

MANITOBA CLEAN ENVIRONMENT COMMISSION

LAKE WINNIPEG REGULATION REVIEW

UNDER THE WATER POWER ACT

VOLUME 17

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Transcript of Proceedings
Held at RBC Convention Centre
Winnipeg, Manitoba
WEDNESDAY, APRIL 15, 2015

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APPEARANCES

CLEAN ENVIRONMENT COMMISSION

Terry Sargeant - Chairman
Edwin Yee - Commissioner
Neil Harden - Commissioner
Beverly Suek - Commissioner
Mike Green - Counsel to Commission
Cathy Johnson - Commission Secretary
Joyce Mueller - Administrative Assistant
Amy Kagaoan - Administrative Assistant
Phil Shantz - Advisor
Bob Armstrong - Report writer

MANITOBA CONSERVATION AND WATER STEWARDSHIP

Rob Matthews
Puru Singh

MANITOBA HYDRO

Doug Bedford - Counsel
Janet Mayor - Counsel

CONSUMERS ASSOCIATION OF CANADA (Manitoba chapter)

Byron Williams - Counsel
Joelle Pastora Sala - Counsel

MANITOBA METIS FEDERATION

Marci Riel
Jasmine Langhan

MANITOBA WILDLANDS

Gaile Whelan Enns

PEGUIS FIRST NATION

Lloyd Stevenson
Jared Whelan

PIMICIKAMAK OKIMAWIN

Annette Luttermann
Jeremiah Raining Bird

APPEARANCES

KEWATINOOK FISHERS

Myrle Ballard

NORWAY HOUSE FISHERMAN'S CO-OP

Keith Lenton

TATASKWEYAK CREE NATION

Sean Keating

INTERLAKE RESERVES TRIBAL COUNCIL

Corey Shefman

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1 WEDNESDAY, APRIL 15, 2015

2 UPON COMMENCING AT 9:30 A.M.

3 THE CHAIRMAN: Good morning, welcome
4 to our second last day. We have this morning
5 Manitoba Hydro rebuttal, followed by two or three
6 closing arguments. I think every one of you has
7 been sworn, so we don't have to do that over
8 again. So the floor is yours. Ms. Mayor?

9 MS. MAYOR: So the format we're going
10 to use this morning is just doing a question and
11 answer, essentially, to try and keep it moving
12 along. I'm not sure if Ms. Johnson has got
13 numbered cards today, but I know she's going to
14 keep me to my hour and a half, so we will do our
15 best with the question and answer just to kind of
16 keep it going. So there's no full length
17 presentation.

18 THE CHAIRMAN: If you're close to an
19 hour and a half, we won't flash any cards. If you
20 go much longer, we might start squawking.

21 MS. MAYOR: Fair enough. Thank you.

22 Okay. We're going to start with
23 Mr. Gawne this morning, and we're going to deal
24 with some evidence that we heard from Dr. McMahon
25 with respect to models. Now, Dr. McMahon

1 indicated he had access to models used by Manitoba
2 Hydro, but did not review or ask for other models
3 such as HERMES or SPLASH.

4 Can you clarify what models
5 Dr. McMahon did ask for and was given access to,
6 and the use that is made of those models by
7 Manitoba Hydro?

8 MR. GAWNE: Dr. McMahon was given
9 access to the models used to prepare appendix four
10 and appendix ten of the LWR document. With
11 respect to HERMES and SPLASH, I'm certain that
12 from the LWR documents and the technical workshop,
13 and as well with our meetings with Dr. McMahon,
14 that he was aware that Manitoba Hydro uses
15 decision support systems. Dr. McMahon also
16 mentioned the HERMES system in his report itself.
17 So Dr. McMahon was aware that Manitoba Hydro had
18 decision support modeling, yet he did not request
19 to see these models.

20 MS. MAYOR: Now you have referenced
21 the models in appendix four and ten, and you
22 indicated that those were also used for
23 operational planning purposes. Can you clarify
24 for me, are they used for operational planning
25 purposes or for generation planning?

1 MR. GAWNE: No, the models reviewed by
2 Dr. McMahon were simple and specific, and quite
3 narrow in scope. They are used specifically to
4 evaluate two things, firstly, the simulation of
5 Lake Winnipeg levels and outflows with Lake
6 Winnipeg Regulation removed. That was appendix
7 four. And secondly, to simulate Lake Winnipeg
8 levels and discharge from Lake Winnipeg, if there
9 was incremental changes to the upper limit of the
10 power production range, so the upper limit being
11 changed to 714 feet or 716 feet. And that was to
12 augment the analysis that was requested by the
13 Commission about the economic impacts of moving
14 that 715 limit, the economic analysis that was in
15 appendix 11.

16 MS. MAYOR: So if those simple models
17 weren't used by Manitoba Hydro for operational
18 planning purposes and generational planning, which
19 models does Manitoba Hydro use for those purposes?

20 MR. GAWNE: Okay. So HERMES is the
21 Manitoba Hydro model used for reservoir and energy
22 operations planning. Among other purposes, it's
23 used to assist our operations planning engineers
24 in decision-making about water load, water
25 releases, and that's at Lake Winnipeg Regulation,

1 at Grand Rapids, and the Churchill River
2 Diversion. And also used to inform decisions
3 about export and import decisions, decisions on
4 the scheduling of coal and thermal generation --
5 sorry, coal and natural gas generation. So it's a
6 reservoir and an energy planning model.

7 SPLASH is Manitoba Hydro's system
8 planning model. And so this is looking further
9 out into the future, and then this is a model
10 where the main role is to assist Manitoba Hydro in
11 planning when and what resources should be added
12 to the system in order to meet future energy
13 demands.

14 MS. MAYOR: Now, have those two models
15 been reviewed, endorsed by external experts?

16 MR. GAWNE: Yes, both SPLASH and
17 HERMES had been reviewed by external experts, and
18 I was part of this process, but these models were
19 reviewed by the PUB's independent experts in 2012
20 in their risk review of Manitoba Hydro. And
21 SPLASH, through the power resource plans that are
22 developed from that model, those power resource
23 plans were tested heavily at the recent 2014 NFAT
24 hearing in front of the Public Utilities Board.

25 MS. MAYOR: Now, why were those models

1 not introduced and used at this hearing?

2 MR. GAWNE: So, in my opening
3 presentation and during the cross exam of our
4 panel, I explained in general how Manitoba Hydro's
5 decision support modeling is used to plan water
6 and energy operations. But these models, HERMES
7 and SPLASH, were not used for the analysis in
8 appendix four and ten, because they are simply not
9 appropriate. HERMES is used to advise on water
10 release decisions, what those decisions should be
11 today and into the future, whereas SPLASH is used,
12 again, for generation planning out into the
13 future, and that model is again looking well out
14 into the future on when new generation is
15 required.

16 So back to appendix four, this is a
17 simulation of Lake Winnipeg levels from '77 to
18 present with Lake Winnipeg Regulation removed and
19 all else being equal. So the model that was used
20 for this simulation is simply a storage balance
21 model. With the pre Lake Winnipeg Regulation
22 outlet characteristics, so as if Lake Winnipeg
23 Regulation is never constructed, with no ability
24 to control outflows from Lake Winnipeg, so it was
25 faster and simpler to develop a model than to

1 either modify SPLASH or HERMES for that type of
2 analysis. And appendix ten, again, was a
3 simulation to study flows and levels on Lake
4 Winnipeg and outflows from Lake Winnipeg with that
5 upper limit shifted on the power production range.

6 So it was an incremental analysis, and
7 the study was quite narrow in scope, and just
8 basic water balance and routing modeling was
9 employed.

10 The analyses were completed to
11 accompany, again, that request for the economic
12 evaluation in appendix 11. Using HERMES or SPLASH
13 to do this type of an analysis in comparing
14 simulated water levels to actual historic water
15 levels and flows would have been a much larger and
16 more complex undertaking. The reason being, all
17 the historic information that would have
18 influenced Manitoba Hydro's decisions over the
19 years since regulation began would have had to
20 have been incorporated into that modeling. So
21 what was done was just an incremental simulation
22 of what happened in the past.

23 MS. MAYOR: Now, Dr. McMahon
24 criticized the models used by Manitoba Hydro for
25 operational planning purposes in generation

1 planning. Is that a fair criticism in light of
2 the fact that he did not review them, or even ask
3 for them?

4 MR. GAWNE: With the greatest respect
5 to Dr. McMahon, I don't think he was in a position
6 to offer any criticisms of Manitoba Hydro's
7 decision support modeling used in operations and
8 planning, as he didn't review those models. It
9 was quite clear from his statements that he did
10 not understand the complexity and detail involved
11 in those models. Specifically, Dr. McMahon
12 implied the decision-making, when Lake Winnipeg is
13 between 711 and 715 feet, is largely based on
14 operator discretion and formed by past practice
15 and judgment.

16 Now, although it's true that judgment
17 and discretion is involved, and he agreed that
18 these are essential elements to reservoir
19 operation, it's incorrect that Manitoba Hydro does
20 not use detailed reservoir and energy modeling in
21 its operations and operations planning.

22 I would add that Dr. McMahon also
23 conceded in his March 17th testimony that he
24 wasn't aware these models were used in day-to-day
25 operations and operations planning.

1 I think it was clear from
2 Dr. McMahon's testimony that he was unaware of the
3 modeling Manitoba Hydro uses in operations. For
4 example, in his testimony at page 1009 to 10 of
5 the transcripts, when Mr. Bedford asked if he was
6 aware that HERMES was used for operational
7 decision-making of LWR, Dr. McMahon had responded:

8 "I thought it was for energy
9 operations, not reservoir systems. I
10 wasn't aware of that."

11 So in Manitoba, energy operations
12 drives reservoir operations, they are closely tied
13 together for the Manitoba Hydro system, because we
14 are predominantly a hydroelectric system. So his
15 response suggests that he did not appreciate the
16 significance of the hydro system in Manitoba and
17 how reservoir operation is key to avoiding energy
18 shortages in the province during times of drought.

19 MS. MAYOR: Now, does Manitoba Hydro
20 allow external parties to review and manipulate
21 these models?

22 MR. GAWNE: Now we're talking about
23 HERMES and SPLASH, generally, no. Although the
24 models have been subjected to confidential
25 reviews, which I spoke earlier, the models are

1 proprietary and they are quite complex and they
2 require expertise and knowledge of the Manitoba
3 Hydro generating system, including the export and
4 import aspects of that system. So the models also
5 contain commercially sensitive information.

6 MS. MAYOR: Can you tell us what type
7 of data gets inputted into HERMES and SPLASH?

8 MR. GAWNE: Okay. Essentially all the
9 major physical aspects of the system are into
10 those models, including the generation and
11 transmission system capabilities, lake and
12 reservoir characteristics, river channels,
13 operating constraints, and more. And there is
14 also forecasts for information, as I spoke of in
15 my initial presentation, for information such as
16 electrical demand forecasts, inflows, contract and
17 pricing details in Manitoba's export contracts,
18 market price forecasts are also used as an input
19 to the models. But without expert knowledge of
20 the data and how the models use that information,
21 the model could not be used by non-experts that
22 aren't familiar with the Manitoba Hydro system.

23 MS. MAYOR: Now, to your knowledge, do
24 any other Canadian utilities in particular release
25 these types of proprietary models to the public?

1 MR. GAWNE: In terms of the internal
2 models used in operations, no, to my knowledge,
3 they are not opened up to the public. Aside from
4 the sensitive information and the proprietary
5 nature of the models, it simply would not be
6 helpful to release these models as they are
7 complex and require expertise and specific
8 training to use them.

9 So, Dr. McMahon had explained in his
10 exchange with Mr. Williams that models used in
11 integrated resource planning are open models on
12 common platforms, and use of those models by
13 external experts would be possible, and I would
14 expect that those models would not include
15 commercially sensitive information, those open
16 models.

17 MS. MAYOR: Now, Dr. McMahon also
18 suggested that the models that should be used in
19 the future by Manitoba Hydro in its licensing
20 processes should have greater flexibility to allow
21 outsiders to test water release alternatives, or
22 to evaluate the effects of operating rules on the
23 water regimes. Does Manitoba Hydro need new
24 models to do those functions?

25 MR. GAWNE: Yes, that would be

1 necessary, especially if there is a need to -- a
2 requirement to open up the models for external
3 users.

4 THE CHAIRMAN: Can I interrupt? Just
5 the first sentence, that would be -- I missed what
6 you said in that response?

7 MR. GAWNE: So the question was --

8 THE CHAIRMAN: Your response in the
9 first sentence, I missed a key word.

10 MR. GAWNE: Yes, that would be
11 necessary, especially --

12 THE CHAIRMAN: Necessary, okay, thank
13 you.

14 MS. MAYOR: Now, Dr. McMahon suggested
15 that possibly the use of the model known as
16 HEC-ResSim might be useful, and perhaps Manitoba
17 Hydro might look at its existing version, and then
18 obviously its updated version, because you
19 indicated it was being updated. Would something
20 like that be of use to Manitoba Hydro?

21 MR. GAWNE: HEC-ResSim, it's always
22 helpful to maintain an awareness of what other
23 modeling technology is out there, and we do that.
24 However, investing the time and money into
25 configuring and calibrating and developing an

1 externally available model open -- of the Manitoba
2 Hydro system open to the public I think would be
3 premature at this state. As we have heard from
4 Dr. McMahon, these efforts can take years.

5 Now, if the path to licence renewal
6 involve various interest groups simulating the
7 operation of the Manitoba Hydro system, and
8 defining scope and what information is required
9 from those simulations, then Manitoba Hydro would
10 certainly look at what modeling technology is out
11 there to answer those questions, once those
12 questions are known.

13 MS. MAYOR: Now, Dr. McMahon also
14 suggested that there was a lack of drought
15 planning for the Manitoba Hydro system, by both
16 Manitoba Hydro and by the Province. He indicated
17 in his written report that there was no drought
18 management plan, and that there is an absence of
19 predefined rules within 711 to 715-foot range on
20 Lake Winnipeg. Can you do two things for me; can
21 you describe what Manitoba Hydro's drought
22 planning activities are, and with those plans
23 already in place, is there still a need for some
24 of the modeling suggested by Dr. McMahon?

25 MR. GAWNE: Well, certainly drought

1 planning is essential to Manitoba Hydro's
2 operation and planning of the development of its
3 generation system. The timing of new resource
4 additions is driven by the requirement to supply
5 Manitoba electrical demand, even under the worst
6 drought condition, so it's absolutely central to
7 the planning of our system.

8 With respect to operations and
9 planning out the operations of water release
10 decisions, Manitoba Hydro ensures that there is
11 sufficient energy supply available at all times,
12 even if drought conditions were to start tomorrow.
13 So it's always top of mind, and it's central to
14 our planning and central to our operations.

15 Now, Manitoba Hydro's operations
16 planning document has been filed in confidence
17 with the Public Utilities Board. In that
18 document, Manitoba Hydro specifies the assumptions
19 that we use when we're planning operations through
20 drought. So that's set out in that document. So
21 drought planning exists at Manitoba Hydro and it
22 has been written down.

23 Now, I believe Dr. McMahon was seeking
24 to find specific water levels or flow based rules,
25 and he used the term rules, for Lake Winnipeg

1 Regulation that should be defined for drought
2 operations. Our rules for drought operation are
3 the same as for other water conditions. However,
4 there are drought related rules that will become
5 binding essentially when drought conditions
6 develop. So it's embedded in our operations that
7 we need to supply Manitoba load. And if water
8 conditions evolve into a drought, those rules that
9 say that you have to supply your load become
10 binding.

11 So we have operations planning
12 criteria that stem from our obligation to serve
13 the electrical demand. And the lack of water from
14 drought results essentially in other resources
15 being used by Manitoba Hydro to meet our
16 electrical demand. And the use of storage, and we
17 talked about the 711 range and what happens below
18 that, the use of storage outside the range of
19 reservoir licence limits is not considered to be
20 an option for us. It's kind of a hard rule. So
21 essentially those rules are embedded within our
22 processes.

23 MS. MAYOR: So would rule based
24 regulation be appropriate for Manitoba Hydro?

25 MR. GAWNE: I think hard rules are

1 certainly -- they certainly have their place. And
2 we have those already in the form of the power
3 range on the Lake Winnipeg Regulation licence, the
4 minimum outflow requirement, and also the rate of
5 change constraint on flows at Jenpeg. However,
6 simple rules for reservoir releases are not
7 appropriate. We have operations research
8 technology, so this decision support modeling,
9 that has given us the ability to calculate the
10 appropriate amount of flow release, given the
11 operating constraints that we have and the
12 objectives that apply continuously in our
13 operation.

14 So conditions are constantly changing
15 and a fixed rule set for operation of Lake
16 Winnipeg would not be able to do the job.

17 MS. MAYOR: Now, I'm going to continue
18 along with Dr. McMahon's report, but I'm going to
19 switch to Mr. Cormie to give Mr. Gawne a bit of a
20 break.

21 So, Mr. Cormie, although Dr. McMahon
22 did not recommend in particular the integrated
23 licensing process used by the Federal Energy
24 Regulatory Commission, or FERC, as the acronym is,
25 he did provide it to us as an example of a

1 licensing process which starts well in advance of
2 the actual licensing hearings, and has a much more
3 intensive public engagement process.

4 Are you aware of other similar
5 processes that may be more in line with the
6 approach used in Canada?

7 MR. CORMIE: Yes. Manitoba Hydro is
8 aware that B.C. Hydro has water use planning and
9 water management, and in Ontario there is water
10 management planning for water power. The goals of
11 these programs are similar in where they are
12 trying to find a balance for sometimes competing
13 environmental social and economic objectives.
14 They use a planning process involving input from
15 participants, government agencies, Aboriginal
16 groups, local stakeholders, you have cottage owner
17 groups, outfitters, those people who would be
18 affected by the water levels on the water bodies,
19 and other interest groups that are affected. And
20 this involvement is to study the projects that
21 might -- and the outcome might result in
22 operational changes, monitoring studies and
23 physical works.

24 B.C. Hydro's water planning has
25 included 23 water use plans, they call them WUP,

1 for 31 of its generating facilities between 1999
2 and 2004. B.C. then directed B.C. Hydro to
3 complete site specific activities, the development
4 of operational and water flow constraints,
5 recreation, habitat enhancements, and to undertake
6 multi-year environmental monitoring studies.

7 In B.C. they have about 750 operating
8 constraints that have been implemented as a result
9 of this process, including studying of minimum
10 flows, seasonal reservoir targets and ramping
11 rates. Ramping rates are the rates at which you
12 can increase and decrease the water flows. The
13 15,000 CFS on Lake Winnipeg, you can describe that
14 as a ramping rate.

15 And the water use planning also
16 includes reviews of the 23 WUP starting in 2015,
17 and those reviews will continue over the next 15
18 years.

19 Back to Ontario. Ontario's water
20 management planning, this was done under the Lakes
21 and Rivers Improvement Act and gave authority to
22 order management plans that set target time frames
23 for the water management plans. For simple
24 systems, those would take six months; complex
25 systems, 24 months. A simple system you can

1 imagine, say Laurie River, it's a small, very
2 local project, so you can imagine that as being a
3 very simple system. A complex system, Churchill
4 River Diversion, large aerial extent, multi --
5 many issues, lots of stakeholders, lots of
6 impacts. So they have set time frames appropriate
7 for the complexity.

8 Water management planning is required
9 at the end of five, between five and ten years.
10 The guidelines that come out of that include, they
11 want to maximize the net benefit to society,
12 riverine ecosystem sustainability, adaptive
13 management, best information available, include
14 the assessment of options, their timely
15 implementation, and Aboriginal and Treaty rights.
16 The water management plans need to be undertaken
17 without prejudice to these rights, and they
18 involve public participation.

