

MANITOBA CLEAN ENVIRONMENT COMMISSION

LAKE WINNIPEG REGULATION REVIEW

UNDER THE WATER POWER ACT

VOLUME 18

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Transcript of Proceedings
Held at RBC Convention Centre
Winnipeg, Manitoba
THURSDAY, APRIL 16, 2015

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1 THURSDAY, APRIL 16, 2015

2 UPON COMMENCING AT 9:30 a.m.

3 THE CHAIRMAN: Good morning. Welcome
4 back. Welcome to what we have all been looking
5 forward to, the final day of hearings in the City
6 of Winnipeg. Mind you, for some of us, we still
7 have more travel and a couple more, or a few more
8 community meetings in Norway House next week, and
9 with the MMF the following week.

10 We have, I think, four closing
11 arguments today, followed by Manitoba Hydro's
12 closing argument. If we can finish early today,
13 we can all go home and have a nap so we can stay
14 up late tonight to watch the Jets game.

15 First on the agenda this morning with
16 her closing argument is Gaile Whelan Enns on
17 behalf of Manitoba Wildlands.

18 MS. WHELAN ENNS: Good morning. At
19 the end of the third set of recent hearings for
20 decisions regarding Manitoba Hydro projects, there
21 is a temptation to just reuse significant elements
22 of the previous closing argument, but I haven't
23 done that.

24 THE CHAIRMAN: Do you want us to just
25 write the same report?

1 MS. WHELAN ENNS: Now, now. I guess I
2 opened that door. Have not done that, though the
3 closing arguments from Manitoba Wildlands are
4 available on our website, on the CEC website and
5 so on, and there's certainly some repeat issues
6 and so on.

7 We will be filing these remarks in a
8 written form by your end of April deadline. What
9 I have in front of me is probably going to be,
10 when it's in its formal written form, in a
11 slightly improved order with citations and so on.

12 Now, these hearings, after 40 years of
13 the operation of Lake Winnipeg Regulation, are the
14 beginning, we all hope, of a collaborative set of
15 steps for both Lake Winnipeg, the regulation of
16 Lake Winnipeg and the Nelson River system.
17 Ideally, one would have been able to include the
18 Churchill River Diversion in that opening
19 sentence, but we're not there yet. And that has
20 been noted during these hearings by a variety of
21 people, including experts that the Clean
22 Environment Commission identified to, in fact,
23 help us all in these hearings.

24 The CRD, of course, is also without a
25 final licence and the public process for that

1 decision is long outstanding. Many of us perhaps
2 would have appreciated knowing what that process
3 will be, while being involved in the Lake Winnipeg
4 Regulation proceedings and hearings.

5 As is somewhat characteristic,
6 perhaps, from myself and our direction, we'd also
7 like to start these remarks with some comments
8 about how we think, and concepts. And I want to
9 thank members of the panel for some very good
10 questions in this track when we did our
11 presentation last week.

12 So, noteworthy is the lack of any
13 alertness, reference to, or content from Manitoba
14 Hydro regarding applying the precautionary
15 principle to regulation of Lake Winnipeg. It's an
16 absence, it's a notable absence.

17 We also generally, and we are dealing
18 with a project, a licence, and a team that have
19 not seen, review, these kind of proceedings, or
20 hearing at all. So I'm reminding ourselves that
21 we have this 40 year gap. So that also may well
22 be the reason why we have a tendency perhaps, an
23 alertness perhaps among the participants and
24 experts who have been in the room to emphasize
25 interdisciplinary thinking, interdisciplinary

1 action, and sets of information for
2 decision-making and for review. But, again, I
3 think that it's accurate to say that anything
4 interdisciplinary, other than perhaps legal and
5 engineering, has been absent in the approach that
6 Manitoba Hydro has taken to these proceedings and
7 these hearings.

8 We have had a pattern, and again thank
9 you for some of the questions last week, we have
10 had a pattern of urging to all of us to think
11 about the whole hydro system, the whole lake, how
12 everything is connected. We have had Aboriginal
13 voices in the room. And it's certainly happened
14 three hearings in a row, urging complete thinking.
15 Again, they choose words and make these comments
16 from a different vocabulary perhaps than the rest
17 of us, but it is the same urging.

18 We went looking for definitions and
19 for systems thinking in preparation for this
20 morning. And there is no shortage, there's entire
21 websites out there, and academic sources, there's
22 a whole variety, and business management sources
23 that specialize in helping people who are making
24 decisions, who have responsibilities, who are
25 planning and operating systems, in terms of how to

1 enter into systems thinking to the benefit of all
2 of the parties that are receivers or partners in
3 the decisions made. So this is just one
4 definition. But the book, the fifth disciplined
5 field-book seems to be referenced and
6 cross-referenced and used right across the
7 materials that we were finding about cross --
8 about systems thinking, excuse me.

9 So a definition then, systems thinking
10 is a way of thinking about in a language for
11 describing and understanding the forces and
12 interrelationships that shape the behaviour of
13 systems. This discipline helps us to see how to
14 change systems more effectively, to act more in
15 tune with natural processes of both the natural
16 and economic world.

17 So we would like to make a
18 recommendation that the engineers involved in Lake
19 Winnipeg Regulation do some reading, do some
20 learning, and get ready for the future in terms of
21 their responsibilities. Systems thinking and
22 interdisciplinary methods are the way to and
23 through the future, including for Lake Winnipeg
24 and our hydro system and, therefore, all of us,
25 whether they are ratepayers and think of ourselves

1 as owners of Manitoba Hydro.

2 There's two suggestions we'd like to
3 make then in terms of this exercise in learning
4 and reading. And I'm in no way being sarcastic
5 here. The go forward for Lake Winnipeg
6 Regulation, both upstream and downstream, is going
7 to need good will, collaboration, and openness on
8 how to go forward together. So the two
9 suggestions here are John Ralston Saul, and it's
10 always fun to start with Voltaire's Bastards.
11 During a previous Provincial Government in the
12 Province of Manitoba, a lot of well-intentioned,
13 honourable civil servants that I had a lot to do
14 with in the 1990s had a reading club, and for
15 their morale they were reading Voltaire's Bastards
16 to basically cope. And it is helpful, because he
17 basically tells us that here we are in the 21st
18 Century, based on 17th Century thinking and
19 evolution.

20 There are also two of John Ralston
21 Saul's books that are about Canada as an
22 Aboriginal country, and they are both relevant for
23 all of us to take a look at. When I can find them
24 online and secondhand, I buy them up and hand them
25 out. So that's, again, the first suggestion by

1 author.

2 And the second one is Malcolm
3 Gladwell. So you don't have to agree with
4 everything Mr. Gladwell is theorizing about,
5 because he still, no matter what your perspective
6 on his conclusions, causes us to think. So we
7 would recommend Tipping Point, Blink, The
8 Outliers, and David and Goliath. And The Outliers
9 is surprisingly relevant in terms of race,
10 culture, who is impacted. You have to get to the
11 last chapter before that begins to be very, very
12 clear.

13 Now, the next thing I'd like to make
14 reference to this morning has to do with the
15 public policy research that Manitoba Wildlands was
16 engaged in, again, to our capacity for the Lake
17 Winnipeg Regulation review, proceedings and
18 hearings. We found that there is dozens of laws
19 that potentially, and regulations that go with
20 them that have impact on or should be involved in
21 the status of the lake and the river system. We
22 found that the framework for public policy for
23 Lake Winnipeg is insufficient in that it's all
24 silos or single issues, single element, one piece
25 at a time, often in reaction to a problem.

1 There's also, of course, no -- there's
2 insufficient accountability evaluation on action
3 and follow through. This is, in public policy
4 generally in our province and country, this is the
5 biggest single challenge.

6 We also came to a conclusion that's
7 been confirmed during the hearings, that the
8 public policy process for the future of Lake
9 Winnipeg, for the future of regulation of this
10 huge reservoir in our Province does need a whole
11 systems approach. It needs systems thinking. It
12 needs to, in fact, not simply be about nutrients,
13 or wetlands, or flooding, or shoreline erosion
14 or -- we need to find a way to go forward in that
15 regard.

16 Now, our recommendations are in the
17 presentation that you all have in terms of what
18 was voiced when we were presenting last week, so
19 I'm not going to go through them again, other than
20 to voice this urging, or hope that your panel,
21 your technical advisors, your support system in
22 coming to contents of your report, that all those
23 steps will include some thought about the
24 situation for public policy.

25 That, of course, leads us to the

1 recommendation we have already made about how
2 there is a need for a comprehensive governance
3 approach to the lake, for regulation, management,
4 monitoring, and protection of all the systems for
5 the lake.

6 As I just mentioned, we're hopeful
7 that we'll have transparency, watershed
8 planning -- my goodness, that was one of the
9 recommendations from the implementation committee
10 10 years ago, greater accountability, benefits for
11 all affected, for all parties.

12 We have identified what's necessary at
13 this point to take the public policy research that
14 we have accomplished and complete it, make it
15 living, make it available. So this includes
16 putting in place a protocol in terms of what else
17 needs to be included. And there are a variety of
18 other research products, peer-reviewed papers, and
19 fairly significant number of Masters, I'm not sure
20 about Ph.D. thesis work, but there is a lot out
21 there that was not included in this stage that we
22 went through. We were also not able to get into
23 repositories, you have heard that before, the need
24 for a fairly sophisticated and relational database
25 to make the connections, if you will, and to open

1 doors in terms of, again, interdisciplinary work
2 would really make a difference.

3 We talk in our office about putting in
4 place web vaults, just sort of shorthand for an
5 assumption that, in this day and age, the products
6 we're talking about, the database we're talking
7 about, the actual materials would all be able to
8 be online in a web vault, which is basically one
9 place to go for all of this. And then you
10 basically keep it up.

11 We also, when we're involved in
12 putting this kind of set of products together,
13 often for First Nation in our office, we put a
14 protocol in place so that everybody knows the
15 naming in the categories. This is self-obvious,
16 self-evident.

17 The goals and the action for access to
18 the information and dissemination work to -- and I
19 have been looking at, in the last week, some of
20 the existing Manitoba school curriculum regarding
21 Lake Winnipeg. So that's an example of where
22 that's out there. It might need -- I mean, it's
23 in an optional senior high school level that I
24 found so far. So the question is, what else can
25 be done, what else is in the system? What else,

1 in fact, can go into curriculum and so on? And of
2 course, you make something like this alive and
3 ongoing.

4 So we have a recommendation, and there
5 is perhaps a hope that the CEC can recommend the
6 rest of these steps so that public policy,
7 research information regarding Lake Winnipeg,
8 including -- and this is very important -- what
9 happens next in the next phases are accessible and
10 used.

11 We had a variety of assumptions from
12 sort of the very front of the preparation for
13 these hearings, in our office, based on the
14 messages that Manitoba Hydro was communicating
15 before the hearing started. And that, of course,
16 goes to the public engagement and the number of
17 presentations and so on that some of us were in.
18 We would like to assert, following the
19 presentations and what we have learned during the
20 hearings and what the pattern coming forward from
21 the participants is, that it's quite clear that we
22 need to sort out exactly how much, which, to what
23 degree, how the regulation of Lake Winnipeg is
24 adversely impacting communities in the Winnipeg
25 ecosystems and economy.

1 It's also clear that technical work
2 and study, perhaps independent of Manitoba Hydro,
3 is needed to unwrap the causes of the effects and
4 the impacts, so that decisions can be made that
5 reduce impacts, benefit communities, and the
6 fishery, for instance, and improve governance,
7 management, regulation, monitoring and protection.

8 Now, it's fairly common in our office
9 for me to get on the phone and talk to people
10 across Canada at the beginning of this kind of a
11 proceeding to get some advice, to ask some
12 questions, to, you know, indicate what we perceive
13 the applicant is saying. And while we were not
14 necessarily able to bring as many experts into
15 this room as we wished, it's a real help to have
16 very specific kinds of advice going in.

17 So, one of the professors emeritus
18 from the University of Alberta said to me, well,
19 Gaile, if you achieve anything at all in these
20 hearings, it needs to be identification of effects
21 and impacts, environmental effects and impacts,
22 social, environmental, economic, the whole range
23 around the lake, and then the kind of technical
24 work, and will to do the technical work, to do the
25 analysis in terms of what the combination of

1 causes are, and how the regulation of Lake
2 Winnipeg and the fluctuating water levels and the
3 current wet cycle is affecting everything. And
4 the last thing said was, it's doable, Gaile, this
5 is doable.

