

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



**Hearing Order OH-001-2016
Ordonnance d'audience OH-001-2016**

**Enbridge Pipelines Inc.
Line 10 Westover Segment Replacement Project**

**Pipelines Enbridge Inc.
Projet de remplacement du tronçon Westover de la canalisation 10**

VOLUME 3

**Hearing held at
Audience tenue à**

**Crowne Plaza Hamilton Hotel and Conference Centre
150 King Street East
Hamilton, Ontario**

**October 19, 2016
Le 19 octobre 2016**

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Imprimé au Canada

HEARING ORDER/ORDONNANCE D'AUDIENCE
OH-001-2016

IN THE MATTER OF Enbridge Pipelines Inc.
Line 10 Westover Segment Replacement Project
Application pursuant to section 58 of the *National Energy Board Act*
and section 45(1) of the Onshore Pipeline Regulations

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Hamilton, Ontario, Wednesday, October 19, 2016
Audience tenue à Hamilton (Ontario), mercredi, le 19 octobre 2016

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

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APPEARANCES/COMPARUTIONS

APPLICANTS/DEMANDEURS

Enbridge Pipelines Inc.
- Mr. Duncan Purvis
- Mr. Robert Bourne

INTERVENORS/INTERVENANTS

Six Nations of the Grand River
- Mr. Ben Jetten

National Energy Board/Office national de l'énergie
- Ms. Michelle Haug

TABLE OF CONTENTS/TABLE DES MATIÈRES

(i)

Description	Paragraph No./No. de paragraphe
Opening remarks by the Chairman	1244
<u>Enbridge Pipelines Inc.</u>	
Mr. Jason Houncaren	
Mr. Mark Laybolt	
Mr. Eric Prud'Homme	
Ms. Kara Schwaebe	
Mr. Ray Philipenko	
Mr. Mitchell Yaremko	
Mr. Craig Neufeld	
- Examination by Ms. Haug	1247
- Examination by Member Kelly	1405
- Examination by Member Lytle	1436
- Examination by the Chairman	1526
- Re-examination by Mr. Jetten	1620
<u>Six Nations of the Grand River</u>	
Mr. Paul General	
Professor Charles Hostovsky	
- Examination by Mr. Jetten	1654
- Motions brought forward by Mr. Jetten	1666
- Ruling of the Board on the motions	1688
- Examination by Mr. Jetten, continued	1693
- Examination by Mr. Bourne	1712
- Examination by Ms. Haug	1778
- Examination by the Chairman	1806
Final argument by Mr. Bourne	1844
Final argument by Mr. Jetten	2063
Reply by Mr. Bourne	2139
Closing remarks by the Chairman	2156

LIST OF EXHIBITS/LISTE DES PIÈCES

No.	Description	Paragraph No./No. de paragraphe
A79907	Enbridge Pipelines Inc. - Capacity Funding Agreement between Six Nations and Enbridge dated June 9, 2016	1717

UNDERTAKINGS/ENGAGEMENTS

No.	Description	Paragraph No./No. de paragraphe
U-1	By Enbridge to provide a breakdown of temporary workspace and permanent easement that will affect the 14 hectares of woodlands.	1270
U-2	By Enbridge to provide the amount of woodland located within the project vegetation RSA and what percentage of this will require clearing for the project.	1283
U-3	By Enbridge to consider the conclusion as to significances changed in light of the answer in Undertaking 2 with respect to vegetation RSA.	1291
U-4	By Enbridge to provide details pertaining to the diameter of the pipeline over its entire length to its terminus at the refinery.	1417
U-5	For Enbridge to provide more information on Cyber security, specifically on the PLC protection.	1489

--- Upon commencing at 8:47 a.m./L'audience débute à 8h47

1244. **THE CHAIRMAN:** Good morning, everyone. Thank you for your patience. We weren't 100 percent sure if we were starting at 8:30 or nine o'clock, and there was some issue with briefing securities. So I apologize for holding everyone up.

1245. Mr. Jetten, you have completed your cross-examination of this panel. I'll now call on -- oh, sorry, any preliminary matters? Seeing none.

1246. Ms. Haug?

ERIC PRUD'HOMME: Resumed
MITCHELL YAREMKO: Resumed
CRAIG NEUFELD: Resumed
MARK LAYBOLT: Resumed
JASON HOUNCAREN: Resumed
KARA SCHWAEBE: Resumed
RAY PHILIPENKO: Resumed

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

1247. **MS. HAUG:** Thank you, Mr. Chair.

1248. I'll start with some environment questions.

1249. On the 14th of September 2016, Enbridge filed a project update that contained a route deviation to avoid the Copetown lands. This re-route is four kilometres primarily along an electrical transmission corridor route.

1250. Can Enbridge use the corridor for the Hydro line for both new permanent and temporary workspace, or does Enbridge need land that is adjacent to the Hydro line corridor in order to construct the project?

1251. **MR. LAYBOLT:** This is Mark Laybolt. Enbridge will be utilizing permanent easement and workspace both within the Hydro One tracts and on tracts adjacent to that corridor.

1252. **MS. HAUG:** Did you say a single tract?

1253. **MR. LAYBOLT:** I did not specify a single tract.
1254. **MS. HAUG:** Oh sorry, so it's more than one tract adjacent to the Hydro corridor?
1255. **MS. SCHWAEBE:** This is Kara speaking. I can clarify that.
1256. There are 13 tracts and land affected by the Copetown re-route. Six of those are a fee simple lands adjacent to the HONI Corridor and three of those six are just temporary workspace only.
1257. There are two municipal crossings with the City of Hamilton, which are crossings of roadways. There are four HONI tracks and there is one CN Rail track that we cross, making up the 13 tracks in total.
1258. **MS. HAUG:** On May 30th, 2016, Enbridge filed a map book for Line 10. Would Enbridge undertake to update the relevant pages of the Line 10 Map Book? I believe it was attachment 1 to NEB IR number 2.12A.
1259. **MR. LAYBOLT:** Yes.
1260. **MS. HAUG:** Thank you.
1261. Next I'll turn to the issue of the extent of woodlands that have to be cleared now that the route has changed.
1262. In December 2015, Enbridge filed an environmental and socio-economic assessment that stated that about 14.9 hectares of treed land would be disturbed for the construction of the project. And then in October 2016, Enbridge filed a response to NEB IR 5.4B which stated that about 2.5 hectares of woodland habitat would be cleared to construct the proposed electrical transmission corridor route. And if I understand correctly, the 2.5 hectares includes temporary access and workspace.
1263. So the first question is, can Enbridge provide an updated estimate in hectares of the extent of woodland habitat that will require clearing in order to construct the entire proposed Line 10 replacement project?
1264. **MR. NEUFELD:** It's Craig Neufeld. The total area is about approximately 14 hectares for temporary workspace and permanent easement.

1265. **MS. HAUG:** Can you indicate how much of that 14 hectares -- you've given the total for temporary workspace and permanent easement. Can you break that down?

1266. **MR. NEUFELD:** We don't have that breakdown at this moment.

1267. **MS. HAUG:** Could you undertake to provide the information?

1268. **MR. NEUFELD:** Yes, we could.

1269. **THE CHAIRMAN:** Ms. Turcotte, could you give that an undertaking, a number please?

1270. **THE REGULATORY OFFICER:** The number will be U-1.

--- UNDERTAKING NO./ENGAGEMENT No. U-1:

By Enbridge to provide a breakdown of temporary workspace and permanent easement that will affect the 14 hectares of woodlands.

1271. **MS. HAUG:** And just to clarify, in December 2015, the ESA indicated about 14.9 hectares of treed land would be affected. So this 14 hectares is a slight reduction in the amount of treed lands?

1272. **MR. NEUFELD:** Yes, that's correct. And that's based on the various re-routes that have been filed since the initial application.

1273. **MS. HAUG:** So the wording of "treed land" and "woodland" were really just synonyms?

1274. **MR. NEUFELD:** That's correct.

1275. **MS. HAUG:** So I have another question, which is what is the total amount of woodland located within the project vegetation RSA and what percentage of this will require clearing for the project?

1276. **MR. NEUFELD:** So we don't have a value readily available for the total amount of vegetation within the RSA. However, the amount that's required for clearing is that 14 hectares that was referenced previously. That 14 hectares is

all of the vegetation -- or sorry, all of the woodlands that would be cleared for the project.

1277. **MS. HAUG:** Would you undertake to provide the figure for the vegetation RSA, please?

1278. **MR. NEUFELD:** Can you please clarify that question?

1279. **MS. HAUG:** So it's the total amount of woodland located within the project vegetation RSA, and what percentage of this will require clearing for the project?

1280. **MR. NEUFELD:** Yes, we can provide that.

1281. **MS. HAUG:** Thank you.

1282. **THE CHAIRMAN:** Ms. Turcotte, an undertaking?

1283. **THE REGULATORY OFFICER:** That will be U-2.

--- UNDERTAKING NO./ENGAGEMENT No. U-2:

By Enbridge to provide the amount of woodland located within the project vegetation RSA and what percentage of this will require clearing for the project.

1284. **MS. HAUG:** Enbridge's ESA indicates that quantitative metrics -- for example, length of woodlands, wetlands traversed -- were calculated to inform the characterization of the magnitude of residual effects.

1285. Enbridge concluded in the ESA that the residual environmental effect of pipeline construction and operations on species at risk will not be significant. So has that conclusion changed as a result of the amount of woodland that is required to be cleared for pipeline construction?

1286. **MR. NEUFELD:** No, that conclusion has not changed.

1287. **MS. HAUG:** And so since you have given an undertaking with respect to the vegetation RSA, would you also undertake to consider whether your conclusion as to significances changed in light of the answer that you'll be giving

in Undertaking No. 2?

1288. **MR. NEUFELD:** Yes, we can undertake that. However, I think it's worth noting that the area of vegetation clearing has not changed drastically from the initial application based on the various reroutes, so we wouldn't expect our conclusions to change.

1289. **MS. HAUG:** Thank you.

1290. **THE CHAIRMAN:** Ms. Turcotte?

1291. **THE REGULATORY OFFICER:** U-3.

--- UNDERTAKING NO./ENGAGEMENT No. U-3:

By Enbridge to consider the conclusion as to significances changed in light of the answer in Undertaking 2 with respect to vegetation RSA.

1292. **MS. HAUG:** Next I'll move to some questions about wetlands.

1293. There was a wetland near the Westover Terminal. Enbridge's Cumulative Effects Assessment indicates that construction of permanent facilities at the Westover Terminal will cause a reduction in the wetland area and Enbridge's ESA states that there is a likelihood that a portion of the wetland will be permanently disturbed.

1294. How will Enbridge determine if the wetland is permanently disturbed?

1295. **MR. NEUFELD:** So there is an expansion of the Westover Terminal into that wetland so there will be some permanent disturbance to that wetland. However, the wetland is quite large and the ultimate function of -- functioning of that wetland isn't expected to be disturbed -- or permanently disturbed.

1296. **MS. HAUG:** So after you've completed the construction, how is Enbridge going to determine if that wetland is permanently disturbed? For example, would you be monitoring?

1297. **MR. NEUFELD:** Yes, construction in that wetland would be -- would be monitored as part of the post-construction monitoring work that Enbridge will do following construction.

1298. **MS. HAUG:** How long will the wetland be monitored post-construction and what are the criteria to measure the recovery?
1299. **MR. NEUFELD:** So the specific details regarding how that land will be monitored are outlined in Section 9.2.3 of the ESA where we describe the post-construction environmental monitoring for wetlands and watercourses. And regarding the length of time post-construction monitoring for the project is anticipated to take -- or is anticipated to go for about five years.
1300. **MS. HAUG:** So if a portion of a wetland will be permanently disturbed after you have found through monitoring that there is a permanent disturbance, will Enbridge provide compensation for the loss of a wetland and what kind of compensation does Enbridge propose?
1301. **MR. YAREMKO:** In that particular example, Enbridge will be applying to the Conservation Authority for the permanent loss and alteration of that wetland. And in that, Enbridge will follow the conditions of that application -- or that permit, sorry.
1302. **MS. HAUG:** So would some of the potential compensation methods -- maybe, perhaps, you could comment on them. Might they be financial, restoration on existing degraded wetlands along the project route, enhancement of existing wetlands, and so forth? Would you include those in an application or would those be proposed to you by who you're going to apply to?
1303. **MR. YAREMKO:** Those would be options that would be discussed with the Conservation Authority.
1304. **MS. HAUG:** You refer to a conservation authority but would Environment Canada also have a role to play with respect to wetland compensation?
1305. **MR. YAREMKO:** Yes, that's correct.
1306. **MS. HAUG:** Then would Enbridge develop a wetland compensation plan in consultation with Environment Canada to ensure that there is no net loss of wetlands?
1307. **MR. NEUFELD:** It's Craig speaking. In the event that wetland form

- and function were not restored following monitoring, Enbridge would consult with Environment Canada.
1308. **MS. HAUG:** And would you consult with them with respect to wetland compensation?
1309. **MR. NEUFELD:** That would be part of -- that could be part of the discussion, yes.
1310. **MS. HAUG:** And what other matters would you discuss with Environment Canada?
1311. **MR. NEUFELD:** With respect to loss of wetland form or function, consultation would generally be focussed around the reasons for that loss and potential mitigation options going forwards, compensation options. I don't think we would restrict that consultation to a specific -- specific items but it would be a fairly robust discussion regarding that wetland loss.
1312. **MS. HAUG:** Thank you.
1313. Enbridge has stated in its application that the natural recovery of vegetation is the preferred method of reclamation for wetlands and that wetlands will not be seeded. So I think I have a potentially two-part question.
1314. It's, how will Enbridge determine if the natural recovery method of revegetation in the wetlands was successful not, and when will this determination be made; and the next part would be, what measures will Enbridge to assist the natural revegetation process, and when would those measures be applied?
1315. **MR. NEUFELD:** Can you please ask the first question?
1316. **MS. HAUG:** Certainly. How will Enbridge determine if the natural recovery method of revegetation in the wetlands was successful or not, and when will this determination be made?
1317. **MR. NEUFELD:** So that determination will be determined as part of the post-construction monitoring that will be completed for the project.
1318. **MS. HAUG:** And I think you had suggested that the post-construction monitoring would be for a period of five years?

1319. **MR. NEUFELD:** Yes, that's right.
1320. **MS. HAUG:** So within the period of five years you would be in a position to assess whether the natural recovery method of vegetation was successful; that would be your timeframe?
1321. **MR. NEUFELD:** Yes, initially the entire route will be -- will be traversed to assess reclamation success and revegetation success including wetlands. And then as areas are reclaimed or on a successful trajectory, those areas wouldn't be reassessed.
1322. So a portion of those wetlands may be reclaimed or may be successfully revegetated within several years and it may not take the entire five years for that reclamation to happen.
1323. **MS. HAUG:** So if the natural recovery method of vegetation is not successful, what measures will Enbridge use to assist that natural revegetation process, and when would you apply those measures?
1324. **MR. NEUFELD:** If those measures aren't successful and it doesn't appear that they'll naturally recover on their own -- there are instances where dry periods may result in delayed reclamation success -- then Enbridge would consult -- well, would determine the appropriate mitigation measures on a case-by-case basis, and it would be in consultation with permitting authorities, the conservation authorities, in this instance.
1325. **MS. HAUG:** So could you comment on some of the following methods that potentially these could be included in the measures you might apply: recontouring, ensuring drainage is correct?
1326. **MR. NEUFELD:** Yeah, all of those are definitely measures that would be undertaken if they were determined to be issues associated with those features to promote reclamation success.
1327. **MS. HAUG:** And I think weed management and erosion control would also be some possible other measures?
1328. **MR. NEUFELD:** Yes, absolutely.

Enbridge Pipelines Inc.
Examination by Ms. Haug

1329. **MS. HAUG:** So I'll just move on to a cumulative effects question.
1330. Enbridge's evidence indicates that within the RSAs for the project, there are numerous reasonably foreseeable developments in activities, and some of these are public and utility works within Hamilton, maintenance on transmission line right-of-ways, gas distribution right-of-ways, electrical facilities, fibre optic lines, water utilities projects, road and rail projects.
1331. So has Enbridge considered developing cooperative relationships with these other operators and/or stakeholders in the area to attempt to reduce potential cumulative effects for the project?
1332. **MR. NEUFELD:** So Enbridge hasn't worked specifically with all of those developments to mitigate the potential cumulative effects. However, the project itself will not result in any significant cumulative effects, as outlined in the ESA.
1333. **MS. HAUG:** I'm sorry, I didn't quite hear the beginning of your answer. It was -- I couldn't quite hear. You said Enbridge has worked with them or has not?
1334. **MR. NEUFELD:** Has not.
1335. **MS. HAUG:** And next I think I'll move on to some bat habitat questions.
1336. If, during pre-construction -- just a minute here, sorry -- surveys, bat habitat is identified and cannot be avoided, will Enbridge commit to offsetting any impacts to identified critical bat habitat?
1337. **MR. YAREMKO:** Yes, Enbridge will consider that, and Enbridge is committed to installing bat boxes to mitigate habitat loss.
1338. **MS. HAUG:** So other than bat boxes, are there any other specific measures that Enbridge would use to offset impacts to critical bat habitat when avoidance is not possible?
1339. **MR. NEUFELD:** So I just maybe want to clarify the use of the term "critical bat habitat". Critical habitat is discussed in the recovery strategies for bats and consists of hibernacula for those bats. And none of that has been

Enbridge Pipelines Inc.
Examination by Ms. Haug

- identified on the project. The bat habitat that is -- has been identified on the project is potentially maternity roosting habitat, and that's where we're proposing to install bat boxes where we impact that habitat.
1340. Additionally, Enbridge is working to narrow down and limit amount of clearing in those areas where bat habitat may be encountered.
1341. **MS. HAUG:** Thank you. Will Enbridge commit to putting the information you've just provided in the environmental protection plan and on the alignment sheets to avoid and maintain bat maternity roosting habitat to the extent possible?
1342. **MR. YAREMKO:** Yes, we will.
1343. **MS. HAUG:** I think next I'll turn to some socio-economic questions. Enbridge indicated that all fee simple lands have been acquired. Is that correct?
1344. **MS. SCHWAEBE:** That is correct.
1345. **MS. HAUG:** And can Enbridge update land acquisition for the category of land that you were describing as fee simple other lands?
1346. **MS. SCHWAEBE:** It's currently at 11 percent acquired.
1347. **MS. HAUG:** So can you provide a bit more information about land acquisition for the whole route and then also for the electrical transmission corridor?
1348. **MS. SCHWAEBE:** Yes. So for the whole route there is 79 tracts that are fee simple land that has been acquired 100 percent. In total, there's 124 tracts affected by the pipeline right-of-way and temporary workspace. Forty-five (45) of those remaining tracts that have not been acquired -- sorry, 40 of the remaining tracts that have not been acquired are either municipality, corporations, provincial ministries, and conservation authorities. Outstanding is Hydro One, MTO, City of Hamilton municipal road crossings, and CN Rail.
1349. Those applications were submitted in June of this year. The application timelines take between 6 to 10 months and are based on the third parties' timelines for review, an internal review, and further requirements on the different agreements that they utilize.

1350. So in some instances, they'll use a licence agreement versus a grant of easement that we would use for the typical fee simple owner. All of these landowners have identified that they have no objection to the proposed route. They are just working through the processes as we undertake additional field studies such as geotech and engineered drawings to submit and supplement those applications.
1351. For your second question regarding the transmission corridor, as I said earlier, there's 13 tracts of land in total, 6 of those being fee simple lands. All of those have been acquired. The remaining are, as I said, City of Hamilton, CN Rail, and Hydro One, and those approval processes are in process, and we expect their approvals prior to construction.
1352. **MS. HAUG:** Thank you. And you had started answering my next question, which is to describe the authorization processes that are required for the remaining fee simple other lands. Can you perhaps break down a little bit more the different processes that you have, as I think they would probably be different for the City of Hamilton, for CN, for Hydro, for the conservation area?
1353. **MS. SCHWAEBE:** Yes, I can. Hydro One uses a grant of easement and a construction encroachment agreement. These are agreements that they provide to us. They include us submitting engineered drawings as well as AC mitigation reports, which we're currently undertaking.
1354. MTO, which is the Ministry of Transportation, they have 13 tracts. They issue us an encroachment permit, a building and land use permit, a permission to enter permit, and an easement. These are for the right-of-way as well as the workspace. They require engineered drawings as part of those applications, geotech study reports, and monitoring reports, which are currently underway.
1355. The municipality, the City of Hamilton, they will issue a licence agreement and a temporary access approval permit, and both of those as well require engineered drawings and geotech.
1356. And the final one is the CN railroad, which issues a standing pipe crossing agreement, and this involves geotech reports and engineered drawings.
1357. I would note that in the Copetown, the electrical transmission corridor

**Enbridge Pipelines Inc.
Examination by Ms. Haug**

- reroute area, CN, MTO, and HONI require revisions to the fieldwork, and that is -- we are anticipating those in November to submit and supplement the applications.
1358. **MS. HAUG:** And did I read correctly that you anticipate all of these will be completed and acquired by July of 2017?
1359. **MS. SCHWAEBE:** That's correct.
1360. **MS. HAUG:** Thank you.
1361. So I do have a further question, which is, is any of the project on Crown lands? And if so, where is it and how much is there?
1362. **MS. SCHWAEBE:** The project does cross Crown land. Sixteen (16) percent of the project is Crown land; that is 20 tracts. The remainder is all few simple other. The Crown land identified is MTO or HONI lands, so Ministry of Transportation and Hydro One Network Inc. There is 20 tracts in total, as I said.
1363. And just one moment and I'll get you the breakdown.
1364. So seven tracts are Hydro One under Ontario infrastructure and 13 are MTO. These are lands that would be considered Crown land.
1365. **MS. HAUG:** Thank you.
1366. I think the next question I'm turning to -- let's see here -- the matter of tile drainage. Tile drainage was an issue on the Copetown lands area but the Copetown Landowners Group has since resolved its concerns with routing and withdrawn from the process.
1367. Are there still drainage tiles along the project route, and if so can you comment on the appropriate mitigation measures for drainage tile matters?
1368. **MS. SCHWAEBE:** So there are other tracts of land impacted that have drainage tile. We had four tracts in total identified; the landowners identified that to us. And we did make commitments to them on if they were impacted that we would repair or replace, or that we would install the pipe at a greater depth. Further mitigation could be provided in the ESA as well and an EPP.

