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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 Kinev	- Board Member

HELD AT:

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

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5	(Manitoba) Inc. and Manitoba Society	
6	of Seniors' Information Requests of	
7	INAC and INAC's responses -	
8	Consultation on capital projects	
9	CAC/MSOS/INAC-2-8	
10	Consumers' Association of and	
11	(Manitoba) Inc. and Manitoba Society	
12	of Seniors' Information Requests of	
13	INAC and INAC's responses -	
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16	CAC/MSOS/INAC-2-9	
17	Consumers' Association of and	
18	(Manitoba) Inc. and Manitoba Society	
19	of Seniors' Information Requests of	
20	INAC and INAC's responses -	
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22	rate classifications	
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1	LIST OF EXHIBITS (CON'T)	
2	Exhibit No. Description	Page No.
3	CAC/MSOS/INAC-2-13	
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5	(Manitoba) Inc. and Manitoba Society	
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8	Allocation of capital cost interest	
9	and depreciation	
10	CAC/MSOS/INAC-2-14	
11	Consumers' Association of and	
12	(Manitoba) Inc. and Manitoba Society	
13	of Seniors' Information Requests of	
14	INAC and INAC's responses - Capital	
15	costs from provincial regulation	
16	CAC/MSOS/INAC-2-15	
17	Consumers' Association of and	
18	(Manitoba) Inc. and Manitoba Society	
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20	INAC and INAC's responses - Recovery	
21	of capital contributions and revenue	
22	shortfall	
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1	LIST OF EXHIBITS (CON'T)		
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5		(Manitoba) Inc. and Manitoba Society	
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9		of export revenues to reserve	
10		deficit	
11	CAC/MSOS/INAC-2-17		
12		Consumers' Association of and	
13		(Manitoba) Inc. and Manitoba Society	
14		of Seniors' Information Requests of	
15		INAC and INAC's responses -	
16		Allocation of export revenue to	
17		reserve deficit	
18	CAC/MSOS/INAC-2-18		
19		Consumers' Association of and	
20		(Manitoba) Inc. and Manitoba Society	
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22		INAC and INAC's responses - Energy	
23		management initiatives	
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1	LIST OF EXHIBITS (CON'T)		
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5		Manitoba Hydro's responses - Request	
6		for electronic version of	
7		schedules	
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12		adequacy for diesel costs	
13	INAC/HYDRO-1-3	Indian and Northern Affairs	
14		Canada's 1st round information	
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17		adequacy PUB options	
18	INAC/HYDRO-1-4	Indian and Northern Affairs	
19		Canada's 1st round information	
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21		responses - PUB directives from	
22		Order Nos. 176/06 and 1/10	
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INAC/HYDRO-1-7	Indian and Northern Affairs Canada's 1st round information requests and Manitoba Hydro's responses - Capital expenditures - soil remediation	
INAC/HYDRO-1-8	Indian and Northern Affairs Canada's 1st round information requests and Manitoba Hydro's responses - Capital expenditures forecast cost/benefit analysis	

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12		responses - Winter Heating Cost	
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16		Canada's 1st round information	
17		requests and Manitoba Hydro's	
18		responses - Power Smart Programs	
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10		requests and Manitoba Hydro's	
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1	LIST OF EXHIBITS (CON'T)		
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1		LIST OF EXHIBITS (CON'T)
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13		Canada's 1st round information
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16	INAC/HYDRO-1-24	Indian and Northern Affairs
17		Canada's 1st round information
18		requests and Manitoba Hydro's
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20		export revenues to diesel
21	INAC/HYDRO-1-25	Indian and Northern Affairs
22		Canada's 1st round information
23		requests and Manitoba Hydro's
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LIST OF EXHIBITS (CON'T)		
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2	Manitoba Hydro is to provide an approximate	
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3	5	Manitoba Hydro to advise if they have a	
4		legal opinion as to the change of	
5		Provincial Government accounts from	
6		government class into the general service	
7		class, and if they believe that is an	
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9		Section 433.3 of the Manitoba Hydro Act	225
10	6	Manitoba Hydro to indicate what percentage	
11		of the 1.56 million that INAC and the First	
12		Nations were asked to contribute was of the	
13		total cost	245
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1 --- Upon commencing at 9:14 a.m.

2

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

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

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

24 Manitoba Hydro should correct me if I am -
25 - if I am in error, but it appears that the electricity

1 rates in the diesel zone have been interim rather than
2 final rates since 2004. The current level of diesel
3 rates were last set, again on an interim basis, by way of
4 Order 176/06. Those rates effective January 1st, 2007.

5 And the subject of diesel rates was last
6 addressed in a one (1) day hearing held on November the
7 16th, 2009, and was the subject of Order 1 of 2010.

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

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

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

23 "Ongoing discussions between
24 representatives of Manitoba Hydro,
25 Indian and Northern Affairs Canada,

1 i.e., INAC, and the four (4) First
2 Nation communities."

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

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

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

23 In this application, and according to the
24 Board's understanding of the evidence filed, Manitoba
25 Hydro was seeking an order from this Board:

1 1. To introduce the concept of tail block
2 rates for residential and general service consumption
3 over 2,000 kilowatt hours per month.

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

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

10 4. To move Provincial Government accounts
11 to the General Service rate class, where such Provincial
12 Government accounts would pay grid rates for the first
13 2,000 kilowatt hours per month, and then the tail block
14 rate for the balance of consumption.

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

21 5. To restrict the government accounts to
22 all Federal departments and agencies and First Nation
23 education accounts as the letter 'R', according to
24 Manitoba Hydro, fully funded by the Government of Canada.
25 Such government accounts would be charged the fifty-nine

1 (59) cent full cost rate for all consumption, plus a
2 dollar twenty (\$1.20) surcharge rate for a total of two
3 nineteen (2.19) per kilowatt hour. And:

4 6. To include in rates interest and
5 depreciation on the unpaid capital cost owed to Manitoba
6 Hydro but exclude any additional component for the
7 accumulated operating deficit that is compounded from
8 2004 until the present day.

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

18 Speaking briefly to policy issues, this
19 Board would benefit submissions as to the options the
20 party see as being available to the Board to resolve the
21 disputes that appear to exist with respect to the diesel
22 zone related to diesel generated electricity. Please
23 provide us with your submissions as to all options,
24 including, a) the building and funding of land lines
25 through rates, and b) the charging of costs to the

1 various customer classes that the Board determines bears
2 responsibility.

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

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

20 Finally, we note that INAC has filed
21 evidence from two (2) witnesses to be produced to assist
22 the Board in its understanding of INAC's role in the
23 diesel communities. We thank INAC for its involvement in
24 advance. At this point I will not turn to Board counsel,
25 Mr. Peters, to provide his opening comments and

1 introductions and provide the procedures that we are
2 expected to follow at this hearing.

3 Mr. Peters...?

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

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

20 In speaking of grid rates, the Board will
21 recall that the Board has provided Manitoba Hydro an
22 interim 2.9 percent rate increase across its customer
23 classes and that 2.9 percent increase to grid customers
24 would also be -- has also been applied to the diesel
25 zone.

1 Next, for the residential and general
2 service customers that use more than two thousand (2,000)
3 kilowatt hours per month, the rate increase being
4 proposed is from the current forty one point two seven
5 (41.27) cent full cost rate to what, Mr. Chairman, I
6 believe you referred to as a new tail block rate, which
7 is forty five (45) cents. That increase of 9 percent, or
8 three point seven three (3.73) cents per kilowatt hour.
9 In terms of the government rate, all kilowatt hours are
10 to increase from a dollar thirty- eight (\$1.38) per
11 kilowatt hour to two dollars and nineteen cents (\$2.19)
12 per kilowatt hour, which is an increase of some 58
13 percent, or eighty-six (86) cents a kilowatt hour.

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

22 The Board will also hear that Manitoba
23 Hydro has accumulated an unfunded operating deficit of
24 over \$7 million since April 1st of 2004. Manitoba
25 Hydro's plans for dealing with this deficit will be

1 canvassed. Manitoba Hydro has provided information on
2 the status of the amortization of the pre 2004 cumulative
3 deficit of \$16.9 million, which the disposition of is a
4 subject of a tent -- tentative settlement agreement.

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

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

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

22
23 And INAC is represented -- and I'd like to
24 welcome to the Hearing Ms. Glynis Hart, who is working
25 with her colleague Mary Ann Thompson, seated at counsel

1 table. In my memory, I think this will be their first
2 time appearing before this Board and I welcome them here.

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

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

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

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

25 The Board has indicated, and counsel

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

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

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

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

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

25 I would just draw attention at this point

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

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

17

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

19

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

23

24 --- EXHIBIT NO. HYDRO-1: April 29, 2010 letter and
25 attached 2010 Diesel

1 Application.

2

3 MR. BOB PETERS: Exhibit Manitoba
4 Hydro/INAC 2-1 through 2-11 would be Manitoba Hydro's
5 Information Requests and the responses by the INAC
6 witnesses.

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

10

11 --- EXHIBIT NO. HYDRO-3: Rebuttal Evidence - September
12 21, 2010

13

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

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

22 Speaking of INAC, I would suggest that
23 their exhibits would include INAC/HYDRO 1-1 through 1-25,
24 representing INAC's First Round Information Requests and
25 Manitoba's responses to INAC.

1 Then INAC/HYDRO 2-1 through 2-5 being
2 supplemental Information Requests posed by that
3 Intervenor and responded to by Manitoba Hydro.

4 INAC Exhibit 3, I would suggest would be
5 the evidence of Frederick William Mills.

6
7 --- EXHIBIT NO. INAC-3: Indian and Northern Affairs
8 Canada's evidence of
9 Frederick William Mills and
10 Desiderata Energy Consulting
11 Inc.

12
13 MR. BOB PETERS: And, at this time, Mr.
14 Chairman, I'm going to suggest that we hold and not
15 officially mark as Exhibit 4, hold that number for the
16 evidence of Mr. Hildebrand that's been filed in these
17 proceedings. Counsel for INAC and others may have some
18 comments related to that this morning, and we'll await to
19 hear whether there's any issues that need further
20 discussion or resolution related to that.

21 Mr. Chairman, subject to any questions you
22 may have of me, I would suggest you canvass the other
23 parties, starting with the Intervenor for their opening
24 comments and introductions, before asking Manitoba Hydro
25 counsel for her opening comments, introductions, and

1 direct evidence of the Manitoba Hydro panel of witnesses.

2 THE CHAIRPERSON: Thank you, Mr. Peters.

3 And we'll first call on CAC/MSOS, Ms. Bowman.

4

5 OPENING COMMENTS BY CAC/MSOS:

6 MS. MYFANWY BOWMAN: Good morning, Mr.

7 Chair, Mr. Vice-Chair, Board member Avery Kinew, and

8 everybody else who's gathered here. Thank you so much

9 for the opportunity to make a brief opening statement.

10 I am here on behalf of CAC/MSOS, who, of
11 course, represent the interest of residential consumers.

12 Seated in the gallery is one (1) of my clients, Gloria
13 DeSorcy. Mr. Williams was here earlier. I don't think
14 he's returning, but you never know with him.

15 Also seated with Ms. DeSorcy are two (2)
16 new advocates who have been hired by Legal Aid Manitoba
17 and are working out of our office. They're not
18 anticipated to be appearing before the Public Utilities
19 Board, but they're here this morning to observe the
20 proceedings. They're Ms. Daniella Echeverria and
21 Catherine Wirt. So that -- they're pleased to be here,
22 I believe.

23 My clients are very pleased to be back
24 before the Board on the diesel issues. We're certainly
25 pleased that the Board chose to hold an oral hearing. My

1 clients take the view that -- that the issues at stake in
2 the diesel zone merit a -- a hearing and some serious
3 discussion.

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

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

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

23 They're also concerned about some elements
24 of Hydro's application, and of INAC's recommendations,
25 which appear to shift a substantial share of -- of

1 responsibility for funding the high cost of service in
2 the diesel zone onto the shoulders of grid customers.

3 So some of -- those are some of the
4 concerns that -- that my clients have coming in. They're
5 interested to hear how the evidence unfolds, and -- and
6 what more we're going to learn about the diesel zone
7 while we're here.

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

24 So those are -- those are the principles
25 that -- that they hope to apply to the issues that we're

1 going to be dealing with. They're hopeful that -- that
2 their participation in the application of those
3 principles will be of some assistance to the Board.

4 I do note how -- I -- I listened with
5 interest to Mr. Chair's opening comments, and -- and
6 given his remarks, and particularly his request for
7 opinions, or -- or submissions on constitutional issues,
8 I'm likely going to be suggesting the opportunity for
9 written submissions. I'm not sure that I'm going to have
10 an opportunity to prepare a constitutional opinion by
11 Thursday. I had been preparing like a crazy woman, but I
12 hadn't prepared that. So that may well be a suggestion
13 that we're going to make at some point in the process.

14 We do have a preliminary issue to deal
15 with with respect to Mr. Hildebrand's report. I'm going
16 to suggest hat we deal with it once everyone has made
17 their opening comments, if that's acceptable to the
18 Board. Those are my comments, subject to any questions.

19 THE CHAIRPERSON: That's fine, Ms.
20 Bowman. We'll -- we'll come back to that issue after
21 everyone's been --

22 MS. MYFANWY BOWMAN: Thank you.

23 THE CHAIRPERSON: -- introduced. So
24 welcome, Ms. -- Ms. Hart and Ms. Thompson. Would you
25 like to provide some opening remarks?

1 OPENING COMMENTS BY INAC:

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

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

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

1 occasion.

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

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

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

17

18 OPENING COMMENTS BY MKO:

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

24 Hello, Mr. Hildebrand. It's nice to see
25 you again. And Mr. Mills, it's nice to have you back in

1 the PUB room with us to answer your questions, and
2 provide accurate information about INAC's procedures.

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

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

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

22 We've been before the Board on the diesel
23 issue since at least 1993. You'll recall that we were at
24 that time being represented at the table by Mr. Arne
25 Peltz in the work that we were doing, and trying at that

1 point to move forward in providing, as Ms. Bowman had
2 outlined, an affordable service that reasonably
3 apportions the costs amongst users. We were also, way
4 back at that time, concerned about contributions from the
5 province, from Manitoba Hydro, toward reducing the cost
6 of service. And so many of those issues still are before
7 us today.

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

20 In terms of 2003 proceedings, you'll
21 recall that the Board was very concerned about three (3)
22 items of cost that were being reported to the Board by
23 Manitoba Hydro: an un -- unpaid surcharge billings, as
24 they were called; the accumulated deficit; and the
25 undepreciated capital amounts.

1 I characterized them in my final summation
2 them -- then as the three (3) wolverines, and suggested
3 that we couldn't really sit down and have a discussion
4 about the disposal of these costs until we had shoed
5 these wolverines back into the bush where they belong so
6 we could sit down and focus on the policy issues in
7 providing service to the communities.

