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MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA HYDRO'S APPLICATION
FOR APPROVAL OF NEW ELECTRICITY RATES
FOR 2010/11 AND 2011/12

Before Board Panel:

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

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
July 5, 2011
Pages 8525 to 8706

1 APPEARANCES

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4

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6 Marla Boyd)

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9 Myfanwy Bowman (np))

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13 Michael Anderson (np)) MKO

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21 Gavin Wood (np)) Independent Experts

22

23

24

25

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LIST OF EXHIBITS

Exhibit No.	Description	Page No.
CAC/MSOS-39	Missing provisions, Section 5.31 of the Employment and Income Assistance Act and Schedule A(3) of Regulation 404-80/88	8529
KM-15	Responses to PUB Pre-ask questions	8577
MIPUG-15	Final written argument	8651

1 --- Upon commencing at 9:35 a.m.

2

3 THE CHAIRPERSON: Okay. Good morning,
4 everyone. Welcome back. Glad to see, in particular, Mr.
5 Williams has returned.

6 Any time, Mr. Williams.

7 MR. BYRON WILLIAMS: Yes, just a couple
8 of preliminary matters. We had -- no one can accuse us
9 of not handing out extensive materials, but as I -- as I
10 reviewed the recommendations document at Tab 6 there are
11 excerpts from the Employment and Income Assistance Act
12 and Regulation. And missing from it were two (2)
13 important provisions.

14 So at some time this morning the Board may
15 want to have Tab 6 of that book of recommendations open,
16 that's the big one with tabs, and -- and the -- the --
17 the two (2) provisions that are missing are Section 5.31
18 of the Act and Schedule A(3) of Regulation 404-80/88.
19 And I provided that to the Board and would suggest it be
20 marked as CAC/MSOS 39.

21 THE CHAIRPERSON: Very good.

22

23 --- Exhibit No. CAC/MSOS-39: Missing provisions,
24 Section 5.31 of the
25 Employment and Income

1 Assistance Act and
2 Schedule A(3) of
3 Regulation 404-80/88
4

5 MR. BYRON WILLIAMS: Ms. Boyd was kind
6 enough to tell me yesterday on a second preliminary
7 matter that I had promoted Mr. McCormick. And at page 9
8 we cite his qualifications as an LLB, which is correct,
9 an MBA in -- with accounting specialization, which is
10 correct, but also as a CA. And I believe the word C --
11 or the letter 'C' should be replaced with a 'B'. It's a
12 BA not a CA. So certainly to -- to some persons in this
13 room that might be a demotion.

14 We understand that there was some
15 additional material filed by Professors Kubursi and Magee
16 yesterday. I can just indicate our clients haven't had a
17 chance -- additional responses to undertakings or no?

18 MS. ANITA SOUTHALL: Additional responses
19 came in yesterday afternoon while the hearing was
20 proceeding, so I'll have to talk with Mr. Singh about
21 that in terms of introducing those informations on the
22 record likely this afternoon.

23 MR. BYRON WILLIAMS: I -- just wanted to
24 say we -- we haven't had a chance to review it. I don't
25 anticipate we would have any comments but in -- in the

1 event that we -- there is something of noteworthy from
2 there we'll seek the advice of Board counsel if -- if we
3 wish for co -- to offer any further comments. I don't
4 expect we will but I just want to reserve that -- that
5 opportunity.

6 THE CHAIRPERSON: Is it voluminous?

7 MS. ANITA SOUTHALL: It -- it is, it's
8 answers to the PUB Pre-asks, Questions 1 to 26. I -- my
9 preliminary view indicates that the Manitoba Hydro pre-
10 asks of KM remain outstanding so I will have to follow up
11 with Mr. Wood on that as well.

12 THE CHAIRPERSON: Perhaps Mr. Singh can
13 begin the photocopying now so Mr. Williams can have it
14 before the break.

15 Okay, Mr. Williams...?

16

17 (BRIEF PAUSE)

18

19 CONTINUED FINAL SUBMISSIONS BY CAC/MSOS:

20 MR. BYRON WILLIAMS: Ms. DeSorcy will be
21 joining us later this morning. Just in terms of my
22 comments on temporary billing demand concession, she
23 pointed out something that I -- I had failed to in -- to
24 include, and I'll just make it orally.

25 She -- CAC/MSOS would ask that in -- in

1 the event that the Board does approve a forgiveness of
2 this payment that it do so in -- in express recognition
3 that the program is unique and addressed to exceptional
4 circumstances, being the unique economic event. So our
5 clients are not supporting the forgiveness, but in the
6 event that the Board does so, their advice would be to
7 note the exceptional circumstances associated with it.

8 MR. ROBERT MAYER: Mr. Williams, what is
9 your clients' position respecting except -- what evidence
10 do we have of exceptional circumstances? You'll recall
11 that the Board had requested that it if was going to be
12 forgiveness, that we be provided with information on the
13 economic well-being of the corporations that are sought
14 to get the forgiveness of the -- of the bill. We haven't
15 seen any evidence of that at this point.

16

17 CONTINUED BY MR. BYRON WILLIAMS:

18 MR. BYRON WILLIAMS: The -- the
19 exceptional circumstances we were referring to were the -
20 - the general economic client -- climate, which certainly
21 the Board is entitled to take judi -- judicial notice of.

22 Now, Mr. Vice-Chair, don't misunderstand
23 our clients. They're not supporting the forgiveness, but
24 they're just -- to the ex -- extent that there is an
25 exception of the rule, they would -- we -- they would ask

1 that it be duly noted.

2 And -- and a final comment lest I forget.
3 And then I will turn to our outline at page 86. But at
4 the outset of our comments we -- we talked extensively
5 about the statutory regime. When the Board or others go
6 to re -- review our recommendations they'll note that
7 some -- some of the recommendations are related to --
8 expressly to the Board's jurisdiction rates for service.
9 Others are related expressly to factual or evidentiary
10 findings that the Board may -- may make.

11 The point I wanted to -- to make though is
12 that there are some comments or a number of matters that
13 came before the Board, whether it's Mr. Dunsky's
14 proposals to im -- improve Hydro's portfolio, which are
15 perhaps not directly within the Board's purview but have
16 come before the Board so we've offered some comments on
17 them.

18 We recognize the limits of the Board's
19 jurisdiction, but my -- my clients felt it important to
20 offer some comments to that regard. And without further
21 ado, I turn -- ask you to turn to page 86 of the outline
22 of CAC/MSOS, and at the top of the page should be
23 "Vulnerable Ratepayers" and the recommendations of Mr.
24 Colton and a subheading, "Low-Income Rate Assistance."

