

**NATIONAL ENERGY BOARD
OFFICE NATIONAL DE L'ÉNERGIE**



**Hearing Order / Ordonnance d'audience
EH-001-2017**

**Manitoba Hydro
Manitoba-Minnesota Transmission Project (MMTP)**

**Manitoba Hydro
Projet de transport d'électricité Manitoba-Minnesota**

VOLUME 9

**Hearing held at
L'audience tenue à**

**Delta Hotel
350 St. Mary Avenue
Winnipeg, Manitoba**

**June 21, 2018
Le 21 juin 2018**

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HEARING ORDER/ORDONNANCE D'AUDIENCE

EH-001-2017

**IN THE MATTER OF Manitoba Hydro
Manitoba-Minnesota Transmission Project (MMTP)**

21 December 2017

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Winnipeg, Manitoba, Thursday, June 21, 2018

Audience tenue à Winnipeg (Manitoba), jeudi, le 21 juin 2018

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

Alison Scott Chairperson/Présidente

Murray Lytle Member/Membre

Keith Chaulk Member/Membre

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(i)

Applicant/Demandeur

Manitoba Hydro

- Mr. Brenden Hunter
- Mr. Sacha Paul
- Ms. Janet Major
- Ms. Shannon Johnson

Intervenors/Intervenants

Animakee Wa Zhing #37 First Nation

- Ms. Paloma Corrin

Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA)

- Mr. John D. Goudy
- Mr. David Core
- Ms. Annette Schinborn

Consumers' Association of Canada - Manitoba Branch

- Ms. Katrine Dilay
- Mr. Byron Williams
- Ms. Gloria Desorcy
- Ms. Danielle Morrison

Manitoba Métis Federation

- Mr. Jason Madden
- Ms. Alexandria Winterburn

Manitoba Wildlands

- Mr. Phillip Cramer

Northwest Angle #33 First Nation

- Ms. Paloma Corrin

Peguis First Nation

- Mr. Dennis Valdron

Roseau River Anishinabe First Nation

- Ms. Madison Urschatz

Sagkeeng First Nation

- Mr. Corey Shefman
- Ms. Kate Kempton

APPEARANCES/COMPARUTIONS
(Continued/Suite)

(ii)

Intervenors/Intervenants

Southeast Stakeholders Coalition
- Mr. Kevin Toyne

Southern Chiefs' Organization Inc.
- Mr. Steven Hunter
- Mr. James Beddome

Wa Ni Ska Tan
- Mr. Jared Wheeler

National Energy Board/Office national de l'énergie

- Ms. Marian Yuzda
- Ms. Carol Gagné

ERRATA

Tuesday, June 19, 2018 - Volume 7

Paragraph No.:

Should read:

3915:

MR. SHEFMAN: Yes.

MS. COUGHLIN: Yes.

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--- Upon commencing at 8:31 a.m./L'audience débute à 8h31

6418. **THE CHAIRPERSON:** Before we start, Mr. Shefman, I have a couple of minor points.

6419. I understand that we may have some new people in the room today who will join us in the appearances. So I would ask those folks to identify themselves to staff so we can register the appearance, and that would be Ms. Yuzda and Ms. Gagné.

6420. And before I get to Mr. Shefman then as well, we'd like to acknowledge that today is National Indigenous People's Day and this is a day for all Canadians to recognize and to celebrate the unique heritage, diverse cultures, and outstanding contributions of First Nations, Inuit, and the Métis people.

6421. We're here today on the lands of Treaty 1 and the Métis Nation. We acknowledge the history, spirituality, and the culture of Anishinaabeg, Oji-Cree, Dakota, and Cree First Nations who continue to have relationships with these lands.

6422. We invite everyone to take some time today to recognize and celebrate Indigenous people.

6423. And before for the agenda today, we will start with questions for the Manitoba Hydro witness panel by our Board counsel, Carol Gagné and Mary Yuzda.

6424. Now, Mr. Shefman.

6425. **MR. SHEFMAN:** Thank you, Madam Chair. Just a quick preliminary matter. In the transcript from Tuesday, which is Volume 7 at paragraph 3915, what I believe to be an answer given by Ms. Coughlin was attributed to me. And while we agree on many things, this answer in particular, we do not, and I'd appreciate it if that could be noted in the record. Thank you.

6426. **THE CHAIRPERSON:** Mr. Hunter.

MARCEL GAHBAUER: Resumed

SARAH COUGHLIN: Resumed

DEIRDRE ZEBROWSKI: Resumed

MARGARET BRATLAND: Resumed

JAMES MATTHEWSON: Resumed

GLENN PENNER: Resumed

BRAD IRELAND: Resumed

ANDREW CORMIE: Resumed

DAVID JACOBSON: Resumed

6427. **MR. BRENDEN HUNTER:** Good morning, Madam Chair. Just one housekeeping matter from Manitoba Hydro.

6428. I understand that Mr. Matthewson has a response to Undertaking Number 10, which is a list of the adjuvants used as part of the vegetation management plan at Manitoba Hydro in the last five years. Do you have that list, sir?

6429. **MR. MATTHEWSON:** Yes, I do.

6430. **MR. BRENDEN HUNTER:** Could you provide the names?

6431. **MR. MATTHEWSON:** Yes. So Manitoba Hydro has utilized the following adjuvants, three types of adjuvants, surfactants, anti-foam, and anti-drift. So their surfactants Manitoba Hydro has utilized on transmission lines in southern Manitoba is Dow Corning's XIAMETER which is spelled X-i-a-m-e-t-e-r; Dow Corning's SYLGARD, S-y-l-g-a-r-d; Dow AgroSciences GATEWAY, G-a-t-e-w-a-y; Victorian Chemical Company HASTEN, H-a-s-t-e-n; Loveland Products LI-700 as surfactants.

6432. For anti-foam adjuvants, Dow AgroSciences HALT, H-a-l-t; Loveland Products BREAKER, B-r-e-a-k-e-r; and for anti-drift adjuvants, NORAC Concepts, N-o-r-a-c Concepts; On Target; these are the products that Manitoba Hydro has used as adjuvants in its herbicide tree-control program.

6433. **MR. BRENDEN HUNTER:** Thank you, Mr. Matthewson, Madam Chair.

6434. **THE CHAIRPERSON:** Ms. Gagné, Ms. Yuzda.

--- EXAMINATION BY/INTERROGATOIRE PAR MS. YUZDA:

6435. **MS. YUZDA:** Thank you, Madam Chair. Thank you, Panel.

6436. Good morning. My name is Marian Yuzda. I am Board counsel. I have a few questions this morning, very few.
6437. I think my first question will either be for Ms. Coughlin or perhaps Mr. Matthewson or perhaps even Dr. Gahbauer.
6438. I note in Manitoba Hydro's evidence that you've made a commitment to conduct pre-clearing nest surveys for the Golden Warbler. And if you want a reference, I can bring it up, but I don't think we'll need it. And I note that there's also a commitment to do so for birds of prey.
6439. I've not been able to find a reference in your evidence or Manitoba Hydro's evidence, and in particular, I haven't been able to see anything in the construction Environmental Protection Plan or in the Environmental Monitoring Plan that Manitoba Hydro will conduct those same pre-construction or pre-activity nest surveys for all migratory birds or bird species of conservation concern.
6440. So what I'm wanting to know is if Manitoba Hydro will commit to making those same surveys, pre-activity, for those birds that I've mentioned, migratory birds and birds of special conservation concern?
6441. **MR. MATTHEWSON:** Yes. Manitoba Hydro will commit to conducting pre-nesting bird sweeps as part of its construction Environmental Protection Plan when construction activities are happening within the breeding bird timing windows.
6442. **MS. YUZDA:** So I just have a couple of follow-up questions, and I think just based on that answer. So if you find active nests, will Manitoba Hydro implement mitigation to protect the identified birds and their nests?
6443. **MR. MATTHEWSON:** Yes, within the construction Environmental Protection Plan there will be an appendix that contains all the details on the nest-sweep protocols as well as the buffers by species that will be implemented for particular construction activities, depending on the level of disturbance.
6444. **MS. YUZDA:** I guess, just based on that answer, will mitigation measures be implemented in consultation with Environment Canada, Environment and Climate Change Canada, particularly if this species is found on

the species at risk list?

6445. **MR. MATTHEWSON:** We implement the buffers, the buffer distances that Manitoba Hydro has in its appendices in its construction Environmental Protection Plan are developed or are recommendations that came from Environment Canada and/or the Province of Manitoba Conservation Data Centre, a wildlife branch of Manitoba Sustainable Development, provided us lists of appropriate buffer setback distances based on distance.
6446. So generally, we don't consult with Environment Canada because of the existing information that exists; however, if there was a situation where a nest was located within some part of our infrastructure or within part of an area of construction activity where there was a safety risk, then Manitoba Hydro would consult with Environment Canada and Canadian Wildlife Agency about submitting any type of permits that may be required to move the nest out of the way. So it would be subject to any permits required by those agencies.
6447. **MS. YUZDA:** And can Manitoba Hydro confirm that the surveys will be conducted in a non-invasive manner? By that, what I mean is, will it be conducted in accordance with any guidance that there is from Environment and Climate Change Canada?
6448. **MR. MATTHEWSON:** Yes, it will.
6449. **MS. YUZDA:** And can Manitoba Hydro indicate whether these commitments to conduct the surveys will be clearly communicated in both the construction Environmental Protection Plan and the Environmental Monitoring Plan?
6450. **MR. MATTHEWSON:** Yes, the commitments will be clearly articulated in both those plans.
6451. **MS. YUZDA:** Yesterday, I believe it was perhaps Mr. Penner or perhaps you, Mr. Matthewson, that had an exchange with Mr. Toyne about the need for two winter seasons in order to complete construction to meet an in-service date of June 2020. And what I'd like to know is, from an environmental protection standpoint, what would Manitoba Hydro's plan be if the company doesn't get those two complete frozen condition seasons, or non -- yeah, frozen condition seasons before the June 2020 in-service date?

6452. **MR. PENNER:** There are probably a few activities, and it's really around risk in some of the wetland areas, where you really can't access into those areas. And if we don't have those two winter construction seasons, we end up in a situation that we run the risk of not being able to complete some of those geo-technical -- we haven't had a chance to do a geo-technical analysis, so the foundation design is not complete for those areas. And so that's probably our biggest risk.
6453. As far as the Environmental Protection Plan, we will continue to -- everything -- we will follow everything. We just may be in a situation where we don't complete some of the wetland areas and we would have to go beyond the June 2020 date. That's essentially what would happen.
6454. But there's certainly areas where, in farmland and in areas that are normally dry, that we can access, but then there's areas -- there's times of year when it is wet. So there's mitigation strategies that we implement to ensure that we follow the environmental protection program for those areas, whether it be matting or waiting until it's drier.
6455. Right, James just mentioned that we implement use of helicopters to do stringing and those kinds of things. Those are the kinds of mitigation measures that we can use.
6456. But there's -- it's a risk around specific foundations. And if everything goes well, you know, we may be able to still complete within that, but I think the answer that I used yesterday -- it would be very difficult, so the probability of completing without two winter seasons significantly drops. But we would work with our contractors to find ways to possibly do it.
6457. **MR. MATTHEWSON:** If we were -- to add to Mr. Penner's, if we were in a position where we had a constrained schedule, there are a number of, as Mr. Penner mentioned, operational construction techniques that may be able to be implemented, as well as corresponding mitigation measures.
6458. And Manitoba Hydro would work with the appropriate regulatory authorities, such as Environment Canada, Manitoba Sustainable Development, to discuss those mitigation measures and review and approve any type of mitigation measures that we may need to adjust in our Construction and Environmental Protection Plan to accommodate new construction techniques, such as the use of helicopters.

6459. **MS. YUZDA:** So I just have a follow-up question, Mr. Matthewson, and I what I'm wanting to know is, would Manitoba Hydro's current -- I guess what I'm hearing you say is your current measures may need to be modified; Manitoba Hydro's measures may need to be modified. But what I'm wondering is if the end result would be the same as your current Environmental Protection Plan. And specifically what I'm wondering is if the predicted residual adverse environmental effects would remain insignificant for any VCs to which that would apply?

6460. **MR. MATTHEWSON:** Yeah, any modifications to our Environmental Protection Program would not result in any changes of significance as determined in the Environmental Impact Statement.

6461. **MS. YUZDA:** Thank you. Those are my questions. Thank you, panel. Thank you, Board.

--- EXAMINATION BY/INTERROGATOIRE PAR MS. GAGNÉ:

6462. **MS. GAGNÉ:** Good morning. I'm Carol Gangé, also Board counsel.

6463. I'm going to return to a topic that's come up a few times this week -- and I think I'm addressing myself to Ms. Coughlin -- particularly on the subject of perceived risks. It's come up in cross-examination from other parties, notably with respect to EMF and herbicides.

6464. I'm just going to ask Ms. Foreman to pull up document A90600. And if you can go to page 7?

6465. So in the first paragraph on this page, you note that:

"The MMF Study goes on to explain that survey participants indicated a perceived risk of industrial odor and other physical attribute changes [...]. Manitoba Hydro would like to work with the MMF to develop relevant educational materials to assist in alleviating this concern. This could include materials explaining EMF to help mitigate concerns associated with it."

6466. So my first question is, what is the status of these educational materials that are discussed here?

6467. **MS. COUGHLIN:** We are in discussions with the MMF and we're about to embark on a series of chats about appropriate mitigation measures from their perspective. And that is one of the ones we've chatted about most specifically, is how to develop a communication document that clarifies concerns and risks on both sides of the issue. So it hasn't been developed yet, but we fully intend to develop that in collaboration with the MMF.
6468. **MS. GAGNÉ:** And would you consider offering a similar type of opportunity to other Indigenous groups to create educational materials?
6469. **MS. COUGHLIN:** Yeah, absolutely. I think if that would help, and if it's suitable. For sure.
6470. **MS. GAGNÉ:** Is it something you've explored with the monitoring committee, or you would explore with the monitoring committee?
6471. **MS. COUGHLIN:** We haven't talk about that specifically yet, but we could if it comes up.
6472. I think the topic of discussion has been -- like, concern for EMF has certainly been shared with through the committee, so that sounds like a solution that might apply more broadly.
6473. **MS. GAGNÉ:** And it's mentioned here with respect to EMF. Has it been considered with respect to herbicides as well?
6474. **MS. COUGHLIN:** We've developed a document to do that for herbicides, I guess last winter, I think, subject to check. There's a document that was created for that specifically.
6475. **MS. GAGNÉ:** Can you describe a little bit what type of information is included in that document about herbicides?
6476. **MS. COUGHLIN:** Yeah. It talks about, first of all, why we need to keep trees away from the transmission line, like the safety hazard, it has visuals that sort of demonstrate why tall trees could cause a problem, and it has images of fire and towers on it, and then we have discussion of what happens at integrated vegetation management. We talk about the tool box of available tools to use for managing rights of way. Yeah, it's short and sweet and in laymen's terms.

6477. **MS. GAGNÉ:** And actually, I'll ask Ms. Foreman to pull up your response to IR 5-12, which is A92082-2, and go to page 205. So on line 70 and 71 you talk about creating plain language summaries. I actually take it that this is slightly different than the one you've discussed about herbicides, but in the same vein?
6478. **MS. COUGHLIN:** Which line item are you referring to?
6479. **MS. GAGNÉ:** Sorry, at line 70, 71 it talks about creating plain language summaries of licensing and certificate conditions and commitments.
6480. **MS. COUGHLIN:** Oh, right. Okay. So what that was talking about, you know that table that we were going through yesterday, that a lot of those are very specific technical commitments that were difficult to understand. So we talked about conveying some of those in a more approachable, easy to understand manner.
6481. People wanted to understand what are the commitments, what really are the commitments and what does it mean in the field. And so we talked about the need to have a plain language discussion of what all those commitments mean. There's so many and some of them are so specific that the committee talked about having something to translate that.
6482. **MS. GAGNÉ:** And this would be documents developed in conjunction with the monitoring committee?
6483. **MS. COUGHLIN:** That's correct.
6484. **MS. GAGNÉ:** So these educational materials on the topic of EMF and herbicides, could -- the work could dovetail with some of this?
6485. **MS. COUGHLIN:** Yeah, the herbicide one is already finished, but it ---
6486. **MS. GAGNÉ:** Right.
6487. **MS. COUGHLIN:** --- certainly could become part of a package of information that works -- that goes to the committee.

6488. **MS. GAGNÉ:** And so moving on to traditional knowledge studies -- and I'll keep this document open, but go to page 198. So here we have the table that I think has also come up this week talking about the various ATKs and Aboriginal traditional knowledge studies that have been done with different groups. On lines 13 and 14 the -- for the Animakee Wa Zhing and Northwest Angle it's offered with agreement pending. Is there any update to that information?
6489. **MS. COUGHLIN:** Yeah, those agreements have been executed.
6490. **MS. GAGNÉ:** So are the studies in progress or have they been completed?
6491. **MS. COUGHLIN:** The studies, I believe, are in progress. We haven't received a draft final report yet.
6492. **MS. GAGNÉ:** Do you anticipate having those studies in time to incorporate it into the EPP?
6493. **MS. COUGHLIN:** That's what I understand. Our schedule was set up in the agreement to have the information before -- in enough time to include information in the EPP.
6494. **MS. GAGNÉ:** And should those studies come in too late to incorporate into the EPP, do you have a plan for what to do with the information in the studies at that point?
6495. **MS. COUGHLIN:** Yeah, so that does happen sometimes. So what we do is we have meetings directly with the community to talk about if there's -- like, sometimes final versions of studies get hung up for various reasons, so what we can do is have discussions with the communities specifically to say if you want to convey components of the report, or just specific site information to share their shape file, or just share characteristics that are important to consider, there's ways that we can convey information to protect those sites without having that final completed report. So we've done that through draft studies in the past, yeah.
6496. **MR. MATTHEWSON:** Just to add to Ms. Coughlin's answer. The environmental protection plans are continuously updated, so if we do receive information at a later date anyway, at any point in time, we can review that information and incorporate it into the environmental protection plans if possible.

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6497. **MS. GAGNÉ:** And this table refers to those -- the two I just mentioned. Are there any other outstanding ATK studies that you're aware of?

6498. **MS. COUGHLIN:** There is one.

6499. **MS. GAGNÉ:** Which group is that?

6500. **MS. COUGHLIN:** That's Dakota Tipi First Nation.

6501. **MS. GAGNÉ:** And what's the status of that one? In progress?

6502. **MS. COUGHLIN:** It's in progress. That's right.

6503. **MS. GAGNÉ:** Thank you very much. Those are my questions.

6504. **THE CHAIRPERSON:** The Panel would like to have a brief consultation with the staff. Sorry, Mr. Shefman.

6505. **MR. SHEFMAN:** That's fine.

6506. **THE CHAIRPERSON:** We'll get to you in a minute. Thanks.

--- (A short pause/Courte pause)

6507. **THE CHAIRPERSON:** Mr. Shefman.

6508. **MR. SHEFMAN:** Madam Chair, I have one question arising out of the Board's questions. I am not sure if that is something which the Panel would permit and I thought it best to ask.

6509. **MR. BRENDEN HUNTER:** Manitoba Hydro would object to that, Madam Chair. There's no opportunity here for my friend to ask additional questions. This panel hasn't gotten up. If he wants to provide other evidence, that's fine through his own panels, but this isn't an opportunity to have a second round of cross-examination.

6510. **THE CHAIRPERSON:** That is the usual circumstance.

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6511. **MR. SHEFMAN:** Some regulatory agencies of this sort allow intervenors to ask questions directly arising out of the Panel's questions, but if that's not the practice of this Panel then that's fine.

6512. **THE CHAIRPERSON:** In any event, the Panel itself has some questions for this panel. I'll start with Dr. Lytle.

--- EXAMINATION BY/INTERROGATOIRE PAR MEMBER LYTLE:

6513. **MEMBER LYTLE:** Thank you, Madam Chair.

6514. Sorry, panel, you probably thought you were off the hook, but you're not.

6515. Now, I'd like you to treat these questions as short snappers, if you will. My background is mostly in rocks, and so if we get too deep into the weeds you'll be sending someone back to look for me.

6516. And I'd also be grateful if you would sort amongst yourselves who's going to answer because that relieves me the burden of one more opportunity to embarrass myself. And looking at the sad state of my notes I think I'm going to be treading on some thin ice here. I'm now recognizing why people use their computers when they come up to ask questions, and I wish I'd done the same.

6517. First question though is, when a dam is licensed, my understanding would be that there would be a maximum water level that is included in that licence? And I'm wondering if that is the case, if there's also a minimum water level.

6518. **MR. CORMIE:** Yes, you are correct. When Manitoba Hydro builds a generating station, it gets an interim licence from the province of Manitoba under the *Water Power Act*. And in that licence the operating parameters of the project are laid out, which includes maximum water levels, minimum water levels if they're appropriate, rates of change on flow and all the parameters necessary that are the basis of the design and the environmental assessment. All those things get incorporated into that licence and then Manitoba Hydro operates to those parameters.

6519. **MEMBER LYTLE:** And if you -- if there was some exigency that required you to spill, for example, more water more quickly than normal, there's a

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mechanism by which you go before a Board to request that, I presume?

6520. **MR. CORMIE:** Yes, the licences are -- set those parameters. But it is not so detailed as to outline every circumstance that could arise in the operation of the generating station.

6521. And in my experience, we have had to deviate from the strict licences in order to protect public safety, for example. If there are people who are downstream of the dam and the licence would order us to open the dam to pass water, we wouldn't do that and put public safety at risk. In that circumstance, we then immediately contact the province, tell them the situation, and request their permission to deviate. But we do that after the fact. We put public safety first, and then we tell the regulator what we have done and seek their after-the-fact concurrence.

6522. **MEMBER LYTLE:** Thank you. We've heard yesterday or the day before that the water level in Lake of the Woods is established by, I think you called it a control board or something made up of users of Lake of the Woods, including Manitoba Hydro.

6523. So if that particular board, the users group, or however they're -- I forgot the name of it -- want to change the lake level, I presume they have to come, at some point, to Manitoba Hydro, to get you to do something downstream to change the lake of the whole -- or the level of the whole system.

6524. Can you explain how that happens?

6525. **MR. CORMIE:** Yes. The dams at the outlet of Lake of the Woods are owned by a private utility; I think it's H2O Power Ltd. But those dams are regulated by the Canadian Lake of the Woods Control Board, which is a government organization set up under concurrent legislation.

6526. The board members are appointed under Order in Council. And there's legislation that describes the operating limits for Lake of the Woods and what happens when water levels get too low and what happens when they get too high.

6527. Manitoba Hydro has no legislative relationship to that board. We do not control those. We go before the Lake of the Woods Control Board, like other users, and express our views. And the board takes those views into consideration

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when it makes its regulation decision.

6528. So the Board doesn't come to Manitoba Hydro, "What would you like?" We go to the board, just as in this process, and seek -- they seek our input and then they make those decisions.

6529. There are reservoirs in northwest Ontario that are deemed to be hydroelectric reservoirs, where the hydroelectric utilities can make specific requests for flow changes. And the Lake of the Woods Control Board in those reservoirs is very responsive.

6530. Lake of the Woods is a different -- it's not considered a reservoir, a hydropower reservoir. It's considered a -- it's a multipurpose lake. And the legislation is very broad, requiring the Lake of the Woods Control Board to regulate for the maximum beneficial use of all parties.

6531. And so Manitoba Hydro has no preferential position in -- when it goes to speak to the board in asking for any particular water flows.

6532. **MEMBER LYTLE:** Okay. So to be clear, Manitoba Hydro is not the point of control of lake levels in that particular ---

6533. **MR. CORMIE:** That's correct. It's outside Manitoba. It's not our dam. It's upstream. The board decides independently -- not independently, but it has its independent jurisdiction, and it can choose to ignore Manitoba Hydro, it can choose to listen to it, it can give it weight, it may not give it weight. But it does seek input from all people who are affected by the water levels, both upstream and downstream of the dam.

6534. **MEMBER LYTLE:** Okay. Thank you. Changing topics a little bit.

6535. When Manitoba Hydro went out in, I guess it was 2013, to the initial groups, I think it was 15 -- I may be wrong about that -- to start informing impacted parties, did you ask that initial group whether they knew of additional parties, or invite them to pass on the messages that were to other parties that might be impacted?

6536. I'm just wondering how you -- what efforts you used to proliferate the initial message?

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6537. **MS. COUGHLIN:** Yeah, what -- so one of the things we do first is to ask how each group wants to engage with us. And one of the ways we handled understanding who else might be out there is to include organizations. We included four Aboriginal organizations that have broad membership. And if there's concerns from this broader membership, they can bring that to their members, who then can share that with us.

6538. We also understand that people who use the area talk, and work together, and collaborate, and information's shared that way.

6539. So we showed that we were open to hearing about others through our meetings. So we asked questions about other communities who may be in the area when we asked about the history of the area.

6540. **MS. BRATLAND:** Just to build on what Ms. Coughlin has said, in the public engagement program, and in the early stages of engagement with stakeholder groups, as well as other interested parties, we did put that question to those groups, as to whether they were aware of any other possible interested parties. So there was a possibility of Indigenous groups being identified that way as well.

6541. **MEMBER LYTLE:** So to understand, you were overt in your invitation to -- for intermediaries, as it were, to spread the word?

6542. **MS. BRATLAND:** Yes, we were.

6543. **MEMBER LYTLE:** Can you identify the four broad groups that were included in the initial survey, I guess, of impacted parties?

6544. **MS. COUGHLIN:** So there were 16 groups that included -- are you talking for Indigenous or did you mean public?

6545. **MEMBER LYTLE:** No, the Indigenous groups. And I'm just interested in -- you mentioned just now, four broad groups that ---

6546. **MS. COUGHLIN:** Yeah. So AMC, SEO, the Dakota Ojibway Tribal Council, and the Aboriginal Chamber of Commerce.

6547. **MEMBER LYTLE:** Okay.

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6548. **MS. COUGHLIN:** Yeah.

6549. **MEMBER LYTLE:** I want to go to the construction now.

6550. We heard that Manitoba Hydro has an inventory of Indigenous groups that might be interested in participating in the construction. And I'm interested in knowing a little bit of detail of that database.

6551. In particular, did you invite statements of qualification from Indigenous groups so that they would have the opportunity to be a bit more specific, perhaps, about what their capabilities are?

6552. And from the perspective of general contractors, when they look at this inventory of capability, can they -- is there sufficient detail in that inventory to identify groups that have specific capabilities that they might be interested in? Or is it just sort of a listing of names and, "Have a go at it, guys."

6553. **MS. ZEBROWSKI:** There were two letters that were sent, one that was sent in January, and then a subsequent letter that was sent in April. And in those letters, we requested information from communities and asked if they had businesses that they would like to see included in the contract. And where that information was provided, we included that information.

6554. And in most cases, it would be -- Mr. Penner can correct me if I'm mistaken, but my understanding is that it would be in the information that the community would provide to us which is provided. So generally speaking, it would be the name of the company, contact information. I would assume in some cases from the name it's clear what that company is about.

6555. **MEMBER LYTLE:** Okay. There wasn't a formal statement of qualifications process then; is that right?

6556. **MR. PENNER:** No. I think those letters were more intended to give opportunities for Indigenous communities to provide the types of companies and equipment that could participate. I think some of the other Indigenous companies that are -- I should back up.

6557. Obviously, transmission line construction is a pretty specialized industry. And there are a number of known Indigenous companies that subcontract with some of the major players. Those are pretty well known and

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- they've been -- we just went through a pretty major build with Bipole III. So some of those companies work with the major contractors on Bipole III. So they're well known, those qualifications.
6558. This was more about finding the smaller companies that may have had a couple pieces of equipment that could be utilized, and to try and draw that out.
6559. **MS. ZEBROWSKI:** It could also have identified opportunities for procurement. For example, if there was a company that sells fuel or like those sorts of services or catering, those sorts of things as well.
6560. **MEMBER LYTLE:** So was the survey granular enough? For example, if a community has an individual who's graduated with a Master's Degree in Agriculture, would that be picked up in this inventory of skills or is there still the possibility that individual capability might get missed?
6561. **MR. PENNER:** The Indigenous content letters that went out were for subcontracting companies and what we're going to do prior to the start of construction is have -- there's going to be for each -- there's two sections for this line so two contracts. And so for each of the contracts there's going to be two separate days where we have a local kind of hiring fair, you might say, and that's what we had an exchange about when those are going to be advertised. But the idea is that happens just kind of weeks before construction.
6562. And the idea there is that those that want to work on the project can bring their resumés and it's a bit of a meet and greet. The preferred contractor will be there, Manitoba Hydro will be there, and it would be an opportunity to connect people that want to work on the project with the contractor. So that, the employment side, will be done that way.
6563. **MEMBER LYTLE:** Yeah, thank you. We've heard about a lot of things that Manitoba Hydro did to advertise the project, to invite participation from impacted parties. Did you ever test what I'll call the saturation of your activities to see how at what level it was reaching and the level of understanding of those who you were attempting to get to in terms of -- it's kind of an efficiency of advertising, if you want, study. Was that ever done?
6564. **MS. BRATLAND:** I would say we informally tested that. We looked at our website hits, we looked at how many of the e-blast emails were opened, we looked at rate of response, we looked at the number of landowners who we had

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communicated with and had dialogue as a result of our notifications or mailouts. So we had a number of different indicators we looked at.

