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Chair

Mrs. Deborah Schulte

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● (1605)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): We will commence. We're missing a few people. Hopefully they're going to show up soon.

We're obviously having some challenges today. We very much want to have the agencies in front of us. There is the possibility on Wednesday of next week to pick up some of this if we need to.

We might need to ask you, if you are willing, to come back next week. However, let's see what we can do today.

I'll introduce our guests. From the National Energy Board, we have Peter Watson, chair and chief executive officer; Robert Steedman, chief environment officer; and Jim Fox, vice president, integrated energy information and analysis.

From the Canada-Newfoundland and Labrador Offshore Petroleum Board, we have Scott Tessier, chair and chief executive officer; Dave Burley, director of environmental affairs; and Susan Gover, general counsel.

From the Canadian Nuclear Safety Commission, we have Michael Binder, who is president and chief executive officer.

Mr. Watson, please.

Mr. Peter C. Watson (Chair and Chief Executive Officer, National Energy Board): *Bonjour*, and thank you, Madam Chair, for inviting us to appear today.

In the interest of time, I'm not going to read my entire statement, which I understand members will receive copies of. I will just be introducing a summary of some of the key points in it.

Our work regulating energy infrastructure has placed us in the midst of some of the most important public policy debates in Canada over the last few years. It's very clear that Canadians are passionate about environmental stewardship, regional and cumulative effects, and the evolving status and nature of Canada's relationship with indigenous peoples. They have strong and often divergent views on these topics.

We often see that passion in our hearings, which have become a venue for debating some of these contentious issues. Many of these issues are at a regional scale, and one of our challenges is that the National Energy Board hearings are necessarily limited in nature, in that we apply the specific powers and legislative authorities to discrete project applications.

We note that the government is proposing to create space in the Canadian energy regulator act to allow for more transparent direction to the regulator on broad policy matters. Moving forward, the organization could benefit from this type of general, broad policy clarity as the overarching policies and priorities continue to evolve in the future, to ensure that appropriate mechanisms are in place to assess whether a specific project fits into the greater policy framework.

I emphasize that this should entail regional and cumulative effects frameworks built in collaboration across multiple levels of government.

There are many additional proposed changes in Bill C-69, and few are more pressing for us than the integrated impact assessments between the proposed impact assessment agency and the Canadian energy regulator, or CER.

The CER, the impact assessment agency, and other departments and agencies will need to work side by side to capitalize on our respective strengths, expertise, and authorities so we can build a new system that works for all stakeholders.

As a key partner in the new federal impact assessment review process, we bring extensive knowledge and technical expertise on energy markets, on pipeline design, construction, and operation, and on the environmental, social, health, economic, and safety aspects of energy projects. As I said, we also have the knowledge and expertise to assess market conditions and the economic need for the project.

There is need for alignment throughout the system, but with respect to integrated reviews, in three areas in particular. The first is timelines and stop-clock provisions. The next is with respect to the setting and amending of project conditions, because conditions play a critical role in mitigating the risks and harms associated with a project. The last area is with respect to the planning phase of an impact assessment.

We will work together across our agencies to learn from one another and align our respective approaches so that we can ensure that we're providing a single-window process for all stakeholders and that the review processes ultimately result in decisions that are timely, fair, and technically sound.

It's also important to recognize that the Canadian energy regulator act formalizes some best practices that we've already initiated at the NEB.

One final example I want to point out is our work with the indigenous advisory and monitoring committees on the Trans Mountain project and the Enbridge Line 3 replacement program. These committees were co-developed with indigenous peoples along those two routes. They support collaborative, inclusive, and meaningful indigenous involvement in the monitoring of environmental, safety, and socio-economic matters related to those projects over the project life cycle. Bill C-69 would formalize our ability to establish such processes and similar processes for life-cycle oversight on other initiatives moving forward.

In conclusion, I am exceptionally proud of the dedicated public service of our staff and members of the National Energy Board. We are ready and committed to work with our federal colleagues to implement the proposed legislation and deliver processes that are transparent, efficient, and fair for all participants and stakeholders in our process.

Merci beaucoup, Madam Chair.

The Chair: That was very fast. Thank you.

Mr. Tessier.

Mr. Scott Tessier (Chair and Chief Executive Officer, Canada-Newfoundland and Labrador Offshore Petroleum Board): Good afternoon, and thank you for the opportunity to share our views on Bill C-69.

I've had the privilege of leading a world-class safety and environmental regulator since 2013. For over 30 years, the C-NLOPB has served as an effective agent of independent joint management of the Canada-Newfoundland and Labrador offshore area. Safety and environmental protection are paramount in all board decisions.

We've reviewed Bill C-69 and have been discussing with governments our role in the new legislative framework. I'd like to begin, though, with a brief summary of the board's recent experience in this area.

Since 2003, the board has completed 57 environmental assessments and an additional eight strategic environmental assessments or SEA updates. Public comments are invited at several stages in these processes and, in the interest of transparency, relevant documents are posted publicly. The C-NLOPB is currently updating our strategic environmental assessment for the Labrador shelf, an initiative co-chaired by the Nunatsiavut government.

In our submission to the expert panel on environmental assessment processes in the fall of 2016, we expressed support for the Government of Canada's interim EA principles. Similarly, today I can confirm our support for the objectives of Bill C-69.

The C-NLOPB recognizes that legislative renewal can provide opportunities to improve the delivery of our mandate. Section 6 of Bill C-69 speaks to the principle of joint management. We're pleased that the government has expressed its recognition of the importance of the Atlantic accord. We're also pleased to see in related documents that projects with potential for smaller effects in areas of federal jurisdiction may be subject to other regulatory processes under life-cycle regulators like the C-NLOPB.

That said, our analysis has identified specific areas of concern and inconsistency between Bill C-69 and the accord acts that governments have been made aware of and appear open to considering. I'll also speak briefly to our initial input on key issues in two related discussion papers, which we've reviewed in conjunction with the legislation.

Our first area of concern is with respect to the single-window approach, in the spirit of joint management and “one project, one review”. In addition to being a product of the Atlantic accord, having an integrated regulator was one of the recommendations of the Ocean Ranger commission report. The C-NLOPB's single-window approach has worked effectively for over 30 years in one of the world's harshest offshore environments. It ensures all relevant information is available and integrated, allowing us to make fully informed decisions.

Bill C-69 contains provisions respecting the appointment and powers of enforcement officers—whom I'll call EOs—which could deviate from that one-window approach and overlap with C-NLOPB officers. If an EO were to order work to be stopped or conducted independently of the C-NLOPB, that could result in safety being compromised. I should note that this potential also exists under CEAA 2012, and relevant agencies are working on it. However, Bill C-69 itself is silent on such matters of potential conflict between regulators, and the C-NLOPB would be concerned should decisions affecting offshore safety be made without our input.

A second issue is with respect to the role and authority of the C-NLOPB. We want to ensure we have clear legislative authority in any area in which we take on responsibility. Bill C-69 continues to designate the C-NLOPB as a federal authority. I've been advised that back in the mid-1990s when it originated, this designation was intended to permit substitution of review processes under the accord acts. Bill C-69 does not enable such substitutions.

At this point, there are no consequential amendments for cost recovery or to section 138.1 of the accord acts related to environmental assessments. There are also no provisions mandating the C-NLOPB to carry out duties and functions under Bill C-69, or to collaborate or otherwise incorporate the obligations enumerated in section 21 of Bill C-69 into the accord acts. It's also unclear what role the new Canadian energy regulator will play, given the offshore area in Bill C-69 includes by definition the exclusive economic zone and the continental shelf. Greater certainty is required to clarify the potential respective roles of the CER and the C-NLOPB for oil and gas and for renewable energy when it comes to physical activities within the Canada-Newfoundland and Labrador offshore area.

We did note Minister Carr's comments to this committee on March 22 about the possibility of amending the accord acts to provide offshore boards with additional responsibilities if renewable energy is generated in the offshore. Ideally, the C-NLOPB should have commensurate regulatory authority with the CER for the Canada-Newfoundland and Labrador offshore area, and one solution would be to mirror provisions in Bill C-69 and the accord acts to ensure consistency in statutory interpretation.

A third point in our review is the fact that Bill C-69 requires that the minister refer to a panel any physical activities that are designated projects and regulated under the accord acts. Our development plan approval process includes an environmental impact statement, a socio-economic impact statement, a benefits plan, and other plans specified by the board. It may also require a public review with hearings.

● (1610)

This raises the question of when the C-NLOPB's development plan process should commence. We'll need to decide whether we should wait until we have the decision report in hand from the impact assessment agency process.

