MANITOBA PUBLIC UTILITIES BOARD

Re: Manitoba Hydro's Application to the
Public Utilities Board for Approval of
New Electricity Rates in Communities
Served by Diesel Generation

Before Board Panel:

Graham Lane - Board Chairman
Robert Mayer, Q.C. - Board Member
Kathi Avery Kinew - Board Member

HELD AT:
Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
September 28, 2010
Pages 1 to 252
APPEARANCES

Bob Peters  )Board Counsel

Odette Fernandes  )Manitoba Hydro

Patti Ramage  )

Myfanwy Bowman  )CAC/MSOS

Glynis Hart  )INAC

Mary Ann Thompson  )

Michael Anderson  )MKO
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--- Upon commencing at 9:14 a.m.

THE CHAIRPERSON: Okay. Good morning, everyone. It's always a pleasure to see everyone, and actually to see that the sound system is working today, because we never really know until we hit the button.

Anyway, today we begin the oral testimony phase of the Board's intended determination of Manitoba Hydro's diesel rates to be charged to consumers in the four (4) communities served by diesel generated electricity. To remind everyone, the four (4) communities that comprise the diesel zone are Barren Lands First Nation, also referred to as Brochet; Northlands Denesuline, also referred to as Lac Brochet; Sayisi First Nation, also referred to as Tadoule Lake; and Shamattawa First Nation, also referred to as Shama – Shamattawa.

My name is Graham Lane. I'm Chairman of the Public Utilities Board, and joined on this panel by the Board's vice-chair, Mr. Bob Mayer, Q.C., and also by Dr. Kathi Avery Kinew. The Board is also assisted by Kristine Shields, acting Board secretary, and both the account -- Board's accounting advisor, and legal counsel.

Manitoba Hydro should correct me if I am – if I am in error, but it appears that the electricity
rates in the diesel zone have been interim rather than final rates since 2004. The current level of diesel rates were last set, again on an interim basis, by way of Order 176/06. Those rates effective January 1st, 2007.

And the subject of diesel rates was last addressed in a one (1) day hearing held on November the 16th, 2009, and was the subject of Order 1 of 2010.

In that hearing, Manitoba Hydro provided an update on the financial status supporting rates charged in the diesel communities. While it appeared that the rates were inadequate, Manitoba Hydro did not propose any change in rates at that time. Rather, it awaited the opinion of the Manitoba Hydro Board. Hydro's Board was to meet on January 21st of 2010, decide whether -- whether the Utilities should advance their rate application.

Some three (3) months following that Manitoba Hydro Board meeting, the rate application that is now before this Board was filed.

Manitoba Hydro attributes the delay in filing the application as being attributable to, and I quote:

"Ongoing discussions between representatives of Manitoba Hydro, Indian and Northern Affairs Canada,
i.e., INAC, and the four (4) First
Nation communities."

This Board will be interested to hear from
Manitoba Hydro, both as to what was discussed, what was
resolved, and as well, what was not resolved.

In Order 1 of 2010, the Board set out
specific issues that ought to be addressed, including
financial considerations. The Board understands there
are still unfunded capital expenditures, and a growing
operating deficit. Also, energy efficiency initiatives
in the diesel communities; the adequacy of INAC funding
for electricity in the diesel communities; safety issues
related to the use of electric space -- space heating in
the communities; and alternative energy options to diesel
generated electricity.

While the materials filed by Manitoba
Hydro indicate that what has been referred to as the
tentative settlement agreement remains unsigned, the
Board seeks confirmation from -- from Manitoba Hydro that
the parties to the agreement have conducted themselves
fully, as if the agreement was in place, and in
accordance with the minutes of settlement.

In this application, and according to the
Board's understanding of the evidence filed, Manitoba
Hydro was seeking an order from this Board:
1. To introduce the concept of tail block rates for residential and general service consumption over 2,000 kilowatt hours per month.

2. To charge a tail block rate of forty-five (45) cents per kilowatt hour that is less than the calculated fifty-nine (59) cents per kilowatt hour full cost rate.

3. To remove Provincial Government customers from the government rate class.

4. To move Provincial Government accounts to the General Service rate class, where such Provincial Government accounts would pay grid rates for the first 2,000 kilowatt hours per month, and then the tail block rate for the balance of consumption.

   If approved, the Provincial Government accounts will no longer pay the surcharge now added to the full cost rate paid by the government accounts -- by government accounts. If this Board agrees with the application, the rates for Provincial Government accounts will apparently decrease by 81 percent.

5. To restrict the government accounts to all Federal departments and agencies and First Nation education accounts as the letter 'R', according to Manitoba Hydro, fully funded by the Government of Canada. Such government accounts would be charged the fifty-nine
(59) cent full cost rate for all consumption, plus a
dollar twenty ($1.20) surcharge rate for a total of two
nineteen (2.19) per kilowatt hour. And:

6. To include in rates interest and
depreciation on the unpaid capital cost owed to Manitoba
Hydro but exclude any additional component for the
accumulated operating deficit that is compounded from
2004 until the present day.

I mentioned the preceding the issues to
indicate the Board's understanding of the written
materials filed as they pertain to key aspects of this
application. I also mentioned the issues that the
parties can now focus -- I also mentioned the issues to
demonstrate that the parties can now focus on the policy
issues that lie behind these matters, and key in on the
issues raised by the Board in its order 1 of 2010. Your
assistance in this is both expected and appreciated.

Speaking briefly to policy issues, this
Board would benefit submissions as to the options the
party see as being available to the Board to resolve the
disputes that appear to exist with respect to the diesel
zone related to diesel generated electricity. Please
provide us with your submissions as to all options,
including, a) the building and funding of land lines
through rates, and b) the charging of costs to the
various customer classes that the Board determines bears responsibility.

With respect to the matter of responsibility, we seek your views of the constitutional responsibility or responsibilities of the Federal and Provincial Governments. And, as noted earlier, the Board observes that the tentative settlement came into existence some six (6) years ago. Since then, much has happened. And through the various events and changed circumstances, diesel zone deficits have soared and disputes over capital expenditures and government obligations continue.

There seems to be no indication as to whether the parties will ever have an agreement. Please show us how the present situation, one marked by interim rates, amended and amended again, is in the public interest. We would appreciate your views as to whether this Board should simply set final rates, and then review rates for possible amendment a year from now.

Finally, we note that INAC has filed evidence from two (2) witnesses to be produced to assist the Board in its understanding of INAC's role in the diesel communities. We thank INAC for its involvement in advance. At this point I will not turn to Board counsel, Mr. Peters, to provide his opening comments and
introductions and provide the procedures that we are
expected to follow at this hearing.

Mr. Peters...?

MR. BOB PETERS: Yes, thank you. Good
morning, Mr. Chairman, Mr. Vice-Chair Mayer, Board member
Dr. Avery Kinew, and ladies and gentlemen. For the
record, my name is Bob Peters and I appear as counsel to
the Board in respect of Manitoba Hydro's 2010 Diesel Rate
Application. The Board is also assisted in this matter
by Roger Cathcart, a chartered accountant from Cathcart
Advisors.

Mr. Chairman, as you noted, Manitoba Hydro
is asking the Board to approve rate changes in the diesel
zone. Specifically, Hydro has proposed the following new
diesel rates. Well, the first one actually is not a new
diesel rate, Mr. Chairman. It's that the residential and
general service customers, for their consumption monthly
less than two thousand (2,000) kilowatt hours, would
continue to pay grid rates.

In speaking of grid rates, the Board will
recall that the Board has provided Manitoba Hydro an
interim 2.9 percent rate increase across its customer
classes and that 2.9 percent increase to grid customers
would also be -- has also been applied to the diesel
zone.
Next, for the residential and general service customers that use more than two thousand (2,000) kilowatt hours per month, the rate increase being proposed is from the current forty one point two seven (41.27) cent full cost rate to what, Mr. Chairman, I believe you referred to as a new tail block rate, which is forty five (45) cents. That increase of 9 percent, or three point seven three (3.73) cents per kilowatt hour. In terms of the government rate, all kilowatt hours are to increase from a dollar thirty-eight ($1.38) per kilowatt hour to two dollars and nineteen cents ($2.19) per kilowatt hour, which is an increase of some 58 percent, or eighty-six (86) cents a kilowatt hour.

As you noted, Mr. Chairman, Manitoba Hydro has proposed changes to its current rate design in this Application. We will be asking Manitoba Hydro to explain the policy reasons behind those proposals. And Manitoba Hydro has also provided information on its planned capital programs for the future. The status of the funding of these proposed expenditures will be explored with Manitoba Hydro and with INAC.

The Board will also hear that Manitoba Hydro has accumulated an unfunded operating deficit of over $7 million since April 1st of 2004. Manitoba Hydro's plans for dealing with this deficit will be
canvassed. Manitoba Hydro has provided information on
the status of the amortization of the pre 2004 cumulative
deficit of $16.9 million, which the disposition of is a
subject of a tent -- tentative settlement agreement.

Mr. Chairman and Board members, Manitoba
Hydro will also be canvassed as to the current status of
the final execution of the settlement agreement among
Indian and Northern Affairs Canada, who I -- I've already
referred to and will refer to as INAC, MKO, and Manitoba
Hydro.

In turning to the procedural matters for
which three (3) days have been set aside by the Board, I
have circulated a -- an outline of procedures and I
believe the parties have a copy.

By way of a brief review, the Board will
see that opening comments this morning following mine, I
would invite the Board to call upon the Intervenors in
the order listed. That would be: CAS/MSOS, represented
by Myfanwy Bowman. And Mr. Williams was lurking, I'm not
sure if he's still present, but he is around, although
won't be directly involved, I don't believe, in the case.

And INAC is represented -- and I'd like to
welcome to the Hearing Ms. Glynis Hart, who is working
with her colleague Mary Ann Thompson, seated at counsel
table. In my memory, I think this will be their first
time appearing before this Board and I welcome them here.

MKO, represented again by Michael
Anderson, and it's good to see Mr. Anderson back in the
Hearing room and we'll await his comments.

Manitoba Hydro will be represented this
morning by Ms. Fernandes and she will be assisted by
Patti Ramage. And Patti Ramage, I suppose similar to Mr.
Williams, will be transient at various times in this
Hearing, but we will see her now and again.

It's anticipated that following the
opening comments, Manitoba Hydro would put forth its
witness panel seated before you today. And Mr. Warden,
Mr. Wiens, and Mr. Cox will be the witnesses and they
will be examined by Manitoba Hydro counsel and then
cross-examined.

Following the Manitoba Hydro panel, the
INAC witness panel would be put forward and both Mr.
Mills and Mr. Hildebrand are in the Hearing room seated
behind their counsel and we welcome them to the Hearing
room as well. They would be providing their direct
evidence and then cross-examined. It's -- if -- if we
don't get to INAC today, it's anticipated we would get to
them early tomorrow morning.

The Board has indicated, and counsel
likewise, that the schedules and timing are tight, and there was a desire to have oral submissions as soon as possible and not stretch them into the other -- into other weeks because there are different matters that are pending for -- for counsel and the Board, so it's anticipated that closing submissions will be provided on Thursday of this week, Mr. Chairman.

If I could turn and speak to the exhibits. An exhibit list has been prepared by the Board's office, and we'll thank Ms. Shields for her contribution and arrangements.

And in terms of the exhibits, I -- I will take the liberty of entering them. I -- I have one (1) new one to enter, and I have almost one (1) new one to enter, and I'll get to those and end the suspense shortly.

In terms of PUB exhibits, I would suggest, Mr. Chairman, that we mark PUB as exhibits, PUB/MANITOBA HYDRO-1-1 through 1-32 being the First Round Information Request posed by Manitoba Hyd -- by the Public Utilities Board on Manitoba Hydro's filings.

And then PUB/INAC 2-1 to 2-22 would be the Information Requests that were opposed on behalf of the Board of INAC's witnesses.

I would just draw attention at this point
that PUB/INAC-2-8 is an answer that has a supplemental answer that's been provided, I believe, last week, and it dealt with the Quebec region and the experience of INAC in that jurisdiction. So -- just so the parties are aware, that's where it would -- it would fit.

And the new exhibit I'd ask to mark at this time, is I've circulated a book of documents, and as I look at it and -- every document that is in the book of documents, as I'm speaking, I believe, is -- is in the public record of -- of what's been filed, so there's nothing new that's been created, but it's a matter of convenience for the Board and for any counsel who choose to use it. If there's a shortcut to get to documents rather than pulling out the binders and -- and going through them, they're welcome to use it, and I would suggest it be marked as Exhibit PUB Number 3.

--- EXHIBIT NO. PUB-3: Board Counsel Book of Documents

MR. BOB PETERS: Turning to Manitoba Hydro Exhibits. Manitoba Hydro Exhibit 1 would be their application of April 29th and attached letter.

--- EXHIBIT NO. HYDRO-1: April 29, 2010 letter and attached 2010 Diesel
MR. BOB PETERS: Exhibit Manitoba Hydro/INAC 2-1 through 2-11 would be Manitoba Hydro's Information Requests and the responses by the INAC witnesses.

And Manitoba Hydro Exhibit 3 would be Manitoba Hydro's rebuttal evidence filed Tuesday September 21.

--- EXHIBIT NO. HYDRO-3: Rebuttal Evidence - September 21, 2010

MR. BOB PETERS: And turning to CAC/MSOS exhibits, I'd like to take the liberty of suggesting that CAC/MSOS/HYDRO 1-1 through 1-28 would be the Information Request posed by that Intervenor and the responses provided by Manitoba Hydro.

And CAC/MSOS/INAC 2-1 through 2-18, would be the Information Request posed by CAC/MSOS and responded to by INAC's witnesses.

Speaking of INAC, I would suggest that their exhibits would include INAC/HYDRO 1-1 through 1-25, representing INAC's First Round Information Requests and Manitoba's responses to INAC.
Then INAC/HYDRO 2-1 through 2-5 being supplemental Information Requests posed by that Intervenor and responded to by Manitoba Hydro. INAC Exhibit 3, I would suggest would be the evidence of Frederick William Mills.

--- EXHIBIT NO. INAC-3: Indian and Northern Affairs Canada's evidence of Frederick William Mills and Desiderata Energy Consulting Inc.

MR. BOB PETERS: And, at this time, Mr. Chairman, I'm going to suggest that we hold and not officially mark as Exhibit 4, hold that number for the evidence of Mr. Hildebrand that's been filed in these proceedings. Counsel for INAC and others may have some comments related to that this morning, and we'll await to hear whether there's any issues that need further discussion or resolution related to that.

Mr. Chairman, subject to any questions you may have of me, I would suggest you canvass the other parties, starting with the Intervenors for their opening comments and introductions, before asking Manitoba Hydro counsel for her opening comments, introductions, and
OPENING COMMENTS BY CAC/MSOS:

MS. MYFANWY BOWMAN: Good morning, Mr. Chair, Mr. Vice-Chair, Board member Avery Kinew, and everybody else who's gathered here. Thank you so much for the opportunity to make a brief opening statement. I am here on behalf of CAC/MSOS, who, of course, represent the interest of residential consumers. Seated in the gallery is one (1) of my clients, Gloria DeSorcy. Mr. Williams was here earlier. I don't think he's returning, but you never know with him. Also seated with Ms. DeSorcy are two (2) new advocates who have been hired by Legal Aid Manitoba and are working out of our office. They're not anticipated to be appearing before the Public Utilities Board, but they're here this morning to observe the proceedings. They're Ms. Daniella Echeverria and Catherine Wirt. So that -- they're pleased to be here, I believe.

My clients are very pleased to be back before the Board on the diesel issues. We're certainly pleased that the Board chose to hold an oral hearing. My
clients take the view that -- that the issues at stake in
the diesel zone merit a -- a hearing and some serious
discussion.

They're also glad that Manitoba Hydro has
brought this application and is trying to -- to bring the
rates up to date. I can't say that they're glad about
the entire contents of the application, but they're
certainly pleased that -- that Hydro has -- has brought
the issues to the Board for discussion.

My clients, not surprisingly, remain
concerned about rising costs in the diesel zone. I don't
think they're alone in that. They're certainly concerned
about their impression that there is a -- a strong need
for increased DSM opportunities in the diesel zone.

They are very concerned over the situation
that diesel zone customers are finding themselves in, in
-- in terms of costs and so on. They're concerned about
the delays in finalizing the tentative settlement
agreement. And they're -- they're concerned and
surprised by the apparent ongoing disputes as to the
terms, and -- and -- and application of that tentative
settlement agreement.

They're also concerned about some elements
of Hydro's application, and of INAC's recommendations,
which appear to shift a substantial share of -- of
responsibility for funding the high cost of service in the diesel zone onto the shoulders of grid customers. So some of -- those are some of the concerns that -- that my clients have coming in. They're interested to hear how the evidence unfolds, and -- and what more we're going to learn about the diesel zone while we're here.

As they review the application, and -- and the evidence that will be presented here, and the positions put forth by the other parties, my clients hope to apply several principles in -- in their analysis of -- of what they hear and see to -- during this hearing. The principles that -- that they hope to apply are going to be affordability for diesel customers; an appropriate contribution from government, and, at least initially, their expectation will be that that will be both levels of government; and appropriate contribution from the grid customers towards the cost of service; efficiency is always a priority, but it's especially so in the diesel zone where the cost of service is so high; protecting grid customers from escalating costs is absolutely a concern for my clients; and the need to consider rate shock and the implications of that.

So those are -- those are the principles that -- that they hope to apply to the issues that we're
going to be dealing with. They're hopeful that -- that
their participation in the application of those
principles will be of some assistance to the Board.
I do note how -- I -- I listened with
interest to Mr. Chair's opening comments, and -- and
given his remarks, and particularly his request for
opinions, or -- or submissions on constitutional issues,
I'm likely going to be suggesting the opportunity for
written submissions. I'm not sure that I'm going to have
an opportunity to prepare a constitutional opinion by
Thursday. I had been preparing like a crazy woman, but I
hadn't prepared that. So that may well be a suggestion
that we're going to make at some point in the process.
We do have a preliminary issue to deal
with with respect to Mr. Hildebrand's report. I'm going
to suggest hat we deal with it once everyone has made
their opening comments, if that's acceptable to the
Board. Those are my comments, subject to any questions.
THE CHAIRPERSON: That's fine, Ms.
Bowman. We'll -- we'll come back to that issue after
everyone's been --
MS. MYFANWY BOWMAN: Thank you.
THE CHAIRPERSON: -- introduced. So
welcome, Ms. -- Ms. Hart and Ms. Thompson. Would you
like to provide some opening remarks?
OPENING COMMENTS BY INAC:

MS. GLYNIS HART: Yes. Good morning, Mr. Chair, Mr. Vice-Chair, and Ms. Avery Kinew.

It seems to be a little bit out of the ordinary for INAC to be here at this rate application hearing when it's Manitoba Hydro's customers, the First Nations, who are here, and they will make the representations. As well, CAC/MSOS are here representing customers, including the diesel First Nation customers, to make representations.

However, you have expressed an interest in finding out more about INAC, so we're here over the next few days to present the information directly, have a discussion with the Board on its interests that it has, set the record straight about INAC; and, because INAC is responsible for the use of public funds, we want to ensure that the information that is presented to the Board is accurate, and we'll do this through two (2) witnesses: Mr. Fred Mills, an experienced public servant whose been with INAC since 1977 in a variety of roles within the INAC department; and Mr. Dale Hildebrand, a consultant who has tremendous experience, and he'll provide an analysis of the rate application and alternatives for consideration. And he has testified here before the Public Utilities Board on another
occasion.

And finally, we also are considering written submissions to file with the Board, and we hope that we could file them next week. Specifically, we would be looking on submitting further information about the fact that Canada does not have a legal obligation to fund First Nations. We would address that specific issue and the jurisdiction of the PUB. There may be some other issues that come up, too, but we would request that time then for us to deal with those issues.

Thank you. Unless the Board has any questions at this time, that would be my opening submission.

THE CHAIRPERSON: Thank you, Ms. Hart. Mr. Anderson, for MKO?

OPENING COMMENTS BY MKO:

MR. MICHAEL ANDERSON: Thank you, and good morning, Mr. Chair, Mr. Vice-Chair, Dr. Avery Kinew, Manitoba Hydro Panel, and to our colleagues at Indian and Northern Affairs Canada, and Consumer Association of Canada, MSOS, through Public Interest Law Centre.

Hello, Mr. Hildebrand. It's nice to see you again. And Mr. Mills, it's nice to have you back in
the PUB room with us to answer your questions, and
provide accurate information about INAC's procedures.

I'd make the small comment on that one (1) point, of course, that there was a point where Mr. Mills
was MKO's witness by subpoena and provided similar
information to that that appears in his evidence, and at
different points during the proceeding I may refer to
those matters that are already on the public record.

We make the comment as -- as the Manitoba
Keewatinowi Okimakanak Incorporated today. It was
recorded -- the transcription person had indicated that
she had us last registered under our organizational name,
the Manitoba Keewatinook Ininew Okimowin, and we're
appearing today on our -- in our corporate status, on
behalf of the Dene -- Northlands Denesuline First Nation,
Sayisi Dene First Nation, the Barren Lands First Nation,
and the Shamattawa First Nation.

And again, Mr. -- Mr. Chair and Mr.
Peters, I congratulate you for your efforts in speaking
Cree and pronoun -- and Dene and pronouncing the names of
our First Nations. I thank you for that.

We've been before the Board on the diesel
issue since at least 1993. You'll recall that we were at
that time being represented at the table by Mr. Arne
Peltz in the work that we were doing, and trying at that
point to move forward in providing, as Ms. Bowman had
outlined, an affordable service that reasonably
apportions the costs amongst users. We were also, way
back at that time, concerned about contributions from the
province, from Manitoba Hydro, toward reducing the cost
of service. And so many of those issues still are before
us today.

There was a comment made by Ms. Hart about
CAC's representation of the residential customers through
CAC/MSOS. They have, as they do, asked questions
regarding low-income customers, the treatment of those
customers, residential demand-side management programs;
and I note in their materials that they've asked for
referential adoption of a number of interrogatories that
they asked in the General Rate Application in their one
(1) information Request, 1-23. So we'll be making
reference to that during the proceedings, and we thank
Ms. Bowman for having done that, bringing those matters
before -- into the record here.

In terms of 2003 proceedings, you'll
recall that the Board was very concerned about three (3)
items of cost that were being reported to the Board by
Manitoba Hydro: an un -- unpaid surcharge billings, as
they were called; the accumulated deficit; and the
undepreciated capital amounts.
I characterized them in my final summation them -- then as the three (3) wolverines, and suggested that we couldn't really sit down and have a discussion about the disposal of these costs until we had shoed these wolverines back into the bush where they belong so we could sit down and focus on the policy issues in providing service to the communities.

Mr. Chair, you've raised a shopping list of issues, and I appreciate your charges to us all as you -- we initiate proceedings. And, like Ms. Bowman and Ms. Hart, MKO also requests the opportunity to make a written submission on the constitutional responsibilities of the parties. The Board will recall that we've made submissions on that in the past, and of course it was a material matter that led us to the mediated arrangement, and the Board's encouragement to do so in Order 17/04. So we'd be pleased to bring that up again, because it is at the heart of providing service to these communities, we believe.

In terms of those three (3) amounts, the major impact and the Board's concern was clearly reflected in Order 17/04, as well as a suggestion for the parties to get together and find a solution to come up with some options and answers for dealing with, not only those costs at the time, but the provision of service.
A matter that appeared in Order 17/04 that, of course, galvanized everyone has certainly brought the -- got the attention of MKO and the diesel First Nations, was the Board's comments that:

"If a solution wasn't found by September '04, the Board would take it upon itself to proceed to resolve them, perhaps with a stated case to the Court of Appeal."

So we had overarching our interest in providing service and addressing costs, the Board's keen interest in having a resolution of this matter and the Board has, again, made reference to that today in respect of addressing and -- and the disposition of the interim rates.

A matter that I'd like to point back to though in 17/04, was also the Board's commentary on its Order 62/94, in which it had indicated that:

"Demand side management conservation initiatives for the diesel communities should be designed taking into account the special circumstances of those communities and providing a service that should take into account the nature of the resources and consumption
of all customers."

Now, this is from its Order in 1994.

In 17/04, we first had the -- the imposition -- or the adoption, as we would say, of the two thousand (2,000) kilowatt hour step that we refer to for residential customers, prior to that, unlimited consumption at grid rates was available to residential customers. So that was a change proposed by Manitoba Hydro to which MKO objected during the Proceedings at that time, that's a matter of record. The Board, however, incorporated that concept into its Order in 17/04 and went along with the encouragement for everyone to proceed to resolve the issues before us.

