

MANITOBA CLEAN ENVIRONMENT COMMISSION

LAKE WINNIPEG REGULATION REVIEW

UNDER THE WATER POWER ACT

Pre-hearing

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Transcript of Proceedings
Held at RBC Centre Convention
Winnipeg, Manitoba
THURSDAY, FEBRUARY 12, 2015

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APPEARANCES

CLEAN ENVIRONMENT COMMISSION

Terry Sargeant - Chairman
Edwin Yee - Commissioner
Neil Harden - Commissioner
Beverly Suek - Commissioner

Mike Green - Counsel
Bill Bowles - Counsel
Cathy Johnson - Commission Secretary
Joyce Mueller - Administrative Assistant
Amy Kagaoan

MANITOBA CONSERVATION AND WATER STEWARDSHIP

Rob Matthews
Puru Singh
Scott Nachtigall

MANITOBA HYDRO

Janet Mayor
Doug Bedford
David Cormie

CONSUMERS ASSOCIATION OF CANADA (Manitoba chapter)

Byron Williams
Pastora Sala

MANITOBA METIS FEDERATION

David Heinrichs
Jasmine Langman

MANITOBA WILDLANDS

Gaile Whelan Enns

PEGUIS FIRST NATION

Lloyd Stevenson

SAGKEENG FIRST NATION

Jared Whelan
Lyle Morriseau

BLACK RIVER FIRST NATION, KEEWATIN PUBLIC INTEREST
RESEARCH GROUP

Ryan Duplaine

INTERLAKE TRIBAL COUNCIL

Norman Boudreau

Participants

NORWAY HOUSE FISHERMEN'S CO-OP
Cory Shefman

TATASKWEYAK CREE NATION
Sean Keating

DAUPHIN RIVER FIRST NATION, KEEWATINOOK FISHERS OF
LAKE WINNIPEG
Norman Stagg

PIMICIKAMAK OKIMAWIN
Darrell Settee
Annett Lutterman
Jeremiah Raining Bird
Darwin Paupanakis

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Opening by the Chair

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1 THURSDAY, FEBRUARY 12, 2015

2 UPON COMMENCING AT 1:00 P.M.

3 THE CHAIRMAN: Good afternoon, I'd
4 like to call this afternoon's session to order.
5 Thank you all for coming out and thank you for
6 being punctual. For those of you who are new to
7 our process, you should know that we operate a bit
8 like the Swiss Railway system. When the second
9 hand hits the top of the clock, we start. We're
10 actually about a minute past that because we were
11 just confirming some people who are participating
12 by speaker phone.

13 For those of you who don't know me,
14 I'm Terry Sargeant. I'm the chair of the Manitoba
15 Clean Environment Commission. I'm also the chair
16 of the panel that's conducting the review of Lake
17 Winnipeg Regulation.

18 Other members of the panel are to my
19 left, Bev Suek, to my right, Neil Harden, and
20 Edwin Yee. To my immediate right is Cathy Johnson
21 who is the Commission secretary. And as will be
22 noted a little later on this afternoon, is the one
23 person that you should be talking to once we get
24 into the formal process of hearings, and not to
25 panel members. To my left is Mike Green, who is

1 legal counsel for the Clean Environment
2 Commission. He will be assisted by Bill Bowles
3 who is sitting off to the side. So one or the
4 other of them will be at our hearings in Winnipeg,
5 and is the other person you should be in contact
6 with if you have issues about proceedings.

7 At the back of the room are our
8 administrative staff, Joyce Mueller and Amy
9 Kagaoan.

10 We're here today to talk in most part
11 about the process and proceedings for the Winnipeg
12 sessions of this review. They will start on March
13 10th, I believe it is. We'll come to that in a
14 few minutes.

15 Before we go any further, I'd just
16 like to do a round the table introductions, and
17 we'll start off to my left with Manitoba Hydro.

18 MS. MAYOR: Janet Mayor, the Law
19 division of Manitoba Hydro.

20 MR. BEDFORD: Doug Bedford, legal
21 counsel to Manitoba Hydro.

22 THE CHAIRMAN: Could I just note that
23 you have to turn the mic on and off manually. And
24 please turn it off after you have spoken,
25 otherwise we get feedback.

1 MR. CORMIE: I'm David Cormie,
2 division manager of Power Sales and Operations at
3 Manitoba Hydro.

4 MS. PASTORA SALA: Good afternoon
5 everyone, I'm Joelle Pastora Sala, and to my right
6 Byron Williams, representing the Consumer
7 Association of Canada, Manitoba branch.

8 MR. STEVENSON: Lloyd Stevenson,
9 Peguis.

10 MR. WHELAN: Jared Whelan, here with
11 Sagkeeng First Nation.

12 MR. MORRISSEAU: Good afternoon,
13 Councillor Lyle Morriseau from Sagkeeng First
14 Nation.

15 MR. HEINRICHS: David Heinrichs,
16 Natural Resources coordinator with the Manitoba
17 Metis Federation.

18 MS. LANGHAN: Jasmine Langhan with the
19 Manitoba Metis Federation.

20 MR. DUPLASSIE: Ryan Duplassie with
21 Black River First Nation and the Keewatin Public
22 Interest Research Group.

23 MR. BOUDREAU: Norman Boudreau, legal
24 counsel for the Interlake Reserves Tribal Council
25 Inc. and I also have with me my articling student,

1 Keith Lenton.

2 MR. SHEFMAN: Cory Shefman, legal
3 counsel for Norway House Fisherman's Cooperative.

4 MR. KEATING: Sean Keating, Hobbs and
5 Associates, representing Tataskweyak Cree Nation.

6 MR. STAGG: Norman Stagg, Dauphin
7 River First Nation, Keewatinook Fishers of Lake
8 Winnipeg.

9 MS. WHELAN ENNS: Gail Whelan Enns,
10 Manitoba Wildlands.

11 MR. MATTHEWS: Rob Matthews, I manage
12 the water use licensing section of Manitoba
13 Conservation and Water Stewardship. And on my
14 left is Puru Singh, who manages the water power
15 subsection of water use licensing.

16 MS. JOHNSON: Can you tell us who is
17 on the phone, please.

18 MR. SETTEE: This is Darrell Settee,
19 Pimicikamak.

20 MS. JOHNSON: And who else is there?

21 MS. LUTTERMANN: Annette Luttermann,
22 ecological adviser to Pimicikamak.

23 MR. NATCHIGALL: Scott Nachtigall,
24 Conservation and Water Stewardship, water use
25 licensing.

1 MR. RAINING BIRD: Jeremiah Raining
2 Bird, legal counsel for Pimicikamak.

3 THE CHAIRMAN: Thank you.

4 What I'm going to do now is take you
5 through a number of documents, some of which you
6 have copies of. Please feel free, if you have
7 questions as I'm going along, just to interrupt
8 me. It doesn't bother me. I have a thick skin
9 and sometimes a thick skull. So if you have
10 questions, please stop me as we go along.

11 I'll just talk briefly about overview
12 of the hearing process. I'll just talk briefly
13 about the order of proceedings in our process
14 guidelines respecting public hearings. There is
15 practice direction which just lays out the order
16 of proceedings. For those of you who have been
17 through our proceedings in the past, this will be
18 very familiar to you.

19 More or less the process will be, we
20 will open with the proponent or the applicant in
21 this case. Manitoba Hydro will spend a day or two
22 describing the project and its role in their
23 overall scheme of things, as well as being subject
24 to cross-examination from participants and members
25 of the panel.

1 Following Manitoba Hydro's time on the
2 stand, we will have presentations. This being a
3 different type of project, the Commission has
4 contracted with a number of experts who will be
5 doing papers in particular fields of expertise.
6 Some of those you will be familiar with, they have
7 already been posted on our website. There will be
8 presentations by the people who have written those
9 papers. In some cases, in one or two cases at
10 least, those witnesses will be open for
11 cross-examination, and others, it will only be
12 questions for clarification.

13 Following that, we will have the
14 intervenor or the participant submissions.
15 Participants will make their presentations and
16 they will be subject to questions, mostly for
17 clarification by the panel and by Manitoba Hydro.

18 There will be opportunities for the
19 general public to come in and say their piece.
20 Public presentations are limited to 15 minutes
21 each. We prefer to have members of the public let
22 us know ahead of time, but that's not a
23 requirement. It's quite within our rules and not
24 uncommon that people just show up at the door and
25 decide they want to make a presentation, which is

1 quite okay.

