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MANITOBA PUBLIC UTILITIES BOARD

Re: APPLICATION BY MANITOBA HYDRO FOR APPROVAL OF  
RATES FOR THE DIESEL ELECTRIC SERVICE IN  
BROCHET, LAC BROCHET, SHAMATTAWA AND TADOULE  
LAKE

Before Board Panel:

- Gerry Forrest - Board Chairman
- Kathi Avery-Kinew - Board Member
- Robert Mayer - Board Member

HELD AT:

Public Utilities Board  
400, 330 Portage Avenue  
Winnipeg, Manitoba  
January 22nd, 2004  
Volume V  
Pages 942 to 1210

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Byron Williams	)CAC/MSOS
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1 --- Upon commencing at 11:09 a.m.

2

3 THE CHAIRMAN: Good morning, Ladies and  
4 Gentlemen, if I may, I'd like to call the Hearing to Order.

5

6 MANITOBA HYDRO PANEL, Recalled

7

8 THE CHAIRMAN: When we last were sitting in  
9 this room, I closed the Hearing by indicating that today we  
10 would deal with the undertakings that were outstanding, and  
11 then following that I would give parties who had undertakings  
12 outstanding an opportunity to pose any questions with respect  
13 to clarification of those undertakings.

14 Following that I'd give Ms. Ramage an  
15 opportunity for re-direct if that was necessary. Following  
16 which it was the Board's view that we would then hear final  
17 submissions with respect to this particular Application; and  
18 unless anyone has any difficulties with that, that's the  
19 process that I'd like to follow this morning.

20 Now, Ms. Ramage, you have filed some  
21 undertakings with us and with parties in the room and that  
22 was in a letter dated January 16th, 2004 and I understand  
23 from that, that you filed four (4) undertakings. Is that  
24 correct?

25

MS. PATTI RAMAGE: Four (4) undertakings were

1 filed on January 16th, 2004, together with, I believe it was  
2 two (2) additional undertakings filed on January 21st.

3 THE CHAIRMAN: Yes, Ms. Ramage, I have that  
4 -- I didn't -- but for the sake of the record I just would  
5 like to take you to the January 16th letter and you have had  
6 Manitoba Hydro Undertaking Number 10, 11, 14 and 15, is that  
7 correct?

8 MS. PATTI RAMAGE: That's correct.

9 THE CHAIRMAN: And then the Board would like  
10 to receive Manitoba Hydro Undertaking Number 10 as Manitoba  
11 Hydro exhibit number 23. Manitoba Hydro Undertaking Number  
12 11 as Manitoba Hydro exhibit number 24. Manitoba Hydro  
13 Undertaking Number 14 as Manitoba Hydro exhibit number 25.  
14 And Manitoba Hydro Undertaking Number 15 as Manitoba Hydro  
15 exhibit number 26.

16  
17 --- EXHIBIT NO. MH-23: Response to undertaking number 10

18  
19 --- EXHIBIT NO. MH-24: Response to undertaking number 11

20  
21 --- EXHIBIT NO. MH-25: Response to undertaking number 14

22  
23 --- EXHIBIT NO. MH-26: Response to undertaking number 15

24  
25 THE CHAIRMAN: And then referring to your

1 letter which was received yesterday, that is January the  
2 21st, you have three (3) response there as I understand it,  
3 is that correct?

4 MS. PATTI RAMAGE: That is correct.

5 THE CHAIRMAN: The first one is an  
6 undertaking with respect to Dr. Avery-Kinew's question posed  
7 to the Panel of the radio and TV availability in the four (4)  
8 communities. May I suggest we receive that as Manitoba Hydro  
9 exhibit number 27.

10

11 --- EXHIBIT NO. MH-27: Response to undertaking with respect  
12 to Dr. Avery-Kinew's question posed to the  
13 Panel of the radio and TV availability in  
14 the four (4) communities

15

16 MS. PATTI RAMAGE: Thank you.

17 THE CHAIRMAN: And I also understand there  
18 would be best efforts made with respect to transcript  
19 reference 604, that is get a list of the INAC accounts  
20 transferred to the First Nations based on billing histories.  
21 And I understand that that was not successful.

22 MS. PATTI RAMAGE: That's correct.

23 THE CHAIRMAN: So we'll receive that  
24 Undertaking as Manitoba Hydro exhibit number 28; that  
25 response.

1 --- EXHIBIT NO. MH-28: Response to transcript reference 604

2

3 MS. PATTI RAMAGE: Mr. Chair, that would in  
4 effect because we didn't file a second document, put the  
5 letter as the -- the letter dated January 21st as Exhibit --

6 THE CHAIRMAN: Yes, thank you. Thank you.  
7 And then with respect to the other Undertaking, the  
8 Undertaking particularly posed by Mr. Anderson on a breakout  
9 of the costs associated with the Shamattawa facilities, there  
10 a number of pages attached to that, and may I suggest we mark  
11 that Undertaking Number 12 as Manitoba Hydro exhibit number  
12 29.

13

14 --- EXHIBIT NO. MH-29: Response to undertaking number 12

15

16 MS. PATTI RAMAGE: Thank you, Mr. Chair.

17 THE CHAIRMAN: Is there anything further, Ms.  
18 Ramage? Is that all the outstanding Undertakings that you've  
19 taken as a result of this Application?

20 MS. PATTI RAMAGE: That is my understanding.  
21 Yes, Mr. Chair.

22 THE CHAIRMAN: Thank you. Now is the Panel  
23 ready with respect to any points of clarification with  
24 respect to those Undertakings?

25 MS. PATTI RAMAGE: Yes, we're ready.



1 THE CHAIRMAN: Mr. Peters?

2 MR. BOB PETERS: Depending on the procedure  
3 that you'd like to follow this morning, Mr. Chair, I believe  
4 through correspondence as well, there were matters that Mr.  
5 Williams had brought to the Board's attention and I was going  
6 to ask for exhibits as well. I don't know if he's ready for  
7 that now or whether you'd like that to follow later.

8 THE CHAIRMAN: No, thank you, Mr. Peters. I  
9 was going to get that, I just wanted to make sure the panel  
10 was ready for that. Now, there was correspondence from Mr.  
11 Williams to the Board dated January the 19th, 2004, together  
12 -- and the Board responded to that. As a result of that  
13 correspondence, I understand, Mr. Williams, you have some  
14 filings that you'd like to -- marked as an exhibit in this  
15 proceeding?

16 MR. BYRON WILLIAMS: Yes, Mr. Chairman. We --  
17 based upon the Board's decision, which we received yesterday,  
18 I believe under Rule 17 of the draft Rules of Procedure, my  
19 understanding is that we -- CAC/MSOS was to have been given  
20 approval to file excerpts from the Status Update Hearing.

21 So I've provided those to Mr. Baron and it's a  
22 document, the front page is titled, "Excerpts from the Status  
23 Update Hearing," and includes the PUB cross-examination of  
24 the Hydro Panel on the diesel issue and as Mr. Mayor noted  
25 offline, a few extra pages that didn't need to be in there.

1 The MKO cross-examination of the Hydro panel and the direct  
2 and cross-examination of Mr. Fred Mills, and I'd ask that  
3 that be marked as an exhibit, Mr. Chair.

4 THE CHAIRMAN: Thank you, Mr. Williams. The  
5 -- we'll receive this material as Manitoba Hydro Exhibit  
6 number 10 and with respect to number 1, it should be  
7 transcript pages -- CAC/MSOS number 10, sorry and we'll  
8 receive with respect to number 1, pages 21-21 through to 21-  
9 50.

10

11 --- EXHIBIT NO. CAC/MSOS-10: Excerpts from Status Update  
12 Hearing, pages 21-21 through to 21-50.

13

14 THE CHAIRMAN: And we'll receive the rest of  
15 the material at number 2 and number 3.

16 MR. BYRON WILLIAMS: Thank you, Mr. Chair.

17 THE CHAIRMAN: Thank you. And now, Mr.

18 Anderson --

19 MS. PATTI RAMAGE: Mr. Chair, if I...?

20 THE CHAIRMAN: Yes?

21 MS. PATTI RAMAGE: Is -- is Mr. Williams going  
22 to be de -- distributing those references or --

23 MR. BYRON WILLIAMS: I believe Mr. Baron has  
24 them.

25 THE CHAIRMAN: Ms. Ramage, I'll give you an

1 opportunity to receive it.

2

3

(BRIEF PAUSE)

4

5 THE CHAIRMAN: And exhibit number is  
6 CAC/MSOS Exhibit number 10.

7

8

(BRIEF PAUSE)

9

10 THE CHAIRMAN: Mr. Anderson, as I understand  
11 it, you wish an opportunity to speak to the Board as well,  
12 sir?

13 MR. MICHAEL ANDERSON: Yes, thank you, Mr.  
14 Chair. De -- we had also -- MKO had also written the Board  
15 in respect of matters regarding reference of earlier  
16 transcripts during argument only in this proceeding.

17 After reading the Board's decision yesterday,  
18 the comments from Manitoba Hydro or CAC in discussions with  
19 Mr. Peters, the one document that we would like to refer to  
20 in our final submission that has not been placed into this  
21 record as of yet, and we would request leave to refer to it,  
22 and I did re -- mention this in our letter subsequently  
23 yesterday, January 21st, appeared as MKO Exhibit 11 in the  
24 Status Update Proceeding and that was an undertaking by the  
25 MKO witness by subpoena to Manitoba Hydro and which was

1 submitted to the Board on September 27th and as I've  
2 mentioned, has already been recorded as an exhibit before  
3 this Board.

4 THE CHAIRMAN: Thank you, Mr. Anderson.  
5 Ms. Ramage, do you have any observations with  
6 respect to that matter?

7 MS. PATTI RAMAGE: Perhaps Mr. Anderson can  
8 help me. Exhibit 11 was -- at Status Update was which  
9 document?

10 THE CHAIRMAN: As I understand it from Mr.  
11 Anderson's comment it was an undertaking requested, I  
12 believe, by Manitoba Hydro of Mr. Mills, the witness, and  
13 that was filed.

14 Mr. Anderson, do you have a copy that you can  
15 show to Ms. Ramage at this time?

16 MR. MICHAEL ANDERSON: I do, Mr. Chair, and,  
17 yes, Ms. Ramage, the undertaking was requested by yourself  
18 during the -- your examination of Mr. Mills.

19

20

(BRIEF PAUSE)

21

22 THE CHAIRMAN: Ms. Ramage, do you have any  
23 concern if the Board does receive that in this proceeding?

24 MS. PATTI RAMAGE: Mr. Chair, my concern  
25 relates primarily to the context of this document, because it

1 was done in the Status Update and we're all going to have to  
2 set our minds back to the context in which it was filed,  
3 which, offhand, we're having difficulty with.

4 But -- so, it's even difficult to speak to,  
5 but as we proceed, if there's confusion, perhaps we will --  
6 we will raise our concerns at that time.

7 THE CHAIRMAN: Thank you, Ms. Ramage. Then,  
8 Mr. Anderson. We'll receive this material as MKO exhibit  
9 number 8 and noting the caveat expressed by Ms. Ramage.

10

11 ---EXHIBIT NO. MKO/8: MKO Exhibit 11 in the Status Update  
12 Proceeding

13

14 THE CHAIRMAN: Is that all of the procedural  
15 issues that need to be addressed at this time? If so, then  
16 going to the undertakings that have been filed, Mr. Peters, I  
17 believe there is one (1) exhibit, and I believe that would be  
18 Manitoba Hydro Exhibit No. 26, I think it will have been  
19 followed from an undertaking request of yours and that's with  
20 respect to the refileing of the tariffs. Do you have any  
21 questions or points of clarification?

22

23 RE-CROSS-EXAMINATION BY MR. BOB PETERS:

24 MR. BOB PETERS: Perhaps just one (1)  
25 question then, of Mr. Wiens. Mr. Wiens, on the tariffs that

1 you have filed, you can confirm that at the bottom of the  
2 tariff that is proposed before this Board, together with the  
3 tariff of November -- effective November, 1st 2001, contains  
4 an indication that you want the tariff to apply to all  
5 Federal and Provincial departments, agencies, Crown  
6 corporations, including accounts of First Nations  
7 governments. Correct?

8 MR. ROBIN WIENS: Yes.

9 MR. BOB PETERS: And that does not appear in  
10 the -- in the previous tariffs, does it?

11 MR. ROBIN WIENS: No.

12 MR. BOB PETERS: Can you explain why that  
13 would be the case?

14 THE CHAIRMAN: Your mike, please.

15 MR. ROBIN WIENS: Manitoba Hydro, since --  
16 since the fil -- filing of the November 1st, 2001 tariff, has  
17 adopted the -- the practice of marking our customer policy  
18 application clearly on the tariff. Thank you.

19

20 CONTINUED BY MR. BOB PETERS:

21 MR. BOB PETERS: Mr Wiens, that November 1st,  
22 2001 tariff -- that's a tariff that has not been approved by  
23 this Board, is that correct?

24 MR. ROBIN WIENS: No, the rates are identical  
25 to the -- to the rates that were approved by this Board back

1 in 1994. I believe that this was filed and -- and this is  
2 subject to check, but I believe this was filed as part of the  
3 status update proceeding, in order to provide information.

4 But not necessarily approved by the Board,  
5 right. Yes, this -- pardon me, Mr. Chairman, this -- these  
6 tariffs with the 2001 prefix were put in place in order to  
7 implement the uniform rates directed by the province of  
8 Manitoba.

9 MR. BOB PETERS: Thank you, Mr. Wiens.  
10 Mr. Chair, that concludes my questions on the undertakings.

11 THE CHAIRMAN: Thank you for that, Mr.  
12 Peters. Mr. Williams, none of these undertakings that were  
13 filed had to do with undertakings of yours, is that correct?

14

15 (BRIEF PAUSE)

16

17 MR. RANDAL SMITH: Mr. Chairman, Mr. Williams  
18 advised that he has no questions on the undertakings, and nor  
19 does INAC.

20 THE CHAIRMAN: Thank you, Mr. Smith, for your  
21 assistance in this regard. Thank you again.

22 Mr. Anderson, all of the undertakings other  
23 than the one for Dr. Kinew that are left on this exhibit,  
24 Manitoba Hydro Exhibit number 27, are yours. Do you have any  
25 questions or clarification?

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RE-CROSS-EXAMINATION BY MR. MICHAEL ANDERSON:

MR. MICHAEL ANDERSON: Yes, I do, Mr. Chair, thank you. One matter of clarification, I realize that we did go through the list of outstanding undertakings and I just had wanted to refer to one. I take the comment on transcript reference 604 to the list of INAC accounts.

There was -- with re -- in respect to the undertakings regarding customer application policy which appears to be generally provided at -- I believe MH-22, the exhibit referring to the manner of treatment for social assistance accounts. Excuse me, Mr. Chair.

There was a separate discussion request by myself to Mr. Warden, it appears at transcript page 7 on 6, to determine whether there is a -- an approved Hydro policy document on Rate Application to residential accounts paid with government source funds and Mr. Warden replied that he would look for it, and if it did exist he would provide it and I'm just wondering if you had examined to determine whether you did have such a -- an approved policy?

(BRIEF PAUSE)

MR. VINCE WARDEN: Yes, Mr. Anderson. Exhibit number 22 was filed to respond to that question as to the



1 policies that Mana Ha -- Manitoba Hydro has with respect to  
2 the diesel rate zone.

3 MR. MICHAEL ANDERSON: All right, Mr. Warden,  
4 thank you.

5 I have one matter that -- excuse me -- may  
6 have passed by and I -- I just seek the assistance of  
7 Manitoba Hydro and perhaps the Board. It's regarding MH  
8 number 17. It is recorded in the record, Mr. Chair, that you  
9 did ask me if I had questions and my reply was, not at this  
10 time, but really, I'm wondering if it's possible to -- to  
11 file the complete Service Extension Policy?

12 All we have here are excerpts and as I read  
13 the discussion, it appeared that the undertaking was to file  
14 the policy.

15 THE CHAIRMAN: Mr. Warden...?

16 MR. VINCE WARDEN: Yes. The undertaking was  
17 responded to or provided in this manner for reasons of  
18 efficiency and expediency. We can certainly provide -- it's  
19 a computer-based file that we have, we can certainly provide  
20 a print of that file but it contains a -- a number of cross-  
21 references to a number of different policies and really, it's  
22 quite cluttered with that and is intended for internal use.

23 I can assure you that the essence of the  
24 information is here. We've only tried to clean it up for  
25 ease of re -- ease of reference in these pro -- proceedings.

1 We can certainly though, as I indicated earlier, provide a  
2 print. It's -- you'll get the identical information with a  
3 lot of clutter in that -- in that filing.

4

5 CONTINUED BY MR. MICHAEL ANDERSON:

6 MR. MICHAEL ANDERSON: With the consent of the  
7 Board, if you would file that, that would be appreciated.

8 MS. PATTI RAMAGE: I'm concerned about the use  
9 at this point because if we're proceeding with final argument  
10 and filing documents afterwards, Manitoba Hydro, as Mr.  
11 Warden indicated, the materials are here, so I'm not sure the  
12 benefit of filing -- of producing this -- the computer  
13 printouts at this point.

14 THE CHAIRMAN: Mr. Anderson, you have Ms.  
15 Ramage's concern with respect to it, is it fundamental that  
16 you have that information as a result of this Application and  
17 for your final submission?

18 MR. MICHAEL ANDERSON: Mr. Chair, assuming  
19 that it -- I was happy that Mr. Warden indicated that it is a  
20 ready document that's available. There was examination of  
21 our witness on service extension policies, it is part of  
22 MKO's evidence and although I cannot say without seeing it  
23 whether it's fundamental, it would be of assistance if we  
24 could see the entire document if it's readily available and  
25 we have, as I look at the clock, Mr. Chair, likely the

1 opportunity to review it over lunch prior to us making our  
2 final submission.

3 MS. PATTI RAMAGE: It --

4 MR. MICHAEL ANDERSON: That may be helpful.

5 MS. PATTI RAMAGE: It's not that readily  
6 available.

7 THE CHAIRMAN: Given Ms. Ramage's response,  
8 I would prefer that we just carry on. The Board will  
9 consider your request, Mr. Anderson, and we'll determine what  
10 course of action we're going to follow when I have a chance  
11 to counsel with the Board with respect to the matter.

12 In the meantime, I would just ask you to carry  
13 on with the other questions that you may have with respect to  
14 the undertaking.

15 MR. MICHAEL ANDERSON: Thank you, Mr. Chair.  
16 Thank you for entertaining my questions on this matter.

17 I would like to turn next to MH-22, Manitoba  
18 Hydro Exhibit 22, which no questions have been asked on as of  
19 yet by ourselves.

20

21

(BRIEF PAUSE)

22

23 CONTINUED BY MR. MICHAEL ANDERSON:

24 MR. MICHAEL ANDERSON: And in fa -- and  
25 realizing that cross-examination is on an undertaking, I

1 would like to go back to the -- the question that had arose  
2 from in terms of the document and I was referring to INAC  
3 Exhibit 2 pages 60 to 63 when this undertaking arose, Mr.  
4 Chair.

5

6

(BRIEF PAUSE)

7

8 MS. PATTI RAMAGE: Excuse me, Mr. Anderson.  
9 Is there a date on that instead of a page number?

10 MR. MICHAEL ANDERSON: Excuse me. The  
11 document that I was referring to at that time was a draft  
12 proposed Customer Application Policy dated the -- by the  
13 looks of this, the 10th of June, 1993 if I read their  
14 numbering sequence correct. Dr. Kinew.

15 And it's at my page 60 in accord with the  
16 Chair's numbering procedure. Thank you.

17 THE CHAIRMAN: I have it.

18 Mr. Wiens, are you ready to respond?

19 MR. ROBIN WIENS: I am waiting for the  
20 question, Mr. Chairman.

21

22 CONTINUED BY MR. MICHAEL ANDERSON:

23 MR. MICHAEL ANDERSON: Thank you, Mr. Chair.  
24 I thought Ms. Ramage might -- might like to join us. If we  
25 look at the -- we have a draft customer policy.

1                   Notwithstanding the fact that it wasn't  
2 approved is the draft policy in INAC 2, the form that such a  
3 policy would typically appear in within the Corporation.

4                   MR. VINCE WARDEN: No, it's not identical to  
5 this. It's a different look being a computer-based system as  
6 I -- I referenced earlier but information is -- is  
7 essentially structured in this manner.

8                   MR. MICHAEL ANDERSON: And you'll recall that  
9 I had begun to ask questions regarding the content of this,  
10 particularly the provisions -- draft, unapproved provisions  
11 at 5.3.1 at page 2 of 4 of this policy; is that correct?

12                   MR. ROBIN WIENS: Yes.

13                   MR. MICHAEL ANDERSON: And that the  
14 examination was suspended on the basis that this was a draft  
15 policy. Is that correct?

16                   MR. ROBIN WIENS: That's my recollection.

17                   MR. MICHAEL ANDERSON: All right. And did you  
18 understand my question to be -- my undertaking to be to  
19 provide the approved policy that was effective as of this  
20 date, Mr. Wiens?

21                   The date being the 10th of June, 1993.

22                   MR. ROBIN WIENS: No, I did not.

23  
24                   (BRIEF PAUSE)

25

1 MR. MICHAEL ANDERSON: Mr. Wiens, if we go to  
2 MH-22 to the very bottom of the first page where it refers to  
3 the non-government rate?

4  
5 (BRIEF PAUSE)

6  
7 MR. ROBIN WIENS: The bottom of Page 1?

8 MR. MICHAEL ANDERSON: Yes, Mr. Wiens. Right  
9 on the front page of MH-22.

10 MR. ROBIN WIENS: Yes.

11 MR. MICHAEL ANDERSON: And could read the  
12 tariff number identified there, please?

13 MR. ROBIN WIENS: 2003-40.

14 MR. MICHAEL ANDERSON: Has this tariff been  
15 approved by the Public Utilities Board, Mr. Wiens?

16 MR. ROBIN WIENS: I'm sure that the -- the  
17 rate to which that makes reference to has been approved by  
18 the Public Utilities Board. I've -- I'd have to check to  
19 determine the -- the nomenclature.

20 MR. MICHAEL ANDERSON: Well, as -- if I  
21 understand the -- the tariffs that have been filed pursuant  
22 to the undertaking of the Board, which appear, as I read, at  
23 Exhibit 26, is not -- can you confirm that General Service  
24 tariff 2003-40 appears on the first page of the tariffs to be  
25 approved by this Board, Mr. Wiens?

1 MR. ROBIN WIENS: I can't confirm that. I  
2 don't have that in front me.

3 MR. MICHAEL ANDERSON: Could you get Exhibit  
4 26 before you, Mr. Wiens, please.

5  
6 (BRIEF PAUSE)

7  
8 MR. ROBIN WIENS: Yes.

9 MR. MICHAEL ANDERSON: Would you now --

10 MR. ROBIN WIENS: Yes, I see that  
11 Mr. Anderson.

12 MR. MICHAEL ANDERSON: Would you now please  
13 confirm that the tariff indicate -- that we're discussing for  
14 non-Government rate at the bottom of -- of MH-22 first page,  
15 is the same as the non-Government tariff that you're seeking  
16 approval of from this Board, Mr. Wiens?

17  
18 (BRIEF PAUSE)

19  
20 MR. ROBIN WIENS: The number -- the number is  
21 the same. However, if you will refer to page 5 of 7, in MH  
22 Number 22, you will see that -- that the rates that are shown  
23 for General Service Rate are the rates that are currently in  
24 effect and have been approved by this Board.

25 MR. MICHAEL ANDERSON: So, is this an error

1 in the language of the policy?

2 MR. ROBIN WIENS: It probably is.

3 MR. MICHAEL ANDERSON: Back to the  
4 examination that we had originally on the draft policy,  
5 Mr. Wiens, when was this policy approved by the Board and how  
6 was that indicated in MH-22? That is the Board of Manitoba  
7 Hydro.

8 MS. PATTI RAMAGE: Mr. Anderson, it may be of  
9 assistance if we could -- if you could give me the reference  
10 to the original undertaking requested. The page reference?

11

12 (BRIEF PAUSE)

13

14 THE CHAIRMAN: Ms. Ramage, I'm not sure I  
15 understand --

16 MR. MICHAEL ANDERSON: 939 --

17 THE CHAIRMAN: -- are trying to determine  
18 where Mr. Anderson is referring to and what document he's  
19 referring to in posing that question to you?

20 MS. PATTI RAMAGE: I have -- we have the  
21 document. It just appears Mr. Anderson is leading to the  
22 point that we may not have fully answered his undertaking, so  
23 I was hoping to see -- have the transcript reference to -- to  
24 see where he is coming from.

25 THE CHAIRMAN: Thank you.



1 CONTINUED BY MR. MICHAEL ANDERSON:

2 MR. MICHAEL ANDERSON: I can provide that.  
3 It's at -- using the references in the transcript for January  
4 9th, it appears at nine three nine.

5 Hang on, this is when it was filed. Excuse  
6 me.

7 MS. PATTI RAMAGE: Mr. Anderson, there's a  
8 request on January 7th, on page 301.

9

10 (BRIEF PAUSE)

11

12 MR. MICHAEL ANDERSON: Is that January 7th,  
13 page 301, Dr. Kinew?

14 MS. PATTI RAMAGE: I believe that the  
15 reference there is dealing with the Service Extension Policy  
16 as opposed to the Customer Service Application.

17

18

19 (BRIEF PAUSE)

20

21 MR. MICHAEL ANDERSON: One reference, excuse  
22 me, Mr. Chair, that appears to continue discussion is at --  
23 on January 9th at page 708, where the Panel resumes,  
24 continued cross-examination by Mr. Anderson.

25

"Listening to the comments that were made  
by the presenters, and also having these

1 earlier in my notes in cross-examination, I  
2 had some questions about billing, metering,  
3 and Rate Application policy -- on the Rate  
4 Application Policy. Has Manitoba Hydro  
5 been successful in locating the current  
6 Rate Application Policy for the diesel zone  
7 by any chance?"

8 MS. PATTI RAMAGE And that's -- the current  
9 is Exhibit 22, but a moment ago you had suggested to Mr.  
10 Wiens that we were to have come up with the Customer Service  
11 Policy Application that was in place back in 1993, before the  
12 proposed -- at the same time as the Proposed Application was  
13 in place. And I'm concerned we're getting off track from the  
14 undertaking actually provided and that -- which the questions  
15 are to be posed to.

16 If it may be of assistance, my recollection is  
17 that it was actually Mr. Smith who requested this  
18 undertaking, and I'm having trouble locating it.

19 MR. MICHAEL ANDERSON: Well, my recollection  
20 of the discussion and I suppose we should find it, I can move  
21 onto some other questions while I look for it, is that I was  
22 asking questions based on this 1993 Customer Application  
23 Policy.

24 I was advised that it was draft and my request  
25 was for the one that was in effect as of this time that was

1 approved, and it would have been effective in 1993, 1994.

2 THE CHAIRMAN: And as I understand the  
3 exchange this morning, in this proceeding that Mr. Wiens was  
4 operating in a slightly different level and he didn't  
5 understand the reference back to the 1993 policy, but indeed  
6 was the current policy. Is that correct, Mr. Wiens?

7 MR. ROBIN WIENS: Mr. Chair, I'd always  
8 assumed from -- that that the undertaking we took was to  
9 bring the current policy in place.

10 If it's -- if it's of any assistance at all, I  
11 -- my reading of it is that it hasn't changed a whole lot  
12 since 1993. I mean we can go back -- we have moved to an  
13 electronic system of making revisions to Customer Policy  
14 Applications and it may be possible to go back and identify  
15 what was in place on a precise date in 1993.

16 But from what I can recall, the response to --  
17 that's provided in Exhibit Number 22, has not changed very  
18 much since then.

19  
20 THE CHAIRMAN: And I guess the difficulty I'm  
21 having, Mr. Anderson, the relevance of going back to a policy  
22 in 1993, when we're looking for -- at an Application that's  
23 moving ahead.

24 MR. MICHAEL ANDERSON: Given the  
25 circumstances and the confusion on the status of the

1 undertaking, I can see that we wouldn't proceed by pursuing  
2 it further.

3                   However, of course, the applicant has put into  
4 the record that it -- one it's rationale for classifying all  
5 First Nation accounts as government was the difficulty in  
6 understanding distinctions between various classifications  
7 and funding levels, Mr. Chairman, which is why I was  
8 interested in following the record of the approved policies  
9 that were in place.

10                   THE CHAIRMAN:       Thank you for that  
11 clarification. I expected if you're making final submission  
12 on that particular matter, you'll put forward your views and  
13 observations.

14

15                                       (BRIEF PAUSE)

16

17                   MR. MICHAEL ANDERSON: Mr. Chair, my next  
18 questions would be on Exhibit 29, which are the break downs  
19 of the requested re -- in respect of page 20 -- for the table  
20 at page 24 of Manitoba Hydro's rebuttal evidence.

21

22                                       (BRIEF PAUSE)

23

24                   MR. MICHAEL ANDERSON: Do you have that? Oh,  
25 okay.

1 MR. ROBIN WIENS: Yes, we do.

2

3

(BRIEF PAUSE)

4

5

6 MR. MICHAEL ANDERSON: In respect of the Item  
7 1, Project Management and Planning Studies, the item enti --  
8 indicated as Consulting and Engineering, these costs are all  
9 indicated as being outside contracts?

10

MR. ROBIN WIENS: Yes, they are.

11

12 MR. MICHAEL ANDERSON: Are these expenditures  
13 -- is this the engineering design of the propo -- of the  
14 diesel plant at Shamattawa?

15

MR. ROBIN WIENS: Yes, it is.

16

17 MR. MICHAEL ANDERSON: Could you describe the  
18 scope of these activities?

19

(BRIEF PAUSE)

20

MR. CHIC THOMAS: Mr. Anderson...

21

(BRIEF PAUSE)

22

23

24 MR. CHIC THOMAS: Yeah, we have that, Mr.  
25 Anderson. First of all, we have the design engineering, shop  
draw and review, design coordination and preparer of the

1 final as-built drawings. We also have the preparation of an  
2 Environmental Assessment report for submission to Manitoba  
3 Conserv -- Conservation and as well as prepare specialized  
4 consultation and air quality to address concerns, also of  
5 Manitoba Conservation.

6 MR. MICHAEL ANDERSON: Who -- who did this  
7 work for Manitoba Hydro, Mr. Thomas?

8 THE CHAIRMAN: The relevance to that  
9 question, Mr. Anderson? We nor -- normally don't go down  
10 that route.

11 MR. MICHAEL ANDERSON: Then I shall not  
12 either. Thank you, Mr. Chair. We're tru --

13 MR. MICHAEL ANDERSON: We're interested in  
14 trying to understand a picture in terms of things like the  
15 scope of Manitoba Hydro's relationships with others and who  
16 they might be, and to get a picture of this plant. That was  
17 the initial beginnings of my conversation.

18 I understand your comment, Mr. Chair.

19 THE CHAIRMAN: Thank you.

20 MS. PATTI RAMAGE: If it's any help, there is  
21 a picture of the plant.

22

23 CONTINUED BY MR. MICHAEL ANDERSON:

24 MR. MICHAEL ANDERSON: I'd also, as part of  
25 Item 1, Project Management Planning Studies, the Manitoba

1 Hydro costs for Project Management, that number at seven  
2 hundred, fifty-three thousand, eight hundred and ninety-six  
3 dollars, (\$7,530,896), at what rate is the internal labour  
4 charged relative to this amount?

5

6

(BRIEF PAUSE)

7

8 MR. CHIC THOMAS: Mr. Anderson, it's not the  
9 exact hourly wage of the -- the people involved, it's  
10 actually part of Manitoba Hydro's financial reporting system.  
11 We -- we build in what we call an "activity rate" that  
12 embodies other costs of the -- of the department that that  
13 person or people might be working in.

14

15

16

So that activity rate is part of that labour  
material and expense number you'll see and it varies based on  
division to division.

17

18

(BRIEF PAUSE)

19

20

21

22

MR. MICHAEL ANDERSON: Is this rate  
determined by Manitoba Hydro as a market rate, or is it cost  
and benefits?

23

24

25

MR. VINCE WARDEN: Cost and benefits, yes.

MR. MICHAEL ANDERSON: Thank you, Mr. Warden.

Are -- are these costs, as identified for 2001 to 2003?

1                   Mr. CHIC THOMAS:   Yes, that's correct, with  
2 the exception of that last line item that says "pre 2001  
3 costs".

4                   MR. MICHAEL ANDERSON:   Thank you, Mr. Thomas.  
5 How many employees were providing project management?

6                   MR. CHIC THOMAS:   Because of the scope of the  
7 project and the length of time over which it was built, there  
8 were several people coming in and out of the project. At any  
9 one time we might have five (5) or six (6) people on site,  
10 sometimes less than that, and even sometimes more.

11                   Correction, Mr. Anderson, I just advised that  
12 five (5) or six (6) in total, but never on site at one time.  
13 They'd spread their work around.

14

15   (BRIEF PAUSE)

16

17                   MR. MICHAEL ANDERSON:   If you could please  
18 turn to Page 2 of 7, to the item "commissioning", which you  
19 have as your break out item 4. The -- it indicates that the  
20 commissioning was done entirely by Manitoba Hydro personnel.

21                   MR. CHIC THOMAS:   Yes, that's correct.

22                   MR. MICHAEL ANDERSON:   And can you identify  
23 the number of Manitoba Hydro personnel that were involved?

24

25   (BRIEF PAUSE)



1 MR. CHIC THOMAS: Total amount of people that  
2 might have been involved were about ten (10), starting from  
3 as early as -- I was just advised, as early as January of  
4 2003 and right through to the -- to the actual in-service of  
5 the plant in the fall of 2003.

6  
7 (BRIEF PAUSE)

8  
9 MR. MICHAEL ANDERSON: Thank you, Mr. Thomas.  
10 At item 6, on -- on distribution upgrade, also  
11 on Page 2 of 7, the item, "distribution engineering" add to a  
12 one hundred and one thousand two hundred and fifty-nine  
13 dollars (\$101,259).

14 This is the correct value, Mr. Thomas?

15 MR. CHIC THOMAS: Yes, that's right.

16 MR. MICHAEL ANDERSON: Can you please confirm  
17 that this was to redesign the entire distribution system?

18 MR. CHIC THOMAS: My understanding that it was  
19 -- yes, the entire distribution system was upgraded. Of --  
20 of -- of course, we'll put the caveat in there that not all  
21 material would have to be taken out of service but my  
22 understanding is is that the bulk of the distribution was  
23 indeed upgraded and replaced as part of that value that you  
24 see there on item 6.

25 MR. MICHAEL ANDERSON: Thank you, Mr. Thomas.

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(BRIEF PAUSE)

MR. MICHAEL ANDERSON: In the line item, "distribution engineering", does this item include all the project management costs related to the redesign of the entire distribution system?

MR. CHIC THOMAS: Yes, that's my understanding, Mr. Anderson.

MR. MICHAEL ANDERSON: Thank you, Mr. Thomas.

(BRIEF PAUSE)

MR. MICHAEL ANDERSON: And then, Mr. Thomas, going to the building costs which are in item 3; it's Page 1 of 7, item 3B. You'd confirm that the total cost is about \$3.15 million dollars for the powerhouse building and the powerhouse foundation?

MR. CHIC THOMAS: Yes, that's correct.

(BRIEF PAUSE)

MR. MICHAEL ANDERSON: Mr. Thomas, and subject to check, could you confirm that the annual cost of the buildings works out to approximately forty (40) -- sorry --

1 four hundred and fifty thousand dollars (\$450,000) a year?

2 MR. CHIC THOMAS: How are you making that  
3 calculation, Mr. Anderson?

4 MR. MICHAEL ANDERSON: Our reference is MKO  
5 Exhibit 6, working on the annual cost as 3.1 million times  
6 14.5 percent yielding four hundred and fifty thousand dollars  
7 (\$450,000) per year?

8 MR. CHIC THOMAS: And the 14 percent is what  
9 value?

10 MR. MICHAEL ANDERSON: We'll go to MKO-6 and  
11 then we'll work from there, Mr. Thomas, thank you.

12

13 (BRIEF PAUSE)

14

15 MR. CHIC THOMAS: We're having some difficulty  
16 locating that, Mr. Anderson. If maybe we could move on and  
17 come back to that if that would be acceptable?

18

19 (BRIEF PAUSE)

20

21 MR. MICHAEL ANDERSON: Mr. Chair, one comment  
22 I would make and I apologize for us working on this and for  
23 the purposes of it, we're appreciating everyone's patience as  
24 we work with these and that we receive these Undertaking  
25 replies at 15-32. I'm after -- about 5:30 yesterday

1 afternoon, so we've been working together on it so I  
2 appreciate your patience as we weed through these.

3 THE CHAIRMAN: Mr. Thomas, are you now in a  
4 position to respond?

5

6 CONTINUED BY MR. MICHAEL ANDERSON:

7 MR. MICHAEL ANDERSON: I could do -- I could  
8 describe it in general terms and perhaps --

9 MR. CHIC THOMAS: Yeah, that would be helpful,  
10 Mr. Anderson.

11 MR. MICHAEL ANDERSON: Essentially, we're  
12 looking at the capital revenue requirement divided by net  
13 investment. You know, where we're going is for every dollar  
14 invested, it's the dollars that you need and if you look at  
15 column B at the bottom for the facility's revenue  
16 requirement, we've determined, subject to check, that the  
17 average is 14.5 percent and that's where I derived the  
18 factor.

19 MR. CHIC THOMAS: Subject to check, that's  
20 correct, yes.

21 MR. MICHAEL ANDERSON: And then that would  
22 yield and annual cost for the plant at about four hundred and  
23 fifty thousand dollars (\$450,000), Mr. Thomas?

24 MR. CHIC THOMAS: I'm sorry, Mr. Anderson,  
25 could you repeat that?

1                   MR. MICHAEL ANDERSON: And then using that  
2 factor, it would yield an annual cost of about four hundred  
3 and fifty thousand (\$450,000) for the building facilities,  
4 the 3.1 million?

5                   MR. CHIC THOMAS: Using -- using that value of  
6 14 and a half percent; however, the -- the overall life of  
7 the powerhouse in general might be actually longer than that,  
8 so I, again, I'm -- can't accept the 14 and a half in --

9                   MR. MICHAEL ANDERSON: Because of a difference  
10 in the la -- value -- life of the facility?

11                   MR. CHIC THOMAS: Yes, that's correct. Of --  
12 of the multitude of facilities that are installed at a plant  
13 like Shamattawa, they all have varying depreciation rates.

14                   MR. MICHAEL ANDERSON: Could you identify what  
15 the expected useful life of those buildings would be for  
16 depreciating purposes, Mr. Thomas?

17

18

(BRIEF PAUSE)

19

20                   MR. ROBIN WIENS: Mr. Chairman, we do not have  
21 an exact expected lifetime here with us for that particular  
22 building but if we consider what our depreciation rates are  
23 on buildings elsewhere in the system, I would say it's  
24 somewhere in the range of twenty-five (25) to thirty-five  
25 (35) years.

1 THE CHAIRMAN: Mr. Anderson...?

2

3

(BRIEF PAUSE)

4

5

MR. MICHAEL ANDERSON: Recognizing the  
6 difference in facility life, et cetera, would you agree that  
7 the facilities revenue requirement that we identify at the  
8 line 15 of Column B is an average for all the assets?