6565. The other thing that we did before this project is we looked at past projects and reviewed the effectiveness of communication and the information needs of people and groups that we worked with and adjusted our practices. At that, we also tracked open house attendance and the number of individuals that participated through those different mechanisms.

6566. **MEMBER LYTLE:** Would you see value in doing sort of a follow-up survey as you go through these practices to understand whether your message is getting to the people it's intended to get to? I'm just, I'm not familiar with how things work in this part of the world and in this industry. I'm just curious whether sort of normal practice to do a survey as you go along to ensure that you aren't wasting your money, number one, and you are, in fact, informing the people that you want to inform.

6567. **MS. BRATLAND:** Like I mentioned with the survey that we had done previously, there was a formal approach to that where we did canvass. We had an independent consultant who reviewed and canvassed the feedback and summarized that feedback for Manitoba Hydro. And I believe we would do that again at the end of this project so we learn from project to project. That's a very important milestone in time.

6568. The feedback that we get and the how we're doing on communication is something that I would say we approach actively similar to our adaptive management process where we are gaining feedback continually through our teams in terms of what kind of information and communication mechanisms are working well for the people we're trying to work with.

6569. **MEMBER LYTLE:** And I take it, based on the previous independent third-party survey, you're happy with the results?

6570. **MS. COUGHLIN:** Based on the previous feedback we got, we made a number of changes and we think that that has resulted in great improvement in our ability to meet the communication and information needs of the groups we're working with.

6571. **MEMBER LYTLE:** Okay, thank you.

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6572. **MS. ZEBROWSKI:** I just wanted to add one point of clarification. The forms that we sent to communities and said, "Send us information in regards to the contracting," the information that we asked for in those forms included the name of the community; the name and the title of the person filling out the form; the date; contact information which we indicated would be included in the public tender documents so who should companies contact if they have general questions about the community and contact information for that person; who should companies contact if they have questions about employment and training, so that information was there as well; and contact name and contact information as well as business information which would also be included in the public tender, information about the company name of the Indigenous business that's owned and/or located in the community, so it didn't necessarily have to be a community-owned company -- it could be a company owned by a community member that the community wanted us to know about. So I just wanted to provide that additional clarification.
6573. **MEMBER LYTLE:** Thank you. Going back to the theme of contacting groups, when you sent out your e-blast, did you send it out to the three groups that were missing up until January of 2017?
6574. **MS. COUGHLIN:** The seven groups that were identified by the NEB Consultation Director?
6575. **MEMBER LYTLE:** Sorry, that's right. Yeah.
6576. **MS. COUGHLIN:** No, you have to sign up for the e-blast to receive it so we would send letters or communications directly to those communities.
6577. **MEMBER LYTLE:** Okay.
6578. **MS. COUGHLIN:** Yeah.
6579. **MEMBER LYTLE:** I want to move to herbicides. Has Manitoba Hydro done any sort of permeability testing in the areas where you're going to use herbicides to test mobility of those herbicides and the concentrations that you're intending to use them on, and particularly near water bodies?
6580. **MR. MATTHEWSON:** No, Manitoba Hydro has not done any formal permeability testing. However, it does work with a -- or has developed a soils map based on soils information provided by the Province of Manitoba that

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outlines where soils, more permeable soils exist such as the sandy soils where the potential for leaching is a possibility. And we adjust our herbicide usage according to those maps. So we would use a herbicide that is not prone to leaching, particularly in those soil conditions. So we use GIS information of soils data for the province to inform our selection of herbicide use.

6581. **MEMBER LYTLE:** Did you ground truth those maps at all to make sure that they're in enough detail to be reliable at the scale that you'll be working?

6582. **MR. MATTHEWSON:** We haven't formally ground-truthed the maps but we do do field reconnaissance prior to our herbicide applications where we do investigate ground conditions and soil conditions at that time.

6583. **MEMBER LYTLE:** I'm not a herbicide expert. I could hardly keep up with the dandelions in my lawn. But I'm wondering, is the application of herbicides a necessary activity or is it a convenient activity? And that gets to the effectiveness of herbicides versus other methodologies for the kind of control you're trying to achieve and also, I guess, the cost of alternatives.

6584. **MR. MATTHEWSON:** The use of herbicides as part of an integrated vegetation management program is very integral into the program because of its -- the vegetation that any one utility -- so integrated vegetation management programs are utilized by many industries, so Manitoba Hydro for maintaining utility rights-of-way, CN Rail for maintaining railbeds, the Highways Department for maintaining ditches.

6585. In Manitoba Hydro's situation and the nature of the species, the early successional species in Manitoba, when we use a mowing program or the initial clearing of the transmission right-of-way, with certain species such as poplar species, they -- and it's particularly a profound effect when clearing is done in the winter time on those species, as much as the food reserves of a poplar tree are into the root system.

6586. So when you remove the top of the tree through a clearing program in the winter, which is generally when Manitoba Hydro conducts that. All the food reserves are in the root system, so the following spring, because poplar is a suckering species, for every tree you cut down you can have hundreds of stems replacing it. And if you continually mow, those stems just continually spread and re-sucker. So it -- chemical control is really the only viable option to control that re-sprouting in those conditions.

6587. And those are conditions that don't exist on the entire right-of-way. It is very selective in nature on where those conditions appear as a result of the initial clearing and it's based on soil conditions, site productivity, the species of trees and shrubs and understory that exist on the right-of-way when it is cleared initially, and as it recovers from that clearing process.
6588. So we're not -- we were requested to identify where -- we've been requested to identify many times where exactly we would use herbicides before we even cleared the project and it's simply not possible to predict exactly where we would use them because of the environmental response that's going to be highly variable based on the location of the clearing, based on the species that are being cleared, as well as the site productivity.
6589. So the initial integrative vegetation management plan is developed and it's developed sometimes prior to construction or prior to operations for sure. It outlines all of the different tools that are available and when those tools would be utilized and the decision-making system that is used to decide which tool is appropriate for the site.
6590. However, the exact sites and how those tools are implemented on a very site-specific basis, those decisions can't be made until post-clearing. And usually one to two years after there is an initial assessment of the re-growth of the right-of-way and what type of vegetation is re-growing.
6591. In an area where we're trying to create a habitat such as the Golden-winged Warbler habitat management plan, it's part of this project, we are really trying to create a diverse shrub herbaceous ecosystem with both species diversity and vertical diversity for that bird species. Without the use of herbicides in the selective control of the trees that start to re-grow in that right-of-way, we wouldn't be able to achieve that habitat type, because if mowing was our only option or cutting because of the continuous re-sprouting of the trees, we wouldn't be able to establish a stable habitat for the Golden-winged Warbler, as an example, without the use of herbicides in a very selective manner to control the trees that are re-growing because of the nature of the poplar species as being an early successional species. They dominate a right-of-way very quickly from -- if there was previously poplar there. And they can take over all of the resources within the soil of the nutrients and the water making it difficult for other herbs and shrubs to re-establish on the right-of-way.

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6592. So chemical control allows us to do that selective treatment on trees only; whereas, a mechanical mowing type method is very indiscriminate. And a manual method, you can selectively control the tree, but you're still manually cutting it. It will re-sprout multiple stems for every stem you cut in the instance of a poplar species.
6593. **MEMBER LYTLE:** So bearing in mind that I'm a rocks kind of guy, I take that as it's a necessary?
6594. **MR. MATTHEWSON:** Yes, sorry, that was a ---
6595. **MEMBER LYTLE:** Thank you. That was a good ---
6596. **MR. MATTHEWSON:** It was necessary.
6597. **MEMBER LYTLE:** I appreciate that.
6598. Is Manitoba Hydro familiar with a group called the Twin Sisters Native Plants Nursery in northern B.C.?
6599. **MR. MATTHEWSON:** No, we are not.
6600. **MEMBER LYTLE:** Okay. That's a hint, by the way.
6601. It's a joint venture organization, I guess. It's a company, I believe, between Indigenous groups and several industry participants to recover seeds, bring them to a nursery, grow them, and then replant them into affected areas. Anyway, I was going to ask some questions about that.
6602. Now my last question -- oh, I'm sorry. Did somebody want to say something?
6603. **MS. COUGHLIN:** There are -- there's a local -- I don't know if it's Indigenous owned, but there is local companies that do Native seed rehabilitation.
6604. **MEMBER LYTLE:** Okay.
6605. **MS. COUGHLIN:** One of the good things about where we're working is a lot of the plants are quite prominent and exist broadly across a wide area, so many of the species of interest are available throughout the regional

assessment area.

6606. **MEMBER LYTLE:** Okay. So it's covered.

6607. **MR. MATTHEWSON:** In our rehabilitation of invasive species management plan we list the species that are commercially available, both traditional use species and native plant species that are available for -- that Manitoba Hydro will work with this contractor to use in rehabilitation processes.

6608. **MEMBER LYTLE:** Good. Okay. Thank you.

6609. Last question, now, I can understand why for safety reasons you don't want to have tall trees on the right-of-way. And I guess the height of the tallest tree can't be taller than the lowest sag of the lines for those reasons.

6610. My question is, in areas where you don't anticipate trees growing to that height or there being trees of that height naturally, is it always necessary to completely brush the entire width of the right-of-way? Could you not get away with sort of a lay down strip, if you want, for the power lines and leave the right-of-way largely in its intact state?

6611. **MR. MATTHEWSON:** Yes, that is what we are planning to do on this project. We've used LIDAR analysis. So LIDAR is a -- it's a laser where a plane flies over the right-of-way pre-construction. It's used for the terrain analysis as part of tower spotting and tower design. I've used that information to understand canopy heights and understory heights. And we've used that to delineate areas, particularly in wetlands, where trees can be very, very old, yet be only a certain height and will never achieve a height taller than that. So we've designated those areas as limited clearing areas, so within the right-of-way. So the areas that will be cleared within a wetland type of environment that is a treed wetland.

6612. The tower footprint and area around the tower footprint will be cleared to facilitate the construction and the erection of the tower, as well as a stringing trail in the centre of the right-of-way, which is approximately 24 metres wide. And then outside of that area we would only be removing the trees that exceed the vegetation height clearance requirements today, with the expectation that the trees that are not exceeding those are likely to take a very long time to exceed that height, or may never achieve that height that where a clearance requirements to be removed.

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6613. So we are considering that as part of our clearing management plan, in conjunction with numerous other methods to retain understory vegetation as much as possible during our clearing processes. Because, as I mentioned, the more vegetation you clear on the right-of-way, the greater the opportunity exists for these early successional tree species to take the place of a shrub and we would prefer the shrub to stay there so that it isn't replaced with a tree species through early successional re-growth.

6614. **MEMBER LYTLE:** So my assumption was wrong and that sounds like a good thing.

6615. **MR. MATTHEWSON:** Yes.

6616. **MEMBER LYTLE:** You had no intention of clear cutting, as it were, the right-of-way, but being selective about it.

6617. **MR. MATTHEWSON:** Yes, that is our intention on this project.

6618. **MEMBER LYTLE:** Very good. Thanks so much.

6619. Madam Chair, I'm done.

6620. **THE CHAIRPERSON:** Dr. Chaulk?

--- EXAMINATION BY/INTERROGATOIRE PAR MEMBER CHAULK:

6621. **MEMBER CHAULK:** Thank you, Madam Chair, and thanks to my colleague, Dr. Lytle, for his insightful questions as always. I want to thank the panel and the interveners, as well as their counsel, for the great exchanges over the last couple of days. It's helped us to understand the project much better.

6622. So I'm going to ask you not nearly as many questions as my colleague, but I want you to think of this as an opportunity to clarify and possibly expand on some -- on my questions, which you may have already answered over the last couple days, so you can clarify or expand, whatever your choice is. I'm not sure who -- you guys choose who is the appropriate candidate to answer.

6623. I think I'll begin actually building off -- in reverse order of how I developed my question, building off some questions Dr. Lytle asked about your

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herbicide program first. I heard the answer that poplar in particular was a species of concern because it was clonal in its re-growth I guess is the way you would describe it. Are there other species that you would use herbicides on other than poplar?

6624. **MR. MATTHEWSON:** Yes, there were other herbicides -- sorry, there are other species that we would use herbicides on. There would be spruce species, pine species, balsam fir. There are a number of tree species we may use herbicides on, whether they be as part of a selective stem control program, or as a part of a broader control program.

6625. The portions of the right-of-way are in a very sandy soil where we would be very selective in the herbicides we choose. But the pine species can regrow very quickly in those types of soils. And not through suckering, but just through the natural seed bank within those areas. So that is another area that herbicides may be used. But mechanical control methods are effective for those as well. So it's a combination.

6626. It really depends on the intermixing of the different species in the stand that's re-growing. A lot of times everything is all intermixed together.

6627. **MEMBER CHAULK:** Okay. So but generally, it's supplied and targeted towards tree species as opposed to other types of vegetation?

6628. **MR. MATTHEWSON:** Yes, tree species is definitely our priority for control. We try to retain as much shrub and understory species through the clearing program and in through operations, because that is the most compatible ecosystem with a powerline.

6629. **MEMBER CHAULK:** Yeah. So you're not using herbicides on sedges, forbs, those other types of ---

6630. **MR. MATTHEWSON:** No.

6631. **MEMBER CHAULK:** In terms of the application of your herbicides, would that be done -- how is -- is that a general application over one area, or is that on a plant by plant, kind of stem by stem basis? Or just walk me a bit through that kind of logistics of how you might implement your herbicide program.

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6632. **MR. MATTHEWSON:** Sure. There's a couple of different methods that we could use. One may be a broadcast. We use a, it's called a Radiarc sprayer. It's a machine mounted spray head that sprays in an arc behind. And it's more of a broadcast application, which we're hoping to prevent from actually requiring that type of equipment through our retention of understory vegetation.
6633. But the poplar, when it comes back with those thousands of stems, if we had a pure popular stand that we harvested in the winter, cleared it, there's a very good chance that that entire area will be covered with tens of thousands of stems of popular within a few years. And in that scenario, a broadcast application may be required. Of course, respecting any type of riparian buffers, traditional use plan buffers, and the other types of environmentally sensitive sites that we have.
6634. A broadcast application would be a logical prescription.
6635. However, in much of the right-of-way, a more selective application is likely to be required. And there's two types of selective applications we do. One is a foliar application, where we use a -- it's called a hose and handgun technique, which is a flex track machine with a tank with the chemical mixture in it, and two people that stand on the back of the machine, holding on to a gun-type device. And they individually spray the foliage of the trees.
6636. So they're selective in that if there's trees located interspersed along the right-of-way; it isn't a continuous stream of the spray gun spraying broadcast, sweeping back and forth. It is selectivity in that they are spraying individual trees or clumps of trees, the foliage of those trees.
6637. The other technique that Manitoba Hydro uses is a basal bark technique, which -- where use a backpack type application, where a wand is attached to a backpack and an individual sprays just the stem of the tree.
6638. So a typical stem may be one inch, an inch and a half wide. So we really want to do this when the trees are rather young. And we would spray through a single stream of chemical onto just the stem of the tree, on one side of the tree, and it wraps around the tree and effectively does what's called chemically girdling the tree. And the tree stays vertical, but it is girdled to prevent the flow of nutrients to and throughout.
6639. So those are the three primary techniques of herbicide application.

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6640. There was the one I referred when I was -- one of the intervenors asked me about what is wet blading? That is another technique that is a chemical mechanical technique in which the machine chemically or mechanically mows the brush or trees. And a film of herbicides is applied to the remaining stump that is left behind, in order to prevent the re-sprouting of the poplar species.

6641. **MEMBER CHAULK:** Thank you. And one final question, I guess on the herbicide issue. I thought I heard reference to a 30-metre buffer for riparian areas for application of herbicides.

6642. Can you -- I'm not familiar with the topography of the area. Would many of these streams, rivers, riparian areas -- what type of bank slope would be associated with it? How is that accounted for in a 30-metre buffer?

6643. For example, is that a horizontal distance, vertical difference, slope distance? What -- how is that calculated?

6644. **MR. MATTHEWSON:** Most of the riparian areas is fairly -- a gentle sloping. There is not a lot of steep ravines, that sort of thing. But the measurement would take place from the top of the bank, not at the bottom of the stream. So it's a horizontal distance measurement from the top of the ---

6645. **MEMBER CHAULK:** Okay.

6646. **MR. MATTHEWSON:** --- riparian area.

6647. **MEMBER CHAULK:** Thank you on that. Moving on, I guess the next area I wanted to ask about would be Aboriginal monitors during construction. I think I heard you indicate that Aboriginal monitors would be used during construction?

6648. **MS. COUGHLIN:** Yes.

6649. **MEMBER CHAULK:** Did you -- and again, clarify, were there certain groups that you had arrangements with on -- are they hired by Manitoba Hydro, or on a First Nation by First Nation basis, or some mixture of that? Can you explain?

6650. **MS. COUGHLIN:** Well, Manitoba Hydro will have its own monitors

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- and they may or may not be Indigenous. But the monitoring committee, the MMTP monitoring committee is, that group of the 25 invited participants to the committee, have created a hiring subcommittee. And this hiring subcommittee is intended to select monitors for the project.
6651. And the discussion so far has been around -- we want to have compliance monitors, but also environment monitors. So monitors that would be aimed at protecting -- just monitoring the health of the earth in the area.
6652. We've also talked about having a communication kind of position so that what the monitors find can be communicated to all the rest of the members of the committee in a way that makes sense to them.
6653. Sometimes you'll have somebody who's great in the field, but what we found through Bipole is they often -- some of the people just did not prefer to write reports. So learning from that, we're understanding that a communication type role might be needed as well in addition to monitors.
6654. We haven't established the number yet; the committee is still working to figure that out.
6655. One of the things they wanted to do was have a tour, different -- the Anishinaabe group wanted to have a tour, the Métis, and the Dakota, to go down the project area and look at characteristics of the line to help that, to determine what kind of skill sets the monitors will need.
6656. So we're embarking on that now.
6657. **MEMBER CHAULK:** Just one second here. Just continuing to explore that. You talk about reporting at the committee level. A monitor on site, for example, might add value if they see something of concern.
6658. How do they -- what's the process that you guys have planned for a monitor on site to express their concerns to the construction team, or for a stern operation phase. What -- just walk me a bit through that process.
6659. **MR. MATTHEWSON:** So on-site, we talked a little bit, I believe it was yesterday, about the environmental management team making decisions about mitigation measures. On that same graphic below there, there was an environmental implantation team. And that's where the Indigenous monitors

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would be a component of. And they would work closely with Manitoba Hydro's environmental officers, and as well as the construction supervisors in communicating concerns and working, and learning about the construction practices on the transmission line.

6660. We've done this -- the concept of Indigenous monitors as part of the MMTP project is not new to Manitoba Hydro. We've done this extensively on the Bipole III project. And those were community-hired individual -- we have an individual community in each section of Bipole that we hired an environmental -- they actually hired an environmental monitor, Manitoba Hydro funded it. And they worked side by side with Manitoba Hydro's environmental inspection team, in the same truck, on a daily basis, looking and inspecting compliance with our Environmental Protection Program.

6661. So there is lots of opportunities for that Indigenous monitor to interact with Manitoba Hydro's environmental staff, as well as the folks in charge of actually constructing and operating the transmission line, and express and voice their feedback.

6662. As well as in addition to what Ms. Coughlin, is having their own independent reports going back to the monitoring committee about what they're seeing on the line and how Manitoba Hydro is performing and fulfilling its obligations.

6663. **MEMBER CHAULK:** So I think I recall hearing that the monitoring committees would last for approximately two years, operation was indicating going for quite a while. Are there times during operations when Aboriginal monitors would be used, for example, during the application of herbicides?

6664. **MS. COUGHLIN:** Yeah. So just to be clear, we've talked about having the monitoring committee or we've committed to having the monitoring committee beyond two years and that would be reflective of the activities that are occurring on the right-of-way at that time. And that may include herbicide application. So they may be interested in participating or monitoring those activities when that occurs.

6665. I should be clear, though, the Bipole III was a much larger project which required many positions. This is a much smaller project which will require fewer positions. So not every community would have a position for a monitor. And that's one of the things we're figuring out how to work around, is how can

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everybody feel represented with fewer monitors?

6666. **MEMBER CHAULK:** Okay. Well, this is a good way to end and maybe segue into my next question. Can you tell me a bit about Manitoba's Indigenous Employment Equity Program that it has for its general operations, maybe? I've heard a bit about specifically employment targets for this project, which I may explore further, but I just -- given that was your answer to that question, I thought I'd start with that one.
6667. **MS. COUGHLIN:** Yeah, I can speak to the operations. I just want to find it in the reply evidence because we spoke to it quite extensively there. Just give me two seconds.
6668. **MEMBER CHAULK:** And I guess by the operations, I'm curious about Manitoba Hydro's employment overall, not specifically for MMTP, but just walk me through your agency-wide Indigenous Employment Equity Program.
6669. **MS. ZEBROWSKI:** Right. So Manitoba Hydro over the years has set targets in relation to Indigenous employment. Typically, how those targets are established was using census data and looking at the demographic of Manitoba but also looking at specifically from the census information the workforce or the labour force numbers and then using those to understand where there might be deficiencies in terms of what is -- where are you approaching equity for groups that might be under-represented in certain labour-force categories. So we would obviously look at the ones that are specific to the categories that Manitoba Hydro hires from.
6670. We have exceeded the targets that we have. This is in the reply evidence, but over our entire operation, our current Indigenous employment sits at just over 19 percent. For our northern workforce, our Indigenous employment sits at, I believe it's just under 49 percent. And in our management category, our Indigenous employment is at 14 percent.
6671. **MEMBER CHAULK:** Sorry, what was that last one again?
6672. **MS. ZEBROWSKI:** Our management category, it would be 14 percent.
6673. One of the other programs that we've had which we also talked to in the reply evidence is our pre-placement program. So we found that for a number

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of reasons, Indigenous candidates for our internal in-house apprentice programs, they're often missing some of the prerequisites for those programs, so for example, sometimes some of the math courses or the physics courses. It may be because schools in some communities don't offer those courses and Indigenous students at the high school level don't always have the opportunity to access those courses.

6674. So in reviewing our program, we found that that was potentially a systemic barrier. And so one of the things we instituted to address that was a pre-placement program. And what that pre-placement program does is it specifically recruits Indigenous people for a paid six-month period and that provides job experience and it also provides the opportunity to upgrade those high school courses where that may be required.

6675. And we have found that this helps prepare them for our formal in-house apprentice program. And the vast majority of the pre-placement trainees do move on to employment at Manitoba Hydro. And that program has really been key in some respects to us having the Indigenous employment percentages that we have.

6676. **MEMBER CHAULK:** Thank you. That's an internship program, I guess? You call it pre-employment, pre-placement program?

6677. **MS. ZEBROWSKI:** Yeah.

6678. **MEMBER CHAULK:** Is that specific to youth or it's not age discriminatory? You could be 40 years old and enter the program?

6679. **MS. ZEBROWSKI:** It's not age discriminatory.

6680. **MEMBER CHAULK:** Do you have any youth programs to help recruit Indigenous people into your workforce?

6681. **MS. ZEBROWSKI:** Through our Human Resources Employment Recruitment and Diversity Group, they do have staff that regularly go out to different schools and different communities to provide information about the types of education, for example, that you would need to work at Manitoba Hydro, the types of jobs that are available at Manitoba Hydro. They will do training sessions, so for example, if you want to apply to the pre-placement training program, they will go out and help run through how you put an application on

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Manitoba Hydro's website and how you apply online, those sorts of things.

6682. We do participate in hiring fairs recruitment. We also have a number of scholarships and bursaries that are available to high school students and those going into university, largely targeted towards the types of courses that would be applicable to the careers that you might have at Manitoba Hydro.

6683. **MEMBER CHAULK:** Okay, thank you. And I'm getting near the end of my questions and I guess I'm going to -- as I said, I was kind of working backwards. I'm moving now more towards the project-specific elements and employment that was discussed over the last number of days. And I just -- both for clarity and maybe to give you the opportunity to expand -- not sure who it's directed towards -- targets of 20 percent, I think will be added to the commitment table, and in your RPs I thought I heard you say with respect to bid assessment, with possible extra scoring as that percentage increases.

6684. Just walk me through. So the bid is now awarded. The company subcontract shows up, but they're not able to realize those numbers. I thought I heard some discussion on this but I just want to clarify someone is able six months in and they won on a 20-percent application but their workforce is only 10 percent Indigenous. Walk me through that scenario.

6685. **MR. PENN:** So there's two components. There's Indigenous content and so they have to identify in their bid that there is 20 percent by value in their bid. So that's the first. And then additionally, they can show up to an additional 10 percent so a maximum, that would be 30 percent of Indigenous content in that bid. And then they'll be held to that. If they've come back with they're doing 30 percent, they will be held to that.

6686. And so before they start construction, that's converted to a dollar amount of Indigenous content that they have to meet and then we will be watching that on a regular basis. They also have to list -- so as an Indigenous content, it may be a subcontractor that is Indigenous. They have to request approval if they want to change a subcontractor during the project. So if they're not bringing the subcontract they said that they would and they say they want to switch subcontractors, we would raise it at a weekly meeting to say, "So how are you going to meet your Indigenous content?"

6687. So the Indigenous content, they have -- obviously, our construction management team will be watching the contractor on a weekly basis and on a

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monthly basis, they need to provide that Indigenous content report in terms of dollar value spent on Indigenous content.

6688. So we're seeing it on a monthly basis and I think the word I used was they would have to provide a recovery plan if they're not achieving that. But if at the end of the contract that they don't achieve that, and so 20 percent by value -- say it's 30 -- and that equates to a certain value in the contract, they would not -- and they don't achieve it, they miss the target, say the amount was \$10 million and they only hit 9, well, we would withhold a million dollars of payment on that contract because they missed that target. That's how that would work.

6689. **MEMBER CHAULK:** I understand. Okay, thank you.

6690. **MR. PENN:** Yeah, thank you.

6691. **MEMBER CHAULK:** And I think that concludes my questions. Panel, colleagues, any follow up?

6692. **THE CHAIRPERSON:** I don't have any questions. I thank Dr. Lytle and Dr. Chaulk for a very good capture of all my concerns as well. And I thank panel for their participation.

6693. Oh yes, we have -- we actually have Mr. Hunter to conclude his re-direct. And Mr. Shefman?

6694. **MR. SHEFMAN:** I apologize, Madam Chair, and Panel members, but I must ask again. If the purpose of this process is to ensure that the Board has the most and best possible information, and that this isn't an adversarial process where we're in court, you know, with plaintiffs and defendants arguing against each other, but rather trying to reach the most informed possible decision, it would seem to me that giving intervenors the opportunity to ask questions, specifically arising out of the Board's questions, not, you know, far ranging, would be in the interest of a full record.

6695. **THE CHAIRPERSON:** Can you describe the area that you want to examine?

6696. **MR. SHEFMAN:** There are two questions. One arising out of Ms. Gagné's questions, and one out of Board Member Lytle's. The first, with respect to ---

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6697. **MR. BRENDEN HUNTER:** If my friend would let me speak before he continues with ---
6698. **THE CHAIRPERSON:** I was just interested in exploring the area. I wasn't ---
6699. **MR. SHEFMAN:** I wasn't planning on ---
6700. **THE CHAIRPERSON:** --- giving him permission to doing it yet.
6701. **MR. SHEFMAN:** I wasn't going to ask the questions, I was just going to ---
6702. **THE CHAIRPERSON:** Yeah.
6703. **MR. SHEFMAN:** --- describe the subject matter as you requested.
6704. **THE CHAIRPERSON:** M'hm. So one is out of Ms. Gagné's questions and the other is Dr. Lytle's, and what was the subject matter?
6705. **MR. SHEFMAN:** The first was with respect to the educational materials regarding perceptions about use on the right-of-way, and the second, about Dr. -- from Dr. Lytle's was with respect to the way that Indigenous employment will be handled in terms of recruitment.
6706. **THE CHAIRPERSON:** If memory serves me, you did examine on the question of perceptions and certainly if you didn't other intervenors have examined on the subject of perceptions -- of youth. Yeah.
6707. **MR. SHEFMAN:** Certainly. I mean, the topic has definitely come up during the course of the hearing. The questions which -- the question which I have arises specifically out of the line of questioning that -- on that topic that Ms. Gagné asked and the use of those educational materials which I don't believe were specifically canvassed previously. If the Panel -- and I understand that what I'm asking is not normal practice here. So ---
6708. **THE CHAIRPERSON:** It's not normal practice, and it could extend our procedure by a considerable amount of time, as there are a number of intervenors who are seated behind you.