19 MS. MAYOR: Now, we have heard you on
20 a couple of occasions talk about having a road map
21 laid out for Manitoba Hydro in the future. Would
22 any of those systems, as is set up in B.C. and
23 Ontario, help lay out that road map for Manitoba
24 Hydro?

25 MR. CORMIE: Yes, we certainly see

1 aspects of these processes as being helpful in
2 defining our road map for renewals, in particular,
3 the early involvement of other interests. The
4 study of -- the scope of the study and the data
5 requirements, that those things are defined early
6 in the process so that the work can be done, so
7 that the outcome will be comprehensive. And
8 setting the -- defining the timing requirements,
9 so that the process can meet its timeline
10 objectives.

11 MS. MAYOR: Now, do you have any
12 concerns with simply just taking one of those
13 models and applying it to Manitoba Hydro, as is?

14 MR. CORMIE: Yes, I do have concerns.
15 Before adopting a similar approach for renewals in
16 Manitoba, you know, we do have our unique
17 requirements. For example, one size does not fit
18 all. And I mentioned Laurie River, two five
19 megawatt generating stations isolated from the
20 rest of the Manitoba Hydro system. The Ontario
21 model classifies, reviews a simpler -- complex, in
22 Manitoba Hydro's context, a complex project would
23 have much broader review. And we think this would
24 be appropriate for review of combined Lake
25 Winnipeg Regulation and Churchill River Diversion.

1 When you get downstream, it's hard to discern
2 which project is creating the effect. And it
3 probably doesn't matter, it's the system effect
4 that we need to be concerned about.

5 Renewal of a single generating station
6 licence with a limited footprint should likely
7 follow into that simple category. You can look at
8 the Slave Falls Generating Station, for example.
9 Very local impact, essentially run of the river,
10 has impacts that go a few miles upstream and a few
11 miles downstream. There's no need to review the
12 entire Manitoba Hydro system, or the Winnipeg
13 River, when you're just looking at those
14 well-defined projects.

15 We would like that there should be
16 proper scoping so that the renewal process can
17 occur in an orderly fashion and, for example,
18 recognizing that existing processes are underway
19 already. So for Lake Winnipeg and Churchill
20 River, the RCEA process is already underway,
21 identifying what information is already available.
22 The objective of that is to identify the gaps.

23 And so until we know what those gaps
24 are and we get input from the public on making
25 sure that there is agreement that those are the

1 appropriate gaps that we need to address, it would
2 be premature now to initiate any new studies until
3 that process is complete.

4 And then at the end of the day, we do
5 have to worry about cost considerations and who is
6 going to pay for these things.

7 I was reminding my fellow panelists
8 the other day what it cost to say build a model.
9 Back in 1983 when we started the HERMES project,
10 we spent \$3 million on that project. The SPLASH
11 model probably cost in the order of six to
12 \$10 million. If we were doing that today, we're
13 talking many, many millions of dollars just to do
14 the modeling effort. Hopefully, we can reduce
15 that cost by using publicly available input, but
16 these projects entail lots of people and lots of
17 money and lots of time and are very expensive. So
18 we want to undertake them having a clear idea of
19 what the scope is, what the objective is, and
20 investing in the things that are really necessary.

21 MS. MAYOR: In terms of future
22 applications for renewals of licences, what is
23 Manitoba Hydro's view of perhaps combining some of
24 those licence renewals into groupings, as opposed
25 to doing each station system separately?

1 MR. CORMIE: Well, you can rationalize
2 the grouping based upon when the renewals have to
3 occur. For example, Lake Winnipeg Regulation,
4 Churchill River Diversion essentially are going to
5 expire around the same time, 2026. Kelsey renewal
6 needs to be done. It's hard -- geographically
7 these projects overlap. So that's a natural
8 grouping, CRD, LWR, and Kelsey. Jenpeg could be
9 included in that, but Jenpeg has one of the -- the
10 actual powerhouse has a very limited footprint.
11 It's subservient to the Lake Winnipeg Regulation
12 licence. You could include it or not, it probably
13 doesn't matter, but that's a natural grouping.

14 The Winnipeg River plants, you know,
15 their licences don't necessarily align for
16 renewal, but you could do them as a group. They
17 are all well-established. The last one, McArthur,
18 came into service in the mid '50s. So whether
19 they are 65 or 95 years old, you know, the impacts
20 from those projects have been absorbed into the
21 environment, they are well embedded into the local
22 area, and very few issues. So you could imagine
23 that being a group.

24 Another group is, natural grouping
25 would be Kettle, Long Spruce and Limestone.

1 Kettle came into service in the early '70s,
2 Limestone came in the '90s, so there is a 20-year
3 difference, but essentially those three plants
4 operate almost exactly the same, they go up and
5 down in tandem. You know, there's a natural
6 grouping there.

7 So, from an efficiency and expediency
8 perspective, and to recognize that there may be
9 interrelated projects and that there may be system
10 effects, rather than just local effects, there is
11 certainly merit to grouping some projects. And
12 you know, if you are thinking about a
13 recommendation in that area, I think grouping and
14 rationalizing how we do this would be really
15 helpful.

16 MS. MAYOR: Now, you may have covered
17 this to some extent when I asked you about the
18 concerns you had about applying other, B.C.,
19 Ontario models, to Manitoba Hydro. But can you
20 just summarize for us, what are the attributes
21 that Manitoba Hydro would like to see in the
22 future licence renewal processes?

23 MR. CORMIE: Well, clearly we'd like
24 the recommendations to be realistic and something
25 Manitoba Hydro can achieve, and at this stage not

1 to be overly prescriptive. There are many other
2 processes that are going on, and I think it would
3 be appropriate that the process include clearly
4 scoping at an early stage. I believe it would be
5 premature to define the scope now. I think it's
6 better to define a process. The process would
7 result in a scoping document that everybody can
8 agree on, including all the, you know, public
9 participation, the Manitoba Hydro, government, all
10 the Aboriginal communities. And then having
11 defined that scope, then we proceed, but I think
12 we need more process now than actually defining
13 the scope.

14 I believe this is an excellent time
15 for the Commission to recommend to the Province
16 that relicensing is an opportunity to modernize
17 the process, and I made those comments in my
18 opening presentation, so that the outcome reflects
19 a modern balance.

20 Now, when I talk about modern balance,
21 that doesn't mean that we can throw away all the
22 existing infrastructure and works and start over.
23 It may be that, from a facility's perspective and
24 a constraint perspective, nothing changes. It's
25 modern in that it's inclusive. Everybody has an

1 opportunity to participate, it's transparent. And
2 I think if you contrast that back to what happened
3 when these projects were initially, you know,
4 there wasn't a lot of public engagement. The
5 process took place over a very short period of
6 time. What we're proposing is a relatively long
7 period that includes everybody. The outcome might
8 be that we still have 711 to 715, we still have
9 all these other constraints, there may be some
10 additional things, but everybody from a modern
11 perspective is involved.

12 I believe that we need to be realistic
13 and recognize that for Lake Winnipeg Regulation,
14 the project is the foundation for both flood
15 control on Lake Winnipeg and for the hydroelectric
16 development in the province. You know, that's a
17 huge public policy decision that was made in the
18 past, and I don't think we can easily walk away
19 from that.

20 We also have to recognize that, in
21 this relicensing opportunity, that there's still
22 ongoing work taking place between Manitoba Hydro
23 and the affected communities downstream. The
24 process between Pimicikamak and Manitoba Hydro
25 that's ongoing, that involves the Provincial

1 Government, and probably other downstream
2 interests, that process needs to work its way
3 through.

4 As I mentioned before, there's the
5 ongoing RCEA process. That's something that we
6 have responded to, at the request of the Province,
7 and we need to let that happen. And I think that
8 fits nicely into the time frames that we have
9 available for relicensing.

10 And clearly we have heard views and
11 concerns from all those that have been involved in
12 this process, the First Nation communities that
13 have come forward, you know, recognizing that they
14 are affected by the water levels on Lake Winnipeg,
15 they have important concerns, and there's a way of
16 bringing them to the table.

17 MS. MAYOR: Mr. Cormie, I'm just going
18 to move, still with you, but on the topic of water
19 governance. Both the Consumers Association and
20 Pimicikamak have recommended that a multi-party
21 task force or a decision-making structure of some
22 form be created. Do you see a difference between
23 these two recommendations?

24 MR. CORMIE: Yes. There appears to be
25 two different multi-party recommendations here.

1 CAC has recommended a short-term task force that
2 will look at the recommendations of the CEC, hold
3 public meetings, and come up with strategy for
4 implementation.

5 Pimicikamak, and I believe as well
6 Sagkeeng, have recommended a multi-party
7 decision-making framework. As part of our process
8 agreement struck last year with Pimicikamak,
9 Manitoba Hydro has agreed to discuss this issue
10 with Pimicikamak and the Province. That agreement
11 recognizes that in any discussions there would be
12 a need to involve a larger group, not just
13 Pimicikamak, Manitoba Hydro and the Province. And
14 I believe that it may need to be broader than just
15 the downstream interests. You know, I'm not sure,
16 I wasn't involved in that discussion about what
17 other interests were being included in the
18 definition of multi-party, but you have seen
19 through this process that there are other people
20 upstream who, to the extent that things happened
21 downstream, it has an upstream effect. And so
22 this multi-party decision-making framework needs
23 to be, I believe, inclusive.

24 MS. MAYOR: Now, turning specifically
25 to the Consumers Association recommendation, what

1 is Manitoba Hydro's position on a multi-party task
2 force of the type recommended by them?

3 MR. CORMIE: I would agree that it's
4 important to evaluate how the recommendations that
5 the Commission makes will be implemented in an
6 effective manner. However, I would suggest that
7 instead of recommending another group to deal with
8 Lake Winnipeg issues, that building on existing
9 efforts may be a better option. There are a
10 myriad of institutions and groups concerned with
11 Lake Winnipeg. There is the Lake Winnipeg
12 Stewardship Board, the Lake Winnipeg Water
13 Initiative, the Save the Lake Winnipeg project,
14 and I'm sure there are others. I believe another
15 task force would further complicate matters and
16 likely hinder the fledgling stewardship efforts of
17 the Lake Friendly Stewards Alliance and Accord.
18 That alliance is a multi-stakeholder initiative.
19 It's been spearheaded by Minister Mackintosh and
20 the Mayor of Dunnottar, Rick Gamble, and that
21 happened on June 19th of 2013. I mean, I think
22 the alliance is emerging as an effective body for
23 issues related to Lake Winnipeg because it is
24 building a broad membership representation from
25 the federal, provincial, municipal governments,

1 First Nations and Metis governments,
2 trans-boundary agencies. And we have heard how
3 some of the problems on Lake Winnipeg are not just
4 caused by things that are happening in Manitoba
5 but in the broader region. Cottage owner
6 associations, conservation districts, agriculture,
7 business and industry, and environmental NGO's, so
8 I think there is a comprehensive body already
9 there looking at these things, and it looks pretty
10 comprehensive.

11 The following seven working groups
12 have already been established under the alliance.
13 There's a communication and education working
14 group, the rural landscapes working group, the
15 community landscapes working group, the science
16 and research working group, we've got the
17 innovation and economic development and technology
18 application working group, the First Nation
19 leadership and traditional knowledge working
20 group, and governance working group. I suggest
21 that a recommendation from the CEC that builds on
22 the work of the alliance would be beneficial.

23 MS. MAYOR: The Lake Winnipeg,
24 Churchill and Nelson River Study Board recommended
25 a board for Lake Winnipeg, and we have heard a

1 little bit about it during the hearing. To your
2 knowledge, was this recommendation implemented?

3 MR. CORMIE: Yes. Cabinet approved a
4 board in March of 1976.

5 MS. MAYOR: And what was this board's
6 role and how long did it operate, to your
7 understanding?

8 MR. CORMIE: You know, based on our
9 files, it started in March -- or in June of 1976,
10 so I wasn't really at the table, so I can only
11 report on what the files indicate. But the board
12 was an advisory board to government, and it
13 operated for approximately two years and had seven
14 meetings. The first meeting was in May 1976, and
15 our records indicate that the last meeting
16 occurred in November of 1977.

17 MS. MAYOR: Do you know why that
18 board's involvement in Lake Winnipeg Regulation
19 ended?

20 MR. CORMIE: Well, our understanding
21 is that an eighth meeting was scheduled but it was
22 postponed pending ministerial review of the
23 board's functions and activities, and that no
24 further meetings actually took place. The 1984
25 report on implementation of the NFA mentions that

1 the board was reformed in 1982, but Manitoba Hydro
2 hasn't found any documentation of any meetings at
3 that time.

4 MS. MAYOR: Now, in terms of the other
5 recommendation, which is for a multi-party
6 decision-making board, can you provide us with
7 Manitoba Hydro's position on such an entity?

8 MR. CORMIE: I believe that we need to
9 be careful about recommending a board at this time
10 without a thorough review of the types of board
11 models, and without having discussions with the
12 provincial departments who have responsibilities.

13 Boards can have mandates that range
14 from being information gathering, to providing
15 advice, and to those that have operational
16 control, for example, the Lake Louis control
17 board, they decide on what their levels and flows
18 are going to be.

19 This, in fact, is a complicated issue
20 with many factors to consider. And from our
21 perspective, we would have serious concerns over
22 losing operational control, given that Lake
23 Winnipeg is the foundation for the electricity
24 system in Manitoba.

25 Without operational control, the

1 security of the electricity supply can not be
2 guaranteed. Manitoba Hydro needs to be able to
3 say that it's able to meet its mandate of
4 supplying electricity. And without control of the
5 water supply for its generating stations, we can't
6 do that.

7 If control were transferred to an
8 operational board, we would need time to assess
9 and potentially to replace the lost dependable
10 energy with other resources, and that could be
11 potentially at a huge cost to our ratepayers. So
12 that's the basis of our concern for not having
13 operational control.

14 In addition, I think in the IISD
15 presentation we saw how small Lake Winnipeg is
16 relative to other major lakes in terms of the
17 amount of storage available, given the variability
18 of inflows. Although one of the largest lakes,
19 it's really actually small when you measure it in
20 terms of reservoir capability. And in that
21 context, operational control requires nimbleness
22 in order to respond to changing conditions. So an
23 operational board needs to be able to respond in
24 real time to changing hydrologic conditions.

25 And we would be concerned that a board

1 that is not on the job 24 hours a day, seven days
2 a week, year in and year out, to manage the needs
3 of the system, we would have concerns with that.

4 If a decision-making board is
5 recommended that takes over operational controls,
6 the issues of compensation, mitigation and
7 remediation would need to be revisited, as
8 Manitoba Hydro could no longer be held responsible
9 for regulation decisions, and the liabilities from
10 impacts. Right now we assume 100 percent of those
11 liabilities under our agreements with the
12 downstream interests.

13 We are also concerned that the
14 business relationships that we have established
15 with our downstream First Nation partners would be
16 affected. Those partnerships were based upon
17 certain assumptions about how much power would be
18 produced, and losing operational control would
19 affect those. So, clearly, we do have serious
20 concerns in that area.

21 Now, a lot of these issues will be
22 discussed through the process agreement with
23 Pimicikamak and the Province, and I think those
24 discussions will consider these issues that I have
25 raised.

1 And then there is the issue of what
2 other parties are brought to the table and who is
3 involved in that multi-party decision-making
4 process.

5 I think for now we need to let those
6 discussions continue and see where government
7 policy lands on that, and what progress can be
8 made on that front without compromising the supply
9 of electricity to the province.

10 So I think it's one of these things
11 that's a work in progress, and to make a decision
12 now, or a recommendation now without knowing the
13 outcome of that process, I think it would be
14 premature.

15 MS. MAYOR: I'm going to turn now to
16 Mr. Sweeny.

17 We spoke briefly with Mr. Cormie about
18 the Lake Winnipeg, Nelson River Study Board report
19 and one of the recommendations that was made under
20 that report. I'd like to turn you to another one
21 of those recommendations, and it was
22 recommendation five, and I'm just quoting from the
23 recommendation, which is:

24 "That a mechanism be established to
25 deal with social and related economic

1 issues, including information and
2 communication problems related to
3 hydroelectric development, mitigation,
4 compensation, monitoring and analysis
5 of ongoing social and economic
6 changes."

7 So I have paraphrased, but that's in essence what
8 the recommendation is.

9 To your knowledge, what, if any,
10 mechanisms were in fact put in place, whether as a
11 result of that recommendation or just by the work
12 of Manitoba Hydro in its normal activities?

13 MR. SWEENEY: Manitoba Hydro, Manitoba
14 and Canada have various agreements, programs and
15 policies in place to deal with social and related
16 economic issues in the context of hydroelectric
17 development, and more generally northern
18 development. Some examples include the
19 \$60 million pre-project training initiative, known
20 as HNTEI, the Hydro Northern Training Employment
21 Initiative, Hydro's employment preferences,
22 various programs that protects safety and
23 alleviate anxiety such as the safe ice and safe
24 water travel programs, initiatives that support
25 traditional pursuits like the trapping programs

1 and fishing programs, and processes that are
2 undertaken in relation to future development.

3 Initially between 1975 and 1977,
4 Canada and Manitoba negotiated the responsibility
5 for implementation of the Lake Winnipeg/Nelson
6 River Study Board recommendations. These
7 negotiations were suspended in 1977 as a result of
8 a decision to proceed with development of the
9 Northern Flood Agreement.

10 Article 17 of the Northern Flood
11 Agreement was subsequently written to encompass
12 those specific Lake Winnipeg/Nelson River Study
13 Board recommendations relevant to the five
14 Northern Flood communities.

15 After 1987, ongoing reporting
16 obligations pursuant to article 17 reviewed has
17 materially satisfied through the reporting process
18 that had occurred. Further, the Nisichawayasihk
19 Cree Nation known as Nelson House, York Factory
20 First Nation, Tataskweyak First Nation, known as
21 Split Lake, and Norway House Cree Nation, these
22 obligations were addressed through articles
23 related to the project operations and water
24 regimes, resource management arrangements, through
25 processes related to impacts and benefits

1 associated with future development, through
2 establishment -- the establishment of a long-term
3 trust to fund programs to benefit the communities
4 and members of the First Nations, through
5 predetermined compensation arrangements, through
6 local processes, and environmental monitoring and
7 investigation arrangements. These programs varied
8 from First Nation to First Nation, but they were
9 intended to implement the thrust of the
10 obligation. And accordingly the obligation under
11 article 17 of the Northern Flood Agreement was
12 released under the Comprehensive Implementation
13 Agreements, known as the CIAs.

14 MS. MAYOR: Mr. Chairman, we have
15 provided to everyone a copy of the August 28, 1985
16 letter from the Deputy Minister, Department of
17 Northern Affairs, to Norway House. And it talks
18 about article 17 of the Northern Flood Agreement.
19 So just for reference material, we're asking that
20 that be filed as well.

21 Now, Mr. Swanson, one of the other
22 recommendations that was made is number ten, and
23 that recommendation says that appropriate
24 government departments and agencies develop and
25 implement a long-term coordinated ecological

1 monitoring and research program to allow impact
2 evaluation and to assist in the ongoing management
3 of the affected area. Can you comment on what, if
4 anything, was implemented as a result of that
5 recommendation, or again as part of Manitoba
6 Hydro's normal activities?

7 MR. SWANSON: Sure. This
8 recommendation was acted on. The NFA status
9 reports describe the evolution of considerations
10 for long-term ecological monitoring and research
11 over time. The first reference in 1978 on that
12 topic indicated that there were four party
13 discussions underway, a number of topics were
14 being considered, and activities were being
15 implemented.