2 Public presentations are not subject
3 to any cross-examination. They are subject to
4 questions from the panel, again, mostly for
5 clarification, and questions from Manitoba Hydro,
6 the applicant, on appeal to the chair.

7 Following all of these presentations,
8 the proponent, the applicant in this case will
9 have an opportunity for rebuttal if it feels that
10 is necessary. And examination of rebuttal
11 evidence is not subject to cross-examination
12 except if there is any new evidence presented.

13 And then the last big step in the
14 process will be final argument, which will occur
15 sometime after Easter. And given the outline of
16 our schedule, you will have about a week break the
17 last week in March, first week in April, at which
18 time you can at least, in part, prepare your final
19 argument.

20 To some extent, the full schedule in
21 Winnipeg is still a little fluid, so we're not
22 sure if we'll be hearing participant testimony,
23 still hearing participant testimony after Easter,
24 it is possible. I am just told, I am just
25 whispered in my ear that we will be hearing

1 participant testimony after Easter. So you can
2 start thinking about your final argument during
3 the Easter break, but you might not conclude it at
4 that time.

5 Typically, our day-to-day proceedings
6 are 9:30 to 4:30, with morning and afternoon
7 breaks, as well as a one-hour lunch break. I
8 think two weeks of our Winnipeg sessions, of the
9 five in Winnipeg, will be here in the Convention
10 Centre, the other three in the Fort Garry Hotel.
11 It's simply a matter of availability. The
12 Convention Centre was our first choice, but good
13 for them, I guess they are often busy and booked
14 up and we weren't able to get them for all five
15 weeks.

16 I think that's all I have to say about
17 the overview of the hearing process. Does anybody
18 have any questions about that?

19 Yes? Again, to you and to anybody
20 else, when you ask a question or speak, please
21 identify yourself and then ask your question.
22 This is for the record. As with all of our
23 sessions, we record and transcribe our hearings
24 and meetings.

25 MR. SHEFMAN: Thank you, Mr. Chair.

1 It's Corey Shefman from the Norway House
2 Fisherman's Cooperative. I have a couple of
3 questions about which participants will be subject
4 to what kind of questioning, participants/others
5 who are here. If you prefer that I wait until
6 later today to ask these questions, I will do
7 that.

8 THE CHAIRMAN: I think it might come
9 up during the discussion on the process guidelines
10 in a few minutes, Mr. Shefman. So if it isn't
11 answered to your satisfaction, ask me again then.

12 MR. SHEFMAN: Thank you.

13 THE CHAIRMAN: Any other questions on
14 the order of proceedings at this point? Okay,
15 thank you.

16 Hearing schedule, we have now been on
17 the road for I believe it's five weeks, holding
18 community hearings which are somewhat less formal
19 than the sessions we hold in the city. We have
20 one more week before we take a brief break. Next
21 week we're up north again in Cross Lake.

22 Following the Winnipeg hearings, we
23 will be going into Norway House, perhaps TCN. I
24 believe that's it. That will be in about the
25 third week in April.

1 I have already noted that we are now
2 scheduled for five weeks of Winnipeg hearings.
3 Earlier we had thought there would be three.
4 Unfortunately, we have no funds left in the
5 participant assistance program to provide
6 supplemental funding for those extra days, so
7 you'll have to budget tightly in some cases.

8 Those of you who have been through the
9 process before will know that it isn't necessary
10 to have your legal counsel and consultants
11 available everyday. So just if money becomes an
12 issue with you, just cut corners as best you can.
13 We simply don't have any money left.

14 We only had a relatively limited
15 amount of \$500,000 to give out for participant
16 assistance in this go-round, and it was in great
17 demand and every cent of it has been committed.

18 The next point in the hearing
19 schedule, for the most part the participants and
20 presenter presentations will occur after
21 March 23rd. A rough schedule of the first couple
22 of weeks has been circulated. Commission staff,
23 in particular Cathy Johnson, have been working to
24 determine who goes when. I believe she has asked
25 all of you to provide some dates that would work

1 for you, also to give us some indication of the
2 time you would require, although within certain
3 limits. We're going to limit that anyway. We're
4 also going to ask you, or I believe you have been
5 asked to give us some sense of how much time you
6 would require for the cross-examinations, which
7 are also going to be somewhat time limited.

8 The scheduling is always a bit of a
9 moving target, however, the latest versions are
10 always posted regularly on our website. So if you
11 have any last minute doubts or concerns about
12 what's going on, you can check there.

13 Our community hearings end next
14 Thursday, then we're off for two weeks. We come
15 back, on March 9th there is an open house, I
16 believe, in this building.

17 MS. JOHNSON: Yes.

18 THE CHAIRMAN: At which Manitoba Hydro
19 will be present and giving a bit of an overview,
20 or available for questions about some of the
21 technical aspects of the project.

22 The Winnipeg sessions will start the
23 next day on March 10th. We'll continue for three
24 weeks in Winnipeg. Then come spring break time,
25 we traditionally always shut down on spring break

1 because many of the people involved have family
2 commitments and wish to get away at that time, so
3 do not sit during spring break. We will resume in
4 Winnipeg the day after Easter Monday, so Tuesday
5 of Easter week, and continue for, right now as
6 planned it would be two weeks. Hopefully we can
7 finish it all within that time.

8 I think that's it on the hearing
9 schedule. Any questions on that?

10 MR. DUPLASSIE: It's Ryan Duplassie.
11 I was just wondering, you had mentioned, Terry,
12 that not all of the consultants or legal counsel
13 need to be present every day during these -- of
14 course, five weeks is a long time. Is it
15 suggested that everybody as much as possible
16 attend every day? Is that sort of how it's set
17 up?

18 THE CHAIRMAN: Oh, absolutely. The
19 point I wanted to make was, in the past when we
20 had a larger sum of money and when it was a larger
21 project, quite frankly, larger in the sense of
22 monies being expended overall, we did allow for
23 contingency fees to be paid if we went over the
24 hearing schedule. And that would allow the
25 participants to have their lawyers and consultants

1 continue. In this case, we simply don't have any
2 money to allow for such contingency. So if money
3 is a concern with your organization, then you may
4 want to consider just cutting back on lawyer or
5 consultant time. But there's nothing stopping you
6 from sitting in and, in fact, we would encourage,
7 and it probably would work better for your groups
8 if you are able to do that. That was only meant
9 as a possible way to save money. That's all.
10 There's certainly no limit on how often you can
11 come. Thank you.

12 Question on the phone I believe?

13 MS. JOHNSON: Is there a question
14 there?

15 MS. LUTTERMANN: Yes. I am Annette
16 Luttermann. I wonder whether or not you have any
17 sense from Manitoba Hydro at this point whether or
18 not, or kind of what order they might be
19 presenting their material? It would facilitate
20 the travel and attendance for certain Pimicikamak
21 representatives if they were to cluster discussion
22 of downstream effects into one particular week,
23 and I don't know if you have had that discussion
24 with them?

25 MR. BEDFORD: It's Doug Bedford

1 speaking. I believe the schedule that the
2 Commission has put forward calls for my client to
3 put forward all of its presentations on Tuesday,
4 March 10th, 2015. We may run over into the next
5 day, we don't think we will today, but...

6 THE CHAIRMAN: Did you hear that,
7 Ms. Luttermann?

8 MS. LUTTERMANN: Oh, okay. I see. So
9 it's all in one day?

10 THE CHAIRMAN: Yes, I don't think it
11 will be a lengthy process. It's not like a case
12 where we have a 10,000 page environmental impact
13 statement to be presented. Well, Manitoba Hydro
14 anticipates and has advised us that they can
15 probably make their entire presentation in one,
16 perhaps slightly more than one day.

17 MS. LUTTERMANN: Okay, thank you.

18 THE CHAIRMAN: Okay. Any other
19 questions on scheduling? Mr. Shefman?

20 MR. SHEFMAN: Thank you, Mr. Chair.
21 Does that one day or slightly more than one day
22 include cross-examination of Hydro from all of the
23 participants?

24 THE CHAIRMAN: No. That would start
25 after they finish their presentation. We don't

1 anticipate that would be extremely lengthy, but
2 certainly not within the one, one and a quarter
3 days.