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6709. **MR. SHEFMAN:** It certainly could. I felt that it was my obligation to my client, and given the Board's responsibility to discharge the duty to consult and accommodate, I felt that it was important to ask.

6710. **MR. BRENDEN HUNTER:** Madam Chair, before you rule, I'm not sure how you can grant my friend a second opportunity to cross-examine without offering that same opportunity to each and every intervenor in this proceeding. I'm not aware of this ever being granted before. He's had his opportunity to ask his questions. He did. Questions coming out of Board counsel or the Board itself are no different than any other evidence given in this proceeding.

6711. And my colleague, Ms. Major, reminds me, there is intervenors that are not in this room and will have missed that opportunity if this is granted to counsel for Sagkeeng.

6712. **THE CHAIRPERSON:** I think in the -- given the depth that we've had of cross-examination in this -- in those areas, in particular, Mr. Shefman, I'm not going to allow the objection. I think it's something that in terms of the quality of the evidence that may have been elicited, it's certainly open to you to challenge the quality of the evidence that came out as a result of Ms. Gagné's and Mr. Lytle's -- or Dr. Lytle's questions, you can challenge the quality of that and its reliability. So it goes to argument. I'd be pleased to hear the final argument on that point. Thank you.

6713. **MR. BRENDEN HUNTER:** Madam Chair, we will be quite brief in our re-direct, I hope. Just a couple of points.

--- RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MR. BRENDEN HUNTER:

6714. **MR. BRENDEN HUNTER:** Ms. Bratland, you indicated in response to Mr. Valdron yesterday that Manitoba Hydro did not write the draft Manitoba licence conditions. Can you advise the Board, Ms. Bratland, whether Manitoba Hydro was provided a copy of the draft licence prior to it being filed in this proceeding?

6715. **MS. BRATLAND:** Yes, we were.

6716. **MR. BRENDEN HUNTER:** And Ms. Coughlin, in response to

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questioning from Mr. Shefman on Tuesday, he had asked you the average amount provided to communities for an ATK study, and I believe your answer was that it was a total of \$1.8 million. Can you confirm whether that \$1.8 million was a total for all communities or a total for each community?

6717. **MS. COUGHLIN:** That was a total for all. Sorry if I miscommunicated that.

6718. **MR. BRENDEN HUNTER:** That's all the re-direct, Madam Chair.

6719. **THE CHAIRPERSON:** Thank you, and the Board's going to adjourn for 20 minutes to allow the next witness panel to set up.

6720. And thank you very much for your time here with us and the information that you shared. Your undertakings, I believe, are all completed, and so your obligations to the Panel and -- are now complete and you're released from your oaths.

6721. **MS. COUGHLIN:** Thank you.

--- (Witnesses are excused/Les témoins sont libérés)

--- Upon recessing at 9:57 a.m./L'audience est suspendue à 9h57

--- Upon resuming at 10:20 a.m./L'audience est reprise à 10h20

6722. **THE CHAIRPERSON:** I understand that counsel for Sagkeeng has requested the first scheduled appearance this morning so he can have his witness adopt their evidence.

6723. **MR. SHEFMAN:** Thank you, Madam Chair. If the witness can be sworn, please.

6724. **THE CHAIRPERSON:** Mrs. Foreman?

6725. **MR. SHEFMAN:** Or affirmed, I suppose.

CAROLYN WHITTAKER: Sworn

**Sagkeeng First Nation
Examination by Mr. Shefman**

--- EXAMINATION BY/INTERROGATOIRE PAR MR. SHEFMAN:

6726. **MR. SHEFMAN:** Thank you, Ms. Whittaker.

6727. Ms. Whittaker, your CV has been filed with the Board; correct?

6728. **MS. WHITTAKER:** Yes.

6729. **MR. SHEFMAN:** Thank you. The -- you're aware, of course, that written evidence was filed on behalf of Sagkeeng First Nation?

6730. **MS. WHITTAKER:** Yes.

6731. **MR. SHEFMAN:** And were -- was that evidence prepared under your direction and control?

6732. **MS. WHITTAKER:** Yeah. All of that evidence was prepared under my direction and control.

6733. **MR. SHEFMAN:** I just want to make sure that the microphone is picking up Ms. Whittaker. Are we okay for the transcript? Okay. Thank you.

6734. Is the evidence accurate to the best of your knowledge and belief?

6735. **MS. WHITTAKER:** To the best of my knowledge and belief, it is.

6736. **MR. SHEFMAN:** Do you have any corrections or changes to that material?

6737. **MS. WHITTAKER:** No, I don't.

6738. **MR. SHEFMAN:** Does that conclude your direct evidence?

6739. **MS. WHITTAKER:** It does.

6740. **MR. SHEFMAN:** Thank you.

6741. Subject to questions from the Panel, that is -- then Ms. Whittaker has adopted her evidence, or Sagkeeng's evidence.

**Motion by Animakee Wa Zhing #37 First Nation
and Northwest Angle #33 First Nation**

6742. **THE CHAIRPERSON:** We have no questions.

6743. **MR. SHEFMAN:** Thank you.

6744. **MS. WHITTAKER:** Thank you, Madam Chair.

6745. **THE CHAIRPERSON:** Mr. Hunter, I'm assuming you don't.

6746. **MR. BRENDEN HUNTER:** No, Madam Chair.

--- (Witness is excused/Le témoin est libéré)

6747. **THE CHAIRPERSON:** I understand we have a motion as well. The witness panel can take its seat if they like while this is happening.

6748. **MS. CORRIN:** Thank you, Madam Chair.

6749. Yes, Animakee Wa Zhing and Northwest Angle 33 would appreciate if the Panel would consider extending the deadline for written argument from 11:59 p.m. this evening until perhaps noon tomorrow.

6750. As a practical matter, the transcript for the proceeding today isn't going to be available until 8:00 p.m., and it's quite a tight deadline when we've heard evidence this morning on issues that are important to both First Nations and both First Nations are also going to be under cross-examination from Manitoba Hydro at some point today.

6751. So under these circumstances we submit the request is quite reasonable and don't expect that this would prejudice Manitoba Hydro in any way for meeting their reply deadline on Monday as they have quite a few resources to prepare.

6752. So thank you very much for considering our request.

6753. **THE CHAIRPERSON:** Mr. Hunter?

6754. **MR. BRENDEN HUNTER:** There's no objection, Madam Chair.

6755. **THE CHAIRPERSON:** Then the motion's granted.

**Motion by Animakee Wa Zhing #37 First Nation
and Northwest Angle #33 First Nation**

6756. I understand that it was not just your clients, but perhaps Southern Chiefs and Manitoba Métis Federation as well had made a similar request? Or am I mistaken? I see some nods from Mr. Hunter.

6757. **MR. BRENDEN HUNTER:** Yeah, Madam Chair, it would have been my understanding that that same deadline would apply to all parties ---

6758. **THE CHAIRPERSON:** All right.

6759. **MR. BRENDEN HUNTER:** --- including Manitoba Hydro.

6760. **THE CHAIRPERSON:** Yeah. Okay. Thank you.

6761. **MR. STEVEN HUNTER:** Just to clarify, SCO is in agreement with the request.

6762. **THE CHAIRPERSON:** Thank you, Mr. Hunter.

6763. **MS. WINTERBURN:** As is the Manitoba Métis Federation. Thank you.

6764. **THE CHAIRPERSON:** Thank you.

6765. All right. So this is the ---

6766. **MS. YUZDA:** Madam Chair, if I may just ask a question to clarify. The deadline for written argument then would be for any party who would like to file -- who've indicated they wanted to file written argument and now the deadline is extended for all of those parties to 12:00 noon tomorrow?

6767. **THE CHAIRPERSON:** Thank you, Ms. Yuzda. I can confirm that's correct.

6768. **MS. YUZDA:** Thank you.

6769. **THE REGULATORY OFFICER:** That will be Ruling Number 16.

6770. **THE CHAIRPERSON:** And now we'll proceed with the Manitoba Wildlife Federation.

**Manitoba Wildlands
Examination by Mr. Cramer**

6771. **MR. CRAMER:** Good morning. My name is Phillip Cramer and I am here for the Manitoba Wildlands, counsel for Manitoba Wildlands. And I just need to -- I'm wondering if I could have just a two minute -- I have one quick matter to ask my witness before we proceed. I just need a quick two-minute recess.

6772. **THE CHAIRPERSON:** Sure. We haven't sworn the witness yet, so go ahead.

--- (A short pause/Courte pause)

6773. **THE CHAIRPERSON:** I'll ask Ms. Foreman to swear or affirm the witness.

DENNIS WOODFORD: Sworn

--- EXAMINATION BY/INTERROGATOIRE PAR MR. CRAMER:

6774. **MR. CRAMER:** Mr. Woodford, I understand you're a professional engineer; is that correct?

6775. **MR. WOODFORD:** That is correct.

6776. **MR. CRAMER:** And your company's called Electranix Corporation?

6777. **MR. WOODFORD:** That's correct.

6778. **MR. CRAMER:** And to that end, you were retained by Manitoba Wildlands to prepare a report?

6779. **MR. WOODFORD:** That is correct.

6780. **MR. CRAMER:** And just -- I want to briefly go through your experience. As I've already indicated, you've indicated you have a -- you're a professional engineer?

6781. **MR. WOODFORD:** Correct.

6782. **MR. CRAMER:** Where did you get your engineering degree from?

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Examination by Mr. Cramer**

6783. **MR. WOODFORD:** My first degree was from Melbourne University, Australia in '67.
6784. **MR. CRAMER:** And your next degree?
6785. **MR. WOODFORD:** University of Manitoba 2000 and -- 1972.
6786. **MR. CRAMER:** And what was that degree?
6787. **MR. WOODFORD:** These were electrical engineering, Master of Science was the last one.
6788. **MR. CRAMER:** Master of Science. Do you have other degrees?
6789. **MR. WOODFORD:** No.
6790. **MR. CRAMER:** And after you finished your degree at the University of Manitoba, what did you do? What type of professional activity were you involved in?
6791. **MR. WOODFORD:** I joined with Manitoba Hydro for 15 more years.
6792. **MR. CRAMER:** And what type of work did you do at Manitoba Hydro?
6793. **MR. WOODFORD:** Transmission planning and system planning.
6794. **MR. CRAMER:** And to that end, could you just briefly describe what a system planner was?
6795. **MR. WOODFORD:** Well ---
6796. **MR. CRAMER:** Or is?
6797. **MR. WOODFORD:** --- I worked on transmission lines development, interconnections, including the first 500 kV interconnection between Winnipeg and the Twin Cities, spent seven years on that, and another line that we hoped to build down to Nebraska, 10 years on that but that never materialized, plus the

**Manitoba Wildlands
Examination by Mr. Cramer**

Nelson River Bipoles I and Bipoles II.

6798. **MR. CRAMER:** And when did you leave Manitoba Hydro?
6799. **MR. WOODFORD:** 1986.
6800. **MR. CRAMER:** And when did you start your company?
6801. **MR. WOODFORD:** Registered '70, started at '71.
6802. **MR. CRAMER:** All right. And there's been a CV filed that you
approved.
6803. **MR. WOODFORD:** Can I correct that? 2001 I started it, not '71.
6804. **MR. CRAMER:** Thank you. After you left Hydro, who were you
employed by?
6805. **MR. WOODFORD:** The Manitoba High Voltage DC Research
Centre.
6806. **MR. CRAMER:** Okay. And after that?
6807. **MR. WOODFORD:** I then joined the corporation I'm now president
of and that's Electranix Corporation.
6808. **MR. CRAMER:** All right. Now, I was indicating that there's -- you
filed your CV. You provided it to Manitoba Wildlands, has been filed as -- in this
proceeding, and that is your correct CV?
6809. **MR. WOODFORD:** Yes, I ---
6810. **MR. CRAMER:** And you swore an affidavit on June 20th, 2018;
correct?
6811. **MR. WOODFORD:** Correct.
6812. **MR. CRAMER:** And that affidavit -- I don't know if I need to show
it to you, but you're familiar with the affidavit?

**Manitoba Wildlands
Examination by Mr. Cramer**

6813. **MR. WOODFORD:** Yes.
6814. **MR. CRAMER:** And attached to that affidavit or referenced is your -- the -- your report and the title of your report is "The Manitoba Minnesota Transmission Project is not Needed."
6815. **MR. WOODFORD:** Yes.
6816. **MR. CRAMER:** And then there's other references that are attached.
6817. **MR. WOODFORD:** Yes.
6818. **MR. CRAMER:** And this was submitted -- signed by you on the 20th and submitted and do you confirm the accuracy of that report?
6819. **MR. WOODFORD:** Yes.
6820. **MR. CRAMER:** And ---
6821. **MR. WOODFORD:** That's the -- which report you're ---
6822. **MR. CRAMER:** I'm sorry, the affidavit ---
6823. **MR. WOODFORD:** Yes.
6824. **MR. CRAMER:** --- to which the report is attached.
6825. **MR. WOODFORD:** Yes.
6826. **MR. CRAMER:** And you're indicating that the materials were prepared under your direction and control?
6827. **MR. WOODFORD:** Yes.
6828. **MR. CRAMER:** And you have -- do you have any corrections to make to those materials?
6829. **MR. WOODFORD:** There's a few typos in the main report that we submitted.

**Manitoba Wildlands
Examination by Mr. Brenden Hunter**

6830. **MR. CRAMER:** All right. But other than typos there's nothing of substance to change?

6831. **MR. WOODFORD:** Right.

6832. **MR. CRAMER:** And given that this affidavit and the -- to which the report is attached and the other references, will that conclude your direct evidence?

6833. **MR. WOODFORD:** Yes.

6834. **MR. CRAMER:** Madam Chair, Mr. Woodford is available for examination.

6835. **THE CHAIRPERSON:** Thank you, Mr. Cramer.

6836. **MR. CRAMER:** Cross-examination by the Panel and other parties.

6837. **THE CHAIRPERSON:** Mr. Hunter?

--- EXAMINATION BY/INTERROGATOIRE PAR MR. BRENDEN HUNTER:

6838. **MR. BRENDEN HUNTER:** Good morning, Mr. Woodford. My name is Brenden Hunter. I'm a lawyer for Manitoba Hydro. Most of my questions today are going to be in relation to your "MMTP is Not Needed" report. Do you have a copy of that with you?

6839. **MR. WOODFORD:** It's coming.

6840. **MR. BRENDEN HUNTER:** And we also provided nine documents to Ms. Whelan and as aids to cross-examination. Were you provided copies of those as well, sir?

6841. **MR. WOODFORD:** Yes, I have those.

6842. **MR. BRENDEN HUNTER:** Okay. And are they numbered by any chance, in the way that we identified them when we emailed them across?

6843. **MR. WOODFORD:** I don't know.

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6844. **MR. BRENDEN HUNTER:** Okay. We'll see how we make out. I've got extra copies if we need any.
6845. **MR. WOODFORD:** Oh, I understand what you mean now. Number one -- across number one, across number two.
6846. **MR. BRENDEN HUNTER:** Perfect. Yes. Now, in relation to your biography, Mr. Woodford, your consulting company provides power transmission and distribution studies and simulations. Is that correct?
6847. **MR. WOODFORD:** Correct.
6848. **MR. BRENDEN HUNTER:** And you're not an economist; correct, sir?
6849. **MR. WOODFORD:** I'm not an economist, correct.
6850. **MR. BRENDEN HUNTER:** Okay, and you're not an account either; correct, sir?
6851. **MR. WOODFORD:** That's correct. I'm not a -- I'm not capable of any fancy economic assessments.
6852. **MR. BRENDEN HUNTER:** Okay. I've only got two more of these. And, sir, I understood from your testimony before the Clean Environment Commission that in discussion with my friend, Mr. Bedford, you're not an expert in transmission line tower design; correct?
6853. **MR. WOODFORD:** It depends. Not on the mechanical side.
6854. **MR. BRENDEN HUNTER:** Like, on the civil engineering?
6855. **MR. WOODFORD:** Correct.
6856. **MR. BRENDEN HUNTER:** Okay. And, sir, you're not an expert in electricity price forecasting either; correct?
6857. **MR. WOODFORD:** We deal -- that's not quite correct because we deal with companies all around the world which have different price situations

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- that we have to deal with. So if you're referring to Manitoba ---
6858. **MR. BRENDEN HUNTER:** Let's start with Manitoba, sir.
6859. **MR. WOODFORD:** Not so much. But I am very familiar with MISO and what's happening there.
6860. **MR. BRENDEN HUNTER:** Okay. And do you undertake probabilistic forecasting, sir?
6861. **MR. WOODFORD:** Not in pricing.
6862. **MR. BRENDEN HUNTER:** Okay, thank you. Okay, sir, if we could turn to your report? On the third page, where you discuss the export capacity of the MMTP line. Sorry, it's the fourth page.
6863. And in that, you looked at Manitoba Hydro's contracts and concluded that its existing export capacity to the U.S. is not sold out; correct?
6864. **MR. WOODFORD:** As written in the report, yes.
6865. **MR. BRENDEN HUNTER:** Okay. Would it be fair to say, sir, that the question you considered was whether MMTP was needed to meet Manitoba Hydro's export contracts?
6866. **MR. WOODFORD:** I have concluded that it is not necessary to meet Hydro's export contracts in terms of capacity required for export. There's ample capacity to Minnesota that will handle all the export, all the contracts that have been presented -- have been proposed.
6867. **MR. BRENDEN HUNTER:** Did you consider the question, sir, of whether MMTP was needed to get surplus energy from Keeyask to market?
6868. **MR. WOODFORD:** Yes.
6869. **MR. BRENDEN HUNTER:** And you indicate in your report, sir, that the Keeyask project is expected to generate 4.4 terawatt hours of energy annually; correct?
6870. **MR. WOODFORD:** That it is what is on the Manitoba Hydro

website.

6871. **MR. BRENDEN HUNTER:** Okay. And it's acknowledged in your report that there will be excess generation coming online in Manitoba as a result of Keeyask; correct?

6872. **MR. WOODFORD:** That is as a result of Keeyask, yes.

6873. **MR. BRENDEN HUNTER:** If we could go to page 9 of your report, sir? You indicate that the prices for solar and wind generation with batteries are falling; correct?

6874. **MR. WOODFORD:** Correct.

6875. **MR. BRENDEN HUNTER:** And in support of that, you reference an article from the Denver Post; correct?

6876. **MR. WOODFORD:** Correct.

6877. **MR. BRENDEN HUNTER:** And that article, sir, it refers to an RFP that was undertaken by Xcel Energy; correct?

6878. **MR. WOODFORD:** Correct.

6879. **MR. BRENDEN HUNTER:** And that RPF, sir, it was up for -- up to 1,000 megawatts of wind; correct?

6880. **MR. WOODFORD:** I'm not sure what the amount was.

6881. **MR. BRENDEN HUNTER:** Okay, sir, maybe if we could turn to document number 4 that was provided? Did you have a chance to review that document; sir?

6882. **MR. WOODFORD:** Yes.

6883. **MR. BRENDEN HUNTER:** And I believe it's the third paragraph on that first page. And I've got it highlighted:

"... portfolio estimates are up to 1,000 megawatts of wind, up to 700 megawatts of solar and up to 700 megawatts of natural

gas...”

6884. Do you see that?

6885. **MR. WOODFORD:** Yes.

6886. **MR. BRENDEN HUNTER:** So that RPF, sir, it was also for up to 700 megawatts of solar power; correct?

6887. **MR. WOODFORD:** Seems like it.

6888. **MR. BRENDEN HUNTER:** And it also included up to 700 megawatts of natural gas; correct?

6889. **MR. WOODFORD:** Possibly.

6890. **MR. BRENDEN HUNTER:** Do you have any reason to dispute the news release that was provided to you, sir?

6891. **MR. WOODFORD:** Are you talking about this particular document number 4?

6892. **MR. BRENDEN HUNTER:** Correct.

6893. **MR. WOODFORD:** Yes. It was in 2017.

6894. **MR. BRENDEN HUNTER:** Correct. And that was the RPF that was referred to in the report you filed; correct?

6895. **MR. WOODFORD:** Yes. But what happened was the results of that came back in 2018.

6896. **MR. BRENDEN HUNTER:** Okay. And you’ve anticipated my next question, sir. The article that you filed indicates that Xcel Energy provided bidders an additional opportunity to refresh their bid; correct?

6897. **MR. WOODFORD:** I believe so.

6898. **MR. BRENDEN HUNTER:** And that article indicated that that was due to potential tariff and tax reforms in the U.S.; correct?

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6899. **MR. WOODFORD:** Possibly, yes.

6900. **MR. BRENDEN HUNTER:** Would you like to turn to it; sir?

6901. **MR. WOODFORD:** That's in number 4 again?

6902. **MR. BRENDEN HUNTER:** No, that's in the article that you filed.
And I believe that's A91730-15.

6903. **MR. WOODFORD:** I don't have it in front of me, but carry on.

6904. **MR. BRENDEN HUNTER:** We can pull it up if you'd like to
refresh your memory.

6905. **THE REGULATORY OFFICER:** I just need a moment.

6906. **MR. BRENDEN HUNTER:** I believe it's PDF page 3, where the tax
reforms are discussed.

6907. **MR. WOODFORD:** All right.

6908. **MR. BRENDEN HUNTER:** Near the top of the page. And I think
it's right in the middle of the page there, sir. It says:

*"The federal government may also decide at the end of the
month to impose new tariffs..."*

6909. Do you see that?

6910. **MR. WOODFORD:** Yes.

6911. **MR. BRENDEN HUNTER:** And then just before that:

*"...installations were at risk in the tax reforms Congress
passed."*

6912. You see that in the previous paragraph?

6913. **MR. WOODFORD:** Yes. I understand what you said.

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6914. **MR. BRENDEN HUNTER:** Okay. And, sir, Xcel Energy is located in Colorado; correct?
6915. **MR. WOODFORD:** No. Xcel Energy is headquartered in Minnesota, in Minneapolis.
6916. **MR. BRENDEN HUNTER:** This RPF was held in Colorado; correct?
6917. **MR. WOODFORD:** The Public Service Commission for PSCO.
6918. **MR. BRENDEN HUNTER:** And Colorado's not a MISO jurisdiction, correct?
6919. **MR. WOODFORD:** No.
6920. **MR. BRENDEN HUNTER:** Sorry, sir?
6921. **MR. WOODFORD:** That's correct.
6922. **MR. BRENDEN HUNTER:** Are you aware, sir, that the MISO manages approximately 200,000 megawatts of power generating resources?
6923. **MR. WOODFORD:** Yes.
6924. **MR. BRENDEN HUNTER:** I wanted to go to page 10 of your report, sir. You included a figure showing the estimated cost of energy in the United States, correct?
6925. **MR. WOODFORD:** Yes, as per the *Wall Street Journal*.
6926. **MR. BRENDEN HUNTER:** Okay. Your source for that figure was a *Wall Street Journal* article from November of last year, correct?
6927. **MR. WOODFORD:** Correct.
6928. **MR. BRENDEN HUNTER:** And that *Wall Street Journal* article was not filed with your report, correct?

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6929. **MR. WOODFORD:** It was just referenced.
6930. **MR. BRENDEN HUNTER:** Okay. Sir, did you add Keeyask to that figure or was it originally included in the *Wall Street Journal*?
6931. **MR. WOODFORD:** That's a figure that I added as an estimate.
6932. **MR. BRENDEN HUNTER:** Okay.
6933. **MR. WOODFORD:** But it's just an estimate.
6934. **MR. BRENDEN HUNTER:** But that was you that inserted Keeyask's projected energy cost onto that figure, correct?
6935. **MR. WOODFORD:** Correct.
6936. **MR. BRENDEN HUNTER:** And other than that arrow that you've added for Keeyask, there's no other line on there to show estimated hydroelectricity costs, correct?
6937. **MR. WOODFORD:** Correct.
6938. **MR. BRENDEN HUNTER:** Now, I'm going to turn to the topic of surplus energy in Manitoba, sir. One of the new markets that you identify for the surplus energy from Keeyask in your report is electric vehicles, correct?
6939. **MR. WOODFORD:** Yes.
6940. **MR. BRENDEN HUNTER:** And the Bloomberg electric forecast that you've cited is a global forecast, correct?
6941. **MR. WOODFORD:** Yes.
6942. **MR. BRENDEN HUNTER:** And scaled to Manitoba on page 13 of your report, you indicate your view that electric vehicles will have a small effect on the energy load forecast, correct?
6943. **MR. WOODFORD:** Just on electric vehicles, yes.
6944. **MR. BRENDEN HUNTER:** Okay. Sir ---

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6945. **MR. WOODFORD:** But I also say that it will reduce the import of oil into the province which will help the province.
6946. **MR. BRENDEN HUNTER:** Okay. I'd like, sir, to turn to Document 6 that we provided you. It's the Statistics Canada printout. Have you had an opportunity to review that?
6947. **MR. WOODFORD:** Yes.
6948. **MR. BRENDEN HUNTER:** And the document is titled, "Statistics Canada Road Motor Vehicle Registrations by Type of Vehicle", correct?
6949. **MR. WOODFORD:** Correct.
6950. **MR. BRENDEN HUNTER:** And on the first page of that, sir, for 2016 it shows that there were 857,033 total road motor vehicle registrations in Manitoba. Do you see that?
6951. **MR. WOODFORD:** Yes.
6952. **MR. BRENDEN HUNTER:** And 783,273 of those vehicles weigh less than 4,500 kilograms, correct?
6953. **MR. WOODFORD:** That's right.
6954. **MR. BRENDEN HUNTER:** We're going to come back to this document, sir, but another suggested local use of energy on page 14 of your report is electric buses, correct?
6955. **MR. WOODFORD:** That's correct.
6956. **MR. BRENDEN HUNTER:** And on the second page of that Statistics Canada report it shows that there were 4,212 buses registered in Manitoba in 2016, correct?
6957. **MR. WOODFORD:** Yes.
6958. **MR. BRENDEN HUNTER:** In your view, sir, would it be fair to say that the 4,200 buses would also have a small effect on the energy load forecast?

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6959. **MR. WOODFORD:** I can explain that more if you wish to hear it.
6960. **MR. BRENDEN HUNTER:** I'm just wondering if those 4,200 buses are going to have a large effect when your report indicates that 783,000 vehicles will have a small effect.
6961. **MR. WOODFORD:** If you take the buses and the electric vehicles together, yes. You're only talking of less than maybe 20 percent or 25 percent of Keeyask's energy, average energy.
6962. **MR. BRENDEN HUNTER:** Okay. And you've also identified heavy trucks as another potential use for surplus energy, correct?
6963. **MR. WOODFORD:** Correct.
6964. **MR. BRENDEN HUNTER:** Would you also take the view, sir, that heavy trucks would also have a small effect on the surplus energy in Manitoba?
6965. **MR. WOODFORD:** Based on -- I don't have the evidence in front of me, but my view is, heavy trucks consume a lot of diesel and they are a big part of the consumption of diesel fuel and of petroleum products. And they will have an effect. Of course, it won't take up all of Keeyask, but added to what electric vehicles will do, it will do a part. But it's not just mobility we're talking about. There's other things in here besides mobility.
6966. **MR. BRENDEN HUNTER:** Yeah, fair enough, sir. You mentioned that you didn't have the data in front of you, but this Stats Canada printout shows that there were 19,245 vehicles between 4,500 kilograms and 14,999 kilograms in Manitoba in 2016, correct?
6967. **MR. WOODFORD:** Could be, yes.
6968. **MR. BRENDEN HUNTER:** That's what this printout shows, correct?
6969. **MR. WOODFORD:** Fine, yes.
6970. **MR. BRENDEN HUNTER:** And sir, to go back to what you just told me, would it be fair to say that at this point in time you would not expect there to

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- be a large effect from heavy trucks on the surplus energy in Manitoba?
6971. **MR. WOODFORD:** Certainly in the near term, yes.
6972. **MR. BRENDEN HUNTER:** Thank you. And on page 16 of your report, sir, electric rail was another suggested use of energy in Manitoba, correct?
6973. **MR. WOODFORD:** Yes.
6974. **MR. BRENDEN HUNTER:** And the example that you point to is the Churchill Rail Line, correct?
6975. **MR. WOODFORD:** Yes.
6976. **MR. BRENDEN HUNTER:** And that rail line was damaged in a flood last year, correct?
6977. **MR. WOODFORD:** Yes.
6978. **MR. BRENDEN HUNTER:** And that rail line, it's used to transport freight; it's not a passenger train, correct?
6979. **MR. WOODFORD:** Yes.
6980. **MR. BRENDEN HUNTER:** You're not aware of anyone coming forward with plans to electrify that line, are you, sir?
6981. **MR. WOODFORD:** Yes.
6982. **MR. BRENDEN HUNTER:** Yes, you are or ---
6983. **MR. WOODFORD:** Oh, yes, and there's a meeting next week on the subject.
6984. **MR. BRENDEN HUNTER:** Okay. Sir, let's turn to the document that I provided you, number 7, and page 2 of that news article, sir.
6985. **MR. WOODFORD:** Oh, yes.
6986. **MR. BRENDEN HUNTER:** And the article says that there's an

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agreement in principle for Omnitrax to sell the line to two First Nation groups and Fairfax Financial Holdings, correct?