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

20 In terms of those three (3) amounts, the
21 major impact and the Board's concern was clearly
22 reflected in Order 17/04, as well as a suggestion for the
23 parties to get together and find a solution to come up
24 with some options and answers for dealing with, not only
25 those costs at the time, but the provision of service.

1 A matter that appeared in Order 17/04
2 that, of course, galvanized everyone has certainly
3 brought the -- got the attention of MKO and the diesel
4 First Nations, was the Board's comments that:

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

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

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

19 "Demand side management conservation
20 initiatives for the diesel communities
21 should be designed taking into account
22 the special circumstances of those
23 communities and providing a service
24 that should take into account the
25 nature of the resources and consumption

1 of all customers."

2 Now, this is from its Order in 1994.

3 In 17/04, we first had the -- the
4 imposition -- or the adoption, as we would say, of the
5 two thousand (2,000) kilowatt hour step that we refer to
6 for residential customers, prior to that, unlimited
7 consumption at grid rates was available to residential
8 customers. So that was a change proposed by Manitoba
9 Hydro to which MKO objected during the Proceedings at
10 that time, that's a matter of record. The Board,
11 however, incorporated that concept into its Order in
12 17/04 and went along with the encouragement for everyone
13 to proceed to resolve the issues before us.

14 Essentially, as its subsequent Order had
15 indicated, we focussed on -- and resolved in fift --
16 159/04 you refer to the fact that there was arrangements
17 made to deal with the O&M mechanism. It's a matter of
18 record, Mr. Mills, as a witness by subpoena, provided an
19 undertaking indicating there were shortfalls in the costs
20 of O&M contributions to First Nations, which INAC has
21 indicated in its evidence that it has addressed.

22 There was also a keen interest on the part
23 of MKO, as on the part of the Board and others, to
24 aggressively implement conservation DSM measures. All
25 parties were common in their interests in controlling

1 cost, particularly capital additions in the communities,
2 and linked the DSM and conservation initiatives to those
3 capital costs.

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

10 You'll note, because of an absence of
11 MKO's commentary on the application in October 2004,
12 which was revised and re-submitted, as a I recall,
13 subject to check November 2nd, 2004, to deal with the
14 matter of the treatment of provincial accounts. MKO did
15 not object to the two thousand (2,000) kilowatt hour step
16 because we saw it integrated into the understandings we
17 arrived at with Manitoba Hydro at the time, primarily the
18 expectation consistent with the Board's charges in 17/04,
19 159/04, and back as far as 16 -- 62/94, that there would
20 be, in fact, an aggressive demand side management
21 conservation program launched by Manitoba Hydro.

22 As the Board is aware, Manitoba -- MKO
23 facilitated, through a contribution by INAC, the payment
24 of the Little Wolverine, as I called it, the \$3.2 million
25 in unpaid surcharge billings, which payment preceded

1 immediately the Board's order that we've now been -- the
2 first of the interim orders in 159/04 in December 2004.

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

11 Mr. Mills has entered into his evidence
12 the amounts that were paid at page 20 of his evidence,
13 but it remains that we paid the \$3.2 million in December
14 2004 and a subsequent series of payments totalling
15 twenty-three million, one hundred and seventy-five
16 thousand, seven hundred dollars and ninety-two cents
17 (\$23,175,700.92) to fully discharge the undepreciated
18 capital costs, which at that time was the larges of the
19 three (3) Wolverines.

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

25 It's worthy of a question, and you've

1 invited the -- the comment on it, but -- about
2 implementation prior to signing. Well, certainly you had
3 your comments -- the Board made its comments in 17/04 in
4 respect of taking action by September '04.

5 We had to find a solution by that time,
6 and you recall that there was a grace period for
7 implementation of its earlier Order up until March 1st,
8 2004, in which you invited us to find a solution, and we
9 worked diligently to do exactly that.

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

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

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

25 So for all those reasons, we proceeded to

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

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

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

18 I would also make a small comment in terms
19 of preservation of our efforts, is that there's an
20 important contribution arrangement between ourselves and
21 INAC that we ensured was renewed at the end of this last
22 fiscal year so that we could carry on our discussions to
23 provide the environment, and our partners at INAC
24 assisted us, but MKO raised the issue that we ought to
25 continue this.

1 So where are we at with all of that
2 effort? We -- we now have the Application before us.
3 The summary is really that the four (4) diesel served
4 communities are clearly the highest cost to serve
5 communities in Manitoba.

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

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

21 Evidence is that consumption and costs are
22 increasing despite our efforts, and really given all of
23 the instructions that the -- the Public Utilities Board,
24 its references and its various orders, the language that
25 it used in order 159/04, was that:

1 "The Board remains of the view that the
2 implementation of demand side
3 management initiatives for these four
4 (4) communities are of extreme
5 importance."

6 Now, this is in 2004, and here we are in
7 2010, almost six (6) years later. So I'm eager to go
8 through the evidence that has been filed in response to
9 interrogatories, and Hydro's own evidence as to the
10 status of those DSM programs because they are directly
11 tied to cost.

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

20 So I'm hoping that all parties can put
21 their minds to finding some solutions that result in
22 affordable service with containing cons -- consumption
23 and control of cost, in a manner that fairly allocates
24 the cost amongst all classes of customers, because in the
25 end we're dealing with a group of customers who are

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

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

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

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

24 THE CHAIRPERSON: That's fine.

25

1 --- EXHIBIT NO. HYDRO-4-1:

2 CV for Mr. Vince Warden

3

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

5 CV for Mr. Robin Wiens

6

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

8 CV for Mr. Rob Cox

9

10 MS. ODETTE FERNANDES: In terms of
11 opening comments we would also like to request from the
12 Board that we be able to provide written submissions on
13 the -- the Board request regarding the Constitutional
14 Responsibility of Government with respect to First
15 Nations.

16 Other than that, that concludes my opening
17 comments.

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

21 Ms. Bowman...?

22

23 MOTION RE: PRODUCTION OF MATERIAL FROM INAC:

24 MS. MYFANWY BOWMAN: Thank you, Mr.
25 Chair. I had anticipated dealing with this issue

1 tomorrow, so I'm not quite as prepared as I might like to
2 have been. But I understand that INAC's counsel would
3 prefer to deal with it today which is, of course, fine,
4 subject to the Board's approval.

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

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

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

25 So I think that -- if I'm -- hopefully

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

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

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

21 So you -- are you looking for both the
22 tentative settlement agreement and the latest version of
23 the minutes -- or sorry, the minutes of settlement -- or
24 the settlement agreement -- the tentative settlement
25 agreement, and the minutes of settlement, both of them?

1 MS. MYFANWY BOWMAN: I understand that --
2 that none of the parties object to the disclosure of the
3 minutes of settlement. I did not realize that they were
4 on the record a number of years back, but apparently they
5 are. So they are, at some point -- at some point in
6 time, the minutes of settlement became public record, so
7 somebody, I believe, is going to provide me with a clean
8 copy of that.

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

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

1 MR. ROBERT MAYER: Ms. -- the --

2 MS. MYFANWY BOWMAN: So I'm not sure if -
3 - if the Board wants to hear the positions from the other
4 parties before I make my submissions, or if you want to
5 hear from me first. I seek direction.

6 MR. ROBERT MAYER: I -- I want to get --
7 I want to get clarification. We now know you want the --
8 the -- nobody argues with the tentative -- that sorry,
9 with minutes of settlement; we have an argument about the
10 tentative settlement agreement.

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

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

22 MS. GLYNIS HART: Yes, INAC -- I
23 apologize. INAC does have a position on the release of
24 the tentative settlement agree -- agreement, and that is
25 that it should not be released. Negotiations are still

1 occurring on that particular document, and release of
2 that document could lead to issues, problems, and it is
3 our position that it's -- should not be released. It's
4 not executed.

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

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

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

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

23 MS. MYFANWY BOWMAN: To begin with, yes,
24 that's certainly what I'm seeking. It may well be that
25 when I see the material that he has reviewed, and when I

1 hear the evidence both from him -- and I suspect there
2 maybe evidence from Hydro as to the -- the status of the
3 tentative settlement agreement, and so on -- it may be
4 that when -- when that evidence all comes froward, I
5 might have to request other material, but as a
6 preliminary - as a starting point, what I'm asking for is
7 whatever it is he's seen.

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

10 MR. MICHAEL ANDERSON: I do, Mr. Chair.
11 This time -- the sequence of events, if I recall, subject
12 to check on the subpoena, for example, on December 22nd
13 there was a pre-hearing proceeding in this chamber, at
14 which time I characterized the -- a document that was
15 being discussed as the tentative settlement agreement.
16 You were con -- interested in correspondence from the
17 original director general of Indian Northern Affairs
18 Canada regarding the agreement.

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

25 So I just believe that it was fresh on the

1 heels of our comments, objecting to it and characterizing
2 that that version of the document as INAC's draft and not
3 an all party concurred draft.

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

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

15 I do not know which version of it, as Ms.
16 Hart raises, that Mr. Hildebrand may have referenced. I
17 raise the other -- when I saw the evidence, I do have to
18 say, Mr. Chair, that it raised the other matter, that a
19 previous version of the tentative settlement agreement
20 was provided to Mr. Hildebrand by MKO when we were Mr.
21 Hildebrand's client, so there is another version in his
22 possession. So it -- there is a caution in referring to
23 it because, in essence, Mr. Hildebrand is -- knows our
24 mind in terms of that draft of the agreement and -- and
25 substantively.

1 Having said all of that, when the outline
2 of the evidence in general -- only the most general terms
3 was discussed with us, because we, of course, expressed
4 an interest in Mr. Hildebrand's retainer by Canada,
5 because he, of course, did work for -- you know, was our
6 expert for -- for many proceedings. We were reasonably
7 content that the general focus of the evidence, which we
8 had not seen nor saw in draft form, would go to the heart
9 of affordability and cost; you know, the things that MKO
10 had presented before.

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

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

21 So the Board will recall that each time I
22 refer to the substance of the tentative settlement
23 agreement in -- in these proceedings before this Board I
24 always make a reference to your decisions, because to us
25 that's the safe reference that we can make without having

1 issues of confidentiality through the mediation process.

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

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

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

20 I'm going to suggest, Mr. Chair, that
21 maybe we want to give the parties a couple more minutes,
22 and then we will have to make a decision, if -- that --
23 something can't be agreed to, and I for one (1) am
24 prepared to consider Ms. Bowman's motion because,
25 especially with respect to the tentative settlement

1 agreement, or agreements, because they are clearly
2 referred to in his evidence.

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

11 THE CHAIRPERSON: Ms. Fernandes?

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

16 But you may recall that at the November
17 16th status update hearing, this issue came up, and it
18 was Manitoba Hydro's position at that time that while we
19 are ultimately bound by a confidentiality agreement,
20 given the passage of time, and how much of that agreement
21 has been implemented, and is on the public record, we saw
22 no real reason why other parties could not view that
23 agreement.

24 But, because we were ultimately bound by a
25 confidentiality agreement, the -- we -- we couldn't just

1 voluntarily file the agreement. The Board subsequently
2 subpoenaed the agreement, and Manitoba Hydro filed it
3 with the Board, I recall it was -- we filed it in a
4 sealed envelope, and advised the other parties, because
5 we weren't taking that kind of a position, that it would
6 be for those parties to -- to deal with that -- with the
7 Board.

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

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

18 We would note, and I might steal a bit of
19 Mr. Warden's thunder here, it is our understanding that
20 we are very close to signing an agreement. As indicated
21 in the interrogatories, there are two (2) articles
22 outstanding; Article 7 and 10. Neither of those articles
23 deal with the capital funding -- or the capital
24 contributions, or the accumulated deficit that are dealt
25 with in Mr. Hildebrand's evidence.

1 It may be possible, if we excluded those
2 articles that were being negotiated, that we could file
3 the document. I -- I don't know if that would be
4 something that would assist the parties because those --
5 those don't directly impact on -- I don't -- I -- I
6 didn't see anything in Mr. Hildebrand's evidence that
7 impacted on that.

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

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

23 THE CHAIRPERSON: Thank you, Ms. Ramage.
24 Ms. Bowman...?

25 MS. MYFANWY BOWMAN: Thank you, Mr.

1 Chair. I think that clarifies the situation somewhat. I
2 -- I -- I will make my submission, and -- and I guess
3 I'll see where this goes.

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

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

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

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

25 My clients are entitled to understand

1 exactly what and why and how Mr. Hildebrand was asked to
2 carry out this -- what he was asked to do and how and --
3 and why he was asked to do it and -- and any sort of
4 conditions or -- or caveats that went with that. So they
5 submit that clearly that material is relevant to testing
6 his evidence.

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

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

22 I assume that the reason -- that the --
23 the nature of the objection to produce a tentative
24 settlement agreement is -- is settlement privilege or
25 something sort of related to that. My clients don't

1 concede that the material's privileged, but for the
2 purpose of the argument, we'll -- we'll accept that.

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

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

15 If we look at page 5 of his report on line
16 14:

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

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

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

25 MR. ROBERT MAYER: Some of us have read

1 this -- the document.

2 MS. MYFANWY BOWMAN: All right.

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

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

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

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

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

24

25

(BRIEF PAUSE)

1 MS. MYFANWY BOWMAN: I apologize for --
2 for the somewhat disorganized manner of this. As I had
3 said, I expected to deal with it tomorrow.

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

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

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

25 "In the ongoing debate as to the extent

1 of waiver of litigation privilege,
2 privileged documents located in the
3 expert's file when it is intended to
4 call that expert as a witness at trial,
5 it is readily acknowledged that the
6 facts and documents on which the expert
7 relies should be disclosed. The
8 controversial issue is whether any --
9 everything else need be produced, such
10 as confidential communications that did
11 not form a basis for the expert's
12 opinion."

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

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

21 This is I believe Justice Binnie writing
22 of the Court of -- Supreme Court of Canada, and he's
23 writing for majority on this issue, because the -- he was
24 in the -- I believe the minority, but the majority agreed
25 with him on this issue.

1 And in this case, the -- it was a criminal
2 case, and the counsel for the defence had referred in his
3 opening statement to an expert report, which was then
4 ordered to be disclosed. And that was then the -- the
5 subject of an -- an appeal of his conviction.

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

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

16 At paragraph 98:

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

23 Going on to paragraph 99:

24 "However, I would also, if it were
25 necessary, give effect to the

1 alternative ground of Dr. McEachern,
2 C.J. The act of calling Dr. Janke
3 would certainly constitute waiver of
4 any privilege attached to his report,
5 as noted by McEachern, C.J. Once a
6 witness takes the stand, he or she can
7 no longer be characterized as offering
8 private advice to a party. They are
9 offering an opinion for the assistance
10 of the court. As such, the opposing
11 party must be given access to the
12 foundation of such opinions to test
13 them adequately."

