

MANITOBA CLEAN ENVIRONMENT COMMISSION

MANITOBA-MINNESOTA TRANSMISSION PROJECT

PRE-HEARING

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Transcript of Proceedings
Held at RBC Convention Centre
Winnipeg, Manitoba
TUESDAY, APRIL 18, 2017

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CLEAN ENVIRONMENT COMMISSION
Serge Scrafield - Chairman
Laurie Streich - Commissioner
Reg Nepinak - Commissioner
Ian Gillies - Commissioner
Cathy Johnson - Commission Secretary
Cheyenne Halcrow - Administrative Assistant
Mike Green - Counsel

REGISTERED PARTICIPANTS

MANITOBA HYDRO

Doug Bedford - Counsel
Janet Mayor - Counsel
Shannon Johnson

DEPARTMENT OF SUSTAINABLE DEVELOPMENT

Elise Dagdick

CONSUMERS ASSOCIATION OF CANADA (Manitoba Chapter)

Joelle Pastora Sale - Counsel

MANITOBA METIS FEDERATION

Megan Strachan
Zach Davis

MANITOBA WILDLANDS

Gaile Whelan Enns
Sarah McEachern - Counsel

PEGUIS FIRST NATION

Dan Valdron - Counsel
Wade Sutherland

DAKOTA PLAINS WAHPETON OYATE

Warren Mills

SOUTHERN CHIEFS ORGANIZATION

James Beddome - Counsel
Jared Whelan

SOUTHEAST STAKEHOLDERS COALITION

Kevin Toyne - Counsel
Jim Teleglow

Scott Blonsky

1 TUESDAY, APRIL 18, 2017

2 UPON COMMENCING AT 10:00 A.M.

3 THE CHAIRMAN: Good morning everyone.
4 Welcome to our second and final pre-hearing into
5 the Manitoba-Minnesota Transmission project. I
6 wonder if I could begin by doing what we always
7 do, and asking you to put your cell phones on
8 mute. Thanks.

9 For those of you who are new to the
10 process, and I know many of you have been part of
11 these before, I would like to ask you to please be
12 ready to go every day at the start time. We will
13 be starting our proceedings on time, especially in
14 recognition of people who have traveled longer
15 distances to get here.

16 Could you please use the microphone
17 when you are addressing the group at all times
18 today? It will make it a lot easier for us to
19 hear you, of course. And be sure that you speak
20 so that the transcriber can clearly understand
21 you. And oh, I should also add, identify yourself
22 at the start of your conversations so that she
23 ascribes the remarks to the right person.

24 I would like to start with a short
25 introduction from the people at the table. And I

1 will start with the panel to my right, so I will
2 start with Reg.

3 MR. NEPINAK: Good morning. My name
4 is Reg Nepinak.

5 MS. JOHNSON: Cathy Johnson.

6 THE CHAIRMAN: Serge Scrafield.

7 MR. GILLIES: Ian Gillies.

8 MS. STREICH: Laurie Streich.

9 THE CHAIRMAN: Did you get those last
10 two?

11 THE REPORTER: Yes.

12 MS. DAGDICK: Elise Dagdick.

13 MR. TOYNE: Kevin Toyne.

14 MR. MILLS: Warren Mills.

15 MR. BEDDOME: James Beddome.

16 MR. WHELAN: Jared Whelan.

17 MR. VOLDRON: Den Valdron, for Peguis
18 as legal counsel.

19 MS. McEACHERN: Good morning. Sarah
20 McEachern from Tapper Cuddy, legal counsel to
21 Manitoba Wildlands.

22 MS. WHELAN ENNS: Gaile Whelan Enns,
23 Manitoba Wildlands.

24 THE CHAIRMAN: Excuse me. Could you
25 repeat that? The mic was off. Thanks.

1 MS. WHELAN ENNS: I imagine not
2 leaving it on long enough. Gaile Whelan Enns,
3 Manitoba Wildlands.

4 MR. ROACH: Brian Roach, articling
5 student with Tapper Cuddy, assisting Ms. McEachern
6 with Manitoba Wildlands.

7 MS. PASTORA SALE: Good morning,
8 Joelle Pastora Sale, with the Consumers
9 Association of Canada, Manitoba branch.

10 MS. MAYOR: Janet Mayor, Manitoba
11 Hydro.

12 MR. BEDFORD: Doug Bedford, Manitoba
13 Hydro.

14 MS. S. JOHNSON: Shannon Johnson,
15 Manitoba Hydro.

16 MS. JOHNSON: And on the phone is Zach
17 Davis and Megan Strachan from MMF.

18 THE CHAIRMAN: Okay. Thank you all.
19 I think we've gone around the table, so thanks.

20 You should all have an agenda in front
21 of you. Does everyone have this document? I've
22 already covered the welcome and the introductions,
23 so I will now move to the overview.

24 Sorry for that pause. We do have one
25 participant who is going to be joining us by

1 phone.

2 The purpose of our pre-hearings is to
3 set agendas, talk about timetables, and at this
4 second pre-hearing to really talk a bit about some
5 of the procedures and the process guidelines that
6 we will be following once we get into the
7 hearings. And I will come back to that in a few
8 moments.

9 We will also listen to any
10 constructive ideas on how we may improve or make
11 more efficient the conduct of our hearings.
12 Please feel free to make suggestions this morning,
13 and we will break the presentation into sections
14 so that you have an opportunity to do that.

15 We have had two complete rounds of
16 information requests with questions submitted and
17 responses filed. We kicked off that process in
18 mid January. I would like to thank all parties
19 for being very diligent in getting the requests in
20 on time, and thank the proponent for meeting the
21 timetable for responses.

22 There was an issue raised by a
23 participant related to the IR process and I will
24 address that issue later in today's session.

25 And I think that's about all I will

1 have to say on the process to date. It has been
2 moving along quite well.

3 I would like to turn the attention now
4 to the hearing schedule. The hearing schedule is
5 in draft form. It is subject to change, and you
6 will be notified of any changes. And I'm assuming
7 you're all more or less aware of the schedule, but
8 I am going to run through it very briefly.

9 It's to commence, the hearings that
10 is, in about three weeks on Monday, May 8th. That
11 first week we will be meeting during the daytime
12 from the Monday May 8th to Thursday May 11th here
13 at the Convention Centre, but not in this room.
14 We'll will be meeting in York 1 in the new part on
15 the ground floor. The second week we will meet
16 again during the daytime from Monday, May 15th to
17 Thursday, May 18th, at the Convention Centre here
18 again, but this time in the Pan Am room down the
19 hall. One of those dates, and that will be
20 Tuesday, May 16th, we will add an evening session
21 at the Convention Centre, again at the Pan Am room
22 I'm assuming, Cathy, to provide an opportunity for
23 those who are not able to attend during the day.
24 So that will be the evening of Tuesday, May 16th.

25 Now, the third week will be different.

1 Monday, May 22nd is Victoria Day, so we will not
2 be meeting. The hearing will reconvene for
3 daytime sessions in the Pan Am room at the
4 Winnipeg Convention Centre, so down the hall
5 again, on Tuesday, May 23rd and on Wednesday,
6 May 24th. So those two days we will meet in the
7 Pan Am room. On Thursday the 25th, we will again
8 begin the morning at the Convention Centre here,
9 in the Pan Am room, but we will adjourn early that
10 day to give us time to move to La Broquerie to
11 continue with an evening session that same day.
12 So that will be Thursday, May 25th at the
13 La Broquerie arena. There will be no Friday
14 session on the 26th, but there will be a morning
15 and afternoon session in the La Broquerie arena on
16 Saturday, May 27th. The hearing in La Broquerie
17 should provide the ability for those in the area
18 to attend closer to home and will also provide an
19 opportunity for those who are not able to attend
20 during the work week. We are going to
21 La Broquerie to hear from the residents of the
22 project area, that's the primary purpose. For
23 those of you who are based in Winnipeg, if you
24 want to attend, that's no problem, of course. But
25 there is no specific role for you there, other

1 than to listen to the residents from the area.
2 The panel wants to hear from the local people and
3 hear what their comments might be about the
4 project. So that will be on Thursday, May 25th in
5 the evening and Saturday, May 27th during the day
6 in La Broquerie.

7 For the fourth week there will be a
8 venue change. It'll be back in Winnipeg beginning
9 on Monday, May 29th, but it will be at the Fort
10 Garry Hotel, seventh floor, and continue there
11 with daytime sessions through to Thursday,
12 June 1st.

13 It has been necessary now to add an
14 additional week, and that will be June 5th to 8th,
15 and that will be to accommodate Manitoba Hydro's
16 rebuttal and oral final arguments. This week will
17 happen in the Pan Am room at the Convention
18 Centre, down the hall here.

19 Once the hearing is concluded, the
20 record will remain open for one week to
21 accommodate the submission of any outstanding
22 information.

23 Written submissions from the public
24 will also be accepted and the deadline for these
25 is May 29th. Any written submissions received by

1 the Commission will also be provided to all
2 parties.

3 In the Winnipeg part of the hearings,
4 we will start off on May 8th, with brief opening
5 statements, initially by the proponent, followed
6 by each of the participants. Opening statements
7 will be limited to ten minutes each.

8 May 8th, we would also welcome an
9 opening prayer by our indigenous representatives,
10 and we will let you decide among yourselves how
11 this will be facilitated. And that can be
12 arranged through Cathy. Then we will turn to the
13 thorough consideration of the environmental
14 assessment. That's the document you've all
15 received which lays out more or less what Manitoba
16 Hydro is going to cover in the two weeks that we
17 think it will take to get through Hydro's
18 submissions and the examination of those
19 submissions. They will proceed to present the
20 material in parts with questions after each part.

21 In the third week we will hear
22 presentations from participants and, as noted
23 earlier, visit La Broquerie to hear from residents
24 in the project area. We will come back then in
25 the fourth and fifth weeks to finish the

1 participant presentations, hear a rebuttal from
2 Manitoba Hydro, and closing arguments from all.
3 The record will remain open for one week until
4 noon, Friday, June 16th, to receive written
5 materials in support of closing arguments.

6 This is the schedule as we propose it
7 now. As I noted at the outset, and we will
8 re-emphasize, that it is very much in draft form,
9 more detail will be added as we approach the
10 hearings, and some aspects could and likely will
11 change. We will keep participants advised of
12 changes.

13 So that concludes a very brief summary
14 of the schedule. Are there any questions or
15 comments or suggestions regarding the hearing
16 schedule?

