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MANITOBA PUBLIC UTILITIES BOARD

RE:

MANITOBA HYDRO'S  
APPLICATION FOR APPROVAL OF  
ENERGY INTENSIVE INDUSTRIAL RATES

Before Board Panel:

Graham Lane	- Board Chairman
Robert Mayer	- Board Member
Susan Proven	- Board Member

HELD AT:

Public Utilities Board  
400, 330 Portage Avenue  
Winnipeg, Manitoba  
January 20th, 2009

Pages 1302 to 1472

APPEARANCES

1  
2 Bob Peters )Board Counsel  
3  
4 Patti Ramage )Manitoba Hydro  
5 Janet Mayor )  
6  
7 Byron Williams )Coalition  
8  
9 John Landry )MIPUG  
10  
11 Michael Anderson (np) )MKO  
12  
13 Bill Gange )RCM/TREE  
14 Beth Tait-Milne )  
15  
16  
17  
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1	TABLE OF CONTENTS	
2		Page No.
3	Exhibit List	1305
4	Opening Remarks	1306
5		
6	Final Submissions by the Coalition	1312
7	Final Submissions by MIPUG	1377
8	Final Submissions by RCM/TREE	1446
9		
10	Certificate of Transcript	1472
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	LIST OF EXHIBIT		
2	Exhibit No.	Description	Page No.
3	MIPUG-7	Copy of Mr. Svidal's presentation,	
4		on behalf of Enbridge	1310
5	MIPUG-8	Copy of Mr. Turner's presentation,	
6		on behalf of MIPUG and Canexus	1310
7	MIPUG-9	Additional questions of the MIPUG	
8		panel	1310
9	MIPUG-10	MIPUG's written argument	1403
10	COALITION-5	Two (2) documents: One is two (2) sheets	
11		and a table, and the other begins,	
12		"Options"	1445
13	RCM/TREE-5	RCM/TREE's written argument	1446
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 --- Upon commencing at 9:05 a.m.

2

3 THE CHAIRPERSON: Okay, good morning  
4 everyone. Welcome back. It's going to be a fairly long  
5 day so we might as well get underway. Welcome back to  
6 the oral argument phase of the Board's Hearing into  
7 Manitoba Hydro's Energy Intensive Rate Application.

8 Last month, in early and mid-December, the  
9 Board heard evidence from Manitoba Hydro's panel of  
10 witnesses. The Board also heard from expert witnesses on  
11 behalf of RCM/TREE and also MIPUG.

12 Manitoba Hydro has applied for approval of  
13 a new rate schedule, one proposed to be applicable to  
14 non-governmental General Service Large customers served  
15 at 30 kV and above, who use a 100 gigawatt hours or more  
16 of energy annually.

17 Manitoba Hydro's proposed EII rate  
18 includes terms and conditions which define customer  
19 specific baseline energy loads, below which each  
20 respective customer would continue to be billed at rates  
21 largely based on embedded costs. Consumption above the  
22 baseline would be billed at a new rate, which would be  
23 based on historic extra-provincial sales prices, which  
24 would serve as a proxy for the marginal value of energy.

25 Proposed baselines would be adjusted with

1 growth allowances and allowances for past Demand Side  
2 Management energy savings and energy saving -- energy  
3 efficient solutions that have been implemented to comply  
4 with government environmental objectives. There is also  
5 a proposed cap on the baseline quantity of electricity  
6 proposed to benefit from embedded cost base rates.

7           In the Board's opening comments to this  
8 proceedings, which can be found on pages 30 to 33 of the  
9 transcript, the Board indicated it expects to hear from  
10 the parties as to the strengths and weaknesses of  
11 Manitoba Hydro's proposal, as well as any recommended  
12 alternatives. The Board's expectations have not changed.

13           In those same comments, in those same  
14 opening comments for the Board, the Board sought all  
15 parties assistance in gaining a further understanding as  
16 to how best address the issue of embedded cost rates  
17 being considerably lower than marginal costs, and the  
18 potential negative implications for the Utility and its  
19 domestic customers. That assistance is still needed.

20           The Board remains aware of the  
21 significance of the Application, and as well of the range  
22 of possible implications for the Utility, its customers,  
23 and the broader Manitoba economy that may arise as a  
24 result of the outcome of this proceeding.

25           Today the Intervenors will provide their

1 closing submissions to the Board. We look forward to and  
2 will wait to hear what those submissions are, and the  
3 extent to which those submissions address the strengths  
4 and weaknesses of Manitoba Hydro's Application, as well  
5 as provide any recommended alternatives.

6           After the Board hears from the Intervenors  
7 today, the Board intends to stand down until one o'clock  
8 on Thursday of this week to hear Manitoba Hydro's closing  
9 submission. By providing Manitoba Hydro with a day and a  
10 half between the Intervenors' submissions and its own,  
11 the Board again recognizes the significance of the  
12 proceeding and invites Manitoba Hydro not only to comment  
13 on its Application but to also respond to any criticisms  
14 of its new rate application.

15           Furthermore, the Board expects that  
16 Manitoba Hydro will seriously reflect on any alternatives  
17 that may come forward from the Intervenors today, and be  
18 prepared in its closing submission to indicate its  
19 identification and views as to the strengths and  
20 weaknesses of any such recommended alternatives that may  
21 come forward from Intervenors today.

22           Indeed, through this Hearing process, the  
23 Board imagines that Manitoba Hydro may have considered  
24 other alternatives that they have not been put before the  
25 Board. If the latter is correct and Manitoba Hydro has,

1 through or as a result of the Hearing proceeding,  
2 considered other alternatives to its Application,  
3 Manitoba Hydro should, in its closing comments, two (2)  
4 days from now, be prepared to share those concepts. All  
5 of this in an effort to assure the Board that all the  
6 options have been raised.

7           The Board fully appreciates that other  
8 options for Manitoba Hydro, if brought forward, have not  
9 been tested through this Hearing process.

10           With that said and to begin the closing  
11 submissions phase of this proceeding, I'll now call on  
12 Board counsel, Mr. Peters. Mr. Peters is to remind the  
13 Board as to the intended order of submissions from the  
14 Intervenors, as well, if Mr. Peters has any closing  
15 comments to make he can then make them.

16           Mr. Peters...?

17           MR. BOB PETERS: Thank you and good  
18 morning, Mr. Chairman, Vice-Chairman Mayer, Board Member  
19 Proven, ladies and gentlemen. I will be brief.

20           By way of preliminary matters, I'd like to  
21 indicate that following the presentations by Mr. Svidal  
22 and Mr. Turner on December the 17th, those gentlemen  
23 provided copies of their presentations, which were to be  
24 marked as exhibits and have now been marked as Exhibit  
25 MIPUG Number 7, for Mr. Svidal, on behalf of Enbridge,



1 and Exhibit MIPUG Number 8 for Mr. Turner, on behalf of  
2 MIPUG, and also Canexus. Those exhibits are listed in  
3 the exhibit list that was circulated by the Board's  
4 Executive Director on January the 12th.

5

6 --- EXHIBIT NO. MIPUG-7: Copy of Mr. Svidal's  
7 presentation, on behalf of  
8 Enbridge

9

10 --- EXHIBIT NO. MIPUG-8: Copy of Mr. Turner's  
11 presentation, on behalf of  
12 MIPUG and Canexus

13

14 MR. BOB PETERS: Because of time  
15 constraints on the 17th of December, and rather than  
16 scheduling a continuation of oral cross-examination,  
17 Board counsel posed additional written questions of the  
18 MIPUG panel and those questions have now been answered in  
19 written form, and copies have been circulated to all  
20 parties. I propose, Mr. Chairman, that those be marked  
21 as MIPUG-9 and entered into the record.

22

23 --- EXHIBIT MIPUG-9: Additional questions of the  
24 MIPUG panel

25

1                   MR. BOB PETERS:    As for any closing  
2    comments, Mr. Chairman, you have in your comments  
3    provided an overview of the energy -- sorry, of the  
4    Intensive Energy Industrial Rate that Manitoba Hydro has  
5    put forward to the Board.  And while there are specific  
6    aspects of that proposal, I will leave those to others to  
7    comment on, such as the specific growth allowances, the  
8    DSM energy credits, as well as the maximum consumption  
9    proposed at heritage rates.

10                   As Board counsel, I take no position on  
11    the merits of the Application.  I expect the Intervenors  
12    and Manitoba Hydro will provide their analysis of the  
13    strengths and weaknesses of the proposal before the  
14    Board.  Additionally, the Board has requested  
15    stakeholders also put forward additional alternative  
16    concepts and options that may exist.

17                   I suggest the Board turn first to Mr.  
18    Williams, counsel for the Coalition, which is the joint  
19    intervention of Consumers' Association of  
20    Canada/Manitoba, Manitoba Society of Seniors, as well as  
21    Winnipeg Harvest.  And he would be the first Intervenor  
22    to respond to the Board's request for closing  
23    submissions.

24                   Following Mr. Williams, I suggest counsel  
25    for the Manitoba Industrial Power Users' Group, Mr.

1 Landry, provide his closing submissions, on behalf of his  
2 client.

3                   Following Mr. Landry, it's my  
4 understanding that Mr. Anderson, who has been monitoring  
5 the proceedings and represents the Intervenor, MKO, also  
6 has closing submissions, and we can hear from him this  
7 afternoon.

8                   And then Mr. Gange will provide closing  
9 submissions, on behalf of Resource Conservation Manitoba  
10 and Time to Respect Earth's Ecosystems.

11                   I do expect, as you indicated, Mr.  
12 Chairman, that those submissions will take us to close to  
13 the end of the Hearing day. And as you noted also, Mr.  
14 Chairman, following today the Board will stand down until  
15 Thursday, January 22nd at 1:00 p.m. to then hear from  
16 Manitoba Hydro and to receive their closing submissions.

17                   Mr. Chairman, subject to any questions you  
18 may have of me, those are my comments. Thank you very  
19 much.

20                   THE CHAIRPERSON: Thank you, Mr. Peters.  
21 Now, I'll call on Mr. Williams for the  
22 Coalition.

23

24 FINAL SUBMISSIONS BY THE COALITION:

25                   MR. BYRON WILLIAMS: Thank you and good

1 morning, Mr. Chairman and Members of the Board.

2           The Chair and Board Members will be aware  
3 in other proceedings, on behalf of my clients, I provided  
4 an extensive outline of their closing submissions. We've  
5 done something a little bit different in the course of  
6 this Hearing, and so if you -- in terms of an outline,  
7 there isn't one, and you'll -- you'll have to bear with  
8 me and see if I utter any Barack Obama-like statements  
9 this morning.

10           And -- but towards the latter half of our  
11 submission I will be certainly hoping to address what the  
12 -- what the Board has requested. We're -- we're going to  
13 divide it into two (2) parts: Some lengthy introductory  
14 comments, which have a point, I assure you. And then an  
15 assessment, at least to a certain degree, of the  
16 strengths and weaknesses of the various options.

17           And essentially the handouts -- just so  
18 you know when we come to them later, there's two (2)  
19 handouts. one (1) -- are just the -- the two (2) pager  
20 which are excerpts from the Hydro rebuttal evidence.  
21 We'll be referring to them later. It's a two (2) page  
22 document and we'll be referring to that later and it will  
23 essentially -- we'll be using it to comment on elements  
24 of whether there is a need for some response to the --  
25 the issue of the difference between opportunity costs, as

1 represented by sales to the export market, and embedded  
2 rates.

3                   And then the other document, a more  
4 lengthy one, does essentially -- it's a tabu -- a table  
5 that looks at an analysis of the four (4) -- four (4) --  
6 at least four (4) options that are before this Board, in  
7 the context of certain strategic objectives or cri --  
8 criteria that my clients are considering.

9                   And again, trying to be responsive the  
10 Board's directive, near the end of that document there's  
11 also a little bit of brainstorming. In the event that  
12 the Board's not happy with these options a -- a bit of a  
13 brainstorming in the attempt to address some of the  
14 better ideas that have come -- come before us. So we'll  
15 come to that a bit later, but I want to assure the Board  
16 that we are going to get to what you wished.

17                   I like to just note that in the room today  
18 are two of my clients, Mr. Benham from Winnipeg Harvest,  
19 and Ms. Desorcy from the Consumer's Association. I'm  
20 surprised that they're still talking to me after the many  
21 hours we've -- we've spent collectively fighting over  
22 this application, but they are and I'm -- I'm glad to  
23 have them here.

24                   Just in commencing the argument, we are  
25 going to start with another thank you and some

1 recognition, and often, we're lawyers and we -- we get  
2 into adver -- you know, processes that are -- are  
3 somewhat adversarial, and we -- sometimes we forget that  
4 it's -- it's not just about tearing down the arguments of  
5 the other side or buttressing our own arguments, it's --  
6 it's also about recognizing the contribution of -- of  
7 other parties in this room.

8                   So before my clients commence their  
9 critical analysis of the positions put forward by Hydro,  
10 TREE, and MIPUG, they -- my clients have asked me to  
11 offer a brief thank you and a note of recognition. And -  
12 - and the thank you is essentially this: My clients  
13 maybe were a bit -- or maybe their legal counsel was a  
14 little bit asleep on the switch, in terms of this issue.  
15 And my clients appreciate the fact that in past  
16 proceedings a number of the persons in this room have  
17 raised this concern, relating -- for the potential for  
18 new, large, energy-intensive firms to enter the  
19 marketplace and impose sig -- significant new costs on  
20 other consumers.

21                   And certainly my clients want to express  
22 their appreciation to Manitoba Hydro, to TREE, I think,  
23 Mr. Lazar identified this issue a long time ago, and the  
24 Board itself for focussing their attention on this issue,  
25 which they think is an important issue.

1           The -- my clients also recognize that in  
2 these times, there's times of tom -- of transition, of  
3 some controversy. We've got a regulator grappling with  
4 complex issues and competing policy cons --  
5 considerations relating to Hydro, as it moves to what the  
6 Board described in its decision this summer, as a unprec  
7 -- unprecedented decade of expansion.

8           And in these times of transition and  
9 pressure, we recognize that there are significant demands  
10 being placed on the regulatory affair staff of -- of  
11 Manitoba Hydro, which they are striving to meet with  
12 their typical vigour and aplomb, A-P-L-O-M-B. We've had  
13 a big debate about how to pronounce that. Mr. Benham  
14 assists -- aplume (phonetic), he insists. Dr. Miller, I  
15 deferred to him, and I appreciate his guidance.

16           So I guess the point I wish to make, on  
17 behalf of my clients, while they may take some issue with  
18 the manner in which Hydro has presented its application,  
19 they do so recognizing that Hydro's staff is diligent,  
20 thoughtful, and working on very tight deadlines and also  
21 striving to reconcile what is sometimes irreconcilable.

22           Mr. Chairman and Members of the Board, at  
23 the onset of this Hearing, I noted that my clients lack  
24 the -- the moral or analytical certitude expressed by  
25 TREE or MIPUG at the onset of this Hearing. I -- I think

1 I described them as agnostics, and that's defined in my  
2 handy-dandy college dictionary from the '80s as "Persons  
3 who doubt the possibility of ultimate knowledge in some  
4 area of study."

5 Now my client, Ms. Desorcy, doesn't want  
6 you to think by me describing them as agnostics that  
7 they're not going to offer a position. But they have  
8 struggled with this -- with this application. They  
9 worked diligently at it -- at it, but they are still  
10 struggling.

11 Despite having met on this issue three (3)  
12 different times and spending many hours in heated  
13 discussion, despite reviewing many thoughtful  
14 backrounders from legal counsel and from their analysts,  
15 the backrounders often changing their positions as  
16 rapidly as a certain Federal party approaches confidence  
17 votes with Prime Minister Harper, despite sincere and  
18 strenuous efforts, my clients are not, at the end of this  
19 application, going to say, This is the best application  
20 that you should adopt at the end of this Hearing.

21 And so, not by way of apology, but I think  
22 the challenges my clients have faced in trying to a --  
23 arrive at a position, and there's four (4) of them, I  
24 think they may offer some insight to the Board in its own  
25 deliberation. So I'd just like to talk about it for a



1 few minutes.

2                   The first challenge my clients have had is  
3 defining the problem. And as we reviewed the debates and  
4 the Board orders from an earlier time, the -- our sense  
5 of when the issue first emerged, the problem might have  
6 been defined as large, new, energy-intensive users, such  
7 as an aluminum smelter. And the implications of that, a  
8 large, new, energy-intensive user entering the  
9 marketplace at a time when embedded costs for industrials  
10 were significantly below the price in the export market.

11                   So that's how we -- we originally saw this  
12 issue. But as -- certainly as my clients reviewed the  
13 Hydro Application and the evidence of Mr. Warden, Mr.  
14 Wiens, Mr. Dudar, they think the issue has been more  
15 broadly defined in this -- in this proceeding. As  
16 relating not just to new, large, energy-intensive users,  
17 but as dispropor -- also including disproportionately  
18 rapid growth of certain large existing industrial  
19 customers over the short term, raising additional -- and  
20 this raises, in their view, additional issues, in terms  
21 of how we treat existing customers, versus new customers.

22                   And then as my clients reviewed the  
23 evidence of Mr. Chernick and considered the opening  
24 submissions of My Learned Friend and esteemed colleague,  
25 Mr. Gange, in reviewing that they might infer that the

1 real issue in this proceeding relates to energy  
2 efficiency and sustainability. And the problem that my  
3 clients are struggling with, of course, is that different  
4 problems may invite different solutions. And as we  
5 define the problem more broadly, we tend to invite more  
6 complications. So that's a significant and major  
7 challenge for my clients.

8           The second major challenge my clients have  
9 had -- and this is a challenge that we -- they've only  
10 discerned in hindsight, and there's no pejorative  
11 comments meant by this -- but it's with the application  
12 itself. And I want to be clear here, in different  
13 regulatory proceedings, a utility can present an  
14 application in different ways. In a general rate  
15 application, you can propose a rate, present a number and  
16 defend that number.

17           And my clients would suggest that, to a  
18 large degree, this is essentially what Manitoba Hydro has  
19 done here. They presented one solution to the issue of  
20 new, large, energy-intensive load, and vicas --  
21 vigorously and capably defended it.

22           But there is another approach to  
23 regulatory proceedings; the Vice-Chair will be familiar  
24 with this from the Wuskwatim proceedings. And we often  
25 see that in environmental assessments they might offer

1 more nu -- nuanced analysis, what some people call a need  
2 for an alternatives analysis. And I would say that  
3 that's a bit of a different approach.

4           Step 1. Ask yourself what is the problem  
5 we are trying to address.

6           Step 2. In trying to address this  
7 problem, what are our key objectives? What are our key  
8 goals? And we'll use those key objectives to measure the  
9 -- measure different options.

10           Step 3. What -- what do we propose? What  
11 -- what does the applicant think is the best option? How  
12 does it address our key option -- objectives? And is the  
13 cure more beneficial than the disease it's attempting to  
14 cure?

15           But the analysis doesn't stop there. What  
16 are other options that are out there? What is our menu  
17 of potential solutions that we might have considered and  
18 how did they compare to our key objectives?

19           Finally, is -- measured against our key  
20 objectives, why do we prefer one (1) option, compared to  
21 the others?

22           In the Coalition's respectful, and again  
23 in hindsight analysis, this is the type of analysis which  
24 would have been best suited to this proceeding. And in  
25 reviewing the Board's order from the summer, the two (2)

1 Board orders, it may be that that was really what the  
2 Board was contemplating and suggesting, rather than one  
3 (1) option and defending it, present a menu of options.

4           Why does the absence of a need for --  
5 well, there's a need for analysis here -- why does the  
6 absence of an alternative analysis by the applicant  
7 matter? It certainly matters to my clients, because it's  
8 difficult for them to be satisfied that they've had a  
9 thorough discussion of all the potential options, the  
10 pros and cons of all those potential options, and it's  
11 been difficult in my clients' view to fully test those  
12 potential options.

13           I want to give you one (1) or two (2)  
14 examples. In my clients' respectful submission there has  
15 been, from Manitoba Hydro, a limited discussion in detail  
16 regarding one (1) potential key tool, which is extension  
17 policy.

18           Whether extension policy is operated by  
19 Manitoba Hydro up till June of 2005, with regard to these  
20 large customers and large expansions, or whether the  
21 current Board of Directors' approach, which my clients  
22 are not comfortable that they know very much about, or  
23 maybe other options for an extension policy, such as the  
24 Centra Gas feasibility approach, which My Friend, Mr.  
25 Meronek, would be -- would be able to give you more

1 advice on than I could, but certainly that -- that's  
2 something that my clients think is an important tool that  
3 they weren't confident was fully discussed on this -- in  
4 the context of this proceeding.

5           And certainly my clients are not alone in  
6 this perspective. At page 1088, Mr. Bowman, the -- one  
7 (1) of the expert witnesses for the -- for the Manitoba  
8 Hydro Industrial Power Users' Group made this observation  
9 at lines 19 to 25:

10                    "So if one (1) major suite [hopefully I  
11                   pronounce that properly] of options,  
12                   and in fact the only major suite of  
13                   options that has, as far as we can  
14                   tell, a serious precedent among utility  
15                   boards, revolves around the topic of  
16                   system extension policies."

17           I would say that the record in this  
18 proceeding is a little thin to be able to understand how  
19 that could work in Manitoba. And again, I am subject to  
20 correction. My clients don't recall seeing significant  
21 reference to the extension policy in the original  
22 application.

23           And likewise, they're, as I've perhaps  
24 stated before, they're not confident that the current  
25 approach, where the Manitoba Hydro's Executive Committee

1 looks at the provision of allowances for any facilities  
2 required to serve new loads exceeding 30 kilovolts,  
3 they're not confident they have enough understanding of  
4 that proposal or how it's intended to work with the  
5 Energy Intensive Rate.

6                   And the point is, from my clients'  
7 perspective, it's difficult to understand, given the  
8 record of this proceeding, whether or not some form of  
9 extension policy, perhaps analogous to elements of the BC  
10 Hydro Tariff Number 6, or the Centra Gas Feasibility,  
11 would be a better tool than the Energy Intensive Rate.

12                   The MIPUG witnesses seem to suggest that  
13 it might be a better tool. In fairness, I did ask Mr.  
14 Warden a question at page 491. He was quite firm in his  
15 views that it wasn't. But I -- to be frank with the  
16 Board, my clients aren't confident they can make that  
17 assessment.

18                   They're intrigued by some elements of  
19 Tariff Number 6 but they're unable to recommend that  
20 approach to the Board, given Hydro's reservations, which  
21 my clients have not fully tested. There also hasn't  
22 been, in terms of extension policies or Tariff Number 6  
23 like approaches, much discussion in the context of this  
24 proceeding, of whether a demand-type charge, implemented  
25 through the extension policy, is within the Board's

1 jurisdiction.

2 My clients' preliminary view is, as it  
3 relates to capacity and demand issues, it probably would  
4 be within the Board's jurisdiction, but -- but that's  
5 something that they may require more thorough  
6 consideration of.

7 The last -- the last point of this, I  
8 don't want to belabour it too much, but it would have  
9 also been really helpful -- in terms of my clients'  
10 assessment of this Application, Manitoba Hydro clearly  
11 has gone a different route than the BC stepped rate  
12 approach. That's -- the BC stepped rate is revenue  
13 neutral on a firm basis. The Energy Intensive Rate is  
14 energy neutral on a corporate basis.