14 Later in that paragraph:

15 "Absent the earlier disclosure, the
16 Crown would have been entitled to stand
17 the appellant down before completing
18 its cross-examination and recall him
19 once they'd been given an opportunity
20 to consider the contents of the
21 report."

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

24 THE CHAIRPERSON: Ms. Bowman, did you
25 take into account MKO?

1 MS. MYFANWY BOWMAN: I was going to get
2 there, and -- and I think that that's an important point,
3 and that's where I think we potentially get into the
4 issue of excluding the report, because really what we're
5 -- what we're saying is that -- that INAC has waived its
6 privilege.

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

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

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

23 If -- if the report cannot be tested
24 fairly, then it's of no value, and -- and should be
25 excluded.

1 THE CHAIRPERSON: I think we --

2 MS. MYFANWY BOWMAN: And --

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

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

7 THE CHAIRPERSON: -- your argument.

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

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

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

24 MR. ROBERT MAYER: Ms. Bow -- Ms. Bowman,
25 you -- you've made your point with respect to INAC. I

1 don't think you real -- really need to go far -- farther
2 with respect to the document they have.

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

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

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

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

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

22 What I can say is I understood MK -- Mr.
23 Anderson, in his comments, to say that they do object to
24 disclosure of this document. Whether they're entitled to
25 object or not, I don't know. If the Board finds that

1 they have privilege, or some other kind of
2 confidentiality right that should be protected, then the
3 remedy is to -- is to exclude the report. If they have
4 no such rights, then presumably the remedy is to -- to
5 produce -- or a production of the material. That will be
6 my position.

7 MR. MICHAEL ANDERSON: Mr. Chair --

8 MS. MYFANWY BOWMAN: Is that of
9 assistance?

10 THE CHAIRPERSON: Mr. Anderson...?

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

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

25 So all of the paperwork that we exchanged

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

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

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

18 So if there were any, and I'm taking the
19 alternative approach, pending the Board's decision,
20 raising an important caution on the part of the diesel
21 First Nations and MKO. If there is any discussion
22 determined by the Board to be in the public interest of
23 the tentative settlement agreement, it must be the
24 December 2004 version that was tabled with you, for that
25 is the one (1) in your possession that we have cross-

1 concurred.

2 I would more -- most importantly echo Ms.
3 Ramage's comments about the passage of time and the
4 performance of the substance of the tentative settlement
5 agreement.

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

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

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

21 Thank you, Mr. Chair.

22 THE CHAIRPERSON: Well, we've had a lot
23 of discussion on this particular point and it coincides
24 to the point in time that we usually take our -- our
25 break in any case. I think we'll take fifteen (15)

1 minutes to reflect on this, and when we come back I don't
2 know whether the various parties in this room will have
3 further discussion or not, but we'll -- we'll be back in
4 fifteen (15) minutes.

5 MS. MARY ANN THOMPSON: Mr. Chair, if I
6 may just ask the Board to -- in its consideration of
7 this, perhaps keep something else in mind. As Mr.
8 Anderson has spoken to the concern here about privilege,
9 it's not a litigation privilege. It's not like retainer
10 of a psychiatrist in the context of the -- the case that
11 Ms. Bowman provided to you. It's all about negotiation.

12 And it stems from the mediation in 2004
13 and certainly in -- to the extent that we might get into
14 the law, that's there to protect the party's ability to
15 continue to negotiate. On a practical level, that's
16 everyone's concern here. Parties haven't concluded the
17 agreement; they need to be free to continue to deliberate
18 on that.

19 And so when a document's going to go out -
20 - and I think what Mr. Anderson is speaking to, once a
21 tentative settlement agreement is released, how is that
22 going to be understood? Is it going to be understood as
23 reflecting a common understanding of the parties? That's
24 not necessarily clear because, of course, there have been
25 a series of drafts all the way back to 2004.

1 So I would ask the Board to consider -- is
2 the extent to which, if it concludes that the tentative -
3 - or, a tentative settlement agreement should be
4 disclosed, what could be done to continue to protect the
5 party's ability to negotiate and conclude the agreement.
6 And in that regard, certainly Ms. Ramage made a
7 suggestion to you that perhaps certain portions of it
8 need not be disclosed.

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

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

22 You've heard the Chair's comments with
23 respect to, Where is this thing going? How long should
24 everything be held in abeyance pending whatever the
25 issues are? If we're not going to be told the issues and

1 we -- there's some very clear issues set out here as to
2 what's in this agreement, and the letter purports to be,
3 basically, a final offer, but since everybody's still
4 talking, obviously the final offer from November 30th of
5 2009 may not, in fact, be the -- be the end of the issue.

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

18 MS. MARY ANNE THOMPSON: Mr. Vice-Chair,
19 the recipients of the letter and the draft agreement to
20 which you've referred are all of the parties to the
21 agreement. And so while I appreciate there's lots of
22 them, they -- there's a lot of parties to the agreement,
23 and so certainly the circulation of the document didn't
24 exceed the negotiation and mediation context in -- in --
25 in which it began.

1 And with respect to the public interest, I
2 -- I might recall that the confidentiality that the
3 parties brought to the mediation initially had a
4 tremendous result. And I think you've heard in the
5 evidence of the parties what -- and in Mr. Anderson's
6 opening submissions today, you've heard what those
7 results were. And that's what that confidentiality is
8 there to protect: the parties' ability to do exactly
9 that.

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

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

23 But I'm having a little trouble
24 understanding how the Board is supposed to -- is Mr.
25 Hildebrand correct, is Manitoba Hydro correct -- if we're

1 -- if people aren't going to be shown the documents that
2 are being interpreted, presumably by the parties?

3 MR. MICHAEL ANDERSON: Mr. Chair, if I
4 might make one final comment. I thank Ms. Thompson for
5 raising the point that the letters were addressed to the
6 parties of the mediation. MKO, strictly speaking,
7 represents those parties on their behalf, and there's
8 formal documentation for that. So they -- MKO is engaged
9 on their behalf at their request. They are the parties.

10 The -- the suggestion, however, to remove
11 Articles 7 and 10 I -- I wanted to speak to directly in
12 that those two articles are material to the First Nation
13 performance of the tentative settlement agreement in good
14 faith. So if the document was circulated abs -- in a
15 version different from that that you received, sealed in
16 December '04, it would be utterly not in context with our
17 understanding, or with the processes and procedures that
18 led us to perform the agreement and pay some \$26 million
19 to Manitoba Hydro.

20 THE CHAIRPERSON: Okay. We're --

21 MR. MICHAEL ANDERSON: Thank you, Mr.
22 Chair.

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

1 we're going to have to pull it together ourselves.

2

3 --- Upon recessing at 10:36 a.m.

4 --- Upon resuming at 11:19 a.m.

5

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

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

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

19

20 BOARD RULING:

21 THE CHAIRPERSON: Okay. CAC/MSOS
22 requests productions of minutes of settlement, the
23 tentative settlement agreement, and the retainer letter
24 and any other information that was given to Mr.
25 Hildebrand. All parties have spoken and the Board has

1 deliberated on this matter. Considerable seriousness.

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

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

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

16 The Board agrees with CAC/MSOS that the
17 2009 INAC draft that Mr. Hildebrand has confirmed he was
18 given and used should be disclosed to CAC/MSOS's counsel.
19 However, such disclosure is to be on blue paper by
20 Manitoba Hydro or INAC and not filed as an exhibit in
21 this proceeding. CAC/MSOS can use it for cross-
22 examination purposes, but that cross-examination by
23 CAC/MSOS of Mr. Hildebrand will be held in camera.

24 CAC/MSOS and its counsel are to keep the
25 2009 draft by INAC confidential and not distribute it or

1 use it in any other proceeding or proceedings without the
2 prior written permission of this Board. Parties are at
3 liberty to continue negotiations.

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

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

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

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

19
20 --- EXHIBIT NO. INAC-4: Evidence of Mr. Hildebrand

21
22 THE CHAIRPERSON: Thank you. And we will
23 now move over to Ms. Fernandes and ask Ms. Shield to
24 swear in the witnesses.

25

1 MANITOBA HYDRO PANEL:

2 VINCE WARDEN, Sworn

3 ROBIN WEINS, Sworn

4 ROB COX, Sworn

5

6 THE CHAIRPERSON: Please proceed.

7 MS. ODETTE FERNANDES: Thank you.

8

9 EXAMINATION-IN-CHIEF BY MS. ODETTE FERNANDES:

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

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

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

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

24 MR. VINCE WARDEN: Yes, I do.

25 MS. ODETTE FERNANDES: Mr. Warden, would

1 you please describe the circumstances giving rise to this
2 Application?

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

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

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

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

25 The current full cost rate of forty-one

1 point two seven (41.27) cents per kilowatt hour was based
2 on the cost of operations at the time it was set. Today,
3 the unit cost is fifty-nine point zero four (59.04) cents
4 per kilowatt hour.

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

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

10 Number 1. Increase the rate for
11 residential and general service usage in excess of 2,000
12 kilowatt hours per month from forty-one point two seven
13 (41.27) cents per kilowatt hour to forty-five (45) cents
14 per kilowatt hour.

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

20 MS. ODETTE FERNANDES: Mr. Warden, why is
21 Manitoba Hydro not proposing to set the tail block rate
22 at the full cost rate of fifty-nine point zero four
23 (59.04) cents?

24 MR. VINCE WARDEN: Manitoba Hydro is
25 concerned that increasing the tail block rate from forty

1 one point two seven (41.27) cents per kilowatt hour to
2 fifty-nine point zero four (59.04) cents per kilowatt
3 hour could impose hardship on both the residential and
4 commercial customers in these communities, and Manitoba
5 Hydro is re -- reluctant to do this.

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

10 The current rate was approved January the
11 1st, 2007 applying a 2.9 percent increase for each of the
12 years since 2007 yields a rate of forty-five (45) cents
13 per kilowatt hour.

14 With the -- with the proposed rates, the
15 tail block increase is 9 percent. If the full cost was
16 applied to -- to the tail block, that increase would be
17 43 percent.

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

23 MS. ODETTE FERNANDES: Does Manitoba
24 Hydro's decision to set the tail block rate below the
25 cost of service increase costs to the Federal agencies,

1 INAC, or the First Nation education accounts above what
2 they otherwise would have been?

3 MR. VINCE WARDEN: No. The reduced
4 revenue of three hundred and twenty-two thousand dollars
5 (\$322,000) resulting from the decision to limit the
6 increase to the residential and general service tail
7 block is absorbed by Manitoba Hydro, and recovered from
8 rates applying to all general consumers within the
9 province.

10 MS. ODETTE FERNANDES: Previous diesel
11 rate applications have incorporated an amount equal to 20
12 percent of the deficit accumulated since April 1st, 2004.

13 Since there is an accumulated deficit, why
14 does this application not incorporate that provision?

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

23 Nevertheless, Manitoba Hydro will continue
24 to -- to track actual deficits and surpluses with the
25 objective of minimizing net deficits over the longer

1 term.

2 MS. ODETTE FERNANDES: Why has Manitoba
3 Hydro made the decision to transfer accounts of the
4 Provincial Government agencies from the government rate
5 to the general service rate?

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

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

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

22 MS. ODETTE FERNANDES: Should the
23 transfer of Provincial Government agencies from the
24 government rate to the general service rate be a concern
25 to INAC or the First Nations?

1 Manitoba Hydro received assurances from INAC that
2 incremental funding will be provided to the four (4)
3 communities, sufficient to cover the proposed increases
4 without detriment to the level of funding providing for
5 other purposes?

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

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

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

20 Unquote.

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

25 MS. ODETTE FERNANDES: Finally, Mr.

1 Warden, the application was made seeking approval to
2 implement the new rates, effective September 1st, 2010.

3 Is Manitoba Hydro seeking new rates
4 retroactive to that date?

5 MR. VINCE WARDEN: No. Manitoba Hydro
6 proposes that the new rates be implemented either October
7 the 1st, 2010, or November the -- 2000 -- November the
8 1st, 2010, with no retroactivity.

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

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

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

24 MS. ODETTE FERNANDES: Why has Manitoba
25 Hydro included interest and depreciation on major capital

1 investments and the revenue requirement in this -- in
2 this application, and what impact does this have on
3 customers?

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

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

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

22 Manitoba Hydro has reviewed the rationale
23 for incorporating Brochet soil remediation into the
24 revenue requirement in its rebuttal evidence. And just
25 to summarize: Discussions with INAC going back to at

1 least 1998 were not fruitful in terms of receiving any
2 commitment to share in the cost of remediation.

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

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

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

23 MS. ODETTE FERNANDES: What was the
24 reason for including the depreciation for Shamattawa
25 engine repairs in the revenue requirement?

1 MS. ROBIN WIENS: These repairs were
2 undertaken to assure continuity of service at Shamattawa
3 and could be described as being of an emergency nature.
4 The repairs were done and the costs incurred, beginning
5 in May of 2008 and concluding in January of 2009.

6 During the course of plant break-in in May
7 2007, dry chemical fire extinguisher was sprayed on Unit
8 Number 1 of the three (3) units in the generating plant,
9 while that Unit Number 1 was online, and this caused an
10 eventual engine oil pump failure.

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

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

23 The work was done in May and June of 2008.
24 The in-service date was September the 18th, 2008.
25 Subsequently, additional work was required due to some

1 incorrect assembly of components and their subsequent fai
2 -- failure, as well as additional upgrades being
3 required.

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

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

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

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

1 time in 2005.

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

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

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

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

21 In my testimony, I will be providing
22 evidence with respect to Manitoba Hydro's demand side
23 management programs in the four (4) diesel communities,
24 my involvement as a liaison with the communities, INAC,
25 and MKO, and as chair of Manitoba Hydro's remote diesel

1 communities committee.

2 MS. ODETTE FERNANDES: Manitoba Hydro
3 developed a First Nation Power Smart program in the
4 summer of 2008. Can you please briefly describe the
5 program.

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

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

23 A key element of the strategy involves
24 having a resource dedicated to work so -- solely with
25 First Nation communities, and taking a partnership

1 approach with this initiative.

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

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

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

21 MR. ROB COX: Manitoba Hydro is working
22 with the communities to capture these opportunities, but
23 ultimately it is the community's decision to act upon
24 them. Challenges in each community may vary, and could
25 include things such as winter road access, or priorities

1 within the community which are beyond the control of
2 Manitoba Hydro.

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

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

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

24 We believe that Desiderata has
25 significantly overstated the presence of electric space

1 heating in these communities.

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

10 Desiderata has also failed to consider the
11 basis of the 6 percent energy savings achieved under the
12 power -- under Power Smart. Thirty-five (35) percent of
13 these savings were realized from the industrial sector,
14 42 percent from the commercial sector, and the remaining
15 23 percent from the residential sector. As mentioned,
16 Manitoba Hydro is working with the individual communities
17 to develop meaningful energy efficient plans.