17 Yes, go ahead.

18 MR. WHELAN: Good morning, Jared
19 Whelan with the Southern Chiefs Organization. The
20 schedule is fairly high level and it's not super
21 detailed. I would like to go back to the
22 transcript from January 17th, page 30, line 8,
23 where I asked a question of the Chair about
24 participation of the TAC in the hearing. If there
25 has been an answer to that question, I apologize,

1 I've missed it.

2 THE CHAIRMAN: I believe the response
3 that you're looking for was in the report on the
4 last hearing. And we did decline to have the TAC
5 participate at the hearings. I think you'll find
6 it in the report.

7 MR. WHELAN: Thank you.

8 THE CHAIRMAN: Go ahead.

9 MR. MILLS: Thank you, Mr. Chairman.
10 The hearing schedule, I note week one preliminary
11 matters, Director Environmental Approvals Branch.
12 Will the director be in attendance? Will the
13 director be offering any information? Will the
14 director be available for any questions or
15 concerns that we might have?

16 THE CHAIRMAN: Yes, the director will
17 be in attendance, or a representative of the
18 director, and will explain the process that was
19 followed in reviewing the submissions from
20 Manitoba Hydro.

21 MR. MILLS: My last question was, will
22 the director be available to answer any questions
23 of the participants?

24 THE CHAIRMAN: The answer to that is
25 no, the director, and I believe that's been the

1 role at previous hearings, will give a summary of
2 the process followed, but there won't be
3 questions. Thanks.

4 MR. MILLS: For the record, the
5 unavailability of the director throughout the
6 process does challenge the sense of fairness and
7 transparency which was committed to my client.
8 And we again encourage the Commission to
9 reconsider. As you may know, Mr. Chairman, there
10 will be a multiple of minor adjustments made to
11 the licence should it ultimately be issued and
12 those adjustments will be made by that director.
13 And I think it would be healthy for this process
14 to have the ability to discuss those matters
15 rather than merely accept them. And so we again
16 raise our concern that the input and contribution
17 of the director remains unchallenged by the Clean
18 Environment Commission. Thank you.

19 THE CHAIRMAN: Thank you. Yes?

20 MS. WHELAN ENNS: Gaile Whelan Enns,
21 Manitoba Wildlands. I would like to ask the CEC
22 to consider who will answer regulatory questions
23 during the proceedings, and/or how, if there are
24 regulatory questions that come forward that need
25 an answer from the director, of approvals, how we

1 will arrive at the answer to said questions?

2 THE CHAIRMAN: The Commission's
3 mandate is to review the report provided by
4 Manitoba Hydro and to ask the public for their
5 input -- and by public, I'm including of course
6 all of the parties -- and to listen to that input
7 and collect that input and then, of course,
8 provide a report and recommendations to the
9 Minister. So we will be focusing on those tasks.
10 I don't believe that the review of the regulatory
11 process is part of our mandate.

12 Yes, go ahead.

13 MS. WHELAN ENNS: I think it is the
14 right-handed, left-handed thing, I'm leaning on it
15 wrong, apologies, or I've a bad one.

16 Gaile Whelan Enns, Manitoba Wildlands.
17 I just wanted to say I wasn't in any way implying
18 a review of the regulatory process, but rather
19 points of information that may be needed during
20 the proceeding. And this line of questioning has
21 come up in the past, including the question asked
22 by the representative for Dakota Plains today, in
23 terms of the ability to ask the director questions
24 during the proceedings. This is not new, this
25 question from participants.

1 THE CHAIRMAN: Are you asking
2 something of me or is that a comment?

3 MS. WHELAN ENNS: Mr. Chair, it's a
4 comment and a little bit of sadness, because we
5 are here to improve the process I think.

6 THE CHAIRMAN: Thank you.

7 Yes, Mr. Mills?

8 MR. MILLS: Yes, thank you, Mr. Chair.
9 Your terms of reference that the Minister provided
10 you with states that, under terms of reference,
11 the very first point that the Minister provides
12 you with, Mr. Chair, is that we are to review the
13 EIS, including the proponent's public consultation
14 summary. And you were advised that a detailed
15 technical review will be completed, not provided,
16 not picked at, will be completed by Provincial
17 agencies who are members of the TAC.

18 Mr. Chairman, this denying of access
19 to the TAC in the face of your terms of reference
20 seems difficult. You have a term of reference you
21 are to rely upon, a detailed technical review,
22 detailed, completed by Provincial agencies who are
23 members of the TAC. The Minister doesn't assure
24 you that your terms of reference will include and
25 that you will be provided with a partial technical

1 review completed by a few or some members of the
2 TAC. It seems to us that your terms of reference
3 are very strong in that regard. And Mr. Chairman,
4 with complete respect, your refusal to allow us to
5 test whether or not even your terms of reference
6 have been met is very troubling. This is -- this
7 is ready, set, go. And we don't believe that your
8 terms of reference perhaps have been met.

9 We're quite prepared to carry on, but
10 we want to be on the record clearly that we
11 believe the contribution of TAC to get us to this
12 date doesn't meet the test of your terms of
13 reference. And on a go forward that may prove
14 difficult. We ask again why don't we simply allow
15 that check mark to be obtained? And if we can
16 extend the process for five days to allow Hydro to
17 submit additional information on that side of the
18 table, Mr. Chairman, perhaps you could offer us a
19 similar period of time to obtain on this side of
20 the table the answers that we feel we haven't
21 received in the TAC review of this project. We
22 think you're proceeding with less than 52 cards in
23 the deck. And we anticipate that's an open
24 switch. We would rather close it and complete the
25 TAC process. And we say again, and I will come

1 back to this throughout our presentation, but we
2 don't believe your terms of reference which
3 describe a detailed, completed by Provincial
4 agencies who are members of the TAC, has in fact
5 been met. That's our concern, Mr. Chairman.
6 Thank you.

7 THE CHAIRMAN: Well, thank you, for
8 your comments, Mr. Mills.

9 Yes?

10 MR. BEDDOME: I just have a further
11 comment, it just seems to me -- James Beddome,
12 Southern Chiefs Organization -- it seems to me
13 quite clearly that the Commission is being asked
14 by a number of participants to summon a witness,
15 and I refer you to 3(18)(1) regarding your power
16 to summon a witness under the Manitoba Evidence
17 Act. So I just want to note that the Commission
18 actually has the power to subpoena a witness
19 should they so choose to. It seems quite clear to
20 me that a number of participants are asking for
21 that.

22 THE CHAIRMAN: Well, thank you. We
23 have not -- I mean, to the best of my knowledge
24 we've not received, according to the practice
25 guidelines, that kind of a request. Thanks.

1 MR. BEDDOME: If I may as to
2 clarification, are you then seeking us to make
3 that type of request? I think it was put on the
4 record, and I guess if you are needing it
5 formally, then we'll have to, obviously I imagine
6 a number of participants will have to consider
7 their options accordingly.

8 THE CHAIRMAN: No, I'm not making any
9 suggestions, I'm just pointing it out. Yeah.

10 MR. MILLS: Mr. Chair?

11 THE CHAIRMAN: I will start over here.

12 MR. TOYNE: Kevin Toyne, counsel to
13 the Southeast Stakeholders Coalition. I've got a
14 couple of questions. Maybe what I'll do is just
15 ask one at a time so I don't take up too much time
16 here.

17 The first is with respect to the
18 opening and closing submissions. You had
19 indicated that the participants would be able to
20 provide some written material. I think the phrase
21 you used was "in support of their closing
22 submissions" prior to the record being closed. So
23 the question I've got is, will the Commission
24 accept both oral and written opening and closing
25 submissions, similar to what you would see in a

1 more formal legal proceeding, say in the Queen's
2 Bench or the Provincial Court?

3 So, for example, I would stand up and
4 make my ten minute presentation in accordance with
5 the order, and immediately before that provide a
6 written synopsis of it, perhaps containing some
7 additional information that I wouldn't get into in
8 the course of my oral submissions, and similar for
9 the closing submissions?

10 THE CHAIRMAN: Yeah, thanks. We'll
11 consider that and advise you. Thanks.

12 Yes, Mr. Mills?

13 MR. MILLS: I hate to belabour the
14 point, and I sense that we're uncomfortable with
15 regards to it. But Mr. Chairman, the
16 correspondence that we have is riddled with
17 references to discussions between Manitoba Hydro
18 and TAC members. We receive some information from
19 TAC which goes as far as to say, and I may
20 misquote, but "further to the discussions we've
21 had with Hydro and the assurances we've received,
22 we find this matter now addressed."

23 We are not privy, to our knowledge, to
24 those discussions and conversations. We are not
25 privy to what assurances Hydro has provided TAC,

1 other than given them the EIS, which they had. We
2 don't understand why there is the hesitancy to
3 allow this side of the table equivalent access to
4 TAC that has been clearly provided to that side of
5 the table.

6 Mr. Chairman, it may not even be about
7 the information we receive, but it certainly tests
8 our sense of fairness. And I repeat myself, but
9 we all deserve to leave here feeling that we've
10 been treated fairly. And with regards to this
11 TAC, we stand opposed. We don't have access to
12 that information, and we received the Cole Notes
13 summary, and we don't know what the discussions or
14 commitments provided were. And it really digs
15 deep at our sense of full and complete access to
16 the information so that we can participate fairly.

17 Thank you. And I'll leave it at that.

18 THE CHAIRMAN: Thank you.

19 Mr. Beddome?

20 MR. BEDFORD: I don't know whether to
21 be flattered or not that you have mistaken me --

22 MR. BEDDOME: I'm flattered that you
23 would be flattered, Mr. Bedford.

24 MR. BEDFORD: So, I think, I assume
25 the panel is likely aware of this, but in the

1 event that you're not, all of Manitoba Hydro's
2 answers to the questions that members of TAC posed
3 regarding this EIS and this project are all
4 available publicly. They're posted, as I recall,
5 on a website that's maintained by the director of
6 the office that's represented here today.

7 I'm advised that outside of some
8 discussions that do take place regarding the
9 Environmental Protection Plan for this project,
10 there are no conversations, no meetings, and no
11 discussions between employees of Manitoba Hydro
12 and members of the TAC. And TAC, of course, is
13 Technical Advisory Committee. I don't know how
14 many individuals make up that committee, but it's
15 certainly more than one. We think probably a
16 dozen or more folks who are employed within
17 various departments of the Provincial Government
18 of Manitoba.

19 THE CHAIRMAN: Thank you. Mr. Mills?

20 MR. MILLS: With respect to
21 Mr. Bedford's position, I take exception to it and
22 I'm not sure he's informed. There are numerous
23 references within the TAC information we received
24 that refer to assurances received, discussions,
25 and meetings held, and we can find no trace of

1 that information. So if Mr. Bedford could assist
2 us in finding that, we would appreciate it. And
3 if he can't, we would suggest he might need to do
4 something else. Thank you.