The C-NLOPB recognizes that we'll have an opportunity to provide our expertise in the panel process. However, the decision-making at the conclusion of the panel appears to be exclusively federal, and that final outcome could conflict with the accord acts.

We acknowledge the commitment of the Government of Canada to conduct a regional assessment in eastern Newfoundland, which could be used to inform and guide environmental assessments and regulatory decisions related to future offshore exploratory drilling projects in the area.

As Minister McKenna indicated to this committee on March 22, there's an opportunity to avoid the need for a separate impact assessment for project-specific offshore exploratory drilling activities where a regional assessment has been carried out. This approach could avoid the need for lengthy panel reviews on exploratory drilling projects, for which impacts and mitigations are well known and well established.

The C-NLOPB is working collaboratively with the Canadian Environmental Assessment Agency, along with our colleagues in the federal and provincial departments of natural resources, in the design of the eastern Newfoundland regional assessment.

A fourth area of uncertainty stems from clause 9 of Bill C-69, under which the minister may designate a physical activity that is otherwise within the duties and powers of the C-NLOPB to be a designated project, as she or he could under CEAA 2012. In theory, this could apply to any delineation well or geophysical program, both of which typically have not been designated projects in the past.

In the spirit of joint management, our expectation is that this ministerial discretion would be exercised minimally and such decisions would be taken in consultation with the Government of Newfoundland and Labrador and the C-NLOPB, if the project in question is in the Canada-Newfoundland and Labrador offshore area.

Our final area of observation deals with coming into force dates. Any amendments to the federal accord act cannot come into force without mirror provisions being made in the provincial version. How the provincial statute would be amended to reflect many of the changes contemplated by Bill C-69 and the timing to do so while upholding the principle of joint management remain uncertain.

We're also unclear as to how the C-NLOPB will be expected to reconcile our existing obligations under the accord acts with Bill C-69 once it comes into force, given the precedence provision in section 4 of the accord acts.

Finally, our staff have reviewed two Bill C-69-related discussion papers released for public comment, and I'm pleased to briefly share our initial input today.

Regarding the “Consultation Paper on Approach to revising the Project List”, the C-NLOPB supports the criteria-based approach to revising the project list. To reiterate another point I made earlier, we're supportive of the plan for projects with potential for smaller effects to continue to be subject to other processes, such as those under life-cycle regulators.

With respect to the “Consultation Paper on Information Requirements and Time Management Regulations”, the C-NLOPB stands ready to assist the impact assessment agency in its review of documents, which project proponents would be required to provide in the early planning phase. We can also support the agency in its engagement and consultation efforts, given our familiarity and relationships with stakeholders. We can provide expert input on documents the agency intends to provide to proponents in cases where an impact assessment is deemed to be required. The C-NLOPB supports providing proponents with certainty, via regulation, when the clock could be stopped for legislated timelines.

In summary, the C-NLOPB supports the objectives of Bill C-69, with due consideration of coordination with the Atlantic accord regime and the C-NLOPB's oversight, which includes environmental protection and safety.

If the legislation takes into account the necessary considerations that are relevant to offshore petroleum activity, and if the required Atlantic accord act amendments are made, the changes could improve regulatory coordination and contribute to a more stable and effective regulatory system, including post-assessment monitoring and enforcement.

Thank you again for the opportunity to present. My colleagues and I look forward to addressing any questions you may have.

● (1615)

The Chair: Thank you very much.

Mr. Binder.

Dr. Michael Binder (President and Chief Executive Officer, Canadian Nuclear Safety Commission): Good afternoon, Madame Chair and members of the committee.

[*Translation*]

Thank you for inviting me to appear before you today to provide comments on Bill C-69.

[*English*]

Under our enabling legislation, the Nuclear Safety and Control Act, the NSCA, our mandate is to regulate the use of nuclear energy and materials to protect health, safety, security, and the environment; to implement Canada's international commitment on the peaceful use of nuclear energy; and to disseminate objective scientific, technical, and regulatory information to the public.

The CNSC is a unique regulator. It is unlike any other energy regulator in Canada. As committee members surely know, in nuclear, an accident anywhere is an accident everywhere. That is why Canada established a nuclear regulatory framework that is based on international obligations and treaty-level legal conventions. In my submission, I provide you with a list of key conventions.

The key requirement of the international nuclear safety and security regime is for the countries to have an independent nuclear regulatory body whose decisions are based on the best available scientific and technical information, not subject to government or political review. Further, to ensure compliance with international legal commitments, Canada must regularly report its regulatory performance, undertake peer reviews, and undergo scrutiny by the United Nations International Atomic Energy Agency, IAEA. I've provided the list of peer reviews recently undertaken in Canada in my tabled remarks.

Along with this level of transparency and scrutiny at the international level, we apply rigorous domestic standards and regulatory requirements that we report on. The CNSC is the only energy regulator that publishes annual regulatory oversight reports that assess the safety performance of all its licensees.

All of this brings me to the proposed Bill C-69.

The CNSC has extensive experience in working on environmental assessments. Since 2000, the CNSC has conducted over 70 EAs and appropriately assessed the environmental impacts of all proposed projects. In every case, in the past and in moving forward, one thing remained constant: the CNSC was and always will be the responsible authority for nuclear safety and security.

It seems to me that the notion of environmental assessment as a planning tool has been forgotten. The implementation and operations of a nuclear project may take many, many decades. It is important that the nuclear life-cycle regulator has the tools to make all the improvements and adjustments, including environmental considerations, throughout the life of the project.

Following its review of Bill C-69, the CNSC identified areas of the proposed impact assessment act that could benefit from increased clarity. We understand that the objective is to have one project, one assessment, and we agree. At the same time, to recognize the independence of the CNSC's regulatory decision-making, there must be a clear separation between the impact assessment and the licensing phase of a nuclear project. Furthermore, all conditions under an impact assessment should flow to the CNSC so they can be effectively managed throughout the project's life cycle.

It has been our experience in regulating uranium mines that harmonization with provinces in the licensing of uranium mines has been beneficial and efficient in avoiding duplication. We believe the new impact assessment regime should allow for co-operation and even substitution with provinces. We also are working with the government on implementation processes and timelines.

● (1620)

It is important that we all know, from the get-go, the length of time to get project approval. From our experience, industry can accept a quick “yes” or “no” decision. What is unreasonable is to get a “maybe”. As an example, it has now been more than 15 years since Ontario Power Generation started discussions with us about a deep geological repository, DGR.

A joint review panel was set up under CEAA 1992. Extensive public and indigenous consultations and hearings were held, and a report was submitted to the government in May 2015. A decision is still outstanding. Situations like this need to be avoided in the future.

We are also participating in helping the government in coming up with an effective and reasonable designated project list. In our view, not all nuclear activities and facilities need to undergo a review panel process. For example, an isotope cyclotron in a hospital, a small research facility or refurbishing a nuclear power plant to make it safer—all such projects should be left to the CNSE to regulate under the NSEA.

I would like to close by affirming that the CNSE supports the Government of Canada's proposed changes to policy and legislation to announce the impact assessment process. We look forward to further collaboration with the new Canadian Environmental Assessment Agency to clarify requirements and effectively implement the act.

● (1625)

[*Translation*]

Thank you and I will be glad to answer any questions you may have.

[*English*]

The Chair: Thank you very much to all of you for your patience in condensing your words to fit within the 10 minutes.

I also want to thank you for providing your comments and statements in both English and French, so we can distribute them to the committee. It's always helpful to have that. People can make notes as they're going along and put down the questions they want to ask.

We'll start the questioning with Mr. Rogers.

Before I do that, I just want to welcome MP Cooper to our committee today.

Go ahead, please.

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Thank you, Madam Chair and welcome, panellists. I appreciate the presentations.

Taking into account the time, I'm going to keep my comments very brief and get to some questions. Some decisions made under the proposed CERA must consider any adverse effects that the decision may have on the rights of indigenous people. Similarly, recommendations made by the commission must take into account the interests and concerns of the indigenous peoples, including with respect to their current land and resource issues for traditional purposes. In your view, Mr. Tessier, would the proposed CERA have any impact on how industry takes the interests and concerns of indigenous people into account when planning a project?

Mr. Scott Tessier: I think we're already seeing an evolution in the industry in terms of its engagement with indigenous people. The federal government has certainly taken an expansive view and placed a high priority on reconciliation with indigenous people, and the industry is following in that vein. We're already seeing a considerable increase in the amount of indigenous engagement, and I suspect that would continue under the new framework, perhaps with a more formalized legislative and regulatory framework surrounding it.