Essentially, as its subsequent Order had indicated, we focussed on -- and resolved in fift -- 159/04 you refer to the fact that there was arrangements made to deal with the O&M mechanism. It's a matter of record, Mr. Mills, as a witness by subpoena, provided an undertaking indicating there were shortfalls in the costs of O&M contributions to First Nations, which INAC has indicated in its evidence that it has addressed.

There was also a keen interest on the part of MKO, as on the part of the Board and others, to aggressively implement conservation DSM measures. All parties were common in their interests in controlling
cost, particularly capital additions in the communities, and linked the DSM and conservation initiatives to those capital costs.

And of course, the arrangement that we arrived at, as you referred to -- as the Board referred to in its order dealt with a rate structure that dealt with the treatment of accounts and their classification and importantly, the two thousand (2,000) kilowatt hour step.

You'll note, because of an absence of MKO's commentary on the application in October 2004, which was revised and re-submitted, as I recall, subject to check November 2nd, 2004, to deal with the matter of the treatment of provincial accounts. MKO did not object to the two thousand (2,000) kilowatt hour step because we saw it integrated into the understandings we arrived at with Manitoba Hydro at the time, primarily the expectation consistent with the Board's charges in 17/04, 159/04, and back as far as 16 -- 62/94, that there would be, in fact, an aggressive demand side management conservation program launched by Manitoba Hydro.

As the Board is aware, Manitoba -- MKO facilitated, through a contribution by INAC, the payment of the Little Wolverine, as I called it, the $3.2 million in unpaid surcharge billings, which payment preceded
immediately the Board's order that we've now been -- the
first of the interim orders in 159/04 in December 2004.

The -- the Chairman had -- has made
comments and has invited commentary on assurances in
inviting Hydro to confirm, but I can indicate that in --
on MKO's part and those of the diesel First Nations that
the parties have implemented the tentative settlement
agreement in the manner in which it was filed with the
Public Utilities Board in confidence in December 2004 by
all three (3) parties as if it were signed.

Mr. Mills has entered into his evidence
the amounts that were paid at page 20 of his evidence,
but it remains that we paid the $3.2 million in December
2004 and a subsequent series of payments totalling
twenty-three million, one hundred and seventy-five
thousand, seven hundred dollars and ninety-two cents
($23,175,700.92) to fully discharge the undepreciated
capital costs, which at that time was the larges of the
three (3) Wolverines.

Manitoba Hydro, through our arrangement,
had agreed to absorb the cumulated deficit as of Dec --
March 1st, 2004, so they're all back in the bush. We've
performed those major items of cost, of greatest concern
to the Board, as if the agreement was entered into.

It's worthy of a question, and you've
invited the -- the comment on it, but -- about implementation prior to signing. Well, certainly you had your comments -- the Board made its comments in 17/04 in respect of taking action by September '04.

We had to find a solution by that time, and you recall that there was a grace period for implementation of its earlier Order up until March 1st, 2004, in which you invited us to find a solution, and we worked diligently to do exactly that.

There is also the previous evidence that I referred to by Mr. Mills regarding the manner of O&M calculations, and the short fall to the First Nations. That was a concern to us. We wanted that addressed quickly because the costs were substantial at the time.

There were also the rather frightening rates in Order 17/04, which I understand, whether or not it was intended or so, it got our intention because they were rates clearly that would be unaffordable to the First Nations at the time.

They also -- the matter of addressing those three (3) items of cost, and then a good faith encouragement to the other parties to implement the unsigned agreement as it was presented to the PUB in confidence in Sep -- in December 2004.

So for all those reasons, we proceeded to
process the amounts, prepare the -- the First Nation submissions, documentations, briefings, to secure the Band Council resolutions from each of the four (4) for all the series of payments, which was actually a substantive amount of activity on the part of MKO.

Many of it done over very tight time frames due to the -- the short availability of funds often appearing at the end of a fiscal year, so I can say as probably -- the two (2) persons probably that have worked the hardest on that side were Mr. Mills and myself, and we've -- I've invested a considerable amount of my personal effort on behalf, and at the direction of MKO, in implementing the agreement as it was -- as if it were signed.

And so have successive First Nation leaderships. It's a lot of work to process that kind of money with the paperwork and requirements.

I would also make a small comment in terms of preservation of our efforts, is that there's an important contribution arrangement between ourselves and INAC that we ensured was renewed at the end of this last fiscal year so that we could carry on our discussions to provide the environment, and our partners at INAC assisted us, but MKO raised the issue that we ought to continue this.
So where are we at with all of that effort? We -- we now have the Application before us. The summary is really that the four (4) diesel served communities are clearly the highest cost to serve communities in Manitoba.

They involve the -- the service involves the shipment, which is not a good thing -- that the costs are so high. The service involves the shipment, storage, and burning of diesel fuel, which is not a good thing. The burning of diesel fuel creates green house gas, which is not a good thing, and we've got legislative restrictions seeking an end to that practice within the northern -- within this service.

It's a matter of record in response to questions raised by CAC that, depending on how you measurement -- measure it, at least 24 percent of the residential customers in our communities are classified as low income. That's not a good thing for us economically, but certainly not to pay higher rates as Manitoba Hydro is proposing.

Evidence is that consumption and costs are increasing despite our efforts, and really given all of the instructions that the -- the Public Utilities Board, its references and its various orders, the language that it used in order 159/04, was that:
"The Board remains of the view that the implementation of demand side management initiatives for these four (4) communities are of extreme importance."

Now, this is in 2004, and here we are in 2010, almost six (6) years later. So I'm eager to go through the evidence that has been filed in response to interrogatories, and Hydro's own evidence as to the status of those DSM programs because they are directly tied to cost.

So we have what appears to be increasing cost with little limit, increasing consumption with relatively ineffective, or to be developed in the future DSM conservation programs, and a continuation, as the Board has indicated, of concerns that were raised six (6) years ago. And that, I would remind the Board once again, that we brought before the Board in -- beginning in 1993.

So I'm hoping that all parties can put their minds to finding some solutions that result in affordable service with containing consumption and control of cost, in a manner that fairly allocates the cost amongst all classes of customers, because in the end we're dealing with a group of customers who are
citizens of the province of Manitoba.

And as another comment about MKO's representation, of course, we also are here -- concerned about the general services -- the service customers, as well as the residential, that are the First Nation governments themselves, as well as those that are First Nation businesses and others.

So I thank the Board for -- and -- and the parties for their patience in my extended opening comments, but these -- it's a high priority to us and we thank the parties for their participation for the evidence and the questions they've asked and brought before this Board. Thank you, Mr. Chair.

THE CHAIRPERSON: Thank you, Mr. Anderson.

Ms. Fernandes...?

OPENING COMMENTS BY MANITOBA HYDRO:

MS. ODETTE FERNANDES: Thank you. Good morning, Mr. Chairman, Vice-Chair Mayer, and Board Member Kinew. For the record my name is Odette Fernandes. Myself and Patti Ramage, who is well known to this Board, will be acting as counsel for Manitoba Hydro during this proceeding.

Also, all three (3) of our witness panel
members here have appeared before this Board before, and
I thought I would begin this morning simply by
introducing our panel. To my immediate right is Mr.
Vince Warden. He is senior Vice President of Finance and
Administration and Chief Financial Officer. To his right
is Mr. Robin Wiens, and he is de-rates and regulatory
affairs Division Manager. And, finally, we have Mr. Rob
Cox who is our Energy Services and Sales Department
Manager.

I would also like to take an opportunity
to introduce our back row, who provides witness support
to our panel. And to the very far right we have Shannon
Johnson, who is the Affordable Energy Department Manager;
and Mr. Chic Thomas, who has also previously appeared
before this Board, and he is the Rates and Policies
Department Manager.

Mr. Peters review the exhibit list during
his opening comments and Manitoba Hydro would like, for
the record, to add the list of CV's for our panel
members. And I would propose that they be entered as
Manitoba Hydro exhibits 4-1 to 4-3.

Maybe, in the interest of moving on, I can
provide those at the break.

THE CHAIRPERSON: That's fine.
--- EXHIBIT NO. HYDRO-4-1:

CV for Mr. Vince Warden

--- EXHIBIT NO. HYDRO-4-2:

CV for Mr. Robin Wiens

--- EXHIBIT NO. HYDRO-4-3:

CV for Mr. Rob Cox

MS. ODETTE FERNANDES: In terms of opening comments we would also like to request from the Board that we be able to provide written submissions on the -- the Board request regarding the Constitutional Responsibility of Government with respect to First Nations. Other than that, that concludes my opening comments.

THE CHAIRPERSON: Thank you very much. We have an issue that I think we haven't completely concluded with.

Ms. Bowman...?

MOTION RE: PRODUCTION OF MATERIAL FROM INAC:

MS. MYFANWY BOWMAN: Thank you, Mr. Chair. I had anticipated dealing with this issue
tomorrow, so I'm not quite as prepared as I might like to
have been. But I understand that INAC's counsel would
prefer to deal with it today which is, of course, fine,
subject to the Board's approval.

The issue is this: INAC has tendered a
report written by Mr. Hildebrand. CAC/MSOS are of the
view and -- and are making the request to the Board for
disclosure of material related to the preparation of that
report.

And specifically they're seeking material
from his file: his retainer letter or letters, whatever
they might be; any directions or instructions that he may
have received from either counsel or -- or
representatives of INAC; and any background material that
may have been provided to Mr. Hildebrand for the
preparation of his report that is not already on the
public record. We expect, given our review of the
report, that that would include the minutes of settlement
and the tentative settlement agreement.

I understand, I think, from my discussions
with counsel, that INAC objects to producing all of that
except for the minutes of settlement which they are
prepared to produce. And I believe that no one else has
an objection to the minutes of settlement being shared.

So I think that -- if I'm -- hopefully
someone will correct me if I'm wrong, but if I'm not mistaken, then the issues that we're dealing with are the retainer letter instructions, the tentative settlement agreement that was provided to Mr. Hildebrand, and any other material in his file that underpins his report, and I don't know what that might be. There may or may not be anything further.

MR. ROBERT MAYER: Ms. -- Ms. Bowman, I -- I'm a little confused here. Mr. Hildebrand refers in his report to both the minutes of settlement and the tentative settlement agreement.

We have subpoenaed what we thought, at one point in time, was the last version of the tentative settlement agreement, and the Board has that, and has held in conference for some time. The only thing -- I'm not sure what is exactly on the public record. I think the minutes of settlement may be on the public record, but Mr. Mills does re -- sorry, not Mr. Mills, Mr. Hildebrand refers to both of them rather extensively in his refer -- in his evidence.

So you -- are you looking for both the tentative settlement agreement and the latest version of the minutes -- or sorry, the minutes of settlement -- or the settlement agreement -- the tentative settlement agreement, and the minutes of settlement, both of them?
MS. MYFANWY BOWMAN: I understand that -- that none of the parties object to the disclosure of the minutes of settlement. I did not realize that they were on the record a number of years back, but apparently they are. So they are, at some point -- at some point in time, the minutes of settlement became public record, so somebody, I believe, is going to provide me with a clean copy of that.

So I think that the contentious issue on that front is the tentative settlement agreement. And -- and yes, Mr. Vice-Chair, you're correct; because he is -- is referring to it extensively, and relying on it for the -- in forming his opinion, my clients are of the view that to effectively cross-examine him, that they require a production of that material. So I have some submissions to make on that issue.

The reason that it's probably im -- or that it may be important to deal with it now is, I'm not objecting to the admissibility of his report per se. I'm simply bringing a motion for disclosure of that material. However, my position is going to be that if that material is not to be produced that the report should be inadmissible, because it is not possible to effectively cross-examine Mr. Hildebrand on his opinion when I do not have access to the material that underpins that report.
MR. ROBERT MAYER: Ms. -- the --

MS. MYFANWY BOWMAN: So I'm not sure if --

- if the Board wants to hear the positions from the other parties before I make my submissions, or if you want to hear from me first. I seek direction.

MR. ROBERT MAYER: I -- I want to get --

I want to get clarification. We now know you want the -- the -- nobody argues with the tentative -- that sorry, with minutes of settlement; we have an argument about the tentative settlement agreement.

You also requested retainer instructions, and I'm going -- and when you make your argument, I want to hear why that wouldn't be somehow privileged. I understand your argument with -- or at least I understand your request, with respect to the -- the other documents that are referred to in the report. I will be interested to hear your argument with respect to the retainer agreement.

THE CHAIRPERSON: Let's start with the tentative -- tentative settlement. Ms. Hart, does INAC have a position on that?

MS. GLYNIS HART: Yes, INAC -- I apologize. INAC does have a position on the release of the tentative settlement agree -- agreement, and that is that it should not be released. Negotiations are still
occurring on that particular document, and release of that document could lead to issues, problems, and it is our position that it's -- should not be released. It's not executed.

And it also raises then what is the document, what are -- what are we talking about, which version?

MR. ROBERT MAYER: Which version did Mr. Mills have that he refers to in his report? Sorry, not Mr. Mills, Mr. Hildebrand.

MS. GLYNIS HART: And is -- is that the version that CAC/MSOS is looking for then? I -- I think it's also important to identify -- the Intervenor has stated that they need it to do their cross-examination, yet often in the report both the minutes of settlement and the tentative settlement agreement are referred to, and points are made about the tentative settlement agreement, but why the Intervenor needs to see it further isn't made clear.

THE CHAIRPERSON: Ms. Bowman, first, which tentative settlement agreement are you referring to? The one Mr. Hildebrand is speaking of?

MS. MYFANWY BOWMAN: To begin with, yes, that's certainly what I'm seeking. It may well be that when I see the material that he has reviewed, and when I
hear the evidence both from him -- and I suspect there
maybe evidence from Hydro as to the -- the status of the
tentative settlement agreement, and so on -- it may be
that when -- when that evidence all comes forward, I
might have to request other material, but as a
preliminary -- as a starting point, what I'm asking for is
whatever it is he's seen.

THE CHAIRPERSON: Mr. Anderson, do you
have a view?

MR. MICHAEL ANDERSON: I do, Mr. Chair.

This time -- the sequence of events, if I recall, subject
to check on the subpoena, for example, on December 22nd
there was a pre-hearing proceeding in this chamber, at
which time I characterized the -- a document that was
being discussed as the tentative settlement agreement.
You were con -- interested in correspondence from the
original director general of Indian Northern Affairs
Canada regarding the agreement.

And I had indicated that the document that
was attached to that was a INAC draft of the tentative
settlement agreement to which MKO had not concurred, and
that we had concerns about disclosing it. I can only
draw the fact that the next day the Board had issued a
subpoena for the document.

So I just believe that it was fresh on the
heels of our comments, objecting to it and characterizing that that version of the document as INAC's draft and not an all party concurred draft.

   Earlier in my opening comments, I said that it's self-evidence that the minutes of settlement as turned into an agreement by the parties is before the Board in confidence, countersigned -- initialled, I suppose, as to its concurrence and presented to the Board in December 2004, prior to your Order 159/04.

   So, to MKO, that is the -- the document the board has available to it which represents a tentative settlement agreement. The other document that was referred to in December 22nd, 2009 is INAC's version, which we have not agre -- concurred in.

   I do not know which version of it, as Ms. Hart raises, that Mr. Hildebrand may have referenced. I raise the other -- when I saw the evidence, I do have to say, Mr. Chair, that it raised the other matter, that a previous version of the tentative settlement agreement was provided to Mr. Hildebrand by MKO when we were Mr. Hildebrand's client, so there is another version in his possession. So it -- there is a caution in referring to it because, in essence, Mr. Hildebrand is -- knows our mind in terms of that draft of the agreement and -- and substantively.
Having said all of that, when the outline of the evidence in general -- only the most general terms was discussed with us, because we, of course, expressed an interest in Mr. Hildebrand's retainer by Canada, because he, of course, did work for -- you know, was our expert for -- for many proceedings. We were reasonably content that the general focus of the evidence, which we had not seen nor saw in draft form, would go to the heart of affordability and cost; you know, the things that MKO had presented before.

So to the extent that we disagree with Mr. Hildebrand's evidence now will become apparent during the proceedings. But, in any case, we were satisfied at that time that there was not a matter of concern to us.

But I do raise that the references to se -- the tentative settlement agreement raise concern on our part because, of course, it is a matter -- it's documented and held in confidence between the parties, hasn't been outlined with the exception of the Board's summary of it in 159/04 and subsequent decisions.

So the Board will recall that each time I refer to the substance of the tentative settlement agreement in -- in these proceedings before this Board I always make a reference to your decisions, because to us that's the safe reference that we can make without having
issues of confidentiality through the mediation process.

We're having our discussions. I -- I'm happy to hear that it being characterized that we're proceeding. I'm happy to hear Canada's concerns about our negotiations with the intent of conclusion because MKO shares those concerns and that intent.

So in order to preserve the confidence that is necessary to proceed, we would also object to its disclosure. Thank you.

MR. ROBERT MAYER: Mr. Anderson, the Board has a tentative settlement agreement that was provided to us in confidence. The Board has the power to subpoena the rest of the documents. And if -- I'm having trouble understanding why the parties can't come to some understanding, and it makes the Board -- the Chair's comments especially more -- more potent and more concerning when we've had something that's been around since 2004 and two (2) of the major parties can't agree what it is, or which one it is, or how many there are.

I'm going to suggest, Mr. Chair, that maybe we want to give the parties a couple more minutes, and then we will have to make a decision, if -- that -- something can't be agreed to, and I for one (1) am prepared to consider Ms. Bowman's motion because, especially with respect to the tentative settlement
agreement, or agreements, because they are clearly referred to in his evidence.

His evidence, I think, is something that the -- that the Board is going to want to hear, so I'm going to listen to the -- I -- this comes right off the top of my head, and of course the Chair will make that decision, but I don't see how we get to keep that away from Ms. Bowman in light of the fact that it has been referred to a number of times by Mr. Mills (sic) and I -- I better stop there.

THE CHAIRPERSON: Ms. Fernandes?

MS. PATTI RAMAGE: Thank you, Mr. Chairman. I -- I -- I'll address this matter, simply because there's a historical component to it, and I'm not going to go too far back.

But you may recall that at the November 16th status update hearing, this issue came up, and it was Manitoba Hydro's position at that time that while we are ultimately bound by a confidentiality agreement, given the passage of time, and how much of that agreement has been implemented, and is on the public record, we saw no real reason why other parties could not view that agreement.

But, because we were ultimately bound by a confidentiality agreement, the -- we -- we couldn't just
voluntarily file the agreement. The Board subsequently subpoenaed the agreement, and Manitoba Hydro filed it with the Board, I recall it was -- we filed it in a sealed envelope, and advised the other parties, because we weren't taking that kind of a position, that it would be for those parties to -- to deal with that -- with the Board.

Manitoba Hydro has not received any correspondence since that date, and to the best of our knowledge, no party took a position with the Board, and we therefore assumed that the envelope was in fact opened, and the Board has seen that document.

So, ultimately, today we are -- we are somewhat bound by that same position. We don't see a reason not to disclose it, however, we -- we are bound by a confidentiality agreement so -- so we would not be in a position to simply file it.

We would note, and I might steal a bit of Mr. Warden's thunder here, it is our understanding that we are very close to signing an agreement. As indicated in the interrogatories, there are two (2) articles outstanding; Article 7 and 10. Neither of those articles deal with the capital funding -- or the capital contributions, or the accumulated deficit that are dealt with in Mr. Hildebrand's evidence.
It may be possible, if we excluded those articles that were being negotiated, that we could file the document. I -- I don't know if that would be something that would assist the parties because those -- those don't directly impact on -- I don't -- I -- I didn't see anything in Mr. Hildebrand's evidence that impacted on that.

So those two (2) articles are -- are -- I -- I have not seen the file version of them. If I can provide some enlightenment in terms of what the Board does have, that would be the last INAC draft with its proposal which it, I believe, described in November as being its final proposal with respect to those two (2) articles.

I can also advise the Board, and again I'm stealing Mr. Warden's thunder a little bit, Manitoba Hydro has, in the last week or so, suggested a couple of small tweaks as a result of evidence that we've seen filed that we thought would perhaps better define a few matters, but nothing that I would be so concerned whether the Board saw or didn't see. So I think that summarizes Manitoba Hydro's position.

THE CHAIRPERSON: Thank you, Ms. Ramage.

Ms. Bowman...?

MS. MYFANWY BOWMAN: Thank you, Mr.
Chair. I think that clarifies the situation somewhat. I
-- I -- I will make my submission, and -- and I guess
I'll see where this goes.

I'll deal with the -- the retainer letter
and the instructions separately. It sounds like that is
-- is a particular concern to -- to Mr. Mayer.

My clients start from -- from the
proposition that INAC has -- has tendered this report in
evidence, and seeks to rely on it, and, therefore, my
clients are entitled to test, and they're entitled to
test it thoroughly. And in order to do that, they
require the information that underpins Mr. Hildebrand's
opinions.

They submit that the -- the retainer
letter or letters and any instructions that Mr.
Hildebrand may have received either from -- from INAC
directly or from counsel are absolutely relevant to
testing his opinion, the objectivity of that opinion,
exactly what it was he -- he was asked to do and how he
was asked to do it.

Mr. Vice-Chairman is absolutely correct,
that material would normally be privileged. It -- it was
privileged, however, they waived that privilege when they
filed the report.

My clients are entitled to understand
exactly what and why and how Mr. Hildebrand was asked to carry out this -- what he was asked to do and how and -- and why he was asked to do it and -- and any sort of conditions or -- or caveats that went with that. So they submit that clearly that material is relevant to testing his evidence.

They also submit that any background material provided to him that's not already on the public record is -- is relevant to testing his evidence, and that certainly includes the tentative settlement agreement, which seems like -- to be the contentious issue.

My -- I suggest to the Board that the law is clear that anything that Mr. Hildebrand relied on is absolutely to be produced. The law is probably less clear on material that he did not rely on. The question becomes, of course, how do you know what he did or didn't rely on, and we may or may not need to get into that. But I suggest to the Board that the law is clear that -- that information he relied on is absolutely producible.

I assume that the reason -- that the -- the nature of the objection to produce a tentative settlement agreement is -- is settlement privilege or something sort of related to that. My clients don't
concede that the material's privileged, but for the purpose of the argument, we'll -- we'll accept that.

My clients submit that by tendering Mr. Hildebrand's report, INAC has waived any privilege it had in that material. Both documents -- pardon me. I'll -- I'll deal with the tentative settlement agreement.

The tentative settlement agreement -- agreement is dealt with repeatedly in his report. I won't take the Board through the entire report, but it -- it is rife with references to it and it is fundamental to the conclusions that he draws. I would refer to the Board, and I'm just going to grab his report here, and I'm dealing first with Recommendation Number 1, which deals with interest and depreciation.

If we look at page 5 of his report on line 14:

"Our recommendation to exclude interest and depreciation is based on our understanding of the minutes of settlement and the tentative settlement agreement."

MR. ROBERT MAYER: Ms. -- Ms. Bowman, I think we have your point.

MS. MYFANWY BOWMAN: Okay, I -- I was --

MR. ROBERT MAYER: Some of us have read
this -- the document.

MS. MYFANWY BOWMAN: All right.

MR. ROBERT MAYER: It's not that long.

MS. MYFANWY BOWMAN: I will -- I will spare you the gory details then if -- if the Board is prepared to accept that -- that the report relies heavily on the tentative settlement agreement and there is -- there are no two (2) ways about that.

All of the recommendations refer to it at some point or other, the minutes or the -- or the tentative settlement agreement or both, and several of them rely on it fundamentally.

It's clearly highly relevant to the recommendations in the report and they form the -- it forms the foundation of his opinions. In order to properly cross-examine him, my clients require access to that material.

I have a little bit of law. I had hoped to pull something a little bit more coherent together because I thought we were going to deal with this tomorrow, but I can give the Board and the parties what I've got. It's a little bit disorganized, and I apologize for that, but I'll just hand it around now.

(BRIEF PAUSE)
MS. MYFANWY BOWMAN: I apologize for --
for the somewhat disorganized manner of this. As I had
said, I expected to deal with it tomorrow.

I don't normally like to file excerpts
from textbooks, but this was the most concise summary of
the law that I could find in my very quick look. So I --
I provided the court with an excerpt from The Law of
Evidence of Canada -- in Canada by Sopinka, Lederman
(phonic), and it deals with the issue of waiver or loss
of privilege in -- in expert reports.

And -- and some of -- some of the elements
of it deal, of course, with the report itself, but really
what we're talking about here is privileged material that
was provided to an expert, and whether that is therefore
disclosable.