16 The 1984 status report indicated that
17 a committee was formed to review long-term
18 ecological monitoring requirements. And that
19 resulted in a joint Manitoba, Manitoba Hydro five
20 year ecological monitoring program, that's the
21 MEMP program. That program was supported
22 financially by Manitoba Hydro and implemented by
23 Manitoba Fisheries branch. The 1987 status report
24 indicated that in 1986, Canada authorized funding
25 for a five-year NFA specific enviromental

1 monitoring program, and that was the FEMP program.

2 So those studies were completed in the
3 early '90s, and reports were produced for both
4 those programs into the mid '90s. Then the
5 Wuskwatim public hearings and consultations heard
6 more and renewed requests for system-wide
7 monitoring, and an MOU was signed between Manitoba
8 and Manitoba Hydro to assess and fill monitoring
9 gaps, and a coordinated aquatic monitoring program
10 was a result of that MOU.

11 In developing the CAMP program, the
12 parameters and sites that were sampled in MEMP and
13 FEMP were considered with a view to being as
14 consistent as possible to build on the findings of
15 MEMP and FEMP. CAMP is now entering into its
16 field season in 2015.

17 MS. MAYOR: Now, Mr. Chairman,
18 Mr. Swanson made reference to a 1987 status report
19 prepared by the Government of Canada. That's also
20 in front of you, that can be filed as an exhibit
21 for reference as well.

22 Now, in terms of topics, we're going
23 to jump around a little bit to some one offs,
24 because there isn't necessarily a logical order to
25 any of them, but dealing with specific concerns

1 that had been discussed with some of the
2 participants.

3 Mr. Sweeny, back to you. We heard
4 yesterday from President Chartrand, and there was
5 a lengthy discussion between he and Mr. Bedford.
6 From your perspective both as a community member
7 and as a manager in the Aboriginal relations
8 department, are you aware of any Metis specific
9 impacts downstream that have not been compensated
10 for by Manitoba Hydro?

11 MR. SWEENEY: No, I'm not aware of any.

12 MS. MAYOR: Mr. Hutchison, jumping to
13 you and the Norway House Fisherman's Co-op. There
14 was an issue raised with respect to the quality of
15 fishing in Playgreen Lake, in the fall, that
16 results from the opening and closing of the gates
17 at Jenpeg. Can you, first of all, describe for us
18 your discussions with the Norway House Fisherman's
19 Co-op in this regard?

20 MR. HUTCHISON: Certainly. On
21 September 7, 2012, our CEO, Scott Thomson,
22 received a letter from Langford Saunders, the
23 president of the Norway House Fisherman's Co-op,
24 requesting that we keep the spillway gates closed
25 at Jenpeg during their fishing season, which would

1 have ended October 15th. In the letter,
2 Mr. Langford states that water levels and
3 fluctuations in the north basin of Lake Winnipeg,
4 Kiskittogisu and Playgreen Lakes, which are their
5 primary fishing areas, affects fishing success and
6 the ability to maneuver their boats. Their
7 perception is that fishing conditions are
8 maximized when the spillway gates are closed at
9 Jenpeg.

10 Mr. Thomson responded by letter four
11 days later, on September 11th, 2012, saying that
12 because flows were average, we would not likely
13 have to use the spillway during the remainder of
14 the current fishing season. And he asked me to
15 arrange a meeting with the Fisherman's Co-op to
16 consider their issue. The meeting was held on
17 December 12th, 2012. And the focus of Manitoba
18 Hydro's presentation at the meeting was to
19 demonstrate that wind was the major factor
20 influencing water levels at the north basin of
21 Lake Winnipeg, Playgreen and Kiskittogisu Lakes.
22 And that at a given flow at Jenpeg, there is no
23 difference to water levels and fluctuations in
24 these lakes, whether water was routed through the
25 Jenpeg spillway or through the generating station.

1 Notwithstanding the Hydro
2 presentation, the Fisherman's Co-op maintains the
3 belief that fishing success is maximized when the
4 spillway gates at Jenpeg are closed, so we have
5 offered to meet with them further to discuss this
6 issue.

7 MS. MAYOR: Mr. Gawne, so following up
8 on that, can you explain for us the Jenpeg
9 operations that did take place in the fall of
10 2012?

11 MR. GAWNE: Yes. In 2012 the Jenpeg
12 spill gates, they were closed, but this was not
13 because of the request of the Norway House
14 Fisherman's Cooperative, it was as a consequence
15 of water conditions and the state of generation
16 conditions at Jenpeg. So essentially we had close
17 to average flows out of Lake Winnipeg at that
18 time, and we could pass all that water through the
19 powerhouse, through the generating station. So we
20 didn't need the spillway at Jenpeg at that time.

21 MS. MAYOR: Can you explain the
22 relationship between the spillway and powerhouse
23 operations at Jenpeg and the water conditions at
24 the Norway House Fishing Co-op's various fishing
25 locations?

1 MR. GAWNE: Yes. Perhaps it would be
2 helpful to look at this map I have on the screen.
3 And I apologize, it's very faint, we shouldn't
4 have used the winter time map.

5 MS. MAYOR: There's also one in fact
6 in front of you, so that's been provided by way of
7 slide. So you have also got a paper copy in front
8 of you.

9 MR. GAWNE: So looking at this map, if
10 the fishing areas in question were the north basin
11 of Lake Winnipeg, Playgreen Lake, Kiskittogisu
12 Lake, quite simply the water conditions at these
13 locations, these fishing locations, are
14 independent of how a given flow has passed at
15 Jenpeg. So flow has passed through the powerhouse
16 or the spillway, it's the total flow that matters.
17 The hydraulic conditions in the immediate forebay
18 area -- so when you are up there visiting Jenpeg,
19 you know, the spillway and the powerhouse are side
20 by side, so if water, for a given flow if water is
21 directed to the spillway or powerhouse, it may
22 affect the hydraulic conditions right in that
23 immediate vicinity of the powerhouse, but a couple
24 hundred metres upstream of the dam, the effect,
25 there's no effect essentially.

1 So it may look different when you
2 drive over the dam if water is going through the
3 spillway versus the powerhouse, but if it's the
4 same volume of water, the same flow that's flowing
5 through that project, it's not impacting upstream.
6 You know, we're talking about 30 kilometres to
7 Kiskittogisu Lake and up to a hundred kilometres
8 to Lake Winnipeg, so that effect is dissipated,
9 you know, basically as far as you can see if
10 you're standing on the forebay deck at Jenpeg, not
11 well up into those other reaches.

12 Now, if it's helpful, just to use an
13 analogy, imagine you have a ditch by a highway
14 that's passing water, and every mile you have a
15 road approach, so that ditch needs to flow
16 underneath, or the flow through that ditch needs
17 to flow through underneath that road approach, and
18 you have two culverts in that road approach, and
19 if you have the flow flowing through one culvert,
20 and then you just switch it over to the other
21 culvert, locally it might have a little small
22 change, but at the mile road upstream, a mile
23 away, there's no impact. So it's very much a
24 local effect.

25 And this speaks to Mr. Cormie's

1 comment earlier about how, you know, Jenpeg, its
2 role is flow control for LWR project, but the
3 generation station and the effect of that
4 generating station is confined pretty much into
5 that local area of Jenpeg.

6 MS. MAYOR: So if Manitoba Hydro
7 simply acceded to the fishermen's request, what,
8 if any, operational impacts could there be?

9 MR. GAWNE: Well, again, remember that
10 Jenpeg's primary role is for flow control, so if
11 Manitoba Hydro were to cease spill operations at
12 Jenpeg during the fall, there could certainly be
13 economic impacts to the operation if the same
14 amount of water couldn't make it to the
15 powerhouse. So under high inflows into Lake
16 Winnipeg, flood management on Lake Winnipeg would
17 be a concern, or compromised.

18 In the extreme case, when or if most
19 of the generating units are out at the powerhouse,
20 like unavailable and you can't pass water through
21 those generators, through those turbines, Manitoba
22 Hydro wouldn't be able to meet that minimum
23 outflow requirement of 25,000 CFS from Lake
24 Winnipeg Regulation. So you would have, you know,
25 power system concerns because they are starving

1 the generation downstream, and also there would
2 be, you know, consequences downstream due to low
3 outflows from Lake Winnipeg.

4 THE CHAIRMAN: Could we not have
5 conversations in the back of the room, please?

6 MS. MAYOR: Mr. Gawne, I'm going to
7 stay with you for quite a bit longer, but we're
8 going to turn now to Pimicikamak and the
9 presentations that were made by them. In
10 particular, on April 7th, Dr. Luttermann discussed
11 her understanding of the licence condition
12 pertaining to rate of change in the Jenpeg
13 outflow. And the quote that she made was, the
14 licence condition says that total increase or
15 decrease over a 24-hour period -- it doesn't say
16 average. What does the licence actually say about
17 the change in flow and what is your interpretation
18 of it?

19 MR. GAWNE: Okay. Maybe to help, I'll
20 just display that clause in the licence and read
21 it into the record. So article 11 of the LWR
22 supplementary interim licence states that:

23 "Subject to article 10 hereof but
24 notwithstanding any other terms or
25 conditions of this interim licence,

1 the licensee shall operate the said
2 control structure at Jenpeg in such a
3 manner that any increase or decrease
4 in the rate of the discharge therefrom
5 during any 24-hour period shall not
6 exceed 15,000 cubic feet per second."

7 So that's the language in the licence, and the
8 word total does not show up in the licence
9 condition.

10 MS. MAYOR: Okay. So she goes on to
11 discuss her understanding of the way in which
12 Manitoba Hydro calculates the rate of flow change.
13 And she stated and I quote:

14 "And then the actual reported flow or
15 rate of flow change over 24 hours is
16 an average. And so the average that's
17 reported is really about half, in this
18 case, approximately half of the
19 decrease and then the increase."

20 Now, from your attempts to explain this to me,
21 failed attempts I might add, my understanding is
22 that she is, in fact, incorrect. How does
23 Manitoba Hydro calculate the rate of flow change
24 at Jenpeg?

25 MR. GAWNE: First let me apologize for

1 failing to explain to my counsel how this works.
2 But I would be doing a disservice to my profession
3 if I didn't display a chart or a graph, so here it
4 is. What you see here is a period of hourly
5 discharge record at Jenpeg. So for every 24-hour
6 period, it's essentially the difference between
7 the highest and the lowest outflow, which
8 consists, or which turns out to be the 24-hour
9 rate of change in that period. So if you look at
10 the maximum hourly discharge at one point within
11 the 24-hour window, and difference that from the
12 minimum, you arrive at the difference. And this
13 24-hour window advances one hour, and the highest
14 and lowest flows, you know, from 1:00 a.m. on day
15 one to 1:00 a.m. the next day, are differenced and
16 so on, and this window moves forward through time
17 on an hourly time step.

18 So here we have in this case a
19 difference between the maximum hourly flow and
20 minimum hourly flow in that 24-hour window. And
21 that difference is about 3,000 CFS. So the
22 24-hour rate of change here would be reported as
23 3,000 CFS, not the total increase or decrease.

24 MS. MAYOR: And so for simpletons like
25 me, there's no averaging being done?

1 MR. GAWNE: That's correct, there's no
2 averaging.

3 MS. MAYOR: Now, Dr. Luttermann also
4 on April 7th made comments about the
5 unpredictability of water levels. And
6 specifically, she spoke about her not wanting to
7 let a child go out on a boat because the
8 uncertainty in water levels has a huge impact
9 there. Can you comment on her reference there?

10 MR. GAWNE: Yes, I agree we should
11 always be concerned about the safety of our
12 children in boats, absolutely. I have children, I
13 have a boat, and safety is always a concern.
14 However, I think Dr. Luttermann's comments were
15 somewhat misleading in that they implied that
16 water levels on Cross Lake prior to the project
17 were very stable and predictable, and then now
18 with the project they are highly variable and
19 regularly going up and down over very short
20 periods of time as a result of the project. And I
21 maintain that this is not the case.

22 So we looked into open water weekly
23 variations on Cross Lake water levels, and where
24 the difference, similar to the way we have
25 calculated here, the rate of change on Jenpeg

1 flows, looking at the difference in maximum and
2 minimum daily levels over a seven-day period. And
3 here's what we found. During open water periods
4 before and after, or pre LWR and post LWR, after
5 the weir was constructed. So prior to Lake
6 Winnipeg Regulation the average variation within
7 seven days was .2 feet, and the maximum was
8 1.8 feet. After LWR and the Cross Lake weir was
9 constructed, the average variation within that
10 seven-day window was .3 feet, and the maximum was
11 1.9 feet under open water conditions. So shorter
12 term water level variations occurred prior to LWR,
13 and particularly during the open water season.
14 And much of those shorter term variations would
15 have likely been driven by wind conditions on the
16 north basin of Lake Winnipeg, blowing the outlet
17 area up and down on Lake Winnipeg, causing
18 outflows to change from Lake Winnipeg, and then
19 translating into water level changes on Cross
20 Lake.

21 MS. MAYOR: Dr. Luttermann also stated
22 while giving evidence that Lake Winnipeg
23 Regulation has resulted in record high flood
24 levels in the fall on Cross Lake. Can you comment
25 on that assertion?

1 MR. GAWNE: It's certainly true that
2 there has been some major flood events in the
3 past, certainly in the past decade. And our panel
4 has discussed how changing conditions have been
5 above average since Lake Winnipeg Regulation, or
6 pardon me, since Lake Winnipeg Regulation inflows
7 into Lake Winnipeg were higher than prior to LWR.
8 And then again in the past ten years, it's been
9 exceptionally wet. So we agree with
10 Dr. Luttermann that new high levels have been
11 experienced on Cross Lake on the record. However,
12 we disagree with the inference that the peak high
13 levels and record high flow levels are due to Lake
14 Winnipeg Regulation.

15 And I'll show a slide here. And this
16 is, this image is taken from appendix four of the
17 LWR document to illustrate this point. So what
18 you see here is actual Lake Winnipeg levels in red
19 experienced for the period of 2007 to 2014.
20 Simulated Lake Winnipeg levels in the gray band,
21 if LWR were removed, okay, so the same inflow
22 conditions into Lake Winnipeg. And then down
23 below is a chart parallel in time of Bladder
24 Rapids flows, so that's flows downstream of Cross
25 Lake, essentially, the total flow out of Lake

1 Winnipeg plus a little bit of local. The red line
2 is observed flow at Bladder Rapids, which you can
3 see across here, and you see a mass over here, in
4 thousands of cubic feet per second. The gray line
5 is similar to the above chart, it's simulated
6 flows at Bladder Rapids if Lake Winnipeg
7 Regulation were removed.

8 So what we can see is that actual Lake
9 Winnipeg levels, or sorry, flows at Bladder
10 Rapids, because they are directly correlated to
11 the lake levels on Cross Lake, we can make
12 inferences about the outflow of Cross Lake and
13 what levels are on Cross Lake, because they are
14 directly correlated. So as you see by the gray
15 shaded area, flows at Bladder Rapids here in the
16 summer of 2011 would have been similar or higher
17 if Lake Winnipeg Regulation was not in place.

18 Now, this seems counterintuitive,
19 right, because we all think, okay, Lake Winnipeg
20 Regulation increases the outflow capacity of Lake
21 Winnipeg, so the floods on Cross Lake must have
22 been much higher because of Lake Winnipeg
23 Regulation. But we have to keep in mind that that
24 50 percent increase in outflows that the LWR
25 project provides is a flood reduction benefit, and

1 that's at any given level on Lake Winnipeg.

2 Now, if LWR wasn't in place, Lake
3 Winnipeg would have been rising through those
4 floods of the last ten years, and Lake Winnipeg
5 levels would have actually been higher in 2011, if
6 LWR didn't exist. So high that the outflow from
7 the lake, even without the channels and
8 everything, would have been similar or higher than
9 what was actually experienced in 2011.

10 So the point is, you would have very
11 similar flows coming out of Cross Lake, therefore,
12 Cross Lake levels would have been impacted by
13 those similar flood levels, even with LWR --
14 pardon me, if LWR wasn't there.

15 Now, what does this mean on Cross
16 Lake? Well, if flows from Lake Winnipeg would
17 have been higher or similar to what was
18 experienced in 2011, then levels on Cross Lake
19 would most certainly have been higher, because the
20 Cross Lake weir and the excavation around the
21 Cross Lake weir would not have been in place. So
22 Manitoba Hydro, we have estimated that peak levels
23 on Cross Lake would have been up to .4 feet higher
24 had LWR and the weir not been constructed.

25 So to say that these extreme peaks

1 that were experienced are because of LWR isn't
2 entirely an accurate statement, and I wanted to
3 explain that.

4 MS. MAYOR: Now, Dr. Luttermann
5 referenced the 1986 Cross Lake environmental
6 report in both her evidence and in her report.
7 She commented that building the weir alone was not
8 going to be sufficient to address concerns after
9 construction. And she was uncertain whether other
10 actions had actually been incorporated into
11 Manitoba Hydro operations that may have come out
12 of the study, or may have come out of, again,
13 Manitoba Hydro normal activities. Can you comment
14 on that reference she made?

15 MR. GAWNE: Yes. Manitoba Hydro has
16 reviewed and considered those recommendations in
17 the 1986 Nelson River group report. And some of
18 those recommendations have been incorporated into
19 our operations. First, of course, the weir and
20 the excavation scheme, you know, from that 1986
21 review, Manitoba Hydro agreed that an excavation
22 and weir scheme was the most practical concept to
23 modify the water regime on Cross Lake. However,
24 the minimum level that was suggested out of the
25 Nelson River report suggested a weir design where

1 679 feet would be the minimum level on the lake.
2 And that was viewed as being too high, as it would
3 have resulted in average open water levels on
4 Cross Lake being significantly higher than what
5 was experienced prior to Lake Winnipeg Regulation.
6 So the weir was constructed, but the design
7 elevation was such that it insured a minimum level
8 of around 677 feet on Cross Lake.

9 A second recommendation of that review
10 was to amend the minimum flow provision in the LWR
11 interim licence. So the licence states that
12 25,000 CFS is the minimum outflow from Lake
13 Winnipeg, and the review recommended that that
14 outflow constraint be deleted essentially and
15 replaced with a minimum water level on Cross Lake.
16 So the concept of operating according to a minimum
17 Cross Lake level, as opposed to minimum outflow
18 from Lake Winnipeg, wasn't considered
19 unreasonable. You know, you could achieve the
20 same thing essentially. However, the minimum
21 elevation recommended by the Nelson River group
22 was 679 feet, again, which was much higher than
23 the pre LWR minimum levels and would have resulted
24 in average water levels much higher than prior to
25 Lake Winnipeg Regulation.

1 So the environmental report indicated
2 that a minimum elevation of 679 feet could have
3 been maintained with the flow of 40,000 cubic feet
4 per second coming out of Lake Winnipeg. And the
5 review had actually stated that that wouldn't
6 significantly impact the dependable energy of the
7 system.

8 However, Manitoba Hydro disagreed with
9 that assessment and any recommendation that would
10 result in increasing the minimum outflow above the
11 current 25,000 CFS.

12 So, in essence, we were okay with a
13 specific level constraint on Cross Lake, as
14 opposed to a minimum outflow constraint. But if
15 that required the minimum outflow to be increased
16 or almost doubled, then it simply wasn't tenable
17 from a power system perspective.

18 MS. MAYOR: Now, I understand there
19 was also another recommendation to delete the
20 licence provision that automatically requires
21 maximum discharge when Lake Winnipeg levels reach
22 715 feet, and replacing that provision with a
23 provision that says when levels exceed 715 feet,
24 Jenpeg flows would be under the direction of the
25 Minister.