Mr. Churence Rogers: In jurisdictions like Norway and the North Sea, exploratory drilling permits seem to be approved much faster, at least that's what we're told. Are you confident that this legislation will lead to a faster process, in which the C-NLOPB, as a licensed regulator, will have authority over smaller projects like exploratory wells? Similarly, once the CEAA has completed the strategic environmental assessment, do you feel the timelines in the bill are adequate? Should they be lengthened or shortened?

Mr. Scott Tessier: In terms of the question as to whether things will be faster, I don't know. I think there is certainly opportunity for improvement, but that would be conditional on processes and roles and responsibilities being streamlined. It's a question of how well resourced the regulatory agencies are going to be, and there's a fair amount of work left to be done in terms of sorting out those roles and responsibilities and resources in terms of federal agencies and ourselves as the life-cycle regulator.

The question of timelines is a tricky one. Again, whether it will be faster or slower and whether it will be better or worse, I'm not in a position to say at this point because there are some details to follow in terms of how the agencies work together. I think there is opportunity to have a streamlined and robust process, but again, that's conditional on the resources provided and the mandates and marching orders of those providing the regulatory oversight and the decision-making.

Mr. Churence Rogers: Again, I'm asking the questions of you, Mr. Tessier, because, being from Newfoundland and Labrador, I'm obviously concerned about the legislation in terms of how it might advance the process or interfere in some way, looking at all sides.

What aspects of the proposed impact assessment act would most affect the board's day-to-day operations and mandate under the accord implementation act?

Mr. Scott Tessier: There will be a fundamental reset of our working relationship with the federal government, and the establishment of the impact assessment act and the impact assessment agency is going to change our day-to-day operations. We'll work more closely with those federal agencies, and we'll continue to work closely with subject matter experts in other federal line departments and agencies.

There will certainly be an increase, in terms of our day-to-day interface, of environmental and impact assessments. Beyond that, as I mentioned in my remarks, for something like our development plan approval process, we're going to have to sit down and figure out how to best streamline our accord implementation act responsibilities with the new working relationships that are being created under Bill C-69.

● (1630)

Mr. Churence Rogers: I understand that there's a commitment to move forward with the regional assessments of the offshore, starting with a pilot in the eastern Newfoundland region. Again, from the board's perspective, what is the importance of regional assessments going forward, and what can the board contribute to this process?

Mr. Scott Tessier: Regional assessment offers the potential to be highly beneficial for governments, proponents, indigenous groups, stakeholders, and us as the regulator. I'm excited about the potential for a regional assessment to be evergreen, as opposed to our strategic environmental assessment, which has to be updated periodically. We're talking to the agency about some sort of digital format, but we haven't moved past paper in our strategic environmental assessments. That offers great potential in terms of everybody involved in this space.

A regional assessment also offers the opportunity to streamline and reduce the burden on everybody I just mentioned. There is a real risk and a danger of fatigue, not only on the part of those on the regulatory and government side but also for proponents and those we consult. We want to minimize consultation fatigue, and the chance to do things more collectively and robustly at the same time has great potential. The caveat or the condition is the governance. We've have to get the governance right. We want to be inclusive but not overly cumbersome.

The Chair: That sounds great.

Next up is Mr. Sopuck.

Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC): Thank you.

To the C-NLOPB, I'm on your website here, and it appears to me that you're a regulator but also a development agency, because you talk about Canada-Newfoundland and Labrador benefits, and you facilitate the exploration for and development of petroleum resources.

How many jobs in Newfoundland and Labrador depend upon the offshore oil industry?

Mr. Scott Tessier: We aren't a development agency in the context that's commonly known in Ottawa, such as a regional development agency. We do have a broad mandate that includes resource management and industrial benefits, just to clarify that for the record.

In terms of employment, I want to say it's 3,000 direct and 7,000 to 10,000 indirect, but there are people in the room who would have those numbers either in their brains or at their fingertips and who could correct me if I'm wrong.

Mr. Robert Sopuck: It's safe to say that the industry that you're a part of is a very significant and important employer in that region.

Mr. Scott Tessier: It's something in the order of 16% to 20% of the provincial economy, even now, and it has been as high as a third in the past.

Mr. Robert Sopuck: Does the industry there depend on annual investment from outside to continue or to form companies?

Mr. Scott Tessier: Yes, the typical offshore operator is part of a global enterprise, and there is a competitive element within those global enterprises for investment. They have investment opportunities all over the world, and certainly a priority of governments is to make the Canada-Newfoundland and Labrador offshore area as competitive as possible.

Mr. Robert Sopuck: That very nicely leads into my next point, and I can assure the rest of the committee that this was—

The Chair: Can I just stop you for a minute? The bells have started ringing, so I just want to make sure I have the unanimous consent of the committee to continue.

Thank you.

Mr. Robert Sopuck: I very much appreciated your last point, because it leads into my next question.

The Canadian Association of Petroleum Producers, when they were in front of us, said:

> Unfortunately, today Canada is attracting more uncertainty, not more capital, and we will continue to lose investment and jobs if we do not have a system of clear rules and decisions that are final and can be relied upon.
>
> Unfortunately, CAPP and the investment community today see very little in Bill C-69 that will improve that status.

Is CAPP correct in their assessment?

Mr. Scott Tessier: I don't know. There are certainly competitiveness challenges faced in offshore Newfoundland and Labrador. I will say that the industry assesses the attractiveness of a region based on below-the-hole considerations, so that's the geophysics and geoscience, and the above-the-hole considerations, which are things like stability in governance and the regulatory regime.

I think we have a world-class regulatory regime. On the broader competitiveness discussions, they are a little outside my remit. We don't preoccupy ourselves with the economics of the operators. Those are more discussions and questions that are better placed to governments.

● (1635)

Mr. Robert Sopuck: Well, I kind of respectfully disagree with that, because basically the reports are in. This is in an article from the *Maclean's*, "Investment by foreigners has collapsed. Foreign direct investment...in Canada clocked in at $31.5 billion...down 56 per cent..."

Chris Bloomer from the pipeline association made the point that "New projects are grinding to a halt and we have major problems as a sector and as a country accessing new markets for our energy products to the world."

It appears that Bill C-69 is setting us on a path that's seriously going to affect Canada's competitiveness.

You brought up the issue of competitiveness, so obviously you are concerned about it, given the business you're in. How do you see this bill affecting Canada's competitiveness in terms of attracting investment around the world?

Mr. Scott Tessier: Maybe a good proxy for the discussion is to look at our nominations and calls for bids. We have seen record numbers in years gone by, and we had a relatively modest offering in uptake last year.

We have a call that closes in November. I suggest that the committee should all keep an eye on the bids that we attract in the round that closes in November of this year. That will be a good indicator as to what you're asking.

Mr. Robert Sopuck: I can assure you we will be watching, especially on this side of the table.

Again, I go to what Chris Bloomer from the Canadian Energy Pipeline Association said. He made the point that "If the goal is to curtail oil and gas production and to have no more pipelines built, this legislation may have hit the mark."

How much time do I have, Madam Chair?

The Chair: You have a minute and a half.

Mr. Robert Sopuck: Okay.

I would like to conclude with the legal opinion from Osler and company. They say:

> Despite the Government of Canada's suggestion that the new legislation will improve the efficiency and timing of federal regulatory reviews, there is nothing in the new legislation that will necessarily achieve these results and many aspects of the legislation will likely have the opposite effect.

From the industry associations, of which your industry is a part—you may not be part of the association, but you are all part of the same industry—and a legal opinion from a resource company, the consensus is emerging very quickly that this bill will encourage a decline in foreign investment in Canada and will slowly grind our energy production to a halt.

Thank you, Madam Chair.

The Chair: Okay, thank you very much.

Ms. Duncan.

Ms. Linda Duncan (Edmonton Strathcona, NDP): My questions will be to Mr. Watson.

It's great to see you. We worked together a lot in Alberta on the Clean Air Strategic Alliance, which we both worked very positively with, and we recommend, at the federal level, bringing everybody together.

We've heard mostly about the first part of Bill C-69, but of course there is a second part, and that is the new Canadian energy regulator. A number of recommendations have been made both for the impact assessment part and the Canadian energy regulator.

One of the recommendations that some of the witnesses are suggesting, and frankly that the expert panel recommended, is that rather than ad hoc panels, there should be a full-time tribunal.

Given your experience both in Alberta and as the head of National Energy Board, do you think there is an advantage to having a full-time tribunal that develops the expertise to hear those hearings, or do you think you would be able to deliver the same responsibilities effectively with people appointed ad hoc to panels?