15 It would have been helpful to -- to have a  
16 more thorough discussion from Hydro, in terms of why that  
17 was -- that option was rejected.

18 A third challenge my clients have had with  
19 this Application and it relates to the -- my last point,  
20 is there's been an inconsistent application of the  
21 concept of revenue neutrality, in the course of this  
22 proceeding. And my clients aren't criticizing anyone for  
23 this, but some of the different solutions on the table  
24 employ different definitions of revenue neutrality. And  
25 to a certain deg -- and -- and in one (1) case, the --

1 Mr. Chernick it's -- it's just not clear that he has --  
2 he's decided which approach he'd like to use.

3 To a certain degree we are comparing  
4 apples to oranges when we look at these different  
5 approaches.

6 Just to highlight this point for a couple  
7 of seconds, as I've indicated before, the Energy  
8 Intensive Industrial Rate is -- is revenue neutral on a  
9 utility basis, and it's certainly trying to get at that  
10 issue of fairness to other ratepayers. The BC stepped  
11 rate is revenue neutral at a firm -- on the firm basis,  
12 but there's a strong argument being presented in British  
13 Columbia by consumer groups, residential consumer groups,  
14 that that particular rate is applied on a revenue neutral  
15 -- on a firm basis, has caused an injustice to other  
16 ratepayers. And -- and that, Mr. Ostergaard commented  
17 about that in his -- in his evidence.

18 And Mr. Wiens, I think at page 91 of the  
19 transcript, highlighted the -- the importance of  
20 understanding that there are different concepts of  
21 revenue neutrality in play.

22 Starting at line 2 he noted that Manitoba  
23 Hydro also observes that the proposed rate is not like  
24 the BC Hydro inverted rate, which is intended to be  
25 revenue neutral for customers who continue to operate at



1 their baseline energy level, and where the price for a  
2 second block is offset by reductions to the price of the  
3 first block.

4                   With this proposed rate in Manitoba, the  
5 price of the second block may affect, or potentially  
6 affect, a significant part of the loads of some  
7 customers.

8                   And this -- this relates to Mr. Chernick.  
9 If Manitoba Hydro were to adopt a significantly higher  
10 price for the second block, as recommended by Mr.  
11 Chernick, it would also want to review other aspects of  
12 the rate design, such as the customer baseline energy  
13 growth provisions.

14                   The point being, when we go to evaluate  
15 proposals like Mr. Chernick, it's difficult to do so  
16 unless we understand what concept of revenue neutrality  
17 he has employed -- and I'll talk about this later -- but  
18 he has not got around to the threshold consideration of  
19 revenue neutrality and whether it should be applied at  
20 the firm class or corporate level.

21                   And my clients' views of the merits of any  
22 particular proposal may depend very much upon the concept  
23 of revenue neutrality employed. So that's been a third  
24 challenge.

25                   The fourth challenge, and I suspect

1 although it may not be expressed, it's shared by my -- by  
2 the -- the customers represented by the Manitoba  
3 Industrial Power Users Group, is that my clients have  
4 some doubts, as to whether this application is merely a  
5 necessary change to maintain the central tenets of the  
6 Manitoba advantage, or whether it constitutes more  
7 fundamental change. They're -- they're struggling with  
8 the implications of this application.

9           And I think it's interesting to note that  
10 this application demonstrates some interesting chameleon,  
11 C-H-A-M-E-L-E-O-N, -like capabilities. It appears to be  
12 fundamentally different things to different parties.  
13 Hydro sees this application, we would suggest, and Mr.  
14 Dudar's expressed as well at page 100 of the transcript,  
15 is a way to preserve a delicate balancing act, which is  
16 the Manitoba advantage, and as a way to achieve fairness  
17 in a time of change.

18           And I'll -- I'll refer to his quote later,  
19 but it -- the -- the quote that we're relying upon is at  
20 page 100 of the transcript, lines 3 to 13.

21           At least two (2) of the MIPUG witnesses,  
22 my clients would suggest, see this application in a  
23 fundamentally different way than Mr. -- than Mr. Dudar or  
24 Manitoba Hydro. They don't see it as a balancing act.  
25 We would suggest, and I'm putting some words into their

1 mouth and they can certainly correct me if I'm wrong,  
2 they see this application as a slippery slope, an  
3 application that's -- that is disconnected from  
4 established regulatory principles, which imposes a two  
5 (2) tier rate which essentially severs certain consumers  
6 from the rest of the rate base.

7           And Mr. Bowman, we would submit, on behalf  
8 of our clients, made this point at page 1,100 of the  
9 transcript. Using words in his discussion, such as  
10 "disconnect" and "sever," he argued that it's a  
11 fundamental change to think about two (2) sets of  
12 customers that are -- have entirely different interests  
13 and -- and impacts arising from the system.

14           The witness for TREE also sees this  
15 application, my clients would submit, in a fundamentally  
16 different manner, not only from the MIPUG witnesses but,  
17 my clients would submit, from Manitoba Hydro as well. My  
18 clients would suggest that he sees this Application as --  
19 as representing the first step in a slippery slope as  
20 well, but a positive -- a positive slope.

21           I don't know if you can have a slippery  
22 slope to something positive, but I'm going to torture --  
23 I'm going to torture that analogy as far as I can.

24           His major criticism is that the  
25 Application is not moving fast enough to what he appears

1 to consider a more positive destination, one which my  
2 clients are concerned might involved taking a lot more  
3 money out of low income and modest income ratepayers'  
4 pockets.

5                   And in referring to where the Energy  
6 Intensive Industrial Rate might ultimately lead, Mr.  
7 Chernick twice used the unfortunate analogy of bank  
8 robbers, first in his direct evidence, and then in cross-  
9 examination at page 824, again referring to where this  
10 might lead. And I had made a crack at page 824 about  
11 bank robbers and hoping to get back to that statement,  
12 and he stated, starting at line 4:

13                   "We have to get in the front -- front  
14 door before you crack the safe."

15                   Once we gave Ms. Desorcy a significant  
16 amount of Valium I think she's recovered from that --  
17 that quote.

18                   But here you have three (3) different  
19 parties seeing this Application in -- in three (3)  
20 different ways. Hydro is seeing it as a way to restore  
21 balance and preserve fair -- fairness. We don't doubt  
22 their sincerity, and we have some sympathy on behalf of  
23 our clients for that.

24                   MIPUG sees this a fundamental change in a  
25 negative way, and TREE appears to see this as the -- the

1 start of a fundamental change in a more positive way.  
2 And my clients, frankly, are torn. They see some  
3 validity to all three perspectives, and they're unsure  
4 where this rate will lead, and they're unsure of the  
5 precedent that it will set.

6                   And I -- I won't belabour this point for -  
7 - for much longer, but -- but I -- I do want to -- I  
8 think it's valuable for the -- from the Board, at least  
9 to understand where my clients are coming from, and  
10 perhaps MIPUG -- Mr. Laundry can speak to that -- my  
11 clients believe at the top -- at the root, both of their  
12 uncertainty, in the face of this application, and also at  
13 the root of the different perspectives that parties are -  
14 - are having of this application, is the fact that we are  
15 living in an era where the fundamental premise, as my  
16 clients would submit, under which Manitoba Hydro has  
17 operated for many years, are being challenged.

18                   My clients will argue, and I'll elaborate  
19 on this just shortly, that for many years it's been a  
20 social consensus in Manitoba, to a large degree, about --  
21 about the legitimate objectives of Manitoba Hydro. And  
22 my clients' submission is that this social consensus has  
23 been fractured, both by changes in events, as well as by  
24 certain philosophical or ideological challenges.

25                   And my clients feel the Board can take

1 judicial not -- notice of this social consensus. They're  
2 going to ask you to -- to take notice of the fact that  
3 there was generally a fair degree of social consensus  
4 about Hydro in the late 1990s, perhaps even at the start  
5 of this decade, and, in my clients' submission, that  
6 consensus revolved around the recognition that Hydro,  
7 working with the province, had made tremendous  
8 achievements in bringing low-cost power to almost all  
9 Manitobans, with the exception of a few diesel  
10 communities, important diesel communities.

11 Rural electrification: Conservative -- my  
12 old conservative town of Souris still -- speaks highly of  
13 the day that -- that the lights went on in -- in the  
14 rural -- rural areas. The Northwest Power Grid. Uniform  
15 rates providing a postage-stamp rate for almost all  
16 classes of customers, regardless of location.

17 And that set -- consensus and -- and the  
18 achievements also focus on the fact that we had among the  
19 lowest rates in North America, which was a conscious  
20 policy choice. Rates were seen as having a positive role  
21 -- low rates were seen as having a positive role in  
22 economic devel -- development.

23 Hydro is seen as having an important role  
24 in stimulating the economy through their investments.  
25 And Mr. Ostergaard talked about a sim -- similar analysis

1 in BC at transcript page 1036. And an argument certainly  
2 was made that -- that low energy was Manitoba's  
3 competitive advantage, in terms of economic development.

4 And again, Mr. Ostergaard used a -- an  
5 example from BC, making the same point, page 1048, when  
6 he talked about using low electricity rates, relatively  
7 low electricity rates, as being fundamental and  
8 encouraging a biomass industry in British Columbia,  
9 including wood pellet manufacturing. That achievement,  
10 from my clients' perspective, and that -- that social  
11 consensus on which it was built also saw low electric  
12 rates having a role in social equity.

13 Manitoba, I don't think is -- or -- as --  
14 my clients do not think, has traditionally been seen as a  
15 low tax environment, but we've also often been seen as a  
16 low cost of living environment. And certainly low rates  
17 mitigated the impacts of utility costs upon low income  
18 persons. At the same time, Hydro was seen as bring --  
19 bringing significant annual benefits to the province,  
20 water rental fees, debt guarantee fees, large corporation  
21 capital tax.

22 My clients use that -- that package of  
23 benefits -- the shorthand word for that as being the  
24 Manitoba advantage. And what constituted this ad --  
25 advantage, or what lay at the heart of it? Natural

1 advantages, bountiful hydroelectric resources, access to  
2 the export market. But those natural advances --  
3 advantages were enhanced by creative policy choices.

4           Policymakers in Manitoba chose a different  
5 route than what Peter Holle, or Milton Friedman, might  
6 suggest. They had a publicly owned Crown corporation,  
7 not a private one, and they made a conscious choice in --  
8 in terms of pricing, not what the market would bear for  
9 domestic consumers. They established a domestic priority  
10 at average cost rates for policy reasons, and also  
11 reflecting the fact that in those days average embedded  
12 cost rates were probably higher, generally, than average  
13 export rates.

14           One (1) caveat to this social consensus,  
15 this Manitoba advantage -- Mr. Anderson would slaughter  
16 me if I didn't reference it -- was just -- it has to be  
17 recognized that this advantage was achieved at the  
18 expense, in certain cases, of some specific Indian  
19 communities. We've tried to mitigate that through  
20 northern flood agreements, but there were impacts. And  
21 we're also just starting to come to terms with the  
22 consequences of the Lake Winnipeg regulation.

23           And again, just to finish up on this  
24 point, so that's the Manitoba advantage and the consensus  
25 around it, and my clients see this as being challenged



1 and they're uncertainty as they look at this application  
2 reflects their uncertainty over where this direction is  
3 leading us. And they're not commenting upon the merits  
4 of this challenge, they're just noting that there are  
5 significant challenges to that social consensus.

6                   One (1) challenge is -- is just by the  
7 fact -- export rates rising relative to domestic rates  
8 have created different perspectives of fairness; that's  
9 what this Application, to a large degree, is about, and -  
10 - and I'll talk about that in greater detail later.

11                   But there has also been philosophical  
12 challenges to the Manitoba advantage. There's been a  
13 rejection by some of the competitive advantage for  
14 economic development of average cost based electricity.  
15 There's been a challenge by some from the perspective of  
16 sustainability, whether average cost prices promote  
17 energy inefficiency. And there's been perhaps a  
18 different concept of social equity. We hear talk about,  
19 from certain quarters, of raising rates perhaps and  
20 creating a social dividend, a different type of social  
21 equity.

22                   So there's those philosophical challenges  
23 to the Manitoba advantage. And my clients also,  
24 observing the experience in other jurisdictions, which  
25 have moved away from average cost rates, have seen the --

1 what they would consider the negative affects it --  
2 whether in Ontario or Alberta, not only upon vulnerable  
3 consumers but upon industry. And Mr. Ostergaard talked a  
4 little bit about this at page 1051.

5           Why I offer this is -- and -- and as an  
6 explanation of the challenges my clients face, they still  
7 treasure that kind of philosophy relating to the Manitoba  
8 advantage, and when they see a move, gradual as it may be  
9 or for one (1) specific class to market-based rates,  
10 especially when that is not seen as a revenue-neutral  
11 move for that class, or -- or for specific firms, they  
12 view that with some trepidation, wondering where that  
13 precedent will lead. And they wonder whether -- rather  
14 than preserving the Manitoba advantage, whether we're  
15 ultimately heading to a rejection of the Manitoba  
16 advantage.

17           And that's why if you sense a cautious  
18 approach from my clients to this application, that really  
19 lies at the heart of it. They want to be cautious; that  
20 we think carefully about where the long-term implications  
21 of this lead.

22           A few minutes ago, Mr. Chairman and  
23 Members of the Board, I whined, relying on hindsight,  
24 about the absence of a need for an alternative analysis,  
25 and -- and that's where I'd like to move to now, given --

1 recognizing that we have limited data and some limitation  
2 in this discuss -- discussion, on the record.

3           What I want to do for the -- for the bulk  
4 of the remainder of my submissions on behalf of my  
5 clients, is attempt to perform, on their behalf, a need  
6 for an alternatives analysis of -- of the -- the Energy  
7 Intensive Rate issue.

8           The first thing that I'll attempt to do,  
9 Step 1, will be to define the problem -- will be to  
10 define the problem and consider whether it -- it is  
11 material such that it requires a solution.

12           Step 2. Assuming the problem requires a  
13 solution, outline and weigh the key objectives, which my  
14 clients will employ, in assessing the effectiveness of  
15 any proposed solution. So outline the problem. Assuming  
16 that it needs a solution, how are we going to measure  
17 which solution is more effective.

18           Step 3. Evaluate Hydro's proposed remedy  
19 along with other potential remedies against these key  
20 objectives, to assess a relative effectiveness of any  
21 proposed solution.

22           Mr. Chairman, Mr. Peters warned me about  
23 my weakness for water, and I -- I don't need a -- a long  
24 break but I wonder if I could stand down for five (5)  
25 minutes and then I -- I should be able to take you

1 through and finish.

2                   It'll take me a while, but I -- I won't  
3 require another break.

4                   THE CHAIRPERSON:   That's fine.

5

6 --- Upon recessing at 9:52 a.m.

7 --- Upon resuming at 9:59 a.m.

8

9                   THE CHAIRPERSON:   Mr. Williams, are you  
10 ready to begin?

11

12 CONTINUED BY MR. BYRON WILLIAMS:

13                   MR. BYRON WILLIAMS:   Defining the problem  
14 and considering whether the problem is material, such  
15 that it requires a solution.

16                   My clients concur with Manitoba Hydro that  
17 there is a fundamental issue here of fairness. They  
18 accept that an argument can be made that the rapid and  
19 unconstrained growth of large industrial users, whether  
20 new customers or existing customers, may be imposing  
21 unfair rate pressures on other groups of customers, both  
22 on the revenue side where the negative gap between  
23 average industrial rates and average export prices, as  
24 defined by Hydro, means that a significant increase in  
25 large industrial usage will result in a significant

1 opportunity cost, due to foregone export revenues.

2                   And Mr. Warden made this point at page 80  
3 and 81 of the transcript better than I can. The sales of  
4 energy -- energy to large industrial customers typically  
5 earn the Corporation about three point three (3.3) cents  
6 per kilowatt hour, compared to five point five (5.5)  
7 cents on the export market. This rate differential of  
8 about two point two (2.2) cents per kilowatt hour must  
9 ultimately be recovered from other customers, unless  
10 steps are taken to address this revenue erosion.

11                   So there's the impact on the revenue side,  
12 or you could say the opportunity cost side. And there's  
13 also -- and there's also a pressure on the cost side, the  
14 capacity side, where the capacity implications of major  
15 industrial expansions may impose significant cost  
16 obligations on other classes of consumers.

17                   Significant pressure on both the revenue  
18 and the cost side raises the risk that, all other things  
19 being equal, other classes may pay an unfair share of the  
20 cost associated with rapid and unconstrained growth of  
21 large industrial users.

22                   Mr. Wiens made this point at page 144 of  
23 the transcript. Using 2005 data, and I emphasize that,  
24 he looked at the costs to extend new services to a load  
25 of the magnitude of chlorate and pipeline facilities, as

1 they were in 2005 would have a present value of \$700  
2 million and an annual financial consequence of 55 million  
3 annually out for thirty (30) years.

4           So my clients accept that it's a  
5 legitimate concern from a regulatory perspective, and  
6 while that original concern was focussed on energy  
7 intensive new load, new large load, such as a smelter or  
8 server farm, they accept Hydro's expanded definition of  
9 the problem to include disproportionate growth of  
10 existing load with the particular concern with the  
11 petroleum and chemical industries.

12           You could certainly make the argument, and  
13 certainly Mr. Bowman and Mr. McLaren ably do, on behalf  
14 of MIPUG, this is not a large industrial problem, but a  
15 general reflection of the issue of average domestic rates  
16 tending to be below average export rates.

17           But Hydro refutes this argument by  
18 emphasizing four (4) points, and my clients endorse  
19 Hydro's position on this. They think, to use the words  
20 of my client Mr. Benham, there is a difference, not just  
21 in degree but in kind, between the fairness implications  
22 of large, new, unconstrained growth on the large  
23 industrial side as opposed to other ratepayers.

24           And I'll elaborate this in two (2) points,  
25 but the four (4) points that Mr. Wiens appears to make,

1 page 537 of the transcript -- and you can come to the  
2 same conclusion by looking at the 2008 General Rate  
3 Application, PUB Interrogatory to Manitoba 1-83A: This  
4 is the class of consumers that is most price responsive.  
5 They're the one with the greatest disparity between  
6 marginal costs and rates. And they're the ones  
7 experiencing the highest growth, both historical and in  
8 the short-term forecast, although in a couple of minutes  
9 I'll get to the question of how much reliance we -- we  
10 should be putting on that short-term forecast, given the  
11 -- the downturn in the economy.

12 In terms of -- I think it's well accepted  
13 that this is the class which is most likely to be  
14 responsive to a -- to a price gap. I should -- should  
15 note -- and Mr. Wiens notes this at page 537 of -- of the  
16 transcript -- that energy use is relatively inelastic for  
17 all the customer classes, but -- but of the classes, this  
18 is the one that is most price-elastic in the short-term  
19 and the long-term.

20 The point is also made that the gap  
21 between embedded cost rates and the export rate is  
22 largest for the large industrials. And he makes that  
23 point at page 536 of the transcript.

24 And I probably can't do justice to it, but  
25 if you go to table -- the -- the two (2) page document

1 that I provided you, to the second page, you'll see that  
2 I -- we've included, on behalf of our clients, an excerpt  
3 from Manitoba Hydro's rebuttal evidence, an excerpt from  
4 Attachment Number 3.

5

6 (BRIEF PAUSE)

7

8 MR. BYRON WILLIAMS: And Attachment  
9 Number 3, in my clients' submission, demonstrates the  
10 short-run impact on revenues of an identical energy  
11 increase of 720 gigawatt hours of each domestic class.  
12 And you'll have to accept that from me; I've only put in  
13 part of the -- part of the table.

14 The key point -- and if you go to the --  
15 to the -- the fifth or sixth column in, Bulk Power,  
16 Marginal Costs Less Marginal Revenues -- is that when you  
17 look at the large, General Service Large, an energy  
18 increase of 720 gigawatt hours for this class, all other  
19 things being equal, will present the Corporation with a  
20 \$15.8/\$15.9 million revenue gap, suggesting that other  
21 classes of consumers would be required to assume a cost  
22 short fall as a consequence of this increased growth.

23 By contrast, go to the top of that column,  
24 you'll see residential -- or General Service Small non-  
25 demand, and you'll observe that when we look at the short



1 run picture an increase in the load of this magnitude for  
2 these classes would actually result in a reduction in the  
3 cost burden of other classes.

4           What Attachment 3, and the conclusion you  
5 can draw from it, doesn't show, because it assumes  
6 identical growth of those classes, what it doesn't show  
7 is a historical trend over the last ten (10) years, which  
8 reveal -- reveals large industrials growing much more  
9 rapidly, when weather normalization is taken into  
10 account. And it doesn't reflect the fact that when you  
11 look at the projections over the next ten (10) years, and  
12 in particular the next five (5), at least based on the  
13 most recent forecasts, again large industrials growing  
14 much more rapidly.

15           So there's the impact of the revenue and  
16 price gap by itself if growth was equal, which is, in my  
17 clients' submission, a difference in kind, not degree.  
18 But when you couple that with a rapid historic growth and  
19 with a relatively rapid projected growth, my clients  
20 suggest that there is a -- a difference in kind and a  
21 policy issue relating to fairness that needs to be  
22 addressed.

23           And just to -- to look at that growth  
24 issue for a moment, Attachment 1 is the -- is -- of the  
25 Hydro rebuttal evidence -- is the first page of the two

1 (2) page document, and you can just look, the fifth  
2 column in, Increases From Previous Annual. And again  
3 allowing for weather normalization you see that the  
4 Residential Class between 1998/'99 and 2007/'08, was  
5 growing around 2 percent annually while the General  
6 Service Large greater than 30 kV, energy intensive only,  
7 was growing more than five (5) times as fast, on a  
8 percentage basis, and moving over one (1) column to the -  
9 - to the left, essentially doubling in usage over the  
10 past ten (10) years.

11 And again, Mr. Wiens made the point that  
12 looking into the future -- and this was at page 530 of  
13 the transcript; also from MIPUG Interrogatory to Hydro 1-  
14 3 -- this disproportionately rapid growth is expected to  
15 continue over the next five (5) years, with top  
16 industrial customers expected to account for about  
17 68 percent of total system load growth within the next  
18 five (5) years.

19 So my clients believe that there is a real  
20 concern. Is it material? Certainly, I guess, one could  
21 argue that when you look at the incremental revenue that  
22 Hydro is expecting to get from this Energy Intensive  
23 Rate, about 10 1/2 million allow -- after DSM  
24 adjustments, in 2009/'10, and 18 million in 2010 to '11 -  
25 - that's from Mr. Wiens, pages 425 and 426 of the

1 transcript -- you could argue, I guess, if -- if, you  
2 know, what's 10 to 20 million between friends -- it's --  
3 the revenue protection, you could argue, is relatively  
4 small.

5                   But even at this level, my clients  
6 certainly think that it's material. Certainly for low  
7 income or consumers of those on fixed incomes or modest  
8 incomes, a 1 or 2 percent impact is significant.