1 What was Manitoba Hydro's position
2 with respect to that recommendation?

3 MR. GAWNE: Yeah. At the time the
4 recommendation was reviewed, Manitoba Hydro was
5 essentially neutral on the recommendation, as it
6 wouldn't significantly impact Manitoba Hydro
7 operations. However, that assessment assumed that
8 any liability associated with that decision, now
9 it's kind of, now it becomes uncertain what's
10 happening. If the decision was left to the
11 Province when water levels exceed 715 feet, then
12 any liability associated with that decision would
13 have to be borne by others.

14 MS. MAYOR: Now, can you comment for
15 us on another one of the recommendations, which
16 was for the November cutback to be specifically
17 prohibited?

18 MR. GAWNE: Okay. So this addresses
19 the flow reductions at Jenpeg in the winter time
20 to develop ice cover. And Manitoba Hydro
21 disagreed with that recommendation, as the cutback
22 program was, and it still is viewed to be very
23 important, in that it allows for more water to be
24 discharged during the winter, which certainly has
25 power system benefits as well as Lake Winnipeg

1 flood reduction benefits.

2 However, following the NRG report,
3 it's important to note that Manitoba Hydro did
4 install an ice boom at Jenpeg. So an ice boom
5 there was installed which essentially reduces the
6 amount of cutback that's required to form a stable
7 ice cover upstream of Jenpeg.

8 Manitoba Hydro has modified its
9 cutback program to closely manage flow reductions
10 during the freeze-up period, which includes
11 monitoring effects on Cross Lake, routine flights
12 into Cross Lake area to observe ice conditions,
13 minimizing flow cuts to the extent possible, and
14 only performing those flow reductions when there's
15 a high level of confidence that we're going to
16 actually make ice, or create that stable ice cover
17 upstream.

18 So, where the earlier program may have
19 been less hands-on management to try and achieve
20 less ice upstream, the program has evolved to be
21 closely monitored benefits from the ice boom in
22 the Jenpeg forebay, and there's people on site
23 actually observing conditions.

24 And one of the objectives of the ice
25 stabilization program is that -- I'll add is that

1 one of those objectives is to minimize the adverse
2 effects on Cross Lake related to ice. So that's
3 specifically a part of the program.

4 MS. MAYOR: And then just one more
5 recommendation that I'd like you to comment on.
6 That was the one which was to establish a
7 management objective to minimize negative impacts
8 on the fish and fur bearer resources of the Cross
9 Lake area.

10 MR. GAWNE: Yeah. The recommended
11 objective was to regulate flows to achieve a
12 target level by October, and that levels on Cross
13 Lake wouldn't be allowed to rise more than
14 two feet, essentially above that winter target by
15 the end of the calendar year. And then after
16 that, subsequent reductions in levels were to be
17 gradual and not decrease by more than two feet
18 until the open water conditions prevail.

19 So Manitoba Hydro agreed with the
20 concept of the management objective around this
21 issue. However, Manitoba disagreed with the
22 specific objective, as it would be severe from an
23 operating perspective. And Manitoba Hydro's
24 review of this at the time was that operating
25 guidelines should be established in consultation

1 with, you know, provincial fisheries and people of
2 Cross Lake, and with input from other experts, and
3 that appropriate weight must be given to Manitoba
4 Hydro's power system, or the power system
5 requirements of the province.

6 And it was also believed that with the
7 construction of the Cross Lake weir, and
8 excavation, that ice, levels under ice would be
9 partially stabilized during that ice cover period,
10 and that has in fact happened.

11 And furthermore, and I have explained
12 this in my earlier testimony, Manitoba Hydro does
13 operate such -- in the fall period at time of
14 freeze-up such that -- with the intent that Cross
15 Lake will freeze in at levels closer to what that
16 winter ice level will be, again, so as to reduce
17 the water level variations under ice cover
18 conditions.

19 MS. MAYOR: Mr. Gawne, I have one more
20 area just for you, brief area, so moving from
21 Cross Lake to Split Lake. We heard on March 26th,
22 Chief Ted Bland from the York Factory First Nation
23 speaking of water level fluctuations on Split
24 Lake. And he stated that the daily, weekly
25 regulation of levels and flows can confuse us,

1 they are unpredictable. We later heard from
2 Mr. Constant, who also alluded to daily variations
3 on Split Lake. And he said, daily, weekly or
4 seasonal changes in water flows and levels can all
5 affect how ice forms and breaks up. Ice
6 conditions are not predictable and this can make
7 winter travel unreliable and unsafe.

8 Could Manitoba Hydro affect the daily
9 changes to levels on Split Lake by changing its
10 operation of Lake Winnipeg Regulation? How much
11 control does it have that far downstream?

12 MR. GAWNE: Okay. Short-term water
13 levels on Split Lake are not due to Lake Winnipeg
14 Regulation operations. So short-term water level
15 changes, I should say, on Split Lake, and
16 increases and decreases in those daily water
17 levels on Split Lake are simply not a result of
18 LWR operations. It takes several weeks for flow
19 changes at Jenpeg to reach Split Lake. And during
20 that time these flow changes are routing through
21 intermediate lakes and channels which moderate the
22 flow change before they actually arrive at Split
23 Lake. So short-term fluctuations on Split Lake
24 are largely a result of wind effects and rainfall
25 events in the open water period, and changing ice

1 conditions at lake outlets in the winter period.
2 And also not just the outlet of Split Lake ice
3 effects changing levels on Split Lake in the
4 winter, but the lakes that supply Split Lake can
5 be choking off and releasing due to ice
6 conditions, and that can translate into water
7 level changes on Split Lake. And those effects
8 existed prior to Lake Winnipeg Regulation.

9 So, if we look at a similar chart to
10 what we are looking at for Cross Lake, our table.
11 So what we have here is the statistics on, again,
12 the difference in the minimum and maximum daily
13 level within a seven-day period. So that's what
14 we called weekly variation.

15 Under open water conditions prior to
16 Lake Winnipeg Regulation, the average weekly
17 variation was .2 feet on Split Lake. After LWR,
18 .3 feet, maximum 1.5, and certainly higher, but
19 2.0 feet after LWR, for a difference of .6 feet.

20 Under ice conditions the average
21 seven-day variation, or within seven-day window
22 variation was .3 feet prior to LWR, and .4 feet
23 after, and the maximum 2.8 feet, and the
24 minimum -- pardon me, and the maximum after LWR
25 being 2.2 feet.

1 So the point of this slide is not to
2 say that there's no variation in water levels on
3 Split Lake. The point is that water level
4 variations on a short-term basis did occur prior
5 to Lake Winnipeg Regulation. And it's simply not
6 possible to have that fine of an influence on
7 Split Lake by operating Jenpeg, which is weeks
8 away upstream. Those effects tend to get tempered
9 out by the routing between Jenpeg and Split Lake.

10 MS. MAYOR: So we just have two more
11 areas to cover, so we're almost done. I'm going
12 to let Mr. Gawne rest now and turn to Mr. Cormie.

13 So yesterday we heard Councillor Gould
14 talk about certain operational notices that he was
15 receiving from Manitoba Infrastructure and
16 Technology about operations of a control
17 structure. And we heard Commissioner Suek ask
18 some questions about it as well.

19 Where do you understand that the
20 operation notices from MIT are in relation to?

21 MR. CORMIE: Yes, it was my
22 understanding, based on what was said by
23 Councillor Gould, that he was speaking about
24 operational changes in relation to the Fairford
25 Dam, which is not a Manitoba Hydro facility. That

1 project is controlled by the Province of Manitoba,
2 and Manitoba Hydro has nothing to do with the
3 operations of that structure.

4 MS. MAYOR: And does Manitoba Hydro
5 have anything to do with Lake Manitoba operations?

6 MR. CORMIE: No, not at all. As we --
7 not at all.

8 MS. MAYOR: What operational notices
9 does Manitoba Hydro implement?

10 MR. CORMIE: Well, as we described in
11 our report and in our presentation, we have had,
12 for as long as I can remember, a water level
13 forecast notice program. And I believe we
14 implemented that very early on in the late '70s.
15 In addition to that, we do have warning systems at
16 the generating stations. So we have long-term
17 90-day forecasts, and I think we described how we
18 use radio broadcast to get that information out to
19 the local communities.

20 But in addition to that we do have
21 local warning systems at Jenpeg. So prior to
22 making spillway gate changes that would cause
23 water levels immediately below the dam to change,
24 as part of the control system necessary to open
25 the gate, the alarm sounds and it blows for a

1 short period of time, so that people who might be
2 in the downstream, either in a boat or standing on
3 the rock adjacent to the spillway, are immediately
4 aware that flow changes from gate changes are
5 going to occur.

6 MS. MAYOR: Now, we also heard about a
7 warning system at Grand Rapids from a gentleman
8 yesterday, and talking about dam breaches and
9 those sorts of things. Can you tell us about that
10 warning system that he was referencing?

11 MR. CORMIE: Yes. That is a different
12 type of warning system. And Manitoba Hydro has
13 long been aware of concerns from people who do
14 live downstream from our facilities. There is
15 this fear that the dam may fail. And we have a
16 comprehensive dam safety and surveillance program
17 that ensures that our facilities and our
18 operations meet modern dam safety standards and do
19 not put the public at risk. However, in the event
20 of a breach, in spite of Manitoba Hydro's best
21 efforts, and we consider a dam breach highly,
22 highly improbable, we need to be prepared to warn
23 those people who are at risk. And there is a
24 warning system in place to warn local residents of
25 that situation. And we go through exercises to

1 test that and to involve the local emergency
2 people in the use of that system.

3 At Grand Rapids, that system includes
4 a series of water level sensors linked to the
5 Grand Rapids generating station control room and
6 to our system control centre here in Winnipeg.

7 After our operators confirm the alarm,
8 the station operator will activate two sirens in
9 the area to trigger evacuation of the local
10 community, and activation of the emergency
11 response plans that involve the community. And
12 there will be a hydro pole with a big siren on
13 that generally in the community, in a centrally
14 located location. And we go through the process
15 of training, and maintaining those systems,
16 because we have an obligation that if there is a
17 breach that we have to have done everything
18 possible to ensure the safety of the public.

19 MS. MAYOR: Mr. Sweeny, you get the
20 last question, on a totally new and exciting
21 topic.

22 At these hearings we have heard from
23 several participants, particularly First Nations,
24 regarding concerns over the lack of employment
25 opportunities or under-representation of

1 Aboriginal people employed by Manitoba Hydro in
2 its projects and operations. Specifically, we
3 heard Pimicikamak put forward a recommendation in
4 their submission that the final licence for LWR
5 should require priority Pimicikamak employment at
6 the Nelson River hydroelectric stations. And they
7 further state, it's in the public interest to
8 employ them to the maximum extent possible,
9 residents, in particular of the subject reserves,
10 in all operations and work related to the
11 projects.

12 So my question for you is, can you
13 tell us Manitoba Hydro's approach regarding
14 employment of Aboriginal people, and also provide
15 us with some current employment information for
16 Aboriginal people within the corporation, and more
17 particularly for Pimicikamak and the Cross Lake
18 First Nation?

19 MR. SWEENEY: Okay. One of the key
20 areas of focus in Manitoba Hydro's corporate
21 strategic plan, and one that I'm personally very
22 proud of, is to continue to be the leading
23 Canadian utility in Aboriginal representation.
24 Through initiatives to recruit, develop and retain
25 Aboriginal employees, Manitoba Hydro has measures

1 in place to increase employment opportunities at
2 Manitoba Hydro for Aboriginal people, and it
3 continues to enhance training and support programs
4 for Aboriginal employees. Measures implemented
5 have been successful at creating a workforce whose
6 Aboriginal members compose a greater percentage
7 than the reflected provincial demographics.

8 Now, as of March 31, 2015, Manitoba
9 Hydro had 6,247 employees, of that 1,120
10 self-declared as being of Aboriginal descent.
11 This is a 17.9 percent overall representation of
12 Manitoba Hydro's workforce.

13 Manitoba Hydro sets Aboriginal
14 employment targets based in part on Aboriginal
15 populations in the northern and province-wide
16 labour forces. Some of those targets include
17 corporate overall at 16 percent, and our
18 performance exceeds the target at 17.9 percent.
19 In the north the target is at 45 percent, and our
20 performance exceeds the target at 45.9 percent.
21 In the area of management, our target is as 6
22 percent and, again, we're exceeding the target at
23 6.7 percent. And in the professional field, the
24 target is 8 percent, and we're at 7.2 percent.

25 In addition, Manitoba Hydro hires an

1 average of 250 summer students each year, and
2 generally 21 to 25 percent are Aboriginal.

3 For the new projects, as of March
4 31st, 2015, approximately 56 percent of Keeyask
5 hires have been Aboriginal people. That is out of
6 the total 3,897 total hires, 2,183 have been
7 Aboriginal. And for the Bipole III, approximately
8 52 percent of project hires have been Aboriginal
9 people. That is out of 2,270 total hires, 1,170
10 have been of Aboriginal descent. These totals do
11 not include the Manitoba Hydro staff that I spoke
12 about earlier.

13 Specifically for Pimicikamak Cross
14 Lake First Nation, as of April 2015, there were 63
15 Cross Lake band members at Manitoba Hydro with
16 active employment status. Of all First Nations in
17 Manitoba, Pimicikamak Cross Lake First Nation has
18 the largest number of members by a First Nation
19 working for Manitoba Hydro. Over the summer, with
20 student and seasonal workers, the number of people
21 employed by Manitoba Hydro from Cross Lake First
22 Nation increases.

23 This past March 2015, for the fourth
24 consecutive year, Manitoba Hydro has been selected
25 as one of Canada's best diversity employers. A

1 few reasons for this Manitoba Hydro was selected
2 include -- or why Manitoba Hydro was selected
3 include: Manitoba Hydro established an Aboriginal
4 sharing circle and virtual site to help employees
5 connect, communicate and network across the
6 organization. Another reason is, Manitoba Hydro
7 supports the University of Manitoba's Engineering
8 Access Program and Aboriginal Business Education
9 partners, and recruits participating Aboriginal
10 students for employment. In the past year,
11 Manitoba Hydro attended over 70 career events
12 hosted by local communities and community
13 organizations, including the Centre for Aboriginal
14 Human Resource Developments job fair, and the
15 information, communication, technology association
16 of Manitoba's Aboriginal Youth Challenge Technical
17 Fair. Further, Manitoba Hydro's pre-placement
18 programs were designed for Aboriginal candidates
19 who did not hold the academic requirements of our
20 trade's apprenticeship programs. These seven to
21 ten month pre-placement programs provide the
22 Aboriginal candidates with the opportunity to
23 complete the academic prerequisites for entry into
24 the apprenticeship programs, as well as to provide
25 relevant on-the-job training and exposure while

1 receiving a wage.

2 The success of the Aboriginal
3 placement programs has contributed to the
4 significant increase in Aboriginal employment at
5 Manitoba Hydro. In addition, Manitoba Hydro's
6 educational funding programs force the continued
7 education of Manitoba's students by offering
8 awards, bursaries and scholarships to those in
9 high school, college and university, enrolled in
10 programs that support our operational
11 requirements. These are programs directly,
12 specifically, directed specifically towards
13 Aboriginal students. And further, Aboriginal
14 students receive a priority for all employment
15 equity groups, awards, bursaries and scholarships.

16 MS. MAYOR: And those are our
17 questions and our rebuttal evidence. Thank you.

18 THE CHAIRMAN: Thank you, Ms. Mayor.
19 And your timing was almost perfect, two or three
20 minutes over 90 minutes. That's pretty good.

21 In a couple of minutes we'll take a
22 break. I should note that rebuttal evidence is
23 not subject to cross-examination, but I would also
24 note that it's always open for the panel to ask
25 questions of this panel. What I propose is that

1 we'll take about a one or two minute caucus right
2 now, discuss whether we have any further questions
3 for the Hydro panel, and whether or not they can
4 be excused at this time. So give us about two
5 minutes, one or two minutes and we'll get right
6 back to you

7 (Proceedings recessed at 11:07 a.m.
8 and reconvened at 11:09 a.m.)

9 THE CHAIRMAN: Okay. We have no
10 further questions at this time, so this panel is
11 excused. I thank you all for your participation
12 here today, and we will hear from one or more of
13 your representatives tomorrow in final argument.

14 We will take a break for 15 minutes.
15 When we come back, Peguis First Nation will be the
16 first to lead off with closing arguments. So come
17 back at 25 after, please.

18 (Proceedings adjourned at 11:10 a.m.
19 and reconvened at 11:25 a.m.)

20 THE CHAIRMAN: We'll reconvene the
21 hearing now. We're about to begin the closing
22 argument phase of these proceedings. Just a
23 couple things on that. Closing arguments can be
24 done by oral, by written or both orally and in
25 writing. Oral presentations are limited to 60

1 minutes. I don't have my flash cards with me but
2 if it becomes urgent, I'll make some up pretty
3 quickly and flash them at you.

4 So having said that, I think,
5 Mr. Stevenson, you can proceed with the closing
6 argument on behalf of Peguis First Nation.

7 MR. STEVENSON: Yes. Thank you, and
8 good morning. I could tell you offhand we'll be
9 well under the 60 minute limit. So we have a very
10 short presentation here this morning.

11 With me is Wade Sutherland. He's a
12 newly elected councillor for Peguis. We had
13 recent elections in the third week in March. So
14 Wade is the new councillor. I presume he'll be
15 taking over the portfolio that Councillor Mike
16 Sutherland had, that was Lands, Water, Resources.
17 And in doing so, because Wade hasn't been involved
18 in these proceedings up until, well this is his
19 first visit here today, so he has asked me to make
20 the closing statements on behalf of Peguis. So
21 I'm prepared to do that this morning. And I guess
22 I could start now.

23 THE CHAIRMAN: Go ahead,
24 Mr. Stevenson.

25 MR. STEVENSON: We would have hoped to

1 have our new chief here as well, but they are so
2 busy in the last couple of weeks in terms of
3 trying to get on the ground running with their new
4 responsibilities. It's very difficult for her to
5 be at the places where we want her to be. So I
6 guess she'll be getting more involved as she
7 spends more time in her new position as chief.

8 Good morning to the chair and
9 commissioners of the Clean Environment Commission,
10 Manitoba Hydro representatives, other participants
11 involved in these hearings and the general public.

12 On March 9th, Chief Glenn Hudson and
13 Councillor Mike Sutherland made presentations to
14 the Commission and I will provide a brief summary
15 with the following recommendations based on their
16 presentation.

17 At the outset, it is difficult to
18 measure the footprint on Lake Winnipeg since the
19 dam at Jenpeg began operating in the 1970s.
20 Suffice it to say, most of the participants at
21 these hearings did express concern in a number of
22 ways, and each has or will share recommendations
23 on matters concerning Lake Winnipeg. To provide a
24 better assessment on the footprint analysis, it
25 would be prudent to conduct further studies in all

1 areas to make it meaningful and complete.

2 Chief Hudson expressed concern about
3 developments that are occurring on lands which
4 Peguis has asserted Aboriginal title and
5 accordingly, some form of reconciliation must be
6 addressed before further developments are
7 undertaken.

8 Chief Hudson spoke of the anachronous
9 timing of these hearings. To be fair, the
10 hearings must follow a proper sequence as outlined
11 in the Supreme Court of Canada. If the whole
12 process is compared to a four person relay race
13 where the baton is passed onto the next leg, the
14 first leg in this process is missing. The first
15 leg is the Crown's duty to consult and
16 accommodate. That is why Chief Hudson stated that
17 faulty timing can lead to faulty outcomes.

18 Chief Hudson referred to Aboriginal
19 traditional knowledge, ATK, and the lack of it
20 especially around Lake Winnipeg. Certainly ATK
21 may have been used in the Nelson River area but is
22 alarmingly absent in the north and south basin of
23 Lake Winnipeg.