5 THE CHAIRMAN: Thank you.

6 MS. WHELAN ENNS: Gaile Whelan Enns,
7 Manitoba Wildlands. Mr. Chair, I just wanted to
8 go back to Mr. Toyne's question for a quick
9 minute, a second. And that is I cannot remember,
10 and I do remember 30 years worth of CEC hearings,
11 I cannot remember an instance where opening
12 statements were not also accepted on paper. And
13 you'll see from your own website that that's so,
14 that that's the pattern. And the same is true in
15 terms of the both oral and written version of
16 closing statements from participants and/or their
17 legal counsels.

18 THE CHAIRMAN: Thank you for that
19 observation. And we -- what I said earlier, the
20 first time it was raised, is that we will be
21 responding to you and to everyone on the table on
22 that issue.

23 MS. WHELAN ENNS: Thank you,
24 Mr. Chair. My concern is that the CEC's practices
25 are public and clear, and your website is clear on

1 this. Thank you.

2 THE CHAIRMAN: Yep. Mr. Bedford.

3 MR. BEDDOME: Beddome is all right.

4 It's a B name, it's understandable. My question
5 is really quite simple, it's with the additional
6 week being added to the hearings, I'm just
7 wondering what that means for the funding of the
8 hearings. And should you wish to make any jokes
9 about a lawyer worrying to get paid, fine. But
10 obviously with a week being added on, it's just
11 wanting to know how the Commission anticipates
12 addressing the additional work needed?

13 THE CHAIRMAN: The week was added in
14 order to give everyone an opportunity to make the
15 closing arguments and, of course, for the rebuttal
16 from Hydro. So that was done I think to
17 accommodate everyone is how I would put it. And
18 there will not be additional funding for that.
19 Thanks.

20 MR. BEDDOME: I would just like to
21 note my objection for the record on that. I'm
22 very happy to do this work, but have done it on
23 less than my ordinary basis, and so now the
24 Commission is even reducing that more.

25 THE CHAIRMAN: Thank you.

1 MS. McEACHERN: Sorry, we would like
2 to follow up with Mr. Beddome's comments in so far
3 as the funding. I think it's quite clear that an
4 extension of a week of this hearing process would
5 entitle the participants to further funding on
6 that issue. We would also, therefore, raise our
7 objection to the denial of funding on that basis.

8 THE CHAIRMAN: Thank you.

9 MR. WHELAN: Good morning, Jared
10 Whelan for Southern Chiefs' Organization. Not to
11 belabour the point, but I guess the question is
12 for the Chair, if the hearing is extended again,
13 will there then be additional resources?

14 THE CHAIRMAN: Thank you. Are there
15 more comments or questions? Yes?

16 MR. SUTHERLAND: Hi, I would just like
17 to introduce myself, Mike Sutherland, Peguis First
18 Nation, the director of the consultation unit. We
19 apologize for being late, but we also agree with
20 the other parties here in regards to the
21 additional week. We are limited to funding and we
22 have a bit of a travel to go, so I think that we
23 should take that into consideration as well in
24 regards to adding that week. Thank you.

25 THE CHAIRMAN: Thank you.

1 MR. TOYNE: Thank you, Mr. Chair.

2 Kevin Toyne, counsel to the Coalition. I will
3 echo the comments that have been made with respect
4 to funding.

5 But the next question I've got relates
6 to the amount of time being set aside for
7 participants to question the proponent's
8 witnesses. I understand that we've got the order
9 in which the questions will be asked, but I also
10 understand that there may be time constraints that
11 are imposed. And I'm wondering, I've got a
12 two-part question: One, how will time be
13 allocated for that as between the different
14 participants, and when will that allocation be
15 made? Because as counsel to the Coalition, there
16 is going to be certain areas where I anticipate
17 having more questions than others. And given some
18 of the responses that I've seen to some of the
19 information requests, that it may be a bit of a --
20 it may take a little bit longer to question. And
21 I'm just hopeful that there is some protocol in
22 place so that those of us who have more questions
23 than others aren't prejudiced while we are trying
24 to plan for our examinations.

25 THE CHAIRMAN: Thanks for those

1 comments. And if you stay in touch with the
2 secretary, she will work out the schedule so that
3 there will be adequate time and appropriate time,
4 and we will work out the order in which people ask
5 their questions from the proponent.

6 MR. TOYNE: If I may, can I ask a
7 follow-up to that?

8 THE CHAIRMAN: Yes, go ahead.

9 MR. TOYNE: My practice in a more
10 formal courtroom setting would be to have
11 discussions with the party that's calling a
12 particular witness. For example, in a courtroom,
13 if Mr. Bedford and Ms. Mayor were on the other
14 side, I would expect to have discussions with them
15 about how long they intend a witness to be on the
16 stand. We would have discussions about how long I
17 would examine them. But given some of the
18 comments that have been made by other
19 participants, I just wanted to inquire if that
20 type of, what I consider to be appropriate
21 cooperation between people involved in a hearing,
22 is something that's either encouraged or
23 discouraged before the Commission?

24 THE CHAIRMAN: The answer to that is
25 it would be encouraged. So by all means, go

1 ahead, and if you can work out timing and
2 scheduling that way, I would only ask that you
3 inform the secretary then. Thanks.

4 Yes, Ms. Whelan Enns?

5 MS. WHELAN ENNS: Gaile Whelan Enns,
6 Manitoba Wildlands. Just a quick comment, and
7 that is that there is a precedent in terms of this
8 discussion and the concern from participants
9 regarding extension to hearings and funding. And
10 while you are not going to consider that we should
11 be privy to whether or not you talk to Treasury
12 Board or let the Treasury Board know, or the
13 Minister with responsibility under the Act know
14 that you're extending the hearings. I think it
15 should be in the record this morning that there is
16 a precedent, a very clear pattern in terms of past
17 practice by the CEC, when they needed to extend a
18 hearing to, in fact, extend the funding. Thank
19 you.

20 THE CHAIRMAN: Thank you. Mr. Mills?

21 MR. MILLS: Mr. Chairman, with regards
22 to the extension, it appears to be a 25 per cent
23 increase in the scope of our work. We observe
24 that we are advised the extension was required to
25 allow Manitoba Hydro sufficient time to prepare.

1 We also observe, Mr. Chairman, that the extension
2 was arrived at, I would expect with some
3 discussion with Hydro, that I can't speak for my
4 friends, but we certainly weren't privy or even
5 aware of. And again, Mr. Chairman, the style is
6 testing our sense of fairness. And we observe,
7 again, that we ask for a fair and level playing
8 field. Thank you.

9 THE CHAIRMAN: Thank you. Yes?

10 MR. WHELAN: Jared Whelan for Southern
11 Chiefs' Organization. I'm looking at the
12 preliminary hearing schedule the week of June 5th
13 to 8th, which we've referenced already. The
14 first, of course, is rebuttal by Manitoba Hydro
15 and then final arguments by participants. On the
16 last page it says:

17 "The amount of time allowed for
18 individual final arguments will be
19 determined by the panel after
20 consultation with all participants."

21 I don't know if I address this
22 question to the Chair or to the proponent. How
23 much time does the proponent think they are going
24 to use those four days, the last week of the
25 hearings?

1 THE CHAIRMAN: That will be determined
2 in discussions between the secretary to the panel
3 and the proponent and, of course, the same for
4 each participant.

5 MR. WHELAN: Yes. Jared Whelan again.
6 If the proponent uses three and a half days of the
7 four days on our last week, that would leave four
8 hours for all of the participants to do their
9 closing statements.

10 THE CHAIRMAN: The secretary to the
11 Commission will work it out, as I mentioned
12 earlier, with the proponent and the participants.
13 And it's been the experience of the Commission
14 that we will work it out in a way that's fair to
15 all parties.

16 Okay. Thank you all, and I'm moving
17 on to the next part of our discussion this
18 morning.

19 MR. TOYNE: Mr. Chair, if I may, I do
20 have one more question.

21 THE CHAIRMAN: Yes, go ahead.

22 MR. TOYNE: My apologies. And I
23 should, just for the record, indicate that two
24 representatives from the Coalition, Scott Blonsky
25 and Jim Teleglow arrived a few moments ago.

1 THE CHAIRMAN: Welcome to you both.

2 MR. TOYNE: My question is unrelated
3 in one sense but related in another to the
4 comments made about summonses to witness. And I
5 don't know if this has reached the Commission yet,
6 but I apologize that I did arrive a little bit
7 later this morning than I intended due to another
8 matter. But the Coalition has made a request for
9 a summons to witness, and I thought I would ask if
10 there were any additional submissions that needed
11 to be made this morning to assist the Commission
12 in dealing with that request for a summons.

13 THE CHAIRMAN: We have received your
14 request, but for most of us it was either late at
15 the end of last week or the beginning of this
16 week, so we are deliberating that and we will
17 advise you accordingly. Thanks.

18 MR. TOYNE: And to just follow up to
19 that, to the extent that a summons is issued,
20 there is a separate protocol for the individual
21 who would be the subject of that summons to
22 challenge it. I take it that would be something
23 that would also be done in writing as opposed to
24 actually taking place with vive voce argument or
25 testimony at the actual hearing?

1 THE CHAIRMAN: Yes, that's the case.

2 MR. TOYNE: I will convey that
3 information to the subject of the requested
4 summons, if necessary.

5 THE CHAIRMAN: Thank you.

6 Okay. With that, I'm going to move us
7 to process guidelines. Yes, go ahead?

8 MS. McEACHERN: Sorry, Sarah
9 McEachern. I'm just following up on Mr. Toyne's
10 comments. We would like to know whether that
11 information will be made available to the
12 participants in so far as who the requested member
13 is and whether or not we will be afforded advance
14 notice?

15 THE CHAIRMAN: We will have to let you
16 know on that as well. We have only just received
17 this request and are considering it.

18 MR. TOYNE: Mr. Chair, if I can just
19 add to that, my current intention is to include,
20 subject to any decision that may be made in
21 advance of this coming Monday, is to include a
22 reference to that individual being the subject of
23 a request for a summons in the 14-day outline that
24 we will be submitting next week. So that point,
25 to the extent the Commission has not made a

1 decision, that that information would then be
2 shared with the rest of the participants.