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

22 THE CHAIRPERSON: Mr. Peters...?
23

24 CROSS-EXAMINATION BY MR. BOB PETERS:

25 MR. BOB PETERS: Yes, thank you. Thank

1 you, Mr. Chairman. Good morning to the panel. As I
2 generally do, I want to remind the panel that my
3 questions are directed to the panel, and the panel will
4 decide amongst themselves, with the assistance of
5 counsel, if needed, as to who would be the most
6 appropriate person to respond.

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

9 MR. VINCE WARDEN: Yes, thank you.

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

15 MR. VINCE WARDEN: Yes.

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

20 MR. VINCE WARDEN: That's correct.

21 MR. BOB PETERS: And if we turn to Tab 5
22 of the book of documents, if you have that handy, Tab 5
23 was a document that Manitoba Hydro was gracious enough to
24 complete. This Tab 5 sets out an historic perspective on
25 the rates charged to the diesel communities, correct?

1 MR. VINCE WARDEN: Correct.

2 MR. BOB PETERS: If, Mr. Warden, you --
3 and if the Board would follow us, under the residential
4 customers looking at what is PUB/ Manitoba Hydro 9-A and
5 the chart that was prepared, if you follow under
6 "Residential" down to "Remaining Kilowatt Hours," this
7 line is to represent kilowatt hours that are over and
8 above the two thousand (2,000) kilowatt hour block of
9 energy that we've talked about in diesel communities?

10 MR. VINCE WARDEN: That's right.

11 MR. BOB PETERS: And I think as Mr.
12 Anderson may have mentioned in one of his comments this
13 morning, prior to ni - prior to 2003, there really wasn't
14 a two thousand (2,000) kilowatt hour per month block. It
15 was unlimited power available at five point one six
16 (5.16) cents per kilowatt hour.

17 Do you accept that?

18 MR. VINCE WARDEN: Yes.

19 MR. BOB PETERS: And then what -- what
20 the Board will see following across that line of
21 remaining kilowatt hours under the residential customer,
22 is that the Board approved a rate of seventy-nine (79)
23 cents for, I guess, the remaining kilowatt hours in the
24 block that was going to be used and that was the rate Mr.
25 Anderson referred to as being significant in -- in

1 essence of getting somebody's attention and causing the
2 parties to focus on some of the mediation and settlement
3 discussions.

4 MR. VINCE WARDEN: Correct.

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

13 MR. VINCE WARDEN: Yes.

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

17 Would that be fair to say?

18 MR. VINCE WARDEN: That's correct.

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

23 Would you agree with that?

24 MR. VINCE WARDEN: Yes, I would.

25 MR. BOB PETERS: And this application you

1 have before the Board is the first time Manitoba Hydro in
2 the diesel zone has gone away from a first cos -- a full
3 cost rate and is now talking about a tail block rate of
4 forty-five (45) cents?

5 MR. VINCE WARDEN: Yes.

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

11 MR. VINCE WARDEN: Right.

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

16 MR. VINCE WARDEN: Yes.

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

24 MR. VINCE WARDEN: Okay, Mr. Peters, I'll
25 accept that.

1 MR. BOB PETERS: Certainly. Just on the
2 -- the Chairman asked for some policy considerations. Up
3 until now, Manitoba Hydro has been having the consumers
4 who use more than two thousand (2,000) kilowatt hours a
5 month pay for the full and actual cost, as calculated by
6 Manitoba Hydro.

7 You've agreed with me on that?

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

10 MR. BOB PETERS: Cer --

11 MR. VINCE WARDEN: I'm sorry.

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

17 MR. VINCE WARDEN: Yes.

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

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

25 MR. BOB PETERS: You'd agree then, from a

1 policy perspective, you -- Manitoba Hydro was retrenching
2 on that position?

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

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

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

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

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

1 through the -- through the products that they -- they
2 sell in those communities.

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

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

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

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

25 MR. BOB PETERS: Does Manitoba Hydro know

1 for a fact whether the -- the general service customers
2 reduced their product costs to consumers, or their
3 service costs to consumers, when the Board ordered the
4 rate dropped from seventy-nine (79) cents down to thirty-
5 six (36) cents?

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

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

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

25 So, therefore, it -- it is likely that we

1 would still set the rate at forty-five (45) cents per
2 kilowatt hour for the tail block rate, based on the way
3 that rate was constructed. As -- as mentioned, it was a
4 2.9 percent per year increase from the date of the last -
5 - last rate increase.

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

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

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

25 MR. VINCE WARDEN: That was the plan,

1 yes.

2 MR. BOB PETERS: And the plan also
3 included that the capital expenditure costs would be
4 negotiated and paid offline and out of the regulatory
5 forum? It would be contractually agreed between
6 yourselves and the parties who you felt were obligated to
7 pay?

8 MR. VINCE WARDEN: Yes.

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

13 That's one of the points, correct?

14 MR. VINCE WARDEN: Yes.

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

18 MR. VINCE WARDEN: Yes.

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

22 MR. VINCE WARDEN: Other revenue, yes.

23 MR. BOB PETERS: And the third obligation
24 was to consult with the First -- the First Nations and
25 INAC, MKO about capital going forward so that there were

1 no surprises?

2 MR. VINCE WARDEN: Yes. There was also
3 an obligation, as part of the settlement agreement --
4 tenta - tentative settlement agreement, to settle the
5 outstanding surcharge bill -- billings. I believe the
6 amount was \$3.2 million.

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

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

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

18 MR. VINCE WARDEN: Including interest,
19 yes.

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

23 MR. VINCE WARDEN: Correct.

24 MR. BOB PETERS: Am I correct to say that
25 as of -- all of the obligations that existed as of May

1 the 1st or March 31st of 2004, everything that was on the
2 books and had to be resolved up to that point in time,
3 has been resolved?

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

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

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

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

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

22 MR. BOB PETERS: And...

23

24

(BRIEF PAUSE)

25

1 MR. BOB PETERS: And that wasn't a pre-
2 2004 capital expense that was even contemplated to be
3 covered by the tentative settlement agreement?

4 MR. VINCE WARDEN: That's correct.

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

10 MR. VINCE WARDEN: Yes.

11 MR. BOB PETERS: So the problem that --
12 that the Board sees, and the Chairman referred to in his
13 opening comments, seem to reflect what's happened post-
14 2004, specifically with the payment of capital costs.

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

18 MR. BOB PETERS: Well, I don't know.
19 \$4.39 million, I know it's -- it's a -- it -- it -- it's
20 a -- it's a -- it's not a huge dollar figure in -- in --
21 in matters, but it seems to be a stumbling block, and I
22 also know, Mr. Warden, and I -- I'm -- I respect that
23 Manitoba Hydro does not want to negotiate on the public
24 record.

25 You'd agree with that?

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

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

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

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

21 MR. VINCE WARDEN: You know, I -- I
22 believe -- first let me say that the -- the changes
23 between those agreements were -- were relatively minor in
24 nature, and I believe the agreement we're talking about
25 signing is 2007.

1 So, it's one (1) of those.

2

3

(BRIEF PAUSE)

4

5

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

9

MR. BOB PETERS: Would -- would --

10

MR. MICHAEL ANDERSON: Mr. Peters --

11

MS. PATTI RAMAGE: If I could help here.
12 It was subpoenaed in 2009, and it was filed January,
13 2010.

14

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

17

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

20

I was, over that period of time, pardon me
21 for being away, speaking with MKO legal counsel and Chief
22 Dan Tuzi (phonetic) just to bring them up to speed on the
23 morning's activities, of course. The document that I had
24 spoken to Mr. Warden that we have instructions to sign,
25 are those related to the authorizations to flow the

1 money, which would be the December 2004 joint common
2 draft given to the Board in confidence, as it was
3 modified on July 24th, 2007 between the parties.

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

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

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

22

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

24 --- Upon resuming at 1:20 P.m.

25

1 THE CHAIRPERSON: Okay. Welcome back,
2 everyone. Mr. Peters, you want to --

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

4

5 CONTINUED BY MR. BOB PETERS:

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

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

15 Have I got that right?

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

22 Therefore, no, it does not appear that
23 we're quite on the same page. There -- it would appear
24 that there may be one (1) or two (2) clauses that are
25 still causing some difficulty for MKO, and therefore

1 they're not prepared to -- to sign the agreement as early
2 as -- the other parties certainly are willing to sign,
3 but -- very disappointing, but the one (1) party does not
4 appear ready yet.

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

10

11 (BRIEF PAUSE)

12

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

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

19 Would that be correct?

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

24 MR. BOB PETERS: Okay. Put it -- put it
25 another way. Is it Manitoba Hydro's understanding that

1 INAC could flow money to Manitoba Hydro directly, or does
2 INAC have to flow it through MKO?

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

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

16 MR. VINCE WARDEN: Yes.

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

21 Would you agree with that?

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

1 this Board in confidence.

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

7

8 (BRIEF PAUSE)

9

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

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

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

25 MR. VINCE WARDEN: Not at this point. In

1 terms of resolving the outstanding issues with respect to
2 capital, no, no, I -- I can't do that.

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

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

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

11 MR. VINCE WARDEN: No.

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

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

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

22 MR. VINCE WARDEN: With -- with the
23 exception of improvements required to communication and
24 coordination, yes, but we -- we can do a better job than
25 we have in the past.

1 MR. BOB PETERS: And you seem to be
2 indicating that Manitoba Hydro will be doing a better job
3 in the future through the committee that Mr. Cox is going
4 to be chairing, or at least, on.

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

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

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

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

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

24

25 (BRIEF PAUSE)

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

7 Would you agree with that?

8 MR. VINCE WARDEN: Yes.

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

12 MR. VINCE WARDEN: Yes.

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

20 MR. VINCE WARDEN: I believe there is
21 some clarification that -- that could be added to the
22 tentative settle -- settlement agreement to avoid any
23 misunderstanding in the future. But I do believe too
24 that all parties understand now the interpretation of the
25 agreement, and revising the agreement to reflect perhaps

1 better wording isn't -- isn't critical, and certainly
2 Manitoba Hydro would not hold up the signing of the
3 agreement for that reason.

4

5 (BRIEF PAUSE)

6

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

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

12

13 CONTINUED BY MR. BOB PETERS:

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

17

18 (BRIEF PAUSE)

19

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

25 MR. BOB PETERS: Mr. Warden, sitting

1 where you are with the knowledge you have and your
2 expectation that the signing of this document is
3 imminent, if it was signed yesterday in the form that you
4 expect it to be signed, would that necessitate any
5 changes to the application you have before this Board?

6 MR. VINCE WARDEN: No, it would not.

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

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

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

25 MR. VINCE WARDEN: That's right. It

1 won't resolve, but it certainly -- again, I -- I'm quite
2 confident that those issues will be res -- resolved soon.

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

8 MR. VINCE WARDEN: I -- I can confirm
9 that, yes. The -- the tentative settlement agreement
10 only refers to the accumulated deficit as at March 31st,
11 2004.

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

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

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

23 MR. VINCE WARDEN: Mr. Peters, maybe I
24 should back up on that previous question. I -- I -- my
25 answer was that operating costs would be recovered

1 through rates. Deficits, not necessarily. There's no
2 reference to deficits in the tentative settlement
3 agreement.

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

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

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

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

21 MR. VINCE WARDEN: In this application,
22 and since the last rates were approved in January 1st,
23 2007, yes.

24 MR. BOB PETERS: And even before that
25 there was a -- an operating deficit, was there not?

1 MR. VINCE WARDEN: That's correct --

2 MR. BOB PETERS: And --

3 MR. VINCE WARDEN: -- yes.

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

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

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

22 MR. BOB PETERS: Mr. Warden, at Tab 13 of
23 the book of documents that's been prepared and marked as
24 PUB-Exhibit 3, at Tab 13 is the PUB/MANITOBA HYDRO-
25 31AInformation Request, talking about accumulated

1 deficits.

2 And the dollar amount -- and b) the dollar
3 amount of that accumulated deficit is about \$7.1 million,
4 \$7 million, to the end of '09/'10?

5 MR. VINCE WARDEN: Yes, I see that.

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

10 MR. VINCE WARDEN: Yes.

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

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

22 So in the past, that -- that cost has been
23 quite volatile. It's possible it will go down again and
24 a surplus will accrue, but -- but we're not consciously
25 going to be trying to recover that in -- any kind of a

1 deficit in future rates, subject, of course, to the
2 approval of this Board.

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

7 Are you okay with -- comfortable with that
8 number?

9 MR. VINCE WARDEN: Okay.

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

14 MR. VINCE WARDEN: Yes.

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

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

22 MR. VINCE WARDEN: No, and I - I -- I
23 should be clear on that. Manitoba Hydro has never really
24 accumulated a deficit on its books. It was -- it was --
25 any surplus or deficit res -- arising from the service to

1 diesel communities was taken into net income, corporate
2 net income, of the period. So there is not an
3 accumulation, per se, that -- that is referenced on -- on
4 the balance sheet of Manitoba Hydro.

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

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

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

24 MR. BOB PETERS: And it's also been
25 reflected in the integrated financial forecasts that are

1 provided to this Board?

2 MR. VINCE WARDEN: Yes.

3 MR. BOB PETERS: And before I leave this
4 topic, at Tab 14 of the book of the documents, the Board
5 would see the -- the breakdown by year of the revenue
6 deficiency. And in the approximate middle of the page
7 there's an annual revenue deficiency line, and if you add
8 up that line, it comes out to -- I guess that's the
9 number that you and I have been talking about in terms of
10 the operating deficit that would be carried forward since
11 '04?

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

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

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

24 MR. BOB PETERS: When we talk about
25 capital expenditures of what Manitoba Hydro is seeking to

1 recover, I think Tab 9 of the book of documents contains
2 a couple of charts that maybe the Board and you could
3 look at; Mr. Wiens as well, as he testified towards this
4 -- to this matter.

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

12 But in turning first of all to the second
13 page of the document in Tab 9 of the PUB's book of
14 documents, there is a schedule of capital additions from
15 2005 to 2010, and certain items have been crossed out by
16 Manitoba Hydro in filing this response.

17 Would that be correct?

18 MR. ROBIN WIENS: That's correct.

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

24 MR. ROBIN WIENS: You said the key words,
25 Mr. Peters. At this time we're not seeking to include

1 them in rates --

2 MR. BOB PETERS: Well --

3 MR. ROBIN WIENS: -- in this application.

4 MR. BOB PETERS: And -- okay. Well,
5 then, let's deal with the very last -- second last item
6 on the page, the capital contribution from INAC Tadoule
7 Lake genset.