1369. **MS. HAUG:** Can you identify where along the route the four tracts are?
1370. **MS. SCHWAEBE:** It would be difficult for me to describe without really revealing personal information for the landowners. But there are four locations, one -- all of them along where the existing pipeline is or nearby on re-routes around.
1371. So to better give an understanding, I would say one is near the electrical transmission corridor and the remainder are further south on the line.
1372. **MS. HAUG:** I'd like to just go back to the Crown lands question and see if we've understood correctly. Was the 16 percent and 20 tracts relating to the entire length of the project?
1373. **MS. SCHWAEBE:** Yes, that's correct; the entire length of the project.
1374. **MS. HAUG:** So the next area I'd like to move on to involves -- it flows from something we heard in the transcript yesterday. I think we heard some discussion around consultation for Enbridge's operations generally and project specific consultation.
1375. What does Enbridge do to distinguish between the two, and how was this applied to Line 10?
1376. **MR. PRUD'HOMME:** Just to make sure -- this is Eric -- I understand the question correctly. So you're referring to prejudice discussion and without prejudice discussions?
1377. **MS. HAUG:** I'm not referring to -- no, I'm not referring to that.
1378. **MR. PRUD'HOMME:** So how we distinguish in a meeting with some stakeholders or Aboriginal communities when we have Line 10 specific related issues to discuss and general issues of other nature than the Line 10 Project?
1379. **MS. HAUG:** Yes, that is what my question relates to.

**Enbridge Pipelines Inc.
Examination by Ms. Haug**

1380. **MR. PRUD'HOMME:** Yeah. So we would set two different agendas and we would mark the items of course that would be with prejudice and without prejudice so that the record of consultation would be applying to only Line 10 project-related items that were discussed.
1381. **MS. HAUG:** I'd like to clarify or perhaps just understand your practice. We were sort of asking about when you consult with the company -- or with the Aboriginal groups generally. And it may be on your general operations might be damage prevention, general operations, and then there is project-specific consultation when you're proposing to construct a project.
1382. And I heard you talking about with prejudice and without prejudice discussions and so do you have with and without prejudice discussions in both of those categories of general consultation and specific consultation?
1383. **MR. PRUD'HOMME:** I'm sorry if I misunderstood your question. I think I now understand exactly your point of view.
1384. So of course in the course of consultation for Line 10 we will address general information with regards to ongoing operation with regards to Enbridge in general. So at some point, you know, those will be addressed as part of the meetings that we have for Line 10 or some of the open houses that were mentioned for example yesterday that were more of general nature but certain specific aspects of the Line 10 could be brought in.
1385. And as I mentioned, to make that distinction, in some cases for the records of consultation with those groups some of the items were without prejudice. Does this answer your question?
1386. **MS. HAUG:** Okay. So we sometimes hear Aboriginal groups have capacity constraints, and was this an issue for Line 10? And if so, how was it addressed?
1387. **MR. PRUD'HOMME:** So in terms of capacity, to review the project; is that your specific question?
1388. **MS. HAUG:** It's perhaps a general inquiry. Aboriginal groups are frequently approached by resource developers and whatnot and sometimes feel strained in their ability to engage with everyone.

**Enbridge Pipelines Inc.
Examination by Ms. Haug**

1389. **MR. PRUD'HOMME:** Yes, our objective is for sure is to have meaningful engagement with First Nation communities and all other stakeholders. So in the case that, you know, resources would not be available for them to thoroughly, you know, review the information that is provided we do propose to provide capacity funding.
1390. In the example of Six Nations, in November of last year we asked them to draft a capacity funding agreement that we of course would review and to which, for example, we agreed to. That's one example.
1391. And throughout the process, if new information or the group tells us that they require additional information or they do not have the capacity to review certain information or requests that have been made by Enbridge, we will of course have a discussion with them on how we can make sure that funding is provided or resources are provided for them to thoroughly and truthfully review the project at stake.
1392. **MS. HAUG:** You referred to financial restraints and Aboriginal groups. Are there restraints other than financial that might affect an Aboriginal group?
1393. **MR. PRUD'HOMME:** One example I can think of off the top of my head would be training. So for example, for archaeology survey, we did provide training for monitors to go on site. That would be one example in terms of non-financial resources but training. As well, it provides local benefits for the community.
1394. **MS. HAUG:** Could you also comment on timing restraints?
1395. **MR. PRUD'HOMME:** For us, I mean timing restraint is -- could be an issue and we welcome any comments from our stakeholders or First Nation to let us know if at any point the information or request that is made does not allow enough time for them to review and then we'll address and mitigate specific issues if that's the case.
1396. **MS. HAUG:** So I'll move on. And we've already started onto timing matters.
1397. The next question is, what in Enbridge's opinion did it do to provide sufficient time and opportunity for Six Nations and other Aboriginal groups to

- adequately review the project?
1398. **MR. PRUD'HOMME:** Well, I think the record of consultation shows that we -- early on into the process in June of last year, June 23rd -- sent a package to address -- sorry, to inform about the project at stake. In the case of Six Nations, we sought a meeting and this happened in early August, on August the 6th. We had meetings throughout the fall and the next year, so over a few months -- a few months prior to the application being filed with the NEB at the end of this year. And of course the consultation for us is not in itself with the project; it's ongoing for the lifecycle of the operation in the area.
1399. **MS. HAUG:** Yesterday Six Nations asked if Enbridge was open to retaining Six Nations' monitors to participate in construction monitoring for the purpose of monitoring effects on resource uses important to Six Nations. Enbridge confirmed that it would do that.
1400. Have other Aboriginal groups expressed an interest in this type of monitoring and will Enbridge extend this offer to other consultant Aboriginal groups?
1401. **MR. PRUD'HOMME:** Yes, others have expressed interest in the monitoring of construction and the same offer will be done in all fairness, like we treat all stakeholders and Aboriginal groups.
1402. **MS. HAUG:** Mr. Chair, that concludes my questions.
1403. **THE CHAIRMAN:** Thank you, Ms. Haug.
1404. The Panel does have questions for you, and I'll start with Member Kelly.
- EXAMINATION BY/INTERROGATOIRE PAR MEMBER KELLY:**
1405. **MEMBER KELLY:** Thank you, Mr. Chair.
1406. And my first question is of a description of Line 10. And specifically, what is the diameter of this pipeline over its entire length including the section we know about in this project but including also the sections we haven't discussed as part of the project?

**Enbridge Pipelines Inc.
Examination by Member Kelly**

1407. **MR. LAYBOLT:** Based on the information I'm able to access at this moment, the section between Westover and Nanticoke Junction is NPS 12, and downstream of Nanticoke Junction goes to NPS 20. There are further diameter changes farther downstream but I don't have the information right in front of me to provide you with further details.

1408. **MEMBER KELLY:** Mr. Laybolt, would you be able to undertake to provide that information pertaining to the -- again to the entire length of the pipeline?

1409. **MR. LAYBOLT:** Yes.

1410. **MEMBER KELLY:** Thank you.

1411. **THE CHAIRMAN:** Ms. Turcotte?

1412. **MR. BOURNE:** Sorry, can I just ask for one clarification on that question? Are you talking for the entire pipeline in Canada or the entire pipeline generally because it does extend to the United States?

1413. **MEMBER KELLY:** Well, I'm aware that the pipeline does connect -- interconnect with facilities in the U.S. Our jurisdiction ends at the border, obviously. I would be interested the entire length to its terminus at the refinery that it serves but I would understand that jurisdictional limit.

1414. **THE CHAIRMAN:** Are we clear, Mr. Laybolt, of what the undertaking is? You're ---

1415. **MR. LAYBOLT:** Yes.

1416. **THE CHAIRMAN:** Ms. Turcotte. And I'll ---

1417. **THE REGULATORY OFFICER:** U-4.

--- UNDERTAKING NO./ENGAGEMENT No. U-4:

By Enbridge to provide details pertaining to the diameter of the pipeline over its entire length to its terminus at the refinery.

Enbridge Pipelines Inc.
Examination by Member Kelly

1418. **MEMBER KELLY:** Thank you.
1419. I'll direct my question to Mr. Yaremko but it may end up elsewhere. I found your discussion -- our discussion yesterday around the archeological resource staging to be very interesting and it prompted a question for me.
1420. I mean you described the survey work that would be done or has been done in relation to the project. This line has been in operation for many years and the project right-of-way follows the existing right-of-way for much of its length. So my question is, what archeological resources can you highlight -- what resources are you aware of already over the length of the existing pipeline that would inform your ongoing work in relation to the project? And if there's points in the record that you could point me to, at least highlights, that would be helpful.
1421. **MR. YAREMKO:** Previous archeological features or sites that would have been discovered would have been registered with MTCS and that would have been picked up or discovered in a Stage 1 assessment for the project; so that was taken into consideration. And then the subsequent Stage 2, then, would have followed.
1422. **MEMBER KELLY:** So I think what you're saying is that we have a reasonably good starting point given that we know about the existing right-of-way. And given that MTCS repository, what features are you aware of along the length of this pipeline that are of concern or that do direct you to any potential for rerouting and so on?
1423. **MR. YAREMKO:** To clarify, from the existing Line 10 information or in general?
1424. **MEMBER KELLY:** Well, my question originates from the fact that we have had a pipe in the ground for many years. Enbridge is familiar with the right-of-way and should have that knowledge reasonably close to hand.
1425. **MR. YAREMKO:** Yeah, I can't specifically speak to that level of detail for that component. Only what I can comment on is the discipline of archaeology is a game of inches, so it matters. Sometimes what you have previously doesn't really inform what you have immediately adjacent to it, in that respect, and that's why Enbridge is conducting the full Stage 2 assessment on the impact and footprint of the project.

Enbridge Pipelines Inc.
Examination by Member Kelly

1426. **MEMBER KELLY:** Thank you. There was a question this morning that I want to come back to, and it dealt with mitigation measures. And I think it was -- Mr. Neufeld was speaking about mitigation in response to a question that Ms. Haug asked.
1427. Generally speaking, how effective are measures such as bat boxes in achieving the desired effect, which is to say, offset in loss of habitat for species such as bats? And I'm curious about how you would approach that question. How do you determine the effectiveness of those mitigation measures? And specifically -- you can either speak specifically to the bat question, but I'm also interested more generally in the question of determination around effectiveness of mitigation and how you confirm that you have indeed achieved that offset.
1428. **MR. NEUFELD:** With respect specifically to bat boxes, the mitigation -- or the mitigation to install those bat boxes was discussed with MNRF as -- and they agree that that was suitable mitigation for removing those trees and potentially suitable bat maternity roosting habitat. Regarding effectiveness of those bat boxes, I think the fact that MNRF has agreed or has endorsed the use of that mitigation speaks to the effectiveness of that mitigation measure. Yeah.
1429. **MEMBER KELLY:** If you could indulge me for just one more follow-up. I'm an engineer. I can think about this as an engineering problem or a problem to be solved, but my basic question or concern would be, installing bat boxes is one thing, but how do you -- practically speaking, how do you determine that those have been effective? Does someone physically go and -- I'm just curious about the process. Does someone physically go and determine that the bat boxes have been used? I mean, what I have learned in this process is that bats, as a specific species, are difficult to monitor, and that is the root of my question. How do you, therefore, ensure that your mitigation measures are being effective?
1430. **MR. NEUFELD:** Yeah, so in the case of bat boxes, that is one way we could determine effectiveness of the mitigation, is to go and see if those bat boxes are used. However, in the case of these specific habitats, Enbridge is using the precautionary principle to install this mitigation based on habitat and the fact that the habitat may provide bat maternity roosting habitat. It's not necessarily confirmed bat maternity roosting habitat, but it does provide that potential habitat for bats to use.

**Enbridge Pipelines Inc.
Examination by Member Lytle**

1431. So the installation of them -- those bat boxes -- is -- it's a precautionary measure, and going back and examining those bat boxes to determine if they are used may not necessarily tell us how effective they are if there were no bats there in the first place.

1432. **MEMBER KELLY:** Okay, thank you.

1433. Mr. Chair, those are my questions.

1434. **THE CHAIRMAN:** Thank you, Mr. Kelly.

1435. Dr. Lytle?

--- EXAMINATION BY/INTERROGATOIRE PAR MEMBER LYTLE:

1436. **MEMBER LYTLE:** Thank you, Mr. Chair. I am going to ask a number of questions that are going to be kind of all over the map, so please indulge me.

1437. I'm first interested in understanding a little bit about how you are going to survey the line when it's installed, the accuracy of the survey, the density of the points of the survey, that sort of thing. Could somebody just sort of step me through the process and give me an idea of what you end up with at the end of the day?

1438. Sorry, I'm not looking for anything in sort of great detail, just a general sense of how the process is undertaken.

1439. **MR. LAYBOLT:** Okay. From a general sense, survey points are taken at the start and end of every girth weld to get the as-built location. So the approximate separation distance would be in the range of 18 to 22 metres. However, I'm not familiar enough with survey technology to tell you the exact accuracy of the survey itself.

1440. **MEMBER LYTLE:** Do you think it might be better than plus or minus a couple of inches?

1441. **MR. LAYBOLT:** I would expect it to be within that range, yes.

1442. **MEMBER LYTLE:** So my sort of tiny tot view of the world is

**Enbridge Pipelines Inc.
Examination by Member Lytle**

somebody just kind of walks down the centre line of the pipe and takes a -- as you said, at each girth weld, they take a survey measurement? And I suppose they would get a northing and easting in an elevation out of all of that?

1443. **MR. LAYBOLT:** Those would be measured, yes.
1444. **MEMBER LYTLE:** So to your knowledge, has the accuracy of the surveying changed over time? Was it about the same, say 50 years ago, as it is today? Just technology changed, but accuracy unchanged?
1445. **MR. LAYBOLT:** As I said, I'm not familiar with surveying technology, but I would imagine with improvements to GPS, such as the ability to have localized coordinate systems at survey sites, I would imagine, qualitatively, that the technology has improved over time.
1446. **MEMBER LYTLE:** Well, I'm old enough to remember how they used to do it. But my assumption would be that the accuracy would be about the same; just the technology makes it easier to get to the data that you want to get. Do you think that would be a fair statement? That's not a challenge. I'm just -- I just want to get a sense of ---
1447. **MR. HOUNCAREN:** I think your assumption about the accuracy of the technology is valid, but I think it would be fair to say that we acquire significantly more data than had been previously captured in the past.
1448. **MEMBER LYTLE:** Okay, good. Thank you for that.
1449. Now, when you put the pipe in the ground, you backfill, you -- I presume you compact around the pipe? Does the pipe move over time, and if so, what would be a typical amount of movement to the pipe over, say 50 years?
1450. **MR. HOUNCAREN:** The pipe actually moves very little. That's not something that we have any interest in seeing happen, so there is some compaction that's done, especially in the localized are right around the pipe; obviously, with consideration being taken to ensure that we don't do any damage to the newly installed pipe. But yes, compaction is done.
1451. **MEMBER LYTLE:** So if there is any movement, we're talking inches rather than feet or ---

**Enbridge Pipelines Inc.
Examination by Member Lytle**

1452. **MR. HOUNCAREN:** Oh, absolutely. Less than that.
1453. **MEMBER LYTLE:** Good.
1454. **MR. HOUNCAREN:** And that's also something that we monitor over time as well.
1455. **MEMBER LYTLE:** So based on this conversation then, would I be right in assuming that the current lines are measured -- surveyed with about the same accuracy as the line you're about to put in?
1456. **MR. HOUNCAREN:** Yes, but through a different method, so while we will be using traditional survey methods during construction to identify where the line is being installed, with some of the older pipelines -- and as I mentioned earlier, some of that data doesn't exist -- but through our in-line inspection program, we are able to get accurate GPS data on the existing lines as well.
1457. **MEMBER LYTLE:** So at the end of the day you'll know where the old line was relative to the new line and you'll have a pretty accurate assessment of distance between?
1458. **MR. HOUNCAREN:** Correct.
1459. **MEMBER LYTLE:** And how far apart do you anticipate putting the new line from the existing lines?
1460. **MR. LAYBOLT:** The nominal separation distance for the purposes of construction is nine metres centre-to-centre between the nearest adjacent pipeline, which can be Line 11 and not Line 10 and the replacement pipeline.
1461. **MEMBER LYTLE:** And those two lines are, if I read correctly, about three metres apart, are they?
1462. **MR. LAYBOLT:** Correct. The nominal separation distance of the existing corridor, so the existing 12-inch Line 10 and Line 11, is three metres.
1463. **MEMBER LYTLE:** Okay. I'd like to now move on to a very general question about how you approve or if you're even involved in the approval of future development along the right-of way. For example, a landowner is a single landowner running a farm; 25 years from now he decides he wants to

Enbridge Pipelines Inc.
Examination by Member Lytle

subdivide and put in a subdivision. Does Enbridge get involved in approving any encroachment on the right-of-way, and if so, how?

1464. **MS. SCHWAEBE:** Yes. So the NEB prescribed area will still relate for the decommissioned line, meaning that if landowners are going to do development they will notify us if they're within 30 metres. We will work with those landowners to identify the issues and determine what future development they have and what we can do to work with them, as well as issue whatever agreements are required for them to do ground disturbance within the vicinity.
1465. **MEMBER LYTLE:** So can they encroach on the 30-metre right-of-way typically?
1466. **MS. SCHWAEBE:** With the new prescribed area being the setback 30 metres from the pipeline itself they potentially could depending where the pipe is located in a general right-of-way. In this instance they would not be able to as the new right-of-way would be 10 metres and the existing is only 18.
1467. **MEMBER LYTLE:** So if I understood you just now, the closest they could come would be about 10 metres?
1468. **MS. SCHWAEBE:** They could come up right to the right-of-way boundary so long as they apply to us and get the appropriate approvals in place.
1469. **MEMBER LYTLE:** So if the right-of-way is 30 metres on one side they could come -- let's have a hypothetical.
1470. **MS. SCHWAEBE:** Sure.
1471. **MEMBER LYTLE:** The pipeline follows right along the edge of the right-of-way. On one side they could be within metres of the pipe, on the other side they would be at least 30, roughly 30 metres away; would that be correct?
1472. **MS. SCHWAEBE:** It would really be based on a case-by-case basis when they apply to us and we look at it and evaluate each scenario. So there's no overarching. They have to apply for anything within 30 metres of centre line. We do not have a 30-metre right-of-way in this area, we have an 18 metre for the existing and a 10 metre for the new, so it really would be subjective to what they're proposing and what our status of those lines are at that time.

Enbridge Pipelines Inc.
Examination by Member Lytle

1473. So looking at it right now, both those lines are active regardless if one is decommissioned. But 50 years from now or in the future, the status of those lines or the easement rights itself could change so subjectively it would be on a case-by-case basis.
1474. **MEMBER LYTLE:** Now if you're approved and you build it along the Hydro One right-of-way, do you get involved if they have an application, somebody wants to build on their right-of-way?
1475. **MS. SCHWAEBE:** Yes, we would still be notified if they're within the 30 metres.
1476. **MEMBER LYTLE:** And typically who's involved? Would this be the community, the local civic authority would be involved in their planning department and other people as well? Or is it ---
1477. **MS. SCHWAEBE:** So the Hydro One transmission corridor is Hydro-owned land slated for another transmission line so it's very unlikely that there would be development under it. The land is owned by them. They have tenants who undertake cultivated crop lands, pasture land on those.
1478. If they are bringing, or planting trees, or trying to do something about the pipeline right-of-way they would be required to follow the Ontario One call as well as the NEB Section 112 of the prescribed zone and apply to us for a crossing or development permit, as well as any other applications they might need to do to the City of Hamilton or Hydro One.
1479. **MEMBER LYTLE:** Okay, thank you. Almost there.
1480. Without going into great detail, I'd really be interested in hearing Enbridge's view on cyber security; how you protect your PLC's from intrusion from either a thumb drive or Internet access? So both on Line 10 and I suppose right back to your control station in Edmonton.
1481. Just, again, I don't want the details -- that wouldn't be appropriate -- but some comfort that you've got a program. And if you do testing I'd like to hear about that as well.
1482. **MR. HOUNCAREN:** I think it's fair to say that there isn't anybody on this panel that would even feel remotely comfortable speaking about cyber

**Enbridge Pipelines Inc.
Examination by Member Lytle**

security, but if I could maybe share a small tidbit with you to give you a sense of our level of security.

1483. We've been experiencing some grief even preparing for this hearing with sharing thumb drives amongst us because of the level of encryption that's required to put a thumb drive into an Enbridge computer. So I would say rest assured we have a significant IT department and this is a high level of concern for them.

1484. So even as an Enbridge employee, my ability to access an Enbridge asset, even something as trivial as my personal laptop, is very secure.

1485. **MEMBER LYTLE:** Would it be possible for you to take an undertaking to get just a bit more information specifically to the PLC?

1486. **MR. HOUNCAREN:** Absolutely.

1487. **MEMBER LYTLE:** Thank you.

1488. **THE CHAIRMAN:** Ms. Turcotte?

1489. **THE REGULATORY OFFICER:** U-5.

--- UNDERTAKING NO./ENGAGEMENT No. U-5:

For Enbridge to provide more information on Cyber security, specifically on the PLC protection.

1490. **MEMBER LYTLE:** Finally, I'd like to understand your comments yesterday about the 30 percent engineering that was done at the point of the application. My background also is in engineering, and I just want to make sure that I understand that what I heard sort of lines up with what I understand engineering typically to involve.

1491. Does this mean then that you've defined 30 percent of the project and you just use assumptions for the remaining 70 percent, or does it mean you've only looked at 30 percent of the project and you haven't gotten to the 70 percent yet?