24 Chief Hudson described Lake Winnipeg
25 as a giant reservoir with elevated water levels

1 that are maintained at a higher level with
2 consequences to the Peguis First Nation. He
3 stated that since the middle of the 1970s, his
4 community has suffered massive flooding causing
5 evacuations and flood damage to housing units.

6 On a further note on reconciliation,
7 Chief Hudson stated that he was not convinced that
8 Manitoba Hydro was not committed to the concept of
9 reconciliation with First Nations around or nearby
10 Lake Winnipeg. He quoted the Mikisew case of the
11 Supreme Court of Canada where it stated there is a
12 requirement for a continued reconciliation.

13 Getting back to Councillor Mike
14 Sutherland's submission. It was Mike's
15 understanding I guess dealing with Lake Winnipeg
16 Regulation that there was a lot of activity mainly
17 on the Nelson River. So if you have a big
18 laboratory, all the microscopes were done on the
19 Nelson River area, but certainly nothing around
20 the north basin or the south basin or the middle
21 basin of Lake Winnipeg. And that was Mike
22 Sutherland's comment in looking at I guess the
23 Lake Winnipeg Regulations.

24 Councillor Sutherland's presentation,
25 he referred to the 1971 environmental and social

1 impact studies done in the Nelson River area, but
2 no studies were conducted around Lake Winnipeg at
3 that time or at the present time. Councillor
4 Sutherland referred to the Northern Flood
5 Agreements, NFA, and the Comprehensive
6 Implementation Agreements, CIA, for the Nelson
7 River area and noted there was no agreements for
8 First Nations around Lake Winnipeg.

9 Councillor Sutherland also noted there
10 were studies and consequent agreements on
11 commercial and domestic fishing on the Nelson
12 River area, but no studies or agreements on Lake
13 Winnipeg.

14 In the area of hunting, trapping and
15 gathering, there were a number of settlement
16 agreements with communities such as Pikwitonei,
17 Thicket Portage and Wabowden, and again no such
18 agreements around Lake Winnipeg.

19 Councillor Sutherland referred to
20 sacred sites along Lake Winnipeg and that no
21 protective action was undertaken to preserve these
22 cultural, religious and traditional sites. He
23 asked would any form of redress that is fair and
24 just be considered for this loss?

25 In the area of fishing, Councillor

1 Sutherland stated that the greater outflows at the
2 north end of Lake Winnipeg has accelerated the
3 current that affects the spawning grounds of Lake
4 Winnipeg fish. This has also affected the ice
5 thickness on Lake Winnipeg making ice fishing more
6 hazardous. The elevated water levels has
7 increased erosion where islands such as Big
8 Tamarack and Little Tamarack are visibly affected.

9 The Netley-Libau Marsh is greatly
10 affected by the high water resulting in loss of
11 cattails, bulrushes and giant reeds. These plants
12 act as filters of the water and when filters are
13 greatly compromised, more toxins are found in the
14 lake water. Medicines in and around Netley Marsh
15 are affected by the elevated water resulting in
16 loss of traditional medicines.

17 When Chief Hudson made his
18 presentation, he referred to domestic laws and
19 international laws and I just wanted to get into
20 one international document here that Chief Hudson
21 referred to.

22 The UN Declaration on the Rights of
23 Indigenous Peoples was signed on September 13,
24 2007 and Canada signed on in November 12th, 2010.
25 Some of the articles in that declaration are

1 appropriate and are noted here.

2 Article 19: States shall consult and
3 cooperate in good faith with the indigenous
4 peoples' concern throughout their own
5 representative institutions in order to obtain
6 their free, prior and informed consent before
7 adopting and implementing legislative or
8 administrative measures that may affect them. So
9 that's article 19.

10 Article 24: Indigenous peoples have
11 the right to their traditional medicines and to
12 maintain their health practices, including the
13 conservation of their medicine plants, animals and
14 minerals.

15 Article 25: Indigenous peoples have
16 the right to maintain and strengthen their
17 distinctive spiritual relationship with their
18 traditionally owned or otherwise occupied and used
19 lands, territories, waters and coastal seas and
20 other resources and to uphold the responsibility
21 to future generations by this regard.

22 Article 26 (1): Indigenous peoples
23 have the right to land, territories and resources
24 which they have traditionally owned, occupied or
25 otherwise acquired.

1 26 (2): Indigenous peoples have the
2 right to own, use, develop and control the lands,
3 territories and resources that they possess by
4 reason of traditional ownership or other
5 traditional occupation or use.

6 Article 28: Indigenous peoples have
7 the right to redress by means that can include
8 restitution or, when that is not possible, just
9 fair and equitable compensation for lands,
10 territories and resources which they have
11 traditionally owned or otherwise occupied or used
12 and which has been confiscated, taken, occupied,
13 used or damaged without their free, prior and
14 informed consent.

15 And finally article 32 (2): States
16 shall consult and cooperate in good faith with the
17 indigenous peoples concerned through their own
18 representative institutions in order to obtain
19 their free and informed consent prior to the
20 approval of any project affecting their lands or
21 territories and other resources, particularly in
22 connection with the development, utilization or
23 exploitation of mineral, water or other resources.

24 And I just want to get into our final
25 set here, dealing with the recommendations from

1 Peguis.

2 Recommendation number 1:

3 I'm going to have to take off my
4 glasses here. I can't read properly.

5 That a final licence not be issued
6 until there are further studies to provide a
7 footprint analysis of Lake Winnipeg Regulation.

8 Recommendation number 2: That Peguis
9 will not provide any form of consent to further
10 developments on Lake Winnipeg Regulations.

11 Recommendation number 3: That a
12 comprehensive study of Aboriginal Traditional
13 Knowledge, ATK, be conducted around Lake Winnipeg.

14 Number 4: That any recommendation by
15 the Clean Environment Commission be deferred until
16 the provincial Crown has met its duty to consult
17 and accommodate First Nations in and around Lake
18 Winnipeg.

19 Recommendation number 5: Further
20 studies are required to assess the flooding of
21 First Nation communities with the elevated levels
22 of Lake Winnipeg.

23 Recommendation number 6: The process
24 of reconciliation must begin and be continued with
25 First Nations around Lake Winnipeg.

1 Number 7: Environmental and social
2 impact studies be conducted for First Nations
3 around Lake Winnipeg.

4 Number 8: Further studies are
5 required for commercial and domestic fishing on
6 Lake Winnipeg.

7 Number 9: Further studies are
8 required on hunting, trapping and gathering for
9 First Nations.

10 Number 10: Further studies are
11 required in assessing sacred sites, loss,
12 destruction and any form of redress.

13 Number 11: We're recommending
14 adopting the recommendations of Dr. Goldsborough
15 on the Netley-Libau Marsh that water levels in
16 Lake Winnipeg be decreased by two feet for up to
17 two year periods on cycles of ten years.

18 Number 12: That the Clean Environment
19 Commission adopt the articles in the United Nation
20 Declaration of Rights of Indigenous Peoples,
21 particularly articles 19, 24, 25, 26, 28 and 32.

22 Number 13: Peguis adopts the
23 recommendations issued by the Consumer's
24 Association of Canada.

25 Number 14: Peguis adopts the

1 recommendations issued by Manitoba Wildlands.

2 And finally number 15: To further the
3 studies requirements and to provide a meaningful
4 product, the issue of capacity must be considered.

5 And that's our submission for this
6 morning. Thank you.

7 THE CHAIRMAN: Thank you very much,
8 Mr. Stevenson. Thank you for your participation
9 in these proceedings throughout.

10 Thank you to new Councillor Sutherland
11 for coming out this morning and congratulations on
12 your electoral victory. And I wouldn't be at all
13 surprised if we see you in future proceedings as
14 Peguis has become quite involved in our
15 proceedings in recent years.

16 Just a note to all of the participants
17 that are present, and we will repeat this probably
18 once or twice over the next few days, the deadline
19 for submitting final argument in written form is
20 April 30th at 12:00 noon, that's two weeks from
21 tomorrow. I should also point out that anything
22 in your written documents must not include any new
23 evidence. This is a summation of your position
24 and any recommendations that you might wish the
25 commission to make.

1 Having said that, that brings the
2 morning's proceedings to a conclusion. This
3 afternoon, we will have two further closing
4 arguments from Pimicikamak and from the Consumer's
5 Association of Canada.

6 So we will now break until 1:30.

7 (Proceedings recessed at 11:44 a.m.
8 and reconvened at 1:30 p.m.)

9 THE CHAIRMAN: Okay. We'll resume the
10 proceedings. First up is Pimicikamak.

11 MR. RAINING BIRD: So thank you all.
12 Thank you to the panel for being so attentive over
13 the last few weeks, and to all of the presenters
14 for being so informative and helping increase our
15 understanding of, at least my understanding of
16 what exactly has been going on for the last 40
17 some odd years.

18 I'm just going to do the bulk of our
19 submissions, and then I'm going to let Chief
20 Merrick make some final closing remarks before we
21 finish.

22 So 45 years ago, the Province of
23 Manitoba announced its plans to proceed with the
24 development of Lake Winnipeg for flood control and
25 the regulation of the Nelson River for power

1 purposes. And it was acknowledged at that time
2 that there were two predominant purposes for that
3 regulation, and that was to prevent shoreline
4 flooding on Lake Winnipeg and to maximize hydro
5 power production. At the time, little to no
6 consideration was given to downstream communities
7 and peoples such as Pimicikamak.

8 Construction of the project began in
9 1972, under the authority of the interim
10 supplementary licences that are under review
11 today.

12 That interim licence provides Manitoba
13 Hydro to operate the project within certain
14 limited conditions, and the decisions that
15 Manitoba Hydro makes in order to keep its
16 operations in the project within those parameters
17 are largely discretionary. Manitoba Hydro
18 recognizes this, and they also recognize that
19 there are adverse impacts to communities and
20 peoples downstream of the project. However, the
21 term "adverse impacts," in my submission, does not
22 do justice to the actual experiences of those
23 communities and peoples.

24 Pimicikamak has occupied the land
25 downstream of Lake Winnipeg, including the land

1 surrounding Cross Lake, since time immemorial.
2 For the last 39 years, its people have witnessed
3 firsthand the profound and lasting impacts that
4 the project has had on their land, their water,
5 their culture, their society, and their
6 well-being. At no time, either prior to the
7 construction of the project or in the remaining
8 years leading up to these hearings, has
9 Pimicikamak ever provided its consent.

10 In 1974, faced with a project that it
11 did not approve and was already being constructed,
12 the Cross Lake band joined forces with four other
13 affected Aboriginal groups and formed the Northern
14 Flood Committee Incorporated in an attempt to
15 defend their rights and interests.

16 Given the choice, Pimicikamak would
17 have vetoed the project at that time. Forty years
18 later, Pimicikamak still cannot give the consent
19 it says is required for the project in its current
20 form.

21 However, Pimicikamak was never given
22 that choice. Rather, the five NFC bands,
23 including Cross Lake, negotiated a set of measures
24 intended to remediate, mitigate, and compensate
25 for the devastating effects of the Hydro project.

1 Those measures were contained in the Northern
2 Flood Agreement, the NFA, which is considered to
3 be a modern Treaty.

4 And as you have heard, the
5 implementation of the NFA and the history of that
6 is one that's fraught with problems. Decades of
7 litigation have been required to seek to compel
8 Manitoba, Manitoba Hydro and Canada to implement
9 the NFA in good faith, and have left a legacy of
10 distrust by Pimicikamak of those Crown officials
11 in charge of operating the project and
12 implementing the terms of the NFA. And it's
13 within this context that I ask you to evaluate
14 Pimicikamak's participation in these hearings.

15 Now, it's admitted by Hydro that more
16 knowledge is needed in order to fully understand
17 the adverse impacts of the project, especially
18 that of LWR, Pimicikamak's rights, lands, culture,
19 economy, society, and people, as well as any
20 potential measures necessary to fully address
21 those impacts. To this end, Manitoba Hydro has
22 voiced a willingness in these hearings to strike a
23 new balance when the final licence comes up for
24 renewal in 2026.

25 Hydro has also indicated they may be

1 willing to engage in the types of studies
2 necessary to fill in knowledge gaps and prepare
3 for potential environmental review, when and if
4 that occurs. If Hydro gets its way, 2026 or
5 beyond. However, until at least 2026, Manitoba
6 Hydro insists that the status quo prevail,
7 business goes on as usual. They will say that
8 varying the terms and conditions of the licence is
9 inappropriate. They'll say that any call for a
10 change in operating decision-making should come
11 from the legislature. Adverse impacts and their
12 mitigation are to be addressed through agreement
13 such as the NFA, and not through the licensing
14 process, despite the fact that getting the NFA
15 implemented has proven to be a massive struggle,
16 with Pimicikamak saying it has yet to be
17 implemented to date.

18 Rather than say what they really mean,
19 that they want no obligations or additional
20 responsibilities, they make vague promises as to
21 possible future commitments at speculative dates.
22 All the while, Pimicikamak is asked to wait.

23 Now, with respect, that's not good
24 enough. Pimicikamak has waited 40 years for
25 adequate remediation, mitigation and compensation.

1 It's imminently reasonable that they are fed up
2 with this process. It forces them to continually
3 litigate and beg, rather than cooperate as is
4 intended.

5 No one can fault them for approaching
6 these hearings with a cynical mind. However, it's
7 with a cynical mind and an optimistic heart that
8 Pimicikamak is here today. Cynical in the matter
9 in which it views the flawed process of engagement
10 and review with regard to the Hydro system in
11 Manitoba to date, yet optimistic that the panel
12 here today will respond to the opportunity placed
13 before it.

14 Now, over the course of these
15 hearings, it should become very apparent that not
16 only are the current licence conditions extremely
17 prejudicial to downstream communities and peoples,
18 but also the knowledge required to address this
19 prejudice is severely lacking. What should also
20 become clear is that the current regime for
21 mitigating impacts downstream, the NFA and
22 associated agreements, is also severely lacking.
23 It has not been implemented in good faith. A
24 costly, time-consuming process of litigation has
25 been required to compel its implementation.

1 Pimicikamak realizes that this project
2 isn't going anywhere. However, it also knows that
3 improvement on this regime is both necessary and
4 possible.

5 In Pimicikamak's submission, the
6 question that the panel should ask itself and the
7 associated opportunity that the answers to that
8 question presents is whether or not the status quo
9 is good enough, or, as Pimicikamak contends,
10 whether recommendations should be made to the
11 Minister to change the status quo, to require
12 Manitoba Hydro to engage in additional studies, to
13 honour agreements as conditions of its licence.
14 Whether substantial changes should be made to the
15 operating regime to allow for affected peoples to
16 have a say in the day-to-day operating decisions
17 that have such a profound impact on their lives.
18 And it's with an optimistic heart that Pimicikamak
19 asks the panel today to make such recommendations.

20 Now, over the course of the hearings,
21 the panel was provided with a plethora of
22 evidence, some from Pimicikamak's members and its
23 experts, about the following issues: Adverse
24 impacts downstream of LWR and Jenpeg. Mitigation
25 measures that are currently not well-assessed in

1 terms of what they had been seeking to achieve.

2 Gaps in the current ecological monitoring and the
3 history of NFA implementation.

4 Now, it is repeatedly stated by both
5 Chief Merrick and executive council member
6 Muswaggon that Pimicikamak was never consulted
7 prior to this project, and its consent was never
8 given. In fact, Pimicikamak has maintained its
9 opposition to the project from day one. This was
10 forced upon them. They had no input into the
11 current licence conditions, no say in its
12 day-to-day operations. These conditions allow
13 Manitoba Hydro and the Manitoba Government to
14 inflict increased periods of flooding at higher
15 levels than were ever possible pre LWR on
16 Pimicikamak lands and waters. Natural seasons of
17 patterns of water flow so critical for ecological
18 processes have been turned upside down and have
19 been rendered erratic from year to year. These
20 manufactured fluctuations in water levels have had
21 many profound negative ecological, socio-cultural,
22 and economic implications for Pimicikamak, and
23 will continue long into the future. That this is
24 the case is undisputed.

25 The current licence conditions result

1 in unnatural flow fluctuations, lead to a bunch of
2 adverse impacts, a number of which have been
3 canvassed in our earlier submissions, but include
4 ongoing severe shoreline erosion, probable
5 increased sediment loads, degraded shoreline and
6 marsh habitats for wildlife, poor aquatic habitat
7 that can be related to declines in certain fish
8 and animal populations, unsafe travel conditions,
9 and permanent loss and degradations of the
10 cultural landscape.

11 And you have heard from Ms. Robinson
12 that Pimicikamak citizens have suffered a loss of
13 their cultural identity, incrementally losing
14 their traditional ways of life, tradition, culture
15 and self-esteem. This loss of connection to
16 Mother Earth has resulted in what she had termed
17 widespread hopelessness.

18 Despite efforts to bring it back
19 through schooling, traditional knowledge is being
20 lost as opportunities to use the land decrease.
21 There's also a lack of knowledge of current
22 environmental science that's necessary to
23 understand the impacts of hydroelectric
24 developments in Pimicikamak territory.

25 Manitoba Hydro acknowledges in its

1 submission that the project has adverse impacts
2 downstream. However, in many cases, Hydro states
3 the lack of scientific data renders any attempt to
4 attribute actual impacts to LWR inconclusive.

5 In our submission, Hydro cannot on the
6 one hand say that there's not enough information
7 available, and then on the other hand use that
8 lack of information as a reason to avoid
9 undertaking further study for the next 11 years
10 because we can't prove it's needed.

11 Hydro then contends that the Cross
12 Lake weir has likely improved conditions, despite
13 a lack of any study evaluating this conclusion.

14 The Cross Lake weir was developed in
15 an attempt to lesson the effects of LWR on Cross
16 Lake, and was completed in 1991. Since
17 installation of that weir, the average water level
18 on the lake has increased, while the range in
19 water levels has decreased. Cross Lake weir also
20 allows greater discharge at high lake levels than
21 was possible under natural conditions. However,
22 as pointed out by Dr. Luttermann in her evidence
23 in our previous submissions, construction of that
24 weir was not by itself meant to fully mitigate
25 adverse impacts on Cross Lake. And in fact, it

1 can't do this.

2 Important changes to the interim
3 licence related to the operating regime were also
4 recommended back in 1986. Manitoba Hydro today
5 has provided some justification for why those
6 recommendations were never implemented. However,
7 the justification, again, is the same. It was
8 their choice, it was their discretion, they
9 evaluated it. It wasn't transparent, and there
10 was no say from Pimicikamak or any other affected
11 communities into why, or how the recommendations
12 were declined.

13 Based on the evidence in
14 Dr. Luttermann's Pimicikamak submission that those
15 measures for changes in operating regime that were
16 recommended back in 1986 should be evaluated in
17 today's changing context. Some of those
18 recommendations may look like the minimal
19 allowable outflow of 25,000 cubic feet per second
20 be revised, with additional provisions that this
21 minimum cannot be permitted at any time of the
22 year. There should be a provision requiring
23 Manitoba Hydro to study the pattern of water
24 levels in that year to date, consult with
25 Pimicikamak on the potential effects of lowering

1 lake levels at critical travel times or critical
2 times in the seasonal cycle for wildlife, and then
3 come to a collaborative decision on timing of a
4 minimum flow that year.

5 The requirement for maximum discharge
6 when Lake Winnipeg reaches 715 feet above sea
7 level could be deleted and replaced with provision
8 allowing for consideration by the Minister in
9 consultation with downstream peoples of the
10 prevailing circumstances at the time.

