

MANITOBA CLEAN ENVIRONMENT COMMISSION

MANITOBA-MINNESOTA TRANSMISSION PROJECT

VOLUME 18

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Transcript of Proceedings
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TUESDAY, JUNE 6, 2017

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NO UNDERTAKINGS

1 TUESDAY, JUNE 6, 2017

2 UPON COMMENCING AT 9:30 A.M.

3

4 THE CHAIRMAN: All right, good
5 morning, everyone. Welcome back to our hearings,
6 final day of our hearings into the
7 Manitoba-Minnesota Transmission Project. So we'll
8 continue today with the final arguments. And the
9 last participant to give final arguments will be
10 the Southeast Stakeholders Coalition, and
11 Mr. Toyne.

12 MR. TOYNE: Thank you very much,
13 Mr. Chair.

14 So the submissions that I will be
15 making on behalf of the Southeast Stakeholders
16 Coalition can be grouped really into five primary
17 areas. The first part of the submission will be
18 focused on what the Coalition says are some of the
19 flawed aspects of the EPRI-GTC methodology that's
20 been employed to select the final preferred route.

21 The second area of submission on the
22 Coalition's behalf will be how that flawed
23 methodology was applied in a way that itself was
24 flawed.

25 The third area will be how the final

1 preferred route is also flawed and defective.

2 The fourth and second to last area of
3 submissions will be the availability of a more
4 appropriate alternative.

5 And finally, I will end off with the
6 licensing and non-licensing conditions and
7 recommendations that the Coalition will be
8 suggesting that this Commission should make to the
9 Minister of Sustainable Development.

10 So late yesterday I provided, both
11 electronically to the distribution list and hard
12 copies to the panel and to Mr. Bedford, a short
13 outline with some tabs behind it to provide some
14 additional, I guess a road map of where I'll be
15 headed this morning. As I was reviewing it last
16 night, I noticed that in a couple of places it was
17 a wee bit rough around the edges, given that it
18 was prepared on Sunday and then delivered here on
19 Monday. So as we go, there's a couple of tabs
20 that are out of order and a couple of minor
21 corrections that need to be made. So I'll do that
22 as we go.

23 If you have any questions I'm used to
24 having questioned hurled at me while I'm speaking,
25 so please feel free. And with that I'll get

1 started.

2 So first, turning to the methodology

3 that was selected by Manitoba Hydro, and this

4 would be paragraphs 6 through 13 of the

5 Coalition's closing outline. The methodology that

6 was selected was the EPRI-GTC methodology. And

7 it's important to recall that this was not

8 something that was selected after this

9 Commission's Bipole III report was released. And

10 if you'll recall, your predecessors prepared a

11 fairly comprehensive report following the hearings

12 into the Bipole III project. And there were a

13 number of recommendations that were made, some of

14 which related to how Manitoba Hydro goes about

15 selecting routes for transmission lines. And it's

16 important to recall that this methodology was

17 selected before that report came out, before this

18 Commission gave guidance to Manitoba Hydro on what

19 steps it should take to do a better job selecting

20 a route, before Manitoba Hydro had a chance to

21 take those concerns, suggestions and criticisms

22 into account. So it should really come as no

23 surprise to the Commission, in my respectful

24 submission, that Manitoba Hydro selected a

25 methodology that suffers from the exact same

1 problems that the one that was used to select the
2 Bipole III route also suffered from. And that one
3 piece of information, that this methodology was
4 selected before Hydro had a chance to hear this
5 Commission's views on the flawed methodology that
6 they used to use, that really sets, in my
7 respectful submission, a theme of what's happened
8 throughout this entire process. That Manitoba
9 Hydro makes a decision before they get appropriate
10 inputs. And once the appropriate inputs come
11 along, they don't go back and correct course.
12 Right at the outset that starts to happen with the
13 selection of the methodology. And that mind-set,
14 in my respectful submission, contaminates
15 virtually everything that has happened throughout
16 this entire process.

17 So again, it's unsurprising that this
18 methodology that's been imported from the U.S.
19 suffers from the same types of problems that the
20 methodology that was previously used suffers from.

21 Now, one of the interesting things
22 that came out of the routing panel's discussion
23 was one of the responses that Mr. Glasgow, the
24 routing consultant with surprising candor
25 admitted, that the primary outcome of the EPRI-GTC

1 methodology are garbage routes. So in a number of
2 places in the EIS, particularly in chapter 5,
3 which is the routing chapter, Manitoba Hydro talks
4 about how over 750,000 routes were generated and
5 considered. But during his testimony, and when I
6 was asking him questions about those routes,
7 Mr. Glasgow was candid and admitted that most of
8 those routes were garbage. So Manitoba Hydro has
9 knowingly, because they told you about all the
10 steps they took to assess other alternatives and
11 to assess this particular methodology, they
12 selected a methodology that generates garbage.

13 And one of the ways in which the
14 volume of garbage that's generated by this
15 methodology can be assessed shows up on page 522
16 of the Environmental Impact Statement. And that's
17 where there's discussion about -- if you'll recall
18 there was a 3 per cent figure that was talked
19 about and how the 3 per cent of the top routes are
20 optimal paths. And there was a series of
21 questions that were asked about this. So as I
22 understand it, really what that means is, is that
23 this entire process that's been selected, really
24 only 3 per cent or less, in my respectful
25 suggestion, of the routes that are generated

1 actually have any viability at all. The rest of
2 it, nonsense, to borrow a phrase from
3 Mr. Matthewson, again in a moment of candor,
4 routes that aren't logical. And Mr. Glasgow's
5 phrase, garbage.

6 So it's important when we're looking
7 at what's going on is that this is a methodology
8 that at the very start is going to give you
9 primarily bad outcomes. So if that's the
10 methodology that you're selecting, it's really
11 important that you're able to tell the difference
12 between a good outcome and a bad outcome.

13 So I like to work movie references
14 into my submissions, so this I hope will be the
15 one and only time I do it today. One of my
16 favourite movies is The Shawshank Redemption. I
17 don't know if you're familiar with it. It was on
18 TV Saturday night. So after I got home from work,
19 I put it on. I didn't finish watching it because
20 it was on the Oprah Winfrey Network and there were
21 so many commercials I couldn't stay awake. But
22 there's a scene in the movie that struck me as
23 mean apropos of what we've seen here. So there is
24 a scene in the movie where a number of the
25 convicts are out digging in a field, and they're

1 looking for rocks. And the reason they're looking
2 for rocks is Tim Robbins' character likes doing
3 things with rocks and he's trying to make a chess
4 set. So one of the characters is looking for a
5 particular type of rock for his friend. And he's
6 really excited when he thinks he's found that type
7 of rock. And he picks it up and he tries to avoid
8 being noticed by the guards, and goes over to some
9 of his friends and he proudly shows off the rock
10 he's found. Well, it turns out he didn't know
11 what he was looking for, because he was proudly
12 holding up what can politely be termed a horse
13 apple. And just watching that scene, it struck me
14 that that's what really what we've got here. If
15 you don't know what you're looking for, you're not
16 going to realize that what you found is not what
17 you should have been looking for.

18 So we've got this methodology that
19 generates garbage. And as I'll get to a little
20 bit later, Manitoba Hydro wasn't able to sort out
21 the good from the bad and ended up picking one of
22 the bad.

23 So let's talk about, given that we've
24 got limited time, just some of the flaws. Again,
25 just with the methodology in general, before we

1 get into how badly it was applied.

2 So we've got one of the flaws that was
3 identified by your predecessor Commission, false
4 precision. So this is the criticism, at least as
5 I understand it from a lay perspective, where if
6 you're assigning scores and numbers and weights,
7 the process will sound mathematical, it will sound
8 precise, but it's an illusion. It's still
9 entirely subjective. And there's false certainty
10 in the results and in the outcome because it's
11 mathematical. And that's discussed in
12 Mr. Berrien's report, and there's a reference to
13 this in the closing outline that I have provided,
14 pages 32 and 33 of his report, and then also in
15 some of his evidence last Wednesday.

16 And that false precision can really
17 result in minor differences being distorted and
18 magnified. So I think that there's three good
19 examples of that. I'll start off with the one
20 that I came up with, because I thought it was
21 clever. You may disagree. But in my opening
22 statement you'll recall I used that analogy of the
23 hundred metre dash in the 2016 Rio Olympics and
24 how there was a fraction of a difference between
25 gold and bronze. But using this type of

1 methodology, you would think that the individual
2 who got bronze took three times longer than the
3 guy who got gold. We all know that's just
4 nonsense, but that's what this methodology does.

5 Mr. Berrien had a perhaps more
6 relevant example of that when he took you through
7 the differences between the B series rounds, or
8 the B series routes in Round 3. And he showed you
9 in his report there were the different criteria
10 that were selected, and we'll get into that, on
11 how three of those routes were virtually
12 identical, very minor differences. But then one
13 of the scores, given the weighting that was
14 attributed to it, really distorted and magnified
15 the difference between those three routes in a way
16 that, to people who aren't wedded to this
17 particular methodology, that that difference would
18 really be meaningless.

19 And the third example where this
20 distortion and magnification that's inherent in
21 this methodology comes into play is actually an
22 example from Manitoba Hydro. And we'll get into
23 this a little bit later. But you will recall
24 there's those two tables where route SIL, it's
25 been eliminated and revived once, and it's then

1 run through the scores again. And yet again
2 Route SIL comes in third.

3 Well, one of the reasons why SIL comes
4 in third is because of this particular
5 methodology. So one of the scores, the score
6 that's ultimately changed by Hydro to make sure
7 their preferred route gets through the next round
8 is a two instead of a one. And the other four
9 routes all have a one.

10 So even Manitoba Hydro, through their
11 own actions, has shown that this methodology has
12 the potential to distort and magnify what might
13 otherwise be relatively minor differences. That's
14 an extremely important flaw in this methodology,
15 because routes are being eliminated, not because
16 they aren't viable, not because they're
17 inappropriate, but because scores that are being
18 attributed to them, scores that are already
19 subjective are then given subjective weights and
20 minor differences are blown wildly out of
21 proportion.

22 One of the other flaws with this type
23 of methodology is the potential for important
24 criteria to be overwhelmed or diluted by the sheer
25 number of criteria that might be used. So in the

1 Bipole III report, your predecessor Commission
2 was, at least in my view and in the view of
3 Mr. Berrien, I understand that there might be
4 different ways to look at this particular aspect
5 of the report, but as I read it, they were
6 critical of Manitoba Hydro for using 28 criteria.

7 As Mr. Berrien pointed out, and as I
8 also tried to do the math, in one step of the
9 EPRI-GTC methodology, Manitoba Hydro is using 132
10 different criteria. Now, when you're using that
11 many criteria, it's no surprise that really
12 important factors can get washed out by the sheer
13 number of other factors that are being taken into
14 account. Because every factor that you're using
15 needs some sort of a number attached to it. So
16 important criteria such as, as Mr. Berrien said,
17 the avoidance of home sites, the use of existing
18 linear disturbances, criteria like that can really
19 get downplayed and their importance can be lost
20 when you have just so many criteria being used in
21 the system.