1492. **MR. HOUNCAREN:** I think it's the first portion that you mention;

Enbridge Pipelines Inc.
Examination by Member Lytle

- that we've looked at the entire project but only completed what we would deem 30 percent of the work. So if you consider going back to when the application was filed, obviously we had a route and a lot of things in place and a significant amount of work had been done in a variety of areas but we hadn't got down to, you know, the detail that us as engineers need to see done to say that a project is 100 percent designed and ready for construction.
1493. So we had, for instance, done high-level assessments on wall thickness but we hadn't looked at the entire project route and worked out the detailed wall thickness joint by joint through the entire route. So I would suggest that every area of engineering had been touched but only to the extent that was necessary during the feed stage.
1494. **MEMBER LYTLE:** So your process then is a process of eliminating assumptions, getting real data presumably, and therefore reducing the amount of contingency?
1495. **MR. HOUNCAREN:** Absolutely. And then I think also considering outside factors other than what we would consider traditional engineering. So we obviously are working with stakeholder groups; we're getting input on the route, so there's a number of things that influence that process along the way and might cause a little bit -- as much as we don't like to see it happen as engineers -- recycle as new information comes to bear.
1496. **MEMBER LYTLE:** So if I may, how would you classify the class of estimate at the time of submission of your application and what sort of contingency did you apply to it for your ---
1497. **MR. HOUNCAREN:** The class of estimate, sorry?
1498. **MEMBER LYTLE:** Yeah.
1499. **MR. HOUNCAREN:** At the time it was a Class 4 estimate.
1500. **MEMBER LYTLE:** And the contingency would be plus or minus?
1501. **MR. HOUNCAREN:** The contingency was in the neighbourhood of -- I would -- was even more refined than a typical Class 4 estimate but was in the range of plus 20.

**Enbridge Pipelines Inc.
Examination by Member Lytle**

1502. **MEMBER LYTLE:** Plus or minus 20 percent?
1503. **MR. HOUNCAREN:** Yeah.
1504. **MEMBER LYTLE:** Yeah.
1505. **MR. HOUNCAREN:** At the time of the application.
1506. **MEMBER LYTLE:** Okay. Where would you say you are today?
1507. **MR. HOUNCAREN:** Engineering?
1508. **MEMBER LYTLE:** Well, what class of -- if you had to give an estimate?
1509. **MR. HOUNCAREN:** We are just in the process of finalizing revised Class 3 estimate as we speak, which will be down here for the end of October.
1510. **MEMBER LYTLE:** And what's your contingency on that?
1511. **MR. HOUNCAREN:** That will be plus or minus 10 percent.
1512. **MEMBER LYTLE:** And that includes any rework that would have to do regarding the change of alignment then, would it?
1513. **MR. HOUNCAREN:** Absolutely. That was one of the big drivers for redoing the estimate was the recent re-route into the electrical corridor.
1514. **MEMBER LYTLE:** And just out of curiosity, as you go through and reduce the number of assumptions and get a better quality estimate, what typically happens to your capital cost estimate over time?
1515. **MR. HOUNCAREN:** I'd say, based on my experience -- and I'd say it's fairly indicative of Enbridge's performance over the last few years -- we have a fairly significant database of past projects and a fairly robust system for putting initial estimates together and we have a very good track record. And I can't identify one that has exceeded a capital cost estimate that has initially been put forward.

**Enbridge Pipelines Inc.
Examination by the Chairman**

1516. **MEMBER LYTLE:** Sorry, so what happens to it over time? Does it

1517. **MR. HOUNCAREN:** We typically are -- I can't think of an example
where we have been over budget in a project I've been involved with. We have
either been on budget or slightly under. I would say within that 5 to 10 percent
range.
1518. **MEMBER LYTLE:** Of the Class 4 estimate?
1519. **MR. HOUNCAREN:** Yes.
1520. **MEMBER LYTLE:** Okay. And what class of engineering do you
need to provide to Hydro One? We heard that you -- in order to get the agreement
with them, you need to provide some -- is it detailed engineering or ---
1521. **MR. HOUNCAREN:** Absolutely detailed engineering, yes. They are
looking for specifics related to the pipe and also to the AC mitigation of the
portion of the project to ensure there's not any corrosion occurring on the pipeline
because of the overhead power lines, so very significant detailed information.
1522. **MEMBER LYTLE:** So would these be drawings for construction or
final design?
1523. **MR. HOUNCAREN:** Very close to, I would suggest, probably about
the 90 percent level.
1524. **MEMBER LYTLE:** Okay. Thank you very much. Those are all my
questions.
1525. **THE CHAIRMAN:** Thank you, Dr. Lytle.

--- EXAMINATION BY/INTERROGATOIRE PAR THE CHAIRMAN:

1526. **THE CHAIRMAN:** I do have some questions, and one of the
advantages of coming last is you get to hear everybody else's and think, okay, I
want to ask something a little more on that. The other side is that they ask your
questions, so you end up cutting them off.
1527. I want to follow up just a little bit on the wetland mitigation topic, and

Enbridge Pipelines Inc.
Examination by the Chairman

- if I heard you correctly, Mr. Neufeld, it was, "We want natural regeneration, but if it doesn't occur, we will do some things." And you say, "We monitor for five years." Did I hear you correctly when you say "monitor for five years"?
1528. **MR. NEUFELD:** Yes, you heard me correctly. The post-construction monitoring program is anticipated to start in five years and I think I mentioned it. When the post-construction monitoring program starts off, the entire route is evaluated, and then in subsequent years, only those areas where there's deficiencies identified are revisited to ensure that those are still being reclaimed and still being addressed.
1529. **THE CHAIRMAN:** I'm not a biologist. I'm not an engineer. I'm a farmer. But I would think it would take more than five years for a wetland to regenerate.
1530. **MR. NEUFELD:** In some cases it might. In those cases, we would definitely look at the trajectory of that wetland. If we're starting to see natural vegetation species occurring in that trajectory, on the track to be fully recovered, that might be considered resolved.
1531. In some cases, for example, in temporary workspace, obviously, a treed wetland would take a longer time to fully recover. Trees obviously take more than five years to fully grow. So as long as that trajectory is identified, then that might be considered resolved.
1532. **THE CHAIRMAN:** Okay. I think I heard what you were saying, but I'll ask for clarification. If the regeneration is starting, but in people's view -- and I'm talking about regulatory agencies, yourselves, Aboriginal groups -- it's not there yet after five years, does Enbridge continue to monitor?
1533. **MR. NEUFELD:** Enbridge will look at those kind of on a -- well, we'll look at those on a case-by-case basis. Based on the reclamation monitoring that was done for past projects, for example, Alberta Clipper and the Line 4 extension, most, if not -- I think most of the wetlands were reclaimed within that five-year period.
1534. So we don't anticipate there to be many wetlands at all that might extend beyond that five-year period. If there are, they will be addressed on a case-by-case basis to determine if additional monitoring is warranted.

**Enbridge Pipelines Inc.
Examination by the Chairman**

1535. **THE CHAIRMAN:** This is a big country, Mr. Neufeld. Regeneration in PEI takes a whole lot longer than it does in some other parts of the country. Would Enbridge be prepared to commit to follow up beyond the five years to make sure this regeneration takes place?
1536. **MR. NEUFELD:** Yeah, they would.
1537. **THE CHAIRMAN:** Thank you. Some jurisdictions have requirements of no net loss. Do you know if Ontario has a no net loss policy when it comes to wetlands?
1538. **MR. NEUFELD:** I'm not specifically aware if Ontario has a no net loss policy.
1539. **THE CHAIRMAN:** Do you understand what I mean when I say "no net loss"?
1540. **MR NEUFELD:** That's correct. So habitat form or function that's removed from the pipeline, or if it was removed due to the pipeline, would be restored, either during reclamation or compensated in another manner.
1541. **THE CHAIRMAN:** Do you know if Enbridge has ever done wetland creation? Like, okay, we can't restore that particular area, but within the scope of the project, we work to create a wetland? And you see the ads all the time with Ducks Unlimited and what they do across the country. Has Enbridge ever done that?
1542. **MR. NEUFELD:** Yeah, in other jurisdictions, Enbridge has done that, made payments for compensation for permanent losses of wetlands.
1543. **THE CHAIRMAN:** Okay. My next question -- and I had it -- I stroked it out because Ms. Haug asked the question. I'm going to rephrase it, and it's on the monitoring, the Aboriginal monitoring that Enbridge has committed to doing. And you indicated, Mr. Prud'homme, that there were other Aboriginal groups besides Six Nations that have indicated an interest. What if all four groups say, "We want to do monitoring"? How -- I'm sure you don't want four monitors on the construction site.
1544. **MR. PRUD'HOMME:** In other cases, for example, for archaeology monitoring, we have more than one Nation represented at the sites, so that would

**Enbridge Pipelines Inc.
Examination by the Chairman**

- work. Of course, there may be some logistics, some security aspect, that we would work. But for example, in other project like the GTA replacement that was done, some of the same Nations were involved, and that worked to everyone's satisfaction.
1545. **THE CHAIRMAN:** Okay. Ms. Schwaebe -- is -- did I pronounce it right?
1546. **MS. SCHWAEBE:** Yes.
1547. **THE CHAIRMAN:** Close enough? I didn't shut my mic off, sorry. You talked about tile drainage and the mitigation that you're going to use. I'm -- could you get into a little more detail of how you mitigate disturbing or cutting tile drainage and replacing it and making it as effective as it was?
1548. **MS. SCHWAEBE:** Sure. So the answer will probably be two part; some from myself from dealing with the landowners, as well from the EPP. As I said, four tracts of land identified it. One of the concerns was specifically regarding depth, so they wanted the pipeline placed below the drainage tile to ensure that we didn't impede it. And the other three tracts were regarding drainage tile repair, should those tiles be damaged during construction.
1549. Typically, what we do with the landowners -- obviously, our construction folks are not drainage tile experts and are not going to reconstruct that. We will work with them to hire their preferred contractor to repair them back to the quality of drainage tile they had previously, or better. So the landowner knows the system, their system, better than Enbridge will, obviously. And so that's why we have them engage the contractor and we compensate them for that undertaking.
1550. **THE CHAIRMAN:** Mr. Yaremko, you look like you were going for your microphone.
1551. **MR. YAREMKO:** I was, actually. What I would like to add to that or just provide the reference or a partial reference to that explanation is in Appendix K of the Preliminary Environmental Protection Plan. There's a segment on mitigation for drain tiles. I think Kara explained it as well as you get it there, but it is in -- it is located in this reference, Exhibit A78552.
1552. **THE CHAIRMAN:** I think our explanation was just one quick

**Enbridge Pipelines Inc.
Examination by the Chairman**

question.

1553. How do you go under tile drainage with a 20-inch steel pipe?
1554. **MS. SCHWAEBE:** So I'm not a construction expert but my understanding is that they can either utilize different construction methods like boring or lowering the pipe. So it's not necessarily that they have to drill under it or go -- but place the pipe deeper.
1555. So in this instance the landowner knew the depth of those tiles and requested that the pipeline depth be four feet below surface, which we did commit to doing on that tract specifically.
1556. **THE CHAIRMAN:** So how deep would it go if they don't want you to go -- how do -- I'm picturing drain tillage, having a little bit of experience with it. I'm trying to picture how you don't go under the tile. Like -- and again, a different part of the country and maybe we don't go as deep as they do here.
1557. **MS. SCHWAEBE:** So in this instance the landowner will come up with different specific requests. So the pipeline will be below the drainage tile but for this one he wanted to make sure that we were at a greater depth than he perceived.
1558. **THE CHAIRMAN:** Okay. Yesterday, on line 1205 of the transcript, Ms. Schwaebe, you were answering a question from Mr. Jetten about the survey that you did on the fee simple landowners and the ability for Aboriginal traditional uses. And you indicated -- and if you don't have it in front of you, I'll read it for the record.
- "I can actually tell you the answer to that because I personally reviewed it along with our land broker. No one answered "yes" to any of the questions of the fee simple landowners asked."*
1559. Do you remember saying -- answering that?
1560. **MS. SCHWAEBE:** I do.
1561. **THE CHAIRMAN:** Did you ask the other fee simple other landowners that question?

Enbridge Pipelines Inc.
Examination by the Chairman

1562. **MS. SCHWAEBE:** We did. We only did not ask the Crown because under the Crown the First Nations have the right to access those lands without consent.
1563. **THE CHAIRMAN:** So what did the fee simple other landowners say to that question about Aboriginal traditional uses?
1564. **MS. SCHWAEBE:** They all responded that no, they had not -- they were not aware of First Nations accessing the lands, that they had not granted access.
1565. **THE CHAIRMAN:** You're choosing your words very carefully, I think, when you said "they were not aware" and "they haven't granted". So it's possible that traditional land use takes place on these properties?
1566. **MS. SCHWAEBE:** So the questions we specifically asked -- asked them if they were aware, or if they had granted access, or if they were providing written agreements for permission for them to use. All of those landowners said no.
1567. There is a possibility that people could be accessing without their awareness.
1568. **THE CHAIRMAN:** Okay.
1569. I'm not sure who to ask the question to on this next -- my next line of questioning. It's on the decommissioning in place. The Board did ask IRs, information requests to Enbridge, to give us a comparison -- the risks and the mitigation required to remove the pipe -- instead of decommissioning in place, pipe removal -- and quite frankly I didn't think we got very detailed answers. And I'm just wondering, to start off with, why is removal of some or all of the pipe not an option?
1570. **MR. LAYBOLT:** I wouldn't say that Enbridge necessarily excluded pipe removal as an option as a portion of its evaluation. The responses provided previously were related to the -- there's was items filed both in the original application and the IR responses related to incurring actual impacts resulting from removal of the pipe as opposed to the assessment related to corrosion and structural integrity and subsidence that shows there is no significant cause for

Enbridge Pipelines Inc.
Examination by the Chairman

concern for the decommissioned pipeline in place.

1571. This forms a portion of the basis for the future land development where Enbridge has proposed in areas, say, next to roadways where a roadway may expend in the future that Enbridge would leave this pipe in place and rely on ongoing consultation and work with these authorities to -- similar to the potential for future developments near the right-of-way that we discussed earlier to evaluate at that time based on the fact that the pipeline retains its structural integrity for an extended period of time.
1572. Other areas where removal incurs significant risk would obviously be at existing development areas such as the railways themselves.
1573. Regarding general land use, the risk associated with pipeline removal, just general construction activity within three-metre proximity of an active pipeline, is considered a greater risk activity relative to the long-term assessment of the pipeline itself considering the status overall right-of-way upon completion of this project.
1574. **THE CHAIRMAN:** I'm trying to think of the actual construction and the work that would be required. One of those pipes had to go in when there was another pipe -- active pipe beside it. I would think putting a new pipe in would be more -- a higher risk within three metres of taking a pipe out. So if it was okay to put a pipe in, why isn't it okay to take it out?
1575. **MR. LAYBOLT:** Obviously these lines were originally installed several decades ago, and I think this would be a good example of a past practice that's no longer employed. So it's fair to say in the sixties when this line was installed that a three-metre separation from the adjacent pipeline was something that was deemed to be acceptable and a risk that I'm assuming everyone was comfortable taking because it was a fairly common practice.
1576. As we discussed earlier, the separation we're proposing for this new pipeline is nine metres; and this would be a good example of engineering out a hazard. So we are increasing the separation to minimize the risk to the existing pipeline and any sort of damage that might occur during construction.
1577. **THE CHAIRMAN:** So what if a landowner says, "I want the pipe taken out"; what's your answer?

Enbridge Pipelines Inc.
Examination by the Chairman

1578. **MS. SCHWAEBE:** So in this case we've consulted with every landowner; they have not requested that we remove the pipe, just the one intervenor, Knollwood, that we were able to settle with and actively have them participate in the project.
1579. In the future, long term, if there was future development and they were going to do some type of development that would impede and they requested us, we would evaluate it at that time but currently our -- the proposal is decommissioning in place and many of the landowners have identified to us that is their preference, to not disturb their lands, keeping in mind that there's an existing Line 11 and -- in that easement -- and it wouldn't remove some of the comments or obligations that they're required to do under the NEB prescribed area.
1580. **THE CHAIRMAN:** My last question in this category -- I do have a couple of other ones. What does Enbridge -- my understanding is that decommissioning is an intermediate step to abandonment before an abandonment application. Does Enbridge have any timeline on how long before they apply for an abandonment on this pipe?
1581. **MR. LAYBOLT:** The short answer would be no, there is no established timeline for when we would apply for abandonment of the decommissioned asset.
1582. **THE CHAIRMAN:** Okay, Mr. Laybolt, I'm going to challenge your -- see how fast -- I noticed you were working very hard on your computer. You didn't happen to find the size of the rest of that pipe for me, did you?
1583. **MR. LAYBOLT:** I did, actually. And of course I misplaced the paper that Ray handed me.
1584. So with respect to Line 10, Line 10 starts at Westover Terminal and is an existing 12-inch pipeline that goes to Nanticoke Junction. Out of -- downstream of Nanticoke Junction, it carries on as a 20-inch pipeline to approximately the Canada-U.S. border, based on the scale of this map. It switches back to 12 inch for a short portion of the pipeline into the United States, continues as a 20-inch pipeline for a short distance and then continues for 12 inch to our termination point where the ownership of taking volumes to the terminating refinery is not under Enbridge's control.

**Enbridge Pipelines Inc.
Examination by the Chairman**

1585. **THE CHAIRMAN:** My colleague made a good point. Yes, it's in the record but could you give us that in writing, Mr. Laybolt, please? Diagram if you could too.
1586. **MR. LAYBOLT:** A pipeline schematic of sorts? Yes, there's no objection to providing that to the Board.
1587. **THE CHAIRMAN:** So I think we just leave that as the same undertaking. We'll just get it officially in writing from you.
1588. Having said that, bear with me. Not discounting the 12-inch pipes that are going into the States and then into the refinery, can you tell me the capacity of a 20-inch pipe with the maximum operating pressure that you have applied for?
1589. **MR. LAYBOLT:** Is that under the assumption there is no restrictions to additional infrastructure modifications required?
1590. **THE CHAIRMAN:** If Enbridge decided they wanted to fill that 20-inch pipe with a maximum operating pressure of 99 whatever, what's the capacity throughput daily?
1591. **MR. LAYBOLT:** The ultimate capacity of the MPS 20 pipeline has not been determined as part of the scope of this project so I do have the information to answer that question.
1592. **THE CHAIRMAN:** What would be a variance that would -- like, I'm thinking a 20-inch pipe is this big, here's the operating pressure. Isn't there a formula that tells you this is how much we can put through that pipe?
1593. **MR. LAYBOLT:** Not without consideration to the external upgrades that Enbridge could make. If you went into the absolute extreme case, you could install additional pump stations along the route to further bolster capacity.
1594. In terms of what post-project this capacity on an annualized average theoretical is with no shutdowns or maintenance, that is the 82,444 barrels per day that Enbridge filed as the design capacity of this pipeline.
1595. **THE CHAIRMAN:** Okay. Can I assume a normal, an ordinary 20-inch pipe with the operating pressure that you've applied for will have significantly higher throughput than a 12-inch pipe with that operating pressure?

**Enbridge Pipelines Inc.
Examination by the Chairman**

I don't want to get into the restrictions and the pump stations and this part of it. Normal, an ordinary 20-inch pipe, would that have significantly more throughput than a 12-inch pipe?

1596. **MR. LAYBOLT:** Not considering the other restrictions such as operating limits that Enbridge has in place. Yes, a 12-inch pipeline at the same MOP can handle more capacity than a 12 inch.
1597. **THE CHAIRMAN:** Significantly more?
1598. **MR. LAYBOLT:** I don't have a frame of reference for "significant" but, yes, it would be more qualitatively.
1599. **THE CHAIRMAN:** I'm just going back to my Grade 10 Math and the circumference or the area of a circle; 12 inch is whole lot smaller than a 20 inch.
1600. **MR. LAYBOLT:** Yeah, I believe it's proportional to the square of the diameter.
- (Laughter/Rires)
1601. **THE CHAIRMAN:** I'm not trying to be argumentative, Mr. Laybolt, because it's leading up to my question. And I'll get to my next question.
1602. In your response to IR number 5, when the Board (off mic).
1603. I'll just read the -- your answer was:
- "An additional valve installed at approximately KP 2.4 results in a marginal decrease in volume reduction [...] for 1.22 km of the pipeline (3.5% of the total length)."*
1604. And then you have a little table where the benefit of the additional valve, the valve station at 2,380 metres. Maximum volume reduction is 11,023 barrels. That's 176,000 plus litres reduction.
1605. If that's a 20-inch pipe and sometime down the road Enbridge decides that, well, we will change that little 12-inch pipe, we will change the pumping stations, do you not think that maybe an additional valve might be a good safety

**Enbridge Pipelines Inc.
Examination by the Chairman**

- feature?
1606. **MR. LAYBOLT:** I would completely agree, but the cut-in of additional valves would be at the time of that expansion.
1607. **THE CHAIRMAN:** When you say that the benefit of the additional valve at -- in this case the maximum volume reduction of 11,023 barrels is not worth -- you know, and you go on in other parts of the answer to say the risk of putting it in and it's more above ground and et cetera, et cetera.
1608. What's your cut off; what's Enbridge's cut off to say, "Okay, this volume reduction warrants another valve"?
1609. **MR. LAYBOLT:** I am not sure if there is a specific volume cut off as the intelligent valve placement assessment works as assessing the pipeline and the theoretical volume out as a whole, as well as the proximity of watercourses and other high-consequence areas to effectively place the valve. So I'm unable to say if there's a specific cut off to a specific feature.
1610. **THE CHAIRMAN:** Okay. That's all I have.
1611. **MR. LAYBOLT:** My apologies if I came across as confrontational.
1612. **THE CHAIRMAN:** Mr. Laybolt, if you did it was a two-way street and I apologize if I was coming across as argumentative.
1613. We've completed our cross-examination.
1614. Do you have any matters, Mr. Purvis, before we dismiss your panel? Mr. Jetten is standing up.
1615. **MR. JETTEN:** I only have one question, if I may, just as a clarification arising out of one of the answers given to a Board question. Or to actually the Board counsel's question, if I may?
1616. **THE CHAIRMAN:** Mr. Purvis, do you have any comment on that?
1617. **MR. BOURNE:** Enbridge doesn't object to our friend asking.

