onto this line of
10 questioning on the next page. Because
11 Mr. Bedford, at page 62 of the outline,
12 Mr. Bedford had asked him a similar question. And
13 initially Dr. Noble had declined to answer. But
14 here you see, again, him making this point.

15 "I just want to make sure I didn't
16 misrepresent my response earlier.
17 When it was asked of me by Mr. Bedford
18 about whether I thought the
19 environmental impact statement was
20 good or..."

21 I think I put in two goods,

22 "...bad or ugly, and I said I wouldn't
23 comment. But the context of that
24 question was cumulative effects
25 assessment aside, and just looking at

1 the EIS itself. And I think my
2 response was that we didn't review the
3 EIS in that thing to be able to
4 comment."

5 But here's the key point:

6 "But if we include the cumulative
7 effects assessment as part of the
8 environmental impact statement, it
9 would not be in the good category."
10 i.e. it would be in the bad or the
11 ugly category.

12 I think making that point crystal clear that not
13 getting over the CEA hurdle, in their view, means
14 that you don't get over the overall hurdle. And
15 certainly Dr. Noble seems to be suggesting that at
16 page 63.

17 Our client finally, at page 64, makes
18 the recommendation that this Commission recommend
19 to the Minister that Manitoba Hydro be directed to
20 perform a cumulative effects assessment that
21 accords with best practice, and that no final
22 approval for the project be granted until the
23 cumulative effects analysis is reconsidered by
24 this Commission.

25 And our clients just want to highlight

1 Dr. Noble's comment on page 64, that this is not a
2 complex CEA compared to site specific analysis.
3 His point is that linear projects probably don't
4 come easier in terms of approaching cumulative
5 effects assessment. And I'll leave that to your
6 reading pleasure.

7 Mr. Chair, just very quickly to finish
8 up this section, page 65 of the outline and the
9 supporting materials starting at page 60. And
10 here at page 60 at the top right you have an
11 excerpt from Mr. Osler's presentation, I think
12 dated October 29th, 2012. And Mr. Osler suggests
13 that cumulative effects and significant concepts
14 are not defined or required in Manitoba
15 legislation, but notes that the scoping document
16 suggested they be included.

17 And perhaps our client was being
18 unduly paranoid, or perhaps their lawyer was, but
19 I certainly became concerned that Manitoba Hydro
20 might argue, well, even if our cumulative effects
21 assessment is fundamentally flawed, that doesn't
22 mean that you have to send us back to do it again.

23 And so at pages 61 to 81 of the
24 supporting materials, you'll find just a memo or
25 legal brief prepared by our clients kind of musing

1 on those questions, does the Act require a
2 cumulative effects assessment? What is the
3 implications of it being referenced in the scoping
4 document? And I certainly am not going to read
5 that to you or bore you with it. I'm going to
6 turn you to page 80, which is the conclusion.

7 THE CHAIRMAN: When was this brief
8 done?

9 MR. WILLIAMS: The last few weeks.

10 THE CHAIRMAN: Okay.

11 MR. WILLIAMS: And certainly you can
12 read the brief at your pleasure. I finally
13 finalized my end of it just two days ago. But one
14 of the points when you read the conclusion, I want
15 to remind you of, is that certainly our approach
16 to statutory interpretation has evolved quite
17 significantly over the last 10 to 15 years. Cases
18 like Rizzo Shoes and ones like that have I
19 think -- and even recent guidance by our Court of
20 Appeal in terms of reading statutes
21 interchangeably.

22 And this is our conclusion. Certainly
23 that the Environment Act does not explicitly
24 mandate consideration of cumulative environmental
25 effects. However, applying the modern principle

1 of statutory interpretation, reading this Act, and
2 in particular the scheme and intent of the
3 legislation, as well as the related Sustainable
4 Development Act, it can be necessarily implied
5 that the legislative intent was that cumulative
6 environmental effects must be considered as part
7 of the environmental assessment process.

8 And in the second paragraph, we note
9 that the consequence of interpreting the
10 Environment Act is not mandated. The
11 consideration of cumulative effects is that
12 significant adverse environmental effects may not
13 be identified.

14 And from our perspective, in applying
15 the principles of modern statutory interpretation,
16 this consequence would be absurd and would defeat
17 the legislative purpose of environmental
18 protection for present and future generations
19 through appropriate and effective environmental
20 management practices and, therefore, it should be
21 rejected.

22 And we certainly note that the terms
23 of reference also, you can also infer from them
24 that cumulative effects must be considered. As
25 with the Environment Act, this requirement is not

1 explicit, but necessarily implied by the reference
2 to the scoping document which states that:

3 "Cumulative effects will be
4 considered, as well as the explicit
5 requirements in the terms of
6 reference, that the Commission's
7 recommendation shall incorporate the
8 principles of sustainable development
9 and the guidelines for sustainable
10 development."

11 And sir, certainly this will be an
12 appropriate time for a break.

13 THE CHAIRMAN: Thank you,
14 Mr. Williams. We'll take a break until
15 4:00 o'clock.

16 (Hearing recessed at 3:45 p.m. and
17 reconvened at 4:00 p.m.)

18
19 Reconvened at 4:00 p.m.

20 THE CHAIRMAN: Could we reconvene,
21 please?

22 Just before you continue,
23 Mr. Williams, at some point before you are
24 finished, it might be helpful to the panel and
25 perhaps to others if you could give us a

1 definition of sorts of what you mean by best
2 practices, and how does that differ from say
3 minimum standards, acceptable standards, ideal or
4 gold standard?

5 MR. WILLIAMS: That might take me
6 about 40 minutes of thinking, Mr. Chair, so I'll
7 put it to the right side for right now.

8 THE CHAIRMAN: Okay.

9 MR. WILLIAMS: I just want to turn the
10 issue of woodland boreal caribou, and page 66 of
11 the outline and page 85 of the supporting
12 material. So the outline should be significant
13 unresolved questions regarding species at risk,
14 page 66, and the supporting material should be
15 page 85 in the top right-hand corner. There
16 should be a PowerPoint from Hydro by the witnesses
17 saying "Current Disturbance."

18 In a way, an issue that the caribou
19 which dominated much of the early part of the
20 hearing have kind of fallen from our attention
21 span. And our clients believe it's extremely
22 important that we address them and bring them back
23 to the top of the agenda. And they do want to
24 trace a little bit of the history of how this
25 discussion has evolved during the hearing, because

1 clearly at page 66 of the outline, Hydro got off
2 to a rough start. The initial report in terms of
3 caribou in November of 2011 had some challenges.
4 With some prodding by the Clean Environment
5 Commission in terms of their information requests,
6 Manitoba Hydro came back in August of 2012 with
7 the report that, in fairness to Hydro, was a
8 significant improvement in terms of its previous
9 analysis. And it undertook an effort to assess
10 the threats to this species using some guidance
11 from the 35 percent threshold for current
12 disturbance agreed to at the Federal level.

13 And Hydro and its witnesses,
14 Dr. Rettie and Mr. Schindler, undertook an effort
15 to predict future disturbance, and also to offer
16 some insight into the annual rate of increase for
17 certain herds. I have used Lambda, I think that
18 should be all in lower case levels, l-a-m-b-d-a,
19 as measured by annual survival and recruitment.
20 So that was stride one in a positive direction,
21 that August 2012 report.