22 Now, this isn't necessarily just a
23 flaw in this type of methodology. That would be a
24 potential flaw in any system that is really using
25 a lot of GIS data and a lot of computers.

1 Because, I think I asked Mr. Glasgow if there was
2 an optimal or a maximum number. You could have
3 potentially had 500 criteria, you could have had
4 5,000 criteria. In some senses there's really no
5 limit to the number of criteria that can be used.
6 But every time you're adding additional criteria
7 when you're up in that range, you're diluting
8 other criteria that are extremely important. So
9 that's another issue that is a flaw, not just in
10 this methodology, but for our purposes this
11 methodology was picked and that's one of its many
12 flaws.

13 Another flaw is the way in which the
14 funnel can be used. So as the process goes along,
15 Manitoba Hydro used the funnel a number of times
16 in the different rounds. And through that
17 process, viable route options or opportunities
18 were lost.

19 Now, you heard that the methodology
20 was used to select the border crossing. And in my
21 respectful suggestion, that border crossing could
22 have been selected without you using this
23 particular methodology. And I asked some
24 questions about that and you heard Hydro's
25 responses. But there were viable route

1 opportunities that were eliminated, that could
2 have been re-examined, say when the border
3 crossing was shifted a number of kilometres east
4 from the Piney West location that was initially
5 settled on, closer to the Piney East border
6 crossing. There were routing opportunities that
7 may have been more appropriate at that point.
8 They may not have. We'll never know because Hydro
9 didn't go back and take a look at them once
10 circumstances and information changed.

11 So again, going right back to
12 effectively the original sin of Hydro's decision
13 to select this routing methodology before hearing
14 the Commission's criticisms of the former one,
15 decisions are being made and not reconsidered when
16 circumstance and information changes.

17 And then one of the flaws that's in
18 some respects separate from, but also as a result
19 of the other ones we've already talked about is
20 the flaw of subjectivity. And just the ability of
21 this particular methodology to be influenced, not
22 by quantitative data, not by objective yardsticks,
23 but by sheer subjectivity. And the more
24 subjectivity that the methodology employs, the
25 easier it is to be manipulated. And that's

1 something that Mr. Berrien talks about in a number
2 of the criticisms that he made of the methodology,
3 and it's important to note, as I will a little bit
4 later, that criticisms were not touched during
5 Mr. Berrien's cross-examination, and rightly so,
6 and also that were not the subject of any rebuttal
7 by Manitoba Hydro. So those criticisms have not
8 been challenged by Manitoba Hydro.

9 So just to sum up some of the most
10 obvious flaws in methodology, given that there's
11 only 90 minutes, we don't have time to hit all of
12 them, just the highlights. You've got a
13 methodology that generates primarily garbage.
14 It's subject to false precision, the dilution of
15 important criteria, it distorts and magnifies
16 otherwise insignificant differences, and it's open
17 to manipulation and driven by subjective
18 decisions.

19 So right out of the gate, Manitoba
20 Hydro sets itself up for failure. But that's just
21 in early 2013.

22 Then we get to how this flawed system
23 is applied by Manitoba Hydro. And rather than
24 trying to make things better, given that they've
25 made a very poor decision in methodology, now

1 let's talk about how much worse they made it as
2 they actually applied it over the years.

3 So for those who were following along
4 in the outline of the closing submissions, some of
5 what the Coalition has to say on the flawed
6 application starts at paragraph 14 on page 8, it's
7 right in the middle there, and it goes on for
8 quite a while. It goes over to paragraph 41 on
9 page 17.

10 So there's really, I guess, five
11 primary aspects of the application that I'd like
12 to focus on this morning that are problematic.
13 The first is how Manitoba Hydro just effectively
14 imported this methodology and didn't really make
15 any appropriate adjustments for the geographic
16 area that it was going to be applied in. Then we
17 can talk about how the individuals who were
18 involved in making some of the most important
19 decisions in how this methodology would be applied
20 were neither diverse nor multidisciplinary. And
21 we'll talk about how their biases drove the
22 selection of the final preferred route that's so
23 problematic. We'll talk about how Manitoba Hydro,
24 throughout applying this methodology, discounted
25 and disregarded the concerns of landowners. We'll

1 talk about how to distort the outcome of the
2 process, Manitoba Hydro double counted certain
3 types of delay and excluded other types of delay.
4 And then finally we'll talk about, in some
5 respects build on some of the submissions that you
6 have already heard from some of the other
7 participants in this proceeding, about how
8 Manitoba Hydro failed to properly incorporate data
9 and concerns from different potentially affected
10 First Nations and the Metis people.

11 So let's start over on the top of page
12 9, how Manitoba Hydro failed to adopt this
13 methodology for southeastern Manitoba.

14 So the methodology, as Mr. Berrien
15 says in his report, has as an example in the
16 original 2006 paper, a one-third, one-third,
17 one-third split. So when you're developing these
18 alternatives corridors, you've got one corridor
19 that's environmental, you've got one corridor
20 that's -- or sorry one corridor that's natural,
21 which is the environmental category, one that's
22 built, one that's engineering. And then you come
23 up with a simple average of them.

24 So, as you've heard from Mr. Berrien,
25 in a State that I thought was a neighbour, it's

1 actually not a neighbour, it's a little bit too
2 far away, but in the State of Kentucky, they
3 changed that process. My guess is they changed it
4 because the conditions that exist in that
5 particular state are different than they are in
6 the State of Georgia. And you would expect that.
7 If you're going to be importing the methodology
8 developed for one geographic socio-economic
9 biophysical environment, you'll make appropriate
10 adjustments when you're going to apply it in your
11 own area. So the State of Kentucky did that. But
12 that's not what Manitoba Hydro did. Manitoba
13 Hydro took that example and just ran with it.

14 So one of the ways in which, at least
15 it strikes me and I suspect it strikes others both
16 in the room and elsewhere, one of the ways that
17 Manitoba Hydro could have adopted this methodology
18 to take the particular concerns of southeastern
19 Manitoba and the particular environment of
20 southeastern Manitoba into account, could have
21 been to adjust some of those weightings when
22 you're developing the average corridor. They
23 could have made use of a separate corridor. You
24 know, imagine that Manitoba Hydro had actually
25 done things properly and accumulated a lot of the

1 data that comes towards the end of the process
2 through the ATK studies, and other information or
3 data acquisition from First Nations and Metis
4 people, imagine if you had all of that data at the
5 outset. And we'll talk about that a little bit
6 later, and the profound impact that should have
7 had on the process. Imagine if Manitoba Hydro had
8 had that information at the outset. One possible
9 way that this could have been adopted would have
10 been to develop some sort of a corridor that takes
11 the data and the concerns of First Nations and
12 Metis peoples into account. Because, as I think
13 it was Mr. Matthewson said that the development of
14 these corridors don't necessarily dictate where
15 the individuals who are going to draw the
16 different route segments are going to put the
17 pencil on the paper, but they certainly have a big
18 impact.

19 So one of the ways that this could
20 have been adjusted would have been to do something
21 like that. You can adjust the different
22 percentages when you're coming up with your
23 average corridor, you could have had an entirely
24 separate corridor, you could have actually used
25 some of that data that Manitoba Hydro waited to

1 collect and used it to influence, even if you keep
2 the third, third, third, use it to influence some
3 or all of those perspectives. But that's not what
4 happened.

5 Now Manitoba Hydro, and this became
6 evident during Mr. Hunter's gentle examination of
7 Mr. Berrien, where he started to ask him questions
8 about, well, wouldn't you agree, sir, that
9 Manitoba Hydro did adjust, because we adjusted
10 from a 230 kV line to a 500 kV line? Well, that's
11 not adjusting the methodology to take the local
12 conditions into account, that's adjusting the
13 methodology to take into account the type of line
14 that Manitoba Hydro is putting through, and
15 nothing more.

16 And as we'll get into, when they did
17 start to make modification, they made the wrong
18 ones. So here was a prime opportunity, you get a
19 methodology that you're going to use from the
20 U.S., you can make any sort of changes or
21 modifications that you want to it and they
22 couldn't be bothered.

23 Now maybe it just made it easier to
24 use the routing consultant, because he didn't have
25 any experience in Manitoba. Maybe it was just too

1 costly, we'll never know. But a missed
2 opportunity. And again, we won't know how, if
3 Manitoba Hydro had done that, how this routing
4 process would have gone differently. But I
5 suspect we wouldn't have ended up with such a bad
6 route being presented to this Commission and being
7 told that, notwithstanding that it's a horse
8 apple, that it's a wonderful example of route
9 selection.

10 But even that is, you know, an example
11 of something else. Manitoba Hydro selects this
12 methodology, hears the criticism levied by your
13 predecessors, makes no changes. But they're
14 prepared to blindly follow the recommendations of
15 an industry-funded group based in the U.S. and a
16 fellow utility.

17 In my respectful submission, they've
18 got their priorities wrong. They should have been
19 listening to this Commission, rather than
20 listening to fellow electrical utilities and their
21 industry groups in the U.S.

22 Now, let's talk about how the four
23 engineers effectively decided where this route was
24 going to go, before any of the real work,
25 including the bit of work that was done with the

1 public and others, took place. So you will have
2 seen an EIS, and this is on page 538, that the
3 Preference Determination Model, and this is the
4 one at the very end where we've got the criteria
5 and the weightings. So on page 538, Manitoba
6 Hydro is talking about how these high level
7 criteria and weightings set by the management team
8 represent key considerations. So it struck me,
9 and I'm sure it struck others, when looking at how
10 this methodology was being sold to you, that the
11 individuals that would have been involved in
12 setting these criteria and setting the weightings
13 would have come from a variety of disciplines,
14 they would have had diverse backgrounds, they
15 would have sought input from other units. Well,
16 given what we've heard from some of the other
17 participants, at least they would have sought
18 input from others within Hydro who might have some
19 interesting experiences and backgrounds to share.
20 But that's not at all what happened. You have got
21 four engineers.

22 Now, in fairness there is some
23 diversity. Two of them are civil engineers and
24 two of them are electrical engineers. So at least
25 we've got some of the engineering world

1 represented. All four of them were Hydro lifers.
2 And even though they will consult outside of that
3 group on other decisions, this critically
4 important one that will affect thousands of people
5 in Manitoba, that will affect a huge area of the
6 province, the ability of people to enjoy that part
7 of the province, they couldn't be bothered to seek
8 any outside input. They know best, the four
9 engineers.

10 And wouldn't you know it, the four
11 engineers pick five criteria. Those criteria are
12 heavily weighted in favour of what I call
13 engineering criteria. You've got the cost
14 element, which is set at 40 per cent. You've got
15 the system reliability criteria at 10 per cent,
16 and you've got the schedule risks criteria at 5
17 per cent.