It appears that the law went back and
forth a little bit, and -- and the excerpt refers to a
couple of different cases. What seems clear from my
review of -- of this summary is that the law is quite
clear that material that was relied upon is clearly to be
disclosed. It's less clear whether privileged material
that was not relied upon must be disclosed, but -- but --
and -- and if we look at paragraph 14.22, which is on the
second page of the excerpt I've given you:

"In the ongoing debate as to the extent
of waiver of litigation privilege,

privileged documents located in the

expert's file when it is intended to
call that expert as a witness at trial,
it is readily acknowledged that the
facts and documents on which the expert
relies should be disclosed. The
controversial issue is whether any --
everything else need be produced, such
as confidential communications that did
not form a basis for the expert's
opinion."

I'm not going that far in this particular
request. My clients are simply seeking the material he's
relied upon.

I've also given the court an excerpt from
the case of Stone v. the Queen, which is referred to in
this excerpt. You'll be thankful that I didn't give you
the whole case. I've just given you the head note and
the relevant section.

This is I believe Justice Binnie writing
of the Court of -- Supreme Court of Canada, and he's
writing for majority on this issue, because the -- he was
in the -- I believe the minority, but the majority agreed
with him on this issue.
And in this case, the -- it was a criminal case, and the counsel for the defence had referred in his opening statement to an expert report, which was then ordered to be disclosed. And that was then the -- the subject of an -- an appeal of his conviction.

I'm looking at paragraph 96, and he's -- the -- Justice Binnie is referring to the decision of the trial judge. He held that:

"In light of comments made by defence counsel at the opening of the defence case, and the fact that Dr. Janke's report would have been disclosed in any event as soon as he took the witness stand, premature disclosure had not occasioned any miscarriage of justice."

At paragraph 98:

"By disclosing what he wanted from the report in favour of the accused, defence counsel could not then conceal the balance of the report whose contents might contradict or put in context what had been disclosed."

Going on to paragraph 99:

"However, I would also, if it were necessary, give effect to the
alternative ground of Dr. McEachern, C.J. The act of calling Dr. Janke
would certainly constitute waiver of any privilege attached to his report,
as noted by McEachern, C.J. Once a witness takes the stand, he or she can
no longer be characterized as offering private advice to a party. They are
offering an opinion for the assistance of the court. As such, the opposing
party must be given access to the foundation of such opinions to test
them adequately."

Later in that paragraph:
"Absent the earlier disclosure, the Crown would have been entitled to stand
the appellant down before completing its cross-examination and recall him
once they'd been given an opportunity to consider the contents of the
report."

I have some other cases, but I'll -- I will spare the Board.

THE CHAIRPERSON: Ms. Bowman, did you take into account MKO?
MS. MYFANWY BOWMAN: I was going to get there, and -- and I think that that's an important point, and that's where I think we potentially get into the issue of excluding the report, because really what we're -- what we're saying is that -- that INAC has waived its privilege.

So as against INAC, there's no question, in CAC/MSOS's collective minds, that this report should be before the Board. It should be in the hands of the parties who need to cross-examine this witness.

The issue becomes that MKO, also has confidentiality rights and potentially privilege, if privilege attaches to this document, and what do we do about that? Because they have not waived it, and they've expressly said that they don't want it released. And -- and I don't have a position on whether they should or shouldn't, but if they don't want to, is it reasonable for this Board to -- to -- to prejudice them?

At that point, it's my submission that the report must be excluded, that INAC is trying to rely on material that they are, if MKO is correct, are not entitled to rely on publicly.

If -- if the report cannot be tested fairly, then it's of no value, and -- and should be excluded.
THE CHAIRPERSON: I think we --

MS. MYFANWY BOWMAN: And --

THE CHAIRPERSON: -- we under -- I think we understand your -- your --

MS. MYFANWY BOWMAN: -- I did have a couple --

THE CHAIRPERSON: -- your argument.

MS. MYFANWY BOWMAN: -- I did have a couple of other quick points to make in response to -- to the suggestion by INAC that -- that the document shouldn't be released, that it's not executed, there's negotiations ongoing, and that they don't know what document it is.

Certainly that statement is somewhat alarming given that they provided the document to Mr. Hildebrand, however, they've given it to him. They're seeking to rely on a part -- on opinion based on that document.

Whether that document really represents the agreement that was reached between Manitoba Hydro, and MKO, and INAC, I've no idea, and that consideration presumably goes to weight, but they opened this can of worms.

MR. ROBERT MAYER: Ms. Bow -- Ms. Bowman, you -- you've made your point with respect to INAC. I
don't think you really need to go far -- farther with respect to the document they have.

I -- and I suppose the question as to whether MKO has any privilege, I thought I heard Mr. Anderson say this was not his document. They -- they had an entirely different document.

But I think the -- if the issue is that the document that was given to Mr. Hildebrand is a document prepared by INAC, not consented to by any other party, how would any other party gain privilege to a document that hasn't -- that they haven't dealt with?

MS. MYFANWY BOWMAN: I'm not sure that I could answer that -- that question, although it -- it is an insightful one.

I don't know whether MKO has privilege, or any other rights, that require protection with respect to that document. I think that that's probably something that should be directed to -- to MKO to respond to.

Keep in mind that -- that I and my clients have not seen this document. We don't know all the back and forth. We really -- I mean, this is all news to us.

What I can say is I understood MK -- Mr. Anderson, in his comments, to say that they do object to disclosure of this document. Whether they're entitled to object or not, I don't know. If the Board finds that
they have privilege, or some other kind of confidentiality right that should be protected, then the remedy is to -- is to exclude the report. If they have no such rights, then presumably the remedy is to -- to produce -- or a production of the material. That will be my position.

MR. MICHAEL ANDERSON: Mr. Chair --

MS. MYFANWY BOWMAN: Is that of assistance?

THE CHAIRPERSON: Mr. Anderson...?

MR. MICHAEL ANDERSON: I didn't mean to interrupt you, Mr. Chair. We do have comments. In respect of what I called the INAC document last December, I again will say, however, that it was circulated to us within the confines of a -- a mediation process in which Patti -- Ms. Ramage has corrected indicated, we are all bound by cross-undertakings of confidence to each other at all levels, all documents.

With -- without going into the process, and there are those here who may advise you better than I, certainly on the process of a mediation, even the mediators own notes of our process are destroyed at the conclusion of the mediation, and that's standard practice, as I understand.

So all of the paperwork that we exchanged
between ourselves, we have been doing in confidence, and
so I didn't mean to be pejorative in calling it the INAC
version, it is a draft presented to us for our
consideration by the Department of Indian and Northern
Affairs Canada.

And it is, to us, privileged and captured
within the undertakings of confidence in the mediation.
I make the point that the Public Utilities Board has used
its authorities under the Act to subpoena a copy of that
document, which pro -- was provided in a sealed fashion
in confidence to it.

It remains that we see all of the
documents as being governed by the privilege of
confidence, and I would repeat again, the TSA that the --
the tentative settlement agreement that the Board has in
its possession that is cross-concurred is the one (1)
provided to it in confidence in December 2004.

So if there were any, and I'm taking the
alternative approach, pending the Board's decision,
raising an important caution on the part of the diesel
First Nations and MKO. If there is any discussion
determined by the Board to be in the public interest of
the tentative settlement agreement, it must be the
December 2004 version that was tabled with you, for that
is the one (1) in your possession that we have cross-
I would more -- most importantly echo Ms. Ramage's comments about the passage of time and the performance of the substance of the tentative settlement agreement.

The version of that agreement that was contained in all the reports provided to our chiefs and councils that gave rise to their band council resolutions authorizing the payment of money, is the version that you have from December 2004. It is not the INAC version of last November -- November 30th/December 1st.

So it would be utterly out of context, in any case, to examine in substance that agreement, because it is not the one that the First Nations relied on to perform their duty -- their obligations under and unsigned agreement.

So I only raise that as an alternative as an abundance of caution to make sure that any discussion of it is in context. But I repeat, that we believe it's captured by the -- by the privilege of remediation.

Thank you, Mr. Chair.

THE CHAIRPERSON: Well, we've had a lot of discussion on this particular point and it coincides to the point in time that we usually take our -- our break in any case. I think we'll take fifteen (15)
minutes to reflect on this, and when we come back I don't
know whether the various parties in this room will have
further discussion or not, but we'll -- we'll be back in
fifteen (15) minutes.

MS. MARY ANN THOMPSON: Mr. Chair, if I
may just ask the Board to -- in its consideration of
this, perhaps keep something else in mind. As Mr.
Anderson has spoken to the concern here about privilege,
it's not a litigation privilege. It's not like retainer
of a psychiatrist in the context of the -- the case that
Ms. Bowman provided to you. It's all about negotiation.
And it stems from the mediation in 2004
and certainly in -- to the extent that we might get into
the law, that's there to protect the party's ability to
continue to negotiate. On a practical level, that's
everyone's concern here. Parties haven't concluded the
agreement; they need to be free to continue to deliberate
on that.

And so when a document's going to go out --
-- and I think what Mr. Anderson is speaking to, once a
tentative settlement agreement is released, how is that
going to be understood? Is it going to be understood as
reflecting a common understanding of the parties? That's
not necessarily clear because, of course, there have been
a series of drafts all the way back to 2004.
So I would ask the Board to consider -- is the extent to which, if it concludes that the tentative — or, a tentative settlement agreement should be disclosed, what could be done to continue to protect the party's ability to negotiate and conclude the agreement. And in that regard, certainly Ms. Ramage made a suggestion to you that perhaps certain portions of it need not be disclosed.

Perhaps another way to look at that, is that if there must be disclosure, could it be limited to those particular aspects that are referenced in the evidence. Thanks.

MR. ROBERT MAYER: Ms. Thompson, the document which was subpoenaed came with cover — with a copy of a cover letter to Chief and Council, Barren Lands First Nation; Chief and Council, Northlands Dene First Nation; Chief and Council, Sayisi Dene First Nation; and Chief and Council, Shamattawa First Nation. This is hardly a closely held document that was provided. It appears to have been created in 2009, which is five (5) years down the road from the -- from the Board order.

You've heard the Chair's comments with respect to, Where is this thing going? How long should everything be held in abeyance pending whatever the issues are? If we're not going to be told the issues and
we -- there's some very clear issues set out here as to what's in this agreement, and the letter purports to be, basically, a final offer, but since everybody's still talking, obviously the final offer from November 30th of 2009 may not, in fact, be the -- be the end of the issue.

But I'm having a little trouble understanding how a document that is relatively widely circulated to at least a significant number of people, why we're having any trouble disclosing this to the Board? And how is it in the public interest to hold this six (6) year old process -- why is it -- well, why -- let's put it another way. Why is it not in the public interest to shed some light on this six (6) year old process which has been referred to now in a number of hearings, a number of times, and is again specifically referred to by a witness who formerly was retained by MKO and is now retained by INAC?

MS. MARY ANNE THOMPSON: Mr. Vice-Chair, the recipients of the letter and the draft agreement to which you've referred are all of the parties to the agreement. And so while I appreciate there's lots of them, they -- there's a lot of parties to the agreement, and so certainly the circulation of the document didn't exceed the negotiation and mediation context in -- in -- in which it began.
And with respect to the public interest, I might recall that the confidentiality that the parties brought to the mediation initially had a tremendous result. And I think you've heard in the evidence of the parties what -- and in Mr. Anderson's opening submissions today, you've heard what those results were. And that's what that confidentiality is there to protect: the parties' ability to do exactly that.

And as we proceed to try and finalize that in written language that all those parties can agree on, it's obviously proving to be challenging, but that's the interest in the protection of that -- of that process.

MR. ROBERT MAYER: Well, just to follow up on that again, Ms. Thompson. You've read Hydro's rebuttal evidence who challenges specifically Mr. Hildebrand's interpretation of the tentative settlement agreement and the minutes of settlement, including reference to an agreement that I quite frankly hadn't previously heard of, which is the mitigation agreement of nineteen (19) something or other -- 1997, which we haven't yet seen.

But I'm having a little trouble understanding how the Board is supposed to -- is Mr. Hildebrand correct, is Manitoba Hydro correct -- if we're
if people aren't going to be shown the documents that
are being interpreted, presumably by the parties?

MR. MICHAEL ANDERSON: Mr. Chair, if I
might make one final comment. I thank Ms. Thompson for
raising the point that the letters were addressed to the
parties of the mediation. MKO, strictly speaking,
represents those parties on their behalf, and there's
formal documentation for that. So they -- MKO is engaged
on their behalf at their request. They are the parties.
The -- the suggestion, however, to remove
Articles 7 and 10 I -- I wanted to speak to directly in
that those two articles are material to the First Nation
performance of the tentative settlement agreement in good
faith. So if the document was circulated abs -- in a
version different from that that you received, sealed in
December '04, it would be utterly not in context with our
understanding, or with the processes and procedures that
led us to perform the agreement and pay some $26 million
to Manitoba Hydro.

THE CHAIRPERSON: Okay. We're --

MR. MICHAEL ANDERSON: Thank you, Mr.

Chair.

THE CHAIRPERSON: We're going to take a
break now, and we'll be back probably in fifteen (15) or
so minutes. We could go on endlessly, but at some point
we're going to have to pull it together ourselves.

--- Upon recessing at 10:36 a.m.
--- Upon resuming at 11:19 a.m.

THE CHAIRPERSON: Yes. We're moving too quickly. If we'd waited a little bit longer, we could have had the lunch break, but anyway. Just wait until Ms. Thompson gets a chance to sit down.

Ms. Bowman, during the break, I don't know whether you had any discussions with your colleagues that led to an agreement in this matter. Can you report if such discussions occurred and whether a consensus was reached.

MS. MYFANWY BOWMAN: Some discussions did take place. I don't think consensus reached. I -- I look around the room for confirmation, but I -- I don't think so, no. I'm sorry.

BOARD RULING:

THE CHAIRPERSON: Okay. CAC/MSOS requests productions of minutes of settlement, the tentative settlement agreement, and the retainer letter and any other information that was given to Mr. Hildebrand. All parties have spoken and the Board has
deliberated on this matter. Considerable seriousness.

The minutes of settlement are on the public record and Manitoba Hydro was to provide clean copies to all.

MS. MYFANWY BOWMAN: And they've done that. Thank you.

THE CHAIRPERSON: Okay. We have been informed that Mr. Hildebrand had had, H-A-D, and utilized the 2009 INAC draft and not the 2004 tentative settlement agreement. The INAC 2009 draft is not privileged, but it is subject to a confidentiality agreement. The only party in the room that has not seen this 2009 draft is the Intervenor, CAC/MSOS. The confidentiality of the draft has been waived by INAC, producing Mr. Hildebrand's evidence.

The Board agrees with CAC/MSOS that the 2009 INAC draft that Mr. Hildebrand has confirmed he was given and used should be disclosed to CAC/MSOS's counsel. However, such disclosure is to be on blue paper by Manitoba Hydro or INAC and not filed as an exhibit in this proceeding. CAC/MSOS can use it for cross-examination purposes, but that cross-examination by CAC/MSOS of Mr. Hildebrand will be held in camera.

CAC/MSOS and its counsel are to keep the 2009 draft by INAC confidential and not distribute it or
use it in any other proceeding or proceedings without the
prior written permission of this Board. Parties are at
liberty to continue negotiations.

Other information given to Mr. Hildebrand
will remain privileged and not disclosed.

During Ms. Bowman's cross of Mr. Hildebrand the court reporter is to make a separate
transcript and no person other than those parties
recognized at this hearing are to be present. The Board
will decide at the conclusion if the in camera transcript
is to be merged into the public record.

And all parties should be mindful in
closing statements that nothing from the 2009 INAC draft
is to be disclosed. And we will expect all parties to
follow this ruling to the letter.

So with the Board's ruling, Mr.
Hildebrand's written pre-filed evidence will be marked as
Exhibit INAC Number 4.

--- EXHIBIT NO. INAC-4: Evidence of Mr. Hildebrand

THE CHAIRPERSON: Thank you. And we will
now move over to Ms. Fernandes and ask Ms. Shield to
swear in the witnesses.
EXAMINATION-IN-CHIEF BY MS. ODETTE FERNANDES:

MS. ODETTE FERNANDES: Mr. Warden, would you please outline your areas of responsibility with respect to this Application?

MR. VINCE WARDEN: Yes. Good morning, Mr. Chairman, members of the Public Utilities Board, ladies and gentlemen.

With respect to this Application, my areas of responsibility include general oversight of the filing, and any related policy matters.

MS. ODETTE FERNANDES: Do you adopt, on behalf of Manitoba Hydro, the evidence provided in Manitoba Hydro's Application as well as Manitoba Hydro's answers to Information Requests made in these proceedings?

MR. VINCE WARDEN: Yes, I do.

MS. ODETTE FERNANDES: Mr. Warden, would
you please describe the circumstances giving rise to this
Application?

MR. VINCE WARDEN: Yes, Manitoba Hydro is
applying to the Public Utilities Board for increases in -
in rates to partly recover costs incurred by the
Corporation to provide diesel electric service to the
four (4) communities of Brochet, Lac Brochet, Tadoule
Lake, and Shamattawa.

The cost incurred by Manitoba Hydro to
serve these communities is approximately $8 million per
year. More than half of this cost is for diesel fuel
alone. At current rates, Manitoba Hydro only recovers
about $4.8 million per year, or about 60 percent of the
cost to serve. A rate increase is required to
reduce the current subsidy of approximately $3.2 million
per year.

With the proposed rate increase, the
subsidy will not be eliminated, but it will be reduced to
approximately $2.1 million per year.

Rates to these communities have not
increased since January the 1st, 2007. Since that time,
cost to provide service in the four (4) communities have
increased due largely to increases in the price of diesel
fuel.

The current full cost rate of forty-one
point two seven (41.27) cents per kilowatt hour was based on the cost of operations at the time it was set. Today, the unit cost is fifty-nine point zero four (59.04) cents per kilowatt hour.

MS. ODETTE FERNANDES: What specifically is Manitoba Hydro seeking in this Application?

MR. VINCE WARDEN: Manitoba Hydro is seeking approval of the Board to make the following changes:

Number 1. Increase the rate for residential and general service usage in excess of 2,000 kilowatt hours per month from forty-one point two seven (41.27) cents per kilowatt hour to forty-five (45) cents per kilowatt hour.

Number 2. Increase the rate charged to the Federal Government in First Nation education accounts for -- from one dollar and thirty-eight cents ($1.38) for all kilowatt hour of usage to two dollars and nineteen cents ($2.19) for all kilowatt hours of usage.

MS. ODETTE FERNANDES: Mr. Warden, why is Manitoba Hydro not proposing to set the tail block rate at the full cost rate of fifty-nine point zero four (59.04) cents?

MR. VINCE WARDEN: Manitoba Hydro is concerned that increasing the tail block rate from forty
one point two seven (41.27) cents per kilowatt hour to fifty-nine point zero four (59.04) cents per kilowatt hour could impose hardship on both the residential and commercial customers in these communities, and Manitoba Hydro is reluctant to do this.

Manitoba Hydro is setting the tail block rate at forty-five (45) cents per kilowatt hour to limit the increase to 2.9 percent annually from the current rate.

The current rate was approved January the 1st, 2007 applying a 2.9 percent increase for each of the years since 2007 yields a rate of forty-five (45) cents per kilowatt hour.

With the proposed rates, the tail block increase is 9 percent. If the full cost was applied to the tail block, that increase would be 43 percent.

The difference in revenue to Manitoba Hydro between an increase of 9 percent compared to 43 percent for the tail block rate is a -- is approximately three hundred and twenty-two thousand dollars ($322,000) per year.

MS. ODETTE FERNANDES: Does Manitoba Hydro's decision to set the tail block rate below the cost of service increase costs to the Federal agencies,
INAC, or the First Nation education accounts above what they otherwise would have been?

MR. VINCE WARDEN: No. The reduced revenue of three hundred and twenty-two thousand dollars ($322,000) resulting from the decision to limit the increase to the residential and general service tail block is absorbed by Manitoba Hydro, and recovered from rates applying to all general consumers within the province.

MS. ODETTÉ FERNANDES: Previous diesel rate applications have incorporated an amount equal to 20 percent of the deficit accumulated since April 1st, 2004. Since there is an accumulated deficit, why does this application not incorporate that provision?

MR. VINCE WARDEN: It was a decision on Manitoba Hydro not to apply for rate increases in the intervening years between January the 1st, 2007 and September the 1st, 2010, because of the impacts that such rate increases would have on the communities. On this basis, it would not be appropriate to recover such deficits through even higher rate increases in the future.

Nevertheless, Manitoba Hydro will continue to -- to track actual deficits and surpluses with the objective of minimizing net deficits over the longer
MS. ODETTE FERNANDES: Why has Manitoba Hydro made the decision to transfer accounts of the Provincial Government agencies from the government rate to the general service rate?

MR. VINCE WARDEN: The purpose of the transfer is to segregate accounts funded by the Federal Government into one (1) rate class. Manitoba Hydro believes that it is appropriate for INAC and other Federal agencies to assume such responsibility on behalf of their clients.

The First Nation and the Federal accounts are responsible for approximately 76 percent of the electricity used in the four (4) communities. Other accounts, including residential and general service accounts not affiliated with the First Nation, as well as Provincial Government accounts, are responsible for the remaining 24 percent of usage.

The decision to segregate these accounts makes it clear which accounts are the responsibility of Federal agencies including INAC.

MS. ODETTE FERNANDES: Should the transfer of Provincial Government agencies from the government rate to the general service rate be a concern to INAC or the First Nations?
MR. VINCE WARDEN: No. This amount is not being passed on to INAC or the First Nations and should not be a concern to them at all. Any impact flowing back to the communities through grid rates would be trivial compared to the amount of revenue that Manitoba Hydro has forgone by setting the tail rate below the full cost amount.

MS. ODETTE FERNANDES: Could you please provide an update on the status of the tentative settlement agreement?

MR. VINCE WARDEN: Well, as you know -- I am pleased to report, however, that I have been advised at the break this morning that all the parties, INAC, MKO, and the First Nations, are ready to sign the agreement which could occur as early as -- as this week, and perhaps even tomorrow. Manitoba Hydro is certainly ready to sign.

I should mention though that once the agreement is on the record there won't be any surprises to anybody. The information has -- most of the information, the major provisions of the agreement, have been put on the record at previous proceedings and those provisions have been met by all the parties to the agreement.

MS. ODETTE FERNANDES: Mr. Warden, has
Manitoba Hydro received assurances from INAC that incremental funding will be provided to the four (4) communities, sufficient to cover the proposed increases without detriment to the level of funding providing for other purposes?

MR. VINCE WARDEN: Unfortunately, no, Manitoba Hydro has not received that assurance from INAC. In its application, Manitoba Hydro did request that the PUB approve rates subject to its obtaining the assurance it sought in Order 110 -- 1/10.

The -- the following is an excerpt from page 15 of that order, and I quote:

"All parties would best immediately demonstrate that First Nations will be adequately funded for essential services, and that First Nations, with the assistance of INAC, are addressing their financial obligations for such essential services."

Unquote.

Notwithstanding that this assurance has not been received, in Manitoba Hydro's view the PUB can elect to unconditionally approve the rate increases being sought.

MS. ODETTE FERNANDES: Finally, Mr.
Warden, the application was made seeking approval to implement the new rates, effective September 1st, 2010.

Is Manitoba Hydro seeking new rates retroactive to that date?

MR. VINCE WARDEN: No. Manitoba Hydro proposes that the new rates be implemented either October the 1st, 2010, or November the -- 2000 -- November the 1st, 2010, with no retroactivity.

MS. ODETTE FERNANDES: Thank you, Mr. Warden. Mr. Wiens, would you please outline your areas of responsibility, with respect to this application?

MR. ROBIN WIENS: Yes. Good morning, Mr. Chairman, and members of the Public Utilities Board. As Division Manager of Rates and Regulatory Affairs for Manitoba Hydro I have overall responsibility for the preparation of the application for the coordination and review of responses to Information Requests, as well as for the preparation of Manitoba Hydro's rebuttal evidence.

I'm responsible for providing direction to staff with respect to the cost of service analysis, revenue forecasting, design of rates, and customer service policies.

MS. ODETTE FERNANDES: Why has Manitoba Hydro included interest and depreciation on major capital
investments and the revenue requirement in this -- in
this application, and what impact does this have on
customers?

MS. ROBIN WIENS: There are three (3)
major capital investments that Manitoba Hydro has
incorporated into the revenue requirement. These are the
Brochet soil, remediation with a capital cost of 3.43
million; repair of Shamattawa engine failures, at a
capital cost of 0.6 million; and modifications to the
Shamattawa powerhouse, at a cost of 0.36 million, for a
total cost of 4.39 million.