22 And stride two, thanks in no small
23 degree to pressure both from the province and
24 perhaps some gentle nudging from this Commission,
25 another stride forward was the revised route for

1 Wabowden.

2 And so before we criticize Hydro, we
3 do think it's important to note that they have
4 improved their analysis on this critically
5 important issue, and they also sought to lessen
6 the impacts up in the Wabowden area, and for that
7 they should be commended.

8 So on page 67 our clients ask, or I do
9 on their behalf:

10 "So what's the problem with the
11 caribou analysis as it currently
12 stands?"

13 First of all, this is an endangered species and
14 we'll get into what the time lag response means,
15 but that time lag response in our client's
16 submission suggests the need for extra caution in
17 assessing the potential for significant adverse
18 effects for caribou. Because the effects of
19 actions today may not be realized in that
20 population for years, or in some cases decades to
21 come.

22 Our clients are also very concerned
23 that the August 2012 report of Manitoba Hydro
24 generally excluded in its cumulative effects
25 analysis consideration of the impact of bears.

1 One of the two major predators for caribou, the
2 great unknown as Dr. Rettie described them, and in
3 our client's view, that in and of itself leaves it
4 impossible to safely conclude that there are no
5 significant adverse effects for this species.

6 Just as fundamentally, our clients
7 point to a gaping hole in the August 2012
8 analysis. If you think of the three herds being
9 the Wabowden range, the Bog range and the Reed
10 Lake range, Hydro did not perform, or its experts
11 did not perform a Lambda analysis for one of those
12 herds, being Reed lake. And I'll walk you through
13 that discussion.

14 So those are the three primary
15 concerns of our client. The time lag effect
16 suggests extra caution, the effective exclusion of
17 bears from the cumulative effects assessments, in
18 our respectful submission, and the gaping hole in
19 terms of Reed lake.

20 We also point to a couple of less
21 critical quibbles. Their prospective cumulative
22 effects assessment did not model major risk action
23 such as fire, and it didn't consider different
24 vegetative management schemes.

25 At page 68, we highlight two key

1 studies. These are already on the record, I
2 haven't provided them today, but one is the Ranger
3 fire 2012 report towards a Manitoba Hydro boreal
4 woodland caribou strategy. And that was actually
5 the result of a workshop of experts conducted by
6 Hydro from a number of years previously. And the
7 other was the fabulous work by Vors et al,
8 Woodland Caribou Extirpation, which is a 2007
9 report. And it's a report that is cited heavily
10 in the EIS, the fragmentation study, and the
11 caribou technical reports.

12 So just to highlight on page 69 what
13 our clients mean in terms of the time lag
14 response, that speaks to the phenomena that it may
15 take, in terms of the caribou population, in
16 response to natural and cumulative human caused
17 disturbances, it can take years or even decades to
18 detect and/or quantify.

19 And so one of the challenges when we
20 look at this very vulnerable population is that we
21 may not see the effects of our actions for many
22 years to come.

23 And at page 70, we again just provide
24 some insight from our discussion of Vors from the
25 transcript, but the key point of page 70 is that

1 last paragraph. Because this poses some real
2 significant challenges to adaptive management
3 with, again with this population, given that
4 success or failure of habitat interventions may
5 not be evident for years or even decades.

6 So, again, recognizing the
7 vulnerability of this population, one has to use
8 extreme care in seeing habitat management or
9 adaptive management as the panacea. We can't have
10 certitude and we can't have confidence.

11 And just on pages 71 and 72, we just
12 highlight some of the challenges admitted by the
13 Hydro witnesses in analysing the success of
14 habitat management plans with this population.
15 And that discussion is set out at 71.

16 And at page 72, we simply note that
17 Hydro has not tried to model the potential results
18 flowing from these potential plans, and why that
19 was of some interest to our client is because
20 Dr. Rettie had actually performed these models in
21 some of his other work, and we thought he might
22 have done it for Hydro, but that wasn't research
23 that Hydro had done.

24 At page 73, we again reinforce the
25 vulnerability of this population, because not only

1 is it currently at risk, but it's not a population
2 that's prone to recovering very quickly. I'm
3 never confident that I can pronounce fecundity,
4 but I can spell it, F-E-C-U-N-D-I-T-Y, for the
5 reporter. And this species has a very low rate
6 compared to other ungulates such as elk, moose and
7 deer.

8 And that means, as we go toward the
9 bottom of page 73, that these herds, these
10 populations are very sensitive to even small
11 reductions in reproductive potential, especially
12 in terms of reduced members of the breeding
13 females in the population. And with smaller
14 populations, the loss of even a few adult females
15 could lead to a local population decline, so a
16 population that's already at risk and not as
17 robust in recovery as others may be.

18 Why am I obsessing about bears? Page
19 74 of our outline. In a population with
20 challenges in reproducing, calves, of course, are
21 especially vulnerable to predation. And what
22 twigged our clients into bears was actually
23 Dr. Rettie. Because in cross-examination, I had
24 suggested to him that wolves were the main threat,
25 and he corrected me, and this is on page 74. He

1 said:

2 "I would say it's a combination of
3 predators, predation by wolves and
4 predation by bears."

5 And Dr. Rettie suggested that we know
6 a fair bit about wolves. But in the second last
7 quote on page 74 he described bears as the great
8 unknown. Their predation rate on neonatal
9 animals, juveniles in the first couple months of
10 life is suspected to be high, but it's been very
11 difficult to show. And when they had that special
12 workshop of experts in 2007, as reported in the
13 Ranger fire report in 2012, that was one of the
14 pieces of advice from that report. And that's at
15 the bottom of page 74. It was important, they
16 stated, to look at bears in terms of their
17 predation rates on young caribou.

18 So that is why, as we turn to page 75
19 of the outline, our client was disappointed and
20 concerned to learn that the cumulative effects
21 analysis did not reasonably explore the great
22 unknown of bear predation on young caribou.

23 And you just see a couple of the
24 questions posed and confirmed to the Hydro
25 witnesses by my client. In terms of the

1 August 2012 technical report, there was not a
2 great deal of analysis in terms of bears. As one
3 digs through the August 2012 technical report, the
4 great unknown of bears do not figure prominently.

5 Our client's concern is that the need
6 for additional research was expressly flagged by
7 the consensus of experts. Rettie identifies bears
8 as the great unknown and one of the two primary
9 sources of risk. And the failure of the
10 cumulative effects analysis to look in any degree
11 of intensity at this risk is of concern to our
12 client, and one of the factors that leaves us in
13 the position, our client in a position where they
14 feel it's unsafe to rely on the results of that
15 analysis to conclude that there are no likely
16 significant adverse effects for this population.

17 The other major concern relates to a
18 weakness in the analysis in terms of the Reed Lake
19 herd. And at page 76, for those, who like me,
20 struggle with the terms, I seek to remind you what
21 Lambda is. In essence, it describes a ratio of
22 recruitment, including calf fecundity and survival
23 against mortality, the number of surviving adult
24 females. So there's two parts to the equation,
25 the number of surviving adult females as compared

1 to the surviving calves.