18 So at tab 4 of the materials, there's
19 a couple of documents. If you've got that closing
20 outline up there in front of you, if you could
21 flip to tab 4 for a second? So there's three
22 pages here. The first page sets out in some
23 greater detail what the actual criteria are -- no,
24 there's actually six criteria, sorry. So half of
25 them are engineering criteria. And when you total

1 that up, they're given a weighting of 55 per cent.
2 If you go to the second page that's here, from
3 Appendix 5A of the EIS, this shows that the four
4 engineers had originally set the engineering
5 criteria a little bit differently. They still
6 totalled 55 per cent, but then they eventually
7 made some changes once they changed the line from
8 230 to 5. And then the final document that I've
9 got here, this is map 5-9. And if I recall
10 correctly, during the initial presentation, this
11 is one of the maps that Mr. Matthewson pointed to
12 and he drew your attention to the simple average
13 corridor in the bottom right. The one I want you
14 to take a look at is the engineering environment
15 corridor up in the top left.

16 Now we heard Mr. Glasgow confirm, and
17 this is also in the EIS, that the three different
18 perspective corridors, they have a five times
19 weighting on that particular perspective. So the
20 engineering environment corridor has a five times
21 multiple being applied to those criteria. And if
22 you take a look, the darker green line in the
23 middle effectively tracks the final preferred
24 route. So right at the outset, the decisions that
25 are being made by Mr. Mailey, Mr. Penner and the

1 other two engineers -- who I don't think were on
2 the same year of engineering as Mr. Mailey and
3 Mr. Penner, but I forgot to ask that part -- is
4 driving where that route is going to go. So
5 again, before public input is being sought, before
6 the First Nation and Metis engagement process is
7 really up and running, the die has already been
8 cast.

9 Now, let's talk about how Manitoba
10 Hydro heard concerns from landowners and then
11 promptly proceeded to discount them. So if you
12 can go to tab 5, that's the next tab, you'll see
13 this is a Coalition information request 76. This
14 is one of the documents that I had asked Mr. Joyal
15 some questions about. If you will recall during
16 his presentation, he talked a lot about the
17 different types of feedback that were received, he
18 had some charts that showed it. And that material
19 is on the record. But hopefully you'll recall
20 that a lot of the concerns that were being raised
21 were similar to some of the key routing principles
22 that Mr. Berrien talked about, home site
23 avoidance, making use of existing linear
24 disturbances.

25 If you take a look at the top three

1 criteria, which I'm going to suggest are
2 effectively the home site avoidance criteria,
3 you've got relocated residences, potential
4 relocated and proximity to residences. So keep in
5 mind that this is a recalibration of some of these
6 criteria that happens after Manitoba Hydro is
7 hearing from members of the public and concerned
8 constituencies. And this is after they've heard
9 all of the criticisms that were leveled at them
10 during the Bipole III process.

11 Manitoba Hydro hears that avoiding
12 home sites is critically important. What does
13 Manitoba Hydro do? Well, they reduce the
14 importance of each of those three criteria by
15 large amounts. These aren't minor modifications,
16 these are significant. We're not talking about
17 the minor differences between the routes that
18 Hydro picks because they prefer them to others,
19 these are significant differences that are going
20 to have a massive impact on their decisions.
21 Landowners say these are the things that are
22 important to us. Hydro's response, they aren't
23 important to Hydro.

24 So after hearing feedback, we see
25 Hydro's response, slash the importance of what

1 they have been told was important, and then go
2 down to the very bottom two. Now, I know that
3 some in this hearing have suggested that where
4 things are on a list are an indication of
5 importance. In my view, that's just silly. But
6 the final two criteria here, you've got what I
7 would suggest are the existing linear disturbance
8 criteria. So we've got the percentage of the
9 route paralleling existing transmission lines and
10 the percentage paralleling roads.

11 So on the St. Vital to Letellier line,
12 a line where they were able to avoid public
13 scrutiny, because I think it was a class 2 as
14 opposed to a class 3, they actually take that into
15 account.

16 This project, as you will see, they
17 didn't just slash their importance, they deleted
18 them completely. So two of the most important
19 routing criteria in Canada, either deleted or
20 significantly slashed by Manitoba Hydro after they
21 have started to hear input from Manitobans.

22 So this one chart, in my respectful
23 submission, really encapsulates all of the other
24 ways in which they've discounted and disregarded
25 landowner concerns, and really held private

1 property owners in disdain, whether it was that
2 video at the outset, which by the way I thought
3 the music was great. When I was working on
4 Sunday, I kept having the video play in the
5 background because I found it relaxing. But
6 again, the homes were missing. We had the
7 nonsense about farms not including land, so that
8 they could stick to statements that were obviously
9 incorrect in the EIS. We had Mr. Hunter's
10 examination of Mr. Berrien. Part of it he was
11 attempting to establish that home site avoidance
12 is not important.

13 But going back to the data for a
14 minute. We heard when the routing panel was up,
15 that during the corridor generation aspect of this
16 flawed methodology, small buffers are placed
17 around occupied homes or residences. And in some
18 respects, that's in the area of least preference
19 aspect of the model, and that was done to make
20 sure that these dots of data are being accurately
21 reflected on the map. Now, those buffers around
22 those residences are then removed once the
23 corridors have been developed. So that the
24 right-of-way is conceivably going right through
25 the living-room of Manitoba. And we've got the

1 transcript references here where I was asking
2 questions about whether there was any technical
3 impediments to keeping those buffers, as you go
4 through, so that routes can't be within a certain
5 distance of residences. The buffer that was used
6 during the corridor model was 50 metres. Hydro's
7 got a policy where they will buy out landowners
8 within 75 metres. The figure 150 metres was
9 referenced during Mr. Berrien's examination. So
10 there's a number of possibilities. It's also
11 possible that the buffers of something greater
12 could be placed around communities like
13 La Broquerie or the Town of Marchand, as we'll
14 talk about shortly. But that wasn't done. So
15 Manitoba Hydro removed that buffer. And if those
16 buffers, whether that small size that they used or
17 something larger had been applied during this
18 process going forward, I'm going to suggest to you
19 that a lot of the concerns, not all of them, but a
20 lot of the concerns raised by landowners would
21 have been dealt with. But, again, that would
22 require a public utility that take landowner
23 concerns into account and take them seriously.
24 But that's not the public utility that we're
25 dealing with. We're dealing with Manitoba Hydro.

1 So the buffers come off and the right-of-way can
2 go through living rooms.

3 Now, in fairness to Manitoba Hydro,
4 Mr. Matthewson did say that while -- and to some
5 extent I'm paraphrasing and perhaps putting some
6 helpful words into his mouth -- that while there
7 may not be any technical impediments to this, we
8 actually don't know if we would still be able to
9 generate viable routes. And this was something
10 that Mr. Glasgow said that was similar. So in the
11 computer sense, yes, this was possible, we can put
12 these buffers on, but we actually don't know what
13 will happen once we do. And it's possible that if
14 these buffers are used, we may not be able to get
15 from point A to point B. And that's a fair point.
16 But that's a piece of information that they should
17 have known and that they should have been able to
18 present to you, because it's something that they
19 should have explored and investigated. Because
20 avoiding home sites is one of the most important
21 criteria to take into account. And that would
22 have been an excellent way to honour that
23 principle.

24 So I'm not going to spend any
25 additional time on the Centennial farm issue,

1 other than to say that it's an example that really
2 undermines pretty much every conclusion that was
3 reached in the Environmental Impact Statement.
4 And that if Manitoba Hydro is going to go to the
5 extent of effectively denying that Centennial
6 farms include land, simply to maintain two
7 statements in the Environmental Impact Statement,
8 where else have they simply defined adverse
9 impacts away, so that they can come here and tell
10 you that there's no significant adverse impacts.
11 We don't know.

12 And I'm not going to complain about
13 the resources that were provided. We certainly
14 appreciated them and I think we have put them to
15 good use, but the resources simply weren't
16 provided to properly assess where else this was
17 done in the EIS. So we caught them on this one,
18 and it undermines every other conclusion that
19 they've made. The reason I'm talking about it
20 here is that it's yet another example of
21 landowners not being important to Manitoba Hydro,
22 and their concerns not being important to Manitoba
23 Hydro.

24 And just to tie that off, even on the
25 very last day of evidence, one of Manitoba Hydro's

1 witnesses is calling landowners receptors.
2 Landowners are not receptors, they are people,
3 their interests are important. Things that they
4 have to say are important. Now, I appreciate that
5 Manitoba Hydro may not see them as important, or
6 the things that they have to say as important, but
7 I sure hope that this Commission, and I know that
8 the Minister of Sustainable Development and the
9 government that she's part of take what they say
10 into account. And they believe that their
11 concerns are important and that they themselves
12 are important. They aren't receptors. What sort
13 of a public utility talks about the people that it
14 supplies like that? The only one that I'm aware
15 of is Manitoba Hydro.

16 So let's turn now to some of the delay
17 that the receptors, as Manitoba Hydro has referred
18 to them, may generate here. So this is an
19 important area. So one of the factors that's
20 obviously important to Manitoba Hydro is the
21 possibility of delay. Now, the timetable that you
22 heard Mr. Penner and Mr. Ireland and others talk
23 about is focused on an in-service date, or ISD, of
24 early 2020. And in my view, at least for what
25 it's worth, that really depends, if we're going

1 with the current route, that really depends on two
2 events happening that I think are rather unlikely.

3 So one of them would be the licence
4 being allowed to operate while legal challenges
5 are under effect, or under way. And the other is
6 that the Provincial Government will strip
7 landowners of their rights to object to
8 expropriations. So for Manitoba Hydro to meet
9 this in-service date that's important, they are
10 counting on the Pallister Government to do those
11 two things. I'm going to suggest to you that
12 those two things are unlikely, given the number of
13 adverse impacts that this current route has. I'll
14 let the Commission be the judge of that.

15 But in tab 12 of the material, you'll
16 see the Order-in-Council that the defeated
17 Selinger Government relied upon to take away the
18 rights of objecting landowners for the Bipole III
19 project, to take away their ability to object to
20 expropriations. And there's an IR that has a
21 letter attached to it, and that's at tab 8, where
22 a request has already been made to the Pallister
23 Government not to exercise that power. We don't
24 know, we can't predict what the government is
25 going to do, but that's certainly one of the

1 issues that's out there in the ether, that may or
2 may not have to be resolved after this hearing is
3 over.

4 And the reason this expropriation
5 issue and delays that arise from it is so
6 important was actually referred to during
7 Mr. Berrien's submission. If you will recall,
8 there's a line in one of the paragraphs of his
9 report where he's quoting something from the
10 Supreme Court, and that's where he subsequently
11 joked that he was glad he wasn't a lawyer in
12 response to one of Mr. Hunter's questions. So the
13 case that he was referring to is a case called
14 Toronto Area Transit Operating Authority versus
15 Dell Holdings Limited. And if it's important, the
16 actual cite for that case is [1997]1, Supreme
17 Court Reports 32. And at pages 44 and 45 of that
18 decision, the Supreme Court said something that I
19 think is important to recall for these purposes.
20 And that is:

21 "The expropriation of property is one
22 of the ultimate exercises of
23 governmental authority. To take all
24 or a part of a person's property
25 constitutes a severe loss and a very

1 significant interference with a
2 citizen's private property rights."
3 Expropriation is extraordinarily
4 serious, and taking a Manitoban's rights away to
5 object to that expropriation is very serious.
6 Manitoba Hydro is counting on the government to do
7 that.