9

MR. CHIC THOMAS: Yeah, I'd accept that.

10

MR. MICHAEL ANDERSON: And that this value  
11 would approximate with the annual revenue requirement would  
12 be?

13

14

(BRIEF PAUSE)

15

16

MR. CHIC THOMAS: It's hard to make an exact  
17 determination on exactly the figures that Mr. Hildebrand was  
18 trying to work on here. But you know, I note that you have  
19 not only the total investment here, but the total revenue  
20 requirement as well. So we're -- so we're talking operating  
21 cost and fixed cost as well. So it's a pretty broad  
22 statement.

23

MR. ROBIN WIENS: For example, Mr. Chairman,  
24 I don't think that the costs of the building are going to  
25 necessarily be tied to the cost of fuel which is included in

1 the total revenue requirement and composes about a third of  
2 it.

3 MR. MICHAEL ANDERSON: Thank you, Mr. Wiens.  
4 If you go to page 6 of 7, and in your narrative it appears,  
5 I'm looking at what would be the first full paragraph  
6 beginning Manitoba Hydro, as addressed and PUB-MH-37-D. Are  
7 you with me? Thank you very much.

8 Could you, when you say that you use a least  
9 cost approach, does Manitoba Hydro have a -- could you please  
10 describe what this least cost approach would be?

11 MR. CHIC THOMAS: Well, I think as we've  
12 explained in the narrative, it's -- it's first all the useful  
13 life of the assets and then of course, the annual operating  
14 and maintenance costs of those assets going forward.

15 So for example, what -- what might be the more  
16 expensive in terms of total capital will, over the life of  
17 the project, yield an operating cost that is much less and  
18 overall less cost in the project in general over the twenty  
19 (20) to twenty-five (25) year horizon that this plant was  
20 intended to be in use for.

21 MR. MICHAEL ANDERSON: As part of the process  
22 of planning the installation of a facility such as this, does  
23 Manitoba Hydro have a formal integrated resource planning  
24 protocol?

25 MR. VINCE WARDEN: Could you be a little more

1 specific with your question? We have an integrated resource  
2 planning protocol at Manitoba Hydro, does it include the --  
3 systems that aren't connected to the grid, like -- that would  
4 be kind of irrelevant to include that in our integrated  
5 resource plan. So if you could be a little more specific in  
6 your question, that would be helpful.

7 MR. MICHAEL ANDERSON: Could you summarize  
8 what your IRPR (sic) is, your integrated resource plan  
9 protocol would be just briefly?

10 MS. PATTI RAMAGE: It appears it would be  
11 irrelevant to this Hearing because it -- as Mr. Warden said,  
12 it applies to grid customers.

13 THE CHAIRMAN: Mr. Anderson, you have Ms.  
14 Ramage's response. I'm having a little difficulty following  
15 this line of questioning relative to the undertaking that was  
16 before us, maybe you could help us determine why that kind of  
17 information is relevant in this proceeding?

18  
19  
20

(BRIEF PAUSE)

21 CONTINUED BY MR. MICHAEL ANDERSON:

22 MR. MICHAEL ANDERSON: In looking at the  
23 project management and planning studies component, and  
24 looking at the -- the in-house labour, material and expense  
25 component, does Manitoba Hydro consider, as part of the



1 process to plan, design and commit to a facility such as  
2 this -- does it compare it to alternative means of providing  
3 the electricity that this generator would otherwise provide,  
4 as part of an integrated resource planning approach?

5 MR. CHIC THOMAS: I -- I think it's been  
6 stated on the record, Mr. Anderson, that we have -- have done  
7 studies of -- of landlines. I believe the Board, in its  
8 Order 07/03 directed us to study wind power at some of these  
9 isolated communities, and I also know that we've also looked  
10 at things such as Biomass and -- and other renewable type  
11 resources.

12 MR. MICHAEL ANDERSON: And making the  
13 commitment to this project, did you explicitly consider  
14 alternatives, such as landline?

15 MS. PATTI RAMAGE: Mr. Chairman, I'm having  
16 trouble understanding how this arises from the Undertaking to  
17 break down costs for the Shamattawa plant.

18 THE CHAIRMAN: So am I, Ms. Ramage. I'm  
19 trying to give Mr. Anderson some latitude given that this  
20 undertaking was filed late last evening and perhaps he's  
21 asking questions as he's reading it, but maybe Mr. Anderson  
22 can focus it back to this undertaking, so we're sure that we  
23 can erase any -- any questions that you may have with respect  
24 to -- to this particular undertaking.

25 MR. MICHAEL ANDERSON: Your commentary, Mr.

1 Chair, about having been in a position to sort of study this  
2 as we go, in the context of preparing everything else for  
3 today is correct, but I was exploring the scope of those  
4 activities by the Corporation in their project management and  
5 planning studies, in terms of project engineering management,  
6 design and construction.

7 MR. ROBERT MAYER: But Mr. Anderson

8 MR. MICHAEL ANDERSON: But --

9 MR. ROBERT MAYER: Sorry. Mr. Anderson, all  
10 that is set out in the narrative. They said they studied the  
11 landline, that was part of the reason for the -- for the  
12 delay, because the community wanted the landline looked at.

13 I -- I don't understand where you're going  
14 with this.

15

16 (BRIEF PAUSE)

17

18 MR. MICHAEL ANDERSON: And once again, Vice-  
19 Chair, thank you I pursue that with the -- the text here.  
20 The exploration of the landline alternative, we had already  
21 established was not booked against this expense as I recall.

22

23 CONTINUED BY MR. MICHAEL ANDERSON:

24 MS. MICHAEL ANDERSON: Is that correct, Mr.

25 Thomas?

1 MR. CHIC THOMAS: Yes, that's correct.

2 MR. MICHAEL ANDERSON: Thank you. Those are  
3 my questions on this undertaking. As you've noted, however,  
4 I would like to say that in -- in terms of the difficulty and  
5 the patience that we've sought this morning, one of the  
6 questions that I did have, though, in respect of this table,  
7 that is Page 24 of the Manitoba Hydro rebuttal evidence  
8 that's being submitted.

9 The date of that, as I under -- recall, is May  
10 29th, 2003; is that correct?

11 MR. CHIC THOMAS: Yes, that's the date on the  
12 letter.

13 MR. MICHAEL ANDERSON: And in assembling the  
14 values that appear on that table, would Manitoba Hydro have  
15 assembled worksheets, et cetera, to derive those values that  
16 appear on that table on Page 24?

17 MR. CHIC THOMAS: That's correct, yes.

18 MR. MICHAEL ANDERSON: And Manitoba Hydro  
19 recognises that MKO placed the reasonableness of the  
20 Shamattawa expenditure's at issue in our evidence, obviously  
21 because of your remote -- of your rebuttal evidence, correct?

22 MR. CHIC THOMAS: Yes.

23 MR. MICHAEL ANDERSON: In light of the  
24 situation, can you explain the difficulty that Manitoba Hydro  
25 apparently had in responding to this undertaking prior to

1 yesterday at 5:30 --

2 MS. PATTI RAMAGE: Mr. Chairman, I'm going to  
3 have to jump in on this one because I have a few concerns  
4 here.

5 First of all, I would suggest that had this  
6 information be -- been sought in the IR process, we wouldn't  
7 have -- have gone through this process. This was raised --  
8 the issues were raised in MKO's witness's evidence for the  
9 first time and MKO had not sought this information. Hence,  
10 Manitoba Hydro focuses its preparation on the areas of  
11 interest that interveners show in the IR process.

12 And having, further, I would note that had  
13 Manitoba Hydro had this information at hand during the  
14 hearing, we wouldn't have had a one week break or anything  
15 else to -- to look at it.

16 So -- so I just raise that in terms of  
17 response to concerns that there wasn't enough time to  
18 consider. Had -- had MKO thought this evidence was that  
19 important, it -- it would have been asked far earlier in the  
20 process.

21 But having said that, I'm not sure of the  
22 relevance of why it takes -- it has -- has taken us to  
23 yesterday to -- to compile the information. It's a -- it's a  
24 fairly complicated process over many years and I think to  
25 suggest that these are easy questions is -- is not helpful.

1 THE CHAIRMAN: Mr. Anderson.

2 MR. MICHAEL ANDERSON: Yes, thank you, Mr.  
3 Chair. The -- I make the observation only that the item was  
4 raised in rebuttal evidence providing information that on the  
5 Shamattawa diesel cost that was different than that on the  
6 Application.

7 THE CHAIRMAN: So noted, Mr. Anderson.

8 MR. MICHAEL ANDERSON: And that the --  
9 according to the procedural order, the -- and the Rules of  
10 the Practice with the Board, the first opportunity we had to  
11 test the page 24 of the Rebuttal Evidence was during our  
12 cross-examination which we did do.

13 And therefore the undertaking that we  
14 requested was our opportunity to obtain more information  
15 regarding the changes and different information that Manitoba  
16 Hydro itself had filed. I just wanted to be clear about  
17 that.

18 THE CHAIRMAN: Thank you.

19 MR. MICHAEL ANDERSON: And, those are my  
20 questions and comments, Mr. Chair.

21 THE CHAIRMAN: Thank you then, Mr. Anderson,  
22 for completing your -- your cross with respect to the  
23 undertakings. That, from my vantage point, now concludes all  
24 the undertakings, except Dr. Kinew, she had one. Do you have  
25 any questions with respect to yours?

1 DR. KATHI AVERY-KINEW: Yes, I would just  
2 like to know, is the power plant on Reserve or off Reserves,  
3 on Crown Land, Provincial Crown Land or...?

4 MR. CHIC THOMAS: It's on Reserve, Dr. Kinew.

5 DR. KATHI AVERY KINEW: Thank you.

6 THE CHAIRMAN: Mr. Mayer.

7 MR. ROBERT MAYER: Thank you, I have a couple  
8 of questions. I found the narrative very informative but it  
9 -- the -- course it then leads to the question, the only  
10 issue you didn't touch and although it's a relatively small  
11 piece of the project, community relations and a community  
12 liaison officer. I'm assuming that the thirty-five thousand  
13 (35,000) is hydro cost for a hydro employee and I'm assuming  
14 -- but I don't understand the four thousand (4,000), am I  
15 entitled to assume that's expenses that was paid to a -- an  
16 outside contractor?

17

18 (BRIEF PAUSE)

19

20 MR. CHIC THOMAS: Sorry, Mr. Mayer. I'm --  
21 I'm advised that the liaison officer is appointed by the --  
22 the Band Council as the liaison between the Band of course  
23 and Manitoba Hydro and the -- the four thousand dollars  
24 (\$4,000) would be incidental expenses and such related to  
25 that person working both with the Bands and Manitoba Hydro.

1                   MR. ROBERT MAYER: Thank you. I -- I've noted  
2 from reading the material, that soil remediation hasn't been  
3 completed and I'm going down to the bottom of page 207 and  
4 you showing a contingency of eight hundred -- four hundred  
5 and eighty thousand two hundred and sixty four dollars  
6 (\$480,264) and I'm trying to under -- or at least I'm trying  
7 to determine and would ask you to tell me, what that  
8 contingency relates to. Does it relate to just the soil --  
9 soil remediation or does it also include a contingency for  
10 the salvage of generation equipment or has the salvaging of  
11 generation equipment already been completed?

12                   MR. CHIC THOMAS: The salvaging of the  
13 generation equipment at the old site has been taken off site.  
14 As you had mentioned, the actual soil remediation has not  
15 been started nor has it -- nor have any funds been expended  
16 to do so.

17                   The contingency you see at the bottom of  
18 almost a half a million dollars would be on the total  
19 project.

20                   MR. ROBERT MAYER: Well, then I asked -- that  
21 sort of begs the question then, you've completed what appears  
22 to be the whole project but for the soil remediation. The  
23 contingency money, how much of it was spent?

24                   MR. VINCE WARDEN: Mr. Mayer, the actual  
25 expender -- expenditures to the end of December 2003 were

1 \$13.3 million dollars. The difference between the 13.3 and  
2 the 16.3 is essentially the soil remediation. Contingency  
3 was a planned amount for the total project and will not  
4 likely be spent at the end of the day.

5 MR. ROBERT MAYER: Thank you very much. I  
6 have no further questions. Oh, just -- I'm sorry, just one  
7 (1) more.

8 The Picture Number 2, am I entitled to assume  
9 -- that is a picture looking downstream -- that I'm assuming  
10 is the God's River on the left, and we're looking downstream  
11 and is this plant downstream from the community?

12 MR. CHIC THOMAS: Yes, that's correct, Mr.  
13 Mayer.

14 THE CHAIRMAN: Thank you. Then that  
15 concludes the questions the Board -- Panel has as a result of  
16 these undertaking.

17 Ms. Ramage, do you have any redirect?

18 MR. MICHAEL ANDERSON: Mr. Chair...?

19 MS. PATTI RAMAGE: We --

20 MR. MICHAEL ANDERSON: I'm -- I apologize, Ms.  
21 Ramage. I just want to, given the examination that we had  
22 earlier, just for the record to indicate where the  
23 undertaking wi -- in respect to the Customer Application  
24 Policy occurred in the transcript. I have it right here, Mr.  
25 Chair.



1 THE CHAIRMAN: Thank you.

2 MR. MICHAEL ANDERSON: If I might do that?

3 THE CHAIRMAN: Yes.

4 MR. MICHAEL ANDERSON: Thank you. The  
5 discussion that led to the undertaking that's now MH-22, the  
6 an -- request for the document was actually made by yourself,  
7 Mr. Chair. It appears at Page 508 of the transcript.

8 Mr. Warden indicates we're actually struggling  
9 over whether or not this was ever approved. The current  
10 approved policy does not make the same references and that  
11 was to -- the reference is to this Section 5.3 I agr --  
12 referred to.

13 You say:

14 "And, Mr. Warden, maybe for the record  
15 you'd be prepared to file a copy of that  
16 new approved policy.

17 MR. VINCE WARDEN: Yes, we will."

18 Mr. Warden and I thank you, of course, because  
19 I was going to ask for it myself.

20 THE CHAIRMAN: Thank you for that  
21 assistance. I appreciate it. I'll have a chance to examine  
22 it over the break.

23 MR. MICHAEL ANDERSON: And -- and there was a  
24 letter dated January 5th, 2004, to Ms. Ramage requesting  
25 this, again, and -- which -- where I mention the transcript

1 reference, et cetera. Ms. Ramage advised, of course, in her  
2 letter yesterday that she hadn't received it.

3 We can't explain that and nothing turns on at  
4 this point, although Mr. Hildebrand does have his copy and  
5 I'm aw -- of this -- that letter requesting -- providing a  
6 pre-ask for this co -- copy of the actual approved policy as  
7 requested by yourself, Mr. Chair, at this transcript  
8 reference.

9 THE CHAIRMAN: Thank you.

10 MR. MICHAEL ANDERSON: Thank you.

11 THE CHAIRMAN: Ms. Ramage, do you have any  
12 redirect?

13 MS. PATTI RAMAGE: Yes, I do but I was  
14 wondering if I could just have a brief moment to confer with  
15 the rest of the Panel to ensure that -- that we have  
16 everything ready to go and I promise it will be brief.

17 THE CHAIRMAN: Ms. Ramage, I'll give you  
18 that opportunity.

19

20 --- Upon Recessing at 12:22 p.m.

21 --- Upon Resuming at 12:25 p.m.

22

23 THE CHAIRMAN: Ms. Ramage, are you ready?

24 MS. PATTI RAMAGE: Yes, we are.

25 THE CHAIRMAN: Please.

1 RE-DIRECT EXAMINATION BY MS. PATTI RAMAGE:

2 MS. PATTI RAMAGE: The first question I have  
3 for re-direct is directed to Mr. Cox. Mr. Cox, there have  
4 been several references to energy efficiency and demand-side  
5 management during this proceeding.

6 Could you describe Manitoba Hydro's position  
7 on this issue?

8 MR. ROB COX: Yes, first let me say that  
9 Manitoba Hydro agrees that there are benefits to these  
10 communities in adopting energy saving methods. Unlike great  
11 design which has been described as not just a science but  
12 also an art, energy efficiency is for the most part, common  
13 sense.

14 Customers who want to reduce their bills can  
15 do simple things like turning off lights when not needed,  
16 purchase energy efficient light bulbs or use a microwave  
17 instead of the oven. Purchasing energy efficient appliances  
18 is another way of reducing bills. But customers must want to  
19 save energy before they will participate in energy saving  
20 methods.

21 As noted in Undertaking Number 6, there are  
22 several general service customers who have participated in  
23 our PowerSmart Programs. These customers are not only  
24 receiving annual energy savings, but have already received  
25 cash incentives.

1                   For residential customers, Manitoba Hydro has  
2 and will continue to provide energy saving information.

3                   We have worked with Chief and Council and all  
4 communities in promoting Power Smart. We have also provided  
5 information to KTC and INAC on PowerSmart building standards.

6                   Manitoba Hydro has proposed that -- an energy  
7 efficiency housing workshop program that will be applicable  
8 to all First Nation communities. Manitoba Hydro is proposing  
9 to partner with First Nations in developing a community  
10 energy efficiency action plan for local residents.

11                   An integral component of the plan is the  
12 training of housing authority personnel on energy efficiency  
13 so that they can conduct community information workshops, in-  
14 home audits and continue with sustainable action concerning  
15 energy efficiency in their communities.

16                   Our next step will be to meet with the First  
17 Nation communities and get their input into the proposal.

18                   Once First Nation input has been received, the  
19 proposal will be finalized and delivered to communities that  
20 wish to participate across the province.

21                   As I mentioned, Manitoba Hydro has and will  
22 continue to provide information on energy savings. However,  
23 for any program to be successful, we need Chief and Council  
24 to be supportive and Chief and Council to tell the Northern  
25 Star to quit selling electric heaters.

1                   We need KTC and MKO to build energy savings  
2 into their initiatives. And we need INAC to include  
3 PowerSmart standards in all of their building initiatives.  
4 If we all work together, energy bills can and will be  
5 reduced.

6                   MS. PATTI RAMAGE: Mr. Cox, during the  
7 presentations there was a reference made that Manitoba Hydro  
8 doesn't train the local -- provide training to the local  
9 residents or that local residents aren't trained to deal with  
10 the -- the diesel facilities. Can you comment on this?

11                   MR. ROB COX: Yes, in fact Manitoba Hydro has  
12 trained and employs at least one individual in each of the  
13 communities. These individuals have been trained to operate  
14 the plant which includes completing daily checks and routine  
15 maintenance on the diesel generators.

16                   In addition, they do assist with the  
17 restoration of power so that Manitoba Hydro can minimize  
18 outages attributed to the diesel generators.

19                   MS. PATTI RAMAGE: And now I'll direct my  
20 question to Mr. Warden.

21                   In Mr. Smith's cross-examination he asked at  
22 page 468 of the transcript:

23                   "Is this in keeping with your policies and  
24 practice that it's only the user who pays  
25 for power in Manitoba."

1                   And you responded that under normal  
2 circumstances that was the case.

3                   Can you elaborate on that answer and what  
4 happens in other circumstances if there are such?

5                   MR. VINCE WARDEN:   Yes.  For the majority of  
6 Manitoba Hydro's customers, the name on the bill is  
7 considered to be the user and that is normally the person or  
8 entity we expect to pay the bill.  There are circumstances  
9 however in which that bill is assigned to a third party who  
10 is not necessarily the user of that power.

11                   For example, an apartment block or a shopping  
12 mall could have a multitude of users, but the payment for  
13 power is made by a third party.  Other examples may be where  
14 a named user has his or her bill reassigned to a parent,  
15 social assistance agency or caregiver.  In these examples, it  
16 is normally a prior arrangement whereby the third party  
17 accepts responsibility for the bill payment.

18                   So it's not unusual for Manitoba Hydro to  
19 redirect bills towards a third party for payment.  The  
20 unusual circumstance with Manitoba Hydro/INAC relationship is  
21 that INAC refuses to accept responsibility for the redirected  
22 billings.

23                   MS. PATTI RAMAGE:   Mr. Warden, can you tell  
24 me, from your perspective, were the costs to build the  
25 Shamattawa generating station prudently incurred?

1                   MR. VINCE WARDEN:    In my capacity as Vice-  
2 President of Finance and Chief Financial Officer for Manitoba  
3 Hydro, I have the responsibility to ensure that adequate  
4 processes, systems and controls are in place to provide  
5 reasonable assurance that all costs are prudently incurred  
6 and that value is received for all expenditures.

7                   In addition, as a member of Manitoba Hydro's  
8 Executive Committee, I review all major capital expenditure  
9 proposals to ensure that sufficient justification has been  
10 provided before any major projects are committed. Manitoba  
11 Hydro's review and approval processes are stringent and  
12 considered to be best practice compared to other energy  
13 utilities in Canada.

14                   In the case of Shamattawa, I am satisfied that  
15 expenditures were prudently incurred. While the up-front  
16 costs of generating units installed at Shamattawa are higher  
17 than other alternatives, such as skid-mounted units, I am  
18 convinced that based on the requirements of the residents of  
19 Shamattawa for reliable, safe and under -- uninterrupted  
20 supply of electricity, the installation chosen by Manitoba  
21 Hydro was superior to all other options and over its life  
22 cycle, is the lowest cost -- lowest cost option to meet our  
23 needs.

24                   MS. PATTI RAMAGE:   Mr. Warden, Dr. Garrioch  
25 seems to have the impression Manitoba Hydro is indifferent

1 towards its First Nation customers and I'm looking at the  
2 transcript reference at Page 809.

3 Do you agree with this characterization of  
4 Manitoba Hydro?

5 MR. VINCE WARDEN: No, I don't. In fact, I do  
6 apologize if I contributed to Dr. Garrioch's impression with  
7 a response to a question by Mr. Peters at Page 301 of the  
8 transcript -- the transcript as to whether Manitoba Hydro  
9 would like to divest itself of diesel electric service.

10 I responded that although the service has been  
11 something of a headache to us, we weren't considering  
12 divestiture. I want to ensure our First Nation customers  
13 that the headache I was referring to was all in the billing  
14 administration side and our relationship with Indian and  
15 North Affairs Canada.

16 We value our First Nation customers every bit  
17 as much as all other customers in Manitoba. We appreciate  
18 that the cost of living in the dee -- the diesel-served  
19 communities are extremely high and we emph -- emphasize with  
20 our -- empath -- I'm sorry, empatha -- size with our First  
21 Nation customers.

22 The reality is that the high electricity costs  
23 reflect the high costs of doing business in the north. This  
24 is one of the main themes of the presentation made by the  
25 north-west company and it is the reason for Manitoba Hydro to



1 be urging the Federal Government to live up to its  
2 responsibilities and not to impose a burden of high  
3 electricity bills on First Nation communities.

4 MS. PATTI RAMAGE: Thank you, Mr. Warden.  
5 Mr. Chair, that concludes my direct -- re-  
6 direct.

7 THE CHAIRMAN: Thank you very much, Ms.  
8 Ramage. On the basis of that, I would now discharge the  
9 panel and they're free to stand down.

10 Given that it is approximately 12:30 and I had  
11 hoped originally that we would get into some of the final  
12 submissions before we stood down for lunch, but given the  
13 time may I suggest that we stand down now for lunch and I  
14 would ask parties, if at all possible, so that we aren't into  
15 too far in the evening tonight hearing final submissions that  
16 we break for a period of forty-five (45) minutes only and I  
17 would ask you to come back at -- at 1:15 at which time I'll  
18 call on Mr. Peters to give a Board Counsel's final  
19 submission. Thank you.

20

21 --- Upon Recessing at 12:35 p.m.

22 --- Upon Resuming at 1:18 p.m.

23

24 THE CHAIRMAN: Ladies and Gentlemen, if I  
25 may I'd like to call the Hearing back to order. I want to

1 thank everybody for their cooperation in getting back. I  
2 know that was a short lunch hour but maybe by doing that,  
3 you'll have a little more time at the end -- other end of  
4 this day.

5 Mr. Peters, are you ready with your final  
6 submission?

7 MR. BOB PETERS: Yes, sir, I am and thank you.

8

9 FINAL SUMMATION BY MR. BOB PETERS:

10 MR. BOB PETERS: Good afternoon, Members of  
11 the Board, ladies and gentlemen. As Counsel to the Public  
12 Utilities Board, it's not my role to take a particular  
13 position on any of the issues or the merits of any of the  
14 issues of this Application.

15 Rather, as I have done in the past, I wish to  
16 review some of the key issues of this Application and perhaps  
17 identify certain areas where I think it would be helpful for  
18 parties to provide their specific views and recommendations  
19 for the Board to consider in arriving at the decisions  
20 regarding this Application.

21 Hydro has applied to increase rates for  
22 electrical service to the four (4) remaining remote  
23 communities that are served by diesel generation. This  
24 Application is generally consistent with the existing diesel  
25 rate design approach that was used in 1993 before this Board,

1 and Hydro is requesting the following rates and other  
2 changes.

3                   Firstly, is an increase to the full cost rate  
4 in the diesel zone from 35.9 cents per kilowatt hour to 79.1  
5 cents per kilowatt hour.

6                   Secondly, an increase in the government  
7 surcharge from 44.8 cents per kilowatt hour to a dollar  
8 twenty-two (\$1.22) per kilowatt hour.

9                   Thirdly, Hydro wants to limit the use of  
10 residential and general service customers -- or the usage  
11 amount, I should say, by residential and general service  
12 customers to which grid equivalent rates apply and that limit  
13 would be two thousand (2000) kilowatt hours per month. In  
14 excess of that amount, Hydro would want to apply the full  
15 cost rate to any consumption.

16                   The fourth area was to apply the government  
17 rate to all non-residential First Nation accounts regardless  
18 of funding sources.

19                   The evidence suggests the average residential  
20 customer in each of the four (4) communities will see no  
21 change to their rates as a result of this Application as long  
22 as their monthly consumption does not exceed two thousand  
23 (2,000) kilowatt hours. Residential customers will continue  
24 to pay identical rates to all other residential customers in  
25 Manitoba as long as the monthly consumption limit is not

1 exceeded.

2                   Hydro's Application requested new rates to be  
3 effective as of April 1st, 2003 and in cross-examination,  
4 Hydro indicated that they were not seeking retroactive  
5 application of these rates but would be looking for new rates  
6 to be in effect subsequent to the issuance of the Board order  
7 resulting from this Hearing.

8                   I might ask Ms. Ramage, on behalf of her  
9 client Manitoba Hydro, to further confirm their expectation  
10 regarding the timing of the proposed rate changes in their  
11 closing comments.

12                   With the exception of the capital cost of the  
13 Shamattawa upgrades, there was little debate during the  
14 Hearing regarding the cost components that have gone into  
15 Hydro's calculation of the various proposed rates.

16                   There appears to be little disagreement  
17 amongst the parties that the costs for diesel service have  
18 increased, as indicated by Hydro in their -- in their  
19 application.

20                   The debate amongst the parties appears to  
21 centre on the question who should pay for those increased  
22 costs?

23                   The Board has heard from a number of  
24 presenters who live and work in the communities affected by  
25 the proposed rate increases. There was a consistency in the

1 messages from the presenters, the main point being that, in  
2 their view, Hydro has a responsibility to serve these  
3 communities, generally at the same rates charged to customers  
4 in other areas of the province, and that customers in the  
5 communities are economically challenged and cannot afford to  
6 pay any further increase in cost.

7           During the evidentiary portion of the Hearing,  
8 the Board has heard some of the history concerning remote  
9 communities that are served by diesel generation. At one (1)  
10 time, as many as thirty-eight (38) remote communities were  
11 served with diesel generation and the associated distribution  
12 facilities, and as time progressed, many of those communities  
13 were connected to the main grid to the point where there are  
14 now only four (4) communities; Tadoule Lake, Brochet, Lac  
15 Brochet, and Shamattawa, which are served by diesel  
16 generation.

17           Hydro has submitted that it's their view the  
18 Government of Canada has responsibility to provide basic  
19 services to diesel communities, and has historically met that  
20 responsibility, by contracting with Hydro.

21           We have heard that over time, residential  
22 customers receive limited service at rates generally equal to  
23 rates charged to other customers on the grid, and the  
24 difference between actual costs incurred, and rates collected  
25 from residential customers was collected from the Federal

1 Government by way of a surcharge.

2 That surcharge structure has been reviewed and  
3 approved by the Board, and was paid to Hydro by Canada for  
4 over fifteen (15) years. However, since approximately  
5 November of 2000, the surcharge billed to First Nation  
6 communities has not been paid by INAC.

7 Hydro has indicated that the principal amount  
8 of the unpaid surcharges is approximately \$2.8 million, not  
9 including interest, and it's growing at the rate of  
10 approximately eighty thousand dollars (\$80,000) per month, at  
11 current rates.

12 The Board has also heard that since the  
13 current whole cost rates were established in the -- in  
14 1993/94, several significant changes have occurred in the  
15 delivery of services to remote diesel communities.

16 These changes, while improving service to  
17 customers, have also significantly increased the cost to  
18 serve these communities. One of the most important events  
19 was the connection of nine (9) of the remaining thirteen (13)  
20 communities to the central grid, representing approximately  
21 80 percent of the usage.

22 As a result, much of the previous Government  
23 surcharge revenue was lost. The remaining four (4)  
24 communities are smaller, more remote and more expensive to  
25 serve.

1                   In addition, significant capital upgrades to  
2 enhance service in these four (4) communities, has added to  
3 the increased costs.

4                   Over half of the consumption and 75 percent of  
5 all bills in these communities are for residential customers  
6 who receive energy at grid equivalent rates, which is  
7 considerably below the cost to serve them.

8                   Hydro has estimated that the total cost to  
9 serve the four (4) diesel communities for the year ended  
10 March 31, 2004 will be \$9.5 million, of which seven hundred  
11 and thirty-nine thousand (739,000) will be recovered from  
12 residential rates.

13                   Nine hundred and forty-four thousand (944,000)  
14 will be recovered from general service, and 2.7 million will  
15 be recovered from full cost government customers, leaving a  
16 shortfall of some \$5.1 million.

17                   If I've done the math correctly, and after  
18 deducting the hydro rate subsidy of five hundred and  
19 fifty-nine thousand dollars (\$559,000), which is paid for by  
20 existing grid customers, the remaining deficit of 4.5 million  
21 is proposed to be recovered by way of the government  
22 surcharge, resulting in an increase of about 172 percent in  
23 that surcharge rate.

24                   As previously discussed, Hydro is proposing  
25 that this surcharge rate be assessed to all government

1 accounts, including non-residential First Nations accounts,  
2 regardless of funding sources.

3           This change in billing practice will result in  
4 approximately forty (40) additional First Nation accounts  
5 being billed at the government rate, including the surcharge,  
6 that previously were not billed at that rate.

7           A number of parties have acknowledged that a  
8 key question for the Board to determine is whether the rates  
9 applied for by Hydro are just and reasonable.

10           Hydro has also stated that they do not have  
11 any expectation that the Board will make a ruling with  
12 respect to the contractual relationship between Canada and  
13 Hydro, regarding the surcharge.

14           However, one (1) of the difficulties the Board  
15 will face is that without resolving the question of  
16 responsibility for the surcharge, it becomes exceedingly more  
17 difficult to answer the question regarding just and  
18 reasonable rates.

19           The Board has also heard that because the  
20 current billed rates have fallen far short of the costs  
21 incurred since approximately 2000, an accumulated deficit  
22 approaching \$18 million is expected by March 31, 2004.

23           This Application does not include any  
24 provision to recover any portion of that deficit. Hydro has  
25 stated that a series of meetings with Canada to attempt to



1 resolve a deficit issue have been unsuccessful and it's  
2 Hydro's hope to have the proposed rates and supporting  
3 principles approved by the Board before proceeding to resolve  
4 the deficit issue.

5           Clearly, this is a significant matter to  
6 Hydro, to Canada, to the existing grid customers of Hydro and  
7 to this Board. Some of the key issues specific to the  
8 requested rate changes by Manitoba Hydro that this Board must  
9 consider in arriving at its decisions include, firstly, are  
10 requested full cost rates to residential, general service and  
11 government accounts of 79.1 cents per kilowatt hour just and  
12 reasonable.

13           Is the requested monthly consumption cap for  
14 residential and general service customers of two thousand  
15 (2,000) kilowatt hours appropriate and reasonable? Is the  
16 reduction in the consumption cap for general service  
17 customers from three thousand (3,000) kilowatt hours to two  
18 thousand (2,000) kilowatt hours appropriate and reasonable?

19           Is the proposed government surcharge of a  
20 dollar twenty-two (\$1.22) just and reasonable? And is the  
21 proposed change in billing all non-residential First Nation  
22 accounts as government accounts, regardless of funding  
23 sources, fair and reasonable?

24           I would expect that each of these -- each of  
25 the parties to this Hearing will clearly summarize their

1 views on these issues in their closing comments and in  
2 circumstances where parties do not support the Board's --  
3 Hydro's Application before the Board, I believe it would be  
4 helpful to this Board if those parties could also include  
5 specific alternatives in their closing arguments for the  
6 Board to consider.

7                   There are some other issues regarding the  
8 provision of diesel service to remote communities that may  
9 have relevance to the Hearing, including: What is the  
10 responsibility of the Government of Canada regarding the  
11 provision of diesel electric service in remote communities?

12                   Should a stated case by the Board be  
13 considered to resolve the relevant contractual and legal  
14 responsibilities? What are the options for resolution and  
15 ultimate collection of the significant accumulated deficit  
16 related to the diesel service which is now approaching \$18  
17 million?

18                   What are the options for resolution and  
19 ultimate collection of the significant uncollected surcharge  
20 which is now approaching \$2 million not including -- or \$3  
21 million not including interest? And, are the diesel rate  
22 principles currently used by Hydro for the four (4) remote  
23 communities served by diesel appropriate and if not, what  
24 rate design alternatives should be considered?

25                   These and other issues, although not

1 specifically included in Hydro's Application regarding rates,  
2 do have an important impact on any ultimate decisions by the  
3 Board, as well as the provision of diesel service to remote  
4 communities in the future. I would therefore encourage each  
5 of the parties to specifically address those issues in their  
6 closing comments, again including any recommendations or  
7 alternatives for the Board to consider.

8           Those complete my closing remarks, other than  
9 to thank each of the parties and Hydro for their cooperation  
10 throughout the course of this process and also to thank the  
11 Board for their guidance and Mr. Chair, if the media reports  
12 are accurate, I wish to you well in your retirement following  
13 your deliberations and decisions on this Application. Thank  
14 you.

15           THE CHAIRMAN:       Thank you, Mr. Peters, for  
16 your final submission.

17           The Consumers Association of Canada Manitoba  
18 Inc. and Manitoba Society of Seniors. Mr. Williams, are you  
19 ready with your final submission?

20           MR. BYRON WILLIAMS: Yes, Mr. Chairman and  
21 Members of the Panel, although I was contemplating retirement  
22 before delivering this submission and you might want to  
23 consider the same option before enga -- entering upon  
24 deliberations.

25

1 FINAL SUMMATION BY MR. BYRON WILLIAMS:

2 MR. BYRON WILLIAMS: I would like to note that  
3 waiting patiently in the morning for closing argument, were  
4 Mr. Cruden and Mrs. Cruden and also present from time to time  
5 in the morning was Ms. Desorcy. So I'm sure some of them may  
6 pop back in later in the afternoon.

7 Usually when I start -- when I'm trying to  
8 summarize my closing arguments for a hearing, I try and -- I  
9 like to -- I like to create a theme that I can summarize in a  
10 magic ten (10) second or ten (10) sentence clip or ten (10)  
11 word clip. The MPI -- past MPI hearing, the question was, is  
12 this Application consistent with the objective of breaking  
13 even over the long term.

14 Also usually when I present a closing argument  
15 to a panel, I like to provide you with a series of  
16 recommendations on behalf of my clients that provides you a  
17 clear path to a fair and just and reasonable solution. A  
18 clean cut answer to a very difficult question.

19 I'm not sure I'm going to be able to do --  
20 accomplish either of those tasks in this proceeding. And  
21 while I will endeavour to answer many of the questions that  
22 Mr. Peters posed, to answer all of them might keep us here  
23 for -- for even on my own submission, well into next week.

24 If I were trying to summarize this case  
25 thematically, I'm not sure that I would do much better than

1 what I did in my opening statement. And with all due respect  
2 to My Friends from Hydro and from the Federal Government and  
3 the MKO First Nations and to my own representations in this  
4 Hearing, I still think this file is a mess.

5           And it's been a collaborative if  
6 dysfunctional effort on the part of the Federal Government  
7 and Manitoba Hydro and perhaps in more recent years there's  
8 been some involvement by the MKO First Nations in creating a  
9 very difficult problem for this tribunal.

10           And to a certain degree my clients sit back  
11 and look upon this with a certain degree of dismay because  
12 there's very pressing issues here for which there's not a  
13 very easily accessible solution. In a moment of hubris when  
14 I first embarked upon working on this file, I thought that my  
15 clients would come up with the magic solution for this --  
16 this panel. Something to bring the white light of regulatory  
17 clarity to a very messy situation.

18           Alas, that will not be the case. My clients  
19 have considered some quick and easy solutions. There aren't  
20 any in their view. So what I propose to do in terms of my  
21 comments, Mr. Chairman, and Members of the Panel, is kind of  
22 run through four (4) or five (5) main sections of my  
23 argument.

24           I'm going to deal with the easy stuff first.  
25 In Part 1, my clients want to talk about something they feel

1 very confident in. And that's their recommendations in terms  
2 of setting the rate structure and the size of the rate blocks  
3 for the diesel communities. And they want to talk as well  
4 about the principles that underlie their analysis of that  
5 issue.

6                   Another issue my clients feel very confident  
7 about is Part 2 of their argument and this will answer  
8 hopefully one of My Friend Mr. Peters' questions which is,  
9 who should pay? And my clients will address the issue of  
10 what contribution should the shortfall in terms of the diesel  
11 communities, what contribution should come from the Federal  
12 Government, in their view, and what, if any, contribution  
13 should come from the grid.

14                   And I think the theme that will emerge from  
15 that section and you'll hear it in a bit more detail later,  
16 is that there's a clear -- clear historic and enduring  
17 obligation on the part of the Federal Government.

18                   My clients would also accept that there's a  
19 responsibility on the grid. But that responsibility is not  
20 as significant or as large as the Federal Government's  
21 obligation.

22                   In the third part of the argument, my clients  
23 wish to turn with reluctance to an issue they feel much less  
24 confident about. And one of those issues is the surcharge  
25 mechanism. A mechanism whose time perhaps never should have

1 come but which certainly has passed. If only there were a  
2 viable alternative.

3           So my clients are going to be on -- in terms  
4 of the surcharge, and we'll get to that in a few minutes, be  
5 imitating McKenzie King and arguing a surcharge if necessary  
6 but not necessarily a surcharge. In the perhaps futile hope  
7 that when the Panel addresses issue Number 1, being the rate  
8 structure and the rate block an issue -- and addresses issue  
9 Number 2 in the context of just and reasonable rates, what  
10 would be a reasonable contribution from the Feds and the  
11 grids -- and the grid.

12           Maybe that will give incentive to the other  
13 parties, Manitoba Hydro to Federal Government to see if we  
14 can come up with a different alternative, one that doesn't  
15 involve this problematic surcharge.