25

1 (BRIEF PAUSE)

2

3 MR. BYRON WILLIAMS: One (1) quick note
4 on this page, the fourth bullet down, the third under
5 "The Roots of Energy Poverty." I reread that this
6 morning, and I'm not sure what even that -- that
7 paragraph means. We're striking -- we would ask that
8 that be struck out. It -- it doesn't -- it's not a well-
9 formed thought and it is not consistent with the rest of
10 the -- rest of the argument.

11 So that's under "The Roots of Energy
12 Poverty," the third bullet. And it end -- at the end of
13 it there's a bracket, [7073]. In terms of low-income
14 rate assistance, I would be remiss if I didn't tell the
15 Board that, to our knowledge, the first proposal for a
16 income-tested rate before the Board actually came from
17 our clients.

18 And you might have to -- I don't know if
19 Mr. Singh was back here in those days. You might have to
20 borrow Mr. Barron's memory. But back in the days of Mr.
21 Peltz repre -- on public interest, certainly when we
22 reviewed in the context of telecommunications there was a
23 proposal for a lifeline rate that was advanced by a con -
24 - group of consumers represented by our office, and I
25 believe Mr. Selwyn, S-E-L-W-Y-N, was brought in as a

1 witness on that matter.

2 So it's an issue that has some roots in
3 Manitoba and is of some interest certainly to our clients
4 as they followed issues before the CRTC in the 1990s, and
5 certainly the important contribution made by our friends
6 at TREE/RCM in this decade before -- on Hydro and Centra
7 Gas matters.

8 Moving to the roots of energy poverty, I -
9 - I think there is -- there are -- there are some areas
10 of clear agreement between our clients and Mr. Colton.
11 Both our clients and Mr. Colton recognize that, for
12 persons of modest means, including those on fixed income,
13 there often is a problem of energy underconsumption
14 rather than overconsumption. And Mr. Colton made this
15 point really well in his evidence. I'm not -- I guess
16 it's at page 28 of Home Energy Affordability in Manitoba.
17 He stated energy bills represent an ineffective means to
18 send price signals to low-income customers, and he's got
19 a -- a helpful paragraph on that subject, and he also
20 referenced that in his evidence, oral -- oral evidence.
21 And we -- we -- our clients agree with him on that point.

22 Our clients also agree with -- with Mr.
23 Colton that the issue of underconsumption by low-income
24 persons is an enduring issue, not just for those
25 individuals, but for society as a whole. Now, while his

1 evidence is primarily focussed on -- on energy, our
2 clients would take that principle much broader going --
3 shelter in particular for low-income persons in Manitoba
4 and food are the -- two (2) of the primary drivers of
5 challenges in health and in a variety of social issues.
6 And certainly our clients don't dispute Mr. Colton's
7 contention that energy underconsumption is a part of the
8 problem.

9 Our clients also certainly are in -- in
10 agreement with Professor Carter, and we're not sure if
11 Mr. Colton is in agreement on this point, but our clients
12 conclude that energy poverty is a function of three (3)
13 specific factors: energy prices in the particular
14 jurisdiction; the income of the person in question; and
15 the energy usage of that person in question and in -- as
16 determined, in large part, by the relative energy
17 efficiency in their home, as well as some other factors,
18 including level of income.

19 What we do in the next couple of pages, as
20 a -- a preface to our discussion of the proposal in
21 Manitoba, is talk about what we have learned from the
22 American experience. And I am going to go through that
23 in some detail. To a large degree, we rely on Mr.
24 Colton's material, also Professor Carter's, and also some
25 material from Pennsylvania which Mr. Colton kindly put on

1 the record.

2 An important point in terms of the US
3 experience relates to participation in low-income rate
4 assistance programs, and certainly on the record of this
5 hearing is the 2007 APPRISE report, which suggested, of
6 the programs evaluated, between 33 and -- percent and
7 less than 50 percent of eligible persons were
8 participating in these programs. There was more -- more
9 information put on the record in the course of this
10 hearing.

11 Mr. Colton, in some of his evidence, has
12 identified certain best-practice jurisdictions, and for
13 Citizen Gas and Coke, he indicated -- I've put in 25
14 percent, I think his evidence was between 20 and 25
15 percent. There's evidence from the 2007 APPRISE report,
16 and confirmed in cross-examination, of New Jersey being
17 in the 45 percent range, and Columbia, in his 2007 best
18 practice report Mr. Colton indicated that it was around
19 40 percent. He suggested it had improved somewhat, but
20 that it was still less than -- than 50 percent. Also on
21 the record is information relating to Maryland, it's not
22 on my notes here, but that's from transcript page 6,947.
23 That's another best practice jurisdiction and in that
24 best practice jurisdiction participation rates are 33
25 percent.

1 And our clients think that one (1) thing
2 that's of particular interest about the Columbia program
3 and its failure to achieve 50 percent participation rates
4 is that it is a payment -- it has a dual targeting. One
5 (1) is a means-tested targeting, secondly, a payment
6 troubled low-income customer targeting. And we think --
7 our clients believe that it's important to recognize that
8 even at that level, even that closely targeted program,
9 they're not achieving 50 percent participation rates.
10 And the transcript reference for that is -- is set out.

11 Another important lesson from Mr. Colton
12 is that programs with the highest participation rates,
13 and in this case we're talking in the range of the 45
14 percent of New Jersey, they are highly integrated with
15 other means-tested programs. And Mr. Colton has pro --
16 provided -- provided evidence suggesting that New Jersey
17 enrolled a hundred thousand (100,000) customers through
18 its integration with LIHEAP, capital L-I-H-E-A-P.

19 And on page 87 of the outline, again we
20 noted -- note the success of New Jersey due to close
21 integration with federal programming. And SNAP, capital
22 S-N-A-P, is what was formally known as food stamps,
23 that's the reference. And we've set out some transcript
24 references for that.

25 Our clients believe that it is also

1 important to understand that while participation rates
2 and social benefits programs are an issue for all low-
3 income persons, empirical research demonstrates that the
4 problem is particularly acute for the working poor. And
5 for that authority we rely on CA -- the WINS report which
6 is found -- an excerpt from it -- in CAC/MSOS Exhibit 28
7 at page 80.

8 Now Mr. Colton disagreed with us on that.
9 What he said, and that's two (2) bullets below --
10 beneath, is that:

11 "The most challenging persons to re-
12 enroll are persons who are not involved
13 in means-testing programs."

14 So he took a slightly different nuance but
15 we want to emphasize for the Board that there is research
16 on the record in this proceeding highlighting the
17 particular challenges of working persons.