6 We can't agree, and this has got to do
7 with being in 2015 rather than 1970, we can't
8 agree that regulation of the lake reduces
9 flooding. It's simple enough to accept that that
10 was a premise provable and relevant 40 years ago.
11 But we are here now, and there is a dramatic
12 increase in flooding and for, depending on who's
13 talking, 10 to 15 years sustained high water
14 levels, where then the regulation and the
15 fluctuation of water levels and so on has a whole
16 range of impacts.

17 So we need to perhaps think about what
18 the information needed, and I think this applies
19 downstream and upstream, what the communities need
20 to know about what the water is doing.

21 We have Water Survey of Canada gauges.
22 The Water Survey of Canada gauges, some of them
23 have, you know, 50 to 60 or more years of data.
24 That's great. But they are in place and used for
25 regulation. So there are some responsibilities

1 here that need action, because the communities
2 need to know water flow, there's not that many
3 water flow gauges. The communities need to know
4 what their water levels are. And I would think
5 that it would be true, if Manitoba Hydro staff are
6 thinking at the moment, well, you know, it's all
7 online. All the discussion about notification in
8 these hearings, and what I'm trying to say now is
9 about the responsibility to assist those
10 industries, communities, individuals affected by
11 the lake to not lose their lives, not lose their
12 equipment, not lose their wharves, not lose their
13 boats, to be able to plan their business,
14 including if it's tourism based. So it's a hole,
15 it's a huge gap. And we feel quite strongly it
16 needs attention, including, and there's no point
17 in going into whose responsibility this is, it's
18 just really clear that the communities don't have
19 the information they need that they are looking
20 for.

21 There is an illusion perhaps, and I
22 don't think it goes all the way to being a
23 delusion, about the levels of water on the lake.
24 So we all know what the licence says. The problem
25 is that there is an illusion that if the licence

1 has 711, 715 maxes on it, and the utility is
2 telling us where they are at in relation to their
3 licence, the illusion is somehow or other that's
4 information about the water levels in the lake.
5 And it isn't. It's information from the gauges
6 that are used to arrive at the mean required under
7 the licence for regulation of the lake. Two
8 different things.

9 So our recommendations in this area
10 include finding ways to get more water gauges onto
11 the lake. Look at the west wall, and this should
12 all be before any more channels, there aren't any.

13 If you look at the major bays on the
14 lake, most of them don't have. If you look at
15 this situation in terms of where the gauges were,
16 locations were chosen at the narrows, and let's
17 face it, the narrows is very erratic in depth of
18 water, very, very important in overall planning
19 and regulation of the lake, and quite a bit deeper
20 in a lot of places. There's some questions about
21 whether for the 21st Century, the Water Survey of
22 Canada, or the Province of Manitoba, or/and the
23 utility need to in fact also put water gauges in a
24 variety of places for regulations going forward.

25 Most communities are lacking, or are

1 not accessing and fully being able to use the
2 information in terms of water flow. And that's a
3 recommendation in terms of, again, how to make it
4 available, how to improve the information about
5 water, and how to make sure it's used.

6 We had some interesting experiences in
7 our office sort of in the lead up to the hearings
8 and during the hearings, and have started to
9 identify information that we don't have. We had a
10 couple of surprises in terms of information that's
11 been omitted by Water Stewardship, Manitoba Hydro,
12 and therefore not in the hands of the CEC. So I'm
13 going to describe a few of those.

14 Our expert on climate change asked
15 some questions of us based on having a bit better
16 understanding of the system. He wanted to know
17 how much water Manitoba Hydro spills. He was
18 reading the reports and presentations from certain
19 of the CEC's experts in these hearings. So I was,
20 you know, getting these questions. There's
21 nothing like two night owls having weird
22 conversations like this at 11:00 o'clock at night.
23 But he wanted to know how much water is spilled.
24 And it was partly because he was reading
25 Dr. McMahon's material, and then reading some of

1 the presentations about what's happening to the
2 inflows, how much they have increased, and then
3 discussion in the hearings about the drainage
4 system for the Province and for Southern Manitoba
5 dramatically increasing the inflows.

6 So there's lots of options, there's a
7 lot of options in terms of retaining more water
8 and slowing down in terms of what's coming into
9 the lake, that have been worked up since the 1997
10 flood. And there are some working examples now in
11 conservation districts in Southern Manitoba. But
12 this combination of natural and then unnatural
13 water level fluctuations, plus the ongoing high
14 water levels due to inflows in the province into
15 the lake, really need some careful thought. So to
16 go back to the question, there was no information
17 about how much water is being spilled in anything
18 filed, and the information was refused when we
19 asked for it.

20 The observation from Mr. Beckwith was,
21 well, this is not pertinent to my presentation,
22 Gaile, but if there's too much going into the lake
23 and Manitoba is therefore spilling a lot of water,
24 isn't that wasted energy and money? Not a
25 hydrologist, right, a climate expert and an

1 engineer asking a question.

2 Now, I don't run this system, and we
3 all know that 2005, in particular, was a year
4 where the water was circulated repeatedly until it
5 could be used to generate energy. So the answer
6 is not simple, but we get concerned when
7 information is not available.

8 So, are we wasting water? Are we
9 wasting energy? Are we wasting money? Why is the
10 information not available? How much has the
11 spilling of water increased in the wet period
12 we're in, the wet cycle? And what does this mean
13 for decision-making?

14 We have some concern about the
15 information that is or is not available in terms
16 of the shoreline, and the baseline information
17 about the shoreline for Lake Winnipeg as of 1970.

18 So the filing says that in 1974, the
19 study board, as part of their work, measured
20 shoreline erosion rates around Lake Winnipeg, or
21 rather that their shoreline erosion rates were
22 investigated by them. This involved creating two
23 sets of maps, using aerial photos and land
24 subdivision surveys, one set of maps plotted
25 location of the shoreline at several different

1 points in time starting in 1876, while the other
2 set used these shoreline positions to determine
3 erosion and rates at various locations.

4 Now, we have been listening to the
5 results of, and assumptions from Manitoba Hydro on
6 a variety of things to the shoreline, but there is
7 information here that could probably have helped
8 you in your work and the rest of us in our
9 understanding.

10 We had a response then to an IR, I
11 guess it's Manitoba Hydro 001, that Manitoba Hydro
12 does not have a model for Lake Winnipeg
13 shorelines. As indicated on page 68, which is
14 what I just read to you, shoreline erosion rates
15 around Lake Winnipeg were investigated in 1974 as
16 part of the work led by the Lake Winnipeg,
17 Churchill and Nelson River Study Board.

18 Well, fine, what about over the last
19 40 years?

20 So that is a reference to Lake
21 Winnipeg technical work in relation to regulation
22 of Lake Winnipeg.

23 So we have sort of a dual track system
24 in terms of what we're hearing from Manitoba Hydro
25 about Lake Winnipeg. There's no impacts from

1 regulation of the lake, none of that's our
2 responsibility, and variations on that. And then,
3 oh, by the way, we have started that, and we know
4 this, we know concretely that none of the
5 shoreline erosion has anything to do with
6 regulation of the lake. It's two tracks, it's two
7 sets of responses, maybe two sets of analyses. We
8 needed more shoreline information about the lake
9 in this undertaking in these hearings.

10 We are also concerned about the filing
11 and what was provided regarding the licence
12 itself. So all we have is the licences. There is
13 no information in terms of -- there's a few
14 citations and cross-references, but there's no
15 information in this schedule here in the filing
16 about the relationship between the regulation of
17 the Water Power Act and the licence. It's
18 constant reference in the licence to those
19 regulations, including the licence says that in
20 terms of regulation of the lake, Manitoba Hydro
21 must accommodate any updates, changes,
22 adjustments, I would use the word improvements, in
23 those regulations while they hold a licence for
24 regulation of the lake. So it isn't static from
25 1972, it is not.

1 On page 5 of that schedule, item 14,
2 it's very, very clear that the licence includes
3 the surveys at the time. They were not provided.
4 So it's a weak schedule. This limits, I think all
5 of us in our ability to contribute, inform each
6 other and help with the decision-making. So you
7 can see why I'm saying it's two sets. I don't
8 know whether it's deliberate, because they are
9 just not combined, but there's two sets of
10 information, two sets of things said in the
11 hearings about the lake. One is no effects, not
12 our responsibility. And the other is I think
13 somewhat contradicted by the reality and then, of
14 course, we hear specific things about Lake
15 Winnipeg at their discretion.

16 So our recommendation here is that the
17 CEC review the entirety of the Lake Winnipeg
18 Regulation licence with a view to making
19 recommendations as to updating the licence and
20 updating those regulations that are inherently
21 part of the licence.

22 I think it would help all participants
23 and all the parties, certainly communities around
24 the lake, and certainly participants in this sort
25 of hearing, for us to have a more complete set of

1 information about the licence.

2 There is another area that was a bit
3 of a surprise to us, and it took me a while to
4 realize that this was also information absent in
5 the filing in these proceedings and so on. And
6 that's because I'm in the room for Manitoba
7 Wildlands, and so I take the other hat off, right.
8 So it took me a while to realize that I have sat
9 in, you know, a fist full of meetings in
10 Aboriginal Northern Affairs offices on Portage
11 Avenue, with Manitoba Water Stewardship staff,
12 where without exception they referred to the new
13 annual Lake Winnipeg Regulation licence report
14 which Manitoba Hydro files every year. So, not
15 here, not in the filing, not discussed, not
16 referenced. I have only read a few of them, once
17 I sort of put the hat back on long enough to
18 realize how many references I have made to this.
19 So, there's some questions, or rather references
20 to these that I had heard, excuse me. There is a
21 couple of questions. Why did the Manitoba
22 Government in 2007 determine that Manitoba Hydro
23 would begin filing an annual report about Lake
24 Winnipeg Regulation, upstream, downstream, it's
25 pretty thorough, it's got every installation in

1 it. Why then are we, on the last day of hearings,
2 without that information? Has it been made a
3 requirement under the licence, or is it just a
4 friendly agreement? What could be added to that
5 reporting mechanism? There's a lot of references
6 in the licence to a wide range of reporting
7 requirements. So it's debatable, it's arguable.
8 It seems to me it's a requirement of the licence.

9 So there's an opportunity here, I
10 believe, to improve on reporting under the
11 licence. There's a variety of things that I think
12 would help all parties to regulation of Lake
13 Winnipeg, again, downstream and upstream. And
14 this is an example of a repeat comment, perhaps,
15 of Manitoba Wildlands in three sets of hearings.
16 The more transparent, the more complete, the more
17 understandable and the more accessible the
18 information about our utility, the better the
19 decisions will be. And whether that's strictly on
20 rates or on a review after 40 years of, let's face
21 it, the reservoir that drives the whole system,
22 it's a predictable thing, I guess, hearing this
23 from me.

24 Now, the next thing I was going to
25 do -- hang on, let me see, I'd better

1 double-check. Yes. The next topic I'm going to
2 move to, and I might even start to talk fast, has
3 to do with climate change. And I asked Paul
4 Beckwith for a summary for this purpose this
5 morning. But he also had a technical suggestion,
6 and that is that he thinks it's timely, perhaps
7 overdue, and neither he nor I are completely aware
8 of whether this work has been done in the past,
9 but he's suggesting that Lake Winnipeg lake floor
10 sediments need to be cored and studied. That the
11 information about climate, the information about
12 algae, the information about a range of species,
13 and all of the information about weather and water
14 quality will be there.

15 So it would, in fact, get -- he's
16 talking about temperature and precipitation
17 records going back much farther, hundreds of
18 years. And also the coring, if it has been done,
19 it needs to be done in the deepest part of the
20 lake, which would be top of the north basin at the
21 narrows, specific locations that are the deepest
22 in the south basin. He's also pointing out that
23 there may well be comparable lakes nearby that
24 have enough similarities to Lake Winnipeg to
25 basically use as a basis to discuss and go forward

1 in thinking about doing this. If there's been no
2 coring of lake sediments in the region, then he's
3 starting to basically talk about scientific
4 experts, different locations in Canada that he
5 knows are doing this in lakes in Canada now.

6 To go to his summary comments: We
7 have changed the chemistry of the atmosphere and
8 this has changed the latitudinally heat balance.
9 This in turn has changed the atmospheric jet
10 streams and the ocean currents that transport
11 heat. Extreme events, torrential rains, floods,
12 droughts and so on, are increasing in frequency,
13 severity and duration.