Mr. Peter C. Watson: I think one of the things that will be important, which is a feature that's already designed into the legislation—as we consider the nature of the projects we're responsible for, pipelines and international power transmission lines—is the full integration of the life-cycle regulatory oversight. As you're aware, we have some of those features and have had under the NEB Act. We think that working in partnership with the impact assessment agency, and providing our technical expertise and ability to deal with the issues that will arise under the Canadian energy regulator act, is a good way forward, and will maximize the strengths and abilities of both organizations.

I think in our world, the integrated review process can work well.

● (1640)

Ms. Linda Duncan: I'm not raising a question about the integrated.... There are questions about that, about how many should come from the various energy sectors. It's more of a question about how under the first part of the bill, the proposal is that there simply be a roster of people who could be appointed to panels, whereas right now we have a full-time National Energy Board.

Do you think that there are any advantages to a full-time tribunal that may be lost with simply a roster of people who could be pulled up from time to time?

Mr. Peter C. Watson: I'm not sure if I'm in the best position to speak to that specific issue because in our instance, as we exercise our authority over federal jurisdiction, it is helpful to ensure that we understand and have full knowledge and capacity to appreciate the issues across the entire life cycle. This is partly because we ensure the ongoing safety and regulatory oversight associated with those projects.

I know that you've received information and advice from other people and other witnesses, including the Canadian Environmental Assessment Agency, and the question might be more appropriate for them. I can't really speak to the range of issues that they may be faced with.

Ms. Linda Duncan: Sure. We look forward to having them back again, hopefully.

Two other recommendations were made by Calgary entities—a professor from the University of Calgary, and the Pembina Institute. They recommended something that, regrettably, will probably require a royal recommendation because it would require additional resources. They proposed an independent energy information agency. I think the intent there is that, because of their experience before the various provincial and NEB tribunals, it would be useful to have a common base of neutrally collected information that everybody can rely on and have trust in.

Do you think that there would be some benefit to consideration of that to support the work of, frankly, all the tribunals under Bill C-69?

Mr. Peter C. Watson: We support the integration of the efforts relative to energy information generally. We play a certain role in that, but it's not a complete role, nor should it be a complete role. We collect certain datasets that are absolutely critical and have been part of our mandate under the NEB Act. They are also critical for the functioning of our role as an economic regulator, for our understanding of flows of energy in the country, and for our responsibilities around import and export jurisdiction.

We contribute core datasets to the system. We understand and support the need for better integration across the system, and we would want to be a part of that as we go forward in the future. We think we can and should strive for better integration and effort across the Canadian energy information system.

Ms. Linda Duncan: My other question has to do with something that has been raised by some of the industry: the concern about the transition period between the enactment of this law and the creation of the new entities and about the continuation of the National Energy Board.

I wonder if you'd like to speak to that at all.

Mr. Peter C. Watson: Sure. I just really want to convey to the members that during this interim period, of course, we will continue to deal with applications under the NEB Act. We'll also be positioning our organization to respond to the changes that will be required when we transition to the new features. We're very mindful not only of our efforts in this transition period, but also of providing clarity and certainty relative to applications that are already in process.

The Chair: Thank you very much.

Mr. Amos.

Mr. William Amos (Pontiac, Lib.): Thank you to our distinguished representatives of regulatory bodies across Canada. It is a privilege to have you here.

I feel as though the public—not just the constituents of Pontiac, but Canadians in general—would want me to ask each of you to speak to the issue of public trust in our regulatory institutions. How do you feel the legislative proposal in Bill C-69 is actually going to successfully address it, and where may there be opportunities for enhancement in order to achieve greater public trust? At the end of the day, if we want the environment and the economy to go hand in hand, we also need the public to come right along with that process. The public needs to feel as though good projects are going to be well regulated and that they're going to be well assessed before they even get off the ground.

I would go to Mr. Binder to start, but I'd invite each of your respected institutions to respond. What could be done better in Bill C-69? What could be modified to greater enhance public trust in our regulatory institutions?

● (1645)

Dr. Michael Binder: Thank you for the question. I think it's an important question in an era where people hear about fake news and inauthentic facts. We just heard about a recent poll showing that 40% of Canadians thought science was a matter of opinion. In that environment, the question is, as a regulator, how do you have people come in front of us, participate in our hearings, and accept our decision?

What I would like to separate out is the project approval process, where we are trying to reach out with public hearings. We actually have participating funding for people to appear in front of us. It's webcast. We issue an annual report on the performance of the licensees and facilities. We do all of this.

By the way, in case you haven't been to one of our hearings, I strongly recommend that you show up. It's riveting material. There's a really interesting discussion back and forth. Hopefully, people will try to understand the science and the technical information that's being considered by the commission.

We will not ever change a small percentage of people who are anti-nuclear, period. We hope that the vast majority.... Particularly in communities where there are facilities, the approval rate for those facilities is very high. In those host communities where they understand the work that's being done by the licensees, I think there's a high acceptance. How we bring it up across the whole board is a challenge. We are trying to do and provide as much.... We have a legislative mandate to disseminate technical and scientific information, and we try to do this best by using our website, our new media, etc.

Mr. William Amos: I appreciate that, but what I am asking is around Bill C-69 in particular. What aspects do you see in this that could be enhanced in order to better achieve public trust? I appreciate that you're doing your utmost to communicate to the Canadian public, but there is clearly a disconnect.

Hon. Ed Fast (Abbotsford, CPC): Madam Chair, on a point of order, this question is actually a matter that is better reserved for those who are not regulators. This is a question being asked to one of our regulators about public trust. That's a question to be asked of other stakeholders or politicians, and I believe it's inappropriate to ask that of our regulators who are present here at the table.

The Chair: I understand your point. I'm just wondering if the member would like to adjust his language.

Mr. William Amos: I think the question is entirely reasonable. If any of our witnesses feel uncomfortable with my asking the question, I am entirely certain they will say, “I don't feel comfortable answering the question”.

The Chair: I've been flexible on all sides in letting people ask questions, make statements, and not ask questions, so let's carry on. We'll keep that in mind.

Mr. William Amos: Maybe I'll pose the question to the NEB. I'll start in a really positive way, because I had a fabulous experience—and I think my clients did as well—at the Arctic offshore drilling review way back in 2011. Mr. Steedman was a key player in that process, and I commend him for his role in all of that.

Dr. Robert Steedman (Chief Environment Officer, Canadian Nuclear Safety Commission): Thank you.

Mr. William Amos: That was a process that I thought did engender public confidence, but there have been other proceedings that the NEB has been involved in where such confidence wasn't achieved. What can you comment, or are you willing to comment, on how Bill C-69 may best help engender public trust and public confidence in our regulatory process?

Mr. Peter C. Watson: Maybe I'll mention some of the things that we have already begun doing. I believe they're consistent with and supported by Bill C-69.

We recognized some time ago that we needed to be more proactive with our engagement with stakeholders across the country and participants in our hearing processes. Engagement with Canadians is necessary and appropriate, and we note that this feature is enabled and expected under Bill C-69.

I think regulators can also take steps to increase transparency associated with what they do. I would point to one of the initiatives that has been taken on both the Trans Mountain expansion and the Line 3 replacement project with our indigenous monitoring and advisory committees, where we're working collaboratively with them to be completely transparent regarding our activities on life-cycle oversight and how things are done that actually ensure safety and reduce harm associated with the potential effects of an operating pipeline.

Through that process, we're learning how to work better together and engage within first nations and the Métis Nation to ensure that we're really transparent and effective in our engagement with them, particularly around life-cycle oversight matters.

There are a number of things that I think we've been attempting to do, and I see that they will be able to be continued as we move forward.

● (1650)

The Chair: That's great.

We have time for one more questioner, Mr. Fast.

Hon. Ed Fast: Thank you to all our witnesses for appearing here.

The first question is for Mr. Tessier. I took note of the fact that you said we have a world-class regulatory regime. Do you stand by that statement?

Mr. Scott Tessier: Absolutely. Yes.

Hon. Ed Fast: It has been suggested by many on the Liberal side that, in fact, the regulatory system in Canada is broken when it comes to impact assessments and when it comes to our energy regulator. Tell me about the kind of consultation that typically goes into a project proposal that comes before you.

Mr. Scott Tessier: There are two levels. With respect to environmental assessment, there are a couple different venues through which we will engage the public and stakeholders and indigenous groups. As I mentioned, we do strategic environmental assessments—broad based, large geographic areas—every five to seven years, looking at the biological and geophysical sensitivities of an area. Layered on that is project-specific environmental assessments, of course, with which the committee would be well familiar.