9                   My clients believe though that looking  
10 just at that revenue may understate the materiality of  
11 the issue, and they accept Hydro's position -- and I  
12 think Mr. Wiens expressed this -- that having the debate  
13 over the Energy Intensive Rate has, in and of itself,  
14 sent an important message to Energy Intensive Large New  
15 Load; introduced some uncertainty which is reduce the --  
16 the growth pressures.

17                   So in -- in considering the impact of any  
18 proposal we -- we submit on behalf of our clients, that  
19 the Board must consider not only the proposed revenue  
20 impacts, but the chilling effect it may have on -- on  
21 certain types of growth which some may consider  
22 undesirable from a fairness perspective or from a revenue  
23 protection perspective.

24                   So wherever the Board chooses in its  
25 wisdom to go, in -- in terms of this issue, my clients

1 believe that until the issue is finally resolved, it's  
2 certainly important to preserve that December 31st, 2007  
3 baseline date. Even if this particular hydro application  
4 is rejected my clients think that that's an important  
5 item for the Board's consideration, one they would  
6 recommend to the Board.

7           On behalf of my clients, I -- I've been  
8 beating up a little bit on the -- the MIPUG perspective,  
9 and certainly my -- my clients rely on those arguments,  
10 they do wish to note, in -- in fairness to MIPUG and to  
11 the members of MIPUG and other large industrial  
12 consumers, that there -- it is -- it would not be a  
13 radical suggestion to say that the economic downturn  
14 generally -- the recession in many parts in North  
15 American, and certainly a slowing even in Manitoba, may  
16 stifle demand in the -- in the short term, whether it's  
17 closures at Hudson Bay Mining and Smelting or otherwise.

18           And my clients don't -- wouldn't take that  
19 to suggest that we should lose the December 31st, 2007  
20 baseline date, but that may give the Board, if it feels  
21 that it needs to consider this issue more carefully, some  
22 comfort that some pressure may be -- may be off.

23           The bottom line, my clients believe  
24 there's an issued that needs to be addressed, but they  
25 accept that the debate about the rate and recent economic

1 events may have reduced the urgency somewhat. Assuming  
2 the problem requires a solution -- this is the second  
3 element of our -- my clients' analysis -- they wanted to  
4 outline and weight key objectives in assessing the  
5 effectiveness of any proposed solution.

6           And the Board may wish to turn to the --  
7 to the other -- other handout that my client -- clients  
8 have prepared. And I want to -- if you wish to follow  
9 along anyways -- if you wish to follow along just focus  
10 on, for -- this time being, the first column, the  
11 Criteria column, because these are the seven (7)  
12 criteria, general themes of criteria, that you may see  
13 more table than that, but the seven (7) general headings  
14 that my clients have employed in assessing the  
15 effectiveness of any proposed solution.

16           And I'll outline them briefly and then I  
17 want to let you know how my clients rank them, in terms  
18 of importance.

19           One (1) is the objective, the fairness  
20 objective, of protecting revenues; that's on page 1, or  
21 page 2, I guess, at this table.

22           A second objective is Cost Protection.

23           A third is economic development  
24 considerations, and I'll elaborate on that in a moment.

25           A four (4), one that's near and dear to

1 Dr. Miller's heart and -- and others in this room,  
2 efficiency signals.

3 A fifth, which is important I think to all  
4 classes of consumers, is fairness to customers impacted  
5 or potentially impacted by the rate. That gets into  
6 issues of whether the rate is discriminatory, or more  
7 importantly, unduly discriminatory.

8 Moving along, a couple other pages -- two  
9 (2) other important issues, from my clients' perspective,  
10 are implementation issues and stability and transparency  
11 of the rate.

12 You may be able to see Mr. Harper's hands  
13 in those last two -- last two (2) criteria.

14 So those seven (7) -- these are the -- my  
15 clients' seven (7) important considerations. They don't  
16 weight them equally, and I think that's important to say.  
17 In the top tier of my clients' objectives, not  
18 surprisingly, given who they represent, are -- are two  
19 (2) considerations: Revenue protection by capturing  
20 instances where domestic revenues are less than export  
21 revenues and cost protection.

22 In the middle tier of -- of the weighting,  
23 from my clients' perspective, are three issues: Fairness  
24 to the customers impacted, pricing signals, and economic  
25 development considerations. And still important, but

1 lanked -- ranked somewhat lower, from my clients'  
2 perspective, are implementation issues and stability and  
3 transparency issues.

4           My clients believe that this ranking is an  
5 important element of understanding their argument, and of  
6 the alternatives -- needs for an alternative analysis.  
7 If my clients ranked efficiency or price signals higher  
8 than rate protection or cost protection, revenue  
9 protection or cost protection, you might see them  
10 endorsing wholeheartedly Dr. Miller's proposal or the BC  
11 stepped rate.

12           Given my clients' primary -- most  
13 important concern, being revenue protection and cost  
14 protection, they have some analytical -- analytical,  
15 followed by economic development considerations -- they  
16 have some analytical interest, both in the Hydro Energy  
17 Inten -- Intensive Rate Proposal, as well as the BC  
18 System Expansion Proposal.

19           In just a couple moments, Mr. Chairman,  
20 Members of the Board, I'm going to -- to mur -- to move  
21 to an evaluation of these key objectives against the  
22 different options. But my clients do have a few  
23 additional comments about some of these objectives.

24           In the terms of the core issue, which they  
25 consider the core issue of this application of revenue

1 pro -- protection, my clients do want to make it clear  
2 that they don't necessarily equate revenue protection  
3 with rate protection, which is, of course, ultimately at  
4 the heart of my clients concerns.

5           And Mr. Warden made this point well at  
6 pages 546 and 547 of the transcript. He agreed with me  
7 that it does not necessarily follow that protecting the  
8 revenue base limits or reduces rate increases. And he  
9 agreed that if the Corporation protects its revenue base,  
10 but increases its expenditures, there will be more  
11 protection on the rate base, all other things being  
12 equal. So just a important point, that this is only part  
13 of the equation, in terms of protecting the rate base.

14           In terms of the issue of proper price  
15 signals, my clients want to emphasize the point, that  
16 they see the issue of proper price signals is primarily a  
17 fairness issue, of signalling to certain cust --  
18 consumers the impact that their use might cause or impose  
19 -- or the costs it might impose on other consumers.

20           Given the relative inelasticity (sic) of  
21 electricity consumers, my clients are less sold than  
22 TREE/RCM on price signals as a key mechanism to promote  
23 conservation and sustainability. They note, as Mr.  
24 Dunsky did in the last hearing, that consumer behaviour  
25 is complex and that there are many barriers to energy



1 efficiency, price only being one (1). They note as well,  
2 that with -- there was compelling empirical evidence in  
3 the last hearing provided by TREE, that energy is partic  
4 -- not a particularly price-elastic commodity, especially  
5 for residential customers.

6 My clients do recognize that we're looking  
7 at efficiency and sustainability issues; that general  
8 service large class is likely to be more price  
9 responsive. But they note the evidence of Hydro in this  
10 proceeding, and Mr. Dudar was very good on this point,  
11 which suggests that higher electricity rates don't  
12 necessarily lead to higher participation rates and energy  
13 efficiency programs.

14 And part of this is at page 393 of the  
15 transcript, but later on as well -- and I don't have the  
16 site; I'll try and get it for the Board -- Mr. Dudar  
17 pointed to the example of Vale Inco and their operations  
18 in Ontario and Manitoba. And he noted that Vale Inco  
19 Ontario failed to implement the same degree of efficiency  
20 of improvements as Vale Inco Manitoba, notwithstanding  
21 his suggestion that electricity rates in Ontario were as  
22 much as 70 percent higher.

23 So while pricing signals may be seen as a  
24 simple and ideologically attractive pathway to energy  
25 efficiency, empirical experience and research, and

1 practical experience, suggests that market economic  
2 theory may not work particularly well in this context.

3 Just going -- excuse me.

4

5 (BRIEF PAUSE)

6

7 MR. BYRON WILLIAMS: Just going back to  
8 the -- the alternatives assessment, I just want to,  
9 starting at the first page, remind the Board of the  
10 options we were looking at. I'm not going to elaborate  
11 on the Manitoba Hydro proposal; I think you're far too  
12 familiar with that.

13 We also look in the column number 3 at the  
14 Chernick proposal, which we suggest sets price based on  
15 forward-looking marginal costs, including emission costs.  
16 He suggests it should apply to more customers and that  
17 the baseline should be reduced over time, starting at  
18 less than historic use.

19 Column number 4 addresses the BC stepped  
20 rate approach, as it's applied in BC to our  
21 understanding. And that -- an important element of that  
22 -- two (2) important elements of that: We're familiar  
23 with how the baseline is set using historic usage, and it  
24 applies marginal cost base rates to usage above 90  
25 percent of historic usage. But two (2) important points

1 about the BC stepped rate approach: The rate for the  
2 first block is reduced to be revenue neutral and that has  
3 consequences for other customers. And also, there's an  
4 adjustment for the baseline if there are major changes in  
5 production capability. And we'll get to that in a  
6 second.

7                   But this is not a tool if your concern is  
8 unrestrained growth or disproportionate growth. This  
9 approach by itself is not a tool, as it's applied in  
10 British Columbia to address that issue; it's really  
11 better focussed on efficiency issues.

12                   The -- the -- in column number 5 we look  
13 at the BC Hydro system expansion contribution approach,  
14 Tariff Number 6, and we note that for very large  
15 customers you include the costs of generation, in  
16 evaluation of contribution needed for the new load.

17                   It's important to realize just how large  
18 those customers are, 150 megawatts, and generally the  
19 contribution is only required, at least in our  
20 understanding, when transmission upgrades and extensions  
21 are needed, otherwise, no additional charge or load  
22 growth. At least that's our understanding of it.

23                   Moving to the Protex (phonetic) revenue --  
24 and we've broken this down into two (2) issues, and --  
25 and time being as it is, I'm not going to go through both

1 of them, and I'm just going to try and big picture it for  
2 the Board, try and highlight it, and then the Board can -  
3 - can do with it as it -- as it wishes.

4           We've asked the question: Does the option  
5 provide revenue protection by capturing instances where  
6 domestic revenues are less than export revenues? And  
7 based on this criteria, in my clients' respectful  
8 submission, the two (2) strongest approaches are the  
9 Chernick proposal -- and my clients might argue that it  
10 arguable over-collects by lowering the -- the baseline  
11 for existing usage as well. And so that's one (1) of the  
12 reasons they're not prepared to endorse it -- and also  
13 the Manitoba Hydro proposal.

14           And it does provide some revenue  
15 protection, but to a certain degree my clients do caution  
16 that -- that when you take into account the -- the growth  
17 allowance, Hydro may overstate its case. And Mr. Warden  
18 was talking about its approach, and he suggests that this  
19 100 gigawatt hour threshold avoids the administrative  
20 complexities of customer exemptions, while capturing 94  
21 percent of the load of all domestic customers served at  
22 30 kilovolts or greater

23           And my clients would just observe that  
24 while the threshold may capture 94 percent of the load,  
25 much of that load is subsequently released by growth

1 allowances. We're not saying, on behalf of our clients,  
2 whether that's a good thing or a bad thing, but it's --  
3 essentially what the Energy Intensive Rate captures,  
4 whether it's a good thing or not, is the -- the growth of  
5 -- it's projected only three (3) or four (4) firms.

6 In terms of "protects revenues," which is  
7 a primary concern of my clients, the BC system expansion  
8 is applied and at the level it's applied at, the -- the  
9 trigger point, it protects export revenues only for very  
10 large customers.

11 And in terms of the BC stepped rate  
12 approach, given the baseline adjustment that takes place  
13 if there's major changes in production capability, it --  
14 it does not protect, in my clients' submission, against  
15 major growth of existing customers or a new customer.

16 So while these are both interesting tools,  
17 if the Board were looking to apply them in Manitoba, or  
18 some version of them, my clients would submit that you --  
19 you'd need to adjust them in a variety of fashions. And  
20 we -- we look at that a little bit in the -- in the last  
21 page of this -- of this outline.

22 I won't -- going to the third page -- and  
23 I'll move through this more quickly -- does the option  
24 provide cost protection by protecting existing customers  
25 from incremental loads that disproportionate cost to the

1 system?

2                   For three (3) of these approaches, namely  
3 the Manitoba Hydro proposal, the Chernick proposal and  
4 the BC stepped rates proposal, my clients note that  
5 without an appropriate service extension policy it does  
6 not, in their view.

7                   And that goes back to the point of why my  
8 clients think that when one is looking at this issue,  
9 what has to be considered as a package, some sort of  
10 consideration of -- of an extension policy, whether it's  
11 a Centra feasibility, a Tariff 6, or otherwise, and --  
12 and perhaps a rate approach as well. My clients -- in my  
13 clients' view the -- the strongest, in terms of cost  
14 protection, is the BC Hydro system expansion.

15                   In terms of economic development  
16 considerations, my clients recognize you can look at  
17 economic development considerations from a variety of  
18 perspectives. There's the traditional Manitoba advantage  
19 approach: Use or -- relatively low cost hydro  
20 electricity as a competitive advantage to level the  
21 playing field for industry where -- where otherwise they  
22 may face unequal -- an unequal playing field. No  
23 judgment on the type of development.

24                   There could be an approach where one tries  
25 to pick good industries, industries that are good for

1 Manitoba.

2                   And finally there's an approach more  
3 consistent with what we understand Dr. Miller, and -- and  
4 perhaps Mr. Chernick might look to, which is setting the  
5 rates at what the market will bear, as did jurisdictions  
6 such as Alberta and Ontario, and let the economic chips  
7 fall where they may. That may be overstating their  
8 position. If -- if -- if we are then certainly they'll  
9 correct us.

10                   And I just want to be clear and -- and if  
11 it is, Mr. -- Mr. Gange, that's where my clients see the  
12 -- the ultimate logic of -- of the TREE position leading,  
13 but they may be overstating it.

14                   My clients are reluctant to embark upon  
15 this latter course, especially given the recession in  
16 much of North America and what they understand to be the  
17 experience in Ontario and Alberta. And they would  
18 certainly appreciate a better understanding of -- of how  
19 far TREE sees this going.

20                   My clients were also intrigued initially  
21 by the idea of, maybe you could use some sort of rate  
22 like this to pick the good ones. But as they started to  
23 outline -- I think at last count they had ninety-seven  
24 (97) -- no, I'm exaggerating, but they had a zillion  
25 different considerations and -- and they -- they

1 seriously questioned whether the regulator was the -- the  
2 proper body to -- to do that type of analysis.

3           Absent compelling, empirical evidence  
4 rather than theoretical or philosophical arguments, my  
5 clients in terms of economic development considerations,  
6 are -- are most attracted to some sort of consideration  
7 of the -- the status quo, the Manitoba advantage, while  
8 still taking into account the issue of fairness to other  
9 classes of consumers.

10           Taking that analytical approach, and  
11 subject to further debate and empirical evidence, on this  
12 cri -- criteria they certainly prefer the Hydro approach  
13 to the TREE approach. And while they -- they recognize  
14 that -- that TREE is -- is more aggressive than Manitoba  
15 Hydro, they think that that type of aggressiveness at a  
16 time of economic slowdown in Manitoba, recession and much  
17 of North America, and given recent rate increases, they -  
18 - they think that may be counterproductive.

19           One (1) last comment about picking good  
20 companies: If you look at the practical effect of  
21 Manitoba Hydro's proposal in this Hearing, you could  
22 argue, I'm not saying that they did this intentionally,  
23 but the practical effect is to pick certain companies  
24 whose growth should be protected and pick other whose  
25 growth perhaps should not be protected. Effectively only



1 three (3) or four (4) companies are being exposed to the  
2 Energy Intensive Rate, based on current load forecasts,  
3 and some may argue that these companies are bringing less  
4 benefits, in terms of employees and payroll.

5           In terms of economically-efficient pricing  
6 signals, my clients would submit that there's little  
7 doubt that -- that probably the Chernick propo --  
8 approach gets the highest ranking on this score, followed  
9 by the BC stepped rate; that's certainly perspective.  
10 And they note, the cross-examination of Mr. Peters of Mr.  
11 Wiens, at page 171 of the transcript -- 171 to --  
12 actually 173, excuse me -- Mr. Peters suggested an  
13 absence of price signals for many companies in the -- the  
14 Manitoba Hydro Energy Intensive Rate.

15           And Mr. Wiens, you would agree with me  
16 that there's no price signal being sent to the other  
17 industrial customers, such as the two hundred and fifty-  
18 two (252), which would be served greater than 750 but  
19 less than 30 kV. That would be correct.

20           Now my clients don't necessarily say that  
21 that's a bad thing in the context of the -- the more  
22 narrow problem we're trying to resolve here, in the sense  
23 that if the issue is, we're looking at revenue protection  
24 primarily supplemented by cost protection, well maybe the  
25 efficiency issue is for another day. We just -- out of

1 fairness, if the Board sees energy efficiency as the  
2 number 1 priority, then the Energy Intensive Rate is --  
3 is not what you're looking for.

4 I want to spend, on behalf of my clients,  
5 some -- some time on fairness to customers impacted,  
6 especially on -- on the first Sub A heading there. And -  
7 - and you could -- you could probably gather that in  
8 terms of trying to achieve this rough balance between  
9 economic growth and revenue protection for other  
10 consumers, my clients have some sympathy for the Energy  
11 Intensive Rate. Where they experience significant  
12 discomfort is on the issue of fairness to customers  
13 impacted. Whether the rate is -- whether or not the rate  
14 is unduly discriminatory is of concern to my clients.

15 You may ask: Why would my clients care,  
16 given that it's not their particular ox that is being  
17 gored in this proceeding. They care for a couple of  
18 reasons: One (1) is they think good regulatory practice  
19 benefits them all, all consumers.

20 And secondly, already anticipating an  
21 appearance before the Court of Appeal, with regard to  
22 payday loans, my clients would suggest that at least the  
23 concern that this may be an unduly discriminatory rate,  
24 means that we -- we want to cross the "Ts," dot the "Is;"  
25 doublecheck to make sure that there are no other

1 preferable options.

2 In terms of fairness to customers  
3 impacted, I'm going to try and high-level this.

4 Concern number 1. The operation of the  
5 growth allowance may lead to the appearance that only  
6 certain types of firms are being targeted. And if you  
7 look at page 496 of the transcript, and it's elsewhere in  
8 the cross-examination of Mr. Peters, but I like it when I  
9 get the same answer from my questions, there's a strong  
10 possibility that only chemical and petroleum firms will  
11 be affected. Mr. Wiens confirmed that.

12 Concern number 2. And this is probably  
13 the most serious concern. The operation of the hard cap,  
14 and Manitoba Hydro's own evidence that it was aware of  
15 the implications of the hard cap on one (1) particular  
16 firm, may lead some to conclude that Hydro was targeting  
17 one (1) specific firm. And I'm not impugning any -- any  
18 motives, I'm just looking at the appearance, and also how  
19 that customer, putting a reasonable person in their shoes  
20 may feel.

21 And Mr. Dudar can confirm this at page 506  
22 through page 509. Essentially, I -- I asked him whether  
23 it would be fair to say that while most companies face  
24 limits on unconstrained growth, there's one (1) company  
25 that faces a firm cap -- firm cap, excuse me, on pretty

1 much any growth, would that be fair; and he confirmed  
2 candidly that that would be fair.

3                   Concern number 3. With this rate -- and -  
4 - and it may just be the unavoidable consequence of  
5 drawing lines. It may just be that. But there are a  
6 variety of ways in which the application of whether it's  
7 the 100 gigawatt hour trigger or the growth allowance, or  
8 the 1,500 gigawatt hard cap, can be said to disadvantage  
9 certain customers as compared to others. And I'm not  
10 going to go through them all. I elaborated on just three  
11 (3) of those in the table, in terms of fairness to  
12 customers.

13                   Mr. Dudar, at pages 79 and 80, in fairness  
14 to -- to Hydro, made the point that if you have uncapped  
15 growth allowances, that would be -- yield significantly  
16 higher quality -- quantities of energy to the high --  
17 largest customers. And that's a, you know, a fairness  
18 concern, in terms of the absolute volume.

19                   But at the same time, a number of  
20 questions have been asked by different parties about the  
21 absolute denial of a growth allowance to one (1)  
22 particular firm, and as well as the question whether the  
23 application of the 100 gigawatt hour trigger could lead  
24 to a perception of unfairness by other firms.

25                   And my clients would just caution that

1 when we're in this duelling banjos kind of debate of  
2 relative unfairness going both ways, that may raise  
3 significant concerns about this -- this rate, both its  
4 perception and whether or not it's unduly discriminatory.

5 I -- I -- my clients are presuming that  
6 both MIPUG and -- and Manitoba Hydro will run you through  
7 the -- the legal arguments. At a high level, my clients  
8 believe there's a reasonable argument that the Energy  
9 Intensive Rate itself is not unduly discriminatory, but  
10 they have a concern that the hard cap may be vulnerable.

11 Certainly we've done extensive research on  
12 behalf of our clients. If someone is looking for those  
13 comments, we'd be prepared to file them, but that's --  
14 those are kind of a high-level look at -- at the issue.  
15 And frankly, we're having debate even within the legal  
16 term -- legal team, on how the -- you know, whether or  
17 not it's unduly discriminatory.

18 So when we have that uncertainty amongst  
19 our clients it's -- amongst the legal team, that's a  
20 concern.

21 Mr. Chairman, I'm -- I'm moving towards  
22 the end. I want to turn to Mr. Chernick's proposal for a  
23 few minutes.

24 And I want to say that apart from  
25 traumatizing my clients with his bank robbery analogies,

1 Mr. Chernick has provided some very thoughtful and  
2 helpful insights, and thought provoking comments, in  
3 terms of expanding the Energy Intensive Industrial Rate  
4 to the whole GS Large class.

5 He's thoughtfully raised the issue of  
6 whether the growth allowance should be disallowed. He's  
7 -- he's raised the issue of whether heritage rate  
8 protection for existing loads should decline over time.  
9 And he's also raised another very important issue of  
10 setting significantly higher marginal cost rates for any  
11 second block, including environmental costs.

12 And certainly my clients applaud TREE/RCM  
13 for bringing Mr. Chernick, and Mr. Chernick for pushing  
14 the envelope, providing some thought provoking comments.

15 It appears that Mr. Chernick at least was  
16 seeking the Board's directional endorsement of these  
17 recommendations, and my clients would strongly urge  
18 caution on this front. They would -- they would  
19 certainly recommend to the Board that let's make sure we  
20 have these options on the table in subsequent  
21 proceedings, but they would recommend that the Board  
22 withhold any directional endorsement.

23 And -- and my clients' reason for this --  
24 much of their argument is indeed supplied by Mr.  
25 Chernick. And he's been very -- my clients have always

1 considered him a good forthright thoughtful witness, and  
2 in his typical forthright fashion he's been fairly frank  
3 in admitting that he has not fully thought through the  
4 full implications of his recommendations.

5                   And for example, if the Board wishes at  
6 some point in time to turn to page 821 of the transcript,  
7 he declined to offer his opinion on whether an extension  
8 to all large GSL customers should be done on a revenue  
9 neutral basis for the class, akin to the stepped rate  
10 proposal, or whether it should be a corporate revenue  
11 neutral basis, as per the Energy Intensive Rate. That's  
12 a pretty important threshold question that he's not fully  
13 forms the opinion on yet.