8 Now, that type of delay wasn't taken
9 into account in their methodology, because to do
10 that would mean that landowner concerns and
11 landowner remedies would have to be given
12 appropriate weight. So that, and there's IRs on
13 this where that type of delay is expressly not
14 being taken into account.

15 We do have other types of delay being
16 double counted. So from Manitoba Hydro's
17 perspective, the delay that can be generated by
18 the Crown consultation process, that's counted in,
19 at least as far as we can tell, in at least two of
20 the criteria, both in the community criteria as
21 well as in the schedule risks criteria.

22 Now, you'll recall in the meeting
23 notes, there's extremely detailed notes of what
24 must have been a very lengthy discussion in the
25 community session about delay arising from the

1 consultation process. And Hydro's witnesses
2 denied that that was the case, but the response to
3 coalition IR 148 confirmed that that delay was
4 being discussed during the community breakout
5 session. So delay, well, at least some types of
6 delay is being double counted. Now, that's a flaw
7 with the methodology that I didn't get into
8 earlier, but that can have a pretty significant
9 impact. So you're double counting some types of
10 delay, you're excluding other types of delay, and
11 that is going to have an impact on a route that's
12 eventually selected.

13 Now, what we have tried to do here is
14 to set out some of the types of delay that were
15 not taken into account by Manitoba Hydro. So one
16 of the -- and this is something that came out of
17 something that Ms. Whelan Enns talked about, I
18 don't remember when, but one of the days that she
19 was here she talked about how she's appealed a
20 number of licences being granted by the Minister
21 of Conservation and Water Stewardship, the
22 Environment, whatever that Ministry has been
23 called over the decades. And we have actually got
24 an example of one of those, the results of one of
25 those appeals in the materials, and that's at tab

1 11. So if you've got that there, you've got an
2 Order-in-Council, and it's an Order-in-Council
3 dated November 9, 2016, so not too long ago. This
4 is the Order-in-Council where appeals that were
5 launched of the licence that was granted for the
6 Keeyask project were being dismissed. Those
7 appeals were launched in the summer of 2014, it
8 took more than two years to deal with the appeals.
9 Now that's an appeal that goes from the Minister
10 straight to Cabinet.

11 Now, if the Provincial Government puts
12 any licence that's granted on hold while just that
13 type of appeal, just that one type of appeal is
14 under way, that could add potentially two years of
15 delay to this project. Now, that doesn't take
16 into account all the other sorts of delay that may
17 be generated, further steps that are taken. And
18 it's important to note that just because there may
19 not be a right of appeal set out in a statute,
20 that doesn't mean an affected person doesn't have
21 a right to go to court to challenge it. If there
22 is a no statutory right to do it, it's called
23 judicial review. So depending on Cabinet's
24 decision, either Manitoba Hydro or whoever has
25 launched the appeal, be it Ms. Whelan Enns or

1 someone else, can go to court and ask for that to
2 be overturned. Proceedings in the Court of
3 Queen's Bench can take a number of years,
4 proceedings in the Court of Appeal can take a
5 number of years, proceedings in the Supreme Court
6 can take a number of years. And that's just on
7 whether or not you get licensed, let alone any
8 issues that may come up with respect to Manitoba
9 Hydro attempting to get rights to actually proceed
10 over certain lands.

11 So, one of the cases that I was
12 involved in before coming back to Manitoba is an
13 example of the type of delay that can result. It
14 was a contempt of court proceeding that was
15 started in late 2009, and the Supreme Court did
16 not render its decision until April 2015, so not
17 quite six years. So these types of proceedings
18 can generate significant delay. And again, this
19 is just on whether or not a licence should be
20 granted, let alone the similar types of delay that
21 can come up if there's disputes over
22 expropriation.

23 The government may decide to behave
24 the way the Selinger Government did and strip
25 landowners of their rights to object to

1 expropriation. If that happens, I would
2 anticipate that this time -- there wasn't in
3 Bipole for reasons that I don't understand -- but
4 this time there would be a challenge launched to
5 that. Maybe it's successful, maybe it's not, who
6 knows? If they don't exercise that power, then
7 there's individual proceedings on expropriation,
8 there's different delays that can arise there.

9 So there's a number of types of delay
10 that go largely to that post licensing delay
11 category that I tried to come up with, as opposed
12 to pre-licensing delay. But regardless of how you
13 characterize it, it's important. It should have
14 been taken into account because it can have an
15 influence. Hydro themselves have said that the
16 impact to schedule is something that's important
17 to them. And by failing to take that into
18 account, you aren't generating the best outcome.

19 Now, just in the interest of time,
20 I'll move onto the final category in the flawed
21 application. And this is the failure to properly
22 acquire and incorporate First Nation and Metis
23 data and concerns.

24 So your predecessors asked for more
25 quantitative data. That was one of the requests

1 that was made in the Bipole III report. Manitoba
2 Hydro has told you that they honoured that
3 request. In this area, though, I'm going to
4 suggest to you that they haven't.

5 So numerous routing decisions were
6 being made, both before quantitative data, whether
7 generated through the ATK study process or
8 otherwise, but before that data was available to
9 Manitoba Hydro. And this isn't a duty to consult
10 case, but something that Supreme Court has talked
11 about in the duty to consult is important to take
12 into account. The duty to consult isn't just
13 about operational decisions. Right. So it's not
14 just what day of the week are we going to infringe
15 our rights, it's whether or not that may happen at
16 all. Or if it's going to happen, how it happens.
17 So there is a broad range of decision types that
18 can trigger the duty to consult.

19 And the Supreme Court of Canada in the
20 Carrier Sekani case that we provided talks about
21 the duty to consult being triggered by strategic
22 high level decisions, and that steps have to be
23 taken at the outset to consult potentially
24 affected groups.

25 Now, again, this isn't a duty to

1 consult situation, but a similar principle
2 applies. Manitoba Hydro should have been taking
3 these concerns into account at the outset.
4 Manitoba Hydro should have had this data at the
5 outset. Before significant routing decisions were
6 made, that information should have been available
7 so it could be taken into account.

8 So waiting until the process is half
9 done, or even closer to completion, before really
10 starting to incorporate this information, in my
11 respectful submission, falls far short of what
12 Manitobans expect of Manitoba Hydro and what this
13 Commission should allow Manitoba Hydro to do going
14 forward.

15 So, just as an example, at tab 16
16 we've got the list of the areas of least
17 preference, and there's a series of areas of least
18 preference. So these are areas that are going to
19 be avoided during some or all of the steps in this
20 routing methodology that was selected. Just
21 imagine for a moment how different the route that
22 we would be talking about today would be if just
23 the data that we've got on some of the maps that
24 are included on the tab before that, at tab 15,
25 that if some of that data had been included in

1 just the areas of least preference, just in that
2 one little bit of this process. So we've got map
3 11-4, we've got plant harvesting information
4 prepared and collected from Peguis First Nation.
5 Imagine if those dots were areas of least
6 preference, or if there were buffers placed around
7 those areas. The next map, map 11-5, hunting and
8 trapping, again, this is just Peguis data. But
9 imagine if this information had been incorporated.
10 The final preferred route is going through an area
11 identified here as being an area where Peguis
12 members are exercising their rights. If that had
13 been identified as an area of least preference,
14 the route would not be there.

15 Flip over the page to 11-6, we've got
16 cultural sites identified by Peguis. If you go
17 over to the next page, we've got information that
18 was obtained by the Southern Chiefs' Organization.

19 Now here we've got two types of
20 information. We've got the individual dots, which
21 are sort of the quantitative data, at least as
22 I've seen it, and I appreciate that I may not have
23 the right approach. But that bits of information
24 where buffers could have been applied, where those
25 areas could have had an impact. But then you've

1 got larger areas or zones that have been
2 identified.

3 Now, you'll recall that a lot of the
4 maps that were generated by the MMF were similar
5 to this, they were more zone oriented, although
6 the MMF did talk about how they had in excess of
7 3,000 use sites that could have been represented,
8 I guess, as data points on a map. So one of the
9 ways that those zones could be taken into account
10 is perhaps by adjusting what the criteria are in
11 certain areas. You know, one of the things that
12 Mr. Berrien said, either in his testimony or in
13 his report, is that locationally specific criteria
14 can be used. You may not want to use the exact
15 same criteria for the entire length of the route.
16 Maybe one of the ways that these zones that have
17 been identified on some of these maps, and it
18 could have been identified in other maps that
19 could have been prepared if Hydro had done its job
20 properly, maybe they could be taken into account
21 by adjusting the criteria through certain areas.
22 So there's a number of things that could and
23 should have been done but weren't. All of them
24 would have had a profound impact on where this
25 route would have gone.

1 And you heard from a number of both
2 participants and also from Grand Chief Daniels
3 when he was here giving evidence, that this type
4 of data acquisition needs to happen earlier. We
5 got some of that testimony excerpt at paragraph 36
6 of the closing outline. We also heard, at least
7 from the MMF panel, that certain existing linear
8 disturbances may actually present routing
9 opportunities. That's an issue that could have
10 been explored. So you potentially minimize
11 impacts going through other areas. But again,
12 that's not something that was done here because
13 routing decision after routing decision after
14 routing decision were being made in the absence of
15 this information.

16 And the criteria that are used to
17 assess routes, we've got that information at tab
18 18. This is the list of criteria that Mr. Berrien
19 was critical of for not including a criteria that
20 reflected First Nation and Metis use of lands and
21 concerns about lands.

22 Mr. Berrien's criteria are not the end
23 all or be all, they are a simple suggestion. But
24 Mr. Berrien did try to come up with some criteria
25 to capture some of the data that was available.

1 Now, of course, we won't know what
2 could and should have happened if Manitoba Hydro
3 had developed a list of criteria that was more
4 sensitive to the data and concerns that I'm
5 talking about, but again I'll suggest to you that
6 it would have had a profound impact.

7 Now, I've said something somewhat
8 similar, both with respect to the concerns of
9 private landowners and the concerns of First
10 Nations and Metis people. And that is that
11 Manitoba Hydro didn't do a very good job of taking
12 their concerns into account. And I'm going to
13 suggest to you that if Manitoba Hydro had done
14 that, the route that we would have been talking
15 about would be very different. The information
16 that we would be using to discuss that route would
17 be very different. And that is a tremendous lost
18 opportunity. And what that means is that the
19 information and analysis that you should have to
20 make your decision, to inform the decision to be
21 made by the Minister, is missing. And that's
22 Manitoba Hydro's fault, in my respectful
23 submission.

24 Now, I take the points that have been
25 raised by others, that there are concerns about

1 how this data can be shared, how it is being used
2 by utilities and by the government. I appreciate
3 all of those concerns. And I'm going to suggest
4 to you that there's ways that those concerns can
5 be addressed to ensure that that information is
6 made available to inform decisions being made by
7 you and by the Minister.