18 The third bullet on page 87 suggests that
19 while most customers remain in need of program
20 assistance, only 40 to 65 percent re-enroll or re-
21 certify. And again, that's research done by Mr. Colton
22 in his 2007 APPRISE report.

23 We'll get into greater detail in terms of
24 low participation but we flagged three (3) issues on this
25 page which -- which discuss it. An important lesson that

1 we've also learned from reviewing Professor -- or excuse
2 me, Mr. Colton's work relates to sustainability of
3 programming in the United States. And our clients, based
4 upon a review of his material, have concluded that best
5 practice jurisdictions in the United States demonstrate
6 ongoing challenges in terms of sustainability and reach.

7 And even New Jersey, which I think is
8 widely regarded as one (1) of the best and consid --
9 considered a national lead -- leader -- however, in one
10 (1) of Mr. Colton's reports for APPRISE in 2007, and I
11 put the reference where it appears on the record in this
12 proceeding, noted that their funding in -- in the year of
13 the study it says one hundred and eleven dollars (\$111),
14 that should be \$111 million. That would be a material
15 typographical error. But he also notes that if all
16 eligible households were served almost four (4) times as
17 much, \$400 million, would be required.

18 Again, drawing from Mr. Colton's material,
19 and this is from his best practices study for Quebec,
20 which again appears on the record of this proceeding, and
21 excerpts of which have been included in the CAC/MSOS
22 exhibit, New Hampshire again facing material limitations
23 imposed by budget constraints, not indexed to fuel prices
24 or program participation, and, as a consequence,
25 increases in eligibility levels resulted in a substantial

1 decrease in par -- participant benefits.

2 Colton also notes, and we pro -- provided
3 the citation here, that in 2007 best practices Maryland
4 became particularly stressed in the face of sub --
5 substantial price spikes. And as the need for
6 affordability grew, the burden of meeting that need
7 outstripped the -- the ability to meet that burden.

8 And our clients' concern on this point,
9 these dual points of low participation, relatively low,
10 and sustainability issues are to the -- to the effect
11 that low participation and sustainability almost go hand
12 in hand with these programs. It's a matter of concern.
13 Look at New Jersey. You know, if -- to increase
14 participation, very material budget stresses flowing from
15 that program. So that's not a contradiction but an -- a
16 future challenge for programs of this nature.

17 And if you turn to page 88 of the outline,
18 I think Mr. Colton made this point fabulously well when
19 he talked about Iowa. And if you'll recall, I was having
20 a discussion with Mr. Colton about recommendations he had
21 made for LIHEAP Iowa about increasing participation. And
22 he had some thoughtful ideas about doing so. And -- and
23 then I asked him, Well, what happened. And he noted that
24 because of budget constraints there were -- not much
25 changed.

1 And he described the attitude of program
2 administrators in -- in Iowa as displaying aggressive
3 disinterest in enhancing program participation. And
4 that, Mr. Chairman and Mr. Vice-Chairman, our clients
5 believe is a fundamental issue with low-income rate
6 affordability, even -- even in jurisdictions where
7 utilities have volunteered to -- to enter into these
8 projects.

9 If you think of again the Indianapolis,
10 the Indiana example of Citizen Coke, that was a utility-
11 led low-income rate affordability program. Look at the
12 participation rates, 25 percent or less. That's of
13 concern.

14 Our clients note as well that
15 implementation in recent years in the United States has
16 been associated often, not exclusively, but often with
17 two (2) phenomena. One (1) is market deregulation, and
18 the other are major price spikes. And Mr. Colton's got a
19 really interest writeup in his best practices study for
20 Quebec about that, and he's been quite candid about that.

21 And towards the middle of this page Ms.
22 Boyd canvassed this with Mr. Colton in cross-examination,
23 but she -- she reviewed the -- his data from his 2007
24 APPRISE report, including -- including in -- in terms of
25 reductions and collections cost. And this is what Colton

1 found in 2007.

2 "Despite the significant reduction in
3 the number of collection actions and
4 service terminations, the reduction in
5 collection cost is small, averaging
6 seven (7) to sixteen dollars (\$16) per
7 participant.

8 And he made the candid statement. And
9 there's a really interesting paragraph about it -- around
10 it which I would or -- urge the Board to read. But the
11 candid statement:

12 "If a program results in large
13 reductions in payments by customers it
14 is unlikely to be cost neutral."

15 And that's a fair statement, and we
16 appreciate Mr. Colton's recognition of that in the 2007
17 APPRISE report. And perhaps when I think back to the
18 examination of Professor Carter I was perhaps a bit sharp
19 with the Vice-Chair, for which I apologize, and -- and it
20 was because I wasn't prepared to -- to accept the premise
21 of your -- your question, and for that I apologize. But
22 you'll -- you'll perhaps understand the urgency with
23 which I -- I responded to your question.

24 Our clients on a practical and this --
25 philosophical level looking at the US experience draw --

1 in terms of low participation rates draw two (2) major
2 learnings or lessons. Given that the significant benefit
3 con -- conferring rate assistance programs will not be
4 cost neutral, other ratepayers must pick up the
5 shortfall.

6 And our clients think to the example of
7 Citizen Coke in Indiana, one (1) of the best-practice
8 jurisdictions, where 25 percent are participating in the
9 -- in the program. Presumably it's a good program,
10 providing substantial benefits. Those costs have to be
11 picked up by a variety of other consumers. Hopefully, if
12 one ever goes to such an approach, it would be all
13 classes of consumers; others might disagree.

14 But one (1) subset of that group of
15 consumers would be other low-income consumers, and if one
16 doesn't achieve a significant participation rate, our
17 clients have a concern that additional burdens will be
18 placed on other low-income persons, or if their program
19 is funded by -- if their energy bills are paid for by
20 social assistance and other social agencies. And so that
21 is a concern for our clients, and one (1) of the reasons
22 perhaps Ms. -- why Mr. Williams has been harping
23 incessantly about participation rates.

24 The other concern of our client, and this
25 is not empirically proven, this is a philo --

1 philosophical concern, and indeed Mr. Colton indicated
2 that there had been no research done in the United States
3 on what are the impacts on the non-participating
4 consumers. And maybe the -- maybe there are technical
5 problems in doing that research, but our clients have a
6 concern, based on their experience with other social
7 programs, in that sometimes the non-participants get left
8 even further behind.

9 Professor Carter talked about it, and
10 those were just outside the shelter allowance guidelines
11 for housing, or the 30 percent affordability guidelines.
12 And our clients certainly are concerned, not with this
13 particular panel of the Public Utilities Board but we
14 don't know who the panels will be in the future, that the
15 existence of a -- a low-income rate affordability
16 program, however imperfect, may drive -- may provide
17 comfort to rela -- regulators seeking to in -- increase
18 rates further. So that's a -- a philosophical concern
19 our clients have. They can't empirically support it, but
20 that is indeed a concern.