11 The November cutback or ice
12 stabilization program needs to be studied with
13 regards to specific ecological or cultural
14 effects. The current 15,000 cubic feet per second
15 rate of flow change in a 24-hour period must be
16 studied in light of actual operations over the
17 past 39 years, and better understood in terms of
18 impacts on people and wildlife habitat. That
19 maximum rate of change should not necessarily be
20 permitted at all times of the year.

21 Finally, objectives could be built
22 into the operating regime that require
23 minimization of negative impacts on aquatic and
24 riparian wildlife of the Cross Lake area and the
25 waterways travelled by Pimicikamak and others.

1 These changes, if put into the
2 licence, would contribute to additional mitigation
3 of adverse conditions such as slush ice, as well
4 as improve the environment for species such as
5 beaver and muskrat.

6 While it may be unclear, the full
7 nature and scope of all adverse impacts from LWR,
8 what those are, what is clear is that there is a
9 need for increased scientific study and monitoring
10 in order to determine if the mitigation measures
11 in place today, or recommended back then, are
12 required in the future.

13 We also heard from Dr. Luttermann
14 about the gaps in ecological monitoring. Despite
15 being in operation for almost 40 years, there's
16 really limited formal study of the state of the
17 downstream environment. Numerous gaps exist in
18 our scientific understanding of the relationship
19 between regulation of the Nelson River and LWR
20 operations.

21 Dr. Luttermann stated that it's
22 imperative that a comprehensive structured program
23 of environmental research be established as soon
24 as possible. This must be embarked upon through a
25 collaborative planning, learning, implementation

1 process involving affected parties both up and
2 downstream of LWR.

3 There's also been inadequate study to
4 determine the effects of flow regulation on
5 downstream wildlife and habitats. And as a
6 result, it's not possible to come to clear
7 conclusions as to the effects of LWR from year to
8 year, or even what further mitigation is possible.
9 Essentially, without proper study, we don't know
10 what can be done.

11 Dr. Luttermann also highlighted a
12 number of areas in which ecological monitoring can
13 be improved or environmental studies can be
14 undertaken, including studies to determine whether
15 the weir has achieved its objectives, studies on
16 lake whitefish habitat conditions and recruitment
17 in relation to the seasonal hydrological regime
18 experienced each year, and studies on the
19 condition of shoreline riparian habitats in
20 relation to the hydrological regime from year to
21 year, and the habitat use of wildlife such as
22 muskrat, moose, amphibians, waterfowl and song
23 birds.

24 I believe her words in -- using the
25 lack of any such studies to date, varied from

1 quite surprising to astounding. She's a learned
2 doctor.

3 Ongoing monitoring is necessary to
4 gain a better understanding of the actual effects
5 of various water level patterns from year to year
6 on riparian and aquatic habitats over time.

7 Similar gaps exist in our knowledge of
8 related impacts of Sipiwesk and Duck Lakes, and
9 Pipestone Lake, lakes that are also of critical
10 importance to Pimicikamak.

11 There are issues with regard to water
12 quality where further study would be valuable, and
13 include investigation of potential changes in
14 nutrient transport through the bypass channels as
15 opposed to the natural outlet, residence time of
16 water in Cross Lake during low water periods, and
17 the effects of invasive species such as carp on
18 turbidity in Cross Lake bays, just as a few
19 examples.

20 So despite what is known about river
21 regulation effects on shorelines, and despite what
22 was predicted by the Nelson River Study Board, no
23 long-term program for riparian habitat research
24 and monitoring has ever been developed for the
25 Nelson River. No study of these areas is being

1 done that relates to habitat condition with a
2 hydrological pattern from year to year.

3 So what you see is a pattern, a
4 consistent pattern. We don't know, but at least
5 based on the evidence of Pimicikamak members and
6 that of Dr. Luttermann, at least we'd know what we
7 don't know.

8 Despite this lack of formal study,
9 Pimicikamak citizens have reported numerous
10 observations related to these impacts. The panel
11 was shown numerous pictures by Mr. Settee of the
12 areas downstream of Lake Winnipeg, and he observed
13 impacts on the land, waters and animals. I'd urge
14 you to go back, look at those photos. They show
15 you a completely different picture than any graphs
16 that Hydro presents to us.

17 The problem, of course, of these
18 observations, as pointed out again by
19 Dr. Luttermann is that they are discounted, they
20 are labelled as anecdotal. This speaks to the
21 need for studies that incorporate both Aboriginal
22 and traditional knowledge and western science.

23 In terms of the NFA implementation,
24 the NFA was intended to deal with the myriad
25 direct and indirect adverse effects resulting from

1 the modification of the water regime that
2 accompanied the development of hydroelectric power
3 in Northern Manitoba.

4 The NFA was and is a Treaty that is
5 supposed to remediate, mitigate and compensate the
6 Aboriginal parties involved. I won't get into the
7 specific provisions, those are outlined in our
8 previous submissions. But you heard evidence
9 about the history of actually getting those
10 provisions implemented.

11 Executive council member David
12 Muswaggon testified and provided evidence on the
13 history of NFA implementation. He testified that
14 Pimicikamak had no choice but to sign. They had
15 to make the best of a disastrous situation that
16 was entered into only after destruction was
17 completed. He described the implementation
18 process as onerous and unfair and grossly
19 inadequate. The Crown parties have used their
20 position of power to impose LWR on us, he said, in
21 direct contradiction of our stated wishes, and
22 they have continued to use their position of power
23 to minimize and limit their responsibilities to us
24 and lands entrusted to us.

25 Promises such as the four to one

1 replacement lands promised in article 3 have yet
2 to be transferred, other than small parcels of
3 land selected on a test basis. What was supposed
4 to be, and was envisioned as a plan to work
5 together, sit down at a table and roll up our
6 sleeves, hasn't happened. Rather, Pimicikamak has
7 been forced to resort to the NFA litigation and
8 arbitration process on a consistent basis.

9 1998, you heard that Pimicikamak
10 citizens engaged in a partial blockade of
11 provincial road 374 which resulted in the signing
12 of the 1998 political accord in which Hydro,
13 Manitoba and Canada pledged to stop pushing
14 Pimicikamak towards a lump sum financial deal to
15 cap their benefits under the NFA. The principle
16 behind that said that this is an ongoing
17 commitment for a lifetime of the project. It's
18 not a bad contract that you can just buy out and
19 get off the books.

20 From 1998 to 2002, we heard that both
21 sides sat down and worked on NFA implementation
22 action plans. And the process to reach the
23 development action plan ceased in 2005 when the
24 NFA Crown parties, including Hydro, stopped
25 supporting it.

1 We heard that in Pimicikamak's view,
2 true implementation of the NFA Treaty should start
3 by determining what the obligations and
4 responsibilities are, how they can best be met,
5 and then determine the cost and allocating
6 appropriate funds to it. Unfortunately, the
7 approach taken by Hydro has been the opposite,
8 starting with unilaterally determined and
9 arbitrary caps to funding, and then proceeding to
10 implement according to those budgets.

11 Finally, and recently in late 2014,
12 Pimicikamak citizens occupied the Jenpeg dam to
13 bring attention to this flawed history of NFA
14 implementation. And as Hydro recognizes, resulted
15 in the signing of a process agreement between
16 Manitoba, Hydro and Pimicikamak.

17 It's important to recognize that this
18 agreement is simply a first step. It's a process
19 agreement. There's no guaranteed outcomes. This
20 is stated repeatedly by Councillor Muswaggon, as
21 well as acknowledged on cross-examination by
22 Mr. Sweeny.

23 As stated by Mr. Muswaggon:

24 "Our people take the position that
25 we'll believe it when we see it. Too

1 many times in the last so many decades
2 talk has been cheap, very little
3 action. They have been betrayed too
4 many times, so do not blame my
5 people."

6 And I would ask if you can blame them? Can you
7 blame Pimicikamak if they take this latest set of
8 promises with a bag of salt?

9 Now, I'm just going to get into the
10 short bit about the law here. Section 20 of the
11 water power regulation provides that every interim
12 or final licence shall be deemed to incorporate
13 and shall be subject to the provisions of the
14 regulation in force at the time of the issue of
15 interim and final licence, and to such other
16 stipulations, provisos and conditions as the
17 Minister may impose.

18 Section 44 provides:

19 "The final licence shall embody the
20 terms set out in the interim licence
21 for incorporation to such final
22 licence and such other terms and
23 conditions as the Minister may
24 impose."

25 Section 6.5 of the Environment Act

1 states in part that:

2 "When requested by the Minister, the
3 Clean Environment Commission must do
4 one or more of the following in
5 accordance with the terms of reference
6 specified by the Minister: Provide
7 advice and recommendations to the
8 Minister, conduct public meetings or
9 hearings and provide advice and
10 recommendations to the Minister."

11 Section 3 of the same Act:

12 "The Commission may, on its own
13 volition, conduct an investigation
14 into any environmental matter and
15 advise and make recommendations
16 thereon to the Minister."

17 The terms of reference for these
18 hearings make it clear that while the CEC has not
19 been asked to comment on whether a licence should
20 have been issued in the first place, they are to,
21 amongst other things:

22 "Hear evidence from Manitoba on the
23 effects and the impacts of LWR since
24 Hydro started to use LWR to generate
25 electricity. Review the successes and

1 failures in implementation of those
2 broader public policy goals that lead
3 up to the issuance of the interim
4 licence and operation of the project,
5 and importantly summarize and make
6 comment on the concerns raised
7 pertaining to the issuance of a final
8 licence to Manitoba Hydro under the
9 Water Power Act, including but not
10 limited to future monitoring and
11 research that may be beneficial to the
12 project and Lake Winnipeg."

13 Now, in Pimicikamak's submission, the
14 combination of the above, those above statutory
15 provisions, leads to the following conclusions.
16 The Minister has the power and discretion to
17 impose additional conditions on any final licence
18 issued to Manitoba Hydro, even if it has complied
19 with the terms of its interim licence. The terms
20 of reference for these hearings are broad enough
21 to allow the CEC to make recommendations
22 respecting various matters that could inform any
23 additional licence conditions the Minister may
24 choose to impose. Finally, the CEC has the
25 residual jurisdiction to make recommendations of

1 their own volition.

2 So it's based on that statutory
3 authority that Pimicikamak says is the CEC's
4 jurisdiction that it now asks you to make
5 recommendations to the Minister.

6 Pimicikamak asks the CEC to make the
7 following recommendations. That a licence
8 condition be imposed requiring Manitoba Hydro to
9 fully and in good faith implement the NFA through
10 action plans developed mutually with Pimicikamak
11 and through the provision of necessary funding to
12 carry out these action plans.

13 B, a licence condition be imposed
14 requiring Manitoba Hydro to fully and in good
15 faith implement the process agreement, including
16 through the provision of necessary funding to
17 carry out its objectives.

18 C, that a licence condition be imposed
19 requiring Manitoba Hydro to balance downstream
20 impacts, needs and objectives, in its operations
21 decisions in a manner similar to other
22 jurisdictions, for example, that water use
23 planning in British Columbia.

24 D, a licence condition be imposed that
25 Manitoba Hydro fund and engage in the requisite

1 environmental studies required to fully assess LWR
2 impacts and potential ways to address them,
3 including the impacts on downstream aquatic and
4 riparian habitat, impacts on wildlife populations,
5 impacts on land use traditional pursuits, culture,
6 society and economy of Pimicikamak, and an
7 evaluation of the results and measures taken to
8 date to mediate or mitigate LWR impacts.

9 E, establishment of a water governance
10 board for the water basin, which includes the
11 watershed of Lake Winnipeg within Manitoba, and
12 the Nelson and Churchill Rivers as a whole, with
13 meaningful input into operational decision-making
14 by all affected parties, including Pimicikamak,
15 and systematic review of the water governance
16 regime of Manitoba with a comparative look at
17 other jurisdictions in an attempt to modernize the
18 current legislation, possibly using the analysis
19 done by the CAC as a starting point.

20 That there have been multiple and
21 substantial adverse impacts to Pimicikamak as a
22 result of this project is undeniable, and Manitoba
23 Hydro, in fact, does not deny it.

24 Manitoba Hydro has also recognized
25 that the value -- that there is value in the types

1 of studies that Pimicikamak is recommending in
2 these proceedings.

3 Mr. Cormie has spoken of the need for
4 a new balance. He says that Manitoba Hydro will
5 do the right thing, they only need guidance or a
6 road map to inform them as to what that is. He
7 acknowledges that the current road map, or what
8 has lead to the current situation is one based on
9 the operation of LWR under current licence
10 conditions. He further recognizes that new
11 licence conditions are one way of providing what
12 that new road map might look like.

13 However, he also maintains that now is
14 not the time for any additional licence
15 conditions, preferring to maintain the status quo
16 to 2026 or beyond, when a final licence is
17 renewed, and then to get into a discussion of what
18 the new balance will look like.

19 With respect, 11 more years is too
20 long to wait. Pimicikamak has been forced to wait
21 40 years already for a proper balance to be
22 struck, one that is gives proper weight to the
23 effects and needs of communities and peoples in
24 the environment downstream. It's recognized that
25 environmental assessment requires at least 10

1 years of study. It only makes sense that in order
2 to prepare for that, if and when licence renewal
3 becomes necessary, that studies begin now.

4 Otherwise, we'll be in a situation where licence
5 renewal is delayed, similar to what has occurred
6 with the Kelsey dam.

7 I would submit that these hearings
8 have been useful in highlighting the areas in
9 which further study is needed, and that those
10 studies should be undertaken now.

11 The evidence that the panel has heard
12 on the history of the NFA implementation should
13 cause them to question any Manitoba Hydro
14 assertion that downstream impacts have been
15 satisfactorily addressed. Pimicikamak submits
16 that imposing new conditions of the sort
17 recommended would compel Manitoba Hydro to engage
18 in the types of work that it has already stated it
19 would be willing to do. Failure to impose these
20 conditions simply preserves the status quo. The
21 current road map, it's a road map that is paved
22 with good intentions but not much more.
23 Pimicikamak has been walking this road for far too
24 long.

25 It's pointed out by the CAC,

1 Aboriginal Treaty rights are frequently recognized
2 in legislation related to resource management.
3 Environmental objectives can be inserted into
4 operational licences as well. There's no reason
5 why conditions of the type recommended cannot be
6 imposed in this case. This is especially so for
7 licence parameters to allow for such a great deal
8 of discretion in their operating decisions.

9 Given the fact that Manitoba Hydro has
10 stated its willingness to do the right thing, they
11 will presumably be willing to follow any new
12 licence conditions that are imposed.

13 Again, it's with a critical and a
14 cynical mind, but with an optimistic heart, that
15 Pimicikamak is here today. Under no illusions as
16 to ultimate outcome of Lake Winnipeg Regulation,
17 Jenpeg and the bypass channels, they are not going
18 anywhere. However, it's Pimicikamak's submission
19 that these hearings have shown that a new path is
20 not only necessary, but it's possible. One in
21 which consideration is given to their rights and
22 needs, and the needs of the ecosystem, and in the
23 manner in which LWR operates. One in which they
24 are able to exercise their responsibility as
25 stewards of the lands to which they had been

1 entrusted as a people. They are optimistic that
2 the panel can see that path as well.

3 I'd simply close in saying that you
4 have an opportunity here today, in the writing of
5 your report, to take the first step down that
6 path. And I would urge you to do so.

7 Now, I'll just introduce Chief
8 Merrick, who is a far more eloquent speaker than
9 me to close things out.

10 CHIEF MERRICK: Good afternoon (Native
11 language spoken). I greet each and every one of
12 you here today, and I bring greetings to you from
13 Pimicikamak territory. I bring greetings to you
14 from my people of Pimicikamak. I'd like to
15 acknowledge the panel for all your time listening,
16 listening to the stories that we have shared as a
17 people, as Pimicikamak people.

18 It is important to my people that I be
19 here today to be able to give closing statements
20 to an important process that has impacted our
21 homeland, that has impacted our waters, and that
22 has impacted the hearts of our people.

23 It is time to modernize the 39-year
24 old licence for Lake Winnipeg Regulation. Times
25 have changed. The licence needs to catch up to

1 time. We have all learned things over the past
2 four decades as a result from the interim licence.

3 Pimicikamak had no say in drafting the
4 licence, and Pimicikamak had no say in how Lake
5 Winnipeg Regulation is operated, even though we
6 are directly and severely impacted. And we have
7 relayed that time and time again. We have said
8 that time and time again, that this is not the way
9 society operates anymore. The days of sidelining
10 indigenous people are over.

11 Lake Winnipeg Regulation has forever
12 changed the Pimicikamak Nation, our nation, our
13 homeland. The lands and waters will never be the
14 same. But we can take steps to make things
15 better. We are here today to make things better
16 for our people, for Pimicikamak people.

17 Hydro says the weir they built at the
18 outlet of Cross Lake has largely solved the
19 problems, but they have not done the research and
20 monitoring necessary to determine if the weir is
21 significantly improving the ecosystem and the
22 health, or to understand the ecological effects of
23 the interim licence conditions. The licence
24 allows Manitoba Hydro to operate Lake Winnipeg
25 Regulation to serve upstream flood control and

1 downstream power generation. Pimicikamak, while
2 being severely compromised in the process, we know
3 that, you know that. Lake Winnipeg Regulation
4 amplifies the impact of both flooding and drought
5 on Pimicikamak homeland, as well as throwing off
6 the natural seasonal fluctuations essential for
7 healthy ecosystems.

8 I am a daughter of a trapper.

9 Premier Selinger has spoken about
10 reconciliation with us. Changing the Lake
11 Winnipeg Regulation licence would be a step in
12 that direction.

13 For these reasons, Pimicikamak is
14 asking for new conditions to be implemented as
15 soon as possible, not to wait the 11 years until a
16 new licence is issued. There's a lot of things
17 that we can do within this time.

18 The provincial website says the power,
19 the water power licensing process continues to
20 react to evolving societal expectations. But
21 Hydro wants no changes in the 39-year old licence
22 that issued before impacts of the Lake Winnipeg
23 Regulation were thoroughly understood.

24 So I come here today to relay a
25 message from my people. Today is the day, it's

1 time for change for my people. Time for change
2 for the future of my grandchildren. It's time to
3 change that we look after the waters and Mother
4 Earth. There will be a day, and it is predicted,
5 that if we do not take care of the water as a
6 responsibility, as women, as a responsibility by
7 the Creator, there will be a day that we won't
8 have water. We all know that and we have all have
9 read documents after documents as to how the water
10 is being neglected.

11 So it is my responsibility as a leader
12 that I come here today to be heard, and to be able
13 to address the issues, and to be able to bring the
14 wishes of our people. The recommendations that
15 are brought forth are good recommendations that we
16 can all take to heart, that we can all take to our
17 respective authorities. But this is the day.
18 It's a beautiful day today.

19 So I'm going to remember this day that
20 I came here to address and to speak on behalf of
21 Pimicikamak people. We are a proud people. We
22 are a very patient people. But sometimes patience
23 runs out.

24 So I leave that with you today, and I
25 thank you from my heart, to the panel for giving

1 us the opportunity to speak of words that needed
2 to be spoken 39 years ago. My lawyer friend here
3 wasn't even born when all this happened. And I
4 thank him for doing this for us. It means a lot.

5 So, with that I thank you from
6 Pimicikamak for giving us this opportunity, to the
7 panel. I know your work is hard, but our
8 recommendations that we have tabled, that you take
9 to heart. So with that (Native language spoken).

10 THE CHAIRMAN: Thank you, Chief
11 Merrick. Thank you, Mr. Raining Bird. We will
12 take a short break while we change the line up at
13 the table. So let's come back at 25 after.

14 (Proceedings recessed at 2:13 p.m.
15 and reconvened at 2:25 p.m.)