14 Variability in the system, which he
15 refers to as climate whiplashing, is increasing
16 and will continue to increase.

17 One key metric that is the cause of
18 accelerated whiplashing is temperature rise in the
19 Arctic sea ice, the area and the extent and the
20 volume, okay, of what's happening as a result of
21 the temperature rise.

22 So, let's not make any mistake, we
23 were not simply listening to an expert talk about
24 the Arctic, we were listening to caution about the
25 effects here in Manitoba of what's happening in

1 the Arctic.

2 Lake Winnipeg needs to prepare for two
3 types of torrential rain events. So this is why
4 we were hearing about Calgary or even Toronto in
5 his presentation. The Calgary type was three to
6 four months of rainfall in a day plus over an
7 entire basin. So that would be then three to four
8 months of rainfall, which pretty much would be an
9 entire year's rainfall, an entire season's
10 rainfall in Manitoba, over the entire Lake
11 Winnipeg basin.

12 The second type of torrential rain
13 event would be like what happened in Toronto,
14 where three or four months of rainfall fell in a
15 day plus over one lake. So comparison is to Lake
16 Winnipeg.

17 Linear climate change is what humans
18 expect and continue to expect, and non-linear
19 climate change is our new reality.

20 Again, from Paul Beckwith, we need
21 IPCC updates every year, which is a lot of
22 resources.

23 We need better methods to quickly
24 disseminate the information about real time,
25 excuse me, disseminate information that is almost

1 real time on the significant ongoing abrupt
2 climate changes. System thinking is vital,
3 connecting the dots is vital, and blowing apart
4 all the information silos is vital. So that's
5 from Paul Beckwith.

6 Manitoba Hydro's climate report in the
7 filing, and then the basis for what they have
8 presented in the hearings, despite the fact that
9 they are identifying temperature increases already
10 in the basin and the watershed, still comes to a
11 conclusion that there is nothing to be concerned
12 about until about 2050. And yet the sources are
13 there to clearly identify, and they are, you know,
14 they are scientific sources, they are
15 peer-reviewed, they are public, they are usually
16 accessible, to indicate that in the south basin,
17 we may well already be dealing with between 1 to
18 2 degrees Celsius increase in temperatures, in the
19 north basin 1 degree already.

20 This means the temperature in the
21 basin, as in terrestrial temperature, effects on
22 species and water temperature are already being
23 affected. Perhaps the fishers know that.

24 There's also significant potential, of
25 course, for drought in Manitoba, and we certainly

1 heard that from Paul Beckwith. This makes his
2 question about spilling water a rather interesting
3 one. It makes the discussion about where we would
4 hold water on the land in Southern Manitoba also
5 fairly interesting. If you're going beyond, oh,
6 well, we're in a wet cycle, and you're truly
7 thinking about weather and climate and the whole
8 watershed and basin, then you need to in fact be
9 thinking beyond, oh, the wet cycle is going to
10 pass.

11 We are concerned in a slightly
12 different way than Mr. Bedford is regarding
13 knowledge systems, Aboriginal knowledge,
14 traditional knowledge, or ATK, which is the
15 terminology the developers often use. We'd like
16 to state our surprise, because we have also been
17 in three sets of regulatory hearings in a
18 three-year period where there has been a
19 tremendous amount of informing all parties and
20 sharing of Aboriginal knowledge. So the surprise
21 and the concern we have is that Manitoba Hydro and
22 any project team they bring into a set of
23 hearings, could have, should have, would have been
24 farther ahead on this topic than seems to be
25 evident in what's been asked and suggested in this

1 hearing. And frankly, I'm just uncomfortable,
2 because there is a question that fluctuates and
3 goes away and comes back again about the sequence
4 of three hearings. All we can conclude is that
5 the Lake Winnipeg Regulation panel was not
6 briefed, were not given any information, have no
7 context in terms of what's been going on. And
8 primary issues that they would be and have been
9 dealing with in this hearing, what's been going
10 on, what's in the record, and what has occurred in
11 the two previous sets of hearings on a variety of
12 topics, but in this case, in terms of Aboriginal
13 knowledge systems. It's not just stories, it's
14 all applied, it's day-to-day activity, it's not
15 oral history.

16 So, perhaps this is a request or a
17 recommendation for the CEC and also Manitoba Hydro
18 personnel to give some thought to why First
19 Nations are filling these hearings, why they are,
20 in fact, saying, sharing, informing, coming
21 through the door. It must be pretty important to
22 them.

23 There's another question, and that is
24 why do the participants and First Nations sort
25 of -- and this is true of certain topics for the

1 participants also -- why do we have to keep saying
2 things over and over again? Why are we in fact
3 handling the same content repeatedly? It means we
4 are using a tremendous number of resources in
5 terms of time, budget, public money, for what can
6 be a repeat. Certainly, the record in the hearing
7 needs to be complete. We're not making that kind
8 of comment. It's just that there seems to be
9 within Manitoba Hydro no bring forward. Why?

10 We have a recommendation here where
11 Manitoba Wildlands supports the intent of the
12 Keewatinook fishers in what they have said to the
13 CEC. While we are certainly not speakers of
14 Aboriginal language, we assume that continuous
15 learning is part of being citizens and part of
16 participating as citizens. The knowledge systems
17 that Dr. Ballard was talking about need to be part
18 of decisions for Lake Winnipeg and decision-making
19 about our utility and our hydro system.

20 We all need to be -- and we hope the
21 CEC and Manitoba Hydro are very, very aware of the
22 results and consequences of a 40-year gap,
23 including never bothering, never bothering to
24 learn from First Nations about the lake.

25 We would suggest that Manitoba Hydro

1 needs to table the March 15th, then re-issued and
2 dated March 20th press release regarding the Lake
3 Winnipeg Indigenous Collective, because it was not
4 provided when questions were asked in the hearing,
5 we believe it would be of use to the CEC.

6 We were glad to see, earlier this
7 week, I believe -- sorry, I don't have the date in
8 front of me -- we are glad to see the results of
9 the undertaking regarding the community and public
10 engagement about Lake Winnipeg Regulation from
11 Manitoba Hydro. We have not been through it yet,
12 and we will, in fact, have some comments when we
13 finalize our closing statements. But I think it
14 matters to make, to know a little bit better from
15 what's on their chart than what's on their chart,
16 what the time or pattern has been since 2010, they
17 corrected me, in terms of the period of time the
18 public engagement has been going on. That is, we
19 understand there has been phone calls and a
20 variety of communications into First Nation
21 offices recently to provide meeting summaries that
22 had not been provided before. And that included
23 over, you know, from two years prior. So we're
24 concerned about what the chart says and what's not
25 available.

1 Sustainable development and the
2 principles and guidelines for sustainable
3 development are part of the terms of reference for
4 all of us in our participation, in our roles in
5 the proceedings and hearings. It's unfortunate
6 that all we have from Manitoba Hydro is a chart
7 that lists the Government of Manitoba Sustainable
8 Development Act principles and guidelines, and
9 then what Manitoba Hydro uses. Mr. Cormie said,
10 well, there was no sustainable development in
11 1970s. I think you have a challenge here in terms
12 of what to do about what is a pretty
13 significant -- I'm watching the time also,
14 Mr. Speaker. I think you have a challenge here in
15 terms of what is a pretty significant gap or hole,
16 in terms of your terms of reference and what we
17 should have been able to discuss with Manitoba
18 Hydro in these hearings. My comments about no
19 briefing, no bring forward inside Manitoba Hydro
20 is quite specific then to sustainability and
21 sustainable development, and what's in the record,
22 what's there for the use of this panel for Lake
23 Winnipeg Regulation, which seems to have been
24 ignored. Again, public resources, public time,
25 and so on, why not make use of what's been made

1 available?

2 We have had the topic of notification
3 and information to municipalities, resorts, towns,
4 cottagers, First Nation communities, Aboriginal
5 communities around the lake and downstream. This
6 is an issue that comes up in each hearing. It's
7 unfortunate that Manitoba Hydro is inclined to
8 minimum compliance as in this is what we do, this
9 is what we're supposed to do, versus what's been
10 urged, including in previous hearings. What I
11 believe Mr. Gould was doing was providing an
12 example of a measurable increase, not all the way
13 there approach to notification with regards to the
14 Fairford Dam, but also making direct reference to
15 the fact that in the discussion of lack of
16 notification about what's going on with the lake,
17 that at least there was some improvement over
18 here, and that should help thinking and discussion
19 about notification, particularly about weather,
20 water, and water levels around the lake. That's
21 what I heard in the room.

22 We certainly need to get away from,
23 and this may be quite relevant, because of
24 notifications in the licence, be quite relevant in
25 your discussions, in your thinking. Because, you

1 know, when I have several First Nation people say
2 the same thing to me, which is, why don't they
3 just text us all? I sort of sit down and say,
4 yeah, faxes to a couple of offices in a community
5 are not -- they had been consistently been
6 inadequate and on too short of notice.

7 I have a bit of a story in front of me
8 and I sort of can't resist. Sometimes you never
9 know where you're going to learn things. So, in
10 the first week of these hearings we were all out
11 for supper, as we being sort of, you know, the
12 uncle, the grandparents and the grandsons. And
13 they are getting to an age where they are sort of
14 curious about this weird hearing thing and they
15 were asking questions. So I have a suggestion for
16 Manitoba Hydro. Because sometimes you would think
17 you are listening to what is a fairly cavalier
18 attitude to the lake, because of this no impacts
19 from Lake Winnipeg Regulation mantra. We suggest
20 that Manitoba Hydro personnel who are involved
21 with regulation of the lake, and this CEC
22 proceeding, visit some high school classrooms in
23 Winnipeg, and ask the future scientists,
24 engineers, researchers and lawyers, how likely
25 they think it is, after 40 or 50 years of use as a

1 reservoir, that there would be no impacts from
2 regulation and use as a reservoir on Lake
3 Winnipeg? Teenagers listen to the front of their
4 minds, and sometimes they blurt out what they are
5 thinking. I know that in this scenario that
6 teenagers would laugh at the question. They might
7 even ask who let Manitoba Hydro continue for 40
8 years without any kind of review. Then they would
9 ask what happened to all that research, and how
10 are a Manitoba utility going to catch up with
11 their responsibility for the lake and the river
12 system? One of those teenagers, perhaps my oldest
13 grandson, who is in a pre-engineering program in
14 senior high school, would ask, if he were in this
15 scenario, what he asked me over supper: Does
16 Manitoba Hydro pay to use water for the energy
17 from each dam? So I answered that one. His next
18 question was: What does Manitoba Hydro pay to use
19 the water in Lake Winnipeg? You've got to look at
20 that 1972 licence if you have a sense of humour,
21 because these amounts are just -- and I presume
22 under regulation they have been increased, but
23 again we don't have that information in the
24 filing. But these amounts for use of land, use of
25 water in the licence are ridiculous.

1 So I'm including the story in my
2 remarks today because we are not in 1972, 1976
3 anymore. We are stuck with a licence that is 40
4 years old that has never been reviewed. We are
5 all holding the bag together on the CEC
6 recommendations of 2004 about the kind of review
7 needed for Lake Winnipeg and the CRD, et cetera.
8 And we're all of us in our roles in this hearing
9 attempting to fulfill the limited, narrow mandate
10 for these hearings.

11 It could be said and this is what I
12 think First Nation voices are trying to say to us
13 in these hearings, we are not just in 2015 here
14 either, we are literally dealing with, as these
15 Aboriginal voices have reminded us, 1970 to 2015,
16 to 2026, to 2076, as the assumptions, the risks
17 the questions are a hundred years worth, or four
18 or five generations of Manitobans who own their
19 utility and carry the liability and the risk for
20 operations and licencing decisions. We need to
21 proceed with caution. We need to be constantly
22 thinking about the future and not basing
23 everything on average numbers, overweighted, based
24 on the past.