4 Any other questions on hearing
5 schedule? Ms. Whelan Enns?

6 MS. WHELAN ENNS: Gaile Whelan Enns,
7 Manitoba Wildlands.

8 In terms of the use of time and the
9 economy on funding, I wanted to ask whether we
10 will see -- and this has got to do with people who
11 won't be in the room, okay, and can't be there
12 continually -- will we see transcripts at the end
13 of each day?

14 THE CHAIRMAN: As always in our
15 proceedings, verbatim transcripts are provided
16 very quickly, not necessarily the end of the same
17 day, but usually within a day or so. They are
18 usually up the next morning, and they are on our
19 website, and it's usually been the next morning.

20 MS. WHELAN ENNS: Thank you.

21 THE CHAIRMAN: Any other questions on
22 scheduling, or the hearing schedule?

23 Okay. I'd like to address then some
24 process guidelines. I think you were all handed a
25 couple of pages, two, three-page printed thing of

1 highlights of our process guidelines. I'm going
2 to go through this very quickly and then I'll
3 elaborate a little on some of them.

4 Again, you should all have copies of
5 our document process guidelines respecting public
6 hearings. They include the process guidelines as
7 well as a number of practice directions. You are
8 expected to have read, looked at these and be
9 prepared for a test at the middle of the first
10 day.

11 But very briefly, the application of
12 the process guidelines, they apply to all of our
13 public hearings or meetings. There is also a nice
14 escape clause in here that, even though we have
15 adopted these guidelines, it's open to the
16 Commission to change our guidelines at any time
17 for specific cases. Now, that's provided in the
18 Environment Act. I'm not sure that we have ever
19 done that, and I'm not sure that we ever would do
20 that, but we do have that authority. So if you
21 don't like, if you challenge our process
22 guidelines, we can always change them. But don't
23 worry about it.

24 I noted earlier all inquiries
25 concerning the hearing process should be directed

1 through the Commission secretary. And related to
2 it, 105, communication for the panel, you
3 shouldn't have any direct contact with any member
4 of the hearing panel. Written communication to
5 the panel will occur only through the Commission
6 secretary, and copies of that written
7 communication will be provided to all other
8 parties. Oral communication about the current
9 proceeding will occur only in the presence of or
10 with the consent of all parties.

11 And where a participant has a
12 representative, a consultant or a lawyer, all
13 communication between the panel and the
14 participant will be through the representative,
15 including notices of hearing.

16 I always qualify this a little bit.
17 We recognize that we are a small group, we are in
18 the same rooms together for many, many weeks. If
19 you are in the hallway and you're chatting over
20 coffee about your kids or how well the Jets are
21 doing, that's fine, but don't talk about anything
22 that relates to the matter before us.

23 Transcripts, we have already noted
24 that they will be available usually by the next
25 morning.

1 Truth in proceedings, swearing in, we
2 don't have exactly a court like swearing in, but
3 we do ask all witnesses, in the more formal
4 proceedings in the city, we ask all witnesses to
5 make a commitment to tell only the truth.

6 Time limits for presentations, our
7 proceedings say that anybody and everybody is
8 limited to 15 minutes. In practice, that is not
9 the case for participants. We'll talk about the
10 time limits in a few minutes for participants.
11 For this case, 90 minutes will be provided.
12 Presenters, the general public will be limited to
13 15-minute presentations.

14 Finally adjournments, the Commission
15 can adjourn the hearing at any time, and may
16 reconvene and may grant extensions at any time.

17 On the last page, just some of the
18 practice directions that you should take
19 particular note of. Order of proceedings, which I
20 just went through a few moments ago. One of the
21 most important ones, the disclosure of witnesses
22 and the 14 day rule, this direction is strictly
23 enforced. Fourteen calendar days before the start
24 of the hearings, we require a detailed outline of
25 your presentation, a list of the witnesses that

1 you will be bringing, including their CVs, and a
2 list of any authorities, journal articles,
3 literature, et cetera, that you will be relying
4 on. And that date will be noon on February 24th,
5 it has to be in our office by that time. It can
6 be sent by regular mail, it can be sent by fax, it
7 can be sent by e-mail.

8 We require an electronic copy of any
9 submission that you are sending in. If it's
10 journal articles, et cetera, you need the public
11 reference, but also if you could put it into a pdf
12 file, scan it and send it to us, that would be of
13 great benefit.

14 This will be, all of this information,
15 and it's incumbent upon the parties to get the
16 mailing list from us and share it with all other
17 parties as well.

18 Now, seven days prior, and again it's
19 seven calendar days prior to when you are making
20 your presentation, we need the final version of
21 your presentation. And that in particular needs
22 to be in an electronic form, or that as well needs
23 to be in an electronic form. You will know, as we
24 go through the proceedings after you have had your
25 dealings with Cathy, about when you are making

1 your presentations. You will be advised when the
2 seven days kicks in. Again, there is no exception
3 to this. If you are late, you don't get to use it
4 in your presentation.

5 You should also look at the practice
6 direction on cross-examination. It's really
7 straightforward. It just says, respect everybody,
8 respect the person that you are cross-examining.
9 This isn't Law and Order or Perry Mason. You
10 don't need any dramatic stuff, it doesn't really
11 impress us. Just be respectful, ask legitimate
12 questions. I'm going to come back to
13 cross-examination in a moment or two.

14 Also note that we have a code of
15 conduct for parties and representatives. And
16 again, it basically just says be respectful,
17 respect the process and respect everybody else in
18 the room. We might have strong differences of
19 opinion, but we're all entitled to our differences
20 of opinion, or you are all entitled to your
21 differences of opinion, and respect others.

22 Just to elaborate a bit on that. As
23 far as time allowed for presentations,
24 participants, as well as what we're calling for
25 this, the major presenters, there's probably not,

1 in fact, there's not going to be a lot of
2 difference between participants and major
3 presenters, other than to some extent the funding
4 and the amount of time that they are putting into
5 it. But presentations by those groups will be
6 limited to 90 minutes. It's up to you to
7 determine how you use your 90 minutes, whether
8 it's one presenter or several presenters, it's not
9 90 minutes each, it's 90 minutes for the total
10 thing.

11 Again, your oral presentations before
12 the Commission are really a highlight reel. You
13 present us with documentation in the two weeks, or
14 the seven day rule, whichever is appropriate. We
15 will read that. You don't need to read it word
16 for word into a record, just highlight what's in
17 that. Let us know what's important. If you have
18 particular experts you are bringing forward, have
19 them make their presentations. Again, highlight
20 the points that they wish to make.

21 Any questions on that, on the time
22 allowed for participants? Mr. Shefman?

23 MR. SHEFMAN: Thank you. Corey
24 Shefman, Norway House Fisherman's Cooperative.

25 I guess this feeds into another

1 question I was going to ask and that's, does the
2 Clean Environment Commission, has it adopted or
3 does it implement the Federal Court's guidelines
4 on the taking of Aboriginal evidence, traditional
5 indigenous knowledge?

6 THE CHAIRMAN: We are cognizant of it.
7 I have read those guidelines. We have never
8 adopted it formally. I have been aware of it and
9 I read those documents one or two proceedings ago.
10 It hasn't come up in the course of a hearing. If
11 you think it's going to, please consult with the
12 Commission secretary or our counsel and we'll see
13 how you would wish it to be applied.

14 MR. SHEFMAN: I suppose I can make my
15 question a little more directed.

16 THE CHAIRMAN: Okay.

17 MR. SHEFMAN: You spoke about how our
18 presentations, some will be 90 minutes each, and
19 that the oral part of our evidence is a highlight
20 reel. I suppose that just leads to some question
21 about, given the number of indigenous participants
22 in this proceeding, I think it's quite a
23 substantial number, and given that much of the
24 knowledge at least that my clients will be seeking
25 to provide to the Commission will be oral in

1 nature, because that's how their knowledge is best
2 communicated, I suppose my question is, is that 90
3 minutes flexible under those circumstances and can
4 we maybe have some clearer guidelines about the
5 acceptance of indigenous evidence?

6 THE CHAIRMAN: Well, I can't give you
7 an answer right now because this has come a little
8 bit out of the blue. We will certainly look at it
9 and we will get back to you and all the other
10 parties in that regard.