6987. **MR. WOODFORD:** Correct.

6988. **MR. BRENDEN HUNTER:** And if we go to page 4 of that report, it says that the first priorities will be to finalize the acquisition and to begin rail line repairs, correct, sir?

6989. **MR. WOODFORD:** Yes.

6990. **MR. BRENDEN HUNTER:** And that's not a rail line; it's not an electric rail line, is it, sir?

6991. **MR. WOODFORD:** It doesn't have to be an electric rail line. It just has to be a rail line.

6992. **MR. BRENDEN HUNTER:** I'm not asking what it could be, sir, I'm asking what it is, and it's not currently an electric rail line, is it?

6993. **MR. WOODFORD:** It's not what you would have in the City of Montreal, for example, for a rail line for the metro system there.

6994. **MR. BRENDEN HUNTER:** Okay. Let's turn to the metro system. You refer on page 16 of your report to a hybrid rail line being contemplated in Ontario, correct?

6995. **MR. WOODFORD:** Hydrail, yes.

6996. **MR. BRENDEN HUNTER:** And that line that's being considered is a passenger rail line, correct?

6997. **MR. WOODFORD:** Yes.

6998. **MR. BRENDEN HUNTER:** And the article that you refer to in your report indicates that no one has developed a passenger rail system at that scale; correct?

6999. **MR. WOODFORD:** That's correct. Although there is, as you see, the Alstom one in Germany that was in your documents.

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7000. **MR. BRENDEN HUNTER:** And sir, where is that German line referenced in your report?
7001. **MR. WOODFORD:** It's not in my report. It's in yours.
7002. **MR. BRENDEN HUNTER:** Okay. Pages 16 and 17 of your report, sir, you talk about right-of-way width; correct?
7003. **MR. WOODFORD:** Yes.
7004. **MR. BRENDEN HUNTER:** And you provided evidence on right-of-way width before the Clean Environment Commission; correct?
7005. **MR. WOODFORD:** Yes.
7006. **MR. BRENDEN HUNTER:** Do you recall Mr. Bedford asking you questions about swing out or blow out and how it would impact ---
7007. **MR. WOODFORD:** Oh, yes.
7008. **MR. BRENDEN HUNTER:** --- right-of-way width?
7009. **MR. WOODFORD:** Yes.
7010. **MR. BRENDEN HUNTER:** I had understood your evidence to Mr. Bedford to be that Manitoba Hydro was best able to determine right-of-way width; correct?
7011. **MR. WOODFORD:** Well, they should be.
7012. **MR. BRENDEN HUNTER:** Now, sir, if we go to footnote 22 on page 16 of your report, you refer to a Black & Veatch report; correct?
7013. **MR. WOODFORD:** Yes.
7014. **MR. BRENDEN HUNTER:** And that report is cited for the purposes of identifying the right-of-way width for a single circuit 500 kV AC line; correct?
7015. **MR. WOODFORD:** It gives an average.

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7016. **MR. BRENDEN HUNTER:** And you didn't file that Black & Veatch report with your evidence; correct?
7017. **MR. WOODFORD:** No, that's right.
7018. **MR. BRENDEN HUNTER:** So we provided -- we think we located it and we provided Ms. Whalen a copy of what we think was the report at Document No. 8.
7019. **MR. WOODFORD:** That is the correct report. I'm very familiar with it.
7020. **MR. BRENDEN HUNTER:** Okay. Now, for visual impacts at page 17 of your report, one of your other suggestions was for tubular structures with low sag conductor; correct?
7021. **MR. WOODFORD:** Correct.
7022. **MR. BRENDEN HUNTER:** And you acknowledge on that same page that tubular structures would most likely have a higher economic cost; correct?
7023. **MR. WOODFORD:** Correct.
7024. **MR. BRENDEN HUNTER:** Okay, sir. Can I get you to turn to page 2-4 of the Black & Veatch report?
7025. **MR. WOODFORD:** Yes.
7026. **MR. BRENDEN HUNTER:** Now, on Table 2-3, it indicates that relative to a lattice tower, the tubular steel structures would have a cost multiplier of 1.50; correct?
7027. **MR. WOODFORD:** That's what it says in the report.
7028. **MR. BRENDEN HUNTER:** Okay. And Manitoba Hydro has applied for aluminum core steel reinforced conductor for this project. Are you aware of that?

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7029. **MR. WOODFORD:** Yes.

7030. **MR. BRENDEN HUNTER:** For short, that is referred to as ACSR;
correct?

7031. **MR. WOODFORD:** Yes.

7032. **MR. BRENDEN HUNTER:** And what you recommend on page 17
of your report is high tension low sag conductor; correct?

7033. **MR. WOODFORD:** Yes, but that's a typo. It should be high
temperature low sag conductor.

7034. **MR. BRENDEN HUNTER:** Okay. And that conductor is also
referred to as HTIs; correct?

7035. **MR. WOODFORD:** That's correct.

7036. **MR. BRENDEN HUNTER:** And the cost multiplier for that
conductor is also contained on page 2-4 of the Black & Veatch report; correct?

7037. **MR. WOODFORD:** Correct.

7038. **MR. BRENDEN HUNTER:** And Table 2-2 indicates that the cost
multiplier for low sag conductor relative to ACSR is 3.60; correct?

7039. **MR. WOODFORD:** Yeah. Yes.

7040. **MR. BRENDEN HUNTER:** Thank you, Mr. Woodford.

7041. No further questions, Madam Chair.

--- (A short pause/Courte pause)

7042. **THE CHAIRPERSON:** The -- any re-direct, Mr. Cramer?

7043. **MR. CRAMER:** I take it there's no other cross-examination of this
witness?

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7044. **MS. GAGNÉ:** In fact, Consumers Association of Canada would like to cross-examine this witness.
7045. **MR. CRAMER:** Well, then, maybe I should do my re-direct after that.
7046. **THE CHAIRPERSON:** Excellent idea.
7047. **MR. BRENDEN HUNTER:** I don't want to interrupt the flow of my friend's cross here, Madam Chair, but I'm going to be very mindful and listen carefully in the questions that she puts to Mr. Woodford.
7048. I note that CAC has taken the position that CAC Manitoba is not satisfied at this point in time that there is sufficient information demonstrating the need for and the economic feasibility of the project. So I'm trusting that my friend's not going to get into sweetheart cross here today.
7049. **THE CHAIRPERSON:** Thank you, Mr. Hunter.
7050. Ms. Dilay.
7051. **MS. DILAY:** Thank you, Mr. Hunter. And our intention is certainly not to get into sweetheart cross. Our questions are some of clarification, given that we had no opportunity to file information requests on the evidence of Mr. Woodford or other intervenors in terms of CAC, Manitoba's position on whether to address Mr. Woodford's evidence in closing submissions. Our questions are intended to clarify that information.

--- EXAMINATION BY/INTERROGATOIRE PAR MS. DILAY:

7052. **MS. DILAY:** Mr. Woodford, good morning, first of all. My name is Katrine Dilay. I am the lawyer for the Consumers Association of Canada, Manitoba branch in these proceedings.
7053. **MR. WOODFORD:** Thank you.
7054. **MS. DILAY:** I'd like to first take you to Manitoba Hydro's amended application for the Manitoba-Minnesota Transmission Project, which is -- oh, perfect. Thank you, Ms. Foreman, and PDF page 12.

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7055. And I'd like to take you towards the bottom of the page, in the last paragraph, which was entitled, "Requirements Under Executed Contracts". Do you see that paragraph, Mr. Woodford?
7056. **MR. WOODFORD:** In front of me, yes.
7057. **MS. DILAY:** And if we go towards the bottom of the page, you'll see, let's say about 10 lines up from the bottom, do you see there that there are four export contracts listed by Manitoba Hydro?
7058. **MR. WOODFORD:** Yes.
7059. **MS. DILAY:** And you'll agree that the first contract listed there is the 250 MW System Power Sale Agreement, dated May 19th, 2011?
7060. **MR. WOODFORD:** Yes.
7061. **MS. DILAY:** The second is the Energy Exchange Agreement, dated May 19th, 2011; correct?
7062. **MR. WOODFORD:** Yes.
7063. **MS. DILAY:** The third is the 133 MW Energy Sale Agreement, dated July 30th, 2014?
7064. **MR. WOODFORD:** Yes.
7065. **MS. DILAY:** And the fourth is the 2014 Energy Exchange Agreement, dated July 30th, 2014?
7066. **MR. WOODFORD:** Yes.
7067. **MS. DILAY:** Now, I'd like to take you to your evidence, which is Exhibit A91730-2. And if we look at page 4.
7068. Now, without asking you to elaborate at this time, you'll agree that on these two pages you look at the impact of Manitoba Hydro's new export sales -- sale contracts with Minnesota Power on the need for additional transmission capacity; correct?

7069. **MR. WOODFORD:** Yes.
7070. **MS. DILAY:** And you'll agree that your evidence discusses specifically the new 250 MW System Power Sale Agreement with Minnesota Power?
7071. **MR. WOODFORD:** Yes.
7072. **MS. DILAY:** But your evidence does not mention the 133 MW Energy Sale Agreement; correct?
7073. **MR. WOODFORD:** Okay. That might be.
7074. **MS. DILAY:** However, the 133 MW Energy Sale Agreement is referenced in Manitoba Hydro's amended application for the project; correct?
7075. **MR. WOODFORD:** Okay. It may be. I did -- in this page, lower down, I did list all the contracts that -- and if it was missing then it was because it wasn't with the evidence I had. I was just using the PUB evidence that was submitted by Manitoba Hydro for the GRA. And I looked at the contracts that were listed there, and they're the only ones that I used.
7076. **MS. DILAY:** Thank you, Mr. Woodford. And you'll agree that including the 133 MW Energy Sale Agreement, dated July 30th, 2014 it would impact the analysis and conclusions of your evidence on pages 4 and 5?
7077. **MR. WOODFORD:** So what you're saying, if I may clarify your question, there's this additional now 133 megawatts, which I -- was not included in the GRA list of projects and the ones that I listed for the dam?
7078. **MS. DILAY:** And maybe we can go to -- I believe it's on the next page that the contracts are listed. Is it this table, Mr. Woodford?
7079. **MR. WOODFORD:** That's the table which did not have the 250 megawatts in.
7080. **MS. DILAY:** I believe it's at the bottom of that table.
7081. **MR. WOODFORD:** The 250 megawatts one, we added in.

7082. **MS. DILAY:** And the 133-megawatt sale?
7083. **MR. WOODFORD:** I haven't seen it. I didn't know about it.
7084. **MS. DILAY:** And do you agree that adding in the 133-megawatt sale agreement would -- could impact the analysis and conclusions of your evidence on these pages?
7085. **MR. WOODFORD:** Give me some more information on that, please. What -- when does it go into service?
7086. **MS. DILAY:** I think we can leave it at that for now.
7087. **MR. WOODFORD:** Because there is capacity available on the existing transmission to handle that 133.
7088. **MS. DILAY:** Mr. Woodford, I think we can leave it at that for now. Those are my questions on that topic.
7089. I'd like to now turn to, I believe we are on page 5 here. And towards the bottom of that page.
7090. Do you see there the paragraph beginning with 2.2?
7091. **MR. WOODFORD:** Yes.
7092. **MS. DILAY:** And you state there that:
- "In Manitoba Hydro's application to the PUB for its 7.9 per cent rate increase, it was stated Manitoba Hydro revised the export price forecast to value all surplus energy at opportunity prices rather than ascribe a higher value for its dependable surplus product."*
7093. **MR. WOODFORD:** Yes.
7094. **MS. DILAY:** You see that?
7095. **MR. WOODFORD:** Yes.

7096. **MS. DILAY:** And you go on to say, in the paragraph that is straddling pages 5 and 6:

“...this reinforces the argument made in 2.1 above, that if there is no MMTP and no 250 MW contract to Minnesota Power, there is still capacity on Manitoba/US interconnections for Manitoba Hydro to sell their surplus electricity into the [...] (MISO) opportunity market with no great loss, while saving the expenditure of \$453 million for the MMTP, and 72 per cent of \$US712 million for the GNTL in Minnesota.”

7097. You see that?

7098. **MR. WOODFORD:** Yes.

7099. **MS. DILAY:** Mr. Woodford, you’ll agree that changes in export prices may change the value of exporting energy, but it does not change the quantity that is able to be exported based on the capability of Manitoba/U.S. connections?

7100. **MR. WOODFORD:** Correct.

7101. **MS. DILAY:** And so in other words, you’ll agree that the value ascribed to Manitoba Hydro’s surplus energy does not change the capacity that Manitoba Hydro can export through Manitoba/U.S. interconnections?

7102. **MR. WOODFORD:** Yes.

7103. **MS. DILAY:** And the Manitoba/U.S. interconnections in general allow Manitoba Hydro to sell surplus energy in the MISO opportunity market; correct?

7104. **MR. WOODFORD:** Correct.

7105. **MS. DILAY:** I’d like now to turn to page 7 of your evidence.

7106. And I’d like to look at the last full paragraph on that page, and about five lines up from the bottom of that last full paragraph. You state there that:

“...it is obvious that the IPL and all that goes into it is very

*unprofitable because of the 7.9 per cent rate increase
Manitoba Hydro has requested... ”*

7107. Correct?

7108. **MR. WOODFORD:** That is correct.

7109. **MS. DILAY:** And a few lines above that you also state that:

*“...very significant changes have occurred in the generation
and use of electricity since then.”*

7110. Correct?

7111. **MR. WOODFORD:** Yes, that’s correct.

7112. **MS. DILAY:** And when you referred to since then, you’re referring to the Public Utilities Board’s need for an Alternatives 2 review. Is that right?

7113. **MR. WOODFORD:** Yes. That was based on data submitted in 2013.

7114. **MS. DILAY:** And, Mr. Woodford, I’d like to bring you now to Exhibit A91323-2.

7115. **MR. BRENDEN HUNTER:** Madam Chair, she’s leading him through his report asking questions -- just having him reaffirm statements already made in the report. I don’t see how this is anything but sweetheart cross.

7116. **MS. DILAY:** Madam Chair, with respect, I am trying to set up my questions and to make sure that Mr. Woodford is following me in my questions by first bringing him to the relevant sections in his report.

7117. My intention in the next questions was to bring him to a portion of Manitoba Hydro’s application in the general rate application.

7118. **MR. BRENDEN HUNTER:** Maybe it would be helpful, Madam Chair, if my friend could explain to me how Mr. Woodford is adverse in interest to the CAC?

7119. **MS. DILAY:** As indicated previously by my friend, Mr. Hunter,

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- CAC Manitoba, based on the information on the record, has not made a determination whether or not the MMTP -- whether it will recommend that the MMTP proceed or not.
7120. This evidence clearly states that the MMTP should not proceed and CAC Manitoba needs further information about Mr. Woodford's evidence in order to determine whether to respond to it or not.
7121. **THE CHAIRPERSON:** I think part of Mr. Hunter's difficulty is the fact that you are simply going through the report and asking for confirmations. And I wonder if you can't phrase your question without actually doing that, but summarizing his conclusions.
7122. And in terms of your question about the Manitoba Hydro report, I'll trust Mr. Hunter to be vigilant about the nature of the question itself.
7123. I appreciate your interest in determining whether or not your client is interested in supporting, or not, the project. But that's really not the purpose of this hearing.
7124. **MS. DILAY:** I appreciate that. I can assure you, those were my last questions where I was going to refer Mr. Woodford back to his report.
7125. **MR. BRENDEN HUNTER:** And then that begs the question why she's asking Mr. Woodford to opine on Manitoba Hydro's materials. That is not the purpose.
7126. She said that she was up here to get clarification around Mr. Woodford's position. I'm not sure now is the time for her to ask Mr. Woodford to opine on other materials contained outside of his report.
7127. **THE CHAIRPERSON:** In any event, I think she's free to speak with Mr. Woodford as she sees fit off the record if she has particular questions that she needs to elucidate for her clients in forming their opinions. So I'm, at this stage, inclined not to let you continue, Ms. Dilay.
7128. **MR. CRAMER:** Madam Chair, I don't know if I'm entitled to make any -- I want to raise my objection to my lawyer friend's objection, Mr. Hunter's objection.

7129. I see that this ---

7130. **THE CHAIRPERSON:** In redirect, you have the opportunity to explore with your clients any issues -- or with Mr. Woodford -- any issues that you feel hasn't been -- haven't been elucidated that were raised by Mr. Hunter. That's your right.

7131. **MR. CRAMER:** My question was, am I not entitled to state that my position is that the questions being put by this counsel to Mr. Woodford at this point are for purpose of clarification and nothing more and do not, therefore, result in what might be referred to as a sweetheart cross-examination?

7132. In any event, that's my submission. If it's not admissible, I'll sit down.

7133. **THE CHAIRPERSON:** It's not a question of admissibility. You're certainly entitled to offer it, and thank you for doing so. But I don't think that changes our position on the information that you're seeking, Ms. Dilay.

7134. **MS. DILAY:** And that's fine, Madam Chair, I will respect your ruling. My questions are intended to test the conclusions of Mr. Woodford in his evidence relating to other pieces of evidence on the record. However, I will respect your ruling. Thank you very much.

--- RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MR. CRAMER:

7135. **MR. CRAMER:** I have two questions in redirect, Mr. Woodford.

7136. We heard from Mr. Hunter and he asked you, and you agreed with him that you're not an economist. Do you recall him putting that question to you?

7137. **MR. WOODFORD:** Yes, I do.

7138. **MR. CRAMER:** Now, since you're not an economist, the numbers and the calculations that you present in your report, what are they based on? If they're not based on economics, what are they based on? What's the science or the discipline that it's based on?

7139. **MR. WOODFORD:** Well, as an engineer we are taught to evaluate

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the cost and benefit of a project. So we know how to cost out a project, we think we do, and we can try to find all the information we can to benefit, and we can also do present value analysis.

7140. And so if you take the cost of Keeyask and you take the carrying charges, how much it costs each year just to keep it up, you will -- then you take how much energy it generates and how much you will get from that energy, including the 250 megawatts, I know enough about basic cost and benefit analysis and present value analysis that over that period up to 2040 when they say they don't need Keeyask for Manitoba's use, that is uneconomical, that the benefit is less than the cost. That's trying to explain what I know about economics.

7141. **MR. CRAMER:** And I'm going to go onto my -- thank you very much for that. That's very useful.

7142. And my learned friend asked you some question and I didn't -- I may not have written it down word for word correctly, but if I'm wrong in restating the question, I'm sure that will be clarified. But there was a reference to a Churchill line, a line that goes to Churchill. And I believe my learned friend, Mr. Hunter, suggested, in fact, it is not an electric railway. Do you remember him making that suggestion to you?

7143. **MR. WOODFORD:** Yes.

7144. **MR. CRAMER:** And then your response, "But it doesn't matter." Can you -- but you didn't elucidate or develop that answer "but it doesn't matter." What did you mean by that?

7145. **MR. WOODFORD:** The modern electric rails, including the one that's being developed -- the hydrogen one that's being developed in Germany by Alstom, the hydrogen -- bulk transfer like rail, or big trucks, hydrogen is -- goes through a fuel cell to produce water and electricity. Electricity is put in a battery and a battery drives the wheels -- of the motors and the wheels. So, in a sense, that's an electric drive. So that's a hybrid drive.

7146. So they're all electric, whether it's hydrogen or electric with batteries. And it's the wheels that turn from electricity, just like they do in a diesel electric generator that we see going down the rail lines here. It's a diesel generating electricity, driving an electric motor. So that's an electric drive, in a sense; okay?

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7147. And there's new developments going on. There's ideas of putting the battery or the hydrogen at the front and having wheels all the way down the train that are driven by electricity. There's a new and developing technology here. We're not in the past. We're in the future. Do you understand? So we can -- you just need a regular rail line.
7148. **MR. CRAMER:** Thank you.
7149. And those are all my questions on redirect.
7150. **THE REGULATORY OFFICER:** Madam Chair's ruling on Manitoba Wildlands cross-examination by Consumer's Association of Canada, the Manitoba Branch will be Ruling No. 17.
7151. **THE CHAIRPERSON:** Dr. Lytle has a question for you so, Mr. Woodford.
7152. **MR. WOODFORD:** Dr. Lytle.
- EXAMINATION BY/INTERROGATOIRE PAR MEMBER LYTLE:**
7153. **MEMBER LYTLE:** Yeah, I just wanted to explore a couple of areas, starting with the *Wall Street Journal* graphic that was shown. Yeah, it didn't go down low enough and I don't recall seeing when I first looked at it the timescale on the bottom. Can you tell me the ---
7154. **MR. WOODFORD:** It ends at 2017.
7155. **MEMBER LYTLE:** Okay. So those are actual numbers then.
7156. **MR. WOODFORD:** Well, that's what the *Wall Street Journal* presents.
7157. **MEMBER LYTLE:** Sure.
7158. **MR. WOODFORD:** But we know it's going lower because in Alberta, just recently, a few months ago, there was a 600-megawatt contracts for solar at 3.7 Canadian cents a kilowatt hour. I know because our company's working on some of those.

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7159. **MEMBER LYTLE:** Sure. Are those costs on an equivalent basis? Do they -- for example, do the wind costs take into account the time when the wind is not going?
7160. **MR. WOODFORD:** Well, this is solar. I'm ---
7161. **MEMBER LYTLE:** Sure.
7162. **MR. WOODFORD:** That was solar.
7163. **MEMBER LYTLE:** But they show wind as well on the ---
7164. **MR. WOODFORD:** Yes. See, what's happening now, storage is becoming a big issue. And the intermittent generators of solar and wind -- solar energy storage is becoming a big factor. And those projects that we discussed before with Mr. Hunter in Colorado had storage associated with them and their prices were low. And, yes, the -- there was a little bit of government assistance there, but storage is a big factor.
7165. And a country that we do a lot of work in is Australia. And they're putting in a lot of solar and a lot of wind and they plan to be all solar and wind and storage and hydro. There's a big Snowy Mountain. So that's what it is. The solar will be the batteries, as in south Australia where Tesla put in a 100 megawatt battery for them, or pump storage. And they're building a huge pump storage. And storage is the way that's being handled with this intermittent variable energy.
7166. **MEMBER LYTLE:** Sure. So the costs shown in the *Wall Street Journal* would include that storage?
7167. **MR. WOODFORD:** I don't think so. I think that just the basic wind, basic solar.
7168. **MEMBER LYTLE:** Okay.
7169. **MR. WOODFORD:** But batteries, solar and wind are diving altogether in cost.
7170. **MEMBER LYTLE:** Sure.

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7171. **MR. WOODFORD:** And that's the way -- this is why I say in my report to you that things are changing. Five years. The last five years the electric power system technology has changed more than the previous hundred years. And we seem to be stuck in this province in the previous hundred years.
7172. **MEMBER LYTLE:** My second and last question goes to the capital costs that you put in your report. And your understanding is the total cost of MMTP is the 453 million for the Canadian side plus an additional for the U.S. side?
7173. **MR. WOODFORD:** Yes.
7174. **MEMBER LYTLE:** Okay. So it's -- all in cost is going to be greater than 453 million?
7175. **MR. WOODFORD:** Exactly. And as far as we know, at this stage from the evidence that we have, it's approximately \$1.1 billion, but everyone says it 453 million, but it's 1.1 billion. And that costs a lot of money. And can we use that money to do something useful in the province rather than selling it to the Americans for next to nothing and we paying for it with a huge rates of increase?
7176. **MEMBER LYTLE:** Sure. Okay. Thank you very much.
7177. **THE CHAIRPERSON:** Thank you, Dr. Woodford.
7178. **MR. WOODFORD:** Mr. Woodford.
7179. **THE CHAIRPERSON:** Mr. Woodford. Surrounded by doctors here. You are released from your obligations to this Panel.
7180. **MR. WOODFORD:** Thank you very much.
7181. **THE CHAIRPERSON:** And thank you for your testimony here today.
7182. **MR. WOODFORD:** Thank you, Madam Chair.

--- (Witness is excused/Le témoin est libéré)

**Animakee Wa Zhing #37 First Nation
Examination by Ms. Corrin**

7183. **MS. GAGNÉ:** The next witness panel would be for the Animakee Wa Zhing.

7184. **THE CHAIRPERSON:** We're going to take a short break while the witness panel shifts. We'll be back in 10 minutes.

--- Upon recessing at 11:22 a.m./L'audience est suspendue à 11h22

--- Upon resuming at 11:31 a.m./L'audience est reprise à 11h31

7185. **THE CHAIRPERSON:** Thank you. And now I believe we have the panel from Animakee Wa Zhing and Ms. Corrin. We'll ask Ms. Foreman to do her duty.

VANESSA POWASSIN: Affirmed

DEANNA MAJOR: Affirmed

--- EXAMINATION BY/INTERROGATOIRE PAR MS. CORRIN:

7186. **MS. CORRIN:** Thank you, Ms. Foreman.

7187. Thank you very much to you both for being with us here on National Indigenous People's Day.

7188. Chief Powassin, have you read the affidavit of Deanna Major sworn May 3rd, 2018 and the affidavit of Deanna Major sworn May 4th, 2018 that was filed as evidence with the Board?

7189. **CHIEF POWASSIN:** Yes.

7190. **MS. CORRIN:** And do you have anything that you would say differently or don't agree with in those affidavits?

7191. **CHIEF POWASSIN:** Just the paragraph 1, changing my name and me being chief.

7192. **MS. CORRIN:** Thank you. And do you adopt Ms. Major's evidence as your own?

7193. **CHIEF POWASSIN:** Yes, I do.

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7194. **MS. CORRIN:** Thank you.

7195. Ms. Major, can you confirm the evidence was prepared under your direction and control?

7196. **MS. MAJOR:** Yes.

7197. **MS. CORRIN:** And do you have any corrections to make to the materials that were filed as your written evidence?

7198. **MS. MAJOR:** No.

7199. **MS. CORRIN:** Madam Chair, the witnesses are available for questioning.

7200. **THE CHAIRPERSON:** Thank you, Ms. Corrin.

7201. Mr. Paul.

--- EXAMINATION BY/INTERROGATOIRE PAR MR. PAUL:

7202. **MR. PAUL:** Thank you, Madam Chair. My questions will be brief today and I want simply to ask about geography and location, et cetera. I've provided my friend with a map. I've also provided it to counsel. I wonder if we could bring that map up so I can ask some questions with respect to geography matters?

7203. **MS. CORRIN:** Madam Chair, I'd like to make an objection, if I may, to the map please.

7204. **THE CHAIRPERSON:** And your objection is?

7205. **MS. CORRIN:** It's not part of the First Nations' filed evidence and the panel is here today to speak to the evidence that was filed, and it's also not part of Manitoba Hydro's evidence.

7206. **THE CHAIRPERSON:** Mr. Paul?

7207. **MR. PAUL:** It's simply an aid-to-cross. I simply want to get some

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- level of geography and we think that the map, while undoubtedly was prepared by Manitoba Hydro, is simply consistent with the aids to cross. I'm not asking it to be adopted formally. It might help if we actually look at the materials as well.
7208. **THE REGULATORY OFFICER:** Mr. Paul, do you have an exhibit number for it?
7209. **MR. PAUL:** I don't, unfortunately. I understood for aids to cross I didn't have to put it in as an exhibit.
7210. **THE CHAIRPERSON:** You don't, but it is similar to other maps that Manitoba Hydro has filed?
7211. **MR. PAUL:** Generally similar, but I will not suggest it's identical. No, not at all.
7212. **THE CHAIRPERSON:** Can you use a map that's already on file?
7213. **MR. PAUL:** I could if that makes it easier.
7214. **THE CHAIRPERSON:** I'm wondering if there are particular features of it that Ms. Corrin is objecting to, and is it ---
7215. **MR. PAUL:** If that's the case, if it makes things easier, what I can do is this. If we could bring up part of the EIS -- let me get the number -- A81182-30. I'm happy to repeat the number again.
7216. **THE REGULATORY OFFICER:** I got it.
7217. **MR. PAUL:** And it's PDF page 3, I believe, map 16-3 you'll see in the bottom right-hand corner. Wonderful.
7218. So if I can begin with my questions, Madam Chair, I just simply want to confirm with both of the witnesses. I understand that both are members -- and I will apologize in advance -- the name of your community, I pronounce it as Animakee Wa Zhing, but of course, that's probably a terrible pronunciation, so you'll forgive me when I mispronounce it.
7219. But both of you are members of what I'll call AWZ, correct?