25 So you have heard from Manitoba

1 Wildlands through, probably from the start of the
2 IRs in the proceedings, and in the text of the
3 information request we were filing, about our
4 hopes for a new governance system for the lake,
5 improved management, improved regulation,
6 monitoring. It's amazing how many recommendations
7 in the 1970s and 1980s were made by the study
8 board about monitoring that hasn't happened. We
9 need to get past who is responsible for what and
10 whose fault is whose, to basically get into a
11 collaborative mode for the future of the lake.
12 Everybody in this room understands that a licence
13 is a licence and you fulfill the licence. There's
14 a question, and it's a 40-year question, which is,
15 why did Manitoba Hydro figure that's all they
16 needed to do? Why are they telling us -- and by
17 the way, it's just simply not true -- why did they
18 tell us in these hearings that the results from
19 all the study board's work and other studies in
20 the 1970s and 1980s, that the data is just not
21 transferable and not relevant and can't be used
22 and so on. I mean, I have asked half a dozen
23 people and they just sort of snort.

24 So, here's the thing to say, Mr. Petr
25 Cizek is an expert at this, he was not in the

1 hearing to talk about how you take 30, 40, 50,
2 60-year old data, and how you ground truth it, and
3 what you do with satellite data to make sure that
4 you are, in fact, adjusting it.

5 One of the very first things he did
6 for, out of our office, was take past studies to
7 do with east, and sets of data to do with east
8 side Lake Winnipeg, and get them into a modern
9 system.

10 So we have a couple of funny things
11 happen yesterday in the hearings. So I'm going to
12 basically refer to the numbers on employment
13 yesterday and then close. These numbers about
14 Aboriginal hires, and let's put that word "hires"
15 in quote marks, were an example of our utility
16 trying to look good, trying to prove something.
17 And it is unfortunate when it happens. We had
18 this discussion, this topic for a very long time
19 in the Keeyask hearings. So, go figure. I guess
20 this panel doesn't know that, wasn't informed.

21 We are also talking then about an
22 example of information provided by Manitoba Hydro
23 in this hearing, where the technical writer for
24 the CEC needs to fact check, which we did
25 yesterday. So the word "hires" means not

1 employees, the word "hires" includes all casual
2 seasonal part-time individuals, including those
3 who go to work for four weeks on Keeyask and go
4 home. It also includes, for instance, everybody
5 at Pine Creek First Nation who worked exactly two
6 months last winter on Bipole III. So the numbers
7 you were given put all of these part-time casual
8 contractors, who are not employees of Manitoba
9 Hydro by the way, on par with their full-time
10 permanent employees. That's how you get to the
11 totals. It's not the standard for reporting
12 employment numbers, we all know that.

13 I was asked last night whether
14 Manitoba Hydro provided the proportion of the
15 total wage budget for Manitoba Hydro who are
16 self-declared Aboriginal persons? That would be
17 very telling.

18 The second question I got last night
19 on the phone was whether or not Manitoba Hydro
20 reported on the number of Aboriginal persons in
21 middle and higher management? Okay. So, it took
22 us five minutes to find out from HRDC Canada that
23 Aboriginal people in Manitoba are at least
24 17 percent of the population. But Mr. Sweeny
25 claimed that these Manitoba Hydro hires, which

1 they say are at 17 percent, are at a higher
2 proportion than Aboriginal persons in the Manitoba
3 population. So we used Manitoba Hydro annual
4 reports, HRDC Canada's Aboriginal population
5 pages. And we all know, if we're paying attention
6 to this, that Aboriginal persons are
7 under-counted, in any set of data, whether it's
8 Stats Canada stuff, whether it's the census, we
9 all know that they are under-represented and
10 under-counted.

11 So this is an example of where I'm
12 hoping our utility just gets on with it in going
13 forward, rather than needing to prove things.

14 Now, I get to thank you. Thank you.
15 And I have the three minute warning. I want to
16 thank everybody in the room for a shorter hearing,
17 and an awful lot of work. It was very important
18 for this proceeding and hearing to occur.
19 Unfortunately, we have no public registry, we
20 didn't actually have a public review. I'm hoping
21 that Manitoba Hydro is directed to keep all of
22 this information on their website and publicly
23 available for a long time.

24 I want to thank all the participants
25 in the hearing. And there is support for Manitoba

1 Hydro for all or most of the recommendations to
2 you from the Consumers Association of Canada, from
3 Pimicikamak, from the Interlake Tribal Council,
4 from Keewatinook Fishers, from Sagkeeng, from
5 Peguis. We do need to acknowledge that the
6 participants in these hearings have been operating
7 with a small fraction of the funding that was
8 available for the Bipole III or Keeyask hearings.
9 In that context, and maybe I'm biased, but I think
10 the participants have done pretty well. And the
11 technical work that you have seen is, in each
12 instance, preliminary, it's about what could be
13 done, what needs to be done, how it might be done
14 in this desert we are in, no pun meant, this
15 desert we are in, in terms of how little the lake
16 has been studied.

17 The last thing I wanted to say is that
18 I had a phone call two weeks ago Wednesday from
19 somebody who volunteers in our office from time to
20 time, and who has actually also spoken to the
21 hearings. She was doing some research, and she
22 wanted to read to me page, I think, 146 from
23 Alexander Morris's books, Treaties of Manitoba.
24 The reason was because page 146 explicitly
25 describes how the waters of Lake Winnipeg go up

1 rivers. It's an 1875 excerpt from a report to
2 Ottawa, from the Treaty Commissioner, about how
3 the waters on Lake Winnipeg go up the rivers.

4 So that's a reminder to all of us that
5 we really actually do need to have the information
6 and the facts, particularly after 40 years. And
7 our hope is that this set of proceedings and
8 hearings is actually the beginning in terms of the
9 future of the lake, the future of the impacts, and
10 approaches to regulation of the lake for both
11 downstream and upstream. Thank you all.

12 THE CHAIRMAN: Thank you,
13 Ms. Whelan Enns, and thank you and your
14 organization and your associates for your work
15 throughout these proceedings. As always, you
16 and/or your associates were fully engaged
17 throughout the proceedings. So, we thank you for
18 that.

19 Let's take a break until quarter to
20 and we'll come back with the Interlake Reserves
21 Tribal Council.

22 (Proceedings recessed at 10:33 a.m.
23 and reconvened at 10:45 a.m.)

24 THE CHAIRMAN: Okay. We'll resume the
25 proceedings. We now have the Interlake Reserves

1 Tribal Council closing arguments. Mr. Shefman.

2 MR. SHEFMAN: Thank you, Mr. Chairman.

3 I do of course represent the Interlake Reserves
4 Tribal Council. They asked me to thank the Clean
5 Environment Commission, Manitoba Hydro, and all of
6 the participants who have appeared over the last
7 number of weeks, and in doing so, have helped to
8 inform these proceedings.

9 My comments will be brief. The
10 Interlake Reserves Tribal Council will be
11 submitting additional written material, a
12 supplementary closing statement which will include
13 our actual recommendations. And so my remarks
14 this morning will simply be an overview.

15 For my client, the fundamental
16 difficulty with the licence renewal in its current
17 form is that the renewal is being requested and
18 this proceeding is being conducted without a
19 fulsome picture of how Lake Winnipeg Regulation
20 has impacted the entire lake system, and without
21 sufficient information generally. It has been
22 clear throughout this proceeding that we're facing
23 significant knowledge gaps. Counsel for CAC
24 Manitoba described the prevalence of knowledge
25 silos as a similar problem, and we agree.

1 Chief among these knowledge gaps is
2 Manitoba Hydro's failure to consider and provide
3 any sort of documentation on negative impacts
4 upstream. We have simply heard their repeated
5 assertion that there have been no negative
6 upstream impacts. Indeed, according to Hydro, the
7 only upstream effects of Lake Winnipeg Regulation
8 is "reduction in the water levels." Besides the
9 dismissive manner in which Hydro has failed to
10 address upstream impacts, and more importantly,
11 the concerns of those living upstream, what we
12 have seen is, as CAC described it yesterday, a
13 factual record which is far from robust. Because
14 when you hear from traditional knowledge holders,
15 residents of the lake and resource users, it
16 quickly becomes clear that the picture painted by
17 Manitoba Hydro does not reflect the lived
18 experiences of those for whom Lake Winnipeg
19 Regulation is very real and is a very real and
20 tangible project, not just charts and graphs on a
21 powerpoint presentation.

22 Like in Pinaymootang, where Councillor
23 Derrick Gould testified that they lost all but two
24 of their farmers to erosion and encroaching
25 wildlife. Like around Lake Winnipeg itself, where

1 we have heard how traditional trappers are finding
2 fewer animals and those animals which are found
3 are stressed, unhealthy, and remarkably different
4 than those that would have been found prior to
5 Lake Winnipeg Regulation. Hydro says those
6 changes aren't related to Lake Winnipeg
7 Regulation.

8 And yet it was Hydro's evidence,
9 stated and confirmed by Mr. Swanson, because of a
10 lack of data, it is "Impossible to tell how Lake
11 Winnipeg Regulation has affected wildlife."

12 They used the information which was
13 available. They took what they could find and
14 they called it good enough. It's not good enough.
15 It's particularly not good enough because it
16 specifically excludes consideration of how
17 upstream wildlife has been affected. A key aspect
18 of this problem is that Hydro has been permitted,
19 in its monitoring, reporting and application
20 materials with respect to LWR, to rely on
21 one-sided material, to ignore Aboriginal
22 traditional knowledge and to simply not gather
23 sufficient information from these sources.
24 Indeed, according to Mr. Hutchison, "There was no
25 reason to engage in ATK studies on Lake Winnipeg."

1 And yet Mr. Cormie acknowledged on behalf of
2 Manitoba Hydro that ATK, Aboriginal traditional
3 knowledge, is very important to balance out
4 western science and southern values when
5 considering new projects. It is particularly
6 telling that Manitoba Hydro professes to
7 appreciate the value of ATK and has used it in the
8 past. But when including that knowledge, would
9 likely reveal inconvenient truths, they left it
10 out of the equation entirely. Their reason,
11 according to their panel, was that to incorporate
12 ATK into this licence and renewal process would
13 require new work.

14 For CEC and the Government of Manitoba
15 to be able to carry out their respective
16 responsibilities with respect to the licence
17 renewal process, everyone would have benefitted
18 from a more holistic process, from a process which
19 reflects the fact that from 1970 to 2015, the
20 landscape has changed both literally and
21 figuratively.

22 It is our submission and our first
23 recommendation that the inclusion of Aboriginal
24 traditional knowledge in the governance,
25 evaluation and ongoing monitoring of Lake Winnipeg

1 Regulation project be made a condition of the
2 licence.

3 The fact is we have heard at these
4 hearings many examples of how ATK would have
5 assisted Manitoba Hydro in providing and
6 developing more fulsome submissions. We heard
7 information based on traditional knowledge about
8 how the changing water has impacted wildlife
9 habitats, making hunting and trapping more
10 difficult and frustrating some traditional land
11 users. We heard from traditional knowledge
12 holders how changing flows has impacted fish
13 populations and fish health.

14 I will not rehash the entirety of
15 these proceedings. We have all had the benefit of
16 witnessing the powerful testimony over the past
17 weeks which was brought before the commission.

18 I will speak in closing to a few
19 important recommendations which my client believes
20 would benefit Manitobans and the like.

21 Number one, this licensing process
22 must be clarified. All parties would have
23 benefitted from a clearer idea of what our
24 expectations were, what Hydro's expectations were.
25 This government should or the government should,

1 for future renewals, ensure that the process is
2 reconsidered. I was pleased to note that Manitoba
3 Hydro agrees that the process needs to be
4 clarified.

5 Number 2, Manitoba Hydro must
6 acknowledge the fact that Lake Winnipeg Regulation
7 has caused negative impacts upstream of Jenpeg and
8 within the Lake Winnipeg basin. Whether these
9 negative impacts are direct, indirect or corollary
10 to downstream impacts, their existence must be
11 recognized, whether as a condition of the licence
12 or as a stand-alone recommendation from this
13 commission.

14 Three, Manitoba Hydro must be in a
15 better position to describe and mitigate the
16 negative impacts of LWR. To do this, greater
17 emphasis needs to be put on monitoring and
18 mitigation, for example, of the Netley-Libau Marsh
19 and wildlife populations around Lake Winnipeg.
20 Therefore, it should be a condition of the licence
21 that Manitoba Hydro engage in ongoing
22 comprehensive monitoring and evaluation of all LWR
23 impacts subject to regular sufficiency hearings
24 before either the CEC or another appropriate body.

25 I note that a number of participants

1 have recommended that a multi-party
2 decision-making framework should be established.
3 Whether that's a new body or an expansion of an
4 existing body, I believe, IRTC believes that is
5 these regular sufficiency hearings which we're
6 recommending can appear either before that new
7 body or before a body like the CEC.