2 Now just directing your attention to
3 the material in the supporting materials at page
4 85. Here at the top of page 85 in the supporting
5 materials, you see that Hydro has started on the
6 right path in terms of their analysis of the three
7 herds, part of whose territory will be traversed
8 by the Bipole III line. They assess the current
9 disturbance. Keeping in mind that once one gets
10 over 35 percent in terms of habitat disturbance,
11 some pink flags, if not red flags are raised. And
12 once one gets over 40 percent, then the colours
13 might get darker. And so you see the current
14 disturbance on the right side, the Wabowden herd
15 25.6, the Bog range 14.6. And of course the Reed
16 Lake range is the one that stands out there in
17 terms of current disturbance, somewhere between 42
18 and 43 percent, already into that area of concern.
19 Looks like a great deal of that was fire related
20 if you work your way back up the chart, but there
21 is a significant disturbance.

22 So what are Dr. Rettie and
23 Mr. Schindler's projections of the future
24 disturbance? And you can see a Bipole III impact
25 for all three of these herds, but, again, on the

1 Wabowden range, in terms of the projected
2 disturbance in the future, you see that at around
3 26 percent, the Bog range at 16 percent, and again
4 Reed Lake looking forward only five years, but
5 looking forward, in that danger zone, 43 percent.

6 So seeing that in the expert reports
7 of Rettie and Schindler, our clients looked with
8 interest toward the Lambda analysis. How is this
9 herd doing? Because really it's critical. This
10 is, as they confirmed in terms of altered habitat,
11 it is the Reed Lake habitat which is in excess of
12 40 percent.

13 So if you get to the next page, page
14 86, in terms of annual survival, you see Hydro's
15 looking at a number of herds. In there are all
16 three of the Bipole III affected herds. You've
17 got the annual survival rates of Reed Lake, the
18 Bog and Wabowden, numbers fairly comparable. But
19 at page 87 in the top right-hand corner, we get to
20 the other essential part of the Lambda
21 calculation, annual recruitment. How are the
22 calves doing? And there on the annual recruitment
23 page slide at the top of page 87, you'll see The
24 Bog, you'll see Wabowden, but you will look in
25 vain for Reed Lake.

1 And I remember putting this question
2 to Dr. Rettie in cross and I said, you have missed
3 Reed Lake? And he said, yes, I have -- and he
4 says, no, I haven't. And I said, yes, you have.
5 And I think I garnered a laugh from panel member
6 MacKay. And then he confirmed that he had not
7 presented that information. Where is Reed lake?

8 And I put that -- and then you get
9 down to annual rate of increase, and again you'll
10 see The Bog and Wabowden -- annual rate of
11 increase of course is Lambda -- but no Reed Lake.
12 Where is Reed Lake? And of course, it can't be
13 there because you are missing half of the
14 equation, annual recruitment.

15 So there you have Reed Lake, one of
16 the three affected herds, the one with the most
17 habitat disturbance, glaringly omitted from the
18 August 2012 report of Rettie and Schindler.

19 And again at page 78 of my overview,
20 in cross-examination at pages 2791 and 92, the
21 witnesses confirmed that their August 2012 report
22 did not explore the recruitment in Lambda for Reed
23 Lake.

24 And just to highlight the glaring
25 omission, if you turn to page 88 in the supporting

1 materials, again here is your evaluation of the
2 final preferred routes. So results of cumulative
3 effects analysis, they are at the top. We have
4 got Reed Lake again in that area of concern, well
5 in excess of 35 percent, in excess of 45 percent.
6 So there they are. They are looking good for that
7 part of the analysis.

8 And then the evaluation of the FPR at
9 the bottom, looking at again, Lambda, you see Bog,
10 you see Wabowden, but where is Reed Lake?

11 And so from our client's perspective,
12 a glaring omission in the August 2012 report.
13 Because if there's any herd one would have
14 presumed that Hydro would have wanted to keep an
15 eye on, it's one with a disturbance rate,
16 cumulative disturbance level in excess of
17 40 percent.

18 In our client's view, that is a gaping
19 hole in the assessment, and one that leaves it
20 unsafe and unreliable to conclude that there is no
21 significant adverse effects on boreal woodland
22 caribou. It doesn't mean there is. But this, in
23 our client's view, is a notable deficiency in the
24 evidence.

25 And this was pointed out to Rettie and

1 Schindler way back in cross-examination, I suspect
2 it was October 30th, 31st, or November 1st. To my
3 client's knowledge, no updated information has
4 been provided but we certainly would love to be
5 corrected by Manitoba Hydro.

6 At page 79, our clients outline two
7 other concerns with the caribou CEA. And
8 remember -- and the first, the top of page 79
9 relates to prospective modeling of fires. And
10 remember what Hegmann said yesterday, we can do
11 that. Remember what the Alberta guidance document
12 says, you know, that is a good thing. Remember
13 Reed Lake, 32 percent of their disturbance was
14 fire related. One would have thought that put
15 into this prospective cumulative effects
16 assessment, Manitoba Hydro's experts would have
17 modelled, done some scenarios in terms of fire.

18 You'll see at page 2817 of the
19 transcript that I posed to Mr. Schindler, in
20 assessing the prospective cumulative effects on
21 woodland caribou, "You excluded fires in the
22 prospective time period?" And he confirmed that,
23 "Yes, we did."

24 At the bottom of that page, you can
25 see I am again obsessing about vegetative

1 management scenarios, and Schindler confirmed that
2 they were not performed.

3 In fairness, if you look at the rest
4 of their answer, they'll say that their buffer
5 zones are sufficient to allow for that. But our
6 clients would vehemently disagree with that. Good
7 cumulative effects assessment, recognizing the
8 core nature of vegetative management, would want
9 to look at scenarios. That's certainly their
10 submission. You don't have to just live by the
11 government guidelines.

12 At page 80, if you will recall from my
13 lengthy preamble, one of the significant adverse
14 effects our clients were inviting this Commission
15 to find was that the Bipole III project, in
16 combination with past, present and future
17 developments, is likely to have significant
18 adverse effects on the traditional land and people
19 of Fox Lake, TCN and York Factory.

20 And at page 80 through 87 of our
21 overview, our clients really highlight why we
22 think that is, A, a well justified conclusion, and
23 B, a critically necessary conclusion.

24 And our clients have previously
25 expressed their admiration for the outstanding job

1 that Fox Lake did in their analysis. I think
2 Ms. Desorcey has threatened to replace me with
3 them. But when we went back and reread the
4 analysis of TCN, we also have some kudos for them.
5 It was a good piece that deserves rereading
6 because there's some good stuff in there.

7 At page 80, Fox Lake gets credit for
8 the best line in the whole hearing, pages 80 and
9 81. They talk of their historic cumulative
10 effects and they describe them as effects that are
11 largely unmonitored, unmitigated and
12 un-rehabilitated. I know Mr. Madden and
13 Mr. Meronek consider themselves wordsmiths, but
14 I'm liking that in terms of language.