The third primary venue through which we invite public feedback and input is through something like a development plan approval process for something like a Hebron project or Hibernia—the big household name projects. There is a third process there wherein you can look at the socio-economic and other considerations in a megaproject, and they often include public hearings.

Hon. Ed Fast: Thank you.

I have a question for Mr. Binder. You stated that industry can accept a quick yes-or-no decision, but what is unreasonable is to get a maybe. Then you use as an example the 15 years since Ontario Power Generation started discussions about the deep geologic repository. I'm assuming you are lamenting the fact that it's taken at least 15 years to get that project approved. Is that correct?

Dr. Michael Binder: Yes, sir.

Hon. Ed Fast: Can you tell me what in this bill, Bill C-69, would actually speed up that process?

Dr. Michael Binder: As I think I pointed out in my remarks, real clarity on timelines every step of the way.... The bill can improve things if the early planning of a project can be done very quickly and get to a no quickly, so industry can move on. If it's a no, tell us quickly. If it's a yes, then allow them to go through the environmental assessment in a reasonable timeline, and then punt the conclusion of the environmental assessment to the regulator to implement. To me, that would be the ideal thing. If you focus on the exact timelines with limited showstoppers, etc., then I think there's room for improvement.

● (1655)

Hon. Ed Fast: As you know, Bill C-69 includes significant discretion on the part of the minister to suspend and extend timelines. In fact, the bill is riven with opportunities for the minister to delay the moving forward of a particular application. Do you feel that is helpful in moving these projects forward in a timely way?

Dr. Michael Binder: I can't comment on that. All I can say is that in the bill there were some time limits, and if they adhere to the time limits then it looks okay. I cannot comment on whether the minister then will find some way to stop it. That's built into the process.

Hon. Ed Fast: It certainly is built into the process, which brings me to my last question to you. You've suggested that at the end of the day the decision on whether a project should be approved should not be a political one. It should be a decision based on science, made by the regulator. Am I correct in understanding that?

Dr. Michael Binder: No. What I said was that we have a lot of experience in doing joint review panels. In fact, as a control board we have been involved in joint projects where there were all kinds of models. I think what people forget is that the EA is a planning tool, and we would like to get that plan approved quickly. Once it's done, give it to the regulator to manage. All I'm focusing...we will leave with what is being structured here as long as the planning process is quick.

Hon. Ed Fast: Thank you.

The Chair: On behalf of the committee, I want to thank our guests today for their very thoughtful briefs and answers to the questions. We also appreciate their patience as we run back and forth.

I will suspend, as we do have to go into the House for votes. We'll be back for the next panel.

Thank you.

● (1655)

(Pause)

● (1720)

The Chair: I will start the next part of the meeting.

I want to introduce our guests. From West Moberly First Nations, we have Chief Roland Willson and Bruce Muir, senior environmental planner. From Wolf Lake First Nation, we have Chief Harold St-Denis. We have Chief Lance Haymond from Kebaowek First Nation.

I have heard that you might want a little bit more than the 10 minutes that we have assigned. I understand that and I appreciate that. We are mindful that we want to get in as many questions as we can, so if we can keep it close to the 10 minutes it would be very much appreciated. When you are one minute out from 10 minutes, I put up a yellow card to help you. This means you are out of time, but don't just stop in the middle of a sentence; wrap up what you are saying.

Chief Willson, would you like to go first?

Chief Roland Willson (West Moberly First Nations): Thank you for requesting us to come and present.

I am Chief Roland Willson from West Moberly First Nation. I am located in northeastern B.C. My nation is Dunne-za. We are the Dunne people of northeastern B.C., the heart of oil and gas, forestry, coal mining, wind farms, large hydroelectric projects, Site C dam—I hope everybody here knows what that is. Our presentation was put together really quickly to talk about the changes to Bill C-69.

Thank you for inviting us here and for considering what we have to say. Part of my presentation is the considerations that got us to this point in our territory. I know I've got 10 minutes, so I'm going to be going through this really fast.

The title of our presentation is, “Neither “Subject To, Or Inferior To, The Crown's Right” To Sustainability”. This comes out of our court case that we had with B.C. and a mining company in northeastern British Columbia. The province had proposed a mine in the area of critical wintering caribou habitat, the Burnt Pine caribou herd, which, because of that activity, is now extinct. The caribou in the North Peace are considered to be endangered now—they're on the Species At Risk Act—and there's not supposed to be any kind of activity like that happening. The court in British Columbia stated that the crown's responsibility to develop does not supersede the first nations right on that; they're equal. They're supposed to take that into consideration when they're doing their permits and things like that.

The third page is the treaty territory. Treaty 8 is the largest, most comprehensive of the historic treaties. It encompasses B.C., Alberta, Saskatchewan, and part of the Northwest Territories. The Dunne-za people have been on the ground in northeastern B.C. for over 13,000 years We hunted the mammoth that lived there, so we've been there and are continuing to be there and we plan on staying much longer. The Dunne-za people are dreamers—that's our culture—and profits are very much land-based; small family groups move through the territory. In 1914 the West Moberly First Nations adhered to Treaty 8 under the Hudson's Hope band. We became the West Moberly First Nation in 1974 when we separated from the Hudson's Hope band and became the Halfway River First Nation and the West Moberly First Nation, reasoning we were in two separate spots, and it was easier for us to maintain our own identity that way.

Treaty 8 promises us a number of things. Of those promises are the oral promises that have been taken into consideration. One of those oral promises is free from white competition. It gets talked about quite a bit. The other big one is no forced interference, which was used from the commissioner's report in 1899 in the Mikisew Cree court case as the oral promises are part of the context of the actual treaty.

Page five is the outcomes of the environmental assessment. We've been poring over the changes recommended from the EA document to what is now considered to be Bill C-69. It's pretty much the same document, just different words. When I said we thank you for your considerations, now I'm going to take you through the considerations that have got us to this point.

● (1725)

Page 6 is entitled “Air We Cannot Breathe”. Throughout our territory, we have signs up all over the place about sour gas, and oil and gas activities here and there.

Page 7 is entitled “Fish We Cannot Eat”. The image on the left is my son. That's the first fish he caught, but we caught it out of the Williston Reservoir, and the Williston Reservoir is contaminated with methylmercury. All of the fish in the reservoir system have high concentrations of methylmercury, and a fish this size is very unhealthy to eat. Typically we would have released that fish, but he snagged it so bad that it was damaged and we had to take it and put it in.

You can't see the pictures on the right unless you have the digital copy. There's a map that has red lines through it. Those red lines are the extent of the mercury filtration system in the Williston Reservoir. On the right-hand side, that light blue area is where the W.A.C. Bennett Dam is. In 1968 they commissioned the dam, and in 1969 they went to full pool on the Williston Reservoir and created what they call the largest man-made lake in western Canada. I think it's the third-largest in North America. The whole thing is full of methylmercury. All of the fish in it are contaminated and we can't eat them.

Page 8 is entitled “Land we Cannot Use to Hunt or Trap”. There are signs throughout the whole area that restrict our activity in those areas. There's no hunting and shooting by residents. There are camps everywhere in the bush out there.

Page 9 is entitled “Animals We Cannot Eat”. The image on the left was a female caribou. It's identified as a species-at-risk animal, and it was eating contaminated soil in a lease site that hadn't been cleaned up. She died. The image on the right is a species-at-risk protected bison that got into a well site that was not fenced, and got her head stuck under the pipes. They had to put her down in order to get her out of there. That was a species-at-risk animal, and we're not allowed to hunt these animals.

Page 10 is entitled “Water We Cannot Drink”. Areas where rivers and waterways are not affected by the Williston Reservoir and the methylmercury have coal mines on them, with high levels of selenium being dumped into them. There are signs throughout the territory about being careful not to drink the water or eat the fish because of the high levels of mercury there.

Page 11 is entitled “Forests we Cannot Use To Camp”. Throughout the territory, signs are up that restrict us from camping through our areas. On the right, in the image of the cabin on the edge of the bank, that's the Williston Reservoir, and sloughing has been happening since they flooded and went to full pool on the Williston Reservoir. When they first considered the Williston Reservoir, they said this would eventually stop. It hasn't stopped. It has been 40 years and it's still sloughing there. New debris goes into the water every year. That cabin has since fallen into the reservoir.

On page 12, I apologize for this, but this is our reality. This is a dead caribou. This is the last male caribou of the Burnt Pine caribou herd. When the province issued the mining permit for the mining company to go up there...an illegal permit.... They didn't actually give them the permit. They told them to go ahead and get started and that they'd get them the permit, and they never did. They went up there and built this big pit, and then when we got involved and the court case ensued, they didn't claim the pit. They left the pit there. There were two caribou left up there, and the male of the two got too close to the edge of the pit and fell into the pit and died. We discovered him that spring at the bottom of the pit. He fell far enough that he actually broke one of the antlers off his head.