3 THE CHAIRMAN: Okay. Thanks for that
4 elaboration.

5 Okay. That brings us to the process
6 guideline highlights next, and that's the next
7 item on the agenda. You will have, either with
8 you today, or generally have the process
9 guidelines. As you will know from our first
10 pre-hearing in January, those of you who have been
11 involved in the past, all participants in these
12 proceedings are expected to know and abide by our
13 process guidelines. I just want to bring to your
14 attention some of the guidelines. This is by no
15 means exhaustive, but you can certainly go through
16 them, those of you that haven't been through them,
17 and inform yourselves of those guidelines. I'm
18 trying to point out a few of them that are
19 critical to our proceedings.

20 On the first page of this document at
21 1.02 is just the application of the guidelines.
22 They cover all of our hearings and our
23 proceedings. We do have an out in there, in the
24 second paragraph that says:

25 "Notwithstanding the process

1 guidelines, we are able to change them
2 when we need to."

3 Assuming, of course, there is a good reason for
4 making the change. Typically we haven't done
5 that, the Commission has not done that, other than
6 to improve the process.

7 I just would like to remind you all
8 that concerning communication with the panel, and
9 many of you are familiar with this process, or
10 with administrative law generally, and other
11 leading legal proceedings of which you have been
12 part, you will know that you shouldn't communicate
13 with any members of the panel while the hearings
14 are in process. Any communication with the
15 Commission should be through the Commission's
16 secretary, who is to my right, or through our
17 legal counsel on my left. And section 1.05 covers
18 this.

19 If you turn your attention to 1.06.4,
20 we do verbatim transcripts. Typically they are
21 available the next morning. There may be the odd
22 time when it is not quite ready in the morning,
23 although that's rare. But if it's not, it will be
24 available later in the day. They are also
25 available on line. If you want hard copies, you

1 can either print them yourself or purchase them
2 from our transcriber, Reid Reporting.

3 Conduct of the hearings, we try to
4 keep the hearings reasonably informal, and this is
5 over to .3.10, we try to keep them reasonably
6 informal but we do have some structure to them.
7 And in particular, we want the hearings to be
8 conducted in an orderly and professional manner,
9 so we will do that.

10 Truth in proceedings and the swearing
11 in of witnesses, that's covered in section 3.14.
12 All persons making a submission, and that includes
13 members of the general public who are giving
14 evidence, will be asked to swear or affirm that
15 the evidence that they give is true. If a
16 representative is making a presentation on behalf
17 of an organization, then that representative must
18 also make the same affirmation. But that's only
19 if you are giving evidence that's going to be
20 become part of the record. A representative
21 making an opening statement or conducting
22 questioning will not be expected to be sworn in or
23 to make the affirmation.

24 Also we will not be asking elders to
25 affirm. Ceremony associated with their

1 presentation will be an acceptable approach to
2 ensuring the validity of what follows in their
3 remarks.

4 Time limits for presentations, that's
5 section 3.16. Our guidelines allow presenters to
6 have a 15 minute period in which to make their
7 presentations. Those of you who have been
8 involved in the process and are participants, I
9 believe that includes most, if not all of you, at
10 the table, know that there is a lot of flexibility
11 when it comes to participants and that
12 participants will be allowed, not an endless
13 amount of time, of course, but a reasonable amount
14 of time to conduct their business, to make their
15 presentations, and to put on the record all of the
16 evidence that they wish to put on.

17 Ms. Johnson, the secretary, may have
18 contacted many of you already to talk about this.
19 She will be refining that timing as we move
20 through the hearings, just to find out how much
21 time you think you will need to make your case.
22 So if she hasn't, she will be contacting you, and
23 then we will schedule accordingly.

24 3.22 deals with adjournments. The
25 Commission may adjourn a hearing from time to time

1 for a variety of reasons. We hope not to have to
2 do that in this process, but it has happened in
3 other hearings sometimes while further information
4 was produced. Again, not something we would want
5 to have to do, just pointing out that it is
6 available to us.

7 If you turn your attention to the
8 practice directions, that's appendix 8 of the
9 guidelines. I would like to draw your attention
10 to a couple of them. Party status is dealt with
11 on page 22. Be sure you understand the rights and
12 obligations to party status. As I said earlier,
13 most of you, at least all of you around the table
14 are participants, and you have a fair degree of
15 rights as well as obligations. You will be
16 entitled to question the proponent and others
17 under certain circumstances. Please note your
18 responsibilities as well.

19 I would like to move on to page 40.
20 This is very important to ensure the orderly
21 proceedings of the hearings, and it deals with the
22 disclosure of witnesses and the 14-day and 7-day
23 rules. So we emphasized this at the first
24 pre-hearing, and I wanted to repeat it today,
25 because we do stick very diligently to these time

1 frames. So by noon on April 24th, that's 14 days
2 before the start of the Winnipeg hearings, and I
3 believe that's this coming Monday, six days from
4 now, you are required to submit to the secretary,
5 with a copy to all participants, a detailed
6 outline of your presentation, a list of the
7 witnesses that you will be calling, with brief CVs
8 for your expert witnesses, as well as a list of
9 the authorities, journal articles, literature, et
10 cetera, upon which you will be relying as you make
11 your presentations. If you will be using
12 community panels, just provide the names of the
13 members and an indication of the topic they will
14 address. CVs are not required for community panel
15 members. So that's by noon, all of that that I
16 just mentioned is by noon Monday, April 24th.

17 Then seven days prior to your
18 presentation, so seven days before the date of
19 your presentation which you will have worked out
20 with the secretary, and that's by noon, again by
21 noon, seven days before you present, you have to
22 have the final version of your submissions
23 circulated. Again, it is noon on that day,
24 submitted to the Commission secretary and copied
25 to all parties. The secretary will provide the

1 date for each participant once their presentation
2 date is determined.

3 As I mentioned earlier, these times
4 are strictly enforced. If you're late, you don't
5 get to use that information in the hearing. So
6 please take particular note of these dates and
7 please abide by them. This is to ensure that all
8 participants have a reasonable time to review each
9 other's materials.

10 Questioning is dealt with on page 45.
11 Questioning by participants will be permitted to
12 the extent necessary, and you must conduct
13 questioning in a respectful manner with no intent
14 to embarrass any other party. Questions must be
15 pertinent to the subject matter and the mandate of
16 the hearing. Participants may question other
17 participants only if there are differing views on
18 the issue at hand.

19 Tip sheets are dealt with in the
20 appendix B, that's page 52. And I highlight this
21 only to let those of you who are new to these
22 proceedings know that you might get some help from
23 the tip sheets that are enclosed in that appendix.

24 One last comment on the guidelines has
25 to do with the code of conduct. And that's

1 covered towards the end of our process,
2 guidelines, documents, there is a code of conduct
3 for parties and representatives. You'll find it
4 there at the end of the document. It is pretty
5 straightforward, but I would like to boil it down
6 by saying that we should be treating each other
7 during these hearings with respect and dignity.
8 Please be aware of that and please have a look at
9 the wording around those thoughts.

10 So that concludes a very brief
11 summary, because this is the second time we've
12 been over it, but a very cursory look at the
13 guidelines. And we would encourage those of you
14 who aren't familiar with them to read them
15 thoroughly.

16 Are there any questions on the
17 guidelines or the practice directions? Yes,
18 Mr. Beddome?

19 MR. BEDDOME: Thank you very much,
20 Mr. Chair. Just really quickly, I asked this
21 during the first participant conference but I just
22 want to confirm, as you went through it again,
23 that we can ask questions of clarification of
24 another participant? I did request clarification
25 of that back in January. You did, I think,

1 confirm that in certain circumstances if it was a
2 question of clarification rather than a question
3 that is directly adverse in interest, that would
4 likely be allowable, and I just for the record
5 wanted to make sure we put that back on the
6 record.

7 THE CHAIRMAN: So the general rule is
8 all participants, of course, can question the
9 proponent. But in terms of questioning other
10 participants, that's only if you are in an adverse
11 situation. Having said that, we will review, if
12 there are requests related to clarifications, we
13 will determine that as they arise.

14 Yes, Ms. Whelan Enns?

15 MS. WHELAN ENNS: I have two quick
16 questions, Mr. Chair. When you were referring to
17 a First Nation or Aboriginal panel presenting in
18 the hearing, you referred to elders and not
19 requiring elders to swear.

20 The practice and the pattern in CEC
21 hearings has been that none of the members of an
22 Aboriginal or First Nation panel are asked to
23 swear unless they have, for instance, brought in
24 an external expert who sits with them in the panel
25 time slot. And you also seem to imply that

1 ceremony would take place and that ceremony would
2 replace the need to swear. Well, if you have a
3 panel of eight, you might have one or two of them
4 performing the ceremony. So I would appreciate
5 some clarification.

6 The second question also goes to the
7 quick review you gave us. And a reminder that in
8 the most recent CEC/Manitoba Hydro hearings,
9 Manitoba Hydro provided the CVs of their experts
10 and their speakers and presenters, and we would
11 like to know whether you are going to repeat that
12 practice and when we will have the CVs?

13 THE CHAIRMAN: Thank you for those two
14 questions. I will deal with the second one first.
15 So, the CVs will be available on Monday coming, so
16 that will be the 24th, right? Yes, the 24th. So
17 you will have those.

18 And in terms of the participation of
19 indigenous members of panels and experts, the
20 experts will be asked to affirm. The indigenous
21 representatives will -- there will be a ceremony
22 associated with their participation and that will
23 be assumed to be in place of the affirming.

24 Thanks.

25 MS. WHELAN ENNS: Thank you,

1 Mr. Chair.

2 THE CHAIRMAN: Okay. I will turn the
3 proceedings now over to the secretary for some
4 additional important matters. Thanks.

5 MS. JOHNSON: Look at that, I didn't
6 even spill water this time.

7 Okay. We've talked a lot about the
8 14-day rule already, and April 24th, next Monday,
9 noon, I expect my email to be blinging away for
10 quite a while. Just to be clear, everything that
11 that comes to the Commission is required in an
12 electronic copy as well, for sure. Even though
13 you submit papers, I also need the electronic
14 copies. So if it's just straightforward material
15 that we can print off in our office, that's fine.
16 But if you have odd ball copies in there, big
17 maps, colours, all kinds of things, we're going to
18 need printed copies as well. So that will be ten,
19 if that's required.

20 We talked a lot about the schedule
21 already. And as we said, I've started informally
22 scheduling people's dates, but I will confirm that
23 once I get more information on Monday. And then I
24 will confirm the 7-day rule and when your
25 submissions have to be distributed. A more

1 comprehensive schedule will be coming, and as all
2 of you know that have been through our hearings,
3 it's a moving target from day one to the day we
4 leave the room. So you can't bet on anything
5 that's on that paper because it could change by
6 the end of the day.