15 At page 80, here is the heart of the
16 Fox Lake submission.

17 "It is impossible for Fox Lake to view
18 the Bipole III project as discrete and
19 unrelated to past and future projects.
20 Bipole III is part of a process of
21 hydroelectric development that began
22 in the 1960s and continues today.
23 With each additional project, Fox
24 Lake's homeland is more and more
25 altered and destroyed by projects,

1 with the consequence that existing
2 environmental problems are compounded
3 and magnified."

4 Fox Lake goes on to say that they have reviewed
5 Hydro's EIS and identified major flaws both in its
6 method and conclusions.

7 Page 81, there's really a summary of
8 some historic cumulative effects, and right at the
9 bottom is the quote that I am so fond of.

10 "To date these remain largely
11 unmonitored, unmitigated and
12 un-rehabilitated."

13 At page 82 we simply highlight two
14 critical concerns, two critical flaws identified
15 by Fox Lake in terms of the Hydro EIS. And the
16 first critical flaw really echos the concern of
17 the Manitoba Metis Federation with regard to their
18 bread basket. Fox Lake says the EIS is flawed
19 because it treats the impacts as though they were
20 similar throughout the entire project's footprint,
21 and as though they were distributed equally among
22 all communities and all landowners along its
23 route. The EIS fails to adequately describe the
24 extensive and intensive impacts that have and will
25 occur in this small geographic area.

1 Powerful statement echoing the
2 concerns presented by the MMF.

3 At the bottom of page 82, again Fox
4 Lake flags what it believes to be Hydro's failure
5 to acknowledge the interconnectedness among
6 projects as a second major flaw. And I suspect
7 that the Bipole III Coalition might have some
8 sympathy for that.

9 Pages 83 through 85, we go to some
10 length to discuss some of what TCN characterizes
11 as the cascading impacts of Hydro development.
12 And on page 83, they make the astounding
13 assertion, which our clients accept as fact, that
14 almost 124,000 acres of land in our resource area
15 have been affected by 35 Hydro projects, including
16 generating stations, converter stations,
17 transmission lines, including Bipoles I and II,
18 power lines, roads and rail spurs, and other
19 related infrastructure, an astounding assertion,
20 and also support for the contention of Gunn and
21 Noble that when you look at scoping the impacts of
22 Bipole III, you've got to take a peak, you've got
23 to assess those other great linear disturbances,
24 Bipoles I and II.

25 And TCN summarizes the impact of the

1 Bipole related activities on its traditional
2 lands.

3 And at page 84, TCN takes head on
4 Hydro's very questionable assertion that Bipole
5 III will not cause any significant residual
6 effects. TCN says they find that very difficult
7 to understand or accept.

8 And if you go to lines 18 to 22, you
9 see:

10 "For TCN, the fragmentation and the
11 resulting cascading range of impacts
12 caused by 437 kilometres of
13 transmission lines through our
14 ancestral homeland will cause, in any
15 ordinary sense of the word,
16 significant impacts."

17 And just above that quote, TCN is
18 saying where does Manitoba Hydro get this
19 definition of significance? Only significant if
20 effects are longer term, greater than 50 years,
21 have a large magnitude, easily observed, et
22 cetera. And in that language, TCN echos the heart
23 of the critique of Mr. Skinner on behalf of CAC
24 Manitoba, and also the critique of Ms. Stewart on
25 behalf of the MMF, raising significant question

1 about the utility and the reliability of the --
2 the utility and reliability of the definition of
3 significance employed by Manitoba Hydro.

4 At page 85, again, TCN takes head on
5 Hydro's determination of cumulative effects. It
6 asserts that the 35 Hydro projects in RRMA had
7 been determined to have no temporal effect and are
8 largely included in the environmental baseline.
9 To TCN, these projects may have occurred in the
10 past, but their effects are felt every day. To us
11 they are cumulative to the understood sense of the
12 word. Each project has caused additional effects
13 which have accumulated over the last 50 plus
14 years. Bipole III will cause additional impacts.

15 And certainly from our client's
16 perspective, that is a persuasive argument and one
17 that they support.

18 At page 86, there's a little excerpt
19 from a discussion we had with both Mr. Lowe, and
20 preceding that with Councillor Spence. And this
21 is the one quote that I haven't cut and pasted
22 from the transcript, but I have typed in. So I
23 certainly urge the Commission to go back and make
24 sure that I have accurately reported it. But a
25 message, it states:

1 "A message that came through very,
2 very clearly from all of those
3 interviews is the human impacts, the
4 stress."

5 And this is Mr. Lowe speaking. And then there's
6 words that I have omitted.

7 "I have heard members speak of, and
8 the obligation that have...",

9 I think that should say they have,

10 "...to care for the land and the
11 waters, and the sense that not having
12 done so, or not to do so is an impact
13 of the highest order. And it's an
14 obligation that they feel to the land
15 and waters and to future generations.
16 And I would say that there's some very
17 deep feelings around that."

18 And certainly profound insight suggesting the
19 stress that may inure to traditional peoples in
20 terms of the impacts of these, the stress or the
21 psychological impacts, or the spiritual impacts of
22 these large projects and its impact on the land to
23 which they feel responsible for. And I can't do
24 justice to it, but I think it's an important
25 quote. And it's important support for Dr. Lee and

1 for Ms. Orenstein who say, when you're looking at
2 the impacts of these projects, you would be remiss
3 if you don't look at mental stress, you would be
4 remiss if you didn't look at general psychological
5 well-being.

6 Page 87, I have put in some quotes
7 from York Factory to similar effect.

8 So at page 88, you see our client's
9 recommendation that the CEC accept the evidence of
10 Fox Lake, TCN and York Factory, that the effects
11 of Bipole III, in combination with the effect of
12 other Hydro projects has, have, a significant
13 adverse effect upon traditional lands, traditional
14 ecosystems and traditional people.

15 Mr. Chair, how am I doing with my time
16 schedule here?

17 THE CHAIRMAN: Well, it's 4:35. You
18 had indicated during the break that you'd probably
19 be done between 5:00 and 5:15, so...

20 MR. WILLIAMS: We're looking not bad.
21 No moral certitude, though.

22 We're going to move into some shorter
23 areas here. At page 89, we identify some of what
24 our clients consider to be weaknesses in the
25 analysis of Ms. Hicks on behalf of Manitoba Hydro

1 in terms of the impacts, or in our client's view,
2 things that she failed to consider in doing her
3 analysis for Manitoba Hydro.

4 On page 89, there's no baseline
5 indicators for gastrointestinal disease outbreaks.
6 She confirms that. And also no baseline for
7 sexually transmitted disease in the area. And
8 you'll recall from the evidence of Dr. Lee, who is
9 a well known expert in health impact assessment,
10 that based upon his experience in conducting these
11 assessments for major companies such as Shell Oil,
12 and around North America, that those are
13 significant risks, in his experience, that you
14 would expect to have when you juxtapose a
15 construction camp of 500 people within relatively
16 close proximity to communities such as Gillam and
17 Fox Lake.

18 At page 90 our clients identify some
19 more notable omissions in their submission in
20 Ms. Hicks' analysis. You don't present baseline
21 indicators for perceived life stress or self-rated
22 mental health, and she confirms that's correct.

23 Now, I had a very brief conversation
24 and cross-examination of Ms. Hicks. And she took
25 me on, on this, because she said, I don't need to.