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

10 MR. ROBIN WIENS: That's correct.

11 MR. BOB PETERS: You're not looking for
12 more money on that account?

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

14 MR. BOB PETERS: Then -- and that genset
15 is the -- it's the same item that's under the Tadoule
16 Lake breakout of new genset, and that's the same item?
17 You've crossed it out there as well.

18 MR. ROBIN WIENS: Yes.

19 MR. BOB PETERS: Now, let's -- let's go
20 up to Brochet and look at the Fall Arrest Program.
21 Remind the Board what a fall arrest program is. Mr. Cox,
22 eyes are coming your way.

23 MR. ROB COX: It's -- it's -- it's simply
24 a system that's set up so -- to prevent falls by people
25 working at heights in the diesel generating station,

1 particularly when they are, as I understand it, going on
2 the top of the tanks to measure the level of the
3 available diesel fuel in the tanks. We have a fall
4 arrest protection system. Don't ask me how it works
5 though.

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

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

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

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

18 MR. BOB PETERS: It's excluded --

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

25 MR. BOB PETERS: My recollection of the

1 evidence, and I'm sure Ms. Hart will have her hands on it
2 more accurately than mine. But, basically, is INAC
3 telling Manitoba Hydro that that's for protection of
4 Hydro workers, so you shouldn't be charging that through
5 to -- through -- through to INAC?

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

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

25 Certainly these costs are -- are to

1 can ask some of the INAC -- perhaps Mr. Mills, for -- for
2 INAC's position on that, but did I summarize it perhaps
3 too quickly or too succinctly, but what's coming back to
4 Manitoba Hydro is that this is a cost for -- expended for
5 your employ -- for Manitoba Hydro employees and it
6 shouldn't be added into diesel community costs?

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

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

17 MR. VINCE WARDEN: Absolutely.

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

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

24

25 CONTINUED BY MR. BOB PETERS:

1 MR. BOB PETERS: So why is safety --
2 safety costs an issue for INAC, according to Manitoba
3 Hydro's understanding?

4 I'll withdraw the question. I'll perhaps
5 put that to Mr. Mills.

6 While we're on that sheet, I see soil
7 remediation is -- is also shown as an expense in the
8 Brochet community. And Mr. Wiens, you talked in your
9 direct evidence to Ms. Fernandes, of about I -- I wrote
10 down \$3.4 million; that doesn't quite correspond, but
11 that's the same item, is it?

12 MR. ROBIN WIENS: That is the same item.

13 MR. BOB PETERS: All right. And at this
14 point in time, again, Manitoba Hydro has not reached an
15 agreement with INAC as -- as to payment for that money.

16 MR. ROBIN WIENS: There is no agreement.

17 MR. BOB PETERS: And there are
18 negotiations?

19 MR. ROBIN WIENS: There have been in the
20 past. There have not been in -- in recent years.

21 MR. BOB PETERS: All right. And because
22 of that -- because Manitoba Hydro is not getting paid
23 that money, the capital incurred, it's now resorted to
24 including interest in depreciation in rates to try to
25 keep itself more whole?

1 MR. ROBIN WIENS: That is correct.

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

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

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

17 Would you like the page?

18

19 (BRIEF PAUSE)

20

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

25 The material that I have been able to

1 review during this process leading up to this hearing
2 suggested that there were some sites that -- that were
3 actually included and specified in the agreement and
4 others were -- negotiations were carried out, at least to
5 some extent, under the general aegis of that agreement.

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

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

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

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

25 MS. GLYNIS HART: Yes.

1 MR. ROBERT MAYER: -- last time we had
2 one of these hearings? I bet you not, hey?

3 MS. GLYNIS HART: Yes.

4 MR. BOB PETERS: Just on that --

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

7 MR. BOB PETERS: Just on that point, Mr.
8 Vice-Chair, I think Ms. Hart is offering to file it as an
9 --

10 MS. GLYNIS HART: Make the agreement --

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

13 MS. GLYNIS HART: -- available.

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

17 MS. GLYNIS HART: Thank you.

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

21

22 CONTINUED BY MR. BOB PETERS:

23 MR. BOB PETERS: Just on the soil
24 remediation, Mr. Wiens, you've been clear that may --
25 there may have been discussions in past, there are none

1 currently and none scheduled, so this remains an open
2 item for which there's been no resolution?

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

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

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

17 MR. ROBIN WIENS: No, that's not quite --
18 quite correct. The percentages change from year to year,
19 and the trend for INAC, or consumption by -- by customers
20 that would be considered within INAC's purview has tended
21 to go up as a percentage of the total. But if you're
22 looking back at the percentages that we incorporated into
23 the minutes of settlement, or that we discussed at the
24 time of the minutes of settlement, to be more precise,
25 INAC was looking at 69 percent.

1 The other 10 percent, leading to the 79
2 percent which you referenced, would have been other
3 government parties, Federal and provincial.

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

7 MR. ROBIN WIENS: That's right.

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

11 MR. ROBIN WIENS: Manitoba Hydro accepted
12 that responsibility.

13 MR. BOB PETERS: All right. Has the
14 Provincial Government paid its share of the capital post-
15 2004?

16 MR. ROBIN WIENS: No.

17 MR. BOB PETERS: Why not?

18 MR. ROBIN WIENS: Well, it would be
19 because we have not approached the Provincial Government
20 to do so. Our intent, going forward, was that we wanted
21 to have a -- a good working system of consultation with
22 the principal client, which was First Nations/INCA,
23 before bringing the other parties, which include the
24 other Federal departments, as well as the provincial
25 departments, into that discussion. And that did not

1 happen.

2 MR. BOB PETERS: Can it happen anytime?

3 MR. ROBIN WIENS: I would -- I -- I
4 wouldn't say that it could not happen in the future. As
5 Mr. Warden said, we are confident we can get these
6 discussions back on track, and at that point, we can
7 bring the other parties into the discussion.

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

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

16

17 (BRIEF PAUSE)

18

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

25 MR. ROB COX: That is correct.

1 MR. BOB PETERS: And that since 2008
2 Manitoba Hydro has been able to offer a targeted Power
3 Smart program towards First Nations' customers.

4 Is that correct?

5 MR. ROB COX: That's correct.

6 MR. BOB PETERS: And that program has had
7 the benefit of leveraging some monies available through the
8 affordable energy fund, and any other sources that are
9 available.

10 MR. ROB COX: That's correct.

11 MR. BOB PETERS: Now, while your evidence
12 talks about doing audits in, I think, 2008, and all home
13 audits in 2009, is it correct that to-date of all the
14 audits done, only ten (10) homes in the Brochet community
15 have been retrofitted with the recommendations of the
16 audit?

17 MR. ROB COX: Actually, it's Lac Brochet
18 that has done ten (10) homes. And we have audited ten
19 (10) homes in each of the other three (3) communities.
20 But Brochet is -- Lac Brochet is the only one that has
21 actually installed the -- the measures that we provided
22 to them.

23 MR. BOB PETERS: Have you provided the
24 physical improvement material to the other three (3)
25 communities for the other ten (1) homes?

1 MR. ROB COX: We're in the process now
2 with Brochet of getting some quotations on what material
3 is needed, and then that will be provided to them. The
4 other two (2) sites, we have given them reports on -- on
5 the results of the audits and are waiting for them to
6 come back to us to say, yes, they would like to proceed
7 with this.

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

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

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

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

22 MR. BOB PETERS: And on the commercial
23 side, the only community that has taken up the Power
24 Smart Program is in Shamattawa, where they did a
25 commercial lighting upgrade?

1 MR. ROB COX: That is correct.

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

4 MR. ROB COX: No.

5 MR. BOB PETERS: You take issue with the
6 suggestion by one (1) of INAC's consultants that an
7 energy management program could ramp up to 20 percent of
8 -- 20 percent savings of energy consumed? You don't
9 agree with that, do you?

10 MR. ROB COX: That's correct.

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

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

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

20 MR. ROB COX: That is correct.

21 MR. BOB PETERS: And of the savings that
22 you've targeted to date, is the Board correct that you
23 believe that 6 percent of the energy requirements of the
24 community have been met through DSM measures, but of that
25 6 percent, only 23 relates to residential customers.

1 MR. ROB COX: That 6 percent is province
2 wide. It's not just in the communities. So that's
3 province wide, so, yes, 6 percent in total is our Power
4 Smart savings.

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

8 MR. ROB COX: Not yet.

9

10 (BRIEF PAUSE)

11

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

17

18 (BRIEF PAUSE)

19

20 MR. BOB PETERS: Yes, it's seven (7)
21 pages from the front of the tab and it's -- it's the page
22 3 of 3 at the bottom to PUB/MANITOBA HYDRO-28A.

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

25 MR. ROB COX: Yes, I have.

1 MR. BOB PETERS: When you said that ten
2 (10) houses have been audited in each of the communities,
3 it appears that only from '08 to '09 only twenty (20)
4 homes in total were inspected.

5 Is that number in error?

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

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

10 MR. ROB COX: We did do some additional
11 ones in March of 2010. March -- April. April. Sorry,
12 it would have been -- they would be showing up on the
13 2010/2011 fiscal year.

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

18 Have you got that chart?

19 MR. ROBIN WIENS: Yes.

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

1 MR. ROBIN WIENS: That would be correct,
2 yes.

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

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

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

12

13 (BRIEF PAUSE)

14

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

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

19 MR. ROBIN WIENS: That would be fair.

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

23 What would some of those other reasons
24 possibly be?

25 MR. ROBIN WIENS: Well, Mr. Peters, this

1 -- this is a standard type of table that Manitoba Hydro
2 produces to look at bill impacts, and the categories we
3 use for residential are two hundred and fifty (250),
4 which really means customers using less than two hundred
5 and fifty (250), and, similarly, seven hundred and fifty
6 (750), customers using less than seven hundred and fifty
7 (750). So when you get up to the five thousand (5,000),
8 that is customers using less than five thousand (5,000).

9 So, yes, they may well be some that use as
10 much as four thousand nine hundred and ninety-nine
11 (4,999) kilowatt hours, but that's not for certain. We'd
12 have to go back and look at the detail to see if that
13 maybe wasn't ten (10) customers using between two
14 thousand (2,000) and twenty-five hundred (2,500) kilowatt
15 hours.

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

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

1 filed.

2 Do you recall a question similar to that?

3 MR. ROBIN WIENS: I do recall.

4 MR. BOB PETERS: And your answer was --
5 I'll take it as a qualified, Yes, that's correct,
6 although you sometimes have a dif -- distinction between
7 -- some customers may some months use more than two
8 thousand (2,000), but not everybody uses more than two
9 thousand (2,000)?

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

18 So in terms of the number of bills, about
19 10 percent of them were over two thousand (2,000); in
20 terms of the number of customers who go over at least
21 once a year, that figure is considerably higher, and I
22 would give you this, subject to check, but it's in the
23 order of 25 percent.

24 MR. BOB PETERS: And so that -- that
25 answer is that, if -- if we assume those numbers are

1 correct, Mr. Wiens, 25 percent of the customers would be
2 affected by a rate increase, because they have an
3 obligation for the -- for the tail block portion of the
4 rate that you're asking for?

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

9 MR. BOB PETERS: All right. And the
10 second page at book of documents, Tab 18, is a Manitoba
11 Hydro response to PUB Question 184, which I believe we
12 took from the -- from the General Rate Application
13 filing. And my chart on my page has colour on it. I'm
14 just hoping that I reproduced colour for everybody.

15 But you've got that, Mr. Wiens?

16 MR. ROBIN WIENS: Yes, I do.

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

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

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

1 last major project.

2 Isn't that correct?

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

5 MR. BOB PETERS: Okay.

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

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

10 MR. ROBIN WIENS: No.

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

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

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

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

24 MR. BOB PETERS: And that's what you'd
25 expect because many of those homes would be converted to

1 electric space heat?

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

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

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

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

16
17 (BRIEF PAUSE)

18
19 MR. ROB COX: Can you ask that question
20 again, please?

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

23 MR. ROB COX: Only in that if you do
24 happen to have a space heater that you're throwing
25 clothes on top of, you could have a fire, yes. But from

1 an electrical point of view, from a electrical panel
2 point of view, that -- that piece of equipment is
3 protected by the electrical panel.

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

7 MR. ROB COX: It would --

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

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

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

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

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

25 MR. ROB COX: No, we don't police it.

1 MR. BOB PETERS: And space heaters are
2 available for sale in the hardware stores?

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

5 MR. BOB PETERS: Any --

6 MR. ROB COX: And --

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

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

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

20 MR. ROB COX: Only if there was some
21 problems with our service wires coming from the pole to
22 the house where you're overloading the service wires, and
23 they might melt and fall down, or it would be something
24 with the extra load causing something to trip, or to
25 cause an outage.

1 MR. BOB PETERS: Does Manitoba Hydro
2 suspect that there are consumers in the diesel zone that
3 have more than a 60 amp service in their home?

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

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

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

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

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

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

22 MR. ROB COX: When we would install the
23 service to the commercial business we would size the
24 wires correctly so that they could handle that kind of
25 load.

1 (BRIEF PAUSE)

2

3 MR. BOB PETERS: Is it possible, Mr. Cox,
4 that Manitoba Hydro could string some new wires so that
5 the diesel residential customers could go from 60 amp to
6 100 amp service?

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

10 MR. BOB PETERS: Your --

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

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

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

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

25 MR. ROB COX: Having been somewhat

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

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

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

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

24 MR. BOB PETERS: Now that you say that,
25 Mr. Warden, would I be correct, and certainly in the ball

1 park, that if one was to burn diesel fuel directly as a
2 heat source, as an energy source, the efficiency would be
3 approximately 70 percent; whereas if you run that diesel
4 fuel through a generator to produce electricity to
5 produce heat your efficiency is down to 30 percent?

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

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

11

12 (BRIEF PAUSE)

13

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

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

19 MR. VINCE WARDEN: Yes.

20 MR. BOB PETERS: And in relative terms --
21 help me out here, the greenhouse gas emissions from the
22 combined four (4) diesel generators would be a small
23 fraction of what would belch out of Brandon or Selkirk if
24 they were up and running as -- I guess your only coal
25 plant -- or, your only coal plant is Brandon now.

1 \$250 million is the number that we've used.

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

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

15 The -- the diesel communities --

16 MR. ROBERT MAYER: Mr. --

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

19 MR. ROBERT MAYER: Mr. Warden, I've been
20 to those communities. I have been to the -- what I would
21 refer to as the remote communities connected to -- to the
22 -- your grid and Shamattawa, and in one (1) case, I
23 actually paddled from God's River, which is connected to
24 your -- to your land line, to Shamattawa, which is not.
25 I did that journey in six (6) days.