16           When my clients do talk about the surcharge  
17 they will also be expressing a concern that it is not  
18 appropriately applied to First Nation customers, because it  
19 -- because it no longer is achieving the -- the original  
20 objective of the surcharge, which is to seek recovery --  
21 recovery from the Federal Government, rather than from the  
22 Social Housing or Economic Development Budget of First  
23 Nations.

24           After that, and I hope it's not too labourious  
25 of a process, my clients want to take the analysis and the

1 principles they've developed in Parts 1 through 3, and apply  
2 them against the proposals of OEMI on behalf of MKO, Manitoba  
3 Hydro, and also the scenario presented in CAC/MSOS Exhibit 6.

4           And perhaps it'll come as no surprise to the  
5 panel that we'll -- my client's analysis will be that all --  
6 all three (3) scenarios fall short in terms of achieving what  
7 they think should be a reasonable result.

8           At the end of each section I will try and  
9 communicate my client's recommendations to the panel, and as  
10 I watch and -- there may be a Part 5 to this argument, in  
11 terms of summarizing that -- those recommendations, that will  
12 be -- depend to a certain degree on my sense of the Panel's  
13 patience at that point in time.

14           Mr. Chairman, and, Members of the Panel, in  
15 terms of the first issue, which is developing the appropriate  
16 block structure and rates for Man -- for the diesel  
17 communities, you don't need to turn to it, but the core  
18 objectives of my clients are set out at page 19, which is in  
19 the open -- their opening submission, and the number 1  
20 submission -- objective is affordability, especially as it  
21 relates to residential clients.

22           And it's clear and I think there's consensus  
23 upon this, in this room, that given the gap between the cost  
24 to serve and -- in these communities, and the ability to pay,  
25 that full cost -- full cost recovery is -- it cannot be



1 expected.

2                   And that there should be equivalent to grid  
3 rates, at least with regard to electricity used for non-space  
4 heating purposes.

5                   So, that's objective 1, is to maintain  
6 affordability in these communities.

7                   Objective 2, is to recognize the need for  
8 efficiency and to make efficient consumption choices, and to  
9 the extent -- and I'll use the example of non -- of space  
10 heating now, to the extent that there are more efficient  
11 choices than diesel electricity, then the rate structure  
12 should be designed to encourage those choices.

13                   The third objective of my clients in the  
14 opening submission they call the cost control, and I think  
15 they would -- would more properly be phrased as some element  
16 of cost causality, and also maintaining cost control.

17                   Mr. Peters detailed that this main list of  
18 accumulating costs with respect to this diesel -- diesel  
19 situation, and it's important to protect and to introduce  
20 measures to protect grid customers from the escalating costs  
21 experienced.

22                   Objective number 4, and it's one (1) that's  
23 not been talked about a lot, but I think it's critical from  
24 my client's perspective, not just for this Proceeding, but  
25 for future ones, is to keep in mind rate shock. And it's

1 difficult when we're talking about price escalation of this  
2 magnitude, but it's an important objective, and my client's  
3 rate design proposals will be designed to accommodate that,  
4 at least to a certain degree.

5           So, I want to turn back to the -- and if the  
6 Panel -- it may be of assistance for them to have at hand  
7 CAC/MSOS Exhibit number 6, which was the diesel rate  
8 scenarios 1, 2 and 5.

9

10   (BRIEF PAUSE)

11

12

13           THE CHAIRMAN: We have it, Mr. Williams.

14

15

16

17           MR. BYRON WILLIAMS: So, in terms of my  
18 client's first objective, which is to have rates equivalent  
19 to the grid, when diesel electricity is the most cost  
20 effective fuel source.

21

22

23

24

25

26           And a similar kind of theme or -- or  
27 objective, I -- I believe has been enunciated by Manitoba  
28 Hydro, and that's at page 343 of the transcript, when I asked  
29 Mr. Wiens in -- that in terms of the rate of seventy-nine  
30 point one (79.1) cents for rates over two thousand (2,000)  
31 kilowatt hours, at least one of the key purposes of that rate  
32 is to deter consumption, where most cost-effective  
33 alternatives might exist for space heating. Is that not  
34 correct, and he concurred that that was correct.

1                   And similarly, OEMI has also proposed on --  
2 behalf of MKO -- proposed rates similar to grid for the first  
3 one thousand (1,000) kilowatt hours and a block at the two  
4 thousand (2,000) level -- at the two thousand (2,000)  
5 kilowatt level where higher costs are being imposed roughly  
6 equivalent to variable costs.

7                   So the key question from my client's  
8 perspective in terms of rate design, especially for the  
9 residential class, is where should the equivalent to grid  
10 rates take place?

11                   Hydro has testified and my clients have a  
12 great deal of comfort and confidence in their suggestion that  
13 we can be quite confident, or relatively confident anyways,  
14 that for non-space heating purposes, the two thousand (2,000)  
15 kilowatt hour level provides a great deal of comfort.

16                   My clients -- given the objective of -- of  
17 ensuring that there's access to affordable diesel electricity  
18 for non-space heating purposes, my clients cannot be as  
19 confident with the thousand kilowatt hour level proposed by  
20 OEMI.

21                   And on that point, I note from the transcript  
22 at page 346 that Mr. Wiens indicated that having a upper --  
23 or a limit at one thousand (1,000) kilowatt hours would  
24 possibly affect many more residents and at page 347 of the  
25 transcript, he indicated that it would co -- capture non-

1 space heating uses.

2           And just to elaborate on that point further,  
3 the transcript at page 348 shows that for a person of modest  
4 lifestyle -- modest lifestyle like my own, as compared to Mr.  
5 Peters', the -- one thousand and forty (1,040) kilowatt hours  
6 would be kind of an average consumption level.

7           Now, that's not -- there's some above, there's  
8 some below but clearly this thousand kilowatt hour level  
9 doesn't give a lot of comfort to my clients in terms of non-  
10 space heating uses. And they'd note as well, and this  
11 appears a couple page la -- pages later in the transcript  
12 that the average consumption level for a community like  
13 Brochet is almost thirteen hundred (1300) kilowatt hours per  
14 month for residential customers. And in two (2) of the other  
15 communities, it's well over a thousand (1000) kilowatt hours,  
16 as well.

17           So from my clients' perspective, in terms of  
18 the limit for equivalent to great -- to grid, one thousand  
19 (1,000) is too low, fifteen hundred (1500), as -- as you look  
20 at the numbers, is something that they feel pretty  
21 comfortable with. And you can see that represented in the  
22 CAC/MSOS Exhibit 6, the first block for residential customers  
23 is set at fifteen hundred (1500) kilowatt hours.

24           So, essentially, what my clients are proposing  
25 based upon and using and stealing, frankly, from the -- the

1 excellent submissions on this point from both MKO and Hydro,  
2 is a first block up to fifteen hundred (1500) equivalent to  
3 grid, a second block from fifteen hundred (1500) to two  
4 thousand (2,000) which will provide -- be used to -- as kind  
5 of a security blanket in the sense of protecting those  
6 customers who may be using a bit more than fifteen hundred  
7 (1500) for legitimate non-space heating purposes and a third  
8 -- third block at two thousand (2,000) kilowatt hours which  
9 will be charged at full cost rates.

10 I want to turn to the second block which is  
11 the block between fifteen-oh-one (1501) and two thousand  
12 (2,000) kilowatt hours. And from my clients' pers --  
13 perspective, that block should be used to send a warning  
14 signal to consumers that a big rate -- rate incr -- rate jump  
15 is on the way.

16 I think Mr. Hildebrand in his evidence  
17 described it as a rate cliff but the second block between  
18 fifteen-oh-one (1501) and two thousand (2,000) should be used  
19 to send a warning to consumers that there's a big jump ahead.

20 But that jump should be consistent -- or that  
21 warning level should be consistent, to the degree possible,  
22 with the concept of -- of rate shock.

23 And Mr. Wiens, in I -- in -- in our discussion  
24 during cross-examination, and I believe that was at page 352,  
25 indicated that the idea of a transitional block was not

1 unreasonable, but then he asked why eight (8) cents? Why  
2 twelve (12) cents? Why not twenty-five (25) cents?

3           And the answer is rate shock and I -- we  
4 didn't do the math on the record but if certainly the Board -  
5 - the Board advisors can do that math, even at eight (8)  
6 cents per kilowatt hour, you're getting close to somewhere  
7 between 10 and 15 percent increase for a consumer using two  
8 thousand (2,000) kilowatt hours.

9           And we think the principle of rate shock is  
10 one that should not be lost. In Manitoba Public Insurance  
11 Hearings, even though we have a strong objective of cost  
12 causality and customers paying what -- for the risks they  
13 bring to the system, as we've motorcyclists towards that  
14 objective, we've also kept in mind principles of rate shock.

15           And that's something that should not be lost  
16 in this Application and it's something that shouldn't be  
17 lost, speaking selfishly for my clients, because we don't  
18 know what's down the line a year from now or two (2) years  
19 from now. And -- and that's an important principle that  
20 should be respected.

21           In terms of the third block, why charge  
22 seventy-nine point one (79.1) cents, well, at a certain  
23 level, my clients believe that there has to be some adherence  
24 to the principle of cost recovery. There has to be some  
25 sense of keeping costs under control in these -- in these

1 communities.

2                   And given that I was so concerned about rate  
3 shock between fifteen hundred (1500) and two thousand (2000)  
4 kilowatt hours, how can my clients endorse a sharp jump to  
5 seventy-nine point one (79.1) cents?

6                   Well, the answer is, they're very confident,  
7 based upon the evidence in this hearing that consumers using  
8 over two thousand (2,000) kilowatt hours are using it for non  
9 -- are using it for space heating purposes. And so, from my  
10 client's perspective, rate shock pric -- principles are not  
11 as applicable in that situation.

12                   Is seventy-nine point one (79.1) cents the  
13 right rate? There's been a hot debate between Hydro and --  
14 and MKO on that subject. My clients will leave that to the  
15 Board for their deliberations. We're trying to focus on rate  
16 structure and rate design and who pays the surcharge and,  
17 from their perspective, that was a -- a big enough task to -  
18 to assume.

19                   There is one thing though that my clients do  
20 wish to agree with Mr. Hildebrand on, actually there's a  
21 number but one (1) in -- one (1) indeed; in his evidence he  
22 commented about the rate design of the Manitoba Hydro  
23 proposal and he commented that going from five point seven  
24 eight (5.78) for the first hundred and seventy-five (175)  
25 kilowatt hours down to five point one six (5.16) for the next

1 -- next block and then a steep jump up to seventy-nine point  
2 one (79.1) was a bit unusual and perhaps sending the wrong  
3 rate structures.

4                   And I'm -- I'm not quoting him accurately but  
5 I hope -- hopefully I'm catching his -- the principle of his  
6 submissions on that point and we agree.

7                   Now, my clients have been neutral on the issue  
8 of inverted rates when it relates to the grid but this is a  
9 unique situation and there's a unique gap between costs and  
10 revenues in this situation.

11                   And, based on that, my clients believe that an  
12 inverted rate structure is -- is quite justifiable and,  
13 indeed, very logic -- logical in this circumstance and we  
14 should be sending it -- a se -- message to consumers that  
15 there is -- that there is a definite cost to increased  
16 consumption.

17                   The last point in terms of rate design, for  
18 the purposes of this hearing in terms of residential  
19 customers, is, let's assume that we do want to have a  
20 structure similar to the proposal of CAC/MSOS, gradually  
21 inclining and then the steep jump at two thousand (2,000)  
22 kilowatt hours.

23                   If -- if the Tribunal -- if the Board chose to  
24 charge at five -- five point seven, eight (5.78) cents for  
25 the full fifteen hundred (1500) kilowatt hours, that would



1 actually be a bit higher than the equivalent to grid rates.

2           If the Board chose to charge a bit less, five  
3 point one, six (5.16) that would be a bit less than  
4 equivalent to grid rates. So in Scenario 5 of the CAC/MSOS  
5 Ex -- Exhibit Number 6, what my clients propose that the  
6 Panel consider is a blended rate, five point two, eight  
7 (5.28) cents which seeks to stay over the fo -- consumption  
8 of fifteen hundred (1500) kilowatt hours revenue neutral.

9           I may not be perhaps explaining it the best  
10 but if you want to go to Page 411 of the transcript Mr. Wiens  
11 did a much better job of it than I did which is I why I  
12 really appreciate cross-examining him.

13           Now, I understand that one of the reasons that  
14 Hydro proposes to charge 5.78 for the first  
15 hundred and seventy-five (175) kilowatt hours and then a  
16 lower level for the next amou -- next block is in -- in order  
17 to recover some of the additional costs associated with the  
18 basic charge which are not recovered in the basic charge  
19 rate.

20           My clients believe that the pricing signals  
21 that should be sent in this -- this rate structure are more  
22 important than that objective. And in future hearings they  
23 may well be arguing that the basic charge should be  
24 recovering its full cost for the purpose of transparency.  
25 They're not doing so in this proceeding because we don't want

1 to complicate the issue anymore than its already complicated.

2           So that's my clients proposal in terms of rate  
3 structure and rate block for the general -- for the  
4 residential customers. In terms of the general service  
5 customers they would adopt a similar analytical approach with  
6 one important caveat. So essentially they're proposing a  
7 block equivalent to the grid where rates are charged  
8 equivalent to grid for certain level of consumption.

9           A second block, where a pricing signal is sent  
10 res -- respecting and recognizing the principles of rate  
11 shock and a third block, seeking to recover the full cost of  
12 providing service for that consumption level.

13           And my clients again are endorsing an inverted  
14 rate structure. The -- the one caveat or -- or the -- the  
15 one kind of important point to consider is where should that  
16 top level of the top block be?

17           Should it be at the two thousand (2,000)  
18 kilowatt hour to be the same as charged -- the same as  
19 experienced by residential customers? Should it be higher?  
20 Should be at the historic level of three thousand (3,000)  
21 kilowatt hours. And my -- from my clients perspective, it --  
22 well it might be argued that it would be unfair to have a  
23 different rate for -- or a different block for residential  
24 and general service customers, they don't believe that that's  
25 the case in this situation.

1                   And they don't believe that for a couple of  
2 reasons. One is, for residential customers you can clearly  
3 tie that two thousand (2,000) kilowatt hour level to -- use  
4 in excess of that to being used that's being used for space  
5 heating.

6                   You cannot do the same for residential cust --  
7 or for general service customers. And I believe in the  
8 transcript Mr. Wiens commented, you couldn't even be sure of  
9 that at the three thousand (3,000) level.

10                   Secondly, the general service group or class  
11 of customers in the diesel communities is a much more  
12 heterogenous group than residential customers. So my clients  
13 do not endorse a upper block of two thousand (2,000) kilowatt  
14 hours for -- for general service. They endorse a block of  
15 three thousand (3,000) and that's based upon three (3)  
16 points.

17                   One is that that was the historic level of  
18 being three thousand (3,000) kilowatt hours. And there's  
19 clear evidence on the transcript during my cross-examination,  
20 Mr. Wiens, for general service customers consuming between  
21 two thousand (2,000) and three thousand (3,000) kilowatt  
22 hours, there's a co -- grave risk of rate shock. If you're  
23 using three thousand (3,000) kilowatt hours, I believe the  
24 transcript indicates 391 percent increase. Even at twenty-  
25 five hundred (2,500) kilowatt hours, it's an over 300 percent

1 increase.

2                   And again, my clients don't pretend to speak  
3 for general service customers. But those principles of rate  
4 shock should -- should at least be given some weight in this  
5 -- in this analysis. If the PUB is concerned with the  
6 revenue loss associated with not charging full consumption at  
7 two thousand (2,000) kilowatt hours, at the very least my  
8 clients would submit that any such increase should be phased  
9 in over time consistent with the principles of rate shock.

10                   There's an outstanding question which I  
11 hesitate to venture into right at this moment, is whether --  
12 which is whether First Nations should be considered general  
13 service customers or Government customers. I will get to  
14 that a little bit later in my submissions.

15

16                   (BRIEF PAUSE)

17

18                   Mr. Chairman, and Members of the Panel, given  
19 the objective of rates equivalent to grid up to a certain  
20 consumption level, it's clear from the proposed rate  
21 structure of CAC/MSOS, that there will be a shortfall. And  
22 we presented scenarios 1, 2 and 5 for your consideration to  
23 give you some sense of the magnitude of that shortfall. And  
24 also some sense of how it's -- it could be affected, at least  
25 to a small degree, by different pricing choices that you

1 made.

2                   But generally the evidence, if you look at the  
3 -- the revenue that will come to consumers from -- from these  
4 -- this scenario, and this would be -- with First Nations  
5 considered -- general service, rather than government  
6 accounts, the revenue that would accrue from customer  
7 contribution would be about \$4 million.

8                   So, you're looking at a \$5.5 million  
9 shortfall, which I believe is about a million dollars  
10 different from the Hydro -- Hydro proposal.

11                   There is one (1) -- in -- in terms of looking  
12 at the CAC/MSOS scenarios, one (1) caution. Hydro accepted  
13 the subject-to-check on diesel rate scenario 5, for the  
14 general service class, and that's where we're attempting to  
15 blend the cost recovery over the first fifteen hundred  
16 (1,500) kilowatt hours, the figure of zero six five four  
17 (0654) is wrong.

18                   I think the -- you know -- and I'm going to  
19 testify with the Board's indulgence on this one (1), and you  
20 can certainly replicate the calculation, but a blended rate  
21 would probably be about zero five nine (059). So, we didn't  
22 want to leave an inaccurate number on the record.

23                   Mr. Chairman, if I might, if I could have one  
24 (1) second to get some water.

25

1 (BRIEF PAUSE)

2  
3 MR. BYRON WILLIAMS: So, I utilized some  
4 clever segues in this -- in this hearing and some less than  
5 clever ones, and I'm moving on to a less than clever one (1).

6 We know that there is a surcharge of a -- or,  
7 excuse me -- a shortfall in the range of \$5.5 million off of  
8 the CAC/MSOS rate structure proposal. How do you recover it?

9 And, given the ambiguity that my clients have  
10 approached so much of this proceeding on, this is one (1)  
11 where they have a surprisingly clear answer. And in their  
12 view, the -- a major source of contribution for the shortball  
13 -- shortfall should be Her Majesty the Queen in light of  
14 Canada.

15 It seems almost self-evident, but I do want to  
16 go through my client's chain of reasoning and the starting  
17 point is that unless the Constitution Act of 1867 has changed  
18 in the last couple of hours, the Federal Government is  
19 responsible for Indians and Indian lands.

20 And, in my clients' view, the Federal  
21 Government has accepted this principal and, through its  
22 conduct, with regard to the diesel communities over the past  
23 thirty (30) years, forty (40) years, demonstrated that --  
24 that it recognizes some sort of commitment.

25 And, if you turn to Page 60 of the transcript,

1 you don't need to, but you can see how Mr. Wiens testified  
2 about how the Federal Government, in certain -- certain  
3 circumstances, requested that Manitoba Hydro come on to these  
4 communities to provide service.

5           And it was the Federal Government, as set out  
6 at Page 61 of the transcript, that agreed to pay. At least  
7 agreed to pay a capital contribution for equipment. And  
8 that's set out at Page 61 of the transcript, and also noted  
9 in Attachments 3 and 5 to the Hydro Application.

10           And again, it was the Federal Government  
11 recognising its commitment, as set out Page 72 of the  
12 transcript, that agreed to pay 75 percent of the North  
13 Central project, and a large percentage of the costs  
14 associated with the Lake Winnipeg East project.

15           And as set out at MKO -- Interrogatory  
16 Manitoba Hydro Number 18, it was the Federal Government that  
17 offered to make a capital contribution of -- in the range of  
18 \$10 million for the Shamattawa transmission line.

19           And again in the -- Mr. Mills, in the status  
20 update proceeding, when he was subpoenaed to testify,  
21 recognized that -- that there was a Federal obligation and he  
22 detailed the nature and extent of that obligation throughout  
23 that transcript and just for the Board's consideration, I'd  
24 refer you to Pages 4355, 4356, and 4373.

25           Mr. Peters posed a question -- I think he

1 posed a question of whether there needs to be a stated case  
2 to determine the obligations of the Federal Government. My  
3 clients are of the view that there does not need to be. My  
4 clients are also of the view that there does not need to be a  
5 determination of whether a contract still exists or a number  
6 -- a series of contracts.

7           Your job, in turn, is to consider whether the  
8 rates for service are just and reasonable. In determining  
9 whether those rates are just and reasonable, you can take  
10 into account the four (4) Cs.

11           The Federal Government's constitutional  
12 obligation, its obligation as recognized in contracts in the  
13 past, its obligation as recognized in its conduct in the past  
14 and its obligation as recognized in its current condu --  
15 conduct with regards to these First Nations and based on  
16 that, we're clear it's -- from the perspective of my clients,  
17 asking the Federal Government to pay a surch -- to pay a  
18 contribution is just and reasonable.

19           It might be argued and I anticipate that some  
20 of My Friends may argue, well, if the Federal Government  
21 signed on, it only signed on for fifteen (15) amp service but  
22 from my clients' perspective, that would be inconsistent with  
23 the record of this proceeding.

24           And I'd note at page 74 of the transcript, in  
25 Manitoba Hydro's direct evidence they talked about how the



1 Federal Government was funding construction of homes in these  
2 communities which were designed for thirty (30) amp service.

3 And I note from the Status Update Proceeding  
4 at page 4408 that when Ms. Ramage asked Mr. Pe -- Mills  
5 whether the Federal Government had ventured any objection to  
6 the sixty (60) ampere service being implemented in those  
7 communities, his answer was no.

8 And to the best of my recollection, I cannot  
9 recall either of those items being challenged by the Federal  
10 Government either through cross-examination or direct  
11 examination.

12 Now, it might be argued as well -- that is if  
13 an attempt is made to recover, through rates paid by the  
14 Federal Government, costs associated with the provision of  
15 service to residential and general service customers in these  
16 communities, that that would be discriminatory because  
17 essentially the Federal Government is being asked to pay the  
18 costs associated with other ratepayers and incurred by other  
19 ratepayers.

20 And at first glance, maybe that would seem to  
21 be consistent with the -- my cross-examination of Mr.  
22 Hildebrand, scenario 1 where at pages 823 to 826 of the  
23 transcript. And there we talked about the concept of  
24 discrimination and we talked about two (2) customers side by  
25 side, each responsible for about fi -- half the cost but one

1 (1) customer being asked to pay 15 percent of the cost  
2 through their rates and the other customer being asked to  
3 provide 85 percent of -- pay 85 percent of the cost through  
4 their rates.

5           And Mr. Hildebrand quite rightly testified  
6 that that was discriminatory, due in part to the fact that  
7 one (1) customer was being asked to pay someone else's costs  
8 and due in part to the disproportionate level of the -- their  
9 costs they're being asked to pay. So, again, at first  
10 glances, that would appear to be the scenario for the Federal  
11 Government.

12           But if you recall at pages 843 and 844 of the  
13 transcript, I put another scenario to Mr. Hildebrand and  
14 after much torturous true -- to and fro, we arrived a con --  
15 conclusion, and that was the example of a mining company  
16 which voluntarily agreed to pay all its costs plus part of  
17 the capital cost associated with the provision of service to  
18 residential customers. And again, after a long pause, Mr.  
19 Hildebrand agreed that in that situation, that would not be a  
20 discrimina -- a discriminatory situation.

21           So the key principles that, based upon that  
22 discussion and that we can apply to the federal situation,  
23 that it may be discriminatory to pay the costs of others,  
24 especially when it's an undue proportion of those costs, but  
25 that differential treatment may be justified by other

1 compelling policy reasons.

2           And one of those policy reasons is  
3 voluntariness and another one of those reasons, I would  
4 submit, is the four (4) Cs as set out in my previous argument  
5 on this point.

6           And again, if you refer to my cross-  
7 examination of Mr. Wiens on the concept of discrimination, he  
8 again talked at page 369 of the transcript of how treatment,  
9 which to an economist might be discriminatory, could be  
10 justified by compelling policies and so forth.

11           So, assuming there is a Federal obligation,  
12 what is the nature of that obligation. And I guess there's  
13 at least two (2) different takes you could have on that  
14 issue. One (1) could be that all costs not recovered by  
15 revenues paid by -- by the customers themselves, should be --  
16 be -- be paid by the Federal Government.

17           Another perspective, and it's a perspective  
18 ens -- that my clients endorse, is that the Federal  
19 Government should be responsible in terms of its contribution  
20 for the capital costs associated with generation.

21           And my clients take this view based upon their  
22 analysis of the record, and I'm not going to go through it in  
23 detail, there's contracts there that I guess we can all  
24 debate about forever.

25           But the basis upon the review of the record,

1 including Attachments 3 and 5, Mr. Wiens' testimony in  
2 particular, at Page 61, and the memo of G. C. Cartwright,  
3 which is found in -- as an attachment to CAC/MSOS/MH-11.1,  
4 and that's a memo dated December 29th, 1977, which I went  
5 through at least in limited detail during cross-examination  
6 with Mr. Wiens.

7                   If that is indeed the case, Mr. Wiens has  
8 testified at po -- Page 403 of the transcript, that that  
9 would leave the Federal Government on the hook for about 43  
10 percent, 43.9 percent of the total costs associated with  
11 diesel -- the diesel project in -- in these northern  
12 communities.

13                   From my client's perspective, well, the  
14 Federal Government clearly has an obligation, so do -- so too  
15 do grid customers.

16                   And I think the best summary of that is in the  
17 memo set out by Mr. Cartwright, the December 12th, 1977 memo,  
18 that I spoke of. And as I listened to Mr. Wiens during his  
19 evidence, it seemed to me that much of his analysis seemed to  
20 flow from that -- that same memo or similar memos.

21                   And that memo talks of Manitoba Hydro being  
22 invited to share in the social commitment to these  
23 communities, by the Fed -- Federal Government, and Manitoba  
24 Hydro did so. And that there was an attempt to limit the  
25 subsidy to these communities, through the provision of 15 amp

1 service.

2                   And essentially, from my clients' perspective,  
3 this is their interpretation of the nature of the  
4 relationship and the obligation assumed by the Federal  
5 Government and by grid customers. And some of this is based  
6 upon the transcript at Page 371 and 372.

7                   As a starting point, there was a commitment  
8 between the Federal Government and the Hydro to charge  
9 resident -- customers up to a certain -- certain service  
10 limit, equivalent to rural rate -- rates, Zone 3 rates in the  
11 old days, before uniform rates.

12                   Secondly, the costs of capital would be paid  
13 by the Feds, and there's a bit of ambiguity on this subject,  
14 but any shortfall in certain -- in certain instances was  
15 assumed by Hydro, in certain -- there was an -- certain  
16 instances there seems to be an attempt to share the burden  
17 with the Federal Government.

18                   So, essentially in this Proceeding, Manitoba  
19 Hydro said to you, start from what should our -- our  
20 obligation be, and that should be about 6 percent of the  
21 total costs for providing to these communities, service to  
22 these communities.

23                   We're approaching it on behalf of my clients,  
24 from a different perspective, and that's from what can we  
25 really pin down to be the Federal Government's obligation,

1 based upon this -- this long pattern and this long  
2 relationship. And that's the capital costs and the --  
3 especially as they relate to generation.

4                   And we think that's a useful starting point,  
5 because again, that gives some certainty to the Federal  
6 Government, in terms of what the level of contribution  
7 they're being asked to assume.

8                   One (1) thing my clients do wish to emphasize,  
9 they recognize the responsibility from the grid customers,  
10 they're prepared to bit -- accept a bit more of that  
11 responsibility than set out in Manitoba Hydro's proposal, but  
12 they don't believe it would be appropriate for grid customers  
13 to assume the primary responsibility.

14                   Part of that is because there's a huge gap  
15 between the actual cost to serve these communities and -- and  
16 to ask for grid customers to assume that gap would be, in  
17 their view, inconsistent with the principal of just and  
18 reasonable rates.

19                   It's unfair -- it would be unfair to ask them  
20 to bear the entire burden, and that's especially the case  
21 when there's a party in the picture which has a clear  
22 obligation, being the Federal Government.

23                   Recent events have reinforced my client's  
24 position that it would be inappropriate to ask the grid to  
25 bear the primary share of contribution to these communities.

1 There's rumours of a significant rate increase for the grid  
2 and the grid tank, it appears to be running on empty in terms  
3 of how much flexibility there is to -- to cover a -- a large  
4 amount in terms of the subsidy to these communities. So  
5 that's a point they wish to emphasise.

6 Part three (3). Assuming that the rate  
7 structure and blocks approved -- proposed by CAC/MSOS are  
8 approved, and assuming that the panel accepts the  
9 recommendation that the Federal Government be held  
10 accountable for the capital related to generation; how do you  
11 recover that -- that contribution from the Federal  
12 Governments?

13 And there -- there we turn to a little more  
14 difficult part of our argument. We turn to the surcharge and  
15 the first questions my clients would ask is; in the abstract,  
16 can a Federal surcharge be justified?

17 MR. ROBERT MAYER: Excuse me, before you --  
18 before you leave, you almost left me behind here. I -- is it  
19 your suggestion -- am I hearing you correctly that the total  
20 contribution to be made by the Federal Government is the  
21 capital cost? Or is it they should be responsible for the  
22 capital cost plus some of the other shortfall?

23 MR. BYRON WILLIAMS: Mr. Mayer, the -- the  
24 -- and I -- I guess I'll get to -- to this in a bit more  
25 detail later, but the Federal Government in my client's

1 submission, they should be paying their full cost to serve  
2 their accounts, and of the -- in terms of the subsidy that  
3 should flow to these communities, being about \$5.5 million  
4 dollars, the majority of that should come from the Federal  
5 Government.

6                   And if you turn to scenario 1 or 2, that'll  
7 give you an idea of the math of it. And if you go to the  
8 second page of scenario 2 -- scenario 1, you'll see that the  
9 Government subsidy amount -- in this case we based it upon 39  
10 percent of cost.

11                   Hydro's testified that the proper number  
12 should be forty-three point nine (43.9), but that -- it  
13 amounts to \$3.7 million dollars in this particular scenario,  
14 which would require the grid to contribute about \$1.8 million  
15 dollars, or about 1.2 million more than I think Hydro is  
16 asking them to contribute.

17                   Is that helpful?

18                   MR. ROBERT MAYER: I -- it -- it's helpful,  
19 but I -- I'm still not clear. You -- you dealt with the  
20 Federal Government bearing the capital costs for generation.  
21 And I'm assuming that that is something different than the  
22 \$3.7 million dollars subsidy required per year?

23                   MR. BYRON WILLIAMS: No, the -- this total  
24 subsidy required per year, Mr. Mayer, based upon the CAC MSOS  
25 proposal would be 5.5 million. Of that, about three point



1 eight (3.8) -- somewhere between three point eight (3.8) and  
2 4 million would be recovered from the Federal Government.

3 And how that Federal figure is to -- the  
4 figure relating to the Federal Government is derived, is  
5 based upon the percentage of capital related to generation.

6 THE CHAIRMAN: Proceed, Mr. Williams.

7 MR. BYRON WILLIAMS: I'm not sure if that was  
8 eyes rolling in bemusement or comprehension, but we'll --  
9 we'll proceed.

10 Given that there's a Federal obligation, it's  
11 important to understand the nature of that obligation. I --  
12 is -- excuse me -- excuse me, let me speak again. Given  
13 there's a Federal obligation, if we're going to justify a  
14 surcharge as a mechanism to rec -- to compensate for that  
15 obligation, it's important to look at how this surcharge was  
16 originally conceived and I think that's set out in the  
17 transcript and a number of pag -- pages.

18 And the question I'm -- I'm asking relates to  
19 what's the objective of this surcharge? Because we realize  
20 that a surcharge absent compelling policy reasons would be  
21 discriminatory. So the objective, I believe, is best set out  
22 at Page 54 of the transcript.

23 Where the Federal Government over Manitoba  
24 Hydro speaks of the obligation of the Federal Gover --  
25 Government. And what it says is the important part -- point

1 is that at no time did the Government of Canada indicate that  
2 it no longer intended to be ultimately responsible to pay the  
3 accounts in question.

4           Going down a few more lines at Page 10 of --  
5 line 10 of Page 54, Manitoba Hydro was led to believe that  
6 the Government of Canada would include henceforth in its  
7 funding to First Nations, the cost of those Manitoba Hydro  
8 accounts which have previously paid directly.

9           And to similar effect would refer you to the  
10 comments of Mr. Wiens at Page 70 and 71. Manitoba Hydro  
11 believes that the surcharge is equitable in that it is  
12 recovers costs from those part -- parties responsible for  
13 incurring them or from the party which is responsible for the  
14 provision of basic services within these communities.

15           So the underlying objective of this surcharge  
16 was to ensure recovery -- recover -- recovery from the  
17 Federal Government. And I -- I think it's interesting that  
18 Hydro's conduct in terms of this file once the accounts were  
19 transferred to the First Nations, it seems to reinforce that  
20 theme and I direct your attention to Pages 94 and 97 of the  
21 transcript.

22           Again at Page 94, Mr. Cox is testifying and he  
23 says that Hydro staff including myself met with INAC  
24 representatives and requested assurance that INAC would  
25 continue to be responsible for these accounts. We were told

1 that INAC intended to increase its funding to the First  
2 Nations to assure they would have the funds to pay for the  
3 energy they were consuming.

4                   And again at Page 97, they speak of trying --  
5 looking at the level of Federal funding received by the First  
6 Nation and whether it had ever been a factor in this  
7 determination. And Mr. Cox testified back in 1987, when the  
8 change in names was first made, our people did sometimes use  
9 that to deter -- help them determine the appropriate  
10 classification.

11                   So the point my clients wish to make is that  
12 the objective was recovered from the Federal Government, the  
13 objective of this surcharge, the policy objective underlying  
14 it was not -- Manitoba Hydro considered the First Nations at  
15 that point in time as an appropriate proxy for the -- for the  
16 First -- for the Federal Government and it went to a degree  
17 of -- it went -- sought assurance that the Federal Government  
18 would be -- or that the First Nations would again be an  
19 appropriate proxy for, in terms of recovering from the  
20 Federal Government.

21                   And my clients, and we'll get to this a bit  
22 later, but the point they want to emphasize, is to the extent  
23 that that relationship has broken down. To the extent that  
24 the First Nations are no longer an appropriate proxy for  
25 recovering the surcharge. It may not be appropriate to

1 recovering surcharge from the First Nations.

2 THE CHAIRMAN: But just to help me refresh my  
3 memory, Mr. Williams, on it, the surcharge was indeed  
4 collected from 1987 through to 2000 and was indeed paid over  
5 that period of time, was I not correct. Is your  
6 understanding the same as mine?

7 MR. BYRON WILLIAMS: That's right, Mr.  
8 Chairman, but I don't think the intent of the surcharge was  
9 to reco -- force First Nations for example, to borrow from  
10 their social housing accounts, to borrow from their economic  
11 development accounts, to pay Hydro electric tru -- Hydro  
12 electricity bills. And I think the evidence of Mr. Mills in  
13 this -- in the Status Update and the representations at least  
14 by some presenters in this proceeding is that's exactly  
15 what's happened.

16 And so from my clients perspective, that  
17 started to sever the relationship between the principle  
18 behind the surcharge and its actual application in this case.

19 THE CHAIRMAN: And I understand what I heard  
20 in this proceeding but I guess the -- the question that the  
21 Board has to look at and -- whether or not you are in  
22 agreement to that is the financial arrangement between the  
23 First Nations community and INAC is their responsibility and  
24 not necessarily ours.

25 MR. BYRON WILLIAMS: That's certainly the

1 case, Mr. Chairman, but you're trying to justify a surcharge  
2 that in other circumstances would be considered  
3 discriminatory -- to -- to justifi --

4 THE CHAIRMAN: I'm sorry, wait a minute, Mr.  
5 -- Mr. Williams, I'm not --

6 MR. BYRON WILLIAMS: I'm -- I'm not --

7 THE CHAIRMAN: -- I'm not trying to just --

8 MR. BYRON WILLIAMS: -- trying to --

9 THE CHAIRMAN: -- I'm not trying --

10 MR. BYRON WILLIAMS: -- excuse me --

11 THE CHAIRMAN: -- to justify anything --

12 MR. BYRON WILLIAMS: -- Manitoba Hydro is.

13 THE CHAIRMAN: -- I'm just trying to get a  
14 better understanding of your position, that's all.

15 MR. BYRON WILLIAMS: Yes, and I apologize for  
16 that, Mr. Chairman. I misspoke.

17 Manitoba Hydro is trying to justify a  
18 surcharge that in other circumstances would be  
19 discriminatory. Our point is you have to go back to the  
20 underlying purpose behind that surcharge, not to borrow from  
21 the social housing budget of First Nations but to in -- in --  
22 to keep Manitoba Hydro clear and clean and whole to a  
23 transfer from the Federal Government.

24 Using -- and so from our perspective, using  
25 the First Nations as a proxy, from my clients' perspective,

1 is no longer an appropriate mechanism for achieving that  
2 objective and to that extent, not your -- to that extent, the  
3 justification underlying Hydro's rationale to collect from  
4 First Nations is suspect.

5           And that enabled me to jump the gun a little  
6 bit, Mr. Chair, and hopefully it will save some time at the  
7 end.

8           My clients also, I guess they -- they wish to  
9 know that there are other mechanisms to collect capital  
10 contributions, whether up front capital or direct  
11 contributions from government. And there -- you -- you have  
12 -- I have to be careful here.

13           At the end of the day it may be that the  
14 surcharge is the -- the best means available given the  
15 limitations, jurisdictionally, upon the Board. But I do want  
16 to comment on behalf of my clients to express their concerns  
17 with a number of aspects of the surcharge and in doing so,  
18 again, they borrow both from Mr. Hildebrand and Mr. Wiens.

19           And -- and one concern expressed by Mr.  
20 Hildebrand which my clients endorse is that it blurs the  
21 distinction, in this case, between capital and operating  
22 costs and that's set out at page 790 of the transcript, and  
23 he explains it far better than I could, but his point is that  
24 it's dis -- difficult to disentangle the two (2).

25           Another concern and Mr. Wiens expresses at

1 page 71 of the transcript was that the surcharge tends to  
2 discourage justified use. And I guess a couple of examples,  
3 obviously a surcharge -- a customer paying the surcharge is  
4 paying their own costs, they're also paying a portion of the  
5 costs of someone else.

6                   And if the hockey rink in -- in a certain  
7 community or the nursing station, while they might be able to  
8 justify using diesel electricity if they only needed to cover  
9 their costs, somehow, you know, it may be just cost-  
10 prohibitive when they have to bury -- bear both their own  
11 costs and the costs of other consumers.

12                   So there's an efficiency argument there and  
13 there's a concern for my clients that, on one hand, the  
14 surcharge may be defer -- deterring justifiable uses.

15                   A related problem, though, is that to keep the  
16 surcharge reasonable, there's a desire, tendency, to want to  
17 spread it over as many accounts as possible to keep it  
18 relatively low.

19                   And the problem then becomes that when you --  
20 when Hydro attempts to do that, they start to get  
21 disconnected from the original purpose for the surcharge and  
22 I think one example is the First Nation accounts that are in  
23 -- who -- which previously were not considered to be  
24 government accounts.