1 And she read -- I remember making, you'll see in
2 the transcript, she read off her little notes.
3 And essentially, while acknowledging she is not an
4 expert in health impact effects, Ms. Hicks
5 asserted that there is not an ascertainable effect
6 from the project related to mental well-being.

7 And you see at page 91, I am asking
8 her, is she an expert?

9 "Are you presenting yourself as an
10 expert in the health impact effects of
11 large natural resources projects like
12 this?

13 No, I'm not an expert."

14 But on a previous page she had stated there was
15 not an environmental effect from the project that
16 can be attainable or ascertainable -- assertable
17 to mental well-being. So that was her
18 justification. There wasn't a pathway, an effect
19 that we can relate between the project and mental
20 well-being.

21 And certainly, if the words of the
22 Tataskweyak Cree Nation in their presentation are
23 not enough to contest that perspective of
24 Ms. Hicks, I direct your attention in the
25 supporting materials to page 92 of the supporting

1 materials. And there you will see a two-page
2 excerpt from the National Energy Board guidelines,
3 that's pages 92 and 93, and under the heading
4 social and cultural well-being.

5 Now, Ms. Hicks can confirm that she
6 was familiar with this document. And on the
7 right-hand side you'll see the guidance of the
8 National Energy Board pointing out that social,
9 cultural effects on local communities may arise,
10 including an increase in temporary or permanent
11 residents, location of construction camps within
12 or beside the community, significant increase or
13 uneven distribution of income, or disruption to
14 cultural traditions and institutions. And then
15 they outline the potential effects from the
16 sources listed above may include, right at the
17 first bullet:

18 "Stresses on community, family and
19 household cohesion."

20 And also substance abuse or illegal or other
21 potentially disruptive activities.

22 So Ms. Hicks, notwithstanding the
23 reference to the National Energy Board, just
24 continued to assert that there's not a link
25 between these developments and mental health

1 effects, therefore, her report was not deficient
2 in failing to collect this importance.

3 Page 93, we simply note that Lee and
4 Orenstein beg to differ. And really, these are
5 among the cutting edge experts in this emerging
6 field in North America, perhaps in the world. And
7 their resumés are on the record, but you will
8 recall that they had been in Brazil doing
9 presentations for the World Health Organization.
10 Ms. Orenstein is writing a book on health impact
11 assessment. Dr. Lee's practice focuses on these
12 northern and remote communities, and along with
13 his masters in community health from Berkley.

14 What was Dr. Lee's expert advice at
15 page 94? Because I put to him, is there any
16 controversy here about the suggestion that
17 resource development process can bring changes to
18 social and cultural well-being? He says there's
19 absolutely not. And he again refers to the
20 National Energy Board.

21 What does Dr. Lee -- at page 95 we put
22 in his assessment of Ms. Hicks' work. He notes
23 that stress and mental health are more or less
24 just passed off as being non significant.
25 Infectious disease gets pretty well no mention.

1 But he says that these are things within the field
2 of health impact assessment you would always scope
3 into a report.

4 And I put in, just for your benefit,
5 references to the transcript where he discusses
6 both mental health and infectious disease, and his
7 experience and analysis from BC.

8 And certainly on this issue, we
9 recommend that the CEC prefer the evidence of Dr.
10 Lee and Ms. Orenstein, and find that there are
11 significant gaps in the analysis of potential
12 effects of the project related to human health.

13 At pages 96 through 101, we discuss
14 the work of Dr. Gordon Brown, who has provided
15 evidence certainly to this tribunal certainly in
16 the Louisiana Pacific proceeding. And the dispute
17 between Dr. Brown and Manitoba Hydro is in its
18 essence that his advice to the Commission is that
19 there are construction emissions that are quite
20 significant, there are direct and indirect paths
21 to known human receptors. And for that reason,
22 there would be some utility in doing a human
23 health risk assessment.

24 And at page 96, we highlight some of
25 his evidence supporting his conclusion. He talks

1 about his determination, the construction
2 emissions are quite significant. Going down
3 toward the bottom of the page, that some of the
4 chemicals emitted are quite toxic. And he says
5 that emissions will flow from terms of clearing,
6 dust generation, diesel exhaust, and the burning
7 of debris.

8 And remember that Dr. Brown knows of
9 what he speaks. His work in terms of human health
10 risk assessment, I think primarily for proponents
11 but also for government, he's done well over 80 of
12 these projects, some of the most complicated
13 issues in the Province of Alberta. He's not a
14 radical. He's not a guy that is tilting at
15 windmills. He's giving the advice to the
16 Commission that he would give to the many large
17 proponents that he would more typically provide
18 expert evidence for, recognizing the potential for
19 significant impacts, and recognizing page 97 his
20 conclusion that there are direct and indirect
21 paths to known human receptors, this is something
22 that should be looked at.

23 And at pages 98 and 99, Dr. Brown
24 notes that, and I'm directing your attention to
25 lines seven, eight and nine at page 98, he notes

1 that Hydro is proposing to mitigate this effect,
2 and recalls a reference from Hydro suggesting that
3 most of the debris would be burned during the
4 winter months. And he says, I've got a problem
5 with that. I don't think that's a very good idea,
6 because of the fact that typically in the winter
7 months, that's when you'll get very stable
8 atmospheric conditions that do not result in very
9 good dispersion. And again, he elaborates on that
10 on page 99.

11 The simple point, the value of a
12 technique and approach, as espoused by Dr. Brown,
13 just practical good advice to Manitoba Hydro. You
14 think you are mitigating the problem, you run the
15 risk of exacerbating it.

16 I won't dwell on Dr. Brown, I probably
17 haven't done him justice here. But at page 101,
18 we certainly are recommending to the Commission
19 that they find, in terms of the construction of
20 Bipole III, that there are direct and indirect
21 exposure pathways in terms of the emissions from
22 clearing, dust generation, diesel exhaust, and the
23 burning of debris, and that a risk assessment is
24 justified.

25 Page 102, our clients briefly discuss

1 significant adverse effects on the practice of
2 modern agriculture. Mr. Meronek did an
3 outstanding job this morning, and I certainly
4 don't need to duplicate his words, except for to
5 make two small points. Like Mr. Meronek, I urge
6 you to read pages 103 to 105 of Mr. Nielsen's
7 report, the technical report for Manitoba Hydro.
8 Because it's quite persuasive, although persuasive
9 from the Bipole III perspective, less so from the
10 Hydro perspective.

11 And secondly, I just want to
12 underscore that from our client's perspective, CAC
13 Manitoba has been working extensively in the
14 Manitoba First and associated campaigns, really
15 focusing and underscoring the importance of local
16 sustainable agriculture. And the analysis of the
17 Bipole III Coalition, and the deep attachment to
18 their communities and to their land that our
19 clients saw, not just in Winnipeg, but when
20 Ms. Desorcey attended in rural hearings, really
21 struck our client, and was in a way a bit of a
22 revelation. And certainly our clients commend the
23 Bipole III Coalition for their insight, and
24 recommend that the CEC find significant adverse
25 effects on modern agricultural practices.