In addition, there are ten (10) items,
other items, listed on Schedule 8 of Attachment 1 of the
application, which individually account for less than a
hundred thousand dollars in expenditure in which
collectively amount to 0.46 million.

In total, all the depreciation and
interest on unrecovered capital which has been included
in the diesel revenue requirement amounts to five hundred
and eighty-one thousand dollars ($81,000) or about four
point two five (4.25) cents per kilowatt hour.

Manitoba Hydro has reviewed the rationale
for incorporating Brochet soil remediation into the
revenue requirement in its rebuttal evidence. And just
to summarize: Discussions with INAC going back to at
least 1998 were not fruitful in terms of receiving any
commitment to share in the cost of remediation.

The remediation was completed in 2003. It
was not incorporated into the capital cost of diesel
operations until after the discussions leading to the
tentative settle (sic) agreement, because Manitoba Hydro
continued to anticipate at that time that soil
remediation may be dealt with in a different manner or
through negotiations. Otherwise, it would have been
incorporated into the capital that was considered the
undepreciated capital amount as of March 31st, 2004.

So, to date, there has -- INAC has
declined to make a contribution towards some of the cost
of soil remediation. The cost is now on the books of
Manitoba Hydro, and Manitoba Hydro has determined that
this cost is best recovered through rates to the parties
that received the benefit of the service.

The amounts of interest and depreciation
included in the 2010/'11 revenue requirement in respect
of Brochet soil remediation is four hundred and three
thousand dollars ($403,000), or approximately three (3)
cents per kilowatt hour.

MS. ODETTE FERNANDES: What was the
reason for including the depreciation for Shamattawa
engine repairs in the revenue requirement?
MS. ROBIN WIENS: These repairs were undertaken to assure continuity of service at Shamattawa and could be described as being of an emergency nature. The repairs were done and the costs incurred, beginning in May of 2008 and concluding in January of 2009.

During the course of plant break-in in May 2007, dry chemical fire extinguisher was sprayed on Unit Number 1 of the three (3) units in the generating plant, while that Unit Number 1 was online, and this caused an eventual engine oil pump failure.

The engine, over time, absorbed the chemical, causing significant damage throughout. These problems did not appear immediately after the incident and the damage was not discovered until a scheduled minor overhaul, at which time the significance of the job -- or the scope of the job was significantly increased over what had been planned.

As Shamattawa has only three (3) units, and now having only two (2) available, if one (1) of those units were to go down, service to the community was in jeopardy, and, hence, the work was deemed as an emergency.

The work was done in May and June of 2008. The in-service date was September the 18th, 2008.

Subsequently, additional work was required due to some
incorrect assembly of components and their subsequent fail
-- failure, as well as additional upgrades being
required.

This item was included in correspondence
dated February 17th, 2010, to INAC, which included the
list of past or completed projects for which Manitoba
Hydro was seeking contributions. To date, INAC has
deprecated to make such contributions, and this is also
documented in Manitoba Hydro's rebuttal evidence.

Consequently, the decision was taken to
include interest and depreciation on this item as well in
the revenue requirement. The total amount involved in
eighty thousand dollars ($80,000), or about zero point
six (0.6) cents per kilowatt hour.

MS. ODETTE FERNANDES: What are the
Shamattawa power house modifications? Why were they
incurred. Why were they included in the revenue
requirement? And what is their impact on customer rates?

MR. ROBIN WIENS: These modifications
relate to the costs for removal and disposal of tanks and
pipes which occurred shortly after the new power house
was installed. These were completed, committed --
contemplated, committed, and essentially completed again
prior to the negotiations leading to the tentative
settlement agreement, and these costs were booked some
time in 2005.

This item was not included in material provided to INAC and MKO in 2006, and then again in 2009, because it was not part of any capital plan. It had already been completed, and the parties responsible for originating and carrying on consultation were not aware of the project at that time. The item was included in correspondence dated February 17, 2010, advising of projects already completed, for which Manitoba Hydro was seeking contributions.

The total of interest and depreciation in the revenue requirement in respect of this project, is approximately forty-five thousand dollars ($45,000), or zero point three (0.3) cents per kilowatt hour.

MS. ODETTE FERNANDES: Thank you, Mr. Wiens. Mr. Cox, would you please outline your involvement with respect to this Application?

MR. ROB COX: Good morning, Mr. Chairman, members of the Public Utilities Board, ladies and gentlemen.

In my testimony, I will be providing evidence with respect to Manitoba Hydro's demand side management programs in the four (4) diesel communities, my involvement as a liaison with the communities, INAC, and MKO, and as chair of Manitoba Hydro's remote diesel
MS. ODETTE FERNANDES: Manitoba Hydro developed a First Nation Power Smart program in the summer of 2008. Can you please briefly describe the program.

MR. ROB COX: Commercial and residential Power Smart programs have always been available in First Nation communities. Over a number of years, Manitoba Hydro has made various efforts to encourage First Nation communities, including diesel communities, to participate in the Corporation's various Power Smart programs. These efforts have included hosting workshops in communities, dialoguing with community chiefs and housing managers, working with Provincial Government staff, working with INAC staff, and undertaking a pilot at Island Lake.

In order to improve participation, Manitoba Hydro used the experience gained through these efforts, and designed the First Nation's Power Smart Program. This program leverages funds available through the Affordable Energy Fund, and is intended to take a very aggressive approach to achieving energy savings in First Nation -- First Nations and diesel communities.

A key element of the strategy involves having a resource dedicated to work so -- solely with First Nation communities, and taking a partnership
approach with this initiative.

In addition, funding available through the Affordable Energy Fund, will be used to cover the cost for residential applications of eligible measures, including basic energy efficiency material, and insulation upgrades. Under this approach, each first community -- First Nation's community works with Manitoba Hydro specialist to develop a meaningful energy efficient plan for the community, and in accordance with the community's time lines.

Manitoba Hydro has met with all four (4) communities, and provided reports outlining the residential and commercial energy opportunities available. To date, Lac Brochet has retrofitted ten (10) residential homes, and Shamattawa has taken advantage of the commercial lighting program.

MS. ODETTE FERNANDES: What do you see as the challenges in encouraging the communities to act on these residential and commercial energy conservation opportunities?

MR. ROB COX: Manitoba Hydro is working with the communities to capture these opportunities, but ultimately it is the community's decision to act upon them. Challenges in each community may vary, and could include things such as winter road access, or priorities
within the community which are beyond the control of
Manitoba Hydro.

MS. ODETTE FERNANDES: In light of the
evidence provided by Desiderata Energy Consulting, do you
believe that a comprehensive energy management program
targeted at the remote communities could reduce overall
electricity consumption by as much as 20 percent?

MR. ROB COX: The electricity reduction
of 20 percent proposed by Desiderata is not defensible.
Desiderata has based this number on the fact that Power
Smart has realized energy savings representing 6 percent
of energy consumption throughout the province. They have
then extrapolated that -- this number to 20 percent,
based on a targeted energy management program and the
potential to eliminate or reduce electric space heating.

As we stated in our responses, electric
space heating is not allowed within the communities and
residential customers are limit (sic) to 60 amp services
which limits the capacity for installing space heating.
Usage data suggests that there is some electric space
heating in the communities, however, less than 10 percent
of residential bills exceed two thousand (2,000) kilowatt
hours per month.

We believe that Desiderata has
significantly overstated the presence of electric space
heating in these communities.

In regard to targeted energy management, through the First Nation Power Smart Program, Manitoba Hydro is already in -- installing pipe wrap faucet aerators and low-flow showerheads, gasket covers, and caulking in the homes. These measures will combine to reduce eclectic -- electricity consumption by approximately four hundred and ten (410) kilowatt hours per year. Additional opportunities are limited.

Desiderata has also failed to consider the basis of the 6 percent energy savings achieved under the power -- under Power Smart. Thirty-five (35) percent of these savings were realized from the industrial sector, 42 percent from the commercial sector, and the remaining 23 percent from the residential sector. As mentioned, Manitoba Hydro is working with the individual communities to develop meaningful energy efficient plans.

MS. ODETTE FERNANDES: Thank you, Mr. Cox. Mr. Chairman, that completes Manitoba Hydro's direct evidence. And with that I would turn over the panel of witnesses to Mr. Peters for cross-examination.

THE CHAIRPERSON: Mr. Peters...?

CROSS-EXAMINATION BY MR. BOB PETERS:

MR. BOB PETERS: Yes, thank you. Thank
you, Mr. Chairman. Good morning to the panel. As I generally do, I want to remind the panel that my questions are directed to the panel, and the panel will decide amongst themselves, with the assistance of counsel, if needed, as to who would be the most appropriate person to respond.

Mr. Warden, as the senior executive on the Panel are you comfortable with that method of proceeding?

MR. VINCE WARDEN: Yes, thank you.

MR. BOB PETERS: And, Mr. Warden, let's just cover a few points that the Chairman raised in his opening comments. Since 2004 can you confirm that the rates charged by Manitoba Hydro to the diesel zone have been interim in nature and not final rates?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And the reason they're not final rates has been because Manitoba Hydro has charged rates that reflect Manitoba Hydro's interpretation of a tentative settlement agreement with--

MR. VINCE WARDEN: That's correct.

MR. BOB PETERS: And if we turn to Tab 5 of the book of documents, if you have that handy, Tab 5 was a document that Manitoba Hydro was gracious enough to complete. This Tab 5 sets out an historic perspective on the rates charged to the diesel communities, correct?
MR. BOB PETERS: If, Mr. Warden, you -- and if the Board would follow us, under the residential customers looking at what is PUB/ Manitoba Hydro 9-A and the chart that was prepared, if you follow under "Residential" down to "Remaining Kilowatt Hours," this line is to represent kilowatt hours that are over and above the two thousand (2,000) kilowatt hour block of energy that we've talked about in diesel communities?

MR. VINCE WARDEN: That's right.

MR. BOB PETERS: And I think as Mr. Anderson may have mentioned in one of his comments this morning, prior to ni - prior to 2003, there really wasn't a two thousand (2,000) kilowatt hour per month block. It was unlimited power available at five point one six (5.16) cents per kilowatt hour.

Do you accept that?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And then what -- what the Board will see following across that line of remaining kilowatt hours under the residential customer, is that the Board approved a rate of seventy-nine (79) cents for, I guess, the remaining kilowatt hours in the block that was going to be used and that was the rate Mr. Anderson referred to as being significant in -- in
essence of getting somebody's attention and causing the
parties to focus on some of the mediation and settlement
discussions.

MR. VINCE WARDEN: Correct.

MR. BOB PETERS: Would it be correct to say, looking at that chart, the seventy-nine (79) cents was effective April 1st and then a month later that rate goes down to essentially half, to thirty-six (36) cents, that reflects Manitoba Hydro coming back to the Board for an interim rate adjustment which reduced that remaining kilowatt hour rate from seventy-nine (79) cents down to thirty-six (36) cents.

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: That was Manitoba Hydro's obligation under the tentative settlement agreement.

Would that be fair to say?

MR. VINCE WARDEN: That's correct.

MR. BOB PETERS: And we can follow that line across, only to note that up until the current application, that remaining kilowatt hour number was what was calculated to be a full cost rate.

Would you agree with that?

MR. VINCE WARDEN: Yes, I would.

MR. BOB PETERS: And this application you
have before the Board is the first time Manitoba Hydro in
the diesel zone has gone away from a first cost -- a full
cost rate and is now talking about a tail block rate of
dirty-five (45) cents?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And that forty-five (45) cents, you indicated in your opening comments to Ms.
Fernandes, that the full cost rate is fifty-nine (59) cents a kilowatt hour, but the proposed tail block rate
is only forty-five (45)?

MR. VINCE WARDEN: Right.

MR. BOB PETERS: And the difference between those two (2), according to your evidence, is
three hundred and twenty-two thousand dollars ($322,000),
approximately?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And we -- the -- we don't need to go there, but if you want to dig out
Schedule 4.5 at Tab 7 of the book of documents, that will
show the Board how that -- how that subsidy was
calculated, in -- in relative terms. And it's not
exactly the same number you utilized, but it's certainly
within the ballpark.

MR. VINCE WARDEN: Okay, Mr. Peters, I'll accept that.
MR. BOB PETERS: Certainly. Just on the
-- the Chairman asked for some policy considerations. Up
until now, Manitoba Hydro has been having the consumers
who use more than two thousand (2,000) kilowatt hours a
month pay for the full and actual cost, as calculated by
Manitoba Hydro.

You've agreed with me on that?

MR. VINCE WARDEN: Would you say that one
(1) more time, Mr. Peters? I'm --

MR. BOB PETERS: Cer --

MR. VINCE WARDEN: I'm sorry.

MR. BOB PETERS: Certainly. Prior to the
application that's now before the Board, the remaining
block of energy over and above two thousand (2,000)
kilowatts has always been a full cost rate to reflect to
customers the actual cost of the energy they're using.

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: One (1) of the reasons
you used the full cost rate would have been to have a
price signal sent to those customers to essentially say:
If you exceed two thousand (2,000) kilowatt hours per
month, it's going to cost you a lot of money because
that's what it actually cost to produce in that area.

MR. VINCE WARDEN: Yes, that's right.

MR. BOB PETERS: You'd agree then, from a
policy perspective, you -- Manitoba Hydro was retrenching on that position?

MR. VINCE WARDEN: No, I wouldn't say so. I think the -- the forty-five (45) cents per kilowatt hour sends the same signal, essentially.

MR. BOB PETERS: Then what is the policy reason for asking grid customers to pick up three hundred and twenty-two thousand dollars ($322,000) of unfunded revenue requirement?

MR. VINCE WARDEN: Well, as -- as I mentioned in my direct testimony, there was concern by Manitoba Hydro about the impacts that that full cost rate would have on the communities. And it's not only the residential. It's the general service customers as well who presumably would pass that cost on to the residents of those communities.

MR. BOB PETERS: I'm sorry, I didn't follow your last comment. The --

MR. VINCE WARDEN: Well, if the rate to the general service customers, the local stores, went from -- went up from the current forty-one point two seven (41.27) cents per kilowatt hour -- hour, all the way up to fifty-nine (59) cents per kilowatt hour, it's assumed that that cost incurred by the local businesses would be passed on to the residents in those communities.
through the -- through the products that they -- they sell in those communities.

MR. BOB PETERS: You have no specific empirical evidence that that happens, but, intuitively, you would expect businesses who are running for profit would pass on those costs.

MR. VINCE WARDEN: Well, I -- I believe in -- in current -- or sorry, in previous proceedings we have had testimony to that effect from North West Company.

MR. BOB PETERS: And with the specific -- is the North West Company going to increase any of their products to their consumers as a result of your application before the Board, or are they going to hold every rate the same?

MR. VINCE WARDEN: Well, I expect there will be an increase if -- if you assume that the cost of -- of their -- their input costs are going to go up from forty-one point two seven (41.27) cents per kilowatt hour at the tail block rate, to forty-five (45) cents, then cost will be passed on. The -- the cost that's being passed on, however, will not be as great as if the cost was the tail block -- tail block rate was fifty-nine (59) cents per kilowatt hour.

MR. BOB PETERS: Does Manitoba Hydro know
for a fact whether the -- the general service customers
reduced their product costs to consumers, or their
service costs to consumers, when the Board ordered the
rate dropped from seventy-nine (79) cents down to thirty-
six (36) cents?

MR. VINCE WARDEN: The -- the seventy-nine (79) cent rate was in place for such a -- such a
brief period of time that -- well, the short answer to your question is: No, we don't know. But, nevertheless, that rate was -- was not in place for a long enough time that it would have been -- would have been incorporated in -- in products sold in those communities. That's an assumption on my part.

MR. BOB PETERS: Would Manitoba Hydro have stayed with the full-cost rate for the remaining kilowatt hours above two thousand (2,000) kilowatt hours per month for residential and general service, if Manitoba Hydro did not include in its revenue requirement interest and depreciation on approximately $4.39 million of capital expenses?

MR. VINCE WARDEN: Yes. As Mr. Wiens indicated in his testimony, the -- the effect of including interest -- interest and depreciation was approximately four (4) cents per kilowatt hour in total.

So, therefore, it -- it is likely that we
would still set the rate at forty-five (45) cents per kilowatt hour for the tail block rate, based on the way that rate was constructed. As -- as mentioned, it was a 2.9 percent per year increase from the date of the last - - last rate increase.

MR. BOB PETERS: I appreciate it's -- it's 3 percent a year, or 2.9 percent a year approximately, for three (3) years, but if you weren't seeking -- if you weren't seeking the interest and depreciation, would you have kept the same rate but applied more of that to the full cost rate?

MR. VINCE WARDEN: Well, I'm saying that the rates -- the -- a rate application -- given that we are not attempting to recover the full-cost rate, the fifty-nine (59) cents per kilowatt hour in the tail block rate, that we're only recovering forty-five (45) cents, that the rate would have -- unlikely have -- the application would have unlikely to have been different.

MR. BOB PETERS: All right. And the major concession that Manitoba Hydro made in this tentative settlement agreement, and when you first came in -- in for rates effective May 1st of 2004, was that most of the capital expenditures were going to be removed from recovery from consumer rates?

MR. VINCE WARDEN: That was the plan,
MR. BOB PETERS: And the plan also included that the capital expenditure costs would be negotiated and paid offline and out of the regulatory forum? It would be contractually agreed between yourselves and the parties who you felt were obligated to pay?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: So just so the Board is clear, Manitoba Hydro's obligation, from this tentative settlement agreement, was apply for a lower rate, which reduced -- which was taking capital out of the equation. That's one of the points, correct?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: The second was to find a methodology that would pay for approximately $16.9 million of an accumulated deficit?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And -- and Manitoba Hydro's proposal for that was to pay it from an allocation of net export revenue and other income?

MR. VINCE WARDEN: Other revenue, yes.

MR. BOB PETERS: And the third obligation was to consult with the First -- the First Nations and INAC, MKO about capital going forward so that there were
no surprises?

MR. VINCE WARDEN: Yes. There was also an obligation, as part of the settlement agreement — tentative settlement agreement, to settle the outstanding surcharge bill — billings. I believe the amount was $3.2 million.

MR. BOB PETERS: Yeah, except that was — that wasn't Manitoba Hydro's responsibility; that was taken care of by a cheque from your other friends in the room.

MR. VINCE WARDEN: You're -- you're right, yes.

MR. BOB PETERS: Yeah. All right. And likewise, the undepreciated capital cost of certain capital equipment, prior to 2004, was also recovered by way of — I believe the number is approximately $23 million of — of funds advanced by the First Nations?

MR. VINCE WARDEN: Including interest, yes.

MR. BOB PETERS: Yeah, okay. That — that was — the payment of that surcharge, and that undepreciated capital cost, that was their obligation?

MR. VINCE WARDEN: Correct.

MR. BOB PETERS: Am I correct to say that as of — all of the obligations that existed as of May
the 1st or March 31st of 2004, everything that was on the
books and had to be resolved up to that point in time,
has been resolved?

MR. VINCE WARDEN: Yes. The only
exception to that would be the -- as you reference, the
capital additions going forward, which I would attribute
more to a -- a misunderstanding than -- than a
disagreement in the inter -- application of the
agreement.

MR. BOB PETERS: But in fairness to INAC,
you didn't include the Brochet soil remediation in the
capital expenses that you were seeking from them, the
undepreciated capital cost recovery from?

MR. VINCE WARDEN: No. As Mr. Wiens
mentioned in his direct, that was on a separate track at
the time.

MR. BOB PETERS: And it was a separate
track pursuant to a separate 1997, I believe, agreement
that the parties believed they had to deal with those
kind of expenditures?

MR. VINCE WARDEN: That -- that's right.

MR. BOB PETERS: And...

(BRIEF PAUSE)
MR. BOB PETERS: And that wasn't a pre-2004 capital expense that was even contemplated to be covered by the tentative settlement agreement?

MR. VINCE WARDEN: That's correct.

MR. BOB PETERS: All right. So I think you've agreed with me that pre-2004, there's been progress and things are tidied up pretty much, as the parties perhaps intended at the time they entered into their discussions and mediated a -- a resolution?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: So the problem that -- that the Board sees, and the Chairman referred to in his opening comments, seem to reflect what's happened post-2004, specifically with the payment of capital costs.

MR. VINCE WARDEN: Yes. It -- it's -- in the overall scheme of things though, it's really quite minor.

MR. BOB PETERS: Well, I don't know.

$4.39 million, I know it's -- it's a -- it -- it -- it's a -- it's a -- it's not a huge dollar figure in -- in -- in matters, but it seems to be a stumbling block, and I also know, Mr. Warden, and I -- I'm -- I respect that Manitoba Hydro does not want to negotiate on the public record.

You'd agree with that?
MR. VINCE WARDEN: Yes. Mr. Peters, when I say it's quite minor, it's -- it's a -- it's a -- minor in terms of coming to an agreement. I'm -- I'm very confident we'll be able to resolve that amount between the parties, so I -- I wouldn't characterize it as a stumbling block.

MR. BOB PETERS: All right. And I appreciate your -- your dancing on egg shells here trying not to indicate that which you think you should not be putting on the public record. But the Board may be encouraged by your direct evidence to Ms. Fernandes that ink may be on paper as early as tomorrow, or this week, related to that settlement agreement.

MR. VINCE WARDEN: Yes, and Manitoba Hydro is very encouraged by that, as well.

MR. BOB PETERS: Now just before I conclude, can you tell the Board whether the ink on the paper will be the 2004 tentative settlement agreement, or will it be the 2009 INAC draft document that receives the ink? Or will it be a third document?

MR. VINCE WARDEN: You know, I -- I believe -- first let me say that the -- the changes between those agreements were -- were relatively minor in nature, and I believe the agreement we're talking about signing is 2007.
So, it's one (1) of those.

(BRIEF PAUSE)

MR. VINCE WARDEN: Okay. I -- I am informed that it would be the same -- essentially the same document that was filed with the Board in confidence in -- in 2010.

MR. BOB PETERS: Would -- would --

MR. MICHAEL ANDERSON: Mr. Peters --

MS. PATTI RAMAGE: If I could help here.

It was subpoenaed in 2009, and it was filed January, 2010.

MR. BOB PETERS: I think, Mr. Chairman, subject to any comments from Mr. Anderson, I'm going to stand down for the lunch hour.

MR. MICHAEL ANDERSON: I just had wanted to -- the discussion during the break that I'd had with Mr. Warden, perhaps I should clarify.

I was, over that period of time, pardon me for being away, speaking with MKO legal counsel and Chief Dan Tuzi (phonetic) just to bring them up to speed on the morning's activities, of course. The document that I had spoken to Mr. Warden that we have instructions to sign, are those related to the authorizations to flow the
money, which would be the December 2004 joint common
draft given to the Board in confidence, as it was
modified on July 24th, 2007 between the parties.

    We had -- that was the comment that he was
reading. We have instructions to proceed with that
immediately. The INAC draft, as it's been characterized,
we have no instruction to proceed with at this time.

    MR. BOB PETERS:   All right. Rather than
perhaps muddy the waters, I'll maybe ask Mr. Anderson,
and Ms. Fernandes and Ramage, as well as my friends at
the INAC table, Ms. Hart -- and I guess CAC will not be
invited to this one either, but Ms. Thompson can -- can
also provide guidance, and they can chat about that over
the lunch. And when I come back, maybe Mr. Warden can
just re -- indicate to the Board whether he believes the
document that is going to be signed is the -- is one that
the Board has seen.

    THE CHAIRPERSON:   Very good. We've lost
a little bit of time, so if it's all right with everyone,
we'll come back at 1:15. Is that okay? Okay, 1:15 it
is.

--- Upon recessing at 12:06 p.m.

--- Upon resuming at 1:20 P.m.
THE CHAIRPERSON: Okay. Welcome back, everyone. Mr. Peters, you want to --

MR. BOB PETERS: Thank you, Mr. Chairman.

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: I might just turn to Ms. Fernandes, and her witness, Mr. Warden, just to finish up on a matter that was broached just before the lunch recess.

And my understanding of the evidence, Mr. Warden, is that the -- what we've been calling the tentative settlement agreement is going to be signed, in Manitoba Hydro's estimation, perhaps as early as tomorrow, but certainly expected this week.

Have I got that right?

MR. VINCE WARDEN: Mr. Peters, as it turns out, and I see Mr. Anderson isn't in the room, but in a subsequent discussion with him just be -- at the lunch break, it appears that, in my exuberance, I may have misinterpreted his willingness to -- to sign the most recent agreement, and -- or on behalf of his client.

Therefore, no, it does not appear that we're quite on the same page. There -- it would appear that there may be one (1) or two (2) clauses that are still causing some difficulty for MKO, and therefore
they're not prepared to -- to sign the agreement as early
as -- the other parties certainly are willing to sign,
but -- very disappointing, but the one (1) party does not
appear ready yet.