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7220. **MS. MAJOR:** Yes.
7221. **MR. PAUL:** And I understand that you were both elected to Chief and Council in March of 2017?
7222. **CHIEF POWASSIN:** Yes.
7223. **MR. PAUL:** And my understanding generally is that roughly there's about 430 members of AWZ living on and off reserve in total; is that fair?
7224. **CHIEF POWASSIN:** That's fair.
7225. **MR. PAUL:** I also understand that about 180 people live on reserve, correct?
7226. **CHIEF POWASSIN:** Approximately, yeah.
7227. **MR. PAUL:** Thank you. And I understand in the affidavit of Ms. Major at paragraph 3, she speaks to the reserve land held by AWZ; is that fair?
7228. **MS. MAJOR:** Yes.
7229. **MR. PAUL:** And of course, because you spoke to it, you'd be generally aware as to the locations of those reserves, correct?
7230. **MS. MAJOR:** Yes.
7231. **MR. PAUL:** Great. When we look at this particular map that we have on the screen right now, just to orient ourselves, you will see a blue line which is the transmission line. Do you see that there?
7232. **MS. MAJOR:** Yes.
7233. **MR. PAUL:** And when I say "transmission line" I mean the proposed transmission line. You will also see next to it in sort of brown, Crown land. Do you see that there?
7234. **MS. MAJOR:** Yes.
7235. **MR. PAUL:** And you also see in the legend that there's something

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called "First Nation lands" in pink. Do you see that there?

7236. **MS. MAJOR:** Yes.

7237. **MR. PAUL:** Right. And so I understand that AWZ is a signatory to Treaty 3, correct?

7238. **CHIEF POWASSIN:** Yes, it is.

7239. **MR. PAUL:** And it's not a signatory to Treaty 1?

7240. **CHIEF POWASSIN:** No, it's not.

7241. **MR. PAUL:** And of course, your reserve lands are entirely within Treaty 3, correct?

7242. **CHIEF POWASSIN:** That's correct.

7243. **MR. PAUL:** Okay. And so when you look at the map and you see at the very bottom corner, you'll see a body of water there. Do you see that there? When I say "bottom corner" I mean bottom right. Do you see that there?

7244. **CHIEF POWASSIN:** Yes.

7245. **MR. PAUL:** I understand that's part of Lake of the Woods. Is that your understanding as well?

7246. **MS. MAJOR:** Yes, that's my understanding.

7247. **MR. PAUL:** And you see around that body of water, you will see some pink for First Nations lands. That's not the reserve land of AWZ, correct?

7248. **MS. MAJOR:** We have land all around Lake of the Woods. I think with this map it's hard to tell exactly where the boundaries are of each First Nation. There's many First Nations that have land in that area. But we would be one of them also.

7249. **MR. PAUL:** And that's why I just want to be specific on the point, because again, in your affidavit, you spoke to a number of reserves and I'm simply trying to locate where they are and I'm just focusing on reserve lands. My

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- understanding of the pink lands next to that body of water is that those would be the reserve lands of Buffalo Point First Nation. Would you agree with that or not agree with that?
7250. **CHIEF POWASSIN:** I don't know.
7251. **MR. PAUL:** And that's fair. My understanding though is that when you go up the right-hand part of the map you will see just above the body of water essentially equal to the entry that says, "City" -- you see that there? You see there's some pink land that juts out?
7252. **CHIEF POWASSIN:** I see where you're pointing at.
7253. **MR. PAUL:** Okay. Now, my understanding -- and correct me if I'm wrong -- is that that's one of the parcels of Animakee Wa Zhing. Is that fair, reserve land, of course?
7254. **MS. MAJOR:** The mapping is so unclear right now to look at this map and say specifically where or exactly where our land would be.
7255. **MR. PAUL:** I had another map but your counsel objected to that so I have to do what I can do with this map. So you're not able to say if that's your reserve land or not?
7256. **CHIEF POWASSIN:** Not right now.
7257. **MR. PAUL:** Okay. And would that be similar? If we skip above that particular parcel of land, you will see a much larger bit one more up of pink land. My understanding is that's Shoal Lake Number 40. I'm wondering if you know if that's Shoal Lake Number 40's reserve land or not?
7258. **MS. MAJOR:** No, I do not because we're not from Shoal Lake 40.
7259. **MR. PAUL:** Okay. And you've never been there then I presume?
7260. **MS. MAJOR:** I have been there. We share land in that area, but I'm not going to say that, oh, yeah, that belongs to Shoal Lake.
7261. **MR. PAUL:** And that's ---

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7262. **MS. MAJOR:** Because I'm not, you know, a part of Shoal Lake.
7263. **MR. PAUL:** That's entirely fair. That's entirely fair.
7264. **MS. CORRIN:** Mr. Paul, if I may, what is the relevance of asking about the location of Shoal Lake 40's reserve land as we are referring to the written evidence filed by Animakee Wa Zhing?
7265. **MR. PAUL:** I just simply wanted to know if the councillors know the location of the various reserve lands in relation to the project and in relation to the Crown land that's in between. And if the witness doesn't know, that's entirely fair as well. I hope that addresses the question.
7266. So from my understanding then, in terms of the map, you're not able to identify reserve lands of Animakee Wa Zhing on this particular map; is that fair?
7267. **CHIEF POWASSIN:** I guess the -- it is hard, like, to read this map, and I'm just wondering what is -- what are we getting to? I know you're trying to get to the boundaries, but we exercise our treaty rights beyond the boundaries, so I don't know what you're getting to.
7268. **MR. PAUL:** And I'm simply trying to ask where the reserve land is because, again, Ms. Major spoke to the reserve land in paragraph 3 and I simply wanted to get the location of it. And, again, if you -- if this map is not at all of assistance, I was simply asking are there any of your reserve lands located on the map. And you either know or you don't know. Either way is fine.
7269. **MS. MAJOR:** If the lands were identified and named on here, then I suppose we could point it out. But because our lands are, like, spread out all around, it's impossible for us to show exact locations on this map. We do have maps of our First Nation land. We don't have them here today, but we do have them.
7270. **MR. PAUL:** But just so that I understand then, when you talk at paragraph 3 about the 11 separate parcels of reserve land located in northwestern Ontario and southeastern Manitoba, it's fair to say that most of the reserve land is located in northwestern Ontario?
7271. **MS. MAJOR:** That's a fair statement.

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7272. **MR. PAUL:** That's great.

7273. Just one moment. I'd like to look over my notes, Madam Chair.

7274. Madam Chair, we have no further questions. Thank you so much.

7275. **THE CHAIRPERSON:** Just one question.

--- EXAMINATION BY/INTERROGATOIRE PAR THE CHAIRPERSON:

7276. **THE CHAIRPERSON:** In your affidavit material, or in the material that you have filed with the Board, are there maps showing the location of reserve lands? I assume there's not or Mr. Paul would have made reference to them, but just to confirm.

7277. **MS. MAJOR:** There are no maps included in the affidavit.

7278. **THE CHAIRPERSON:** Or in any other material that ---

7279. **MS. MAJOR:** We do not have maps of our land -- I mean in the affidavit or in our material provided.

7280. **THE CHAIRPERSON:** Thank you.

7281. Anything in addition, Ms. Corrin?

7282. **MS. CORRIN:** Thank you, Madam Chair.

7283. Just one quick question. You mentioned, you know, exercising rights outside of the reserve land. Can you just tell us a bit more about the nature of boundaries, like, reserves that my friend was referring to, and your members exercising their rights and practising their traditional ---

7284. **MR. PAUL:** I object to that question. I think it goes far beyond the redirect, Madam Chair.

7285. **THE CHAIRPERSON:** We have had lots of evidence on that point I think, both in materials filed in writing and during oral traditional evidence in particular. I'm not sure we need at this point to have it confirmed. Thanks.

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7286. **MS. CORRIN:** I'll leave it. Okay.

7287. **THE CHAIRPERSON:** I want to thank the witness panel for their time today and the evidence that they shared with us on behalf of the panel, and you're released from your obligations to the panel. Thank you.

7288. **MS. MAJOR:** Thank you.

--- (Witnesses are excused/Les témoins sont libérés)

7289. **THE CHAIRPERSON:** The next witness panel is from CAEPLA. Just checking on time. We're about 15 minutes before the usual lunch break, Mr. Paul, Mr. Hunter. Perhaps we can at least proceed with the swearing in, but if you'd turn your mind to how long you're going to take with this witness panel?

7290. **MR. BRENDEN HUNTER:** Madam Chair, it may involve no questions at all.

7291. **THE CHAIRPERSON:** In that event, we'll have the witness sworn, Mr. Core?

7292. **MR. GOUDY:** Sorry, Mr. Goudy, Madam Chair.

7293. **THE CHAIRPERSON:** I saw your witness approaching.

7294. **MR. GOUDY:** Oh. Mr. Core, yes. And there are a few members of the MBLC committee of CAEPLA attending as well.

--- (A short pause/Courte pause)

7295. **THE CHAIRPERSON:** Mr. Goudy.

7296. **MR. GOUDY:** The witnesses have been sworn; is that correct?

7297. **THE CHAIRPERSON:** Not yet. We're waiting for it.

DAVID CORE: Sworn

JURGEN KOHLER: Sworn

RICHARD NYCHUK: Sworn
ESTHER FEHR-LENZ: Sworn
ROXANNE WIENS: Affirmed
TIMOTHY WIENS: Affirmed

--- EXAMINATION BY/INTERROGATOIRE PAR MR. GOUDY:

7298. **MR. GOUDY:** Thank you, Ms. Foreman.

7299. I'll start with Mr. Core. Mr. Core, could you please just introduce yourself to the Board and explain very briefly your participation in this proceeding?

7300. **MR. CORE:** I'm Dave Core. Can you hear me? Is the mic on?

7301. **MR. GOUDY:** Yes.

7302. **MR. CORE:** David Core. I am the founding president and CEO of CAEPLA. I'm no longer CEO today.

7303. But anyways, CAEPLA is an organization of landowners. It's a federally incorporated not for profit organization representing landowners -- directly affected landowners and their issues.

7304. We've worked on advocacy for landowners with companies, energy companies, electrical, and pipeline companies across Canada for many years, advocating for respective property rights, landowner safety, environmental and stewardship issues.

7305. CAEPLA and its provincial associations have worked on many -- in many regulatory hearings to address landowner issues and advocate for landowners. And we've tried to, over the years, hold regulators and companies to account on property rights issues.

7306. We're constantly looking for solutions through contractual, or comprehensive contractual agreements to address landowner issues so that they're respected and that there's fewer impositions on their farming practices, their farms, and remediation.

7307. **MR. GOUDY:** Thank you, Mr. Core. I understand that CAEPLA

filed evidence in this proceeding; correct?

7308. **MR. CORE:** Yes, we did.

7309. **MR. GOUDY:** Okay. I'm going to refer to the exhibit numbers that comprise CAEPLA's evidence and I'm going to ask you to confirm that as CAEPLA's evidence.

7310. Exhibits A91278-2 through A91278-12, which is the written evidence of CAEPLA; Exhibit A92077-2, which is the response of CAEPLA to Manitoba Hydro Information Request 1; and finally Exhibit A91278-2, which is the CAEPLA Information Response -- sorry, CAEPLA Information Request No. 1 to Manitoba Hydro containing PDF references.

7311. Would you please confirm that that evidence was prepared by you or under your direction and control?

7312. **MR. CORE:** Yes, it was.

7313. **MR. GOUDY:** And do you have any corrections to make to those exhibits?

7314. **MR. CORE:** No, I don't.

7315. **MR. GOUDY:** And are those exhibits correct to the best of your knowledge and belief?

7316. **MR. CORE:** Yes, they are.

7317. **MR. GOUDY:** Thank you. And do you adopt those exhibits as your direct evidence in this proceeding?

7318. **MR. CORE:** Yes, I do.

7319. **MR. GOUDY:** Thank you.

7320. Madam Chair, I'll now move on to the witnesses -- the witness members from the Manitoba Bipole Landowner Committee, which is a subcommittee of CAEPLA. They have provided information and evidence in this proceeding and I'll ask them to adopt that.

7321. First, Mr. Kohler, could you very briefly explain to the Board what MBLC is and who you are?
7322. **MR. KOHLER:** Yes. Dear Madam Chair and Panel members, my name is Jürgen Kohler. I'm chair of the Manitoba Bipole Landowners Committee, or MBLC. We were formed in 2013. And that same year we formed an association with CAEPLA and MBLC is a committee of CAEPLA.
7323. We formed this association with CAEPLA for the sole purpose of negotiating a fair business agreement with Manitoba Hydro in regards to the Bipole III project.
7324. My wife and I operate a farm business near Brunkild, Manitoba, where we grow wheat, oats, canola, soy beans, and some high-quality forages for the horse market.
7325. The Bipole III line that Manitoba Hydro constructed runs for three quarters of a mile along the edge of our farmland. We have half the footprint of three towers on our land and our neighbour has the other half.
7326. Since 2013, it's been an extremely frustrating and taxing experience for me and other MBLC landowners in dealing with Manitoba Hydro on the Bipole III project.
7327. We've hired an expert to represent us in our dealing with Hydro. Unfortunately, Hydro has not recognized our right to do this, as enshrined in the Canadian Charter of Rights and Freedoms. Not only have they taken possession of our farmland without notice or negotiation, they have neglected and abandoned the land by letting them become infested with weeds and disease.
7328. And now, when it's even more critical to have an expert to assist us in negotiating a fair transition to get our abandoned land back, they still won't recognize our legitimate concerns in regards to post construction impacts and our fundamental rights to secure the expertise of an organization such as CAEPLA.
7329. Hydro will no doubt have told you about their commitment letters to landowners. However, as you will hear from some of my fellow landowners who received such commitment letters from Hydro, the commitments were never implemented. The mitigation measures outlined in the commitment letters were

- not rolled out in the field.
7330. We need an enforceable regulatory regime that not only monitors Hydro's commitments and how they're being rolled out, but we desperately need a regulatory regime that is able to hold Hydro to account.
7331. The reason we are here before you today is that we want the Panel, the Board, to be aware of what awaits MMTP landowners once that project is approved.
7332. We very much appreciate the opportunity to be here today and to be able to answer any questions you may have.
7333. Thank you.
7334. **MR. GOUDY:** Thank you, Mr. Kohler.
7335. There are two exhibits that were filed by CAEPLA that include evidence directly from MBLC, I will just state the references for the record. Exhibit A91746-10, and A91746-11. There are -- one is the MBLC letter to the Ombudsman. The other is a collection of witness statements from MBLC committee members.
7336. Could you please confirm that those were prepared by you or under your direction and control?
7337. **MR. KOHLER:** Yes, I can confirm that.
7338. **MR. GOUDY:** And are there any corrections to be made to those two exhibits?
7339. **MR. KOHLER:** The only correction, or addition -- update I'd like to point out, if Madam Chair would allow me, is that the letter to the Manitoba Ombudsman had asked for an investigation. And the Ombudsman has initiated a formal investigation.
7340. **MR. GOUDY:** Subject to that update, are those exhibits correct to the best of your knowledge and belief?
7341. **MR. KOHLER:** Yes.

7342. **MR. GOUDY:** And would you please confirm that you adopt those exhibits as your direct evidence in this proceeding?
7343. **MR. KOHLER:** Yes, I would.
7344. **MR. GOUDY:** Mr. Nychuk, I have the same questions for you. Would you please very briefly introduce yourself?
7345. **MR. NYCHUK:** Hi, my name's Rick Nychuk. I'm a certified seed grower. I was part of the CEC's expert witness farm panel. I started this process approximately 2010 when I heard the line was going to come close to our property. This affects two sections of our property, so it's very important to us. And dealing with Hydro in previous lines -- I have other lines that run through our property, not to this magnitude as Bipole III. You know, Manitoba Hydro comes across as sweethearts. They're going to do everything for us. And they did nothing for us.
7346. Just like my submission here, they were never -- you know, they promise you biosecurity and they put the approach on the clean side and ran all the clubroot through my side. And I do have the tests from them, but because they expropriated my land, or our land, our family land that belongs to my wife and my mother-in-law is the major landowner, so there's so many errors and lack of communication.
7347. I was, you know, basically lied to at my kitchen table by their environmentalist, Fiona Scurrah and Alex Stewart, that the line of communication would be open. Because I -- we are major stakeholders in this thing, whether it's going to the States or Manitoba here -- excuse me -- that they would communicate with us and they never did
7348. And whether it was crushing my soybeans with mats, seed soybeans that were a huge cost to my farm, and never told us that they were coming, or whatever. And so there is a -- I hope the -- I hope that the Minnesota people, transmission people get a better and fairer deal than we did. Thank you.
7349. **MR. GOUDY:** Thank you, Mr. Nychuk.
7350. With respect to the two exhibits I referred to with Mr. Kohler, can you confirm that those exhibits were prepared by you or under your direction and

control?

7351. **MR. NYCHUK:** Yes, it was.

7352. **MR. GOUDY:** And do you have any corrections to make to either of those exhibits?

7353. **MR. NYCHUK:** No, they`re not.

7354. **MR. GOUDY:** And are those exhibits correct to the best of your knowledge and belief?

7355. **MR. NYCHUK:** Yes, I do believe.

7356. **MR. GOUDY:** And will you confirm that you adopt those exhibits as your direct evidence in this proceeding?

7357. **MR. NYCHUK:** Yes, I do.

7358. **MR. GOUDY:** Ms. Fehr-Lenz, would you please very briefly introduce yourself to the Board?

7359. **MS. FEHR-LENZ:** My name is Esther Lenz. I'm a landowner in the Brunkild area, and we have a family farm in Brunkild since the flood of 1950. I am impacted by the Bipole III. I was and am. The line goes through about a three-quarter mile through our land and right through the centre. And our footprint is it has three towers of -- directly on the land behind me. And my farm is dissected in half.

7360. And what I just wanted to express to the NEB and to all of you is that biosecurity in agriculture is extremely important in today's world, and specifically into our region. I want to just emphasize, you know, the impact of clubroot. Excuse me. I'm just a little nervous.

7361. Manitoba Hydro's commitment to biosecurity, the processes and procedures did not execute on the fields, and in my case. And I presented in my statement and evidence where I experienced biosecurity failures early on and there were multiple infractions on my property. And Manitoba Hydro did fail to meet some of their own processes on my fields.

7362. I didn't initially receive any clubroot testing, but every one of my neighbours did. I started to ask questions of everyone. And that was the inception of how I was being treated differently. I actually had to block my land in order to demand the -- which is a process for biosecurity prior to any entrance to the property. And after -- I had to defend my own land.
7363. Later on in the summer of 2017 I documented four biosecurity breaches that I witnessed on passing. And even after our meeting with Manitoba Hydro in the RCMP station of Headingly with Jurgen and Rick, I documented these four breaches, contacted Manitoba Hydro and photographed it and documented it.
7364. The best protection to biosecurity was also the use of rig mats. And this was a letter that Rick received from Manitoba Hydro, Fiona and another person, I forgot the name. Rig mats is the best process. But I didn't receive them. They did.
7365. And because I didn't receive rig mats I got huge ruts -- you know, these equipment pieces are huge and they left huge ruts in the middle of the fields. And this is during, you know, after seeding. This is before harvest. This is during harvest and, you know, right in the times of when we were on the fields. After Manitoba Hydro left, we are the ones that actually cleaned them up and fixed them the best that we could.
7366. I have a lot of pieces of evidence that I documented and I just want to say that this is easier to put in the words, but what I can't demonstrate to you in my statement is to express my personal stress and my experience with Manitoba Hydro of how I was treated on the process, like, on my property, and I felt that I had to defend the farm and I had to defend biosecurity on my own, and the stress it has left with our family and myself. I just wanted to report that to you verbally.
7367. I really hope for the Manitoba Minnesota landowners that there's a huge improvement in the Manitoba Hydro commitment, but not in the boardrooms, but actually execution in the fields. And I hope that it is much better for them and that what happened on Bipole III isn't repeated on their line. Thank you.
7368. **MR. GOUDY:** Thank you, Ms. Lenz. With respect to the two NBLC exhibits I've referenced previously, can you please confirm that those were prepared by you or under your direction and control?

7369. **MS. FEHR-LENZ:** Yes.

7370. **MR. GOUDY:** And do you have any corrections to make to those two exhibits?

7371. **MS. FEHR-LENZ:** No.

7372. **MR. GOUDY:** Are those exhibits correct to the best of your knowledge and belief?

7373. **MS. FEHR-LENZ:** Yes.

7374. **MR. GOUDY:** And will you adopt those exhibits as your direct evidence in this proceeding?

7375. **MS. FEHR-LENZ:** Yes.

7376. **MR. GOUDY:** Lastly, out of a concern for time, I'm wondering, Roxanne and Tim, whether you'd like to speak together? So if you could please just introduce yourself to the Board and then we'll have you adopt your evidence.

7377. **MS. WIENS:** My name is Roxanne Wiens. Together with my husband Tim we own agricultural land on the Bipole III -- Manitoba Hydro's Bipole III transmission line. And when I think about my experience with Manitoba Hydro, as a landowner on this project, I have absolutely nothing good to say. It has been excruciating dealing with them. It has been painful.

7378. You know, I'm not sure if they go to a special school that teaches them ways to use words like negotiate with landowners and work with landowners, but they must have different definitions than I do. And I think you need to be aware of this and I think that landowners of Manitoba Minnesota transmission line also need to be aware of this -- what truly happens to landowners and to the agricultural land on transmission line projects by Manitoba Hydro. It's nothing good.

7379. **MR. GOUDY:** Ms. Wiens, can you confirm that the two MBLC exhibits were prepared by you or under your direction and control?

7380. **MS. WIENS:** Yes.

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7381. **MR. GOUDY:** And do you have any corrections to make to those exhibits?
7382. **MS. WIENS:** No.
7383. **MR. GOUDY:** So you confirm that those exhibits are correct to the best of your knowledge and belief?
7384. **MS. WIENS:** Yes.
7385. **MR. GOUDY:** And do you confirm that you adopt those exhibits as your direct evidence in this proceeding?
7386. **MS. WIENS:** Yes.
7387. **MR. GOUDY:** And, Mr. Wiens, I'd like to ask the same of you. Were the two MBLC exhibits prepared by you and under your control -- direction and control?
7388. **MR. WIENS:** Yes.
7389. **MR. GOUDY:** And do you have any corrections to make to those exhibits?
7390. **MR. WIENS:** None.
7391. **MR. GOUDY:** Are those exhibits correct to the best of your knowledge and belief?
7392. **MR. WIENS:** Yes.
7393. **MR. GOUDY:** And do you adopt those exhibits as your direct evidence in this proceeding?
7394. **MR. WIENS:** Yes.
7395. **MR. GOUDY:** Madam Chair, that concludes the direct evidence of CAEPLA in this proceeding and the panel is available for any questions.

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7396. **MR. BRENDEN HUNTER:** Manitoba Hydro does not have any questions of this panel, Madam Chair.

7397. **THE CHAIRPERSON:** The Panel doesn't have questions. I would like to thank the witnesses for their attendance today. We appreciate the evidence that you've provided. And you're released from your obligations to the Panel and thank you for coming today.

7398. **MR. GOUDY:** Thank you, Madam Chair.

--- (Witnesses are excused/Les témoins sont libérés)

7399. **THE CHAIRPERSON:** We are going to -- I'm not sure. I see Mr. Paul getting up.

7400. **MR. PAUL:** Madam Chair, just with respect to the next witness panel, not this panel, sorry, my apologies -- I believe that the Chief of Northwest Angle is indeed here and is prepared to adopt the evidence. We think this will be relatively brief, if I'm correct. If it's possible to fit her in before the lunch hour, I think Ms. Corrin and I would be greatly obliged.

7401. **THE CHAIRPERSON:** I think we can accommodate.

7402. Mrs. Foreman?

KIM SANDY-KASPRICK: Sworn

7403. **THE CHAIRPERSON:** Ms. Corrin.

--- **EXAMINATION BY/INTERROGATOIRE PAR MS. CORRIN:**

7404. **MS. CORRIN:** Thank you, Madam Chair.

7405. Good morning, Chief Sandy-Kasprick. Thank you very much for travelling all this way to be with us here on National Indigenous People's Day. I understand Manitoba Hydro no longer has any questions for you.

7406. Chief, can you please confirm that the written evidence filed with the Board, your affidavit sworn May 4th, 2018, was prepared under your direction and

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control?

7407. **CHIEF SANDY-KASPRICK:** Yes, I can.

7408. **MS. CORRIN:** And do you have any corrections that you wish to make or any changes to the materials that were filed as your written evidence?

7409. **CHIEF SANDY-KASPRICK:** No, I don't.

7410. **MS. CORRIN:** Thank you. And do you adopt this evidence as your evidence for the proceeding?

7411. **CHIEF SANDY-KASPRICK:** Yes, I do.

7412. **MS. CORRIN:** Okay, thank you.

7413. **CHIEF SANDY-KASPRICK:** Thank you. *Miigwetch.*

7414. **MR. PAUL:** And we have no questions for this witness, Madam Chair.

7415. **CHIEF SANDY-KASPRICK:** *Miigwetch.*

7416. **THE CHAIRPERSON:** The Panel has no questions either. Thank you.

7417. **CHIEF SANDY-KASPRICK:** *Miigwetch.*

7418. **THE CHAIRPERSON:** So the witness is released from your obligations to this Panel and thank you for your attendance today.

7419. **CHIEF SANDY-KASPRICK:** *Miigwetch.*

--- (Witness is excused/Le témoin est libéré)

7420. **THE CHAIRPERSON:** We're going to break til 1:30 today at which time we're going to hear the Southern Chiefs adopt their evidence. And we hope to get through at least one oral argument this afternoon. Thank you.

--- Upon recessing at 12:16 p.m./L'audience est suspendue à 12h16

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--- Upon resuming at 1:29 p.m./L'audience est reprise à 13h29

7421. **THE CHAIRPERSON:** Thank you.

7422. I understand we're starting with the Southern Chiefs? We're about a minute or two early maybe.

--- (A short pause/Courte pause)

7423. **THE CHAIRPERSON:** Mr. Hunter. We'll let Mrs. Foreman do her job.

--- (A short pause/Courte pause)

PETER KULCHYSKI: Affirmed

--- EXAMINATION BY/INTERROGATOIRE PAR MR. STEVEN HUNTER:

7424. **MR. STEVEN HUNTER:** Thank you, Dr. Kulchyski.

7425. I guess, as kind of a precursor, I believe Mr. Kulchyski will be reading an opening statement. I have a hard copy here as well if the Board Members are interested in obtaining one of those.

7426. **THE CHAIRPERSON:** We already have it.

7427. **MR. STEVEN HUNTER:** Thank you.

7428. Dr. Kulchyski, can you please provide your opening statement.

7429. **DR. KULCHYSKI:** Certainly.

7430. My name is Peter Kulchyski. I'm a Professor of Native Studies at the University of Manitoba. Although I'm a non-native, I grew up in Northern Manitoba where I attended a government-run residential school, so that really is where my passion for Aboriginal issues came from.

7431. I've worked at the intersection of Indigenous law, politics, culture and history for almost four decades, particularly in Nunavut and the Northwest

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Territories, but for the last almost 20 years in Manitoba. My name is on nine books. The most recent was published this last spring.

7432. One of my next books will be based on archival research I've conducted that I started in the early nineties, actually, on the Royal Proclamation of 1763. So I'm not just a casual observer of the Royal Proclamation, I'm someone who has done very intense work looking at early drafts, looking at the archival record behind it. And it matters to me as a founding constitutional document of Canada, and quite a bit of my report leans on that research.
7433. So I was saying, I have conducted into the Royal Proclamation of 1763, perhaps Canada's founding constitutional document, which I discuss in my report.
7434. When I returned to Manitoba after 20 years of learning and teaching in Ontario, I wanted to put my knowledge and experience in the service of Indigenous communities in the northern part of this province. Where I'm from, basically. It was a return home for me. I quickly discovered that in the long and complex history of the region, from the fur trade through to treaties, the *Indian Act*, residential schools and the whole panoply of colonial assaults, the most pressing issues in many communities in Northern Manitoba had to do with the history of relations with Manitoba Hydro, which I review in my report. There are about four or five paragraphs where I just emphasize some major points in that history.
7435. I was very honoured to be asked by the Southern Chiefs' Organization to develop a report in relation to the Manitoba-Minnesota Transmission Project, which I've done. And I know that time is of the essence, and I don't want to take up much of your time, but there are just a few things that I think it would be worth my while to emphasize for you.
7436. So I welcome the chance to briefly introduce my report, and in the short time I have I'm going to focus on my recommendations, with one exception. In my report, at paragraph 23, I cite the Supreme Court in the *Clyde River* case of 2014, a case which the National Energy Board knows about, and which actually I was instrumental in helping broker the community getting it through the courts.
7437. In that case, a unanimous Court decision, the Court said:

"We do not, however, see the public interest and the duty to

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consult as operating in conflict. As this Court explained in Carrier Sekani, the duty to consult, being a constitutional imperative, gives rise to a special public interest that supersedes other concerns typically considered by tribunals tasked with assessing the public interest. A project authorization that breaches the constitutionally protected rights of Indigenous peoples cannot serve the public interest".
(As read)

7438. End quote.

7439. I emphasize this because I believe the Proponent here, Manitoba Hydro, has acted diligently to protect a public interest at the expense of treaty and Aboriginal rights. And I -- I think for many years they thought they were doing -- they thought their job was protect the public interest and confine Aboriginal and treaty rights as much possible. It is now clear from the Supreme Court on down that the public interest actually includes respect for, and you know, not only recognition but enactment of Aboriginal and treaty rights. And so I think this is a part of the sea change we're experiencing in Canada, and I don't think it's something that has really been taken on board by the Proponent, in my view, given their past actions and their present actions.