1 We come to the work of Mr. Skinner at
2 pages 103 to 105 of the overview. And you might
3 also wish to turn in the supporting materials to
4 page 95. This point has been well expressed to
5 the hearing. But in this visual display,
6 Mr. Skinner, a well-known wildlife practitioner
7 from Alberta, again primarily works for
8 proponents, highlights the challenges that he has
9 with Manitoba Hydro's definition of significance.
10 And if you look to the top right, the bright red
11 box, that's your one in 27 probability of a
12 significant impact. And you will remember
13 Mr. Skinner's evidence, he was a kind of a
14 grizzled veteran, soft spoken, not very dramatic,
15 certainly not after Dr. Gunn and Dr. Noble, but
16 some good common sense concerns in terms of this
17 definition of significance, and also his spidey
18 sense was tingling about the wildlife assessment.
19 And at page 103, in the quote in the middle of the
20 page he says:

21 "A key point here is that using the
22 criteria that you used in the Bipole
23 III Environmental Impact Statement
24 makes it almost impossible to define
25 an impact as significant for

1 wildlife."

2 And Skinner takes issue with the fact that Hydro
3 used a one-size-fits-all approach to significance.
4 The same one for wildlife as for other features of
5 the environment. And he points out to the board
6 that some other environmental impact assessments
7 do use discipline specific criteria. So it's not
8 an impossibility.

9 And you know, the grizzled veteran,
10 not flashy, but he says, I'm kind of concerned,
11 they examined 30 wildlife species and groups and
12 not one of those was found to have any significant
13 impact associated with it. And again he
14 questions, were the criteria used for wildlife
15 appropriate?

16 And Mr. Chair, you probed Mr. Skinner
17 on this and, you know, I think in response to a
18 question by you he described Hydro's work on
19 wildlife as fair. And so I went back at him in
20 reply and I said:

21 But Mr. Skinner, just given the
22 shortfalls you have identified, can we
23 safely conclude that there are no
24 significant impact ratings for all
25 wildlife species and groups?

1 And he says:

2 "No, I don't think we can."

3 That's just a caution about the evidence in terms
4 of wildlife.

5 And at page 105, again, we see Skinner
6 being supported by Ms. Stewart, who we certainly
7 consider to be a strong witness in this hearing.

8 At pages 106 through 108, our client
9 describes some concerns with what has variously
10 been described as the MMF bread basket, the Pine
11 Creek's backyard, certainly as well impacting to
12 the north the Wuskwi Sipihk First Nation's
13 declining traditional lands. Our clients note
14 that clearly this is an area that is under
15 significant stress. The name Louisiana Pacific
16 popped up from time to time. Clearly, there's
17 potential threats to the blueberry patch, which
18 our client has certainly learned in this hearing
19 means something far more than I can do it justice
20 to. And I won't attempt to, except for to say
21 that our clients accept the powerful assertions by
22 First Nations people and by Metis people.

23 We note as well that in this
24 territory, moose are in precipitous decline, and
25 that the causes of that seem to be uncertain.

1 Our clients note as well, they think
2 Mr. Schindler, in particular, of the Hydro
3 witnesses has some credibility issues. They
4 weren't very impressed with his first report on
5 caribou. They think that in terms of the western
6 side of the province, the bread basket or the
7 backyard, that he's been in a bit of a rush to
8 judgment, and so our clients don't take a lot of
9 comfort at a general level from his analysis.

10 And at page 107, Mr. Mills was so
11 diligent on the bison enclosure that we simply
12 highlight what we understand to be a really
13 thoughtful point by him. We suggest that we
14 understand that you are of the view that there is
15 a gaping hole in terms of Manitoba Hydro's
16 knowledge related to the bison enclosure, and he
17 says, no, it's not Hydro's knowledge, it's
18 everyone's knowledge. We don't know, Hydro
19 doesn't know, Conservation doesn't know. And he
20 certainly suggested that that might have
21 implications for the population of moose.

22 Without going into -- other parties
23 have dealt with this carefully -- our client does
24 recommend -- there's a lot of uncertainty in this
25 area. And before I get there, I do want to just

1 direct your attention to Conservation in the
2 supporting materials, Mr. Chair and members of the
3 panel, page 98.

4 Again, our clients are confident that
5 much of the criticism of Conservation that they
6 received in this hearing is well deserved. But
7 they also note that there has been some really
8 important stuff said by Conservation all along in
9 terms of both the western bottleneck and the
10 Wabowden area. And they direct your attention to
11 page 98, under one, the second bullet, still some
12 pretty significant concerns. The scientific
13 literature and previous wildlife branch experience
14 suggests that the development of either the final
15 preferred route or the adjusted final preferred
16 route will create human access and wolf predation
17 challenges for the management of moose in GHA 14.
18 A pretty significant and stern warning from
19 Conservation, in our client's submission.

20 And if you turn to the next page, page
21 99, again towards the bottom, you'll see that same
22 warning repeated.

23 The scientific literature, and
24 previous wildlife branch experience,
25 suggests that the development of

1 either the FPR or the AFPR will create
2 human access and wolf predation
3 challenges for the management of moose
4 in GHA 19A and 14A.

5 Our client again flags this as a
6 matter of concern, and they flag this whole area
7 as an area of significant uncertainty, and
8 certainly they are not as certain as they are on
9 the York Factory traditional lands, but they think
10 that clearly there is potentially significant
11 adverse effects being brought into play by this
12 project in combination with past, present and
13 future developments, in terms of the berry patch
14 and other traditional harvesting practices, and in
15 terms of the moose population that is in
16 precipitous decline. And our client is certainly
17 not confident that the record demonstrates that
18 there is no significant adverse effects that can
19 not be mitigated. This remains an area of concern
20 based upon our client's overview of the record.

21 At pages 109 to 115, we offer some
22 commentary on adaptive environmental management.
23 And Drs. Diduck and Fitzpatrick did such a good
24 job in this hearing, I certainly am not going to
25 do justice to their information. I do want to

1 note the more collaborative approach employed by
2 both Hydro and CAC witnesses, again, the totally
3 unprecedented meeting in the middle of the hearing
4 with Hydro experts that allowed both parties to
5 have a better insight into the practices. And our
6 client certainly -- and our experts were not
7 giving Hydro's efforts on adaptive management an
8 A, they weren't giving it a B plus or a B, but you
9 can tell Dr. Diduck was leaning towards a C plus.
10 You know, he's a pretty strict marker. You know,
11 really, there is a lot of concerns of our client,
12 but this certainly was one of the stronger areas
13 of Manitoba Hydro's evidence. And certainly for
14 deeper insight, we recommend the evidence of
15 Diduck and Fitzpatrick to you.

16 At pages 110 and 111, we highlight
17 some ongoing concerns expressed by Dr. Diduck.
18 The one I want to draw the panel's attention to is
19 on page 111. He raised the concern of a notable
20 weakness being the lack of open and transparent
21 detailed plans regarding active experimentation.
22 And Hydro has, it sounds like there's something
23 exciting on the go in terms of vegetative
24 management and wildlife corridors. But there's
25 nothing on paper. And that, for our client is a

1 big concern. The proof will be in the pudding. I
2 think Mr. Meronek said that 12 times today, I'll
3 say it the 13th.