25                   Hydro, in this Application, is trying to share

1 the -- the burden and in doing so, we think they're  
2 approaching a disconnect between the rationale and the  
3 purpose that the surcharge is trying to achieve and reality.

4           And Mr. Wiens commented upon this at pages 40  
5 -- 413 to 415 of the transcript.

6           And he was asked to comment upon CAC/MSOS rate  
7 scenario or Exhibit Number 6 and the different scenarios  
8 presented there. And one of the concerns he advanced, was  
9 that there may be a jurisdictional problem, and I'm referring  
10 around lines 22 at Page 414.

11           We might have a problem jurisdictionally, in a  
12 situation where we, your surcharge number 1, we're asking  
13 the Provincial Government to accept a significant proportion  
14 of the cost that is related to subsidising service to  
15 communities, of which the government of Canada has  
16 constitutional responsibility.

17           And, he's right. That -- that might be  
18 problematic. But it begs the question, it's not really the  
19 level of the surcharge that would justify the Provincial  
20 Government's complaint, it's that a surcharge is being  
21 directed at it, to recover costs that are more properly  
22 directed to the Federal Government.

23           A surcharge is either justifiable or it's not.

24           MR. ROBERT MAYER: When you say that,  
25 Mr. Williams, I think we've had some evidence that there may



1 well be a significant Provincial responsibility in the  
2 community of Brochet because of these -- what I understand to  
3 be a majority of non-status people residing there.

4 MR. BYRON WILLIAMS: And I'll accept that,  
5 Mr. Chair. I guess the point I -- or Mr. Vice-Chair -- I  
6 guess the point I was trying to make, though, is  
7 analytically, let's accept it for that one (1) community.

8 Does that justify a surcharge on the  
9 Provincial Government and other communities, or at least a  
10 surcharge of that magnitude, given that the primary  
11 responsibility here is the Federal Government?

12 And again, I -- I don't have solutions to --  
13 to the panel, but I'm raising concerns and matters that are  
14 of deep concern to my clients on this subject.

15 THE CHAIRMAN: Thank you, Mr. Williams, for  
16 that explanation. Does it sort of go or follow that same  
17 train of thought that -- as no doubt most people in this room  
18 are aware, I spend a great deal of time in the public service  
19 and trying to ensure that we had appropriate cost centres so,  
20 do I take it by moving this thing down that stream, that we  
21 are charging a surcharge, for example, to the Royal Canadian  
22 Mounted Police Detachment that may be in one (1) of these  
23 communities, and loading on to them some of the costs of  
24 supplying electricity in that community, when it is indeed  
25 probably more appropriately charged to INAC?

1                   MR. BYRON WILLIAMS:   That's -- that's why I  
2 don't have any magic solutions for you, Mr. Chairman.  
3 That's -- my clients have a lot of analytical difficulties  
4 with this solutions. That's certainly one of their concerns.  
5                   Now, I guess the answer to that might be that,  
6 perhaps the RCMP is -- represents the -- is paid from  
7 consolidated funds, where their funding comes from  
8 consolidated funds.

9                   Like the -- like Health and Welfare and like  
10 INAC. I guess that might be the answer, but I -- I think  
11 that is a -- a big concern, and I think, analytically, we're  
12 -- in the old days, when there was a single payer, INAC, or  
13 only a few payers, and where the costs were smaller, this  
14 wasn't such a concern.

15                   But as the costs of providing service to this  
16 community grows higher and the -- and the -- INAC at least  
17 has insulated itself to a certain degree from payment, the --  
18 the problem with the surcharge becomes more problematic.

19                   And I wish that I had a magic answer to you,  
20 but if I was a nimble lawyer for the province of Manitoba or  
21 for MKO or for -- for others, I certainly would have concerns  
22 that they're being asked to pay costs that are not properly  
23 attributed to them.

24                   So, that's the advice that we can -- we -- we  
25 can give the panel on that point. And I note just from a --

1 a matter of efficiency, and I think Mr. Wiens commented at  
2 this at Pages 66 and 67, and he -- he noted that capital  
3 contribution or operating grants would be more efficient from  
4 a -- a rate perspective than a surcharge.

5 And the panel shouldn't despair, because --  
6 especially because their questions have helped me to -- to  
7 move along in my -- my argument a fair degree.

8 We've talked about a number of the principles  
9 that my clients are applying to this Application, that in  
10 terms to the -- in terms -- and with regard to the three (3)  
11 kind of scenarios before you, the Hydro proposal, the OEMI  
12 proposal and CAC/MSOS Exhibit 6.

13 And I want to turn now to kind of trying to  
14 apply those principles to the specific proposals. What -- as  
15 I do so, the one (1) kind of issue that I mention a lot in my  
16 opening statement and during cross-examination, which I  
17 really haven't covered in these submissions, relates to  
18 another objective of just stopping the bleeding, stopping the  
19 kind of the quagmire -- quagmire that Mr. Peters spoke of in  
20 his comments, this triangular dispute between the Federal  
21 Government, the First Nations and Hydro about who should pay  
22 what.

23 And I want to turn first in terms of the  
24 scenario, so I'm at part 4 of my argument, to the proposal of  
25 OEMI.

1                   And the pros of this proposal, the positives  
2 of this proposal that my clients see is twofold. One (1) is  
3 that if accepted, it would at least for in the future, seem  
4 to help to end the dispute between the Feds and Hydro and  
5 MKO, because it would be asking grid customers to assume all  
6 that responsibility. So, I guess you could look at that as a  
7 two (2) edged sword, but at least from one (1) side that's a  
8 positive.

9                   And the other, and I think this is what my  
10 clients consider to be a more positive aspect, is that the  
11 actual rate structure proposed, there's some innovative ideas  
12 in there, and I spoke of that earlier, in terms of inv --  
13 inverted rates and the appropriate block structure, so we  
14 recommend that for the Panel's consideration.

15                   The problem with the OEMI proposal, from my  
16 client's perspective, is the unacceptable high level of costs  
17 that it's imposing on the grid, a grid which my clients are  
18 concerned is starting to run on empty.

19                   And it's important -- it's not -- we're not  
20 just talking the -- the kind of current operating costs rep--  
21 represented in the \$9.5 million dollar cost of service study,  
22 there's other costs that have not yet been included, and my  
23 clients are concerned that the grid customers could be on the  
24 hook for them as well, the costs of depreciation, costs of  
25 soil remediation, what's going to be done with the past

1 deficit and the unpaid bills.

2           So, it -- it's more than a subsidy of \$7 or \$8  
3 million dollars, there's a lot more at stake than here.

4           The -- my client's other concern with the OEMI  
5 proposal, especially as it relates to the third block  
6 structure, and the rates charged at that level, the -- which  
7 are prop -- you know, attempt to be close to variable rates.

8           And we consider -- my clients consider that  
9 too great of a deviation from their objective of cost  
10 causality, and they don't consider that those are  
11 appropriate.

12           So, the Hydro proposal, just turning to -- to  
13 that from my client's perspective, the strength of that  
14 proposal, of which they're appreciative, I think there's  
15 three (3), one (1) is that it pro -- provides the maximum  
16 protection for grid customers of the three (3) scenarios  
17 before the Panel.

18           A second is that for residential customers  
19 using less than two thousand (2,000) kilowatt hours, it  
20 ensures them rates which are either the lowest or the second  
21 lowest in Canada, up to that consumption level.

22           And it does the same for general service  
23 customers until they get over that two thousand (2,000)  
24 kilowatt hour threshold, so that's a positive.

25           Another positive is that it enables a much

1 lower surcharge than set out in the CAC/MSOS Exhibit Number  
2 6.

3           A final positive, at least a theoretical  
4 positive of the Hydro proposal, is that it provides at least  
5 the sense that we're making INAC pay, and that's at least  
6 theoretically satisfying.

7           Of course that only applies to the extent that  
8 INAC is truly paying. And we've -- we've gone through this  
9 before Mr. Chair -- Chairman, so I don't want to belabour it,  
10 but Mr. Mills' testimony during the status update, he talked  
11 about the contribution for -- that flowed through to diesel,  
12 or to -- to these communities in terms of their electricity  
13 rates, was based upon a -- a model, not upon the actual  
14 costs. And that the -- and that the First Nations were  
15 actually receiving only a percentage of their actual costs,  
16 and that takes place at Page 4352 through 4356 of the  
17 transcript.

18           He also talked about how there was little  
19 prospect for growth in terms of the INAC model, or the -- or  
20 the -- and that's at Page 4361, in terms of the contribution.

21           And he talked about a need at Page 4373 for  
22 the policy to be revisited. Clearly based upon the testimony  
23 of Mr. Mills, the money's not flowing through to achieve that  
24 initial -- the original purpose that the surcharge was in --  
25 designed to do and so I guess one of the problems for this

1 panel is whether they think the surcharge can be justified.

2           If it's apparent, and it seems to be apparent  
3 from my client's perspective, that it's either funding  
4 envelopes that the First Nation are being asked to contribute  
5 from, whether it's social housing or social assistance or  
6 economic development, and we may say that that's none of our  
7 business but if we go back to the original intent of the  
8 surcharge and -- I don't think that that was the original  
9 intent.

10           The other problem from my client's perspective  
11 with the Hydro proposal is that they -- my clients envision  
12 coming back here five (5) years from now with this issue  
13 still unresolved. We asked Mr. Warden during cross-  
14 examination whether he could guarantee that we wouldn't be  
15 back in a year and -- or -- and the answer was no and of  
16 course not, that was an honest and accurate answer.

17           There's -- there's a real prospect that the  
18 bleeding may not stop and that's apparent at page 390 of the  
19 transcript. So, again, from my clients' perspective that's  
20 unsatisfactory.

21           What about the scenario set out in CAC/MSOS  
22 Exhibit 6 or the series of scenarios?

23           Well, the positive is that it certainly  
24 provides more protection to grid customers than the OEMI  
25 proposal and from my clients' perspective, it avoids an

1 unfair treatment of First Nations and it doesn't sink into  
2 the quagmire of the triangular debate between the First  
3 Nations, the Federal Government and Hydro.

4                   The other positive from my clients'  
5 perspective, it may not be positive from others, is that  
6 surcharges of that magnitude might act as shock treatment for  
7 the Federal Government. At the end of the day, those funds  
8 do come from the same source, consolidated funds, subject to  
9 check, and it may send a message to the Federal Government  
10 that it's important to resolve this stalemate through  
11 negotiations with Hydro and with the First Nations.

12                   What are the weaknesses? There are many. One  
13 is, and I think Mr. Mayer, the Vice Chair, spoke of this when  
14 this was originally presented to the -- to the -- to the  
15 Hydro panel and he -- he wondered whether it let Hydro too  
16 far off the hook.

17                   Another, and Mr. Chairman, you spoke of this  
18 yourself a few minutes ago, does it invite legal action by --  
19 by other parties, by the RCMP, by Health and Welfare Canada?  
20 More importantly, does it defer -- deter justifiable usage.  
21 So, again, it's not without its problems.

22                   From my clients' perspective, they're not  
23 satisfied with any of these alternatives. The one they find  
24 least unsatisfactory is the one set out in CAC/MSOS Exhibit  
25 number 6. They -- they don't believe that grid customers



1 should be primarily on the hook for the shortfall in these  
2 communities and they're also uncomfortable with the impact on  
3 First Nations of the Hydro proposal.

4                   So, hopefully, I can -- Mr. -- Mr. Chairman,  
5 just in terms of our recommendations, I think there --  
6 hopefully my deliber -- my comments have given you some  
7 insight to them but what my clients are proposing in terms of  
8 issue number 1 is a block structure based on a scenario  
9 similar to that set out in CAC/MSOS Exhibit 6 with -- for  
10 residential, a first block of fifteen hundred (1500), a  
11 second block up to two thousand (2,000) kilowatt hours and a  
12 third block comprising the rest.

13                   The block sizes for general service are set  
14 out on the sa -- on the front page of diesel scenario being  
15 two thousand (2,000) for the first block, a thousand for the  
16 second block and a third block consisting of the -- the rest.

17                   In terms of rates for tho -- that first block,  
18 my clients would propose the blended figure, which appears in  
19 diesel rate scenario 5, which is the five point two eight  
20 (5.28) cents, and a second block sent -- set at eight (8)  
21 cents, for the purposes of mitigating rate shock. And the  
22 third block set at seventy-nine (79) cents.

23                   For the general service, my clients would  
24 recommend a first block, again with the blended figure, which  
25 isn't properly on the record, but being zero five point nine

1 two (05.92), a second block sent -- set at eight (8) cents,  
2 and a third block at seventy-nine (79) cents.

3           They would recommend that the full costs be  
4 paid by the Federal and Provincial Governments, and the First  
5 Nations be considered as part of the general service  
6 classification.

7           In terms of determining the level of subsidy,  
8 from the Federal Government, my clients would recomm --  
9 recommend to you, something that's based on costs as based on  
10 a -- costs -- generation as a percentage of total capital,  
11 the 43.9 percent figure provided by Mr. Wiens.

12           And roughly that would provide a subsidy  
13 through -- to be collected through a surcharge in the range  
14 of somewhere between \$3.7 and \$4 million dollars, with the  
15 remainder of that subsidy to be collected from the grid.

16           And again, that would be in the range of \$1.8  
17 to \$2 million dollars, with a rate impact of .21 percent.

18           The difficult part of my client's proposal,  
19 apart from the legal implications, is just the magnitude of  
20 the surcharge, which -- which would be very significant, and  
21 that would be set down. You're talking about a surcharge in  
22 excess of four dollars (\$4).

23           Mr. Chair, and, Members of the Panel, the  
24 other concern my clients have asked me to express is -- is  
25 that whatever scenario this Panel accepts, there are likely

1 to be material rate impacts for certain customers, and it's  
2 important that those -- that the impact be communicated to  
3 clients or to consumers to ratepayers, whether they be  
4 residential or general service or First Nation, in a comp --  
5 as comprehensive of a fashion as possible.

6           And so that's something that the -- Hydro --  
7 my clients -- that we'd submit that the Panel should be  
8 recommending that Hydro be -- make an extensive communication  
9 effort, whatever rates are imposed.

10           So end my extremely lengthy comments, I can  
11 indicate to the Panel two (2) other things, that my clients  
12 will be applying for costs. The costs they will seek will be  
13 in no way -- they will not match the estimate that they  
14 originally submitted to this Panel, there's a number of  
15 reasons for that, and those would be det -- detailed in my  
16 client's written submissions.

17           We -- I'm not sure that my clients will seek  
18 to recover all their costs associated with this Proceeding,  
19 they certainly will seek to recover their expert costs and a  
20 -- a portion of the legal fees, but perhaps not all.

21           And, Mr. Chairman, just on behalf of my  
22 clients, I hope I don't get weepy, I will. Anyways, I can't  
23 finish that, we'll say that to -- good luck in your new  
24 career.

25           THE CHAIRMAN: Thank you, Mr. Williams, I want

1 to thank you and your clients, for the thought process that  
2 you entered into in putting your final submission forward  
3 today.

4                   No doubt as you started off, this is a  
5 difficult Application, it's difficult from a number of  
6 perspectives, and I want to sincerely thank you and your  
7 clients for taking the time and looking at the seriousness of  
8 the Application, and trying to give the Board some glimmer of  
9 hope with respect to resolving the problem in the future, and  
10 for that I am sincerely thankful.

11                   MR. ROBERT MAYER: Mr. Williams, I -- I think  
12 in the end you came back to a surcharge, and I thought I  
13 heard you quoting Mr. Wiens with approval, about a capital  
14 contribution and operational grants?

15                   MR. BYRON WILLIAMS: Yes, and that's actually  
16 an ommi -- omission on my part. For the existing costs, Mr.  
17 Mayer, I don't think that there is many realistic options but  
18 a surcharge, unless there's some kind of negotiation that  
19 takes place outside of this Proceeding.

20                   In the future, and it's certainly my client's  
21 strong recommendation, future capital expansions should be  
22 funded by way of some form of capital contribution, either up  
23 front or determine the costs and have it made on a time  
24 payment plan.

25                   So, and I -- that's a -- a key part of my

1 client's recommendations that I omitted, they're -- they're  
2 not happy with the surcharge, but given you know, you can't  
3 rewrite history, you can't go back and collect an up front  
4 capital surcharge for expenditures which have taken place  
5 over the last decade.

6 MR. ROBERT MAYER: Mr. Williams, I just want  
7 to pursue this for a minute, never mind the capital for a  
8 moment, but it strikes me that this Government surcharge is a  
9 very cumbersome way to collect what you estimate on scenario  
10 5, \$3,719,382 dollars.

11 What in principle, is wrong with -- rather  
12 than going through the surcharge -- wait I'll call it the  
13 surcharge scam of charging the RCMP and the nursing station  
14 and Health and Welfare Canada, and to some extent the  
15 Frontier School Division, X number of dollars over and above,  
16 based on their Hydro use.

17 What, in principle, would be wrong if we say  
18 that there's requires -- we require a Government subsidy of  
19 \$3,719,382 dollars? We heard at some point a break down of  
20 roughly eighty-seven (87) to whatever the difference between  
21 eighty-seven (87) and a hundred (100) is, I think that's 13  
22 percent breakdown as between the Feds and the Province.

23 What would be wrong with just basically  
24 assessing, or at least attempting to negotiate, although  
25 because they can't assess, a payment based on their -- on

1 Hydro's costs, and its IFFs and all that other stuff, and  
2 say, okay, we need from each of you, X number of dollars per  
3 month. If we go beyond that at the end of the yea -- if we  
4 need more than that at the end of the year we'll send you a  
5 bill, if we -- got too much, we'll send you a ref -- we'll  
6 send you a cheque?

7 In principle, what's wrong with that? And  
8 isn't it more efficient?

9 MR. BYRON WILLIAMS: My clients would be  
10 supportive of just about anything besides the surcharge and  
11 that in principle that's great, except for how do you collect  
12 it? You can't impose it upon -- on anyone to make a  
13 contribution in that way.

14 MR. ROBERT MAYER: I -- we -- I realize we  
15 can't, but I distinctly heard the words mediation escape Mr.  
16 Smith's lips sometime during the course of these Proceedings.

17 MR. BYRON WILLIAMS: My clients would support  
18 something like that, or similar proposals.

19 I think they -- what's important though, and  
20 -- and perhaps this -- perhaps a push that this Panel can  
21 give is a rate structure that they consider appropriate, a  
22 block structure they consider appropriate. And also a sense  
23 of the degree of obligation of -- of the -- of the grid, and  
24 the Federal -- Federal Government, based upon kind of -- the  
25 Federal Government based upon the four (4) C's of which I

1 spoke previously.

2           But at the end of the day, you -- you know,  
3 I'm not sure I'm speaking with instructions about this, but  
4 Ms. Desorcy will throw something at me if I'm not.

5           My clients certainly would have no objection  
6 to this decision coming down in -- in two (2) parts, for  
7 example, for the Panel kind of determine the rate structure  
8 and the kind of -- what they would consider to be just and  
9 reasonable rates, and then putting some scenarios to the  
10 parties, and saying, we're inviting comment.

11           And you know, maybe that would encourage  
12 parties to -- you know, inviting comment within thirty (30)  
13 days, and maybe that would encourage parties to come up with  
14 other more creative solutions, outside the structure -- the -  
15 - the limitations of the rate structure.

16           Mr. Peters will have to give you legal advice  
17 on whether that's appropriate, but this Panel, through the  
18 surcharge, is being asked to do something that it's next to  
19 impossible to do equitably. And -- and that's why you know,  
20 it's -- it's a function that's -- I guess my clients are glad  
21 you're making that decision then and not them.

22           THE CHAIRMAN: And maybe, Mr. Williams, I used  
23 the wrong date. But, Mr. Williams, in the consideration of  
24 your final submission, did you chat to your clients about not  
25 only the issues that you just put on the record, but the fact

1 is we have a significant liability that is still outstanding,  
2 that is growing and Mr. Peters mentioned it in his final  
3 submission, the 18 million plus approximately three (3) more  
4 million.

5                   Did they give you any advice with respect to  
6 that matter?

7                   MR. BYRON WILLIAMS: I think my clients would  
8 apply the same principles to the -- the deficit in terms of  
9 responsibility to it -- for it. The -- in -- in terms of the  
10 unpaid bills, Mr. Chairman, I'd like to and I could undertake  
11 to provide, given the invitation of Mr. Peters, just some  
12 written comments.

13                   I don't really have instructions on that and  
14 maybe that may or may not be appropriate but certainly, my  
15 clients are certainly open to -- to doing that if -- if that  
16 would be appropriate.

17                   THE CHAIRMAN: Mr. Williams, when I joined the  
18 public service a number of years ago, I always tried to guide  
19 my activities of not leaving to someone else to resolve  
20 problems that I should have resolved myself and given that  
21 this is sitting there, I know the Application and no, Hydro  
22 hasn't applied for this but it is a significant amount and  
23 indeed, it's -- it's twice the annual expenditures that are  
24 associated with these four (4) communities in generating  
25 electricity power -- electrical power and at some point in



1 time, that issue has got to be addressed.

2                   And I guess the question is, if you have  
3 advice, I certainly from my vantage point, I think the Board  
4 would be interested in hearing it.

5                   MR. BYRON WILLIAMS: Are you interested in  
6 hearing it right now, Mr. Chairman?

7                   THE CHAIRMAN: If you have it, it would be in  
8 fairness to all parties then to hear it.

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10                                   (BRIEF PAUSE)

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                  MR. BYRON WILLIAMS: I guess two (2) points.  
My clients were hopeful at least this piece might be chewed  
off by -- by mediation so that we could -- or they could duck  
and run on it.

                  Mr. Chairman, I guess a couple of additional  
comments. We're looking at substantial rate impacts in terms  
of the current proposal. Things have been allowed to slide  
for a considerable period of time, so I think my clients  
would concur in Hydro's -- at least my understanding of their  
position was let's get -- let's get, kind of, the future  
costs dealt with or the existing costs dealt with before we  
deal with the past.

                  If you chose to deal with the -- with -- with  
the deficit and I'm talking with very limited instructions

1 here, but I think the rate impact for the current year is --  
2 is significant as it is. If you wanted to look at phasing in  
3 additional surcharges over time to recover that, I guess you  
4 could.

5                   The advice I would give to the panel is almost  
6 more legal, frankly, than policy-wise. I recall a long time  
7 ago, Mr. Holly was Counsel with the -- with the CMMG. He --  
8 he was representing CAC/MSOS but the -- at issue was the  
9 Board came down with a rate that had not been applied for by  
10 Manitoba Public Insurance.

11                   And prior to making its final determination, I  
12 believe it gave an opportunity for Counsel for the various  
13 parties to make representations on that, Mr. Chair, and that  
14 certainly would be something that I think my clients would  
15 recommend in this because that issue of the deficit, while it  
16 was canvassed, wasn't really extensively debated and I don't  
17 think that this panel, based upon the debate before it, has  
18 the best information to -- to make that determination.

19                   We'd certainly be open to, at the risk of  
20 running up bigger bills, coming -- making some sort of  
21 representations on that but I think in fairness to all  
22 parties, it's -- it's not enough to address it through  
23 closing argument when we don't have a very good record, sir.

24                   THE CHAIRMAN: Thank you, Mr. Peters -- or Mr.  
25 Williams. I wasn't trying to place you or your clients in an

1 awkward spot. I just wanted to get a sense of whether or not  
2 that matter had been discussed and I appreciate that.

3 Ladies and gentlemen, the next party that we  
4 wish to hear from is Indian and Northern Affairs Canada. We  
5 have Mr. Smith QC, as well as Ms. Anderson here. Mr. Smith,  
6 are you ready, sir?

7 MR. RANDAL SMITH: Yes, Mr. Chairman, and I  
8 have asked Mr. Baron if he might distribute a -- a written  
9 submission before we get started, then we'll switch places  
10 with Mr. Williams.

11 THE CHAIRMAN: Thank you.

12

13 (BRIEF PAUSE)

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15 THE CHAIRMAN: Mr. Smith, for the sake of the  
16 record, may I suggest we receive this material as INAC  
17 Exhibit Number 4?

18

19 --- EXHIBIT NO. INAC-4: Material submitted by Mr. Smith.

20

21 MR. RANDAL SMITH: Thank you, Mr. Chairman.

22 THE CHAIRMAN: When you're ready, sir.

23

24 MR. RANDAL SMITH: Yes, thank you,  
25 Mr. Chairman. As you'll note from the written material, we  
have provided it to you because it's quite legalistic. There

1 are quite a few cases cited, there are statutes cited and we  
2 have attached those for your ease of reference, to the  
3 written submission.

4                   There was also today a -- a late, additional  
5 issue that arose in our discussions internally at Justice  
6 Canada, and we have added to the back of the booklet a case  
7 that I'll refer to during my submission as well as the  
8 Constitutional Questions Act which we'll refer to briefly as  
9 well.

10                   Now, it -- it'll come as no surprise that our  
11 submission will be going to the issue of jurisdiction and I  
12 apologise if I'm, as some say, arguing through an open door.  
13 It's my first time here, as you know, and I'll make my points  
14 and if you've heard them before, well, forgive me for that,  
15 but I'll try and be brief.

16                   To say firstly the case of MKO INC against  
17 Manitoba Hydro Electric Board from 1992, the jurisdiction of  
18 the Board is expressly limited by statute to the fixing of  
19 rates and nothing more.

20                   As per Chief Justice Scott in that Decision  
21 which, as I mentioned, is attached there for your reference,  
22 it must be emphasised, and this is quoting from Justice --  
23 Chief Justice Scott:

24                   "It must be emphasised at the outset that  
25                   the jurisdiction of the Board is expressly

1                   limited to the fixing of rates, see Section  
2                   2(iv) of the Act, Section 26(I) of the  
3                   Crown Corporations public review and -- and  
4                   Accountability and Consequential Amendments  
5                   Acts makes it clear that rates for service  
6                   in the case of Manitoba Hydro simply means  
7                   the prices charged by that Corporations  
8                   with respect to the provision of power"

9                   Now Section 84(I) of the Public Utilities  
10                  Board Act, and I'll paraphrase it, says:

11                   "No change in any existing rates shall be  
12                   made by any owner of a public utility until  
13                   the change rates or new rates are approved  
14                   by the Board and the Board may herein  
15                   determine whether the proposed increases  
16                   are just and reasonable."

17                   So, there's that phrase that we've all been  
18                  bouncing around, and for my own benefit, I had to find out  
19                  exactly where that came from, and there -- there we are.

20                   In 84(ii) the burden of proof to show that any  
21                  such increases are just and reasonable is upon the owner  
22                  seeking to make increases and of course, in this case, that's  
23                  Manitoba Hydro who has the burden to show that the proposed  
24                  increases are just and reasonable.

25                   Now, I wrestled with this question,

1 Mr. Chairman, and -- and I'll -- I'd like to explore it with  
2 you. Does this mean that the Public Utilities Board is to  
3 determine whether the amounts of the proposed rates are just  
4 and reasonable, or does it mean determining whether the  
5 amounts and how those rates can best be recovered by Manitoba  
6 Hydro are just and reasonable?

7                   Now, we submit that it's the former  
8 interpretation that's correct, that it's just the amounts  
9 that the Board is to determine to be just and reasonable.  
10 But Board Order 76/03 on page 4 of that Order, lines 2 and 3  
11 and I'll quote from it suggests that it's the latter  
12 interpretation that the Public Utilities Board is proceeding  
13 with. In addition, and I quote,

14                   "In addition to the examination of the  
15                   costs, parties may advance evidence and/or  
16                   submissions on how approved costs can best  
17                   be recovered by the Utility."

18                   In our -- in INAC's respectful submission if  
19 how to recover costs includes who should pay those costs,  
20 this appears in our view to exceed the Board's jurisdiction  
21 to fix prices. If upon its further reflection, the Board  
22 concerns itself only with approving just and reasonable  
23 rates, in other words just the amounts proposed by Manitoba  
24 Hydro, then we defer of course to the MKO position 'cause  
25 they have that covered.

1                   If however the Board wishes to venture into  
2 and either directly or indirectly bless the methods that  
3 Manitoba Hydro may use to recover those rates, then INAC  
4 submits that billing it for any part of the diesel hydro  
5 charges and in particular the so called surcharge, is not  
6 just and is not reasonable on the grounds that follow.

7                   Firstly, it's our contention that Provincial  
8 Boards such as the PUB do not have jurisdiction to make  
9 orders against INAC. And then you'll see that we've set out  
10 some provisions from the Interpretation Act that we've  
11 included and also from the Public Utilities Board Act on page  
12 4, subsections A, B and C. And A, B and C refer to the  
13 Government of Manitoba, the Municipality of the Province,  
14 entities, Public Utilities within the jurisdiction of the  
15 Legislative Authority.

16                   And it's our contention that clearly in  
17 reading those sections, the intent of the PUB Act is to limit  
18 its application to all entities under Provincial jurisdiction  
19 only. I don't think any of this is earth shattering or any  
20 revelation but for my benefit it's getting me to where we  
21 want to go.

22                   Indeed even attempts by a province through its  
23 legislation to include the Federal Crown in its scope have  
24 failed. And we've cited the case from the Supreme Court of  
25 Canada of Gauthier against Canada. An old case from 1918

1 which denied Provincial competence to impose contractual  
2 liability upon the Crown and Right of Canada notwithstanding  
3 that Provincial Legislation in that case changed the common  
4 law and purported to embrace the Crown in that chain.

5           Now if in the present Diesel Rate Hearing, the  
6 Public Utilities Board attempts to use its powers under  
7 Provincial Legislation, to enquire into matters concerning  
8 the operation and management of a Federal entity such as INAC  
9 which operates under the authority of a Federal statute,  
10 being the Department of Indian Affairs and Northern  
11 Development Act, the Supreme Court of Canada has stated that  
12 such an enquiry is beyond the jurisdiction of the Provincial  
13 entity.

14           And the Provincial entity cannot enquire into  
15 the operations of a Federal department such as INAC. And  
16 that comes from the more recent Supreme Court of Canada case  
17 of Keable and Canada from 1979. Now in that Keable case a  
18 Provincial Commission of Enquiry was setup to investigate  
19 certain specific crimes allegedly committed by the police,  
20 including the RCMP.

21           The Supreme Court of Canada held that such a  
22 Provincial commission which in our contention, is similar to  
23 a Provincial board, cannot be empowered by a province to  
24 investigate a Federal institution such as the RCMP, its  
25 services, rules, policies, and procedure so as to make



1 recommendations on changes to be made to those rules and  
2 methods.

3                   The Supreme Court disapproved of the intrusion  
4 of a Provincial authority into the internal workings of an  
5 agency within Parliament's authority, in that case, the RCMP.  
6 Therefore, Mr. Chair, to the extent that the Public Utilities  
7 Board is inclined to delve into the inner workings of INAC  
8 regarding its funding, its formulas, evidence that you've  
9 heard and that has now been incorporated from the status  
10 update Hearing, to the extent that you're inclined to delve  
11 into those types of issues, the inner workings of INAC, the  
12 Supreme Court makes it clear that the Board must resist the -  
13 - the temptation to do so. And you may want to see, as well,  
14 the case of Her Majesty in Right of Alberta versus CKC from  
15 1978 which to -- to phrase -- to paraphrase a portion of the  
16 decision:

17                   "A provincial legislature cannot, in the  
18                   valid exercise of its legislative power,  
19                   embrace the Crown in right of Canada in any  
20                   compulsory regulation."

21                   Now, we point out that the law may be somewhat  
22 different and we're taking no position on this at the moment,  
23 but it may be somewhat different vis-a-vis Federal users of  
24 diesel generated hydro-power such as the RCMP. If such  
25 Federal users consume the diesel generated hydro-power, they

1 probably have little choice but to pay the approved prices.  
2 However, since we do not represent the RCMP, as I said, we've  
3 taken no position today on that.

4 I will, however, allude to that point in the  
5 fifth -- fifth ground that is the late edition that has some  
6 relevance to that issue, as well. In this case, as you know,  
7 INAC is not a user, as we have been using that word, of the  
8 diesel generated power, thus, any attempt to make an order  
9 directly or indirectly against INAC, we contend, is outside  
10 the scope of the legislative scheme, being the Public  
11 Utilities Board Act, et cetera.

12 Now, we referred in our cross-examination of  
13 the Hydro panel to Manitoba Hydro Act Regulation 186-90 and  
14 the one section that caught our attention in there was  
15 Section 15 sub 1 which stated that the user -- the user shall  
16 pay Manitoba Hydro for power supplied at the rates, and I'm  
17 paraphrasing here, for the class or classes of service  
18 supplied to the user.

19 Now, when we read that, our conclusion was,  
20 well, why would that be in there if it doesn't mean what it  
21 says? If it didn't -- if it's not the intent that the user  
22 of the hydro pays for the hydro being used, then why is that  
23 regulation even there?

24 Now, I understand Mr. Warden's point today  
25 that there are some occasions when it's not the user who

1 actually pays the bill but by agreement someone else, a third  
2 party, pays the bill for that user and he gave an example of  
3 apartment block owners paying hydro for their tenants because  
4 that's the agreement that's been made by the parties  
5 involved.

6                   It's our contention that that would have been  
7 possible here too but there was no agreement made in November  
8 of 2000 between Manitoba Hydro and Canada that Canada, INAC  
9 would now since November 2000 pay the First Nations' hydro  
10 bill. So that's where the difference lies between Manitoba  
11 Hydro's position and INAC's position is, sure, you can change  
12 Section 15 of the regulations by agreement, but if you don't  
13 have that agreement, then Section 15 applies and it's the  
14 user who pays.

15                   INAC is not a user, therefore, INAC submits  
16 that Manitoba Hydro is in breach of its own regulation by  
17 billing INAC for any surcharges related to hydro-power used  
18 by the First Nations.

19                   THE CHAIRMAN: Mr. Smith, I'm just trying to  
20 follow your train of thought. If I go back to prior to 1987,  
21 who was the user then?

22                   MR. RANDAL SMITH: Prior to 1987 the user was  
23 the First Nations.

24                   THE CHAIRMAN: And did INAC have any  
25 responsibility then as a user or as the person who was paying

1 the obligations at that time?

2

3

(BRIEF PAUSE)

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MR. RANDAL SMITH: The surcharges, as we understand it, was instituted by Manitoba Hydro in 1984 and was paid on schools and teacherages by INAC for the next three (3) years until the -- the -- those accounts were transferred to the First Nations in 1987.

10

THE CHAIRMAN: What I'm trying to clarify in my own mind is who had the -- who owned the facilities and that prior to, whether it was '84 or '87, in those communities? Was it the First Nations or was it INAC?

14

15

(BRIEF PAUSE)

16

17

MR. RANDAL SMITH: Without being able to get into the ownership issue, we don't have evidence on that before you, as you know, and it's outside of the -- my -- my abilities to give you the evidence at the moment, but, there is no doubt that from 1984 to 1987 with by -- with the -- with the express agreement between Hydro and Canada, Canada was paying the surcharge and then with the express agreement of Hydro and INAC, in 1987 those accounts were transferred to the First Nations who, as we know, paid the surcharge for the

25

1 next thirteen and a half (13 1/2) years.

2 THE CHAIRMAN: And as I understand, that  
3 transfer occurred with some condition?

4 MR. RANDAL SMITH: Well, according to Hydro  
5 there was -- there was some discussion of funding conditions  
6 and, as we know, the funding did come from INAC to the First  
7 Nations.

8 THE CHAIRMAN: And we haven't any evidence  
9 from you to the contrary?

10 MR. RANDAL SMITH: To the contrary, there's no  
11 issue there, no.

12 THE CHAIRMAN: Thank you. Then continue.

13 MR. RANDAL SMITH: Next, we've been somewhat  
14 cheeky in entitling our submission, Contracts from Bygone  
15 Days but Manitoba Hydro is inviting the Public Utilities  
16 Board, in its Application, to examine the original contracts  
17 made with Canada for the purpose of diesel generated hydro to  
18 these four (4) communities.

19 In dealing with a similar contractual issue,  
20 the Manitoba Court of Appeal in Greater Winnipeg Cablevision  
21 versus Public Utilities Board, a copy of which is attached to  
22 the submission, had this to say about the jurisdiction of the  
23 Board to rule on contractual disputes,

24 "The parties asked for ruling on the  
25 general jurisdictional question of the

1 Board's authority. The question is not  
2 academic. It would make a difference to  
3 the disposition by the Board if it were  
4 held to have jurisdiction to examine the  
5 original agreement and to consider the  
6 points raised by Counsel for the Applicant.  
7 The effect of the order being asked for  
8 would be to give the Board jurisdiction to  
9 go back to the original agreement to  
10 determine the bases of the original  
11 charges. The Board would not merely  
12 consider justification for the proposed  
13 increase using the existing charges as a  
14 starting point."

15 The Court continued,

16 "It is my opinion that the Board does not  
17 have the jurisdiction to adjudicate upon  
18 the bases of the original agreement between  
19 the parties as claimed by the appellant."

20 And the Court dismissed the appeal with costs.

21 So, as in our case, it is our submission that  
22 the Board should resist the invitation from Manitoba Hydro to  
23 look at the original agreements that they have placed before  
24 the Board. If the Board decides contrary to the Court of  
25 Appeal decision to comment on the contractual issues between

1 Manitoba Hydro and Canada, it is our position that these  
2 contracts have since been spent.

3           And as was obvious from the cross-examination  
4 that we did, they're spent because they've been overtaken by  
5 events occurring in the many years which have passed since  
6 those original contracts were entered into and, in  
7 particular, it's INAC's position that the original contracts  
8 were replaced in 1987 through novation which is the legal  
9 concept that we submit applies.

10           And while INAC is not asking the Board to rule  
11 on whether a novation occurred in 1987 or not, since it would  
12 be outside of the Board's jurisdiction to do so, INAC wants  
13 the Board to appreciate that there are genuine issues here  
14 that need to be decided by a court of competent jurisdiction.

15           This is not a case of INAC shirking its  
16 responsibility. It's -- it has the formulas in place, the  
17 funding formulas that it uses and it -- it discharges its  
18 responsibilities in that respect.

19           We've set out some information about novations  
20 and we've included a case or two (2) for your reading  
21 enjoyment but we -- as we say, it's really not something that  
22 we want to -- to bore you with at -- at this time. But it's  
23 there for you to consider.

24           The one thing though that we want to come  
25 through loud and clear from our point of view is that, in our

1 view, it was undisputed that all of these diesel generated  
2 hydro accounts in each of these four (4) communities, were  
3 transferred to the First Nations in 1987.

4                   And that was done as part of their move  
5 towards self government and that was documented by Hydro in  
6 an internal memo that's part of our Exhibit 2, I think Page 3  
7 and as we heard from the First Nations representatives  
8 themselves, it was done so they could administer part of  
9 being able to administer their own business affairs.

10                   And it was done at that time with the express  
11 agreement, I believe Hydro said they changed their policy and  
12 we changed our policy -- INAC changed its policy I should  
13 say, and then for, as we know, thirteen and a half (13.5)  
14 years, the First Nations paid the bills including the  
15 surcharge and Manitoba Hydro accepted those First Nations as  
16 their customers no if's, and's or but's there for thirteen  
17 and a half (13.5) years.

18                   I believe Mr. Peters had Canada or INAC paying  
19 for fifteen (15) years but we paid for three (3) and INAC .-  
20 or sorry, the First Nations paid for thirteen and a half  
21 (13.5).