● (1730)

That Burnt Pine caribou herd has now become extinct. When we went to court to try to protect the Burnt Pine caribou herd, from the provincial analysis of the caribou in the region, there were 425 caribou left in the southern Peace area. Now there are 219 caribou. This is after our court case and everything that we've been doing to try to protect the caribou. The West Moberly First Nations and the Sto:lo Nation, our next-door neighbours, have come together and we've been running a penning program, a maternity pen, where we have one of the herds, the closest to the communities, going from 19 caribou back up to 70 caribou. We're doing a recovery program ourselves on that because we couldn't wait for the federal and provincial governments to come together and do this.

Now the government has piled in. I don't know if anybody has heard that there's a herd in the south end of the province, called the South Selkirk herd. They're believed to be functionally extinct now. There are only three left and they're all females. This is all since the planning started. This is the state we're in here.

In the beginning I talked about the oral promises and the no forced interference with everything. We can't hunt the caribou because there are not enough of them there. The federal and provincial governments, in their recovery program, are not recovering the caribou to levels of harvesting; they're recovering to levels of sustainability. They want to stop the wipeout of the caribou, but they're not curtailing development and they're not doing any recovery program of the land, to rebuild the habitat zones. They're flying around in helicopters and shooting all the wolves and protecting the high-elevation habitat, not understanding that in the spring the caribou come out of the mountains and back down into the valley to live. They're being annihilated down there.

We went from having a sea of caribou. Caribou are considered to be an animal that we could always go to the mountains and get. They were considered to be a convenient food. We'd want to get a moose or an elk, but if we couldn't find them, we could always go to the mountains and find a caribou. It's like the fish. If you were hungry and you couldn't find anything else, you could always go to the river or the lake and catch a fish. Right now—

● (1735)

The Chair: Sorry to interrupt. You're giving very powerful testimony and we do want to hear it. I'm just mindful of the time because we do have votes that we're going to have to go back to.

Chief Roland Willson: I'm just about done.

The Chair: Awesome. Thank you so much.

Chief Roland Willson: Page 13 shows probably the only cumulative effects study that has ever been done. The image on the left was done by Dr. Faisal Moola of the David Suzuki Foundation and Global Forest Watch. This is all the current B.C. and federal development that has happened on the land. These are the five watersheds around my community. The image on the left is the actual footprint, and the image on the right is the footprint with the 500-metre buffer that the federal government uses in the area. When I talk about no forced interference, this is what we're presented with in our territory.

Regarding page 14, when we went through the paperwork and looked at the recommended changes, suggested changes to the environmental assessment, the current issue with the B.C. and federal governments' environmental assessment is that there is nothing in there about first nations. When we go through what's being recommended now, there is no consideration of first nations.

What we hear and see is that they'll take it into consideration. Well, we've seen what consideration gets us. What does that mean, “take it into consideration”? Is it the intent of the environmental assessment to unjustifiably infringe on the treaty? That's a question I have for you guys. Is that the intent?

We're not in here. The first nations are not in here anywhere. We should be at the very beginning. The treaty is a constitutional document. It's part of the Constitution of Canada, yet we don't show up until the very end of it, after permits have been released, after studies have been done. This is where we find ourselves in Site C.

The Chair: I hate to do this, but we've gone almost five minutes over.

Chief Roland Willson: You didn't put your card up.

The Chair: I don't hit the gavel. I don't really want to cut you off, but I've given you almost double, again another five minutes. I do want to leave some time for the other chiefs.

Your point is well made. We have the presentation and you've made some remarks. How about we get into the details as we go through our questions?

Chief Roland Willson: Sure.

The Chair: Are you good with that?

Chief Roland Willson: Did somebody write down my question? That's a question I'd like to get an answer to.

The Chair: Absolutely. Got it.

I hate to cut you off, because we respect that you're here, and we want to hear from you.

Who would like to come up next?

Chief Harold St-Denis (Wolf Lake First Nation): Thank you, Madam Chair.

I have asked for a bit more time than the 10 minutes just because we know that the committee members haven't seen our brief. We did submit a written brief before the deadline, but I guess it hasn't been translated yet.

The Chair: It's coming.

Chief Harold St-Denis: No one has a copy of the document I'm going to read, so we'll take our time to try to make sure that we get all our points across.

First, I would thank to thank you, Madam Chair and committee members, for the invitation to speak to the standing committee on making amendments to Bill C-69.

My name is Chief Harry St-Denis, and I'm from the Wolf Lake First Nation. I'm here today with Chief Lance Haymond from the Kebaowek first nation. Today we represent two Algonquin first nations in Quebec.

We have provided a written brief as per the deadline, as I mentioned, with a number of recommendations and amendments for your review. I understand you haven't had time to read our brief due to the rushed timeline surrounding this push towards legislation, and as such, I will provide you with some background.

The Algonquin nation is made up of 11 distinct communities recognized as Indian Act bands. Nine are located in Quebec, and two are in Ontario. The Algonquin nation has never given up the aboriginal title to our traditional territory. This includes all the lands and waters within the Ottawa River watershed on both the Ontario and Quebec borders. Aboriginal title is held at the community level within the Algonquin nation. Our two first nations, along with the Timiskaming first nation, assert un-extinguished aboriginal rights, including title under section 65 of the Canadian Constitution.

Inherently, our lands and waters are part of the Anishinaabe Aki, a vast territory surrounded by the Great Lakes in North America. For centuries we have relied on our lands and waterways for our ability to exercise our inherent rights under our own system of customary law and governments known as *Ona'ken'age'win*. This law is based on our mobility on the landscape, the freedom to hunt, gather, and control the sustainable use of our lands and waterways for future generations.

That is how Europeans discovered us, as a well-established society in control of the Ottawa River watershed. We had a vast trade network supported by our own economy that included levying tolls on canoe flotillas that descended the Ottawa River from Morrison Island. We were not only the gateway to the continent but the technology provider of the only craft that could navigate the rivers ahead. In no other part of the world have water and the canoe had such a huge influence on both Algonquin culture and the development of its history post-European contact.

What we once knew and shared on our territories under treaties of peace and friendship with Europeans has been abused. Our ancestors never contemplated our territories to be industrial, nor has government legislation ever adequately protected us from industrial development. We continue to regard ourselves as keepers of our lands and waterways, with seven generations' worth of responsibilities for livelihood, security, cultural identity, territoriality, and biodiversity. This sentiment has been expressed by many other first nations to your committee.

These responsibilities stem from a history of traditional knowledge and governance on the land that provided our Anishinaabe identity as opposed to how we have been recreated by crown governments through such legislation as the Canadian Indian Act.

In response to your task of gathering information for Bill C-69 that ensures that environmental assessment legislation is amended to enhance our consultation, engagement, and participatory capacity in protecting our lands and waterways, one of our guiding recommendations is for your committee to look beyond the act itself and take into account other pieces of legislation and policy that further weaken aboriginal peoples' capacity to participate in the resource development review process, including and not limited to the federal comprehensive claims policy.

I am concerned here that various pieces of legislation, including this current proposal to combine previous legislation under an impact assessment act, will come together as an assault on indigenous sovereignty and protection of our land, air, and water. This cumulative policy effect could intentionally strip environmental protections across the country as resource development proceeds and colonialism completes itself.

● (1740)

Therefore, our nations are here today to seek a different but joint legislative approach with your government that provides a strong foundation for recognition, protection, and reconciliation of our inherent and constitutional rights and interests that is consistent with the articles of the United Nations Declaration on the Rights of Indigenous Peoples, now adopted by your government.

Today, in our presentation, Chief Haymond and I intend to give you a quick profile of our communities and our experiences related to environmental legislation on our territory, and briefly outline the problems we still have regarding Bill C-69. Specifically, we are asking the committee to make amendments to Bill C-69 concerning the following items: reconciliation; implementing indigenous institutions and a nation-to-nation relationship; troubleshooting provincial environmental legislation rather than simply relying on it; strengthening protection over our traditional waterways; and implementing indigenous knowledge and impact assessment.

Chief Haymond will now speak on three items, and then I will conclude.

● (1745)

Chief Lance Haymond (Chief, Kebaowek First Nation, Wolf Lake First Nation): Thank you very much, Chief St-Denis, for the introduction.

Good evening, Madam Chair and distinguished committee members. I appreciate the opportunity to be here to discuss this important matter.