4 The noble intentions are very
5 laudable, but these are such key areas, as
6 Dr. Gunn's evidence, and Dr. Diduck and
7 Dr. Fitzpatrick's evidence makes clear, and
8 certainly our clients would feel better about this
9 assessment if there was something in writing that
10 we could assess, and critically assess.

11 And we note as well that Ms. Stewart,
12 at pages 4386 and 4387, has expressed a very
13 similar concern to Diduck and Fitzpatrick.

14 So while the theoretical intentions of
15 Hydro in terms of active adaptive management
16 experimentation in these critical areas seem
17 laudable, they are not on paper, they are not
18 possible to test.

19 Dr. Fitzpatrick shared with this
20 Commission her really intriguing and ground
21 breaking work on independent oversight monitoring.
22 And at page 112, we have a quote from her when she
23 highlights, when should we be looking for
24 independent oversight?

25 "Should be considered when there is

1 overlapping mandates, where different
2 branches of government are proponents
3 and regulators, where there are
4 questions of issues of trust, and when
5 there are questions of geography, both
6 in time and space."

7 In other words, Bipole III, the hinterland
8 projects of Manitoba Hydro seem like perfect
9 candidates in terms of the policy challenges
10 presented by a situation where government is both
11 proponent and regulator, and long-standing issues
12 of trust which have been well documented in this
13 proceeding.

14 We all had lots of fun with
15 Dr. Gibbons' question of who guards the guardians?
16 At page 113, we simply highlight the importance of
17 what independent oversight is all about. To
18 demonstrate accountability for the appropriate,
19 proper and intended use of resources, to make sure
20 that the system monitoring that's laid out is
21 appropriate, and that there is a dearth or a lack
22 of implementation gaps. And in our client's
23 submission, Dr. Fitzpatrick made a powerful
24 submission in terms of the potential of
25 independent monitoring, and certainly our clients

1 endorse that recommendation.

2 So at the bottom of page 114, you'll
3 see one recommendation of our client is that Hydro
4 complete its adaptive management plans for
5 wildlife corridors access, vegetative management,
6 and independent monitoring concert with Manitoba
7 Conservation, and affected First Nations, and the
8 MMF.

9 What's missing is our client's
10 endorsement of the principle of independent
11 oversight for this project. Our clients are of
12 the view that the time has come. Dr. Fitzpatrick
13 has given ample insight into how to make it
14 affordable, accountable and successful.

15 The last point on adaptive
16 environmental management our clients wish to
17 emphasize is that good adaptive management -- this
18 is at page 115 of the outline -- cannot compensate
19 for material flaws in the effects analysis or
20 fundamental flaws in the CEA.

21 And I ask that same question to
22 Dr. Gunn, to Dr. Skinner, to Ms. Stewart and to
23 Dr. Diduck. I liked all their answers. I chose
24 to put in one of Dr. Diduck's.

25 "If an impact assessment fails to

1 identify in a fundamental way impacts
2 on a baseline, or impacts on a system,
3 then the mitigation strategies that
4 are put in place could be misguided,
5 the adaptations that are used to
6 adjust the mitigation will be
7 misguided, will just miss the mark."

8 He used his analysis of running, going out
9 jogging. You have to read the whole analogy to
10 see really see how effective it is. But his point
11 was, if the house is to collapse, there's no
12 adaptive management approach that's going to help.
13 You can't use an adaptive approach to fix a flawed
14 assessment. And certainly there's words from, I
15 called him Dr., but Mr. Skinner to that effect and
16 other witnesses as well.

17 116, we're not going to deal with
18 route selection, that was well addressed by
19 Mr. Meronek.

20 Just a couple of final points before
21 we get to our conclusion. We anticipate tomorrow
22 that Manitoba Hydro will say that CAC's
23 recommendations are unduly risky, because they put
24 the timing off of Bipole III by a year, perhaps
25 two years.

1 In assessing Hydro's submissions, our
2 clients believe that context is important. And
3 it's important to understand that this, the Bipole
4 III solution to Riel has been on and off Hydro's
5 agenda for over two decades, back to Limestone,
6 back to the old Conawapa that was to serve
7 Ontario, and Mr. Mazur confirmed that. And he
8 stated indeed that it was scheduled at one time
9 for early 2000.

10 And if you recall our client's
11 cross-examination of Mr. Mazur, that solution was
12 available, as well as a partial approach way back
13 at the time of Limestone. But it was rejected at
14 the time in part on the grounds of expense. And I
15 think the word used in Hydro's backgrounder was,
16 it would have a significantly negative effect on
17 Limestone's economics.

18 And Mr. Meronek made this point today.
19 Think of even after the wind event of 1996. How
20 many years did it take to get Bipole III back on
21 the books? What, about 2001?

22 At pages 118 again, we note that Hydro
23 rejected what it describes as an attractive option
24 of the relocation of Bipole III to Riel,
25 notwithstanding the reality that it would offer a

1 quicker solution to Dorsey related risks. We
2 don't mean to suggest it would address their other
3 concerns related to the corridor, but certainly
4 the urgency presented by Manitoba Hydro, given
5 this long history of this project coming off and
6 on the books, has to be taken with a pretty large
7 grain of salt.

8 At page 119 we just make the point
9 that the load forecast in which the original EIS
10 was based was materially overstated. And this was
11 the 2011 load forecast. And you can recall Hydro
12 putting great stock on the risk of a 1500-megawatt
13 deficit in 2017. An updated load forecast, the
14 2012 one suggests that now that apparent tipping
15 point will not be reached until 2019. And
16 Mr. Derry, on behalf of the Coalition, again
17 offers some pretty compelling suggestions that
18 even this most recent load forecast is overstated,
19 especially when you look at the history of load
20 forecast growing at a bit over 40 megawatts a
21 year, and now this aggressive forecast of
22 83 megawatts a year out into the future.

23 At page 120, to similar effect, we
24 cite the precedent from the independent regulator
25 for Manitoba Hydro, the Manitoba Public Utilities

1 Board. This is from board order 5-12, pages 122
2 and 123, section 13.6, board findings.

3 "It is the board's view that Manitoba
4 Hydro's most recent domestic load
5 forecasts for the longer term: do not
6 adequately recognize the longer-term
7 implications of the recent economic
8 downturn; may well be overly
9 optimistic given the stagnation and/or
10 lack of growth over the last five
11 years in the industrial sector;
12 particularly coupled with the actual
13 pulp and paper plant closure and
14 imminent smelter closures; do not
15 support the significantly advanced
16 dates for new generation, but rather,
17 in the absence of the new contracts,
18 suggest a 2024/25 in-service date for
19 domestic load."

20 Our simple point being, there is ample support for
21 the conclusion that Manitoba Hydro's load forecast
22 is aggressive.

23 Now, that's the risk from the Hydro
24 perspective, and our clients don't want to be
25 misunderstood. You hear Mr. Tymofichuk, you know

1 he's got a reliability concern. Our clients
2 certainly believe that the motivations for this
3 line are much more complex, involving economic
4 opportunity as well. But we won't dwell on that
5 in this hearing.