1 And I'm really having trouble when you
2 tell me, and I read it in your material, that you need
3 diesel backup in Shamattawa if you had a land line, but
4 you don't need it in God's River, when God's River is
5 sitting on the east side of God's Lake, subject to every
6 piece of wind that comes across that very windy lake. So
7 I don't understand why -- how -- how those two (2)
8 communities, being as close as they are related, actually
9 sitting on the same river, and Shamattawa just being a
10 couple of -- about 200 kilometres northeast of God's
11 River, I don't understand why one (1) would have to be
12 worr - you would have to worry about diesel backup and
13 one (1) you do not.

14 Could somebody tell me why -- how they
15 differ.

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

1 the community.

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

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

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

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

21 MR. VINCE WARDEN: Mr. Mayer, we're
22 probably getting beyond the expertise of this panel. I
23 am relying on the evidence that was put forward, or at
24 least the information -- not evidence necessarily, but
25 information -- that was put forward by the people that

1 conducted those studies. I -- I can tell you, though,
2 that -- that with a land line -- and I -- I -- and this
3 certainly seemed logical to me -- with a land line, there
4 are going to be issues with respect to weather related
5 outages. That happens with all land lines.

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

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

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

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

20 MR. ROBERT MAYER: I understood that,
21 sir, but I did read your evidence about the back --
22 diesel backup. And, quite frankly, with the -- with the
23 communities connected in the North Central Project, many
24 of them differ very little in terms of the environment
25 surrounding them than surrounds the environment of

1 Shamattawa. I just didn't understand why one (1) would
2 need diesel backup and the other didn't.

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

6
7 --- UNDERTAKING NO. 1: Manitoba Hydro to indicate
8 why one (1) town can joined
9 to the grid without a diesel
10 backup while another in the
11 same area must have a diesel
12 backup

13

14 CONTINUED BY MR. BOB PETERS:

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

21 I'm on page 9, and I just wanted to
22 confirm on the record that -- I'm not changing anything
23 you've said -- but the capital cost estimate to construct
24 a transmission line to Brochet, Lac Brochet, and Tadoule
25 Lake ranged from 94 million to \$178 million, and the

1 capital cost to connect Shamattawa ranged from \$41
2 million to \$77 million. Those were in 2006 nominal
3 dollars.

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

8 MR. VINCE WARDEN: Correct.

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

14 Can you provide the Board with any update
15 on that?

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

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

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

24 MR. BOB PETERS: Then I won't suggest the
25 answer. But -- I'm not sure anything turns on it, but

1 they -- the proposal to the Federal Government Green
2 Initiative Fund was -- was not for all the communities?
3 It was for -- for a select one (1) or more communities,
4 correct? It wasn't for all of them?

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

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

11 MR. VINCE WARDEN: There are not, no.

12 MR. BOB PETERS: All right. Thank you.
13 I want to just change gears a little bit and turn to Tab
14 3 of the book of documents, if I could. And at Tab 3 of
15 the book of documents you show the Board the current
16 revenues from current rates as well as the proposed rates
17 and revenues that would arise; and the calculation can be
18 done -- Tab 3. We're looking at Schedule 2 of Manitoba
19 Hydro's application.

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

22 MR. BOB PETERS: And this application, if
23 approved, will generate an additional \$1.134 million to
24 the corporation by subtracting those two (2) numbers on
25 the bottom line, one (1) from the other?

1 MS. ROBIN WIENS: That looks correct,
2 yes.

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

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

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

14 MS. ROBIN WIENS: Yes.

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

18 MS. ROBIN WIENS: Yes.

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

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

25 MR. BOB PETERS: No, I accept that, Mr.

1 Wiens, and if there's any errors on it, they're mine.

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

5 Are you aware of that?

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

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

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

18 MR. ROBIN WIENS: Well, Mr. Peters, I
19 don't have the numbers in front of me, but it would not
20 be very difficult for us to go back and obtain the
21 numbers that relate to the different categories of
22 customer that -- which INAC has an interest. And it may
23 very well total that number, or something very close to
24 it. I'm not sure that I'm qualified to answer whether
25 that is INAC's increase.

1 language?

2 MR. ROBIN WIENS: Well --

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

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

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

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

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

19 MR. ROBERT MAYER: We -- we had this
20 discussion, I think, yesterday, and we talked about the
21 issue of Frontier School Division in Brochet, which I --
22 I expect you would have metered the school, the
23 teacherages, and whatever other particular buildings may
24 have been owned, operated, or leased to Frontier School
25 Division.

1 And you would show each meter as being a -
2 - an account, or would you lump them all together as
3 Frontier School Division?

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

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

14

15 CONTINUED BY MR. BOB PETERS:

16 MR. BOB PETERS: All right. And on the
17 Federal Government and First Nation's education accounts,
18 the majority of those relate to schools, and teacherages,
19 and the infrastructure to support education.

20 Is that correct?

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

24 MR. BOB PETERS: Sure. And when we talk
25 about education, a teacherage, is that -- would the Board

1 be correct in understanding that is the residence in
2 which a teacher would be living?

3 MR. ROBIN WIENS: That would be correct.

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

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

10

11 CONTINUED BY MR. BOB PETERS:

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

15 MR. ROBIN WIENS: No.

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

18

19 (BRIEF PAUSE)

20

21 MR. BOB PETERS: In terms of the moving
22 of the Provincial Government to general service customers
23 --

24 THE CHAIRPERSON: Before you move on --

25 MR. BOB PETERS: Yeah.

1 THE CHAIRPERSON: -- Mr. Peters, let's
2 take our break because there's something we -- we wanted
3 to think about.

4 MR. BOB PETERS: All right.

5
6 --- Upon recessing at 2:34 p.m.

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

8
9 THE CHAIRPERSON: Okay. Welcome back
10 everyone. By the way, tomorrow morning, if you wouldn't
11 mind noting it, we're going to start at 9:15 because
12 we've got another engagement, but we will definitely be
13 able to sit from 9:15. So if people can do something
14 else for an extra fifteen (15) minutes.

15 Bob...?

16 MR. BOB PETERS: Yes, thank you.

17

18 CONTINUED BY MR. BOB PETERS:

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

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

25 MR. BOB PETERS: What does Manitoba Hydro

1 understand to be the reason that that funding wouldn't
2 occur?

3 MR. VINCE WARDEN: I think there were --
4 Mr. Peters, I'm going a little bit by memory here, but I
5 think there was some concerns about the cost of -- cost
6 versus the population being served, in -- in simple
7 terms.

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

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

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

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

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

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

25 MR. BOB PETERS: And the same principle

1 was being considered by Manitoba Hydro when looking at
2 extension of the -- the land lines.

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

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

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

14 MR. BOB PETERS: The practicality is the
15 dollar?

16 MR. VINCE WARDEN: Yes.

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

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

1 reasons.

2 MR. BOB PETERS: All right. But the --
3 the amenities, or the -- the quality of life as it
4 relates to things that electricity brings to the
5 community wouldn't be there in the diesel zone to the
6 same extent they would be in other communities connected
7 to the grid?

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

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

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

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

22 MR. VINCE WARDEN: Well, having a higher
23 capacity of electricity available in those communities is
24 not the primary -- economic development within those
25 communities has not been the primary driver for -- for

1 that.

2 MR. BOB PETERS: Is there sufficient
3 electricity there for economic development?

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

7 MR. BOB PETERS: Yeah.

8 MR. VINCE WARDEN: -- new mine? No. But
9 does it support an expansion of the grocery store?
10 Probably.

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

15

16 (BRIEF PAUSE)

17

18 MR. VINCE WARDEN: Yeah, I think that's a
19 fair assumption, Mr. Peters, but nobody's told me that
20 directly, but...

21 MR. BOB PETERS: When you say that you
22 can't make a business case for expanding land lines into
23 the four (4) communities that comprise the diesel zone,
24 is that the reason that the North Central line was not
25 extended to these communities in the first place?

1 MR. VINCE WARDEN: Well, the North
2 Central -- the communities of the North Central are
3 located some distance from these four (4) communities.
4 The North Central Project required significant
5 contribution by Federal and Provincial Governments to
6 make it viable. To my knowledge, there was never any
7 thought of extending the North Central project to include
8 Shamattawa, for example.

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

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

23 MR. BOB PETERS: The other reasons you
24 talk about would be -- well, you -- you put those as
25 social reasons as to why you'd exte -- expand the line if

1 the dollars and cents wasn't going to be returned to the
2 corporation for doing that?

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

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

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

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

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

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

21 MR. VINCE WARDEN: Yes.

22 MR. BOB PETERS: And I suppose you could
23 expand that and maybe make the same analogy on a utility
24 basis in our neighbouring province of Saskatchewan, where
25 they essentially put natural gas throughout rural

1 Saskatchewan? There may -- there may have been social
2 reasons that it was done or political reasons that it was
3 done, even if it didn't make economic business case?

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

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

13 MR. VINCE WARDEN: Well, yes.

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

18 MR. VINCE WARDEN: No question.

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

23 MR. VINCE WARDEN: Yes, but it's -- it's
24 a -- it's an order of magnitude that we're talking about
25 here, I think.

1 MR. BOB PETERS: Well, when we talk
2 "order of magnitude," you're saying the order of
3 magnitude of the total expense divided by the number of
4 people who would benefit from the expense?

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

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

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

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

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

21 MR. BOB PETERS: But you would concede,
22 would you, Mr. Warden, on behalf of Manitoba Hydro, that
23 intuitively homes that have -- are well heated may lead
24 to fewer problems health-wise, than homes that are not
25 well heated?

1 MR. VINCE WARDEN: No, I -- I really -- I

2 MR. BOB PETERS: You won't --

3 MR. VINCE WARDEN: -- I really don't know
4 that for sure.

5 MR. BOB PETERS: You won't go there?

6 MR. VINCE WARDEN: No, sorry.

7 MR. BOB PETERS: You -- you don't think
8 there's a health care benefit to having access to
9 electric space heat?

10

11 (BRIEF PAUSE)

12

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

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

24 MR. BOB PETERS: But you can comment that
25 if there is such a benefit, or even if there isn't such a

1 benefit, that wasn't a factor taken into account when the
2 cost benefit study was done on extending land lines to
3 the four (4) communities in the diesel zone?

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

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

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

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

25 And if there's any clarification on that,

1 certainly through your counsel, we'd be pleased to
2 provide that to you.

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

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

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

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

25 MR. VINCE WARDEN: But, Mr. Peters, I --

1 I'm telling you that there would be -- we would have to
2 assume that if the rates -- if that restriction was not
3 there as it is today on the two thousand (2,000) -- two
4 thousand (2,000) kilowatt hours, consumption would rise
5 dramatically, as we've seen in the north central
6 communities, and how do we provide that capacity?

7 THE CHAIRPERSON: Mr. Warden --

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

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

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

22 THE CHAIRPERSON: Mr. Warden --

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

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

1 fair.

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

8 MR. VINCE WARDEN: Okay. Thank you.

9

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

20

21 MR. ROBERT MAYER: While we have a gap in
22 the -- in the questioning here, I'm looking now at a map
23 of Manitoba; am I correct, sir, that the last -- the last
24 significant extension of service by way of a transmission
25 line, excluding the new transmission lines being built

1 associated with Wuskwatim, was a transmission line that
2 extended the grid to Churchill, Manitoba?

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

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

8 MR. VINCE WARDEN: Okay.

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

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

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

21 But in any event, if I'm looking at
22 distances, and I'm looking at population, when I was last
23 in Churchill the population of Churchill was
24 approximately, I believe, six hundred (600). That may
25 have been -- and four hundred (400) voters, four (4) to

1 six hundred (600) voters. There were other kids
2 involved.

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

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

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

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

1 1983, around 1983.

2 Personally I've never been to Churchill,
3 but I know people during the course of my adult life who
4 live there, and my recollection is that the population of
5 Churchill was somewhat larger in the 1970s and early
6 1980s, that there was a port, that there was an American
7 rocket base, and that there was already beginning some
8 elements of a tourism business.

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

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

1 Fort Churchill.

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

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

11

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

17

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

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

25 MR. ROB COX: Just one (1) comment about

1 the Lynn Lake up to Brochet and Lac Brochet. There is
2 not sufficient power supply at Lynn Lake to allow us to
3 continue on, so we would have to go south of Lynn Lake
4 and bring up a different transmission line before we
5 could go north up to the -- these communities.

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

10 MR. ROB COX: Yes, that was another
11 option. We looked at two (2) different supplies, one (1)
12 from the west and one (1) from the south.

13 MR. ROBERT MAYER: And the -- in light of
14 the fact that the mining industry has suffered a
15 significant setback in Lynn Lake over the past number of
16 years, what are you doing with the -- I think it's only 3
17 or 4 megawatts coming out of Laurie River?

18 MR. ROB COX: That, I'm not sure of.
19 Sorry, I can't answer that.

20

21 CONTINUED BY MR. BOB PETERS:

22 MR. BOB PETERS: Mr. Warden, I want to
23 move to the issue of the Provincial Government accounts
24 being changed from -- excuse me -- out of the government
25 class into the general service class, and you've gone to

1 some lengths in your evidence through Ms. Fernandes to
2 indicate that there should be no negative impact by that
3 move on the Federal Government accounts, correct?

4 MR. VINCE WARDEN: Yes, correct.

5 MR. BOB PETERS: And -- and the in -- the
6 impact is about six hundred and eighteen thousand dollars
7 (\$618,000)? I'm going to look to Tab 7 of my book of
8 documents to see if I've got that number correct.

9

10 (BRIEF PAUSE)

11

12 MR. BOB PETERS: I'm going to go to
13 Schedule 4.5, at the top.

14

15 (BRIEF PAUSE)

16

17 MR. VINCE WARDEN: Mr. Peters, the -- the
18 number I was recalling was slightly higher than the six
19 eighteen (618). I believe though the -- the number is
20 seven forty-four (744), which is the sum of the
21 unrecovered provincial reve - revenue requirement of one
22 thirty five nine fifty-nine (135,959) plus the sixty (60)
23 -- six eighteen (618) number you were referring to.

24

25 MR. BOB PETERS: So seven hundred and
forty-four thousand (744,000) is the total impact of that

1 transfer on -- on the revenue recovered from the
2 customers in that area?

3 MR. VINCE WARDEN: Yes.

4 MR. BOB PETERS: And instead of
5 recovering that revenue from the customers in the area,
6 it will be recovered from the grid customers?

7 MR. VINCE WARDEN: Yes.

8 MR. BOB PETERS: And just on a point here
9 to make sure Ms. Fernandes has some -- something to do
10 tonight, as well, just looking at the lunch hour as to
11 whether or not that's -- does Manitoba Hydro have a legal
12 opinion as to that being an appropriate transaction in
13 light of Section 433.3 of the Manitoba Hydro Act?

14 What I'm getting at, Mr. Warden -- and I
15 won't ask for an answer, maybe it'll come through the
16 closing submissions -- is whether or not the funds of the
17 corporation can be employed for the purposes of the
18 government or any agency of the government that is set
19 out and whether that's what this amounts to. So I'll let
20 you take that as an undertaking, or maybe that -- Ms.
21 Fernandes will deal with that later.