11 MR. SHEFMAN: That's all we ask.

12 THE CHAIRMAN: We're certainly willing
13 to be flexible, but within limits. I mean, we
14 can't go on endlessly, any party, you and any of
15 the others, because we do have five weeks
16 scheduled. That's actually a lot. We have held
17 major hearings within a five week slot in the
18 past, major in the sense that they again involve
19 much bigger dollars and huge environmental impact
20 statements. Not that this isn't a major
21 proceeding, we are open to it. We are open to
22 anything that's reasonable, but we'll have to work
23 it out a bit. And we'll talk with you and we'll
24 take other consideration as well.

25 If anyone else has issues or concerns

1 in this specific regard, if you could let us know
2 as soon as possible, that would be appreciated.

3 MR. SHEFMAN: Thank you, Mr. Chair.

4 MR. SETTEE: Darrell Settee from Cross
5 Lake. I have a question regarding the
6 presentation in terms of not able to, I guess you
7 said not to add anything to the presentation
8 that's already been handed and delivered, it's
9 already been presented for presentation.

10 THE CHAIRMAN: Yes.

11 MR. SETTEE: Does that include any new
12 information that may become available subsequent
13 to that submission?

14 THE CHAIRMAN: Well, I understand your
15 question. You're asking if, after you have
16 submitted your final presentation seven days
17 before, if you get new information, can that be
18 added? Is that your question?

19 MR. SETTEE: It's pertaining to
20 something, to the content of the submission.

21 THE CHAIRMAN: Well, I think -- I
22 mean, if it specifically is already referenced in
23 a general way in your final submission, then
24 adding additional information -- within a
25 reasonable amount. I mean, if you suddenly come

1 up with 700 pages of journal articles we might
2 have trouble with accepting that, because that
3 defeats the purpose of this rule which is to
4 ensure that everybody has a chance to review the
5 presentation and be prepared for it. But if you
6 are just massaging what you have already put in,
7 there's no limitation on that within, again,
8 within what we would consider reasonable. Does
9 that answer your question?

10 MR. SETTEE: Yes, thank you very much
11 for listening.

12 THE CHAIRMAN: Thank you.

13 Ms. Whelan Enns?

14 MS. WHELAN ENNS: Working on how best
15 to ask this question. On the seven day rule, the
16 pattern that I'm aware of has been the filing of
17 the report that fulfills what's filed on the 14
18 day rule. And again, the pattern that I'm
19 familiar with then is that the presentation
20 material, this is the powerpoint for instance,
21 that's used in the hearing room, is available the
22 day it is used. So I'm basically stating the
23 obvious to clarify that.

24 THE CHAIRMAN: That's correct.

25 MS. WHELAN ENNS: Thank you.

1 THE CHAIRMAN: Mr. Duplassie.

2 MR. DUPLASSIE: Ryan Duplassie, Black
3 River First Nation and KPIRG. My question is, so
4 you mentioned that there is little qualitative
5 difference between participants and major
6 presenters. But with these practice directions,
7 for example, only participants are listed. So are
8 we to assume then that any of us that are
9 considered major presenters will follow this
10 procedure precisely, including the submission of
11 the 14 day rules of list of witnesses with their
12 CVs and list of authorities and journal articles,
13 et cetera. So this is all applicable to --

14 THE CHAIRMAN: Yes, the answer is yes.
15 In that respect, that applies to participants and
16 major presenters. Major presenters is something
17 we coined for this process, because we ended up
18 with people who are not fully participating as in
19 our status guidelines, but they are certainly more
20 than general public presenters. But those rules,
21 the 14 day rules, the seven day rules all apply.
22 The ability to cross-examine would apply. But
23 again, within the time limits that will be allowed
24 in the -- at those times when cross-examination is
25 allowed.

1 Any other questions in respect of the
2 time allowance at this point? Okay. I'm going to
3 talk a little bit about cross-examination.

4 MR. RAINING BIRD: Excuse me, Jeremiah
5 Raining Bird, I just have a couple of questions.

6 THE CHAIRMAN: Okay.

7 MR. RAINING BIRD: The first is just
8 in relation to sort of the materials to be filed
9 14 days prior -- you'll just have to excuse me, I
10 haven't done a CEC hearing before, this is my
11 first one, so I don't have any experience. But
12 when we're preparing for presentation, I guess, as
13 you call it, is it acceptable to file materials
14 such as an affidavit?

15 THE CHAIRMAN: Yes.

16 MR. RAINING BIRD: Okay. Does that
17 then make up the actual materials that go in at
18 the time with expert report, and then would you
19 expect some sort of brief outline of what we
20 expect would be contained in the affidavit prior
21 to that?

22 THE CHAIRMAN: Yes. If you're going
23 to file affidavits, on the 14 day rule, which is
24 February 24th, we'd like just a list, an
25 indication of what affidavits you are going to

1 file. And then the affidavits themselves would
2 come in on the seven day. Does that respond to
3 your question?

4 MR. RAINING BIRD: Yeah, that's
5 perfect, thank you.

6 THE CHAIRMAN: Is that all?

7 MR. RAINING BIRD: Yeah, that's it.

8 THE CHAIRMAN: Thank you.

9 Okay. I'm going to turn to the
10 cross-examination and questioning of parties. For
11 the most part, a formal cross-examination is
12 limited to participants and major presenters.
13 There will be no participant to participant
14 questioning in these proceedings. Examination of
15 participants, once you have made your
16 presentations by Manitoba Hydro and by the
17 Commission, we hope to limit to one hour in total,
18 so more or less is a half an hour for Hydro and a
19 half an hour for the Commission. There will be
20 some specific times, and probably during one or
21 two of the evening sessions or late afternoon
22 sessions, when members of the public will be
23 allowed to ask questions of Manitoba Hydro, and
24 the length of such questioning will be limited
25 within reason.

1 The order of questioning will be
2 determined randomly and will rotate as we move
3 through the process. We'll let you know when it
4 becomes relevant. So a day or two before, or even
5 the morning of the presentations, or the beginning
6 of cross-examination of Hydro, for example, we'll
7 just give you a random list. And then those of
8 you who have been through it before know that we
9 more or less just drop down each time and go in
10 that order.

11 Again, as I noted earlier, in
12 cross-examinations, particularly in a limited time
13 period, we don't need long rambling and irrelevant
14 cross-examination. This is not, again, Law and
15 Order. Keep it appropriate to matters before us.
16 And remember that what you are doing, as well as
17 trying to help your final argument, but you are
18 also trying to have information presented to the
19 panel so that it's on the record when it comes
20 time for us to make our, or to turn to our
21 deliberations.

22 Very important is that questions of
23 Manitoba Hydro must be relevant to the current
24 hearing. Manitoba Hydro, as you all know,
25 operates a huge system in Manitoba. There's many,

1 many, many parts to this system. And there is no
2 doubt that they are all intertwined, they are all
3 related to each other. But the matter before us
4 is Lake Winnipeg Regulation. The licence is for
5 Lake Winnipeg Regulation. So please keep your
6 cross-examination of Hydro relevant to Lake
7 Winnipeg Regulation. If it's not relevant, I'll
8 rule you out of order.

9 We'd also ask that you not repeat
10 questions that have been asked and answered by
11 other participants, or questions that were
12 presented in the information request process and
13 were adequately answered. If you feel
14 legitimately that Manitoba Hydro may not have
15 fully answered your question, then with leave of
16 the chair, you may be allowed to ask that. And
17 we're going to ask Manitoba Hydro to object where
18 questions have been asked and answered. And the
19 chair, and perhaps in consultation with the rest
20 of the panel, we'll decide on relevance of such
21 questions. So is that reasonably clear? Please
22 be relevant. Or not only please be relevant, you
23 must be relevant in your questioning. And please
24 don't ask questions that have already been asked
25 and answered at other times in this process.

1 We'd also ask, and this should have
2 happened through the IR process, but if we get
3 into the cross-examination process, and you have
4 legitimate questions that are fairly technical in
5 nature, please let us, or through us so we can
6 pass it on to Manitoba Hydro, know what you're
7 going to ask so that they can ensure that they
8 have the relevant person or the relevant
9 information to respond to your question.