As chief of my community, Kebaowek, I represent approximately 1,000 Algonquin members. Although our reserve lands are in Quebec, our traditional territory lies on both sides of the Ottawa River basin, where our members live, work, and exercise aboriginal rights including title in both Ontario and Quebec. Our jurisdiction is transborder.

Before starting, for the record I would like to address some procedural concerns in regard to this hearing. The short time frames, short notices, insufficient funding, and very tight timelines for aboriginal communities like my own have made it very difficult to present comments.

For your reference, Kebaowek and Wolf Lake first nations did prepare comments on all environmental and regulatory environmental act reform requests by your government and participated in two expert panel sessions. We also fully participated in the AFN's technical review of Bill C-69, and we give our full support to its 25-page submission and clause-by-clause recommendations for amendments.

Regardless of our combined effort, Bill C-69 appears to have not included our key messages and resorted to a matter of tweaking CEAA 2012 over modernization. In our view, true modernization of the act does require reconciling the wrongs of previous legislation and policies that have worked against indigenous people in Canada.

The Chair: Can I just interrupt you for a minute? We're going to stop the clock.

I have to get agreement from the committee that we're going to continue as we did before. Five minutes before votes, we'll go back to the House.

Thank you. Sorry for the interruption.

Chief Lance Haymond: As part of true modernization of the act, we ask you to revisit the act's original sources and acknowledge how the act's evolution over the past several decades has materialized against us. Stronger language in amendments pertaining to ecological and first nations rights protection is imperative. Otherwise, we appeal to this committee that this bill is a failed attempt at meaningful consultation with first nations communities and at modernized legislation as set out by this government.

I conclude these introductory remarks with no disrespect to your committee. Your work is both urgent and critical to all first nations in Canada. In fact, the Assembly of First Nations has a special assembly next week in Gatineau on this topic. I would urge you in all of your work leading to your final amendments to Bill C-69 to be resolute and determined that this piece of future legislation does operationalize first nations' perspectives, consistent with the Truth and Reconciliation Commission's calls to action and with the United Nations Declaration on the Rights of Indigenous Peoples. Modernized legislation must not further disparage or trivialize our assertion of territory, our environmental knowledge, our constitutional rights, and the implementation of UNDRIP.

Clearly, there is a strong link between reconciliation and environmental assessment and the protection of our rights on our territories, a link that is becoming clearer to us every day. We see our youth interested in environmental science, and Algonquin socio-ecological knowledge is growing. We see the need to develop an Algonquin institute for environmental assessments on our territory. However, our terms for reconciliation must be supported in writing in this legislation and policy.

The problem is that government is defining what reconciliation relations are as a priori to extinguishment of rights and title under a planned federal legislative framework to transition bands currently under the Indian Act into self-government agreements, or into comprehensive claims agreements or modern treaties, which the government regards as self-determination. First nations' rights and title cannot be undermined by the colonial interpretation of reconciliation.

Reconciliation should be a stated purpose within the legislation, and it should further Canada's commitment to implement UNDRIP, including our right to our own interpretations of self-determination on our territories.

Furthermore, the legislation must be consistent with the protection of aboriginal rights and title recognized and affirmed by section 35 of the Constitution Act, 1982.

In terms of our second item, implementing the Algonquin institutions and the nation-to-nation relationships, we view that our nations' values, interests, and needs can be marginalized on a regional environmental assessment table or board where our constitutional rights and interests are diluted and/or ignored by the more dominant actors. Our constitutional provisions are unique and should be treated as such.

In our presentation to the expert panel, we introduced the concept of an Algonquin institution to encourage Algonquin involvement in Canadian environmental assessments in order to pay more careful attention to the matters that are of Algonquin concern. This is desirable not only to combat the development biases of proponents and government agencies that we have experienced under CEAA 2012, but also to explore the greater role that indigenous institutions can play in the economics of environmental impact assessment and ecosystem service planning, including evolving markets for project monitoring and other environmental services.

We request that Bill C-69 be amended to authorize nation-based indigenous institutions as a governing body to exercise powers or perform duties or functions in relation to impact assessments under this act, not excluding Indian Act bands with indigenous jurisdiction over unsurrendered title territories.

In terms of troubleshooting provincial environmental legislation, rather than relying on it for assessments and information gathering, I would like to bring your committee's attention to the Government of Quebec's recent reform of its Environment Quality Act by way of the adoption of Bill 102 on March 23, 2017. You should be concerned that, for a bill having potentially such an important impact on our aboriginal title and aboriginal rights, first nations in Quebec were not consulted. Furthermore, the new consolidated version of the EQA makes no reference whatsoever to the rights of first nations in Quebec.

● (1750)

This is shocking to us, that 35 years after the recognition of our rights in the Constitution of Canada and after years of jurisprudence, no reference is made to our rights, nor to the need to consult and accommodate, and in some cases, obtain our free, prior, and informed consent, despite the fact that we are often the main communities impacted by damages done to the environment.

We have aboriginal rights applicable in Quebec and that needs to be reflected in legislation and any directives, in order for our meaningful participation in environmental impact assessment and review processes in Quebec.

In closing, I advocate for legislating clear and mandatory protection and enhancement of section 35 rights in both federal and delegated review processes.

Chief St-Denis will now conclude with a couple of items.

Thank you.

The Chair: Can I interrupt you briefly?

Chief, just before you get going, I have given an additional four minutes.

Is it the will of the committee to continue with the witness. I know that we're taking it away from the time we have for questions.

Is it the will of the committee?

Chief Harold St-Denis: It will be just about another four or five minutes.

The Chair: Okay.

Is it the will of the committee?

Some hon. members: Agreed.

The Chair: Okay.

Please proceed.

Chief Harold St-Denis: I would like to discuss strengthening the protection over our traditional waterways within Bill C-69. Wolf Lake First Nation is a non-reserve community and, like many first nations communities, assigns great importance to the protection of our waterways.

The 2012 amendments to the Navigable Waters Protection Act affected first nations from coast to coast to coast. As I mentioned earlier, the free and unencumbered use of the waterways on our territories is critical to our culture and ability to exercise a range of section 35 rights, and for other important economic purposes like running our tourism businesses.

Recently, in your parliamentary standing committee hearings, Kelly Block asked the honourable Transport Minister Garneau to provide an example post-2013 where navigation was negatively impacted due to the Navigation Protection Act being in place, and said that not one witness throughout the regulatory review hearings in 2016-17 was able to make a comment.

What Ms. Block outlined in our view was the failure in consultation and setting adequate timelines for the legislative process. Both Kebaowek First Nation and Wolf Lake First Nation were not aware of the hearing opportunity, but did describe, in our written comments on reforms to CEAA 2012 and the Navigation Protection Act, how navigation was impeded on not one, but two, locations on our territory since 2013.

These cases were not on unprotected waterways, but even worse, were on an actual scheduled waterway under the new Navigation Protection Act, namely the Ottawa River, the main highway of our nation.

The following examples demonstrate that this new idea of scheduling waterways really provides no protection for navigation under the act.

Our first example is a three-metre chain-link fence installation on the historic La Cave portage by Ontario Power Generation, while they conducted minor maintenance activities at the Otto Holden Generating Station. Here, the OPG took the liberty to install a permanently locked fence installation on our historic portage. This was without consultation or notice, and was followed by OPG's subsequent refusal to grant continued access for our community members or our canoe business clients navigation without the presentation of a third party insurance. The gate remains in place, and the issue is unresolved.

The second incident was at the Public Works Timiskaming Dam Complex replacement project on the upper Ottawa River at Long Sault Islands where Wolf Lake First Nation operates a branch of our Algonquin Canoe Company outfitting business. Here, in 2013, without the federal government acting as it should have on a major project's interprovincial project designation provisions within the legislation, and the Minister of Environment at the time refusing our request for project designation, the Public Works real property branch refused to engage in a framework for consultation and accommodation to guide decision-making regarding this development. Subsequently, all access to the lower river was impeded for portage for Algonquins and non-Algonquins alike, for over a year.

Furthermore, the Public Works-led environmental effects evaluation under CEAA 2012 completely scoped both our first nations communities and threatened lake sturgeon species completely out of the process, as Transport Canada, NEB, and DFO issued authorizations without consulting us. Once again, the watershed and our rights were impacted by this development.

The great watershed of the Kitchissippi River is an ancient trade and travel route throughout the Algonquin nation, as are the shores, islands, and portages along the route. We ask this government, why was our navigation impeded under the Navigation Protection Act on a scheduled waterway? What navigation protection assurances do we really have in the scheduling of waterways?