22 But you will acknowledge that the
23 Government of Manitoba will be spending seven hundred and
24 forty-four thousand dollars (\$744,000) less if your
25 application is approved than they would currently be

1 paying?

2 MR. VINCE WARDEN: Yes, but it's a cost
3 allocation issue within -- within Manitoba Hydro's cost
4 of service. It -- it's not in any way, and I'm -- I'm
5 not giving a legal opinion here in any -- any -- by any
6 means, and we'll -- we'll certainly undertake to -- to
7 come back with -- with the answer on that, Mr. Peters.
8 But -- but, really, we're not -- we're not transferring
9 money to the government at all. It's -- it's just a
10 method of allocating costs between our customer base, and
11 this is a change in allocation.

12

13 --- UNDERTAKING NO. 5: Manitoba Hydro to advise if
14 they have a legal opinion as
15 to the change of Provincial
16 Government accounts from
17 government class into the
18 general service class, and if
19 they believe that is an
20 appropriate transaction in
21 light of Section 433.3 of the
22 Manitoba Hydro Act

23

24 CONTINUED BY MR. BOB PETERS:

25 MR. BOB PETERS: What you're doing though

1 is you're reducing the government costs by seven hundred
2 and forty-four thousand dollars (\$744,000), which means
3 that's -- that's money they can employ elsewhere?

4 MR. VINCE WARDEN: Well, what they do
5 with it, I guess, is their -- their prerogative. But I -
6 - I -- again, it's -- it's an allocation of Manitoba
7 Hydro's cost within its rate -- rate structure and -- and
8 not -- not a subsidy of the government.

9 MR. BOB PETERS: For Manitoba --

10 MR. VINCE WARDEN: It's seven hundred and
11 forty-four thousand dollars (\$744,000) less than they
12 would have paid -- paid under the previous methodology,
13 but that doesn't amount to a subsidy to government.

14 MR. BOB PETERS: From a summary
15 accounting perspective it's -- it's a wash on the books
16 of the province, is it not?

17 MR. VINCE WARDEN: Yes.

18 MR. BOB PETERS: Yeah.

19

20 (BRIEF PAUSE)

21

22 MR. BOB PETERS: Mr. Warden, in the book
23 of documents there is an indication that Manitoba Hydro
24 has some expectations as to future capital expenditures
25 and, specifically, I believe Tab 12 contains the capital

1 -- the five (5) year capital project forecast. And I
2 think Mr. Cox has sent this to the various communities.

3 Mr. Cox, is that correct?

4 MR. ROB COX: That is correct, yes.

5 MR. BOB PETERS: And in light of the
6 apparent difficulty Manitoba Hydro is getting and having,
7 having its capital costs since 2004 to 2010 paid, why
8 would Manitoba Hydro be embarking on a future capital
9 program when it hasn't sorted out the last five (5) or
10 six (6) years?

11 MR. ROB COX: This -- everything that's
12 in there is -- is regular type maintenance stuff that has
13 to happen to maintain the reliability of the generating
14 station.

15 MR. BOB PETERS: Has INAC agreed to fund
16 their share of it?

17 MR. ROB COX: That is all dependant on
18 the signing of the -- the Agreement. In -- in discussion
19 with INAC, I was advised that it would be best if I sent
20 it to the First Nations because they expected the First
21 Nations to be submitting capital requests through INAC
22 and they wanted to have that information in the First
23 Nations' hands.

24 MR. BOB PETERS: So presently you have no
25 -- no agreement or understanding that if you incur these

1 capital costs that Manitoba Hydro will be reimbursed,
2 even if it is for the -- keeping the generators in good
3 working order?

4 MR. ROB COX: That would be correct, yes.

5 MR. BOB PETERS: And the fire suppression
6 system, I can't go by that, Mr. Cox, without maybe
7 commenting that your estimate on that was -- was out.

8 MR. ROB COX: Yes, that's correct.

9 MR. BOB PETERS: It was out
10 substantially?

11 MR. ROB COX: It was, yes.

12 MR. BOB PETERS: And that caused some
13 difficulty in your discussions and consultations?

14 MR. ROB COX: I don't think it caused any
15 difficulties in our discussions. It maybe -- may have
16 been just a situation where we were being questioned as
17 to what kind of criteria are we using when we come up
18 with some estimates that come out at four point five
19 (4.5) and then when we actually get a firm estimate it
20 comes down to one point three (1.3); there was just that
21 question.

22 MR. BOB PETERS: All right. And so there
23 was no agreement to pay that 4.5 million and you were
24 questioned on it. And when you tried to firm it up it
25 came down to essentially a third of the cost?

1 MR. ROB COX: I don't -- we were not
2 questioned on it. What happened is, I had been providing
3 INAC with copies of the five (5) year capital plan and
4 when I sent them the most recent one, our engineers
5 involved in that project were able to firm up the price.
6 And so then when they got the most recent five (5) year
7 capital plan it was down at one point three (1.3).

8 MR. BOB PETERS: Mr. Warden, from a
9 policy perspective, other than emergency work that's
10 needed to keep the generators running, is there any
11 reason Manitoba Hydro will continue to fund capital into
12 the -- those communities without an agreement for
13 repayment?

14 MR. VINCE WARDEN: Well, as Mr. Cox has
15 indicated, all of the capital expenditures are required
16 to provide safe, reliable service to these communities.
17 So we don't incur capital expenditures unless we
18 absolutely have to. It's -- it's no different in these
19 communities than it would be anywhere else on the system.

20 So, yes -- and I -- and I indicted
21 earlier, we will be endeavouring to communicate more
22 effectively than we have the capital plans in the future
23 than -- than we have in the past. But at the end of the
24 day, these capital expenditures are required and we won't
25 be compromising the safety and reliability of the system

1 for economic -- for -- or and if these agreements aren't
2 in place. We -- having said that, I'm fully expecting
3 agreements to be in place in the future.

4 MR. BOB PETERS: But you're also saying
5 if the agreements aren't in place you're going to
6 continue to put this capital in there even though you're
7 not getting paid back?

8 MR. VINCE WARDEN: Yeah. We -- we would
9 really have little choice. I think the parties
10 understand that and I'm expecting that there will be
11 cooperation between the parties.

12 I think if we were unable to recover the
13 capital costs by way of capital contribution, then they
14 would -- we would have no choice but to incorporate those
15 costs and rates as we have done with this application for
16 a relatively small amount of capital.

17

18 (BRIEF PAUSE)

19

20 MR. BOB PETERS: If you thought ahead,
21 Mr. Warden, and I'm sure you have, in the event that the
22 INAC funding doesn't come through for these capital
23 projects, is it likely the Board's going to see you in a
24 year's time with another rate application which includes
25 interest and depreciation on capital expended in the --

1 in the current fiscal year?

2 MR. VINCE WARDEN: Yes, I think that
3 would be a fair assumption. I would be very disappointed
4 if that were to occur, but yes, that's our fallback
5 position, so to speak.

6 MR. BOB PETERS: Mr. Chairman, I've gone
7 a little longer than I had hoped, and I know it's late in
8 the day, but I thought maybe I could turn the microphone
9 over to Ms. Bowman to start her questioning.

10 I would indicate before I do that, that as
11 I -- as I look here, Ms. Hart has provided a copy of a
12 1997 diesel site remediation agreement and fifteen (15)
13 copies have been made. And with Ms. Hart's concurrence,
14 I would ask that this be marked as INAC Exhibit 4, and we
15 can circulate it amongst the parties, because I believe
16 there will be questions on it, and --

17 MS. GLYNIS HART: That's five (5).

18 MR. BOB PETERS: I'm sorry. INAC Exhibit
19 5, that is correct. Mr. Hildebrand's evidence will be
20 number 4. So, Mr. Chairman, we --

21 THE CHAIRPERSON: Very good, yes.

22

23 --- EXHIBIT NO. INAC-5: 1997 Diesel Site Remediation
24 Agreement

25

1 MR. BOB PETERS: And with that, I'll hand
2 these back to Ms. Hart and I'll provide a copy to the
3 Board as well, and turn it over to Ms. Bowman.

4 THE CHAIRPERSON: Thank you very much,
5 Mr. Peters.

6 Ms. Bowman, if you want to begin your
7 cross now, it'll be appreciated.

8 MS. MYFANWY BOWMAN: Thank you. I'll
9 just take a moment to get sorted out, Mr. Chair.

10

11 (BRIEF PAUSE)

12

13 MS. MYFANWY BOWMAN: Thank you, Mr.
14 Chairman.

15

16 CROSS-EXAMINATION BY MS. MYFANWY BOWMAN:

17 MS. MYFANWY BOWMAN: Because I'm anal
18 retentive, perhaps I'll just start by following up on a
19 question Mr. Peters was asking. And there was a
20 discussion about the cost of transferring the Provincial
21 Government accounts from the government class to the
22 general service class, and if I'm not mistaken -- and Mr.
23 Wiens probably knows by now not to trust my math -- am I
24 not correct that the cost of seven hundred and fifty-four
25 thousand (754,000), not seven hundred and forty-four

1 thousand (744,000)?

2 MR. ROBIN WIENS: We've got a fairly
3 substantial record in this matter, and we should probably
4 just check that out and make sure, but we're definitely
5 very close either way.

6 MS. MYFANWY BOWMAN: Thank you. Now, as
7 I understand it, the residential and general service
8 customers get grid rates for their first two thousand
9 (2,000) kilowatt hours to shield them, at least to an
10 extent, from the high cost of -- of diesel service.

11 Is that a fair assessment?

12 MR. VINCE WARDEN: Yes.

13 MS. MYFANWY BOWMAN: And the reality is
14 that -- that fifty-nine (59) cents a kilowatt hour is --
15 is a lot of money for electricity, and -- and the need is
16 felt to protect them from having to pay for their full
17 consumption at that level?

18 MR. VINCE WARDEN: It's a -- it's a high
19 cost, yes.

20 MS. MYFANWY BOWMAN: And that was a
21 policy decision made several years ago by all the people
22 in this room, that those residential and general services
23 customers shouldn't have to pay that cost on all
24 consumption?

25 MR. VINCE WARDEN: For the first two

1 thousand (2,000) kilowatt hours, yes.

2 MS. MYFANWY BOWMAN: And the purpose of
3 the government's surcharge is to cover off the difference
4 between -- between what it costs to serve those customers
5 and what they're actually paying?

6 MR. VINCE WARDEN: That's the purpose of
7 the surcharge, yes.

8 MS. MYFANWY BOWMAN: And until this
9 application, the Provincial Government has of course
10 contributed to that subsidy.

11 That's also true?

12 MR. VINCE WARDEN: True.

13 MS. MYFANWY BOWMAN: Can you just clarify
14 for us who exactly we're talking about when we talk about
15 Provincial Government accounts? What agencies or offices
16 would those be?

17

18 (BRIEF PAUSE)

19

20 MS. MYFANWY BOWMAN: An idea would be
21 sufficient.

22 MR. VINCE WARDEN: Well, we did talk
23 about Frontier School Division as being one (1), but I
24 think we've been -- we -- we typically do not like to
25 name customers in this proceeding, so we'd like to talk

1 about customer groups, and -- without identifying
2 specific customers. I -- I don't think that's a -- a big
3 issue for us, but if -- that would be our preference, is
4 not to get to name individual customers.

5 MS. MYFANWY BOWMAN: They would be
6 Provincial Government agencies or government departments,
7 is that --

8 MR. VINCE WARDEN: Yes.

9 MS. MYFANWY BOWMAN: -- fair?

10 MR. VINCE WARDEN: Yes.

11 MS. MYFANWY BOWMAN: Now, as I read
12 Hydro's response to Public Utilities PUB/MH-10A, and I'll
13 read you the answer:

14 "Manitoba Hydro has made the decision
15 to provide this subsidy to provide the
16 same level of support to provincial
17 services that it provides to general
18 service accounts in the diesel
19 communities."

20 Is this -- that accurate?

21 MR. VINCE WARDEN: I believe that's in
22 the book of documents, but can you --

23 MS. MYFANWY BOWMAN: It's PUB/MH-10A.

24

25 (BRIEF PAUSE)

1 MS. MYFANWY BOWMAN: That might be at Tab
2 17 of the book of documents I've actually been using.
3 There we are. It -- it's at Tab 17 of the book of
4 documents. It's the first page.

5

6 (BRIEF PAUSE)

7

8 MR. VINCE WARDEN: Yes, Ms. Bowman, we --
9 we have that here now.

10 MS. MYFANWY BOWMAN: So it's Manitoba
11 Hydro's position that Provincial Government departments
12 and Provincial Government agencies either need or deserve
13 the same level of support as general service customers?

14 MR. VINCE WARDEN: The Provincial
15 Government accounts are being charged the same rate as
16 are other cus -- non-government customers. We've
17 classified government customers as Federal Government for
18 purposes of this application. And the -- the Provincial
19 Government has been classified the same as the general
20 service class of customers, yes, as -- as you just
21 pointed out.

22 MS. MYFANWY BOWMAN: So they need or
23 deserve the same level of support. That's -- that's the
24 policy choice that Manitoba Hydro has made is what I read
25 from this answer. Am I wrong?

1 MR. VINCE WARDEN: I think you are wrong
2 in the way you're categorizing it, yes. We -- as I
3 stated in my direct, we are -- the purpose of what we're
4 doing is to segregate the Federal agencies into one (1)
5 separate rate class with all other customers being
6 treated the same.

7 MS. MYFANWY BOWMAN: So when it says
8 Manitoba Hydro has made the decision to provide the same
9 level of support to provincial services it pro -- as it
10 provides to general service accounts in the diesel
11 communities, it doesn't mean that those accounts -- that
12 -- that provincial and -- and Provincial Government
13 departments and agencies need or deserve that level of
14 support.

15 It just means that Manitoba Hydro has
16 decided to provide it?

17 MR. VINCE WARDEN: It was a decision of
18 Manitoba Hydro to provide that -- that support, yes.

19 MS. MYFANWY BOWMAN: And the purpose of
20 that decision was to distinguish those accounts from
21 accounts that funded directly or indirectly by the
22 Federal Government, is that right?

23 MR. VINCE WARDEN: Yes.

24 MS. MYFANWY BOWMAN: It would be fair to
25 say, would it not, that up until now Manitoba Hydro has

1 been able to say which accounts were and were not funded
2 by the Federal Government? It's not a big mystery, is
3 it?

4

5

(BRIEF PAUSE)

6

7 MS. MYFANWY BOWMAN: I can rephrase the
8 question. Manitoba Hydro has up till now been able to
9 identify Provincial Government accounts and Federal
10 Government accounts and tell us how many of there are --
11 of them there are in each community and so on?