7 For your presentations we have AV
8 equipment available, a computer and a PowerPoint
9 projector. Generally, it's most efficient if you
10 bring your own computer and just plug it into the
11 projector because you're familiar with your files
12 and how your computer works, but we have one
13 available if you require it. We would just ask
14 that you pre-load the information before your
15 presentation, so we're not stuck trying to
16 troubleshoot when you are supposed to be
17 presenting.

18 And some tips on making your
19 presentation: Please make your slides readable.
20 You lose your audience if there is too much
21 printing on the slide and you can't read it.
22 Also, minimize the engineering schematics. Little
23 squiggles aren't going to help anybody understand
24 what you're trying to convey. And please watch
25 your colour schemes, because some people are

1 colour blind and blues may just come out as one
2 gray for them, so you're losing the impact of your
3 presentation. And I cannot stress enough, for
4 those that have experienced this, do not use dark
5 backgrounds on your slides. It's not that it just
6 gums up the copy machines, but it makes it hard to
7 write on the copies, and the panel likes to keep
8 notes as you go along in your presentation. If
9 they can't write on there, you may make them a
10 little grumpy and I don't think you really want to
11 go there. Please advise your consultants and your
12 witnesses as of this fact as well. And, in bold
13 letters, put numbers on your slides. Because it's
14 really difficult and confusing when questions come
15 up and trying to figure out what slide is what
16 when there is no number on it.

17 Copies of materials to be shared at
18 the hearing; if you refer to page 49 of the
19 procedural manual there is some tips on your
20 presentations. All copies of materials need to be
21 in electronic form, whatever it takes, whether it
22 is ticks, graphs, photos, videos, can be sent by
23 email or other format. Many times the files are
24 too big to email, so you can put it on a stick or
25 a CD, but make sure you label them so I can tell

1 what they are. Make your file names distinctive.
2 That includes your organization name or your own
3 name, and don't just make it CEC presentation,
4 because I have thousands of those, and I have to
5 go through each one to figure out who they are.
6 Same thing goes for labeling CDs and flash drives.
7 There's lots of flash drives flying around during
8 the hearing. I need to know what they are and who
9 they're from. And please number your slides or
10 any pages of materials that are going to be
11 distributed.

12 In the past we had some discussion
13 from some of the participants who would prefer to
14 receive the presentations in electronic format
15 only. We considered this, but some of the
16 presentations are so big that they can't be
17 emailed, so then it becomes a question about who
18 got it, who didn't, how was it distributed in the
19 hearing room. So I think until we up our game and
20 have the money to have a central computer with
21 monitors on every desk, we're still going to have
22 to work with paper copies. So I need 50 copies of
23 your presentations or any other materials at the
24 hearing. And those of you who have been through
25 it know that any extra copies will disappear quite

1 quickly in the audience.

2 Here's another point. On the day of
3 your presentation, deposit the copies of, the
4 papers copies of your presentation at the
5 reception desk with Ms. Halcrow when you arrive.
6 Don't hold them at your desk, because it delays
7 the process.

8 I know sometimes it's done for effect,
9 but it disrupts the whole proceeding, and nobody
10 knows where the copies are or who has the relevant
11 information. If you have secret information in
12 them, Ms. Halcrow will hold them until the last
13 minute, until they need to be distributed.

14 We are also discouraging putting
15 copies of materials for distribution at the end of
16 your table because it causes traffic within the
17 hearing and is disruptive. If you have materials
18 to be distributed, take them to the reception desk
19 and they will be distributed from there.

20 Also note if your presentations are in
21 more than one part, say you have three experts and
22 they each have separate presentations, bring them
23 as a package, not in three separate boxes. It's
24 just too much confusion, too much traffic, and we
25 only have one person this time, last time we had

1 two distributing, and she is brand new. So please
2 be respectful of that.

3 And also make sure you get your copies
4 to the reception desk at an appropriate time. If
5 you're first thing in the morning, you should have
6 your copies to the desk between 9:00 and 9:15, not
7 at 9:29 when we start at 9:30. Same as in the
8 afternoon, between 1:00 and 1:15. Your
9 cooperation would help us and keep things moving
10 smoothly.

11 Also please pay attention to the flow
12 of the hearing. It may move faster than expected,
13 which is unlikely because I don't think that I've
14 experienced that yet. But if you're scheduled for
15 perhaps first thing in the afternoon and the
16 morning is shorter, be prepared to go on in the
17 morning and have your copies to the desk at
18 perhaps the break.

19 As we said, everything is being
20 transcribed. We need to -- we need everyone to
21 speak into the microphone as clearly as possible,
22 at a speed that the transcriber can keep up with.
23 Otherwise we will be interrupting you and that
24 will hurt your presentation because you will lose
25 the flow.

1 For parties that need translation, we
2 are asking you to bring your own translator so
3 that we have the appropriate language and dialect.

4 For public presenters, as we said, we
5 have sessions blocked out in Winnipeg and two in
6 La Broquerie. We will assist those public
7 presenters in making copies if they have copies to
8 be made. If it's less than five pages, we can
9 make them on site. Otherwise we are going to need
10 a little lead time. Send it to us ahead of time
11 so we can make the copies on the bigger machine
12 and bring them with us.

13 If you know individuals who wish to
14 speak, please ask them to get in touch with us at
15 least seven days ahead of time. Even though we do
16 take sign-ups on site, it just helps with the
17 scheduling so that we make sure there's enough
18 time for everyone.

19 Undertakings; in the past we have been
20 kind of lax in that area and it has caused a bit
21 of confusion, so we are toughening up our rules a
22 little bit. The transcriber is going to keep
23 track of undertakings, but I need everybody's
24 assistance in this. If you are asking for an
25 undertaking, please clearly ask what's to be done

1 in reference to what documentation. And I would
2 ask the responder to repeat what they understand
3 is the request, so that we can get out of any
4 misunderstandings right then and there. And if
5 it's not clear, I will interrupt to make sure that
6 there is clarification and we know what we are
7 asking for.

8 Presentations will be posted on a
9 daily basis where we can. Some of the
10 presentations are so large that they don't always
11 download properly. So in these cases we do put a
12 note on our website that you can contact us to get
13 them. We're not trying to keep them secret or
14 keep them hidden, it's just a matter of logistics.
15 Sometimes we don't get the electronic copies in
16 time to post for the next day, so that's on you
17 guys to get them to me on time. And we can post
18 videos, if you do have videos as well.

19 Written submissions; we've already
20 said -- that's public written submissions are due
21 May 29th. We have a function on our website that
22 you can submit directly from there, or we accept
23 emails, regular mail, faxes, however it comes to
24 us. And once we receive these submissions, we
25 circulate them to all of the parties so that they

1 can go on the record.

2 There will be wifi in both Winnipeg
3 rooms. In the Convention Centre here, you
4 probably already discovered that it's Telus. The
5 Fort Garry, there may be a password, but I'm not
6 sure, but if there is, it will be at the reception
7 desk. And we're checking on the situation in
8 La Broquerie.

9 As we said, the transcripts will be
10 posted most of the time the next day, but there
11 are times that it doesn't happen for many reasons.
12 And if that's possible, you will be notified as
13 soon as it's been posted.

14 I just want to reiterate here, because
15 we had some discussions at the previous
16 pre-hearing, we are not going to take roll call
17 every day, so the parties and the representatives
18 will be identified on the opening day. That list
19 will remain constant throughout the hearing. And
20 it's just the new presenters, witnesses,
21 questioners that appear on a daily basis that will
22 be added. So no amount of pestering the
23 transcriber will change this.

24 If you have personal equipment in the
25 room, please mark it. Such things as computer

1 power cords, mice, you name it, things get left
2 behind and we don't know who they long to. And
3 that goes for travel mugs as well.

4 We will be providing power to each
5 station and you may have to share outlets, but
6 please don't plug things across the aisle because
7 that causes us all kinds of liability problems.
8 Everything has to be taped down. If you have a
9 difficulty, you should check with the audiovisual
10 tech. He can probably help you.

11 Printed copies of the final report; we
12 will be printing again, but we have been limiting
13 our numbers in the last little while to save
14 paper, money and space. So later in the hearing I
15 will be asking you for a number of copies that you
16 want. There's no need to skimp, but I just want
17 to make sure that we don't overdo it.

18 So that's all I have for those
19 matters. Anybody have any questions? Mr. Whelan?

20 MR. WHELAN: Good morning, thank you,
21 Cathy. In the past Manitoba Hydro has used, I
22 believe, WebEx to transmit audio and video to its
23 staff and consultants for hearings, and I think
24 they did that in the Keeyask hearing, maybe not
25 for Bipole III. Will Manitoba Hydro do that at

1 this hearing as well?

2 MS. JOHNSON: Yes, they will. And
3 it's only for their own use. Ms. Whelan Enns?

4 MS. WHELAN ENNS: Thank you for all of
5 your reminders. We all need all of the reminders.
6 I just wanted to ask a question about moving from
7 room to room. The ceiling and the setup in this
8 room, and I know next door is higher ceiling,
9 causes me to think about size of screen. So the
10 setup in the Hotel Fort Garry is probably the
11 best, but I'd really like to know what the size of
12 screen is that the Convention Centre is going to
13 be providing?

14 MS. JOHNSON: We've got that under
15 control. There will actually be two screens for
16 the first two weeks, at least.

17 MS. WHELAN ENNS: Great. Thank you.
18 Okay.

19 THE CHAIRMAN: Thank you all. I have
20 a couple of more things to address here. It's
21 Serge Scrafield, the Chair. The first is the
22 order of opening, closing and questioning. Will
23 they have this document in front of them?

24 MS. JOHNSON: Yes.

25 THE CHAIRMAN: So you should all have

1 the order in front of you, the order of
2 appearance. This is the order in which you will
3 make your opening statements and questioning. As
4 we've done in other proceedings, you are welcome,
5 in consultation with other participants, to change
6 your appearance schedule, either for a specific
7 day or more generally. But otherwise this is the
8 list we'll stick by. If one party wants to swap
9 or change with another, that's open, but please
10 inform the secretary so we can make appropriate
11 changes to the list. So, just to re-emphasize
12 that, please inform the secretary of any changes.
13 So that's pretty straightforward.

14 Any questions on the list? Okay.

15 Thank you.

16 I would like to now turn to an issue
17 which I referenced at the start of today's
18 proceedings, and that was an issue raised
19 initially by Ms. McEachern on behalf of Manitoba
20 Wildlands related to the IR process. It had to do
21 with communication to Manitoba Hydro from
22 Mr. Toyne, acting for the Southeast Stakeholders
23 Coalition. And I would like to begin with a brief
24 summary of the back and forth, and then address
25 the issues raised in the exchange of emails.