MR. BOB PETERS: Would it be correct to
say from Manitoba Hydro's perspective that INAC's hands
are somewhat tied, and have to be released to sign
documents if MKO provides those instructions and that
agreement through to them?

(BRIEF PAUSE)

MR. BOB PETERS: I'll rephrase the
question. I'll rephrase the question.

You -- when you indicated that other
parties may be prepared to sign the agreement as it
currently stands, you're taking MKO as representative of
the four (4) individual First Nations.

Would that be correct?

MR. VINCE WARDEN: Mr. Peters, that is
the position they held going back to the minutes of
settlement, and in negotiations preceding the minutes of
settlement, yes.

MR. BOB PETERS: Okay. Put it -- put it
another way. Is it Manitoba Hydro's understanding that
INAC could flow money to Manitoba Hydro directly, or does INAC have to flow it through MKO?

MR. VINCE WARDEN: You know, I -- I think that might be a better question posed to INAC. The -- the money that's flowed though, in accordance with the tentative settle -- settlement agreement, has already flowed, so there's no further monies to flow through that agreement.

MR. BOB PETERS: Okay. That's perhaps helpful. Before the -- before the lunch recess you had agreed with me that the pre-2004 obligations and payment of monies, reductions of rates, arranging for unaccumulated deficits to be paid, that -- that's all been, in fact, arranged even though the document has not been formally signed?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And then I focussed on what's happened since 2004 to 2010, and it appears from your evidence that one (1) of the issues that arises is -- is on the capital expenditures post-2004. Would you agree with that?

MR. VINCE WARDEN: An issue, but not an irresolvable issue. It -- it's something that requires some more discussion, but we can certainly work within the agreement as it was drafted -- as it was filed with
this Board in confidence.

MR. BOB PETERS: Yeah. Okay. And the reason it hasn't been resolved over the last six (6) years is -- is -- why is it now not a problem, or not a significant problem and yet the document still remains unsigned?

(BRIEF PAUSE)

MR. VINCE WARDEN: I think Mr. Wiens spoke to that to some extent in his direct testimony. It has taken a long time to resolve outstanding matters, with respect to capital.

I think better communication is required. Manitoba Hydro has set up a committee that is now being chaired by Mr. Cox. We fully acknowledge that the communication hasn't been as good as it should have been over the past number of years and we are addressing that currently. And I'm -- I'm quite confident that through the enhanced communication that these issues will be resolved in the future and -- and won't -- will not drag on as they have in the past.

MR. BOB PETERS: And you're not prepared to put forward a timeline?

MR. VINCE WARDEN: Not at this point. In
terms of resolving the outstanding issues with respect to
capital, no, no, I -- I can't do that.

MR. BOB PETERS: Does Manitoba Hydro see
any role for this Board to play in the resolution of that
dispute, relative to capital?

MR. VINCE WARDEN: No. No, I'm really
quite confident that the -- the parties can work that out
between them -- between themselves.

MR. BOB PETERS: Is there litigation
between the parties?

MR. VINCE WARDEN: No.

MR. BOB PETERS: Just let me complete the
question. Is there litigation between or amongst the
parties related to pre-2004 diesel electric costs and
rates paid by the diesel zone customers?

MR. VINCE WARDEN: Manitoba Hydro is not
party to any litigation.

MR. BOB PETERS: Is Manitoba Hydro of the
view that Manitoba Hydro has conducted itself as if the
tentative settlement agreement was in place and in
accordance with the minutes of settlement?

MR. VINCE WARDEN: With -- with the
exception of improvements required to communication and
coordination, yes, but we -- we can do a better job than
we have in the past.
MR. BOB PETERS: And you seem to be indicating that Manitoba Hydro will be doing a better job in the future through the committee that Mr. Cox is going to be chairing, or at least, on.

MR. VINCE WARDEN: Yes, I -- I firmly believe that.

MR. BOB PETERS: Is it then Manitoba Hydro's position that INAC has not conducted itself as if the TSA, or the tentative settlement agreement, was in place and in accordance with the minutes of settlement?

MR. VINCE WARDEN: No, I wouldn't say that neither. Again, it's just been a communication issue primarily, from my perspective.

MR. BOB PETERS: And then I may as well ask you the third part of that. Is -- is it Manitoba Hydro's position that MKO, in either representing the four (4) diesel communities, or the four (4) diesels communities themselves, have not conducted themselves as if the tentative settlement agreement was in place and in accordance with the minutes of settlement?

MR. VINCE WARDEN: No, I think all parties share some responsibility for better communication, MKO being part of that.

(BRIEF PAUSE)
MR. BOB PETERS: As of -- this application sits before the Board -- well, before I get there; if and when this tentative settlement agreement is signed it will be in a form consistent with what this Board has seen, although it may not be exactly what this Board has previously seen.

Would you agree with that?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And in terms of being consistent with what this Board has seen, it'll be consistent in all major respects?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: If that's the case and the parties are now moving towards signing it, are there other side documents that provide explanations or interpretations of the clauses that the parties are now agreeing to, or is it -- is it simply the same -- the one (1) document that the parties are relying on when they are resolving this dispute?

MR. VINCE WARDEN: I believe there is some clarification that -- that could be added to the tentative settle -- settlement agreement to avoid any misunderstanding in the future. But I do believe too that all parties understand now the interpretation of the agreement, and revising the agreement to reflect perhaps
better wording isn't -- isn't critical, and certainly
Manitoba Hydro would not hold up the signing of the
agreement for that reason.

(BRIEF PAUSE)

MR. ROBERT MAYER: Manitoba Hydro doesn't
appear to be the problem, Mr. Warden, at this point, in
any event, at -- at least as of an hour or two (2) ago.

MR. VINCE WARDEN: Well, I'd like to
think not. Yes, I agree with you.

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: When that document is
signed is it Manitoba Hydro's intention to file it with
this Board and to make it a public document?

(BRIEF PAUSE)

MR. VINCE WARDEN: Manitoba Hydro
wouldn't have any objection to it being a public
document. I don't think the document itself speaks to
that issue, but as long as the other parties were
willing, we would have no objection.

MR. BOB PETERS: Mr. Warden, sitting
where you are with the knowledge you have and your
expectation that the signing of this document is
imminent, if it was signed yesterday in the form that you
expect it to be signed, would that necessitate any
changes to the application you have before this Board?

MR. VINCE WARDEN: No, it would not.

MR. BOB PETERS: Would you remove the
interest and depreciation expense from the revenue
requirement?

MR. VINCE WARDEN: Well, to do that, we
would have to get agreement from the parties that the
capital expenditures, the $4.4 million in question, would
be funded by -- by way of a contribution. The agreement
does make some provision for incidental capital
expenditures to flow through to operating in the absence
of agreement by the parties. So our preference would be
to handle all capital contributions through -- or all
capital construction through contributions, but in the
absence of a contribution, there's no reason why it can't
flow through and -- as part of rates.

MR. BOB PETERS: Should the Board take
from your answer that the signing of this document that
you've talked about will not resolve the issue about the
unfunded capital expenditures of 4.4 million since 2004?

MR. VINCE WARDEN: That's right. It
won't resolve, but it certainly -- again, I -- I'm quite confident that those issues will be res -- resolved soon.

MR. BOB PETERS: Can you confirm for the Board that rel -- in relation to operating deficits, the tentative settlement agreement and the minutes of settlement don't speak to whose obligation it is to pay any operating deficits?

MR. VINCE WARDEN: I -- I can confirm that, yes. The -- the tentative settlement agreement only refers to the accumulated deficit as at March 31st, 2004.

MR. BOB PETERS: Would it also be the Board's understanding that since 2004 the expectation of the parties was that the annual operating costs would be recovered in the rates set on an annual basis?

MR. VINCE WARDEN: Yes, that would have been an expectation underlying that agreement, yes.

MR. BOB PETERS: And the reason that rates are not recovering the underlying operating deficits today is Manitoba Hydro's judgement, that do to so would raise the rates too high and likely cause hardship on the -- on the customers.

MR. VINCE WARDEN: Mr. Peters, maybe I should back up on that previous question. I -- I -- my answer was that operating costs would be recovered
through rates. Deficits, not necessarily. There's no
reference to deficits in the tentative settlement
agreement.

So operating costs as put forward to this Board for approval would be recovered through rates, but that doesn't necessarily mean that those rate applications would include all costs. So it doesn't preclude Manitoba Hydro from, as we've done with this application, not including all costs in the -- in -- in the application for a rate -- rate increases.

MR. BOB PETERS: Maybe we're saying the same thing, Mr. Warden, but Manitoba Hydro could have, since 2004, been before this Board on an annual basis to make sure that their revenues matched their costs for the diesel zone through -- through the rate program.

MR. VINCE WARDEN: Nothing in the agreement would have prevented that, yes.

MR. BOB PETERS: So it's Manitoba Hydro's judgment that has resulted in that not factually taking place.

MR. VINCE WARDEN: In this application, and since the last rates were approved in January 1st, 2007, yes.

MR. BOB PETERS: And even before that there was a -- an operating deficit, was there not?
MR. VINCE WARDEN: That's correct --

MR. BOB PETERS: And --

MR. VINCE WARDEN: -- yes.

MR. BOB PETERS: -- and for the same reason Manitoba Hydro decided it would not recover that operating deficit in consumer rates for the diesel zone because of a likely hardship on the consumers.

MR. VINCE WARDEN: Well, I think there has been somewhat of a change since that period of time. If you recall, we were, rather than attempting to recover the deficits in the immediate year of the rate application, we were including 20 percent of those deficits in the -- in the rate application.

So we were looking at some smoothing mechanism to include in the -- in the rates going forward, on the basis that diesel fuel was fluctuating up and down, and there may very well have been years in which there would be surpluses if -- but that hasn't occurred. And we have decided since that time to not attempt to recover past deficits in -- in rates going forward.

MR. BOB PETERS: Mr. Warden, at Tab 13 of the book of documents that's been prepared and marked as PUB-Exhibit 3, at Tab 13 is the PUB/MANITOBA HYDRO-31AInformation Request, talking about accumulated
deficits.

And the dollar amount -- and b) the dollar
amount of that accumulated deficit is about $7.1 million,
$7 million, to the end of '09/'10?

MR. VINCE WARDEN: Yes, I see that.

MR. BOB PETERS: And we see on the next
page, 2 of 2 of the answer to number -- or to letter 'B',
an indication that the deficit arising from this year
would be in the range of $2.1 million?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And you indicated in --
in your answers to Ms. Fernandes that while you're not
seeking recovery of this accumulated, or any portion of
this accumulated deficit, Manitoba Hydro hopes to address
it at some point in the future?

MR. VINCE WARDEN: Well, I think I did
indicate that we would -- we would be tracking this
deficit, and over the long term we may or may not recover
that deficit. Again, it depends so much on diesel fuel --
the cost of diesel fuel, which comprises more than half
the cost to serve those communities.

So in the past, that -- that cost has been
quite volatile. It's possible it will go down again and
a surplus will accrue, but -- but we're not consciously
going to be trying to recover that in -- any kind of a
deficit in future rates, subject, of course, to the
approval of this Board.

MR. BOB PETERS: Let's just slow down on
that answer. In terms of tracking the deficit -- and
let's use $7.1 million as the operating deficit, Mr.
Warden.

Are you okay with -- comfortable with that
number?

MR. VINCE WARDEN: Okay.

MR. BOB PETERS: That 7.1 million is to
the end of the '10 fiscal year, and in the current
application that -- that'll go up by another couple
million dollars likely?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: So now -- now we're in
the neighbourhood of $9 million of operating deficit that
will have -- accumulated, and Manitoba Hydro is going to
track it.

But Manitoba Hydro is not showing that as
a receivable, or a liability on its financial records, is
it?

MR. VINCE WARDEN: No, and I -- I -- I
should be clear on that. Manitoba Hydro has never really
accumulated a deficit on its books. It was -- it was --
any surplus or deficit res -- arising from the service to
diesel communities was taken into net income, corporate net income, of the period. So there is not an accumulation, per se, that -- that is referenced on -- on the balance sheet of Manitoba Hydro.

So when we track it, it'll be a -- kind of an off balance sheet tracking that we would -- we would calculate, but it -- it would not affect the net income of Manitoba Hydro.

MR. BOB PETERS: And what you're then saying is it may affect the retained earnings of Manitoba Hydro by reducing them, and to the extent that reduced retained earnings draw attention from Manitoba's Hydro's board or this Board in terms of rate increases, that would be paid for by grid customers?

MR. VINCE WARDEN: Well, not exactly. Well, let me just explain further. If we have a -- a deficit of $2 million this year in 1011 in the diesel zone, that $2 million would reduce the net income that would otherwise be reported by Manitoba Hydro. So any accumulated deficit, the amount that we're referring to in the response to PUB/MANITOBA HYDRO-31B, $7.1 million, at the end of the 2009/10, has already been reflected in the retained earnings of -- of Manitoba Hydro.

MR. BOB PETERS: And it's also been reflected in the integrated financial forecasts that are
provided to this Board?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And before I leave this topic, at Tab 14 of the book of the documents, the Board would see the -- the breakdown by year of the revenue deficiency. And in the approximate middle of the page there's an annual revenue deficiency line, and if you add up that line, it comes out to -- I guess that's the number that you and I have been talking about in terms of the operating deficit that would be carried forward since '04?

MR. VINCE WARDEN: That should be the same number, yes.

MR. BOB PETERS: And in addition, there is -- there's a breakdown in the bottom part of the page to show that there are also subsidies on the basis of revenue to cost coverage ratios that have to also be added into the -- I guess the subsidies that are being provided to customers in the diesel zone by grid customers, and those are set out in the bottom part of the schedule?

MR. VINCE WARDEN: That -- that's correct, yes.

MR. BOB PETERS: When we talk about capital expenditures of what Manitoba Hydro is seeking to
recover, I think Tab 9 of the book of documents contains a couple of charts that maybe the Board and you could look at; Mr. Wiens as well, as he testified towards this -- to this matter.

In Tab 9 of the book of documents, there is a reproduction of PUB/MANITOBA HYDRO-16A and the accompanying chart, 16B and the accompanying chart -- it's actually an email from Ms. Wallace, who -- I knew whose fingerprints would be on this application, and it's in an email from Mr. Cox, so he too may want to provide some clarity here.

But in turning first of all to the second page of the document in Tab 9 of the PUB's book of documents, there is a schedule of capital additions from 2005 to 2010, and certain items have been crossed out by Manitoba Hydro in filing this response.

Would that be correct?

MR. ROBIN WIENS: That's correct.

MR. BOB PETERS: And, Mr. Wiens, the reason you crossed them out is to indicate that while those were capital expenditures incurred by Manitoba Hydro in the diesel zone, Manitoba Hydro is not seeking those at this time from -- from INAC?

MR. ROBIN WIENS: You said the key words, Mr. Peters. At this time we're not seeking to include
them in rates --

MR. BOB PETERS: Well --

MR. ROBIN WIENS: -- in this application.

MR. BOB PETERS: And -- okay. Well,

then, let's deal with the very last -- second last item
on the page, the capital contribution from INAC Tadoule
Lake genset.

You're never going to be seeking that in
rates, because you've already been paid for that?

MR. ROBIN WIENS: That's correct.

MR. BOB PETERS: You're not looking for

more money on that account?

MR. ROBIN WIENS: No, we're not.

MR. BOB PETERS: Then -- and that genset

is the -- it's the same item that's under the Tadoule
Lake breakout of new genset, and that's the same item?

You've crossed it out there as well.

MR. ROBIN WIENS: Yes.

MR. BOB PETERS: Now, let's -- let's go

up to Brochet and look at the Fall Arrest Program.

Remind the Board what a fall arrest program is. Mr. Cox,

eyes are coming your way.

MR. ROB COX: It's -- it's -- it's simply

a system that's set up so -- to prevent falls by people

working at heights in the diesel generating station,
particularly when they are, as I understand it, going on
the top of the tanks to measure the level of the
available diesel fuel in the tanks. We have a fall
arrest protection system. Don't ask me how it works
though.

MR. BOB PETERS: A suggestion that it's
railings and platforms and strapping in and tying on
would be part of that type of program?

MS. ROB COX: Yes, that would be part.

MR. BOB PETERS: Thank you, Mr. Cox. The
purpose of removing it from this filing and not
recovering any portion of the interest or depreciation in
this application, is that an indication that Manitoba
Hydro is going to have the grid customers bear that cost?

MS. ROBIN WIENS: That's -- that has not
been determined, Mr. Peters, and that's why it was
excluded from this application. We have --

MR. BOB PETERS: It's excluded --

MS. ROBIN WIENS: We have had some
discussions in the past, in this current year, about
paying the cost of the fall arrest protection I believe
with INAC, and we may continue to have discussions on
this matter, but they're not included in this rate
application.

MR. BOB PETERS: My recollection of the
evidence, and I'm sure Ms. Hart will have her hands on it more accurately than mine. But, basically, is INAC telling Manitoba Hydro that that's for protection of Hydro workers, so you shouldn't be charging that through to -- through -- through to INAC?

MR. VINCE WARDEN: Mr. Peters, I was a little bit involved in this at the time, and -- and so maybe I'll just provide you with so -- a couple of thoughts. Manitoba Hydro was under the understanding that a payment was imminent with respect to the capital items that we're referencing here. At least I was of -- under the understanding that the $4.4 million was due to flow to Manitoba Hydro immediately prior to us filing a rate application, and the fall arrest equipment was -- was an item of contention.

So rather than cause an issue, we decided to remove the fall arrest equipment from the capital schedule that was provided to INAC for payment with the understanding that the $4.4 million net of that fall arrest equipment would be forthcoming. That was not though in any way to suggest that those costs shouldn't be recovered from -- from this -- the -- Manitoba Hydro's capital requirements, either through contribution or through rates.

Certainly these costs are -- are to
protect Manitoba Hydro employees, but it's -- it's a necessary part of doing business in those communities. And it's quite ridiculous, quite frankly, to think that we -- those costs should be borne by other ratepayers if they're attributable to -- to the First Nation, the community.

So there was -- but rather than hold up the payment of the $4.4 million, which turns out was held up anyway, but, at the time, it was an attempt to get -- to get the -- the for -- the payment through so that we would not have to include these amounts and the -- in the rate application. I hope that clarifies.

MR. BOB PETERS: A better understanding.

I'm sure the Board appreciates that. Do I take though from a previous answer you've given there is no express provision for recovery of this amount for the Fall Arrest Program in the tentative settlement agreement that Manitoba Hydro expects will be signed shortly?

MR. VINCE WARDEN: Well, not specifically, but the -- the tentative settle -- settlement agreement speaks to recovery of capital costs, and this is a capital clo -- cost -- absolutely a direct capital cost for those communities and it needs to be recovered.

MR. BOB PETERS: All right. So I know we
can ask some of the INAC -- perhaps Mr. Mills, for -- for
INAC's position on that, but did I summarize it perhaps
too quickly or too succinctly, but what's coming back to
Manitoba Hydro is that this is a cost for -- expended for
your employ -- for Manitoba Hydro employees and it
shouldn't be added into diesel community costs?

MR. VINCE WARDEN: No, it's -- it's
certainly not like an employee benefit or such. It --
it's something to improve the safety at Manitoba Hydro,
and it's -- it's absolutely essential for providing
service in these communities, so it's as much a capital
cost as -- or any of the any other -- other items that
we're referencing in this -- on this page.

MR. ROBERT MAYER: I'm assuming that your
requirement to protect the safety of your workers is
covered by workplace safety and health regulations.

MR. VINCE WARDEN: Absolutely.

MR. ROBERT MAYER: And I can't imagine
that you can't have -- that you wouldn't have some kind
of protection on top of those tanks. They're fairly high
the last time I looked.

MR. VINCE WARDEN: They are. Thank you,
Mr. Mayer.

CONTINUED BY MR. BOB PETERS:
MR. BOB PETERS: So why is safety --
safety costs an issue for INAC, according to Manitoba
Hydro's understanding?
I'll withdraw the question. I'll perhaps
put that to Mr. Mills.
While we're on that sheet, I see soil
remediation is -- is also shown as an expense in the
Brochet community. And Mr. Wiens, you talked in your
direct evidence to Ms. Fernandes, of about I -- I wrote
down $3.4 million; that doesn't quite correspond, but
that's the same item, is it?
MR. ROBIN WIENS: That is the same item.
MR. BOB PETERS: All right. And at this
point in time, again, Manitoba Hydro has not reached an
agreement with INAC as -- as to payment for that money.
MR. ROBIN WIENS: There is no agreement.
MR. BOB PETERS: And there are
negotiations?
MR. ROBIN WIENS: There have been in the
past. There have not been in -- in recent years.
MR. BOB PETERS: All right. And because
of that -- because Manitoba Hydro is not getting paid
that money, the capital incurred, it's now resorted to
including interest in depreciation in rates to try to
keep itself more whole?
MR. ROBIN WIENS: That is correct.

MR. BOB PETERS: How does Manitoba Hydro reflect on its books, Mr. Warden, the expenditure of the -- either $3.4 million or two point eight (2.8) depending which number we use, for the soil remediation in the Brochet community?

MR. VINCE WARDEN: That has been included in the capital expenditure of Manitoba Hydro.

MR. ROBERT MAYER: Mr. -- while we have a little interregnum, I've been reading -- I read your rebuttal evidence and the talk about the 1997 Diesel Site Remediation Agreement. I don't recall ever having seen that agreement. And from reading the rebuttal evidence, Hydro's rebuttal evidence, it appears to be, at least, somehow related to what your digging up in Shamattawa and Brochet.

Would you like the page?

(BRIEF PAUSE)

MR. ROBIN WIENS: Sorry. Mr. Mayer, my understanding is that there was an agreement between Manitoba Hydro and INAC regarding remediation of sites. I'm not, myself, familiar with that agreement.

The material that I have been able to
review during this process leading up to this hearing suggested that there were some sites that -- that were actually included and specified in the agreement and others were -- negotiations were carried out, at least to some extent, under the general aegis of that agreement.

MR. ROBERT MAYER: It's my understanding from reading your rebuttal evidence that one (1) of the reasons that some of the remediation projects weren't included in the pre-2004 capital, because it was expected they would have been dealt with outside that particular agreement and in accordance with the 1997 Diesel Site Remediation Agreement.

MR. ROBIN WIENS: Well, sir, I believe that to be the case based on the documents that I have been able to see.

MS. GLYNIS HART: Sorry to interrupt, but we did bring a copy of the 1997 agreement after Hydro into the -- into their rebuttal. And we're actually quite frustrated with the fact that that's a document that isn't before the Board, it's being referred to. And so we went back and looked in our records for a copy of the 1997 agreement.

MR. ROBERT MAYER: Did you happen to find the other agreements I asked for --

MS. GLYNIS HART: Yes.
MR. ROBERT MAYER: -- last time we had one of these hearings? I bet you not, hey?

MS. GLYNIS HART: Yes.

MR. BOB PETERS: Just on that --

MR. ROBERT MAYER: I might go over that later.

MR. BOB PETERS: Just on that point, Mr. Vice-Chair, I think Ms. Hart is offering to file it as an --

MS. GLYNIS HART: Make the agreement --

MR. BOB PETERS: -- exhibit in the proceedings.

MS. GLYNIS HART: -- available.

MR. BOB PETERS: And -- and I'm seeing, Ms. Hart, the Board would appreciate that -- your filing that as an exhibit, and we'll mark it when it's filed.

MS. GLYNIS HART: Thank you.

MR. BOB PETERS: And if we need to copy it, we can certainly do that here at the break. So, thank you.

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: Just on the soil remediation, Mr. Wiens, you've been clear that may -- there may have been discussions in past, there are none
currently and none scheduled, so this remains an open
item for which there's been no resolution?

MR. ROBIN WIENS: Well, Mr. Peters,
that's not quite correct. The discussions in the past
certainly occurred prior -- prior to 2000 or 2001. I'm
not -- not quite sure of the -- of the date. And
certainly we advised INAC prior to the filing of this
application that we were looking to get -- to have some
discussion about contribution in respect of Brochet
settle remediation.

   It would be fair to say that there are no
talks happening right now, at this moment.

MR. BOB PETERS: And in terms of the
payment of capital, am I correct in recalling that, based
on historical consumption, 79 percent of capital costs
were to be paid by INAC?

MR. ROBIN WIENS: No, that's not quite --
quite correct. The percentages change from year to year,
and the trend for INAC, or consumption by -- by customers
that would be considered within INAC's purview has tended
to go up as a percentage of the total. But if you're
looking back at the percentages that we incorporated into
the minutes of settlement, or that we discussed at the
time of the minutes of settlement, to be more precise,
INAC was looking at 69 percent.
The other 10 percent, leading to the 79 percent which you referenced, would have been other government parties, Federal and provincial.