21 Turning to the outline at page 89, our
22 clients note that Professor Carter did some really
23 interesting research about low-income targeted programs
24 in the United States -- in the United Kingdom, and we
25 really urge the Board to go back to his research. And

1 one (1) of the problems that Professor Carter identified
2 in the United States -- in the United Kingdom was that
3 the -- while the UK integrated program initially had
4 great success in moving a significant portion of persons
5 out of energy poverty, to a large degree rising energy
6 prices have undermined its achievements in -- at least to
7 some degree. And this is the quote from page 31 of his -
8 - of his evidence, and he is referring to the -- one (1)
9 of the programs called the warm front scheme:

10 "The program, which has been in place
11 for several years, reduced energy
12 poverty over the period 1996 to 2004.
13 The assistance plus stable -- plus
14 stable fuel prices meant energy poverty
15 reached a low of 2 million households
16 in 2004, less than half of what it had
17 been in 1996. Rising fuel prices since
18 then have once again increased energy
19 poverty by another 2 million
20 households. Grant increases are being
21 considered, but the change in
22 government and the economic crisis --
23 but with the change in government and
24 the economic crisis, this may not
25 occur."

1 So this is Professor Carter speaking of
2 the United Kingdom program, and again, in many ways, our
3 clients have a lot of interest in that program. It
4 achieved actually higher participation rates in a variety
5 of areas than the American programs have, so it's an
6 instructive program. One might argue that they were
7 overinclusive, but that's a philosophical question.

8 But there's a lot to be learned from the
9 United Kingdom, but one of the lessons is it's --
10 sustainability is not just an American problem, it's you
11 -- an English problem, as well. And it's particularly a
12 problem for the good programs. The programs that
13 meaningfully try and make a difference.

14 At page 89, we talk a little bit about the
15 poor in Manitoba, and I don't think there's any dispute
16 that for those living off reserve in Manitoba, the
17 poorest are -- of the poor are persons living on income
18 assistance. In particular, those under the general
19 assistance category, section 5.1, and persons with
20 disabilities. Both Mr. Colton and Mr. Carter spoke to
21 that.

22 I -- I do want to note one shortcoming in
23 Professor Carter's research, for which I take
24 responsibility, and that is that we didn't really look at
25 the issue of persons on reserve. And partly that was

1 because my sense was that had been canvassed to a greater
2 -- to some degree in the diesel -- diesel hearings, but
3 when I discussed it with my colleagues its perhaps not
4 been canvassed to the gree -- to the degree I -- I had
5 understood.

6 And one (1) topic of further research
7 certainly our clients would propose, and may
8 independently retain Mr. Carter to do so, is the
9 demographics of poverty on reserve, the implications of
10 income assistance on reserve, and whether it costs
11 utilities and that. And certainly our clients would
12 agree that the record on reserve is -- is incomplete in
13 this hearing, for which I take responsibility.

14 What Professor Carter does tell us in
15 terms of persons in Manitoba who are poor, no big shock.
16 Disproportionately persons with disabilities, Aboriginal
17 persons, single parents, and renters. And I'll -- I'll
18 provide a -- a citation to this in a -- in a couple of
19 moments, but the poor in Manitoba, and in Canada
20 generally, we can say with confidence are mobile in two
21 (2) particular senses.

22 One (1) is being disproportionately
23 renters. They tend to move from jur -- from place to
24 place more often than -- than others -- than -- than
25 average. And that's important for program design and

1 program administration. They're -- to --
2 disproportionately hard to keep track of.

3 The other point about poverty in Canada,
4 but which we can take to Manitoba -- at Manitoba level is
5 the makeup of that population of poverty in terms of its
6 duration. And Professor Carter's been quite clear that
7 there is a group in sustained long-term poverty in
8 Manitoba. Disproportionately persons on income
9 assistance, about 11 percent of -- of the -- the Canadian
10 data, excuse me, I -- I mis-said Manitoba.

11 The other point he makes, though, is that
12 a substantial portion of the population of those living
13 in poverty are on it for shorter periods of time. I
14 believe the evidence in his report is -- is about 40
15 percent for a year, another 21 percent for two (2) years.
16 In no way does this diminish the -- the pain that the
17 parents, their children, feel and -- and the deprivation
18 that they experience living in poverty.

19 But that unique nature of -- of persons
20 moving into poverty, out of poverty, and then of course -
21 - and sadly sometimes back into poverty again raises
22 unique challenges for program administration. You don't
23 just enroll them and re-certify them once because the
24 persons you enroll and re-certify in years 1 and 2 may
25 not be there in years 3 and 4. There will be another

1 group of persons there. Another group that has to be re-
2 enrolled, re-certified, and that raises particular
3 challenges for participation.

4 Another important distinction our clients
5 would note between the American and Canadian experience
6 is that there -- to our knowledge, there is no Canadian
7 LIHEAP. And why is that important? It's important
8 because in the United States in every state there is a
9 LIHEAP and it is a key conduit for participation rate and
10 re-enrollment. It's one (1) of the key tools. And the
11 evidence from New Jersey suggest a very significant
12 element of -- of their enrollment comes from its close
13 integration with LIHEAP.

14 Now, we're going to try and, at the bottom
15 of page 89, set out what we understood to be the focus of
16 Mr. -- Mr. Colton's evidence and some of the key
17 assumptions that he made. And there's no doubt Mis --
18 Mr. Colton was aimed at the group LICO 125 percent or
19 less.

20 But if one reads his evidence, and we
21 recommend taking a close look at my cross-examination on
22 him on this point or the early part of his home energy
23 affordability of Manitoba, there's really a focus of
24 concern, and we commend him for this, on the poorest of
25 the poor, persons on welfare. And Professor -- Mr.

1 Colton, Table 3 of his evidence is -- is a splendid
2 example of that, places particular focus on the
3 affordability gap for the poorest of the poor, persons on
4 welfare.

5 And when one looks to page 42 of his home
6 energy affordability in Manitoba he has a really
7 interesting discussion of eligibility, outreach, intake,
8 collections, and re-certification. And it's -- it's
9 important for program design.

10 What does he say about intake? The
11 primary intake should occur by contracting with relevant
12 federal and provincial agencies to match electronic lists
13 of residential customers with lists of social assistance
14 program participants, a primary focus for intake on
15 social assistance recipients.

16 What does he say about re-certification?
17 Most participants will have their income re-certified
18 automatically through a contact with the appropriate
19 social assistance agency. Perfectly understandable,
20 perfectly practical, perfectly -- makes perfect sense in
21 the American experience and given the social benefits
22 programs in the United States.