1618. **THE CHAIRMAN:** Okay, thank you very much.

1619. Go ahead, Mr. Jetten.

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

1620. **MR. JETTEN:** Yeah, sorry.

1621. Board counsel Ms. Haug asked you a question about the capacity funding agreement you were dealing with with Six Nations. Would I be correct in understanding that that agreement was signed in June of 2016?

1622. **MR. PRUD'HOMME:** Yeah, that is right. But I'd just like to add maybe some information for the Board. In November 17th of 2015 Enbridge asked Six Nations for a draft capacity funding agreement. We had not received anything so we followed up in February of 2016 with Six Nations. There was some discussion because part of the CFA included non-related Line 10 language. So in the end we were able to sign the agreement early June of 2016.

1623. **MR. JETTEN:** All right. And so no capacity funds obviously would flow to Six Nations until after the agreement was signed?

1624. **MR. PRUD'HOMME:** No, that would be correct. And a second offer for additional capacity funding was made this summer with relation to a site-specific traditional land usage and another additional offer was made for general traditional land use study, and then we asked Six Nations for a scope and a budget that we've not received.

1625. **MR. JETTEN:** You mentioned the capacity funding agreement going back and forth. Would I be correct that Six Nations sent ---

1626. **MR. PRUD'HOMME:** Sorry?

1627. **MR. JETTEN:** Sorry?

1628. **MR. PRUD'HOMME:** I missed the first part of your question. There's a bit of ventilation going on in your second question.

1629. **MR. JETTEN:** Yes. You were describing the process; you had a discussion in November 2015 and asked for a draft capacity funding agreement

Enbridge Pipelines Inc.
Re-examination by Mr. Jetten

- from Six Nations. Was that draft sent to you on February 19th to Ms. Fazari who reports to you?
1630. **MR. PRUD'HOMME:** So if I understand correctly, you ask if the first draft was sent on February 19th?
1631. **MR. JETTEN:** Yes.
1632. **MR. PRUD'HOMME:** No, actually it was sent on February 9th by Six Nations.
1633. **MR. JETTEN:** February 9th, okay, a little bit earlier than that. Okay, thank you.
1634. **THE CHAIRMAN:** Thank you.
1635. Thank you very much to the panel from Enbridge. The Board appreciates your answers and your forthcoming with us on our questions and the questions from Mr. Jetten.
1636. What we'll be doing just before I dismiss you, I just want to give a little update, I guess, on process. We'll take a break now for about 20 minutes.
1637. Mr. Jetten, you can seat your panel and get them ready.
1638. Mr. Purvis, you'll be available to cross-examine the Six Nations witness panel, and then the Board counsel and the Board themselves.
1639. It is my understanding, and Mr. Groza can correct me if I'm wrong, Mr. Farquhar has filed his written final argument. So, gentlemen, if you could let Ms. Haug know the timelines you need between the time we finish oral cross and we do oral argument that would be very much appreciated.
1640. Again, the Board thanks you for your answers. You're now dismissed. And we are taking a 20-minute break.
- (Witnesses are excused/Les témoins sont libérés)
- Upon recessing at 10:26 a.m./L'audience est suspendue à 10h26

**Six Nations of the Grand River
Examination by Mr. Jetten**

--- Upon resuming at 11:05 a.m./L'audience est reprise à 11h05

1641. **THE CHAIRMAN:** Thank you everyone. We're back in session. I apologize; it was longer than 20 minutes. Always something to talk about.

1642. Mr. Jetten, your panel is -- if you could seat your panel and we'll have them adopt their evidence. We'll have them sworn in as well.

1643. **MR. JETTEN:** If I might, I might just approach the table. I know we have the monitors and so on, but it might be easier if necessary -- I've got -- I went to the trouble of making some extra copies of the affidavits of the two witnesses that are here. I don't think they've yet been sworn though for the purpose (off mic). They have not yet been sworn.

1644. But I will provide you with duplicate copies of the affidavits that were already exhibits so you don't have to depend on looking a fair distance to the monitor for perhaps small type depending on the cross-examination questions.

1645. **THE CHAIRMAN:** I'm sorry, Mr. Jetten, I'm not clear of what you're going to be giving us.

1646. **MR. JETTEN:** Just duplicate copies of Professor Charles Hostovsky's affidavit that's been already filed in this proceeding, and also the affidavit of Paul General of June 20th, 2016. Intended for the Board's convenience. If you don't want it that's fine but that's ---

1647. **THE CHAIRMAN:** Mr. Purvis, any problems?

1648. **MR. BOURNE:** If they are just copies, paper copies of previously filed exhibits, no objection to having those distributed.

1649. **THE CHAIRMAN:** Go ahead. Ms. Haug will distribute them for us.

1650. Do you want a copy?

1651. **MR. BOURNE:** I think we'll be okay.

1652. **MR. JETTEN:** So if both witnesses might be sworn for the proceeding today I think you will ---

**Six Nations of the Grand River
Examination by Mr. Jetten**

1653. **THE CHAIRMAN:** Ms. Turcotte, could you please swear or affirm the witnesses?

PAUL GENERAL: Affirmed

CHARLES HOSTOVSKY: Sworn

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

1654. **MR. JETTEN:** Yes, Mr. General, you're the wildlife officer and manager of the Six Nations Eco-Centre and Wildlife Management office, correct?

1655. **MR. GENERAL:** That's right.

1656. **MR. JETTEN:** And in this proceeding you swore an affidavit of June 20th, 2016?

1657. **MR. GENERAL:** Yes.

1658. **MR. JETTEN:** Okay. And for the Board's reference, this is Exhibit A77766 with 1 to 13 as sub-exhibit numbers, I believe, because there's Exhibits A through K to your affidavit.

1659. And Enbridge, in response to your affidavit in part, filed a reply evidence -- it's called "reply evidence" on September 23rd, 2016. And in that evidence, for the first time they raised new matters.

1660. **MR. BOURNE:** I'm going to step in and object at this time. If my friend intends to ask or lead new evidence through his direct examination, Enbridge objects to that.

1661. **THE CHAIRMAN:** Mr. Jetten, the process is for the witnesses to adopt their evidence, not enter new evidence.

1662. **MR. JETTEN:** In my submission, and I believe this was established through cross-examination yesterday, Enbridge for the first time indicated in paragraph 13 of their reply evidence something that had not been put in their documentation in support of the application.

1663. And the new evidence in particular that they alleged or purported to put forward was Enbridge made a specific request of Six Nations on August 6th,

**Six Nations of the Grand River
Examination by Mr. Jetten**

2015 for information about traditional land use practices. Enbridge was advised by Six Nations in response that there were no traditional uses presently being performed along the project's then proposed route.

1664. And in the cross-examination yesterday, Mr. Prud'Homme confirmed that the summary that was contained in the Section 5 Aboriginal Engagement was complete up until November 30, 2015 and there were no -- and he also confirmed there were no such statements made in that discussion and summary for the Board.

1665. So in my submission, this is new evidence for the first time. It either should be completely disregarded by the Board and struck out as improper reply, or alternatively, as a way to mitigate the prejudice to my client we should be given an opportunity to ask the witnesses about this statement.

1666. **THE CHAIRMAN:** Are you making that as a motion?

1667. **MR. JETTEN:** Well, I guess it's two part. I don't need to bring a motion to strike it out -- to strike out that Enbridge evidence if my client is given an opportunity to comment on it; however, that is my alternative position, that that evidence should be struck out from the record.

1668. **THE CHAIRMAN:** I guess the question -- sorry, I wasn't clear enough. There's actually two potentials for a motion, as far as I'm concerned. One is the motion to strike the evidence. The other is a motion to allow you to directly examine your own witnesses.

1669. **MR. JETTEN:** All right. I bring that motion too, then. I think that would be the simplest solution, is to allow me to ask -- which is what I'm asking the opportunity to do -- is ask an opportunity to ask our witness about that and alternatively, my alternative motion is, as I've stated, that that evidence of Enbridge's should be struck from the record because it's new evidence.

1670. All right, so I don't know what got caught on the record or didn't.

1671. I'm sorry? The part that was cut from the mic, it appears, was that it was my submission it was not -- it's not proper reply because it is new information that is being put forward by Enbridge.

1672. **THE CHAIRMAN:** Just to be clear, Mr. Jetten, you've focused on

**Six Nations of the Grand River
Examination by Mr. Jetten**

one particular issue, and that was the August 6th meeting. Is that all you want to question about?

1673. **MR. JETTEN:** The other element that is new is also about the survey, related to the survey information on paragraph 10 of the reply. But that is not as critical, in terms of my question. The critical one, from my standpoint, is the August 6th, 2015 meeting.

1674. **THE CHAIRMAN:** Enbridge?

1675. **MR. BOURNE:** Yes, it's Rob Bourne, legal counsel for Enbridge. If I could, I would first reply to the alternative motion to strike. Enbridge disagrees that it's improper to lead new evidence in reply evidence. It's -- in fact, the purpose of reply evidence is to provide anything new that you feel you need to put on the record after having seen the evidence of the intervenors. That's what Enbridge did in this case.

1676. The original -- my friend noted that the original entry from the application was a very generalized account of what took place at that meeting. After that, Professor Hostovsky's report was filed in September of this year. It raised questions and assertions about a lack of information, or Enbridge's lack of having solicited information from Six Nations about its traditional land uses.

1677. And so in the reply evidence, we included further details about that meeting from August 6th that described -- or that addressed that issue specifically. So again, we addressed it once it was raised in the Hostovsky report, and again, I think that's what reply evidence is for, in my submission.

1678. So dealing with the first motion then, Enbridge notes the original hearing order provides a procedure here for the entering in of evidence by intervenors. It provided an opportunity for written evidence, and it provided an opportunity for oral traditional evidence, and after a motion in September, late in the day, from Six Nations to provide further evidence in the form of Professor Hostovsky's report, it provided an opportunity there as well with the consent of Enbridge.

1679. The procedure, in accordance with the principles of natural justice and procedural fairness, provided Enbridge the opportunity for the -- or the final opportunity to submit evidence in reply. And that is what Enbridge has done here to -- and so to allow an opportunity now to lead further new evidence through

**Six Nations of the Grand River
Examination by Mr. Jetten**

direct examination would be prejudicial to Enbridge, because it doesn't have an opportunity to then reply with additional evidence.

1680. On top of that, Procedural Update number 3, which was issued by the Board on August 31st, was very clear about the procedure here at the hearing, that there wasn't an allowance for direct exam of one's witnesses in the -- for the purposes of leading new evidence, but only to adopt the evidence that had been filed on the record.

1681. And furthermore, I would argue that even if there were an alternative where we asked the questions of this panel and then Enbridge has an opportunity to file even more evidence or respond with its panel one more time, there needs to be a logical end to the back and forth of the evidence. Here the Board set a procedure well in advance, very clearly communicated when that end would be, and in Enbridge's submission, there is no reason to depart from that now.

1682. But even if we were to allow further a opportunity for Enbridge, I would argue that Enbridge would still be prejudiced because it didn't have the opportunity to direct exam its -- directly examine its witnesses in advance of their cross-examination. We certainly could have and did anticipate some of the topics that my friend, Mr. Jetten, cross examined on and would have led more evidence that probably would have headed that stuff off before they were asked, and we did not have the opportunity to do that.

1683. So those are my submissions. Enbridge objects to both of the motions.

1684. **THE CHAIRMAN:** Mr. Jetten?

1685. **MR. JETTEN:** Obviously, in the Board's hands, but two comments. I raised this issue specifically with counsel for Enbridge, Mr. Purvis, on the weekend, when I became aware of this, and raised this as an issue, that we disputed the accuracy. And secondly, I also had a discussion over the break with Mr. Bourne, and indicated that I didn't have any objection if Enbridge wanted to call any of the panel members that were sitting this morning or anybody else they wanted in response.

1686. **THE CHAIRMAN:** The panel will take a break to decide -- determine this motion.

--- Upon recessing at 11:21 a.m./L'audience est suspendue à 11h21

**Six Nations of the Grand River
Examination by Mr. Jetten**

--- Upon resuming at 11:40 a.m./L'audience est reprise à 11h40

1687. **THE CHAIRMAN:** Okay, we're back.

1688. A ruling on the two motions: on motion number 1, the motion to strike the specific section 13 or paragraph 13 of the reply evidence is rejected. And our reasons for rejecting it is that in the reply evidence, first paragraph from Enbridge indicated that they were responsive to written evidence to specific areas, which is essentially, in our view, what reply evidence is all about. And they didn't go into areas that weren't raised by someone else, and as the Applicant have the right to have that reply evidence.

1689. In terms of motion number 2, the request to allow questioning of the witness panel, specifically on paragraph 13 of the reply evidence in dealing with the meeting on August 6th, 2015, we're prepared to allow that on that specific topic on that specific paragraph. Anything beyond that, Mr. Jetten, is not allowed.

1690. Mr. Bourne and Mr. Purvis, if you feel necessary to recall Mr. Prud'Homme, because he is the person, based on evidence, that was responsible for the writing of that paragraph, we'll allow you to do that after lunch, and hopefully, that will give you time over lunch, if you feel you want to recall Mr. Prud'Homme, you can.

1691. So we'll allow those specific questions on that specific paragraph, Mr. Jetten, and then it's up to you, Mr. Bourne, whether you want to recall Mr. Prud'Homme after lunch.

1692. Any questions from anyone?

1693. **MR. JETTEN:** Thank you, Mr. Chair.

1694. Mr. General, I understand you have read the document called "Reply Evidence of Enbridge Pipelines" dated September 23rd, 2016.

1695. **MR. GENERAL:** Yes.

1696. **MR. JETTEN:** And that is Exhibit No. A79569-2?

1697. **MR. GENERAL:** Yes.

**Six Nations of the Grand River
Examination by Mr. Jetten**

1698. **MR. JETTEN:** And in particular I would like to direct your attention to paragraph 13 of that reply where there's a discussion of a meeting or a request to Six Nations on August the 6th, 2015.
1699. Were you in attendance at a meeting with Enbridge representatives on August 16, 2015?
1700. **MR. GENERAL:** Yes.
1701. **MR. JETTEN:** And was there anyone else there on behalf of Six Nations?
1702. **MR. GENERAL:** I believe Lonny Bomberry, Joanne Thomas, Caron Smith, and myself were there.
1703. **MR. JETTEN:** Thank you. I don't know if you need any spellings -- the court reporter needs any spellings of names.
1704. **MR. GENERAL:** Lonny Bomberry, B-o-m-b-e-r-r-y.
1705. **MR. JETTEN:** Did you ever make a statement that no traditional uses were presently being performed along the project's then proposed route?
1706. **MR. GENERAL:** I don't recall making such a statement. I don't believe anybody in our group would make such a statement. It may be a qualified statement of sorts; somebody may have asked about traditional land use. We're talking August 6th here and at that particular date in the season there may not have been any activity there, but there's always activity in the area.
1707. **MR. JETTEN:** Okay. Those are my questions.
1708. **THE CHAIRMAN:** Mr. Bourne or Mr. Purvis, do you want to start your cross-examination now or would you like to wait until after lunch? Your call.
1709. **MR. BOURNE:** I think we can start now. And perhaps we can, if it would be all right with the Board, during the lunch, we can confer with our client about whether or not we also want to bring Mr. Prud'Homme back and we can advise to that after lunch, if that would be all right?

**Six Nations of the Grand River
Examination by Mr. Bourne**

1710. **THE CHAIRMAN:** That's quite fine with me.

1711. Go ahead, Mr. Bourne.

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

1712. **MR. BOURNE:** Mr. General, during one of the breaks I provided a copy of this document to your counsel. I'm going to provide it now to you and I'm going to ask that this be entered as an exhibit.

1713. **THE CHAIRMAN:** Ms. Turcotte, could you give that an exhibit number?

1714. **THE REGULATORY OFFICER:** The number is A79906.

1715. **THE CHAIRMAN:** Can we get a copy of that, Mr. Bourne?

1716. **MR. BOURNE:** Sorry, I provided one to Ms. Wong during the break.

1717. **THE REGULATORY OFFICER:** I apologize. The number is A79907.

--- EXHIBIT NO./PIÈCE No. A79907:

Enbridge Pipelines Inc. - Capacity Funding Agreement between Six Nations and Enbridge dated June 9, 2016

1718. **MR. BOURNE:** Okay.

1719. Mr. General, would you agree with me that this is the Capacity Funding Agreement reached between Six Nations and Enbridge?

1720. **MR. GENERAL:** Yes.

1721. **MR. BOURNE:** And this document is signed by Lonny Bomberry on behalf of Six Nations, correct?

1722. **MR. GENERAL:** Yes.

**Six Nations of the Grand River
Examination by Mr. Bourne**

1723. **MR. BOURNE:** And dated June 9th, 2016?
1724. **MR. GENERAL:** That's right.
1725. **MR. BOURNE:** And you'll note on the first page, in the table, in the second row -- could you read for me what it says in the third column?
1726. **MR. GENERAL:** I'm not sure which one you're talking about.
1727. **MR. BOURNE:** So -- maybe I'll start it. So on this page we're here with column 2 -- maybe I'll start -- can you just read what's in the first box to the right of column 2?
1728. **MR. GENERAL:** Column 2, okay. Six Nations communications activity; is that what you're talking about?
1729. **MR. BOURNE:** And then in the next box over?
1730. **MR. GENERAL:**

“Includes costs for up to 10 community meetings/information sessions, per diems, notice, venue, travel, light lunch and refreshments to discuss matters falling within the scope of this Agreement.” (As read)
1731. **MR. BOURNE:** And finally, the column next to that.
1732. **MR. GENERAL:** *“There's a monetary value of \$15,000.” (As read)*
1733. **MR. BOURNE:** Thank you. Now, Mr. General, you just described that you were in attendance at the August 6th meeting. You'd agree with me that you took part in other meetings with Enbridge as well?
1734. **MR. GENERAL:** Yes.
1735. **MR. BOURNE:** And that Joanne Thomas was present at some of those meetings?
1736. **MR. GENERAL:** Yes.

**Six Nations of the Grand River
Examination by Mr. Bourne**

1737. **MR. BOURNE:** And would also agree that Joanne Thomas took part in meetings that you did not attend?
1738. **MR. GENERAL:** That I did not attend?
1739. **MR. BOURNE:** Yes.
1740. **MR. GENERAL:** Yes.
1741. **MR. BOURNE:** In particular, would you agree that Joanne Thomas attended a meeting between Enbridge representatives and Six Nation representatives held on November 17th, 2015? This is one that you were in attendance for, I believe.
1742. **MR. GENERAL:** To the best of my recollection, yes.
1743. **MR. BOURNE:** And again in a meeting on April 8th, 2016, you'd agree that Joanne Thomas was present at that meeting as well?
1744. **MR. GENERAL:** Again, to the best of my recollection, yeah.
1745. **MR. BOURNE:** And are aware of a meeting held on May 11th that was between Joanne Thomas of Six Nations and Sonia Fazari of Enbridge?
1746. **MR. GENERAL:** I believe there was sometime in that timeframe; I'm not exactly sure of the day, obviously. I wasn't at that meeting so I can't tell you for sure.
1747. **MR. BOURNE:** And then on another meeting on May 27th of 2016, which I believe you were in attendance for, that Joanne Thomas was in attendance for that meeting as well?
1748. **MR. GENERAL:** May 27th, '16?
1749. **MR. BOURNE:** Yes.
1750. **MR. GENERAL:** Again, to the best of my recollection, yeah.
1751. **MR. BOURNE:** Okay. And are you aware that there was a further meeting on June 9th just between Joanne Thomas and Sonia Fazari again?

**Six Nations of the Grand River
Examination by Mr. Bourne**

1752. **MR. GENERAL:** I believe I recall booking the room for that meeting, yes.
1753. **MR. BOURNE:** And in a further meeting on July 21st of 2016 -- that there was another meeting in which both you and Joanne Thomas were present?
1754. **MR. GENERAL:** What was the date again?
1755. **MR. BOURNE:** July 21st, 2016.
1756. **MR. GENERAL:** Yes.
1757. **MR. BOURNE:** And in another meeting on August 26th, 2016, that -- now, this is not one that you were in attendance, at least according to Enbridge's records, but it does indicate that Joanne Thomas was in attendance. Are you aware that she attended that meeting?
1758. **MR. GENERAL:** That one I can't say for sure whether I recall that one or not, sorry.
1759. **MR. BOURNE:** Are you aware of Joanne Thomas also attending two meetings on October 5th and 17th of 2016 with Enbridge?
1760. **MR. GENERAL:** The dates once again, thanks -- please?
1761. **MR. BOURNE:** October 5th and October 17th, that would be.
1762. **MR. GENERAL:** I can't give you a definite on that one.
1763. **MR. BOURNE:** Okay, thank you.
1764. Those are all the questions that I have.
1765. **THE CHAIRMAN:** Thank you, Mr. Bourne.
1766. Looking at the hour, I think prior to the Board counsel and the Board panel beginning our cross we'll break for lunch. We'll come back at one o'clock.

**Six Nations of the Grand River
Examination by Ms. Haug**

1767. Mr. Purvis, Mr. Bourne, you can give some thought to whether or not you want to recall Mr. Prud'Homme and we'll deal with that one o'clock.

1768. We're on a break.

--- Upon recessing at 11:53 a.m./L'audience est suspendue à 11h53

--- Upon resuming at 1:01 p.m./L'audience est reprise à 13h01

1769. **THE CHAIRMAN:** We'll come back to order.

1770. Before Board counsel starts their cross-examination of the panel, Mr. Purvis, Mr. Bourne, have you decided on whether or not (off mic)?

1771. **MR. BOURNE:** We will not be calling Mr. Prud'Homme. Thank you for the opportunity though.