8 So let's talk for a couple of minutes
9 about the flawed route that was selected by
10 Manitoba Hydro. That's Route SIL, or at least the
11 final preferred route is generated off of SIL.
12 And the reason that happens is that that's the
13 route that escapes Round 2, even though it's
14 repeatedly being eliminated as unsuitable for
15 scoring poorly.

16 And as Paul Berrien said, and he was
17 not challenged on this, so I'm going to suggest to
18 you that Hydro has effectively admitted this, that
19 Route SIL is so poor and violated so many routing
20 principles that it should never have seen the
21 light of day.

22 So, again, this goes back to the point
23 that I made earlier about how this methodology
24 generates garbage. If you can't differentiate
25 what's garbage and what's not, if all you're being

1 presented with is garbage, that's probably what
2 you're going to pick, and that's what happened.

3 So we've got at Appendix 5D, and this
4 is out of the EIS, and at pages 10 and 11 -- now,
5 Manitoba Hydro didn't page number them, but we've
6 got on page 10 or 11 of that appendix, we've got
7 the notes that show that SIL comes in third in the
8 simple average category. And it's beaten by route
9 SGZ. So SGZ goes on to the next round, AY is one
10 of the top routes, it goes on to the next round.
11 Two other routes that start with the letter U go
12 on to the next round. SIL doesn't, it's properly
13 been eliminated. But as we have heard, it gets
14 brought back in even though it's been eliminated.
15 And then we go through the application of
16 so-called expert judgments, and wouldn't you know
17 it, Route SIL comes in third again. And this
18 shows up on page 14 of the notes. So this is,
19 page 14, that's the one where Manitoba Hydro tried
20 to sell you that this table was just a working
21 table, it didn't really mean much. With respect,
22 that's nonsense. This route was properly
23 eliminated, and Manitoba Hydro brought it back
24 because it was Manitoba Hydro's preferred route.
25 That's what happened.

1 And their preferred route gets
2 eliminated by their methodology, so then they
3 start playing around with the methodology,
4 changing scores. And that's disclosed on the next
5 page.

6 So when it's Manitoba Hydro's
7 preferred route, corrective measures are taken to
8 make sure that all of the discordant aspects of
9 the methodology don't get on the road. And
10 wouldn't you know it, once they start messing with
11 the scores, their preferred route becomes the
12 winner, in the note-taker's words. Well, I'll
13 tell you who's not the winner, every Manitoban
14 that will be affected by this route. They
15 certainly don't win in this scenario.

16 So we've now got a route that's going
17 to form the backbone of the final preferred route,
18 that's been repeatedly eliminated as being
19 unsuitable. But because it's Manitoba Hydro's
20 preference, it sales through.

21 So at tab 19 of the brief, we've got
22 the red-green chart that Mr. Berrien prepared.
23 And this is the chart that shows the comparative
24 analysis that he thought your predecessors were
25 asking Manitoba Hydro to come forward with, not

1 the disaster that's been presented to you. And in
2 his view, the SIL route fails virtually every
3 category.

4 So in the Coalition's respectful
5 submission, the fact that the final preferred
6 route is based on such an unsuitable route, that
7 only survived the process because Manitoba Hydro
8 kept reviving and reviving it, shows that it
9 should not be recommended to the Minister.

10 Now, the middle column is Route AY,
11 and that's the alternative route that has been
12 suggested by the Coalition in this hearing is a
13 more suitable alternative to form the backbone of
14 the final preferred route. And as you heard, both
15 in his report and in his testimony, what
16 Mr. Berrien tried to do was to incorporate some
17 additional criteria that would do something
18 Manitoba Hydro didn't do, and that's reflect data
19 and concerns of First Nations and Metis people.
20 And I just want to pause here for a second. If
21 you recall part of the discussion during
22 Mr. Baldwin's examination of Mr. Berrien, I
23 thought it was extremely important, and I've said
24 this to Mr. Baldwin. And the discussion that they
25 were having about how some of that data and how

1 some of those concerns and how the impact to
2 projects like this may have on the ability of some
3 to exercise their constitutional or Treaty rights,
4 how is that taken into account in this type of a
5 process? Well, as important and informative as
6 that was, that shouldn't have been happening
7 during Mr. Berrien's presentation alone, that's
8 something that should have been included in this
9 process, in this methodology, and it's missing.

10 And again, Manitoba Hydro has let you
11 down and let Manitobans down.

12 Look, what Mr. Berrien did, he readily
13 admitted repeated times that he was just starting
14 to scratch the surface, that he had just
15 identified a glaring hole. That really makes it
16 difficult for this Commission to do the job that
17 the Minister has asked you to do, in my respectful
18 submission.

19 Now, Hydro is going to rely on that
20 failure on their part to try to convince you that
21 you shouldn't be looking at any alternatives
22 because information is missing, and people have
23 some concerns about it that really haven't been
24 studied yet. Well, I'm going to ask you to put
25 that request into proper context. If Manitoba

1 Hydro did a bad job, that doesn't give them a
2 pass, at least in my respectful submission.

3 Now, the AY route, at least the
4 currently contemplated AY route, does travel east
5 of the Watson P. Davidson Wildlife Management
6 Area. And I've tried to reflect some of the
7 responses to some of the concerns that have been
8 raised about that, in the section of the closing
9 outline that deals with this area, and that's at
10 paragraph 53.

11 So the Coalition recognizes and
12 acknowledges that a lot of the area traversed by
13 Route AY was not properly studied and was not the
14 subject of sufficient engagement during the
15 routing process. So it's important that if the
16 Commission is going to accept the Coalition's
17 submission that AY is a more appropriate backbone
18 for the final preferred route, that the Commission
19 is also live to the fact that additional study
20 engagement is required. And you have heard that
21 from a number of participant witnesses. You even
22 heard that in some of the written submissions. I
23 recall seeing that in one of the two or three
24 letters from the RM of Piney, saying that if there
25 are going to be modifications to the route, that

1 they would like to provide additional input. So
2 that concerns that people may have about the
3 eastern side of the Wildlife Management Area, they
4 can be addressed in that. And we've tried to
5 address some of those concerns here, because it
6 strikes me -- and again this is just because the
7 data that's available just scratches the
8 surface -- that a lot of those concerns aren't
9 about the area right along the eastern boundary
10 but further to the east, east of the railway
11 track, east of Provincial Road 404. So that strip
12 of land between those two existing linear
13 disturbances may turn out to be a phenomenal
14 routing opportunity. With further study and
15 engagement, we may discover that it's a terrible
16 routing opportunity. Again, that's something that
17 we should already know, and that's something that
18 Manitoba Hydro has deprived all of us of.

19 Now, you may have been asking yourself
20 at occasional points throughout this hearing why
21 it was the Coalition was focused on SIL and AY out
22 of Round 2, as opposed to being focused on route
23 BWZ, which is one of the routes that the
24 Commission asked a question about at the end of
25 last week. And that route travels around the west

1 side of the Wildlife Management Area, but is
2 significantly further east of the Town of
3 La Broquerie. Well, the reason that that's
4 something that's not been suggested by the
5 Coalition is because the line then goes from
6 affecting the Town of La Broquerie and the people
7 who live in that vicinity to affecting people in
8 the Town of Marchand and people in that vicinity.

9 Now, at some stages in process there
10 was input received from the Town of Marchand, but
11 not with respect to that particular route option.
12 So the Coalition acknowledges that there are two
13 main routing issues in that area, the Town of
14 Marchand and the Wildlife Management Area. Those
15 are issues that can and should be explored in
16 Round 4, I think as it's been referred to
17 elsewhere.

18 Now, there is also issues about this
19 buffer that Manitoba Hydro started to talk more
20 about once the hearing began. I'm going to
21 suggest to you that's really a red herring. The
22 final preferred route violates the buffer. One of
23 the reasons for the buffer no longer exists once
24 Bipole III comes into operation. The return
25 periods they were talking about are inconsistent

1 with actual evidence that's available. If they
2 were actually concerned about the loss of lines in
3 that area, they'd actually have contingency plans
4 set up, if there's issues with their licence.
5 There's other ways to deal with these NERC
6 conditions. They're not before you in the
7 evidence so I don't know what restriction
8 requirements, I don't know what weight you can
9 take from the evidence you have about that. But
10 it's not necessary to get too concerned about
11 that, in my respectful submission. If Manitoba
12 Hydro can violate this buffer when it pleases
13 them, in my respectful submission, they can't then
14 rely on it as a shield to say that it somehow
15 fetters your ability to do your job, or that
16 somehow fetters the Minister's ability to do hers.

17 So in the small amount of time I have
18 left, I'll turn to the recommendations that the
19 Coalition is asking you to make.

20 The first is just to reject Manitoba's
21 request for this class 3 licence. They have done
22 such a bad job, and they have been so
23 disrespectful of everyone, that they do not
24 deserve to get this licence. You should reject
25 their request outright, and should only reconsider

1 recommending that this project go ahead to get
2 licensed once they have come up with an
3 appropriate route.

4 And we have talked about how they have
5 been disrespectful towards you, the people that
6 they are coming before, acting as if you're a
7 rubber stamp, acting as if they already have the
8 rights to go over the lands that they are seeking
9 a licence for, when they don't. Imagine if all of
10 the money they're paying to landowners for
11 easement agreements had been used to collect data
12 at the outset, hundreds of thousands of dollars
13 invested in obtaining additional quantitative data
14 that would have had a radical impact on where this
15 route would have gone. In my respectful view,
16 that's a better use of public resources, not
17 wasting it the way they are doing it now.

18 Now, I realize that that's a harsh
19 recommendation, but one that is fully deserved.
20 So if the Commission is not prepared to go quite
21 that far and to give Manitoba Hydro the medicine
22 they need, an alternative is to recommend that the
23 Minister grant stage licences. And this is the
24 statutory authority for the Minister to do that is
25 set out here. We heard that the non-contentious

1 parts of Dorsey to Anola and south of the Wildlife
2 Management Area, that there aren't too many issues
3 with that portion of the route, and Manitoba Hydro
4 could just send it back to the drawing board on
5 the middle section and they could get started on
6 the other sections. So concerns that they may
7 have about delay can be taken care of. And that
8 they would then come back, in our respectful
9 submission, to a subsequent hearing here to ensure
10 that they actually do a proper job this time of
11 considering where the line should go in that,
12 effectively the middle third. And concerns about
13 east or west side of the Wildlife Management Area,
14 how close to La Broquerie, how close to Marchand,
15 how much further east along the transmission
16 corridor past Anola should it go? Those are all
17 issues that can be resolved with further study and
18 further engagement. Quite frankly, all issues
19 that should have already been the subject of study
20 and engagement.

21 So the Coalition is asking you, either
22 in whole or in part, to send Manitoba Hydro back
23 to the drawing board, so that the concerns that
24 have been expressed and the data that's been
25 provided by landowners, First Nations and the

1 Metis Nation can be properly assessed, analyzed,
2 and used to inform the decision as to where this
3 transmission line, that is primarily intended to
4 export power to the U.S. -- let's call it what it
5 is, this line is exporting power, it's not being
6 used to supply power, although from time to time
7 that may happen if some of Manitoba Hydro's
8 projections turn out to be accurate. This is an
9 export line. And the concerns of people who live
10 along that line or who use the lands along that
11 line, their concerns have heightened importance if
12 they aren't going to benefit from the line.