23 Now, as we understand Mr. Colton's
24 evidence, his evidence was in his initial paper that --
25 that they would achieve pretty close to American best

1 practice, 40 percent participation, at a cost of 10.8
2 million annually, although he -- I note in one (1) of his
3 footnotes he noted that he expected some of these costs
4 to be reduced due to reductions in normal operating
5 costs, including collections costs. And of course he
6 pointed to what he considered to be a substantial social
7 utility from his program.

8 And our -- our clients is -- I hope they
9 have made apparent, are -- have read and absorbed Mr.
10 Colton's work with interest for years, and they think
11 that he adds a lot to the debate. But they have two (2)
12 -- two (2) key concerns with his proposal as presented.
13 One (1) is what they consider to be a key factual
14 oversight, and the other is a key analytic oversight.

15 And, again, his factual oversight is
16 understandable, but it -- it's clear that he was not
17 aware of provisions for the payment of utilities set out
18 in both the employment and income assistance regulation
19 and the administrative manual.

20 And the -- the Board is already aware of
21 the affidavit of Ms. Catherine Wirt, W-I-R-T, which sets
22 out the excerpt from the administrative manual. What I
23 have presented in -- in CAC/MSOS-39 -- Mr. Chairman and
24 Mr. Vice-Chair, that's the one (1) page -- page document.
25 I can certainly go into greater detail if the Board would

1 like, but at the top of the page is Section 5.3(1) of the
2 Act. And it essentially sets out how -- how a
3 calculation is to be made in terms of what the benefit or
4 the monthly budget that is paid to a income assistant
5 recipient is.

6 Step 1, you take into account their
7 financial resources and make a determination that they
8 are less than the cost of basic necessities. Step 2, you
9 make sure that they're complying with the Act, which
10 means identifying any material change in circumstances,
11 et cetera. And the -- the rest is set out there, but
12 it's essentially a calculation of financial resources
13 minus cost of basic necessities.

14 And at Tab 6 of the recommendations -- and
15 the -- the Board is probably familiar with it and you do
16 have legal counsel, but there are a few parts of the Act
17 and Regulation I -- I want to bring to your atten --
18 attention.

19 At page 2 is the definition -- at page 2
20 in the bottom right-hand corner, Mr. -- Mr. Chairman.
21 There's a definition from Section 1 of the Act. I'll
22 just wait till everyone has it. Okay. There's a
23 definition of financial resources and (b) just makes
24 clear that it includes income from all sources, any
25 sources.

1 Now there are exemptions set out in the
2 Regulation which I'll come to in just a second, but
3 certainly the -- our clients would -- would be of the
4 view that a low-income R -- RA, rate assistance, would --
5 would fit in -- in the category of a financial resource.

6 At page 7 of the out -- of the excerpt,
7 page 7 in the bottom right-hand corner, this is actually
8 from -- an excerpt from the Regulation 404/88 Section
9 4(1). And it essentially says this is how we determine
10 the costs of basic necessities and the financial
11 resources. For financial resources we look at section
12 4(8) and 8.1. For basic necessities we look at the --
13 the costs and the household in accordance with Sections 5
14 to 7 and Schedule A.

15 And on just the single page that I
16 provided for you, you'll see that this is an excerpt from
17 Schedule A, and what does it provide? Utilities and
18 fuel, including water, light, fuel and rentals or
19 installment payments are included in the calculation of -
20 - of basic resources. Basic necessities.

21 So essentially, Mr. Chairman and Mr. Vice-
22 Chairman, the calculation works like this: Determine the
23 cost of basic necessities, included in that cost would be
24 utilities, set that off against available resources, any
25 streams of income, and then the remainder is the budget,

1 the monthly budget for that particular person.

2 And our -- we've set out and certainly
3 Professor Carter testified to this, payment can occur in
4 a number of manners. If it's included in the rent bill
5 then they receive a higher allowance for rent than --
6 than others. If it's not it may in some cases be paid
7 directly to the utility and in other cases it may be paid
8 to the person for the purposes of promoting autonomy and
9 they will be responsible for paying their utility bills.

10 There was at pa -- and I'm turning to the
11 outline, page 91. I noticed an interesting discussion
12 between Mr. Peters and Mr. Colton on the subject of
13 double-dipping and there seemed to be a suggestion that -
14 - that if for those persons to -- and just to back up.
15 Mr. Colton seemed to be suggesting at that time that for
16 persons who were not receiving assistance, who were not
17 having income assistance pay Hydro directly, that the
18 low-income ra -- rate assistance might still be available
19 in a payment to them.

20 And Mr. Peters asked him: Well, wouldn't
21 that be double-dipping? And our clients would rise to
22 Mr. Colton's defence on -- on this point. It wouldn't be
23 double-dipping because the way that the Act operates, and
24 the Regulation operates, and you can check sec -- Section
25 4 of the Regulations, Section 8 and 8(1), I've included

1 them here, but that assistance would be income. It would
2 be included in the calculation of income, and would be
3 simply set -- set-off against the budget, in effect would
4 be reducing the -- the budget to the person in question.

5 So we respectfully disagree with the
6 implication Mr. Peters crossed that there would be double
7 dipping. The point we would make, though, is that there
8 would be no benefit to the person on income assistance.
9 And that's the -- the deeper point. The way the Act and
10 Regulation operate, already utilities are included in the
11 calculation of the monthly budget, even if provision was
12 made to stream additional income to those persons. And I
13 don't think my clients ever object to additional income
14 going to persons on income assistance. The way the Act
15 operates, and the Regulations operate, it would be simply
16 rem -- deducted from the budget, in effect.

17 So our clients' conclusion towards the
18 middle of page 91 is that persons on welfare appear
19 unlikely to benefit from the low-income rate assistance,
20 as that benefit is already being provided. And this has
21 important ramifications for our clients. In their view,
22 it eliminates many of the poorest of the poor from
23 program participation. It removes over 50 percent of
24 those at or under 100 percent LICO from participation.
25 And this is -- this nuner -- numerically dominant

1 population of the means-tested group, it's -- it's the
2 easiest to enroll and the easiest to re-certify. And
3 it's -- it tends to be the population that will stay on
4 the program -- stay in poverty the longest.

5 And I don't mean to be pejorative in that
6 sense. There are tremendous success stories of people
7 moving out of income assistance, but it does tend to be
8 the population that stays there in poverty the longest.

9 So, in our clients' view, this is the off-
10 reserve group that is most likely to remain in long-term
11 poverty, and -- and the implications removes many persons
12 from prime intake -- from the prime intake and re-
13 certification pool.