10 As much as possible, we'd like to
11 reduce the number of undertakings. It's part of
12 our practice that if Manitoba Hydro can't answer a
13 question on the spot, they will take it as an
14 undertaking and respond within a relatively short
15 time. But if you can give us a heads up, or give
16 Manitoba Hydro a heads up of your questions,
17 particularly if they are more technical, it will
18 save us all a little bit of time.

19 Any questions about that?

20 Mr. Shefman?

21 MR. SHEFMAN: Not to be the only one
22 who speaks but --

23 THE CHAIRMAN: That's okay, you are
24 new.

25 MR. SHEFMAN: I note at point 3.2 of

1 the practice guidelines, the full practice
2 guidelines, it states:

3 "Participants will be allowed to
4 cross-examine the evidence of the
5 proponent and other participants."

6 I take it that you have changed that
7 for the purpose of this hearing. I'm wondering if
8 you can explain the rationale for that decision?

9 THE CHAIRMAN: We have changed it for
10 this proceedings. We may, in the near future,
11 change our practice guidelines to that effect. In
12 part, because we found, particularly during the
13 last couple of proceedings, Keeyask and Bipole
14 III, that the participant to participant
15 cross-examination was not a true
16 cross-examination. It was designed to help each
17 other out and to help other parties emphasize
18 their points. It really didn't help the panel in
19 our deliberations and it took a lot of time.

20 MR. SHEFMAN: Thank you. Is there any
21 consideration to the possibility of allowing
22 questions on a participant-to-participant basis,
23 but having the chair take, I suppose, a more
24 active role in not allowing irrelevant questions?
25 It seems to my client that not allowing them at

1 all is limiting our ability to test the evidence
2 being submitted to the panel by the other
3 participants, and to ensure that the panel has
4 access to the best evidence.

5 THE CHAIRMAN: Well, as I said
6 earlier, we're always open to be flexible, but I'm
7 not going to give you a commitment right now. If
8 we knew that such cross-examination would be
9 limited to testing the evidence before us, I would
10 have no problem with it. But it's when it
11 becomes, you know, we'll help each other out, that
12 doesn't help the process. The information that's
13 elicited is often rambling and not of use to the
14 panel in our final deliberations.

15 We will take that under advisement and
16 we will get back to all parties before the
17 hearings start. We may -- well, we'll see.

18 Mr. Williams?

19 MR. WILLIAMS: Yes, Byron Williams CAC
20 Manitoba. Just to follow up on Mr. Shefman, I'm
21 not sure how intensive our cross will be in this
22 proceeding, but it does seem to me that there
23 might be distinction in interest in this hearing,
24 in particular between upstream of Lake Winnipeg
25 and downstream. So the kind of friendly cross

1 that you were worried about in other proceedings,
2 there might be true adverse cross here that might
3 be relevant to material. So I'll just make that
4 comment.

5 I will say for our client, we do have
6 a bit of discomfort in terms of the proposed
7 treatment for the independent witnesses retained
8 by the Clean Environment Commission. Again, I'm
9 not sure how extensive our cross-examination will
10 be. And we may provide some written comments in
11 the future. But having some subject to
12 cross-examination, apparently some immunized from
13 it, it would be helpful if the panel could set out
14 perhaps some guidance in terms of the criteria
15 that it's doing in suggesting that process, which
16 ones will be immunized and why. That might be
17 helpful for my clients to understand the panel's
18 analytic process.

19 Our client has seen independent
20 experts retained, not that often, fairly rarely,
21 but from time to time. I note the last time we
22 saw it was during the NFAT proceeding where the
23 Public Utilities Board went to pretty deep pains
24 to separate itself from the independent witnesses,
25 in terms of the independent council and things

1 like that. Just when I took the time the last
2 couple of days to go through that evidence of the
3 independent witnesses, I think it might be helpful
4 to provide a bit more guidance in terms of these
5 witnesses. Most of them, their qualifications as
6 related to their evidence are clear. There's one,
7 frankly, that it's difficult to make the
8 connection between their evidence and their
9 qualification. So it might be helpful if they
10 had, even in presenting their evidence, an
11 explanation of their expertise and how it relates
12 to their evidence.

13 Anyways, those are our comments that
14 we might offer.

15 THE CHAIRMAN: I just wanted to
16 confirm, did you say that one of our experts, it's
17 unclear what his or her expertise is?

18 MR. WILLIAMS: No, we are clear what
19 his expertise is. It wasn't clear to us how it,
20 from our perspective, enabled him to draw the
21 conclusions that he did. And so it may be just
22 simply a communication issue. It wasn't readily
23 apparent to me from his curriculum vitae.

24 THE CHAIRMAN: Okay. Thank you. We
25 will consider those comments, Mr. Williams.

1 Anybody else? Ms. Whelan Enns?

2 MS. WHELAN ENNS: Gaile Whelan Enns,
3 Manitoba Wildlands. I have a couple of questions
4 that have come forward, if you will, as a result
5 of the discussion and other questions, Mr. Chair.

6 I think it would be helpful to know
7 whether or not Manitoba Wildlands will be filing
8 any further material. Now, I ask that based on
9 the last two sets of hearings, where there were
10 ongoing materials from the applicant proponent
11 while we were into the proceedings.

12 THE CHAIRMAN: I think you might have
13 misspoken, you said Manitoba Wildlands.

14 MS. WHELAN ENNS: Sorry, that's why
15 he's looking at me. Thank you, Mr. Bedford.

16 So the question is whether Manitoba
17 Hydro will be filing or providing any further
18 materials to the proceedings between now and when
19 the hearings start and/or during the hearings?

20 THE CHAIRMAN: Good question.
21 Manitoba Hydro?

22 MR. BEDFORD: Doug Bedford for
23 Manitoba Hydro. No, other than of course we will
24 be putting on presentations and paper copies of
25 the presentations will be available. And the open

1 house, I'm assuming there will be the usual story
2 boards at the open house.

3 THE CHAIRMAN: And the --

4 MR. BEDFORD: And Ms. Mayor correctly
5 reminds me, we will file the CVs for our witness
6 panel.

7 THE CHAIRMAN: And your presentations,
8 the powerpoint presentation will be based on the
9 documentation that has already been filed?

10 MR. BEDFORD: Yes.

11 THE CHAIRMAN: Does that answer your
12 question, Ms. Whelan Enns?

13 MS. WHELAN ENNS: Yes, thank you,
14 Mr. Chair. I have a follow-up.

15 THE CHAIRMAN: Yes.

16 MS. WHELAN ENNS: Thank you for what
17 you were identifying in terms of the one round of
18 formal information requests to date, and the
19 process then within the hearing, if there is a
20 need follow up. I wanted to make sure I was
21 understanding then that there will be the ability
22 to alert the CEC and Manitoba Hydro, if there is a
23 need, in what would well happen during
24 cross-examination after Manitoba Hydro's
25 presentation where a follow-up might be needed.

1 Am I understanding you correctly?

2 THE CHAIRMAN: I think so, yes.

3 MS. WHELAN ENNS: Third question, if I
4 may, Mr. Chair. This goes to the economy that we
5 are all practising here, including both money and
6 time and energy. And the experts, participants'
7 experts, and what we were listening and hearing
8 about the CEC's experts' presentations, because
9 not everyone will be able to be in the room all
10 the time, and that's true at any set of hearings,
11 one degree or another. Is it a fair assumption
12 that a participant's expert presentation may well
13 respond to or use content in a CEC expert
14 material?

15 THE CHAIRMAN: I'm not quite sure that
16 I follow.

17 MS. WHELAN ENNS: I'll try a
18 hypothetical. If there was a climate change
19 expert brought into the hearing by a participant,
20 then that expert may well be responding to the
21 mandate of the hearings, in terms of reference
22 concerning the lake, may well be responding to
23 what Manitoba Hydro has filed, and then may also
24 be inclined to incorporate, use or respond to the
25 material the CEC expert has provided to all of us.

1 And just, again, making sure.

2 THE CHAIRMAN: Well, that's
3 absolutely.

4 MS. WHELAN ENNS: Thank you.

5 THE CHAIRMAN: That's all?

6 MS. WHELAN ENNS: Yes.

7 THE CHAIRMAN: Any other questions on
8 this area, the cross-examination?

9 MR. RAINING BIRD: Jeremiah Raining
10 Bird. I just want to reiterate Mr. Williams'
11 request for an explanation as to the reasoning
12 behind immunization of certain experts and
13 allowance of cross-examination for others. And
14 again, the main reason is we have an uneasiness as
15 to the ability to test the evidence. I'd just
16 like to say that we also support that request.