1772. **THE CHAIRMAN:** Second question, just so I can get it in my own mind. Once we complete cross-examination how long before you're prepared to do oral argument?

1773. **MR. BOURNE:** From the Enbridge side I think just a short 15-minute break would be enough time.

1774. **THE CHAIRMAN:** Mr. Jetten?

1775. **MR. JETTEN:** That's fine by me.

1776. **THE CHAIRMAN:** Let the record show that's fine by him.

1777. Ms. Haug, were you -- you're on.

PAUL GENERAL: Resumed

CHARLES HOSTOVSKY: Resumed

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

1778. **MS. HAUG:** Good afternoon, panel.

1779. I have a question for you today that relates to traditional use. Does Six Nations practise traditional activities within the project LSA? The local study

**Six Nations of the Grand River
Examination by Ms. Haug**

area consists of the footprint and extends to 500 metres on both sides of the centre line. So the question is, does Six Nations practice traditional activities within that project local study area?

1780. **MR. GENERAL:** I would say yes.

1781. **MS. HAUG:** Has Six Nations shared this information with Enbridge?

1782. **MR. GENERAL:** In a very general way. Our tradition is not to share a lot of this information with outside folks of any sorts, it's especially the medicine information; that's held very, very close to the chest. But hunting exists all -- or you could pretty much say most of Southern Ontario.

1783. **MS. HAUG:** Thank you.

1784. Does Six Nations recommend any mitigation measures with respect to those traditional activities?

1785. **MR. GENERAL:** We hadn't -- are you talking specifically about talks with Enbridge?

1786. **MS. HAUG:** Yes. Are there any mitigation measures that you would recommend that Enbridge implement so that they avoid or reduce impacts to your traditional use?

1787. **MR. GENERAL:** I'm sure that we could recommend some. We haven't got to that point yet in any sort of discussions. I know with other groups we've talked about things like reforestation of other plots of land, that sort of stuff, but we haven't really mentioned anything with Enbridge.

1788. **MS. HAUG:** Are the Six Nations committed to sharing this information with Enbridge in the future?

1789. **MR. GENERAL:** Again, some of it is very proprietary. I would say depending on the type of information asked for I think there would be a willingness to share some of it, but again the medicine information is very, you know, very tightly guarded.

1790. **MS. HAUG:** So you've already, I think, started responding to my next question which does relate to medicinal plants.

**Six Nations of the Grand River
Examination by Ms. Haug**

1791. During the oral traditional evidence in June, Six Nations indicated their interest in medicinal plants. And we understand that since that time there has been some consultation on medicinal plants, and is this consultation ongoing?

1792. **MR. GENERAL:** I don't know whether you would call it consultation or not. I mean, we have met and we have discussed a number of things over the last few meetings. Whether I would class that as consultation I can't give you a definite answer on that.

1793. **MS. HAUG:** All right, perhaps I'll say -- if we call them "discussions" -- are the discussions about medicinal plants ongoing?

1794. **MR. GENERAL:** I would say yes and no at the same time. Again, a lot of that information is proprietary so, again, a lot of the stuff we're not sharing. You know, what I'm willing to share is the fact that there may be medicinal plants there and, you know, we should be actually opening discussions on how we could determine what is actually on these sites as opposed to, you know, me trying to guess off-hand what's there. I don't know, I've never walked the site so I can't tell. And further, I'm not a medicine person. We have people that are specialized in that particular field that we would certainly invite to come out and have a look.

1795. **MS. HAUG:** So do your medicines persons in the Six Nations have concerns about the project's impacts on medicinal plants?

1796. **MR. GENERAL:** They have concerns about development in general, the loss of plants in general, you know, no matter where the territory is. I recall a discussion with one of these folks quite a while ago now about having to travel farther and farther and farther from Six Nations to find certain types of plants because of the fact that they're no longer available locally.

1797. **MS. HAUG:** Is Six Nations willing to work with Enbridge to develop a plan to avoid and mitigate the impacts of the project on medicinal plants?

1798. **MR. GENERAL:** I think that would be a possibility. It would be up to our council at that point. I mean, we haven't opened talks up. We haven't continued talks.

1799. **MS. HAUG:** Thank you, witness panel.

**Six Nations of the Grand River
Examination by the Chairman**

1800. Mr. Chair, that concludes my questions.

1801. **THE CHAIRMAN:** Thank you, Ms. Haug.

1802. Member Kelly?

1803. **MEMBER KELLY:** I have no questions, Mr. Chair.

1804. **THE CHAIRMAN:** Mr. Lytle?

1805. **MR. LYTLE:** I have no questions.

--EXAMINATION BY/INTERROGATOIRE PAR THE CHAIRMAN:

1806. **THE CHAIRMAN:** I have a couple. I don't know which one of the witnesses wants to answer it. You were here this morning when I asked questions of the Enbridge panel on the mitigation measures for wetlands.

1807. You live here, Mr. General. I indicated this morning in different parts of the country different things respond quicker. How do you feel about natural regeneration? And because that's common in a lot of applications; you know, the preferred method is natural regeneration. I'd just like to hear your comments on that.

1808. **MR. GENERAL:** I don't have a large problem with it in a very general sense. I understand the concept of natural regeneration. I guess my concern would be -- we have a lot of introduced species now such as phragmites, which would be very likely to show up in a wetland situation; they like the water.

1809. So I would guess, and again this is only a guess, that if that project was left to regenerate in around the wetland area that you would possibly get phragmites in there as opposed to natural plants. And again, we would support natural growth for sure if there was some way to guarantee. And I know you can't guarantee that. But if there was some way to guarantee it we would be fully supportive of it.

1810. But I would just be concerned that, yeah, for sure you're going to get something like phragmites or purple loosestrife showing up there as opposed to a more natural plant.

**Six Nations of the Grand River
Examination by the Chairman**

1811. **MR. HOSTOVSKY:** Yeah. I can add I've worked on a couple hundred projects in Ontario with many, many wetland projects. And the general principle from the Ministry of Natural Resources, the guidelines and policies, is that there be no net loss of provincially significant wetlands.
1812. So it's quite common in some development projects to remove part of a wetland and then create an anthropogenic wetland. And the wetland biologists and specialists are trained in doing that. But that would require a detailed study of the study area to look in terms of the hydrology of the study site where you could build an anthropogenic wetland and in terms of the water table and also the soils and plants.
1813. **THE CHAIRMAN:** You said there's been a number of "created wetlands"; I'll use that term. How successful have they been?
1814. **MR. HOSTOVSKY:** I'm not a wetlands biologist so I wouldn't be in a position to state that. But you could probably look on the internet and find that out. But it's quite common practice to have anthropogenic wetlands created or to extend existing wetlands. Because a lot of the wetlands that were, especially southern Ontario, here 100 years ago have been drained and built on. So the basic hydrological and soil conditions are still there.
1815. But that would have to be handled on a site-by-site basis by specialists. It's not something that you can make a generic answer to.
1816. **THE CHAIRMAN:** Yeah. I've got the control over it and I can't push it.
1817. Just a couple of more questions, Mr. General. Yesterday your counsel asked the Enbridge panel specifically would Enbridge be prepared to meet with experts from Six Nations on archaeological studies. And the answer was yes, they would. I guess I'm asking you, is Six Nations prepared to have their experts meet with Enbridge on this project?
1818. **MR. GENERAL:** I think in a general sense, yes. Again, that would be up to our council to carry that forward and to direct us. It would be hard for me to give a definite "yes" on this. Personally I would say yes but I'm at the mercy of my council as well so whatever the council decides on that.

**Six Nations of the Grand River
Examination by the Chairman**

1819. I mean, we have been talking with Enbridge on archaeological stuff, you know, and there is monitors on Enbridge sites as well. So I was here for the question, yes, and I think that would be a good idea. But again, it's unfortunate it would be up to our council to make that final decision for us.
1820. **THE CHAIRMAN:** No, and I appreciate your answer. And having you here with your experience, Mr. General, I'm looking for your opinion and I recognize the council.
1821. The second part, same type of question. Mr. Prud'Homme made the comment yesterday and it was confirmed today as a commitment to have Aboriginal monitors on for construction. In your opinion, do you think Six Nations would want to have construction monitors?
1822. **MR. GENERAL:** Yeah. Again, from a personal sense yeah, I would think that would be a positive for sure. I'm aware of construction monitors and what they do as I am with archaeological monitors and what their purpose is. So I think it's not a bad idea.
1823. Six Nations has kind of a history of having people in the field to monitor what's happening. When I first started my work career many, many, many unfortunately decades ago now, that's how I started out, as a bit of a construction monitor. There was no name for it at the time but that's what I did.
1824. You know, we watched what happened on Six Nations and how the projects were moving forward and, you know, worked with a lot of engineering firms over the years. That's where I got a lot of my on-the-ground training, from when I was very, very young.
1825. So yeah, again personally, because I have experience, I would be supportive of it. But again, I fall back on my previous statement that, you know, that's up to council.
1826. **THE CHAIRMAN:** Okay, my last question. And if you thought the last two were unfair, this one will probably be even worse.
1827. Something that wasn't talked about and I was going to ask Enbridge but neglected to, and that's post-construction monitoring not necessarily specifically for wetlands but for regeneration and in other areas. What's your personal opinion on post-construction monitoring?

**Six Nations of the Grand River
Examination by the Chairman**

1828. **MR. GENERAL:** I think again it would be a wise concept to explore, for sure. For exactly the reason I mentioned when we were talking about wetland regeneration, you don't know what's happening there unless you're monitoring this sort of stuff. And so, you know, you expect the area to regenerate on its own or you expect the construction to happen, you know, the way it's supposed to. But you know, monitoring is a better way to confirm it in a field, for sure.
1829. Length of time, you know, five years would, you know -- I don't think that would be an unreasonable amount of time to continue to monitor these things. As you mentioned this morning, you know, five years is not a very long time when you're considering regeneration of a wetland.
1830. So you know, that would be something certainly that would be worthwhile to negotiate if we're going to continue talking. And we talked about this for other projects that we worked on in the past as well. So again, it's not unknown to us for sure. So yeah, I would agree that that would be an obvious thing to do, for sure.
1831. **THE CHAIRMAN:** I said that was my last question; it's not. And I don't know if we discussed this at the June meeting or not.
1832. On another project that my colleague Dr. Lytle and I were on in northeastern B.C., two Aboriginal groups created a nursery called Twin Sisters. And what they used it for was to take rare plants, medicinal plants, plants that for whatever reason were starting to decline, and propagated them in a nursery. That development then used those plants -- developers used those plants for I call it "quasi-natural regeneration".
1833. Have you ever had any experience with that?
1834. **MR. GENERAL:** Yes, we have. I don't know whether I discussed the Red Hill Valley Project at our first gathering here in June, but Six Nations was involved with the City of Hamilton on the Red Hill Valley Expressway, which is just over here. And one of the things that was discussed and eventually agreed to was to create a company -- it's now called Kayanase -- that specializes in exactly that, to collect native seed, medicines as well, and to try to propagate those in a greenhouse situation for replanting.
1835. And they're specializing right now in restoration work. You know, we

**Six Nations of the Grand River
Examination by the Chairman**

try to promote that particular group whenever we can. But yeah, it's just something that is certainly being done from a Six Nations standpoint right now. We do have a company that actually specializes in it.

1836. **THE CHAIRMAN:** Thank you very much. That's all the questions I have. The panel is dismissed or excused, completed. Thank you very much for not just your evidence today but your evidence presented prior to this oral hearing. It's very useful for the Panel in making its decision.

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

1837. **THE CHAIRMAN:** We have now concluded the evidentiary portion, oral hearing, oral cross portion of the hearing. We'll proceed next to oral argument. And both parties have indicated they'd like a 15-minute break, and then we will -- we'll start up again in 15 minutes with the oral argument. Thank you.

1838. No, we're not. Ms. Haug.

1839. **MS. HAUG:** Mr. Chair, I believe the evidentiary portion is concluded subject to the undertakings.

1840. **THE CHAIRMAN:** Thank you.

--- Upon recessing at 1:20 p.m./L'audience est suspendue à 13h20

--- Upon resuming at 1:34 p.m./L'audience est reprise à 13h34

1841. **THE CHAIRMAN:** Okay, folks, I think we're ready to go with oral argument.

1842. Mr. Bourne, you first, or Mr. Purvis?

1843. Mr. Bourne.

--- **FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. BOURNE:**

1844. **MR. BOURNE:** Yes, it's me, Mr. Bourne. Thank you, Mr. Chairman and Members. I'm pleased to present to you the final argument of Enbridge this afternoon.

1845. I've provided a copy of my argument to the reporter. In argument today, I will utilize the same abbreviations that Enbridge has used in the Application and throughout the proceeding. I'd ask that the evidentiary and legal references that are in square brackets be included in the transcript so that you will be able to confirm that what I am about to tell you is grounded in the evidence and based upon legal precedent. The evidentiary references include the PDF page number or paragraph number of the document or, in the case of transcripts, the line.
1846. Now, the Line 10 Westover Replacement Project is made up of four main components. The first is the decommissioning in place of approximately 32 kilometres of the existing 12-inch diameter pipe; the second is the installation of approximately 35 kilometres of 20-inch diameter pipe; the third is the addition of four remotely-operated sectionalizing valves along the replacement Line 10 pipeline; and the fourth, the addition of one new pig-launching trap and one associated leak-detection meter.
1847. Enbridge is requesting the following primary relief from the Board:
1848. First, a finding that the Project is in the public interest and in order, pursuant to section 58 of the NEB Act approving the Project and exempting the Project from the plan, profile, and Book of Reference provisions of the NEB Act; and second, an order pursuant to section 45.1 of the OPR, allowing Enbridge to decommission in place the identified portions of the pipeline in accordance with the methodology set out in the application.
1849. These two requests are supported by the extensive evidence that is on the record in this proceeding. That evidence, in my submission, demonstrates that it would be in the Canadian public interest for the Board to grant the requests.
1850. To assist the Board in its deliberations, I will address each of the issues outlined in the Board's List of Issues from the Hearing Order [*Exhibit A75552-3, Appendix I, p. 25*], even though for some of those issues there is no dispute in this proceeding.
1851. I will also incorporate Enbridge's reply to the positions presented by Mr. Farquhar in his written argument. With respect to Mr. Farquhar's argument, though, we have not attempted to respond to every point or issue that has been raised. In most instances, we submit that the record speaks for itself. However,

- Enbridge's silence on any particular point should not be taken as agreement with any of Mr. Farquhar's positions.
1852. So I'm going to start by addressing Issues 1 through 3 of Appendix 1 of the Hearing Order. These are the need, economic feasibility, and potential commercial impacts of the project.
1853. The Line 10 Westover Segment Replacement Project is a maintenance project. The existing Line 10 was built in 1962, carrying a variety of crude oils. It has operated safely and reliably for more than half a century. *[Exhibit A74508-2, p. 16]*
1854. In recent years, the Westover Segment that is the subject of Enbridge's application has experienced a higher concentration of preventative maintenance digs and associated impacts to landowners. After a series of extensive integrity inspections, Enbridge has determined that this segment of Line 10 has reached its conservative threshold for replacements.
1855. The analysis shows replacement to be the most cost-effective approach to achieve the following key benefits: enhance the safety and reliability of Line 10; restore Line 10 to its original operating capability; and minimize the disruption to landowners from maintenance activities; and finally improve the hydraulic efficiency of the pipeline, thereby allowing transportation of product while using less energy. *[Exhibit A74506-6, p. 1]*
1856. The need for the Project is further evidenced by the commercial agreement with a third-party customer to fund all of the Project's costs, as estimated at approximately \$219 million *[Exhibit A74506-6, p. 1 and Exhibit A77227-2, p. 58]*, and that includes the decommissioning scope of the project. *[Exhibit A79404-2, p. 1]*
1857. As Line 10 sources its supply from the Enbridge mainline, there is and will continue to be adequate supply to support the use of the applied-for replacement pipeline segment for delivery ultimately to a refinery in Warren, Pennsylvania. *[Exhibit A74508-2, p. 1-1, Exhibit A74506-6, p. 1, and Exhibit A77227-2, p. 59]*
1858. Enbridge's evidence of need, economic feasibility and potential commercial impacts is uncontested by the intervenors in this proceeding and then Enbridge requested The Board should conclude there is a need for the project and

- that it is economically feasible.
1859. I'm now going to deal with the potential environmental and socioeconomic effects. This is this is Issue 4 of Appendix 1 of the Hearing Order.
1860. Enbridge retained CH2M to prepare the ESA for the Project in collaboration with Dillon Consulting Limited. The ESA includes the construction and operation of the replacement pipeline and the decommissioning of the existing pipeline.
1861. Now, before I get into a little bit of Enbridge's response to some of the evidence that has been filed, I want to just quickly address a few issues that were identified by the Panel in their questions to Enbridge and just make sure -- to clear up any potential confusion there may be as to what the record states.
1862. Enbridge's plan for monitoring reclamation is specifically outlined in Section 9.2.3 of the ESA and this includes specific measures related to wetlands and what will be monitored.
1863. Also, I want to point out that when the Board has an opportunity to review the evidence again, and in particular the ESA and Enbridge's response to Environment and Climate Change Canada's letter, you'll note that Enbridge does not anticipate, after applying the proposed mitigation and the modern construction techniques, that there will be any net loss to wetlands form or function.
1864. And finally, I want to just point out that any disturbance to the wetlands -- and this again is reflected in the evidence of the ESA -- will be temporary and will be reclaimed following construction.
1865. Now, Six Nations of the Grand River has submitted an expert report that purports to assess the gaps in the ESA. I don't propose to dive into the details of Enbridge's reply to this report which was filed with the Board on October 14, 2016 [*Exhibit A79620-2*], but I do want to point out that the ESA was prepared in accordance with all applicable requirements and guidelines.
1866. In particular, the ESA and subsequent updates were prepared in accordance with Guide A.2 and K.3 of the NEB Filing Manual and having regard for the concerns and issues raised through stakeholder and Aboriginal engagement. [*Exhibit A74508-2, pp. 20-26*]

1867. The level of detail contained in the ESA corresponds to the nature and magnitude of the anticipated environmental impacts and also meets the NEB's Online Application System guidance. An ESA checklist of the NEB Filing Manual requirements is specifically provided in section 1.8 of the ESA, including specific ESA section references for each filing requirement confirming that information has been provided in relation to each applicable requirement. *[Exhibit A74508-2, pp. 20-26]*
1868. On this basis, it is Enbridge's submission that the ESA is complete and provides sufficient information for the Board to evaluate both the potential benefits and adverse impacts of the Project in determining whether this project is in the public interest.
1869. So let's look at what the evidence says about the environmental and socioeconomic benefits and potential adverse impacts of the Line 10 Westover Segment Replacement Program.
1870. The ESA identified and assessed the potential environmental and socio-economic effects that may result from the project and outlined possible mitigation measures to address those effects.
1871. Enbridge has developed and will continue to develop general and project-specific documents and programs to ensure that these mitigation measures and commitments are implemented, including project-specific environmental protection plan, environmental alignment sheets, environmental training programs, environmental inspection and monitoring, and compliance and commitment tracking. In addition, the project will be incorporated into the existing emergency response program.
1872. Taking into account the implementation of these programs and mitigation measures in the ESA, CH2M has concluded that there are no situations where the project would result in an adverse residual environmental effect or a socioeconomic effect, either on its own or as part of a cumulative effect, that is considered significant. *[Exhibit A74508-4, p. 82]*
1873. Environment and Climate Change Canada filed a Letter of Comment with the Board and provided a number of recommendations in respect to the project. *[Exhibit A79368]*
1874. Enbridge responded to those recommendations in its reply evidence

filed on September 23rd of 2016. *[Exhibit A79569-1]*

1875. Where feasible, these recommendations were accepted; and where they were not, an explanation has been provided.
1876. Some of the recommendations that Enbridge was unable to accept related to construction timing. Although Enbridge plans to construct the pipeline outside of applicable restricted activity periods, as a contingency, Enbridge may need to undertake some construction activities within the recommended restricted activity periods. In such cases, Enbridge has committed to mitigation measures, such as pre-construction nest surveys prior to the commencement of construction.
1877. In particular, the Nest Sweep Protocol was developed by Enbridge considering the Risk Factors for migratory birds. *[Exhibit A79569-2, pp. 9 and 10]*
1878. A number of the recommendations deal with the protection of certain plants or animals and associated habitat that have the potential to be impacted by the project. And again I'm referring to ECCCs recommendations here.
1879. Enbridge has and continues to consult directly with appropriate authorities such as Environment and Climate Change Canada, the Ontario Ministry of Natural Resources and Forestry, and other appropriate government agencies to ensure that effective surveys are conducted and appropriate mitigations applied for the protection of identified sensitive plant and animal species and associated habitats. *[Exhibit A79569-2, pp. 12-15]*
1880. Environment and Climate Change Canada has also provided a number of recommendations in relation to air quality and greenhouse gas emissions. With respect to emissions related to project operations, Enbridge notes that the scope of the project does not include the installation of pumps, compressor stations, tank farms, or any other component that will contribute to air quality during operation of the project.
1881. Rather, the air emissions during operation of the replacement pipeline will be limited to transportation and equipment use during maintenance activities, and these are the very activities that this project is intended to significantly reduce through replacement of this segment. *[Exhibit A79569-2 pp. 16 and 17]*
1882. The qualitative assessment applied by CH2M on behalf of Enbridge

- was based upon key guidance such as the NEB Filing Manual and the Canadian Environmental Assessment document “Incorporating Climate Change Considerations in Environmental Assessment” and is consistent with the approach approved by the NEB in the context of projects with similar or greater scopes. *[Exhibit A79569-2, p. 17]*
1883. Similarly, the assessment of construction-related emissions was completed in accordance with the NEB Filing Manual. A qualitative assessment of the construction and vehicular emissions was considered to be appropriate based upon the scope of the project. *[Exhibit A79569-2, p. 17]*
1884. The ESA notes that the pipeline construction and site specific maintenance activities will result in a temporary increase in emissions and that with the implementation of the mitigation provided in the ESA and EPP, the effects of these emissions are expected to be local in extent, short-term, reversible and not significant. *[Exhibit A74508-2, pp. 110-115]*
1885. I will now very briefly talk about the socio-economic benefits associated with the project.
1886. Although the project is of a relatively limited scope and won't result in additional permanent full-time employment positions, the ESA does identify key economic benefits including increased contract procurement opportunities for local businesses and increased revenue for local, provincial, and federal governments through applicable taxes. *[Exhibit A74508-2, pp 229-232]*
1887. Considering these benefits and the conclusion in the ESA that the project will not result in an adverse environmental or socioeconomic impact considered significant, Enbridge requests that the Board find this project to be in the public interest.
1888. I'm now going to move to the impact to landowners and land use and the appropriateness of the general route, and these are Issues 5 and 8 from Appendix 1 of the Hearing Order.
1889. Through continued engagement with landowners and other stakeholders, Enbridge has continued to refine the route through the regulatory process, most recently including the Electrical Transmission Corridor reroute in the Copetown area that move the pipeline route from certain fee simple lands, including those owned by the Copetown Landowners Group, to instead follow an

- existing electrical transmission corridor in the area.
1890. As a result of the Electrical Transmission Corridor reroute and other stakeholder engagement efforts, Enbridge has been able to secure the necessary right-of-way and temporary workspace for 100 percent of the 79 fee simple tracts traversed by the project. *[Exhibit A79585-3]*
1891. In addition, the Copetown Landowners group has expressed its support for the Electrical Transmission Corridor route and has withdrawn from further participation as an intervenor in this matter.
1892. Although acquisition of the right-of-way and temporary workspace for the 45 tracts owned by a mixture of industry, municipalities, conservation authorities, and provincial ministries currently stands at 11 percent. All of the owners for these fee simple other lands have confirmed their non-objection to the route and Enbridge will continue to work with these entities to secure the necessary land rights by working through the processes that they have established to acquire those rights. And those will all be acquired in advance of construction commencing, anticipated by July of 2017.
1893. Further, through continued engagement efforts, Enbridge was also able to resolve the concerns of intervening landowners Knollwood Golf Limited, including Jason Cassis and Heidi Cassis, as well as Martin Hotz. This is evidenced in the case of the first three landowners by the letter of support and confirmation of withdrawal as intervenors which was filed on October 4, 2016 *[Exhibit A79788-1]* and for Martin Hotz, by the letter filed June 23, 2016. *[Exhibit A77901-1]*
1894. It's no small achievement that there are no remaining landowner intervenors, no outstanding landowner concerns regarding the route of the pipeline, and no outstanding landowner concerns regarding the decommissioning of the existing Line 10 pipeline segment.
1895. Given the success of Enbridge's landowner engagement and land acquisition program, it is Enbridge's position that the NEB should approve the route for this project.
1896. I'm now going to move to contingency planning for spills during construction and operation, and this is Issue 9 of Appendix I of the Hearing Order.