12

MR. VINCE WARDEN: Yes.

13

MS. MYFANWY BOWMAN: And you've been able
14 to put them into separate lines on the tables, some of
15 the tables in your application and -- and responses?

16

MR. VINCE WARDEN: Absolutely, yes.

17

MS. MYFANWY BOWMAN: And you've been able
18 to tell us the cost of -- that this particular subsidy
19 will provide?

20

MR. VINCE WARDEN: We've done that, yes.

21

MS. MYFANWY BOWMAN: So it has been po --
22 possible to distinguish between them up until now?

23

MR. VINCE WARDEN: Yes. Well, it still
24 is.

25

MS. MYFANWY BOWMAN: And it would be

1 possible, if Manitoba Hydro were so inclined, rather than
2 moving Provincial Government accounts to a -- into the
3 general services category, to simply create two (2)
4 different categories of -- of government accounts, one
5 (1) for Federal accounts and one (1) for provincial
6 accounts. Manitoba Hydro could do that if they wanted
7 to, could they not?

8 MR. VINCE WARDEN: Absolutely.

9

10 (BRIEF PAUSE)

11

12 MS. MYFANWY BOWMAN: I'm going to ask the
13 panel to turn to the application, Schedule 3, which is
14 the bill comparisons. And I believe it was corrected in
15 one (1) of the IR -- IRs, but I don't have a reference to
16 which one. However, the tables I'm looking at will be
17 the Provincial Government ones, so I don't think that
18 that changed.

19

20 (BRIEF PAUSE)

21

22 MR. VINCE WARDEN: Yes, I think we have
23 it here.

24 MS. MYFANWY BOWMAN: So if I'm reading
25 this table correctly, depending on consumption levels,

1 the Provincial Government by this transfer will be
2 getting a rate decrease of between 72.9 and 93.5 percent,
3 depending on how much they're using?

4 Is that correct?

5 MR. ROBIN WIENS: That's correct.

6 MS. MYFANWY BOWMAN: And that for
7 provincial accounts as a whole, that translates to an
8 average rate decrease of 83.1 percent?

9 MR. ROBIN WIENS: Yes. I think we
10 discussed that recently with Mr. Peters.

11 MS. MYFANWY BOWMAN: And so the grid
12 customers will pay for the cost of that particular
13 subsidy?

14 MR. ROBIN WIENS: Yes.

15 MS. MYFANWY BOWMAN: And if I read the
16 Application correctly, it also means that, going forward,
17 Provincial Government accounts -- Provincial Government
18 customers will no longer be asked to pay for part of the
19 capital costs that are incurred in the diesel zone.

20 Is that correct?

21 MR. VINCE WARDEN: No. No, that's not
22 correct.

23

24

(BRIEF PAUSE)

25

1 MS. MYFANWY BOWMAN: I'm going to ask you
2 to turn to CAC/MSOS/MANITOBA HYDRO Number 5A. And this
3 question and answer deals with division of capital costs
4 pursuant to the tentative settlement agreement.

5 The last paragraph, as I read it, says:

6 "Manitoba Hydro assumes approximately
7 21 percent of the cost to reflect the
8 21 percent of usage that is
9 attributable to non-status residential
10 customers, and general service accounts
11 not in the name of a First Nation."

12 And here's the part that particularly
13 interested me:

14 "Since Manitoba Hydro is now proposing
15 to treat Provincial Government accounts
16 in the same way as general service
17 accounts, Manitoba Hydro's share will
18 actually rise to 25 percent."

19 Am I reading that answer correctly?

20 MR. ROBIN WIENS: You're reading it
21 correctly, yes.

22 MS. MYFANWY BOWMAN: Does that not mean
23 that the grid customers will assume the portion of
24 capital costs that would previously have been assigned to
25 Provincial Government customers?

1 MR. VINCE WARDEN: This -- it -- it was
2 not the intent. I can see how you could -- could
3 certainly get that interpretation from reading this, but
4 it is not the intent of that IR.

5 So I would -- in looking at this now, I
6 think we would probably want to modify that answer, if
7 that -- that is -- it's certainly not the intent that we
8 -- that Manitoba Hydro will be paying the capital costs
9 of the Provincial Government in the future.

10 MS. MYFANWY BOWMAN: So Manitoba Hydro
11 does intend to ask Provincial Government customers to
12 contribute to pro -- capital costs going forward?

13 MR. VINCE WARDEN: Yes.

14

15 (BRIEF PAUSE)

16

17 MS. MYFANWY BOWMAN: And at some point,
18 that answer will get corrected, or clarified?

19 MR. VINCE WARDEN: Well, I think we just
20 clarified it, Ms. Bowman. I -- I'm not sure, do you want
21 us to re-file that response? We could -- we could do
22 that, taking out that last sentence if you like, but I
23 just clarified the in -- that that is not the intent,
24 that --

25 MS. MYFANWY BOWMAN: So if -- if that's

1 not what that means, so does that mean -- then mean that
2 Manitoba Hydro's share will remain at 21 percent?

3

4 (BRIEF PAUSE)

5

6 MR. VINCE WARDEN: Based on the
7 assumptions under which this table was derived, yes,
8 Manitoba Hydro would re -- retain 21 percent of funding
9 responsibility.

10 MS. MYFANWY BOWMAN: And that's the
11 expectation going forward, as well?

12 MR. VINCE WARDEN: Well, those ratios
13 change from time to time depending on consumption levels
14 in the communities but, yes, that would be -- assuming
15 everything else stays the same, tho -- that ratio would -
16 - would be maintained going forward.

17 MS. MYFANWY BOWMAN: Thank you for
18 clarifying that. I appreciate it.

19

20 (BRIEF PAUSE)

21

22 MS. MYFANWY BOWMAN: And if I -- moving
23 further into the issue of capital -- okay, moving on,
24 pardon me, to the issue of capital costs, if I understand
25 it correctly, the reason that Manitoba Hydro is seeking

1 to include interest and depreciation on capital costs in
2 this application -- and -- and I appreciate that it's
3 only partial -- but the reason that that's being sought
4 is because of the delays in collecting customer
5 contributions. Would that be fair?

6 MR. VINCE WARDEN: Yes.

7 MS. MYFANWY BOWMAN: And would it also be
8 fair to say that those delays result in -- in carrying
9 costs for the corporation?

10 MR. VINCE WARDEN: They do.

11 MS. MYFANWY BOWMAN: And those costs, if
12 they're not passed on to diesel zone customers, are born
13 by grid customers, would that also be fair?

14 MR. VINCE WARDEN: Yes.

15 MS. MYFANWY BOWMAN: I have a couple of
16 questions about the Tadoule Lake generator set. I
17 understand that the total cost of that project was 2.19
18 million, if I'm reading the material correctly. Does
19 that sound right?

20 MR. ROBIN WIENS: I -- I believe that's
21 right.

22 MS. MYFANWY BOWMAN: And if I look at the
23 material provided in Appendix 2, Attachment 2 to the --
24 in -- in, sort of, the second binder, if I read that
25 material correctly, the First Nation was originally -- or

1 INAC, depending on how you want to think about it -- was
2 originally requested to contribute 1.56 million. Would
3 that be correct?

4 MR. ROBIN WIENS: Yes.

5 MS. MYFANWY BOWMAN: And what percentage
6 -- was 2.1 million -- pardon me, 2.19 million, was that
7 the -- that is the final cost. Was that the cost -- the
8 forecast cost coming in, or did those costs change?

9 MR. ROBIN WIENS: I believe that 2.1
10 million was the final cost.

11 MS. MYFANWY BOWMAN: So when INAC and the
12 First Nation were asked to contribute 1.56 million, what
13 percentage was that of the total cost? Can Hydro tell us
14 that?

15 MR. ROBIN WIENS: I don't have exact
16 recall on this. We'll have to undertake to provide that.

17

18 --- UNDERTAKING NO. 6 Manitoba Hydro to indicate
19 what percentage of the 1.56
20 million that INAC and the
21 First Nations were asked to
22 contribute was of the total
23 cost

24

25 CONTINUED BY MS. MYFANWY BOWMAN:

1 MS. MYFANWY BOWMAN: I understand that
2 INAC ultimately contributed 1.15 million out of a total
3 cost of 2.19 million, is that right?

4 MR. ROBIN WIENS: That sounds right.

5 MS. MYFANWY BOWMAN: And if my math is
6 correct, that's 52.5 percent. Does that sound about
7 right to you?

8 MR. ROBIN WIENS: Yeah.

9 MS. MYFANWY BOWMAN: And can you tell us
10 why INAC and the First Nation would have contributed 52.5
11 percent as opposed to, sort of, 70 to 75 percent which
12 is, generally speaking, what -- what they've been asked
13 for in the past?

14 MR. ROBIN WIENS: Well, you know, I -- I
15 am going to try to rely on my memory on this one, but my
16 -- my memory tells me that they did pay approximately 70
17 or so percent of the estimate that was provided to them--

18 MS. MYFANWY BOWMAN: So the diff --

19 MR. ROBIN WIENS: -- but not of the final
20 cost.

21 MS. MYFANWY BOWMAN: So the -- the
22 difference being that the cost went up and so the -- the
23 relative proportion went down?

24 MR. ROBIN WIENS: That is correct.

25 MS. MYFANWY BOWMAN: And so who pays that

1 difference between what we would have expected INAC or
2 the First Nation to pay, the -- the 70 percent, or
3 whatever it is, and the 52 1/2 percent that they did pay?

4 MR. ROBIN WIENS: Well, right now it's
5 still on the books of Manitoba Hydro.

6 MS. MYFANWY BOWMAN: And is Hydro seeking
7 to recover that from INAC and the First Nation or from
8 anyone else?

9 MR. ROBIN WIENS: To date, we've not
10 attempted that.

11 MS. MYFANWY BOWMAN: Do you have any
12 plans to do so?

13 MR. VINCE WARDEN: Ms. Bowman, it would
14 typically depend on the agreement that was struck with
15 the -- with INAC or the First Nation at the time the
16 capital expenditure was -- was contemplated. Sometimes
17 there's provision for true up and other times there's
18 not. So we would have to look at the specific cir -
19 circumstances with that -- with that contribution to
20 answer your question fully.

21 In the event that there isn't a true up
22 provision, then those costs would reside with -- with
23 Manitoba Hydro and ultimately be borne by grid customers.

24 MS. MYFANWY BOWMAN: And would it not be
25 in the interests of Manitoba Hydro and grid customers to

1 include a true up provision in all of those agreements?

2 MR. VINCE WARDEN: Well, you have to
3 understand that a lot of these agreements are subject to
4 individual negotiation depending on the circumstances at
5 the time. There are -- there are a lot -- a multi -- a
6 multitude of different circumstances that affect capital
7 additions in these communities, and discussions take
8 place between the parties, agreements are reached based
9 sometimes on negotiation, and sometimes that -- that
10 amount is fixed.

11 MS. MYFANWY BOWMAN: Now I understand
12 that work was completed on this project in 2005. Does
13 that sound right? I get that from appendix 2, attachment
14 2, as well, if that helps you.

15 MS. ODETTE FERNANDES: Do you have a
16 little bit more of a specific reference because it's
17 pretty thick?

18 MS. MYFANWY BOWMAN: Bear with me. Hang
19 on.

20

21 (BRIEF PAUSE)

22

23 THE CHAIRPERSON: If your question
24 doesn't hang on the date, they could take it subject to
25 check and check later.

1 MS. MYFANWY BOWMAN: Sure.

2

3 CONTINUED BY MS. MYFANWY BOWMAN:

4 MS. MYFANWY BOWMAN: I -- does that sound
5 reasonable? Does 2005 sound about right?

6 MR. ROBIN WIENS: I think it was in
7 fiscal 2005/2006, but that would be subject to check.

8 MS. MYFANWY BOWMAN: That's enough for
9 me. Now if I read the application material correctly,
10 there have been no requests made for contributions to
11 this project from any other parties, is that right?

12 MR. ROBIN WIENS: That's correct.

13 MS. MYFANWY BOWMAN: Now given that this
14 is one of the very few examples where funds have flowed
15 from the Federal Government and the First Nation, why
16 would this not have been perhaps the poster child for
17 select -- for soliciting contributions from other
18 customers?

19 MR. ROBIN WIENS: Well, Ms. Bowman,
20 perhaps it should have been, and -- and perhaps Manitoba
21 Hydro should have pursued it at that time. But if you'll
22 recall one of my earlier answers, where I talked about we
23 -- we want to get this consultation process established
24 and ongoing with the prime customers before we -- but
25 with, if you will, the -- the 70 percent before we bring

1 in the other 8 or 10 percent.

2 In the case of Tadoule, while we certainly
3 did eventually succeed in getting and receiving a
4 contribution, pretty much what we had asked for in the
5 discussions, if you go through the record -- and if you
6 want a summary of the record, we put it in our rebuttal
7 evidence -- that was a process that took approximately
8 three (3) years or more from beginning to end.

9 I can say that we -- we finally had -- did
10 -- did make a request from INAC, I believe, in around
11 September of 2006, that we'd been in discussions for two
12 (2) years, we've given their consultant all the
13 information he had requested, we had contacted them on at
14 least one (1) previous occasion, and we hadn't heard back
15 from them.

16 And I believe, if I'm recalling correctly,
17 our -- our lead representative in the discussions wrote
18 another letter toward the end of February 2007 and --
19 and, you know, I can't speak for other people at Manitoba
20 Hydro, but nobody was more surprised than I was when a
21 cheque came in at the end of March, by that time.

22 So I -- it -- you know, it -- we did -- we
23 did succeed in getting the contribution that we set out
24 to do, but it wasn't really a process that I thought
25 should be extended to the other parties, that we had to -

1 - that we had to have some sort of a meaningful, ongoing
2 process to bring them into.

3 And, you -- you know, I -- I think we can
4 probably be taken to task for not trying to pursue it
5 with more vigour at that time, but, for what it's worth,
6 that -- that is the explanation.

7 MS. MYFANWY BOWMAN: That strikes me as
8 an honest answer. Thank you.

9

10 (BRIEF PAUSE)

11

12 THE CHAIRPERSON: Ms. Bowman, how about
13 we call it a day?

14 MS. MYFANWY BOWMAN: Certainly.

15 THE CHAIRPERSON: Okay. Now, tomorrow
16 morning, just so everyone knows, this is the first day,
17 and it's always getting into it, it's probably just as
18 well to shut down at the four o'clock mark, we'll be
19 starting tomorrow at 9:15. So we'll see you all then.
20 Have a good night.

21

22 (PANEL RETIRES)

23

24 MS. MYFANWY BOWMAN: Thank you.

25

1 --- Upon adjourning at 4:00 p.m.

2

3

4 Certified Correct,

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10 _____
Cheryl Lavigne, Ms.

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