14 And so our clients have -- in the
15 Manitoba-specific context, have an additional concern
16 about participation because that means that many of the
17 remaining eligible persons are persons who may not be
18 associated with the means-tested program. Many of the
19 remaining eligible persons will be harder to en --
20 enroll, harder to re-certify, and many of the remaining
21 persons in the eligible population are less likely to
22 remain in poverty for an extended period of time.

23 So removing the pool of income-assistance
24 recipients, in our clients' respectful submission, will
25 tend to make identification of this group harder, harder

1 to re-certify, and -- and that is a -- a concern in terms
2 of participation rates, and also in terms of program
3 costs, and also in terms of overall social utility.
4 Again, our clients are -- are -- a concern about the --
5 this program in this particular context is that the
6 poorest of the poor, those with the highest poverty gap,
7 will not -- will tend not to benefit.

8 Our clients, at page 92 of the outline, do
9 discuss what they consider to be a key analytic error in
10 Mr. Colton's work, and again they -- they make this
11 comment with the greatest of respect, but the cross-
12 examination by Mr. -- by Ms. Boyd and the response of Mr.
13 Colton in -- in TREE/RCM Exhibit 14 suggest that he
14 significantly underestimated the cost of low-income rate
15 assistance. The original number, I think, was in the
16 range of \$11 million. Now it's between 39 and \$40
17 million. And even at higher energy burdens, even at 10
18 percent, he still estimates it to be 25 million.

19 I don't think anyone would suggest that
20 even at 10.8 bil -- 8 million, excuse me, Mr. Colton was
21 suggesting the program would be cost neutral. At a high
22 -- substantially higher lever of cost, this will
23 substantially increase the support from other persons,
24 including other low-income persons, and that is a concern
25 to our clients.

1 Our clients were also of con -- concerned
2 where, at least as they understand Mr. Colton's evidence
3 when he was -- when this ana -- analytic gap was brought
4 to his attention, he suggested raising the energy poverty
5 level, perhaps to 8 percent, or 10 percent, or -- or
6 capping benefits.

7 And our clients have two (2) concerns with
8 that. One (1) is if you raise the energy poverty level,
9 or you cap benefits, you're diminishing the impact of the
10 program. You're making it less effective. You're making
11 it harder for persons to pay their bills, that that's one
12 (1) of the key thrusts of the program. So that's the
13 practical -- so the -- the practical concern.

14 Philosophically, you -- from my clients'
15 perspective, you're either into poverty alleviation or
16 you're not. And if -- if you've got a program -- if --
17 if Mr. Colton's evidence and his views was 6 percent is
18 energy poverty, you -- you can't have, in my -- my
19 clients' respectful submission, a half measure poverty
20 alleviation program. Already Professor Carter was
21 identifying concerns with the reach of this program. To
22 raise the -- the poverty level, or to cap the benefits
23 would, in our clients' view, significantly diminish the
24 social utility of Mr. Colton's proposal.

25

1 (BRIEF PAUSE)

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MR. BYRON WILLIAMS: Philosophically, our clients are of the view, as is Professor Carter, that -- that in terms of -- if one were weighing the utility of two (2) different programs, one (1) being a low-income rate assistance program and one (1) being a low-income energy efficiency program, from our clients' perspective, the utility of -- of the two (2), they do prefer low-income energy efficiency.

They realize it's not within the Board's mandate to impose such a program, but in support of our clients' perspective, and in support of Professor Carter's perspective, our clients do point to, at the bottom of page 92 and the top of page 93, evidence put on the record by Mr. Colton. And it's really a fabulous study by Penn State University, which I -- in our -- I believe is Attachment 3 to Mr. Colton's evidence. Penn State comments that:

"Payment for bills was tem -- typically received the most funding, although such assistance is often just a temporary solution. And most experts agree that in the long run, the approach with the greatest impact for

1 low-income households, as well as many
2 other households, is weatherization."

3 And at a different page of the same
4 report, Penn State cite Power and Clark:

5 "Weatherization services are often seen
6 as the best sol -- solution for
7 households living in fuel poverty."

8 And the -- there's also some -- a comment
9 about their impacts in terms of bill affordability.

10 I would note, Mr. Chairman and Mr. Vice-
11 Chairman, just out of fairness, the -- the fourth -- the
12 -- the last quote from Power and Clark that I make there,
13 I re-read the quote and the footnote this morning, and I
14 -- I would -- if the Board's -- looks to this reference,
15 I would re -- recommend that you do as well because there
16 is a tremendous support for low in -- energy
17 affordability, low -- low-income energy efficiency
18 programming. But there also is in the footnote some
19 positive comments about LIHEAP, so I -- I don't want to -
20 - there is a bit of a context to that quote that -- that
21 should be read.

22 Just in terms of the evidence of Professor
23 Carter, and I'm going to flip the Board over to pages --
24 page 95 of Professor Carter's -- or of my outline. And
25 at the top of page 95 we outline some of the key

1 determinations Professor Carter made in terms of the poor
2 in Manitoba. And in the middle of the page there are
3 references for the -- the -- what I spoke of before in
4 terms of mobility of this population, and I just draw
5 those references to your -- to your attention.

6 But one (1) thing that is really important
7 from Professor Carter's analysis is a recognition that
8 there are three (3) drivers of energy pro -- poverty:
9 price, household energy efficiency, and -- and low
10 household income.

11 Turning you -- and recognizing the time,
12 turning you to page 97 of the outline. Professor Carter
13 asks, and this is page 97 of the outline:

14 "What are the criteria of a good
15 poverty alleviation program?"

16 He identified three (3) or four (4).
17 Actually, he identified more than that, but I -- I've
18 selected three (3) or four (4): horizontal equity,
19 fairness within that group; adequacy, ability to reduce
20 poverty; sustainability; and participation.

21 And he outlines at the bottom of page 97
22 and page 98 of the outline, and I won't elaborate, a
23 number of the challenges in terms of participation rate,
24 and the Board can read them at its leisure.

25 At page 98, Professor Carter draws -- I --

1 I cite two (2) major lessons that he drew from the
2 American experience, those being that participation rates
3 and sustainability are major challenges. And there is no
4 doubt that Professor Carter preferred energy efficiency
5 as compared to temporary rate -- rate supports. I don't
6 have a reference there, but there is one (1) at page
7 7,954.

8 Professor Carter, turning to the outline
9 at page 99, spoke a lot about the UK experience, and I
10 put the references there for you. He found this a par --
11 particularly attractive approach to addressing energy
12 poverty. It was a national approach looking at all three
13 (3) drivers of energy poverty: energy efficiency, income,
14 and energy price.