1897. Now, this topic did not receive much attention during the course of the hearing or in the written evidence or the IRs of intervenors, but it is one that Enbridge takes very seriously and is of importance in determining whether the project is in the public interest.
1898. Enbridge develops its emergency response plans to comply with the applicable regulatory requirements [*Exhibit A74508-28*] and through consultation with communities and first responders in proximity to its pipelines. [*Exhibit A772277-2, pp. 14-16*]
1899. Enbridge then tests the effectiveness of its emergency response plans and provides training on emergency procedures through emergency exercises conducted all along its pipeline system each year. These exercises ensure the continued improvement of Enbridge's emergency management program with lessons learned being tracked and improvement plans assigned through an Emergency Response Exercise Action Tracker. [*Exhibit A772277-2, p. 18*]
1900. In addition, Enbridge's Emergency Management department chairs an Emergency Response Advisory Team that also drive continuous improvement through quarterly meetings that review lessons learned from both exercises and real events and manages action items and communication with office staff and field personnel. [*Exhibit A77277-2, p. 19*]
1901. Enbridge's evidence regarding emergency management and contingency planning for spills is uncontested by the intervenors in this proceeding.
1902. Going now to engineering design and integrity, which is Issue 6 of Appendix I of the Hearing Order.
1903. I'd like to first briefly address the decommissioning scope of the project. Enbridge has presented the Board with a detailed technical report explaining key decommissioning activities such as removing product from and cleaning the decommissioned line, segmenting the decommissioned line to prevent the risk of the decommissioned line becoming a conduit for water, and an ongoing monitoring program to identify, assess and mitigate any potential future issues with the decommissioned line [*Exhibit A74508-22, p. 1*]
1904. Enbridge is proposing to decommission the pipeline segment in place because it is the most suitable approach from a technical and environmental

- perspective given the current land use and the fact that Enbridge's Line 11 will continue to operate in the existing corridor for the foreseeable future.
1905. Enbridge's decommissioning plan is based upon guiding industry literature and applies appropriate mitigation to address key risks associated with decommissioning in place including erosion, soil contamination, water contamination, subsidence, and the risk associated with the pipeline becoming a water conduit. *[Exhibit A74508-22 and Exhibit A78552]*
1906. Enbridge has been able to address the issues and concerns that landowners and other stakeholders have raised with respect to the decommissioning scope of this project. *[Exhibit A77277-5]*
1907. Finally, Enbridge's plan for decommissioning is based upon Enbridge's decommissioning plan for Line 3, and that decommissioning scope has been conditionally approved by the NEB. *[OH-001-2015, Filing ID A76575].*
1908. We ask that the Board similarly approve Enbridge's decommissioning proposal for this project.
1909. Another key aspect related to engineering that has been of particular interest to the Intervenor, Mr. Farquhar, is the leak detection methods applied to the project. The record already provides Enbridge's response to the issues raised by Mr. Farquhar and I do not propose to repeat that all during argument, but I would like to review a few a couple of the key topics that will help the Board to make a determination to approve the project.
1910. First, Enbridge has committed to comply with Annex E of CSA Z662-15. *[Exhibit A77229-2, p. 6]*
1911. Annex E provides the recommended practice for liquid hydrocarbon pipeline system leak detection that is not mandatory for compliance with the code or with the Onshore Pipeline Regulations, but Enbridge nevertheless recognizes that the Annex E guidelines represent industry best practices for the design and testing of a robust pipeline leak detection system. Enbridge applies the recommended practice set out in Annex E as part of its standardized approach to leak detection over its entire system. *[Exhibit A77229-2, p. 6.*
1912. Enbridge complies with Annex E by employing a comprehensive, multi-layered approach to leak detection and is committed to the continuous

improvement of its leak detection strategy. Enbridge's leak detection includes six primary leak detection methods, each with a different focus and feature differing technology, resources and timing. Together these methods provide an overlapping and comprehensive leak detection capability under all operating scenarios, including the operation of pipelines at reduced pressures. [*Exhibit A77229-2, pp. 1 and 6, and Exhibit A78493-2, pp. 1-4*]

1913. Mr. Farquhar has suggested that Enbridge may not be compliant with Annex E, if degradation of its primary leak detection method results in the use of alternative method of tank gauging for even short periods of time. Enbridge does not agree with this position as CSA Z662-15 clearly gives consideration for the temporary use of alternative methods of leak detection while the primary method is down.
1914. Mr. Farquhar also argues in favour of additional conditions around reporting requirements on conditions of degradation of the primary leak detection methods as well as its leak detection testing results. Given that Enbridge's leak detection methods are standardized across its entire system, Enbridge suggests that the Board has many other tools available to it to verify compliance, including audits and inspections that would be more appropriate in the circumstances.
1915. I'll specifically address Mr. Farquhar's position when I get to the portion of my argument where I address the draft conditions. And sorry, I meant to say that I'll specifically address his position on those draft conditions when I speak about the draft conditions more generally.
1916. I'm now going to move to the potential impact on Indigenous interests. This is Issue 7 of Appendix I of the Hearing Order.
1917. As the Board is aware, how the duty to consult is to be discharged in the context of an application under section 58 is at the heart of a pending Supreme Court of Canada appeal by the Chippewas of the Thames First Nation relating to the Line 9B reversal and Line 9 capacity expansion projects. [*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., 2016 CanLII 12151 (SCC)*]
1918. That is an appeal of a decision by a majority of the Federal Court of Appeal which upheld an NEB decision where the NEB had not expressly assessed the satisfaction of the duty to consult in the context of a section 58 application where the Crown was not the proponent. [*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc., 2015 FCA 222*]

1919. Each party in its pending Supreme Court of Canada appeal has taken a different position on the issues of how the duty to consult is to be discharged under section 58. There is some value in highlighting what those positions are.
1920. The Appellant, the Chippewas of the Thames First Nation, argued the Board is authorized to assess the adequacy of Crown consultation but erred by not having done so. [*Appellant Factum at paras. 79, 86*]
1921. The Appellant then argued that the Board is not authorized to engage in consultation itself. [*Appellant Factum at paras. 89-90*]
1922. Enbridge argued that the Board is indeed authorized to assess the adequacy of consultation [*Enbridge Factum at paras. 44-46*] and also to engage in consultation given its broad remedial powers [*Enbridge Factum at paras. 47-56*].
1923. Then Enbridge argued the Board's process was more than adequate to discharge the duty to the Appellant. Enbridge also argued, as an alternative, that even if the Board were not empowered to engage in consultation, the Minister of Natural Resources could rightly have relied on the NEB process in determining that the duty to the Appellant was satisfied. [*Enbridge Factum at paras. 114-119*]
1924. The Attorney General of Canada argued that the NEB is empowered to assess the adequacy of Aboriginal consultation. [*AG Factum at paras 69-71*]
1925. The Attorney General then argued that the Board is not authorized to engage in consultation [*AG Factum at para. 69*] but that its process was consistent with section 35 so the Minister of Natural Resources could rightly have relied on it as satisfying the duty to consult [*AG Factum at paras. 71, 77, 79*].
1926. In this way, the Attorney General's argument is similar to Enbridge's alternative argument.
1927. The Board expressed its understanding that participation in a forum created for other purposes may satisfy the duty to consult if in substance an appropriate level of consultation is provided. [*NEB Factum at para. 72*]
1928. The Board then explained why its process under section 58 is effective

at facilitating consultation. [*NEB Factum at paras. 74-80*]

1929. That summary of the positions being taken in the pending Supreme Court of Canada appeal revealed two things. First, the Appellant, the Attorney General, and Enbridge all agree the NEB is authorized to assess the adequacy of consultation. Second, there are differing views about how the duty to consult is discharged in the context of a section 58 application.
1930. Respectfully, the Board should frame its decision in this case to include a clear assessment of the duty to consult. That may involve reviewing first, the Board's inclusive procedures for obtaining information from First Nations and Aboriginal groups; second, Enbridge's engagement; third, what claims were made and a prima facie assessment of their strength; fourth, what specific concerns were disclosed either through the engagement process or the regulatory process; fifth, how those concerns are being addressed through commitments, conditions, or otherwise; then sixth, the Board should express two conclusions.
1931. It should state that if the Board is authorized to engage in consultation, that the duty to consult was discharged through the Board's comprehensive process. It should also state that if the Board is not empowered to engage in consultation, another representative of the Crown like a minister would be right to rely on the Board's comprehensive process as having wholly discharged the duty to consult.
1932. To be clear, Enbridge is asking that the Board express both of those conclusions given the pending Supreme Court of Canada appeal.
1933. Now, I am going to explain why the Board should be satisfied in this case with the effectiveness of its process in relation to the application before it.
1934. The Board is the master of its own procedure. Here, the Board established a procedure recognizing the Métis Nation of Ontario, Mississaugas of the New Credit First Nation -- going forward I'll refer to those as MNO and MNCFN respectively -- Six Nations of the Grand River, and Haudenosaunee Confederacy Chiefs Council as represented by the Haudenosaunee Development Institute, which I'll refer to as HDI. And the Board established or recognized those rights when it made its pre-decision on standing in this case. [*Exhibit A75552-3, p. 27*]

1935. Here, Six Nations and HDI availed themselves of that standing. MNCFN and MNO did not.
1936. The Board established a participant funding program to provide financial support to intervenors. *[Exhibit A75552-3]*
1937. That financial support was above and beyond any payments made by Enbridge. The Board's procedure allowed intervenors to submit written evidence. Six Nations did so. HDI did not. It also allowed intervenors to ask information requests of Enbridge. None of the Aboriginal intervenors took advantage of that opportunity. However, the Board did submit five rounds of information requests to Enbridge, focusing in part on Enbridge's engagement with First Nations and Aboriginal groups.
1938. The Board convened a community meeting, which was held on June 28th of 2016 in which the participants could present oral statements and Aboriginal intervenors could present oral traditional evidence. *[Exhibit A75552-3, A76887-1 and A77648-1]*
1939. Six Nations did participate in the community meeting by having two witnesses present oral traditional evidence. *[Exhibit A78265-1]*
1940. HDI did not participate at the community meeting.
1941. The Board held an oral hearing in which intervenors were given the right to cross-examine a panel of Enbridge witnesses. *[Exhibit A79239-1]*
1942. Six Nations did so. HDI did not.
1943. All parties were given the opportunity to present oral or written final argument, regardless of whether they otherwise participated in the oral hearing. Six Nations will present their oral argument once I'm done here and HDI presumably has decided not to.
1944. The Board's process has been unrestrictive throughout. It has not limited what issues could be raised by Aboriginal intervenors. There is no doubt that Aboriginal intervenors have had every opportunity to make their concerns known to the Board and to put their evidence and perspectives forward.
1945. Enbridge's own engagement occurred in parallel with the Board's

- process and under the Board's oversight. That process involved regular communications, including emails, text messages, telephone calls, and in-person meetings, all of which started in June 2015. [*Exhibit A74506-32, pp. 3-14, Exhibit A76417-3, Exhibit A78970-2, pp. 9-11, Exhibit A79404-10, insert Response to NEB IR 5 and Exhibit A79858*]
1946. To be clear, Enbridge's Aboriginal engagement was not limited to just five months, as was suggested by Professor Hostovsky's report filed in September of this year. [*Exhibit A79620-2 pp. 2, 11, 16*]
1947. That suggestion seems to be based on the mistaken belief that Enbridge stopped engaging after it filed its Application.
1948. What rights are being claimed by the Aboriginal intervenors?
1949. Well, Six Nations and HDI are both representatives of the Haudenosaunee population in the vicinity of the project. Both claim rights under the *Nanfan Treaty* of 1701 [*Exhibit A77766-1, -4, 5 and -6*] and the *Haldimand Proclamation* of 1784. [*Exhibit A77766-1 and -8*].
1950. Enbridge did not restrict its engagement with Six Nations or HDI based on an assessment of Haudenosaunee rights. Enbridge chose to engage with both, trying to identify and address any issues or concerns. [*Exhibit A79979-2, p. 6*]
1951. Nevertheless, Enbridge makes five observations about the assertions of rights.
1952. First, Enbridge does not dispute that Six Nations has Aboriginal and treaty rights.
1953. Second, the Project is being developed outside the Haldimand Tract, which extends six miles from either bank of the Grand River. [*Exhibit A79979-2, p.6 and Exhibit A79979-4*]
1954. That is the land contemplated by the *Haldimand Proclamation*. Six Nations' legal counsel conceded the *Haldimand Proclamation* is not particularly relevant to this project during his cross-examination of Enbridge's witness panel. [*Exhibit A80075 at lines 1221 and 1230*]

1955. Third, Ontario courts have expressed reservations about assertions of Haudenosaunee sovereignty over treated lands [*Detlor v. Brantford (City)*, 2013 ONCA 560 (“*Detlor*”) at para. 11] and the applicability of the *Nanfan Treaty* to private property and lands that are not available for hunting [*1536412 Ontario Ltd. v. Haudenosaunee Confederacy Chiefs Council*, 171 A.C.W.S. (3d) 236, 2008 CanLII 28041 (ONSC) at para. 14].
1956. Courts have also recognized the Haudenosaunee as not seeking to recover any treated lands in Six Nations’ long pending claim against the federal and provincial governments. [*Detlor* at paras. 9, 94 and Exhibit A79979-3]
1957. Fourth, all of the lands along the proposed route are either now owned privately or have been taken up by the Crown for specific purposes such as hydro corridors and highways. [*Exhibit A79406-7, p. 2*]
1958. Fifth and finally, members of Aboriginal groups need landowner consent to access private lands for traditional purposes. Indeed, Mr. General admitted this during the community meeting, that Six Nations’ members conduct themselves on that basis. [*Exhibit A78265-1, paras. 128, 147, 149-151, 298*]
1959. Based on all of that, I respectfully submit to you as part of the Board’s assessment of the duty to consult, any claims based on Haudenosaunee sovereignty, title, or the accessing of taken-up lands in relation to this project should be identified as prima facie weak.
1960. That brings me to the issue of what specific Aboriginal concerns were raised through the engagement process and the Board’s regulatory process.
1961. MNCFN, Six Nations, and HDI all expressed interests and concerns about archaeology and the potential that artifacts may be discovered along the proposed routes. [*Exhibit A74506-31, p.9, Exhibit A78790-2, pp. 9-11, and Exhibit A79404-10*]
1962. MNCFN expressed an interest in harvesting wood that could be used for traditional purposes and the collection of White Pine needles. [*Exhibit A78790-2, pp 3-5*]
1963. Six Nations expressed traditional land use concerns relating to deer hunting and medicinal plant gathering. [*Exhibit A77766-1 paras. 16 and 17, Exhibit A78265-1, paras. 120, 145, 174-175, 255-258*]

1964. It also expressed an interest in conducting a traditional land use study. *[Exhibit A79404-10, p. 1-3]*
1965. No traditional land use concerns were raised by HDI. HDI resisted engaging about specific project impacts -- for example, on traditional practices -- wanting instead to focus on rights and its contention that Enbridge requires the consent of HDI to proceed with the project. *[Exhibit A79404-10, pp. 5 and 6]*
1966. These issues are being addressed through Enbridge's ongoing engagement process, commitments made by Enbridge to the Board, and the Board's draft conditions.
1967. MNCFN decided not to participate in the NEB regulatory process but it was nevertheless deeply engaged by Enbridge. MNCFN expressed thanks to Enbridge on April 26, 2016 for Enbridge's hard work in the engagement process. *[Exhibit A79406-3, p. 2]*
1968. Then, on July 19, 2016, MNCFN also expressed appreciation for the organizational quality and complexity of the mapping, scheduling, and documentation that it was provided by Enbridge. *[Exhibit A79406-3, p. 12]*
1969. Enbridge has also worked with the Haudenosaunee population in the vicinity of the project through two separate avenues, by engaging with both Six Nations and HDI.
1970. Enbridge entered into archaeological monitoring agreements with both Six Nations on November 25, 2015 and HDI on February 8, 2016 *[Exhibit A76417-3, pp. 3 and 4]* so they could have boots on the ground at sites of potential archaeological significance. The monitors continue to work alongside the archaeologists in the field to ensure that Enbridge's archaeological program is conducted respectfully and to represent the interests of the community and to gain a better understanding of what's happening in the field.
1971. In cross-examination, Mr. Jetten asked if Enbridge would be willing to meet with Joanne Thomas of Six Nations to discuss archaeological issues. Enbridge expressed its enthusiasm to have such a meeting *[Exhibit A80075 at lines 1117-1119]* and indeed Enbridge has participated in numerous meetings with Ms. Thomas in attendance, as was admitted by Mr. General during my cross-examination today.