8 But it's the hearings which are key to
9 ensuring that the monitoring and evaluation are
10 sufficient and are accountable to the people who
11 live on and near Lake Winnipeg and accountable to
12 the lake itself.

13 We heard how, in these hearings how
14 Lake Winnipeg, the water is alive, it's living.
15 And it's important that Manitoba Hydro be
16 accountable not just at licence renewals. Because
17 between licence renewals, a lot can happen.
18 Rather, Manitoba Hydro needs to be accountable on
19 an ongoing basis and their accountability needs to
20 be to the people, it needs to be to the people who
21 came out to these hearings and participated. It
22 needs to be to the cottage owners around the lake,
23 it needs to be to the First Nations around the
24 lake.

25 But requiring both study and reporting

1 back to a third party, as I mentioned, we will be
2 in a better position to ensure that impacts are
3 being addressed. And those who are most directly
4 impacted by Lake Winnipeg Regulation will have a
5 mechanism by which Hydro can be held accountable.

6 Yesterday, Mr. Cormie responded
7 favourably to a suggestion by Pimicikamak that a
8 multi-party decision-making framework be
9 established. We agree with the suggestion of such
10 a framework and that such a framework should
11 include upstream communities as Manitoba Hydro
12 suggested. We encourage the CEC to include such a
13 recommendation in its report.

14 These are the most significant of the
15 recommendations which IRTC is prepared to make.
16 There are more of course but we recognize the
17 limits of these proceedings and staying within
18 scope and of course of Manitoba Hydro's own
19 capacities.

20 Central to IRTC's recommendations,
21 representations and evidence at these hearings has
22 been that Manitoba Hydro cannot, must not ignore
23 the impacts of Lake Winnipeg Regulation on
24 upstream peoples and communities. The lived
25 experiences of my clients are clear. Lake

1 Winnipeg Regulation is a fact of life upstream on
2 Lake Winnipeg and they deserve to be treated
3 fairly. Their lives and livelihoods respected and
4 considered in the same way as those living
5 downstream.

6 After all, as Councillor Gould said,
7 we cannot eat Hydro. Thank you.

8 THE CHAIRMAN: Thank you, Mr. Shefman.
9 And thank you to your client for their
10 participation in these proceedings. And thank you
11 for your dedicated engagement throughout the
12 proceedings.

13 Norway House Fishermen's Co-op is
14 prepared to make their closing arguments now, so
15 we will hear from them at this time. Mr. Lenton.

16 MR. LENTON: Thank you, Mr. Chairman.
17 Good afternoon, commissioners, panelists from
18 Manitoba Hydro and all other participants in the
19 proceedings. As you know, my name is Keith Lenton
20 and I represent the Norway House Fishermen's
21 Co-operative at these proceedings.

22 First, I would like to thank Manitoba
23 Hydro and all the other participants for their
24 presentations. It's been very useful to the Co-op
25 to see how other stakeholders have approached the

1 matter of Lake Winnipeg Regulation, to see where
2 there are commonalities and where there are
3 differences in priorities and interests. And I
4 know that everyone's given the commission a lot to
5 think about throughout these past few weeks.

6 And of course, I would like to thank
7 the Commission on behalf of the Fishermen's
8 Co-operative explicitly for hearing their concerns
9 and including them in this process as that will be
10 part of my closing statement. This, in itself, is
11 of substantial importance to the fishermen.

12 So I should be relatively brief today
13 in my remarks because as everyone knows, the
14 Commission is travelling to the Norway House
15 community in the coming weeks and will be hearing
16 from not only members of the community but a
17 number of fishermen as well. So it would be
18 premature for me to cap things off at this point
19 before they are heard from. But I will address a
20 couple of matters that arose in the course of
21 Mr. Langford Saunders' presentation. He is of
22 course the president of the Fishermen's
23 Co-operative. And we expect that somewhat more
24 detailed submissions will be written and filed
25 with the Commission later on and may include

1 remarks based on the testimony in the coming
2 weeks.

3 So there are two over-arching subjects
4 that I'll be discussing today. One is the state
5 of the fishery in and around Playgreen Lake and
6 the second is the relationship between the Norway
7 House Fishermen's Co-operative and Manitoba Hydro.

8 So first turning to the state of the
9 fishery. As you know, the Norway House commercial
10 fishermen fish in a number of waterways, however
11 they did do so primarily in Playgreen Lake and
12 northern Lake Winnipeg. So we have heard from
13 Mr. Saunders as well as from Manitoba Hydro's
14 presentation and materials that the opening of
15 2-Mile Channel from northern Lake Winnipeg into
16 Playgreen Lake as well as the opening of 8-Mile
17 Channel have impacted the flows of water in
18 certain areas, water quality, the temperature and
19 turbidity of the water, at least in Playgreen
20 Lake.

21 In particular, Playgreen Lake, where
22 the commercial fishermen have previously focused
23 their fishing efforts, it is now subject to
24 increased sedimentation deposits as water flows
25 out of 2-Mile Channel. And especially as the

1 northern basin and the northern shore of Lake
2 Winnipeg is eroded and materials are transported
3 through the channel that way. We heard a little
4 bit more of this from Dr. Petr Cizek's
5 presentation last week.

6 As a result of the change in water
7 flows and the increased sedimentation is a
8 displacement of fish habitats and spawning
9 grounds. And this in turn has affected the number
10 of fish as well as the relative types of fish that
11 exist in Playgreen Lake. We have also heard that
12 there is multiple factors at play which impact
13 fish species but the commercial fishermen
14 maintain, based on their experiences, that the
15 opening of 2-Mile Channel has been a substantial
16 impact on that.

17 We have also heard similar stories
18 from the Keewatinook Fishers Association who
19 recently spoke to the Commission and referenced
20 the change in fish species in Lake Winnipeg
21 proper. And the commercial fishermen believe
22 that, you know, looking at it from a systems
23 approach, of course, the fish species will be
24 migrating and changing over the lakes.

25 As a result of these changes to the

1 lake, the commercial fishermen have to travel
2 further and further in order to catch or meet
3 their quota or come close to meeting their quota.
4 Mr. Saunders told us that fishing near the western
5 shores of Playgreen Lake is less and less feasible
6 due to the build up of sedimentation, and it's
7 essentially not possible to meaningfully fish
8 there anymore.

9 Moreover, fishermen who do attempt to
10 fish in these areas of increased sedimentation are
11 more likely to find their nets with algae and mud,
12 damage their boats, hitting floating debris
13 floating out of the channel. And in any event,
14 it's hard to catch commercially worthwhile fish as
15 the fish stocks change. Some are less
16 economically worthwhile to catch.

17 We also heard from Elder Leslie
18 Apetagon on this matter and he spoke to us about
19 how, in his experience from pre Lake Winnipeg
20 Regulation to post Lake Winnipeg Regulation, he's
21 noticed a difference in the quality of the water
22 and the fish, the water becoming more and more
23 muddy and dirty, and the fish changing in quality
24 as well.

25 Mr. Saunders told us that while he was

1 once able to fish with his uncles in the area
2 around 8-Mile Channel and catch sturgeon, that's
3 no longer possible. And that's been something
4 that's particularly significant to a number of
5 fishermen because it represents sort of the end of
6 an era for them. Something that not only is there
7 less of it, it just isn't possible anymore.

8 We have also heard that because
9 fishing in Playgreen Lake has become increasingly
10 difficult, that as a result, Manitoba Conservation
11 has moved up to three-quarters of the quota for
12 the fishermen out of Playgreen Lake into northern
13 Lake Winnipeg. This way, the fishermen can still
14 catch a reasonable number of fish but of course
15 this means that they must go further south in
16 order to do so. Or alternatively, they go north,
17 again further to catch fish.

18 Now it may be that the fishery in Lake
19 Winnipeg overall, looking at an overall system
20 could be said to be relatively healthy based on
21 the data that is available. But, you know, the
22 Fishermen's Co-op really must emphasize, it's an
23 imposition on them to have to go further to catch
24 relatively the same number and quality of fish.
25 Particularly, as they had been doing this for a

1 very long time and, you know, especially over the
2 past five years, they have had great difficulty in
3 meeting their quota. They are allocated
4 115,000 kilograms and Mr. Saunders has told us
5 that in the last five years, they had been only
6 able to average about 80,000 of that.

7 So the position of the commercial
8 fishermen has been and continues to be that Lake
9 Winnipeg Regulation has some responsibility for
10 the change and decline in the fishery in Playgreen
11 Lake.

12 Manitoba Hydro has taken the position
13 that the fishery in Lake Winnipeg is generally
14 healthy as well as in Playgreen Lake and they have
15 provided several studies in support of this
16 position.

17 Some of these studies have said that
18 it is unlikely that Lake Winnipeg Regulation has
19 impacted the fishery. Manitoba Hydro has admitted
20 in its materials that there are some limitations
21 to the data available with respect to the
22 fisheries. Some regions contain few, if any, pre
23 Lake Winnipeg Regulation studies. Those that do
24 have pre Lake Winnipeg Regulation studies, a
25 couple of them, the methodologies don't really

1 allow for meaningful comparison with post Lake
2 Winnipeg Regulation studies which makes it hard to
3 draw conclusions from them one way or the other.
4 This includes the area in Playgreen Lake. Some
5 areas have not been studied post Lake Winnipeg
6 Regulation such as in Kiskittogisu Lake.

7 Manitoba Hydro has, however, relied on
8 more recent CAMP data to inform their position
9 that the fishery in Playgreen Lake is relatively
10 healthy. On this point, the Fishermen's Co-op
11 wishes to make the point that the Commission
12 should just be careful in considering what
13 conclusions it's going to draw from these studies
14 and this data as put forward by Manitoba Hydro.
15 It's just important to be clear on what
16 conclusions can be drawn from the studies and what
17 can't be drawn.

18 As noted, Manitoba Hydro has cited a
19 number of studies which it describes as indicating
20 that Lake Winnipeg Regulation is not primarily
21 responsible for the impacts on the fishery.
22 However, the Fishermen's Co-op wishes to point out
23 that many of these studies somewhat dated now,
24 arising in the '70s, '80s and '90s. And obviously
25 a substantial amount of time has passed since

1 then, the lake has changed, there has been
2 cumulative effects that may or may not have been
3 tracked by these studies. And so the co-operative
4 wishes to just point out the limitations and
5 conclusions to be drawn from these somewhat dated
6 studies.

7 The Fishermen's Co-op does acknowledge
8 the fishery in Playgreen Lake will now be
9 routinely monitored every three years or so under
10 the CAMP regime, and that this has recently begun
11 in 2008 and 2009. However, as Mr. Saunders put it
12 in his presentation, he would very much like to
13 know where the fish are so that he can go fish
14 there. For one reason or another, the CAMP data
15 is either not being communicated to the fishermen
16 in terms that they can either understand or make
17 use of, or the data just doesn't show useful
18 fishing information for them. So it just remains
19 unclear to them, especially in the face of their
20 lived experiences, how this data can show that the
21 Playgreen Lake fishery is healthy.

22 In spite of the CAMP studies findings,
23 they still find themselves having to travel
24 further in order to meet their quota, and
25 incurring considerably more expense just to do

1 this.

2 So our first recommendation to the
3 Clean Environment Commission arises out of the
4 divergence between the data as provided mainly by
5 Manitoba Hydro and the experiences reported by the
6 fishermen. The Fishermen's Co-operative would
7 like to see more monitoring studies undertaken of
8 the fishery in Playgreen Lake and the surrounding
9 water bodies, and there shouldn't be a reliance on
10 decades old studies, again, especially when it's
11 contrary to their experiences every day with their
12 decades of experience on the lake.

13 Further to this, the commercial
14 fishermen think that they should be consulted to
15 assist with these studies. They can provide their
16 own insights and observations over time, as well
17 as make the studies more meaningful, as they can
18 say, well, we fish here, this is where we're
19 interested in, this has been our experience of
20 where the fish are going. This, I think, would
21 contribute to a more meaningful study, something
22 that would certainly be more useful to them, as
23 opposed to, you know, having no input in where the
24 study locations would be and what times of year
25 the studies would take place.

1 So the CAMP studies are promising in
2 this regard. However, given that is a relatively
3 new initiative and the fishermen are currently
4 having these difficulties, and the CAMP studies
5 are, you know, on a rotational basis, perhaps only
6 once every three years will Playgreen Lake be the
7 recipient of a study of this kind, the fishermen
8 would like to see more studies, sooner rather than
9 later. They are simply concerned that the CAMP
10 studies may not tell the whole story without their
11 own input.