13 Now, there's a number of conditions,
14 or licensing conditions that are being suggested.
15 I won't spend too much time on them, but there's
16 one or two additional ones and then, mercifully, I
17 am almost finished.

18 So one of the additional conditions
19 that is not listed here -- and this is my fault,
20 just in the limited amount of time to prepare
21 this, I didn't notice that I had left it out -- is
22 to ensure that there is much stronger language
23 with respect to bio-security. So one of the
24 bio-security licence conditions for Bipole III is
25 condition 46. I've been told by Hydro's external

1 counsel on another matter -- and I'm not providing
2 this as evidence, just so you understand where
3 this is coming from -- that they are going to be
4 commencing proceedings with respect to Bipole that
5 may result in findings that they breached that
6 particular condition, which may result in that
7 licence ultimately getting suspended. That's why
8 the condition about having protocols in place, if
9 licences are getting suspended or terminated, are
10 so important. If this Commission does accept some
11 of the recommendations to beef up say the slash
12 burn, the bio-security, other types of conditions,
13 if those types of conditions are getting stronger,
14 the likelihood that Manitoba Hydro will face
15 licensing issues goes up. And if there aren't
16 protocols or procedures in place for what happens,
17 if, God forbid, Manitoba Hydro is breaching these
18 conditions to the point that the Minister actually
19 suspends the licence, that Manitobans deserve some
20 certainty as to what will happen after that.

21 And when I suggested this to, I think
22 it was Mr. Matthewson, he had indicated, and I'm
23 paraphrasing, I don't have the exact transcript
24 reference, that it would be something that the
25 Minister would have views on what should happen.

1 I don't doubt that. But this is not something
2 where Manitoba Hydro should be reacting on the
3 fly. Having a licence suspended or terminated
4 could have very serious consequences for people
5 who reside along or in the vicinity of the line,
6 or he used lands along the line. And whether it's
7 a strength in bio-security or some other type of
8 condition, it's important that there be protocols
9 in place.

10 A couple of non-licensing
11 recommendations, and then I will just have a final
12 conclusive remark.

13 Reject this methodology. You would be
14 doing a tremendous disservice to Manitobans if you
15 recommended that Manitoba Hydro continue to use
16 it. Be forceful in your recommendations about the
17 earlier acquisition and incorporation of data and
18 concerns from First Nations and Metis people.
19 This route is an example of what happens when
20 Manitoba Hydro does not do that. That should
21 never happen again.

22 If experts are being made available to
23 public in community sessions, which I think is an
24 important innovation, if there's been issues with
25 their credentials raised during the hearing, the

1 people at those sessions should have that
2 information to be able to assess what they're
3 hearing. And that Manitoba Hydro, if they are
4 going to use this methodology going forward,
5 should do a much better job, a much better job of
6 taking landowner concerns, and concerns of First
7 Nations and Metis people into account. Not just
8 for the purposes of the monitoring plan, but right
9 from the outset. Imagine how different this
10 hearing would have been if some of the people who
11 were involved in this hearing had been involved in
12 setting some of the criteria, picking areas of
13 least preference, selecting the weights and
14 criteria in the Preference Determination Model.
15 It would have been a radically different hearing,
16 and it should have been.

17 So with that, subject to any questions
18 that you may have, that concludes my remarks. Out
19 of order, at least compared to other participants,
20 because I practice elsewhere and we don't
21 traditionally thank the people we appear in front
22 of, I'd like to thank you for listening, I thank
23 you for providing funding to the Coalition.
24 Without that support we would not have been able
25 to do what we were able to do during this hearing.

1 And on a personal note, I have appreciated
2 appearing in front of you. I realize that the
3 fact that I practice elsewhere most of the time
4 may have made for the occasional rough edge, and
5 to the extent that that did occur, I do apologize.

6 So with that, if you have any
7 questions, I would be more than happy to answer.

8 THE CHAIRMAN: Thank you, Mr. Toyne,
9 for a very focused and helpful presentation. As I
10 mentioned to all groups, this will certainly help
11 us in our deliberations and, of course, all your
12 background materials will also be very useful.
13 Thank you for putting that together. And I hope
14 you enjoyed your movie on the weekend.

15 All right. I think we'll take our
16 break now. I forgot to mention also thank you for
17 being timely, you are within one minute of your 90
18 minute allocation. So we'll take a break now.
19 We'll be back here -- I should perhaps ask
20 Mr. Bedford whether you've got any time frame for
21 your presentation?

22 MR. BEDFORD: I'm anticipating about
23 an hour.

24 THE CHAIRMAN: Okay. Then we'll take
25 a 15 minute break and be back here at 11:15.

1 Thank you.

2 (Proceedings recessed at 11:00 a.m.
3 and reconvened at 11:15 a.m.)

4 THE CHAIRMAN: All right. Welcome
5 back, everyone. It's 11:15, so the time has
6 finally come to hear Manitoba Hydro's closing
7 arguments, and I believe that will be Mr. Bedford.

8 MR. BEDFORD: Thank you,
9 Mr. Scrafield.

10 I was told 15 years ago, when I joined
11 Manitoba Hydro, that my life as a lawyer would
12 become easier. I was told a team of people would
13 write the final argument and my job would simply
14 be to read it. Over the years, I have stubbornly
15 refused to read someone else's written argument.
16 And consequently at this moment, the most nervous
17 people in this room are my colleagues at Manitoba
18 Hydro, because they have no clue what I'm about to
19 say regarding their work. However, I would like
20 you to know that a team of people is writing a
21 final argument. And when you look back after this
22 is all done, I rather anticipate you may find
23 their written argument to be of more practical
24 guidance to you than what I am about to tell you.
25 I'm told that their written argument will include

1 tables summarizing all of the commitments that
2 they have made at this hearing. I would certainly
3 commend that part of their written argument to
4 your attention.

5 I have wondered over the course of the
6 last four weeks, looking at the large map that was
7 generally in this room, how many who have been
8 here have asked themselves how the route for the
9 other 500 kV transmission line was determined
10 before it was built in 1979. That's the M602F
11 line that is featured in some of the evidence.

12 Well, I know and you know that it
13 certainly was not a route chosen by using the
14 Electric Power Research Institute, Georgia
15 Transmission Corporation methodology, because we
16 learn that that methodology wasn't created until
17 the first decade of the 21st century. I know that
18 there was no Clean Environment Commission review
19 of that route, because there was no Clean
20 Environment Commission in the 1970s. I know that
21 that route has no Environment Act licence, because
22 there were no Environment Act licences when it was
23 built. And I know that there was no consultation
24 pursuant to section 35 of our country's
25 Constitution with Indigenous peoples, because as

1 we were reminded during the course of this
2 hearing, that part of our Constitution came about
3 in 1982. However it was done 40 years ago, we
4 obviously do it differently today.

5 The route that you have been asked to
6 review, as you have heard, parallels for its first
7 92 kilometres existing lines in an existing
8 corridor. No one who spoke at this hearing
9 seriously disagreed with that. Many who spoke
10 thought it was a good idea. And if you are
11 tempted at all to write a report that finds that
12 the EPRI methodology was hopelessly flawed, ask
13 yourselves how you are going to explain, in so
14 concluding, how my client got it so right for a
15 good portion of the route that's presented to you?
16 Yes, the new right-of-way portion of the route
17 that's before you compared with the line that was
18 built 40 years ago, is further west. Less of it
19 is in intact forest. More of it is proposed to
20 lie on agricultural lands. Only 36 kilometres of
21 it will be on Crown land, which leaves 85
22 kilometres on private land. And yes, more of it,
23 compared to the route of 40 years ago, will be
24 closer to a number of residences.

25 This new route was not chosen by

1 drawing a diagonal line on a map from Dorsey to
2 Piney. We live in too complicated a world and a
3 province for that. And that complication was
4 reflected in the breadth of the presentations that
5 you listened to. You heard about the effects of
6 mankind on climate change throughout the world.
7 You listened to the frustrations that some of our
8 fellow citizens still have with historic
9 injustices in the case of the Metis people, dating
10 from the early 1870s, in the case of members of
11 First Nations dating at least to the 1870s when
12 the Treaties in this country were signed. You
13 heard about professional disputes over how to do
14 environmental assessments.

15 You certainly heard that this route
16 was chosen through the use of the EPRI-GTC
17 methodology as adapted to Manitoba's
18 circumstances. It was simply said that the EPRI
19 methodology was adapted and adjusted to the
20 landscapes of southeastern Manitoba. I can't tell
21 you how to explain how some people either missed
22 that, or forgot it as soon as it was spoken.

23 If one steps outside this hearing
24 room, the core concern you will hear from
25 Manitobans about Manitoba Hydro is the costs of

1 its projects and their impact on rates. When you
2 step inside this hearing room, where we all heard
3 that cost was identified as having been allocated
4 the greatest weight among six factors,
5 mysteriously cost becomes self-serving to Manitoba
6 Hydro. I suggest to you that allocating cost a
7 weight of 40 per cent was the responsible
8 decision. To use Mr. Glasgow's characterization
9 of corporate values, a Crown corporation should
10 reflect the core concern of its ratepayers. And
11 that was done in planning this route.

12 I ask you to reflect on some of the
13 strengths of the EPRI-GTC methodology. It is
14 transparent. The weightings, the identities of
15 the people who worked with the methodology, and
16 the working papers of all the teams were all
17 disclosed in evidence. The process is objective.
18 Through each round, the same process and criteria
19 were used. There were three rounds of public
20 engagement, more than Mr. Glasgow, who told us he
21 has participated in dozens of route planning
22 exercises, mainly in his country, but some in
23 Canada, more than what he has seen.

24 A First Nation and Metis engagement
25 process that began come this August 4 years ago,

1 and I would remind you that the characteristics of
2 transparency, objectivity, public engagement,
3 unique engagement with Metis and First Nations
4 people, who have unique concerns, are not
5 characteristics somehow unique to the utility
6 industry, and ought not, therefore, to be imported
7 to our country, are not characteristics somehow
8 unique to engineers. Those are characteristics
9 that we all recognize.

10 The routing process involved over 60,
11 and if we move forward to the work done in
12 assessing the final preferred route, the number of
13 individual professionals involved climbs to over
14 100. And I remind you that the application of the
15 EPRI-GTC methodology was not a simple process of
16 entering data into a model in a computer, it was
17 three years of discussion and debate and expert
18 study.

19 Ms. Bratland made some 50 trips over
20 the three years to the region in which this line
21 is proposed to be built. That's why on a
22 morning's notice, she was able to provide a
23 comprehensive answer to a question you posed.
24 Mr. Joyal, over those three years, has made over
25 100 trips to the regional assessment area.