1972. Further to the Aboriginal archaeological concerns, Enbridge is also conducting Stage 2 archaeological assessments for the entire Project footprint, and Stage 3 and 4 assessments as required by the provincial regulator, all before the start of construction. *[Exhibit A80075 at lines 971, 1007-1010, 1016, 1032-1033, 1094]*
1973. There is a dispute between the parties about whether Enbridge engaged Six Nations about traditional land use practices, specifically on August 6, 2015. Mr. General's testimony on that point was equivocal. He stated that he did not recall and did not believe that Six Nations had advised Enbridge on August 6, 2015 about an absence of traditional practices along the project route.
1974. On that front, Enbridge notes two uncontested facts.
1975. First, Enbridge engaged with representatives of Six Nations Consultation and Accommodation Process team and the Six Nations Eco-centre and Wildlife Management Office early on, including on August 6 of 2016. Those representatives of Six Nations are very experienced, as is clear from Mr. General's biographical details *[A77766-2, -3]*, and clearly have always understood the importance of traditional practices in these sorts of circumstances.
1976. Second, Six Nations, still to this date, has not identified any traditional practices as occurring at any specific sites along the project route.
1977. Six Nations general traditional land use concerns were only expressed for the first time in Mr. General's affidavit on June 20, 2016. *[Exhibit A77766-1, para. 16]*
1978. Mr. General expressed an awareness of Six Nations hunting in the vicinity of the Copetown golf course. He also expressed in his affidavit a concern that Six Nations had not conducted a traditional land use study. Then, when Mr. General testified at the community meeting on June 28 of 2016, he also expressed a concern about the harvesting of certain medicinal plants. *[Exhibit A78265-1, paras. 120, 145, 174-175, 255-258]*
1979. Even though all of these concerns were raised late in the process, Enbridge tried to work with Six Nations to address them. Enbridge met with Six Nations to get specifics about which parcels of land are purportedly being used by Six Nations for deer hunting and whether any medicinal plants are being

harvested by Six Nations other than those listed by Mr. General at the community meeting. *[Exhibit A79569-2, para. 14]*

1980. Enbridge was advised that members of Six Nations hunt on the Copetown Woods golf course property, to the west of Jerseyville, in the Dundas Valley Conservation Area, and also on unspecified private lands in the general area. *[Exhibit A79569-2, para. 14]* Jerseyville is approximately 5.6 kilometres to the west of Copetown Woods Golf and Country Club. It and areas to the west of it are not impacted by the project. *[Exhibit A79569-2, para. 14]*
1981. Enbridge also surveyed all private landowners along the right-of-way to determine if any had consented to the accessing of their lands by First Nations or their members for traditional purposes. *[Exhibit A79569-2, para. 10]*
1982. When conducting this survey, Enbridge asked five questions:
1983. Do you currently, or have you in the past, allowed First Nations access to your lands for the purpose of hunting or conducting traditional activities?
1984. If yes, who have you granted access to or what band?
1985. Do you have a written or verbal agreement? If written, can we have a copy?
1986. What activities are they conducting?
1987. Have you seen or observed any First Nations activities/hunting/fishing on your land without permission? *[Exhibit A79905]*
1988. As indicated by Ms. Schwaebe yesterday, nobody answered “yes” to any of those questions. *[Exhibit A80075 at lines 1169-1205]*
1989. That Six Nations has not identified any specific deer hunting sites in the immediate vicinity of the project is not surprising. Indeed, it’s exactly what one would expect based on the oral testimony from Mr. General at the NEB community meeting. There, he explained at length that Six Nations traditional territory has been deforested, taken up and developed over hundreds of years with the result that members now have to travel to exercise their rights. *[Exhibit A78265-1, paras. 33, 127-133, and 143-151]*

1990. The Line 10 replacement will not impact lands that would otherwise be used for hunting. It is occurring on lands that are already unsuitable for hunting because they are owned privately, were developed as farms or residential or industrial sites, or were set aside by the Crown for utility corridors and highways long ago. There is doubt and certainly a lack of clarity about whether any deer hunting is occurring along the specific project route.
1991. Regardless, the ESA outlines measures that Enbridge will implement up and down the project route to mitigate the impacts of construction, which will result in the corresponding mitigation of impacts on any deer hunting that may be occurring. As well, Enbridge has a Traditional Land and Resource Use Sites Contingency Plan that will be engaged in the event that traditional deer hunting, or any other traditional land use, is identified during construction. *[Exhibit A79979-2 at p. 22]*
1992. With respect to medicinal plants, Six Nations identified certain species as medicinally important during the community meeting: plantain, tobacco, burdock, strawberries, jewelweed, and raspberry cane. None of those species are at risk, and indeed all are considered common and secure in Ontario. *[Exhibit A78970-2, p. 28, Exhibit A79569-2, p. 6]*
1993. There is also no evidence of any of those species being harvested from lands along the project route.
1994. Enbridge nevertheless tried to work with Six Nations by offering to hire a community member who harvests medicinal plants to obtain more specifics about that traditional package -- or practice. Enbridge also offered a confidentiality agreement to address the proprietary information concerns that were expressed by Mr. General in his cross-examination earlier today. Six Nations initially expressed interest in Enbridge's offer but to date, it has not taken Enbridge up on this offer. *[Exhibit A79569-2, p. 6].*
1995. Enbridge maintains that a traditional land use study is not required. Traditional practices in southern Ontario have been influenced by centuries of development and the taking up of lands, as Mr. General fairly acknowledged during the community meeting. *[Exhibit A78265-1, paras. 33, 127-133, 143-151]* Traditional land uses are also incompatible with the ownership and use of the lands along the project route.
1996. A traditional land use study is also not a requirement under the Six

- Nations Consultation and Accommodation Policy, notwithstanding what the report from Mr. -- Professor Hostovsky has said. *[Exhibit A79979-2 at p. 11]* Indeed, traditional land use studies are not referenced anywhere in that policy.
1997. Nevertheless, after Mr. General filed his affidavit, Enbridge offered \$20,000 of additional funding beyond what it had earlier agreed to pay as capacity funding to support an investigation of Six Nations' traditional uses. It also agreed to work with Six Nations to develop a work plan and budget if Six Nations believed that Enbridge's offer of \$20,000 was inadequate. Six Nations has not responded to either of those offers to date *[Exhibit A79569-2, pp. 7 and 8]* but Enbridge did clarify during cross-examination that its offer to Six Nations remains open *[Exhibit A80075 at line 1132]*.
1998. Mr. Jetten expressed a willingness on the part of Six Nations to continue engaging with Enbridge during his cross-examination of Enbridge's witness panel, and this is seen by Enbridge as encouraging. *[Exhibit A80075 at lines 1118-1119, 1131-1132]*
1999. Six Nations had previously expressed in a letter that was copied to the federal and provincial Crowns, dated May 10, 2016, that it was requiring Enbridge to accommodate it on all pipelines in its traditional territory. *[Exhibit A79979-5]*
2000. That position was recently re-articulated by Six Nations in a press release on September 26, 2016, wherein Six Nations expressed that it has ceased all current and future engagement with Enbridge about Line 10, noting that Six Nations had tasked its Consultation and Accommodation Process team with seeking accommodation on all of Enbridge's pipelines. *[Exhibit A79979-2, p. 17]*
2001. Turning now to HDI, Enbridge opened the door to engaging with HDI by agreeing to submit an application and application fee. Since then, however, HDI has resisted engaging with Enbridge about site-specific and project-specific concerns, instead maintaining a rights-based and consent-based position. *[Exhibit A79404-10, pp. 5 and 6]*
2002. Archaeological participation is the one exception. Enbridge is continuing to engage with HDI archaeological monitors pursuant to the parties' agreement.
2003. HDI was granted standing as an intervenor in the regulatory process

- but it did not file any evidence, it did not participate in the Board's community meeting, and it did not participate in today's -- or this week's oral hearing. There is no evidence from HDI before the Board.
2004. On September 20 -- or, I'm sorry, on September 14, 2016, HDI sent a letter to the Honourable Minister of Natural Resources, Jim Carr, copying the Board. That letter states that HDI has withdrawn from the NEB process, which may explain why HDI is not participating today, although Enbridge is not aware of any formalization of that withdrawal. [*Exhibit A79505-1*]
2005. I am going to conclude about the Aboriginal issues by focusing on a few legal principles and how they apply here.
2006. First, consultation is a two-way street. [*Haida at para. 42*] All sides are required to engage in a consultative process actively and in good faith. HDI could not have bettered its position by not participating actively in engagement or regulatory processes, nor could Six Nations be accepted as having bettered its position by cutting off its engagement with Enbridge much later on in the process.
2007. Second, the duty to consult involves a balancing of societal and Aboriginal interests. It is not a veto. [*Haida at para. 48*] The fact that Six Nations and HDI have not consented to the project should not stand in the way of its approval.
2008. Third, an assessment of the satisfaction of the duty to consult is not a proper forum for making a conclusive determination about whether Aboriginal or treaty rights exist but it nevertheless may involve a prima facie strength of claim assessment. [*Carrier Sekani at para. 36, citing Haida at paras. 43-45 and Taku River at para. 32*]
2009. Indeed, the appellant in the pending Line 9 Supreme Court of Canada appeal argued the Board erred by not engaging in that prima facie assessment. With respect to this application, I have already explained that Enbridge accepts Six Nations as having rights, but that claims based on Haudenosaunee sovereignty, title, or the accessing of taken-up lands should be identified in this case as prima facie weak.
2010. Fourth, the duty to consult relates to the proposed conduct or decision before the Board. The duty to consult does not apply to past developments [*Carrier Sekani at para. 45*] and there must be a causal connection between the

- conduct or decision in issue and the alleged impact. [*Carrier Sekani at para. 51*]. Here, the duty to consult does not relate to pipelines in the traditional territory of Six Nations other than the proposed Line 10 Replacement Project.
2011. Fifth and finally, the duty to consult exists on a spectrum. [*Haida at paras. 43-45; Taku River at para. 32*]
2012. Here the assertions of sovereignty, title, and the accessing of taken-up lands are prima facie weak, and if there are any impacts on those rights, which it is not borne out by the evidence, they are very limited because the project involves the replacement of an existing older pipeline with a newer one and because no traditional practices have been identified as specifically occurring on the project route.
2013. I submit to you, therefore, that the duty to consult was only triggered at the low end of the spectrum, yet the mitigation measures in the ESA, the contingency plans, and the Board's conditions are such that Aboriginal interests are being addressed and accommodated as though the duty were at the deep end.
2014. I'm now going to address the draft conditions that the Board provided to the parties over the -- or just at the end of the weekend.
2015. I'd like to start with draft Condition 8 to the section 58 order which sets out the requirement to file an updated EPP relevant to the section 58 scope of the project.
2016. Enbridge does not take issue with this condition, but would like to clarify its understanding regarding the requirement for site-specific mitigation for migratory birds and provincially and federally listed species at risk as reflected in sub (b) and (c) of the condition.
2017. The EPP will include mitigation specific to those areas where the relevant wildlife habitat has been identified, but the EPP is designed to provide appropriate mitigation measures for various conditions that could exist at the time of construction, and the application of mitigation is necessarily contingent on those actual conditions at those locations at the time that construction activities are taking place in that location. If this does not accord with the Board's intention with regard to this condition, Enbridge would request that it please provide further direction in the final condition applied to the project.

2018. Next, I'll draw your attention to draft Condition 13 regarding archaeological and heritage resource clearances and authorizations. Enbridge has undertaken to acquire all historic resource clearances for the pipeline. Enbridge will have completed all initial investigations of the pipeline right-of-way in the near term; however, upon the identification of archaeological or historic resource sites further work may be required to obtain historical resource clearances for specific sites.
2019. The work that needs to be undertaken for these sites is issued under a separate permitting and clearance. Therefore, there may be sites on the project footprint that may require further investigation and mitigation, and consequently Enbridge may not receive those clearances or conditional clearances for every project area 30 days prior to the commencement of construction.
2020. So Enbridge proposes that draft Condition 13(a) be amended to read as follows:
- “Confirmation that Enbridge has or will obtain all of the required archaeological and heritage resource clearances and authorizations from the Ontario Ministry of Tourism, Culture and Sport”.*
2021. This wording is consistent with wording employed by the Board on a similar draft condition for Enbridge's Line 3 Replacement Program [*Filing ID A4Z5U4, p. 238*] where it was addressing a similar issue raised by Enbridge with respect to the potential timing of clearances for that project.
2022. For draft Condition 14 requiring the filing of detailed feasibility assessments for both horizontal directional drills and horizontal directional bores, Enbridge notes that there are circumstances where, based upon field conditions experienced during construction, it may be advisable to revise a crossing method to either an HDD or an HDB where one had not previously been planned.
2023. Enbridge requests that additional language be added to this condition to allow for the provision of detailed feasibility assessments for any previously unplanned HDDs or HDBs that may be decided upon during construction activities, and Enbridge requests that the requirement be that such assessments be provided seven days in advance of commencing those HDD or HDB activities.
2024. For draft Condition 23 requiring the filing of contingency construction

- methods where an HDD or HDB has failed, Enbridge requests that the requirement be amended from 15 days prior to commencing the contingency construction to seven days prior. This will help avoid delays to the completion of construction and will help minimize the construction activities that could potentially take place during frozen conditions.
2025. For draft Condition 20, Mr. Farquhar has requested additional language to specify a requirement that the requested information should be provided individually for each of the computational -- I'm going to go back to the acronyms since I can't remember what it stands for -- for each of the CPMs employed.
2026. Enbridge can confirm that its leak detection manual will describe the requested information for each of the CPMs applied.
2027. For draft Condition 25 requiring the filing of leak detection system test results, Enbridge requests that in sub (b) the words "and other methods" be removed. Testing in this context can only confirm sensitivity, accuracy, and reliability performance for the computational pipeline monitoring methods. So there's the meaning of the acronym -- computational pipeline monitoring. This includes automated volume balance, mass balance system, and rupture detection system.
2028. Mr. Farquhar has requested additional sub parts to be added to this condition. Enbridge notes that his requested wording in sub (c) is already a requirement in Annex E which Enbridge has committed to be compliant with.
2029. With respect to his request to add sub (d), Enbridge notes that sub (a) already requires Enbridge to file the results of the testing six months after commencing operations. To the extent the Board would like to review continuing performance during operation, it has many other compliance verification powers in its toolbox, including audits and inspections that Enbridge submits would be more appropriate and comprehensive than what Mr. Farquhar has proposed as a condition for continued reporting in the project approval.
2030. For draft Condition 26 regarding pressure surge and overpressure protection, Enbridge submits that this condition has already been met. The system utilized by Enbridge for pressure control and overpressure protection on Line 10 is described in section 1.0 of the Transient Hydraulic Report filed with the NEB under Enbridge's response to NEB IR 3.2(a). [*Exhibit A78683-2 pp. 4-*

- 5; *Exhibit A78683-4 p. 4]*
2031. This approach meets the requirements of CSA Z662-15 Clause 4.18.
2032. Furthermore, Enbridge manages pressure control and overpressure protection systems in accordance with CSA Z662-15 Clause 10.9.5.1 when the operating parameters of the pipeline are below the maximum operating pressure of the system.
2033. The scenarios proposed by the Board in 26(b) have also already been addressed by the transient hydraulic report filed with the NEB under Enbridge's response to NEB IR 3.2(a). [*Exhibit A78683-2 pp. 4-5 and Exhibit A78683-4 p. 4]*
2034. Based on Enbridge's operating experience, RSV closure, intentional or otherwise, is not the worst-case scenario when compared to a station PCV closure under communication out conditions. That is, situations where communications with the pipeline control system have been lost.
2035. Further, as specified within the report, there are no locations where the surge pressure exceeds the maximum operating pressure by more than 10 percent, and as such no corrective measures are required as requested by draft Condition 26(c). On this basis, Enbridge requests that this condition be removed in its entirety.
2036. With respect to Condition 27, Enbridge requests that the requirement for a full-scale exercise specific to this segment be replaced with a requirement for a tabletop exercise and an equipment deployment exercise specific to this pipeline segment.
2037. Enbridge's eastern region staff just concluded a full-scale exercise last week in relation to Line 9, which included NEB participation. In addition, Enbridge is currently planning a French language full-scale exercise in the Province of Quebec in 2019 based upon that province's expressed interest in Enbridge conducting such an exercise.
2038. Each full scale exercise takes approximately one year to plan and to arrange, and it would be the same Enbridge staff that were involved in last week's full-scale exercise in relation to Line 9 who are also involved -- or will be involved in the planned full-scale exercise in Quebec that would then be assigned

to any full-scale exercise conducted in relation to Line 10.

2039. I note that the National Energy Board letter dated April 24, 2002 [*File 172-A00073*] requires companies under the Board's jurisdiction to conduct a full-scale exercise every three years.
2040. Enbridge already goes beyond this requirement by conducting a full-scale exercise once every three years in every region that it operates. If the draft condition were to apply to this project without revision, this would mean that Enbridge would be conducting three full-scale exercises in its eastern region within a four-year timeframe.
2041. In the alternative, if the Board would still like to see Enbridge conduct a full-scale exercise in relation to the specific Line 10 segment, Enbridge requests that the requirement be revised to require such exercise to take place within five years of going into service.
2042. I'd now like to turn to Condition 30 regarding leak detection systems and compliance with Annex E.
2043. Mr. Farquhar has requested an additional part to this condition that would require Enbridge to develop a method of estimating absolute sensitivity of the CPMs on a real time basis.
2044. Enbridge cannot commit to developing a method that currently has not been developed by anyone in the industry prior to operation of the pipeline. Furthermore, such a method would not provide material benefit to operating the leak detection systems.
2045. Enbridge has already submitted in its IR responses that the trigger to go to another method of leak detection is based upon system failure modes such as instrumentation. This would be the case even if the Mr. Farquhar's real time sensitivity method could be developed.
2046. We agree with Mr. Farquhar that the draft condition proposed by the NEB in 30(b)(i) is not intended to require shutdown whenever there are minor degradations caused by transients or instrumentation failure. As outlined in the draft condition, shutdown should be based upon whether a leak can be timely detected within its determined performance levels.

2047. Finally, with respect to Mr. Farquhar's suggested condition regarding reporting on the development of new technologies, Enbridge suggests that the Board can more effectively and appropriately keep apprised of industry development in this regard through engagement with industry as a whole as opposed to project specific conditions.
2048. Moving now to the conditions for the OPR Section 45.1 decommissioning scope with respect to Condition 7, requiring the filing of a decommissioning plan 120 days prior to applying for leave to open of the Section 58 pipeline. Enbridge requests that this be amended to 60 days in advance of commencing decommissioning activities as that term is defined in the draft conditions.
2049. Enbridge's proposed timeline will allow adequate time prior to Q1 2018 to complete the necessary engineering and other work needed to develop a comprehensive decommissioning plan to submit to the NEB for approval.
2050. For Condition 8, Enbridge notes that its preliminary Project EPP which was filed in July of this year, applies to both construction of the replacement pipeline as well as the decommissioning of the existing Line 10 pipeline segment.
2051. Based upon the NEB's feedback during the Line 3 Replacement Program hearing that there was a lack of clarity for readers to understand exactly what portions of the EPP would apply to decommissioning activities, Enbridge has developed an EPP for this project that is very clear on this point.
2052. Section 9 of the EPP provides prescriptive guidance on the sections of the EPP that are to be applied to decommissioning activities. On this basis, Enbridge requests that this condition be revised to require Enbridge to provide an update to the project EPP 60 days in advance of commencing decommissioning activities, which will include a reclamation plan for each land use type affected, for example, cultivated land, wetlands, riparian, including a description of the condition to which Enbridge intends to reclaim and maintain the right-of-way once the activities have been completed, and a description of the measurable goals for reclamation.
2053. And finally, Condition 11(c) requires Enbridge to file the results of the use of nitrogen as a propellant for displacement and cleaning activities and

- Condition 11(d) asks Enbridge to provide a comparison of such results with traditional methods.
2054. Enbridge notes that the use of nitrogen as a propellant for displacement and cleaning activities is the traditional method for these and similar activities such as purging. On this basis, Enbridge requests that these sub-parts to Condition 11 be removed.
2055. So, Mr. Chairman and Members, that completes Enbridge's response to the written argument of Mr. Farquhar, the draft conditions provided the Board, and my argument in chief.
2056. At this point, I'll just reiterate my request that the Board grant the relief that Enbridge has requested in its application. Thank you.
2057. **THE CHAIRMAN:** Thank you, Mr. Bourne.
2058. Mr. Jetten, I think you're up.
2059. **MR. JETTEN:** Would we be able to take a 15-minute break?
2060. **THE CHAIRMAN:** You want a 15-minute break, okay, we'll take one.
2061. We'll be back at 2:45.
- Upon recessing at 2:28 p.m./L'audience est suspendue à 14h28
--- Upon resuming at 2:45 p.m./L'audience est reprise à 14h45
2062. **THE CHAIRMAN:** Okay, we're ready to go, Mr. Jetten, whenever you are.
- FINAL ARGUMENT BY/ARGUMENTATION PAR MR. JETTEN:**
2063. **MR. JETTEN:** Thank you, Mr. Chair and Members.
2064. **THE CHAIRMAN:** Excuse me, Mr. Jetten, could you get a little closer to the mic, please? It's just sometimes with the noise behind your voice doesn't carry as well.

2065. **MR. JETTEN:** I tend to be a little bit soft-spoken sometimes to begin with.

2066. I'd like to make a couple of submissions in terms of our position on behalf of Six Nations, but I'm going to deal with the second position first and more extensively.

2067. The first position is -- submission -- is that there's been insufficient consultation with respect to this project with Six Nations who have treaty-protected resource rights. And in our submission, the central issue is that those have not been really investigated and assessed appropriately or sufficiently.

2068. And so our first position is that the application should be adjourned as premature without prejudice to Enbridge bringing it back on when consultation has been completed and incorporated into the environmental protection plan for the project, and when traditional use effects have been investigated and assessed and any impacts on those uses have been addressed in some fashion, either through mitigation or accommodation in some way.

2069. The second position is an alternative one, and that is that appropriate conditions should be imposed such that there's only a conditional approval and that there be appropriate conditions beyond those that have been circulated in draft to the Project.

2070. And I'm going to deal briefly with these positions in reverse order, so first I'll deal with the question of conditions.

2071. Our first submission is that there should be a traditional use, or treaty use in this case -- it's not just traditional, it's -- there's actually treaty rights. Traditional use, if you want to call it that -- that's the terminology that the Board has normally used in its guidelines -- investigation relating to the Six Nations particular interests which are things like deer habitat and medicinal plants. And so a condition on that.

2072. And then the second part of the condition is for a plan, a condition relating to a plan for participation in construction monitoring not only on Aboriginal -- sorry, not only on archaeological resources as was circulated in the draft conditions but going beyond that to traditional uses or treaty uses that may be of concern to Six Nations. And we heard that Enbridge was not opposed to that kind of condition, that they were prepared to retain monitors from Six

Nations to monitor during construction.

2073. And then the third condition is one that quite sensibly I think was proposed or suggested by the Chair in questions today, and that relates to post-construction monitoring, particularly of things that may be of interest or concern to Six Nations and that Six Nations monitors could be part of that.
2074. I have provided to Ms. Haug the copy of two Board decisions that I would just like to refer to briefly in which these sorts of conditions were applied.
2075. So if we look at the NOVA case first, the NOVA Gas case, it's Conditions 11 and 12 in that decision that could give some guidance to the Board here in this case. And so they appear at pages 29 to 31 of the decision. And the type of condition that we are suggesting is of the nature that is set out in paragraph 11 for a traditional use investigation. And of course in that case there were some B.C. First Nations.
2076. But we're suggesting that:
- "...[the] 60 days prior to commencing construction (including ground clearing) of the Project, [that Enbridge] file with the Board for approval, and serve a copy on [Six Nations of]...a plan to address ... [land use] investigations for the Project. [And] the plan [should] include, but not be limited to..."*
2077. And then the types of things that are listed here.
2078. And then leave it to the Board to decide whether it should be for the project footprint more generally or whether it should be only limited, as Enbridge suggests, to areas identified as being of concern to Six Nations.
2079. And then the second condition that again was adopted in this *NOVA Gas* case -- and I think, in my submission, would make an appropriate precedent - - is the type of condition for construction monitoring that is set out as Condition 12 in that case. And again, I don't think -- because there isn't here before the Board any other Aboriginal group that has demonstrated or indicated a treaty interest or protected or has advocated for it. And including in the traditional land use one, it can be restricted to Six Nations.
2080. And the same with the construction monitoring; it can be restricted to

Six Nations and not just Aboriginal Groups at large, none of whom have indicated any expression of interest. However, I'll leave that to the Board's determination.