7440. I emphasize this because I believe the Proponent has acted diligently to protect the public interest at the expense of treaty and Aboriginal rights, and this is a source of the troubling and continued environment of conflict, hostility and colonial relations that I believe in part were evident in this hearing. And I had the honour and privilege of being able to attend several sessions of the hearing, particularly, the oral traditional evidence, and I felt that you were exposed to some of the kind of conflictual relations and conflictual background that has been a part of, you know, this area of public policy in the Province of Manitoba.

7441. Turning to my recommendations. As I say within them, I don't make these lightly and I realize they're consequential. I can only say that the situation we all face here in Manitoba is dire, and in my view, drastic measures are called for. So in paragraph 47, I wrote:

"Manitoba and Manitoba Hydro have dishonoured the Crown. These words are not used lightly. They are the result of a careful reading of...law and of history. While the National

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Energy Board has clearly decided to confine this hearing to the [Manitoba-Minnesota Transmission Project] and to exclude discussion of impacts on the broader [integrated] system, it must be noted firstly that such confinements have a long history of serving the interests of Manitoba Hydro and have contributed to longstanding abuses of aboriginal and treaty rights."

7442. The silo approach hasn't allowed Aboriginal and treaty rights to get the kind of robust defense that they deserve:

"Secondly, while this process cannot examine the broader system, it is still appropriate to call for such an examination: this is the only forum in which First Nations and Métis can address the federal government about a complex but deeply distressing situation. The duty to consult has not been discharged properly by the provincial government or Manitoba Hydro for the [Manitoba-Minnesota Transmission Project]; while this report focuses on the inadequacies of the public utility's consultation processes, it likewise has noted that provincial processes always take place with a pre-given outcome. There has not been an environmental impact hearing in the province that rejected a Manitoba Hydro application to my knowledge. The consultations engaged in by the Province of Manitoba regarding the MMTP do not include all twenty-one first nations identified by Manitoba Hydro or all the First Nations identified by the National Energy Board in its letter to Manitoba Hydro."

7443. And it's my and several other scholar's contention that because of the *Natural Resources Transfer Act* all of the treaty nations in Manitoba have a stake in this project, they may have all used that land. And the *Natural Resources Transfer Act* gives them the ability to use all unceded Crown lands within the province.

"The consultation processes used in the Province of Manitoba do not meet the constitutional standard as defined by the Supreme Court of Canada. Finally, there can be little doubt that at the end of that process..."

7444. The processes that have happened here:

"...the result will be an approval..."

7445. This is what I've seen in the hearings that I've attended since 2005:

"...in such a circumstance the word 'meaningful' as a descriptor of the word 'consultation' cannot be broached."
(As read)

7446. In paragraph 48, I wrote:

"The federal government has a responsibility to robustly assist in the protection of Aboriginal and treaty rights that goes beyond engaging or overseeing consultation processes; this is clear from a reading of the Royal Proclamation and [of] the Guerin case [in 1985]. The situation in Manitoba is in fact a case in point as to why, without federal oversight, and active participation in protecting Aboriginal and treaty rights and interests, those interests will be confined, ignored and abused as they have been in this province. The province's paramount concern aligns with the Crown corporation's paramount concern: economic windfall. But if Aboriginal and Treaty rights and interests are the public interest, as asserted by the Supreme Court, where is that view to be found in Manitoba? Who is defending it? Both reason and legal history suggest a more robust federal role is called for. An independent, truly independent environmental and social impact assessment is desperately called for in this situation, and the federal government, I contend, is the only party to viably be able to conduct that, to show that independence."

7447. In paragraph 49 I wrote:

"The fact that the territory in question of the Manitoba Minnesota Transmission Project involves heavy agricultural use and settlement must raise the bar when it comes to protecting Treaty rights and interests, specifically. The Treaty and the Natural Resource Transfer Act promise access to unused Crown lands. Thirty (30) percent of this project would

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be built upon such lands. In a situation where these lands have been reduced to a small rump of their former ecological state, extraordinary precaution must be applied to any proposals that would consume large or small portions of what remains.” (As read)

7448. The broader need for the MMTP does not appear to meet this standard, and in my report, I cite the *Keewatin* case, which basically says, "If you get rid of all Crown lands, you have violated the real intentions of the Treaty." And you know, this is reaching that state.

7449. This lead me to the conclusion, in paragraph 50.

“For these reasons, the project as designed should be rejected.” (As read)

7450. And in paragraph 51 my last recommendation:

“The federal government should initiate a broad review of Manitoba Hydro’s past, present, and proposed future hydroelectric development and transmission activities with attention to section 35 constitutional Aboriginal and Treaty rights and interests of First Nations and Métis.” (As read)

7451. The whole integrated system should be a subject of this review and I think it should take place before they're allowed their MMTP.

7452. I have to say that I sympathize with you, Members of the National Energy Board. Yours is not a mundane administrative task. This isn't simply a matter of shuffling paper. This is a matter of looking at a very serious issue and a weighty responsibility in which the results of your decisions will echo down to the generations and will be looked at. People will say, "How did this happen or how did this not happen? When did these last vestiges of land and habitat get consumed or when were they actually stood up for and protected?" which is what the First Nations, many of the First Nations from different communities and different organizations have called on.

7453. And I'm particularly mindful of the woman elder from Swan Lake who just talked about the need to protect the land, I think, in very eloquent terms.

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7454. So I want to thank you for taking on this weighty task and I want to thank you for considering my words here. Thank you very much. *Ecosis and chi migweech.*

7455. **MR. STEVEN HUNTER:** Thank you, Dr. Kulchyski.

7456. This may have already been canvassed in your opening statement, but what is your current employment?

7457. **DR. KULCHYSKI:** So I'm a full professor at the University of Manitoba in the Department of Native Studies.

7458. **MR. STEVEN HUNTER:** Can you please describe your experiences and education qualifications?

7459. **DR. KULCHYSKI:** Sure. Well, in a sense, I would say, going back to attending a residential school in northern Manitoba gave me both educational knowledge, but certainly I came away from that as a young person with a sense that some injustice was taking place. And I'm a non-Aboriginal person. I'm one of the few non-Aboriginal people to go through the residential school system. It was a government-run system, so it's not a scheduled residential school like the Truth and Reconciliation dealt with. But parts of that facility had been and certainly it was kind of the same place and the same rough kind of operation.

7460. So from the time I graduated in 1976, I became interested in studying Aboriginal politics. I studied politics at the University of Winnipeg for an undergraduate degree and did a Master's and PhD at York University.

7461. I ended up teaching first in the Department of Native Studies at the University of Saskatchewan and then at Trent University where I was tenured and I worked for about 12 years. In that time, I had a year at Cornell University in the United States and kind of realized I could talk to the best academic minds in the world so that was a bit of a confidence booster.

7462. I started doing research in the far north in the Yukon and Northwest Territories before the Northwest Territories was divided and have engaged in research around Aboriginal Treaty rights in history in the Yukon and Northwest Territories. Since the mid-1980s I've written several books on all of these elements and I think it's important to say that within academia, it's useful to have an interdisciplinary perspective, so to know something of law, to know something

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of politics, to know something of history, and then to actually -- like, I go out in the bush with people so I learn about culture.

7463. I know what traditional harvesting is about. It's not something that I read about in books. I've hunted mountain sheep in the Mackenzie Mountains in the Northwest Territories. I've hunted seal with the Inuit in Nunavut. I've gone fishing and hunting with people in northern Manitoba. So that cultural side of people's practice has been very important to informing all the work that I do.

7464. And then I moved back to Manitoba in 2000 and have been working here ever since; started working on Hydro issues really about 2004 or 2005 with the then-proposed Wuskwatim Project and I've been working in some capacity or other around that since.

7465. **MR. STEVEN HUNTER:** Thank you for that.

7466. **DR. KULCHYSKI:** I don't know if you wanted that much detail but you know, I could go on if you like.

7467. **MR. STEVEN HUNTER:** What you provided was sufficient. What is the purpose of your appearance at this proceeding?

7468. **DR. KULCHYSKI:** Well, I wrote an expert witness report that looked at basically two elements, I think, federal responsibility in relationship to MMTP and broader concerns and a little bit around sort of the history of Manitoba Hydro's involvement with First Nations as a background to say has the pattern of behaviour changed significantly or not? So those really two elements were the keys to my report.

7469. **MR. STEVEN HUNTER:** Thank you. And were these materials prepared under your direction and control?

7470. **DR. KULCHYSKI:** I prepared them myself so fully under my direction and control.

7471. **MR. STEVEN HUNTER:** And do you have any corrections to make to any of these materials?

7472. **DR. KULCHYSKI:** No, I don't think so.

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7473. **MR. STEVEN HUNTER:** And do you have anything further to add?

7474. **DR. KULCHYSKI:** Well, I could add a lot but I kind of think I don't want to try your patience.

7475. **MR. STEVEN HUNTER:** And is that your direct evidence, sir?

7476. **DR. KULCHYSKI:** That is my direct evidence.

7477. **MR. STEVEN HUNTER:** And so you adopt this evidence?

7478. **DR. KULCHYSKI:** I adopt this evidence.

7479. **MR. STEVEN HUNTER:** Thank you, Dr. Kulchyski.

7480. **DR. KULCHYSKI:** Thank you very much.

7481. **THE CHAIRPERSON:** I understand Manitoba does not have questions, Manitoba Hydro? And that has been confirmed, thank you.

7482. We're going to break -- I'm sorry, I see Mr. Vorden rising. Is your intent -- sorry, I may have gotten your name wrong -- Mr. Hunter's colleague.

7483. **MR. BEDDOME:** Oh, Mr. Beddome. No, we're done. I'm just waiting for the Board, yeah.

7484. **THE CHAIRPERSON:** All right. Well, we're going to take a very short break. Yeah, just five minutes. We'll be back to the podium.

--- Upon recessing at 1:47 p.m./L'audience est suspendue à 13h47

--- Upon resuming at 1:50 p.m./L'audience est reprise à 13h50

PETER KULCHYSKI: Resumed

7485. **THE CHAIRPERSON:** Thank you. The Panel doesn't have any questions for Dr. Kulchyski. And thank you for your appearance today and for the evidence that you've filed on behalf of the Southern Chiefs. You're released from your obligations to this witness panel and you can be excused. Thank you.

--- (Witness is excused/Le témoin est libéré)

7486. **THE CHAIRPERSON:** That concludes the cross-examination phase of the proceeding. And we are about to start the oral argument phase. And I understand that -- who have we got up first? I had it here, CAEPLA? Yeah, CAEPLA, or was it? Yes, it is CAEPLA.

7487. Mr. Goudy.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. GOUDY:

7488. **MR. GOUDY:** Thank you, Madam Chair.

7489. Madam Chair and Board Panel Members, I've provided speaking notes to the hearing officer and I've asked that the exhibit and case references that I've included in those rough notes be inserted into the transcript where applicable so that I don't need to say them out loud as I'm making my submissions.

7490. And I've also got a small number of exhibits that I'm going to ask be put on the screen, but for the most part I will just refer to the document without asking it to be put up.

7491. I've also provided a small collection of three references to our excerpts from National Energy Board reports. And one is a selection of excerpts from the *Manitoba Hydro Act*. I'll make reference to those during my submissions.

7492. I've provided the Board with copies and I've left a number of copies at the back of the room that are available.

7493. So it is my pleasure to present the final oral argument of the Canadian Association of Energy and Pipeline Landowner Associations in this proceeding and I thank you for the opportunity to do so,

7494. CAEPLA, as the Association is known, has participated in many past National Energy Board proceedings on behalf of landowners facing energy projects, such as the MMTP at issue in this hearing, and has advocated for improvements in the way projects are undertaken, both during construction and following construction once a project is in operation.

7495. In particular, CAEPLA works with agricultural landowners to minimize adverse impacts from projects on agricultural lands and farming

operations, and on the landowners themselves, who often live and work in close proximity to projects. And given the nature of linear projects, such as the MMTP, it is often the case that agricultural lands are affected by the project, spanning between urban centres.

7496. CAEPLA is made up of individual landowners and landowner associations from across Canada and has a wealth of knowledge and experience when it comes to the identification of project impacts and the mitigation and avoidance of project impacts.
7497. CAEPLA has had significant success in addressing landowner impacts through its participation in NEB proceedings, but also through negotiated settlements with project proponents, often resulting in withdrawal from NEB proceedings.
7498. Success comes where landowners affected by the project can rely on clear, comprehensive, and binding project documents for comfort that their interests will be respected and that the project will be undertaken in a manner that gives priority to environmental protection over the financial benefit of the proponent, whether that proponent is private or public.
7499. In this particular case, CAEPLA applied to participate in the hearing process [*Exhibit A89812*] because it could see that Manitoba Hydro was heading down the same path in this project, the MMTP, as it did in the very recent Bipole III project.
7500. The path being followed by Manitoba Hydro is one where commitments to landowners and to the environment are vague and open-ended, and which leave Manitoba Hydro and its construction contractor with such discretion to decide later on how construction and operation activities will be carried out, that the commitments often aren't commitments at all.
7501. The landowner members of the Manitoba Bipole Landowner Committee of CAEPLA, MBLC, experienced first-hand how commitments communicated by Manitoba Hydro on the ground weren't always honoured in the field, putting agricultural lands at risk of damage, if not causing damage that should have been avoided.
7502. CAEPLA intervened in this hearing process to make the Board aware of the risks now being faced by MMTP landowners and their properties as a result

of the project as currently proposed by Manitoba Hydro and to ask the National Energy Board to exercise its authority to remove that risk, or at least to minimize it.

7503. CAEPLA is requesting that the Board impose conditions of approval on the project that will transform the commitments Manitoba Hydro says it is making to landowners into real commitments -- effective and binding commitments that Manitoba Hydro and its construction contractor cannot later avoid when it suits their purposes or their construction schedule.
7504. Thinking about this argument last evening, it struck me that CAEPLA's concern in this case, about how Manitoba Hydro proposes to address landowner issues, and the mitigation of adverse impacts on agricultural lands and farming operations, is much like the concern that CAEPLA had expressed in the past when the National Energy Board would refer to, and perhaps still does, but previously referred to goal-oriented regulation -- set the goal, and then leave it up to the companies to decide how best to achieve that goal with a minimal amount of prescriptive direction.
7505. Manitoba Hydro talks a lot about goals and desired outcomes when it comes to the avoidance or mitigation of construction impacts. But my submission is that there isn't much detail and there isn't much certainty in Hydro's description of how it will achieve those goals and outcomes, which leaves a lot of room to abandon the outcomes when it's convenient to do so.
7506. CAEPLA submits that there is a place for prescriptive regulations -- and construction projects like the MMTP call for prescriptive regulations -- clear and detailed procedures and rules about how things will be done because these are large complex projects.
7507. And it's not the people in this room, including the Manitoba Hydro witnesses you had before you in this hearing, who will be carrying out the construction work on the ground. There are going to be a large number of people involved. They all have to be on the same page. And the best way to do that is through clear instruction, clear rules.
7508. On many other projects, CAEPLA and its landowner members have obtained detailed and enforceable commitments from project proponents through comprehensive project agreements, agreements that set out in detail how construction will be carried out, how agricultural lands will be protected, how

farming operations will be accommodated, how construction activities will be monitored, and how company commitments will be enforced.

7509. In its evidence, CAEPLA has provided a number of examples of recent project agreements. Appendices A through F are copies of the agreements that are industry-leading in terms of impact mitigation on agricultural lands [*Exhibits A91746-3 to A91746-8*]. Appendix G to CAEPLA's written evidence is a table summarizing how each identified landowner impact is addressed in the agreements [*Exhibit A91746-9*].

7510. For the purpose of my submission today, I'm going to use the Enbridge Line 3 Replacement Settlement Agreement [*Exhibit A91746-8*] as an example. It's Exhibit A91746-8. If I could ask that it be brought up on the screen. It's again, A91746-8. And if we could move to pages -- page 3 of the document, please?

7511. The Table of Contents for this settlement agreement, this construction agreement, I would suggest discloses the comprehensive nature of the agreement. The intention that it cover more or less all identified landowner and agricultural land impacts. It covers easement agreements. It covers compensation. It covers construction methodology, construction monitoring, dispute resolution, property reclamation. It's a single document that landowners can read and understand and rely upon.

7512. This agreement comes out of a National Energy Board-regulated project reviewed by the Board in Hearing OH-002-2015, with the Board's approval of that project coming in April of 2016. The project involved both the decommissioning of the existing Line 3 pipeline running through western Canada, including through southern Manitoba, and the construction of a new replacement pipeline. And the panel in that case said the following about the agreement. This is from the first case reference that I've provided to you in hard copy. The panel said:

"There was very little landowner involvement in the hearing process. This appears largely due to Enbridge's efforts to resolve landowner concerns, including its ability to negotiate comprehensive settlement agreements with the Canadian Association of Energy and Pipeline Landowners Associations (CAEPLA), the Manitoba Pipeline Landowners Association (MPLA) and the Saskatchewan Association of Pipeline

Landowners (SAPL). The Board is of the view that these negotiated agreements are a positive initiative and encourages their use to resolve issues to the parties' mutual satisfaction."
[National Energy Board Report, OH-0022015, Volume I: Our Decisions and Recommendations, April 2016, Section 1.5.1, Adobe page 10]

7513. And the Board goes on to discuss how the agreement played into its determination of the reasonableness of Enbridge's decommissioning plan. Obviously, decommissioning is not an issue in this proceeding. We're dealing with the construction.

7514. And for that reason, I've also included an excerpt from Volume II of the Board's report in that proceeding where the Board summarized the evidence before it about the agreement and again expressed its approval of the comprehensiveness of the settlement agreement. The Board report states:

"Enbridge expressed that in late 2013, it began meeting with the Manitoba Pipeline Landowners Association and the Canadian Association of Energy and Pipeline Landowners Saskatchewan Association of Pipeline Landowners regarding the Project. Enbridge confirmed that it was able to resolve outstanding concerns of CAEPLA/SAPL and MPLA regarding both the Decommissioned Line 3 Pipeline and the Line 3 Replacement Pipeline, as the parties signed two settlement agreements dated June 5th, 2015 and March 5th, 2015, respectively.

Enbridge stated that these negotiated agreements were the result of significant engagement and negotiation with the landowner associations and their members, and they are very comprehensive agreements that go beyond matters of compensation. The Construction Settlement Agreement dealing with the Line 3 Replacement Pipeline sets out numerous construction and operation requirements, and includes a wet soil shutdown procedure, a weed management program, and a very detailed clubroot biosecurity agreement. The Agreement includes specifications regarding clubroot sampling associated with integrity digs, additional test audit and reporting procedures, greater detail and prescriptions regarding

implementation of mitigation, and a process for dispute resolution." [National Energy Board Report, OH-002-2015, Volume II: Our Detailed Assessment, April 2016, Section 5.3, Adobe page 107]

7515. I'll skip ahead to the last paragraph:

"Enbridge indicated that the mitigation measures outlined in the Construction Settlement Agreement and the Decommissioning Settlement Agreement are complementary to the mitigation proposed in its Application. Enbridge stated that although the Application is not as prescriptive as the Agreement, the mitigation will be applied consistently to all landowners." [National Energy Board Report, OH-002-2015, Volume II: Our Detailed Assessment, April 2016, Section 5.3, Adobe page 107]

7516. So the Board notes there the difference in the level of detail between the agreement -- the Comprehensive Construction Agreement and what's set out in the project application. And I'd submit we're in a very similar situation with the MMTP.

7517. Finally, the Board, in its detailed assessment, commented:

"The Board is of the view that both the Decommissioning Settlement Agreement and the Construction Settlement Agreement between Enbridge and CAEPLA/MPLA/SAPL are a positive initiative and encourages their use to resolve issues to the parties' mutual satisfaction. The Board is satisfied that Enbridge will apply the mitigation set out in these Agreements consistently to all landowners." [National Energy Board Report, OH-002-2015, Volume II: Our Detailed Assessment, April 2016, Section 5.4, Adobe page 109]

7518. Under cross-examination, Manitoba Hydro witnesses confirmed Manitoba Hydro does not offer landowners comprehensive project agreements of the sort negotiated by CAEPLA and its landowner members and member associations. Mr. Ireland stated:

"We don't believe that the level of detail that's laid out in the --

in those agreements are required. We believe that the easement agreement has been, continues to be very effective in documenting both the conditions that are important to the landowner, and are important to Manitoba Hydro. And where that falls short, there is the opportunity for us to be able to document those things and attach them to the easement. But there's no requirement from our perspective to enter into an agreement of that extent." [Transcript, Volume 6, Line 2499 – Mr. Ireland]

7519. Further, Mr. Ireland stated:

"The only agreement that Manitoba Hydro makes with its landowners, at least in writing, is its standard form easement agreement." [Transcript, Volume 8, Lines 6278, 6282 – Mr. Ireland]

7520. Mr. Ireland confirmed this again on Wednesday with Mr. Toyne in cross-examination.

7521. If MMTP proceeds in the way proposed by Manitoba Hydro in its application, then what affected landowners will have is an easement agreement that is not intended to be a detailed construction agreement, as acknowledged by Manitoba Hydro in cross-examination. *[Transcript, Volume 6, Lines 2455 to 2469 – Mr. Ireland]*

7522. Beyond that, affected landowners will have the record of this proceeding, and the record of the Clean Environment Commission, CEC proceeding, including Manitoba Hydro's massive Environmental Impact Statement or EIS. And I suppose they'll also have whatever decision is made by the provincial Minister, likely containing conditions of approval, and the decision of this Board containing any conditions of approval, should the project be approved.

7523. But I would submit to you that such an overwhelming amount of information and documentation will not be helpful to landowners faced with a major construction projects on their lands. That's a comment about form.

7524. I've already submitted to you that there are problems with the substance, but there's an issue with form. There's a lot of paperwork on the

record of this proceeding, as I'm sure you can appreciate, and much of it is just paper, few effective commitments from Manitoba Hydro to agricultural landowners.

7525. I'd like to look at a few of the commitments that have been made or are stated to have been made by Manitoba Hydro.

7526. I drew your attention earlier to the landowner settlement agreement summary table at Appendix G to CAEPLA's written evidence. [Exhibit A91746-9]

7527. There is a long list of landowner impacts identified and those are impacts to be addressed, I would submit, in a project like the MMTP. There's obviously not time today to look at more than a few of these. I will focus on a handful of items that I submit are of primary importance in the protection of the environment, and that are indicative of the shortcomings in Manitoba Hydro's proposed mitigation measures.

7528. The first area I'd like to review with you is what is generally called wet soil shutdown. In agriculture, you need sunlight, you need water, and you need soil. And topsoil is fundamental to agriculture, but construction projects like the installation of hydro transmission towers and lines involve the disturbance of topsoil. It's unavoidable. And it's acknowledged by Manitoba Hydro that conducting construction activity in wet soil conditions will cause damage to soils, which can consist of compaction, rutting, and even admixing of topsoil and subsoil. [Transcript, Volume 6, Lines 2504-2511 – Ms. Bratland]

7529. If we could look again at the Enbridge Line 3 Agreement [Exhibit A91746-8]. We had it on the screen before, and go to Adobe page 6, section 2.2. Thank you.

7530. That's an introductory statement about the Wet Soil Shutdown Policy. That's the framework for the policy. The policy itself is actually attached as Schedule 6, and I'll take you to that in a moment.

7531. The statement in that part of the agreement, and this is a binding agreement between Enbridge and its landowners; there's the statement that:

"Enbridge's practices for pipeline construction, repair and maintenance during wet soil conditions will be governed by the

Wet/Thawed Soils Contingency Plan attached as Schedule 6."

7532. So Enbridge is undertaking that it will follow the plan that is attached to the agreement, and that the decision on whether to suspend activities due to excessively wet soil conditions will be made by the assistant construction manager, in consultation with the chief inspector, the environmental inspector, contractor superintendent, and, importantly, the construction monitor. And the construction monitor in the context of this agreement is an independent third-party construction monitor for the project outside of the company.

7533. If we could skip forward to Adobe page 28. Thank you.

7534. Beginning at Adobe page 28 is Schedule 6. This is the Wet Soil Shutdown Procedure. It's a detailed document that runs on for several pages, and it spells out pretty clearly what can and cannot be done in wet soil conditions. And there are tables that form part of this schedule that provide clear criteria for which activities must be suspended in excessively wet soil conditions. This procedure is a prescriptive one, and the level of detail in the procedure is warranted because of the damage that will be caused by working in wet soil conditions.

7535. Enbridge's Line 3 landowners have an agreement that requires Enbridge to follow this policy in consultation with an independent third-party construction monitor, as I explained, who is not part of Enbridge's team. If we look at what MMTP landowners are offered, well there's no agreement, we know that. We know from Manitoba Hydro's information request responses that it may choose to conduct construction activities in saturated soil conditions -- not just wet, or excessively wet, but saturated -- if needed to meet construction deadlines and its scheduled in-service date.

7536. That is taken directly from Manitoba Hydro's response to CAEPLA's Information Request 1.24(a). Manitoba Hydro says:

"Manitoba Hydro may need to work in agricultural areas where soils are saturated and nonfrozen to meet the Project scheduled in service date." [A91170-1, Adobe page 55 – MH Response to CAEPLA IR 1.24(a)]

7537. We also know, if we look carefully -- we also know from Manitoba Hydro's Environmental Impact Statement, Chapter 22, [Exhibit A81182-38] that

construction operations may be stopped in limited circumstances. There are three examples, and I'd like to put them up on the screen. They're at Exhibit A81182-38. Thank you.

7538. And the first example -- these come from the, what I understand to be mitigation tables, Appendix 22A of the Construction Environmental Protection Plan, and at Adobe page 82, there's a table related to clearing operations, and commitment or Mitigation Measure PA-3.22. It says:

"If extreme wet weather or insufficient frost conditions results in soil damage from rutting, and soil erosion is resulting in sedimentation of adjacent waterbodies, a stop work order may be issued."

7539. So that's for clearing operations, and what Manitoba Hydro is committing to is if extreme wet weather or insufficient frost conditions result in soil damage from rutting -- so number 1 you need rutting -- and soil erosion is resulting in sedimentation of adjacent waterbodies -- 2 -- a stop work order may be issued.

7540. So the direction to the construction contractor is if you get both of those things at the same time, a stop work order may be issued; otherwise, there's no provision for a stop work order.

7541. Could we move forward to Adobe page 88, please. This table deals with erosion protection and sediment control, and Mitigation Measure 3.02 says:

"Construction activities will be suspended during extreme wet weather events where erosion protection and sediment control measures are compromised."

7542. Again, it's not just a question of is there an extreme wet weather event; it's a question of is there an extreme wet weather event where erosion protection and sediment control measures are compromised. No reference to the -- simply to the condition of the soil and whether damage is going to be caused.

7543. Finally, if you could please turn forward to page 105, Adobe page 105. This part of the table deals with transmission towers and conductors, and it says:

"The Construction Supervisor will issue a stop work order if

extreme wet weather conditions result in soil damage from rutting and erosion is resulting in sedimentation of adjacent waterbodies."

7544. That's the same statement as we saw in the first example I took you to. Again, it's not good enough that soil damage is resulting from rutting; it's got to be soil damage is resulting from rutting and erosion is resulting in sedimentation of adjacent waterbodies. That, I submit, is not prescriptive enough and it's not effective to protect agricultural soils.

7545. I looked through those mitigation tables, and those were the only instances I found where construction was stated to be suspended in wet soil conditions. But as I explained, all of those examples, the three examples I showed you, they're all qualified. None of them provide that construction must stop where soils are excessively wet. That alone is not enough.

7546. The measures set out by Manitoba Hydro maybe sound reasonable enough until you realize that they leave open the opportunity to continue working in excessively wet soil conditions, even in saturated soil conditions, if Manitoba Hydro chooses to do so. And Manitoba Hydro has confirmed that it may need to do that in order to meet its in-service date.

7547. And recall that under cross-examination Manitoba Hydro's witnesses were not willing to commit that Manitoba Hydro would not conduct work in saturated soil conditions. *[Transcript, Volume 6, Lines 2529-2530 – Mr. Matthewson]*

7548. So there's a deficiency, I would suggest, in the substance of these commitments from Manitoba Hydro, and there's a deficiency in the form as well, as far as landowners are concerned because landowners are not going to have ready access to Chapter 22 of Manitoba Hydro's EIS.