12 We understand that the CAMP studies
13 use catch per unit effort as a measure of the
14 viability and the health of the fishery. The
15 fishermen want to make sure, though, that all
16 variables are being considered, the location of
17 the fish, the extra effort and cost they have to
18 go through, you know, to engage in these efforts,
19 the location of the stocks, and the change in the
20 compositions of the stocks. So, in essence, they
21 want to be more involved in the study process.

22 So I'll move to my second theme of my
23 discussion today, and that's the relationship
24 between Manitoba Hydro and the Norway House
25 Fishermen's Co-operative. And on this topic

1 there's three related issues of concern to the
2 fishermen; that's mitigation, compensation and
3 communication.

4 In regards to the first, mitigation.
5 Philosophically on this matter, the Fishermen's
6 Co-op agrees with the point made by Mr. Williams
7 in his presentation, namely that it would be
8 appropriate to make as conditional, or as part of
9 the licence requirement a consideration of all
10 interests on an equal basis. So, I'll briefly
11 quote from a statute that he quoted. This will be
12 equal consideration for the purpose of energy,
13 conservation, the protection, mitigation of damage
14 to, and enhancement of fish and wildlife,
15 including related spawning grounds and habitat,
16 the protection of recreational opportunities, and
17 the preservation of other aspects of environmental
18 quality. These were from United States
19 guidelines.

20 So the Fishermen's Co-operative thinks
21 that this would be a good condition for Lake
22 Winnipeg Regulation, because it would encompass
23 the ongoing study that the fishermen are
24 interested in, as well as formalize what -- we
25 understand Manitoba Hydro is interested in making

1 sure that everyone's interests are taken account
2 of. So to formalize it with these words and make
3 a requirement for equal consideration of all
4 interests, not necessarily one subordinating the
5 other, but equal consideration, we think that
6 would be a step in the right direction.

7 Specifically, as it pertains to the
8 Norway House Fishermen's Co-op, the Co-op is very
9 pleased to be working with Manitoba Hydro in
10 various shoreline stabilization efforts and other
11 projects, and they hope that this work will
12 continue. In this vein, they are just hoping that
13 a formal recommendation can solidify this
14 requirement to consider all interests, especially
15 those of the environment.

16 Now, although we have heard from
17 Manitoba Hydro that it disagrees that opening the
18 Jenpeg spillway has had any impact on the fishery
19 in Playgreen Lake, what is encouraging to the
20 Co-op is that Manitoba Hydro has agreed to meet
21 with them about this, and continues to meet with
22 them and discuss the matter and try and reach some
23 resolution. That in itself is very important. In
24 going forward, the Co-op hopes that Manitoba Hydro
25 will continue to work directly with them to

1 mitigate future adverse effects.

2 And this leads into my second and
3 third points, which really I can combine into one,
4 compensation and communication. And this is from
5 Mr. Saunders' presentation, this is one of the
6 most critical aspects to him. As he emphasized in
7 his presentation, the Norway House Fishermen's
8 Co-operative and the Norway House Cree Nation are
9 not synonymous, they are separate entities with
10 separate interests, separate governments and
11 separate, albeit related, stakes in Lake Winnipeg
12 Regulation. As has been discussed, several First
13 Nations communities has signed onto the Northern
14 Flood Agreement, and each would have their own
15 comprehensive implementation agreement or master
16 implementation agreement which will govern the
17 rights and obligations between the First Nation,
18 Canada, Manitoba and Manitoba Hydro. Of course,
19 Norway House Cree Nation has its own master
20 implementation agreement. The Cree Nation is a
21 party to this agreement while the Fishermen's
22 Co-operative is not.

23 The Fishermen's Co-operative is
24 incorporated by reference as the designated
25 commercial fishermen's organization under the

1 trust indenture of the master implementation
2 agreement. So at the time that the implementation
3 agreement was signed, the Chief and Council of the
4 Norway House Cree Nation has recognized the
5 Fishermen's Co-operative as the designated
6 fishermen's association. And from that point, the
7 Fishermen's Co-operative has received benefits
8 under the master implementation agreement.

9 So we have heard from Mr. Saunders
10 that while this has been the case so far, they
11 were not a party to this agreement, and this has
12 been of greater concern as the co-operative has
13 changed and grown larger over time.

14 The issue is that the Fishermen's
15 Co-operative does not formally have a voice in
16 many of these matters. If one is dealing with the
17 Chief and Council of Norway House Cree Nation, one
18 is not necessarily dealing with the interests of
19 the Norway House Fishermen's Co-operative.
20 Unfortunately, and to the contrary perhaps of the
21 intentions of the parties when they entered into
22 this agreement, it has been the experience of the
23 Fishermen's Co-operative that the Cree Nation does
24 not always represent or advocate or protect their
25 interests. It may be reasonable for external

1 parties to believe that if they are speaking to
2 the Cree Nation, that the information that they
3 are providing will reach the Fishermen's
4 Co-operative, and that the Cree Nation will be
5 standing up for the Fishermen's Co-operative
6 interests, but the Fishermen's Co-operative has to
7 state emphatically that has not been always the
8 case. And that's a concern for them that they are
9 being left out of the room while important
10 conversations are going on, that they are not
11 being consulted.

12 Again, it may be that the other
13 parties can't be blamed for this, for not going
14 out of their way to engage a non-party to the
15 agreement. Nevertheless, the Fishermen's Co-op is
16 left in a position where it's not aware of
17 important decisions being made which substantially
18 impacts its own interests.

19 And Mr. Saunders, in this regard,
20 spoke to an example of this resulting out of a
21 compensation agreement between the Fishermen's
22 Co-operative and Hydro. It arose out of flood
23 damage to which the Fishermen's Co-operative's
24 members suffered substantial damages, where many
25 of their docks were destroyed and they lost a lot

1 of other property. Compensation was paid directly
2 to the Cree Nation and, unfortunately, the
3 Fishermen's Co-operative didn't see a dollar of
4 it. And to this day, they are not sure how that
5 money was spent, or where it went, despite them
6 having arguably suffered some of the worst impacts
7 of that flood, which gave rise to the
8 compensation.

9 And to be clear, I want to note that
10 it is still open for the commercial fishermen to
11 engage within the usual claims process under the
12 master implementation agreement. So they are not
13 without recourse to obtain compensation for this
14 damage from Manitoba Hydro. The point is simply
15 that a substantial supplementary compensation
16 agreement was reached, and the Fishermen's
17 Co-operative, despite being impacted by it, was
18 completely excluded from this agreement and had no
19 control over it. So this was disturbing for the
20 Fishermen's Co-operative.

21 And so they want to emphasize that
22 notwithstanding that it is not a party to the MIA,
23 at least not one of the four parties that signed
24 it, it is a separate entity with a substantial
25 interest in Lake Winnipeg Regulation. It has very

1 significant economic impacts that reach within the
2 Norway House community. As Mr. Saunders
3 described, there may be as many as 800 people
4 which directly or indirectly rely on the
5 commercial fishery, that's 50 registered
6 fishermen, each with say two helpers, each of
7 these people has family, and there's 45 or 50
8 staff members who work at the Co-operative. This
9 creates a substantial economic network of reliance
10 on the viability of the commercial fishery.

11 So the commercial fishermen don't want
12 to be excluded or dismissed as a small player, or
13 as a group that doesn't have a substantial stake
14 in Lake Winnipeg Regulation.

15 It is also felt by the Fishermen's
16 Co-operative that until recently, there had been
17 little proactive effort on the part of Manitoba
18 Hydro to engage with them, perhaps for the reasons
19 that I mentioned earlier, that they are not a
20 party to the agreement. And so it may not have
21 occurred to other parties to engage with them
22 specifically. The notable exception to this would
23 be the engagement that Manitoba Hydro has had with
24 respect to the shoreline stabilization projects.
25 That's been ongoing for some time and has produced

1 a lot of good results. So that must be
2 recognized.

3 But there has been a perception within
4 the commercial fishermen that Manitoba Hydro has
5 dealt mainly or only with the Norway House Cree
6 Nation, and that in doing so there would be no
7 need to discuss anything with the Fishermen's
8 Co-operative. This leaves the Fishermen's
9 Co-operative feeling very vulnerable, perhaps with
10 no protection of their interests in Lake Winnipeg
11 Regulation.

12 On the other hand, and on the bright
13 side, as Mr. Saunders pointed out, Manitoba Hydro
14 has been very accommodating in recent years of
15 their requests for meetings. He has met with
16 Mr. Hutchison once, or one or more times to
17 discuss the Jenpeg spillway matters. And you
18 know, the upper management of Manitoba Hydro has
19 been very receptive of his communications and has
20 been willing to meet with him and discuss his
21 concerns. And that really, you know, we can't
22 acknowledge that enough. It's so encouraging to
23 see that one of the parties is beginning to treat
24 the Fishermen's Co-operative as an independent
25 entity. And he really wants to emphasize,

1 Mr. Saunders really wants to emphasize his
2 appreciation of this in recent years.

3 And of course, the Norway House
4 Fishermen's Co-operative is present as a
5 participating member here. And that, as I said
6 earlier, is of substantial significance and is
7 very much appreciates. As the commercial
8 fishermen work and live in the area on the lake,
9 and have done so for decades, it believes it has a
10 very meaningful input to give to the Clean
11 Environment Commission on Lake Winnipeg
12 Regulation.

13 In terms of recommendations going
14 forward, I would add my endorsement to
15 Mr. Cormie's already cited comment that these
16 proceedings are for a change, for a chance for a
17 process of modernization. At the time the master
18 implementation agreement was signed with the
19 Norway House Cree Nation, the Fishermen's
20 Co-operative was relatively young. But as time
21 has passed and the lake has changed, so has the
22 Co-operative changed and grown. Now they are a
23 substantial stakeholder and a recognized
24 independent entity.

25 So our recommendation would be that

1 the commercial fishermen, they believe it's time
2 that they be formally recognized in terms of
3 negotiations and communications with Manitoba
4 Hydro. Although the Fishermen's Co-operative
5 understands that the master implementation
6 agreement cannot simply be amended to include
7 them, it believes that an explicit and emphatic
8 recommendation from the Clean Environment
9 Commission, that consultation and communication be
10 required for all stakeholders, again, words to
11 those effects may exist already. But just a
12 re-emphasis of all stakeholders, including those
13 not signatory to the master implementation
14 agreement, would be a good step.

15 Having a policy of keeping the
16 Fishermen's Co-operative in the loop with respect
17 to these discussions and negotiations that impact
18 them, and giving them a voice, this would go a
19 long way towards ensuring that their interests are
20 considered, at least, and hopefully protected.
21 The Fishermen's Co-operative believes that this
22 kind of change would be an appropriate
23 modernization in the relationship between Manitoba
24 Hydro and the Fisherman's Co-operative. This has
25 been one theme that has been repeated by a number

1 of participants at these proceedings, and that is
2 that sometimes there is a lack of feeling that
3 they have a voice in the discussions which are
4 important to them, and that this can lead to
5 feeling of hopelessness or that they really have
6 no control in their destiny. So to the extent
7 their recommendation could be fashioned by the
8 Commission, which would give some type of formal
9 or guaranteed voice to the commercial fishermen on
10 matters that impact them, this, the commercial
11 fishermen believe, is the right approach to take.

12 However, as I have already said, and
13 we want to emphasize, the Co-operative is very
14 pleased with Manitoba Hydro's willingness to come
15 to the table with them and deal with them as an
16 independent entity, and negotiate with them on
17 their own, so they thank Manitoba Hydro for that.

18 So I'll just conclude now. This is
19 the end of my closing remarks for today, but we
20 expect that we may have a little bit more to say
21 after the proceedings, in the coming weeks at
22 Norway House.

23 Again, I'd like to thank the
24 commission for having the Fisherman's Co-operative
25 here to these hearings and hearing their concerns.

1 I would also like to thank Manitoba
2 Hydro for sharing its work with us and engaging
3 with the Fishermen's Co-operative as it has so
4 far.

5 And lastly, the participants of this,
6 of these proceedings, for all of their
7 presentations and their valuable input. Thank
8 you.

9 THE CHAIRMAN: Thank you, Mr. Lenton.
10 Thank you to your client for their participation
11 in these proceedings, and we look forward to
12 hearing from some members of the Co-op next week
13 when we are in Norway House. And as earlier with
14 Mr. Shefman, I'd like to thank you personally for
15 your dedicated engagement in these proceedings
16 over the last number of weeks. So thank you.