14                   At page 822 he candidly admitted:

15                   "I haven't really thought through how  
16 much load growth there's likely to be  
17 in that class and how substantial the  
18 revenues would be, compared to the  
19 revenues from an EIR approach only for  
20 larger customers."

21                   At pages 822 and again at pages 823 he  
22 candidly raised the question of whether, and I'm quoting  
23 from Mr. Chernick:

24                   "...it's really feasible to do this on  
25 an individual customer basis, with the

1                   number of customers in the smaller GSL  
2                   category."

3                   That'S page 822, lines 20 -- lines 19 to  
4                   22.

5                   And in terms of administrative feasibility  
6                   and how long down the road one should go. my clients  
7                   believe and -- and -- that -- Hydro has raised some  
8                   significant concerns about how far to take this, in terms  
9                   of Mr. Chernick, and those, in -- in my clients' view,  
10                  are best set out at pages 434 to 453 of the transcript.  
11                  Hydro suggests, at page 434, that the task for just ten  
12                  (10) companies, administratively, was quite labour  
13                  intensive and more complicated than originally  
14                  anticipated. And they note that they've -- in their  
15                  words "captured" -- we take issue with that 75 percent of  
16                  the total load with that effort.

17                  They argue at pages 440 that would be  
18                  similarly challenging for the two hundred (200) companies  
19                  in the GSL class.

20                  And at page 480, Mr. Wiens elaborates on  
21                  that further, and you can just go to the transcript  
22                  reference.

23                  At page 450 they suggest that going down -  
24                  - doing that same effort for two hundred (200) companies  
25                  would be time consuming, significant, and onerous.



1 That's at page 450.

2 And Mr. Wiens confirms at page 452 that  
3 the payoff for the administrative effort is not the same,  
4 and that the megawatt hours likely to be captured per  
5 customer decreases quite rapidly within those groups.

6 So not to say it can't be done, but  
7 there's an open question on -- on what's the trade-off  
8 and what's the benefit.

9 In terms of BC Tariff Number 6 or  
10 analogous service extension policies, my clients have to  
11 admit that they -- they have some analytical attraction  
12 to -- to some of those approaches. They're going to  
13 point out in just a couple of minutes some limitations,  
14 but from my clients' perspective the evidence on the  
15 record seems to suggest that some version of an extension  
16 policy might assist in dealing with, first of all large  
17 new server farms, or a -- or the aluminum smelter.

18 And again, if I'm misinterpreting Mr.  
19 Wiens' evidence, I'm sure Ms. -- Ms. Ramage will -- will  
20 correct me, but at page 494 he was asked:

21 "If you were to use that kind -- that  
22 kind of figure, a figure similar to the  
23 BC Tariff Number 6 approach, would that  
24 capture any of the foreseen energy  
25 intensive growth in Manitoba in the

1                               foreseeable future?"

2                               And Mr. Wiens made an important point, and  
3 that would be one (1) of the limitations of this  
4 approach:

5                               "I don't see that capturing any of the  
6 loads that are coming on in the near  
7 term that we have some degree of  
8 certainty about."

9                               He made that point quite clear. But  
10 looking forward, he said, some of the perspective loads  
11 that we've talked about previously, large server farms,  
12 aluminum smelters, would certainly be captured by that.

13                              So again, my clients aren't endorsing  
14 this, but they're just open to the idea that if the  
15 problem is defined more narrowly, there may be some  
16 usefulness in that tool.

17                              And again, my clients may have  
18 misunderstood Mr. Dudar's evidence, but based upon his  
19 conversation with the Chairman, they were -- they were  
20 wondering whether the extension policy, or some sort of  
21 extension policy, might capture Canexus, because of  
22 Canexus' transmission limitations. And my clients' point  
23 to the transcript at page 509. Mr. Williams is asking  
24 whether there's only one (1) -- the one (1) company that  
25 faces a firm cap, and Mr. Dudar says, "that would be

1 fair," but the Chairperson intervenes and goes:

2 "But that cap is only with respect to  
3 the so-called heritage rates?"

4 And that's confirmed.

5 "So it's not necessarily a supply  
6 issue," he goes on.

7 And Mr. Dudar notes: No, the transmission  
8 -- although the transmission capabilities -- and I'm  
9 paraphrasing -- will need to be upgraded to serve  
10 additional load growth from that customer.

11 "And who would pay for those  
12 transmission upgrades?

13 The customers would pay for that."

14 And so again, my clients may have  
15 misunderstood Mr. Dudar's evidence, but one (1) of the  
16 conclusions that they drew on a preliminary basis, is  
17 that the extension policy or some form -- form may address  
18 a Canexus-type issue.

19 In the event that the Board feels that  
20 it's a glutton for punishment, and -- and it decides not  
21 to sever the Gordian Knot, not to -- to make a final  
22 determination in this proceeding, my clients have briefly  
23 set out -- and that should be before you in the -- the  
24 last two (2) pages -- a proposal that's not been tested  
25 in this Hearing. They've asked a few questions in cross-

1 examination. And essentially what it attempts to do,  
2 inelegantly and on a just-for-discussion basis, is  
3 combine some of the elements of the BC Tariff 6 and the  
4 stepped rate approach.

5                   It's important to note on the second-last  
6 page, the third bullet, my clients see the BC Hydro,  
7 whether it's Tariff 6 or the stepped rate, having  
8 limitations as they're currently designed. In terms of  
9 existing customers, and I've noted this before, the  
10 stepped rates baseline is automatically adjusted for  
11 increases in production, and therefore does not address  
12 the incremental generation costs.

13                   Tariff Number 6, as it's currently  
14 structured in British Columbia, only occurs for very  
15 large increases in demand, greater than 150 megawatt.  
16 This provides for an exceptional growth allowance and my  
17 clients would say would likely not catch much, if any, of  
18 existing customer growth projected.

19                   And their understanding of Tariff Number  
20 6, subject again to correction, is that it only applies  
21 when you're up against it, in terms of capacity, when  
22 transmission facilities are needed, and they offer some  
23 similar concerns about new customers.

24                   So -- and -- and I won't go through this  
25 in detail, but my -- my clients have -- have looked to an

1 approach, whereby you meld these two (2) -- these two (2)  
2 approaches, revenue protection primarily provided by a  
3 change to the BC stepped rate approach, which looks  
4 curiously similar to the Energy Intensive Rate of  
5 Manitoba Hydro, extension or incremental capacity costs  
6 addressed by a more limited Tariff Number 6.

7           When one looks at this, and this is again  
8 a preliminary analysis, the clients see it having some  
9 strength, in that it better integrates revenue protection  
10 and cost protection, and they certainly see it being --  
11 perhaps its greatest strength is better on energy  
12 efficiency.

13           They note though, that it has some of the  
14 same challenges -- they note, though, that it has some of  
15 the same fundamental challenges as the Energy Intensive  
16 Rate, in terms of client fairness to customers with --  
17 within that class. And -- and perhaps that's a  
18 reflection that this is a -- a line drawing exercise.

19           My clients also would note that we did try  
20 and -- and do this in two (2) ways, kind of the -- option  
21 number 1 -- well, there was going to be an option number  
22 2 -- option number 1, leading with the stepped rate,  
23 using it primarily as a revenue protection device and  
24 supplemented by Tariff Number 6.

25           We also tried to construct a approach

1 where Tariff Number 6 provided the revenue protection and  
2 -- and supplemented by stepped rate. And that proves  
3 very mechani -- mechanistically challenging. So not to  
4 say that it couldn't be done but in the twenty-four (24)  
5 hours I gave Mr. Harper, it was not -- not possible. So  
6 that's a -- a final point.

7           Finally, just before we get to the -- the  
8 recommendations, Mr. Chairman and Members of the Board,  
9 and I thank you for your indulgence, just some -- three  
10 (3) general comments about the Energy Intensive Rate and  
11 if Manitoba -- and if the Board decides to adopt it as  
12 proposed by Manitoba Hydro. We'll leave it to others to  
13 micro-detail that analysis.

14           One (1) is -- is in terms of transparency  
15 or process. If the Board walks down that path, my  
16 clients certainly believe that it's important that, in  
17 terms of debates over baselines, DSM allowances, et  
18 cetera, that the final authority is not Manitoba Hydro;  
19 that there should at least be some mechanism to appeal to  
20 the Board, and ideally, as in British Columbia, perhaps  
21 the Board approval, as -- as is required in certain  
22 aspects of Tariff Number 6.

23           And Mr. Warden was feeling charitable, at  
24 least partially charitable, at about pages 463 and 464 of  
25 the transcript. Pages 463, he indicated that: While

1 Hydro's position -- and again I'm paraphrasing -- would  
2 be that we don't see the need for any independent  
3 determination of that baseline, there may, however, be  
4 good logic for having an appeal process.

5 Later on page 464 you see the logic.

6 "It may be beneficial?"

7 Mr. Warden agrees:

8 "Yeah. Our expectation would be that  
9 we would be able to agree with  
10 customers, but in the event that it  
11 doesn't happen it would seem reasonable  
12 to have some other avenue."

13 Another comment, in terms of if the Board  
14 decides to go down the Energy Intensive Rate path,  
15 there's all sorts of debate about what's the right proxy  
16 for marginal cost or whether we should be actually using  
17 a forecast or looking backwards.

18 My clients certainly agree with Mr.  
19 Chernick, that the marginal costs proxy for Manitoba  
20 Hydro is probably understated for the Energy Intensive  
21 Rate. But frankly, my clients don't see that as such a  
22 bad thing, at least in the initial stages of applying  
23 this rate. If the Board decides to go down this path,  
24 certainly there'll be some adjustment required, in any  
25 event, and some conservatism in terms of the marginal

1 costs. Certainly my -- my clients would see that as --  
2 as being beneficial.

3           Again, my clients aren't endorsing the  
4 Energy Intensive Rate, but if the Board sees fit to -- to  
5 go that route, my clients certainly are prepared to  
6 forego, in the short term, some revenue protection in  
7 order to -- to -- be cautious and careful in -- in the  
8 implementation.

9           And finally again, if the Board -- a more  
10 general comment, if the Board goes down the Energy  
11 Intensive Rate approach, gradualism from my clients'  
12 perspective is almost always a good thing.

13           I talked before about the stresses that my  
14 client group is facing, and perhaps the large industrials  
15 as well, the Manitoba advantage that they cherish, they  
16 see as being under threat. And -- and certainly they see  
17 a value in rolling out any approach gradually over time,  
18 and as well as Hydro has recommended, if you're going to  
19 go down that route introduce it to a small group.  
20 There'll be some teething -- some learning lessons and if  
21 you want to go farther do that incrementally.

22           Recommendations. Goodness gracious.  
23 They'll be quick. Hopefully you've -- you've got them  
24 all as we've moved through this.

25           My clients, going back to their first



1 point, they applaud Hydro's concern to protect the  
2 revenue protection. And they realize that if revenue  
3 protection extends to rate protection, they'll certainly  
4 benefit.

5                   And they applaud Hydro for trying to  
6 address the fundamental issue of fairness, but my clients  
7 are uncomfortable with the -- are uncomfortable in  
8 recommending the Energy Intensive Rate for two (2)  
9 reasons: One (1) is -- is just the issue of whether or  
10 not it's vulnerable to an argument that it's unduly  
11 discriminatory.

12                   And secondly, and -- and more importantly,  
13 because my clients would prefer a more thorough  
14 alternative analysis, looking more carefully at extension  
15 policies, whether it's BC Tariff 6, Centra's feasibility  
16 approach or otherwise.

17                   My clients would recommend and they  
18 acknowledge that -- that Hydro's action, in terms of this  
19 rate, has -- has arguably helped to -- to protect the  
20 revenue bases just by the mere debate, and they would  
21 recommend that the Board retain the date of December  
22 31st, 2007.

23                   Ultimately, although my clients see a  
24 number of very good things in the Energy Intensive Rate  
25 proposal, they recommend that Hydro -- that it be

1 rejected for the time being, that Hydro be asked to  
2 consider it in the context of a need -- of -- of a more  
3 fulsome need for an alternative analysis, and also in the  
4 context of a more explicit discussion of how it relates  
5 to extension policy. And certainly my -- my clients are  
6 of the preliminary view that the Board, as long as it's  
7 setting a demand charge relating to expansion --  
8 extension policy, would have jurisdiction in that area.

9           Going back to the recognition of the many  
10 burdens that Mr. Wiens and other in his shop face, we  
11 recognize that the risk of our approach, my clients'  
12 approach, may result in you being back here with the -- a  
13 -- the very same proposal. There -- there may not be a -  
14 - one that better meets those needs. And that's a risk  
15 that they acknowledge and frankly they -- they can  
16 conceive of no other -- other way out of their -- their  
17 analytical dilemma.

18           Subject to any questions from the Board  
19 and subject to a very quick check with my clients, that  
20 would be -- can close my submissions. And if you'll just  
21 excuse me for one (1) minute, Mr. Chairman.

22           THE CHAIRPERSON: Mr. Williams, just  
23 before we excuse you, I think we'd take you up on your  
24 offer to file your legal ruminations. We understand  
25 they're part of your closing statement.

1                   MR. BYRON WILLIAMS:    Okay, Mr. Chairman.  
2   And you -- you'll -- you'll get a cut and paste version  
3   of two (2) different documents.  One (1) will be a high  
4   level look at differential rates, and then one (1) will  
5   be a -- a more focussed analysis by Ms. McCandless on  
6   this.

7                   THE CHAIRPERSON:    Very good.  We  
8   appreciate it.  So we'll stand down now.  You can  
9   consult.  We'll take an eight (8) minute break and we'll  
10  come back quickly to you and then onto Mr. Landry before  
11  lunch.

12                   So we'll have a start with Mr. Landry  
13  before we have lunch.  Thank you.

14  
15  --- Upon recessing at  11:02 a.m.

16  --- Upon resuming at 11:14 a.m.

17

18                   THE CHAIRPERSON:    Mr. Williams, do you  
19  have anything more?

20                   MR. BYRON WILLIAMS:    Just a correction.  
21  Ms. Desorcy wants me to confirm for the Board that she's  
22  not addicted to Valium or any other substances, but apart  
23  from that I can...

24                   THE CHAIRPERSON:    Thank you very much.  
25  Okay, before lunch we'll allow Mr. Landry to get a good

1 start.

2 Mr. Landry, for MIPUG...?

3 MR. JOHN LANDRY: Thank you, Mr. Chair.

4 I assume, Mr. Chair, that we would go to twelve o'clock,  
5 is that a good assumption?

6 THE CHAIRPERSON: Yes.

7

8 FINAL SUBMISSIONS BY MIPUG:

9 MR. JOHN LANDRY: Okay. Mr. Chair,  
10 Members of the Board, MIPUG's argument, as in the past,  
11 has two (2) components to it: A written component and an  
12 oral component.

13 And the written argument, copies of which  
14 have been distributed, is really intended to respond to  
15 all of the relevant issues of significance arising from  
16 Manitoba Hydro's Application, with the appropriate  
17 references to the evidence and authorities.

18 Now can I assume that the Board has copies  
19 of -- of the written argument?

20 THE CHAIRPERSON: Yes, we do.

21

22 CONTINUED BY MR. JOHN LANDRY:

23 MR. JOHN LANDRY: Thank you. Now, sir,  
24 my oral argument will focus on the issues MIPUG believes  
25 are of the most importance to the Board's deliberations,

1 and will, in general, be divided as follows.

2 I'd first like to make a few preliminary  
3 comments concerning the context within which the issues  
4 raised by the Application arise, and talk about MIPUG's  
5 approach to those issues, especially in relation to the  
6 approach that MIPUG took to respond to the various  
7 suggestions and directions given to Manitoba Hydro in  
8 Board Order 116 -- or sorry, 116-08 concerning this  
9 issue.

10 I then -- I will then take a moment to  
11 summarize MIPUG's recommendations, articulating for the  
12 Board, at a high level, why Manitoba Hydro's Application  
13 must be rejected and what the Board can do if it believes  
14 there truly is a material concern to be addressed.

15 Then what I intend to do, sir, is take the  
16 board through the key issues using the written argument  
17 as a guide highlighting MIPUG's argument on those key  
18 issues.

19 And finally, I'll conclude my submissions  
20 by discussing in more detail the options that MIPUG sees  
21 for the future.

22 Now, Mr. Chair, I want to start by talking  
23 a bit about the context for the Board's decision on this  
24 current Application.

25 The issue which is the genesis -- genesis

1 of Manitoba Hydro's Application, emerged, as we know, in  
2 2006. In Board Order 117-06, the Board supported a  
3 concern raised by Manitoba Hydro about its revenue  
4 position and rates of domestic customers being threatened  
5 by new, large, energy intensive industrial Loads in  
6 Manitoba, using energy as a manufacturing input.

7 In that decision, amongst other things,  
8 that you directed Manitoba Hydro to establish a new  
9 energy intensive industrial rate class. You noted that  
10 at least one (1) other hydro electric Crown Corporation,  
11 Quebec Hydro, had specific measures for new industrial  
12 loads, and you suggested that in developing its proposal,  
13 Manitoba Hydro should take into account that existing  
14 industry came, remained, and expanded in Manitoba, with  
15 certain assumptions as to energy pricing and supply, and  
16 that a distinction between new and existing energy is  
17 reasonable.

18 Now, as we know, these and other issues  
19 were clarified in 2008. Manitoba Hydro filed its new  
20 Energy Intensive Rate Application as part of its 2008  
21 GRA. And after cross-examine during the -- cross-  
22 examination during the 2008 GRA proceeding, which cross-  
23 examination addressed major issues and deficiencies in  
24 Manitoba Hydro's then proposed new industrial rate,  
25 Manitoba Hydro, as we all know, withdrew its application

1 and sought to file a new one.

2                   Now, in Board Order 116/08 the Board,  
3 through directions and suggestions, highlighted the  
4 analysis and information it considered relevant in its  
5 ultimate deliberations on the issues raised by Manitoba  
6 Hydro, specifically noting that the Board was deeply  
7 interested in the issue and that more -- more  
8 particularly as to how best to address concerns regarding  
9 embedded cost rates being considerably lower than  
10 marginal costs, and the potential negative financial  
11 impact that can result to Manitoba Hydro and its  
12 customers.

13                   The Board clearly indicated that it  
14 expected Manitoba's -- Manitoba Hydro's new application  
15 to identify and discuss options, taking into account  
16 specific concerns noted by the Board, including dealing  
17 with how other jurisdictions have addressed the gap  
18 between embedded cost rates and marginal rates -- and  
19 marginal costs.

20                   And as we know, concurrent with the new  
21 rate application, the Board also directed, amongst other  
22 things, Manitoba Hydro file specific information on its  
23 service extension policy, which was unilaterally  
24 suspended by -- by Manitoba Hydro in 2005, and apparently  
25 in part due to Manitoba Hydro's concern about these new

1 and expanding industrial loads in Manitoba.

2                   Now, sir, from the time of Manitoba  
3 Hydro's most recent filing, a key concern throughout the  
4 review of the new application has been its material  
5 deficiencies in providing information that the Board  
6 directed, or suggested be included, regarding a wide  
7 array of matters, including identifying and assessing  
8 options, including rate options such as time of use, in-  
9 depth analysis of export market values and deferred  
10 values, and the information required on its suspended  
11 service extension policy.

12                   So that is a backdrop and is sort of a  
13 preliminary overview. An important question is, given  
14 the filing and the evidence that was brought forward at  
15 the Hearing, from my perspective what is known today on  
16 the key Energy Intensive Industry Rate issues?

17                   Well firstly, in terms of the key issue  
18 identified by the Board in its opening comments at the  
19 beginning of the Hearing in December, concerning the gap  
20 between embedded cost and marginal costs, we now know  
21 that this gap is clearly not unique to Manitoba. In  
22 fact, the gap is less material in Manitoba than in most  
23 other Canadian jurisdictions and provides no  
24 justification, in MIPUG's submission, for the specific  
25 EIIR set out in Manitoba Hydro's application.



1                   Secondly, in terms of the merits of the  
2 Manitoba Hydro filing, MIPUG submits that the evidence is  
3 clearly -- has clearly demonstrated that the EIIR is  
4 flawed, due to its unique and unprecedented departure  
5 from the Manitoba regulatory construct.

6                   Manitoba Hydro, as the monopoly supplier,  
7 has an overriding obligation to serve all customers in  
8 Manitoba. There are fundamental core principles or  
9 protections within that construct (sic), which require  
10 that this Board ensure all customers are treated fairly,  
11 and just and reasonable rates are appropriately approved  
12 by the Board.

13                   The new rate, however, would, if  
14 implemented, unfairly and unjustly discrim --  
15 discriminate against the targeted few domestic customers  
16 and loads, by delinking overall charges to this group  
17 from heritage embedded cost rates applicable to all other  
18 customers within the greater than 30 kV General Service  
19 Large class.

20                   Given the seriously adverse discriminatory  
21 impact on those actually affected by this rate, the  
22 evidence demonstrates how the new rate, or new proposal,  
23 was deliberately shaped by Manitoba Hydro to impact a  
24 very few specifically targeted customers. We understand  
25 that to be three (3) to five (5) over the next decade,

1 within the so called ten (10) to eleven (11) eligible  
2 customers using over 100 gigawatt hours per year. In  
3 fact, this basic discriminatory approach went even  
4 further. It included a proposal to impose a 1,500  
5 gigawatt hour cap on one (1) of the targeted customers,  
6 Canexus, thereby deliberately discriminating directly  
7 that customer.

8           Now the third we now know from the  
9 evidence, from -- from MIPUG's perspective, is that  
10 there's simply no reasonable justification for this  
11 discriminatory rate increase. In fact, in MIPUG's  
12 submission, reviewed even in a cursory matter the new  
13 rate has realistically nothing to do with what the Board  
14 was told the problem was in 2006.

15           In that regard, contrary to the Board's  
16 direction for example, the direction that was in 2006,  
17 that Manitoba Hydro has not proposed a new Energy  
18 Intensive Industrial Rate class in its proposal.  
19 Further, the rate is now forecast to hit primarily well  
20 established existing customers, contrary to the Board's  
21 suggested focus in Order 117/06.

22           The new rate will in fact adversely hit  
23 well established existing pipeline and chemical company  
24 customers. And the biggest share of Manitoba's net  
25 revenue, of approximately \$10 million or more from this

1 rate, will be from pipeline expansions inside Manitoba,  
2 that in no way use electricity as a manufacturing input,  
3 further showing, in our submission, that this proposal  
4 has nothing to do with the concerns brought to the Board  
5 in 2006.

6 Overall, in MIPUG's submission, Manitoba  
7 Hydro has not provided any useful evidence as to how this  
8 rate is needed today to prevent future economic growth  
9 that is against the public interest.

10 If anything, reasonable concern remains  
11 that such discriminatory rate proposals may well  
12 discourage highly desirable economic growth in Manitoba,  
13 both today and in the future. And one (1) example on the  
14 record, sir, is that since 2006 yet another aluminum  
15 smelter went to Quebec after a brief look at Manitoba.  
16 We may never know who this rate ends up discouraging.