7549. The second area I want to review with you is biosecurity, and I intend today to focus on the prevention of the spread of clubroot. Clubroot can be devastating for canola crops. It's present in Manitoba, and canola is a major cash crop in Manitoba. Manitoba Hydro's EIS confirms that:

"Currently, there are no economic control measures that can remove the disease from a canola field once it has been infested." [Exhibit A81182-27, Adobe page 58 – MH EIS,

Chapter 15, Section 15.4.3.1.1]

7550. Clubroot was a major concern for Manitoba landowners on the Enbridge Line 3 Replacement Project. The problem is that an infestation in the soil -- and clubroot is spread from property to property through the transportation of soil, usually on equipment. And there's likely no greater opportunity to spread soil from property to property than during the construction of a major linear utility project. That's my own observation, but I think the Board can probably appreciate why that would be the case.
7551. So if we could just look briefly at how Enbridge and CAEPLA addressed clubroot in the Line 3 Replacement Project, that's Exhibit A91746-8 at Adobe page 39, please.
7552. Schedule 9 to the document -- and I would encourage the Board to review this. Beginning at schedule 39 is an agreement on clubroot prevention that is more than 30 pages long. And obviously we don't have time today in my submissions to look at it in any detail, but I would commend it to you as being a procedural document that is robust in a way that reflects the seriousness of the risk posed by construction and maintenance operations on agricultural lands.
7553. The key starting point is sampling. The presence or lack of -- or absence of clubroot must be determined at the beginning. And the level of mitigation required is determined in large part by the results of that sampling. The sampling has to be robust. And mitigation has to be robust. There need to be protocols for equipment cleaning and disinfection. The protocols need to be detailed and prescriptive, so that construction contractors can follow them.
7554. That is what the agreement between Enbridge and CAEPLA represents.
7555. Manitoba Hydro doesn't ignore clubroot, obviously, but we don't actually have, in this proceeding at this time, Manitoba Hydro's management plan, or policy, or procedure for clubroot. It hasn't been prepared, as was confirmed by Mr. Matthewson under cross-examination [*Transcript, Volume 6, Line 2606 to 2609 - Mr. Matthewson*].
7556. What we do have, I would submit, is lacking. This is Exhibit A81182-27. It's Appendix B to Chapter 15 of the EIS at Adobe page 132. It's a two or three-page document. It lacks the level of detail and prescription that are found in

the Line 3 Agreement, and that extends both to the mitigation measures and, importantly, to the testing protocols.

7557. As with Manitoba Hydro's commitments concerning work in wet soil conditions, the biosecurity procedure just seems to be too relaxed and too loose.

7558. The third and final area of landowner impact mitigation I'd like to review with you concerns oversight.

7559. Lacking in Manitoba Hydro's project, as it is proposed to you, is effective independent third-party oversight of its construction on agricultural properties. That sort of over-sight is key to the successful implementation of the comprehensive project agreements that have been negotiated by CAEPLA and its members.

7560. Now, I'm not ignoring the fact that Manitoba Hydro does plan to have a number of people involved in the construction [*Exhibit A81182-38, Adobe page 20, Page 22-9*]. But they aren't independent. They either work for Manitoba Hydro, or the contractor, or they're hired by Manitoba Hydro for Manitoba Hydro.

7561. And I'm not ignoring that the provincial environment ministry, or the National Energy Board itself may conduct some oversight or inspection of construction activities. But we can safely assume that no regulatory inspectors will be present across the whole project at all times and locations to monitor activities in a way that is intended to be comprehensive.

7562. What benefits landowners is a program that involves two things.

7563. One, it involves independent third-party construction monitors with expertise in soils and agronomy who monitor construction and are available to respond to landowner concerns and who are expressly not on the project working for the proponent.

7564. And two, the program involves landowner involvement in issue resolution and dispute resolution through a joint committee made up of company representatives and landowner representatives, with the construction monitor reporting to that joint committee.

7565. I will -- I'll simply give you the reference in the Enbridge Line 3

Replacement Project Agreement. These issues are dealt with at Section 1.1 and 1.2 and Schedule 1 to the Agreement [*Exhibit A91746-8*], but we don't need to look at it this afternoon.

7566. Manitoba Hydro doesn't propose a program of that sort for landowners on privately-held lands. There may be provision for the engagement of independent construction monitors in connection with the MMTP monitoring committee. Manitoba Hydro's Panel discussed this again in response to a question by Dr. Chaulk this morning. But I don't understand that proposal to extend to privately-held agricultural lands.

7567. The MMTP Monitoring Committee actually sounds a lot like the independent third-party construction monitoring program that CAEPLA has helped to implement on other projects. The joint committee of landowners and the company sounds a lot like the MMTP monitoring committee itself. And I would submit that a similar program is needed for agricultural lands on this project.

7568. And the example that I provide to you is the Enbridge Line 3 Agreement.

7569. Those then are three major components of successful comprehensive landowner construction agreements that are lacking in Manitoba Hydro's project proposal, if not missing all together.

7570. And if we step back and consider again what landowners on this project are offered, it's the standard form easement agreement. Beyond that, it's not terribly clear what commitments Manitoba Hydro is making to landowners.

7571. Even if the landowners read all of the documents on the record of this proceeding, and the CEC proceeding, it's not likely they'll have any useful understanding of what to expect from construction, and little in the way of enforceable undertakings.

7572. Just to be clear, I do recognize that Manitoba Hydro has suggested in its reply evidence filed very recently, that it will be preparing a letter of commitment of some sort for landowners, and I will address that at the end of my submissions.

7573. But we don't have any commitment letter at this point.

7574. When considering the mitigation measures that have been proposed to date by Manitoba Hydro, the ones that are actually in the record of the proceeding, I would suggest that it's important to keep in mind that landowners are given a take it or leave it option when it comes to an agreement for the project.

7575. Manitoba Hydro's witnesses did not agree with my characterization of take it or leave it [*Transcript, Volume 6, Lines 2410 to 2415 - Mr. Ireland*], but I can't see how the characterization doesn't apply.

7576. Manitoba Hydro has been clear that if a landowner does not enter into a voluntary easement agreement, Manitoba Hydro will expropriate the fee simple ownership of the land it requires for the project.

7577. Manitoba Hydro's response to CAEPLA Information Request 1.14(h) was that:

"If expropriation is used on MMTP, Manitoba Hydro would seek to expropriate fee simple ownership of land." [Exhibit A91170-1 at Adobe page 38]

7578. Mr. Ireland confirmed in cross-examination that this effectively means:

"...that for landowners who will be affected or anticipated to be affected by this project they have a choice between accepting Manitoba Hydro's standard form easement agreement or losing ownership of their property to expropriation..." [Transcript, Volume 6, Lines 2410-2411]

7579. And yet, Manitoba Hydro told the Clean Energy Commission, the CEC, that easements are the best option. This is from the CEC transcript May 15, 2017.

"So first on easement, Manitoba Hydro believes that easements are the best option for both the landowner and Manitoba Hydro. Easements provide Manitoba Hydro with the rights we need to operate the right-of-way, and it gives Manitoba Hydro the responsibility to maintain that right-of-way. Ownership stays in the landowner's name and the landowner continues to

use the land in largely the same way that they always have."
[Exhibit A84536-22, Adobe page 267 – CEC Transcript, May
15, 2017, Page 1021 Lines 18-25 and Page 1022, Line 1]

7580. Manitoba Hydro prefers easements, but it will take fee simple ownership. The question is why? You heard from Mr. Ireland that Manitoba Hydro expropriated fee simple interests on Bipole III on the advice of legal counsel that there was some question as to whether or not Manitoba Hydro could expropriate an easement. *[Transcript, Volume 6, Lines 2425 to 2426 – Mr. Ireland]*

7581. I do not know what to make of that. My reading of the *Manitoba Hydro Act* is that there is no question that with the authorization of the Lieutenant Governor in Council Manitoba Hydro can expropriate an easement. And that is the back page of the documents that I provided to the Board. There are excerpts from the *Manitoba Hydro Act*.

7582. Section 16(1)(b) sets out the power of the corporation, Manitoba Hydro, that can be exercised with the approval of the Lieutenant Governor in Council. Manitoba Hydro may,

"...without the consent of the owner or persons interested therein, acquire, take and expropriate land, including the right of entry to install, maintain and protect works and the right to impose restrictions on the use of any land, notwithstanding that the land which is subject to the restriction is not, or may not be, appurtenant or annexed to any land of the corporation."

7583. That, in itself, the last part of that section is important because the discussion of what is appurtenant to or annexed to any land is only relevant in the case of an easement. So implied in that itself is the fact that an easement can be taken. But beyond that, if we go back up to the excerpt from Section 1 of the Act, the definition of land, the definition of land very clearly includes easements.

" "land" means real property of whatsoever nature or kind and includes tenements, hereditaments, and appurtenances, leaseholds, and any estate, term, easement, right or interest in, to, over, under or affecting land, including rights-of-way, and waters, water rights, water powers, and water privileges."

7584. So, on my reading, unless I'm missing something, it's not clear to me why Manitoba Hydro or its legal counsel would have any question arising from the *Manitoba Hydro Act*.
7585. But the question is a convenient one to have because the fact is that MMTP landowners, like the Bipole III landowners before them, are, as a result, faced with the choice of accepting the standard form easement agreement, with no comprehensive construction agreement, or losing their property to Manitoba Hydro.
7586. **THE CHAIRPERSON:** But Mr. Goudy, can't that be said of every piece of legislation that authorizes expropriation? I mean, whenever that exists in legislation it's possible to set up a view of negotiations that way.
7587. **MR. GOUDY:** That is absolutely true. However, speaking from my experience, companies do not generally want fee simple ownership of routes for these sorts of projects. They will take easements. And where expropriation can be challenged or tested in a tribunal or judicial process, the taker of the property is generally limited to the least taking that is required for the project.
7588. So if Manitoba Hydro can't show that it needs more than an easement for its project, then normally it wouldn't be in a position ultimately to expropriate fee simple. The landowner could challenge the fee simple taking and force Manitoba Hydro into accepting an easement. And Manitoba Hydro in this case -- or it has said that its preference is an easement. But in the Bipole III project, that process where what was being taken could be challenged was avoided because the Lieutenant Governor in Council passed an order allowing Manitoba Hydro to bypass the approval process.
7589. So it -- I'd suggest that this is a different situation. And also, it's not the normal situation where the proponent from the very beginning is saying, if we expropriate it's going to be fee simple.
7590. **THE CHAIRPERSON:** So one of the things -- and I'm not that familiar with Manitoba's expropriation law, but one of the things I think you've identified is the fact that this particular section doesn't have an expropriation compensation independent tribunal like they do in my province.
7591. **MR. GOUDY:** My apologies, Madam Chair, it's -- compensation, yes. Manitoba does have a provision for the determination of compensation.

That -- Manitoba Hydro has to deal with that. When I said that they were able to bypass a certain process, it's the process by which the landowner could contest the actual expropriation itself.

7592. The landowner would still have the ability to go and argue that the compensation they had been offered for the taking is not sufficient, but what they couldn't do is have -- and, sorry, in the Bipole III process, what they were not able to do was go and contest the taking of fee simple as opposed to an easement.

7593. And Manitoba Hydro -- I don't have the reference here, but Manitoba Hydro confirms in information request responses to CAEPLA that the same scenario could take place here.

7594. **THE CHAIRPERSON:** I'm sorry. I may have taken us down a rabbit hole.

7595. **MR. GOUDY:** That's okay.

7596. **THE CHAIRPERSON:** Thanks.

7597. **MR. GOUDY:** And the Board should keep in mind as well that it's not just landowners who may face a new easement and a new corridor and face the prospect of expropriation. There are also a large number of landowners on this project who already have a Manitoba Hydro corridor with existing lines. So those landowners, they already have an easement in place, but they're not offered a comprehensive construction agreement either.

7598. Manitoba Hydro in its pre-application project description explained that

"As proposed, close to half of the route (92 km) is located in existing transmission line corridors." [Exhibit A73129 - Manitoba Hydro - Manitoba-Minnesota Transmission Project Pre-Application Project Description, 2.3.2.1 Use of Existing Corridors, Adobe Page 12]

7599. And also to give some context to the agricultural lands that we're dealing with, I'd ask that Section 7.6 in the CEC Report be brought up. It's Exhibit A867799-1. And it's at Adobe page 61. Thank you. And if you could just scroll down a little. That's perfect. Thank you.

7600. So this excerpt from the CEC Report shows that land under agricultural production that is affected by the project appears to be something just over 1950 acres, comprised of 747 acres of annual crops and 1,212 acres of hayland. And you can compare that -- and it's not shown on the screen right now, but in the -- on the other side of the page you can compare that with just over 1,700 acres of forest in the right-of-way. *[Exhibit A86779-1, Adobe Page 61]*
7601. So in comparing or having some kind of an idea of how much agricultural land is affected by this project, it would appear to be more than half of the project.
7602. As I noted earlier, Manitoba Hydro is heading down the same path in MMTP as it did in the Bipole III project. Landowners on that project were similarly faced with the choice between signing standard form easement agreements with no comprehensive construction agreement or losing ownership of their property to expropriation.
7603. And Manitoba Hydro, in response to CAEPLA Information Request 1.14(d) *[Exhibit A91170-1, Adobe page 37]*, confirms that it expropriated properties from a total of 226 landowners on the Bipole III project.
7604. Manitoba Hydro also advises that since it negotiated easements with all but 33 landowners -- sorry, that it has since then negotiated easements with all but 33 landowners, but I would submit that's not likely a reflection of landowner satisfaction with the standard form easement; rather, it's not surprising that they might sign in order to get their land back after the fact.
7605. And in any event, we can look at the example of Bipole III to see what results for agricultural landowners and agricultural lands from Manitoba Hydro's program for the mitigation of landowner impacts -- that is the plan being the easement agreement combined with the commitments that are contained within the project document and the regulatory filings.
7606. The results are less than stellar, I would submit. The Board has heard from MBLC landowners about failed commitments on the part of Manitoba Hydro and damage to agricultural lands. Their written evidence is found at Appendices H and I in the CAEPLA written evidence *[Exhibits A91746-10 and A91746-11]*.

7607. But the National Energy Board has an opportunity in this proceeding to correct the deficiencies in Manitoba Hydro's mitigation of landowner impacts, to fill in what's missing in the framework proposed by Manitoba Hydro, to provide the comprehensive construction protocols and procedures and oversight that complement the easement agreement as we saw in the Enbridge Line 3 Replacement project decision.
7608. In deciding whether to issue a Certificate of Public Convenience and Necessity for MMTP, the Board has to determine whether the project is in the public interest. CAEPLA submits that the project will not be in the public interest without the framework that deals with adverse impacts on landowners and agricultural lands in a comprehensive and binding way that landowners can understand and rely upon.
7609. In the absence of an agreement between Manitoba Hydro and landowners, CAEPLA has proposed conditions of approval intended to achieve the same result, and it is within the jurisdiction of the National Energy Board to impose those conditions. *[Exhibit A82687-1, Adobe pages 4-5 – NEB Letter re process dated April 19, 2017]*
7610. In its letter on process dated April 19th, 2017, the Board stated:
- "As noted by Manitoba Hydro, the Board has broad jurisdiction regarding the scope of matters that it may take into account when determining whether to issue a permit. This authority stems from its enabling legislation, the NEB Act, and would include the authority to take into consideration all relevant matters since there are no provisions in the NEB Act limiting the Board in this regard." [Exhibit A90002-1, Adobe page 2 – NEB Letter re Draft Conditions for Comment dated February 14, 2018]*
7611. And in the Board's letter from February 14th of this year, the Board stated, with respect to draft conditions for approval:
- "A primary purpose of conditions is to mitigate potential risks and effects posed by a project throughout all phases of its lifecycle so that it is designed, constructed, and operated in a manner that protects property and the environment, and safety and security of the public."*

7612. The Board, I submit, has the authority to impose conditions, including conditions dealing with the mitigation of adverse impacts on landowners and agricultural lands. And although many aspects of the project are subject to provincial law rather than the *National Energy Board Act*, section 58.22 of the *National Energy Board Act* confirms that the terms and conditions of permits and certificates and *Acts of Parliament* of general application are, for the purpose of applying the laws of a province under section 58.2 or 58.21, paramount to those laws.
7613. So the National Energy Board can impose conditions as part of the certificate process that are paramount to provincial laws.
7614. And as already submitted by CAEPLA in its comments on the Board's draft conditions, which were provided by letter dated May 30, 2018 [*Exhibit A92181-1, Adobe page 2*], the provincial CEC hearing process did not, in CAEPLA's submission, address impacts on agricultural lands and landowners in any meaningful or effective way.
7615. CAEPLA stated in it's letter:
- "CAEPLA has reviewed the CEC's report and, in particular, Section 9.6 of the report relating to 'Agriculture'. In CAEPLA's view, the superficial and summary fashion with which the CEC addressed agricultural impacts in its assessment of the MMTP is reflected in the summary nature of the section on agriculture and in the CEC's making only one recommendation related to agriculture."*
7616. And that one recommendation -- I won't ask that it be put up on the screen. The one recommendation that was made related to agriculture was that Manitoba Hydro offered to landowners to plant shrubs or trees in order to replace shelterbelts removed by the project. [*Adobe page 111*]
7617. That condition, I submit, is vague and open-ended in the same way that the commitments made by Manitoba Hydro in its regulatory filings are vague and open-ended. And that's the only recommendation on agriculture that the CEC made.
7618. So the National Energy Board in this proceeding, need not be

- concerned that it will be stepping on the province's jurisdiction in imposing conditions of approval to protect landowners. The CEC, I submit, failed to protect landowners to the extent that it was even the role of the CEC to do so.
7619. CAEPLA has proposed a series of conditions of approval. They are contained in Appendix J to CAEPLA's written evidence [*Exhibit A91746-12*]. The conditions are intended to provide the framework for addressing landowner impacts that is missing from Manitoba Hydro's project as it is proposed.
7620. Earlier in my submissions, I noted that Manitoba Hydro has now suggested that it will offer to landowners some sort of commitment letter. This was raised for the first time in Manitoba Hydro's Reply Evidence at paragraph 87 [*Exhibit A92478-2, Adobe page 29*]
7621. It's CAEPLA's view that letter of commitment of the sort suggested by Manitoba Hydro could work, if the letter is clear, comprehensive, and prescriptive if it provides for the mitigation measures contained in the landowner agreements that have been negotiated by CAEPLA and its members with other project proponents including a wet soil shutdown policy, a clubroot biosecurity policy, independent third-party construction monitoring, a joint committee of landowner and company representatives — namely the areas addressed by CAEPLA's proposed conditions of approval.
7622. If creating and offering to landowners that sort of comprehensive letter of commitment was made a condition of approval by this Board, CAEPLA's concerns could be addressed. If the letter of commitment is a Board condition and it is clear, comprehensive, and prescriptive, then it could work if the National Energy Board accepts that as a vehicle for implementing a proper framework for dealing with landowner mitigation.
7623. But we don't have the letter at this point. It's a very recent development. We can't review it, we don't have it on the record, so I would submit that the NEB needs to impose conditions. It needs to impose the conditions proposed by CAEPLA.
7624. Manitoba Hydro has advised the Board that it opposes each and every condition of approval proposed by CAEPLA. [*Transcript, Volume 6, U-4, Lines 2393, 2625*]
7625. It also suggests -- and I will end here. It also suggests that it,

Manitoba Hydro, is somehow different than other projects because it is a Crown corporation. *[Transcript, Volume 6, Lines 2490 to 2491 – Ms. Bratland]*

7626. My last submission to you is that Manitoba Hydro is not different. Its project is not different from other projects solely because it is a Crown corporation transmission line; it's still a transmission line. Manitoba farmland is still Manitoba farmland. The distinction between a project like the MMTP and other linear projects is a false one. The impact comes from the work that is done on the ground. The interference with farming operations, the damage caused to lands -- that's not different for a Crown corporation than it is for another public company or a private entity.

7627. Manitoba Hydro can do better, and CAEPLA's concern is that Manitoba Hydro will not do better and will not do well enough unless the National Energy Board exercises its authority in this case, and we urge the Board to do so.

7628. Subject to anymore questions you have, those are my submissions.

7629. **THE CHAIRPERSON:** Thank you, Mr. Goudy. I'll just check with my colleagues.

--- (A short pause/Courte pause)

7630. **THE CHAIRPERSON:** We're going to take a 20-minute break and we'll go back to Mr. Goudy. Thank you.

--- Upon recessing at 2:54 p.m./L'audience est suspendue à 14h54

--- Upon resuming at 3:17 p.m./L'audience est reprise à 15h17

7631. **THE CHAIRPERSON:** Thank you, Mr. Goudy. It turns out the Panel doesn't have questions for you. Thank you very much for your submissions.

7632. **MR. GOUDY:** Thank you, Madam Chair.

7633. I just -- I have one comment I'd like to make, if I could, just with respect to the question that you'd asked earlier about expropriation and leading me down a rabbit hole. And I apologize for leading, perhaps leading you down the rabbit hole.

7634. Expropriation, the expropriation context here, I think is important as context, perhaps an explanation as to why Manitoba Hydro has been successful in obtaining voluntary easements. But expropriation or no expropriation, the fact of the matter is it's -- there still is no comprehensive construction agreement or mitigation program for this project.
7635. So that submission of CAEPLA's and the request for the conditions of approval apply irrespective of what expropriation may or may not happen and whether it's fee simple or an easement; it doesn't matter. We feel that the Board still needs to exercise its authority and impose conditions.
7636. **THE CHAIRPERSON:** Yeah, and I guess my point wasn't so much that as the fact that any time a landowner or -- is engaged in negotiations with an expropriating authority, that is a reality that expropriation may happen if negotiations aren't successful.
7637. **MR. GOUDY:** You're absolutely right, but my submission would still be that in most circumstances they -- the landowner faces the taking of an easement where an easement would be sufficient for the project.
7638. And in this case, there's no indication from Manitoba Hydro that anything more than an easement is needed. Manitoba Hydro says that its clear preference is an easement and yet landowners on Bipole III and apparently on MMTP are facing loss of fee simple ownership of the corridor.
7639. **THE CHAIRPERSON:** And that led your argument about whether or not the *Expropriation Act* actually requires them to take fee simple.
7640. **MR. GOUDY:** Thank you.
7641. **THE CHAIRPERSON:** I understand. Thank you.
7642. **MR. GOUDY:** Yes. Thank you.
7643. **THE CHAIRPERSON:** Ms. Dilay for the Canadian Consumers Association, Manitoba Branch.
7644. **MS. DILAY:** Thank you, Madam Chair.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MS. DILAY:

7645. **MS. DILAY:** Good afternoon. My name is Katrine Dilay, and I'm a lawyer with the Public Interest Law Centre here in Winnipeg, and we represent the Manitoba Branch of the Consumers Association of Canada in these proceedings. And going forward, I intend to refer to our client as CAC Manitoba.

7646. I'd like to also acknowledge that the executive director of CAC Manitoba is here in the room today, Ms. Gloria Desorcy.

7647. At the outset, CAC Manitoba wishes to thank the National Energy Board for the opportunity to intervene in these proceedings. Fundamentally, this hearing is about whether the Manitoba-Minnesota Transmission Line, or the MMTP, as I'll refer to it, is in the public interest.

7648. CAC Manitoba's position regarding the MMTP is that Manitoba Hydro has not yet met its onus of demonstrating that the MMTP is in the public interest based on two main reasons.

7649. First, Manitoba Hydro appears to be looking backwards but planning forward. This is based on the fact that Manitoba Hydro has refused to update the economic analysis for the project based on changed circumstances since 2016. This is also based on the fact that Manitoba Hydro has provided no information about how it is considering a broader energy strategy and energy future for Manitoba and how this may impact the need for the project.

7650. The second main reason upon which CAC Manitoba's position is based is that if the project is approved the follow up and monitoring of the project proposed by Manitoba Hydro is not sufficient and must be strengthened.

7651. On behalf of our clients, we intend to go into these reasons in more detail in our argument.

7652. I do have a PowerPoint presentation that is up on the screen, and as directed by the Board's June 1st, 2018 letter, it is limited to outlining the presentation as well as providing specific excerpts from the transcript and the record of the proceeding. We have filed it electronically [A92631-1], and I believe the Board has physical copies as well, and I have a few copies on the back table for those who are interested.

7653. In terms of how our argument is organized, we will first provide an introduction to CAC Manitoba. We will then speak briefly to the issue of the MMTP as part of a larger plan. We will then outline the legal test to meet in this proceeding. Following that, we will focus on our argument regarding the issues that CAC Manitoba focused on in this hearing, which include the economic feasibility of the project, the need for the project, and the potential environmental and socioeconomic effects of the project. Finally, we will summarize CAC Manitoba's recommendations in this proceeding.
7654. The Manitoba Branch of the Consumers Association of Canada is a volunteer, non-profit, independent organization that works to inform and empower consumers and to represent the consumer interest in Manitoba. Formed in 1947, the organization is governed by a volunteer board of directors elected annually at a general meeting of the organization's membership. The organization is a branch of the National Consumers Association of Canada but is financially separate and separately incorporated.
7655. The Manitoba Branch of the Consumers Association of Canada's policy is guided by its understanding of generally accepted consumer rights. Some of those consumer rights include the right to satisfaction of basic needs, the right to safety, the right to be informed, the right to choose, the right to be heard, the right to consumer education and the right to a healthy environment.
7656. CAC Manitoba has significant experience in regulatory hearings. CAC Manitoba has been involved over the past 25 years in rate regulation matters relating to Manitoba Hydro, Centra Gas, Manitoba Public Insurance, Manitoba Telephone System or MTS, payday lending, and the maximum cost of cashing government cheques.
7657. In terms specifically of Manitoba Hydro hearings, CAC Manitoba is the only party, apart from Manitoba Hydro, to have participated in all types of hearings relating to Manitoba Hydro's regulation. CAC Manitoba has participated in every Hydro general rate application, cost of service, and diesel proceedings.
7658. CAC Manitoba was an intervenor in the 2014 Need for an Alternatives to proceeding, or the NFAT, before the Manitoba Public Utilities Board, where it warned that Manitoba Hydro was taking on too much risk and living too much in the past. CAC Manitoba also participated in the NFAT relating to Wuskwatim.

7659. On the environmental side, CAC Manitoba has participated in Hydro proceedings before the Manitoba Clean Environment Commission relating to Bipole III, Keeyask, Lake Winnipeg Regulation, and the MMTP.
7660. In its work the Manitoba branch of the Consumer's Association of Canada seeks input on its policy position from consumers through engagement, which includes the innovative use of focus groups, style sessions, workshops, surveys, and through its ongoing services to the public.
7661. For example, in 2016/2017 the organization had contact with approximately 13,000 consumers through its consumer education and information programs, services and consumer research. In addition, the organization seeks other perspectives on relevant issues through the use of policy, community advisory committees, workshops and interviews.
7662. In terms of how CAC Manitoba develops its position when it participates in proceedings such as this one, it is always guided by the overarching consumer rights and responsibilities.
7663. Regarding the MMTP hearing in particular, CAC Manitoba was an important participant during the Clean Environment Commission hearing. Specifically, it brought evidence by Dr. Patricia Fitzpatrick from the University of Winnipeg, regarding adaptive management, follow-up and monitoring.
7664. To inform its own position it conducted engagement with consumers and policy communities with the assistance of Dr. Fitzpatrick on some aspects of adaptive management, follow-up and monitoring. It also conducted cross-examination of multiple witnesses and delivered closing arguments and recommendations.
7665. For CAC Manitoba, the National Energy Board hearing represented a significant opportunity to follow up on environmental issues that were either insufficiently addressed at the CEC proceeding, or not addressed at all. It also represented the opportunity to test Manitoba Hydro's application relating to the need for and the economic feasibility of the project in light of changed circumstances since 2014.
7666. CAC Manitoba saw this opportunity as especially important, given its participation in other regulatory proceedings relating to Manitoba Hydro's development plan where it warned about taking on too much risk.

7667. In preparation for this hearing, CAC Manitoba retained a consultant, Mr. Bill Harper of Ecoanalysis, to assist with the analysis of the need for and the economic feasibility of the project. In fact, CAC Manitoba was one of the only intervenors who dug deep into the economic issues relating to the project, including in their information requests and cross-examination.
7668. On the environmental issues, CAC Manitoba built upon its participation before the Clean Environment Commission.
7669. To further inform its overall participation in this proceeding, CAC Manitoba also conducted engagement with consumers and policy communities relating to certain issues in the form of focus group like session, workshops and interviews.
7670. Finally, CAC Manitoba also conducted cross-examination and prepared final argument and recommendations.
7671. Before getting into the specific issues relating to the MMTP, CAC Manitoba wishes to speak briefly to the issue of the MMTP being at the tail end of a much larger development plan by Manitoba Hydro. As we heard in this proceeding, a U.S. interconnection very similar to the MMTP was first examined during the Need for an Alternatives to proceeding before the Manitoba Public Utilities Board in 2014 as part of a larger plan that also included the Keeyask generating station.
7672. In the end fact, the PUB found that there was economic justification for building a U.S. interconnection as part of Manitoba Hydro's development plan. And that's the excerpt that we have -- one of the excerpts from the PUB Report that we have on the screen.
7673. For valid reasons, intervenors are bringing forward in this proceeding legitimate concerns about Manitoba Hydro and the integrated system as a whole, including the decision to build Keeyask and to export the surplus power to the south. As we saw on the record of this proceeding, the MMTP was historically connected to Keeyask's surplus power and, in fact, it still is. And I'll just point you to the quote on the screen.
7674. CAC Manitoba has been at the forefront of a lot of these dialogues about the larger plan, including during the 2014 NFAT. However, CAC

Manitoba acknowledges that this hearing is about one specific aspect of that plan, the Manitoba Minnesota Transmission Project.