17 That will conclude the morning
18 proceedings. This afternoon, we will have Black
19 River First Nation up first at 1:30, and following
20 that will be Manitoba Hydro's final arguments, and
21 following that we are all released. So back at
22 1:30.

23 (Proceedings recessed at 11:22 a.m.
24 and reconvened at 1:45 p.m.)

25 THE CHAIRMAN: Okay, we'll reconvene

1 the proceedings. Black River First Nation was
2 scheduled to give their closing arguments at 1:30,
3 however it is now 1:45 and there is no sign of
4 them, so they will have lost their opportunity to
5 present their closing arguments orally. Of
6 course, they can still provide it in writing.

7 So we'll move on to the final final
8 closing arguments. Manitoba Hydro, over to you.

9 MS. MAYOR: Many of us will be quietly
10 celebrating that it's the last day of CEC
11 hearings. The Commission, though, still has
12 further meetings scheduled and then, of course,
13 has the arduous task of reviewing the significant
14 record put before it, and then putting forward its
15 recommendations as requested by the Minister of
16 Conservation and Water Stewardship.

17 The terms of reference set out the
18 important and challenging responsibilities given
19 to the CEC in relation to the Lake Winnipeg
20 Regulation. Rather than quoting, though, from
21 those terms of reference, which I'm sure you have
22 all memorized, I am instead going to borrow from
23 the words of the chairman on the first day of the
24 Winnipeg hearings, when he concisely broke down
25 the job of the CEC into four key tasks: Reviewing

1 the broader public policy reasons as to why the
2 regulation of Lake Winnipeg came into being in the
3 1970s; hearing evidence from Manitobans regarding
4 effects and impacts of Lake Winnipeg Regulation
5 since it first went into full operation in 1976;
6 reviewing the successes and failures of the
7 implementation of those public policy goals; and
8 commenting on concerns raised about the issuance
9 of the final licence, including but not limited to
10 future monitoring research beneficial to the
11 project, to Lake Winnipeg, and to communities
12 affected by regulation.

13 It is the position of Manitoba Hydro
14 that the CEC will have before it, for the purposes
15 of this Water Power Act hearing, a comprehensive
16 record and a body of evidence from representatives
17 of all interested groups and individuals that will
18 allow it to fully carry out its responsibilities.
19 This is not a hearing under the Environment Act
20 and as such, the evidence differs from those
21 hearings.

22 The Commissioners have attended
23 numerous communities meetings, have received and
24 reviewed both the plain language document and
25 numerous answers to written questions, and you

1 have heard evidence over five weeks of hearings in
2 Winnipeg.

3 The work done by both the CEC experts
4 and by the participants and presenters has been
5 tremendous, and will most certainly guide the CEC
6 in its deliberations, but also guide Manitoba
7 Hydro in its future endeavours.

8 On the first day of the hearing, the
9 Chairman also described for us what was not in the
10 CEC mandate. I'm going to again borrow from those
11 words. "The Commission has not been asked to
12 provide an opinion on whether or not the final
13 licence should be issued, nor have we been asked
14 to pass comment or judgment on whether or not Lake
15 Winnipeg Regulation should have been implemented
16 in the first place. And while we recognize that
17 Lake Winnipeg Regulation is a key part of the
18 overall hydro system, we have not been asked to
19 review other parts of the system."

20 You also confirmed, pursuant to the
21 Water Power Act regulation, that Hydro is entitled
22 to a final licence upon fulfillment and compliance
23 with the terms and conditions of its interim
24 licence. The decision, of course, whether or not
25 to issue that final licence rests ultimately with

1 the Minister of Conservation and Water
2 Stewardship. It is Hydro's position that it has
3 exercised due diligence in complying with the
4 terms and conditions of its interim licence and
5 that it is now entitled to that final licence.

6 It has also exercised its discretion
7 in operating Lake Winnipeg Regulation honourably
8 and in good faith. Manitoba Hydro is not seeking
9 a change to that licence or to the operating
10 parameters through this process. Because to
11 implement such a change could have significant
12 environmental impacts for those living on the
13 lake, both upstream and downstream, depending upon
14 the nature of the change. Any recommended change
15 for the future needs to be carefully studied.

16 I am going to be turning the
17 microphone over to Mr. Cormie shortly to address
18 many of the issues that have arisen during the
19 course of this hearing, including the need for
20 those studies that I have referenced, and how
21 priorities should be identified. He, of course,
22 can't possibly answer each and every question
23 raised during this hearing in a short oral
24 argument. And for that reason, Manitoba Hydro
25 will also, as many others, be filing a written

1 argument, and it will be accompanied by a table
2 listing the many recommendations made by the
3 various experts, participants and presenters, and
4 it will provide a brief position and comment on
5 each of those recommendations for your review.

6 And just prior to handing it over to
7 Mr. Cormie, I would like to speak briefly to a
8 couple of recommendations made by participants
9 that have potential legal implications.

10 During the presentation of the
11 Consumers Association, it was suggested that there
12 needs to be significant law reform, including
13 possible reform to both the Environment Act and
14 the Water Power Act. As you heard in evidence,
15 there are two robust processes already in place
16 with respect to potential amendments to the
17 Environment Act and its interplay with the Water
18 Power Act, one being conducted by the Law Reform
19 Commission, and one being conducted by the
20 Province of Manitoba. Both have included
21 extensive input and participation from numerous
22 stakeholders over various rounds of feedback. And
23 as Mr. Williams indicated, there's even one
24 further round anticipated with respect to the Law
25 Reform Commission.

1 Creation of yet another body to look
2 at such reform would be duplicitous and would
3 possibly delay implementation of any changes
4 currently being considered. Manitoba Hydro asks
5 that this Commission give careful thought to what
6 type of recommendation, if any, it makes on this
7 subject, in light of the good work already done by
8 those two bodies.

9 The CEC has been asked by some parties
10 to advise the Province of Manitoba to issue an
11 affirmation of Aboriginal and Treaty rights.
12 Aboriginal and Treaty rights are entrenched in
13 this country's Constitution, and have been
14 clarified and interpreted in several important
15 Supreme Court of Canada decisions and other court
16 decisions. To ask the Province and/or Manitoba
17 Hydro to affirm those important rights in the
18 licence is not, in Hydro's view, appropriate, nor
19 necessary, nor of any legal force and effect. It
20 is also certainly outside the scope of this
21 hearing, as confirmed by the Chairman in his
22 opening remarks in relation to section 35 and
23 Aboriginal and Treaty rights.

24 Finally, a number of participants have
25 recommended that no final licence be issued until

1 Manitoba Hydro has provided them with compensation
2 for any perceived impacts. What this boils down
3 to is that they are asking that there be a delay
4 until Hydro reaches an agreement with their
5 community or organization. And I specifically
6 point to comments made by Pimicikamak, by the
7 Keewatinook Fishers, and by others.

8 A requirement preventing issuance of a
9 licence to Manitoba Hydro until it successfully
10 negotiates an agreement or compensation with any
11 third party is not practicable, because it is not
12 legally enforceable. No process, body, court or
13 government can successfully compel two parties to
14 agree. Two parties must negotiate, they must
15 attempt to understand each other's interests and
16 needs, they must have meaningful discussion, and
17 then hopefully conclude an agreement of their own
18 volition and free will. The parties cannot be
19 forced to agree. For example, if one party is not
20 being reasonable or is not negotiating in good
21 faith, such an agreement cannot be forced upon the
22 other.

23 A related recommendation from
24 Pimicikamak is for the Clean Environment
25 Commission to compel Manitoba Hydro, through

1 licence conditions, to fully and in good faith
2 implement its contractual obligations under both
3 the NFA and the recent process agreement. Again,
4 the essence of that recommendation is asking the
5 CEC to order Manitoba Hydro to agree with them.
6 That type of condition is not enforceable, nor
7 appropriate. No examples have been provided of
8 any other license in any other jurisdiction where
9 such a condition has been imposed, or where such a
10 condition has ever been effective.

11 Further, the process agreement with
12 Pimicikamak was only negotiated some five months
13 ago. There should be an opportunity for the
14 parties to work under that new agreement and
15 attempt to voluntarily reach agreement on the
16 matters in issue through a full and fair
17 negotiation process. In addition, a new
18 arbitrator has just been appointed under the NFA,
19 and he should be afforded an opportunity to work
20 with the parties and assist them in resolving both
21 the current and potentially future disputes. It
22 is for those reasons that Manitoba Hydro urges
23 this Commission not to make any of those types of
24 recommendations.

25 I'll turn it over now to Mr. Cormie.

1 THE CHAIRMAN: I should have done this
2 at the outset. What is your understanding of the
3 time for your final argument, time allowed?

4 MS. MAYOR: One hour. We will be
5 under that.

6 THE CHAIRMAN: That's okay, I just
7 wanted to make sure. I didn't want to go flashing
8 cards at 30 minutes when you thought you had three
9 hours.

10 MS. MAYOR: No, we knew we had one
11 hour and we'll be there.

12 MR. CORMIE: I think we'll be well
13 under that, Mr. Chairman.

14 Over the past few months, the
15 Commission has heard many concerns from those on
16 Lake Winnipeg about the significant effects of
17 Lake Winnipeg Regulation downstream. Manitoba
18 Hydro acknowledges the effects downstream and has
19 done much to address these concerns, and I'll come
20 back to those later.

21 But with regard to Lake Winnipeg
22 proper, with respect to concerns raised about Lake
23 Winnipeg and upstream areas, it is Manitoba
24 Hydro's position that there are many problems that
25 need to be dealt with. However, Lake Winnipeg

1 Regulation has not been the cause of the serious
2 problems on the lake associated with water levels,
3 erosion, water quality, fisheries, and the Netley
4 Marsh. The Lake Winnipeg Regulation (inaudible)
5 addresses the Province's desire for flood control
6 on Lake Winnipeg, peak and average water levels
7 are lower than what they would have been without
8 regulation, and this was clearly demonstrated over
9 the last ten years, when it's been very wet and
10 there's been significant reductions in lake levels
11 as a result of the project.

12 The seasonal pattern of water levels
13 on Lake Winnipeg remains the same as it was prior
14 to Lake Winnipeg Regulation. Water levels haven't
15 gone as low on the lake since regulation as they
16 have in the past. However, the Lake Winnipeg
17 watershed has not experienced an extensive dry
18 period since regulation compared to the one that
19 occurred in the 1930s and 1940s.

20 Erosion on Lake Winnipeg has been
21 ongoing for thousands of years and will continue
22 for thousands of years into the future. And over
23 a long time scale, in terms of millennia, the
24 hidden driving force behind erosion is
25 differential isostatic rebound. On a shorter time

1 scale, the mechanism for erosion is the natural
2 process of wind-driven wave energy.

3 The increase in frequency of algae
4 blooms and the corresponding decrease in water
5 quality on Lake Winnipeg is driven by the increase
6 in nutrient loading, especially from the Red and
7 Assiniboine Rivers. During extended periods of
8 high inflows to the lake, when nutrient loading is
9 the highest, Lake Winnipeg Regulation provides
10 increased outflows.

11 The fishery on Lake Winnipeg continues
12 to be successful. Netley Marsh has been
13 experiencing changes for the last 80 years, Lake
14 Winnipeg Regulation has been in place for the last
15 40.

16 There are many factors affecting the
17 marsh, including the Netley Cut, cessation of
18 dredging of the mouth at the Red River, isostatic
19 rebound, higher flows on the Red River, invasive
20 species, none of these have anything to do with
21 Lake Winnipeg Regulation.

22 And issues related to the regulation
23 of Lake Manitoba, our second great lake, and the
24 outflows into Lake St. Martin have nothing to do
25 with Lake Winnipeg Regulation.

1 However, downstream there is no
2 disagreement that people and the environment have
3 been impacted in a number of complex ways. For
4 that reason, there have been significant
5 negotiations over the past several decades to find
6 ways to mitigate and compensate for those impacts.
7 This has resulted in a variety of ongoing
8 programming and in the payment of hundreds of
9 millions of dollars through the Northern Flood
10 Agreement, through comprehensive settlement
11 agreements, and a multitude of agreements with
12 communities, trappers associations, fishers,
13 organizations, and others. Input received through
14 these negotiations contributes to the
15 establishment of mitigation programs and policies
16 at Manitoba Hydro.