17 Sir, even before the -- what I would call  
18 the tsunami of the current recession surprised the world,  
19 and as the MIPUG presentations clearly showed impacted  
20 the MIPUG members in a profound way, there was no  
21 meaningful evidence to support the assertion that  
22 Manitoba Hydro's revenue position was being seriously  
23 threatened by new energy intensive industry being  
24 attracted to Manitoba to capture Manitoba's low rate  
25 advantage.

1                   Now, sir, during this Hearing and the  
2 recent GRA hearing, ample evidence was provided as to  
3 major factors likely to drive future rate increases, and  
4 domestic load fails to surface as a leading concern here.  
5 And to place the -- the Manitoba Hydro proposal in  
6 context, and you heard this, sir, during this Hearing,  
7 Manitoba Hydro told the Board that it no longer even sees  
8 a future \$400 million drought impact as being a major  
9 rate driver or threat to its financial well being.

10                   Now sir, today's -- today, faced with a  
11 recession of the likes not seen since before World War  
12 II, we were reminded by one of MIPUG members that during  
13 -- members during the Hearing, that within North America  
14 Manitoba remains a relatively high cost place to do  
15 manufacturing, and that low power rates in the end often  
16 cannot offset the many other cost disadvantages faced  
17 with this location.

18                   So sir, in short, from MIPUG's  
19 perspective, the rate as now proposed has, for all  
20 intents and purposes, nothing to do with the concerns  
21 brought forward to the Board in 2006, and the Application  
22 fails to provide any reasonable justification as to why  
23 the Board should today approve this new discriminatory  
24 rate proposal.

25                   Now, as I said in my opening comments, I'd

1 like to make a few additional comments about MIPUG's  
2 intervention and the approach it adopted in response  
3 Manitoba Hydro's application.

4                   Sir, Manitoba Hyd -- or, sorry, MIPUG's  
5 overriding objective in this intervention, is to ensure  
6 that fundamental and basic regulatory principles,  
7 important to the regular -- regulatory construct in place  
8 in Manitoba, are understood and maintained. Manitoba has  
9 prepared evidence as you know, attempted to address the  
10 various informational directions and suggestions on this  
11 matter that were set out in your Board Order 116/08.

12                   And in light of the Board's interest in  
13 options and experience in other jurisdictions, MIPUG also  
14 on this occasion retained Mr. Ostergaard to provide  
15 expert evidence, including a full and thorough review of  
16 the BC situation, and using as a guide for his review,  
17 the type of information and analysis the Board  
18 specifically requested or suggested Maniho -- Manitoba  
19 Hydro include in its application.

20                   Now as you know, Manitoba -- or MIPUG's  
21 intervention has focussed on three (3) major related sets  
22 of issues:

23                   Firstly, targeted industrial growth  
24 issues, i.e., issues relating directly to the new rate.

25                   Secondly, efficiency and price-signal

1 issues. And what I mean by that is issues related to what  
2 relationship, if any, exists between this application and  
3 proposals to establish efficiency and price single --  
4 signal rates within the Manitoba regulatory construct of  
5 regulated embedded costs rates. In our view the evidence  
6 clearly shows that this application provides no  
7 meaningful contribution or relationship to addressing  
8 such efficiency in price signal issues.

9           And the third general area that Manitoba -  
10 - or that MIPUG's intervention dealt with is bulk power  
11 system planning issues. And what I mean by that, is  
12 issues related to what relationship, if any, exists  
13 between this application and the Board's stated concerns  
14 rege -- regarding Manitoba Hydro's bulk power system  
15 planning and export focussed development strategy.

16           In our view, the evidence clearly shows  
17 that this specific application and its alleged concerns  
18 related to energy intensive industry growth, provides no  
19 meaningful contribution or relationship to addressing  
20 such bulk power system planning issues.

21           It's also important to emphasize, sir,  
22 that in focussing on a long-term in-principle  
23 perspective, MIPUG was not here to speak on behalf of any  
24 individual MIPUG member. As stated in my opening  
25 comments, many MIPUG members now do not expect to be

1 impacted by the new proposal. However, this is not, and  
2 should not be the determining factor on whether or not  
3 this Board, on a principled basis, should approve this  
4 application.

5                   And what also needs to be remembered is  
6 that all eligible large industrial customers will be  
7 impacted by this new rate, at any time their growth  
8 exceeds the allowed limit set out in the proposal.

9                   Now, sir, just turning for a moment to the  
10 presentations that were made by MIPUG members, those  
11 presentations provided extensive and considered views to  
12 the Board, addressing their individual company views on  
13 this application, and there are a couple of points that I  
14 would like to point out and are worth noting from those  
15 presentations.

16                   Firstly, two (2) of the members will be  
17 directly affected by the new proposal if implemented, and  
18 they each provided the Board with specific information on  
19 their respective situations and interests. All of the  
20 MIPUG presentations underlying the seriousness of today's  
21 merging economic concerns relating to the current  
22 recession, including concerns about -- even including  
23 concerns about Manitoba Hydro's anticipated 4 percent  
24 overall rate increase this Spring and the impact it would  
25 have on their operations.

1                   In his closing comments, on behalf of all  
2 members, you'll recall, sir, that Mr. Turner talked about  
3 how industrial customers of Manitoba Hydro had been well  
4 served by this Utility in the past. He talked about the  
5 importance of a stable and predictable rate environment  
6 through regulation by this Board, and broad concern about  
7 any Manitoba Hydro proposal which targets too much  
8 growth.

9                   He noted, Mr. Turner noted, that there's  
10 no compelling evidence that Manitoba Hydro or Manitoba  
11 has anything material to gain from taking on this new and  
12 risky approach to rate setting, simply to get Hydro a  
13 little bit more -- more revenue.

14                   And he also noted, of importance to this  
15 Board, in my submission, the multitude of ways that this  
16 approach can stop highly desirable growth, as well as  
17 impose unfair rates on people who must expand here, and  
18 notwithstanding this rate.

19                   His closing comment at page -- of the  
20 transcript 1230 to 1231 was as follows, and I quote:

21                   "The future -- the future growth of  
22 large industry in Manitoba depends on  
23 reliable firm power at fair and  
24 reasonable rates, rates that reflect  
25 cost of service principles and



1 demonstrate commitment to innovative  
2 rate options that benefit industry,  
3 Manitoba Hydro, and the province of  
4 Manitoba."

5 Now, sir, with that as a bit of a  
6 backdrop, I'd like to give the Board at the front of my  
7 submissions an overall summary of the MIPUG  
8 recommendations.

9 Now, sir, at the beginning of this  
10 Hearing, and again today, you, as the Chair, stated that  
11 the Board expected to hear about the strengths and  
12 witness -- weaknesses of the Manitoba Hydro new proposal,  
13 as well as any recommended alternatives.

14 Now, we're going to -- we've discussed in  
15 some detail the alternatives that exist, as requested in  
16 our written argument. It's important to emphasize at the  
17 outset that these alternatives fundamentally differ from  
18 the Manitoba Hydro approach. And of course key issues  
19 related to the Manitoba Hydro application are reviewed in  
20 detail in the written argument, as I said earlier, and we  
21 will highlight some of those in the submissions.

22 But at the outset, we want to state  
23 clearly that based on the evidence Manit -- or MIPUG's  
24 position is that the Manitoba Hydro application must be  
25 rejected by the Board. And at a high level, sir, each of

1 which of these items will be dealt with in some detail,  
2 as I go through my oral submissions, and are dealt with  
3 in the written argument, the reason why the Manitoba  
4 Hydro application should be rejected are as follows:

5                   Number 1. Hydro has failed to support the  
6 basic need for the rate.

7                   Number 2. Hydro has failed to provide the  
8 Board with the analysis requested, and the proposal  
9 simply does not address key issues of concern raised by  
10 the Board in Order 116/08.

11                   Number 3. There are key regulatory  
12 principles compromised by this proposal. The Manitoba  
13 Hydro proposal is inappropriately discriminatory at its  
14 core.

15                   Number 4. There has been no review of  
16 options by Hydro as requested by the Board.

17                   Number 5. There are non-discriminatory  
18 options available that would not require regulatory  
19 principles to be compromised.

20                   And finally, there are no precedents  
21 available for what Manitoba Hydro proposes in this  
22 application.

23                   Now going from a rejection from MIPUG's  
24 submission of the Manitoba Hydro approach and turning to,  
25 again, an -- sort of an overview of the summary of

1 MIPUG's recommended approach, and the Board's clear  
2 desire to see alternatives, Mani -- or MIPUG recommends  
3 the following specific options, which address specific  
4 rate object --objectives, which have been discussed  
5 during the Hearing and have been of potential concern to  
6 the Board.

7                   Its overall recommended approach in  
8 relation to large or new -- large, new, or expanding  
9 domestic load, is that it recommends that a service  
10 extension policy, consistent with regulatory principles,  
11 should be developed for approval by the Board, which  
12 would, on a principle basis, establish the requirements  
13 for large load to pay relevant system-related costs  
14 incurred for interconnection.

15                   Now, sir, in relation to that  
16 recommendation, the objective of such a policy should not  
17 be specifically direct -- sorry, the objective of such a  
18 policy should be specifically directed not to involve  
19 revisiting the I -- sorry, EIR approach through another  
20 door.

21                   And what I mean by that is, it should not  
22 involve any impact on embedded cost rates, nor involve  
23 any compensation for lost export revenues or future  
24 energy-related costs, but should address each new load on  
25 a separate basis, without -- and address, sorry, each new

1 load on a separate basis, without aggregation with a  
2 customer's other loads.

3 Now, sir, this alternative will take some  
4 time to formulate, and should only be brought forward to  
5 the Board in MIPUG submission after a Board-sanctioned  
6 consultation process, at which the -- MIPUG believes the  
7 Board's advisors should actively take part.

8 Now, in addition to this proposal, or  
9 option, or alternative, sir, although it is clear -- the  
10 -- the point I'll make is clearly a discreet topic,  
11 which, quite frankly, in my submission, addresses, in a  
12 more fundamental way, the key issue raised concerning the  
13 problem of embedded cost rates being materially lower  
14 than marginal cost.

15 In relation to issues concerning general  
16 load growth in large industrial class and otherwise, the  
17 issue of efficiency and efficient price signals, should  
18 be reviewed in detail by the Board, again after  
19 appropriate consultations among all stakeholders is  
20 undertaken. In relation to this part of MIPUG's  
21 recommendation, experience elsewhere underlies the need  
22 for meaningful and effective consultation to anent -- to  
23 enact such concepts, and demonstrates that such  
24 consultations may take some time.

25 And I note, sir, that MIPUG member

1 presentations have also directly described how concerned  
2 -- how concerns and opportunities relating to such new  
3 rate proposals may differ widely among major industrial  
4 customers, and these differences must be fully addressed  
5 and revolve -- resolved, in our submission, through  
6 meaningful consultations.

7                   Now sir, that's an overview of the  
8 recommended approach that MIPUG is suggesting to the  
9 Board, and I will come back to those recommendations and  
10 discuss them in more detail in my concluding comments,  
11 but what I'd like to now do, sir, is turn to the written  
12 component of our argument. And this may be a little bit  
13 more scattered than my opening comments, but it will take  
14 you through some of the key issues that we would like to  
15 highlight for the Board in that -- in that document.

16                   And I'd like to start at the beginning,  
17 which actually immediately comes after the table of  
18 contents before Tab 1. It's actually page 1.

19                   If you have that, sir, what that is doing  
20 is effectively summarizing the various sections and  
21 issues that have been dealt with in the written argument.

22                   You can see for example, Section 1,  
23 Required Standard of Review; Section 2, Issues a  
24 Principle Raised by the Manitoba Hydro Application  
25 Regarding Discrimination.

1                   And so that it's -- for the ease of the  
2 Board reference, what we have done is -- Section 1  
3 relates to Tab 1, Section 2 relates to Tab 2, and so  
4 forth. And if you go to the back of the -- or the bottom  
5 of -- or sorry, the middle of page 2 it takes you through  
6 to Tab 8, which is Conclusions and Recommendations.

7                   And just for the Board's information if we  
8 take a second just to understand the structure of the  
9 written argument, Tab 9 is actually Appendix A; and Tab  
10 10 is Appendix B. And I will be referencing Appendix A  
11 in some detail.

12                   Appendix B, which I will not be  
13 referencing in -- in detail, effectively is to deal with  
14 specific issues, if this Board was inclined to seriously  
15 consider the Manitoba Hydro proposal.

16                   Now again, as I mentioned earlier, I do  
17 not intend to go through in detail each one of the  
18 sections. I'll focus my submissions on selective parts  
19 of Sections 1 to 4 and Section 8, and have just some  
20 general comments in relation to the -- to the other  
21 sections.

22                   Now, sir, if I can start my review of the  
23 written argument with Tab 1. Now what I'd like to do is  
24 take a bit of time to talk about the required standard of  
25 review for this Application. And as you can see here and



1           than marginal values of energy and the  
2           potential financial impact on the  
3           Utility is not unique to Manitoba. The  
4           Manitoba -- the Board understands that  
5           other jurisdictions have and continue  
6           to face this issue."

7           Now, sir, you then, in some detail,  
8           highlighted what you expected from Manitoba Hydro, given  
9           that point.

10           And the second major category that we've  
11           outlined here is the option for -- options for marginal  
12           cost rates, when the Board stated, and again I quote:

13                   "Manitoba Hydro will be expected to  
14                   provide options including the preferred  
15                   option."

16           And in this regard we note that what the  
17           Board did say, in general they should consider, and we've  
18           highlighted the various options: The first one being  
19           options that consider baseline and growth allowances;  
20           options for setting marginal cost rates; options that  
21           include time-of-use alternatives; options that provide  
22           for revenue neutrality; and options that consider a  
23           marginal cost component for only a few customers. Those  
24           were key issues identified by the Board, in relation to  
25           options.



1                   Now, the third item that we are  
2   referencing as a backdrop to the more thorough review of  
3   the written argument is the issues relating to export  
4   contracts. And again I quote from the Board decision,  
5   and you stated, and I quote:

6                                 "Manitoba Hydro should be required to  
7                                 reconcile its proposed treatments of  
8                                 energy intensive industries with  
9                                 existing and proposed export  
10                                contracts."

11                   The next item, sir, in general, was the  
12   time- of-use rates, and in fact in relation to time-of-  
13   use rates you gave a specific direction, Direction 22 Sub  
14   A, to Manitoba Hydro.

15                   Turning the page to page 70, the fifth  
16   category is -- you -- you talked about the need to  
17   discuss marginal cost value of export, which obviously  
18   included key issues relating to how such a marginal cost  
19   is -- is in fact calculated. And this led to your  
20   Directive 29 Sub A, directing Manitoba Hydro, in effect,  
21   to do an in-depth analysis of on-peak and off-peak energy  
22   sales.

23                   The next category is you talked about the  
24   appropriateness of including avoided cost element in  
25   determining marginal costs. And that led to Directive 29

1 Sub B. And I note -- we note here that you indicated a  
2 report was required on specific deferral values that  
3 could be achieved by constraining industrial load growth.

4 The seventh major category, sir, on page  
5 71, is you talked about customer baseline, and I quote  
6 from the Board's order -- it's, and I quote:

7 "In the Board's view, Manitoba Hydro  
8 should have provided the impact  
9 analysis for all GS cust -- GSL  
10 customers, in order to justify the  
11 proposed 39 gigawatt hour floor for the  
12 new rate exemption."

13 And then this led to another directive,  
14 Directive 29 Sub C.

15 And, sir, finally, in terms of major  
16 headings, you gave -- the Board gave -- a very specific  
17 direction on service extension policy.

18 Now, sir, the next three (3) pages of this  
19 -- of this appendix outlines, from MIPUG's perspective,  
20 how Manitoba Hydro responded to each of these major  
21 issues.

22 And I don't say the next statement  
23 lightly, sir, but as we've seen in cross-examination of  
24 Manitoba Hydro witnesses Manitoba Hydro's responses to  
25 the Board's directions and suggestions was quite simple -



1 from regulatory practice in a  
2 jurisdiction.  
3 Secondly, compromises fundamental  
4 principles and protection in place to  
5 protect ratepayers.  
6 And thirdly, implements either  
7 discriminatory or unduly discriminatory  
8 rates."

9 Now, sir, we outline at the bottom of --  
10 of the page, and I -- and I quote from line 31, if -- if  
11 you see that, sir:

12 "Such a proposal should only be  
13 entertained or permitted under very  
14 limited circumstances where..."

15 And two (2) items are listed on page 4.

16 The first one is:

17 "...a clear and well-supported need is  
18 established by the Utility, all  
19 information required to understand test  
20 and determine the issue is on the  
21 record, and a complete analysis of the  
22 information, as put -- put forward,  
23 that includes a comprehensive  
24 understanding and assessment of all  
25 options available that could reasonably

1 address the Utility's concern."

2 And I say that, sir, you heard from a  
3 customer group today, that's what they're saying to you.  
4 They're a customer group that appears to be somewhat  
5 conflicted here, but what they're saying to you is: The  
6 appropriate approach would be to have a full and  
7 comprehensive review of -- of -- of the -- of the options  
8 that are available, options that you, this Board,  
9 requested Manitoba Hydro bring forward.

10 The second item, sir, is that there is no  
11 reasonable -- you must -- must establish that there is no  
12 reasonable alternative available to address the issue  
13 that would not require deviation from fundamental regulat  
14 -- regulatory principles.

15 Now, as we will review -- and we explain  
16 in -- in some detail in the written argument that follows  
17 under Tabs 2 to 4, both of these circumstances, in  
18 MIPUG's submission, do not exist in this case. Now, in  
19 Tab 2, sir, we will -- I will go through it through -- in  
20 detail, from a -- or -- or the written argument, sorry,  
21 goes through in detail, from a principled perspective,  
22 key issues relating to the regulatory principles at  
23 issue, which arise from, obviously, Manitoba Hydro's  
24 application.

25 And for that I would start at the

1 beginning of Tab 2 at page 5. And I'm at the -- this is  
2 probably a good point to break, Mr. Chair. We can come  
3 back a little bit early if -- if that pleases the Board,  
4 but it's probably a good place to break.

5 THE CHAIRPERSON: Okay, fine. That --

6 MR. JOHN LANDRY: And you might want to--

7 THE CHAIRPERSON: Yes, I think what we  
8 should do is file your written argument directly into the  
9 transcript into the record.

10 MR. BOB PETERS: That's -- that's fine by  
11 me. As an exhibit, is that the -- is that what pleases  
12 the Board?

13 THE CHAIRPERSON: I think it's the only  
14 method we have, Mr. Peters.

15 MR. BOB PETERS: Well, perhaps two (2)  
16 approaches: One (1) is to ask the Court Reporter to have  
17 it transcribed verbatim into the record, and the  
18 alternative is to accept it as MIPUG Exhibit 10, and keep  
19 it in part of the proceedings in that fashion.

20 THE CHAIRPERSON: We will take it as  
21 MIPUG Exhibit Number 10.

22

23 --- EXHIBIT NO. MIPUG-10: MIPUG's written argument

24

25 MR. JOHN LANDRY: Thank you, sir.

1 THE CHAIRPERSON: We will see you back at  
2 one o'clock. Thank you.

3

4 --- Upon recessing at 11:57 a.m.

5 --- Upon resuming at 1:05 p.m.

6

7 THE CHAIRPERSON: Anytime you're ready,  
8 Mr. Landry.

9 MR. JOHN LANDRY: Thank you, sir.

10

11 CONTINUED BY MR. JOHN LANDRY:

12 MR. JOHN LANDRY: Where we stopped off or  
13 stopped before the break, Mr. Chair, is Tab 2 and in this  
14 section we talk about the issue of discrimination,  
15 effectively highlighting why MIPUG says that Manitoba  
16 Hydro's proposal is elaborate. And what I'd like to do  
17 is just go to the two (2) different distinct types of  
18 discrimination that are referenced here and just for your  
19 reference it's starting at line 6. And it'll be a bit  
20 tedious but I'll quote from here because I think it is  
21 important.

22 There are two (2) distinct types of rate  
23 discrimination recognized in rate making that could flow  
24 from the implementation of this proposal and the first  
25 one at line 9 is, discriminatory relationships between

1 rates for different classes and qualities of service.

2 Now this form of discrimination between  
3 customer classes would focus primarily on the principles  
4 applied to different customer classes. In these  
5 circumstances the Board must make a determination of  
6 whether the proposal is duly or unduly discriminatory,  
7 which is a debate you've heard before and something  
8 discussed, using the usual legal tests for  
9 discrimination.

10 Now, the second type of discrimination is  
11 discrimination between treatment afforded to specific  
12 customers within a class who are charged different rates  
13 for substantially the same product rendered under similar  
14 conditions. This is referred to in Bonbright as personal  
15 discrimination and described as an anathema to rate  
16 regulation, i.e., there is no test of due or undue  
17 discrimination in these circumstances and where these  
18 facts exist there can be no justification for the rate,  
19 and I've provided the reference to that.

20 Now, in the written argument, sir, we do  
21 review both types of discrimination but I'd like to  
22 confine my oral submissions primarily on the second type  
23 which, given the evidence, MIPUG says is clearly the type  
24 of discrimination that pervades Manitoba Hydro's  
25 proposal.



1                   And if -- with the Board's indulgence, if  
2 you could go to page 12 is where we begin the discussion  
3 in the written argument on this.

4

5                                   (BRIEF PAUSE)

6

7                   MR. JOHN LANDRY:   And you'll see, sir, on  
8 page 12, starting at the -- at the bottom of the page  
9 you'll see a section talking about personal  
10 discrimination and I'd like to take you to and highlight  
11 from approximately line 33 where we outline, starting at  
12 that -- that line, the general characteristics of the  
13 proposal which provide for personal discrimination  
14 between customers within the GSL classes in Manitoba  
15 Hydro's proposal.

16                               And, of course, the first point is that --  
17 and I don't think there is any debate about this, Hydro  
18 agrees that the rate will apply only to a limited number  
19 of customers, but I'd like to highlight -- start by  
20 highlighting the second point that's referenced on that  
21 page, starting at line 8.

22                               The -- the Manitoba rate is -- Manitoba  
23 Hydro rate is targeted at a few loads that have nothing  
24 notable in common as a class, except that the targeted  
25 customers are planning to grow or have already committed

1 to expansions.

2                   And there's no -- using that then, there's  
3 no ability to know that future customers subject to this  
4 rate would match the characteristics of customers  
5 currently targeted. The -- the rate currently targets  
6 defined energy-intensive loads such as pipelines and  
7 sodium chlorate companies that, and I quote, "use energy  
8 as a manufacturing input", and are currently expander --  
9 expanding.

10                   However, the rate will also potentially  
11 capture a variety of potential new loads who may or may  
12 not use energy in the same manner as either the sodium  
13 chlorate customers or pipelines.

14                   And we mention Manitoba Hydro's evidence  
15 at pages 641 and 642 of the transcript where Manitoba  
16 Hydro agrees that it "is appropriate and fair" and in the  
17 public interest for a new primary metal customer to pay  
18 the -- the new Tier 2 rate if it was lucky enough to find  
19 new or bring in new or to process and it -- and it took  
20 them above the growth allowances.