7675. This hearing specifically is not focused on the hydro system. It is not focused on MMTPS part of a larger whole. It is really focused on one part of the plan in isolation. As a result, in this proceeding, CAC Manitoba has chosen to focus on the more narrow issue of the MMTP, while also acknowledging and recognizing the essential questions that other intervenors are posing regarding the Manitoba Hydro integrated system as a whole, and also recognizing that the NEB is being asked to grapple with the very tail end of a far more substantive dialogue that has been taking place over the last few years.

7676. On behalf of our clients, we'd like now to go through a bit of the statutory context for this proceeding and the questions that the National Energy Board is being asked to answer under its governing legislation.

7677. The question under Section 58.16 of the *National Energy Board Act* is whether the Board is satisfied that the line is and will be required by the present and future public convenience and necessity.

7678. Essentially, as the National Energy Board has previously found, that question boils down to whether the project is in the public interest. And that's from the Emera Brunswick Pipeline Company Limited NEB Decision.

7679. The test is "primarily a matter of reasoned opinion, based upon an appropriate factual basis that is within the discretion of the regulatory body." In addition, "since the public interest is dynamic, the criteria by which the public interest is served may also change according to the circumstances."

7680. The National Energy Board also has to answer the question under the *Canadian Environmental Assessment Act 2012*, of whether the project is likely to cause significant adverse environmental effects. And Section 19 of CEAA 2012 sets out the factors to be taken into account when conducting an environmental assessment.

7681. I will not be listing all of them, but just to briefly name a few, they include the environmental effects of the project, including any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, the significance of these environmental effects, mitigation measures, and the

requirements of the follow-up program.

7682. And finally, we just included Section 2 of the *Manitoba Hydro Act*, which is simply the purpose of the corporation. The purpose of Manitoba Hydro in its governing statute is to meet the needs of the province, and promote economy and efficiency, as well as to provide and market products, services and expertise related to power within and outside the province, and to market and supply power outside the province on terms and conditions acceptable to the Board.

7683. For this hearing, CAC Manitoba chose to focus on three issues that were listed in the Board's Hearing Order. Those issues include the economic feasibility of the project, the need for the project; and the potential environmental and socio-economic effects of the project, including those to be considered under the *Canadian Environmental Assessment Act, 2012*.

7684. We will first start by exploring the issue of economic feasibility of the project.

7685. CAC Manitoba's position is that Manitoba Hydro has not met its onus of demonstrating the economic feasibility of the project. In fact, Manitoba Hydro appears to be planning forward, while still looking backward.

7686. While Manitoba Hydro has acknowledged the change in inputs into the NFAT analysis conducted in 2014, the corporation has not been responsive to the changing marketplace and the changing circumstances.

7687. Manitoba Hydro has had multiple opportunities to update its business case for the MMTP during the National Energy Board proceeding. Despite multiple requests, it chose to regurgitate analyses conducted in 2014, four years ago, and in 2016, almost two years ago.

7688. Of note is that only June 12th, 2018, five days before the start of the cross-examination portion of this hearing, did Manitoba Hydro provide its most recent analysis of the MMTP, which was done at the end of 2016, but was based on the same assumptions as a previous analysis done that same year.

7689. Given that the latest economic analyses of the project are from 2016, the National Energy Board does not have an up-to-date economic analysis of the MMTP. CAC Manitoba's position is that this is an essential component of

determining whether the MMTP is in the public interest.

7690. So I'd like to walk through the different economic analyses that are on the record, chronologically.

7691. A 500 kV, 750-megawatt interconnection was approved by the Public Utilities Board during the NFAT in 2014. The Public Utilities Board found that Manitoba Hydro had demonstrated the value of building the proposed transmission interconnection to the United States. And we've included an excerpt for your reference in the PowerPoint.

7692. However, as acknowledged by Manitoba Hydro in this proceeding, there have been a number of significant changes in inputs to the analysis since then.

7693. And we'll move relatively quickly through the changes that have happened since 2014, then move on to the changes since 2016.

7694. First, since 2014 there has been an increase in the capital costs to the MMTP. At the time of the NFAT, the capital cost of the MMTP was \$350 million in 2014 dollars. The current approved budget for the MMTP is \$453.2 million in 2017 dollars.

7695. Second, there's also the increase in costs for the Great Northern Transmission Line, or the GNTL.

7696. At the time of the NFAT, Manitoba Hydro's share of the capital costs was \$304 million in 2014 dollars. And in addition, it was responsible for \$567 million in ongoing O&M costs.

7697. Manitoba Hydro's O&M costs for the GNTL are now estimated to be \$787 million. And the exact portion of the capital costs that will be paid by Manitoba Hydro has not been disclosed. However, we have seen from Responses to Information Requests that the capital costs have increased, as there was a capital projects justification indicating an increase in costs.

7698. In terms of the export price for executed contracts, it appears that they have not changed materially, about less than five percent since the NFAT. However, the export prices for market sales or opportunity exports have declined by 28 percent since the NFAT, so since 2014.

7699. Now Manitoba Hydro, as discussed, as provided two analyses of the MMTP that were conducted since the NFAT. While these analyses are more recent, they are both from 2016 and do not reflect the benefit of the information that is now available and that should be before the regulator in a proceeding taking place in 2018.
7700. What is really the crux of CAC Manitoba's argument relating to economic feasibility of the project is that the changes and circumstances since 2016 make it that those economic analyses from 2016 cannot be relied upon.
7701. Overall, the 2016 Boston Consulting Group report that was provided by Manitoba Hydro provides a more recent evaluation of the business case for the MMTP, which suggested the project's economics were still favourable.
7702. The 500 kV interconnection report that was filed last week on the record as based on consistent assumptions to those underlying the Boston Consulting Group report and also found that it was economic to proceed with the MMTP.
7703. However, it is CAC Manitoba's submission that two significant inputs have changed since then: one, the export price forecasts; and two, the interest rate forecast, which affects the discount rate used in the analysis.
7704. So we'd like to take you through the export price forecast first.
7705. The economic analyses from 2016, both the Boston Consulting Group report and the 500 kV interconnection report were based on the 2016 export price forecast. Since then, Manitoba Hydro has made revisions to that forecast that were filed during the latest general rate application before the Public Utilities Board.
7706. Manitoba Hydro appears to be relying on different information before different regulators for different purposes.
7707. First, Manitoba Hydro updated its export price forecast for non-firm opportunity sales, lowering the prices in comparison to those included in the 2016 analyses of the MMTP.
7708. This deterioration is based on the outlook for low costs of fossil fuel,

and also because American utilities have local options for carbon-free electricity. And that was taken from an expert -- excerpt from the Public Utilities Board Order 59-18.

7709. Second, the forecast for export sales for new firm contracts has changed. And to be clear, by new firm contracts we mean future contracts that are dealing with surplus dependable energy, and not the contracts that were recently signed by Manitoba Hydro.
7710. In the past, Manitoba Hydro has assumed that surplus dependable energy that has not already been contracted for will be sold under contract and command a capacity premium, due to the dependability of its supply.
7711. However, for policy reasons, in its January 2017 update to the financial forecast, Manitoba Hydro removed this premium from the pricing and revenue assumptions associated with such sales.
7712. Manitoba Hydro confirmed that this change was not reflected in the updated economic analyses from 2016 that are currently before this Board. Indeed, Manitoba Hydro appears to be picking the forecasts it uses depending on the purpose, which in CAC Manitoba's view, raises serious questions regarding the corporation's credibility.
7713. The Manitoba Public Utilities Board in Order 59-18 recently found that Manitoba Hydro's export price forecast methodology was conservative and that it would under-forecast the revenues expected to be realized from export sales.
7714. And this was due to the change in methodology.
7715. For revenue requirement purposes before the Public Utilities Board, Manitoba Hydro appears to have removed the capacity premium. But this was not done in the economic analyses for the MMTP that are before this Board.
7716. Removing the capacity premium for the purposes of a rate application resulted in a higher revenue requirement, and therefore a higher rate application. But Manitoba Hydro has not provided an updated economic analysis. And this may be because their updated methodology would remove the capacity premium and therefore lower the economic value of the MMTP. Keeping the capacity premium in the analysis essentially makes the MMTP look better.

7717. While at first glance the PUB's finding that Manitoba Hydro is being too conservative in its methodology by removing the capacity premium would appear to revert back to the methodology that was in fact used in 2016, there are still concerns with the 2016 analysis.
7718. At page 7 of the 500 kV Interconnection report, Manitoba Hydro appears to have included a capacity premium for the analysis where the MMTP was included, but for their analysis without the MMTP, they assumed that surplus dependable energy had no premium associated with it.
7719. In this instance as well, the corporation appears to have picked to the scenario that would give them the best calculation possible similar to their use of different export revenue forecasts in different regulatory hearings.
7720. And finally, also in terms of export revenues, Manitoba Hydro has indicated that a larger transmission network delivering electricity in Minneapolis could lead to an increase in export prices and a price reduction for imports. This information has not yet been modelled by Manitoba Hydro and was not quantified in either of the 2016 analyses. As a result, it is unclear how this would impact the economic analysis of the MMTP.
7721. Overall, it is CAC Manitoba's submission that the most recent export price forecast that Manitoba Hydro used in its rate application before the Public Utilities Board, has not been reflected in any MMTP economic analysis.
7722. It is not clear what the impact that updating this information could have on the business case, and this is information that should be on the record before this regulator.
7723. Manitoba Hydro indicated in cross-examination that the updates to the export price forecast were used for rate-setting purposes. The fact that Manitoba Hydro appears to be using different forecasts and numbers for different purposes casts a shadow of doubt on the corporation's credibility. Based on the information provided, Manitoba Hydro appears to be impeaching their 2016 500 kV Interconnection report with the information and submissions regarding export revenues that they are making in another regulatory proceeding before the Public Utilities Board.
7724. The changes in export price forecast since 2016 points strongly in the

direction of a need for an updated economic analysis.

7725. The other input in the economic analysis that we'd like to discuss is the discount rate that was used, and specifically, the impact of interest rates on the discount rate and the resulting impact of the discount rate on the economic analysis as a whole of the project.

7726. To summarize just part of the discussion from our cross-examination of Mr. Cormie, we agreed that the purpose of a discount rate is that future costs and benefits are discounted to a common point in time. The result is that for a given cash flow, the higher the discount rate, the lower the present value, and the further out in the future a cost of benefit is incurred or received, the lower its net present value.

7727. In terms of the impact of the discount rate used, the majority of the costs for the MMTP are those associated with construction and are incurred in the near term. Conversely, the majority of the benefits from the project will occur over the long term.

7728. For this type of project where the majority of the costs are incurred in the near term but the majority of the benefits occur over the long term, a higher discount rate will tend to decrease the benefit more than it will decrease the costs. The impact of a higher discount rate as a result is that it would make the project look less economic.

7729. As was discussed with Mr. Cormie, a 4.4 percent real discount rate was used for both of the 2016 analyses, the Boston Consulting Group report and the 500 kV Interconnection report. One of the inputs in deriving the appropriate discount rate to use is the interest rate forecast.

7730. For Manitoba Hydro, the interest rate forecast uses the long-term Canadian bond yield. The long-term Canadian bond yield used by Manitoba Hydro in determining the discount rate was the 10-year rate and was based on an average of the 10- and 30-year debt values.

7731. Manitoba Hydro confirmed that its most recent interest rate forecasts have had higher interest rates. Where the long-term Canadian bond yield increases, it would lead to a higher discount rate if everything else remains constant.

7732. To the extent that the current forecast long-term borrowing cost for Manitoba exceeds 5.4 percent, the current value of the discount rate to be used in the analysis could increase above 4.4 percent. And as we established, a higher discount rate for a project such as the MMTP would make the project look less economic.
7733. Now, in the reference we're providing to the transcript in slide 38, we do note that Mr. Cormie provided the Board with the current 30-year figure and the resulting discount rate that would be used. However, as was established the next day of the hearing on Tuesday by way of undertaking, for Manitoba Hydro's purposes, the long-term Canadian bond yield used by Manitoba Hydro in determining the discount rate was the 10-year rate and was based on an average of the 10- and 30-year debt values.
7734. Mr. Cormie did also provide a revised discount rate based on Monday's 30-year rate; however, as he noted, day-to-day interest rates fluctuate. What is really important for our purposes is not today's rate, but rather Manitoba Hydro's current best estimate or forecast of the interest rates it will be borrowing at to finance the project.
7735. In this context, Manitoba Hydro's latest interest rate forecast, which was provided during the recent general rate application, is higher than previous forecasts.
7736. If we were to use Manitoba Hydro's current interest rate forecast, which Mr. Cormie acknowledged has gone up, the discount rate that would be used in the analysis would likely be higher and could result in the project looking less economic for the corporation and, ultimately, for all Manitobans.
7737. It is CAC Manitoba's position that less weight can be given to the 2016 business case analysis because the lower discount rate is inconsistent with the trend in Hydro's projected interest rates.
7738. While the discount rate that would be used now may approximate the rate used in 2014, in the 2014 NFAT analysis which was 5.4 percent, as we discussed earlier, too many inputs have changed since that time to consider the 2014 analysis reliable.
7739. In CAC Manitoba's view, the economic analyses provided by the corporation are problematic and cannot be relied upon by the National Energy

Board for determining the economic feasibility of the project in 2018.

7740. To summarize the issues in terms of the economic feasibility, given the more recent reductions in export market prices, the removal of the premium attached to surplus dependable energy, and the increase in forecast interest rates, it is unclear if the economics of the project would still be favourable.

7741. CAC Manitoba has drawn an adverse inference from Manitoba Hydro's failure to update its economic analysis, given the material changes in circumstances.

7742. The NEB is making its decision in 2018 or is holding this proceeding in 2018 and should have the benefit of current and up-to-date information.

7743. CAC Manitoba submits that it is open to the NEB to also draw an adverse inference from Manitoba Hydro's failure to update its economic analysis for the benefit of this regulator.

7744. In terms of the recommended findings on the economic feasibility of the project, CAC Manitoba submits that it is not clear whether the risks associated with the construction of the 500 kV Interconnection are still outweighed by the benefits the Interconnection provides based on the lack of updated information on the record in this proceeding. There is insufficient updated information on the record to make a decision on the economic feasibility of the project, which should be a key component of whether the project is in the public interest.

7745. As a result, Manitoba Hydro has not met its onus of demonstrating a positive economic value for Manitobans.

7746. CAC Manitoba's recommendation on this point would be that the NEB has the authority to approve or deny a project and should make its decision on the most current information available. The NEB should order Manitoba Hydro to provide an updated business case analysis based on June 2018 information before rendering its decision.

7747. Now, I'll move on to the need for the project. CAC Manitoba recognizes that Manitoba Hydro likely requires additional transmission to the U.S. to fulfill its four recently-executed export contracts. However, on a broader level, CAC Manitoba is very concerned that in its application for the MMTP the corporation has not adequately taken into account what a different energy future

might look like for the Province of Manitoba.

7748. The energy market is changing. There are significant disruptive forces in terms of solar, wind, the development of storage and batteries and others. There are also important considerations relating to climate change and Canada's and Manitoba's commitments to greenhouse gases reduction.

7749. The choice of Manitoba's energy future could significantly impact Manitoba Hydro's choices for future development projects. This includes questions such as where does our energy come from? How much energy do we need in this province? Where should surplus energy produced in our province go? For example, should it be exported to the U.S. or should it be exported to other Canadian provinces?

7750. Decisions relating to Manitoba's energy future should not be made unilaterally by Manitoba Hydro, but rather should include input from all Manitobans. Consideration of a broader energy strategy for the province should account for a gradual transition away from fossil fuels, especially considering Canada's commitments to reducing greenhouse gases, which has the potential to dramatically increase domestic load forecast for hydroelectricity, both in Manitoba and potentially in Canada.

7751. Manitoba Hydro in this application has not provided any information about whether it has conducted engagement with Manitobans about the desired energy strategy for the future and how the MMTP fits within that.

7752. Once again Manitoba Hydro appears to be planning forward while looking backwards to traditional development pacts and projects that may not be the best fit for a broader energy strategy for the province. This issue goes directly to the determination of whether the project is in the public interest, including whether it will be needed over the long-term and its economic feasibility.

7753. In terms of a recommended finding regarding the need for the project, CAC Manitoba submits that while Manitoba Hydro is likely to need the additional transmission to the U.S. in order to fulfill recently executed contracts, the corporation has not adequately considered or engaged with Manitobans on the need for the project within a broader energy strategy.

7754. On behalf of our clients, we'll now spend a bit of time on the environmental and socio-economic effects of the project.

7755. At the outset, CAC Manitoba wishes to be clear that environmental assessment must be informed by the principles of transparency, inclusivity, informed deliberation and meaningful participation. In this proceeding, the National Energy Board has an important opportunity to shape a more robust environmental protection, follow-up and monitoring program for the MMTP built upon these four principles.
7756. CAC Manitoba filed comments on May 30th, 2018 in relation to the draft National Energy Board conditions for the project. We do not intend to repeat those submissions in the interest of time, but we do want to highlight some of the recommendations that we consider significant. And on the other points, we would refer the National Energy Board to our full submissions for the remainder of the recommendations regarding the certificate conditions.
7757. Manitoba Hydro has made it clear throughout this proceeding that it will not act on the Clean Environment Commission recommendations unless it is compelled to do so by the regulator or by government. As a result, CAC Manitoba recommends that the National Energy Board incorporate the Clean Environment Commission recommendations, both licensing conditions and non-licensing recommendations.
7758. While CAC Manitoba acknowledges that the corporation has taken some steps toward implementing certain CEC recommendations, CAC Manitoba recommends that the conditions must be enshrined as licensing conditions to ensure that they will be consistently complied with by Manitoba Hydro and to send a clear message to the corporation about the importance of accountability, transparency, inclusivity, informed deliberation and meaningful participation on this project.
7759. One example where Manitoba Hydro appears to have taken some step toward implementing a Clean Environment Commission recommendation but has provided no indication of fully complying is the MMTP Monitoring Committee. While there is currently in place an MMTP Monitoring Committee comprised of First Nation and Métis participants -- and CAC Manitoba applauds the corporation for this -- it has -- Manitoba Hydro has made it clear that it does not intend to have any monitoring advisory group which would include representatives of local residents, interested non-governmental organizations and academic researchers, which would provide input into monitoring and management of the right-of-way.

7760. CAC Manitoba also makes additional recommendations to strengthen monitoring, follow-up and adaptive management for the MMTP. As stated by Dr. Patricia Fitzpatrick, who was the expert retained by CAC Manitoba in a clean environment proceeding:

"Attention should not be lost once a project gets its approval. Environments and circumstances can change, in some instances quite rapidly. Follow up and monitoring is meant to ensure that public attention remains on the project throughout construction/implementation, operation and decommissioning." [Fitzpatrick evidence, A84535-3, CAC-0108, page i]

7761. A condition should be included for Manitoba Hydro to modify its objectives of the monitoring program to explicitly add a reference to adaptive management, as well as remove the reference to baseline information.

7762. Manitoba Hydro should also be directed to create monitoring plans for the three endangered fish species which are found in the right-of-way. While it is established that there are three endangered fish species within the assessment area for the MMTP, no fish sampling was conducted, not even on these endangered species. This is the case, even when Manitoba Hydro confirmed that habitat changes may have great effects on endangered fish species because of specialized habitat or biological requirements for species that have narrow tolerance to habitat alterations.

7763. As part of its annual reporting, Manitoba Hydro should include an assessment of whether any monitoring programs need to be extended beyond the two-year post construction timeframe. While the majority of Manitoba Hydro's monitoring plans end after two years, the Clean Environment Commission recognized that many effects will take longer than two years to be fully recognized. So there's a need to strengthen those monitoring plans or at least have a condition in place to allow that to happen.

7764. On behalf our clients, we'd like to discuss cumulative effects for a few minutes. Section 19 of CEAA 2012 includes that the environmental assessment of a designated project must take into account:

"...any cumulative environmental effects that are likely to result

from the designated project in combination with other physical activities that have been or will be carried out."

7765. The record of this proceeding has demonstrated the significant cumulative impact of human activity in Southern Manitoba, and specifically, in the MMTP right-of-way. This has led to significant concerns on the part of CAC Manitoba about project proponents in general and the regulator's ability to adequately assess cumulative environmental effects of projects on the environment.
7766. For example, the Clean Environment Commission report discusses the long-term decline in the amount of forested land in the project study area. The Clean Environment Commission also recommended that Manitoba Hydro, in future Environmental Impact Statements, include a more complete discussion of project cumulative effects that brings together materials for all VCs and the project area.
7767. Many intervenors in this process have discussed the cumulative effects of both human activity and also Manitoba Hydro activities in southern Manitoba and in the MMTP right-of-way. And we've included those references in the PowerPoint for your consideration.
7768. While Manitoba Hydro's Environmental Impact Statement does include sections on cumulative effects, CAC Manitoba is not satisfied that this adequately assesses the cumulative effects of the project when considering the significant impact of human activity to date in the region.
7769. In order for future projects to adequately assess cumulative impacts, CAC Manitoba recommends that there needs to be a multi-sectoral or comprehensive regional strategic cumulative effects assessment for southern Manitoba. And I'll just break that down a bit in terms of what we mean by that.
7770. By "multi-sectoral or comprehensive" we mean that the assessment should not be limited to Manitoba Hydro activities and projects. The evidence on the record is clear. There are other types of human activities that have also significantly impacted land availability and the environment more generally in southern Manitoba.
7771. By "strategic" we mean that such an assessment would not only need to look at cumulative effects of various activities on the environment to date, but

also would have to look to the future including considering various competing pathways for development in the future.

7772. In terms of the region in question, while the MMTP environmental assessment looked at southeastern Manitoba, there may be value in also looking at southwestern Manitoba, as future projects may not be limited to the eastern or the western part of the province.

7773. A comprehensive strategic regional cumulative effects assessment would have many benefits going forward for the proponent, for regulators, and for the public more generally. The results of such an assessment would assist in all future decisions on particular development projects in the region, as it would assist in understanding whether the environment can withstand the incremental impact of one more project.

7774. The results of such an assessment would provide a full picture of the chosen value ecosystem components for the region and an assessment such as this one could result in decisions on strategic development direction for the region as a whole including regarding the pace of development and the amount of development.

7775. A more complete discussion of project-specific cumulative effects, as was recommended by the Clean Environment Commission, combined with the results of a comprehensive strategic regional cumulative effects assessment would allow the public and the regulators to get a fuller and more adequate picture of the cumulative effects of projects on this region.

7776. This assessment would also assist all regulators, regulators such as the National Energy Board, in assessing cumulative effects under environmental legislation such as CEAA 2012.

7777. Now, before going into my conclusion and wrapping up our final argument, CAC Manitoba wishes to address the issue that Manitoba Hydro appears to have taken the National Energy Board regulatory process as a fait accompli. In CAC Manitoba's view, the 500 kV Interconnection report from December 15th, 2016, demonstrates that this Crown corporation has not taken the National Energy Board approval of this project seriously enough.

7778. The report refers to a November 2nd, 2016 go/no go date after which Manitoba Hydro faced consequences if it backed out of the project. Manitoba

Hydro made it clear during cross-examination that it made the decision to proceed with the project by November 2nd, 2016 while knowing full well there was a risk that the project may not receive regulatory approval. In fact, by November 2nd, 2016, Manitoba Hydro had not even applied to the National Energy Board for approval of this project.

7779. In making this decision by November 2nd, 2016, Manitoba Hydro stacked the deck in its favour as the consequences it would face by not proceeding with the project now have to be taken into consideration by the National Energy Board in making its decision of whether the project is in the public interest.

7780. In CAC Manitoba's view, this appears to be backwards. Manitoba Hydro should be receiving regulatory approvals first before making any decisions to proceed with the project, such as the decision made by November 2nd, 2016.

7781. Manitoba Hydro appears to be trying to deprive the National Energy Board of a meaningful choice by presenting the MMTP as a fait accompli through its go/no go decision which was made by November 2nd, 2016, by refusing to provide any more recent update of critical information, and by using certain information in the NEB process and other information in the Public Utilities Board process.

7782. And I did include a transcript excerpt here that spans a few pages.

7783. Now, by way of summary I'd like to just briefly go over CAC Manitoba's recommendations in this proceeding.

7784. First, a Certificate of Public Convenience and Necessity should not be issued until Manitoba Hydro submits an updated business case to the National Energy Board including all inputs current as of June 2018, and that the National Energy Board is satisfied of the positive economic value of the project.

7785. Second, should a Certificate of Public Convenience and Necessity be issued, CAC Manitoba is making a number of recommendations relating to environmental conditions that should be attached to the certificate. Those conditions are all included in more detail in the May 30th, 2018 submissions and I have already highlighted some of those recommendations earlier in our argument, so I will not go into detail in those.

7786. Third and finally, CAC Manitoba recommends that a strategic multi-

sectoral or comprehensive regional cumulative effects assessment should be conducted for southeast Manitoba within the next five years.

7787. By way of conclusion, CAC Manitoba emphasizes once more that Manitoba Hydro has not demonstrated, based on the information available, the economic feasibility of the project. The information provided by the corporation shows that it is looking backward while planning forward.
7788. Manitoba Hydro's economic analysis of the project is not keeping pace with changing circumstances, especially relating to export prices and interest rate forecasts.
7789. In terms of the need for the project, Manitoba Hydro is not considering what a different Manitoban and even Canadian energy future might look like and the impact on Manitoba Hydro's business and development plans.
7790. Finally, in terms of follow up and monitoring of the MMTP, CAC Manitoba has come to the conclusion that Manitoba Hydro will not act unless it is compelled to act. For that reason, it is our submission that all the Clean Environment Commission conditions should be adopted by the National Energy Board and additional conditions also be imposed to strengthen environmental protections.
7791. CAC Manitoba thanks the National Energy Board for the opportunity to intervene in this proceeding and to provide final arguments today.
7792. Subject to any questions the Board may have, those are CAC Manitoba's submissions. Thank you.
7793. **THE CHAIRPERSON:** Thank you, Ms. Dilay.
- (A short pause/Courte pause)
7794. **THE CHAIRPERSON:** Dr. Lytle has some questions and Dr. Chaulk may.
7795. **MEMBER LYTLE:** Usually I'd need some time to put thoughts down on paper before I -- it's sort of an engage brain, open mouth kind of thing, so this might come out a little bit garbled. But I'm interested in your comments about cumulative effects, because it's not going to surprise you to know that that's

probably the number one issue that the NEB faces in all of its hearings across Canada, nor will it surprise you that it's historically -- we have records from the ancient Greeks complaining about cumulative effects in Athens, for example, and Canada was populated largely with people who left the United Kingdom because of cumulative effects and the enclosure laws of the 18th century. So it's geographically broad and historically deep. It's a big problem.

7796. I'm wondering where you see the NEB contributing to this conversation, which I agree with you should be had, given the constraints in our legislative mandate.

7797. **MS. DILAY:** Thank you for the question. And if the Board will allow me to consult with my client just for a minute to make sure I'm actually expressing their views, I would appreciate it.

--- (A short pause/Courte pause)

7798. **MS. DILAY:** Thank you. I appreciate your patience.

7799. And we really appreciate the question, and our client has also been grappling with this issue as well. While a cumulative effects -- or regional cumulative effects assessment may not be appropriate to take place attached as a condition to the MMTP, we would recommend that the National Energy Board at the federal level could make a recommendation to the federal government that this type of regional cumulative effects assessment would need to take place.

7800. We do not, however, believe that one level of government would be sufficient. We believe that a recommendation would have to be that all levels of government would have to be involved, industry, the public. This would have to be a broader -- broader in scope with multiple partners and their buy-in in such a regional assessment.

7801. The reason the recommendation was within five years is in order to get buy-in and to get appropriate methodology and process in place that would take some time. And we do believe within the federal CEAA 2012 cumulative effects assessment are indicated in Section 9 of that Act.

7802. A meaningful assessment of the cumulative impacts, we submit, would include a regional assessment that would create almost a type of baseline that we can then move forward from there to see what are the incremental effects of each

project as we move forward.

7803. **MEMBER LYTLE:** Thank you for that. I guess it's the regional and the multi-party issue that's bedevilled everybody I think through time and through space. Thank you.

7804. **THE CHAIRPERSON:** Thank you, Ms. Dilay. Those are our questions and we're adjourned until tomorrow morning at 8:30.

7805. Thank you.

--- Upon adjourning at 4:21 p.m./L'audience est ajournée à 16h21