17 THE CHAIRMAN: Thank you. As I noted,
18 or as I responded to Mr. Williams, we will take
19 that under consideration.

20 Any other questions on questioning?

21 MR. SHEFMAN: I'm sorry, Mr. Chair, as
22 a follow-up to that, would it be possible for you
23 to provide the participants with, and I'm not
24 asking for that to be done right now, but to
25 provide us with some idea as to when you'll have

1 that answer for us so that, if necessary, we have
2 the ability to direct follow-up questions?

3 THE CHAIRMAN: We will try to have an
4 undetailed response to you by the end of next
5 week, but we're on the road tomorrow and all of
6 next week, so we can give you a very short
7 response, yes/no, but perhaps not with much backup
8 written at this point, but by next Friday.

9 MR. SHEFMAN: Thank you.

10 MR. PAUPANAKIS: Darwin Paupanakis
11 from Pimicikamak.

12 THE CHAIRMAN: Yes, Darwin?

13 MR. PAUPANAKIS: I have a question
14 regarding the evidence being submitted by, let's
15 say Manitoba Hydro. Will the participants have a
16 chance to ask for supporting documentation prior
17 to the hearing? And the reason why I ask is, I
18 have a concern over some of the previous
19 submissions that was made in the last hearing at
20 the Keeyask hearings, where key evidence was being
21 submitted supported by documentation that was not
22 provided, and not even when it was asked for, for
23 example, Band Council Resolutions and supporting
24 documents.

25 THE CHAIRMAN: I am not quite sure

1 that I follow. I mean, when you mentioned Band
2 Council Resolutions, that's not something that we
3 have any authority over. Can you expand a little
4 bit, Mr. Paupanakis?

5 MR. PAUPANAKIS: If Manitoba Hydro is
6 making evidence submission to the Commission, in
7 the past they have submitted evidence supported by
8 documentation as such Band Council Resolution
9 supporting development of, let's say, Keeyask, and
10 in this case the effects of Lake Winnipeg
11 Regulation. And I know they are probably going to
12 have some Aboriginal or indigenous support backed
13 up by -- again, Band Council Resolutions have
14 nothing to do with the Lake Winnipeg Regulation.
15 I would question the validity of those supporting
16 documentation again. So will we have a chance to
17 question that before it's being used as evidence
18 or in the hearings?

19 THE CHAIRMAN: Well, if it's not
20 relevant to the matter before us, then it
21 shouldn't be filed and it shouldn't be used by any
22 parties, including Manitoba Hydro.

23 MR. PAUPANAKIS: In my experience they
24 have used it. So I'm just wanting to know if we
25 can have a chance to question that when they do,

1 or prior to the hearings?

2 THE CHAIRMAN: Well, if you are aware
3 of it through their disclosure in the 14 day
4 period, you'll have a chance to question it then.
5 If it's posted as part of their seven day filing,
6 you may have to wait until the day they present it
7 before the Commission. But there will certainly
8 be an opportunity to examine Manitoba Hydro on the
9 relevance of their submissions.

10 MR. PAUPANAKIS: Okay.

11 MR. RAINING BIRD: Jeremiah Raining
12 Bird, just to clarify, I think the issue is
13 whether or not, before it becomes part of the
14 record, if we want to question, is there an
15 opportunity to have a motion to get evidence
16 excluded and not put before the panel?

17 THE CHAIRMAN: Well, I think that's a
18 new one on me. I don't know that we have dealt
19 with that in my 10 odd years at the Clean
20 Environment Commission. I'd like to hear some
21 more discussion about this and exactly what you
22 are referring to. I mean, Mr. Paupanakis has said
23 Band Council Resolutions. Now, was he talking
24 about Band Council Resolutions that might be in
25 the property of Manitoba Hydro?

1 MR. PAUPANAKIS: Yes, that's what I'm
2 talking about when they use that as part of their
3 supporting documents, put forward their position
4 on, let's say, Keeyask or partnerships, et cetera.

5 THE CHAIRMAN: Well, I mean, in this
6 case there are no partnerships. This is a project
7 that Manitoba Hydro owns all by itself. There are
8 no First Nation or other community partnerships in
9 this case, so we wouldn't have that coming before
10 us.

11 I think if Manitoba Hydro has in its
12 possession copies of Band Council Resolutions that
13 have been sent over the years, then I'm not sure
14 that we could exclude that. But it's always open
15 to you to challenge the validity of that evidence.

16 MR. PAUPANAKIS: Okay, thank you. I
17 just brought that up because they objected to a
18 request to have them presented at the last
19 hearings.

20 THE CHAIRMAN: Yeah. Well, I don't
21 need to restate what I have just said. But if you
22 don't like what they have put before us, then it's
23 open to you to challenge that and give us your
24 opinion in respect of that evidence.

25 MR. PAUPANAKIS: It's not a question

1 of whether I like it or not, it's the question of
2 validity.

3 THE CHAIRMAN: Yeah, I understand
4 that.

5 MR. PAUPANAKIS: Okay, thank you.

6 THE CHAIRMAN: You can challenge its
7 validity. Does that satisfy you for now?

8 MR. PAUPANAKIS: Yes, thank you.

9 THE CHAIRMAN: Okay. Thank you.
10 Any other questions about the

11 cross-examination? Ms. Whelan Enns, your arm is
12 sort of --

13 MS. WHELAN ENNS: Yes, and I think I
14 can get my Manitoba words right today, this time.
15 I just wanted to ask in the discussion we just had
16 with Pimicikamak, you made a reference in terms of
17 being able to question what is filed on the 14 day
18 rule?

19 THE CHAIRMAN: I said you'd be aware
20 of what was put in there, and if there is
21 something that you think is totally invalid and
22 might be a crime against mother nature, or
23 whatever, you can bring it our attention. Whether
24 that will make any difference, I don't know. For
25 the most part, we have never experienced in my now

1 11 years with the Commission, I have never
2 experienced a case where we had be asked ahead of
3 time to exclude evidence. And it would have to be
4 something very special to be excluded. But it's
5 always open during the hearings to challenge any
6 evidence put before us --

7 MS. WHELAN ENNS: Thank you.

8 THE CHAIRMAN: -- by Manitoba Hydro.
9 Any other questions? Mr. Whelan?

10 MR. WHELAN: Good afternoon, Jared
11 Whelan for Sagkeeng First Nation. This is a
12 question again about the 14 day rule and the seven
13 day rule, and the specific example of evidence
14 given, and the example used was from Norway House.
15 Norway House, or Sagkeeng, or one of the other
16 Aboriginal First Nation communities brings someone
17 to the panel on their time slot, their 90 minute
18 time slot. And that person is going to provide a
19 story, an experience in their life, observations
20 about the lake. What would the Commission like to
21 see 14 days beforehand from that individual?

22 THE CHAIRMAN: We want to know that
23 individual's name, what his or her role is, and
24 just a general description of the evidence that
25 that person might be giving. It might, you know

1 in the case, the example you have given,
2 Mr. Whelan, it might be sufficient, or it would be
3 sufficient just to say that this person will give
4 testimony from his experience as a fisherman on
5 Lake Winnipeg, blah blah blah. And it need not be
6 much more than that, as long as we know his or her
7 name and generally what they are going to state.

8 MR. WHELAN: As you know from our
9 previous work with First Nations appearing at the
10 Commission, we in our office sometimes do projects
11 that involve something called land use and
12 occupancy memory mapping.

13 THE CHAIRMAN: Yes.

14 MR. WHELAN: Peguis First Nation
15 presented information about the Nelson River in
16 the Keeyask hearings as an example.

17 THE CHAIRMAN: Yes.

18 MR. WHELAN: So if any participants
19 here, any First Nation or Aboriginal participants
20 are going to do something similar to that, do you
21 need to see the outputs, maps from something like
22 that, 14 days, seven days beforehand?

23 THE CHAIRMAN: If you are going to
24 rely on those maps, yes.

25 MR. WHELAN: Thank you.

1 THE CHAIRMAN: I'd also like to note,
2 just in this regard, in respect to bringing
3 indigenous witnesses to tell their stories before
4 us, if the 90 minutes is going to be a problem,
5 please let the secretary know, PDQ, and we may be
6 able to allow more time for such witnesses.