16 THE CHAIRMAN: Okay, it appears that
17 we're ready to go. So closing arguments from
18 Consumer Association of Canada, Manitoba Branch,
19 Mr. Williams.

20 MR. WILLIAMS: Yes. Thank you and
21 good afternoon, and thank you for your patience.
22 I should note that our client, Ms. Barbara
23 Nielsen, is in the crowd, as is Ms. Gloria
24 Desorcy. Dr. Fitzpatrick and Mark Regehr, who you
25 have been introduced to previously, are here

1 somewhere amidst the multitudes.

2 The title is a bit awkward, "There can
3 be change if there is the will." But it's a
4 message that our client kept hearing and we
5 thought it was important to start with that
6 central theme. We go on to say "LWR quiescent
7 licensing and evolving consumer values." And we
8 use the word quiescent quite consciously. My
9 colleague, Ms. Pastora Sala, reminded me that I
10 used "hesitant" during our presentation last week.
11 Quiescent is defined as in a state or period of
12 inactivity or dormancy, inactive or dormant. And
13 that is certainly how our client would describe
14 the licencing regime that has existed with regard
15 to Lake Winnipeg Regulation and the CRD for the
16 last 39 years.

17 And it's important, and of course you
18 have seen this in our submissions, you have heard
19 it over the course of this hearing, when we use
20 the term quiescent licensing, we're talking about
21 the reality of a 39-year old interim licence with
22 no additional environmental adjustments. We're
23 talking about the reality that there is no
24 environmental assessment that has been conducted
25 or planned. And that's important not to pass

1 judgment, but to underscore both the frailty of
2 the governance regime we have, and also to raise a
3 critical question of confidence.

4 In the face of significant and
5 evolving effects, quiescent licencing invites a
6 lack of confidence, non-confidence. And when we
7 get to our recommendations, that lack of
8 confidence that our client perceives will be an
9 important element of some of our client's
10 recommendations.

11 Far more eloquently than I ever could,
12 we heard both Chief Merrick and counsel for
13 Pimicikamak talk about a sad tragic history in
14 terms of LWR and CRD. And our client will be
15 largely focused on the future, but thought it
16 important to honour the past. And to note, if you
17 look at that first bullet on the page in front of
18 you, the language and the attitude expressed back
19 in 1967, the judgment offered that indigenous
20 people have no future, and that persons living in
21 remote geographic areas were the problem. We note
22 as well at least one of the fundamental flaws in
23 LWR from the very onset, going to the second
24 bullet on that page, analysis that ignored the
25 impact of the people and the environment

1 downstream from the control structure.

2 Pimicikamak made the point today that
3 they never consented. And we thought the language
4 from legal counsel back in 1974, on behalf of the
5 Northern Flood Committee, was quite instructive.

6 "They wish to retain their lands in
7 the form unaffected."

8 And in a hearing where we have talked a lot about
9 a sense of alienation, we observe, according to
10 the historians retained by the Clean Environment
11 Commission, that even back in the '70s there was
12 this effort to bypass or dismiss the legitimacy of
13 the Northern Flood Committee. That's the sad
14 part.

15 The cynical part is caught in the
16 Tritschler Inquiry report, and we all know from
17 reading the history what an intensely politicized
18 examination that was. Here was the judgment of
19 Tritschler, though, about a failure to provide
20 timely and accurate information, and a right of
21 Manitobans to all the facts, not just the good
22 news. And certainly a dominant theme of our
23 client in this hearing, as we go forward, is that
24 consumers, the consumer interest wants the
25 information to make informed choices, to provide

1 informed advice.

2 Manitoba consumers have had many
3 benefits economically from hydroelectric
4 generation. They want to be able to weigh those
5 benefits in the future against the costs as well,
6 the social costs, the ecological cost.

7 If you look at the slide, the bullet
8 on page 7, before you look at the date, look at
9 the language. And you might think that that was
10 today's hearing. They talk about a greatly
11 increased sensitivity to the need to preserve the
12 natural environment, to respect the rights of
13 Indian communities, and to develop resources in an
14 integrated fashion. Quite ironic as we look at
15 what happened in terms of LWR and CRD. But we
16 have to remind ourselves that we hear that same
17 type of language in the hearing today. And the
18 risk for all of us is, 46 years later, to ensure
19 that these words are real and not just simply
20 platitudes.

21 My learned friend, Mr. Bedford, last
22 week perhaps caught a little bit of the cynicism
23 and malaise I was feeling as I read the no history
24 report. The very last question that he posed to
25 ourselves in terms of our brief was represented in

1 this bullet here, and asking where is everybody?
2 Why is the room empty? The fourth last line of
3 that lengthy quote, he wonders if, in fact, it's
4 not entirely accurate to say that Manitobans care
5 a lot about the lake.

6 And so, of course, our client brings
7 that concern that we not be infected by that sense
8 of powerlessness, by that sense that nothing
9 material can be done, that it's too hard.

10 So last week we responded to
11 Mr. Bedford, the legal team, and we highlighted
12 three key messages. The first, that as
13 Manitobans, we are failing our stewardship duties.
14 The second, and we heard it again from Hydro in
15 Mr. Cormie's rebuttal evidence this morning, that
16 there is broad support in this process for change.
17 We call it law reform in governance, he talks
18 about a road map and guidance and a modern
19 balance, support for change.

20 And the third message we tried to
21 bring to you last week was that reform is
22 possible, it has been done in a variety of
23 jurisdictions. And we go back to our client's
24 core theme, if there is the will, there can be
25 change.

1 Our client wasn't satisfied with my
2 response to Mr. Bedford, I have to tell you. They
3 want to tell you that Manitoba consumers care
4 deeply about affordable reliable electricity, but
5 also about how it is produced, and that it is
6 produced in an ethical manner and a sustainable
7 manner.

8 And in response to Mr. Bedford about
9 the empty room, they highlight a significant level
10 of distrust and cynicism towards existing
11 governance and licensing, and of a need to engage
12 in different and more innovative ways than perhaps
13 we have done to date.

14 We noted the message from Pimicikamak
15 of sadness, but hope. And our client echos that
16 sentiment through good will, good governance, and
17 law reform. It's our client's view that we have
18 an unprecedented and rare opportunity to address
19 that cynicism and to achieve a more equitable
20 balance and a more transparent balance.

21 What is a consumer organization
22 spending so much time on environmental issues?
23 CAC Manitoba has been around a long time. They
24 are zealously independent of government, and they
25 are about as non-profit as you can imagine. And

1 the message they have heard in focus groups in
2 their engagement process, through their advisory
3 process, is that Manitoba consumers engage with
4 Lake Winnipeg and downstream of Lake Winnipeg in a
5 variety of profound ways. They fish there, they
6 bird watch there, they enjoy their cottages there,
7 they boat there. And yes, they like their homes
8 heated and their lights on in large part through
9 the power production generated through Lake
10 Winnipeg. So consumers are in this hearing
11 because they are profoundly, intimately engaged
12 with the lake and downstream of the lake in a
13 variety of manners.

14 And as some members of this panel will
15 be aware, there are eight broad consumer rights
16 recognized internationally. And throughout this
17 hearing, we have heard echos and reinforcement of
18 the importance of those rights, goods and services
19 to meet our basic needs as an initial one. You
20 have heard the threats to food and to water
21 alleged with regard to Lake Winnipeg and CRD
22 regulation. You have heard people talk about it
23 being too dangerous to be on the water. You have
24 heard a lot about the need for more information.

25 And going to the sixth bullet, the

1 third last one, you have heard about the need to
2 be included in government decisions affecting the
3 market-place, rather than excluded.

4 Upstream, downstream, there's been a
5 lot of talk about the need for redress. And
6 ultimately this hearing, not about licensing, it's
7 about a healthy, sustainable river and riparian
8 habitat. And that clearly is core to the consumer
9 values. So that's why our clients are here.

10 And our client has asked us to
11 underscore for this panel that the consumer
12 interest and consumer values are not static.
13 We're pretty familiar with the core consumer
14 values that I often express in the PUB process:
15 Value for money, affordability, equity. But that
16 consumer interest continues to evolve.

17 Increasingly, our clients are telling
18 us -- and I have misspelled ethically, I'm not
19 trying to say ethnically -- they have told us
20 there is an increased emphasis from consumers on
21 ethical or socially responsible purchasing.
22 Consumers are by no means homogeneous. For many,
23 too many, affordability is and must be the primary
24 concern. But for many others, the ripple effects
25 of their purchases matter, and in many cases can

1 be a significant or a primary purchasing driver.

2 So consumers increasingly, as they
3 evolve, see they have a responsibility not just to
4 get good value, but to look beyond the price to
5 the production values, to look at their
6 transaction with eyes wide open.

7 Among the eight consumer rights is the
8 right to choose, and that's a little bit difficult
9 in the context of a retail monopoly for the sale
10 of electricity in Manitoba. Consumers in the
11 market-place can often choose a product that is
12 certified as being less harmful. That choice is
13 not available to them given the hydro monopoly.
14 And the reality is that through their bills,
15 consumers fund hydro development, they reap the
16 benefits, but they are collectively responsible
17 for the impacts.

18 So these CEC hearings are a proxy for
19 the right to choose. This is consumers chance to
20 articulate their values, to express what they
21 think is both an ethical choice and a choice in
22 their self-interest.

23 One of our clients asked me to
24 particularly highlight some quotes that caught her
25 eye in this hearing. Chief Merrick told us about,

1 "My people continue to suffer while
2 the south continues to benefit."

3 Elder Martha Spence talks about hoping that they
4 are heard.

5 "I hope they open their ears, I hope
6 they open their eyes and their hearts
7 to know what is happening to us."

8 And CAC Manitoba certainly have their
9 eyes wide open now. We cannot return to the
10 market-place complacency that endured in the '70s,
11 the '80s, the '90s, and our clients cannot endorse
12 quiescent licensing.

13 Pimicikamak spoke a lot about the
14 status quo, and our client asks the same question,
15 can the status quo endure? And I'm going to talk
16 about the status quo for a couple of minutes, but
17 I'm going to ask my colleague, Ms. Pastora Sala,
18 to go to our beautiful diagram. This is how our
19 client interprets our status quo, and I will go
20 through it quickly on the diagram and then in a
21 bit more detail for a couple of moments.

22 Certainly going to the left of the
23 status quo, we have one of the great achievements
24 of Manitoba Hydro in terms of reliability, economy
25 and efficiency. From our client's perspective,

1 ecological considerations in terms of planning and
2 operations play a secondary role. And certainly,
3 contrary to the high hopes back in 1969, our
4 clients don't see a lot of integrated water
5 resource management. We had spoken a lot about
6 this in the course of this hearing in terms of a
7 light-handed licensing regime for Manitoba Hydro.
8 We describe it as opaque, light-handed and
9 exclusionary. And again, a central element of the
10 status quo is a fractured but evolving
11 relationship with indigenous people.

12 Near the start of this hearing,
13 actually on day one, Mr. Cormie outlined a key
14 message from Hydro, and our client has asked me to
15 highlight it, the benefits that we do receive from
16 Manitoba Hydro in terms of economic dependable
17 power. Mr. Cormie also made the point that
18 control of the river flows is central to that
19 development. And our client acknowledges that the
20 lights stay on, that their homes stay warm, that
21 Hydro has relatively low GHG emissions, that
22 historically it's been relatively affordable, and
23 that there is a value to the Manitoba economy from
24 Hydro expenditures. And our client has asked me
25 to highlight that they value these contributions

1 and appreciate them from Manitoba Hydro.

2 A second element of the status quo is
3 that light-handed, opaque and exclusionary
4 licensing of legacy projects that I spoke of, most
5 notably characterized by the fact that CRD and LWR
6 have escaped environmental assessment. Certainly,
7 to the extent that there is a regulatory dialogue,
8 it's primarily between Hydro and the Province.

9 And our clients describe this light-handed
10 regulation initially as a double-edged sword, but
11 really as a triple-edged sword.

12 There clearly have been short-term
13 economic benefits to consumers from Manitoba Hydro
14 being able to run the system, its legacy projects,
15 with relatively modest environmental constraints.
16 But there are also long-term costs, which is the
17 second edge of the sword. And there's also the
18 damage to the Hydro brand, when we go to sell it
19 into other market-place, which is the third edge,
20 if a sword can have three edges.

21 And so our client is highly critical
22 of light-handed regulation. They accept that in
23 the short-term, it may have had some economic
24 benefits, but they see long-term and dangerous
25 adverse effects as well.

1 Dr. Luttermann has been one of the
2 more powerful witnesses in this hearing. More
3 powerfully than I, she has talked about how
4 ecological concerns are subordinated to focus on
5 the production of electricity and revenue, as well
6 as flood control. And she's highlighted the
7 consequences of that in terms of changes to the
8 timing, rate of change, magnitude of water flows,
9 as being the primary driver of the adverse
10 physical and biological effects. That inequality
11 between ecological and other factors is a primary
12 driver of adverse effects.

13 Again, in terms of the status quo,
14 others are more eloquent than I in terms of the
15 nature of the relationship with indigenous people,
16 the exclusion from consultation relating to legacy
17 projects, the enduring evolving and adverse
18 effects of the Nelson River projects, efforts to
19 reconcile in new projects, and through the apology
20 to PCN in 2014, but an ongoing sense of exclusion.

21 The fifth element of the status quo,
22 as our client sees it, is a bit more complicated.
23 I'm just going to take a couple of moments to walk
24 through that. And it's the lack of integration,
25 and in two ways. Integrated water resource

1 management has been implicit in a lot of this
2 hearing. We have talked about it in our brief,
3 but perhaps not as much as we should. But a good
4 shorthand definition is a process which promotes
5 the coordinated development and management of
6 water, land, and related resources to maximize
7 both economic and social welfare, without
8 compromising the sustainability of vital
9 ecosystems. That's a theory. And it's practiced
10 in a growing number of jurisdictions in North
11 America and in other areas.

12 Our client concludes emphatically that
13 integrated water resource management is not
14 characteristic of the approach in Manitoba. And
15 we raise five questions in terms of the power,
16 water power resource. We note the absence of
17 consideration of a broad suite of values and
18 interests in the development of operating
19 objectives. We note the dearth of analysis
20 related to the cumulative effects of flow
21 alterations, climate change and other stressors.
22 We note the limits in terms of looking from a
23 water shed perspective at inflows to the lake. We
24 notice as well the absence of a multi-stakeholder
25 approach to evaluation of current conditions,

1 objective setting, or development of strategies.
2 And like Dr. McMahon, we identify challenges, at
3 least in terms of what Hydro has presented in this
4 hearing, of the appropriate tools for the
5 evaluation of different watershed management
6 scenarios.

7 So from our client's perspective,
8 while integrated water resource management is an
9 objective, and a reality in a number of other
10 jurisdictions, it's a challenge in the Manitoba
11 environment.

12 One other element of the status quo,
13 part B of part 5, is the absence of integrated
14 resource planning. And I have put a definition up
15 there from the Public Utilities Board. That's
16 really looking at the longer term power supply,
17 balancing supply side alternatives, including
18 hydroelectricity, new renewables, as well as
19 demand side energy efficiency initiatives. And
20 it's an important approach in a number of
21 jurisdictions. But clearly in the NFAT, the
22 Public Utilities Board found that Manitoba Hydro
23 was not achieving that ideal. Its analysis of
24 conservation measures was neither complete,
25 accurate, thorough, reasonable, nor sound,

1 according to the PUB.

2 Why does it matter for this dialogue?

3 Well, again, from our client's perspective, it
4 points at a high level to that lack of integrated
5 approach. Our sustainable development guidelines
6 talk about integrated planning approaches. Again,
7 this is a shortfall of Manitoba Hydro. And we
8 raise the question, if we use less will we build
9 less and avoid further impacts? So we think it's
10 part of the equation. So that's the status quo.

11 We talked a fair bit last week about
12 the environment for change. We're going to
13 highlight just a few elements of it today without
14 spending the time we did last week.

15 But a major driver of that environment
16 for change is the sense, we're certainly hearing
17 it from downstream folks, as well as some
18 communities upstream, that things are not
19 stabilizing, things are getting worse. And that
20 traditional knowledge perspective is supported by
21 science. The Canadian Science Advisory
22 Secretariat flags that riverine ecosystems are
23 under an increasing threat from human activities,
24 with hydroelectricity being one of the ones
25 enumerated. That's a central message that you

1 have heard from our client, you have also heard
2 from Dr. Luttermann and others in this hearing.

3 So part of that environment for change
4 is a recognition that what we're doing now is not
5 good enough. And not only is it not good enough,
6 is that there is a lack of stability. And when we
7 juxtapose that with the risks that we face in the
8 future, whether climate change or other human
9 development, that's a particular concern.

10 The environment for change has also
11 been captured in the language of tribunals in
12 Manitoba. And I am quite shameless in my argument
13 today in repeating back some of the words of the
14 Clean Environment Commission. I'm told that's
15 good tactics, but it's also wise words from the
16 Clean Environment Commission.

17 One of the most significant indicia of
18 the need for change and the recognition for change
19 came out of Bipole III, with the recognition that
20 we needed to do a regional cumulative effects
21 assessment, that we had to have a baseline before
22 we move forward, that we had to have analysis
23 which could be the foundation for modern adaptive
24 management.

25 That echoing of the need for change

1 was also apparent from the Public Utilities Board
2 in the NFAT decision, highlighting the requirement
3 for new commitment to a clean energy future.

4 Echoing the language perhaps of others in this
5 hearing, the importance of investing in new
6 planning tools. And saying in the last bullet
7 that integrated resource planning should be the
8 cornerstone of a new clean energy strategy for the
9 Province of Manitoba.

10 So our client sees powerful parallels
11 between the thrust of the tribunals which are best
12 in the position to know.

13 We see that climate for change in two
14 parallel reviews of the Environment Act that are
15 ongoing, and we talked about that a fair bit last
16 week, so I won't dwell on it. But we also see
17 that climate for change in values. And the point
18 we're trying to make on this slide, being slide
19 27, is that change in values offer both an ethical
20 and a financial incentive. Just think of part of
21 the push to get a final licence. How do we sell
22 as a renewable source of power to Wisconsin? We
23 need a final licence under LWR and CRD. And
24 that's reflective of a change in the market-place.
25 But there is a premium attached to products that

1 are considered to be produced in a more ethical
2 manner.

3 Mr. Cormie is probably tired of me
4 quoting him, but from time to time he has wise
5 words. And he's talked about our social licence
6 changing, standards changing, and about the great
7 opportunity presented. And Dr. Luttermann and
8 many others have talked about the press of events,
9 the need to look at cumulative overlapping
10 effects.

11 The final point about the environment
12 for change that our client wishes to underscore is
13 that Manitoba is not out on a limb here, we're not
14 alone. We're not even at the cutting edge. The
15 thrust of our brief and our presentation last week
16 was that there are robust examples in other
17 jurisdictions, both operationally in terms of
18 ecological flows, whether it's Glenn Canyon in
19 Colorado or the Grand River in Ontario, or in
20 terms of lake level variation, where we see plan
21 2014 proposed by the IJC. And it's not on here as
22 a bullet, but you have heard Mr. Cormie talk about
23 approaches in British Columbia. And if you dig
24 deep into the footnotes of our presentation, our
25 written brief, you will see reference to some very

1 innovative work that's being done by B.C. Hydro.
2 We reference Revelstoke dams five and six in terms
3 of looking at flows that may assist the salmon
4 population. So we're not alone. And
5 legislatively, we have offered, from our
6 respectful perspective, a plethora of innovative,
7 thoughtful options, whether it's the U.S., British
8 Columbia, the Territories, or some of the
9 thoughtful work being done in terms of governance
10 in jurisdictions such as Australia.