22                   And let's not confuse INAC and the First  
23 Nations. The First Nations are separate independent  
24 entities, they are not part of INAC. There's no agency  
25 relationship, which has been suggested in places, that is an



1 archaic outmoded -- outmoded notion. They are completely  
2 independent of INAC.

3                   And based on that, Canada is still at a loss  
4 to understand how in November of 2000, Mr. Brennan could  
5 unilaterally make a decision and write a letter and change  
6 what had been in place for thirteen and a half (13.5) years  
7 and try to bill Canada directly for the surcharge after that  
8 status quo had been in existence for so long. So, you know,  
9 we take some issue with Mr. Warden saying that that was the  
10 unusual aspect of this particular third-party billing.

11                   Well that wasn't the unusual aspect. The  
12 unusual aspect is that Manitoba Hydro would believe that they  
13 could do something like that without getting the consent of  
14 the third-party who was to be billed; that's the unusual  
15 aspect.

16                   Now last but not least as the grounds for why  
17 the Public Utilities Board should resist the request to in  
18 anyway bless this surcharge being billed directly to Canada,  
19 or at all for that matter, is what we have inserted as an  
20 addendum to the back of our package.

21                   And what -- what is going on here is that it  
22 is anticipated that this surcharge will be challenged in a  
23 court of competent jurisdiction if it -- if it continues, as  
24 an indirect form of taxation and is thus beyond the  
25 jurisdiction of a provincial board or even a province to

1 impose on anyone; whether it's the Federal Government or  
2 anyone at all.

3                   And the case that we have included is also  
4 from the Supreme Court of Canada, where the Province of  
5 Saskatchewan back in the 70's was collecting as part of what  
6 it collected from oil companies, what they called a Royalty  
7 Surcharge. And after analysing what exactly that surcharge  
8 was all about, the Supreme Court says well that .- you can  
9 call it a surcharge if you like, and I'm paraphrasing here,  
10 but what it really is is an indirect form of taxation.

11                   Provinces do not have the power to impose  
12 indirect taxation on anyone. So in that case the surcharge  
13 was struck down as being an invalid exercise of provincial  
14 jurisdiction and the Province of Saskatchewan had to repay to  
15 the oil company in question all of the surcharges that had  
16 ever been paid plus interest.

17                   MR. ROBERT MAYER:   Where -- am I missing .-  
18 am I .- should I be seeing that case here somewhere in this .

19                   MR. RANDAL SMITH:   Mr. Mayer, it should be in  
20 the back of your booklet. It was inserted today after the  
21 binding was done. So we just stuck it in there for your ease  
22 of reference.

23                   THE CHAIRMAN:    It is there.

24                   MR. RANDAL SMITH:   Yeah. The Canadian  
25 Industrial Gas and Oil Limited versus Saskatchewan and -- and

1 -- and --

2 MR. ROBERT MAYER: Am I right in assuming that  
3 was the case that won Allan Blakeney the next election?

4 MR. RANDAL SMITH: Your memory is better than  
5 mine, Mr. Mayer.

6 And, of course, we're not asking the Public  
7 Utilities Board to decide whether the surcharge that Manitoba  
8 Hydro is using is ultra vires the Province of Manitoba or the  
9 Public Utilities Board, but we wanted to make you aware that  
10 this is a consideration that we are wrestling with and it --  
11 it's there as another ground where the surcharge is in  
12 serious question.

13 And because of it being a constitutional  
14 question, we've included the Constitutional Questions Act and  
15 if -- if this becomes an issue for a court then, of course,  
16 we'll have to give proper notice to the Province of Manitoba;  
17 they'll do their thing, we'll do ours then it'll all come out  
18 in the wash.

19 Now, in conclusion, while it is our position  
20 that the Board lacks the jurisdiction to order INAC to pay  
21 for any of the First Nations' hydro bills, we urge the Board  
22 to not find that Hydro's current practice of billing Canada  
23 directly for the surcharge is just and reasonable. If you  
24 were to find that their current practice of billing INAC  
25 directly for the surcharge to be just and reasonable, that

1 would, in effect, be authorizing indirectly what cannot be  
2 ordered directly for all of the reasons that we've been --  
3 been through.

4                   Now, back in 1994 when the Public Utilities  
5 Board made its order 62-94, these First Nations had been  
6 paying the surcharge for some seven (7) years at that point  
7 and they, in fact, continued to pay it for six (6) more years  
8 pursuant to your Order. And after appearing before the Board  
9 in 1993 I believe it was, the RCMP and Health Canada have  
10 also paid the surcharge because they were then, and remain  
11 today, users of the diesel generated hydro. INAC did not  
12 appear at those hearings because it was not a user of the  
13 power and had not been subject to any surcharge at that time  
14 for more than a half a dozen years.

15                   What the PUB approved in 1994, though, was  
16 changed without the authority of the Public Utilities Board,  
17 without the consent of INAC and, in fact, without any  
18 consultations with INAC, by the stroke of Mr. Brennan's pen  
19 in November of 2000 and -- and with that, we take -- we take  
20 exception.

21                   We do have a proposal and it's something that  
22 I've talked to Board Counsel Peters about and I wish that I  
23 could come here today and say that I've received instructions  
24 to submit all of the various issues that we have with  
25 Manitoba Hydro to mediation but we are still waiting for

1 instructions from the client as to whether we can embark on a  
2 mediation process or not.

3           When you do the mathematics as Mr. Mills has  
4 done, the issues that we're talking about between ourselves  
5 and Hydro are somewhere in the neighbourhood of twenty-five  
6 (25) to \$30 million and because of the amount of money  
7 involved, the instructions have to come from a higher place  
8 than what we anticipated and as soon as we have those  
9 instructions, we will be making a proposal with Hydro.  
10 However, the client may say no and that's where it still sits  
11 today, Mr. Chairman but thank you. Those are my comments.

12           THE CHAIRMAN: Thank you for your submission,  
13 Mr. Smith. I know you're in a difficult position because you  
14 don't know whether the answer is going to be yes or no.

15           Do you have any idea when a decision might be  
16 made, that if I was looking at a critical path I would be  
17 able to say this is the time that we expect will be the  
18 demarcation line?

19           MR. ROBERT MAYER: I don't want to hear after  
20 the next Federal election.

21

22

(BRIEF PAUSE)

23

24

25

MR. RANDAL SMITH: Within the next four (4) to

1 six (6) weeks and definitely before the end of the fiscal  
2 year which is March 31st.

3 THE CHAIRMAN: Mr. Smith, does INAC or do you  
4 representing INAC, if the Board accepts your argument today,  
5 your position as you've outlined quite succinctly before us,  
6 if the Board accepts that position and you've also heard Mr.  
7 Williams' submission to this Board.

8 Are you suggesting then, at the end of the  
9 day, that the Board look at your submission and as a result  
10 if we agree with your submission, we then have to redo the  
11 Application if we are to try and maintain some level of  
12 revenue to us at the costs that are determined.

13 Are you prepared for the significant increases  
14 that would be required from the consumers in those four (4)  
15 communities?

16 MR. RANDAL SMITH: Well, we'll defer to MKO  
17 on that issue, Mr. Chairman.

18 THE CHAIRMAN: But you, representing INAC who  
19 has an interest in those four (4) communities, do not have a  
20 position?

21 (BRIEF PAUSE)

22  
23 MR. RANDAL SMITH: INAC will continue to fund  
24 the First Nations according to its policies. I know that's a  
25 partial answer but it's the best we can do.

1 THE CHAIRMAN: I guess, Mr. Smith, to be very  
2 candid with you, if the Board accepts the position that  
3 you've submitted to us, and I'm not taking a position one (1)  
4 way or the other, I'm just trying to get a sense of where we  
5 are.

6 Really, what you're saying to this Board that  
7 you're just going to have to double the revenue requirement  
8 that this Application that Hydro's put forward, is what the  
9 Board is going to have to end up approving if we accept every  
10 position you've offered. Do you understand that?

11 MR. RANDAL SMITH: I do, Mr. Chairman, and as  
12 you've probably noticed it hasn't been INAC's position at  
13 this Hearing to get into the amount. We've gotten in to how  
14 and if that includes who, that the amounts we're not  
15 addressing.

16 THE CHAIRMAN: But at the end of the day,  
17 sir, isn't that what you're telling us that this Board has to  
18 address?

19 MR. RANDAL SMITH: Absolutely.

20 THE CHAIRMAN: Thank you, Mr. Smith. Mr.  
21 Mayer...?

22 MR. ROBERT MAYER: That -- that was a little  
23 too easy. I think I understand what Mr. Williams called the  
24 Constitutional Act of 1867 and I keep referring to as a  
25 British North America Act which probably gives you some

1 indication of when I went to law school.

2 But I recognize Section 91 and the  
3 responsibility of the Federal Government for Indian and  
4 Status People and those lands which I think Her Majesty in  
5 Right of Canada still owns and holds in trust for the -- for  
6 the Indian Bands, its special reserve land.

7 I think what the Chairman tried to say is Her  
8 Majesty in Right of Canada having responsibility for those  
9 People, having responsibility in many cases as we heard  
10 through the presenters, if not, through sworn -- written or  
11 sworn evidence, a number of those communities were, in fact,  
12 moved from where they were originally were and relocated  
13 elsewhere with either the active participation or at least  
14 with the advice and consent of INAC.

15 But you're now going to and I -- and I realize  
16 you're taking instructions, but I want the position clear, if  
17 this Board finds that it is necessary in order for Hydro to  
18 recover its costs and following all the proper regulatory  
19 principles, that we have to smack those First Nations with  
20 the kind of rates that are going to be necessary to recover  
21 not only the .- not only the -- the operational costs, but  
22 the incredible costs of actually putting power generation in  
23 there; then you will remain and INAC will remain silent about  
24 that issue. Am I correct?

25 MR. RANDAL SMITH: Well, without wanting to



1 get into a constitutional law debate, that's certainly beyond  
2 my expertise, although, you know, I've heard it said many  
3 times that it's a division of powers, it's not a division of  
4 financial responsibility.

5           And to have the legislative power over Indians  
6 and lands reserved for Indians does not mean that the Federal  
7 Government has the exclusive responsibility for all matters  
8 financial.

9           Be that as it may, Mr. Mayer, it's also a  
10 matter of how things have evolved from the times when INAC  
11 Canada was all things for all reasons, to the present day of  
12 self-government and independence and they have Mr. Anderson  
13 representing their interests, INAC has Justice Canada  
14 representing its interests.

15           INAC is a funder. It funds. It provides  
16 funds for the First Nations to do what they're approved to  
17 do. What they are doing as First Nation governments.

18           MR. ROBERT MAYER: All right. It seems -- it  
19 seems to me my last line was to ask a question. You're  
20 basically telling us, however, you're prepared to stand by  
21 and do nothing if, in fact, we find it necessary to  
22 significantly increase the cost to First Nations?

23           MR. RANDAL SMITH: We have no position on  
24 that.

25           THE CHAIRMAN: Thank you -- thank you, Mr.

1 Smith and Ms. Anderson, it was nice to meet you and thank you  
2 for your contribution.

3 Ladies and gentlemen, may I suggest that we  
4 stand down for a small break and to give us -- some of us the  
5 opportunity to try to move around and others to use the  
6 facilities but I would ask everyone to be back in their seats  
7 so we can turn it over to Mr. Anderson at quarter to 4:00.

8

9 --- Upon recessing at 3:35 p.m.

10 --- Upon resuming at 3:47 p.m.

11

12 THE CHAIRMAN: Ladies and gentlemen, if I  
13 may, I'd like to call the proceeding back to order. Mr.  
14 Anderson, are you ready to submit the position of MKO?

15

16 FINAL SUMMATION BY MR. MICHAEL ANDERSON:

17 MR. MICHAEL ANDERSON: I am, Mr. Chair, thank  
18 you.

19

20 I notice that everyone has been talking in  
21 terms of retirement and so forth in examining this particular  
22 proceeding. As all -- everyone, of course, I wish you the  
23 best in your future endeavours. I'm empathetic to Mr.  
24 Williams' considerations about his case and I have to confess  
25 that, in terms of our efforts on this proceeding, those sorts  
of thinking about, you know, the future because of the

1 outcome and significance of what we're recommending has  
2 weighed heavily on my mind.

3           This is a very important case with very  
4 complex issues that Mr. Williams has, in his own words,  
5 described as a mess with multiple parts. But it is a mess  
6 that the Board is charged and being requested to sort out, to  
7 some extent, within its authority. And certainly our -- all  
8 of our intentions is to arrive at a resolution to the issue.

9           In terms of MKO's perspective on this and view  
10 in -- as an organization, we've mentioned previously that MKO  
11 is a solution-driven organization in its root. While this is  
12 a quasi-judicial tribunal with a somewhat adversarial tone  
13 from time to time, it's managed in fo -- in the intent of  
14 proceeding with the gathering of evidence and information and  
15 making a decision that, in the end, is in the public  
16 interest.

17           All of MKO's work and its activities take the  
18 similar approach in terms of the interests and well being of  
19 MKO First Nation members. I'd like to comment by saying  
20 that, of course, every MKO First Nation member who is served  
21 by electricity, that we're aware of, is a M -- is a Manitoba  
22 Hydro customer, including those on the grid.

23           So the discussion about the transfer of costs  
24 and surcharges and shortfalls and stranded costs and how  
25 that's all dealt with is -- weighs heavily on us in terms of

1 our other customers that are not within these four (4) diesel  
2 communities.

3                   So I would like to provi .- I wanted to  
4 provide that bit of background in terms of the things I'm  
5 about to say. The successes of that approach of course are  
6 in the Awasis Child and Family Caring Agency that MKO began  
7 in the 1980's. Recently we're very -- we're very proud to  
8 have participated in the development jointly of legislation  
9 in the Province of Manitoba to provide a clear authority to  
10 these agencies in Northern Manitoba.

11                   Our 1995 submission to the Royal Commission of  
12 Aboriginal Peoples was -- was called in printing The Path to  
13 Keewatinook Ininev Okimovin and I'm pleased to say as our  
14 name change indicated that we've fulfilled that promise too.  
15 So several years after are RCAP (phonetic) submission on a  
16 pathway to doing it, amended our constitution and changed our  
17 name and the proceeding along the lines and desire's of our  
18 Chief's and people.

19                   So our thinking here is no different. But the  
20 issues are complex and our desire to resolve them is there.  
21 It had occurred to us while we were thinking about this in --  
22 in that we represent thirty (30) First Nations in the  
23 northern most part of Manitoba whose traditional territory  
24 covers three quarters (3/4) of the province in terms of its  
25 land mass and also parts of Ontario, Saskatchewan, Northwest

1 Territories and Nunavut, fifty thousand (50,000) First Nation  
2 Members.

3                   In thinking about how to try to explain the  
4 process that we see, you re-call at the beginning of my  
5 opening comments, I mentioned that the stranded costs and  
6 costs like that aren't officially part of this Application.  
7 Manitoba Hydro is not making a proposal before this Board to  
8 address the stranded costs which Mr. -- Mr. Peters has kindly  
9 tabulated closer to its true number, something in the order  
10 of \$20 million.

11                   So we're conscious of that. However, the way  
12 that we would like to characterize it and I have an analogy  
13 and a bit of a theme from my story as well and ask you all to  
14 bear with me. The theme that struck us as we shared the  
15 outcomes of these proceedings as we go is that it's a story  
16 of two wolverines and the Weetago.

17                   Well wolverines, as I'm sure you all would  
18 imagine, are troublesome creatures and if you've got a pair  
19 of them in your camp, you don't think of anything else but  
20 them. One of these wolverines is the shortfall -- is the  
21 stranded cost and it's the bigger and older of the two. And  
22 the other wolverine which is just as ferocious and  
23 troublesome is the shortfall that as we are presented in the  
24 evidence will continue from year to year to year.

25                   Precisely how this shortfall is added to the

1 stranded cost wolverine is not clear but, in any case, all of  
2 us in this proceeding have had these wolverines running  
3 around under our feet for the entire proceeding. They're  
4 occupying our attention and those things that MKO would like  
5 to present in terms of tariff approaches and other principles  
6 to be applied and rate design and rate setting to some extent  
7 have been pushed to the side.

8           Without commenting on the attention of anyone  
9 in this room, it's very clear that the activities of these  
10 two (2) wolverines have been pre-eminent. And as I had  
11 mentioned if they're in your camp up north, that would be the  
12 natural way for it to be. You'd pay nothing but close  
13 attention to them.

14           The Weetago is a troublesome spirit. It's a  
15 myth in terms of bringing times and difficulties into our  
16 communities. And a lot of the traditions about well being,  
17 health, trust, honesty, the conduct of personal activities  
18 and the sharing between each other are to keep the spirit  
19 away, to keep it out of our community so that well-being is  
20 the course of the day.

21           So what we see happening is, is that during  
22 the course of this troublesome row between these two (2)  
23 wolverines, there's the potential for inviting Weetago to go  
24 into the communities. And moreover and we say this with  
25 respect and that if the Board chooses to adopt the proposal

1 that Manitoba Hydro has presented to you, we are concerned  
2 deeply that Weetago will be invited into these four (4)  
3 communities in terms of the outcomes, the difficulties, the  
4 financial distress, the inevitable political issues that will  
5 arise and so forth.

6 I just wanted to set the tone for how we are  
7 viewing this in terms of its significance to our communities  
8 and using that parable because it will pop up again and again  
9 in terms of the roles of these two (2) wolverines and our  
10 desire to keep Weetago away.

11 Now, the inability of the First Nations to pay  
12 the proposed government surcharge may likely result in legal  
13 and funding disputes between parties, closure of First Nation  
14 facilities and distress amongst First Nation customers. And  
15 I've explained that's our greatest concern.

16 We see that the Board has before it really  
17 quite two (2) different proposals. And I'm not taking away  
18 at all from the -- the middle positions that Mr. Williams has  
19 attempted so hard to present to you.

20 The two (2) proposals are at the opposite ends  
21 of the book case and while both proposals, that is those of  
22 Hydro and MKO, claim to be based on sound rate-design  
23 principles, we submit that Manitoba Hydro's proposal is not.  
24 The impact of these two (2) proposals on remote customers  
25 would be very different and as we'll show, at one bookend

1 Manitoba Hydro's proposal will have a negative effect on the  
2 remote communities and will likely not result in the desired  
3 outcome. One of which outcomes appear to be to set things in  
4 motion to influence actions by the Government of Canada in  
5 respect of funding.

6                   At the other end of the bookend, we have MKO's  
7 proposal which is based on sound rate-design principles and  
8 more importantly -- and more importantly, I would say, Mr.  
9 Chair, Mr. Vice Chair and -- and Dr. Kinew, is directly  
10 comparable to other jurisdictions in Canada where service is  
11 provided to remote communities and we can't forget about the  
12 wolverines.

13                   We see Manitoba Hydro's proposal as simply an  
14 impractical solution to what amounts to a contractual  
15 dispute. Manitoba Hydro's proposal was designed to deal with  
16 the shortfall wolverine and to enhance the surcharge in  
17 future proceedings to get read of the stranded cost of  
18 wolverine potentially in the future; that is, to change the  
19 approach of tariff design rate setting and customer  
20 arrangements in the communities to make this possible.

21                   We submit that in the next Manitoba Hydro  
22 Application the proposal may be for an even larger surcharge  
23 to dispose of the stranded cost wolverine, plus increased  
24 depreciation expenses, plus soil remediation cost, plus who  
25 knows what other costs may appear. The recoveries of these



1 costs are inappropriate motives for the development of just  
2 and reasonable rates.

3           We estimate that if the stranded cost  
4 wolverine were applied to the surcharge, and there's been  
5 considerable discussion about that and including Mr. Peters  
6 this morning, it would result in an annual surcharge increase  
7 by an astounding four dollars and thirty-four cents (\$4.34)  
8 per kilowatt hour. We derive this increase in the surcharge  
9 by dividing 15 million by the Government Consumption Forecast  
10 on Schedule 3 of the Application.

11           As Mr. Williams had indicated, both Manitoba  
12 Hydro and Canada are responsible for the messes we find  
13 ourselves in. Manitoba Hydro appears to have continued to  
14 incur cost without the expressed approval of Canada or,  
15 indeed, without the expressed objection of Canada to the cost  
16 that had been recorded at -- for example, at PUB-36.

17           The fact that these costs have continued to  
18 rise with -- without some agreement between these two (2)  
19 parties, as it -- in accord with the comments that have been  
20 made, has significantly increased and the in -- since the  
21 implementation of the enhanced service program, meaning that  
22 the amount that is at variance and all of these costs that  
23 are going into PUB-36 has increased substantially since  
24 enhanced diesel was initiated.

25           The Board is almost being asked to take on the

1 role of a Counsellor to resolve disputes within Manitoba  
2 Hydro and Canada. Mr. Smith commented to you today on, to  
3 the extent that the Board may enter into providing advice to  
4 Canada but really, unfortunately, the First Nations are  
5 caught in the middle and they have the least ability in the  
6 current circumstances to resolve the issue but again, these  
7 wolverines are in the camp and Weetago is potentially  
8 invited.

9                   We're concerned that Manitoba Hydro has  
10 appeared to be remarkably unconcerned, in our view, about the  
11 consequences of its proposed rates on its customers. I note  
12 that in the re-direct today that there was a comment about a  
13 transcript reference that may have caught the attention of  
14 Grand Chief Garrioch and I thank you for the apology and with  
15 -- in respect of the transcript reference that you refer to.

16                   But really, the comments that the Grand Chief  
17 was referring to were in Mr. Peters' cross of Mr. Warden on  
18 January 6th at Pages 211 to 212 of the transcript in which,  
19 Mr. Warden, I -- I'll just paraphrase, you had indicated that  
20 the issues related to Government funding were interesting but  
21 really not of Hydro's concern and it was that comment that  
22 attracted Grand Chief Garrioch's attention and gave rise to  
23 his comments.

24                   It is not proposed rates that are based on  
25 sound rate-design principles, it is not designed rates that

1 will send proper price signals to its customers and it is not  
2 designed rates that its customers will be able to pay which  
3 is very important for a variety of reasons as we'll proceed.

4           Manitoba Hydro's rate design is simply a  
5 mechanism, it seems to MKO, to put pressure on -- for First  
6 Nation customers and then to indirectly put pressure on  
7 Canada to modify what appears to be its process for  
8 resourcing these communities in respect of their operations  
9 and management, as had been indicated and referred to  
10 frequently from the testimony provided by subpoena by Mr.  
11 Mills.

12           If approved, this approach will inevitably set  
13 in motion a political initiative by First Nations customers  
14 to attempt to change a twenty (20) year old Federal funding  
15 policy. There's no evidence that such an initiative would be  
16 successful.

17           We made some brief enquiries about Manitoba  
18 Hydro's strategic planning but we're left without any  
19 satisfactory answer as to what the results of all of this  
20 might be. Nor has Manitoba Hydro considered the requirements  
21 and outcomes for such an initiative to be successful and that  
22 discussion appears at transcript 578.

23           The Board should reject Manitoba Hydro's  
24 approach outright as it is discriminatory to all Manitoba  
25 Hydro remote customers and, saying this carefully, we see it

1 potentially as an abuse of the PUB process for approving  
2 rates because of the things that we're about to elucidate  
3 under Hydro's proposals, and Weetago may be invited into  
4 these communities.

5           In respect of the duty to serve and following  
6 along my initial outline, in our submission, Manitoba Hydro  
7 has a responsibility to provide service to its customers  
8 which include the eight hundred and fifty (850) or so  
9 accounts in the four (4) remote communities; of course, as  
10 we've indicated, primarily reside, in many cases, and four  
11 (4) individual customers being the First Nations themselves.

12           We note, with keen interest in the non-  
13 evidentiary portion of the proceedings that when northerners  
14 came to talk about who was responsible for the provision of  
15 service, and I make this point, northerners, people that MKO  
16 works with and cooperates, the Northern Stores said, Manitoba  
17 Hydro.

18           The Frontier School Division said, Manitoba  
19 Hydro. Grand Chief Garrioch said, Manitoba Hydro. The  
20 Regional Chief Francis Flett, former Grand Chief of MKO,  
21 Manitoba Hydro. As did Chiefs Bussidor and Hyslop.

22           So when northerners were asked, even though  
23 with the opportunity to comment on their relationship with  
24 Indian and Northern Affairs as a question the -- a question  
25 was directly put to them by the Board, they said that it was

1 Manitoba Hydro's duty to serve these communities as Manitoba  
2 citizens.

3                   Now, Grand Chief Garrioch also made a comment  
4 with respect to Canada's fiduciary duty in respect of First  
5 Nations and there were some comments by Mr. Smith. In -- in  
6 respect of MKO's position regarding the relationship of  
7 Canada to the First Nation's peoples of this country, as the  
8 crest on my chest says, there is a permanent commitment to  
9 nation building that lasts as long as the sun shines, the  
10 grass grows and the rivers flow and that's a long time.

11                   That relationship was entered into between Her  
12 Majesty the Queen in right of Canada but there have been  
13 subsequent enactments, for example, the Natural Resources  
14 Transfer Agreement, that have placed Manitoba in a position  
15 to share that nation building commitment.

16                   We note clearly, as did Chiefs Bussidor and  
17 Grand Chief Flett, that Manitoba is a province. It  
18 administers its water resources and the welfare of and,  
19 therefore, there is part of this national building commitment  
20 an obligation to share in that wealth.

21                   In terms of changes to concepts about the duty  
22 to serve that, to some extent, rolls together with thinking  
23 about the surcharge and I'm reminded of the numerous  
24 references that have been made to MKO's 1994 argument in the  
25 previous proceeding and I'll just comment on that, that it's

1 been made and without necessarily going into it.

2 But Mr. Williams posed the opportunity to  
3 respond very neatly. In his question at Transcript 18 to  
4 suggest to the Board,

5 "What has changed since 1994 that might  
6 disturb the Board's findings?"

7 That was his first point, which I agree with;  
8 that's a good question. And then his second comment was in  
9 respect of whether the surcharge should be assessed to First  
10 Nations. Again, broadly paraphrasing, and that's at  
11 Transcript 17 and 19.

12 The first issue in respect of what's changed  
13 since 1994 from MKO's perspective, of course, we commented on  
14 in our previous proceeding but I will put our comments on the  
15 record here.

16 First and foremost, of course, is better  
17 information in respect to the effect of the surcharge.  
18 We have a comment that I will quote later in my submission  
19 that Manitoba Hydro emphatically indicated that during its  
20 community round of discussions regarding the north, the  
21 enhanced diesel initiative, that information was not provided  
22 to First Nation's customers in respect to the effect of the  
23 surcharge that would necessarily arise from the investments  
24 and the facilities that were related to that initiative, that  
25 it was directed at the community. That's important.

1                   That's important, we submit, because now we  
2 know through several seri -- through the Status Update  
3 Proceedings and this one, we have a very clear picture what  
4 the implications would be and as Chief Hyslop had indicated  
5 and I had tentatively provided some commentary. An  
6 additional commentary, by the way, exists on -- on this on  
7 INAC 2 at Pages 17 and 18, Grand Chief Flett's letter. That  
8 it came to MKO's attention after doing a review of accounts  
9 at -- at the Northlands First Nation, mainly those of the  
10 Northlands Education Authority and then much of the rest of  
11 the discussion by MKO began to unfold from there including, I  
12 should say, the meeting with Mr. Brennan in November of 2000.  
13 So that's the first. I mean, we are much better informed  
14 about the surcharge in terms of its effects.

15                   The other is that the Manitoba Hydro system  
16 since 1994 has continued to mature, primarily in terms of  
17 consolidation. Manitoba Hydro is now the single provider of  
18 retail electrical services in the Province of Manitoba.  
19 That's a substantial change from 1994. There have also been  
20 changes in legislation, the first being in 1997, Bill 55,  
21 which in our view sets in place one of the most -- one of the  
22 key changes since that period of time and that change, in our  
23 view, appears at Section 15.2 of the Manitoba Hydro Act and  
24 rega -- and it's entitled Retail Sale of Power and it reads  
25 simply:

1 "No person other than the Corporation or  
2 the City of Winnipeg in accordance with the  
3 City of Winnipeg Act shall engage in the  
4 retail sale of power in Manitoba."

5 Period. That's a substantive change. Statute  
6 retains and -- and provides to Manitoba Hydro the exclusive  
7 authority for the retail sale of power in Manitoba. I won't  
8 comment on what the legislature may have thought in respect  
9 of providing an exemption to First Nations because they  
10 didn't do that. They reserved to Manitoba Hydro the  
11 exclusive authority to make sale of retail sale of power.  
12 Whether that exclusive authority applies to Indian Reserve  
13 Lands, I spoke about in our last comments.

14 The Manitoba Hydro Act, because of its  
15 structure and because there is no countervailing Federal  
16 Statute that replaces it in respect to the provision of power  
17 on reserve in Mani -- in the Province of Manitoba would be  
18 under Section 88 of the Indian Act, the Law of General  
19 Application. Section 88 reads:

20 "Subject to the terms of any treaty or any  
21 other act of Parliament of Canada, all laws  
22 of general application from time-to-time  
23 enforce in any province are applicable to  
24 and in respect of Indians in their province  
25 except to the extent that such laws are



1                   inconsistent with this Act --"  
2           Being the Indian Act.

3                   "-- or any order, rule, regulation or by-  
4                   law made thereunder and except to the  
5                   extent that such laws make provision for  
6                   any matter for which provision is made by  
7                   or under this Act."

8                   The applic -- the exclus -- the -- the  
9   reserving to Hydro, the exclusive authority to engage in  
10 retail sale of power is applicable to Indian Reserves in the  
11 Province of Manitoba. That's a big change.

12                   The other, of course, is Bill 27. That is the  
13 uniform-rate legislation as we've called it. That's Chapter  
14 23 of the statutes in Manitoba 2001 and Manitoba Hydro  
15 Amendment Act 2. As far as we know, this statute is on the  
16 books of the Statutes of Manitoba and available from  
17 statutory publications and in fact, on Manitoba Government's  
18 website. The discussions Mr. Peters had about the permissive  
19 aspect of it, that is true.

20                   We don't disagree with that but it remains  
21 that the legislative assembly of the Province of Manitoba  
22 enacted legislation providing an authority to Manitoba Hydro  
23 to establish uniform rates for off-grid customers. It was an  
24 expression of Crown policy.

25                   So we have these two (2) expressions of Crown

1 policy, one, reserve the right to exclusive retail sale of  
2 power to Hydro and two, provide them with the authority to  
3 establish uniform rates for all customers including non-grid  
4 customers.

5 Another major change, of course, since 1994  
6 which I am obligated to pursue is the statement of the policy  
7 of Manitoba Keewatinook Okimovin that was signed on March  
8 13th, 2001 by Grand Chief Francis Flett and appears at INAC-2  
9 at pages 17 and 18 and on page 17 Manitoba -- MKO is stated,  
10 Grand Chief wrote, and I have placed this earlier into the  
11 record:

12 "Manitoba Hydro has agreed with MKO's  
13 position that the approved general service  
14 diesel rate government tariff number 60-08  
15 enhanced Federal rate is inapplicable to  
16 any First Nation account."

17 We've had some discussion on that and Manitoba  
18 Hydro need not reply in terms of contention that, beyond the  
19 Grand Chief's statement, that there was an agreement that  
20 what's salient from that comment is, that's our policy.

21 So whatever MKO may have said in 1994 in  
22 respect of the appropriateness of surcharges being applied to  
23 government accounts, MKO has clarified its position  
24 absolutely by having a letter signed by the Grand Chief  
25 saying, not to First Nation accounts.

1                   And, again, that all flows from our better  
2 understanding changes in law, and so forth. I'm very  
3 encouraged to hear, in Mr. Williams' comments about puzzling  
4 with comments from his clients about the applicability of the  
5 surcharge to First Nation accounts; that in his final  
6 submission today, in fact, he made comments indicating that  
7 it was his clients' view that the surcharges were not  
8 appropriate to be applied to First Nation accounts given  
9 their effect; that's also a change since 1994. And that is  
10 in the position of CAC/MSOS.

11                   So I leave you with these considerable series  
12 of changes that have effected -- answered Mr. Williams'  
13 question about what has changed since '94 but certainly to  
14 put out before you the position of MKO regarding the -- the  
15 use of surcharge as a tool to address the wolverine that  
16 represents the shortfall.

17                   Now, having gone through that -- that entire  
18 history, I would say that if we were rolling back the clock  
19 in time and Manitoba were connected by a disparate group of  
20 utilities for which inter-connected transmission systems did  
21 not exist, private -- a mixture of private and Crown power  
22 and so forth, and Section 15.2 of the Hydro Act did not  
23 exist. Then there may be circumstances in which Canada would  
24 be approached to engage in the provision of electrical  
25 services because Hydro would not have the responsibility or

1 the exclusive authority and nor would it have extended its  
2 reach from -- to every extent of the borders of the province  
3 of Manitoba.

4           But, unfortunately, that's not the case. The  
5 system has matured and the facts are as I've outlined.  
6 Therefore, we submit -- MKO submits that under the Manitoba  
7 Hydro Act, Manitoba Hydro is responsible for the supply of  
8 power, adequate for the needs of Manitoba Hydro remote  
9 customers as citizens of the province of Manitoba.

10           Our second point in terms of examining whether  
11 the application is just and reasonable, of course, in our  
12 view it begins with Section 2 of the Hydro Act which requires  
13 -- places a statutory obligation on the Corporation to:

14                   "provide service in a manner that reflects  
15                   economy and efficiency in the development,  
16                   generation, transmission, distribution,  
17                   supply and end use of the power including  
18                   for the Manitoba Hydro remote service."

19           Clearly, examining and testing the  
20 reasonableness of costs is, we submit, a part of the Board's  
21 mandate to review rates and to make sure that a determination  
22 that rates are just and reasonable and in the public interest  
23 but Hydro has also a statutory duty to maintain its costs in  
24 this way.

25                   And the merger of the legislation which has

1 been referred to in terms of how the PUB functions with  
2 Hydro's duty, those are the proceedings that we hear, that's  
3 the process that we're in right now.

4           Mr. Peters had mentioned about not necessarily  
5 being disagreement amongst the parties on the level of  
6 capital costs. I just wanted to clarify MKO's view on that.  
7 We do question the level of capital costs Manitoba Hydro has  
8 expended and the forecast annual operating costs.

9           We're concerned, as Mr. Smith has placed, that  
10 there is no direct regulatory oversight on individual capital  
11 expenditures and -- and, in our view, hence no competitive  
12 pressure to keep these costs in line.

13           Given Manitoba Hydro's view that Canada is  
14 ultimately responsible for most diesel remote costs, except  
15 those related to provincial facilities in Northern Affairs  
16 communities, for example, there appears to be a perverse  
17 incentive for Manitoba Hydro to expend resources without the  
18 explicit agreement of these governments.

19           Given that Manitoba Hydro is of the view that  
20 governments are ultimately responsible for all remote diesel  
21 costs, Manitoba Hydro should have received explicit approval  
22 from governments for all major capital expenditures before  
23 the expenditures were made.

24           Failure to receive approval is evidence that  
25 Manitoba Hydro is operating on -- under a cost of service

1 regulatory model, that is under -- on its own volition and  
2 not under a contractual regulatory model. And these matters  
3 were presented by Mr. Hildebrand but these two (2) approaches  
4 are, to some extent, also part of us resolving the issues  
5 with these wolverines in our sp -- in our space in this room.

6           If Manitoba Hydro was operating under a  
7 contractual regulatory model, as suggested by Mr. Hildebrand  
8 in direct evidence, it's Transcript 787, Manitoba Hydro would  
9 be required to seek approval for its level of costs from  
10 Canada.

11           If this were the case over the past decade, in  
12 particular, we submit that many of the issues we are facing  
13 here would be moot, as it appears that Manitoba Hydro is  
14 operating under a regulated cost of service model and, thus,  
15 this Board has the ability to approve rates that are just and  
16 reasonable.

17           If the underlying costs are not reasonable,  
18 then the proposed rates that flow from the costs cannot be  
19 just and reasonable and potentially discriminatory as was  
20 discussed in Stantec's pre-filed evidence on Page 2.

21           In the -- if the -- in the application, the  
22 fixed costs represent 48 percent of total costs or thirty-one  
23 point eight (31.8) cents per kilowatt hour to provide service  
24 to the remote communities and that's outlined at MKO Exhibit  
25 6. Of the fixed costs, 82 percent are generation related and

1 -- excuse me -- 12 percent are distribution related.

2           While Manitoba Hydro claims to use a least  
3 cost approach in developing plant additions PUB/MH-37-D and,  
4 of course, my questions today, there is little evidence that  
5 Manitoba Hydro sought independent cost estimates or tenders  
6 for significant cost items like internal labour.

7           And we appreciate that the undertaking  
8 provided a breakdown between your internal costs and those  
9 that were contracted out. These are substantial costs. It  
10 appears that Manitoba Hydro prefers to custom-design each  
11 remote generating station -- remote plant using its internal  
12 resources when off-the-shelf solutions are readily available  
13 at much lower costs and we discussed those at PUB/MKO-21.

14           The allocation of internal Manitoba Hydro  
15 labour cost to these projects has inflated their value to the  
16 point of unreasonableness in our view. The capital costs of  
17 the Manitoba Hydro system diesel service include significant  
18 amounts for in-house engineering and project management costs  
19 for the Shamattawa diesel project.

20           We note the total amount of the Hydro labour  
21 cost assigned in this project that could discern from the  
22 undertaking were \$1.7 million dollars or about fourteen (14)  
23 man years; that's Exhibit 29.

24           In addition, we note that the annual revenue  
25 requirement for the Shamattawa generator building is about

1 three hundred and fifty thousand dollars (\$350,000) per year  
2 which is derived as depreciation expense, assuming a thirty  
3 (30) year life and a 7.81 percent interest rate on net  
4 investment.

5           The need for the building was justified, in  
6 part, due to the expected reduced maintenance costs. From  
7 Schedule 2 of the diesel costs of service study, we note that  
8 the total annual non-fuel operating costs are only three  
9 hundred and sixty-five thousand dollars(\$365,000) per year  
10 which includes all labour-related operations costs.

11           We submit that there is not sufficient  
12 justification for a \$3.1 million dollar building that is  
13 proposed to impose costs of three hundred and fifty thousand  
14 dollars (\$350,000) per year and I note that Manitoba Hydro  
15 kindly provided photographs of the -- the building that we're  
16 speaking about.

17           A metal clad building should not cost over \$3  
18 million dollars, even in a remote community and I would say  
19 though, then a -- as a way that we see it, if you design a  
20 Ferr -- Ferrari you get a Ferrari and then ask all remote  
21 customers to pay for that Ferrari.

22           These costs are not reasonable and should be  
23 discounted when the Board determines what level of rates are  
24 just and reasonable. As a comment, and realize it's non-  
25 evidentiary, but when we reviewing all of this one of the



1 thoughts that came to mind is if you want to go out to Ray  
2 and Jerry's for lunch and charge it to the grid, that's fine.  
3 But in the diesel communities we prefer you had a peanut  
4 butter sandwich, or maybe egg salad.

5           But our thinking on this is that the  
6 facilities that are installed in the communities really need  
7 to match the communities needs including the revenues  
8 available in these communities to match the service to the  
9 customer.

10           Manitoba Hydro has not adequately nor  
11 appropriately compared the forecast diesel cost and proposed  
12 rates to the benefit cost of alternatives including other  
13 supply options like small hydro and transmission  
14 interconnection.