Furthermore, it is unclear to us whether the working group of ministers will ensure the crown is meeting its constitutional obligations with respect to aboriginal and treaty rights within this new legislation and ongoing regulation, to provide innovative, effective, enforceable, and specific indigenous and environmental protections to the Ottawa River.

For example, Akikodjiwan is a key sacred site to our peoples. Here in Ottawa, it is also known as Chaudière Falls. Akikodjiwan was, and continues to be, a site of prayer, offerings, ritual, and peace. These activities are important work for us as custodians of our waterways and communities, as we redefine and reconcile the interrelationship between our people and the river.

● (1755)

We have closely examined the threats to Akikodjiwan and the Ottawa River watershed and have made recommendations to both the National Capital Commission and the Canadian Heritage minister,Mélanie Joly, that a much higher priority must be given to recognize and preserve Akikodjiwan as a key healing point for Algonquin peoples and all cultures here in the national capital region.

Therefore, as Algonquin leaders, we are together exploring all possible options that can address the legislative shortcomings impacting the protection of our sacred waterways and jurisdiction, including but not limited to the pursuit of separate legal rights for the waterways.

Wolf Lake and Kebaowek introduced a resolution at the AFN national assembly to give legal recognition for the Kitchissippi River, the Ottawa River, that explores the concept of legal identity for the watershed as a means of protection. It's attached for your reference later.

In terms of our recommendations, Bill C-69 remains overly politicized, with the minister making final decisions on the scheduling of waterways or designation of projects, and the cabinet making final project decisions after a full impact assessment process. Based on our experience, this would leave little incentive for us to participate. Similar to what we are discovering within this process to date, why put all this work into it if the government already has its mind made up?

Prime Minister Trudeau specifically promised to return lost protections to waterways in this country. That is not necessarily going to happen and is entirely at the discretion of the minister in scheduling new waterways for protection. We are requesting that the act guarantee in writing that it will schedule any waterway that first nations request to be scheduled. Without this amendment, we have little choice but to pursue legal identity for the Ottawa River watershed, because as far as we are concerned, in our view all protections have effectively been lost.

We support the opportunity that the impact assessment act is to “take into account” indigenous knowledge, along with scientific information and community knowledge. However, only “traditional” knowledge is a required factor to be considered in the environmental assessment, and the act does not go far enough to require that assessments and decisions be based on the broader scope of indigenous social, ecological, and cultural knowledge.

● (1800)

The Chair: I'm just mindful that we do have votes very soon. I've given you almost 12 minutes over your 10-minute time.

Chief Harold St-Denis: There are another couple of pages, but I will end it there, Madam Chair.

The Chair: Okay.

Chief Harold St-Denis: You will get copies of this.

The Chair: We do have copies in front of us, absolutely.

Chief Harold St-Denis: Okay.

I would just like to finally say that when the Right Honourable Prime Minister addresses the national assembly, he opens his presentation with the same words every time: I would like to thank the Algonquin Nation, on whose traditional territory we are gathered. I want to thank them as the past, present, and future protectors of this land.

Well, Madam Chair, I think this legislation would be the perfect legislation to give life to those words and to give life to UNDRIP. I think this would be the perfect legislation for this government to prove that once and for all it's serious about reconciliation and about working with the first nations peoples.

Thank you.

The Chair: Thank you very much.

For the record, I want to make something clear, because I did see in your testimony that you were very concerned about the conduct of this hearing, as you mentioned.

For the record, the committee adopted a process right at the beginning that would be setting its operation for speaking times and speaking orders. That is applied to all of our committee work. There is nothing unique about what we have done here. We have been consistent. But as you can see, we are very generous with the time when it's required to hear from witnesses, so please do not see that as a barrier. We also do not fund apart from paying for travel, and that's consistent across all the work of committees. I apologize if there was any misunderstanding there.

I will open it up. We have 13 minutes until we have to be sitting in our chairs. We will have three minutes, and then three minutes, and then we will have to go. That doesn't give Linda anything. Let's do two minutes and see if we can....

Go ahead, Mike.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you, Chair.

Meegwetch for allowing us to have these meetings on the unceded territory of the Algonquin people. It is so important for us to have you present here today to share your words and your thoughts and your concerns with us on this important bill.

Will and I sit on the indigenous affairs committee and are studying Bill C-262 on UNDRIP. I understand from what you're saying that the rights and recognition framework, the tables, and FPIC should be recognized and embedded within this bill. Would you agree with that?

Chief Harold St-Denis: For sure, 100%.

Mr. Mike Bossio: Would you as well, Chief Willson?

Chief Roland Willson: Yes.

Mr. Mike Bossio: Okay, thank you.

Am I done?

The Chair: No, you have one minute.

Mr. Mike Bossio: Okay.

Under FPIC, there have been three different types of descriptions of what FPIC actually means. It could mean good faith without really obtaining it, a type of consensus-oriented process, which is called collaborative consent, or a veto. I'd like to get your sense on what your view is of consent and the meaning of it within an FPIC framework.

The Chair: That's a very big question. It's a good question if we can have a very quick answer to it.

● (1805)

Chief Harold St-Denis: I think it all depends on the project or on what's being proposed. I know Quebec has the same issue. They think that it means veto automatically. I don't think that's the intent of it. We should have a say, depending on what the project is and what the impacts are. I wouldn't say it's an automatic veto on anything, but we should have a say, and a meaningful say, and it should be, I think, taken in that light. It should not be an automatic veto, because everyone is afraid that they're not going to agree to anything. The fact is that when you're talking about project development and economic development, our people need to work too, you know?

The Chair: I hate to do this, but I have to end it there.

Mr. Fast, you have two minutes.

Hon. Ed Fast: Thank you.

I'd ask the same question of Mr. Willson.

You've been quite outspoken about the concerns you have for your treaty rights. If the Liberal government adopts FPIC, as it appears it will do, what do you understand FPIC to mean? Is it a veto? Is it some kind of collaboration in a nation-to-nation discussion? What does it look like?

Chief Roland Willson: I can express what we've gone through. Site C is a prime example. We were never opposed to the development of the energy. What we were opposed to was the means of creating the energy: Site C, the flooding of the last chunk of the Peace River Valley we had. We were never given the opportunity to have that discussion. Free, prior, and informed consent, for us, is to be sitting at the table before the decision is made. They made their decision to build Site C, and then came and talked to us. That becomes a mitigative process. They've already decided they're going to do the project. We had no other choice at that point in time. Now we find ourselves in court trying to stop this thing. There are proven alternatives to this project that we never had a chance to have a talk about, that are now identified as being better solutions than Site C was.

I agree that FPIC depends on the project. It's not a veto. But Site C was not a good project, is not a good project, not by any means. It's been proven that it's probably the worst thing that we could be doing, but we never got a chance to sit down and talk about that. We were told, "We're building Site C. What are your concerns? We'll take them into consideration."

Hon. Ed Fast: Thank you.

The Chair: Okay.

Madam Jolibois.

Ms. Georgina Jolibois (Desnethé—Missinippi—Churchill River, NDP): Thank you.

Do you share the concerns expressed by other first nations that a federal assessment should be required not just for certain projects on a list, and that impact assessments must also be triggered when a proposed activity may cause adverse impacts to migratory birds, the rivers and the lakes, indigenous groups or their rights as recognized and affirmed by section 35 of the Constitution Act, 1982, and UNDRIP?

Both of you can answer, if you can.

Chief Roland Willson: Speaking from experience, you're about to infringe on the treaty if it's unjustified. That's law. That's why I asked the question whether your intent was to unjustifiably infringe the treaty. There is a test that's supposed to be performed called the Sparrow analysis test, on whether or not the impact is justifiable. That has never happened.

We were told that it didn't need to happen on Site C, which is the largest infrastructure project that B.C. has ever seen. It's $12 billion. If that project does not justify a Sparrow analysis test, what project does?

It's death by a thousand cuts. You can minimalize everything if you have the pen to do it with. They structured the whole thing away from a justification process. We were saying let's look at alternatives, and they said no. They know now that there is no need for the power, for Site C. There is no reason to destroy the last remaining piece of that river, but here we are.

We're in court now because of this. Two little first nations in northeastern B.C. have to fight Canada, B.C., and BC Hydro, a crown corporation with billions of dollars in their pockets, to try to justify a development that's not needed.

● (1810)

The Chair: You've come a long way, and I really appreciate the wisdom you have brought to the table for the discussion. I am sorry that we couldn't spend more time with questioning. It's because of what's been going on in the House today and that there are votes. It turns out there will be three votes, which is unfortunate, because that's going to be quite a bit of time. It prevents us from being able to come back.

We want to thank you again. I will have to end the meeting.

The meeting is adjourned.