11 So if we go back to the diagram, we're
12 going to ask you to flip the page, though. What
13 might change look like? And our client has
14 admonished me to be a bit cautious here, because
15 change, the prescription for change shouldn't be
16 coming exclusively from our client, it should be
17 part of the dialogue going forward. But we have
18 blue sky'ed, or blue coloured a few elements of
19 what change might look like.

20 Our client still believes, focusing to
21 the left at about the 10:00 o'clock position,
22 Hydro's core mandate involves reliability, economy
23 and efficiency. But that's sustainable. And our
24 client would argue that it's not currently
25 sustainable. That's what the future needs to look

1 at.

2 Our client, going down
3 counter-clockwise, transparent and balance
4 planning and operational decision-making, express
5 consideration of the weight to be given to
6 economy, reliability, ecology, social values, and
7 express articulation of those trade-offs. Our
8 client has certainly seen, in what change might
9 look like, a more robust approach to integrated
10 water resource management and resource planning.
11 And you have heard the ISD talk about it, you have
12 heard Dr. Luttermann talk about it, you have heard
13 others as well, a more robust approach to adaptive
14 management fueled by both traditional knowledge
15 and science, reconciliation with indigenous
16 people, and an inclusive and transparent
17 stewardship approach to planned projects, but also
18 to existing projects. No more quiescent
19 licensing.

20 So that's our client's guess at what a
21 modern balance might look like. And there's
22 plenty of examples out there to choose from.

23 Change doesn't come without
24 consequences. As consumer values evolve and as
25 things change, there will be consequences to a

1 modern balance. Our client doesn't know what that
2 looks like. Will there be more pressure on the
3 Hydro bottom line, that first edge of the sword,
4 or will there be more value in the Hydro brand?

5 A key criticism of our client of the
6 current status quo is that there's no objective,
7 inclusive, holistic way of measuring those
8 trade-offs. It's a bit of a closed shop.

9 Manitoba consumers tell us they want
10 the information to make informed policy choices,
11 and the voice and the influence to influence those
12 choices. And so our client is aware that there
13 may be the risk of adverse consequences as things
14 change. But the message they have had from the
15 consumer interest is that, give us the
16 information, give us the fair system, and let us
17 have input into those choices.

18 Mr. Harden, in his questioning of the
19 panel, or actually us, last week flagged one of
20 the most contentious questions we have had within
21 our team. Is there the will? And he actually
22 used some nice language there, treading in murky
23 water, so to speak. I think that was very nice.
24 But raising a very important question about will.
25 And our client wants to underscore that while they

1 are optimistic about the potential and about the
2 climate for change, they see will as essential.
3 Having an inclusive two-way conversation is
4 important -- undertaking transparent independent
5 research. And one of the notable parts of this
6 hearing, if you think of the Netley-Libau wetlands
7 debate, look at what they have done in Ontario as
8 part of plan 2014, an extensive discussion of the
9 effects of the compression of lake levels on
10 wetlands. I think 32 sites studied. I'm holding
11 up about 8 inches worth of literature on it. What
12 does Dr. Goldsborough describe our state of
13 knowledge as -- as trivial. So here's that
14 openness to independent research, whether or not
15 we like the results.

16 Mr. Bedford made this point well, in
17 terms of me questioning the PILC panel last week,
18 the importance of listening and sometimes the
19 communication disconnect between different
20 communities, whether upstream and downstream.

21 Our client has identified as the
22 fourth bullet, as a key element of will, to avoid
23 treating these dialogues, these discussions as PR
24 exercises. And certainly they talk about the
25 importance of being candid in terms of our

1 trade-offs.

2 On page 33 of our slide, I have
3 highlighted a few other elements of will, just one
4 or two to highlight. Having the will not to treat
5 hydroelectric generation is sacrosanct. It
6 doesn't mean it's not core to who we are, to our
7 economy. But that was the message to the Public
8 Utilities Board. I think it's a public message in
9 this hearing. You can't have a candid discussion
10 if there are sacred cows, if there are exempted
11 legacy projects. If change, meaningful change is
12 going to happen, everything analytically needs to
13 be on the table.

14 What next? I promise this is the last
15 time I quote the CEC. I think, again, this was a
16 question of the PILC presentation last week, a
17 common sense suggestion in our client's view by
18 board member Yee, wouldn't it make sense if some
19 sort of body, cooperative body comprised of key
20 stakeholders would work jointly to develop
21 mutually acceptable options and develop an EIS on
22 a water management plan together?

23 This kind of thinking is certainly
24 music to our client's ears. And we realize it was
25 just a question, not an opinion, but our client

1 certainly applauds the sentiment.

2 I'm going to take the panel in just a
3 moment to the CAC recommendations, but I just want
4 to walk you through, in Ms. Pastora Sala's
5 beautiful map, just a bit of a sense of the time
6 line.

7 We have divided this into short-term
8 recommendations, thanks to Mr. Bedford's
9 cross-examination, a medium-term recommendation,
10 as well as some long-term recommendations. And
11 just to walk through quickly, one of the more
12 urgent events we highlight, and this is an
13 amendment put in by our client, is engagement on
14 the CEC recommendations. Certainly getting out
15 and getting feedback from the communities already
16 engaged in the LWR process, getting assistance in
17 scoping, and that's one of the first tasks that we
18 have identified.

19 The fourth yellow recommendation down
20 is a new one, and I will talk about it in a few
21 moments, but hosting a public workshop on
22 ecological flow assessment. And again,
23 essentially what we're trying to set out here is a
24 schematic for the timing of the recommendations of
25 CAC Manitoba. There's two new long-term ones that

1 I want to flag as well, and again I'll talk about
2 them a bit more in a second.

3 Actually, as a follow-up for some of
4 our discussion with board member Harden, speaking
5 to the need for greater leadership from the
6 Province in terms of shoreline management policies
7 and legislation, that's the first one under the
8 long-term recommendations. And borrowing a little
9 bit from our Ontario friends, an environmental
10 auditor, also from the COSDI discussion.

11 If Ms. Pastora Sala could pull up our
12 list of recommendations?

13 And I want to go to the second page
14 for our first short-term recommendation. And we
15 were so inspired by Mr. Yee's commentary, board
16 member Yee's commentary, that we thought, well,
17 who better to go out and engage in terms of the
18 feedback with regard to the LWR recommendations of
19 the Clean Environment Commission than the Clean
20 Environment Commission?

21 Now, I don't see a lot of enthusiasm
22 for all that extra work we are suggesting, but our
23 client is mindful of the atmosphere of exclusion,
24 the atmosphere of distrust, and also the urgency
25 from our client's perspective. And you heard

1 Pimicikamak speak of it today. Things need to be
2 done, from our client's perspective, they need to
3 be done soon.

4 And this first recommendation is aimed
5 at having the CEC go out in the fall of 2015 and
6 present the findings from its report to the
7 communities that it engaged already, some of the
8 communities which said thanks for coming around
9 for the first time in 40 years. What would be the
10 purpose? To receive input by these communities on
11 the recommendation, to highlight gaps and
12 uncertainties, and also to build the working
13 relationship. To a large degree, we see this as
14 being an important scoping exercise. And that's
15 certainly what we see coming out of this.

16 Moving to the second recommendation.
17 Last week we talked about a multi-party task
18 force. We've halved off part of that assignment
19 and given it to the CEC, but we do still think
20 it's critically important to have a task force on
21 water governance, to build consensus around that
22 issue within the next two years.

23 And we heard Hydro comment on that
24 today. And it was interesting because we don't
25 think they took issue with the concept, they took

1 issue with yet another committee. And Manitoba
2 Hydro suggested, well, maybe Lake Friendly could
3 do that type of assignment.

4 If we go to page 3, our client looked
5 at having an existing body do that. Our client's
6 judgment and our client's advice is to remember
7 this empty room, remember that attitude of
8 cynicism and distrust that you have heard. Lake
9 Friendly, we have no doubt, is a well-intentioned
10 initiative lead by the Province. Our client has
11 doubts that that will be seen as credible as
12 compared to the multi-party task force that we
13 recommend.

14 We put some proposed suggestions here
15 in terms of organizations, a water scientist,
16 indigenous representation.

17 The fourth bullet on here is actually
18 misstated. I think our client would prefer that
19 be a representative of the consumer interest,
20 whether the national consumer interest or
21 otherwise, industry representative or
22 representatives, and an individual who is
23 understanding of water governance.

24 This committee is intentionally small,
25 I think there's seven or eight there right now.

1 Our client is not adverse to it being 12. But the
2 advice that we have received through our
3 engagement is you don't want 20, you don't want
4 30, too unwieldy. This needs to be a tight
5 organization, well resourced, well supported.

6 What kind of questions might they ask?
7 And if my colleague can stroll up to the Why. I'm
8 not going to go through all those questions, but I
9 did want to highlight a few of the bullets. This
10 is about water governance. This is a key step in
11 our client's view to the broader reform,
12 legislative reform but also planning reform. So
13 the first bullet is, what do policy communities
14 want the watershed to look like in the future?
15 What's their plan? What do we need to get there?
16 Going to the lack of balance in our current
17 process, how can we best integrate a broad range
18 of criteria to create a more inclusive process?

19 Going down to the second last bullet
20 on this page, our sustainable development
21 principles tell us to look at valuing ecological
22 services. There is some scientific literature
23 that speaks to the value of that. You heard the
24 ISD talk about it. But should we go down that
25 route? And if we do, how does such evaluation

1 consider the spiritual and cultural importance of
2 the water? Is it possible to merge those values?
3 That's a key question from our client's
4 perspective.

5 And right beneath it is the other key
6 question that I think you have heard a lot of
7 advice on in the course of this hearing. What is
8 an appropriate governance structure to restore
9 public confidence and provide for a holistic,
10 forward looking and inclusive governance? You
11 have received a lot of recommendations already on
12 that. Unlike others, our client is not prepared
13 to make that recommendation. In this case, we're
14 probably in some agreement with Hydro, in the
15 sense that we need to go out and speak with folks
16 more, and that the record of this hearing, from
17 our client's perspective, is not robust enough.
18 That question, though, our client sees as key
19 going forward and thinks should be a key element
20 of this multi-party task force.

21 In terms of the next recommendation,
22 number 3, this is about the interim licence
23 making, the decision about it, and the criteria
24 for it, and then building to the future. I want
25 to ask my colleague to pull down to the bottom of

1 this page. Right there, please.

2 And you have heard a bit of a
3 difference of opinion today. Manitoba Hydro I
4 think has been a little cautious about inviting
5 new research. Pimicikamak, on the other hand, has
6 said, issues are urgent, we can't lose another
7 year, we can't lose another two years waiting to
8 figure things out. And based on the record of
9 this proceeding, our client has four or five areas
10 of future research that they think are critically
11 important.

12 The first one, an assessment of
13 priority downstream issues, there are others in
14 this hearing who can speak more to that, but we
15 just flagged it. There's clearly an identified
16 need for future research and monitoring directed
17 to that.

18 The second bullet is a critical one
19 from our client's perspective. We have seen from
20 the National Scientific Secretariat, from
21 Pimicikamak, from our own research, the importance
22 of considering ecological flow options. And our
23 client thinks that that kind of analysis is
24 critical, and it's critical to get started on
25 that. Because if there's going to be any hope,

1 any material hope for the downstream communities,
2 a big part of that in terms of the health of the
3 riverine and riparian habitat will be from an
4 examination of ecological flow options.

5 Moving upstream, our clients accept
6 the advice of Dr. Goldsborough that much more
7 needs to be done in terms of wetlands and the
8 effect, if any, of the compression of lake level
9 variation upon them. And again, we point to the
10 conclusion of the robust research in the
11 Laurentian Great Lakes that the compression of
12 lake level variation has had an adverse effect on
13 lake wetlands. From our client's perspective,
14 that is a critical area of future research and
15 study.

16 Taking the advice of Baird is bullet
17 number 4, an independent review analogous to that
18 undertaken on the Laurentian Great Lakes in terms
19 of erosion.

20 And following the practice, the good
21 practice our clients would submit, of the IJC,
22 assessment of lake level variation options similar
23 to what was done with regard to Lake Ontario.

24 I want to just go to page 6 of the
25 recommendations for a moment. And actually, given

1 the time, I'll skip to page 7.

2 Short-term recommendation 7 is the
3 last of our short-term recommendations, and it's
4 that we host a workshop in Manitoba in terms of
5 ecological flow. Why do we make this
6 recommendation? Well, from our understanding, the
7 Canadian Science Advisory Secretariat has
8 identified this as a critically important, but
9 under-used tool for investigating and addressing
10 the health of threatened riverine systems. Our
11 sense of the record here is that there is very
12 little ongoing ecological flow analysis being
13 undertaken by the Province or Manitoba Hydro. And
14 we think that there is high value in increasing
15 familiarity with this important tool.

16 On page 8, we talked a lot last week
17 about the importance of an environmental
18 assessment, about not waiting to 2026. I think
19 certainly our clients believe that that point was
20 made appropriately and powerfully last week. We
21 want to underscore that recommendation.

22 And the last couple that I really want
23 to focus on, going to page 9, is the suggestion of
24 the importance of reforming our regulatory
25 framework for water governance. And going down to

1 the fourth bullet, an important one, the
2 development of clear and well-coordinated process
3 for scrutinizing licence applications, including
4 criteria to assess previously unlicensed projects,
5 opening licences for review, establishing licence
6 conditions consistent with management plans, and
7 the last sub bullet there, eliminating silos by
8 making provision for the integrated review of
9 operationally integrated facilities.

10 And you heard Mr. Cormie on that point
11 this morning. And again, we find ourselves, our
12 client, in agreement with him.

13 Going to the next bullet, that's that
14 public trust concept. If we think of what we
15 would suggest is hesitant regulation, the
16 importance of highlighting that obligation to
17 actively regulate, to protect, to exercise ongoing
18 supervisory control and review.

19 The second last bullet on this page
20 speaks to a better balancing of operational plans.
21 And if we could go to the next page -- go to the
22 top of page 10, Ms. Pastora Sala. The last one to
23 talk about, consider making expressed provisions
24 for ecological or environmental flows. We have
25 seen that in B.C. and there may be value in

1 Manitoba as well.

2 Page 12 of the recommendations,
3 towards the bottom of that page is a
4 recommendation that did not appear in our original
5 presentation. And that is pulling from COSDI, as
6 well as Ontario experience, we call it an
7 environmental auditor, in Ontario they call it an
8 environmental commissioner. There's not a real
9 mechanism in terms of dealing with complaints,
10 unless it's under the cumbersome Northern Flood
11 Agreement. Our client thinks that that may be an
12 important tool for good water governance in this
13 province. We should be clear here. The role we
14 envision isn't for this Commissioner or auditor to
15 do the actual investigation, it's to receive the
16 complaint, refer to the appropriate department,
17 oversee the reasonableness of the analysis,
18 provide a mechanism. And so that's certainly how
19 we see that point working.

20 Noting the time, I just want to go to
21 slide 39 of our powerpoint.

22 This has been an invigorating and
23 unusual Clean Environment Commission proceeding.
24 The policy dialogue and the governance dialogue I
25 think has been particularly robust. The level of

1 engagement in communities has been very powerful,
2 and our client applauds that. We do have some
3 caution about the factual record. We don't
4 consider this a particularly robust hearing
5 factually. Whether it's with regard to downstream
6 impacts, upstream impacts, climate change, human
7 development, there was not a particularly rich
8 Hydro filing. We didn't have the resources for
9 participants that we might have had in other
10 proceedings, so we had to pick our spots much
11 more, and there certainly would have been much
12 more vigorous testing of the allegations of fact
13 by Manitoba Hydro in a different process.

14 So when the board no doubt will have
15 some intriguing policy recommendations, our
16 client's advice to the board is, if you are going
17 to make factual determinations, pay heed to the
18 unusual nature of this hearing. Exercise -- you
19 always exercise caution, but in this hearing in
20 particular, given the challenges in terms of the
21 record, we would recommend extreme caution.

22 And perhaps I should have done this at
23 the start. We do want to thank the Clean
24 Environment Commission staff, unfailingly
25 supportive and helpful.

1 Our client appreciates the granting of
2 participant status to CAC Manitoba in this
3 hearing. And our client truly applauds the
4 efforts of the Clean Environment Commission to
5 make this hearing meaningful. And certainly, I'm
6 speaking for myself now, when I saw that terms of
7 reference, this was a hearing that could have
8 easily gone very badly off track, or engendered
9 even more cynicism than already exists. Our
10 client thinks this is not a hearing we want to
11 repeat in the future, but our client sincerely
12 wants to applaud the efforts of the Clean
13 Environment Commission to do something meaningful
14 and innovative, given the limits of your terms of
15 reference and your resources.

16 We appreciate the opportunity to make
17 these presentations, as well as your patience in
18 waiting for the USB. Thank you.

19 THE CHAIRMAN: Thank you,
20 Mr. Williams, and thank you for your compliments
21 and your advice to the Commission. As you well
22 know, we don't get to set the terms of reference
23 that are sent to us.

24 I have just one question of
25 clarification, and it's on page 17, and you're

1 actually quoting Mr. Cormie, but I don't quite
2 understand. I don't know if you quoted it
3 correctly, or if I need to talk to Mr. Cormie
4 about it, but it says:

5 "And continued control of river flows
6 has been key for further northern
7 hydro development such as is not
8 occurring at Keeyask."

9 MR. WILLIAMS: Well, I think that
10 should say such as is occurring at Keeyask. I'm
11 very confident of that. And whether that was our
12 fault or not, I think that's clear that that's
13 Mr. Cormie's intent. We would have no objection
14 if he speaks to that, or he did give me the nod I
15 think as well.

16 MR. CORMIE: I think it should be
17 "now".

18 THE CHAIRMAN: Now. That makes much
19 more sense. Thank you.

20 MR. WILLIAMS: I'm not sure I'm taking
21 the blame for that one, but I may be.

22 THE CHAIRMAN: Again, thank you very
23 much, Mr. Williams and Ms. Pastora Sala, and the
24 rest of your team, the folks from the Consumers
25 Association, as well as the folks in your office,

1 your support staff in the office. Thank you for
2 your participation. It's been up to your usual
3 standards. Thank you very much.

4 That completes today's proceedings.
5 Tomorrow we will meet here at 9:30 for our final
6 day. We have up to four participants making final
7 argument, as well as Manitoba Hydro. So we
8 should, if all goes well, finish at around about
9 4:30 tomorrow afternoon, and we can all relax for
10 a day or two. Good afternoon.

11 I had forgotten it for the first time
12 since early in these proceedings. Documents to
13 register?

14 MS. JOHNSON: Yes, we do, and we have
15 a pile today. MH number 13 is the letter from the
16 Deputy Minister to Norway House Indian Band in
17 1985. MH 14 is the NFA status update. 15 is the
18 set of slides that were shown this morning. CAC
19 number 9 is the errata that was filed earlier
20 today. CAC 10 is the diagram that was just shown
21 in the presentation. 11 is the list of
22 recommendations. And number 12 is the
23 presentation.

24 (EXHIBIT MH 13: Letter from Deputy
25 Minister to Norway House in 1985)

1 (EXHIBIT MH 14: NFA status update)

2 (EXHIBIT MH 15: Set of slides)

3 (EXHIBIT CAC 9: Errata filed)

4 (EXHIBIT CAC 10: Diagram shown in
5 presentation)

6 (EXHIBIT CAC 11: List of
7 recommendations)

8 (EXHIBIT CAC 12: Presentation)

9 THE CHAIRMAN: Thank you. No other
10 business? Okay. We're now adjourned until
11 tomorrow morning.

12 (Proceedings adjourned at 3:31 p.m.)

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