21                   And if you go then to the next page  
22 starting at line 2 --

23                   MR. ROBERT MAYER: Before you leave  
24 there, Mr. Landry, and I -- I seem to -- here you seem to  
25 be conceding that -- that the pipelines are, in fact --

1 use energy as an input but you did say earlier this  
2 morning, and I think I agree with you, that -- that the --  
3 - the electricity isn't used as an input if it's used to  
4 power the pumps.

5 MR. JOHN LANDRY: Mr. -- Mr. Mayer, what  
6 -- this -- the quotes here are effectively from Manitoba  
7 Hydro's proposition, not ours, and I would agree with  
8 your latter suggestion, not the former, that they are not  
9 -- they're not technically -- they don't technically use  
10 energy as a manufacturing input. So it was a quote. And  
11 I apologize, it's probably not as clear as it should be  
12 in that -- in the written part of that argument.

13 MR. ROBERT MAYER: The last line of that  
14 doesn't appear to be a quote anymore, though, in the same  
15 manner as chlorate customers or pipelines.

16

17 CONTINUED BY MR. JOHN LANDRY:

18 MR. JOHN LANDRY: I'm -- I'm sorry, I  
19 keep pushing it off instead of on.

20 The -- you're -- you're quite right.  
21 That's not as -- as accurate as it should be and I -- and  
22 I -- as I said earlier in my presentation that is the --  
23 the position of MIPUG is as -- as previously stated that  
24 it is not in the -- in the sense in which it is used in  
25 Manitoba Hydro's proposal, energy is a manufacturing

1 input for -- for pipelines. And I thank you for that  
2 clarification, sir.

3 Now to go to where I was which is at line  
4 2 on page 14, we say, as noted in cross-examination the  
5 rate was not designed to apply to customers with specific  
6 load characteristics over the next five (5) years, but  
7 was designed to apply to certain customers' specific  
8 growth plans.

9 And -- and what we've done here for the  
10 Board's review is we've had specific references that --  
11 that -- from the transcript that relate to the point and  
12 -- and I think are worth noting as to what was said in  
13 the transcript. And the first one is at page 177 to 179,  
14 where again we quote from the evidence which states that  
15 three (3) to four (4) customers identified by Manitoba  
16 Hydro are:

17 "...being targeted to pay the energy  
18 rate for the second block and they  
19 would only be targeted because of their  
20 growth, and not because of their  
21 current size."

22 keeping in mind that the points here that  
23 are being made are to deal with the issue of the fact  
24 that this is a targeted rate and would come within the  
25 concept of personal discrimination as I have defined it.

1                   The second reference as you can see there  
2 at line 10 is to the transcript page 244, where it's  
3 noted that the growth allowance was designed so that most  
4 but not all customers affected by the rate would be able  
5 to grow without paying the Tier 2 rate.

6                   And the third transcript reference is  
7 starting at line 15 which is relating to transcript 241  
8 where representatives of Manitoba Hydro note that the  
9 growth allowance was a negotiated amount between Manitoba  
10 Hydro and some of its largest customers designed to allow  
11 certain existing companies to grow without having their  
12 growth be charged above the baseline.

13                   And, of course, we -- you -- you heard  
14 from the evidence, sir, that Manitoba Hydro admits that  
15 in that respect they deliberately made sure,  
16 intentionally so, that the primary metal customers were  
17 not impacted.

18                   We also in this -- in this section of the  
19 argument, sir, point out the very personal nature of the  
20 proposal in the way in which the -- the cap was set.

21                   At page 647 of the transcript for the  
22 Board's reference, Manitoba Hydro testified that, and I  
23 quote, cap:

24                                   "...designed to ensure [did not] have  
25 continued growth [from] largest

1 customer."

2 What it did is, it made sure that that  
3 customer was prevented from expanding at embedded cost  
4 rates. The -- the evidence in relation to the cap also  
5 demonstrated that the cap was designed to effectively rob  
6 Canexus, that largest customer that we all know, of  
7 available DSM credits.

8 And the Board will recall the letter from  
9 Mr. Turner which was marked as MIPUG Exhibit Number 4 in  
10 relation to that issue.

11 Now again, highlighting the personal  
12 nature of the -- of the Manitoba Hydro proposal, I'd like  
13 to make one further point about the cap that once again  
14 in MIPUG's submission clearly demonstrates the  
15 inappropriateness of a personal approach adopted by  
16 Manitoba Hydro.

17 And if you could go, sir, to page 18 and  
18 the point here is that Manitoba Hydro -- discriminating  
19 not only between customers in the same class but  
20 customers in the same industry.

21 And it comes under the subheading as you  
22 see in -- on -- on line 18 of page 18, and which is  
23 entitled Discrimination and Competitive Issues between  
24 Customers subject to the new rate.

25 And I'd like to refer to a quote from the



1                   created an unfair competitive situation  
2                   for those two (2) customers, that we  
3                   didn't want to put ourselves in -- in  
4                   the middle of [it]."

5                   Well, in reality Manitoba Hydro's proposal  
6 merely shifts the advantage elsewhere and -- and raises  
7 some pretty fundamental concerns underlying the rate in  
8 that regard.

9                   And we have highlighted the two (2) --  
10 those two (2) points, at -- at -- starting at line 30.  
11 The first point, why should a Crown utility be taking any  
12 action in this regard at all?

13                   And we outline what the mandated Manitoba  
14 Hydro is from Section 2 of the -- of the Manitoba Hydro  
15 Act which is to "provide for the continuance of a supply  
16 of power adequate to the needs of the province". And --  
17 and we say, and nowhere in the Utility's mandate is it  
18 suggested that its role includes interfering in or  
19 balancing competitive concerns between customers.

20                   And, of course, the second point here is  
21 that the -- the rate itself creates the competitive  
22 concern. Whether the growth allowance applies to all  
23 customers or whether a cap is inserted that prevents  
24 certain customers from growing, Manitoba Hydro's rate  
25 will be interfering with competitive concerns between two



1 (2) customers in the same rate class.

2 And we go on further there to -- to  
3 highlight, at line 6 and following, that the evidence is  
4 clear that there was no in-depth analysis of the chemical  
5 industry that was done by Manitoba Hydro to come to these  
6 conclusions, and, furthermore, that they took this sort  
7 of one (1) step to level the playing field in only one  
8 (1) competitive situation between two (2) customers and  
9 no other competitive issues were identified.

10 So I highlight that, Mr. Chair and -- and  
11 Board members, because a review of this evidence, and it  
12 was a bit tedious, we went through each one of them, but  
13 a review of this evidence clearly demonstrates, in  
14 MIPUG's submission, in the clearest way, that the  
15 proposal was morphed into a patently personal  
16 discrimination. And we would say, Mr. Chair, that on  
17 this basis alone the proposal must be rejected.

18 Now, sir, I'd like to now move on from --

19 MR. ROBERT MAYER: When you -- when you  
20 say "on that basis alone," sir, if the -- the  
21 interference with competition or the levelling of the  
22 playing field, apparently it takes place as a result of  
23 the fifteen hundred (1,500) cap. If that were eliminated  
24 would that resolve the personal discrimination problem in  
25 your opinion?

1

2 CONTINUED BY MR. JOHN LANDRY:

3 MR. JOHN LANDRY: No, sir. And -- and  
4 for the -- for the other reasons that are -- were  
5 outlined earlier, it is a deliberate and intentional,  
6 effectively, implementation of a proposal to catch in the  
7 end, effectively, three (3) to five (5) customers and we  
8 all know from the evidence that effectively what it was  
9 intended to do was to catch two (2) pipelines and the  
10 sodium chlorate industry.

11 In and -- that, in and by itself, is  
12 person personal discrimination because it's effectively  
13 dealing with specific customers within a class in a  
14 different way than other customers in a class, and it's  
15 very personal in this sense, Mr. Mayer.

16 This was -- this was deliberate and -- and  
17 I don't mean that in some nefarious sense. It was  
18 deliberate and -- deliberate and you heard Mr. Dudar say  
19 he sat down and he -- and he -- and he effectively  
20 favoured certain customers, sat down and made sure the  
21 primary metals customers were taken care of, but not  
22 other customers, and that's the personal nature of the --  
23 of the -- of the type of discrimination that we're  
24 talking about, in addition to the cap and the -- and --  
25 and the issues that arise out of the cap.

1                   What it does, what the cap does and what  
2 the issue that I raised at the end does, is it just  
3 highlights the -- the -- the point at -- at its highest  
4 level. In other words, that it would -- that there was -  
5 - appears to be no doubt about what the objective of the  
6 exercise was, who is going to be con -- who is going to  
7 be impacted by this.

8                   Now, sir, I wanted to talk a little bit at  
9 Tab 3 about why MI -- MIPUG says that the evidence simply  
10 does not even demonstrate a need for the -- for the rate  
11 as proposed by Manitoba Hydro.

12                   And sir, we -- we -- we go into some pains  
13 to describe effectively the basic assertions that were  
14 made by Hydro in this regard, and that -- and we quote,  
15 as you can see in line 3 about the assertion, that the  
16 energy intensive industry Rate has been that large -- the  
17 -- the need for it has been because large energy  
18 intensive industry is being attracted to Manitoba on a  
19 scale large enough to threaten the Corporation's revenue  
20 position and that comes directly from the application at  
21 page through -- page 3.

22                   And -- and -- and we also highlight other  
23 parts of the evidence at -- starting at line 5, where we  
24 say that Hydro representatives have continued,  
25 referencing the transcript at page 80, to portray the

1 Corporation as experiencing significant revenue loss  
2 through expansion of energy intensive industry in the  
3 province.

4           They described this issue as significant  
5 to the Corporation and the rate of growth that targeted  
6 customers as out of proportion with Hydro's overall load  
7 growth, an epidemic of industrial growth that threatens  
8 the revenue position of the Corporation and the rate of  
9 other -- the rates of other domestic customers.

10           Now in order to make this case, which is  
11 effectively implementing the rate as we point out here,  
12 that fundamentally breaks with regulatory principles and  
13 precedent in the province by actively, as we've talked  
14 about, discriminating against certain groups of customers  
15 or certain specified customers, MIPUG states the  
16 Corporation must clearly demonstrate four basic  
17 propositions.

18           We outline them here:

19           The first one is that the Corporation will  
20 experience significant future revenue loss due to the  
21 future expansion of the energy intensive industry in the  
22 province.

23           Secondly, that the -- that Manitoba will  
24 in future experience a period of unusually rapid growth  
25 in energy intensive industry.

1                   Third, that the future influx of energy  
2 intensive industry load will be due to the low rates  
3 available in Manitoba.

4                   And fourthly, when energy intensive  
5 industry grows other ratepayers and overall public  
6 interest are both adversely affected.

7                   In other words, to justify the need for  
8 this rate Manitoba Hydro, in MIPUG's submission, needs to  
9 demonstrate a clear, urgent, or critical policy objective  
10 and that this new rate is the best option available to  
11 address that objective.

12                   Now, what we do in the written argument,  
13 and I'd like to highlight some of the points that are  
14 made in the written argument, is that we review each one  
15 of these propositions to demonstrate that Manitoba Hydro  
16 is not able to credibly satisfy any one (1) of the four  
17 (4) that I've just gone through.

18                   And the first item is on the next page, on  
19 page 22, which goes to the assertion that significant  
20 revenue loss will occur due to expansion of energy  
21 intensive industry.

22                   And this is the one, they say that it's  
23 such a significant concern to the jurisdiction in effect,  
24 they say, that it justified this unprecedented action.

25                   Now, it -- Manitoba Hydro asserts that

1 but, in MIPUG's submission, the evidence demonstrates  
2 otherwise and I'd like to highlight a couple of things to  
3 that effect, Mr. Chair, and if you could go to the next  
4 page, page 23, Item Number 3, and there I'm referring to  
5 -- I'd like to refer to what we talk about as Exhibit  
6 MIPUG Number 10 which concerns me now that we've marked  
7 the -- oh, from the -- oh, sorry, this is MIPUG Number 10  
8 from the GRA, that's -- I'm glad that's clarified.

9           And -- and I think it goes without saying  
10 given the -- given the evidence that you've seen is that  
11 other similar hydro-based jurisdictions in Canada also  
12 have a gap between embedded costs and marginal values and  
13 -- and as I mentioned in my opening comments, that gap is  
14 more pronounced in other jurisdictions.

15           And if you go down to a -- a number or  
16 lines 26 and 27, you see that effectively it's about two  
17 (2) cents in Manitoba and it's about four (4) cents in  
18 BC. Yet with British Columbia faced with the -- with the  
19 exact same dilemma, perhaps even more pronounced, they  
20 went quite differently and I'd like to take you to that.

21           And if you would go to the next page, page  
22 24, effectively BC has not felt the need to address that  
23 issue by essentially charging a punitive industrial rate  
24 that discourages growth. And -- and I'd like -- what I'd  
25 like to do is refer the Board in this regard to Mr.

1 Ostergaard's evidence relating to that which sets out --  
2 which is set out, sorry, in the written argument starting  
3 at line 13. And I'm quoting from Mr. Ostergaard's  
4 evidence when it says:

5 "In BC the gap between embedded costs  
6 and marginal value has not been  
7 accepted as a rationale for imposing  
8 marginal cost-based rates specifically  
9 focussed for new or expanding loads for  
10 any customer or customer class. A  
11 broader approach has evolved to manage  
12 this issue -- with energy efficient  
13 rates being a fundamental underpinning  
14 to overall BC energy policy."

15 It's also worth noting as we do in -- in  
16 line 25 that Mr. Ostergaard indicated in his evidence  
17 that the approach to this issue evolved over some  
18 timeframe and -- and apropos the recommendations that  
19 you've heard a little bit about from MIPUG's perspective  
20 and it involved a concerted effort from the government,  
21 from BC and -- and BC from the regulatory body, BCUC, BC  
22 Hydro, and all interested stakeholders.

23 So it's hardly a new issue that Manitoba  
24 Hydro's facing and quite frankly in a -- in a -- in -- in  
25 using the BC as an example, it's a less pronounced issue

1 in -- in Manitoba than it was in -- in British Columbia  
2 and there is a situation where they did not feel it  
3 necessary to put in place such a discriminatory rate,  
4 which effectively compromises basic regulatory principles  
5 in order to deal with the issue.

6 Now if I can, Mr. Chair, I'd like to go to  
7 the second proposition that we referred to earlier which  
8 is starting at page 26, line 5, which -- that's the one  
9 where we -- I mentioned the recent rapid growth in -- in  
10 the energy intensive industry.

11 Just for the Board's reference, Appendix  
12 B.2 of the MIPUG evidence tested the degree to which  
13 industrial load growth either forecast in the recent past  
14 or forecast in the future is a reasonable driver  
15 suggesting a need for this rate.

16 And what this does is it -- in -- in our  
17 written argument here, sir, is that effectively  
18 demonstrates that the load forecast if one takes as a  
19 reference point for example, 1998, and here I'm referring  
20 to, Mr. Chair, line 18, the 1998 load forecast  
21 demonstrates that the actual GSL over 100 kilovolt loads  
22 for 2007/2008 were within 4/100th of a percent of the  
23 1998 forecast.

24 Given that the actual industrial load  
25 growth experienced over the last nine (9) years was not



1 materially different than the load growth forecast by  
2 Hydro in 1998, MIPUG says there can be no cred -- no  
3 credibility to Hydro's assertion that recent growth is  
4 unexpected or extraordinary and requires immediate and  
5 unprecedented action.

6 Industrial load growth is as expected nine  
7 (9) years ago and when forecast at that time did not  
8 present any dilemma to Hydro that required redress or  
9 extraordinary solutions.

10 We go on in Sub B, at line 26, to say  
11 that, further, the total GSL greater than 100 kilovolt  
12 load growth per year over the next nine (9) years is  
13 forecast to be 1 percent lower than the actual growth  
14 experienced over the past nine (9) years.

15 So in essence, the pace of industrial load  
16 growth is not dramatically increasing over the next nine  
17 (9) years when compared to the past nine (9) years. In  
18 fact, it's actually projected to slow down.

19 In fact, as we point out later in the  
20 written argument, the largest spike in forecast growth is  
21 really a weakness in the -- in the Manitoba Hydro's  
22 forecast relating to primary metals where their load has  
23 been extended in life from what was earlier forecast.

24 Therefore, in MIPUG's submission it can be  
25 hardly said that there has been a recent and rapid and

1 unforeseen growth in the energy intensive load.

2           Now just to go to the third assertion  
3 referenced earlier, that starts at page 28, Mr. Chair,  
4 and that assertion is that the growth in energy intensive  
5 industry is due to the low rates.

6           And I would say to start off with, sir,  
7 that the evidence simply does not bear this out. If I --  
8 if you could go to line 16 on page 28, you'll see there's  
9 a reference there to PUB/Manitoba Hydro-19 Sub A Sub  
10 (ii), where using what appears to be the best estimate  
11 available it demonstrates that over the six (6) year  
12 planning horizon two-thirds (2/3s) of the additional  
13 revenues from the proposed rate will come from pipelines.

14           And we know from the -- from the evidence,  
15 sir, that in relation to the two (2) pipelines which  
16 would be caught by Manitoba Hydro's proposal, they are  
17 captive loads and not price sensitive.

18           And just using Enbridge as an example and  
19 -- and to go over to Sub D where Enbridge is referenced,  
20 and Sub D is at line 13 of page 29, we know that Enbridge  
21 has been a longstanding customer with a long history in  
22 Manitoba.

23           And as we heard from the Enbridge  
24 representative, its current expansion plans are designed  
25 to occur within an existing right-of-way with shared

1 usage of existing pipeline pumping station facilities.  
2 This is not someone that is attracted to the jurisdiction  
3 because of low rates; they're there because they have to  
4 be there.

5                   And -- and we'd highlighted Item Number 3  
6 on page 29 that -- at line 26, that there's no credible  
7 evidence, in MIPUG's submission, that has been provided,  
8 that energy intensive load is flooding into Manitoba and  
9 there is credible -- and there's credible ev -- and  
10 there's -- sorry -- and there's no credible evidence of  
11 any imminent loads.

12                   As we -- we note in MIPUG/Manitoba Hydro-  
13 1-4, and I quote from that:

14                   "There has only -- there has been only  
15 one (1) company, who has located in  
16 Manitoba in the past ten (10) years  
17 whose use has exceeded a hundred  
18 gigawatt hours or more during their  
19 first full vol -- year of operation."

20                   In relation -- in relating to new loads,  
21 in my submission, Mr. Chair, Manitoba's evidence on this  
22 issue was at best anecdotal and, in my submission, very  
23 unhelpfully superficial. It talks about various times of  
24 smelters and server farms, but there's been absolutely no  
25 substance underlying those speculative suggestions.

1                   It's just, in my submission, insufficient  
2 in order to support such a fundamental proposition, based  
3 on what the actual clear evidence is before the -- before  
4 the Board.

5                   And we talk a little bit more about that  
6 point, about the -- about these so called new possible  
7 loads, et cetera, and I won't go through it, on page 30  
8 and 31 of -- of the written argument.

9                   And finally, the -- the last proposition  
10 that we started out with under this section, sir, that --  
11 and I -- and I'm now referring to line 24 at page 31 --  
12 is that when industry grows in Manitoba, other custom --  
13 customers are ad -- adversely affected. Well, in the  
14 context of what we're talking about, that proposition is  
15 not solely confined to the industrial class, is con --  
16 confined to any of the classes. And we make that point  
17 in the paragraph effectively starting at line 33, on page  
18 31.

19                   So we say, Mr. Chair, when you look at  
20 each one of those propositions, it's MIPUG's position  
21 that reviewed in substance, each one of those  
22 propositions has not been met in this case by Manitoba  
23 Hydro.

24                   Now, in the context of reviewing the  
25 issue, we also pointed out, or I also pointed out on my

1 opening comments, the importance if that you are going to  
2 the discriminate -- discriminatory route, that -- that  
3 there be no other non-discriminatory options available to  
4 it. And that is an issue that we deal with under Tab 4.

5           Now, sir, under Tab 4, which is at -- for  
6 the record, at page 33 of the written argument, we talk  
7 about other non-discriminatory options to the proposal.  
8 And -- and of course what we're talking about here, which  
9 you heard a fair amount of evidence about, is about the  
10 Quebec and the BC options or situations.

11           And what we do in this -- in this section  
12 of the argument, is that we highlight the evidence in  
13 relation to those two (2) propositions. But one (1) of  
14 the things that I would like to deal with orally, sir,  
15 relates to something that came up in the evidence about  
16 the BC and -- and Quebec options and whether or not they  
17 in -- in by themselves, were discriminatory in any way.

18           And so if you could, Mr. Chair, I'd ask  
19 you to refer to page 34, starting at line 14. There was  
20 -- there was a suggestion in Manitoba Hydro's rebuttal  
21 evidence that MIPUG witnesses implicitly accepted some  
22 level or form of discrimination in noting the BC and  
23 Quebec precedents, because they were referring to in that  
24 -- and -- and I -- and I quote from the -- from that, on  
25 lines 14 to 16.

1                   And I'd like to read to you the quote from  
2 Mr. Bowman denying that assertion from the transcript at  
3 page 934 and 35, when he noted as follows:

4                   "Hydro effectively says that we clearly  
5                   accept discrimination because we  
6                   support these other types of approaches  
7                   and that it's just a question of  
8                   degree. That is not correct. In each  
9                   of the cases you're dealing with,  
10                  Quebec or BC, you're not dealing with  
11                  discrimination. They have dealt with  
12                  the issue without having to put in  
13                  place a discriminatory rate regime."

14                  And then he goes on further to say, again  
15 from the transcript:

16                  "In Quebec you have a maximum  
17                  obligation to serve that comes out of  
18                  policies made by the Government of  
19                  Quebec. Discrimination and the  
20                  question of undue discrimination is a  
21                  regulatory concept that arises and is  
22                  tested within the regulatory arena, if  
23                  you like. The regulatory arena is  
24                  defined by the laws and the policies of  
25                  the jurisdiction. In Quebec the

1 regulatory arena is defined not to  
2 include those customers that are  
3 outside the jurisdiction, that are  
4 outside the arena."

5 Being outside of the arena, Mr. Chair,  
6 means that effectively they're not being treated -- these  
7 customers are not being treated, as asserted, in a  
8 discriminatory manner.

9 And then we deal with the BC situation,  
10 starting at line 19 on page 35, where we talk about the  
11 fact that the MIPUG witness, Mr. Bowman, indicated to the  
12 -- to the Board that the system extension approach is not  
13 discriminatory. And that was -- basically his point was  
14 because it effectively applies the same set of principles  
15 to all customers and all customer classes -- and again, I  
16 -- I wish to read a quote from Mr. Bowman's testimony  
17 from page 1073 and 74, and I quote -- it's at line 24 of  
18 page 35:

19 "Mr. Ostergaard has set out some of the  
20 detail, in regards to the 1991 order  
21 that approved Tariff Supplement Number  
22 6. Tariff Supplement Number 6, as I  
23 set out yesterday, is oriented towards,  
24 I'll call it system impacts. Capital -  
25 - capital investment shocks that would

1 occur to the system because a large,  
2 new customer comes on including through  
3 to the generation system and making  
4 sure that those shocks don't -- don't  
5 hit others, in terms of having to pay  
6 for new transmission lines or new  
7 combustion turbines, or any other  
8 aspects related to putting in place a  
9 system that can reliably deliver the  
10 energy. It doesn't though, extend to  
11 the ongoing energy charges or the cost  
12 of actually producing the energy."