1 For an example of what was discussed,
2 debated by my client's employees and the
3 consultants my client retained, we chose to look
4 at Appendix 5A, which is the collection of working
5 papers. I chose notes of a meeting that took
6 place on April 30, 2015. The meeting lasted all
7 day. I observe it involved 28 people. Should you
8 choose to look at the same notes, you'll recognize
9 a good half of the names because those people
10 testified before you at this hearing.

11 I looked at some of the topics that
12 were discussed, reviewed, debated. I read,
13 despite the close proximity, the landowners would
14 rather MMTP parallel R49R, even though it's closer
15 to their homes. I read that the RM of Tache has a
16 high value quarry that they don't want disrupted.
17 I read Manitoba Hydro anticipates that First
18 Nations would probably indicate that paralleling
19 is preferred because less vegetation is removed.
20 I read the RM of La Broquerie and Town of
21 La Broquerie has a strong opposition to the
22 transmission line. They are concerned with the MF
23 and health effects, they want the transmission
24 line away from people and development. Manitoba
25 Hydro has picked the more permissible development

1 zone. As Ms. Bratland said, concerns of
2 landowners and of First Nations people and the
3 Metis were included and debated and discussed at
4 every meeting. I read Peguis First Nation
5 indicated extensive hunting uses and a sensitive
6 site in a nearby patch of trees. Roseau River
7 mentioned that there is a cedar and sage botanical
8 area nearby. I read it is important to maintain a
9 treed buffer between the lake and the transmission
10 line. The natural tree line would cause the birds
11 to start climbing before they reached the
12 transmission line. All of those things, which I
13 selected to read to you, I suggest are exactly the
14 issues and the concerns that you would want
15 professional people to be thinking about, to be
16 discussing, and to be debating when they were
17 planning the route for a high voltage transmission
18 line.

19 The three perspectives, built,
20 natural, and engineering, were not chosen by
21 Mr. Mailey and his three engineering colleagues.
22 Those three perspectives have nothing to do with
23 preference determination for the final route.
24 Those three perspectives were used to identify
25 corridors, and they did assist in the initial work

1 of identifying viable routes.

2 Perhaps the most significant aspect of
3 the use of EPRI-GTC was what you did not hear. No
4 one who spoke to you advocated for use of a
5 different methodology, as opposed to advocating
6 that in the past the priority in some
7 jurisdictions has been to route away from
8 residences.

9 To each and every landowner, we at
10 Manitoba Hydro say that we listened and we believe
11 we understood your views and concerns. But in
12 life, in hearing rooms such as this, and in court
13 rooms, listening and understanding do not always
14 mean, cannot always mean we agree with you or that
15 we can agree with you.

16 To those who suggest that because I do
17 not agree with you, I'm showing disregard and
18 disrespect, I say you have not understood and you
19 have not listened. You ignore the other voices I
20 heard, you have not understood those other voices.

21 To borrow and adapt some now well
22 known words of our Prime Minister, I suggest to
23 you that because it is 2017, it is not acceptable
24 in addressing routing to ignore the interests of
25 Indigenous people until page 53 of a 59 page

1 report.

2 Mr. Berrien's experience has been in
3 routing through agricultural landscapes. The
4 challenge my client had was routing through a
5 mixed landscape of agriculture, forest, wetlands,
6 bogs, protected areas, and a region claimed by
7 multiple First Nations and the Metis as their
8 traditional territory.

9 Mr. Berrien's work, you heard, has
10 been largely done in Alberta, where he told us
11 apparently First Nations people and the Metis do
12 not regularly participate in hearings. And I have
13 noted where 5 per cent of the population is
14 Indigenous.

15 In Clean Environment Commission
16 hearings in Manitoba, First Nations and the MMF
17 always appear. In Manitoba, I have noticed that
18 over 17 per cent of our population is Indigenous.

19 The core concern Mr. Berrien had was
20 that information provided to Manitoba Hydro
21 through ATK, through many meetings with First
22 Nations, and through field trips, was that it was
23 not converted to in data, to numbers, to
24 quantification. I suggest that the adherence to
25 or faith in numbers and quantification is

1 fundamental to western science and to
2 non-indigenous cultures. I suggest that the time
3 has come to stop expecting Indigenous people to
4 provide us with information in a form, quantified
5 data, that is foreign to their language and to
6 their culture. First Nations people and the Metis
7 do not tell you how many animals or plants they
8 harvested, and frequently they do not tell you
9 specifically where they have harvested. Ten
10 gathering sites are not more important than five
11 simply because 10 is a larger number than five.
12 And if you have to route close by or through a
13 particular sensitive site, it is not adequate or
14 appropriate to simply say to the member of a First
15 Nation or to the Metis, there are nine other
16 gathering sites, go and use them.

17 The one VC without a threshold was
18 traditional land use. The reason for that is that
19 it was a VC focused on the use of lands in the
20 regional assessment area by members of First
21 Nation and the Metis. It was thought
22 inappropriate to try and find a threshold, meaning
23 a number, in order to study that VC and to predict
24 what changes there would be made to what, a number
25 of animals harvested, or plants harvested?

1 In my opening remarks, I told you that
2 at the conclusion of the Wuskwatim hearing, I told
3 your predecessors on the panel that we at Manitoba
4 Hydro had much room for improvement in integrating
5 western science and traditional knowledge. You
6 don't have the time to do it, and I don't invite
7 you to do it, but if you reviewed the evidence
8 from the Wuskwatim hearing and the Bipole III
9 hearings, you would likely detect what I saw. And
10 that is that indigenous information came late, it
11 was generally handed to so-called discipline
12 experts, non-indigenous educated people, who were
13 asked to try and take it into account in assessing
14 two assessments they had already written.

15 I will reveal to you that after the
16 Wuskwatim hearing, and more so after the Bipole
17 III hearing, I asked our staff why there were no
18 apparent meetings directly with elders and
19 knowledge holders, why there were no visits with
20 indigenous people directly to the sites of the
21 proposed projects, why there was not more and
22 better integration?

23 I suggest to you that with this
24 project, we at Manitoba Hydro have done better.
25 We started earlier. We had reports from six

1 communities, keeping in mind that three of them
2 worked together to produce a single report, before
3 the Environmental Impact Statement was done. And
4 I'm told that that reflects well, if one looks at
5 Environmental Impact Statements across the country
6 and the provision of ATK studies for those
7 reports. We used plain language documents.

8 Ms. Coughlin and Ms. Thompson went to
9 communities many times. Ms. Coughlin and
10 Mr. Matthewson participated on the field trips.
11 Ms. Coughlin, Ms. Thompson and Mr. Matthewson had
12 a direct role in route planning, and then in the
13 writing of the Environmental Impact Statement.
14 Ms. Thompson studied for two years at the Centre
15 for Indigenous Environmental Resources, where
16 classes are conducted by elders. She does know
17 about and does understand Indigenous culture. She
18 is the primary liaison in Ms. Johnson's department
19 for Indigenous engagement. Ms. Coughlin has
20 degrees in Environmental Science and Zoology. She
21 listened and she understood. Mr. Matthewson has a
22 degree in forestry. He listened and he
23 understood.

24 We had at your hearing for this route
25 the best and most informed presentation on plants

1 that are important to Indigenous people that I
2 personally have seen at any of your hearings.
3 Manitoba Hydro, of course, did not do that
4 presentation, Elder Dave Daniels did. However,
5 that presentation and all of the ATK reports you
6 have would not likely have been done absent the
7 funding and the encouragement from Manitoba Hydro.

8 To those who ask where First Nation
9 information is in the Environmental Impact
10 Statement, I say it starts on page 1. Thereafter,
11 First Nations are mentioned over 3,000 times.

12 Chapter 4, in its entirety, is about
13 the engagement with First Nations and the Metis.
14 Chapter 5, the routing chapter, outlines the
15 feedback that was received from First Nations and
16 about the Metis and how it influenced the routing
17 process. Chapter 7, on methods and approach,
18 again describes how information that came from the
19 engagement process with First Nations and the
20 Metis informed the selection of the VCs. In the
21 same chapter we are reminded that the VCs for this
22 project, unlike Bipole III, unlike Wuskwatim, were
23 selected so that they would be more in line with
24 Indigenous worldviews.

25 On May 24th, Mr. Mike Sutherland of

1 the Peguis First Nation told you that Peguis
2 members are comfortable with the final preferred
3 route. But he cautioned against routing east of
4 the Watson P. Davidson Wildlife Management Area,
5 because he said that is heavily used by his fellow
6 members.

7 On May 29th, Grand Chief Daniels
8 identified areas to the east as important to
9 Indigenous people. On May 29th, Elder Dave
10 Daniels urged us to stay away from the east side
11 of the Watson P. Davidson Wildlife Management
12 Area.

13 Dr. Fitzpatrick is correct in
14 observing that the form of continuing Indigenous
15 involvement with respect to monitoring must be
16 developed in conversations with the First Nations
17 and the MMF. A respectful process requires
18 listening and discussion. And often that is not
19 necessarily done to meet the timetable for Clean
20 Environment Commission hearings, nor Manitoba
21 Hydro's ideal of when it should happen.

22 Accordingly, Dr. Fitzpatrick is not correct in
23 suggesting that fault lies with Manitoba Hydro for
24 not having presented here at this hearing the
25 details of how Indigenous people will or ought to

1 be involved to influence monitoring.

2 We do not anticipate impacts to fish
3 because there will be no works constructed in any
4 rivers or streams. I remind you that Mr. Block,
5 at the commencement of his presentation, told us
6 that the closest tower to a river or stream will
7 be 42 metres. Therefore, diverting monitoring
8 resources to fish would not be well advised.

9 Mr. Joyal, to correct another
10 misunderstanding, is not the sole liaison officer
11 with respect to landowner communications.

12 Mr. Joyal coordinates a program that involves six
13 individuals at Manitoba Hydro who divide that
14 liaison work with the 126 landowners.

15 No Manitobans, be they Indigenous or
16 non-indigenous, are prohibited from harvesting
17 animals and plants on right-of-ways where there
18 are Manitoba Hydro towers and transmission lines.
19 To suggest the opposite by virtue of the fact that
20 Manitoba Hydro will have some legal right, through
21 an easement or otherwise, to construct and operate
22 a transmission line, puts more weight on a legal
23 document than it can bear. Further, as I said
24 earlier, as we understand it at Manitoba Hydro,
25 the province is currently reviewing what legal

1 mechanisms it wants to use for the granting of
2 limited legal rights on Crown land.

3 Further, the argument ignores the
4 reality that once the line is constructed,
5 maintenance work on any particular transmission
6 line doesn't occur every year or every second
7 year. Usually about every five years, subject
8 again to the type of vegetation.

9 The argument that was advanced also
10 ignores the mitigation measures that had been
11 proposed to deal with the potential concerns of
12 harvesters during construction and maintenance,
13 particularly the measure surrounding
14 communication. If you have an area where you wish
15 to harvest, you know there's a transmission line
16 there, there is a way in which to satisfy yourself
17 and a way in which Manitoba Hydro can give you
18 notice when its workers will be performing
19 maintenance activities, or when the contractor's
20 crews will be building the line.