15           The diesel generation expenses at the four (4)  
16 communities over the last few .- past few years with their  
17 associated high capital cost will ensure that costs to  
18 provide service in these communities will continue under  
19 Manitoba Hydro's proposal meaning the Application before you  
20 to be very high in the foreseeable future.

21           The shortfall wolverine will continue to roam  
22 in our midst for years to come. Hydro has not pursued DSM  
23 initiatives with diesel customers, in our view, consistent  
24 with a degree of aggressiveness consistent with the high cost  
25 of providing electricity to its customers, and believes it

1 has no responsibility to do so, even though the PUB provided  
2 a specific directive and that's -- we refer to that in  
3 PUB/MKO-20.

4           There were comments of course made this  
5 afternoon regarding the types of programs that were  
6 submitted. But in the absence of aggressive DSM initiatives  
7 by the corporation, by Manitoba Hydro, the variable operating  
8 cost of the remote service are higher than they need to be;  
9 and there's comments on that at transcript 921.

10           We note that earlier today, Manitoba Hydro has  
11 committed to implement an energy management program similar  
12 to that recommended by Mr. Hildebrand and carried out,  
13 hopefully, with the intent of addressing and mitigating  
14 increases in costs and communicating to customers that  
15 increased consumption means increased cost. We welcome that.

16           Manitoba Hydro's current and proposed rate  
17 designs for residential and general service customers are  
18 fundamentally flawed. Since the enhanced service upgrades  
19 from 15 amps to 16 amps was initiated in the 1990's, Manitoba  
20 Hydro's end use residential rates provided no price signal  
21 that increased consumption will drive higher costs.

22           If Manitoba Hydro would have had an escalating  
23 block rate structure as proposed by Stantec and in place in  
24 almost every jurisdiction that provides service to remote  
25 communities, the significant increases in consumption and

1 accompanying increase in cost may have been tempered. That  
2 is the costs that we are dealing with today may not be what  
3 they are.

4 Manitoba Hydro needs to recognize that it was  
5 their initiative to provide enhanced service and since it was  
6 their initiative to provide enhanced service, the rate-design  
7 .- they are responsible for designing rates for the issues  
8 that we're facing in this proceeding.

9 We see that Manitoba Hydro's rate design  
10 approach being .- as being unjust and unreasonable. Manitoba  
11 Hydro's proposed rate design for all customers will represent  
12 rate shock for many residential and general service customers  
13 and in particular, for the four (4) First Nation customers.  
14 We appreciate Mr. Williams comments where he was discussing  
15 that today.

16 In respect to the accounts held by the First  
17 Nation, the rate increases for the seventy-three (73) First  
18 Nation government accounts will be borne by only four (4)  
19 customers. And in respect of trying to provide some comments  
20 on what types of effects might occur within the communities  
21 to give some kind of context to our concerns about the effect  
22 of these rates, I could mention that in the non-evidentiary  
23 portion of the proceeding of course, Northern Stores, at  
24 transcript 150, indicated that it was their estimate that the  
25 increase .- that the Manitoba Hydro proposal would result in

1 an increase in cost of one hundred and eleven dollars and  
2 fifty-two cents (\$111.52) per person in these communities.

3           Now their calculation wasn't tested by cross-  
4 examination but it remains as it is and we thank them for  
5 bringing that to our attention and to the Board's attention.  
6 We also have comments from of course Frontier School Division  
7 and also on the non-evidentiary presentation, that they're  
8 facing a three hundred and three thousand dollar (\$303,000)  
9 increase in school operations budgets in Brochet which they  
10 believe will convert to a 2.4 increase in their taxes  
11 required to generate revenues.

12           Chief -- Grand Chief Garrioch referred to  
13 severe financial circumstances at transcript 808 to 809 and  
14 Chief Bussidor described the impacts on her community in  
15 transcript 515 to 516 at -- at lines 17 to 22.

16           To give a face to these concerns about cost  
17 impacts in addition to those provided by the Northern Store,  
18 I'd like to go to INAC 2 and per -- in particular, for my  
19 first example, I'd just like to run through an example of  
20 what the rates would do to some of the accounts that were  
21 posted.

22           For example, the first one's at Lac Brochet at  
23 Page 48 of INAC 2. Mr. Wiens had described in detail further  
24 to one of my questions, and I thank him for that, what this  
25 table says -- provides, how to read it. If -- since there is

1 a break down of the consumption by block and as -- as well as  
2 the rate that's actually being charged.

3           If we take a few of these accounts and look at  
4 them, for example the arena account which is the very first  
5 one. At the present non-government rate using the -- the  
6 billing determinants that have been provided by Manitoba  
7 Hydro in this table, the bill for the consumption of forty-  
8 five hundred (4500) kilowatt hours would be seven hundred and  
9 seventy-six dollars and forty-nine cents (\$776.49). It's a  
10 simple matter of using their bill determinants.

11           The proposed government rate, however,  
12 applying its slightly higher basic charge and the same  
13 billing determinants would result in a bill of nine thousand  
14 sixty-three dollars and five cents (\$9,063.05), following the  
15 variance in Indian and Northern Affairs funding that we have  
16 numerous references to in the proceeding, and I can refer to  
17 each of them.

18           For example, in transcript 503 to 506 there  
19 was a discussion between the Vice Chair and Mr. Wiens  
20 regarding these proposals and recollection of Mr. Mills'  
21 testimony, we apply the 20 percent funding, that leaves a  
22 shortfall for that bill of seven thousand two hundred and  
23 fifty dollars and forty-four cents (\$7,250.44).

24           So as soon as the bills are instituted, it  
25 will go from seven hundred and seventy-six dollars and forty-

1 nine cents (\$776.49) to nine thousand dollars (\$9,000) of  
2 which seven thousand dollars two hundred and fifty cen --  
3 seven thousand two hundred and fifty dollars and forty-four  
4 cents (\$7,250.44) will not be provided under INAC's funding  
5 policy. So with the first bill, assuming these same  
6 consumptions occur, they'll feel it.

7                   If you go to the hockey-shack, just taking the  
8 information off this bill. I was presented -- this statement  
9 that was presented to Indian Affairs. Using the same  
10 analysis, the consumption of four thousand twenty (4,020)  
11 kilowatt hours turns into a bill of six (6) -- six hundred  
12 and four dollars and seventeen cents (\$604.17) under the  
13 rates that are currently being received by the First Nation  
14 in respect of the hockey-shack. The rates under the current  
15 proposed char -- the -- the bill under the currently proposed  
16 rates would be eight thousand and ninety-eight dollars and  
17 twenty-five cents (\$8,098.25), of which Indian and Northern  
18 Affairs Canada would fund, following your formula, one  
19 thousand six hundred and nineteen dollars and sixty-five  
20 cents (\$1,619.65) leaving again a shortfall of six thousand  
21 four hundred and seventy-eight dollars and sixty cents  
22 (\$6,478.60).

23                   So for these two (2) accounts alone in one (1)  
24 month at Lac Brochet they would be left with a combined  
25 shortfall of thirteen thousand seven hundred and twenty-nine

1 dollars and four cents (\$13,729.04). And I could do similar  
2 math for the remainder.

3           Using similar accounts in Shamattawa and  
4 they're classified with different funding levels. In this  
5 case they would get 80 percent of their cost and we can use  
6 the water plant as an example. Under the current rates their  
7 bill would be four thousand one hundred and fifty-eight  
8 dollars and twenty-seven cents (\$4,158.27); that is the rate  
9 that's currently being charged -- the bills they're currently  
10 receiving.

11           Under the proposed rate they would be billed  
12 twenty-seven thousand nine hundred and ninety-seven dollars  
13 and twenty-five cents (\$27,997.25) for that one (1) month for  
14 that account. INAC would fund twenty-two thousand three  
15 hundred and ninety-seven dollars and eighty cents  
16 (\$22,397.80) of that of which a shortfall of five thousand  
17 five hundred and ninety-nine dollars and forty-five cents  
18 (\$5,599.45) would result.

19           Similarly for the sewage plant, their current  
20 bill would be -- the bill that at actual rates to them that  
21 would have appeared in respect to this statement would be six  
22 hundred and four dollars and seventeen cents (\$604.17).

23           Under the proposed rates it would be eight  
24 thousand ninety-eight dollars and twenty-five cents  
25 (\$8,098.25). INAC would fund six thousand four hundred and

1 seventy-eight dollars and sixty cents (\$6,478.60) leaving a  
2 shortfall of one thousand six hundred and nineteen dollars  
3 and sixty-five cents (\$1,619.65).

4           So for just these two (2) accounts in  
5 Shamattawa, and remember the proposal is to transfer all the  
6 accounts to the full rate, just for these two (2), the  
7 shortfall would be seven thousand, two hundred and nineteen  
8 dollars and ten cents (\$7,219.10) for one (1) month for two  
9 (2) accounts.

10           And, I have some others and I think that I've  
11 made the point in respect of this, but I would like to draw  
12 your attention to one that is, to me, very interesting. If  
13 you go to Tadoule Lake, which is at page 47. I apologize, I  
14 moved to Shamattawa, Mr. Chair, without providing the page  
15 reference. It's at page 54 and Tadoule Lake's statement at  
16 page 57.

17           If we go to what's called "the education  
18 office" under the current consumption at one thousand, two  
19 hundred and thirty (1,230) kilowatt hours, the bill that they  
20 would receive including the basic charge would be thirty-one  
21 dollars and twenty-five cents (\$31.25). Under the proposed  
22 rates, it would be two thousand, four hundred and ninety  
23 dollars and thirty-five cents (\$2,490.35). INAC would fund  
24 four hundred and ninety-eight dollars and seven cents  
25 (\$498.07) of that by adjusting their multipliers, as Mr.



1 Mills had explained, leaving a shortfall for that one (1)  
2 account of one thousand, nine hundred and ninety-two dollars  
3 and twenty-eight cents (\$1,992.28).

4           So they'd be going from a bill of thirty-one  
5 dollars and twenty-five cents (\$31.25) to a shortfall of one  
6 thousand, nine hundred and ninety-two dollars and twenty-  
7 eight cents (\$1,992.28) as of the first bills received  
8 assuming that the same consumption occurs, of course.

9           Now, I will note that the date of this bill is  
10 from October 20th to November 19th so these are Fall/Winter  
11 consumption patterns but, again, my example remains the same.

12           So those are the severe circumstances Grand  
13 Chief Garrioch refers to and the comments that Chief Bussidor  
14 refers to. Now, to try to provide a global picture, that is  
15 for all four (4) communities for category 3 assets, those are  
16 those that are funded at 20 percent, I'd like to go to MKO-8  
17 if I might which I had filed this morning subject to a  
18 caveat.

19           In respect of that, I would like to say that  
20 in reviewing the record from the proceeding when it was  
21 entered, there was discussion of it at transcript 4-612, Mr.  
22 Chair, to 4-614 there was discussion of its receipt. You had  
23 made an offer to provide a process to further examine it. If  
24 that was required, people were to contact Mr. Peters and as I  
25 understand no such contacts or requests were made.

1                   So the evidence was -- this document was  
2 entered into the -- the record at that time without further  
3 comment. So in looking at this table at MKO-8, and I shall  
4 go through it simply, I hope, and fairly carefully to try to  
5 provide an illustration on one set of assets for these  
6 communities, given the plan is to move all accounts to the  
7 full government rate.

8                   If we look at the first table on this page,  
9 category 3 assets, either of them would actually work but  
10 I'll use the first one to follow through. Under the column  
11 "total electrical cost", that's explained by the assumptions  
12 at the bottom of the page.

13                   I thank Mr. Mills for having provided a clear  
14 understanding of this. And this was an analysis that INAC  
15 had done that I had referred to in cross-examination and Ms.  
16 Ramage had asked for explanation.

17                   The column total "electrical cost" is the  
18 electrical cost generated by the Indian and Northern Affairs  
19 formula for Category 3 assets for the period between April  
20 1st, '94 and April 1st, 2001. Those are the assets in  
21 service as of that time that were forecast for those years.

22                   So those -- that column assumes eight (8)  
23 years of consumption based on INAC formula. So, in order to  
24 provide you with a helpful analysis for this proceeding, it's  
25 a straightforward matter to divide the total electrical cost

1 in that first column by eight (8) to come up with an average  
2 annual electrical cost forecast by their formula.

3 And additional division needs to be made for  
4 Shamattawa, you'll note, for it's -- during the assumptions  
5 because there's a multiplier of six point three (6.3) already  
6 built in so for Shamattawa you divide by eight (8) and then  
7 by a further six point three (6.3) times.

8 The resulting numbers for average monthly  
9 electrical cost at grid rates based on the INAC formula,  
10 that's explained in the assumptions at the bottom, for a  
11 Barren Lands First Nations would be fifty-four thousand,  
12 seven hundred and sixty-four dollars (\$54,764), for a  
13 Northlands First Nation, ninety-six thousand, three hundred  
14 and seventy dollars (\$96,376), for the Sayisi Dene First  
15 Nation, seventy-four thousand one hundred and ninety-three  
16 dollars (\$74,193).

17 Oh, excuse me. Excuse me. The average annual  
18 electrical cost based on the analysis that I have just  
19 outlined, and I'll repeat the numbers again, because I was  
20 repeating the line for total electrical cost, I apologise, as  
21 it appears on this document.

22 The average annual electrical cost for the  
23 Barren Lands First Nation is six thousand eight hundred  
24 forty-six dollars (\$6,846), the Northlands First Nation,  
25 twelve thousand forty-six dollars (\$12,046), the Sayisi Dene

1 First Nation, nine thousand two hundred seventy-four dollars  
2 (\$9,274) and the Shamattawa Cree Nation, twelve thousand nine  
3 hundred and six dollars (\$12,906).

4 For a total in the grid -- at grid rate,  
5 formula forecast of monthly average -- of annual electric  
6 cost, average annual electric costs of forty-one thousand,  
7 seventy-two dollars (41,072). That's what the INAC formula  
8 produces.

9 I caution that this -- I'd mention that this  
10 understates their actual forecast because we don't have the  
11 assets for the years ensuing from April 1, 2001. I'm just  
12 using this because it's all I have available to work with.

13 If you apply a multiplier of thirty-six (36)  
14 times -- you recall if you look at the category 3 assets line  
15 on the top column, you'll notice the multiplier used was  
16 fifteen point four (15.4).

17 If you replace that with thirty-six (36),  
18 which appears in our PUB/MKO-14, in which Mr. Hildebrand  
19 estimates the approximate multiplier increase in rates, if  
20 you apply that multiplier, the resulting electrical cost  
21 would be, for the Barren Lands First Nation, two thousand  
22 (2,00) -- two hundred forty-six thousand four hundred and  
23 thirty-eight dollars (\$246,438), for the Northlands First  
24 Nation, four hundred and thirty-three thousand, six hundred  
25 and sixty-five dollars (\$433,665), for the Sayisi Dene First

1 Nation, three hundred and thirty-three thousand, eight  
2 hundred and sixty-nine dollars (\$333,869), for the Shamattawa  
3 Cree Nation, four hundred and sixty four thousand, six  
4 hundred and nine dollars (\$464,609).

5 For a total annual cost, based on the proposed  
6 rate for these four (4) communities for category 3 assets of  
7 \$1,478,580.

8 Based on the funding policy of the Department,  
9 the contribution would actually be for the Barren Lands First  
10 Nation, forty-nine thousand, two hundred eighty-eight dollars  
11 (\$49,288), for the Northlands First Nation, eighty-six  
12 thousand seven hundred thirty-three dollars (\$86,733), for  
13 the Sayisi Dene First Nation, sixty-six thousand seven  
14 hundred seventy-four dollars (\$66,774), for the Shamattawa  
15 Cree Nation, ninety-two thousand nine hundred and twenty-two  
16 dollars (\$92,922) for a total contribution under their  
17 funding policy of two hundred and ninety-five thousand, seven  
18 hundred and sixteen dollars (\$295,716).

19 The resulting shortfall, or dollars that are  
20 required to pay bills but are not provided by the O&M funding  
21 formula: for the Barren Lands First Nation is a hundred and  
22 ninety-seven thousand one hundred fifty dollars (\$197,150),  
23 for the Northlands First Nation, three hundred and forty-six  
24 thousand nine hundred and thirty-two dollars (\$346,932), for  
25 the Sayisi Dene First Nation, two hundred and sixty-seven

1 thousand ninety-five dollars (\$267,095), for the Shamattawa  
2 Cree Nation three hundred and seventy-one thousand six  
3 hundred and eighty-seven dollars (\$371,687). For an annual  
4 shortfall for -- in respect to actual billings for the  
5 category three (3) assets for these four (4) communities of  
6 \$1.182,864 million.

7                   So, we've got the two (2) wolverines, one (1)  
8 represented by stranded costs and one (1) represented by the  
9 shortfall, but we have another very sizable creature that  
10 we've nicknamed Weetago here.

11                   Because trying to address a \$1.18 million  
12 shortfall by these communities will be onerous and will set  
13 in motion all of the effects that the Chiefs had presented to  
14 you in the non-evidentiary portion of the proceeding.

15                   I thank you for bearing with me in running  
16 through this adjustment on this table to compare it to the  
17 current rates -- the -- to the rates that are being proposed  
18 to the Board and it gives you a picture of, I hope, of the  
19 concern of the communities.

20                   A similar process, of course, could be done  
21 for category 2 assets and so forth, but I just wanted to  
22 choose this one. So, in terms of our interests in coming up  
23 with a resolution that works, those two (2) examples of a few  
24 sample bills plus an analysis of the earlier Mills Exhibit or  
25 Undertaking, I hope, illustrates too, the weight that I feel

1 upon us and our work here and our recommendations to you and  
2 the consequences of, well, not being successful in providing  
3 some options to the Board that it may consider.

4                   Manitoba Hydro's service extension and  
5 customer application policies are inappropriate in respect of  
6 the ability to pay. Now, I've just outlined the scope of  
7 what that inability is and I'd like to explore it a bit. One  
8 (1) of the premises for the proposed reclassification of all  
9 First Nation accounts to government is, the difficulty that  
10 Manitoba Hydro claims it is having in classifying these  
11 accounts.

12                   There are others, but that was one (1) of the  
13 items that they had raised. Mr. Wiens testified at pages  
14 182, line 16 to 183 line 10 and this is in response to Mr.  
15 Peters' examination, Mr. Peters stated,

16                   "And Mr. Wiens, before lunch I was trying  
17 to get an explanation from Manitoba Hydro  
18 to the Board as to why does Manitoba Hydro  
19 -- as to why is Manitoba Hydro now  
20 expanding the number of First Nation  
21 accounts or Band Council accounts from  
22 approximately forty (40) to approximately  
23 eighty (80) for the purposes of charging  
24 the government rate? Can you remind me of  
25 your -- of your reasons for that?"

1                   Which after, the transcript notes a brief  
2 pause and Mr. Wiens replies,

3                   "Mr. Peters, the simple reason to your  
4 question is that over the years we've had  
5 increasing difficulty relying on the kind  
6 of rules of thumb that our people in the  
7 field relied on to determine whether a Band  
8 account was substantially funded by  
9 government or partially funded by  
10 government or being wholly funded by  
11 government. I don't think at this point in  
12 time, those are distinctions that Manitoba  
13 Hydro staff can or should have to make."

14                   Now, it was in this regard, of course, that we  
15 were so keenly interested in identifying the customer  
16 application policy to actually have in our hands a copy of  
17 documents that spanned the period of time and I regret that  
18 our request wasn't succinct enough for Manitoba Hydro.  
19 Certainly we have a role to play in providing the undertaking  
20 clearly to you and appreciate the responses that you have  
21 provided.

22                   But it's important that we understand what's  
23 happened, in this period of time, that gives rise to the  
24 current Application in respect of the Corporation's inability  
25 to classify accounts because they've used it as a rationale.



1 We submit that Manitoba Hydro, in fact, did know how to  
2 properly classify these accounts, they simply choose --  
3 choose not to document the classification process and provide  
4 it to their field staff.

5 Now, "choose" is a -- is a word that has  
6 multiple meanings. The process being is that there was ample  
7 information that's available on the record to indicate that  
8 they were aware of the distinctions. For example, we would  
9 look at MH/MKO-2-9 from the 1994 proceeding which has been  
10 filed, thankfully, in this proceeding as MH Exhibit 9.

11 And I recall that Ms. Ramage filed it at the  
12 beginning of the direct evidence of Manitoba Hydro and  
13 indicate that it had some weight and bearing that we should  
14 provide on this exhibit. The key element of this exhibit, of  
15 course, is that if we look at the classifications for full  
16 cost government and full cost non-government, there are very  
17 clear distinctions illustrated here of the types of  
18 facilities that do and do not qualify for application of  
19 those rates.

20 Full cost government, correctly identifies  
21 health and education facilities. Full cost non-government  
22 correctly identifies Band Offices and recreation facilities.  
23 If we look further and recognizing, again, that it was a  
24 draft policy, but if we go to INAC Exhibit 2 to pages 60 to  
25 63 and, in particular, to page 61, item 5.3.1 Diesel fuel

1 cost surcharge, the list of assets that are listed under item  
2 B, correctly identify those types of accounts that receive  
3 higher levels of funding from the department as indicated in  
4 Mr. Mills' evidence.

5           So it appears, if we put these together, that  
6 these classifications are consistent with the evidence,  
7 provided by Mr. Mills, as put to Hydro in this proceeding at  
8 transcript 563 to 564. We're reasonably comfortable that  
9 there actually was a fairly good understanding.

10           Of course, Dr. Kinev had pointed out that  
11 there was relatively recent meetings which at which Manitoba  
12 Hydro had advised that it had become more aware of these  
13 processes but, again, these two (2) documents, Manitoba Hydro  
14 9 from this proceeding and the draft policy correctly  
15 identify the distinction.

16           It is also clear that Manitoba Hydro has not  
17 evenly applied its customer application policy, in fact if  
18 one exists to the remote communities, since the institution  
19 of the surcharge rate, particularly the First Nation  
20 accounts.

21           So, despite having the information to do so,  
22 it has not been done. MKO/MH-10 discusses that and, again,  
23 as I've referred to, in INAC Exhibit 2. Inevitably, it is  
24 the customer's responsibility to pay Manitoba Hydro bills.  
25 Manitoba Hydro must, we submit must, consider the ability of

1 its customers to pay when designing and installing services,  
2 particularly in light of the information that we've shared in  
3 respect of these example billings and a calculation of the  
4 potential annual shortfall amount.

5           As indicated in our evidence, Bonbright's  
6 Principles call for the need for public acceptability, rate  
7 stability, fairness and undue discrimination and these  
8 principles are not properly observed in the Manitoba Hydro  
9 proposal. We note that Manitoba Hydro did not determine if  
10 their customers could pay the proposed cost and, again, as  
11 I'd indicated, nor do they feel they have a responsibility to  
12 determine this at transcript 579 line 10 to 579 line 12 Mr.  
13 Warden advises that

14                     "In direct response to your question as to  
15                     whether or not we consult with customers as  
16                     to their ability to pay, no, we don't."

17           And, again, at 579, line 20 to 579, line 23

18                     "Manitoba Hydro's objective is to recover  
19                     their costs from the customers that we  
20                     serve. As to their ability to pay those  
21                     costs, that is not our responsibility."

22           Well, it may not be their responsibility in  
23 respect of their thinking, in this process, but it certainly  
24 is a necessary item to consider in establishing rates that  
25 would generate the revenue necessary to cover the revenue

1 requirement.

2           We're concerned with these statements though  
3 that, using my earlier story and parable, that Manitoba Hydro  
4 appears unconcerned that the spirit of Weetago may be invited  
5 into these communities. The issue of the ability of the  
6 First Nation customers to pay their bills is germane to this  
7 hearing.

8           Manitoba Hydro is, in our view, attempting to  
9 pull off the classic, I suppose, bait and switch, if I might  
10 use that term. When Manitoba Hydro communicated the benefits  
11 of the enhanced service, that is the increase from fifteen  
12 (15) amp to sixty (60) amp service, they delivered  
13 presentations to the remote communities. There was interest  
14 by Dr. Kinew and MKO and many others in this.

15           A copy of the presentation, of course, is  
16 attached to INAC/MH-9-1 and we discussed it at transcript 739  
17 to 752. The key message was read into the record by Mr. Cox  
18 at page 743 line 3 to 743, line 10

19           "With this increase in service capacity,  
20 customers served by diesel generators will  
21 be able to enjoy the use of all the basic  
22 electrical amenities while paying central  
23 system electricity rates. This revision  
24 supports Manitoba Hydro's position of  
25 treating all Manitobans in a fair and

1                   equitable manner."

2                   Now, this is what was communicated in a round  
3 of exchanges with all of the First Nation communities. The  
4 discussion led to how the invitations took place and they  
5 were generally through Chief and Council and so forth and  
6 meetings were generally with Chief and Council, but this was  
7 the message being -- being shared.

8                   As indicated on one of the cells we discussed  
9 that the key message was, higher consumption, not higher  
10 rates which we all know, in terms of a remote community, is  
11 virtually an oxymoron. It's impossible to increase  
12 consumption in a remote service powered by diesel generation  
13 without increasing its costs and without having some  
14 influence on rates.

15                   But that was the message communicated to these  
16 communities by Manitoba Hydro as they engaged in the enhanced  
17 diesel initiative. We're deeply concerned that Manitoba  
18 Hydro did not communicate to its First Nation facility  
19 customers the potential future impact of the government  
20 surcharge.

21                   And in our discussion, of course, we reviewed  
22 the letters that had been sent to Mr. Thomson and Ms. Jolson  
23 clearly identifying the potential effect of those -- that --  
24 the enhanced diesel initiative to them but that was not the  
25 message provided to the Chiefs and Councils or the

1 communities.

2 Again, at transcript 752, line 19 to 752, line  
3 23.

4 "Was there anything in this  
5 presentation --"

6 This is part of a question:

7 "Was there anything in this presentation  
8 that explained the consequences leading to  
9 a surcharge rate for these First Nations  
10 facilities?"

11 And once again:

12 "No, there was nothing as part of this  
13 presentation."

14 We can only surmise that the reason for the  
15 impact of the surcharge being -- not being communicated to  
16 First Nation customers is that it was never intended to  
17 charge First Nation customers. We've heard ample evidence  
18 from Manitoba Hydro as to their expectations, but we're  
19 unclear with this, apparent, wide gap in the information  
20 being provided to the communities and Manitoba Hydro's  
21 evidence.

22 Manitoba Hydro's current proposals are a  
23 direct contradiction to the representations made to First  
24 Nation facility customers through this period of the time and  
25 the bait-and-switch will bring on difficulties within the

1 community.

2                   Manitoba Hydro's rate proposal was uncertain  
3 and we've discussed some of those uncertainties already but  
4 there are some others I wish to share. Manitoba Hydro's  
5 proposal contains several elements that cause significant  
6 doubt as to the ability of Manitoba Hydro to implement the  
7 proposed tariffs successfully or that the proposals are  
8 justified.

9                   For example, Manitoba Hydro's Application is  
10 based on the proposition that any costs, net or rate  
11 revenues, be recovered in direct billings to an unidentified  
12 Federal agency. Those that, if the bands are unable or  
13 unwilling to pay that was the proposal that appears in the  
14 Application; that is not a Manitoba Hydro customer nor is it  
15 being supplied power by Manitoba Hydro.

16                   Manitoba Hydro does not propose a rate for  
17 this purpose in this proceeding for approval by the Board and  
18 as Mr. Smith has discussed, such a tariff may be inapplicable  
19 in respect to persons receiving bills who are not users of  
20 power under Manitoba Hydro -- under Manitoba regulations any  
21 person not receiving power but then he also commented as to  
22 the inability to do so as against Canada's authority for its  
23 constitutional distinctions and I just leave Mr. Smith's  
24 record in tact on -- on that to discuss.

25                   Manitoba Hydro has presented no evidence or

1 analysis to confirm that rate revenues can be realized in  
2 actual consumption at the proposed rates and there's  
3 discussion of that at transcript 578 and 580 and I've already  
4 gone through an illustration of the kinds of financial  
5 pressures that the First Nations are certain to be placed  
6 under should the current rate -- to the -- should the rates  
7 that are being proposed be approved by this Board and  
8 implemented.

9           Which is a concern, of course, because the  
10 object of the rate, the rate-design process and the tariff-  
11 design is to generate necess -- the revenues necessary to --  
12 to address the revenue requirement but we -- there's no  
13 confidence that that will actually occur, meaning that these  
14 wolverines are going to be scurrying around for an extended  
15 period of time.

16           Hydro is also aware that First Nation  
17 government customers will be unable to pay their bills for  
18 community facilities, but has made no re -- proposal in  
19 respect of the anticipated shortfalls for the community  
20 customers. We think this is a conc -- a -- a very  
21 considerable gap in the Application.

22           I noted with some interest the partnership  
23 that was proposed, Mr. Cox had mentioned in Ms. Ramage's re-  
24 direct that INA -- that KTC and MKO and Indian Northern  
25 Affairs Canada and Manitoba Hydro should work together to do



1 these shorts of things. Well, there isn't any proposal in  
2 the Application precisely to deal with the anticipated  
3 shortfalls, either in -- in a form of partnership or  
4 otherwise. Information to the communities -- the evidence is  
5 that when the rates are approved, Manitoba Hydro will advise  
6 them.

7                   So in -- in essence, we have no information to  
8 determine what a possible strategy could be because those  
9 that could provide it, the First Nation customers haven't  
10 been consulted in detail about the potential effects and we  
11 could see MKO, INAC undertakings 13, we've worked through  
12 those.

13                   "In light of the risk and significance to  
14 the customer of any misapplication of the  
15 proposed rates, the proposed rates should  
16 not be approved."

17                   I have more to say about that but we had  
18 discussed what happens in terms of the changes in the billing  
19 period, in terms of when meters are read and so forth,  
20 because the sensitivity of these customers to those types of  
21 extra charges are significant and that it moves them into a  
22 different block of consumption.

23                   Manitoba Hydro's Service Extension Policy and  
24 Customer Application Policy reasonably and realistically  
25 forms part of the rate and we would be -- request that it be

1 submitted.

2 We had some discussion from Ms. Ramage that  
3 the Board does not approve such policies, but it's clear from  
4 all of the discussion in respect of the obligation of other  
5 parties to share in extensions and so on and so forth that,  
6 and in addition to the -- our evidence, the evidence of MKO,  
7 that the service extension policy and customer application  
8 policies go hand in hand with rates, particularly in a place  
9 like the remote service.

10 "Manitoba Hydro proposes the First Nation  
11 government customers directly subsidize.  
12 Now, MKO finds this, frankly, an incredible  
13 proposition under the circumstances, that  
14 First Nation government customers directly  
15 subsidize all but five hundred and fifty-  
16 nine thousand, three and hundred fifty  
17 dollars (\$559,350) of the difference  
18 between revenues and costs for all other  
19 customers in the diesel service zone, as  
20 government customers, including the costs  
21 of the partial uniform rate for other  
22 diesel customers established and proposed  
23 by Manitoba Hydro pursuant to the  
24 provincial uniform rate legislation."

25 So, part of this burden communities are being

1 asked to bear and part of the shortfall is related to  
2 subsidizing a Provincial policy; the Board should not permit  
3 that to take place.

4           In terms of proceeding, we don't believe  
5 Manitoba Hydro is ready. One of the comments is that we've  
6 -- it's -- it's in the record that Manitoba Hydro's billing  
7 system, at present, is not capable of accurately charging  
8 customers on the proposed rates with the degree of  
9 sensitivity that is required given the possibilities of  
10 consumption being recorded in the higher -- in the higher  
11 cost blocks.

12           It was indicated that that could be done but,  
13 again, there is no firm proposal to do so in this Application  
14 and it would need to be absolutely considered prior to any  
15 application similar to this being presented to this Board, we  
16 submit.

17           For the proposed tail block price increase of  
18 an order of -- of this order of magnitude, the difference  
19 between a twenty-seven (27) day and a thirty-three (33) day  
20 billing period will be important. There's discussion of that  
21 at transcript 722 to 724, and we would submit extremely  
22 important for customers in our communities.

23           Manitoba Hydro suggests that in instances  
24 where residential consumption is over two thousand (2,000)  
25 kilowatt hours per billing period, a manual bill can be

1 prepared. It's an indication that the system is not ready to  
2 proceed with this Application.

3 Manitoba Hydro also stated that about a  
4 hundred and sixty-six (166) residential accounts consume more  
5 than two thousand (2,000) kilowatt hours per billing period,  
6 at least once a year, transcript 247. Again, indicating the  
7 need to have this billing system in place or a proposal to do  
8 so as a companion to their Application to you.

9 Having 30 percent of residential bills  
10 prepared manually should raise concerns, that is a hundred  
11 and sixty-six (166) accounts done manually divided by five  
12 hundred and sixty (566) total residential accounts and we  
13 take that from PUB/MH-11 as -- in terms of our 30 percent of  
14 potential manually -- manual accounts.

15 In our submission, even though Manitoba Hydro  
16 has had this Application before the PUB for over a year, they  
17 are currently not ready to implement the proposals. While  
18 the assignment of the proper rate to each account and the  
19 billing issues can likely be resolved over time, it will be  
20 the end use consumers who will be disrupted while Manitoba  
21 Hydro addresses these issues.

22

23

(BRIEF PAUSE)

24

25

MR. MICHAEL ANDERSON: In -- in summary, the

1 Application by Manitoba Hydro is inappropriate and ill  
2 conceived. The proposals do not address the pressing issues  
3 at hand, that is, how rates can be set at just and reasonable  
4 levels and how future costs can be contained. Stated in the  
5 context of my initial theme, how we can deal with these  
6 wolverines and prevent Weetago from entering our communities.

7           If approved, the bills stemming from Manitoba  
8 Hydro proposed rate design will not get paid; this will lead  
9 to additional contractual and legal disputes. In the end, it  
10 will be Manitoba Hydro's customers in the remote communities  
11 that will suffer. Surely this result cannot be found to be  
12 just and reasonable.

13           Manitoba Hydro's proposal at one book end is  
14 designed to deal with the shortfall wolverine and a little  
15 bit more but, unfortunately, the stranded cost wolverine is  
16 still in the room and will not go away, as of yet, and the  
17 difficulties coming from this are still in the shadows.

18           At the other end of the spectrum for Manitoba  
19 Hydro's proposal as it appears in these proceeding are the  
20 recommendations of MKO. MKO's approach was to use sound  
21 rate-design principles. You'll note from our responses to  
22 CAC/13, 17 and 19 that we spent some time and some effort  
23 through Mr. Hildebrand's assistance doing a comparison of  
24 utility treatment for remote services in other jurisdictions.

25           I bring you back to my earlier comments at the

1 beginning of these, that MKO is a solution driven  
2 organization. We want this to work. How is it being done  
3 there -- elsewhere? What principles are applied? What  
4 policies are applied by the Crown or the Utility or  
5 otherwise? And I again I invite the Board to review the  
6 entirety of those Attachments because when we make our  
7 recommendations we're making them in the contents to the  
8 benefit of that information.

9           MKO's approach was to use sound rate design  
10 principles. Even though the wolverines are present and need  
11 to be addressed, we have to send these creatures back where  
12 they belong and not disrupt the process of investigating and  
13 reviewing these rates. They should not interfere with  
14 setting rates that are just and reasonable. The types of  
15 propositions that MKO are -- is making in other words should  
16 not be over shadowed by these concerns.

17           We have a rate-design to establish, rates to  
18 set and customers to serve. The key driver for MKO's  
19 recommendations in this proceeding is the rate-design used by  
20 other utilities that serve remote communities. In our  
21 submission comparability between utilities is a key rate-  
22 design criteria, particularly when examining something as  
23 difficult as the remote service.

24           There are a lot of people, a lot of utilities,  
25 a lot of government policy analysts, a lot of customers

1 examining remote services from coast-to-coast-to-coast and  
2 looking at how they have approached the issue is important.  
3 We surmise that Canada is intimately familiar with rates  
4 charged at all remote communities largely -- particularly in  
5 their jurisdictions, for -- for example North of 60.

6                   And must view as we do, Manitoba Hydro as  
7 something of an anomaly in Canada. As we'll discuss,  
8 Manitoba Hydro in effect stands alone in its archaic care  
9 proposal for the remote communities. As noted in  
10 CAC/MSOS/MKO-13, all jurisdictions in Canada provide service  
11 to remote communities -- I should say all of them, at prices  
12 below cost.

13                   "This is an accepted rate-design practice  
14 supported by government policy, in many  
15 cases guided by government policy, and in  
16 some cases statutes. In our submission  
17 Manitoba Hydro should have embraced the  
18 opportunity to include the remote customers  
19 in the Provincial Cost of Service Study and  
20 incorporate the associated diesel capital  
21 costs.

22                   The opportunity would have brought the  
23 service to custom .- the -- this  
24 opportunity would have brought electrical  
25 service to customers in remote communities

1                   in line with other jurisdictions in  
2                   Canada."

3                   And on this, I had initially had comments in  
4                   respect of linking my comment about the use of the word  
5                   "embraced the customers", to what I'm sure was, and I  
6                   appreciate Mr. Warden's comments and apology in terms of the  
7                   service being viewed, as a headache.

8                   But we're inevitably left with that as an  
9                   impression in terms of a commitment to serve, in terms of  
10                  embracing these customers as part of the Manitoba Hydro  
11                  system. And we submit that it is time to embrace the remote  
12                  customers in Manitoba who are citizens of the Province, the  
13                  First Nation citizens of these communities as well as the  
14                  non-status citizens and government agencies and others as  
15                  Mani -- fully as Manitoba costum -- Hydro customers.

16                  We recommend a single cost of service approach  
17                  for both grid and remote services. Instead of being more  
18                  progressive as is the case for many other jurisdictions in  
19                  Canada, Manitoba Hydro has elected to digress in respect of  
20                  its approach to cost of service and rate design.

21                  Manitoba Hy -- Manitoba Hydro proposes to  
22                  virtually eliminate the contribution from good customers to  
23                  good service cost which have historically been between 20 and  
24                  about 28 percent and abruptly move to rates based on  
25                  recovering closer to 100 percent of the cost of service.



1                   While Zone 3 residential customers enjoy a  
2 contribution of about 45 percent in respect of measured as  
3 RCC, Manitoba Hydro proposes that remote residential  
4 customers only receive 10 percent and that's .- there's a  
5 reference to CAC/MSOS/MH-14.

6                   This is patently unfair, particularly in that  
7 historically the reference has been to treat the remotes in a  
8 manner equivalent to Zone 3 customers. It's been the mantra  
9 since we've been working on diesel rates.

10                   In this case, this is a divergence from how  
11 these customers are actually being treated. Since Manitoba  
12 Hydro has chosen a cost of service regulatory model, drawing  
13 you back to my comments between contractual and regulatory,  
14 all Manitoba Hydro customers should be treated with equality.

15                   Compared to the subsidies provided by other  
16 grid customers, Manitoba Hydro's is low. And what I mean to  
17 say, is subsidies provided to -- by other grid customers in  
18 other jurisdictions. Newfoundland Labrador Hydro provides an  
19 annual subsidy of about a forty-six hundred dollars (\$4,600)  
20 per customer and that's in Exhibit CAC/MSOS/MKO-13-D.