6 But what about the risk on the other
7 side? What are the consequences of not asking
8 Manitoba Hydro to improve its analysis? Dr. Noble
9 answered this I think very eloquently. This is at
10 page 121. I would assume that for any project
11 that the Minister -- and I'm paraphrasing -- has
12 to weigh the need and the merits and the benefits
13 against what the costs are, environmental
14 socioeconomic costs. I would assume that applies
15 to any project that choice has to be made. I
16 guess in this particular case what the Minister is
17 missing is information on the cumulative effects
18 of the project. So he would have to make that
19 choice and that decision based on incomplete
20 information. And so hence our recommendation that
21 this is an important piece, because it's not
22 possible for the Minister to understand the
23 effects or the significance of the effects of the
24 project without the cumulative effects analysis.

25 From our client's perspective, delay

1 is necessary, at page 122. If Mr. Madden has his
2 way, it may be inevitable, but it is not fatal.
3 And again, not in any way trying to underplay the
4 legitimacy of Mr. Tymofichuk's feelings and
5 emotions.

6 Our client couldn't let this hearing
7 end without highlighting and objecting to a
8 decision by the Minister of Conservation that has
9 impaired our client's ability to fully assess and
10 recommend on this project. Our client has come to
11 the conclusion that there are some significant
12 adverse effects. It's come to the conclusion that
13 there are some potential uncertainties that make
14 it unsafe to rush to judgment on this project.
15 And normally our client, in the way our client
16 looks at these issues would say, we would want to
17 do what Dr. Noble said, measure those effects,
18 those significant adverse effects and the risks
19 and uncertainties, against the need for the
20 project and the alternatives to the project.

21 And our client does not mean to be
22 critical of this panel in any way. You have
23 undertaken an admirable analysis of the issues,
24 given the constraints of the Minister's decision.
25 But our client believes very strongly that an

1 important part of due process, an important part
2 of proper modern environmental analysis has been
3 left out of this equation. And in our client's
4 most respectful view to the Minister, this is bad
5 public policy, unfair to their ability to develop
6 an informed position, and impairs their ability to
7 make meaningful representations.

8 At pages 124 and 125, our client just
9 asks the rhetorical question, is it radical to
10 suggest that Hydro be asked to improve its
11 assessment prior to a final decision being made?
12 And our clients say not at all. Gunn and Noble
13 have given you examples from the Cheviot coal mine
14 matter. Ms. Stewart gave you an example from the
15 northern impact review board. Mr. Berrien, at
16 page 125, was much more blunt, he just said,
17 Alberta, if they got this kind of application,
18 they'd just send it back.

19 And so from our client's perspective,
20 it's not radical for an independent tribunal to
21 say you need to do better before we make a
22 recommendation. The environment sustainability,
23 proper environmental management is just far too
24 important.

25 Mr. Chairman, I have not forgotten

1 your question. I just want to talk to my client
2 for one second.

3 THE CHAIRMAN: Mr. Williams, would you
4 like to sleep on it overnight and provide a very
5 brief commentary in the morning?

6 MR. WILLIAMS: That would be fine,
7 Mr. Chair. There's just one thing that I did want
8 to just note as well. We didn't incorporate in
9 this analysis the recommendations of our
10 individual experts. Our client has reviewed those
11 recommendations and is supportive of them. I
12 could compile them if the panel found it
13 beneficial, but I'm not proposing to unless the
14 panel would like us to do that.

15 One that I do believe our client did
16 ask me to highlight is one of Drs. Gunn and Noble,
17 and it flows from a discussion that Ms. MacKay had
18 with Mr. Hegmann yesterday. And it relates to a
19 regional cumulative effects assessment, related to
20 certainly the Lower Nelson and associated areas.
21 And our clients just want to reiterate, A, that
22 they believe that within the limits of a project
23 specific assessment, a much superior and assessed
24 cumulative effects assessments is demanded. But
25 for a number of years now, our client has been

1 flagging the concern that we're not getting the
2 full picture of what's going on in that region.

3 And the evidence of TCN and, you know,
4 the insight into 35 separate Hydro related
5 projects really brought that to our client's
6 attention.

7 And so our client, certainly realizing
8 that it's not related to the project specifically
9 but we do want to flag that recommendation of
10 Dr. Noble that we could do better in Manitoba, and
11 that certainly in terms of the Lower Nelson and
12 the large linear disturbances such as Bipoles I,
13 II and III, something might be required. And
14 certainly that's something she asked me to bring
15 to the panel's attention.

16 THE CHAIRMAN: Thank you. I think
17 that if you could do a compilation of your
18 client's recommendations, that would be very
19 helpful. We don't require it by tomorrow, but a
20 few days into next week, we would close the
21 record.

22 MR. WILLIAMS: We'll do that. And I
23 think I'll shove it off to my friends at Hydro
24 just to make sure that, it will only be
25 recommendations, there will be no rationale

1 attached, but I just want to make sure that they
2 are comfortable with what --

3 THE CHAIRMAN: All we need is the
4 recommendations.

5 MR. WILLIAMS: And subject to that
6 million dollar question that you posed, those
7 close our submissions.

8 THE CHAIRMAN: Thank you very much,
9 Mr. Williams. And I'll take this opportunity,
10 although we'll hear from you again tomorrow, to
11 thank you in particular for your representation of
12 your client, and also your client, Ms. Desorcey,
13 and the CAC Manitoba for your very diligent and as
14 always excellent participation and contributions
15 to our process. So thank you.

16 MR. WILLIAMS: Thank you very much.

17 THE CHAIRMAN: Okay. That brings us
18 to the end of a very long day with a lot of
19 information placed on the table.

20 Tomorrow morning, we will have
21 Mr. Williams' brief definitions of best practices.
22 We will then have a closing argument from the
23 Green Party of Manitoba. And I thank Mr. Beddome
24 for agreeing to postpone it until tomorrow. And
25 then we will hear Hydro's final argument and

1 comments, and that will close the hearings. It
2 probably won't close the record. We will agree on
3 a day tomorrow when that will be closed, it will
4 be a few days down the road, but the hearings will
5 close tomorrow.

6 Do you have documents to register,
7 Madam secretary?

8 MS. C. JOHNSON: Just a few today. I
9 have MH 128 is a response to undertaking to
10 Mr. Meronek regarding the southern loop around
11 Winnipeg. PFN number 9 is Chief Hudson's remarks
12 this morning. CAC 13 is Mr. Meronek's closing
13 argument, and CAC 14 is his supporting materials.

14 (EXHIBIT MH 128: Response to
15 undertaking to Mr. Meronek reg
16 southern loop)

17 (EXHIBIT PFN 9: Chief Hudson's
18 presentation)

19 (EXHIBIT CAC 13: Mr. Meronek's
20 closing argument)

21 (EXHIBIT CAC 14: Mr. Meronek's
22 supporting materials)

23 THE CHAIRMAN: Thank you. We stand
24 adjourned until 9:00 a.m. tomorrow morning.

25 (Adjourned at 5:20 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

Cecelia Reid and Debra Kot, duly appointed
Official Examiners in the Province of Manitoba, do
hereby certify the foregoing pages are a true and
correct transcript of my Stenotype notes as taken
by us at the time and place hereinbefore stated to
the best of our skill and ability.

Cecelia Reid
Official Examiner, Q.B.

Debra Kot
Official Examiner Q.B.

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