13 So once again, this is a -- is a way in  
14 which BC deals with the situation, which does not  
15 compromise basic regulatory principles. And then the  
16 effect of this is once those payments, or whatever, that  
17 are required under Tariff Rate Supplement 6 are paid,  
18 that customer, as with all other customers in the system,  
19 gets embedded cost rates.

20 We do on to describe in -- in a fair  
21 amount of detail the Tariff Supplement Number 6, which  
22 obviously is relevant to the recommendations that we are  
23 -- are made, even though obviously in the Manitoba  
24 situation a service extension policy in -- in -- like  
25 that, would had to be -- would have to be created to deal



1 with the Manitoba specific situation.

2 Now, sir, those were basically the most  
3 substantive parts of the written argument that I wanted  
4 to deal with, but I'd like to take the Board quickly  
5 through the balance to show what it is that -- that we  
6 have provided in the written argument.

7 And if you could turn to Tab 5, what we've  
8 done is we've also provided the Board with written  
9 argument on some of these other issues, which relate in  
10 some manner to the issues raised in the -- in -- in  
11 Manitoba Hydro's application.

12 And firstly, we discuss, starting at page  
13 39 and going through to page 48, efficiency issues. And  
14 -- and at -- at a very high level, what we're basic --  
15 the proposition that we make in -- in the argument is  
16 that the Manitoba Hydro proposal, which I think Mr.  
17 Williams agreed with, is clearly not an efficiency rate.

18 And -- and put quite simply there's simply  
19 not enough information before the Board, at this time, to  
20 deal with -- with obviously the key issue of efficiency.  
21 We also talk about, in some detail, as to how -- as to  
22 what options that might be available to the Board, if  
23 they were so inclined to deal with this topic.

24 And I guess I would particularly point out  
25 for the review of -- of the Board, a couple of the

1 sections. And would one would be on page 43, where we  
2 deal with the issue of why we say that the rate as  
3 applied for is not an efficiency rate. And that's sort  
4 of starting at about line 6 and through -- through to the  
5 next couple of pages, to the end of page 45. I point  
6 that one out to the Board.

7 The other one that I would point out to  
8 the Board is why MIPUG says that this Application can't  
9 be made into something that it's not. I -- it can't be  
10 made into an efficiency rate proposal. And that starts  
11 at -- at page 46. You see at the top where it says:

12 "Hydro's proposal cannot be turned into  
13 an efficiency rate."

14 I would -- I would point that one out to  
15 the Board for its considered review.

16 Now another issue that we deal with in the  
17 written argument which I don't intend to spend some time  
18 on in oral argument, but is -- is effectively and  
19 comprehensibly dealt with in the written argument, is the  
20 bulk plant -- bulk power planning issues that I raised at  
21 the beginning. And that, for the Board's reference, is  
22 at page 48 of the written argument.

23 And again you can see a couple of the  
24 subheadings, which are of -- would no doubt be of  
25 interest to the Board. The first one is, Issues and

1 Concerns Raised by MIPUG -- and -- and I would say, and  
2 others would, including the Board about -- about planning  
3 issues -- and that's gone through in a fair amount of  
4 detail.

5                   And then if you go through to page 50  
6 there is a section which says:

7                   "Cannot solve bulk power planning  
8                   concerns with industrial rate option."

9                   So it goes through and -- and talks a  
10 little bit about that and then -- and deals with some --  
11 some of the options.

12                   The last issue, Mr. Chair, that is deal  
13 with in the written submission, which again I don't want  
14 to go through with -- or go through in any detail, is the  
15 whole issue of the service extension policy. This has  
16 been debated in previous hearings. And this effectively  
17 is an attempt to both summarize some of the key practical  
18 and other concerns about transparency, discrimination,  
19 and fairness issues, all -- all of which has been, in  
20 some manner or another, referred to in other argument.

21                   And also deals with the -- MIPUG's view on  
22 the jurisdictions issue raised by the rate, and that's  
23 starting at page 55. And effectively to summarize, it --  
24 it takes the -- MIPUG's position is that this Board  
25 clearly has jurisdiction over the system extension policy

1 -- or extension approach that would be adopted by  
2 Manitoba Hydro, and it took that -- that position in at  
3 least one (1) previous hearing.

4 Now, sir, for the Board's consideration,  
5 we have also included two (2) subheadings which may be of  
6 interest in a review of -- of what is gone on --  
7 transpired in this Hearing, and that is we have  
8 highlighted in Tab 6 key points from the MIPUG member  
9 presentations.

10 And in Tab 7 we have taken the time to  
11 highlight the key portions of the testimony of Mr.  
12 Ostergaard, which, Mr. Chair, takes me to my concluding  
13 remarks which is where we started in terms of the  
14 conclusions and recommendations that MIPUG is -- is  
15 bringing forward to the Board for its consideration and  
16 they are at Tab 8.

17 I won't go over one (1) more time because  
18 I've done it a couple of times but we highlight, once  
19 again here, the reasons why we say the Manitoba Hydro  
20 proposal or its application should be rejected. You've  
21 heard me on that and we've gone through in the written  
22 argument, to some extent, on each one (1) of these issues  
23 as to why we say any one (1) of these issues, let alone  
24 all of them, probably -- does support the proposition  
25 that the Manitoba Hydro proposal should be rejected.

1                   But I would like to take some time to talk  
2 about the recommended approach which is the alternatives  
3 or options that the Board was interested in both at the  
4 beginning of the Hearing and also it was referenced  
5 again, too, at the beginning of -- of today.

6

7   (BRIEF PAUSE)

8

9                   MR. JOHN LANDRY:   And I'm -- I'm really  
10 going to effectively just review what we have here, so,  
11 I'll -- I'll go through it slowly in case the Board has  
12 some questions.

13                   As I said earlier, MIPUG recommends that a  
14 service extension policy should be effectively the  
15 approach adopted to this issue and we say, starting at  
16 line 10, that MIPUG recommends that any service extension  
17 policy be recognized as part of the tariff -- rate tariff  
18 structure requiring Board approval for any changes and  
19 that Manitoba's unilateral suspension of its service  
20 extension policy be set aside until such time as the  
21 Board can review and approve any changes proposed by  
22 Manitoba Hydro to this policy. To this end, Manitoba  
23 Hydro would also need to file with the Board a copy of  
24 its service extension policy as it existed prior to the  
25 suspension in 2005.

1                   Now, as I've indicated to the Board  
2 earlier, if -- if there is a perceived need to deal  
3 specifically on a regulated basis with very large,  
4 possible major new loads being connected in the future,  
5 MIPUG recommends that Manitoba Hydro be directed to  
6 develop in consultation with customers - and we say  
7 perhaps through a Board-led consultation process of the  
8 type which was noted you'll recall by Mr. Ostergaard - a  
9 proposal for a relevant, modified service extension  
10 policy for the Board to review and approve related solely  
11 to incremental new loads served at transmission voltages.

12                   The objective of such a policy should be  
13 specifically directed not to involve revisiting the  
14 Manitoba Hydro approach through another door, i.e., it  
15 should not involve any impact on embedded cost rates, nor  
16 involve any compensation for lost export revenues or  
17 future energy-related costs and should address each new  
18 load on a separate basis without aggregation with a  
19 customer's other loads, which I mentioned earlier.

20                   And of course as we say, this could be  
21 similar to the BC Hydro Tariff Supplement Number 6 which  
22 is designed to ensure that new or existing loads -- new  
23 or expanding customers contribute fairly to the capital  
24 cost or system investments required to serve them.

25                   MR. ROBERT MAYER:    I'm glad you're going

1 slowly, sir, because this raises another question for me.

2                   They've talked about extension of  
3 transmission and upgrading of transmission. Can you tell  
4 me, because I should have asked this to Mr. Ostergaard if  
5 I had of thought of it at the time, but am I correct in  
6 assuming that Manitoba is basically the only province  
7 that is using these high-voltage DC lines to move its  
8 power such long distances, or more precisely, are there  
9 any such -- is there any similar facilities in BC because  
10 they're a fairly expensive piece of equipment?

11                   MR. JOHN LANDRY: I am aware of that and  
12 I -- I can't say for certain that there are none. I  
13 believe there might be some. I would say this, Mr.  
14 Mayer, that I have a little bit of familiarity with some  
15 of the transmission lines and the major ones that would  
16 be coming down from the north from their major hydro  
17 facilities are not DC and, I mean, that that would be  
18 from the Peace River Bennett Dam area, and from the  
19 Columbia system, those are not DC but I believe, and I --  
20 and I stand to be corrected, that there might be a DC  
21 line or more than one (1) DC line connecting the Lower  
22 Mainland to -- to Vancouver Island as an example.

23                   But I'm not -- but I can't -- I can't say  
24 for sure. There was a fairly significant debate about  
25 those lines recently and I have a vague recollection that

1 one (1) of the lines that they were talking about was a  
2 DC -- one (1) or more of the lines was a DC line.

3           And again, and I'm going through this --  
4 going through this in some detail because of the Board's  
5 desire to hear from MIPUG and others on -- on their -- on  
6 their recommended options.

7           I note at the bottom or we note, at the  
8 bottom of page 66, that in a case of -- and I think  
9 you've heard this from both Mr. Ostergaard and others  
10 that in the case of -- of loads in excess of a certain  
11 high capacity level and BC is set at 150 MVA, which for  
12 all intensive purposes is -- is around 150 megawatts, any  
13 new generation facilities that are specifically needed  
14 for the new loads are actually part of the cost that  
15 would have to be picked up by the -- by the new load.

16           And as Mr. Williams indicated Manitoba  
17 Hydro did acknowledge that if such a policy was in place  
18 in Manitoba, it would pick up the -- the very large loads  
19 that if at least anecdotally been discussed as new  
20 possible loads that would be the aluminum smelter and the  
21 -- and the large server farms.

22           And as I said in my opening comments, in  
23 addition to that as a proposal or an alternative that  
24 MIPUG would urge upon the Board as being the appropriate  
25 way in which to deal with this, we've also highlighted



1 here another possible option which would be used in  
2 addition to the -- in addition to the service extension  
3 policy concept recommended and that is that to deal with  
4 the efficiency and efficient price signals concept also  
5 in a separate process, we also believe that the best way  
6 in which to do that would be through, once again, a -- a  
7 Board sanctioned or led consultation process with the  
8 concept of coming back to the Board with a proposal in  
9 that respect.

10                   And we note, obviously, that, as I've said  
11 before, that in -- in MIPUG's submission, you just don't  
12 have the information before you today, the necessary  
13 information before you today to deal effectively and in a  
14 considered manner as you would -- as you would do with --  
15 with these type of proposals.

16                   But, obviously, if the parties were able  
17 to go through such a Board sanction process, MIPUG is  
18 hopeful that something positive would obviously come out  
19 of that.

20                   And -- and, of course, you see in sub item  
21 (e), in line 31 of page 67, that you could have rate  
22 designs such as, at least, for example, a time and use --  
23 a time of use proposition which -- which could start as  
24 an alternative optional rate for an initial evaluation  
25 period.

1           You heard some concerns expressed by some  
2 of the present -- by the members in the presentations  
3 about problems or issues that they see with both time of  
4 use and stepped rates and I think those are the type of  
5 things that are not dissimilar to what we heard in  
6 British Columbia and quite frankly were dealt with within  
7 the consultation process that occurred, and that was a  
8 Board led consultation process at least on the -- for  
9 sure on the stepped rates and also Mr. Ostergaard said it  
10 took place on Tariff Supplement Number 6.

11           MR. ROBERT MAYER:   Again, I hate to  
12 interrupt because I know you're watching your watch too,  
13 but you mentioned Board led, and I, of course, have some  
14 concerns about that because we're set up as a quasi  
15 judicial process and if we start sending our staff into  
16 these meetings, don't you perceive a problem there, and  
17 would you think we would require further legislative  
18 changes?

19           MR. JOHN LANDRY:   My answer to that, sir,  
20 having been through a number of these both in British  
21 Columbia and other jurisdiction, would be, I don't think  
22 there's a need for -- in fact, I'd say there is no need  
23 for a legislative basis to do it and the approach that  
24 has been adopted in jurisdictions that don't have the  
25 negotiated settlement type process guidelines in place,

1 is effectively -- which -- which quite frankly is the  
2 same way they deal with it in British Columbia -- that at  
3 the end of the day if a proposition is brought forward  
4 from that process to the Board, the Board -- it's  
5 ultimately still the Board's decision. They have make --  
6 come to a conclusion that is in the public interest.

7                   So it's never a given. You bring back the  
8 pro -- proposition in -- in most jurisdictions including  
9 British Columbia, a full and comprehensive report would  
10 be made to the Board and it's up to the Board to  
11 determine whether or not, if -- if -- if the parties have  
12 been successful in -- in -- in their discussions, whether  
13 or not what is being brought forward to the Board is  
14 indeed in the public interest.

15                   MR. ROBERT MAYER: But when you say  
16 "Board led," how do we report to ourselves?

17                   MR. JOHN LANDRY: Sorry, when I meant,  
18 Board led -- Mr. Mayer, what I meant was through the  
19 Board advisors. And that is the way in which  
20 traditionally these type of approaches have happened,  
21 that the Board actually takes part in an active -- the  
22 Board advisors, I keep -- I -- I apologize, because in  
23 other jurisdictions that -- that's the way it is. The  
24 Board advisors actually take part substantively in the  
25 discussions that -- that ensue.

1                   MR. ROBERT MAYER:   And then the report  
2 that comes forward, if these three (3) gentlemen here  
3 have been sitting in on all these negotiations and this  
4 report comes to us, where do we go for independent  
5 advice?

6                   MR. JOHN LANDRY:   Sir, that's not in my  
7 experience, and I've been through a number of these,  
8 that's not been a concern that has been raised or -- or  
9 of concern to the parties, because if you're coming  
10 forward with a proposal, which normally is what happens,  
11 you're coming forward with a proposal that everybody  
12 endorses.

13                  MR. ROBERT MAYER:   Who would rubberstamp  
14 it?

15                  MR. JOHN LANDRY:   Well, Mr. Mayer, I can  
16 only speak from my experience in this one, and I would  
17 say to you that I'd never seen a situation where I would  
18 call it a complete rubberstamp. It's a -- comprehensive  
19 reports are made to the Board, submissions are made, and  
20 the Board -- or when I say Board, I mean that -- that the  
21 tribunal that you would be referring to deliberates and  
22 makes a determination based on the public interest.

23                  So, Mr. -- Mr. Chair, those are my  
24 concluding comments. And now I understand the way in  
25 which the Board has approached this, which we endorse,

1 that you've asked parties to -- to talk about  
2 alternatives. We've heard Mr. Williams' alternatives.  
3 And in that respect, I attempted to, where -- where there  
4 was -- where there might have been issues to -- to deal  
5 with them in my -- in my oral submissions, obviously we  
6 have not have heard of the alternatives that may be  
7 suggested by RCM/TREE. At least I don't think we have.  
8 If it's in part of the evidence, that's a different  
9 issue.

10 And also you've asked the -- Manitoba  
11 Hydro to not only comment on perhaps alternatives that  
12 have been suggested by the parties but other  
13 alternatives, and I would only ask the Board's  
14 indulgence, that if indeed new issues come up, new  
15 alternatives, new proposals, that -- that we at Manit --  
16 or that MIPUG be able to provide its comments for the  
17 Board's considered review. And that can be either at the  
18 end -- I will be here on -- on -- on Thursday for  
19 Manitoba Hydro's submissions -- or -- or in writing, if  
20 it so pleases the Board.

21 THE CHAIRPERSON: Thank you, Mr. Landry.  
22 By the way, just in housekeeping, on your page 65 in your  
23 written brief, point 5, is there a typo there?

24

25

(BRIEF PAUSE)

1                   MR. JOHN LANDRY:    I think you're  
2 referring to, Mr. Chair, that -- where it says, and I  
3 quote, "There has been on review," and it should be "no  
4 review?"

5                   THE CHAIRPERSON:   That's what I thought.

6                   MR. JOHN LANDRY:    Yes, that's correct.  
7 Thank you for picking that up.

8                   THE CHAIRPERSON:   Thank you.

9

10 CONTINUED BY MR. JOHN LANDRY:

11                   MR. JOHN LANDRY:    I -- I would make one  
12 (1) final comment. I guess, that I should've, and it --  
13 it just jogged my memory about something that Mr.  
14 Williams said, and he referred to in his material. It  
15 was one of the handouts that he had and it's the second  
16 page of the two (2) page handout, which is something that  
17 came from Manitoba Hydro's rebuttal evidence as a excerpt  
18 from Attachment 3.

19                   And -- and it will come as no surprise  
20 that there was some angst about this document being  
21 discussed one (1) more time, with -- as I understand it,  
22 and I wasn't at the previous hearings, and I -- so I  
23 can't specifically comment -- where there's even  
24 arithmetic errors in it.

25                   I would only ask the Board if they were --

1 if they are going to consider this -- this attachment,  
2 which, again, I don't think it will come as any surprise  
3 that the MIPUG fundamentally disagrees with the approach  
4 that stopped it you're; that they also -- be a reference  
5 to -- the Board should also reference a document that --  
6 as -- was referred to in the evidence by Mr. Peters in  
7 cross examination on a couple of occasions, and it comes  
8 from MIPUG Exhibit -- or sorry, PUB Exhibit -- it's the  
9 black book -- Bob's book, I mean. The blue book, Exhibit  
10 8.

11 And there is a reference there to...

12

13 (BRIEF PAUSE)

14

15 MR. JOHN LAUNDRY: Just while we have it,  
16 for the record, if that would -- if I could seek the  
17 indulgence of the Board.

18 Yes, it's Tab 16 of -- of PUB Exhibit 8.

19 THE CHAIRPERSON: Thank you, Mr. Laundry.

20 MR. JOHN LAUNDRY: Thank you.

21 THE CHAIRPERSON: I think -- I don't see  
22 Mr. Anderson present, so we'll move onto Mr. Gange for  
23 RCM/TREE.

24 Mr. Gange...?

25 MR. BILL GANGE: I -- I can advise you, Mr.

1 Chair, in terms of your -- your -- the question of  
2 timing. I will -- I will be less than an hour.

3 THE CHAIRPERSON: Okay, well, we'll take  
4 a ten (10) minute break now, and then we'll come back  
5 with you, Mr. Gange. It will give Mr. Anderson one more  
6 opportunity to arrive.

7

8 --- Upon recessing at 2:05 p.m.

9 --- Upon resuming at 2:23 p.m.

10

11 THE CHAIRPERSON: Okay, one (1) small  
12 piece of housekeeping; for the Coalition and Mr.  
13 Williams' presentation, we're going to mark that -- there  
14 was two (2) documents he presented: One (1) was the two  
15 (2) sheets with the table and the other one began  
16 "Options." We'll mark that Coalition Number 5, so it  
17 will be on the record as an exhibit.

18

19 --- EXHIBIT NO. COALITION-5:

20 Two (2) documents: One is two (2) sheets  
21 and a table, and the other begins,  
22 "Options"

23

24 THE CHAIRPERSON: So thank you, Mr. Gange.  
25 If you wish to begin now.



1

2 FINAL SUBMISSIONS BY RCM/TREE:

3 MR. BILL GANGE: Thank you. Mr. Chair, I  
4 have provided to the Board Secretary copies of the  
5 written argument. I -- I will stray from it from time to  
6 time. I recognize that this is getting to be a sleepy  
7 time of the day. I hope that I am able to engage you to  
8 -- throughout this process. It -- as I say, I don't  
9 expect this to be a very lengthy submission.

10 I will start with our introduction. As we  
11 indicated in our opening remarks, RCM and TREE intervene  
12 on the basis of principles of sustainability and justice.  
13 Sustainability includes durable economic well being as a  
14 component of social and environmental well being.

15 It requires taking into account a variety  
16 of system-wide and long-term consequences OF policies and  
17 actions. It also requires the recognition that  
18 development must be reconciled with finite resources,  
19 even if those resources are renewable as hydroelectric  
20 power is. And it encourages pricing mechanisms for  
21 demand management, resource allocation, and efficient use  
22 of resources. That comes from the Sustainable  
23 Development Act, Guideline 1A.

24 We also recognize that Manitoba Hydro is a  
25 key engine of prosperity in Manitoba. A central purpose

1 of our deliberation should be to optimize the  
2 contributions of this major asset and see that the  
3 benefits are distributed fairly.

4 At the core of Manitoba Hydro's business  
5 lies the generation, transmission, distribution, and sale  
6 of its premium product: reliable, storable, dispatchable  
7 hydroelectric power.

8 This high-value product energizes our  
9 homes, institutions, commerce, and industry. Despite its  
10 environmental footprint, it is relatively clean per  
11 kilowatt hour generated in comparison with other sources.  
12 Its adjustable output and storage capacity can match  
13 variable demand, market demand, and prices and make  
14 feasible and economic other clean, but intermittent  
15 sources, like wind and solar power. This farming  
16 capability greatly expands the potential for the  
17 production of green electricity in Manitoba and export  
18 markets to displace fossil fuel generation. Moreover, on  
19 the near horizon, our hydro power will be able to  
20 electrify a growing portion of Manitoba's transportation  
21 fleet as plug-in hybrids and electric vehicles are  
22 deployed.

23 With this set of favourable attributes on  
24 the cusp of a greenhouse-gas constrained North American  
25 economy, domestic and export demand are forecast to

1 increase. It is important that we are not -- that we not  
2 waste this high-value commodity but use it efficiently  
3 and wisely. Unfortunately, current domestic pricing  
4 undervalues our hydroelectric resource, hides the costs  
5 of growing usage and thereby encourages it, makes  
6 conservation and self-generation efforts less cost  
7 effective, and thus undermines efficient use of this  
8 valuable resources.

9           When no customers in the system face the  
10 marginal costs of their consumption, we are in danger of  
11 cooking the goose that lays the golden eggs.

12           In this Hearing, the current Energy  
13 Intensive Industrial Rate Application arises because a  
14 growing electrical load comes with real costs and these  
15 costs must and will be paid.

16           Furthermore, the costs for all users are  
17 increased by policies and pricing that lead to the  
18 inefficient consumption of electric power. The questions  
19 posed in this Hearing are: Who will pay the costs  
20 attributable to load growth among the large industrial  
21 consumers of Manitoba Hydro's premium product and how can  
22 a new rate structure mitigate or recover those costs and  
23 encourage more efficient use?

24           Since bargain rates and a growth allowance  
25 for the customer baseline energy level have been

1 justified on the basis of the stimulus they provide to  
2 the Manitoba economy, we shall also consider whether  
3 there are more cost effective ways to provide that  
4 stimulus.

5                   The RCM/TREE position and recommendations.  
6 At a high level, RCM/TREE, Manitoba Hydro, and MIPUG  
7 agree that some kinds of rate reform are needed to  
8 optimize our Hydro asset and the use of its premium  
9 product. Where we differ is in the nature, degree, and  
10 pace of implementation of the required reforms.