21                   And Manitoba Hydro's proposal is for a subsidy  
22 of approximately six hundred and fifty dollars (\$650) per  
23 customer, about seven (7) times less. And we just sort that  
24 out by using the five hundred and sixty thousand (560,000) in  
25 the Manitoba Hydro subsidy divided by eight hundred and fifty

1 (850) customers.

2           While Hydro proposes -- Manitoba Hydro  
3 proposes that no assignment of an export credit from Manitoba  
4 Hydro export revenues be contributed toward the cost of  
5 service in the diesel zone, Hydro has applied the RCC for the  
6 Zone 3 customers that result after application of an export  
7 credit based on the Zone 3 contribution to system  
8 transmission.

9           Resulting in a nominal contribution of five  
10 hundred and fifty-nine thousand, three hundred and fifty  
11 dollars (\$559,350) from the grid service. And that can be  
12 found at -- the reference to that at CAC/MSOS/MH-14.3.

13           In respect of comparability of utility  
14 treatment and remote services elsewhere in Canada, we have  
15 said already that comparability between utilities suggests  
16 that Manitoba Hydro -- Manitoba First Nation accounts should  
17 not be classified as government accounts.

18           I was pleased to hear my colleague Mr.  
19 Williams make the same comments on behalf of his clients.  
20 And so we are in agreement, at least in respect of that  
21 classification. In addition to, of course, whether or not  
22 the surcharge aspect is appropriate.

23           But, in essence, that First Nation account  
24 should not be classified as a government account. There is  
25 no longer any precedent in Canada for Manitoba Hydro to

1 define First Nation customers as government customers and  
2 apply the surcharge directly to them.

3           And although I had referred to it in our  
4 previous argument and status update, Mr. Smith had commented  
5 on -- provided his views on whether the consideration of  
6 First Nations as an agency of Her Majesty is any -- no -- any  
7 longer appropriate in the current circumstances as we evolve  
8 and grow.

9           And I agree with Mr. Smith that it is not  
10 appropriate to consider First Nations as an agent of Her  
11 Majesty The Queen in Right of Canada. First Nations  
12 customers are customers in their own right and should be  
13 treated as such.

14           As noted in CAC/MSOS-13-A-(I), no jurisdiction  
15 in Canada allows rates to First Nation accounts to be based  
16 fully on cost of service. Manitoba Hydro's proposal is even  
17 more punitive and by making that statement I'm saying, by  
18 singling out First Nation accounts in respect of their  
19 individual cost of service, as distinct from other customers  
20 in their area.

21           Manitoba Hydro's proposal is even more  
22 punitive since the proposed charges to First Nation general  
23 service accounts are higher than the cost of service in order  
24 to subsidize other diesel customers. The proposed full cost  
25 is seventy-nine (79) cents per kilowatt hour whereas full

1 cost -- whereas First Nation accounts are proposed to be  
2 charged two dollars and one cent (\$2.01) a kilowatt hour.

3                   From CAC/MSOS-19-A the definition of  
4 government account does not include the types of accounts  
5 First Nations have in Manitoba. There has been a progression  
6 in Canada to eliminate the government distinction altogether,  
7 as in the case of British Columbia, Quebec, Yukon, and  
8 Alberta.

9                   As noted in the update to CAC/MSOS-13, 17 and  
10 19, which I've referred to already as filed in this  
11 proceeding, CAC/MSOS/MKO-13-C,

12                   "The Northwest Territories Power  
13 Corporation has recently eliminated their  
14 government definition and all non-  
15 residential accounts are -- now classified  
16 as general service."

17                   Only Newfoundland and Labrador and Ontario  
18 still have government account definitions and Newfoundland  
19 and Labrador specifically exclude First Nation general  
20 service type accounts. There was a comment on this  
21 previously and our understanding, of course, is indicated in  
22 the material that there is a single First Nation account at  
23 the former community of Davis Inlet and at the time the --  
24 so, in terms of their practice, I just had wanted to place  
25 that in context.

1                   Manitoba Hydro's proposal to redefine First  
2 Nation general service accounts as government is nearly  
3 unique in Canada and as digressive from the direction other  
4 utilities in the country have taken. Comparable utility  
5 treatment of remote services in Canada is noted as an  
6 important criteria in rate design and Manitoba Hydro, in our  
7 view, stands virtually alone -- stands alone in its proposed  
8 approach in Canada.

9                   From utility comparables found in response to  
10 CAC/MSOS/MKO-13, -17 and -19, we note that in every other  
11 jurisdiction in Canada the utility's ratepayers ultimately  
12 subsidize the cost of diesel generation; that is, grid  
13 customers contribute to the cost of remote services.

14                   In BC, Quebec, Yukon, Alberta and Newfoundland  
15 and Labrador the cost shortfall from diesel is included in  
16 the utility's cost of service allowing for the shortfall to  
17 be spread over all utility customers. This is -- in Ontario,  
18 the shortfall is explicitly determined and is called the  
19 "remote and rural rate protection".

20                   There was mention of that by Manitoba Hydro  
21 and others. The shortfall is determined and collected from  
22 all grid customers. In 2002 the shortfall was estimated to  
23 be about two-thirds of the total cost to provide diesel  
24 service to nineteen (19) communities.

25                   In the Northwest Territories, the government

1 of the Northwest Territories pays for the shortfall with the  
2 dividends that it has received -- that are received from the  
3 Northwest Territories Power Corporation. There's a  
4 description of how that mechanism works in our IR response.

5           Essentially, utility customers fund the  
6 shortfall indirectly. Although the government administers  
7 the actual subsidy program, the source of the funds are  
8 intended to come from all customers through a dividend.

9           In every jurisdiction, except Manitoba, that  
10 serves remote communities, utility customers cover the  
11 shortfall in revenue for First Nation accounts. Manitoba  
12 Hydro's proposal to cover 6 percent of the forecast revenue  
13 requirement and we have numbers that move, but that appears  
14 at page 4 of their application or 11 percent of the forecast  
15 shortfall at Schedule 3 of the application and it woefully  
16 inadequate.

17           We recommend that it is time for Manitoba  
18 Hydro to recognize the progression of cost responsibility to  
19 the local utilities and provide service to all First Nation  
20 accounts at non-government rates, at general service rates in  
21 accord with other general service customers in their  
22 communities.

23           From our review of other jurisdictions where  
24 utility service is provided to remote communities, we have  
25 observed the following: that First Nation residence,



1 Alberta provides grid rates for all consumptions to all  
2 customers under their circumstances and there was a note that  
3 those customers have cost-competitive sources of -- to  
4 provide domestic heat which contributes, to some extent, to  
5 that decision, as Mr. Hildebrand testified.

6           Rate design and service connection policies  
7 are intended to communicate to customers the higher cost of  
8 remote service in every jurisdiction, except Alberta, of  
9 course, where alternate heating fuels are available, as I  
10 mentioned.

11           The tariff structure proposed by Stantec is  
12 consistent with all other jurisdictions and should be  
13 implemented in Manitoba. As noted in CAC/MSOS/MKO-13-A-(iii)  
14 capital contributions to utilities are no longer required for  
15 generation upgrades in any of the jurisdictions reviewed.

16           The exception is Manitoba where 100 percent of  
17 the untested costs are proposed to be borne by First Nation  
18 customers and governments. To provide comparability with  
19 other utilities in Canada, we recommend that the net Manitoba  
20 Hydro remote generation investment be reclassified as net  
21 transmission investment.

22           Based on our review of the other jurisdictions  
23 and the application of sound rate design principles, we  
24 recommend that Manitoba Hydro be directed to adopt a single  
25 cost-of-service approach to allocate diesel shortfall costs



1 to all utility customers consistent with other utilities in  
2 Canada.

3           It is clear that remote generation is a  
4 substitute for transmission. The North Central Project in  
5 its way is evidence of this. There were diesel generators  
6 replaced by transmission when it became appropriate to do so.  
7 As are the evidence of the previous studies to replace remote  
8 generation with transmission at INAC/MH-9.2 and transcript  
9 727 to 733 and my discussion with Mr. Cox in respect of the  
10 transmission studies that closely predated the decision to go  
11 to enhanced diesel.

12           We determined that Manitoba Hydro had done  
13 studies of the cost of transmission to Tadoule Lake, Lac  
14 Brochet, Shamattawa, all the four (4) communities and the  
15 material concluded route maps of the transmission systems.

16           So the decision to proceed with diesel was  
17 after reviewing the alternative costs of providing  
18 transmission lines, so our proposal to classify net -- remote  
19 generation investment as net transmission investment is  
20 consistent with the facts we have before us.

21           With respect to net Manitoba Hydro investment  
22 costs, we recommend that the PUB direct Manitoba Hydro as  
23 follows and as noted in Mr. Hildebrand's direct evidence,  
24           "Net generation investment should be  
25           reclassified as transmission and

1 incorporated into the prospect of cost of  
2 service study and appropriately allocated  
3 to the residential and small general  
4 service customer classes."

5 If, and we've had discussion about this and  
6 it's a big if but it remains -- if the contracts between  
7 Manitoba Hydro and Canada are determined to be valid by  
8 whatever process and I'm very -- we're very pleased to hear  
9 Mr. Smith's comments about the possibility of mediation in  
10 this matter and extremely pleased to hear that there are  
11 instructions being sought from Ottawa to do so.

12 Manitoba Hydro's Transmission Extension Policy  
13 should be applied to the net generation investment with the  
14 amount of contribution required from Canada determined; that  
15 would be part of the work that they would do as they discuss  
16 the outcome of these various costs. Any capital contribution  
17 amount required from Canada should be collected off tariff,  
18 however, either through a lump-sum capital payment or a  
19 structured payment over time.

20 It is suggested that Manitoba Hydro and Canada  
21 should review the quantum of the fixed costs and agree on the  
22 amounts to be collected from Canada. So there's some work to  
23 do in analysing, I suppose, what's taken place that -- that  
24 appears in the progression of investment at PUB/MH-36 from  
25 1994 to the current time. The same processes outlined above

1 should be performed for the net distribution investment.

2           Implicit in this proposed treatment of net  
3 investment is that diesel customers would share in the cost  
4 of benefit of export revenues to the same extent as other  
5 Manitoba Hydro customers. Clearly, if the costs are re-  
6 classified as transmission then without re -- requiring any  
7 revision to existing Board orders, then they would -- there  
8 would be a provision to classify net export credit on the  
9 basis of generation and transmission, however it's worked out  
10 on this -- in this study.

11           With respect to the variable costs, we  
12 recommend the PUB direct Manitoba Hydro as follows: The  
13 diesel service variable cost should be incorporated into the  
14 prospective cost of service study and appropriately allocated  
15 to residential and small general service customers. This is  
16 with respect to variable cost. We're still working on these  
17 two (2) groups. The first recommendations dealt with the  
18 fixed costs and now we're dealing with variable costs.

19           So once again, the diesel service variable  
20 cost should be incorporated in the progressive cost of  
21 service study -- prospective cost of service study and  
22 appropriately allocated to residential and small general  
23 service customer classes. And allocation of variable costs  
24 where a comprehensive energy management program for the four  
25 (4) communities should be incorporated in the prospective

1 cost of service study.

2           The Board could direct Manitoba Hydro to file  
3 for acknowledgements, annual adjustments to the diesel rates  
4 to reflect changes in variable costs similar to the process  
5 followed by BC Hydro, for example and that's in CS --  
6 CAC/MSOS/MKO-17-C.

7           These filings could be made public and subject  
8 to review. I'm trying to deal with the smaller of the two  
9 (2) wolverines as it's charging about trying to keep costs  
10 intact.

11           With respect to diesel zone tariff design, we  
12 recommend that the PUB direct Manitoba Hydro as follows, for  
13 residential rates to adopt Stantec rate-design methodology  
14 with three (3) escalating rate blocks. Manitoba Hydro should  
15 propose a residential rate that incorporates Stantec's design  
16 methodology.

17           A revised forecast of billing determinants  
18 should incorporate an estimated demand response from the  
19 escalating price blocks. Overall, the rate should be set to  
20 not impose rate shock, that is the maximum forecast increase  
21 for the residential diesel class should be between 8 to 10  
22 percent and that's discussed at transcript 928.

23           Now, these are important considerations in  
24 terms of trying to get the diesel service in a position where  
25 it's functioning within the Manitoba Hydro system on a go-

1 forward basis.

2           For non-government general service, including  
3 all First Nation accounts, to adopt the Stantec rate-design  
4 methodology with three (3) escalating rate blocks. Manitoba  
5 Hydro should propose a general service rate that incorporates  
6 Stantec's design methodology, incorporates an estimated  
7 demand response from the escalating price blocks and does not  
8 impose rate shock. Again, that is a maximum forecast  
9 increase for general service accounts of 8 to 10 percent.

10           For government general service accounts, the  
11 rate should be identical to the non-government general  
12 service. As we -- we said before, the First Nation accounts  
13 should be treated as general service customers and the same  
14 rates apply.

15           If the contracts between Manitoba Hydro and  
16 Canada are determined to be valid by whatever process that  
17 might be or however it's determined that there is an  
18 relationship, and the governments are found to be responsible  
19 for variable cost shortfalls, the shortfalls could be  
20 collected off tariff.

21           Now, on this, Mr. Smith did not identify what  
22 items would be considered through the mediation as  
23 instructions are being sought, but clearly addressing both  
24 the stranded costs and the ongoing shortfall could be  
25 considered as a mechanism because there are relationships

1 between the two, because variable costs, of course, are  
2 driven by the installed facilities and so forth and the  
3 degree of consumption driven by whatever degree of demand-  
4 side management initiatives and so forth have been engaged  
5 over the last several years, et cetera; so they're all  
6 linked.

7                   With respect to the implementation of the  
8 revised diesel zones tariff, we recommend the PUB direct  
9 Manitoba Hydro as follows; Manitoba Hydro will need to  
10 upgrade their billing system to adjust for the number of days  
11 in the billing period when applying the escalating three (3)  
12 block rate structure.

13                   We note that this upgrade will also be  
14 required for the proposed rates and we commented on that  
15 previously. One way to accomplish this would be for the size  
16 of each rate block to be adjusted based on the number of days  
17 in the billing period. For example, if the billing period is  
18 notionally sixty-one (61) days, then the size of the first  
19 rate block would be two thousand (2,000) kilowatt hours which  
20 is equivalent to a thousand (1,000) kilowatt hours per month  
21 as proposed by Stantec.

22                   If the billing period was actually sixty-five  
23 days, the first block would be increased to two thousand, one  
24 hundred and sixty-seven (2,167) kilowatt hours, for example.  
25 This adjustment would ensure that customers are not

1 disadvantaged by the date that the meters are actually read  
2 by Manitoba Hydro.

3                   Manitoba Hydro should implement a  
4 comprehensive energy management program for the four (4)  
5 diesel communities, increased consumption does mean increased  
6 cost and rates. In person audits -- in person audits should  
7 be performed at each residence and commercial facility, for  
8 example, lighting, appliance and insulation retrofits could  
9 be funded through Manitoba Hydro's PowerSmart residential  
10 loan program.

11                   If Manitoba Hydro takes into account the real  
12 cost of electric energy to serve these customers, it is  
13 submitted that the pay backs for retrofits would be short.

14                   We note and support the comments provided by  
15 Mr. Orecklin regarding the need for and potential benefits of  
16 a comprehensive energy management program in his comments in  
17 the non-evidentiary portion of the proceeding. And we also  
18 appreciate him taking the time to attend and share those  
19 points of view and his experience in Northern Ontario.

20                   Manitoba Hydro should be required to develop  
21 an information document that explains how under Stantec's  
22 escalating price block rate design, the price of electricity  
23 will increase the more the customer uses, to explain this  
24 clearly.

25                   This information document should be translated

1 into the local languages spoken in these communities, it  
2 should also be prepared in a form that can be communicated  
3 through both our Provincial radio system, as well as those  
4 that are available in the community, primarily they have a  
5 closed circuit system through satellite exchange in the  
6 school, and made available on that basis.

7           Included in the document must be any  
8 explanation of how the meter works and how customers can read  
9 the meter. And we submit, that there should also be an  
10 initiative to determine the familiarity and comfort with the  
11 community members in understanding the reading of meters, and  
12 the dials are counter-rotating and so on and so forth, the  
13 instructions are fairly self explanatory, but I note from  
14 experience that you have to be very careful in how you read  
15 them to ensure.

16           The key here is, is that even if we adjust the  
17 rate blocks to account for variations in billing periods. As  
18 we have indicated, Mr. Warden has indicated, that they've  
19 moved their customer service application policy into a  
20 digital based system in the computers. We're working more  
21 and more on improving that capability.

22           The key is, is on the ground in the community.  
23 The community member is going to want to know what they're  
24 consuming and to be able to read that on an ongoing basis.

25           So, to investigate options for meter reading



1 and rate in this process would be important, to be able to  
2 ensure that the customer is working with us in keeping the  
3 cost of service in the community down. And providing an  
4 affordable service to these customers.

5           We submit that in respect of the policy  
6 direction from the Manitoba Government that appears in the  
7 uniform rate legislation, that it speaks for itself in terms  
8 of the Government's intention to make the benefits of uniform  
9 rates available to all customers in the Province, not  
10 withstanding the permissive aspect with respect to non-grid  
11 rates.

12           The Government -- the Government's position,  
13 well, speaks for itself, and there have been references in  
14 previous testimony in other proceedings, on that precise  
15 matter. Mr. Williams, as I recall, went through that with  
16 the Board.

17           MKO recognizes that with its proposals -- with  
18 its proposals, we still have wolverines to deal with to some  
19 extent. However, their presence should not dissuade the  
20 Board from taking steps in the right direction. In our view,  
21 to do the right thing, simply.

22           We submit that MKO's recommendations are the  
23 right approach to take in the circumstances, to move us from  
24 its current circumstance on a go forward basis, as we resolve  
25 these issues.

1 Under MKO's recommendation, the shortfall will  
2 be absorbed by the Manitoba Hydro cost of service study.  
3 This may be unpopular with many Manitobans and there's been  
4 comments expressed here today, and it's been expressed by  
5 Manitoba Hydro as not being their preferred option. Though I  
6 have to indicate that I'm very aware of the effect that it  
7 will have on our grid customers that are members of the  
8 Manitoba Keewatinook Ininew Okimovin communities.

9 So, we have a partnership intent in pursuing  
10 our recommendations, to make the services in those  
11 communities as cost effective as possible, to provide an  
12 affordable service, to provide for the well being of those  
13 communities.

14 But in any case, the resistance or the  
15 appearance of the magnitude of some of these changes we  
16 submit, whether courage is the right word, they're the right  
17 step to take and we need to take them and the longer that we  
18 -- we wait in taking them, we submit the worse things will  
19 become.

20 And fortunately, Canada, in its comments  
21 today, has offered some glimmer of hope for dealing with  
22 these two (2) pesky wolverines that haven't gone away through  
23 the course of this Proceeding.

24 We have no promise, we have some commitments  
25 in timing, but those are greater hopes and comments that

1 we've had in the previously filed documents and for one (1),  
2 I'm welcome -- I am very -- I welcome them and I'm happy to  
3 hear them, because it does provide a way to move forward with  
4 our rate design, presuming that that works, and address these  
5 other issues off tariff, which is precisely what we  
6 recommend.

7                   So, the MKO proposal really as we see it, is  
8 the primary -- is the only reasonable and complete proposal  
9 presented to the Board.

10                   We recognize that remote customers are  
11 Manitoba Hydro customers and that the utility has a duty to  
12 serve them. The Manitoba Hydro -- our proposal addresses the  
13 cost of service for remote services, we -- we propose tariffs  
14 in terms of their general structure for all customer classes.

15                   MKO proposes tariffs that incorporate rate  
16 setting principles and the need to limit consumption clearly  
17 being communicated due to the very high cost of production of  
18 electrical power in remote settings.

19                   The MKO proposal incorporates a comparison of  
20 the treatment of remote services in other jurisdictions and  
21 is influenced by it. An MKO proposal provides the only  
22 workable go forward approach to the diesel service rates, we  
23 submit and MKO has recommended a framework that can resolve  
24 the revenue, cost and balance for services to the remote  
25 communities.

1                   And hopefully by making suggestions in  
2 response to Mr. Smith's comments as a mechanism for Manitoba  
3 Hydro and Canada to resolve their contractual disputes  
4 without subjecting the remote community customers to undue  
5 economic hardship which as we've said we submit will result  
6 from the Board's approval of the proposal as it presently  
7 exists.

8                   We submit that the Board's role is much more  
9 than, sort of, an adjudicator in terms of these disputes and  
10 again Mr. Smith has commented on the limitations in your role  
11 in that regard. The Board should exercise its authority in  
12 setting and approving rates proposed by Manitoba Hydro and  
13 provide Manitoba Hydro with firm directives to reallocate  
14 costs and redesign the end use rates.

15                   MKO recommends the proposed rates be rejected  
16 and that the Board set down an order requiring Manitoba Hydro  
17 to resubmit for approval, tariffs based on the following  
18 Board directives.

19                   First, that Manitoba Hydro develop a single  
20 integrated cost of service study with remote customers  
21 subsumed and into the residential and general service  
22 customer classes. Second, that diesel generation fixed costs  
23 classified as transmission -- system transmission costs with  
24 the appropriate service extension policy applied.

25                   And third that -- third, that diesel

1 distribution fixed costs be classified as system distribution  
2 costs with the appropriate service extension policy applied  
3 once again. That fourth, end use rates to be designed on the  
4 following basis.

5           First, a limited first block uniform system  
6 rates, whatever they might be. That an incentive block as  
7 its been described to communicate higher cost of service to  
8 customers and encourage containment of consumption within  
9 both uniform and incentive blocks.

10           For financial and other reasons we've  
11 described why that's crucial for the success of this  
12 initiative. To communicate to the customer, and in order to  
13 keep costs in line and in the end result make the service  
14 affordable and in line with the ability of the customers to  
15 finance it and also to ensure that the customers work as  
16 partners in maintaining cost for the service.

17           And finally a tail block for rate for diesel  
18 customers equal to the variable fuel cost to communicate the  
19 higher cost of service to customers. Rates should be  
20 forecast as we've said to a maximum of 8 to 10 percent to  
21 eliminate rate shock. The Board should direct Manitoba Hydro  
22 to file for acknowledgment, annual adjustments to diesel  
23 rates reflect changes and variable costs; these should be  
24 filed and made public and subject to PUB review.

25           This is a mechanism that again we've mentioned

1 earlier is applied in BC by the BC Utilities Commission in  
2 respect of BC Hydro's remotes. A comprehensive energy  
3 management program should be implemented with Manitoba Hydro  
4 providing investment, direct investment and upgrades under  
5 their existing Power Smart programs. In addition, Manitoba  
6 Hydro should be directed to communicate these changes to  
7 their remote customers to ensure the changes will be  
8 effective as possible.

9           And my concluding comments, Mr. Chair, would  
10 be that MKO's recommendations correctly communicate the  
11 responsibility and obligation of Manitoba Hydro to pursue on  
12 behalf of all Manitoba Hydro customers. The economy and  
13 efficiency in the developed generation transmission  
14 distribution supply and use of power; that would also give  
15 incentives to the corporation to aggressively pursue to  
16 demand side management initiatives with Hydro's remote  
17 service customers.

18           It would also potentially provide incentive to  
19 engage in additional competitive tendering and least cost  
20 approaches with respect to the installation of diesel and  
21 other capital assets. That it will assist in additional  
22 comparison of diesel cost service options as to the benefit  
23 cost of alternatives including other four sources of supply  
24 and transmission.

25           As regarded stranded costs, MKO recommends the

1 Board issue a direction pursuant to the assignment of remote  
2 fixed cost of system transmission and therefore the  
3 responsibility of all Manitoba Hydro customers, any Manitoba  
4 Hydro for recovery of these costs must provide a means to  
5 fully and finally address them, in an off tariff manner of  
6 course.

7                   As regards to stranded costs, again as -- also  
8 as regarded to stranded costs, MKO recommends the Board  
9 suggest that the matter be resolved by mediation or  
10 arbitration, and that Hydro communicate a preference for this  
11 approach to Canada.

12                   Further in this regard, MKO recommends that  
13 any mediation process involved, as we've mentioned, a full  
14 and independent audit of all diesel system fixed and variable  
15 operating costs, to confirm whether the expenditures related  
16 to Manitoba Hydro's accounting of the quantum of the stranded  
17 costs, are prudent and reasonable.

18                   We also have -- MKO also proposes, of course,  
19 that negotiation discussions must include representation from  
20 the First Nations, we've discussed this before in terms of  
21 the information provided to First Nations, as the enhanced  
22 diesel initiative began, but the key is, is that there is a  
23 lot of discussion and decision making and correspondence that  
24 doesn't involve a customer, who are in the end responsible  
25 for paying the bills.

1                   And so all these arrangements and discussions  
2 that affect their businesses, their facilities, their  
3 operations and services to community members, must -- must  
4 involve first hand information about the outcome of these  
5 Proceedings, and the recommendations that are being made.

6                   In essence, if agreements are going to be made  
7 that affect the First Nation citizens of the four (4) diesel  
8 communities, their First Nation leadership and authorities  
9 must be involved.

10                   Finally, in light of Mr. Smith's comments, and  
11 in respect of the hopeful, imminent possibility of entering  
12 into some discussion on mediation, we suggest that the Board  
13 consider directing a -- consider issuing an interim order,  
14 that would hold in abeyance the implementation of any  
15 approval of these rates and its directives. Of course we  
16 recommend they not be approved, while Manitoba Hydro and  
17 Canada pursue mediation and arbitration discussions.

18                   As Manitoba Hydro mentioned in the status  
19 update, they had believed that the outcome of such  
20 discussions might influence the Application that we had  
21 before us today, and beyond saying that, I mean that's on the  
22 record.

23                   It's very clear that should mediation be  
24 engaged in, and should the parties resolve their issues, it  
25 will substantially influence what rates and tariffs might be



1 established and proposed for the remote service area and so  
2 no -- no changes should be made until we have better  
3 information on what might -- what fruit might come of these  
4 processes.

5 THE CHAIRMAN: But if the Board accepts that,  
6 Mr. Anderson, accepts your observation to us, by that  
7 decision we are in essence transferring the responsibility to  
8 the existing grid customers?

9 MR. MICHAEL ANDERSON: MKO's basic  
10 recommendation in respect to the tariff, Mr. Chair?

11 THE CHAIRMAN: No, I mean with respect to this  
12 most recent comment, that you wish us to put it in abeyance  
13 until this matter is resolved, if that is the case then  
14 either Manitoba Hydro becomes the banker for the outstanding  
15 obligations or the responsibility is transferred to the grid  
16 customers, is that not the case?

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(BRIEF PAUSE)

20 MR. MICHAEL ANDERSON: The mechanism that  
21 we're suggesting is that to give the -- issue the directives  
22 as we've recommended in respect to cost of service and tariff  
23 -- tariff design and classification fixed in variable cost  
24 and so forth, to get all of that in place, but then in terms  
25 of the actual rates that would be implemented in the end, to

1 not implement them until the results of the mediation are  
2 known.

3 THE CHAIRMAN: I understand that, and I would  
4 -- I had just followed up with the question is, if the Board  
5 accepts that premise, we are transferring the obligation to  
6 Manitoba Hydro either to be the banker of the outstanding  
7 amounts that -- the shortfall in revenue that would be  
8 required in order to try and maintain a revenue stream as a  
9 result of this Application.

10 And secondly, this issue has been outstanding  
11 since the year 2000, already, that is the discussion between  
12 Manitoba Hydro and INAC and others, and if the Board permits  
13 that to carry on, at what point do we say, that a decision  
14 has to be made, in order to try and build into the system  
15 some sense that there is a financial integrity?

16

17 (BRIEF PAUSE)

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19 MR. MICHAEL ANDERSON: We're recommending that  
20 the tariff design be implemented.

21 THE CHAIRMAN: I understand completely what  
22 you're recommending, but I was just trying to suggest to you  
23 that to do nothing is not solving the issue and that was all  
24 I was trying to say.

25 MR. MICHAEL ANDERSON: We agree that doing

1 nothing would not resolve the issue and, in fact, we are  
2 proposing, absent the process that Mr. Smith has referred to,  
3 our recommendations are to implement the changes to cost of  
4 service and rate design that we have proposed.

5           The outcome of the -- the process off tariff  
6 that Mr. Smith has proposed would have the effect of  
7 modifying rates that may occur on a go-forward basis.

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(BRIEF PAUSE)

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MR. MICHAEL ANDERSON: In addition, of course,  
that subsequent to the Board implementing our  
recommendations, in the event the mediations are not  
successful, Manitoba Hydro would still be able to approach  
the Board to pursue an Application.

THE CHAIRMAN: Yes, I understand that but what  
you're adding is more dominoes into the basket so at some  
point in time the whole thing will crater and I guess my  
sense is that we've had a lot of discussion, there's been a  
lot of proposals put forward and certainly, this Board  
appreciates the various observations including that of Mr.  
Smith, but to suggest that we hold it all in abeyance, until  
all of that is concluded, we may be just postponing a further  
difficulty for either the grid customers or for the consumers  
in the four (4) communities and I don't wish to debate it.

1 I'm just trying to put together the scenario  
2 that I think that last recommendation may provide some  
3 difficulties to some parties.

4 MR. MICHAEL ANDERSON: There was -- part of  
5 the other thinking on that and that's why instead of our  
6 language directive, given the recent comments by Mr. Smith we  
7 said to consider and I appreciate the dialogue that we're  
8 having on this, it may also provide an opportunity and an  
9 incentive for the parties to get together and resolve this.  
10 I mean, putting it in -- in --

11 THE CHAIRMAN: But forgive me, Mr. Anderson,  
12 you know maybe it's just been the length of the day here and  
13 listening to the final submissions, but you know, this  
14 Application was before the Board in excess of a year ago and  
15 we just got this particular point, if there was some real  
16 seriousness of all of the parties to try and resolve the  
17 issue, you would have thought that that would have occurred  
18 before this time, would you not agree?

19 MR. MICHAEL ANDERSON: I can say that I would  
20 have hoped, certainly, given the consequences that have  
21 resulted that that would have definitely have been the case  
22 but in -- as we've spoken, we find the Application difficult  
23 to -- to acknowledge because of the impacts that will occur,  
24 so.

25 THE CHAIRMAN: And I accept that term.

1                   MR. MICHAEL ANDERSON: Okay. I did have --  
2 and -- and as part of the comments on our record, of course,  
3 further to part 4 of the Board's April 28th, 1992 draft rules  
4 I just had wanted to make our comments in respect to the MKO  
5 seeking an award of Intervenor costs.

6                   In this proceeding, MKO, of course, represents  
7 the majority of interested customers including the four (4)  
8 First Nation customers, two (2) of whose elected Chiefs were  
9 present to provide support to MKO's position.

10                   MKO, including the four (4) Manitoba Hydro  
11 remote service First Nations has a substantial interest in  
12 the outcome of these proceedings. MKO has participated, we  
13 believe, responsibly during the proceeding.

14                   From the outset of the proceedings we have  
15 cooperated with either -- other Intervenors and in  
16 particular, Mr. Williams' clients, the CMA -- CAC/MSOS from  
17 the very beginning in order to avoid a duplication of  
18 interventions and to ensure and to determine whether, in  
19 fact, we could not have proceeded as a joint intervention.  
20 There was considerable discussion about that at the  
21 beginning.

22                   MKO has contributed, we believe, to an  
23 understanding of the issues and MKO requires financial  
24 assistance to conduct an intervention of this scope. We've  
25 also followed the procedures of Part IV of the Board's

1 related revisions dated November -- December 2nd, 2002 and  
2 will provide the Board and the Applicant with a breakdown of  
3 costs in accord with Board rule 43.5.

4 Thank you, Mr. Chair.

5 THE CHAIRMAN: Thank you, Mr. Anderson. Does  
6 the Board have any questions? Mr. Mayer...?

7 MR. ROBERT MAYER: Mr. Anderson, in light of  
8 your most recent discussions about keeping the First Nations  
9 involved in each and every aspect that -- that affects them,  
10 I thought I heard you say that despite your reading of the  
11 undertaking provided by Hydro regarding the costs of  
12 construction of the Shamattawa Plant, and I've read that  
13 complete document.

14 You -- I understand your position to be,  
15 despite the fact that the plant as installed, is much more  
16 environmentally friendly than any other alternatives,  
17 basically because of the noise and spillage protection,  
18 despite the fact that it is significantly more reliable than  
19 any other -- than the alternative proposal, despite the fact  
20 that it contains remote trouble shooting and fire protection,  
21 despite the fact that it has reduced maintenance costs, and  
22 despite the fact that they have even taken the precaution of  
23 having a tank farm, so we won't be burdened with those  
24 horrible costs we had a couple of years ago, when we had to  
25 fly all that fuel into those remote communities.

1                   It is the position of MKO that Shamattawa  
2 should have been happy with the ham sandwich shown in photo 3  
3 instead of the meal from Ray and Jerry's shown in photos 1  
4 and 4; is that MKO's position? And did you specifically  
5 discuss that position with the -- with the people of  
6 Shamattawa?

7                   MR. MICHAEL ANDERSON: The issue as to whether  
8 the costs in the diesel service are just and reasonable and I  
9 take -- I understand your example and your direct question.  
10 The matter is, is that it's not -- there's no question in  
11 looking at the photographs, that a very --

12                   MR. ROBERT MAYER: My question was very  
13 clearly clear, that is --

14                   MR. MICHAEL ANDERSON: That is --

15                   MR. ROBERT MAYER: -- your position that they  
16 should have taken a ham sandwich and have you discussed it  
17 with the people of Shamattawa?

18                   MR. MICHAEL ANDERSON: The issue is, is  
19 whether or not the services that are being provided and the  
20 assets that are being installed are commensurate with the  
21 requirements including the afford -- the ability of the  
22 diesel customers to afford the installations of facilities.

23                   So, we're talking about options and approaches  
24 and expenditures. I'm not disputing that we have here a very  
25 capable facility of generating diesel electric energy, but

1 the issue is, that the costs that are associated with this  
2 installation are now driving the rate increases that are  
3 before us in this Application.

4 Our consideration is whether all of the  
5 expenditures were prudent and necessary, and whether options  
6 to doing the things that you've described were available and  
7 followed, that's what our -- that's what our comment is on  
8 this.

9 MR. ROBERT MAYER: You're obviously not going  
10 to answer my question and that's fine, I'm not going to go  
11 any further, I'm not going to debate it with you and I don't  
12 intend to. I would remind you, however, that especially when  
13 it comes to the issue of the environment, we've got a number  
14 of schools now that have been closed down, some for months,  
15 some for years, as a result of diesel pollution.

16 We have people in those communities who are --  
17 who are becoming sick as a result of diesel pollution, but  
18 you're still recommending the ham sandwich depicted in photo  
19 3?

20 MR. MICHAEL ANDERSON: We're not recommending  
21 that we set aside environmental considerations or to take  
22 reasonable precautions, in fact necessary precautions to --  
23 to eliminate future soil contamination.

24 What we're saying is, is that the expenditures  
25 on doing those things must be balanced against the options



1 that are available to do so, and to result in the optimal  
2 plant in respect to the costs of service to the customers who  
3 clearly have a limited ability to cover those costs.

4 Our -- our view is there are other ways to do  
5 the same job, and were they investigated?

6 THE CHAIRMAN: Thank you, Mr. Anderson. I  
7 want to thank you and Mr. Hildebrand for your contribution.

8 Ms. Ramage, would you like five (5) or so  
9 minutes? And may I suggest we stand down for at least five  
10 (5) minutes to give the Board an opportunity to move around  
11 and then come back.

12 Is there indication of how long we might be?  
13

13

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(BRIEF PAUSE)

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16 MS. PATTI RAMAGE: I'm hoping half an hour,  
17 but I don't want to disappoint you, Mr. Chair, so --

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18 THE CHAIRMAN: No, no, that's --

19

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19 MS. PATTI RAMAGE: Especially on your last  
20 day.

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21 THE CHAIRMAN: -- understood. I didn't mean  
22 to -- to put you in an awkward position. Certainly there's  
23 no rush on it. I just wanted to get an indication of when we  
24 may conclude.

25

Ladies, we'll -- Ladies and gentlemen, we'll

1 stand down and reconvene in about five (5) minutes.

2

3 --- Upon recessing at 5:50 p.m.

4 --- Upon resuming at 6:00 p.m.

5

6 THE CHAIRMAN: Ladies and gentlemen, if I may  
7 call the procedure back to order. Ms. Ramage, are you ready  
8 with your final submission?

9 MS. PATTI RAMAGE: Yes, I am, Mr. Chair.

10 MR. MICHAEL ANDERSON: Mr. Chair, Mr. Peters  
11 had encouraged me just to make a brief comment for the  
12 record.

13 In terms of the specific configuration of a  
14 diesel facility, we responded to a PUB IR, it's PUB/MKO-20.  
15 It's not quite what's in the picture but it does, based on  
16 the information we had at the time, that's the configuration  
17 that we suggest.

18 And in respect to the other part of the Vice  
19 Chair's question, I have spoken with all of the Chiefs of all  
20 four (4) communities as often as I can about these concepts.  
21 With respect to our configuration the -- the issue is to try  
22 to keep the costs low and make the rates affordable.

23 I just wanted to say that and I thank you for  
24 allowing me to put that on the record.

25 THE CHAIRMAN: Thank you, Mr. Anderson. Ms.

1 Ramage...?

2

3 FINAL SUMMATION BY MS. PATTI RAMAGE:

4 MS. PATTI RAMAGE: Yes, Mr. Chairman, Members  
5 of the Board, diesel rates have been submitted to this Board  
6 for review and approval on numerous times since the passage  
7 of the Crown Corporations Public -- Public Review and  
8 Accountability Act in 1989.

9 The most extensive of these reviews, prior to  
10 this hearing, was during Manitoba Hydro's 1994 general rate  
11 application. In 1994 the Board concluded that the diesel  
12 rate structure and the rates themselves were just and  
13 reasonable.

14 The rate structure approved in 1994, and which  
15 had previously been approved ex parte in 1993 and before that  
16 in 1992, '91, 1990 and 1989, consisted of, in general terms,  
17 a residential rate equal to that of other rural residential  
18 rates subject to service limitations, a general service rate  
19 equal to that of other general service small customers in the  
20 north subject, again, to consumption limitations and, after  
21 which, prices increased to reflect the full cost of diesel  
22 service.

23 And, finally, a government rate comprised of  
24 the full cost on all consumption together with a surcharge  
25 intended to recognize and recover the high cost of providing

1 diesel service.

2           In 1994 the Board found that this rate  
3 structure was just and reasonable. Mr. Chair, this was a  
4 good decision and it was a sound decision. And it's of note  
5 that in 1994 MKO argued in favour of this rate structure.

6           Manitoba Hydro's Application before this  
7 board, like that dealt with in 1994, deals with three (3)  
8 rate categories, residential, general service, and  
9 government. Manitoba Hydro is seeking to have the costs now  
10 being forecast for the year 2003/2004 reflected in the rates  
11 charged to these three (3) classes.

12           The approach taken to recovering this cost is  
13 substantially similar to that requested in 1994. Manitoba  
14 Hydro submits that the approaches which have been proposed in  
15 this Application are consistent with the principles approved  
16 in 1994.