MR. BOB PETERS: And it would have been 6 percent for the Federal Government, and 4 percent for the provincial?

MR. ROBIN WIENS: That's right.

MR. BOB PETERS: And then the balance of the 21 percent would have been Manitoba Hydro apportionment?

MR. ROBIN WIENS: Manitoba Hydro accepted that responsibility.

MR. BOB PETERS: All right. Has the Provincial Government paid its share of the capital post-2004?

MR. ROBIN WIENS: No.

MR. BOB PETERS: Why not?

MR. ROBIN WIENS: Well, it would be because we have not approached the Provincial Government to do so. Our intent, going forward, was that we wanted to have a -- a good working system of consultation with the principal client, which was First Nations/INCA, before bringing the other parties, which include the other Federal departments, as well as the provincial departments, into that discussion. And that did not
MR. ROBIN WIENS: I would -- I -- I wouldn't say that it could not happen in the future. As Mr. Warden said, we are confident we can get these discussions back on track, and at that point, we can bring the other parties into the discussion.

MR. BOB PETERS: Would it be correct that the other Federal Government departments are aware of their obligations under the proposed settlement agreement?

MR. ROBIN WIENS: Well, they would have been aware at the time we went to them, in respect of the capital in place in 2004. Whether they have that degree of awareness still today, I can't comment.

(BRIEF PAUSE)

MR. BOB PETERS: I'm going to turn, Mr. Cox, to energy efficiency initiatives. And the Board has heard your direct evidence through Ms. Fernandes, basically indicating that all Power Smart programs introduced by Manitoba Hydro are available to any and all Hydro customers in the province. Correct?

MR. ROB COX: That is correct.
MR. BOB PETERS: And that since 2008
Manitoba Hydro has been able to offer a targeted Power
Smart program towards First Nations' customers.
Is that correct?
MR. ROB COX: That's correct.
MR. BOB PETERS: And that program has had
the benefit of levering some monies available through the
affordable energy fund, and any other sources that are
available.
MR. ROB COX: That's correct.
MR. BOB PETERS: Now, while your evidence
talks about doing audits in, I think, 2008, and all home
audits in 2009, is it correct that to-date of all the
audits done, only ten (10) homes in the Brochet community
have been retrofitted with the recommendations of the
audit?
MR. ROB COX: Actually, it's Lac Brochet
that has done ten (10) homes. And we have audited ten
(10) homes in each of the other three (3) communities.
But Brochet is -- Lac Brochet is the only one that has
actually installed the -- the measures that we provided
to them.
MR. BOB PETERS: Have you provided the
physical improvement material to the other three (3)
communities for the other ten (1) homes?
MR. ROB COX: We're in the process now with Brochet of getting some quotations on what material is needed, and then that will be provided to them. The other two (2) sites, we have given them reports on -- on the results of the audits and are waiting for them to come back to us to say, yes, they would like to proceed with this.

MR. BOB PETERS: Are you doing more audits in those communities other than just the ten (10) homes that -- that have been done?

MR. ROB COX: In some cases, we have, yes.

MR. BOB PETERS: And are they likewise on track to be retrofitted if the homeowner agrees?

MR. ROB COX: At this time, we're considering that. We have not made -- made a final decision on -- as to whether to go beyond the ten (10). The original program design was just to go to ten (10) homes and have them upgraded and ho -- hoping that the First Nation would see the benefit and undertake some of it themselves.

MR. BOB PETERS: And on the commercial side, the only community that has taken up the Power Smart Program is in Shamattawa, where they did a commercial lighting upgrade?
MR. ROB COX: That is correct.

MR. BOB PETERS: And no other commercial upgrades, to your knowledge, have been done?

MR. ROB COX: No.

MR. BOB PETERS: You take issue with the suggestion by one (1) of INAC's consultants that an energy management program could ramp up to 20 percent of -- 20 percent savings of energy consumed? You don't agree with that, do you?

MR. ROB COX: That's correct.

MR. BOB PETERS: And that's based on your assessment of the amount of energy to be saved and the uptake of the energy efficiency programs?

MR. ROB COX: It's more related to the amount of energy to be saved, so.

MR. BOB PETERS: What you're indicating is that it's not possible to save energy in a -- in a climate that -- because space heat isn't a big part of this?

MR. ROB COX: That is correct.

MR. BOB PETERS: And of the savings that you've targeted to date, is the Board correct that you believe that 6 percent of the energy requirements of the community have been met through DSM measures, but of that 6 percent, only 23 relates to residential customers.
MR. ROB COX: That 6 percent is province wide. It's not just in the communities. So that's province wide, so, yes, 6 percent in total is our Power Smart savings.

MR. BOB PETERS: And of that 6 percent, 23 percent is residential, but you're not applying that same 23 percent savings to the -- to the diesel zone yet.

MR. ROB COX: Not yet.

(BRIEF PAUSE)

MR. BOB PETERS: Just a point of clar -- clarification, Mr. Cox. In having a quick peek at the book of documents, Tab 18, tried to include one (1) of your responses to an Information Request, and is -- I appreciate there's a lot of material in this tab.

(BRIEF PAUSE)

MR. BOB PETERS: Yes, it's seven (7) pages from the front of the tab and it's -- it's the page 3 of 3 at the bottom to PUB/MANITOBA HYDRO-28A.

Have you located the page after my, excuse me, fumbling with it, Mr. Cox?

MR. ROB COX: Yes, I have.
MR. BOB PETERS: When you said that ten (10) houses have been audited in each of the communities, it appears that only from '08 to '09 only twenty (20) homes in total were inspected. Is that number in error?

MR. ROB COX: No, that is not an error.

MR. BOB PETERS: All right. Well, how do I get to the -- to the forty (40) homes having been audited or inspected prior to today?

MR. ROB COX: We did do some additional ones in March of 2010. March -- April. April. Sorry, it would have been -- they would be showing up on the 2010/2011 fiscal year.

MR. BOB PETERS: Okay. Thank you. While we're in that same tab, the very first page is PUB/MANITOBA HYDRO-3, and the number of customers are provided at various consumption levels.

Have you got that chart?

MR. ROBIN WIENS: Yes.

MR. BOB PETERS: And what's interesting on this chart, Mr. Wiens, is that once you get past two thousand (2,000) kilowatt hours per month, there's an indication of the number of customers who are consuming greater than two thousand (2,000), and in fact up to five thousand (5,000) kilowatt hours a month, correct?
MR. ROBIN WIENS: That would be correct, yes.

MR. BOB PETERS: And it's Manitoba Hydro's belief that those customers -- ten (10) in Brochet, ten (10) in Lac Brochet, three (3) in Tadoule Lake, and twenty-six (26) in Shamattawa -- are using diesel electric heat?

MR. ROBIN WIENS: That may be one (1) of the explanations for it. There are other possibilities.

MR. BOB PETERS: Does Manitoba Hydro know for certain?

(BRIEF PAUSE)

MR. ROBIN WIENS: The answer is we don't know for certain.

MR. BOB PETERS: Strongly suspect but don't know for certain?

MR. ROBIN WIENS: That would be fair.

MR. BOB PETERS: All right. And you said there may be other reasons that consumption is up to five thousand (5,000) kilowatt hours per month.

What would some of those other reasons possibly be?

MR. ROBIN WIENS: Well, Mr. Peters, this
-- this is a standard type of table that Manitoba Hydro produces to look at bill impacts, and the categories we use for residential are two hundred and fifty (250), which really means customers using less than two hundred and fifty (250), and, similarly, seven hundred and fifty (750), customers using less than seven hundred and fifty (750). So when you get up to the five thousand (5,000), that is customers using less than five thousand (5,000).

So, yes, they may well be some that use as much as four thousand nine hundred and ninety-nine (4,999) kilowatt hours, but that's not for certain. We'd have to go back and look at the detail to see if that maybe wasn't ten (10) customers using between two thousand (2,000) and twenty-five hundred (2,500) kilowatt hours.

So just to preface that, possibilities are, you know, as we've said, electric heat, a plug-in of exterior vehicles, number of persons living in a household, the use of appliance, such as -- as electric clothes dryers, and so forth.

MR. BOB PETERS: I think in one of the information requests, Mr. Wiens, you were asked whether -- whether it was true that 90 percent of the residential customers will not see any rate increase and be affected by your application directly if the Board approved it as
 filed.

Do you recall a question similar to that?

MR. ROBIN WIENS: I do recall.

MR. BOB PETERS: And your answer was --

I'll take it as a qualified, Yes, that's correct, although you sometimes have a dif -- distinction between -- some customers may some months use more than two thousand (2,000), but not everybody uses more than two thousand (2,000)?

MR. ROBIN WIENS: The 10 percent figure refers to bills. A customer receives twelve (12) bills in the course of a year, so a bill using -- referring to over two thousand (2,000) kilowatt hours could be one (1) customers who exceeds two thousand (2,000) in every month of the year, or it could be twelve (12) customers who only exceed two thousand (2,000) in one (1) month of the year, or anything in between.

So in terms of the number of bills, about 10 percent of them were over two thousand (2,000); in terms of the number of customers who go over at least once a year, that figure is considerably higher, and I would give you this, subject to check, but it's in the order of 25 percent.

MR. BOB PETERS: And so that -- that answer is that, if -- if we assume those numbers are
correct, Mr. Wiens, 25 percent of the customers would be 
affected by a rate increase, because they have an 
obligation for the -- for the tail block portion of the 
rate that you're asking for?

MR. ROBIN WIENS: That would be correct. They -- they may not be affected very much, but that's 
the approximate percentage that would be affected for at 
least one (1) month out of the twelve (12).

MR. BOB PETERS: All right. And the 
second page at book of documents, Tab 18, is a Manitoba 
Hydro response to PUB Question 184, which I believe we 
took from the -- from the General Rate Application 
filings. And my chart on my page has colour on it. I'm 
just hoping that I reproduced colour for everybody. 
But you've got that, Mr. Wiens?

MR. ROBIN WIENS: Yes, I do.

MR. BOB PETERS: This was to show the 
Board what happens when a community goes from diesel to 
land line, correct?

MR. ROBIN WIENS: Specifically, this is 
to show what happened in seven (7) communities as they 
grew from diesel to land line.

MR. BOB PETERS: And there were maybe as 
many as -- well, most recently probably nine (9) 
communities that went from diesel to land line with the
last major project.

Isn't that correct?

MR. ROBIN WIENS: No, there was seven (7). Two (2) of them went on separate projects --

MR. BOB PETERS: Okay.

MR. ROBIN WIENS: -- in -- in roughly the same timeframe.

MR. BOB PETERS: But as a separate -- it wasn't the North Central Project.

MR. ROBIN WIENS: No.

MR. BOB PETERS: All right. Then thank you for that. And what you're showing the Board is the area that is coloured shows the years in which land line electricity was available to the residents of those communities?

MR. ROBIN WIENS: Yes. We'll agree to that.

MR. BOB PETERS: And without looking at anything in specific, in each and every case the consumption increases, and then ramps up fairly dramatically over the course of the years?

MR. ROBIN WIENS: Yes, it -- yes, it does.

MR. BOB PETERS: And that's what you'd expect because many of those homes would be converted to
electric space heat?

MR. ROBIN WIENS: I believe that would happen. In addition, customers may acquire additional appliances, and of course, there tends to be in these communities from year to year a growth in the number of customers.

MR. BOB PETERS: Manitoba Hydro is not aware of any fires, or loss of lives, through the use of space heaters in the four (4) diesel communities in the diesel zone, are they?

MR. ROBIN WIENS: We are not aware of any such.

MR. BOB PETERS: That's not to say that it -- safety is not a concern if you're using baseboard heaters running off of diesel generated electricity?

(BRIEF PAUSE)

MR. ROB COX: Can you ask that question again, please?

MR. BOB PETERS: Certainly. Using space heaters to heat homes raises safety concerns, correct?

MR. ROB COX: Only in that if you do happen to have a space heater that you're throwing clothes on top of, you could have a fire, yes. But from
an electrical point of view, from a electrical panel
point of view, that -- that piece of equipment is
protected by the electrical panel.

MR. BOB PETERS: So you're telling the
Board that if it shorts out, just like a frying pan or a
toaster would short out, it should -- it should --

MR. ROB COX: It would --

MR. BOB PETERS: -- break the breaker, or
blow the fuse --

MR. ROB COX: It would trip the breaker,
and power to that unit would be cut off.

MR. BOB PETERS: Does Manitoba Hydro do
any education, Mr. Cox, in the communities for -- for
residence not to use space heat through diesel generated
electricity?

MR. ROB COX: Specifically for the --
these four (4) communities, while we have offered safety
training, or safety education, I don't believe we've
specifically gone in and said to them, Be careful. It --
well, first of all they shouldn't be using electric space
heaters, but we haven't gone in specifically for that
reason.

MR. BOB PETERS: Manitoba Hydro doesn't
police it?

MR. ROB COX: No, we don't police it.
MR. BOB PETERS: And space heaters are available for sale in the hardware stores?

MR. ROB COX: We have in the past seen some in stock, yes, in some of the stores.

MR. BOB PETERS: Any --

MR. ROB COX: And --

MR. BOB PETERS: -- any programs, or any outreach to those stores to have them remove them from the sores in those communities?

MR. ROB COX: Certainly whenever we see them there, we talk to the store manager, and remind them that that's not allowed to be used on the diesel community, and ask them to remove it, but we cannot force them to do it.

MR. BOB PETERS: And so show my ignorance, Mr. Cox, but if -- if 60 amp service was -- was supposed to be provided to me, would Manitoba Hydro have any way of knowing if I put a hundred amp panel in my home?

MR. ROB COX: Only if there was some problems with our service wires coming from the pole to the house where you're overloading the service wires, and they might melt and fall down, or it would be something with the extra load causing something to trip, or to cause an outage.
MR. BOB PETERS: Does Manitoba Hydro suspect that there are consumers in the diesel zone that have more than a 60 amp service in their home?

MR. ROB COX: From a residential point of view, I'm not aware that there is very many, if any, that would have more than 60 amps.

MR. BOB PETERS: All right. Then let's turn to the commercial customers under the general service rate class.

MR. ROB COX: In most cases, the -- the general service would have more than 60 amps.

MR. BOB PETERS: All right. And what does Manitoba Hydro, if anything, do about that, if anything?

MR. ROB COX: Well, the 60 amp restriction is only residential.

MR. BOB PETERS: Help me understand, that if the electricity coming over the wires to a home would melt if I had a hundred amp service, why wouldn't those same wire melt if I had a hundred amp service in my commercial business?

MR. ROB COX: When we would install the service to the commercial business we would size the wires correctly so that they could handle that kind of load.
(BRIEF PAUSE)

MR. BOB PETERS: Is it possible, Mr. Cox, that Manitoba Hydro could string some new wires so that the diesel residential customers could go from 60 amp to 100 amp service?

MR. ROB COX: Yes, we could do that, but I'm not aware of any time that we have done that. I'm not sure --

MR. BOB PETERS: Your --

MR. ROB COX: -- not sure why we wouldn't.

MR. BOB PETERS: I'm sorry. Your diesel generating capacity is there that these homes could have hundred amp service, isn't that correct?

MR. ROB COX: That is correct. In most situations there is capacity there to allow a customer to go beyond the 60 amp capability.

MR. BOB PETERS: When you go beyond 60 amps though and you look at the total gigawatt hours of consumption, if it ramps up as it did in the other seven (7) communities that Mr. Wiens and I spoke about, there may not be sufficient capacity to support -- to support those communities?

MR. ROB COX: Having been somewhat
involved in this North Central project, one (1) of the
benefits that was identified is that customers could
convert their 60 amp service to 200 amp service and
install electric space heating. So we would have been
part of that. They would have taken out permits, we
would inspect it, and we would upgrade our wires at that
time.

MR. BOB PETERS: All right. If the
capacity already exists -- and Mr. Warden, this might be
a policy issue, but if the -- if the capacity already
exists why shouldn't residential customers in the diesel
zone be allowed to put in a hundred amp service and have
some new wires strung? And I appreciate I'm -- it's a
lot more work than what I've just said.

MR. VINCE WARDEN: Well, Mr. Peters, it --
I believe it's an energy efficiency issue. We stated
somewhere in our -- our submission that it's much more
efficient to burn diesel fuel directly for heating,
rather than to produce electricity with diesel fuel and
use that for heating.

So it's a -- it's an enfic -- efficiency
and environmental issue that we would be, at least,
partly concerned about.

MR. BOB PETERS: Now that you say that,
Mr. Warden, would I be correct, and certainly in the ball
park, that if one was to burn diesel fuel directly as a heat source, as an energy source, the efficiency would be approximately 70 percent; whereas if you run that diesel fuel through a generator to produce electricity to produce heat your efficiency is down to 30 percent?

MR. VINCE WARDEN: Yes, Mr. Peters, I believe your -- your numbers are -- are quite close.

MR. BOB PETERS: So it's only for energy efficiency purposes that Manitoba Hydro has put in a restriction on the 60 amp service?

(BRIEF PAUSE)

MR. VINCE WARDEN: Yes, Mr. Peters, that's the primary reason. Environmental issues, I believe, are also an issue.

MR. BOB PETERS: And by environmental, you're talking about greenhouse gases?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And in relative terms -- help me out here, the greenhouse gas emissions from the combined four (4) diesel generators would be a small fraction of what would belch out of Brandon or Selkirk if they were up and running as -- I guess your only coal plant -- or, your only coal plant is Brandon now.
MR. VINCE WARDEN: The only coal plant is Brandon, and only being used for emergency conditions and -- and for system testing.

MR. BOB PETERS: Mr. Warden, that maybe raises again on a policy issue, and I -- I believe the Chairman referenced to the effect in his opening comments, you know, if -- if energy efficiency is the concern and 60 amp service is a limiting factor, land lines, they cost a lot of money, but if you're recovering capital costs in rates why not put in the land lines and seek recovery of those rates -- seek -- seek the recovery of those costs through rates as well?

MR. VINCE WARDEN: Well, the -- the capital costs associated with providing land lines are exorbitant, they -- they're huge. I don't have the numbers in front of me, but it just does not make econo -- any economic sense whatsoever for a relatively small population to extend land lines the distance they would have to go to serve those communities.

MR. BOB PETERS: Just to help me -- and, you know, I didn't bring the number either from your -- from your alternative studies, but are we in the neighbourhood of 250 million, $300 million for land lines to all four communities?

MR. VINCE WARDEN: Yes. I -- I believe
$250 million is the number that we've used.

MR. BOB PETERS: Okay. And if it's $250 million, that's a once-only expenditure rather than running annual deficits and running up a cost of service annually of $8 million for the diesel communities?

MR. VINCE WARDEN: Well, a one (1) -- a one (1)time, upfront cost which would also be subject to ongoing maintenance. I think, too, that there's a -- there's a question of reliability. Because these communities are so remote, the land line is subject to outages due to weather. There may be a reason for -- because of the remoteness, to require backup diesel generation in any event to provide the level of reliability that they have today.

The -- the diesel communities --

MR. ROBERT MAYER: Mr. --

MR. VINCE WARDEN: -- do -- do enjoy very high reliability today.

MR. ROBERT MAYER: Mr. Warden, I've been to those communities. I have been to the -- what I would refer to as the remote communities connected to -- to the -- your grid and Shamattawa, and in one (1) case, I actually paddled from God's River, which is connected to your -- to your land line, to Shamattawa, which is not. I did that journey in six (6) days.
And I'm really having trouble when you tell me, and I read it in your material, that you need diesel backup in Shamattawa if you had a land line, but you don't need it in God's River, when God's River is sitting on the east side of God's Lake, subject to every piece of wind that comes across that very windy lake. So I don't understand why -- how -- how those two (2) communities, being as close as they are related, actually sitting on the same river, and Shamattawa just being a couple of -- about 200 kilometres northeast of God's River, I don't understand why one (1) would have to be worr -- you would have to worry about diesel backup and one (1) you do not.

Could somebody tell me why -- how they differ.

MR. ROB COX: Any time we connect a community to the grid and remove them from diesel generation, we do not maintain the diesels. They automatically come out. Where the -- where -- some of our studies have -- have told us is, if you're going to go do wind, for example, wind is not a hundred percent reliable, so you have to leave the diesel generators there. Even some of the low head generating stations, depending on water flows, you may not have enough power to generate -- to -- to provide service to everybody in
the community.

So it's only in situations there where we don't have a hundred percent reliable system providing service to the community that we would leave the generators there.

MR. ROBERT MAYER: Okay. I -- I -- you haven't answered my question. Did you leave the generators in to -- in God's River? If you didn't, why not? And why would -- and how does it differ from Shamattawa? The idea, whether you join Shamattawa to a grid, I don't understand. If you can have God's River joined to a grid and no problems with backup, why you can't join Shamattawa to the grid -- to the grid even from God's River without backup from diesel?

MR. ROB COX: We did -- we did not leave the diesel generators in God's River. We would not leave them if we connected Shamattawa to the grid.

MR. ROBERT MAYER: Okay. Then what is the argument I just heard about you have to have backup diesel if you go into Shamattawa with a -- with the grid?

MR. VINCE WARDEN: Mr. Mayer, we're probably getting beyond the expertise of this panel. I am relying on the evidence that was put forward, or at least the information -- not evidence necessarily, but information -- that was put forward by the people that
conducted those studies. I -- I can tell you, though, that -- that with a land line -- and I -- I -- and this certainly seemed logical to me -- with a land line, there are going to be issues with respect to weather related outages. That happens with all land lines.

With diesel sitting next door, the -- you -- you're not going to have those same issues.

MR. ROBERT MAYER: If we followed that argument to its logical conclusion, Mr. Warden, we wouldn't have our high-voltage DC lines, would we?

MR. VINCE WARDEN: Well, that's an issue too.

MS. ROBIN WIENS: But -- but I think -- I think to address the general point that Mr. Peters was discussing, those -- the studies on replacing service to those communities with the land lines have been done in all four (4) cases. The economics of them provided to this Board, those are the reasons why those investments have not been made.

MR. ROBERT MAYER: I understood that, sir, but I did read your evidence about the back -- diesel backup. And, quite frankly, with the -- with the communities connected in the North Central Project, many of them differ very little in terms of the environment surrounding them than surrounds the environment of
Shamattawa. I just didn't understand why one (1) would need diesel backup and the other didn't.

MR. VINCE WARDEN: It's -- it's a good question, Mr. Mayer. And perhaps we'll undertake to try and get a better answer for you than we've provided here.

--- UNDERTAKING NO. 1: Manitoba Hydro to indicate why one (1) town can joined to the grid without a diesel backup while another in the same area must have a diesel backup

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: Thank you. And just for the record, Mr. Warden, Appendix 1 to your diesel rate case has been the report on recommendations for reducing or eliminating the use of diesel fuel to supply power in off grid communities. And on page 9 of that report there's a capital cost summary and an estimate.

I'm on page 9, and I just wanted to confirm on the record that -- I'm not changing anything you've said -- but the capital cost estimate to construct a transmission line to Brochet, Lac Brochet, and Tadoule Lake ranged from 94 million to $178 million, and the
capital cost to connect Shamattawa ranged from $41 million to $77 million. Those were in 2006 nominal dollars.

Do you recall that? You add those together and you have a low range of 135 million and a high range of about 255 million, which is consistent with the -- the number you and I talked about, correct?

MR. VINCE WARDEN: Correct.

MR. BOB PETERS: When we did last talk land lines I understood there was a Federal Government green program initiative that was being explored to perhaps provide a land line into at least one (1) of the communities.

Can you provide the Board with any update on that?

MR. VINCE WARDEN: Yes, I can. We have been informed that no funding will be available through that green fund.

MR. BOB PETERS: Is the community in which was being targeted, is that a matter of public record?

MR. VINCE WARDEN: I don't know the answer to that.

MR. BOB PETERS: Then I won't suggest the answer. But -- I'm not sure anything turns on it, but
they -- the proposal to the Federal Government Green Initiative Fund was -- was not for all the communities?
It was for -- for a select one (1) or more communities, correct? It wasn't for all of them?

MR. VINCE WARDEN: Yes, it was for one (1) of the communities.

MR. BOB PETERS: All right. And there's no present applications outstanding in any other Federal Government applications for funding to provide land lines?

MR. VINCE WARDEN: There are not, no.

MR. BOB PETERS: All right. Thank you. I want to just change gears a little bit and turn to Tab 3 of the book of documents, if I could. And at Tab 3 of the book of documents you show the Board the current revenues from current rates as well as the proposed rates and revenues that would arise; and the calculation can be done -- Tab 3. We're looking at Schedule 2 of Manitoba Hydro's application.