1 On March 27th, Mr. Toyne, on behalf of
2 his clients, that's the Southeast Stakeholders
3 Coalition, submitted a table to Manitoba Hydro
4 summarizing his clients' round one questions,
5 hydro's responses to those questions, and his
6 concerns about the supplied responses.

7 It is our understanding that this
8 submission to Hydro occurred after Mr. Toyne's
9 discussions with Manitoba Hydro legal counsel to
10 try and resolve the difference of opinions on the
11 completeness of some of the answers received to
12 the first round IRs.

13 On the 4th of April, Ms. Mayor,
14 counsel for Manitoba Hydro, provided the table to
15 all parties, so you should all have that table,
16 with an additional column giving reasons for the
17 responses and in some cases supplying some
18 additional elaboration to those responses.

19 On the 11th of April, Ms. McEachern
20 wrote to the Commission stating that the
21 March 27th submission from Mr. Toyne to Manitoba
22 Hydro was an additional information request, an
23 additional IR, which was submitted outside the IR
24 process. Later that same day, Mr. Toyne responded
25 by way of email, and that email was also sent to

1 all participants. He explained that the chart was
2 used to facilitate the submission of any
3 outstanding disputes to the panel in the event
4 that a request was made to the panel for
5 assistance in resolving those disputes. He added
6 that the Stakeholders Coalition did not submit IRs
7 outside of the IR process, instead the Coalition
8 complied with the part of the practice direction
9 dealing with disputes about answers to IRs,
10 referencing page 33 of the guidelines.

11 It's the Commission's impression, at
12 least at this time, that the exchanges between
13 Mr. Toyne and Manitoba Hydro are within the
14 procedures for disputes as addressed on page 33 of
15 the guidelines. The practice guideline on IRs
16 does not specifically state that a request to
17 resolve disputed answers requires distribution to
18 all parties.

19 At the same time the Commission
20 understands that there may be differences of
21 opinion as to what constitutes a dispute versus a
22 new IR, and the associated requirement to
23 circulate. The Commission will re-examine the
24 practice direction and, if warranted, amend it for
25 future hearings.

1 Having said that, this type of
2 different perspectives will need to be resolved on
3 a case-by-case basis, depending on the nature and
4 breadth of the questions.

5 In addition to that general issue, or
6 specific issue, there were four additional issues
7 raised by Ms. McEachern on behalf of Wildlands.
8 So what I will do is I will read the issue raised,
9 and then our response to the four issues.

10 So the first issue raised by
11 Ms. McEachern, and I'm quoting here is:

12 "It remains unclear whether the
13 specified SCC information request and
14 responses by Manitoba Hydro will form
15 part of the record."

16 Our response, that's Commission's
17 response is:

18 "The chart as completed by SCC and
19 Hydro will now become part of the
20 record."

21 Number 2 is:

22 "Whether the SCC will be allowed a
23 further opportunity to submit a
24 follow-up and/or clarification request
25 as a result of answers provided by

1 Manitoba Hydro."

2 Our response, that's the Commission's
3 response is that:

4 "The SCC, nor any other participant,
5 will not be afforded..."

6 and I put a double negative there, so let me make
7 that very clear.

8 "Neither the SCC nor any other
9 participant will be afforded
10 additional opportunities for follow-up
11 and/or clarification requests."

12 The submission of IRs has been closed
13 for three weeks and no additional
14 information requests will be
15 accepted."

16 A third issue raised by Ms. McEachern
17 is:

18 "Further, we have great concern
19 regarding the impact of allowing one
20 participant access to responses to
21 what are essentially information
22 requests approximately ten days in
23 advance of all other parties."

24 The Commission's response is that:

25 "Even if the submission to Manitoba

1 Hydro had been considered to be an
2 additional IR, Mr. Toyne made this
3 submission before the round 2 deadline
4 of March 28, 2017. There is no
5 timetable as to when responses are to
6 be supplied by the proponent as long
7 as the deadline date is met. As you
8 recall, all parties were encouraged to
9 submit IRs as they were developed, and
10 the proponent was encouraged to
11 respond to IRs as they were received."

12 Fourth issue raised by Ms. McEachern,
13 and I'm quoting again:

14 "The practical implication of the
15 above is that the SCC has been
16 afforded an additional line of inquiry
17 to which Manitoba Hydro responded.

18 Therefore, the question remains as to
19 whether this option remains available
20 to other participants in the
21 proceeding at any time or after the
22 second round of information request
23 responses have been submitted by
24 Manitoba Hydro."

25 The Commission's response is that:

1 "The process related to the handling
2 of disputes, as outlined in the
3 information request practice
4 direction, has been available to all
5 participants since the beginning of
6 the IR process. The Commission is not
7 aware of any other disputes arising
8 from information requests."

9 That concludes our remarks related to
10 this issue. Are there questions? Yes?

11 MR. MILLS: Mr. Chairman, I thank you
12 for that. It helps to better understand. There
13 was a bit of correspondence that you should be
14 privy to that you missed. I asked Ms. Mayor on
15 April 4th if there was other correspondence that
16 had not been shared. And she advised us, and I
17 quote:

18 "Manitoba Hydro will not be providing
19 copies of communication between legal
20 counsel in this matter."

21 Again, Mr. Chair, we wonder if there's
22 a VIP line-up or a back door to answers to
23 questions that aren't available to the rest of
24 this process. And when Ms. Mayor and Mr. Toyne,
25 with great respect, step behind the green curtain,

1 we wonder if that information is not available to
2 us, if therefore none of that available -- none of
3 that information should be available to the
4 process. I'm wondering if counsel is picking and
5 choosing. Ms. Mayor shares with us some
6 information which she chooses to share, but she
7 clearly indicates that there is other
8 communication that she will not be providing us
9 access to.

10 And again, Mr. Chair, we take the
11 sense of equality and fairness very seriously in
12 this process. And we think you've missed a point.
13 If Mr. Toyne's information is privileged as
14 between counsel, then we suggest it stays there.
15 And if it isn't, then we'd like to see what took
16 place. But for Ms. Mayor to tell us that Hydro is
17 going to pick and choose as to what communication
18 between counsel they respond to publicly, I don't
19 think that's the spirit of what we're trying to
20 achieve here. And those are our thoughts on that.

21 THE CHAIRMAN: Thank you, Mr. Mills.
22 The Commission was dealing with the issues that I
23 outlined, the four additional issues plus the main
24 issue that I outlined in my remarks. So if
25 there's another issue between you and Hydro, that

1 is not something we have been addressing.

2 Other comments? Sorry, Mr. Toyne?

3 MR. TOYNE: Thank you very much,
4 Mr. Chair. I'll do my best to be brief in
5 response to your comments and the ruling on behalf
6 of the Commission.

7 First off, let me say that I
8 appreciate the acknowledgment that the Coalition
9 was following the protocol for resolving disputes
10 that was set out in the guidelines. But I do take
11 issue with part of the comments and the decision,
12 and I'm going to respectfully ask that you
13 reconsider that. And if you bear with me, I'll
14 explain why I'm asking that.

15 You started off your comments today by
16 talking about two complete rounds of the
17 information request process having been completed.
18 We take exception with that. The two rounds have
19 not been completed. And the reason I say that,
20 Mr. Chair, is that the Coalition, by raising those
21 issues with Manitoba Hydro's legal counsel, was we
22 were attempting to obtain what we viewed as
23 appropriate responses to first round information
24 requests. And at this time there are certain
25 information requests that have been made by the

1 Coalition, which the Coalition views as,
2 notwithstanding Manitoba Hydro's efforts to
3 respond to our position, that those information
4 requests still have not been appropriately
5 answered. And it strikes me as deeply and
6 fundamentally unfair to a participant in this
7 process to have the IR protocol changed part of
8 the way through, particularly when that
9 participant has followed the Commission's very own
10 guidelines and processes for submitting those
11 information requests, and then also follows the
12 Commission's guidelines for resolving disputes
13 about answers received to those requests.

14 And it's currently unclear, at least
15 to me, and I say this respectfully, precisely why
16 it is the protocol is being changed part of the
17 way through before all of the information requests
18 have been appropriately answered. Is it because
19 the questions -- and this is my characterization
20 which would be hotly disputed by my colleagues
21 across the room -- is it because the Coalition is
22 asking uncomfortable questions of Manitoba Hydro
23 and insisting on answers? Is it because
24 participants are making hasty objections that will
25 be to their detriment and the detriment of other

1 participants in future hearings? It is unclear at
2 this point, at least to me, why it is the protocol
3 is being changed at this point.

4 Regardless of the reason, there are
5 information requests that have not been properly
6 answered. And if they are properly answered, the
7 Coalition will not have had an opportunity to do a
8 second round request on that. And that's to the
9 prejudice, not just of the Coalition or future
10 participants, but to the entire CEC process. The
11 recommendations that you make will be undermined,
12 and any licensing decision made by the Minister of
13 Sustainable Development will be undermined by the
14 fact that the IR process was not completed for
15 this particular hearing.

16 So I'm going to ask for the Commission
17 to reconsider. Now, you've got the power to do
18 that under section 1.02 in the guidelines. You've
19 also got the power, to the extent it's necessary,
20 under 3.21 of the guidelines, or 2.09, to deal
21 with times, terms, compelling information, et
22 cetera, et cetera.

23 And the reason I'm going to ask you to
24 reconsider this is as follows: First, as I said,
25 it is deeply unfair to one of the participants,

1 especially a participant that has followed your
2 rules, to change those rules on them, to their
3 prejudice, part way through the proceeding.

4 I don't say this with respect to
5 Manitoba Hydro in this particular proceeding, but
6 by changing the protocol in this particular
7 fashion, you are rewarding and encouraging
8 non-responsiveness to first round IRs by future
9 proponents that come before you. And you are
10 giving them a way to avoid having to provide
11 relevant information within the scope of your
12 terms of reference by simply taking the position
13 that they don't have to answer at the outset, and
14 by forcing a participant to go through the
15 process, knowing full well that they won't be able
16 to make second round information requests. And
17 that in and of itself undermines and discourages
18 public participation before you.

19 Part of your statutory mandate under
20 section 6(6) of the Environment Act is to
21 encourage public participation in this process.
22 Telling public participants that the rules will be
23 changed while they are engaged in the process, to
24 their detriment, and that the Commission is going
25 to proceed without full and complete information,

1 that does the opposite of encouraging public
2 participation, in my respectful submission. And
3 all of that really undermines, again in my
4 respectful submission, the legitimacy of this
5 entire process.