21 And finally, the argument ignores that
22 a route which is on apparently .04 per cent of
23 unoccupied Crown land in the regional assessment
24 area is not significant, at least in the sense
25 that significance is used by those who practice

1 environmental assessment work.

2 With respect to suggestions that there
3 be a third party audit for the MMT project, I
4 reiterate Mr. Matthewson's suggestion that such an
5 audit for this project be discretionary in the
6 Minister's judgment. Let us wait and receive the
7 audit that is part of the licence conditions for
8 Bipole III, that was to be done five years into
9 the project. And when we see that audit, we can
10 weigh its value. I would suggest that if it
11 identifies predictions and outcomes that were not
12 recognized by others, including my client and its
13 staff, its value will be evident. If it does not
14 do that, it may be that its cost exceeds its
15 worth.

16 We cannot find any precedent for a
17 class 3 Environment Act licence in this province
18 being split for a project. Moreover, as
19 Mr. Penner told you, Manitoba Hydro will not be
20 starting construction of the MMTP until it has
21 received National Energy Board authorization. And
22 I suggest to you that the National Energy Board is
23 not going to authorize just part of an
24 international power line. And I observe that the
25 two examples that Mr. Berrien provided from

1 Alberta did not involve National Energy Board
2 authorizations.

3 Decisions by members of the Provincial
4 Cabinet to suspend a licence, for whatever reason,
5 decisions to ask courts to review judicially
6 decision made by Cabinet Ministers, and I note if
7 a court's asked to judicially review a decision,
8 that does not necessarily halt the construction of
9 a project that is the subject of the decision. I
10 would suggest to you that in a majority of the
11 cases, the court case may continue on its way, but
12 so does construction of a project, because courts
13 will decline frequently to halt projects while a
14 case proceeds through the courts.

15 In any event, such decisions and
16 concerns and possibilities are outside the scope
17 of your work. It's regrettable when some citizen
18 says, if you proceed, I will sue you. But I say I
19 will do my duty, and you are welcome to have your
20 rights reviewed, if you so choose, by a court.

21 I remind you on the subject of
22 herbicides that my client's evidence was, not only
23 do they consult with private landowners where the
24 line crosses private land, but they have committed
25 not to use herbicides where there are known and

1 identified sensitive sites, important to
2 indigenous people who gather plants, or who
3 harvest at those particular sensitive sites. I
4 remind you that if Manitoba Hydro did nothing with
5 respect to vegetation on right-of-ways, eventually
6 that vegetation will grow and come into contact
7 with lines. I think we all understand that and we
8 all know that once something comes into a contact
9 with a line, you have a dangerous situation. If
10 for the entire 11,000 kilometres of high voltage
11 line right-of-ways in this province, Manitoba
12 Hydro ceased to use herbicides and instead turned
13 to using employees and equipment, the number of
14 people and the number of pieces of equipment
15 moving through the right-of-ways would have
16 undesirable impacts on their own with respect to
17 those right-of-ways. Accordingly, ironically to
18 some, use of herbicides is sometimes the more
19 sensible way in which to address the growth of
20 vegetation on right-of-ways. And yes, cost is
21 also a concern.

22 Presently, the Province of Manitoba
23 has the legal responsibility and the legal right
24 to tell Manitoba Hydro what to do and what not to
25 do on critical issues. If another body is to do

1 that, say for example a monitoring group composed
2 of various citizens in this province, or an
3 independent auditor with respect again to
4 monitoring work, then I suggest it will have to be
5 the people of this province through the
6 legislature who will have to decide that some of
7 the authority in governing Manitoba Hydro's
8 operations should be transferred to a different
9 independent body. Certainly the Minister cannot
10 simply delegate some of her current responsibility
11 to such bodies.

12 In light of the limited extent of
13 habitat disturbance that's predicted on this
14 project, and in light of those benefits that are
15 being incorporated into the management of
16 vegetation, the most recognizable one that's been
17 mentioned a number of times being that pertaining
18 to the golden-winged warbler, but there were
19 others.

20 My client is not considering such
21 offsets as purchasing land and transferring it to
22 the province so that it can become Crown land, nor
23 is my client advocating for an increase in the
24 compensation it pays to the province for the legal
25 right to construct a transmission line on 36

1 kilometres of Crown land, as is proposed for this
2 project.

3 The ancient Greek Archimedes said that
4 with a long enough lever, he can shift the world.
5 The MMT project, I suggest to you, is not a long
6 enough lever to address all of the long-standing
7 historical injustices that you have heard about
8 through the course of this hearing. At best, I
9 think we can say that we have not added to them,
10 and perhaps, although it was not the intent of the
11 routing methodology, we can say that to some small
12 degree we have been cognizant of them in planning
13 this route.

14 Those who do monitoring say that
15 within two years, you should see effects. What
16 you see after two years will then help to make the
17 decision as to what you should continue to
18 monitor, what further opportunities there may be
19 to experiment and to encourage beneficial growth.
20 To those who think that Manitoba Hydro only
21 studies and monitors for two years, I suggest that
22 you read again IR CAC 24, which sets out a long
23 list of research and study being supported by
24 Manitoba Hydro, some of it multi-year studies, and
25 much of it which will be helpful to understanding

1 the behaviour of animals and plants on the MMT
2 project, although some of those studies are being
3 done with respect to other transmission line
4 right-of-ways in Manitoba.

5 I find with each of these Clean
6 Environment Commission hearings that the
7 witnesses, many of them my colleagues at Manitoba
8 Hydro, are getting younger and younger. Young in
9 limb and judgment old, as Shakespeare wrote. I
10 told you when we started that their commitment to
11 professionalism and hard work was undiminished.
12 My colleagues and our consultants fulfilled that
13 promise, as I knew they would.

14 Their work, I suggest to you, was
15 accurate and it was meaningful. We ask that you
16 recommend the MMT project be licensed. We invite
17 you to add to that your recommendations for
18 thoughtful and practical additions to what is
19 being proposed.

20 Now, because I gather yesterday my
21 professionalism was questioned, and you were asked
22 to do something about that, I can tell you that it
23 was 13 years ago, the Wuskwatim hearing, as I
24 referenced when the subject came up during the
25 cross-examination, that I read the report by the

1 World Commission on Dams. My memory served me
2 well at this hearing. There is only one dam in
3 North America that was studied for that long ago
4 report. My memory served me well that dam
5 produces 6,000 megawatts of energy, which exceeds
6 all of my client's production in Manitoba. My
7 memory failed me with respect to the name of the
8 dam. It's not Hoover, it's Grand Coulee. If you
9 want to admonish me for having a bad memory, you
10 are welcome to do so. My wife does so frequently.

11 We at Manitoba Hydro recognize that
12 participants at your hearings work with what they
13 have, and they contribute as they are instructed.
14 Without participation from participants, your
15 hearings, respectfully, would add little to the
16 development of thoughtful and meaningful
17 recommendations. And the four of you are in a
18 better position than I am to know exactly that.
19 Participants here should know, and should leave
20 knowing that we listened to each of you. We
21 understood you all, we think. And obviously we
22 cannot agree with everything that you said.
23 Miigwech.

24 THE CHAIRMAN: Thank you, Mr. Bedford,
25 for a very pointed and at some points

1 light-hearted closing argument. I think you have
2 given us some material and some points of view
3 that will assist us, as I had mentioned to others,
4 in our deliberations and we will certainly review
5 them carefully. So thank you.

6 Any questions from the panel?

7 No questions from the panel. And for
8 the record, I also wanted to add, because I
9 neglected to do that earlier, there were no
10 questions for Mr. Toyne's presentation either.

11 All right. Well, we've come to that
12 time to wind up the hearings. And on behalf of
13 the panel, I would like to thank all participants.
14 We found the information you provided and your
15 contributions, as were noted by Mr. Bedford, to be
16 very helpful to us, and as I have mentioned now
17 several times, we will take them to heart in our
18 deliberations. And I would also like to thank
19 Manitoba Hydro for a very thorough presentation
20 earlier in the hearings, and then for some
21 thoughtful questioning and closing arguments which
22 will also be beneficial to us.

23 The panel would also like to thank, in
24 addition to Ms. Johnson who we thanked yesterday
25 for her hard work to make these hearings possible,

1 Ms. Cheyenne Halcrow, who has also worked
2 diligently and many extra hours to make the
3 hearings work smoothly. Also to our legal
4 adviser, Mr. Green; our writer, Bob, who has taken
5 a lot of notes, and all of this will be very
6 useful to him in helping us write the final
7 report. Also Phil Shantz, who is not here today
8 but gave us technical assistance. On a personal
9 note I would like to thank the other three
10 panelists for their questions for their help to me
11 in navigating through a hearing for my first time.
12 And again, I'd like to thank all of you for
13 helping me as well.

14 The record will be open for about 10
15 more days to be exact, June 16th, at what time,
16 Ms. Johnson?

17 MS. JOHNSON: Noon as usual.

18 THE CHAIRMAN: All right. So like all
19 the other time limits that we talked about at the
20 pre hearings, the record will be open till noon on
21 June 16th. That's a week this Friday. It won't
22 be extended, so be sure to get us any final
23 presentations and your summary of your closing
24 arguments, be sure to get them to us by then.

25 The only other step in the process

1 will be the 90 days we have to complete a report
2 to the Minister, and we will do that, obviously we
3 are required to do it by law, so within 90 days,
4 which my math wasn't perfect when I tried to get
5 the exact date, but it will be early September.
6 And I'm sure Ms. Johnson will remind me many times
7 of the exact date. So early September there will
8 be a report to the Minister reflecting, of course,
9 our conclusions and recommendations.

10 So with that, I'd like to thank you
11 all once again, and we'll be busy working on a
12 report which you have assisted us with. Yes, one
13 more?

14 Sorry, we did have a few filings
15 today, so we'll do those now.

16 MS. JOHNSON: Okay. PFN 006 is a
17 letter dated May 15th, signed off by each of the
18 participants, allowing Peguis First Nation just to
19 provide a summary and their presentation that they
20 made. And PFN 007 is another letter dated
21 June 5th to the Commission, that they will supply
22 their report, as they have to Manitoba Hydro, to
23 the Commission for their use only and it will
24 remain confidential. MH 070 is answers to
25 undertaking number 3; 071 answers to undertaking

1 number 4; and SSC 006 is Mr. Toyne's presentation
2 here.

3 (EXHIBIT PFN-06: Letter, May 15th)

4

5 (EXHIBIT PFN-07: Letter, June 5th)

6 (EXHIBIT MH-70: Answers to

7 undertaking number 3)

8 (EXHIBIT MH-71: Answers to

9 undertaking number 4)

10 (EXHIBIT SSC-06: Mr. Toyne's report)

11 THE CHAIRMAN: All right. Thank you

12 all. We are adjourned.

13 (Adjourned at 12:08 p.m.)

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Cecelia Reid and Debra Kot, duly appointed
Official Examiners in the Province of Manitoba, do
hereby certify the foregoing pages are a true and
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Official Examiner, Q.B.

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