11                   The Coalition, by its own description, is  
12 -- in our written submission we said "or was," although  
13 after listening to Mr. Williams I think I'll take out the  
14 "was," is agnostic about these matters. Subject to  
15 modifications recommended by our expert witness Mr. Paul  
16 Chernick, RCM/TREE support Manitoba Hydro's application  
17 to create a two (2) tier rate for their largest  
18 industrial -- largest energy-intensive industrial  
19 customers in which the second tier approximates the  
20 marginal cost of new load.

21                   We can re-state Mr. Chernick's  
22 recommendation in three (3) parts: Number 1, the direct  
23 modification of Manitoba Hydro's proposal. First of all,  
24 I ought to say that we support the -- the date of  
25 December 31st, 2007, as the baseline date for setting the

1 energy level -- the CBEL.

2                   It is our position, however, that the  
3 second block rate should be set on the basis of forward-  
4 looking marginal costs. Hydro's proposal, as before you  
5 currently, would set the second block rate by taking a  
6 backward-looking calculation of the cost of sales in 2007  
7 and 2008. It is the position of RCM/TREE that the second  
8 block rate should be a forward-looking calculation in  
9 order to provide a more accurate value for the cost to  
10 Manitoba Hydro of supplying energy that would fall into  
11 the second block.

12                   Forward-looking marginal costs could be  
13 calculated using one (1) of two (2) methods, and Mr.  
14 Chernick discussed those methods during his testimony.

15                   The most accurate would be for it to be  
16 based upon the cost of new generation represented by  
17 Wuskwatim. Another acceptable method in our position  
18 would be to base marginal costs on future forecast market  
19 prices.

20                   The position of RCM/TREE has, in -- in  
21 spite of the comments that were made by Mr. Williams  
22 about Mr. Chernick's position being somewhat  
23 inconsistent, the position is -- has not been  
24 inconsistent whatsoever. The position of RCM/TREE is  
25 that this proposal ought to result in a revenue

1 neutrality for the system as a whole; not on a class, but  
2 for the system as a whole. And it is our view that using  
3 a forward looking method is the most likely to result in  
4 as close as possible to a revenue neutral position.

5 MR. ROBERT MAYER: Mr. Gange, we've heard  
6 this from a number of people, and I think this was  
7 Manitoba Hydro's first proposal as well, they wanted to  
8 be forward looking. If I recall correctly it was the  
9 Board who said, We need something that is -- what are we  
10 calling it -- transparent. And Hydro has hidden and  
11 chooses to hide and argues that it is commercially  
12 sensitive to give you their forecast market pricing.

13 I guess my question to you: Would you  
14 prefer to forego the -- the transparency in order to  
15 attempt to obtain what you think are more accurate price  
16 markers?

17

18 CONTINUED BY MR. BILL GANGE:

19 MR. BILL GANGE: The first method -- our  
20 prefer -- preferred method would be based on Wuskwatim.  
21 That can be a very transparent number, Mr. Mayer. That -  
22 - that's -- that's -- that's our view.

23 The -- the future forecast, you are  
24 correct, it is not entirely transparent. However, the  
25 backward looking process is also not transparent, and







1 on this point is that the current structure of the Hydro  
2 proposal is not revenue neutral to the system as a whole.  
3 The Hydro proposal sets the second block rate by looking  
4 backwards on -- at the revenues incurred by sales in 2007  
5 and 2008.

6 The sales in 2007 and 2008 look even  
7 further back because in some cases the sales involve  
8 contracts that date back over a decade, and that was  
9 discussed at transcript pages 760 to 761.

10 Hydro's proposal is that the backward-  
11 looking number will then determine the second block rates  
12 for the next two or three years. The result of that is  
13 that prices negotiated as many as twelve (12) and  
14 thirteen (13) years previously may determine the cost of  
15 the second block rate.

16 As Mr. Chernick has calculated, Hydro's  
17 most recent export price forecast is 12 percent higher  
18 than its backward-looking marginal rate in financial year  
19 2009 and 17 percent higher by financial year 2011. This  
20 is a significant difference in the revenues Hydro would  
21 receive for the sale of its power.

22 Hydro witnesses agreed during the Hearing  
23 that the more appropriate way to set value for the  
24 industrial loads is to look at forward pricing, and I  
25 would refer to transcript page 767. The difference in

1 the revenues to be raised by the second block rate would  
2 be increased if the approach adopted by the Board would  
3 be to set the second block rate based on the marginal  
4 cost of Wuskwatim.

5                   The second part of our modification of the  
6 Hydro proposal is to eliminate the growth allowance  
7 proposal. And you've heard much in the arguments that  
8 have been advanced so far in terms of discrimination. It  
9 is the position of RCM/TREE that there has been no  
10 compelling evidence to justify the growth allowance that  
11 is proposed. If the electrical usage is increased by the  
12 maximum amount proposed, the cost to Hydro is  
13 significant.

14                   Mr. Chernick's testimony provided a  
15 compelling assessment of the cost to Hydro's revenues if  
16 the growth allowance is utilized in full. At page 15 of  
17 his written testimony he calculated the annual loss to  
18 Hydro as a result of the growth allowance in comparison  
19 to revenues if the growth allowance was eliminated.

20                   In the year 2012, Hydro's revenues would  
21 be down by \$9.1 million in that year alone. In 2017,  
22 Hydro's revenues would be down on an annual basis by  
23 \$30.8 million. By the year 2022, Hydro's revenues would  
24 be down by \$49.6 million in that year.

25                   As an aside, I would say that in -- in

1 response to Mr. Williams' concern about the -- the cost  
2 upon low-income customers that a \$50 million -- 49.6  
3 million -- I'll use 50 million -- a \$50 million dollar  
4 annual shortfall in revenue that is going to have to be  
5 born by the -- by the system as a whole, and that  
6 includes the Society for Seniors, it includes those  
7 members of Harvest, it includes the Consumers  
8 Association. Those people that those organizations serve  
9 would be shortchanged by a total of \$50 million; that's -  
10 - that is an unfair burden to be putting on those groups.

11           One (1) of the key principles of an  
12 inclining rate structure is to send price signals to  
13 industry to adopt DSM measures that reduce energy usage.  
14 The comments that Mr. Turner made during his presentation  
15 are an excellent review of the ways that one (1)  
16 industrial user has applied DSM measures to reduce its  
17 energy costs.

18           Industry can reduce or shift its  
19 consumption with the -- with the introduction of time of  
20 use rates. Efforts to implement conservation measures,  
21 however, are most likely to be effective only when the  
22 conservation measures pay for themselves in a relatively  
23 short time frame.

24           Mr. Dudar agreed that the payback period  
25 for conservation measures is not likely to be more than

1 three (3) years; transcript page 775. Mr. Dudar also  
2 agreed that the use of a declining baseline for energy  
3 consumption could provide a powerful tool to encourage  
4 companies to be more aggressive in their conservation  
5 efforts.

6                   And that is at the heart of -- of this --  
7 the -- the idea that -- that we have of eliminating the  
8 growth allowance. The growth allowance should be --  
9 should -- should take place within the industry by the  
10 use of conservation measures.

11                   And if -- and if it is going to cost  
12 people money to exceed the baseline it is our position  
13 that -- that those industries will take effective steps  
14 to reduce their usage just as Mr. Turner indicated that  
15 his company had done.

16                   The second recommendation or the second  
17 part of the recommendations that RCM/TREE make deal with  
18 additions to Manitoba Hydro's position. (a) We say that  
19 -- that the demand charge should be restated as an  
20 increase to on peak -- the on peak energy charge. This  
21 would provide more efficient pricing signals and this  
22 would result in a peak period energy price increment of  
23 thirty-two point four dollars (\$32.4) for customers over  
24 100 kV as discussed in Mr. Chernick's testimony.

25                   And secondly we -- Mr. Chernick had

1 discussed setting the first block of power for each  
2 customer at 95 percent of the CBEL to increase the number  
3 of customers facing the higher second block rate.

4           Again, in terms of discrimination, our  
5 position is do it to all of the large users. Have all of  
6 the large users facing the possibility of the larger rate  
7 which then forces the -- the discussion of how do we  
8 reduce our demand, how do we reduce our usage. And the -  
9 - the answer to that is by more efficient use of power.  
10 And if -- and if nobody has to face that question, that  
11 issue is not as likely to be discussed as when at the  
12 edges of their usage everybody is being affected by it.

13           Our recommendations for the future. Hydro  
14 should phase in marginal cost rates for other customers  
15 in future applications and should put other GSL customers  
16 on notice that they are next.

17           Secondly, the Board should gradually  
18 reduce the baseline to ensure that most customers will  
19 face marginal cost prices and incentives for at least a  
20 small portion of  
21 their usage.

22           In its next GRA, Hydro should be  
23 instructed to file data on the percentage of the EIIR  
24 customers and the annual consumption of those customers  
25 that would have some load in the second block for the



1 we agree with Mr. Landry that that would not compromise  
2 the Board. It would not result in a rubber stamp, but we  
3 do believe that if -- if the Board advisors and the Board  
4 consultants were involved in pre-hearing, the pre-hearing  
5 consultation process, that -- that this process, the  
6 Hearing process, would be significantly improved and --  
7 and we would, again, urge the Board to -- to consider the  
8 idea of -- of that Board-led consultation process being  
9 involved here. Those are our recommendations.

10 In terms of the discussion of the process  
11 that has been before you, the first question is -- is  
12 load growth by large industrial users a material issue?  
13 We're going to go through a number of issues that -- that  
14 Mr. Landry went through in-depth, that Mr. Williams went  
15 through as well.

16 And not surprisingly, we have -- we look  
17 at these things and come to different conclusions. This  
18 is the same process. When you start from a different  
19 angle, you see things differently.

20 The material before the Board in our  
21 submission supports the conclusion that load growth is a  
22 material issue. In Hydro's forecast for energy usage for  
23 2010/2011 75 percent of the energy increase is related to  
24 customers over 30 kV. For 2013/'14 80 percent of the  
25 increase is due to large customers over 30 kV and in

1 contrast, non-GSL customers represent 10 percent of the  
2 load increase in 2010/2011 and only 7 percent for  
3 2013/2014. Reference for that is transcript page 797.

4           The effect of that load growth has a  
5 potentially negative impact upon Hydro's revenues. If a  
6 new customer were to use 200 gigawatts of power that  
7 would otherwise be available for export sale, Hydro would  
8 see its revenues decrease by approximately \$4 million. A  
9 new customer using 1,000 gigawatts would result in a  
10 decrease of approximately \$22 million in revenue; that  
11 comes from transcript page 756 and 757.

12           Transposing those numbers to the Canexus  
13 situation of 1,500 gigawatts, you're talking about a \$33  
14 million impact upon the Hydro system right now. Those  
15 numbers, those new numbers, that -- that were put  
16 forward, the 200 gigawatts and the 1,000 gigawatts must  
17 be made up by the other customers in the system.

18           We would note that Hydro is significantly  
19 behind the other two (2) major hydroelectric Crowns -  
20 Hydro Quebec and BC Hydro in developing provisions and  
21 safeguards for very large potential additions to load.  
22 It is the position of RCM/TREE that there is a material  
23 issue of the costs of load growth that need be addressed.  
24 A modified version as we -- of Hydro's proposal, as we  
25 have suggested, fairly addressed that issue.



1                   We have heard statements from MIPUG that  
2 Hydro's proposal is unprecedented. We disagree.

3                   The precedents have been put before the  
4 Board. BC Hydro and Hydro Quebec have both faced the  
5 exact issue under consideration. Solutions were found in  
6 both British Columbia and Quebec to address the problems  
7 in their own ways. However, they have addressed the  
8 issue, and it is now Manitoba's turn to attempts to  
9 balance the competing interests to arrive at a fair  
10 system, based upon the realities of Manitoba.

11                   Is the proposal fair and reasonable? We  
12 heard Mr. Williams talk about the social consensus. A  
13 social consensus changes over time, and right now the  
14 issue, in terms of that social consensus, is how do we  
15 address the issue of -- of a potential load growth  
16 expansion and the effect upon the system as a whole, and  
17 the effect upon the other classes?

18                   Manitoba Hydro is subject to the  
19 principles of the Sustainable Development Act. The  
20 guidelines for sustainable development include the  
21 following in Schedule B of the guidelines: Efficient use  
22 of resources, which means encouraging and facilitating  
23 development and application of systems for proper  
24 resource pricing, demand management, and resource  
25 allocation, together with incentives to encourage

1 efficient use of resources; and employing full-cost  
2 accounting to provide better information for decision  
3 making -- makers.

4 Pursuant to these guidelines, it is our  
5 position that:

6 Number 1. Most customers should face  
7 marginal cost pricing for a portion of their load, to  
8 recover the cost to Manitobans of high usage and  
9 expansion, to increase incentives to conserve and to  
10 self-generate power, and to make conservation and self-  
11 generation investments more cost effective.

12 I do want to stray from my written  
13 argument and respond to a comment that Mr. Williams made,  
14 where he said that it was the position of Manito -- of  
15 RCM/TREE that all customers ought to pay full cost. That  
16 has never been the position that has been advanced by  
17 RCM/PREE -- RCM/TREE at any hearing before this Board. I  
18 made perhaps an impar -- an impertinent re -- rejoinder  
19 to Mr. Williams during that argument, to say that it is  
20 not the position of RCM/TREE. I can make it now before  
21 you, while I have the mic, it is not the position and it  
22 never has been.

23 It is the position of RCM/TREE that --  
24 that customers should face marginal cost pricing for a  
25 portion of their load, but only for a portion of their

1 load. And this Hearing is no different than any of the  
2 other hearings that -- that Professor Miller has  
3 appeared at or that RCM/TREE have appeared at.

4           Number 2. Generation, conservation,  
5 consumption and pricing decisions should be guided by  
6 full-cost accounting; impacts on residential and GSS  
7 customers in the current review.

8           Thirdly, all customers should face similar  
9 constraints on consumption.

10           Fourthly, customers should pay incremental  
11 costs that impose on the systems -- incremental costs.

12           And Number 5. Subsidies should be applied  
13 in ways that do not undercut marginal cost pricing.

14           We would note that the Board has  
15 introduced inclining rates for the residential class of  
16 customers. It is our view that this decision was proper  
17 and begins to send appropriate price signals to  
18 residential customers to take active steps to reduce  
19 consumption of power, although the fur -- the full  
20 marginal cost price signal has not yet been reached.

21           It would be discriminatory if the Board  
22 were not to implement an inclining rate to the large  
23 industrial users. There is no valid reason why this  
24 group of users ought not to receive price signals in an  
25 attempt to recover incremental costs and reduce power

1 usage by this class as well.

2 (c) What is the value of export energy?  
3 In the original material that was submitted, MIPUG's  
4 evidence assumed that the transmission lines to other  
5 regions are fully loaded in most peak hours so Hydro can  
6 sell more exports only in low value off peak.

7 Mr. Chernick did significant research on  
8 this point and his discovery responses and Hydro's  
9 rebuttal demonstrated that most energy conserved in  
10 Manitoba can be used to support additional peak energy  
11 exports.

12 Recently in its responses to Board staff  
13 question XX-4, and without offering any supporting  
14 analysis, MIPUG continued to suggest that opportunities  
15 for additional peak exports are limited to low water  
16 years.

17 It is clear from the evidence in the  
18 record that there is room on the transmission lines for  
19 additional on-peak sales under most circumstances. Only  
20 in spring months with high runoff are the transmission  
21 lines fully loaded, according to Mr. Chernick's analysis.

22 The plausible range of export prices is  
23 that discussed by Mr. Chernick and Hydro and not the much  
24 lower prices alleged by MIPUG's witnesses.

25 (d) Power Smart and other allowances.

1 Adjustments for previous Power Smart investments are  
2 appropriate in fairness to early adopters. However, it  
3 should be noted that (a) DSM measures need not last  
4 forever and (b) earlier adopted measures may over time  
5 become standard practice.

6                   Since DM's SM measures function -- only  
7 function in the settings of the initial CBEL and not  
8 thereafter, RCM/TREE recommend that verified savings from  
9 DSM measures adopted in the last ten (1) years, that is,  
10 since 1999 should be given credit but any older measures  
11 should be subject to verification that they are still  
12 effective and that they go beyond current standard  
13 practice.

14                   Hydro's proposal also includes a CBEL  
15 expansion for future energy consumption associated with  
16 energy efficient solutions for environmental compliance.

17                   Ordinarily environmental compliance is an  
18 internalized cost of doing business. In its written  
19 evidence, Mr. Chernick points out that an expanded  
20 allocation of cheaper electricity for such compliance  
21 distorts the choice of a least-cost solution in the  
22 direction of electricity intensive solutions at the  
23 expense of other ratepayers.

24                   On a full cost accounting basis an  
25 electricity intensive solution also increases the release

1 of greenhouse gasses in the export markets, at least for  
2 the near to medium term.

3                   We note that Manitoba Hydro in its  
4 proposal has appropriately ruled out solutions that  
5 involve fuel switching to electricity and that the  
6 Province recently announced its intention to help Tembec  
7 substitute biomass for coal at its facility.

8                   RCM/TREE are more comfortable with the  
9 latter type of assistance to meet Provincial, social and  
10 environmental priorities, when possible, than a perpetual  
11 allocation of cheaper electricity.

12                   (e) Economic development. As discussed  
13 earlier, the growth allowance proposed by the Hydro  
14 proposal would by 2022 result in a loss of revenue to  
15 Hydro of \$49.6 million annually.

16                   We have to ask whether a potential \$50  
17 million annual expenditure to subsidize growing base load  
18 energy could otherwise achieve a greater economic  
19 stimulus bang for the buck.

20                   In response to Mr. William's question, Mr.  
21 Chernick's -- Mr. Chernick pointed out that there is not  
22 a high correlation between the benefit to the province  
23 and the amount of electricity used. It is better to  
24 target available subsidies to the type of stimulus  
25 desired rather than the number of kilowatt hours

1 consumed.

2                   In his GRA direct evidence Mr. Chernick  
3 gave an example of a six hundred thousand dollar  
4 (\$600,000) Manitoba tourism investment that produced one  
5 hundred and eleven (111) new jobs, retained seventy-two  
6 (72) jobs, created sixty-nine (69) spinoff jobs and  
7 resulted in redevelopment and housing starts valued at  
8 \$45.2 million.

9                   Mr. Chernick has suggested that a portion  
10 of the revenue raised by the second block rate would be  
11 better used by the province of Manitoba to subsidize  
12 economic development in a focussed and purposeful manner.

13                   Another model before the PUB is Quebec's  
14 non-regulated approach to new large industrial loads  
15 described in the evidence of Messrs. Bowman and McLaren,  
16 at page 36.

17                   In this approach the provincial government  
18 would determine rates for loads above a threshold. You  
19 have the example that in Quebec it's 50 megawatts. Such  
20 a scheme is beyond the scope of this argument today.  
21 RCM/TREE, however, take the position that the Hydro  
22 proposal as amended by RCM/TREE ought not to be  
23 considered to the economic development of Manitoba,  
24 rather the amended proposal ought to be viewed as the  
25 possibility for targeted growth that would result in

1 appropriate jobs being created within the province of  
2 Manitoba.

3                   We leave it to the Board to contemplate  
4 the range of mechanisms that could be developed in making  
5 its recommendations.

6                   We have talked about the Manitoba  
7 advantage. Mr. Williams made a long -- or talked about  
8 this at length. And -- and -- and during his argument  
9 Mr. Williams linked our position to deregulation in  
10 Alberta and Ontario. This is not our position. And the  
11 -- the -- and -- and to make that suggestion is a  
12 misrepresentation of the position that has been advanced  
13 by RCM/TREE.

14                   The -- and -- and I -- I've commented on  
15 this once, I'll make this point again, to state our  
16 position that it -- that we are recommending total market  
17 rates, again, that is a misrepresentation of the RCM/TREE  
18 point.

19                   Our position is that -- that the -- that -  
20 - that -- that making the changes that we have suggested  
21 to the -- to the current proposal would result in a  
22 protection of the Manitoba advantage rather than a  
23 weakening of it.

24                   In conclusion, RCM/TREE support the  
25 proposal of Manitoba Hydro to introduce an inclining rate



1 for large industrial users. We see the benefit of  
2 amending the proposal to ensure that the addition of  
3 large industrial loads will result in a revenue-neutral  
4 effect for the Manitoba Hydro system as a whole. In  
5 order to effect a true revenue-neutral system, the second  
6 block rate should be set on a forward-looking basis.

7           We recommend that there be no provision  
8 for an automatic growth allowance in order to encourage  
9 companies to take effective steps to reduce consumption.  
10 Such an approach would be good for business, would be  
11 good for Manitoba Hydro, and would be good for the  
12 Province. Thank you.

13           THE CHAIRPERSON: And thank you, Mr.  
14 Gange. Thank you RCM/TREE.

15           I do not see Mr. Anderson. I know that  
16 Mr. Anderson has told us before that he carries a lot of  
17 files at the same time concurrently, so given that, I  
18 will ask Mr. Peters if he would not mind checking with  
19 Mr. Anderson, and if Mr. Anderson has something to file  
20 for the records, he should do so before the end of Friday  
21 this week.

22           No, that will not work, because Hydro will  
23 not have a chance to respond. Mr. Peters, do you have  
24 any advice as to the planning --

25           MR. BOB PETERS: Perhaps by the close of

1 business tomorrow, if that's acceptable to the Board?

2 THE CHAIRPERSON: That sounds good.

3 MR. BOB PETERS: And -- and, Mr.  
4 Chairman, while I have the mic, I would like to indicate  
5 that -- that my -- indicating to you first thing this  
6 morning that Mr. Anderson was making a -- a closing  
7 submission was not based on direct evid -- or direct  
8 discussions with Mr. Anderson, so I -- I don't want him  
9 to -- to bear the brunt of my suggestion. I heard it  
10 anecdotally and -- but I will give him a head's up in an  
11 e-mail to indicate that if he has written submissions  
12 they should be filed by the close of business tomorrow.

13 THE CHAIRPERSON: And earlier --

14 MR. ROBERT MAYER: Close of business?

15 THE CHAIRPERSON: -- and earlier than  
16 that, if possible. Like, Wednesday at noon would  
17 probably be more preferable, given that Manitoba Hydro  
18 needs an opportunity to consider it in drafting theirs.

19 MR. BOB PETERS: All right. I'll use  
20 Wednesday noon then if that's the agreed time. Thank  
21 you.

22 MR. BILL GANGE: Mr. -- Mr. Chair, could  
23 I just make one (1) further comment?

24 THE CHAIRPERSON: Please.

25 MR. BILL GANGE: The written argument

1 ought to be filed as RCM/TREE Number 5, if I did not do  
2 that at the start of -- of my presentation.

3

4 --- EXHIBIT NO. RCM/TREE-5:

5 RCM/TREE's written argument

6

7 THE CHAIRPERSON: So be it. That's fine.  
8 Thank you, sir.

9 MR. BILL GANGE: Thank you, sir.

10 THE CHAIRPERSON: Okay, thank you to all  
11 the Intervenors. And we now look forward to Manitoba  
12 Hydro's closing statement which will come on Thursday at  
13 1:00 p.m.

14 So we will stand down for now. Thank you.

15

16 --- Upon adjourning at 3:07 p.m.

17

18 Certified correct,

19

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21

22 \_\_\_\_\_  
Cheryl Lavigne, Ms.

23

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