MS. ROBIN WIENS: Yes, Mr. Peters, I have that in front of me.

MR. BOB PETERS: And this application, if approved, will generate an additional $1.134 million to the corporation by subtracting those two (2) numbers on the bottom line, one (1) from the other?
MS. ROBIN WIENS: That looks correct, yes.

MR. BOB PETERS: All right. And you -- you can go back and look at the residential customers. The increase to residential customers would be in the neighbourhood of eight thousand dollars ($8,000) if your application was approved as filed?

MS. ROBIN WIENS: Yes, that's correct.

MR. BOB PETERS: And to the general service customers, primarily because you have moved over to the Provincial Government here, there would be, in fact, a decrease of revenues of three hundred and sixty-two thousand (362,000) from that class?

MS. ROBIN WIENS: Yes.

MR. BOB PETERS: In terms of the government and First Nations education accounts, there would be an increase of revenue of about $1.5 million.

MS. ROBIN WIENS: Yes.

MR. BOB PETERS: And when you do the wash and sum total them, it -- it comes out to the $1.134 million increase in revenue that Hydro would expect to be generated?

MS. ROBIN WIENS: That sounds right. I won't take my calculator out, Mr. Peters.

MR. BOB PETERS: No, I accept that, Mr.
Wiens, and if there's any errors on it, they're mine.

Now, I read in Mr. Mills' testimony that nine hundred thousand dollars ($900,000) of that increase will fall to -- to INAC.

Are you aware of that?

MR. ROBIN WIENS: Well, I looked at Mr. Mills' testimony, and I -- I don't recall the specific figure, but I'll -- I'll take that as having appeared there.

MR. BOB PETERS: Page 18, if my notes are correct, and -- and they may not be, in terms of what -- I'm not going to try to put words in Mr. Mills' mouth until tomorrow now.

But is that -- do you have an expectation as to how much by class would be paid for by INAC as a result of this Application? Would you have any handle on that?

MR. ROBIN WIENS: Well, Mr. Peters, I don't have the numbers in front of me, but it would not be very difficult for us to go back and obtain the numbers that relate to the different categories of customer that -- which INAC has an interest. And it may very well total that number, or something very close to it. I'm not sure that I'm qualified to answer whether that is INAC's increase.
MR. BOB PETERS: And I wonder if I could ask for an undertaking for you to investigate whether Manitoba Hydro can provide an approximate calculation, by customer class, as to the increased costs it expects INAC would fund as a result of your application, if approved?

MR. ROBIN WIENS: We can do that.

MR. BOB PETERS: Okay. That'll be fine.

Thank you, sir.

--- UNDERTAKING NO. 2: Manitoba Hydro is to provide an approximate calculation, by customer class, as to the increased costs it expects INAC would fund as a result of the application

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: In terms of customer numbers -- on Tab 4 of the book of documents, and I believe I might have had this in a different document as well -- but when we look at the Provincial Government of having twenty-two (22) customers, those are twenty-two (22) separate customers, not dealing with how many accounts you have.

Would that be your understanding of the
MR. ROBIN WIENS: Well --

MR. BOB PETERS: Those are separate customers in --

MR. ROBIN WIENS: -- those are separate customers. They have their own -- each one has their own meter.

They may be the same -- there may be many of -- many meters or a number of meters that are in the name of the same ultimate institutional customer, but the number of accounts that's served is twenty-two (22).

MR. BOB PETERS: All right. So instead of customers, you're calling those "accounts".

MR. ROBIN WIENS: Well, I -- I would use those interchangeably in this context. In terms of the -- in terms of the customers, as you get right back to the department of the Provincial Government there's probably three (3) or four (4).

MR. ROBERT MAYER: We -- we had this discussion, I think, yesterday, and we talked about the issue of Frontier School Division in Brochet, which I -- I expect you would have metered the school, the teacherages, and whatever other particular buildings may have been owned, operated, or leased to Frontier School Division.
And you would show each meter as being a - an account, or would you lump them all together as Frontier School Division?

MR. ROBIN WIENS: I -- I don't know how the bill would actually go out. There may be only one (1) bill go out. But there are a number of meters that are associated, and they would be read separately, and the bill calculated separately.

Similarly, I believe another of the provincial departments has a presence in each of the four (4) communities, so we would have four (4) accounts. Although they may all go in the same envelope; I don't know that.

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: All right. And on the Federal Government and First Nation's education accounts, the majority of those relate to schools, and teacherages, and the infrastructure to support education. Is that correct?

MR. ROBIN WIENS: I would say the majority do. Are -- there are some -- at least a couple of other Federal departments that are included there.

MR. BOB PETERS: Sure. And when we talk about education, a teacherage, is that -- would the Board
be correct in understanding that is the residence in
which a teacher would be living?

MR. ROBIN WIENS: That would be correct.

MR. BOB PETERS: And the suggestion here
is then that that account would be -- would be funded not
by the teacher's salary, but by, in this case, through
INAC?

MR. ROBIN WIENS: That's correct. Or --
or a Frontier School Division.

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: If it's a Federal
Government or a First Nation education, it wouldn't be --
it wouldn't be the provincial school division, would it?

MR. ROBIN WIENS: No.

MR. BOB PETERS: No. All right. I think
we've got the clarification that we need.

(BRIEF PAUSE)

MR. BOB PETERS: In terms of the moving
of the Provincial Government to general service customers
--

THE CHAIRPERSON: Before you move on --

MR. BOB PETERS: Yeah.
THE CHAIRPERSON: -- Mr. Peters, let's take our break because there's something we -- we wanted to think about.

MR. BOB PETERS: All right.

--- Upon recessing at 2:34 p.m.

--- Upon resuming at 3:00 p.m.

THE CHAIRPERSON: Okay. Welcome back everyone. By the way, tomorrow morning, if you wouldn't mind noting it, we're going to start at 9:15 because we've got another engagement, but we will definitely be able to sit from 9:15. So if people can do something else for an extra fifteen (15) minutes.

Bob...?

MR. BOB PETERS: Yes, thank you.

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: Mr. Warden, we were talking land lines before the afternoon recess. And the indication you gave was that the Federal Government was not going to be funding a land line to one (1) of the four (4) diesel communities, correct?

MR. VINCE WARDEN: Yes, that's correct.

MR. BOB PETERS: What does Manitoba Hydro
understand to be the reason that that funding wouldn't occur?

MR. VINCE WARDEN: I think there were --

Mr. Peters, I'm going a little bit by memory here, but I think there was some concerns about the cost of -- cost versus the population being served, in -- in simple terms.

MR. BOB PETERS: What you're saying is, in my words, you can't make a business case to -- to expend that kind of money for -- for the benefits that would result from it?

MR. VINCE WARDEN: You -- you could absolutely not make a business case, no.

MR. BOB PETERS: Yeah. The cost benefit wasn't there under -- under the measure that was used?

MR. VINCE WARDEN: No, it would require a significant involvement by both levels of government.

MR. BOB PETERS: Well, when the business case can't be met -- Manitoba Hydro does a business case when it wants to expand its facilities, and if a business case can't be met then it requires contribution from either the customer or third parties, correct?

MR. VINCE WARDEN: Yes, that's part of our normal service extension policy.

MR. BOB PETERS: And the same principle
was being considered by Manitoba Hydro when looking at
extension of the -- the land lines.

MR. VINCE WARDEN: From a very broad
principle perspective, yes, but each community was
unique.

MR. BOB PETERS: Were the social reasons
factored into the equation as to why a land line may --
may be a -- a good idea?

MR. VINCE WARDEN: Well, you know, I
think everybody in a perfect world would love to see
those communities receive all the amenities that we -- we
receive down south, but there are practicalities, of
course.

MR. BOB PETERS: The practicality is the
dollar?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And that's -- that's a
tacit acknowledgement, is it, Mr. Warden, that the -- the
standard of living sought -- or the standard of living in
the diesel zone would be less than the standard of living
in -- in communities on the grid?

MR. VINCE WARDEN: Well, I wouldn't go so
far as to say that. I -- you know, there's a lot of
things that enter into standard of living. So standard
of living might be high in those communities for other
reasons.

MR. BOB PETERS: All right. But the --

the amenities, or the -- the quality of life as it
relates to things that electricity brings to the
community wouldn't be there in the diesel zone to the
same extent they would be in other communities connected
to the grid?

MR. VINCE WARDEN: Well, there's the
convenience of electric heat, but there's other sources
of heat that may be -- may not be quite as convenient,
but some -- provide the same level of comfort.

MR. BOB PETERS: But if the electricity
in sufficient supply is not on hand, then that may also
limit the economic development of a community.

MR. VINCE WARDEN: Yes, but I've never
heard that cited as -- as a -- as a reason for exploring
other energy options.

MR. BOB PETERS: I didn't understand your
answer. Are you saying that by not having electricity in
-- in -- to a higher degree and capacity in the diesel
zone doesn't inhibit any economic development?

MR. VINCE WARDEN: Well, having a higher
capacity of electricity available in those communities is
not the primary -- economic development within those
communities has not been the primary driver for -- for
MR. BOB PETERS: Is there sufficient electricity there for economic development?

MR. VINCE WARDEN: I think it -- you know, it depends, of course, what economic development we're talking about. Would it support a --

MR. BOB PETERS: Yeah.


MR. BOB PETERS: M-hm. Would it be correct to say that these four (4) communities would like enhanced diesel service -- or enhanced electricity service whether by diesel or some other means?

(BRIEF PAUSE)

MR. VINCE WARDEN: Yeah, I think that's a fair assumption, Mr. Peters, but nobody's told me that directly, but... MR. BOB PETERS: When you say that you can't make a business case for expanding land lines into the four (4) communities that comprise the diesel zone, is that the reason that the North Central line was not extended to these communities in the first place?
MR. VINCE WARDEN: Well, the North Central -- the communities of the North Central are located some distance from these four (4) communities. The North Central Project required significant contribution by Federal and Provincial Governments to make it viable. To my knowledge, there was never any thought of extending the North Central project to include Shamattawa, for example.

MR. BOB PETERS: But in terms of a strict business case, wouldn't the same be true for the North central line, that it just doesn't make a business case sense to expand into the seven (7) communities that it -- that that line was extended, just on a dollars and cents point of view?

MR. VINCE WARDEN: Were there wa -- there was no business case to support that without the contributions from the government. But, of course, there's degrees of business case as well, and every time we look at the economics of extending land line or other forms of -- of alternative forms of energy to these four (4) communities, diesel always comes out as being the -- the low cost option.

MR. BOB PETERS: The other reasons you talk about would be -- well, you -- you put those as social reasons as to why you'd exte -- expand the line if
the dollars and cents wasn't going to be returned to the corporation for doing that?

MR. VINCE WARDEN: The dollars and cents would not be returned to the corporation for sure, no.

MR. BOB PETERS: So, to do it, there would have to be social reasons or perhaps capital 'P', political reasons?

MR. VINCE WARDEN: And that's why there's involvement -- necessary involvement by government.

MR. BOB PETERS: And -- and those same social or political reasons would be -- would be factors when things like the Province of Manitoba went to a province wide electrification program many years ago?

MR. VINCE WARDEN: Well, I think, you know, if you go back to the early '50s there were probably a lot more economic reasons, economic exp -- expansion throughout the province, maybe even more -- more so than social reasons at the time.

MR. BOB PETERS: But there would have been expansions that were not economic?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And I suppose you could expand that and maybe make the same analogy on a utility basis in our neighbouring province of Saskatchewan, where they essentially put natural gas throughout rural
Saskatchewan? There may -- there may have been social reasons that it was done or political reasons that it was done, even it if didn't make economic business case?

MR. VINCE WARDEN: Yes, but, you know, even the case of natural gas, there -- there's not natural extended to every remote community in Saskatchewan, there -- so there's economics that enter into that decision making process as well.

MR. BOB PETERS: And when Manitoba Hydro went from three (3) zone rates in rural Ma -- in Manitoba and went to a unified rate, again, there would be social and/or political reasons that would support that?

MR. VINCE WARDEN: Well, yes.

MR. BOB PETERS: On a -- on a strict economic basis, it costs more money to deliver the electrons to remote communities from the grid than it does to populate in urban areas?

MR. VINCE WARDEN: No question.

MR. BOB PETERS: But, again, a decision was made that zone rates would be eliminated in Manitoba, not necessarily for economic reasons, but for perhaps social reasons or political reasons?

MR. VINCE WARDEN: Yes, but it's -- it's a -- it's an order of magnitude that we're talking about here, I think.
MR. BOB PETERS: Well, when we talk "order of magnitude," you're saying the order of magnitude of the total expense divided by the number of people who would benefit from the expense?

MR. VINCE WARDEN: That's one (1) way of looking at it, yes.

MR. BOB PETERS: Do you think that increased electricity would provide an opportunity for better space heating, which may result in fewer health problems?

MR. VINCE WARDEN: Mr. Peters, I -- I don't know the answer to that question, that to what extent health would be effected by electricity space heating.

MR. BOB PETERS: You don't know if there are people who don't have adequate heat in their homes in the diesel zone because they don't have access to electric space heat?

MR. VINCE WARDEN: No. No, I don't know, but I -- no, I don't know the answer to that question.

MR. BOB PETERS: But you would concede, would you, Mr. Warden, on behalf of Manitoba Hydro, that intuitively homes that have -- are well heated may lead to fewer problems health-wise, than homes that are not well heated?
MR. VINCE WARDEN: No, I -- I really -- I
MR. BOB PETERS: You won't --
MR. VINCE WARDEN: -- I really don't know
that for sure.
MR. BOB PETERS: You won't go there?
MR. VINCE WARDEN: No, sorry.
MR. BOB PETERS: You -- you don't think
there's a health care benefit to having access to
electric space heat?

(BRIEF PAUSE)

MR. VINCE WARDEN: You know, I think we'd
have to compare it to the alternatives, that if coal is
being burned and polluting the atmosphere, sure, there --
there's going to be health care ben -- or, health
benefits to going to electric heat. If other -- you
know, wood is being burned, perhaps, to a lesser extent.
So I think you'd have to look -- look at each individual
circumstance.

But, I -- you know, I'm really not
qualified to comment on the health -- health care
benefits of electric heat versus other heating forms.

MR. BOB PETERS: But you can comment that
if there is such a benefit, or even if there isn't such a
benefit, that wasn't a factor taken into account when the cost benefit study was done on extending land lines to the four (4) communities in the diesel zone?

MR. VINCE WARDEN: To my knowledge, that's correct, yes.

MR. BOB PETERS: Likewise -- and I'll throw out another -- opportunity, like opportunities for children; are they enhanced by having greater access to appliances that are supported by electricity than -- than not?

MR. VINCE WARDEN: Well, app -- appliances they -- certainly in the communities now, in the -- in diesel communities they do have access to appliances that -- the only thing they don't have access to is space heating.

MR. BOB PETERS: Perhaps, from a rate design perspective and -- and Mr. Thomas is trying to be anonymous or incognito in the back row, and I have a undertaking to maybe ask of him, but through you, Mr. Warden, if Manitoba Hydro could provide an indication of what the government rate would be if grid rates applied to all consumption for residential and general service, and then re-file schedules 4.1 to 4.5 of your application that would -- that would reflect that rate design change.

And if there's any clarification on that,
certainly through your counsel, we'd be pleased to
provide that to you.

MR. VINCE WARDEN: So I'm assuming though
-- we'd have to make a number of assumptions to put that
 together. And if grid rates were available to all --
other than non-government customers, consumption would
increase quite dramatically and the costs of that
increase would have to be borne somehow.

So we'd have to -- we'd have to look at
what the -- the increase costs of providing additional
capacity, additional generation capacity in the
communities, upgrading the services -- the whole
distribution system would have to be upgraded, so it --
this is not a trivial undertaking.

MR. BOB PETERS: No, you've -- you've
read more into it than I intended and I apologize if I've
lead you there.

But, let's -- let's just assume you're
dealing with the existing -- the cost of service that you
have, and that instead of there being the -- the runoff
rate for the last block of energy used by those classes,
if that consumption was billed at grid rates and any
resulting shortfalls were imbedded into a government
rate, what that government rate would look like.

MR. VINCE WARDEN: But, Mr. Peters, I --
I'm telling you that there would be -- we would have to assume that if the rates -- if that restriction was not there as it is today on the two thousand (2,000) -- two thousand (2,000) kilowatt hours, consumption would rise dramatically, as we've seen in the north central communities, and how do we provide that capacity?

THE CHAIRPERSON: Mr. Warden --

MR. BOB PETERS: You don't, in my example. You don't, because my -- my undertaking doesn't ask you to make that assumption.

Just as the tiered chart that we see in PUB book of documents, number 5, prior to 2003 there were grid rates that were charged, there was no second -- there was no two thousand (2,000) kilowatt hour restriction, and consumption didn't skyrocket because there were still the 60 amp, or maybe even back to the 15 amp limitations back then. So let's keep our 60 amp limitation. Let's just assume that the rate recovery is different.

MR. VINCE WARDEN: We'll run that through, Mr. Peters.

THE CHAIRPERSON: Mr. Warden --

MR. VINCE WARDEN: We'll -- we'll probably have to put a lot of footnotes on it, though.

MR. BOB PETERS: That's fair. That's
fair.

THE CHAIRPERSON: Mr. Peters, and Mr. Warden, it -- it's fine for you to take the undertaking as Mr. Peters put it, but it's also fine, I think, for you to produce a schedule with the assumptions that you were talking about in -- with increased consumption, as well.

MR. VINCE WARDEN: Okay. Thank you.

--- UNDERTAKING NO. 3: Manitoba Hydro to provide an indication of what the government rate would be if grid rates applied to all consumption for residential and general service, and then re-file schedules 4.1 to 4.5 of their application that would reflect that rate design change

MR. ROBERT MAYER: While we have a gap in the -- in the questioning here, I'm looking now at a map of Manitoba; am I correct, sir, that the last -- the last significant extension of service by way of a transmission line, excluding the new transmission lines being built
associated with Wuskawtim, was a transmission line that extended the grid to Churchill, Manitoba?

MR. VINCE WARDEN: I'm trying to think back in my history versus the -- the north central came in around --

MR. ROBERT MAYER: I believe Churchill was after north central.

MR. VINCE WARDEN: Okay.

MR. ROBERT MAYER: In fact, I'm pretty sure it was after north central.

MR. ROBIN WIENS: Mr. Mayer, Churchill was -- happened in the 1980s; north central was in the late 1990s.

MR. ROBERT MAYER: Okay. I -- maybe I'm having another one (1) of those senior's moments, but I certainly remember the diesel generation when I used to go regularly to Churchill and eventually with the people being able to, in fact, drive down your transmission line to get to Gillam on their -- on their four (4) wheel drives, and it just seemed a little earlier than that.

But in any event, if I'm looking at distances, and I'm looking at population, when I was last in Churchill the population of Churchill was approximately, I believe, six hundred (600). That may have been -- and four hundred (400) voters, four (4) to
six hundred (600) voters. There were other kids involved.

But the distance from Gillam to Churchill, which was the way I understand the line went, is certainly significantly less than the distance from Gillam to Shamattawa – significant -- is significantly more from Churchill than it is to Shamattawa.

And interestingly enough, Churchill is at a higher parallel of latitude than either Tadoule Lake or Lac Brochet, and Lac Brochet and Brochet were always significantly closer to the end of the line, which was Lynn Lake, than Churchill ever was to any other transmission facility in the province.

Now I'm prepared to accept the fact that there -- there was a port up in Churchill as may be a business case justification, but what was the other business case justification for going to Churchill as opposed to the shorter distances from Lynn Lake to Barren -- to Barren Lands and Northlands, and from Fox Lake to Shamattawa?

MR. ROBIN WIENS: Well, Mr. Mayer, may -- we may be going to trade senior moments here. And I -- I think to answer your question properly we would probably have to go back to the record, but that line -- if I am recalling correctly, that line went to Churchill around

Personally I've never been to Churchill, but I know people during the course of my adult life who live there, and my recollection is that the population of Churchill was somewhat larger in the 1970s and early 1980s, that there was a port, that there was an American rocket base, and that there was already beginning some elements of a tourism business.

MR. ROBERT MAYER: The tourism business I'll give you. The military base was -- was ratcheting down. The rocket base was an interesting concept that didn't go along for very long, and -- and the major tourism now, as it's generally been for years, has been the train trip up and the tour -- and the tour boats in. It hasn't resulted in a whole lot of expansion in the businesses that are available, but certainly a better business for them.

However, you had the diesel generators located out at the base, if I recall correctly, and -- and the population of Churchill has been down significantly for quite some time. I -- but again, I -- if you're correct about 1983, you may be closer with respect to the -- to the two (2) bases, neither of which, of course, are functioning now. In fact, there's virtually nothing left of the -- at what we used to call
Fort Churchill.

I would just be interested in the business case that was made there because it -- it is -- it was so much farther to go there. The only community that appears to me to be more distant from any given source might be Tadoule Lake, and I would suspect that that would be awfully close to the same distance.

MR. VINCE WARDEN: Mr. Mayer, we'll do a little bit of homework on that, a little bit of research, and come back with -- with some justification.

--- UNDERTAKING NO. 4: Manitoba Hydro to research and provide some justification for the transmission line from Gillam to Churchill

THE CHAIRPERSON: I can help you a little bit, because we had a water and sewer hearing in Churchill, and I think the population is somewhere around nine hundred (900).

MR. VINCE WARDEN: So it's very similar to what Shamattawa would be today probably. In fact, Shamattawa might be a little bit more than that.

MR. ROB COX: Just one (1) comment about
the Lynn Lake up to Brochet and Lac Brochet. There is
not sufficient power supply at Lynn Lake to allow us to
continue on, so we would have to go south of Lynn Lake
and bring up a different transmission line before we
could go north up to the -- these communities.

MR. ROBERT MAYER: I thought you were
bringing in tran -- power out of Saskatchewan in portion
to that area from a generating station south of Reindeer
Lake?

MR. ROB COX: Yes, that was another
option. We looked at two (2) different supplies, one (1)
from the west and one (1) from the south.

MR. ROBERT MAYER: And the -- in light of
the fact that the mining industry has suffered a
significant setback in Lynn Lake over the past number of
years, what are you doing with the -- I think it's only 3
or 4 megawatts coming out of Laurie River?

MR. ROB COX: That, I'm not sure of.

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: Mr. Warden, I want to
move to the issue of the Provincial Government accounts
being changed from -- excuse me -- out of the government
class into the general service class, and you've gone to
some lengths in your evidence through Ms. Fernandes to
indicate that there should be no negative impact by that
move on the Federal Government accounts, correct?

    MR. VINCE WARDEN: Yes, correct.

    MR. BOB PETERS: And -- and the in -- the
impact is about six hundred and eighteen thousand dollars
($618,000)? I'm going to look to Tab 7 of my book of
documents to see if I've got that number correct.

    (BRIEF PAUSE)

    MR. BOB PETERS: I'm going to go to
Schedule 4.5, at the top.

    (BRIEF PAUSE)

    MR. VINCE WARDEN: Mr. Peters, the -- the
number I was recalling was slightly higher than the six
eighteen (618). I believe though the -- the number is
seven forty-four (744), which is the sum of the
unrecovered provincial reve - revenue requirement of one
thirty five nine fifty-nine (135,959) plus the sixty (60)
-- six eighteen (618) number you were referring to.

    MR. BOB PETERS: So seven hundred and
forty-four thousand (744,000) is the total impact of that
transfer on -- on the revenue recovered from the
customers in that area?

    MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And instead of
recovering that revenue from the customers in the area,
it will be recovered from the grid customers?

    MR. VINCE WARDEN: Yes.

MR. BOB PETERS: And just on a point here
to make sure Ms. Fernandes has some -- something to do
tonight, as well, just looking at the lunch hour as to
whether or not that's -- does Manitoba Hydro have a legal
opinion as to that being an appropriate transaction in
light of Section 433.3 of the Manitoba Hydro Act?

    What I'm getting at, Mr. Warden -- and I
won't ask for an answer, maybe it'll come through the
closing submissions -- is whether or not the funds of the
corporation can be employed for the purposes of the
government or any agency of the government that is set
out and whether that's what this amounts to. So I'll let
you take that as an undertaking, or maybe that -- Ms.
Fernandes will deal with that later.

    But you will acknowledge that the
Government of Manitoba will be spending seven hundred and
forty-four thousand dollars ($744,000) less if your
application is approved than they would currently be
paying?