7 We understand the difference in
8 hearing testimony from indigenous people,
9 particularly when it's oral histories. But please
10 let us know as soon as you can, certainly around
11 about the 24th, the same time you are making your
12 initial filing, even before that if you can, but
13 certainly by the 24th of February, so we can
14 schedule or allow some time for that.

15 Any other questions on questioning?

16 Moving along then, we have on the
17 agenda what we call important matters. And these
18 tend to be of a technical nature. They are very
19 important that you know about them and that you
20 follow them, and I'm going to turn this over to
21 Commission secretary Cathy Johnson.

22 MS. JOHNSON: Some of the matters we
23 have already talked about, there are just some
24 things I have to stress, just to make my life a
25 whole lot easier. You have received a rough copy

1 of the schedule. So the sooner that you can
2 identify the times that you cannot provide your
3 presentations, so much the better. And I'll do my
4 best to schedule in the slots that you prefer, but
5 there's no guarantees. And as most of you know
6 that sit around here that schedules are moving
7 targets. So be patient and help me out.

8 We already talked about the dates.
9 March 9th is the open house, 10th is the official
10 formal hearing, two weeks in the Convention Centre
11 and the rest in the Fort Garry. There will be two
12 evening sessions, one on March 11th and one on
13 March 18th for public presenters. And if
14 necessary, we will add a session somewhere, a
15 block somewhere in the day time should we have
16 enough presenters wishing to speak.

17 As I said, I encourage you to get your
18 possible presentation dates to me as soon as
19 possible, and that way we can all be happier. As
20 well as the estimated time for cross-examination
21 of Manitoba Hydro, that helps me schedule as well.
22 We have talked about the dates, the February 24th
23 date, and if we have to change your presentation
24 date, it is your responsibility to back calculate
25 the seven day, for the seven day rule. I have

1 enough trouble keeping track of who is appearing
2 when without being your secretary as well. So
3 just make note of that.

4 If your outline is fairly complicated
5 and has maps and things in it, we need ten printed
6 copies for the Commission and one electronic copy.
7 We need electronic copies of everything. If it's
8 just straight text, no problem, we'll just print
9 it off, but if there's special maps and things, we
10 just don't have the technology.

11 For the most part the participant
12 presentations will be occurring after March 23rd.
13 We have one case that was a special case that it's
14 going to be before that. And once I get
15 everybody's information in, we'll have a more
16 substantive schedule that will be made available
17 to each of you and will be posted.

18 Your electronic presentations, we will
19 have available a computer with a powerpoint and a
20 projector. And if there are participants who wish
21 to use their own equipment, you must ensure that
22 it's set up before the start of the hearing,
23 either the first thing in the morning or at the
24 lunch break. We don't want any delays just
25 because somebody was late bringing their projector

1 with them.

2 And here is a good point. If you are
3 making a powerpoint presentation, please be aware
4 of the etiquette. Make your slide readable, not
5 all kinds of squiggles on the bottom that nobody
6 can see. Minimize the engineering schematics,
7 you're not going to get your point across with
8 those. Watch your colour schemes, some people are
9 colour-blind. And do not, I stress do not use
10 dark solid background. Right CAC? They broke
11 their machine trying to copy them. As well as you
12 can't write on them. The panel members really
13 like to make notes as they go along so that they
14 can ask you questions when you are finished or,
15 you know, highlight a significant point they want
16 to keep on. And we found that they just couldn't
17 write on them. So please, please, advise your
18 consultants or witnesses as well of this.

19 All copies of everything are to be
20 shared at the hearing. We need an electronic copy
21 of all materials. And sometimes, I know we have
22 got lots of pictures and things and the files are
23 too big, so CDs, flash drives, whatever works to
24 get it to us, that's fine with us. And please
25 make your files distinctive. Don't just put CEC

1 presentation on that, because I end up with a
2 whole list of CEC presentations that I don't know
3 who they came from. So include your organization
4 name somewhere in your file name, as well as
5 clearly label any CDs or flash drives that you
6 leave with us, because we end up with piles of
7 things.

8 At the hearing, when you do your
9 presentation we will need 50 copies of those
10 presentations. Ten for the CEC, which includes
11 one for the record, ten for the proponent, and
12 three each for all the participants and department
13 personnel. If you want to supply some for the
14 audience, that's fine with us, it's up to you to
15 do that.

16 Here is another point, please pay
17 attention, please deposit your copies at the
18 reception desk on your arrival. The Commission
19 staff will distribute them at the appropriate time
20 and the appropriate manner. Do not hold your
21 copies until you appear, at your seat, because it
22 just causes terrible confusion and not all the
23 parties get the appropriate documents.

24 If there is information in there you
25 would like to hold to the last minute, we can do

1 that. Advise the staff at the desk. They'll keep
2 it with them and not put it on public display
3 until it's time to distribute them.

4 Do not distribute documents to and
5 only to the panel on your own, because often I
6 don't get a copy for the record and the rest of
7 the parties don't get a chance to see them. So
8 make sure that your copies are distributed in the
9 appropriate manner, depositing them at the
10 reception table.

11 Don't put documents at the end of your
12 table because it disrupts the whole hearing with
13 people coming back and forth. Please put them at
14 the back at the reception table as well.

15 And if your presentation has more than
16 one part, bring them as packages to the reception
17 desk, we're not going to sort them for you, so
18 that packages can be distributed. It's very, very
19 time consuming, when you see how much paper is
20 being generated through this, it just doesn't work
21 to do one piece at a time. And if you don't,
22 you'll be sent away to do it, and it may eat into
23 your presentation time. And if you don't believe
24 me, you can ask people who have been at our
25 hearings.

1 And the appropriate time for
2 depositing your handouts is 9:00 a.m., not 9:29,
3 because there is a lot going on at the beginning
4 of the day and at the breaks. Same in the
5 afternoon, by 1:00 p.m., not at 1:29.

6 Okay. For presentations, we will be
7 recording everything, and ensure that anybody who
8 is speaking has to speak into the microphone.
9 Please speak clearly as possible and at a speed
10 the transcriber can keep up with. This has been
11 an issue with a few presenters. We'll stop you
12 and make you slow down. And if you don't, you
13 know, you'll lose the train of your presentation
14 if you have to be stopped too many times.

15 If you have long quotes in your oral
16 presentation that weren't provided in your written
17 materials, please provide those to the transcriber
18 as well if you want them correct in the record.
19 And this goes for Aboriginal words as well. Often
20 in the presentations they get thrown in, which is
21 fine, it's not a problem, but if you want them
22 recorded in the transcripts, you have to provide
23 the spelling to the transcriber.

24 If your party requires translation
25 because your members wish to speak in their native

1 tongue, that's fine, but it's up to you to provide
2 the translation, because there's so many different
3 dialects and at least two different languages,
4 that we can't keep guessing. So it's best if you
5 bring your own translator.

6 THE CHAIRMAN: Mr. Shefman has a
7 question.

8 MR. SHEFMAN: Thank you, Mr. Chair.
9 Given the relative scarcity of financial resources
10 at this hearing for participants, is there any
11 funding available, I suppose, for that in
12 particular, or is there any means by which the
13 Commission itself can, with proper notice, and
14 perhaps if arranged so that there were more than
15 one on one day, provide translators for our
16 witnesses? I'm just concerned that, again,
17 because of the significant number of indigenous
18 participants in this hearing, that we may face a
19 situation where there are six different
20 participants each paying for their own translator,
21 possibly unnecessarily. And doing so, or forcing
22 us to do so will prevent us potentially from
23 providing the Commission with the best evidence.

24 THE CHAIRMAN: Typically, what we have
25 experienced in practice is that almost always the

1 person who speaks in his or her own language
2 subsequently translates it themselves. If there
3 is a situation where the person either doesn't
4 feel comfortable or in some cases can't speak
5 English very well, often another member of the
6 same community has translated for us. However, if
7 that's not possible, if you would require a
8 professional translator, and if you can identify
9 such a person, then we would be prepared to
10 consider paying the fees for that person on a one
11 off basis. I'm not going to pay for them to be
12 there for a week, but for a day or for a half a
13 day, or even a half an hour to translate, we can
14 work that out. But you have to let us know well
15 in advance.