15 Also in his comments on those pages there
16 was a substantial focus on education, on consumer
17 education. And if the Board does review the Penn study,
18 the Penn State study, consumer education is a important
19 facet of that.

20 Professor Carter identified in the UK
21 experience relatively high participation rates through
22 more inclusive program de -- design and broader linkage
23 across government.

24 And -- but he did also note a huge
25 sustainabi -- bility issue, even there, that the current

1 status was threatened by significant increases in energy
2 prices and potential policy changes.

3 And certainly I think a lesson that we can
4 all draw from the analysis from the United Kingdom, a
5 program that in many ways appears superior to some of the
6 American programming, is that price stability in the
7 energy context must be a central anima -- element of any
8 good poverty alleviation program. And without price
9 stability the sustainability of energy poverty
10 programming is thrown into question. Many of the 2
11 million households who left the po -- energy poverty in
12 the United Kingdom in that glorious decade, from '96
13 through 2004, are the same households re-entering it in
14 the face of rapidly rising prices.

15 The other legacy from the United Kingdom
16 experience that Professor Carter points us to is energy
17 efficiency and there's a great citation at page 32 of his
18 evidence. He notes that in the -- this is page 32 of his
19 written report. He notes that in the United Kingdom
20 there were 2.1 million homes social housing that did mee
21 -- did not meet the decent homes standard. He notes that
22 already a million of these homes have been raised to a
23 decent standard with most of the improvement taking place
24 in deprived areas, and that by the end of 2010 it is
25 anticipated that 92 percent of social housing will meet

1 the decent homes standard of being warm and weatherproof
2 with rec -- reasonably modern facilities.

3 This was a tremendous legacy of the US --
4 the United Kingdom experience. A tremendous legacy of an
5 integrated approach not just by the utilities but by a
6 broader government approach. A tremendous legacy that
7 Professor Carter points to and also points to one that is
8 enduring. You can't take away those energy efficiency
9 improvements, but you can take away or de -- a low-income
10 rate assistance or you can diminish it. Not as sexy as
11 we note in our outline, not as quick, but far more large-
12 reaching in our clisis -- clients' -- clients'
13 submission.

14 And in our clients' view, perhaps at the
15 risk of gilding the lily, price is really the critical
16 thing. Price stability missing from the Colton approach
17 and perhaps, with respect, from the TREE/RCM approach.
18 The lesson from the United Kingdom in our clients'
19 submission is also the lesson from Maryland. It's also
20 the lesson from Indiana. These programs are not
21 sustainable except with price stability.

22 We -- and I'm not sure if Professor Carter
23 actually said this expressly in his direct evidence or
24 even in his written evidence, but in his information
25 responses he's articulated this more clearly. When asked

1 in a variety of manners how one might address the -- the
2 ex -- the issue of energy poverty from a regulatory
3 experience, I think I can fairly summarize Professors --
4 Professor Carter's advice as -- as the following. And
5 this is at pages 100 and 101.

6 His concern was with patchwork programs
7 and not getting the job done. And as we interpret his
8 advice it was to remember that there were three (3) sides
9 to the energy poverty equation: price stability, energy
10 efficiency, and income stability. And his advice to the
11 PUB in terms of pri -- was to focus on at least to a
12 significant degree price stability in -- in the sense of
13 making sure that the utility was operating prudently and
14 efficiently. And this is set out in his information
15 responses. Certainly to Hydro it would be a continuing
16 and greater focus on energy efficiency, significantly
17 greater focussed.

18 And in terms of income level and
19 stability, I think Professor Carter's point was that the
20 real solutions to that will come both from the economy,
21 jobs are a tremendous poverty alleviation tool, and from
22 government with education, skills training, and adequate
23 income support. And he would be quite frank in saying
24 that income assistance is not adequate on the income
25 support level, but I think he was also fair in noting

1 that there has been a more integrated approach focussing
2 on education and skills development in recent years.

3 Just a couple of last points and -- and
4 this certainly flows from the discussions our clients had
5 which Professor Carter observed in terms of the -- our
6 workshop on low-income energy affordability.

7 One could reasonably ask isn't it better
8 to put some money in the pockets of some poor persons.
9 And that is a really hard issue to dispute. You know, if
10 you can help a person, a low-income person, to buy an
11 extra quart of -- jug of milk for their kids or to -- to
12 buy a -- some better quality food, that is -- is a --
13 something that should not be diminished.

14 But the question does have to be asked:
15 At what price? Is it at the price of other low-income
16 persons experiencing an increase in their rates? Is it
17 at the price of diverting scarce utility revor -- disors
18 -- resources away from other, perhaps better, options?
19 And those are our clients' concerns.

20 And a -- a final two (2) comments. The
21 first is offered with -- in this area with the greatest
22 of respect, is that our clients would be wrong not to
23 note -- or not to expect that Hydro, if it was given the
24 task of delivering this program, might experience some
25 challenges in program delivery. And we -- we offer that

1 comment with the greatest respect because anyone who's
2 had experience with poverty programs knows that they're
3 hard. They're hard to deliver, they're administratively
4 challenging to deliver means-tested programs.

5 And current experience with Manitoba Hydro
6 suggests that it's got a -- it's got a fair ways to go in
7 this area, and our clients' strong preference would be
8 let's get low-income energy affordability right. Excuse
9 me. Let me try that again. Let's get low-income energy
10 efficiency right, and let's get participations up in that
11 very important program before we move on to -- to other
12 issues, if we ever decide to do so. Our clients have
13 already noted that further research is required in the
14 area of on-reserve.

15 A last comment is on jurisdiction of the
16 Board in this area, and I don't know if the Board needs
17 to turn there, but I want it to be aware if -- that, on
18 behalf of our clients, at Tab 5 of the book of
19 recommendations -- at Tab 5 of the book of
20 recommendations, we have sent -- set out a memo which
21 seeks to canvass American literature, a few American
22 cases and Canadian cases in terms of the jurisdiction to
23 set rates based upon level of income.

24 And I -- I could take up a lot of the
25 Board's time going through this memo. I will not, not

1 because our clients don't have views on this or -- or
2 that we're trying to duck the issue of jurisdiction
3 because we're not. But, Mr. Chairman and Mr. Vice-
4 Chairman, I want to underline that our clients' primary
5 concerns with the low-income rate affordability are that,
6 from a philosophical perspective, their concern that --
7 that it -- that it won't work as Mr. Colton intended,
8 that it will put a burden on other low-income persons,
9 and that it will take scarce resources away from other
10 superior policy options. So we want to underscore, our
11 clients' primary concern is philosophic.