17 Ongoing dialogue continues now and
18 will continue as Manitoba Hydro endeavours to
19 build and enhance its relationships with
20 Aboriginal peoples. Engagement continues even
21 today to work toward better relationships. An
22 example of this is the new Turning the Pages
23 agreement with the MMF.

24 The Commission recommended in its
25 Bipole III report that Manitoba Hydro find a new

1 way to work with the MMF. This agreement reflects
2 that new way and has resulted in the MMF support
3 of Manitoba Hydro's final licence application.

4 In terms of recommendations presented
5 to the Commission, Manitoba Hydro would like to
6 comment on a few of these. There has been some
7 discussion of a multi-party decision-making
8 protocol. Pimicikamak and Sagkeeng have
9 recommended that to the Commission. Manitoba
10 Hydro is committed contractually to the discussion
11 of this issue with Pimicikamak and the Province.
12 We need to let these discussions continue.

13 However, Manitoba Hydro has serious concerns with
14 operational control being taken away from Manitoba
15 Hydro. And without control, the security of the
16 electricity supply in Manitoba can't be
17 guaranteed.

18 And if Manitoba Hydro no longer makes
19 operational decisions, the issues of compensation,
20 mitigation and remediation, as a result of
21 decisions made by others need to become the
22 responsibility of whoever does get control.

23 There have been numerous requests for
24 new studies. Over the course of the hearing, the
25 future studies recommended have been many, which

1 begs a number of questions. What studies of these
2 are most important? Who will fund them? How can
3 they all be accomplished? And who should
4 coordinate these studies? Clearly, not everything
5 can be studied, because costs are significant and
6 time is limited. But there needs to be an orderly
7 process of identifying gaps, setting priorities
8 and establishing next steps, not ad hoc or random.
9 We believe the RCEA is a good step in that
10 process. A well-defined licence renewal process
11 would be the next step.

12 The recommendation to remove the
13 maximum discharge provision at elevation 715 and
14 put the decision in the hands of the Minister has
15 been made. The CEC has been urged use caution by
16 some of the participants in dealing with this
17 recommendation, and we would urge the same. This
18 will become an unwieldy process that would shift
19 the liability to the Minister. The Minister, in
20 its role, should be in policy mode, not
21 operational mode.

22 Manitoba Hydro, as we mentioned
23 yesterday, is indifferent to how floods are
24 managed, and we continue to be open to potential
25 change there. If a suitable licence amendment can

1 be found in collaboration with all parties at the
2 table, and is endorsed by the Minister, Manitoba
3 Hydro would adopt such a change.

4 We talked about our road map. Well,
5 what does that road map look like? Regardless of
6 the ongoing review of the Environment Act, we
7 believe our road map can proceed. Focusing on
8 changing legislation could waste valuable time and
9 delay work that could begin sooner. With regard
10 to scope, a road map only requires early direction
11 from the province in setting down expectations of
12 Manitobans that will lead to licence renewal in a
13 modern context. And there are many good models
14 out there, including the B.C. Hydro's model for
15 water use planning and Ontario's management plans
16 for water power. These models focus on involving
17 stakeholders early in the process and recognize
18 that one size does not fit all for all license
19 renewals.

20 With regard to research, the road map
21 should recognize existing efforts, and that the
22 RCEA is underway and it will be completed shortly.
23 The RCEA will identify gaps in the research done
24 to date, in the downstream area, and will help in
25 the scoping of the work required for licence

1 renewal.

2 That there are many independent
3 research organizations working on Lake Winnipeg,
4 issues needs to be recognized.

5 With regard to public engagement, the
6 road map should recognize the importance of
7 continued public engagement to ensure
8 transparency, inclusion and completeness. In
9 regard to that, we understand that after the
10 second phase of the RCEA is completed in October
11 of 2015, there will be a phase of public
12 engagement. That process could be used to
13 identify any further gaps and to assist in setting
14 priorities.

15 Manitoba Hydro remains committed to
16 engaging with communities around Lake Winnipeg.
17 We are also encouraged by the Lake Winnipeg
18 Indigenous Collective and we hope to discuss ATK
19 with them in the near future.

20 We have heard the word "status quo"
21 from both Pimicikamak and the Consumers
22 Association. Status quo, with regards to issuing
23 a final licence, does not mean nothing will be
24 done. The RCEA is underway. There is a process
25 agreement in place with Pimicikamak and Manitoba,

1 and potentially other parties. We recognize that
2 much work needs to be done, and 11 years is not
3 too soon to start. This work involves identifying
4 research gaps, addressing these gaps, developing
5 models, and building understanding and engaging
6 with people.

7 As Ms. Mayor has already stated,
8 Manitoba Hydro has not said we want no licence
9 change, only that we are not requesting a change
10 in this process. By changing the terms of the
11 licence in a modern context requires everyone at
12 the table. We cannot strike a deal with one
13 group. York Factory, Split Lake and others have
14 been very clear that they need to be involved in
15 any changes to the terms of the licence.

16 There are many upstream on Lake
17 Winnipeg who are relying on the flood protection
18 benefits afforded under the existing licence. We
19 have heard this licensing process referred to as
20 quiescent. Manitoba Hydro would point out that
21 this is the first licence review ever completed
22 under the Water Power Act. Nowhere in the Water
23 Power Act is this type of process called for, or
24 even contemplated. Instead of being quiescent,
25 Manitoba Hydro has embraced this process. Our

1 position on moving forward reflects our belief
2 that expectations have changed, that Manitoba
3 Hydro needs social licence, and indicates our
4 willingness to participate in the development of a
5 modern process.

6 With regard to integrated watershed
7 planning, we acknowledge there is a need for
8 integrated watershed planning in Manitoba.
9 Integrated water management planning, that need is
10 for a larger area at a basin strategy level. This
11 type of planning is beyond the mandate of Manitoba
12 Hydro. Leadership needs to come from the
13 province. And if that occurs, Manitoba Hydro will
14 be a willing participant.

15 As we have heard at these proceedings,
16 there are many issues on Lake Winnipeg, and water
17 related issues in the water basin that don't
18 result from the project. Some of these include
19 Lake Manitoba, phosphorus in the waterways,
20 drainage from agricultural lands, and shoreline
21 development policies. It's not possible to have
22 watershed planning that addresses these types of
23 issues just for hydro projects and not for the
24 province as a whole.

25 There has been a recommendation for an

1 ecological flow workshop at this time, and we
2 believe that it would be premature. An
3 understanding of how ecological flows should be
4 considered along with other interests in the
5 larger planning process is required. This is
6 supported by caveats in the Canadian Science
7 Advisory Secretariat paper that was referenced by
8 the CAC, which acknowledges that, and quotes:

9 "These regulated flow situations are
10 highly complicated, both ecologically
11 and economically, and the associated
12 issues are typically unique to each
13 situation. Each ecological flow
14 consideration will, therefore, have to
15 be addressed on its own ecological,
16 economic and social circumstances.
17 Providing an ecological flow regime in
18 one river reach will only have
19 implications for others. And that
20 interaction needs can only be
21 understood through appropriate
22 modeling."

23 So we need to ensure that modeling
24 tools are available and that the capacity to do
25 this type of work is in place before we undertake

1 a workshop.

2 Pimicikamak has suggested that
3 Manitoba Hydro wants no further responsibility,
4 and I can say that this could not be further from
5 the truth. We have responsibilities and Manitoba
6 Hydro is prepared to fulfill them.

7 As we wrap up this process, I'd like
8 to say a few thank yous, to the Clean Environment
9 Commission for your careful consideration and
10 attention, your thoughtful questions, and your
11 willingness to engage in this complex process.
12 Manitoba Hydro looks forward to your report to the
13 Minister and your guidance. We believe it will be
14 an important part of moving forward.

15 To each of the participants and
16 presenters in this process and the various
17 experts, we thank you for providing your efforts
18 and participation and perspectives. Your
19 involvement and the information you have provided
20 will help guide us as we continue to meet our
21 responsibilities.

22 To Manitoba Hydro's legal expert and
23 to our legal counsel, thank you for your wise
24 assistance in this process. And to the Manitoba
25 Hydro team and the witness panel, I thank you, you

1 have invested a lot of hard work and many hours in
2 preparing materials, answering questions, and
3 participating in this hearing.

4 I believe we have met the high
5 expectations that Manitobans have of us. Thank
6 you.

7 THE CHAIRMAN: Thank you, Mr. Cormie.
8 Thank you, Ms. Mayor. I'd like to throw some
9 thanks back to you and your team, the eight of you
10 who are in the room today, who have really been
11 the core of your group. You have been very
12 cooperative and very diligent in presenting your
13 case and responding to the many, many questions
14 that have come from the panel and the many
15 participants over the last number of weeks, and
16 even months if we go back to the beginning of the
17 IR process.

18 I'd also like to extend a thanks to
19 Gina Norris, who is not in the room, or hasn't
20 been in the room much during these hearings, but
21 with whom we had a lot of dealings in the last two
22 or three years as we prepared for these
23 proceedings.

24 So, thank you. And I suspect this
25 won't be the last time we'll be sitting across

1 tables from each other.

2 Just let me lay out a little bit, some
3 very brief closing comments. As has already been
4 noted, we do have some further community meetings
5 that we will be engaging in next week in Norway
6 House, and the following week in Winnipeg with the
7 Manitoba Metis Federation. The nature of those
8 meetings will be essentially the same as the
9 community meetings we held in January and February
10 prior to the opening of the hearings in Winnipeg.

11 As far the closure of the record, and
12 yesterday I had said noon on April 30th, we have
13 moved that back one day just to the end of the
14 week, so we will close the record at noon on
15 May 1st. And at that time, we require any written
16 final arguments. If they come in at 12:01, they
17 will go into the garbage can. So we're strict on
18 many of these deadlines, so please note that. The
19 Commission secretary will be letting you all know
20 in e-mails over the next few days, reminding you
21 of those deadlines. So that's to Manitoba Hydro
22 and to all of the participants.

23 As for the report, as has been noted a
24 number of times, this is not an Environment Act
25 licence. Under the Environment Act, we are

1 required by law to deliver a report to the
2 Minister within 90 days. I have said it here on
3 the record, and I'll repeat it, it's our
4 intention, or at least our hope that we will be
5 able to meet that 90 day time line for this report
6 as well.

7 Just a bit of a but, in some ways this
8 is actually more complicated than some of the
9 bigger projects that we have had to deal with.
10 There are a lot more diverse interests in this
11 process and we have to address all of those, we
12 being the panel, in our deliberations and in the
13 advice we give to our report writer. We have to
14 address all of those diverse interests and issues.
15 So we may be a little delayed in it, but we don't
16 think so. We're still shooting for basically the
17 end of July to deliver our report to the Minister.

18 And as Ms. Mayor quoted me earlier
19 today saying, ultimately it's the Minister's
20 decision. As in all of our reviews, it is
21 ultimately the Minister's decision as to whether
22 or not he issues, in this case, the final licence
23 to Manitoba Hydro.

24 Madam secretary, I think you have one
25 or two documents that need to be registered?

1 MS. JOHNSON: Yes. I just have one
2 document. It's Peguis's final comments, and it's
3 PFN number 9.

4 (EXHIBIT PFN 9: Peguis's final
5 comments)

6 THE CHAIRMAN: Okay. And finally
7 then, I'd just like to thank all of the people who
8 have been involved in these proceedings, including
9 many members of the public who came before us and
10 made presentations, to all of the participants who
11 put in a heck of a lot of work. And as has been
12 noted by many of them, they had far less money to
13 work with in these proceedings than in some of our
14 more recent ones. I think they all did very good
15 work. And I have long believed that having good
16 participants makes our job as a panel much easier.
17 And I think it also makes the proponent work a
18 little harder to define and describe what they are
19 looking for. So thanks to all of the
20 participants. Thank you to all the people who
21 played a part or a role in these proceedings over
22 the last number of months now.

23 And I think with that, that brings us
24 to a close and we'll adjourn.

25 (Adjourned at 2:15 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

Cecelia Reid and Debra Kot, duly appointed
Official Examiners in the Province of Manitoba, do
hereby certify the foregoing pages are a true and
correct transcript of my Stenotype notes as taken
by us at the time and place hereinbefore stated to
the best of our skill and ability.

Cecelia Reid
Official Examiner, Q.B.

Debra Kot
Official Examiner Q.B.

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