6 There's a concept in economic theory
7 called regulatory capture, where regulators start
8 to lose sight of the public interest and
9 effectively become rubber stamps for the
10 individuals that appear before them. And I'm not
11 suggesting that that's what this decision is, or
12 that that's what this body, to the extent it's a
13 regulator, has become. But it certainly gives
14 rise to concerns about what it is that is actually
15 going on here, and the extent to which Manitoba
16 Hydro has to answer questions that might be
17 uncomfortable, and the extent to which
18 participants are able to get at information that
19 they believe is both relevant and important to the
20 perspectives that they bring to this proceeding.

21 So in my respectful submission, this
22 is something that the Commission should seriously
23 reconsider. You have the power to do it. You
24 should do and I'm asking you to do it.

25 THE CHAIRMAN: Mr. Bedford?

1 MR. BEDFORD: If I were sitting at
2 this moment where you were sitting, I would
3 probably be asking Mr. Toyne for clarification as
4 to what you changed in the protocol. Because I
5 must say, sitting here, I don't understand what he
6 sees as a change in your protocol. His client, as
7 I recall, asked something like 150 round 2 IRs.
8 So this is not a situation where his client lost
9 an opportunity or was not given an opportunity to
10 ask round 2 IRs.

11 I speculate, as you may be doing at
12 this minute, just what is the problem that's
13 bothering Mr. Toyne and his client. And one
14 shouldn't speculate, so probably we need to ask
15 him to clarify, is this something to do with the
16 15 round 1 IRs that he had in exchange with my
17 colleague, Ms. Mayor. And as we all know, some
18 further clarifications and answers were provided
19 by Manitoba Hydro. So if my speculation is
20 correct, he may in a moment tell me it is or it
21 isn't, but if it's something to do with those 15
22 IRs, is it all 15 IRs, or is it one of them or two
23 of them or three of them? What exactly is the
24 substantive problem his client has, and what is it
25 that he thinks is an embarrassing question to my

1 client? I don't recall that we have seen
2 embarrassing questions to my client. Some of you
3 may think that some of them were couched in terms
4 that were intended to embarrass, but we did our
5 best to answer. What is it about these questions
6 that he suggests may be uncomfortable for my
7 client? And I would repeat, we were not
8 uncomfortable providing answers to the questions.
9 Some of you may have thought some of these
10 questions might have made us feel uncomfortable,
11 but I repeat, we did our best to answer all of the
12 questions.

13 But if one is to entertain his
14 invitation to go away and reconsider as a panel,
15 four commissioners, the ruling that you have given
16 us this morning, one really ought, I suggest, to
17 understand, to repeat what is it that he thinks
18 you changed in the protocol? It's a serious
19 allegation to make, that you changed your own
20 rules, and the consequence is unfairness to his
21 client. I don't understand what you changed in
22 the protocol that made it unfair.

23 And then to get through this web, is
24 this about those 15 answers, or only one or two of
25 them, and what exactly is it about those answers,

1 and what is it that he seeks to do if you were to
2 change your ruling?

3 THE CHAIRMAN: Mr. Toyne?

4 MR. TOYNE: I'm happy to provide some
5 additional comments in response to that,
6 Mr. Chair. So, as you will recall, the chart or
7 the table contained a number of Coalition IRs.
8 Manitoba Hydro provided responses to all of those.
9 And there are certain responses that were provided
10 that, in my view, require some additional
11 follow-up, such that what I would consider now
12 that an appropriate round 1 answer has been
13 received, it would be appropriate to make a second
14 round information request. But of course that
15 information was provided by Manitoba Hydro after
16 the deadline for the second round IRs being
17 submitted. There are additional questions that --
18 there remains, at least from the Coalition's
19 perspective, an issue about whether the questions
20 have been answered properly. And I've refrained
21 from submitting anything to the panel until after
22 today's hearing, simply to hear what the panel's
23 views are on the objection that was raised by
24 Manitoba Wildlands to receive more, rather than
25 less information. And the two IRs perhaps in

1 response to Mr. Bedford's speculation would be
2 additional information about two particular more
3 easterly routes that were eliminated during one of
4 the earlier routing rounds, and also with respect
5 to the issue on the extent to which the Provincial
6 Crown consultation process has an impact on
7 scheduling, and for Manitoba Hydro to provide some
8 estimates in that regard.

9 So that's summarizing in a very broad
10 way what two of those information requests are.
11 My understanding of the protocol is that my remedy
12 is now to submit that to the panel and ask the
13 panel to make a decision, in a summary way,
14 whether or not Manitoba Hydro has any further
15 obligations to provide additional detail. If I'm
16 correct, Manitoba Hydro may have to provide some
17 additional material about those two routes and
18 some additional material about their understanding
19 of the consultation process.

20 In those circumstances, with that
21 additional information, in my view that would be a
22 satisfactory and appropriate response to a first
23 round information request, at which point the
24 guidelines contemplate a second round information
25 request being made.

1 Your decision denies the SSC that
2 opportunity if you require Manitoba Hydro to
3 provide additional information. If you deny our
4 request to require them to produce additional
5 information, I guess in that sense it's moot, but
6 we've lost the opportunity to ask second round IRs
7 based on the information provided by Ms. Mayor in
8 early April. And if you do compel additional
9 responses to first round IRs, we have also lost
10 the ability to make second round information
11 requests of that information.

12 So the change in protocol, I think to
13 respond most directly to Mr. Bedford's point is,
14 given that a dispute has arisen about a small
15 number of first round IRs, the fact that we've
16 gone to the trouble to follow your process has
17 resulted in us losing the ability to make the
18 second round IRs. And when I say -- that's what
19 the unfairness is.

20 So that if Manitoba Hydro had
21 hypothetically simply provided that information at
22 the outset, rather than having to go through this
23 disputed process, we would have been able to make
24 those second round requests. But if we submit
25 something to the panel, and you require Hydro to

1 provide additional information, that's it. Based
2 on your ruling, we're done.

3 If I have additional information
4 requests based on what was provided on April 4th,
5 I can no longer make that. So the Coalition has
6 lost the ability to make second round information
7 requests, not through anything that we have done,
8 but because we followed your process, if there was
9 a dispute about whether or not Hydro had
10 appropriately answered.

11 And I think that that's responsive to
12 Mr. Bedford's question.

13 THE CHAIRMAN: We're going to take a
14 few minutes to review your request, and so we will
15 reconvene in ten minutes. Thanks.

16 (Proceedings recessed at 11:40 a.m.
17 and reconvened at 11:50 a.m.)

18 THE CHAIRMAN: I would ask that
19 everyone take their seats. We would like to
20 conclude this matter.

21 THE CHAIRMAN: We are ready to go
22 here. So thank you, Mr. Toyne, for raising this
23 issue and thank you for your comments. Thank you
24 for your comments, Mr. Bedford. I think I have it
25 right this time. The Commission has, or the panel

1 has discussed the matter at hand, and this is our
2 determination. We would encourage -- step one is
3 we would encourage the Stakeholders Coalition and
4 Manitoba Hydro to try and resolve this matter
5 concerning whether IRs have been answered
6 adequately or not. And if -- we would encourage
7 you to resolve that, and we sure are -- certainly
8 are hopeful that you will resolve that. If you
9 are not able to do that, the guidelines referred
10 to, I think during the discussion by both parties,
11 do provide a way that can happen. So, you can, if
12 you are not able to resolve it, and we certainly
13 are hopeful that you are, you can refer that to
14 the Commission. And that's point 5 under the
15 guidelines, page 33, the IR Practice Direction.
16 And the Commission, once you refer to us, will
17 determine the matter in a summary fashion.

18 So that is the course of action that
19 we are -- or have determined to settle this
20 matter.

21 Thank you.

22 MR. TOYNE: Mr. Chair, can I ask a
23 follow up question to that?

24 THE CHAIRMAN: Yes.

25 MR. TOYNE: So hypothetically there is

1 an IR where there remains a dispute between the
2 Coalition and Manitoba Hydro. In the course of
3 submitting that to the panel, just given other
4 concerns that have been raised, would that be
5 something that would be distributed to all of the
6 participants, or is that something that the
7 outcome would be distributed, but not necessarily
8 the underlying material with respect to the
9 dispute?

10 THE CHAIRMAN: All right. So if I
11 understood it right, it is a two part question, so
12 I will have a two part answer. The first part is
13 that this is a dispute between the Stakeholders
14 Coalition and Manitoba Hydro as to the adequacy of
15 the responses to those IRs, and so that does not
16 require circulation to everyone. You are free to
17 do that, of course, if you choose to. Our
18 response, though, once we have determined the
19 matter, that will be sent to both of you, but will
20 also be circulated to all participants.

21 MR. TOYNE: Thank you. And if I can
22 make one, I hope, final comment, just with respect
23 to the concern that was raised earlier about
24 communications between certain legal counsel that
25 are involved in the hearing. Just building on

1 your remarks earlier, that cooperation amongst the
2 participants, and perhaps particularly amongst
3 their counsel, is something that's encouraged, if
4 not recommended by the Commission. It seems to me
5 that some sort of a lengthy email chain that
6 doesn't necessarily affect all of the participants
7 would actually result in less rather than more
8 cooperation.

9 And it strikes me that those types of
10 more administrative exchanges, say with respect to
11 hypothetically how long Manitoba Hydro's counsel
12 may want to cross-examine or question Bob Berrien,
13 the expert witness that will be put forward by the
14 Coalition, those are discussions that I think can
15 remain as between the legal counsel.

16 For example, if Manitoba Hydro and the
17 folks representing Manitoba Wildlands would like
18 to engage in some discussions about how long they
19 may be with certain witnesses, I don't think
20 that's something that I need to be provided with.
21 I realize that there may be some differing
22 opinions. But in my respectful submission, those
23 differing opinions will result in less rather than
24 more cooperation. So to the extent that the panel
25 is considering some sort of order, I strongly

1 advise that you not interfere in the minutia of
2 what should be relatively straightforward
3 cooperation between the parties.

4 THE CHAIRMAN: We agree with those
5 suggestions. Thanks.

6 Yes?

7 MR. WHELAN: Jared Whelan for Southern
8 Chiefs Organization. I am not going to go into
9 particulars. We will leave it between the parties
10 in the last conversation. But in the guidelines,
11 page 33, point 7: "To the extent possible, the
12 process of making and responding to information
13 requests should be completed before the beginning
14 of the hearing of evidence."