MR. VINCE WARDEN: Yes, but it's a cost allocation issue within -- within Manitoba Hydro's cost of service. It -- it's not in any way, and I'm -- I'm not giving a legal opinion here in any -- any -- by any means, and we'll -- we'll certainly undertake to -- to come back with -- with the answer on that, Mr. Peters. But -- but, really, we're not -- we're not transferring money to the government at all. It's -- it's just a method of allocating costs between our customer base, and this is a change in allocation.

--- UNDERTAKING NO. 5: Manitoba Hydro to advise if they have a legal opinion as to the change of Provincial Government accounts from government class into the general service class, and if they believe that is an appropriate transaction in light of Section 433.3 of the Manitoba Hydro Act

CONTINUED BY MR. BOB PETERS:

MR. BOB PETERS: What you're doing though
is you're reducing the government costs by seven hundred and forty-four thousand dollars ($744,000), which means that's -- that's money they can employ elsewhere?

MR. VINCE WARDEN: Well, what they do with it, I guess, is their -- their prerogative. But I -- I -- again, it's -- it's an allocation of Manitoba Hydro's cost within its rate -- rate structure and -- and not -- not a subsidy of the government.

MR. BOB PETERS: For Manitoba --

MR. VINCE WARDEN: It's seven hundred and forty-four thousand dollars ($744,000) less than they would have paid -- paid under the previous methodology, but that doesn't amount to a subsidy to government.

MR. BOB PETERS: From a summary accounting perspective it's -- it's a wash on the books of the province, is it not?

MR. VINCE WARDEN: Yes.

MR. BOB PETERS: Yeah.

(BRIEF PAUSE)

MR. BOB PETERS: Mr. Warden, in the book of documents there is an indication that Manitoba Hydro has some expectations as to future capital expenditures and, specifically, I believe Tab 12 contains the capital
-- the five (5) year capital project forecast. And I think Mr. Cox has sent this to the various communities.

Mr. Cox, is that correct?

MR. ROB COX: That is correct, yes.

MR. BOB PETERS: And in light of the apparent difficulty Manitoba Hydro is getting and having, having its capital costs since 2004 to 2010 paid, why would Manitoba Hydro be embarking on a future capital program when it hasn't sorted out the last five (5) or six (6) years?

MR. ROB COX: This -- everything that's in there is -- is regular type maintenance stuff that has to happen to maintain the reliability of the generating station.

MR. BOB PETERS: Has INAC agreed to fund their share of it?

MR. ROB COX: That is all dependant on the signing of the -- the Agreement. In -- in discussion with INAC, I was advised that it would be best if I sent it to the First Nations because they expected the First Nations to be submitting capital requests through INAC and they wanted to have that information in the First Nations' hands.

MR. BOB PETERS: So presently you have no -- no agreement or understanding that if you incur these
even if it is for the -- keeping the generators in good working order?

MR. ROB COX: That would be correct, yes.

MR. BOB PETERS: And the fire suppression system, I can't go by that, Mr. Cox, without maybe commenting that your estimate on that was -- was out.

MR. ROB COX: Yes, that's correct.

MR. BOB PETERS: It was out substantially?

MR. ROB COX: It was, yes.

MR. BOB PETERS: And that caused some difficulty in your discussions and consultations?

MR. ROB COX: I don't think it caused any difficulties in our discussions. It maybe -- may have been just a situation where we were being questioned as to what kind of criteria are we using when we come up with some estimates that come out at four point five (4.5) and then when we actually get a firm estimate it comes down to one point three (1.3); there was just that question.

MR. BOB PETERS: All right. And so there was no agreement to pay that 4.5 million and you were questioned on it. And when you tried to firm it up it came down to essentially a third of the cost?
MR. ROB COX: I don't -- we were not questioned on it. What happened is, I had been providing INAC with copies of the five (5) year capital plan and when I sent them the most recent one, our engineers involved in that project were able to firm up the price. And so then when they got the most recent five (5) year capital plan it was down at one point three (1.3).

MR. BOB PETERS: Mr. Warden, from a policy perspective, other than emergency work that's needed to keep the generators running, is there any reason Manitoba Hydro will continue to fund capital into the -- those communities without an agreement for repayment?

MR. VINCE WARDEN: Well, as Mr. Cox has indicated, all of the capital expenditures are required to provide safe, reliable service to these communities. So we don't incur capital expenditures unless we absolutely have to. It's -- it's no different in these communities than it would be anywhere else on the system.

So, yes -- and I -- and I indicted earlier, we will be endeavouring to communicate more effectively than we have the capital plans in the future than -- than we have in the past. But at the end of the day, these capital expenditures are required and we won't be compromising the safety and reliability of the system
for economic -- or and if these agreements aren't in place. We -- having said that, I'm fully expecting agreements to be in place in the future.

MR. BOB PETERS: But you're also saying if the agreements aren't in place you're going to continue to put this capital in there even though you're not getting paid back?

MR. VINCE WARDEN: Yeah. We -- we would really have little choice. I think the parties understand that and I'm expecting that there will be cooperation between the parties.

I think if we were unable to recover the capital costs by way of capital contribution, then they would -- we would have no choice but to incorporate those costs and rates as we have done with this application for a relatively small amount of capital.

(BRIEF PAUSE)

MR. BOB PETERS: If you thought ahead, Mr. Warden, and I'm sure you have, in the event that the INAC funding doesn't come through for these capital projects, is it likely the Board's going to see you in a year's time with another rate application which includes interest and depreciation on capital expended in the --
in the current fiscal year?

MR. VINCE WARDEN: Yes, I think that
would be a fair assumption. I would be very disappointed
if that were to occur, but yes, that's our fallback
position, so to speak.

MR. BOB PETERS: Mr. Chairman, I've gone
a little longer than I had hoped, and I know it's late in
the day, but I thought maybe I could turn the microphone
over to Ms. Bowman to start her questioning.

I would indicate before I do that, that as
I -- as I look here, Ms. Hart has provided a copy of a
1997 diesel site remediation agreement and fifteen (15)
copies have been made. And with Ms. Hart's concurrence,
I would ask that this be marked as INAC Exhibit 4, and we
can circulate it amongst the parties, because I believe
there will be questions on it, and --

MS. GLYNIS HART: That's five (5).

MR. BOB PETERS: I'm sorry. INAC Exhibit
5, that is correct. Mr. Hildebrand's evidence will be
number 4. So, Mr. Chairman, we --

THE CHAIRPERSON: Very good, yes.

--- EXHIBIT NO. INAC-5: 1997 Diesel Site Remediation
Agreement
MR. BOB PETERS: And with that, I'll hand these back to Ms. Hart and I'll provide a copy to the Board as well, and turn it over to Ms. Bowman.

THE CHAIRPERSON: Thank you very much, Mr. Peters.

Ms. Bowman, if you want to begin your cross now, it'll be appreciated.

MS. MYFANWY BOWMAN: Thank you. I'll just take a moment to get sorted out, Mr. Chair.

(BRIEF PAUSE)

MS. MYFANWY BOWMAN: Thank you, Mr. Chairman.

CROSS-EXAMINATION BY MS. MYFANWY BOWMAN:

MS. MYFANWY BOWMAN: Because I'm anal retentive, perhaps I'll just start by following up on a question Mr. Peters was asking. And there was a discussion about the cost of transferring the Provincial Government accounts from the government class to the general service class, and if I'm not mistaken -- and Mr. Wiens probably knows by now not to trust my math -- am I not correct that the cost of seven hundred and fifty-four thousand (754,000), not seven hundred and forty-four
thousand (744,000)?

MR. ROBIN WIENS: We've got a fairly substantial record in this matter, and we should probably just check that out and make sure, but we're definitely very close either way.

MS. MYFANWY BOWMAN: Thank you. Now, as I understand it, the residential and general service customers get grid rates for their first two thousand (2,000) kilowatt hours to shield them, at least to an extent, from the high cost of -- of diesel service. Is that a fair assessment?

MR. VINCE WARDEN: Yes.

MS. MYFANWY BOWMAN: And the reality is that -- that fifty-nine (59) cents a kilowatt hour is -- is a lot of money for electricity, and -- and the need is felt to protect them from having to pay for their full consumption at that level?

MR. VINCE WARDEN: It's a -- it's a high cost, yes.

MS. MYFANWY BOWMAN: And that was a policy decision made several years ago by all the people in this room, that those residential and general services customers shouldn't have to pay that cost on all consumption?

MR. VINCE WARDEN: For the first two
thousand (2,000) kilowatt hours, yes.

MS. MYFANWY BOWMAN: And the purpose of
the government's surcharge is to cover off the difference
between -- between what it costs to serve those customers
and what they're actually paying?

MR. VINCE WARDEN: That's the purpose of
the surcharge, yes.

MS. MYFANWY BOWMAN: And until this
application, the Provincial Government has of course
contributed to that subsidy.

That's also true?

MR. VINCE WARDEN: True.

MS. MYFANWY BOWMAN: Can you just clarify
for us who exactly we're talking about when we talk about
Provincial Government accounts? What agencies or offices
would those be?

(BRIEF PAUSE)

MS. MYFANWY BOWMAN: An idea would be
sufficient.

MR. VINCE WARDEN: Well, we did talk
about Frontier School Division as being one (1), but I
think we've been -- we -- we typically do not like to
name customers in this proceeding, so we'd like to talk
about customer groups, and -- without identifying specific customers. I -- I don't think that's a -- a big issue for us, but if -- that would be our preference, is not to get to name individual customers.

MS. MYFANWY BOWMAN: They would be Provincial Government agencies or government departments, is that --

MR. VINCE WARDEN: Yes.

MS. MYFANWY BOWMAN: -- fair?

MR. VINCE WARDEN: Yes.

MS. MYFANWY BOWMAN: Now, as I read Hydro's response to Public Utilities PUB/MH-10A, and I'll read you the answer:

"Manitoba Hydro has made the decision to provide this subsidy to provide the same level of support to provincial services that it provides to general service accounts in the diesel communities."

Is this -- that accurate?

MR. VINCE WARDEN: I believe that's in the book of documents, but can you --

MS. MYFANWY BOWMAN: It's PUB/MH-10A.

(BRIEF PAUSE)
MS. MYFANWY BOWMAN: That might be at Tab 17 of the book of documents I've actually been using. There we are. It -- it's at Tab 17 of the book of documents. It's the first page.

(BRIEF PAUSE)

MR. VINCE WARDEN: Yes, Ms. Bowman, we --

we have that here now.

MS. MYFANWY BOWMAN: So it's Manitoba Hydro's position that Provincial Government departments and Provincial Government agencies either need or deserve the same level of support as general service customers?

MR. VINCE WARDEN: The Provincial Government accounts are being charged the same rate as are other cus -- non-government customers. We've classified government customers as Federal Government for purposes of this application. And the -- the Provincial Government has been classified the same as the general service class of customers, yes, as -- as you just pointed out.

MS. MYFANWY BOWMAN: So they need or deserve the same level of support. That's -- that's the policy choice that Manitoba Hydro has made is what I read from this answer. Am I wrong?
MR. VINCE WARDEN:  I think you are wrong in the way you're categorizing it, yes. We -- as I stated in my direct, we are -- the purpose of what we're doing is to segregate the Federal agencies into one (1) separate rate class with all other customers being treated the same.

MS. MYFANWY BOWMAN: So when it says Manitoba Hydro has made the decision to provide the same level of support to provincial services it pro -- as it provides to general service accounts in the diesel communities, it doesn't mean that those accounts -- that -- that provincial and -- and Provincial Government departments and agencies need or deserve that level of support.

It just means that Manitoba Hydro has decided to provide it?

MR. VINCE WARDEN: It was a decision of Manitoba Hydro to provide that -- that support, yes.

MS. MYFANWY BOWMAN: And the purpose of that decision was to distinguish those accounts from accounts that funded directly or indirectly by the Federal Government, is that right?

MR. VINCE WARDEN: Yes.

MS. MYFANWY BOWMAN: It would be fair to say, would it not, that up until now Manitoba Hydro has
been able to say which accounts were and were not funded by the Federal Government? It's not a big mystery, is it?

(BRIEF PAUSE)

MS. MYFANWY BOWMAN: I can rephrase the question. Manitoba Hydro has up till now been able to identify Provincial Government accounts and Federal Government accounts and tell us how many of there are -- of them there are in each community and so on?

MR. VINCE WARDEN: Yes.

MS. MYFANWY BOWMAN: And you've been able to put them into separate lines on the tables, some of the tables in your application and -- and responses?

MR. VINCE WARDEN: Absolutely, yes.

MS. MYFANWY BOWMAN: And you've been able to tell us the cost of -- that this particular subsidy will provide?

MR. VINCE WARDEN: We've done that, yes.

MS. MYFANWY BOWMAN: So it has been po -- possible to distinguish between them up until now?

MR. VINCE WARDEN: Yes. Well, it still is.

MS. MYFANWY BOWMAN: And it would be
possible, if Manitoba Hydro were so inclined, rather than moving Provincial Government accounts to a -- into the general services category, to simply create two (2) different categories of -- of government accounts, one (1) for Federal accounts and one (1) for provincial accounts. Manitoba Hydro could do that if they wanted to, could they not?

MR. VINCE WARDEN: Absolutely.

(BRIEF PAUSE)

MS. MYFANWY BOWMAN: I'm going to ask the panel to turn to the application, Schedule 3, which is the bill comparisons. And I believe it was corrected in one (1) of the IR -- IRs, but I don't have a reference to which one. However, the tables I'm looking at will be the Provincial Government ones, so I don't think that changed.

(BRIEF PAUSE)

MR. VINCE WARDEN: Yes, I think we have it here.

MS. MYFANWY BOWMAN: So if I'm reading this table correctly, depending on consumption levels,
the Provincial Government by this transfer will be
getting a rate decrease of between 72.9 and 93.5 percent,
depending on how much they're using?

Is that correct?

MR. ROBIN WIENS: That's correct.

MS. MYFANWY BOWMAN: And that for

provincial accounts as a whole, that translates to an

average rate decrease of 83.1 percent?

MR. ROBIN WIENS: Yes. I think we
discussed that recently with Mr. Peters.

MS. MYFANWY BOWMAN: And so the grid
customers will pay for the cost of that particular

subsidy?

MR. ROBIN WIENS: Yes.

MS. MYFANWY BOWMAN: And if I read the
Application correctly, it also means that, going forward,

Provincial Government accounts -- Provincial Government
customers will no longer be asked to pay for part of the

capital costs that are incurred in the diesel zone.

Is that correct?

MR. VINCE WARDEN: No. No, that's not
correct.

(BRIEF PAUSE)
MS. MYFANWY BOWMAN: I'm going to ask you to turn to CAC/MSOS/MANITOBA HYDRO Number 5A. And this question and answer deals with division of capital costs pursuant to the tentative settlement agreement.

The last paragraph, as I read it, says:

"Manitoba Hydro assumes approximately 21 percent of the cost to reflect the 21 percent of usage that is attributable to non-status residential customers, and general service accounts not in the name of a First Nation."

And here's the part that particularly interested me:

"Since Manitoba Hydro is now proposing to treat Provincial Government accounts in the same way as general service accounts, Manitoba Hydro's share will actually rise to 25 percent."

Am I reading that answer correctly?

MR. ROBIN WIENS: You're reading it correctly, yes.

MS. MYFANWY BOWMAN: Does that not mean that the grid customers will assume the portion of capital costs that would previously have been assigned to Provincial Government customers?
MR. VINCE WARDEN: This -- it -- it was not the intent. I can see how you could -- could certainly get that interpretation from reading this, but it is not the intent of that IR.

So I would -- in looking at this now, I think we would probably want to modify that answer, if that -- that is -- it's certainly not the intent that we -- that Manitoba Hydro will be paying the capital costs of the Provincial Government in the future.

MS. MYFANWY BOWMAN: So Manitoba Hydro does intend to ask Provincial Government customers to contribute to pro -- capital costs going forward?

MR. VINCE WARDEN: Yes.

(BRIEF PAUSE)

MS. MYFANWY BOWMAN: And at some point, that answer will get corrected, or clarified?

MR. VINCE WARDEN: Well, I think we just clarified it, Ms. Bowman. I -- I'm not sure, do you want us to re-file that response? We could -- we could do that, taking out that last sentence if you like, but I just clarified the in -- that that is not the intent, that --

MS. MYFANWY BOWMAN: So if -- if that's
not what that means, so does that mean -- then mean that
Manitoba Hydro's share will remain at 21 percent?

(BRIEF PAUSE)

MR. VINCE WARDEN: Based on the
assumptions under which this table was derived, yes,
Manitoba Hydro would re -- retain 21 percent of funding
responsibility.

MS. MYFANWY BOWMAN: And that's the
expectation going forward, as well?

MR. VINCE WARDEN: Well, those ratios
change from time to time depending on consumption levels
in the communities but, yes, that would be -- assuming
everything else stays the same, tho -- that ratio would --
would be maintained going forward.

MS. MYFANWY BOWMAN: Thank you for
clarifying that. I appreciate it.

(BRIEF PAUSE)

MS. MYFANWY BOWMAN: And if I -- moving
further into the issue of capital -- okay, moving on,
pardon me, to the issue of capital costs, if I understand
it correctly, the reason that Manitoba Hydro is seeking
to include interest and depreciation on capital costs in this application -- and -- and I appreciate that it's only partial -- but the reason that that's being sought is because of the delays in collecting customer contributions. Would that be fair?

MR. VINCE WARDEN: Yes.

MS. MYFANWY BOWMAN: And would it also be fair to say that those delays result in -- in carrying costs for the corporation?

MR. VINCE WARDEN: They do.

MS. MYFANWY BOWMAN: And those costs, if they're not passed on to diesel zone customers, are born by grid customers, would that also be fair?

MR. VINCE WARDEN: Yes.

MS. MYFANWY BOWMAN: I have a couple of questions about the Tadoule Lake generator set. I understand that the total cost of that project was 2.19 million, if I'm reading the material correctly. Does that sound right?

MR. ROBIN WIENS: I -- I believe that's right.

MS. MYFANWY BOWMAN: And if I look at the material provided in Appendix 2, Attachment 2 to the -- in -- in, sort of, the second binder, if I read that material correctly, the First Nation was originally -- or
INAC, depending on how you want to think about it -- was originally requested to contribute 1.56 million. Would that be correct?

MR. ROBIN WIENS: Yes.

MS. MYFANWY BOWMAN: And what percentage -- was 2.1 million -- pardon me, 2.19 million, was that the -- that is the final cost. Was that the cost -- the forecast cost coming in, or did those costs change?

MR. ROBIN WIENS: I believe that 2.1 million was the final cost.

MS. MYFANWY BOWMAN: So when INAC and the First Nation were asked to contribute 1.56 million, what percentage was that of the total cost? Can Hydro tell us that?

MR. ROBIN WIENS: I don't have exact recall on this. We'll have to undertake to provide that.

--- UNDERTAKING NO. 6 Manitoba Hydro to indicate what percentage of the 1.56 million that INAC and the First Nations were asked to contribute was of the total cost

CONTINUED BY MS. MYFANWY BOWMAN:
MS. MYFANWY BOWMAN: I understand that INAC ultimately contributed 1.15 million out of a total cost of 2.19 million, is that right?

MR. ROBIN WIENS: That sounds right.

MS. MYFANWY BOWMAN: And if my math is correct, that's 52.5 percent. Does that sound about right to you?

MR. ROBIN WIENS: Yeah.

MS. MYFANWY BOWMAN: And can you tell us why INAC and the First Nation would have contributed 52.5 percent as opposed to, sort of, 70 to 75 percent which is, generally speaking, what -- what they've been asked for in the past?

MR. ROBIN WIENS: Well, you know, I -- I am going to try to rely on my memory on this one, but my -- my memory tells me that they did pay approximately 70 or so percent of the estimate that was provided to them--

MS. MYFANWY BOWMAN: So the diff --

MR. ROBIN WIENS: -- but not of the final cost.

MS. MYFANWY BOWMAN: So the -- the difference being that the cost went up and so the -- the relative proportion went down?

MR. ROBIN WIENS: That is correct.

MS. MYFANWY BOWMAN: And so who pays that
difference between what we would have expected INAC or
the First Nation to pay, the -- the 70 percent, or
whatever it is, and the 52 1/2 percent that they did pay?

MR. ROBIN WIENS: Well, right now it's
still on the books of Manitoba Hydro.

MS. MYFANWY BOWMAN: And is Hydro seeking
to recover that from INAC and the First Nation or from
anyone else?

MR. ROBIN WIENS: To date, we've not
attempted that.

MS. MYFANWY BOWMAN: Do you have any
plans to do so?

MR. VINCE WARDEN: Ms. Bowman, it would
typically depend on the agreement that was struck with
the -- with INAC or the First Nation at the time the
capital expenditure was -- was contemplated. Sometimes
there's provision for true up and other times there's
not. So we would have to look at the specific cir-
cumstances with that -- with that contribution to
answer your question fully.

In the event that there isn't a true up
provision, then those costs would reside with -- with
Manitoba Hydro and ultimately be borne by grid customers.

MS. MYFANWY BOWMAN: And would it not be
in the interests of Manitoba Hydro and grid customers to
include a true up provision in all of those agreements?

    MR. VINCE WARDEN: Well, you have to understand that a lot of these agreements are subject to individual negotiation depending on the circumstances at the time. There are -- there are a lot -- a multitude of different circumstances that affect capital additions in these communities, and discussions take place between the parties, agreements are reached based sometimes on negotiation, and sometimes that -- that amount is fixed.

    MS. MYFANWY BOWMAN: Now I understand that work was completed on this project in 2005. Does that sound right? I get that from appendix 2, attachment 2, as well, if that helps you.

    MS. ODETTE FERNANDES: Do you have a little bit more of a specific reference because it's pretty thick?

    MS. MYFANWY BOWMAN: Bear with me. Hang on.

    (BRIEF PAUSE)

    THE CHAIRPERSON: If your question doesn't hang on the date, they could take it subject to check and check later.
MS. MYFANWY BOWMAN: Sure.

CONTINUED BY MS. MYFANWY BOWMAN:

MS. MYFANWY BOWMAN: I -- does that sound reasonable? Does 2005 sound about right?

MR. ROBIN WIENS: I think it was in fiscal 2005/2006, but that would be subject to check.

MS. MYFANWY BOWMAN: That's enough for me. Now if I read the application material correctly, there have been no requests made for contributions to this project from any other parties, is that right?

MR. ROBIN WIENS: That's correct.

MS. MYFANWY BOWMAN: Now given that this is one of the very few examples where funds have flowed from the Federal Government and the First Nation, why would this not have been perhaps the poster child for select -- for soliciting contributions from other customers?

MR. ROBIN WIENS: Well, Ms. Bowman, perhaps it should have been, and -- and perhaps Manitoba Hydro should have pursued it at that time. But if you'll recall one of my earlier answers, where I talked about we -- we want to get this consultation process established and ongoing with the prime customers before we -- but with, if you will, the -- the 70 percent before we bring
In the case of Tadoule, while we certainly did eventually succeed in getting and receiving a contribution, pretty much what we had asked for in the discussions, if you go through the record -- and if you want a summary of the record, we put it in our rebuttal evidence -- that was a process that took approximately three (3) years or more from beginning to end.

I can say that we -- we finally had -- did did make a request from INAC, I believe, in around September of 2006, that we'd been in discussions for two (2) years, we've given their consultant all the information he had requested, we had contacted them on at least one (1) previous occasion, and we hadn't heard back from them.

And I believe, if I'm recalling correctly, our -- our lead representative in the discussions wrote another letter toward the end of February 2007 and -- and, you know, I can't speak for other people at Manitoba Hydro, but nobody was more surprised than I was when a cheque came in at the end of March, by that time.

So I -- it -- you know, it -- we did -- we did succeed in getting the contribution that we set out to do, but it wasn't really a process that I thought should be extended to the other parties, that we had to --
- that we had to have some sort of a meaningful, ongoing process to bring them into.

And, you -- you know, I -- I think we can probably be taken to task for not trying to pursue it with more vigour at that time, but, for what it's worth, that -- that is the explanation.

MS. MYFANWY BOWMAN: That strikes me as an honest answer. Thank you.

(BRIEF PAUSE)

THE CHAIRPERSON: Ms. Bowman, how about we call it a day?

MS. MYFANWY BOWMAN: Certainly.

THE CHAIRPERSON: Okay. Now, tomorrow morning, just so everyone knows, this is the first day, and it's always getting into it, it's probably just as well to shut down at the four o'clock mark, we'll be starting tomorrow at 9:15. So we'll see you all then. Have a good night.

(PANEL RETIRES)

MS. MYFANWY BOWMAN: Thank you.
--- Upon adjourning at 4:00 p.m.

Certified Correct,

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Cheryl Lavigne, Ms.