2081. And then at page 32 of the decision, the Board in that case mandated Aboriginal consultation reports be filed by the pipeline company during construction. And in my submission, this is also something that should be ordered in this case if there is a conditional approval given at this time and the application is not simply deferred.

2082. But again, in my submission, it could be restricted to Six Nations. And one thing that is missing from this particular condition as written here in the *Nova Gas* case is that it says it's to be filed with the Board. But it would be appropriate that it be served at the same time on Six Nations so that they are aware of it.

2083. Then I'd just like to look briefly at the *Vantage Pipeline* case on page 26 and 27. Again there was a similar condition imposed to the one we looked at in the *NOVA* case. At Condition 20, pages 26 to 27, it's very much in the same language. So there's another case for the adoption of it.

2084. And I would note that one of the submissions that counsel for Enbridge made was that only 16 percent of the land in question here is Crown land and the rest is privately owned land.

2085. If Mr. Chair, you and Members Lytle and Kelly take a look at page 19 of the *Vantage Pipeline* case -- so the views of the Board in terms of the consultation issue and the effects start at page 18. But if you look at page 19 at the very top, the Board comments:

"The Board notes Vantage's commitments to continue consulting with interested Aboriginal groups..."

2086. And again, that's something that Enbridge says that they're still prepared to do.

"...and to develop and review all mitigation pertaining to TLU with affected Aboriginal groups. The Board further notes Vantage's commitment to completing various TLU investigations that would identify any additional issues or concerns. The Board would require Vantage to file with the

Board a final report outlining TLU investigations for the Project.”

2087. And it refers to Condition 20, which I just referred to.

“In this regard, the Board would expect Vantage to provide, in particular, a summary of any effects of the Project on the current use of lands and resources for traditional purposes identified in the investigations, including a description of how [those] concerns or issues have been or will be addressed by Vantage.”

2088. Now, this is the part to note because it’s an argument that Enbridge makes, is that, you know, more than 80 percent of the lands are privately owned:

“The Board notes that almost all the lands required for the Project are previously disturbed, primarily privately owned, and used mainly for ranching and agricultural purposes. The Board also notes the comprehensive program of measures for reducing or eliminating potential Project impacts on resources that may be used for traditional purposes by Aboriginal groups committed to in Vantage’s EA. The Board is, therefore, of the view that any impacts to the use of lands and resources for traditional purposes would be effectively addressed by Vantage.”

2089. So notwithstanding that they found that they thought the mitigation measures would be effective and that it was private land, they nevertheless ordered the investigation and the traditional land use study. And I would urge you to adopt that consideration.

2090. I would also like to just comment briefly on a couple of the draft conditions that were circulated on Friday by Board counsel and that Mr. Bourne commented on.

2091. With respect to Draft Condition 12, which is an Aboriginal monitoring plan for monitoring activities during construction for archaeological resources, I understood that Enbridge was now agreeing or consenting to it being also -- for there to be monitoring, presumably by separate experts or monitors, for traditional resources gathered by Six Nations. It’s probably -- one could put that into a

- separate condition, but if you were more inclined to put it in one condition I leave it to you. But I just want to point out that the condition as written here needs to be broadened.
2092. The second comment I would have is that although the draft condition says that Enbridge must file with the Board, it doesn't say anything about serving Six Nations. And so in our submission any condition should also impose a service requirement on Enbridge to serve Six Nations at the same time. And presumably this would not be of a big concern to Enbridge. I would anticipate that Mr. Bourne would probably consent to it. But I just point that out as an apparent oversight.
2093. And then the plan should describe participation by Aboriginal groups. In my submission, I think it imposes some clarity and it assists Enbridge as much as anyone else that the groups that are actually participating should be identified, or if the Board believes that it should be kept open ended, at a minimum, we would submit that Six Nations should be expressly mentioned in these conditions, because, I mean, Six Nations is the only one that's indicated that it has any treaty interests here. And so we're not talking about Aboriginal groups from, you know, eastern Ontario or Quebec or northern Ontario. It's just not at large.
2094. The further comment I would make is that the Aboriginal monitoring plan should -- it should be clear -- and I don't know if additional language would be appropriate, but I'm sure you could take guidance from Board counsel on this -- but that the plan should describe and set out monitoring procedures for the protection of Six Nations' traditional resource uses during construction.
2095. Then I'd like to turn to Draft Condition 13. In the first line, it says,
- "Enbridge must file with the Board at least 30 days prior to commencing construction. These draft conditions ..."*
2096. And this relates to archaeology, which is of concern. It is an issue of concern to our client. And again, it may be an oversight, but it -- the draft condition as written does not mention serving that material on Six Nations, and I would request a revision to that so that Six Nations is served at the same time as the Board is, as it's filed at the Board.
2097. And that's important, because one can't assume -- you know, an organization like Enbridge has a full-time regulatory division that monitors NEB

filings on a daily and regular basis, whereas a First Nation is not likely to be checking the National Energy Board website unless somebody brings to their attention that there's something there they're supposed to look at. So that's why it's important that Enbridge serve Six Nations directly.

2098. The second point on Draft Condition 13 -- I want to respond to a comment that Mr. Bourne brought on behalf of Enbridge. As I understood it, he proposed that Draft Condition 13(a) be amended to read,

"Confirmation that Enbridge has or will obtain -- has obtained or will obtain all of the required archaeological and heritage resource clearances and authorizations from the Ontario Ministry of Tourism, Culture, and Sport." (As read)

2099. I have to object to that because to say that you will obtain clearances after you've already commenced construction in an area strikes me as ludicrous, because you would have done the damages, and let's say you don't get a clearance. You would have already done the damage.

2100. So in my submission, if this is too onerous for Enbridge to get it on the entire project footprint route from the outset, at a minimum the Board should require that these clearances be obtained at least 30 days prior to commencing construction in the relevant area that is the subject of the clearance. So in other words, you can't commence construction in a certain area until you have the clearance from Ontario Ministry of Tourism, Culture, and Sport in this -- in the area proposed for construction.

2101. So I don't know if you have any questions on that portion, because I'm now going to go to the next portion. Okay.

2102. So I'd like to go back to my -- the first position I indicated, which was that the application or a decision on the application by the Board is premature. And this is based on the proposition that there was insufficient consultation prior to submission by Enbridge of the plan to the National Energy Board.

2103. In other words, it's not criticizing the Board for its regulatory process; it's criticizing Enbridge because the Board is hamstrung by statutory and regulatory regime. But it's to criticize Enbridge for not providing Six Nations or contacting Six Nations about this project and addressing it before completing and making its filing.

2104. So here I'd like to take you briefly to Professor Hostovsky's report, and his evidence was Exhibit A79669-4. That was the report, and if you want his affidavit, it was also at Exhibit A79620-2, which appended his report.

2105. And if we look at page 2 at the bottom, Professor Hostovsky -- who by the way, had extensive experience with the Ontario Ministry of the Environment, in terms of work experience, aside from his academic credentials, and it's covered in his CV, all of the work that he's done. But anyways, it says at the -- he provides the opinion at the bottom of page 2:

"Section 5 on Aboriginal Engagement is also troubling in terms of the 'state-of-the-art' in environmental assessment practice. Overall the engagement process took place over a period of just 5 months which did not provide sufficient time or appropriate notification for Six Nations to respond in a meaningful manner. The process lacks traceability in terms of stakeholder input and provides only vague generalities about that public input. The engagement process does not meet the basic requirements of the Six Nations of the Grand River Consultation & Accommodation Policy."

2106. And I'll make another comment about that shortly.

"The report seems to assume that there is a general lack of concern by First Nations about the project. This is an assumption, based on the proponent's interpretation of events."

2107. So what he is talking about is the pre-submission period before Enbridge filed on December 4, 2015, that that was less than a five-month period.

2108. And then I'd like to refer to what he says at page 20 at the bottom, and it goes over into page 21 up to where he signs his report. He says:

"Overall, based on my review of the above noted three documents..."

2109. And that was the Environmental Site Assessment, the Environmental Protection Plan, and the Supplemental Environmental Site Assessment.

"...vis a vis my area of expertise in environmental assessment and public consultation, my main issues, concerns and deficiencies associated with the above noted reports are as follows:"

2110. The first bullet:

"In terms of aquatic and terrestrial biology impact assessments, my main concern is that field studies were not completed and are being conducted simultaneous to the proponent releasing reports for comment and review. The approach appears to be 'hurried'."

2111. And if I could pause there for a minute, we know, for example, from Enbridge's response to Professor Hostovsky's report -- and also this was confirmed by Mr. Neufeld yesterday in cross-examination that, for example, the botanical surveys are still to be done and won't be done until some time 2017.

2112. Okay, then the next bullet, he's -- Professor Hostovsky's says:

"In terms of a Traditional Land and Resources Use study, I am concerned that the study was not conducted. Reading the reports, I am not convinced there is sufficient rationale for not conducting the TLRU. Further, the reports do not appear to indicate that the proponent consulted with Six Nations and other First Nations as to the need for a TLRU."

2113. The next bullet:

"Overall the consultation program with First Nations, and Six Nations in particular, does not appear to be conducted in a fair and meaningful manner. The approach used in the study was to contact Six Nations and ask for their input and their comments on reports using timelines that were inappropriately short by modern standards in environmental planning. This is a reactive approach, rather than a proactive approach whereby the proponent should be seeking to partner with Six Nations. There is a general lack of traceability in terms of specific Six Nations input. There is a lot of vague and general statements designed to give the impression of a lack of concern

from Six Nations. Furthermore, intervenor review funding had not be awarded to Six Nations with sufficient time for meaningful comments on the Line 10 project to be presented to Enbridge. Overall the consultation process does not meet modern standards in environmental assessment and is also not consistent with the Six Nations of the Grand River -- [inconsistent, I think he meant] -- with the Six Nations of the Grand River Consultation & Accommodation Policy."

2114. And then in terms of when he -- when Professor Hostovsky talks about it not being consistent with timelines for modern standards in environmental planning, again we're talking about pre-submission periods. And he gave as a specific example in the body of his report -- if I can just -- bear with me for one minute.

2115. He compared it to the time periods for class -- Municipal Class Environmental Assessments under the *Ontario Environmental Assessment Act* which are -- tend to be routine-type projects. And he indicated -- oh, yes, here it is. It's page 7 of his report starting at the bottom. No, I'm sorry; that's the wrong reference.

2116. Where his comments on all of this appear is at pages 11 and following. And it's at the bottom of page 12 he has the concluding comment after reviewing what the different periods were. He says:

"Overall the consultation activities as described took place over a less than 5 month period. This is a very hurried process, with an even a shorter timeline that the Ontario Municipal Engineers Association Class Environmental Assessment process (of which many projects involve pipelines for water and wastewater). A 2010 study of the MES Class EA process by the Residential and Civil Construction Alliance of Ontario found that the average time between notice of commencement and notice of completion for 99 projects that were audited was 19 months, and 11 months for EAs initiated in 2008."

2117. And just to review briefly, on June 23rd, 2015 there was notification of this project to Six Nations. There was then a meeting of August the 6th, 2015 to introduce the project through those slide presentations that we went through to the

Six Nations Lands and Resource personnel, staff, and to the Eco-Centre Manager, Mr. General, who you heard from.

2118. There was no community meeting held specifically concerning Line 10 in the Six Nations Community. We know that Six Nations is a large community so it would be appropriate to disseminate the information and get people in the community -- that is hunters themselves, for example, or those who practice, not just staff with Six Nations elected council -- to know about this and to provide input.
2119. And we know that the Band membership, or the First Nation membership, is some 25,000, plus or minus, and that the on-reserve population is 12 or 13 thousand. And how -- you know, it would be unreasonable for anyone to expect that either Mr. General, or even other members of the Six Nations Lands and Resource staff are going to know about any and all concerns by all of that community.
2120. I would like to take issue directly with a statement that Mr. Bourne made in his final oral argument. I think he was maybe in a bit of a rhetorical flourish and was trying to be generic and brush it over, but I heard him to say -- and maybe I'm wrong but you can check the transcript if I've overreacting, but I understood him to say that the stakeholder comments were incorporated into the ESA that was filed by Enbridge. And that filing, we'll recall, was December 4th, 2015, that was prepared by CH2, Hill and Dillon and he defined those stakeholders as including Aboriginal groups.
2121. And we also know from cross-examination yesterday that Mr. Neufeld confirmed that CH2M had no engagement whatsoever with Six Nations because Enbridge was keeping that in their own bailiwick, in their own separate box. So how my friend can submit that Aboriginal groups or Six Nations' comments were incorporated into CH2M's report is, I think, a little bit of rhetorical flourish for which there's no evidence.
2122. And also, we know that Six Nations really has not really engaged on this project because the Capacity Funding Agreement to allow them to really be consulted wasn't signed until June 9th of 2016. So that's well after the Board's regulatory process has started. That's like 2 weeks or 14 days away from when Six Nations is required to file evidence in this proceeding. And I could tell you I was engaged very late in this process.

2123. In addition, I think that Enbridge has a very different conception of how the process is to work from my client.
2124. We know from the final exhibit that was marked yesterday -- and that was Exhibit A79906, and this was the brochure. In that brochure there is a multi-stepped process that's described or that Six Nations understand, that parties who are proposing projects or that they are to engage with, that their staff are mandated by elected council to follow. And this is something that Enbridge would have been aware of from the website as Mr. Prud'Homme fairly acknowledged yesterday.
2125. And so Six Nations has got one conception as to what steps are to take in terms of consultation. Enbridge, as Professor Hostovsky has described it, is in a more reactive mode rather than a proactive mode. So to describe the difference in the consultation approach, a proactive consultation approach would be to engage early. As the Supreme Court of Canada has said in the case law, you're to engage early as soon as they have it in their mind, even before they've got all the detailed plans or things.
2126. So to engage early to start the process going, to start entering into some agreement for how this will play out -- I mean, if Enbridge didn't agree with the multi-stepped approach that Six Nations have, there's nothing preventing Enbridge from proposing and the parties negotiating some other process. And so again we're talking about pre-filing to the Board, before the Board, before you engage in the plans.
2127. Enbridge's approach, as Professor Hostovsky has indicated in this process, has been one, "Let's get all the work done that we would do and, you know, we'll tell them about it a few months before, less than the municipal engineers in Ontario give the public for highway projects or water pipelines. We'll just give it to them and see if they have any concerns. We'll dump all this paper on them, the volumes and volumes, and not necessarily having the technical expertise or the capacity." And it's not the only project they're dealing with.
2128. So they're saying, "Okay, well, we'll get reaction and by the way, the regulatory process gives them a chance to file some evidence if they want and they'll have a chance to react and we'll react to it." So it's very much a regulatory one driven.
2129. We submit that that is entirely wrong, that the consultation that ought

to have occurred should have been at the front end. It should have been proactive. It should have permitted the concerns to be incorporated by a firm like -- a very good firm like CH2M Engineering to actually incorporate and hear what those concerns are.

2130. And so for those reasons, we submit that the consultation has been insufficient, has been hurried, has been reactive. We know that there's studies still on the fly, that there's only certain percentages of work done on archaeology, certain percentages of work done on planning, certain percentages of work done on engineering.

2131. We know, for example, that entities like Hydro One and the Ministry of Transportation of Ontario say, "Sorry Enbridge, we're not going to give you a clearance until you provide us with the detailed engineering drawings. Then we'll look at it; then we'll tell you our position."

2132. Well, in my submission, the Board should be doing the same to Enbridge. It should say, "These studies should be complete. The consultation should be complete before you file, before the Board has a hearing, before the Board considers these issues." So I don't submit that we shouldn't go ahead with this hearing at some point, but my submission is that it's premature, that it should be adjourned until the consultation is finished.

2133. And those are all my submissions unless you have questions.

2134. **THE CHAIRMAN:** Not at this time, Mr. Jetten. Thank you.

2135. Mr. Bourne, do you have reply comments? Do you want a little time or are you prepared now?

2136. **MR. BOURNE:** If I could have just a few minutes to confer with my client? I don't think it will take very long, maybe 10 minutes.

2137. **THE CHAIRMAN:** Sure, okay.

--- Upon recessing at 3:29 p.m./L'audience est suspendue à 15h29

--- Upon resuming at 3:37 p.m./L'audience est reprise à 15h37

2138. **THE CHAIRMAN:** We're back. Mr. Bourne, are you ready?

--- REPLY BY/RÉPLIQUE PAR MR. BOURNE:

2139. **MR. BOURNE:** I am. I'm going to do my very best to keep this much, much shorter than my argument-in-chief. I'm sure you'll be happy to hear that.
2140. I thought what I would do is first address what my friend artfully described as my rhetorical flourish. Then I thought I'd talk about the first position and then go back to the second position that Mr. Jetten reviewed.
2141. So to begin, I do not agree that there was a rhetorical flourish; I meant what I said when I said it. When I referred to the ESA I was not just talking about what was filed with the application. The ESA is a living document and so I also mean the updates. And I think when you go back and you get a chance to read again the reply to the Hostovsky report, it absolutely details what information and what comments from Six Nations were incorporated into the ESA.
2142. Although CH2M was not directly involved in the discussions with Six nations, Enbridge absolutely was. And then of course that information -- and I think we described the process for how that information then gets fed into CH2M for inclusion in the ESA.
2143. With respect to the first position, that this is that it's premature to approve the project, again Enbridge absolutely disagrees. We think the record absolutely shows a strong commitment and a strong record of attempts to determine any potential impacts to traditional uses by Six Nations.
2144. There were a number of points that were also raised specifically citing the Hostovsky report. Again, I don't want to go into the reply on each of those but I'll just direct again the Board's attention to Enbridge's reply which was filed on October 14th of this year.
2145. And I would also point out that with respect to the Capacity Funding Agreement that, you know, an explanation is to the path and why that took until June of this year to execute. It's also provided in the Hostovsky report and it involved, you know, negotiations between the parties and some delay in responses from Six Nations throughout that process. And that's just the amount of time it took to get that agreement in place.

2146. Also point out that with respect to disseminating information to the community as a whole, the Capacity Agreement specifically provides funding to Six Nations to help accommodate that particular interest as we covered in my cross-examination of Mr. General this morning.
2147. So with respect to the second position, Mr. Jetten has, if I understand it correctly -- so I'm going to deal first with the two additional conditions, and I think I've got that right that there were two additional conditions that you cited from the *Vantage* and *NOVA* cases that you provided.
2148. With respect to the TLU, I would -- and I haven't had a chance to read through the cases, I don't know the exact circumstances there -- but I would point out in my experience the Board typically imposes a condition of this kind when there are already agreements to complete TLUs but they have not been completed by the time the hearing happens. By the wording of the conditions that my friend has referenced, I suspect that was the case there too because those conditions list specific First Nations not just general First Nations, and they say "outstanding" TLU to be done.
2149. In this case, we do not have any outstanding TLU to be done because there's been no response to the offers for TLU. And in fact, there's uncertainty as to whether or not there will be any further engagement as Mr. General admitted in his cross-examination by Board's -- I believe it was counsel or it may have been the panel this afternoon; that he takes direction from his council. And so at this present point in time, what Enbridge is aware of is that the council has directed no further engagement on this project in the letter to Minister Carr from September of this year.
2150. With respect to the comment on the draft conditions, I don't think Enbridge does have any issue with continuing to serve Six Nations with any filings it makes through the construction phase.
2151. But with respect to Condition 13, I'd like to address that. Of course Enbridge would not start construction if it doesn't have clearance and so we would be open too if the Board wants to revise that condition to make that clearer if it wasn't clear before; that would be fine.
2152. But we would request then that it states that Enbridge provide the clearances it has prior to construction 30 days before, and for any clearances that would come after Enbridge would provide a buffer zone for where it would

- propose not to do any construction until that clearance is in place, and that Enbridge would then provide that clearance when it's obtained during the course of project construction -- but again, not construction in the area where the clearance is covering -- that that be provided seven days in advance of commencing construction activities specific to that clearance or specific to that clearance area.
2153. The reason for the seven days is similar to my previous requests on a couple of timing issues. It will help mitigate delays in the construction schedule, and in particular the potential for construction activities to drag out into frozen conditions.
2154. I think that's all I've got to say in reply. So thank you again, and subject to any questions that is all I have to present today.
2155. **THE CHAIRMAN:** We have no questions, Mr. Bourne. Thank you very much.
2156. This concludes this portion of -- the evidentiary portion of the hearing, subject to the undertakings that will be coming in.
2157. I would like to take this opportunity to thank the parties, the Applicant Enbridge, and Six Nations and your counsel, for the professional way you handled the last day and a half. You were very respectful, which the Panel appreciates very much. And I think that bodes well for hopefully interaction between both parties as we go forward.
2158. On behalf of the Board I too would like to thank the court reporter, our staff, our regulatory officers, our counsel, and other staff, our IT guys at the back who kept things going pretty well.
2159. I would be remiss if I didn't point out for the record that Ms. Turcotte is -- this is her first hearing as a regulatory officer. Well done, Lori-Lee. As you can imagine, trying to get evidence and get different documents up in a timely manner must be nerve wracking; I can't imagine. But her coach was helping her -- Sharon -- but I think she did a great job.
2160. And last but not least, what we don't -- when we're in this room we don't know what happens out there. We may think we do. We don't know what goes on behind the scenes. I want to thank our staff who developed our security

Reply
Mr. Bourne

measures, the Hamilton Police. And please, the officer that's in the room, please pass this on to your colleagues yesterday and today how much we appreciate the work you've done. Our security people that were helping out, it must be tough sitting in that chair in a hot room listening to us. And those that are behind the scene.

2161. It was tense, I think, what we find out after the fact but it was handled so professionally. You're all a credit to your professions. And to the Hamilton Police and the security, thank you very much, and our people.

2162. The Board will reserve its decision on this matter. You'll be informed in advance before a decision is released.

2163. And before we adjourn, please have safe travels home wherever home may be.

2164. We're now adjourned.

--- Upon adjourning at 3:47 p.m./L'audience est ajournée à 15h47