17           This structure and, in particular, the  
18 government surcharge allows Manitoba Hydro the opportunity to  
19 recover its costs and provide service at reasonable rates to  
20 the residential and general service customers. Manitoba  
21 Hydro has relied, in good faith, upon the surcharge mechanism  
22 since 1984 and, with the oversight and approval of this  
23 Board, since 1989 to recover its costs.

24           Contrary to comments made by other parties  
25 here this afternoon, Manitoba Hydro does not believe the

1 diesel rate structure is a mess, rather it needs some  
2 attention from the principal parties and we're very  
3 encouraged by INAC's potential offer of mediation that  
4 perhaps it's going to receive some of that attention.

5           At the opening of these submissions, Board  
6 Counsel requested Manitoba Hydro states its expectation  
7 regarding when Manitoba Hydro would want to implement this  
8 Order.

9           I can advise that it's Manitoba Hydro's  
10 intention to implement immediately on receipt of the Order on  
11 a perspective basis and when I say immediately on receipt,  
12 we'd be looking at the first of the month following receipt  
13 of the Order.

14           Dealing with the Application at hand, in  
15 particular the proposal with respect to residential  
16 customers, note that Manitoba Hydro is seeking no change with  
17 respect to the residential diesel customers basic monthly  
18 charge or the rates applying to the first two thousand  
19 (2,000) kilowatt hours per month.

20           For consumption in excess of two thousand  
21 (2,000) kilowatt hours per month, Manitoba Hydro proposes to  
22 increase the rate to seventy-nine point one (79.1) cent per  
23 kilowatt hour which is estimated to be the full cost of  
24 providing service.

25           The current residential rate structure has no

1 limitation on the number of kilowatt hours available to a  
2 customer at equivalent to grid rates. The logic, driving the  
3 proposed two thousand (2,000) kilowatt hour limitation is  
4 clearly in accordance with accepted principles governing the  
5 provision of diesel service in the diesel served communities.

6                   Currently, access to the residential rate is  
7 restricted to residential customers with service size not  
8 greater than sixty (60) amps and not using electric space  
9 heating. Mr. Wiens testified at transcript page 62 that  
10 service restriction of this type has been in place since the  
11 earliest days of Manitoba Hydro's involvement in these  
12 communities and before that when Canada provided these  
13 services directly.

14                   The service restriction was intended to limit  
15 usage and the corresponding operating and capital cost caused  
16 by such usage. The proposed two thousand (2,000) kilowatt  
17 hour per month cap doesn't constitute a change in this basic  
18 principle, rather a modification and how it is to be  
19 achieved. So I think the question has to be is what's  
20 changed since 1994 to justify this modification?

21                   The space heating prohibition has never been  
22 easy to enforce. However, the fact that sixty (60) amp  
23 service is now the norm in these communities exasperates this  
24 problem. Mr. Wiens testified at transcript page 231, that  
25 presently 6.2 percent of bills issued to residential

1 customers show consumption in excess of two thousand (2,000)  
2 kilowatt hours per month and that one hundred and sixty-six  
3 (166) customers in all, would show consumption .- consumption  
4 in excess of two thousand (2,000) kilowatt hours per month at  
5 least once during the year and that can be found at page 246  
6 of the transcript.

7                   Mr. Wiens also testified that the average  
8 consumption of Manitoba residential customers not using  
9 electric heat is only eight hundred and seventy (870)  
10 kilowatt hours per month. Manitoba Hydro submits that the  
11 two thousand (2,000) kilowatt hour per month restriction is a  
12 just and reasonable means of achieving the well established  
13 objective of limiting use and discouraging space heating.

14                   The response to PUB/MH-5-A demonstrates that  
15 this restriction should easily accommodate all reasonable  
16 uses except space heating. It's a generous limit when  
17 compared to other jurisdictions. For example, Hydro Quebec  
18 provides good rates for only the first nine hundred (900)  
19 kilowatt hours per month. The Northwest Territories Power  
20 Corporation uses a seven hundred (700) kilowatt hour per  
21 month limit.

22                   Other parties to this proceeding have  
23 suggested alternative price signals for residential  
24 customers. Mr. Williams has proffered scenarios which  
25 include an intermediate rate for usage between the fifteen

1 hundred (1,500) and two thousand (2,000) kilowatt hour per  
2 month point. Although at eight or twelve cents or any amount  
3 in that range, such an intermediate rate would only be a  
4 substantial increase from the customer perspective and not  
5 recover .- it would recover very little towards the variable  
6 costs.

7                   Mr. Hildebrand also proffered such an  
8 immediate .- intermediate rate but would reduce the rate for  
9 usage over two thousand (2,000) kilowatt hours to a point  
10 that would recover a minimal maybe half of variable costs and  
11 make no contribution to the fixed costs.

12                   Turning now to the general service small  
13 customers. Manitoba Hydro is not seeking any change to the  
14 basic monthly charge and rates applying to the first two  
15 thousand (2,000) kilowatt hours of general service usage.  
16 For usage in excess of two thousand (2,000) kilowatt hours  
17 per month, Manitoba Hydro proposes the full cost rate of  
18 seventy-nine point one (79.1) cents per kilowatt hour.

19                   Presently, general service customers have  
20 access of up to three thousand (3,000) kilowatt hours at grid  
21 rates and thereafter pay full cost which is currently thirty-  
22 five point nine (35.9) cents. Once again Manitoba Hydro's  
23 Application before .- Application before this Board seeks no  
24 change except with respect to the amounts; the amount of the  
25 full cost rate and the amount of consumption at grid rates.



1                   Manitoba Hydro believes the two thousand  
2 (2,000) kilowatt hour limit is reasonable to apply to the  
3 general service customers for the following reasons.

4                   First, the original intent in enhancing  
5 service in diesel communities beginning in 1990 was to allow  
6 both residential and general service customers a sixty (60)  
7 amp service limit to qualify for access to grid rates. We  
8 can find this reference at transcript Page 242. Now, this  
9 would suggest similar, if not identical, consumptions be  
10 applied on a go-forward basis.

11                   Secondly, it's true that general service  
12 customers can vary significantly in their requirements, even  
13 apart from consideration of electric heat. Consideration of  
14 the wide range of varying requirements, however, would lead  
15 to poten -- would lead potentially to eligibility for grid  
16 rates being much higher in terms of monthly usage or to  
17 setting limits which are different for individual customers  
18 which would pose its own difficulties.

19                   This Board heard a presentation from one of  
20 Manitoba Hydro's general service customers in the north, the  
21 northern stores. Manitoba Hydro is not only sympathetic to  
22 the concerns of the northern stores but it can also relate to  
23 them. It's apparent the provision of service of any kind to  
24 people in remote communities is expensive but like the  
25 northern stores, Manitoba Hydro must recover its costs.

1 Manitoba Hydro submits, however, that the provision of  
2 service for the first two thousand (2,000) kilowatt hours per  
3 month at subsidized rates, rates some seventy-three (73)  
4 cents per kilowatt hour below cost is a huge subsidy and to  
5 ask for more may not be reasonable to those paying that  
6 subsidy.

7                   Turning to government rates, Manitoba Hydro is  
8 proposing to continue to charge the full cost rate, together  
9 with the government surcharge on all kilowatt hours used.  
10 The proposed full cost rate is 79.1 cents per kilowatt hour  
11 and the surcharge is one dollar and twenty-two cents (\$1.22)  
12 per kilowatt hour.

13                   Again, these are increases in amounts, not a  
14 change in the principle or purpose of the government rate and  
15 surcharge.

16                   The other change being requested is that the  
17 surcharge be applied to all First Nation non-residential  
18 accounts. Currently the surcharge is applied to forty (40)  
19 out of seventy-one (71) of these accounts and the transcript  
20 reference there is Page 510. As noted repeatedly throughout  
21 these proceedings, the surcharge to First Nation accounts is  
22 being billed but not collected.

23                   Manitoba Hydro has discussed extensively why  
24 it would prefer to apply the surcharge to all these accounts  
25 but the rationale essentially amounts to the following.

1                   First, Manitoba Hydro staff are not in a  
2 position to determine the extent of funding from Canada  
3 available to individual First Nation accounts with any degree  
4 of consistency.

5                   Second, it is likely that all of these  
6 accounts receive INAC or other funding from Canada directly  
7 or indirectly.

8                   Third, the provision of adequate funding to  
9 the First Nations is a matter between the First Nations and  
10 Canada.

11                   Now, MKO provided a fair bit of commentary  
12 during argument with respect to funding levels. Manitoba  
13 Hydro is not in a position to -- to comment on the adequacy  
14 of these funding levels, although it appears self-evident  
15 that they are a problem. The concern here is it simply isn't  
16 practical for Manitoba Hydro to base its rates on the  
17 customer's ability to pay; nor, quite frankly, should  
18 Manitoba Hydro ratepayers be held hostage to a funding  
19 formula determined in Toronto.

20                   Ultimately, regardless of how these  
21 communities are funded we have to collect the costs and it's  
22 not a lack of concern on Manitoba Hydro's part; had that been  
23 the case, Manitoba Hydro have -- would not have been  
24 attempting to meet with INAC over the last few years to try  
25 to resolve these funding issues.

1                   The fourth rationale dealing with applying the  
2 accounts to the First Nations is that the application of the  
3 surcharge to all these accounts does not increase the  
4 aggregate amount that must be recovered from the surcharge  
5 but does increase the customer base over which it can be  
6 recovered. If we take the band accounts out, including  
7 facilities which have always been surcharged, customers such  
8 as the Frontier School Division will have to pay a higher  
9 surcharge.

10                   Other parties to this proceeding have offered  
11 varying degrees of guidance as to how the revenue requirement  
12 for the diesel community should be collected. Mr. Williams  
13 appears to want to see the other ratepayers of Manitoba Hydro  
14 ante-up another \$1.2 million dollars and my transcript  
15 reference there is at 405 but he doesn't tell us why that  
16 should be.

17                   He also wants the Federal and Provincial  
18 Governments to bring some direct subsidies to the table or,  
19 alternatively, surcharge in excess of three (3) or four  
20 dollars (\$4) per kilowatt hour on the usage of government  
21 agencies other than those funded by INAC.

22                   No explanation has been provided as to why the  
23 taxpayers of the province of Manitoba or the budget of the  
24 RCMP and Health and Welfare Canada should be responsible to  
25 subsidize INAC's clients. Nor does Mr. Williams indicate why

1 he thinks the RCMP or Frontier School Division would not  
2 bypass Manitoba Hydro's system in order to -- in order to  
3 avoid paying surcharges of that magnitude.

4 Mr. Hildebrand acknowledges that a service  
5 extension policy might usefully and reasonably be applied to  
6 collect some of the cost of diesel generation up front. He  
7 even agrees that, and I quote:

8 "Isolated customers must expect to pay  
9 capital contributions for costly  
10 extensions."

11 End of quote and that, and I'll quote again:

12 "The treatment of isolated generation costs  
13 should be no different than -- than what  
14 the treatment of the cost to build a  
15 transmission line to inter-connect the --  
16 the isolated system would be."

17 And my transcript reference there is Page 863.  
18 He also suggests that Canada contribute -- could contribute  
19 through an off-tariff payment and I find that reference at  
20 PUB/MKO-22-C.

21 He declines to provide assistance as to how  
22 Manitoba Hydro could negotiate such an arrangement given  
23 INAC's apparent unwillingness to acknowledge its  
24 responsibilities. However, Manitoba Hydro is -- is hopeful  
25 that we're -- we're at a crossroads with the most recent

1 talks of mediation.

2           But I'd also note that Mr. Anderson is  
3 requesting that remote generation be treated as -- as  
4 transmission in the Cost of Service Study. Manitoba Hydro  
5 does not agree with this recommendation. But, in any event,  
6 would remind the Board that transmission extensions are  
7 subject to serv -- to service extension policy and would  
8 require contributions similar to that of the North Cent --  
9 North Central Transmission Project which was funded 90  
10 percent by -- by contributions.

11           Now, I alluded, several times, to Canada's  
12 mediation officer and I see it's coming up in my notes so I'm  
13 going to try to deal with it here. And I would just say that  
14 Manitoba Hydro would be most willing to participate in any  
15 meaningful discussions with Canada and we wouldn't shy from  
16 mediation but it is -- but Manitoba Hydro is extremely  
17 reluctant to delay this matter and urges the Board to put in  
18 place rates reflecting current costs so that the appropriate  
19 incentives are in place when those discussions take place.

20           Dealing with some of Mr. Smith's comments, I'd  
21 also like to state clearly on the record that Manitoba Hydro  
22 is not suggesting that this Board has the ability to make an  
23 order requiring Indian and Northern Affairs Canada to pay  
24 these accounts.

25           This Board does, however, have the ability to

1 set rates and it -- when setting those rates it can take into  
2 account those factors set out in Section 26 sub 4 of the  
3 Crown Corporations Public Review and Accountability Act.

4           And once it sets those rates, Manitoba Hydro  
5 can charge those rates and then it can pursue payment of  
6 those rates in a forum which does have that ability. And,  
7 for those reasons, I would encourage the Board to proceed  
8 with -- with setting the rates so that met -- so that we will  
9 all be dealing with the current costs if and when discussions  
10 actually take place.

11           Manitoba Hydro fully acknowledges that it will  
12 have the onus of satisfying this Board that the proposed  
13 increases to the various diesel rate classifications are just  
14 and reasonable and Manitoba Hydro is confident that the  
15 proposed rates meet such onus.

16           If, however, there is to be a change in the  
17 rate structure would -- which has already been reviewed,  
18 Manitoba Hydro submits that this Board should be imposing a  
19 heavy onus on any party advocating such a position to show  
20 what has changed since 1994.

21           And on that, I'd -- I'd like to segue now, I'm  
22 going to do one of Mr. Williams' clean segues over to the  
23 historic -- history of this project and on that, I -- I'm  
24 hoping to be brief, because Manitoba Hydro has provided  
25 evidence with respect to the history of diesel service in

1 Manitoba Hydro -- in Manitoba in order to demonstrate how we  
2 got where we are today.

3                   Similar evidence was heard at the status  
4 update hearing, and before that the 1994 GRA. The historical  
5 record is what it is, it can't change.

6                   And I would -- I don't want to go into any  
7 detail on it -- on it, except to say that Manitoba Hydro  
8 provided service to the diesel communities because they were  
9 requested to do so by the Federal Government, who in turn  
10 undertook to pay the cost of service in these communities.

11                   And on -- at this point it seems appropriate  
12 to comment on one (1) of Mr. Williams' comments or positions,  
13 which was that -- that he would endorse the continuation of  
14 the surcharge, at least with respect to capital  
15 contributions.

16                   And I -- I put that at this point in my  
17 argument, because his basis for doing so, as I understood it  
18 was that -- was because he said the -- the surcharge would,  
19 if you eliminate it to capital contributions, it would  
20 reflect the historical basis of Canada's responsibilities.

21                   I would suggest that that logic is somewhat  
22 flawed, because the actual -- the surcharge was originally  
23 designed to deal with fuel costs, and therefore the basis for  
24 limiting the Government of Canada's contribution to capital  
25 costs, that logic is flawed.



1                   Now, Mr. Anderson dealt with briefly the  
2 obligation to serve, and he made reference to Manitoba -- the  
3 Manitoba Hydro Act being a law of general application, and I  
4 think we discussed this briefly back at the status update,  
5 but it continues to be Manitoba Hydro's view that there's no  
6 need to go into whether the Manitoba Hydro Act is a law of  
7 general application or not, Manitoba Hydro is providing  
8 service in these communities, so how it's doing it, whether  
9 it's contract or law, the reason we're here today is to deal  
10 with whether the rates are reasonable.

11                   Now, in Mr. Smith's cross-examination of  
12 Manitoba Hydro, he -- he appeared to suggest that times have  
13 changed since the original contracts documenting Canada's  
14 obligation to support service in the die -- in the diesel  
15 services -- I'm sorry, I'm going to have to start this one  
16 (1) over again.

17                   Mr. Smith's cross-examination of Manitoba  
18 Hydro was intended to suggest that the times have changed  
19 since the original contracts documenting Canada's obligation  
20 to support service in the diesel communities were signed. He  
21 mentions that fifteen (15) amp service has changed to sixty  
22 (60) amp service, and that this was not reflected in the old  
23 agreements.

24                   Yet INAC was fully involved in the discussions  
25 that led up to the decision to enhance service in these

1 communities, and its representatives attended meetings, which  
2 were to inform communities about the new service and I refer  
3 there to transcript page 435, together with the response to  
4 INAC/MH-9-1.

5           Mr. Smith referred to the fact that the  
6 contracts did not contemplate a surcharge. That's the same  
7 surcharge that his client requested be implem -- implemented  
8 to make budgeting easier, the same surcharge which his client  
9 paid directly from 1984 through 1987, and agreed to fund  
10 indirectly at the time the accounts were transferred to the  
11 First Nations in 1987, and which we understand his client  
12 continues to fund.

13           Mr. Smith refers to the fact that PUB hearings  
14 were not contemplated at the time the original contracts were  
15 signed. How can this diminish the responsibility of INAC?  
16 They signed a contract saying they would pay the rates  
17 established by Manitoba Hydro from time to time. There was  
18 no mechanism for negotiation with Manitoba Hydro as to the  
19 rates.

20           After 1989, I think Canada got a bit of a  
21 windfall when the PUB acquired the mandate to approve all  
22 rate changes, they had contractually admitted -- or  
23 contractually committed to pay the rates. The contracts and  
24 INAC's obligations were not in any way dependent on the legal  
25 mechanism for changing rates in Manitoba.

1                   Mr. Smith has suggested in cross-examination  
2 that the letter of May 2nd, terminated INAC's obligations.  
3 If this is the case, we have to ask why did INAC continue to  
4 accept and pay for service for four (4) years thereafter, and  
5 continue to fund, at least partially, until this date.

6                   Finally, Mr. Smith put some sort of emphasis  
7 on the age of the contracts, as if they somehow lost their  
8 enforceability over time. I know no precedent which lends  
9 itself to this suggestion. The foundation of these  
10 agreements that Canada pay the cost of service in the diesel  
11 communities has never changed over the years.

12                   The mechanism for collection of those payments  
13 has and most often at the request of Canada. The fact that  
14 Manitoba Hydro complied with Canada's requests in order to  
15 assist with their internal budgeting or policy concerns  
16 should not now be used against Manitoba Hydro ratepayers so  
17 as to excuse Canada from its obligations.

18                   MR. ROBERT MAYER:    Ms. Ramage, assume we  
19 agree with you, --

20                   MS. PATTI RAMAGE:    Hmm hmm.

21                   MR. ROBERT MAYER:    Mr. Smith is undoubtedly  
22 right, we cannot order him to pay -- order his client to pay  
23 or to comply with its contracts, if such contracts still  
24 exist; where do you want us to go with that?

25                   MS. PATTI RAMAGE:    I agree --

1 MR. ROBERT MAYER: Or where are you going  
2 with that?

3 MS. PATTI RAMAGE: I agree with you and Mr.  
4 Smith entirely that this Board can't order but I think when  
5 -- when setting rates one (1) of the considerations has to be  
6 the history because what I'm hearing from some of the other  
7 parties in this room is, for example, to just move these  
8 rates over to grid rates.

9 And when setting those rates, I think to that  
10 end, it's important for the Board to understand what happened  
11 in the past. No question that we have to go to another forum  
12 when we want to collect on those rates but until those  
13 dollars are put into rates, Manitoba Hydro's hands are tied  
14 in terms of collecting them.

15 So, Manitoba Hydro relies on the early  
16 contract as part of the historical record but also the verbal  
17 undertakings, the participation of INAC in the redevelopment  
18 of service in these communities, the assurances given in 1987  
19 at the time the accounts were transferred, the orders of this  
20 Board pertaining to the delivery and rates for service in  
21 these communities, and the constitutional responsibility of  
22 Canada for the provision of service to First Nations.

23 All of these, we assert, lead to the  
24 responsibility of Canada to provide for the recovery of costs  
25 incurred to provide these services, if not directly then by

1 transparently assuring the First Nations are adequately  
2 funded to meet the cost.

3           Now, the history of diesel service was -- was  
4 reviewed, as I said, extensively at the 1994 GRA and the  
5 historical record is what it is. The Board concluded, based  
6 on the record, it's just and reasonable to approve a rate  
7 structure including the government surcharge.

8           Manitoba Hydro has relied on this  
9 determination when incurring costs and it's now time to  
10 recover those costs. Had such a -- determination not been  
11 made, Manitoba Hydro may well have conducted itself  
12 differently; it may have insisted on upfront contributions,  
13 but such speculation, however, today is of little assistance.

14           Costs have been incurred in the good faith  
15 expectation they'll be recovered. Now, Manitoba Hydro  
16 acknowledges that it is fair to look at the record post 1994  
17 to determine if there have been any changes which -- which  
18 might justify a change in the diesel rate structure.

19           Enhanced service to sixty (60) amps was not  
20 fully completed at the time of the 1994 GRA. However, as set  
21 out in the answer to PUB/MH-35(a), it had been partially  
22 implemented and inclusion in rates of the associated costs to  
23 that date was deemed just and reasonable in Order 62-94.

24           Since 1994, enhanced service has been fully  
25 implemented in all four (4) communities and significant new

1 investment in the order of \$20 million has been made in three  
2 (3) of the four (4) communities and there I refer you to the  
3 response to PUB/MH-36.

4           The record shows that INAC -- INAC was the  
5 party who paid the bills and would be -- and was advised of  
6 the impact of enhancement. And Manitoba Hydro submits -- or  
7 would advise that those discussions were held with INAC  
8 because they were the party who was funding this arrangement.

9           And when an overhead was alluded to that said,  
10 to the effect that it wouldn't cost more for enhanced service  
11 in those communities; that was in the 1990 environment when  
12 there was no issues as to who was paying these accounts. The  
13 parties in those communities in 1990 weren't expected to --  
14 to see those costs.

15           Now, the significant new investment drives  
16 substantially, however, the increase to the full cost and  
17 surcharge portion of the rates included in the Application.  
18 Fuel and other operating costs have also increased  
19 substantially from about twenty-one (21) cents per kilowatt  
20 hour in 1994 to forty-one (41) cents per kilowatt hour in the  
21 2003/2004 diesel cost of service study.

22           Such increase in costs have not been  
23 challenged in these proceedings with the single important  
24 exception of the capital costs of the new Shamattawa  
25 generating station and I'll address Shamattawa separately in

1 a few moments.

2 Another factor leading to the need to increase  
3 rates that have been in place since 1994 is the reduction in  
4 the number of diesel communities and the fact that the  
5 remaining communities are more remote and hence more costly  
6 to serve than the aggregate of communities in  
7 1994. The North Central Project has been completed with the  
8 result that thirteen (13) communities -- that rather than  
9 thirteen (13) communities, we now have only four (4) diesel  
10 communities.

11 The North Central Project, however, was on  
12 everyone's radar screen back in 1994 and, in fact, I would  
13 suggest that MKO's desire to see North Central proceed and  
14 the motivation provided by the surcharge to Canada to fund  
15 that project is at least one (1) reason why back in 1994 MKO  
16 strongly endorsed the continuation of the surcharge.

17 North Central is now in place and nine (9)  
18 former diesel communities and their principal funders are  
19 enjoying the reduced cost and improved service associated  
20 with grid service.

21 For the four (4) remaining communities, the  
22 principles which acted as the foundation for the surcharge  
23 remain unchanged from the days when MKO supported it. The  
24 fact that the surcharge is no longer a useful tool in -- for  
25 grid -- is no longer useful as a negotiating tool for grid

1 extension does not serve to make a just rate structure  
2 unjust.

3                   Now, this brings us to the allegations of  
4 MKO's witness, Mr. Hildebrand, that Manitoba Hydro has spent  
5 far too much to provide service to Shamattawa. Firstly, I  
6 would like to point out that Mr. Hildebrand has not suggested  
7 that he is an expert in the construction of diesel  
8 facilities, nor was he qualified as such.

9                   Mr. Hildebrand was presented as an expert in  
10 the cost of service and rate design issues and that -- his --  
11 his qualification can be found at transcript page 785.

12                   Mr. Hildebrand alluded to this himself when he  
13 told us at page 908 of the transcript that he based his  
14 testimony on experts he talked to. These experts haven't  
15 been named, their experience hasn't been reviewed nor has  
16 that evidence been tested. We simply don't know what  
17 information was avai -- made available to these individuals,  
18 nor do we know their knowledge of the facts at hand.

19                   With respect to Shamattawa itself, the costs  
20 incurred to date and forecast by Manitoba Hydro to complete  
21 the project are in the order of \$16 million. Mr. Hildebrand  
22 has suggested that the project could have been completed for  
23 around \$5 million. At transcript page 904, Mr. Hildebrand  
24 goes as far to suggest that Manitoba Hydro's cost for  
25 electronics and plant at \$8.1 million should be compared to



1 his estimate for the cost of a smaller plant which -- with  
2 much less fuel storage of 1.5 million FOB the factory.

3           It should be recognized that that 1.5 million  
4 FOB quoted doesn't include transportation from the factory  
5 gates to these northern communities. It doesn't include  
6 assembly and construction of the diesel generators.

7           It doesn't include the power house and as best  
8 we can tell, it doesn't take into account the additional fuel  
9 storage capacity, the concrete required for the building and  
10 tank farm, or the cost associated with a larger site situated  
11 outside the community proper.

12           Mr. Chairman, when you look at what Manitoba  
13 Hydro's cost to procure the -- what Manitoba Hydro's cost to  
14 procure the generator was, as shown in the response to  
15 undertaking -- the undertaking on Shamattawa which I believe  
16 is Exhibit 29. It is 1.8 million, not much more than the  
17 \$1.5 million suggested by Mr. Hildebrand.

18           Apparently, however, Mr. Hildebrand doesn't  
19 want to see Manitoba Hydro build a permanent power house or  
20 two (2) ye -- two (2) years of fuel inventory capability in  
21 case the winter roads can't be built one (1) year.

22           It appears he doesn't think the plant should  
23 have more sophisticated electronics to assist in maintaining  
24 reliability or fire su -- or fire suppression or appropriate  
25 fencing, or access, or the capability to serviced the

1 generator on-site. Mr. Hildebrand wants to see a skid-  
2 mounted plant with less reliabili -- reliable generating  
3 equipment than there is at the remaining diesel facilities  
4 and with more costly maintenance and more outages.

5           As the response to the undertaking  
6 demonstrates, Mr. Hildebrand's estimate would not include a  
7 complete upgrade of the community's distribution system, soil  
8 remediation of the decommissioned plant, and would have been  
9 done in the absence of the close coordination and lengthy  
10 consultation with the community, that was required in order  
11 to bring this plant to service.

12           It would not have included the additional  
13 costs incurred to assure the community had meaningful  
14 economic participation in this project.

15           As the response to the undertaking  
16 demonstrates, if all of these items had been excluded, the  
17 all up cost of the station would have been comparable to Mr.  
18 Hildebrand's all up estimate of \$5 million, but the operating  
19 costs would have been higher, the service less reliable, and  
20 the -- potential environmental impacts more severe.

21           Manitoba Hydro submits that given the  
22 operating conditions of this remote community, there is a  
23 need for a permanent facility capable of meeting the long  
24 term growth in a sustainable, safe, and reliable manner, and  
25 that the costs incurred are reasonable and not dissimilar to

1 costs incurred for similar facilities in other Canadian  
2 remote centres.

3           And if I can make a final comment on this  
4 point; and it was suggested by MKO in argument that Manitoba  
5 Hydro should not have proceeded with construction, without a  
6 funding agreement from Canada.

7           First, Manitoba Hydro did have an approved  
8 funding mechanism, that was the surcharge. Second, it's hard  
9 to accept that the First Nation would have been -- would have  
10 preferred to defer more reliable service, pending the outcome  
11 of such negotiations.

12           It's -- in the year 2000 -- between the years  
13 2000 and 2003, there were nineteen (19) outages in the  
14 community of Shamattawa. Since the service date of that  
15 plant, zero, and it's -- it's terribly hard to believe that  
16 that would have been the community's preference to -- to stay  
17 with the less reliable plant.

18           Now, Mr. Anderson noted during his argument,  
19 he compared Manitoba Hydro's rate structure to those of other  
20 provinces in the country, and he noted that the Northwest  
21 Territories eliminated the Government -- Government class of  
22 rates. Although this is true, he neglected to indicate that  
23 the general service customers in diesel communities now pay  
24 higher rates to account for the subsidy previously paid by  
25 Government accounts.

1                   And I'm having trouble accepting that the  
2 Northern Store and Frontier School Division should be paying  
3 more than the rates proposed by Manitoba Hydro.

4                   Mr. Anderson also noted that diesel customers  
5 in Ontario are subsidized by grid customers. Although this  
6 is true, it -- we failed to mention that this subsidy is  
7 imposed by the Government of Ontario and not by the utility  
8 that serves them.

9                   Now, one (1) final point that I see I've neg  
10 -- neglected, and it's going to be one (1) of those nice  
11 clean segues, is with respect to comments made regarding  
12 Manitoba Hydro's User Legislation, or I should say User  
13 Regulation, because the suggestion has been made that  
14 Manitoba Hydro is limited to seeking recovery of its accounts  
15 from parties who physically consume the power. This  
16 foundation has -- this position has no foundation in law or  
17 practice.

18                   The terms of condition -- the terms and  
19 conditions of service referred to are those contained in  
20 regulation H-190, which places certain obligations on the  
21 users of power, including the obligation to pay for power  
22 consumed -- consumed.

23                   This is a regulation passed by the Board of  
24 Manitoba Hydro itself, pursuant to powers granted under  
25 Section 28.1 of the Act, and that Section authorizes the

1 Board to prescribe terms and conditions upon which  
2 corporation -- the corporation will supply power.

3           This is a statutory power not afforded to an  
4 ordinary citizen or corporation, but is avail -- made  
5 available to Manitoba Hydro to assist in carrying out its  
6 mandate. Nowhere, however, in the Manitoba Hydro Act will  
7 you find a provision which supports the notion that Manitoba  
8 Hydro is restricted to these terms and conditions or from  
9 contracting with a third party for payment of its accounts.

10           Mr. Warden's evidence on redirect was quite  
11 clear that Manitoba Hydro enters into arrangements where  
12 third parties assume responsibility for power concern --  
13 consumed. This -- this Board is quite familiar -- or -- or  
14 is quite familiar with other terms and conditions applied  
15 with respect to other programs.

16           Such activities are well within the  
17 Corporation's power, as Section 15.1.1 of the Manitoba Hydro  
18 Act, provides that the Corporation has all the powers of a  
19 natural person. This includes the ability to enter contracts  
20 on such terms and conditions as Manitoba Hydro deems proper.

21           We're now to the point which Manitoba Hydro  
22 submits should be the primary focus of this hearing: are the  
23 proposed rates just and reasonable?

24           As stated at the outset, Manitoba Hydro is not  
25 proposing any change to the basic monthly charge for any of

1 the three (3) diesel rate classifications or for the first  
2 block for residential and general service small customers.

3           Manitoba Hydro is proposing to introduce full  
4 cost rates to residential customers where consumption exceeds  
5 two thousand (2,000) kilowatt hours per month. However,  
6 there is no reason to believe that this will present any  
7 hardship to these customers if service restrictions are  
8 honoured.

9           The consumption level at which full cost rates  
10 are enforced for general service customers will be reduced  
11 from three thousand (3,000) to two thousand (2,000) kilowatt  
12 hours per month; this is consistent with historical practice  
13 of treating these customer classes in a similar manner.

14           Full cost rates and surcharge apply to all  
15 consumption for government accounts. Manitoba Hydro is  
16 proposing to increase the full cost rate from the current  
17 thirty-five point nine (35.9) cents to seventy-nine point one  
18 (79.1) cents per kilowatt hour, and proposing to increase the  
19 surcharge from the current forty-four point eight (44.8)  
20 cents to one dollar and twenty-two cents (\$1.22) per kilowatt  
21 hour.

22           Manitoba Hydro acknowledges that these are  
23 significant increases, but increases which are justified by  
24 the reasonable cost of providing service and the  
25 responsibility of governments for assuring service in these

1 communities. They are also in keeping with the established  
2 principles of rate setting in diesel communities.

3 Manitoba Hydro strongly urges that the Board  
4 make clear the obligation of governments to support the  
5 provision of service through the surcharge in the amount and  
6 customer applicability as applied. It is the only vehicle  
7 available to Manitoba Hydro to recover its cost of service.

8 Mr. Chairman, subject to any questions the  
9 Board may have, that concludes Manitoba Hydro's argument.  
10 However, perhaps on a personal -- more personal note,  
11 Manitoba Hydro and myself would just like to extend our best  
12 wishes to you.

13 It's been a pleasure to appear in front of you  
14 over the years. I've always enjoyed these hearings and I  
15 hate to say it, but I kind of think they're fun, sometimes.

16 MR. VINCE WARDEN: Mr. Chairman, if I  
17 could -- if I could just add to Ms. Ramage's last remarks.  
18 On behalf of Manitoba Hydro and -- and Centre Gas, we not  
19 only want to wish you well, but we want to thank you. Thank  
20 you for your patience, your wisdom, your direction, your  
21 sense of humour over -- over the years.

22 And to use one of -- one of your phrases, one  
23 of your favourite phrases, at the end of the day -- at the  
24 end of the day, Manitoba Hydro is a stronger utility under  
25 your regulation and, most importantly, I think the consumers

1 of electricity and natural gas within the province have  
2 benefited greatly under your regulations.

3                   So, we do -- really do sincerely appreciate  
4 all you've done for us, Mr. Forrest, and wish you all the  
5 best in your retirement. Thank you.

6                   THE CHAIRMAN: Thank you, Mr. Warden and  
7 Ms. Ramage. Ms. Ramage, I know that there are occasions that  
8 you are and can demonstrate that you can get some fun from  
9 some other issues from time-to-time, so I do however,  
10 sincerely appreciate the comments.

11                   Just before I get in to closing down the  
12 hearing, however, are there any questions that the Board has  
13 for Ms. Ramage? Mr. Mayer?

14                   MR. ROBERT MAYER: At great fear of  
15 lengthening these proceedings, and however not wishing to  
16 shorten Ms. Ramage's fun, I recall the discussion about  
17 inverted rates from the status update hearing in the -- and  
18 the evidence from Treaty, and I recall that one (1) of the  
19 reasons -- I think it was Mr. Wiens -- had a concern about  
20 that, is because we didn't know how to deal with -- with  
21 people who heated by electricity.

22                   It seems to me and I will eventually have a  
23 question -- it seems to me that with the diesel communities  
24 where we firstly don't want anybody heating with electricity,  
25 that we are presented with a unique opportunity to test this



1 inverted rate structure.

2           And that proposal appears to have been made by  
3 CAC/MSOS. My question is, well firstly -- MH -- we  
4 recognize, or I recognize that -- that the proposal set out  
5 by CAC/MSOS contributes slightly more, but admittedly only  
6 slightly more revenue than has been requested by Manitoba  
7 Hydro in its Rate Application.

8           But the evidence from CAC/MH -- MSOS or at  
9 least the -- through cross-examination it comes out, that the  
10 suggestion is that that will create a signal, and quite  
11 frankly, that strikes me as being somewhat important.

12           You've been attacked on the issue of -- of  
13 demand side management, the discuss -- the suggestion by Mr.  
14 Williams about the intermediate increase to -- to send the  
15 price signal to the consumer that you're getting real close  
16 to where it's going to cost you an arm and a leg, has some  
17 attraction.

18           I'm wondering why it is that Manitoba Hydro  
19 doesn't appear to want to incorporate that suggestion made by  
20 Mr. Williams?

21

22   (BRIEF PAUSE)

23

24           MS. PATTI RAMAGE: After my consultation with  
25 my client, I am advised that it's -- it's not that we don't

1 want to go ahead with that -- that suggestion, but rather at  
2 the time this Application was made, it was -- we were in  
3 essence trying to -- to stick with the program to some  
4 degree, not make the changes too drastic at any one (1) time,  
5 and move forward once the issue of cost recovery was dealt  
6 with, because that was really the focus when -- when this was  
7 filed.

8 MR. ROBERT MAYER: So I take it there's no  
9 objection in principle, to the suggestion made by Mr.  
10 Williams?

11 MS. PATTI RAMAGE: Well, Mr. Warden has  
12 advised me that it's -- it is Manitoba Hydro's intention to  
13 move forward and deal with inverted rates in the future.

14 THE CHAIRMAN: Any further questions? Thank  
15 you, Ms. Ramage, for your final submission. I'd like to  
16 thank all parties in this room for their contribution through  
17 the final submission today.

18 No doubt as everyone has mentioned, it will be  
19 one (1) that will take some time and effort to try to arrive  
20 at appropriate decision with respect to this matter, and I'm  
21 sensitive to the time lines that you have also put forward,  
22 Ms. Ramage.

23 Ladies and gentlemen, this will be the last  
24 oral Hearing, I guess, that I will be doing, unless something  
25 terribly surprising comes out of the woodwork in the next few

1 weeks. There are some oral -- or some written Hearings that  
2 I still have yet to -- to undertake, and I believe they will  
3 be next week or the week following.

4           But when I first came to the Board, back in  
5 1991, I came with some fear and some trepidation with respect  
6 to the activities of this Board, but I have to say that I've  
7 been really pleased, personally, with the issues that were  
8 brought forward and the matters that have been decided over  
9 the period of the last dozen plus years.

10           I think personally the '90s, and no doubt,  
11 certainly the early part of this new century, regulatory  
12 schemes in North America, if not in the world, became much  
13 different than what the old traditional approaches were. So,  
14 I got an excellent opportunity to spread my wings and learn  
15 from everybody's contributions, that through these  
16 Proceedings and through other gatherings that I was able to  
17 join.

18           So, I want to thank each and every one of you  
19 for assisting me in undertaking and responding to the needs  
20 of this Board by those contributions.

21           And I guess I've been really lucky and I've  
22 always said to my colleagues across Canada that we are very  
23 lucky in Manitoba because we have a good and excellent team  
24 of professionals, both at the utility side as well as those  
25 that contribute to the proceedings, either as, in the sense

1 of Board advisors and Counsel as those who intervene in the  
2 proceeding.

3           And because our province is 1.3 million or  
4 those approximate number of people, we are able to do things  
5 here, watch it carefully, see it happening and if it gets  
6 slightly off track, we can tap it either on the right or the  
7 left and get it back on the road.

8           Whereas if you're in a province such as  
9 Ontario or in the far West when things get off the road,  
10 usually it's so far down the road that you have to take out  
11 the bridge to stop the process. So we're really lucky in  
12 that.

13           And I really -- while I don't want to get  
14 emotional, I have to say there's been a fair bit of media  
15 attention the last day or so and some of it has been positive  
16 and some of it's been less than positive but, from my point  
17 of view, in arriving at this decision, the stars all lined  
18 up, so to speak, for me.

19           I've had, on a personal side, some  
20 difficulties over the last number of months that have weighed  
21 heavily on me and between my son, who I'm nurturing back to  
22 full health, he nurtured me back to full health and said,  
23 dad, I think it's time.

24           So I want to thank each of you from the bottom  
25 of my heart for your assistance to me. It's been much

1 appreciated and have a good night.

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3 --- Upon adjourning at 6:51 p.m.

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7 Certified Correct,

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Wendy Warnock, Ms.

14 Court Reporter

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