16 MR. SHEFMAN: That's excellent. Thank
17 you.

18 MS. JOHNSON: Okay. As we said, there
19 will be public presenters and they will be
20 scheduled in at appropriate times. We'll try to
21 do them in a block so that they are not changing
22 the agenda for anybody.

23 We will make copies for these people
24 if they show up ahead of time. We'd prefer that
25 they would send it to us and we will bring it for

1 them. It doesn't really apply to the people who
2 are sitting here, but I'm sure there are others
3 that are part of your groups that may wish to come
4 on their own, so I'm just giving you the bottom
5 line here. And they must use the available
6 equipment that we have, because it's just for 15
7 minutes, it's not worth changing things around. I
8 would also ask that if public presenters provide
9 their presentation materials, that they not put
10 their personal information on it. We just have to
11 black it out, so just their name is good enough.
12 And they can, in the e-mail or whatever, separate
13 letter, they can tell us where we can get a hold
14 of them.

15 We talked a little bit about
16 undertakings. I'm hoping that we won't have a
17 whole lot this time because it's a little bit
18 different of a hearing. But there are some rules
19 of thumb that we're going to go by. The
20 transcriber will be keeping track of the
21 undertakings, and we ask those that are asking an
22 undertaking to be done to clearly state what they
23 are asking for, what calculation, what document
24 and so forth. And that the responder should
25 probably repeat their understanding of what's

1 being asked for, and then if there's a
2 miscommunication there, we can sort it out right
3 at the point.

4 We will be posting presentations on
5 our website, as you have probably seen before. So
6 it's really important that we have that material
7 as soon as possible so that it can be posted to go
8 along with the transcripts. If you don't want
9 your materials posted, please let us know. Amy at
10 the back there will be doing most of this through
11 the hearing, however, her term is up on March 31st
12 and that job will fall back to me, so we won't be
13 quite as quick as we have been. When Amy is
14 around things get done, the next day everything is
15 complete. So it may take a little bit longer
16 after March 31st for things to get up and running.
17 So I do ask you to help me out a little bit and
18 provide anything you provide to us in a pdf. That
19 saves me one step from having to do things.

20 We'll also accept written submissions.
21 We set the date for February 28th, although we
22 never do refuse anything until the record is
23 really closed. It was just to encourage people to
24 get on it sooner than later.

25 Submissions can be sent by e-mail.

1 There is a function on our website that will
2 automatically send it to us. Written, by mail,
3 whatever, we'll take it. And those will also
4 become public and be distributed to all the
5 parties involved.

6 We will have Wi-Fi in the rooms. I
7 don't think anybody can live without it anymore.
8 So check at the reception table for the password.

9 We talked about transcripts already.
10 For the most part, they will be posted the next
11 morning unless it's a very, very heavy day,
12 sometimes it takes a little longer, or if there
13 are those speakers that take longer to transcribe
14 just because they use bigger words or too many
15 words.

16 Also, I remind you that your personal
17 equipment that you bring to the hearing, we always
18 end up with a box full of leftovers. So if you
19 really don't want to lose anything, I would
20 suggest that you label it. We've got plugs and
21 mice and you name it.

22 That's about it. Any questions,
23 please feel free to contact me. We're little
24 early in the process, but a little later we would
25 like to know how many printed reports you would

1 like. We're trying to minimize the number of
2 trees we kill. You can have as many as you want,
3 we just want to get a general number when we get
4 to that point.

5 THE CHAIRMAN: Ms. Whelan Enns?

6 MS. WHELAN ENNS: Gaile Whelan Enns,
7 Manitoba Wildlands. I just have a couple of quick
8 technical questions. Do we want to also remind
9 people to put a number on each slide?

10 MS. JOHNSON: Yes.

11 THE CHAIRMAN: Good point. Please
12 number each page of your powerpoint presentations.
13 We have had cases where numbering in different
14 parts ends up different, and we're bouncing back
15 and forth. And a participant or somebody is
16 questioning the presenter and we can't identify
17 the slide. So, please clearly number each page on
18 your powerpoint slides.

19 Thank you for that, Gaile.

20 MS. WHELAN ENNS: Thank you. And the
21 only other technical question, if I may. I think
22 it would help us to know whether or not Manitoba
23 Hydro is going to be supporting the hearing
24 technically again, and whether their equipment and
25 their video camera and their screen and so on will

1 be in use?

2 THE CHAIRMAN: I'll have to direct
3 that question to Manitoba Hydro, if they are able
4 to?

5 MR. BEDFORD: Yes.

6 THE CHAIRMAN: Thank you.

7 MS. WHELAN ENNS: Thank you.

8 THE CHAIRMAN: Mr. Whelan?

9 MR. WHELAN: I'd like to pass a motion
10 that the CEC somehow retain its funding and keep
11 Amy on staff after March 31st.

12 THE CHAIRMAN: We would love to do
13 that. If you ever worked for government, you know
14 it's a lot more complicated than just doing that.

15 MR. WHELAN: Second question is, when
16 are you having your garage sale to sell all those
17 bits and bobs you collect at the hearing?

18 THE CHAIRMAN: That's a good point.
19 Maybe if my salary gets cut or something in the
20 next round, I'll do that. We also have a good
21 market for unused copies of past reports, or
22 reports from past reviews, we have got hundreds of
23 those in various cabinets around our relatively
24 small office.

25 Any other questions in general?

1 Mr. Duplassie.

2 MR. DUPLASSIE: Ryan Duplassie, Black
3 River First Nation. I just want to clarify, I
4 understand that the use of dark slides can kill
5 machines and toner and all of that, you can't
6 write on them. I am sure a lot of participants
7 and presenters will have photographs on their
8 slides, of course, a lot of them are going to be
9 dark. What might the panel suggest when we come
10 across dark slides? Do we omit? Print anyway?

11 THE CHAIRMAN: Well, if you are using
12 something that's already in existence, then
13 obviously that's okay. But if you are generating
14 your own slides, just have dark type face on a
15 white or a very light background. I mean, you're
16 right, there are going to be photos and other
17 things that have a fairly dark background, that's
18 fine, but don't create more of that.

19 Any other questions or comments?

20 Okay. Well, before I finally close
21 this off, we will let you know, based on some of
22 the discussion today, we will let you know by next
23 Friday about whether or not and in what form there
24 will be participant to participant
25 cross-examination. We will also let you know

1 what, if any, examination of CEC witnesses will be
2 allowed.

3 We will review the Federal Court
4 guidelines on hearing Aboriginal or indigenous
5 evidence. I can tell you that we did, as a panel
6 we did review those a number of months ago. I
7 actually sort of pulled off that section of that
8 particular set of guidelines and shared it with
9 the other panelists, and we discussed it.

10 If we need more accommodation than
11 what I said a few moments ago, just to let us know
12 ahead of time if any of you need more time for
13 such testimony, we will consider that. So we will
14 let you know by next Friday specifically about the
15 first two participant to participant and CEC
16 witnesses, and we are open to any further
17 accommodation for indigenous witnesses.

18 Last chance for any questions or
19 comments? Mr. Whelan?

20 MR. WHELAN: Section 3.14, truth in
21 proceedings, swearing in. Myself, I presented on
22 behalf of a client last hearings and I had to
23 affirm that I was speaking the truth. And the
24 section specifically reads to participants'
25 experts actually presenting. What about people

1 who may speak on behalf of participants or the
2 proponent who aren't themselves giving
3 presentations?

4 THE CHAIRMAN: Anybody who is giving
5 testimony before us will be required to be sworn
6 in. Whatever nature that is, if they are speaking
7 during the public hearings, we will swear them in.

8 MR. WHELAN: Okay.

9 THE CHAIRMAN: Now, having said that,
10 we do not do that in our community sessions. We
11 try to keep the community sessions as informal as
12 possible, so we don't do the swearing in then.

13 Any other questions or comments?

14 Okay. Thank you all very much for
15 coming out today. If you have matters that you
16 want to clarify, please contact Ms. Johnson. If
17 they are of a legal matter, you can get in touch
18 with Mr. Green. Otherwise, we will see all of you
19 on the 10th of March. We look forward to that
20 day. So thank you very much and we are adjourned.

21 (Concluded at 2:29 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

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

Debra Kot
Official Examiner, Q.B.

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