15 So earlier, Mr. Chair, you said that
16 the IR process was complete. If I'm wrong on
17 that, I apologize. But it sounded to me like you
18 said the IR process was complete. My
19 understanding of the guidelines is it doesn't have
20 to be complete, and that participants can use the
21 hearing process and questioning of the proponent
22 to get at answers that were not satisfied in IR
23 round 1 or 2. Is that correct?

24 THE CHAIRMAN: Thank you for your
25 question. Let me begin by clarifying what I said

1 earlier, and I will certainly try and make it as
2 clear as I can this time around.

3 The deadlines for submission of IRs
4 and the dates by which there have to be responses
5 to each round of IRs, those dates have passed.
6 That might be the better way to put it. So the
7 dates for submitting questions in round 1 and
8 round 2, and the dates for responding to questions
9 in round 1 and round 2, those dates have come and
10 gone.

11 When we are dealing with a dispute
12 between parties related to that, then I would
13 refer you to point 5, which I did earlier. It
14 does not set a deadline or schedule for the
15 resolution of that.

16 Then you raised the question of point
17 7 under the practice direction, guideline for IRs,
18 and the strong preference of the Commission, and
19 to the extent possible, we would like that
20 completed, even the resolution of any disputes
21 completed before the hearing begins to make the
22 hearings as productive as possible. So that
23 remains our position.

24 And then finally you raise the issue
25 of further questioning at the hearings and, of

1 course, that's permissible and that's what the
2 hearings are about. So obviously there will be
3 further questions at the hearings. Thanks. Yes,
4 Mr. Beddome?

5 MR. BEDDOME: James Beddome, legal
6 counsel for Southern Chiefs Organization. I
7 appreciate your clarification, but I just want to
8 be clear then should any other participants be
9 seeking answers that they feel need more
10 sufficiency in terms of the answers provided by
11 Manitoba Hydro, we are free to pursue this dispute
12 resolution process as referred to, because I would
13 note that second round responses only came out
14 just before the long weekend and there may be a
15 number of points of clarification or further
16 questions where participants may feel that those
17 questions haven't been answered. And forgive me,
18 but I feel I have less clarity now -- my mike
19 seems to be weird -- but less clarity now than I
20 did beforehand with this dispute. So I just want
21 to make sure it is resolved.

22 THE CHAIRMAN: I think the way I'd
23 respond to that is to say that the time for
24 questions and the responses to those questions for
25 both rounds 1 and 2, has passed. So to the best

1 of our understanding there was a very long list of
2 questions submitted in both rounds, and those
3 questions were responded to. What we have here,
4 the case before us, is a dispute related to those
5 questions that occurred in round 1 and perhaps
6 extended in to round 2, although I guess that
7 remains to be seen.

8 What you are suggesting is that there
9 may be other instances that would fall in that
10 category. And the only thing that I would say --
11 what I would say about that is that the Commission
12 will look at that, to be sure, if we are involved,
13 and if you do have any concern about inadequacy of
14 a response, that's really a matter in the first
15 instance between yourself and the proponent. If
16 the Commission is to be involved, the Commission
17 will have to satisfy itself that there is a real
18 dispute here. So that will be the test that we
19 will apply to it. And we will be certainly
20 rigorous about that, because that's what our
21 guidelines contemplate.

22 MR. BEDDOME: So just to confirm, I'm
23 free to approach Manitoba Hydro if there is one or
24 two questions from our round 2 questions that we
25 did ask and submit within the time table, and

1 which we feel requires some further answer or some
2 further clarification in accordance, and as I
3 understand it, although I respectfully disagree
4 with my learned friend, Mr. Toyne, I'm not to copy
5 to all participants. Although earlier before we
6 took the break you seemed to be recognizing there
7 was some transparency issues there. I just want
8 to be clear, if we are going to raise those issues
9 how we should do that. We should, as I
10 understand, should approach Hydro directly, should
11 not be contacting the other participants.
12 Hopefully it is resolved between say myself on
13 behalf of SCO or any other participant with Hydro
14 with respect to round 2. If it is not, we then
15 raise that concern with the Commission and the
16 Commission would make a ruling.

17 And further to what Mr. Whelan said, I
18 would note that section 7, the language is not
19 mandatory, but permissive, saying that hopefully,
20 or the information should be provided before the
21 hearing, but I guess conceivably could drag into
22 the hearing process if a resolution isn't quickly
23 found. Would that be a correct understanding of
24 what I'm to do if I feel that some of the answers
25 that I got in round 2 were not sufficient?

1 THE CHAIRMAN: Okay. I think there
2 was two, perhaps three questions in your remarks,
3 Mr. Beddome. So I will answer them I think in the
4 order they were asked.

5 The first question had to do with
6 approaching Hydro if you have concerns regarding
7 the questions in round 2, if I understood you
8 correctly. And I would take your guidance from
9 point 4 in the guidelines, which says: "Where a
10 dispute arises regarding IRs or the answers to the
11 IRs, the parties shall promptly communicate with
12 each other in order to resolve the dispute in a
13 cooperative and efficient manner."

14 What we are trying to encourage here
15 is that we get to the completeness of the answers
16 in the most efficient and cooperative manner
17 possible. That's what we are trying to encourage
18 here.

19 If that fails, you do have the option
20 under 5 of approaching the Commission. We would
21 hopefully -- not hopefully, we would expect that
22 you've made an honest effort first to try and
23 resolve the issue with Hydro and vice versa and
24 you would come to us only on those few instances
25 where you can't come to a conclusion on the

1 matter.

2 So then, yes, under 5 you have the
3 option of coming to us.

4 And in terms of informing others, if I
5 understood correctly, that was part of your
6 remarks there, that at this point in time is your
7 option, whether or not you do that. And once we
8 have determined the matter, we will inform the
9 parties and all the other participants. Thank
10 you.

11 MR. BEDDOME: Thank you very much,
12 Mr. Chair.

13 THE CHAIRMAN: Yes, go ahead.

14 MS. McEACHERN: Thank you, Mr. Chair,
15 Sarah McEachern on behalf of Manitoba Wildlands.
16 First of all, I would like to thank the Commission
17 for their time in addressing the issues as set
18 forth in our letter dated April 11, 2017. At this
19 juncture we just thought it appropriate to confirm
20 that, in fact, it is Mr. Chair's position that
21 disputed IRs will continue throughout the CEC
22 hearings, or whether or not, if a dispute arises,
23 it is to be brought to the Commission prior to the
24 commencement of the hearings? And I'm just giving
25 note of the time line requirements at this point.

1 THE CHAIRMAN: Okay. Thank you very
2 much, Ms. McEachern. A couple of things: On the
3 IRs, the IR process itself, the deadlines, the
4 time lines for questions and responses, those time
5 lines have passed. So I think I was -- if I was
6 referring to the hearings, there will be
7 questioning obviously in the hearings. That's
8 different than the formal process of information
9 requests, with a capital I and a capital R.
10 That's a formal process that we have as part of
11 the Commission's procedures. But that's a
12 distinct process from the questions that occur at
13 the hearings.

14 MS. McEACHERN: Thank you for that
15 response, Mr. Chair.

16 I suppose my question becomes then, in
17 so far as the methodology employed by the SSC in
18 their specified information requests, whether or
19 not that -- that information gathering process can
20 be used then to clarify second round IRs that are
21 now disputed, and whether that in fact -- say if
22 another participant chooses to take advantage of
23 that methodology employed by the SSC, will that
24 chart also form part of the record?

25 THE CHAIRMAN: Yeah, I'm not -- and

1 perhaps that's my not understanding it, but I'm
2 not totally grasping the question.

3 MS. McEACHERN: I apologize. My point
4 is if we are encouraged then, as it is suggested
5 by Mr. Toyne, to resolve the disputes with Hydro
6 directly, and it is my understanding in part of
7 his attempts to resolve that dispute he has
8 submitted the specified requests through chart
9 form. And it is the decision of the panel that
10 that chart itself will form part of the record
11 moving forward to the hearing. And my question
12 is, if we are continued to be encouraged to
13 attempt to resolve the dispute with Hydro, on a
14 private basis, whether or not we can submit that
15 same sort of chart form, and whether or not the
16 responses from Hydro in the course of that
17 dispute, can be used as part of the record?

18 THE CHAIRMAN: Yes. Thanks very much.
19 Now I understand the question. Thank you. A
20 couple of things we would say in response to that
21 is, we wouldn't be prescribing an approach under
22 which a participant would try and resolve a matter
23 with Manitoba Hydro. What we would encourage you
24 and any other participant and Hydro to do is use
25 whatever approach is most conducive to resolving

1 the dispute, if there really is a dispute. So we
2 would encourage you to work that out in whatever
3 way is most logical or most productive and most
4 efficient to do that.

5 So, we are not -- certainly not going
6 to prescribe what form that might take. And we
7 did decide in this instance to make it part of the
8 record. So you referred to the instance of a
9 dispute arising between the Stakeholders Coalition
10 and Manitoba Hydro, and we have chosen to make the
11 results of that part of the record. And that
12 resulting, in that instance, included a chart as
13 you referenced. I don't want to prejudge what we
14 might conclude if other matters are referred to
15 us. So, that would be premature until we see what
16 the issues are and the nature of the resolution.

17 MS. MCEACHERN: Thank you, Mr. Chair.

18 THE CHAIRMAN: Yes. Ms. Whelan Enns.

19 MS. WHELAN ENNS: Mr. Chair, I just
20 wanted to confirm what we heard from another
21 participant today, and that is that none of us can
22 assume whether the round 2 answers are sufficient
23 or not. They arrived pretty close to end of
24 business on --

25 THE CHAIRMAN: Thursday.

1 MS. WHELAN ENNS: Thursday, before the
2 long weekend, and here we are the first morning
3 after the long weekend. The other thing that is
4 worth pointing out, of course, is the participants
5 now have the work before them for the April 24th
6 deadline, the 14 day rule and the 7 day rule, and
7 hearings start soon. So you are likely I think to
8 see a mix of approaches for resolution. And I
9 just thought I would state the obvious. And by
10 that I mean resolution on IRs.

11 THE CHAIRMAN: Okay. Thanks for that
12 comment. Well, that brings us to the end of
13 today's agenda. We are finished almost on
14 schedule. And hopefully we are able to continue
15 moving along as productively as we move forward.
16 Thank you very much, and we look forward to seeing
17 you all at the beginning of May. Thank you.

18 (Concluded at 12:20 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

I, CECELIA J. REID, a duly appointed Official Examiner in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of the proceedings herein, to the best of my skill and ability, as taken by me at the time and place hereinbefore stated.

Cecelia J. Reid
Official Examiner, Q.B.

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