12 What the memo does at a high level is say
13 that our clients believe that the better view is that,
14 based upon the case law and this specific statute, is
15 that the Board does not have jurisdiction. But our
16 clients openly recognize that this is not an easy
17 question in terms of jurisdiction, and what they have
18 tried to set out in this memo are arguments going both
19 ways.

20 So they are of the view that the better
21 view is that the Board does not have jurisdiction, but
22 they recognize that there are arguments, which they would
23 characterize as reasonably arguable, that the Board does.
24 And they hope that the Board, in its leisure, will enjoy
25 the -- the memo. We -- we think it's a fair sense of --

1 of the case law, and we would caution the Board about
2 drawing too much from particular determinations, whether
3 it's the Bell case or the Nova Scotia -- Nova Scotia case
4 or the Ontario case, in that those statutory regimes are
5 different, and there is a unique jurisdiction in Manitoba
6 we found to our pain in the stated case proceeding. So
7 we offer our advice in -- in this memo.

8 Mr. Chairman, I -- I'd like to fin --
9 finish up just by going through a -- some of the
10 recommendations that our clients have set out in -- at
11 the start of the recommendations book. And I hope to do
12 that in about eight (8) to ten (10) minutes.

13 Right near the start of the book are our
14 recommendations, at page 2. You should see a heading,
15 "Overview of the Position of CAC/MSOS." And what our
16 clients want to point out in terms of page 2, focussing
17 on the test years first of all, is we've already gone
18 through this. There's evidence to support, in terms of
19 changes since IFF-09, a material reduction in the interim
20 rate. But what we're trying to really emphasize on this
21 page are -- is that there is new evidence in terms of the
22 cost side of the equation that may, if the Board chooses,
23 provide a strong rationale to reduce the interim rate.

24 There is certainly new information filed
25 since the interim hearing by Mr. McCormick at the top of

1 -- bottom of page 2, top of page 3, showing a gap between
2 forecast and actual interest rates in the pes -- test
3 period.

4 There certainly is new information in
5 terms of foregone opportunities in terms of financing
6 costs again put on the evidence by Mr. -- Mr. McCormick
7 in his oral evidence.

8 There is evidence via cross-examination
9 and the 2009/'10 new evidence regard -- from the 2009/'10
10 Power Smart review that the Corporation's ongoing
11 operations of its energy efficiency program is not pru --
12 prudent and consistent with best industry practice.

13 And there is new evidence in terms of O&A
14 costs provided by a fairly authoritative source, Mr.
15 Brennan. So that -- that's the new evidence which,
16 in our clients' views, might -- well, certainly from our
17 clients' views push us towards a rate lower than the
18 interim rate, and might be an appropriate tool for the
19 Board to rely upon in moving to a lower rate than the
20 interim rate.

21 We also just want to emphasize Mr.
22 Matwichuk's evi -- evidence on the RSM and its utility in
23 terms of rate stability.

24 At the bottom of page 4 of our
25 recommendations we note that the Board since the '03/'04

1 drought has faced competing policy issues, protecting
2 domestic ratepayers over the short-term and long-term,
3 building a more robust domestic revenue base for the
4 Corporation to address -- this is at the bottom of page
5 4, Mr. Chairman -- to address existing and future
6 challenges, and encouraging greater efficiency in the
7 Corporation's day-to-day, and long-term operations. And
8 these policy issues can often send competing messages
9 regarding the revenue requirement, some suggesting it
10 should go up, others that it should go down.

11 For this specific proceeding, given the
12 new evidence and the improved situation since IFF-09, our
13 clients recommending focussing on protectious --
14 protecting domestic rate -- ratepayers over the short
15 term, and encouraging greater efficiency in the
16 Corporations' day-to-day and long-term operations.

17 Our clients certainly would love to see
18 the interim rate increase eliminated. Alternatively,
19 though, they would welcome such -- such -- some sort of
20 finding to this effect. But for concerns related to
21 expanded capital costs and uncertainty related to the
22 decade of investment, the Board would have materially
23 reduced or eliminated the interim rate increase. Given
24 these concerns with making a finding in terms of this new
25 evidence, it would reduce the interim rate increase

1 somewhat. Our clients recommend, as an alternative, 1
2 percent.

3 At page 8 of our recommendations there are
4 some which I've not discussed in -- in any detail. We
5 spoke a lot in terms of risk quantification in terms of
6 the advice offered by Professors Kubursi and Magee.
7 Assuming -- assuming for one (1) moment that the Board
8 doesn't accept their quantification of a five (5) year or
9 a seven (7) year drought, then what does the Board have
10 left?

11 And we note at the middle of page 8 that
12 the various stress tests conducted by Hydro and KPMG
13 provide some limited, and we really emphasize limited
14 insight into the nature of the risks faced by the
15 Corporation but are not satisfactory on a going-forward
16 basis as a quantification of risk using modern
17 statistical records -- methods, excuse me.

18 In the context of this specific hearing,
19 probably the -- the last number left standing is the --
20 the five (5) year drought analysis of Manitoba Hydro. So
21 we would recommend that for this hearing only that the
22 Board may want to have reference to that particular
23 figure, but that in its next General Rate Application
24 Hydro be directed to do a couple of things.

25 One (1) is to provide its advice on, when

1 we're looking at droughts, what's an appropriate year
2 time range: four (4) years, five (5) years. To my
3 horror, I -- I believe I heard Ms. Southall talking about
4 fourteen (14) years. One (1) of the reasons why we re --
5 we referenced the -- the -- we referenced the four (4)
6 year period is if one looks at the analysis of KPMG, they
7 had an interesting analysis of cor -- correlation and all
8 -- the serial effect of -- of bad years and when it kind
9 of seems to peak. And our understanding of that evidence
10 was that -- that it was at the four (4) year range.

11 So our clients, as we move forward in this
12 discussion, are tending towards the four (4) or five (5)
13 year range, but that's something that they believe the
14 Board could benefit from -- advice from -- from all on,
15 further advice.

16 And, secondly, our clients believe it is
17 very important for Manitoba Hydro to do more than a
18 stress test in terms of a quantification of its major
19 risks but to -- to perform a probabilistic assessment.
20 And we've set out the elements that -- that we believe
21 there.

22 The very last comment again goes to the --
23 the top of page 12. And our clients note that Mr. Colton
24 offered advice on more than one (1) area. Clearly our
25 clients are not supportive of his low-income rate

1 affordability recommendation. He made some
2 recommendations in terms of crisis intervention that our
3 -- our clients are supportive of, recognizing that the
4 Board sets rates and makes determinations based upon its
5 jurisdiction. But from a -- we would certainly recommend
6 that Hydro consider that carefully.

7 We also had some interest, our clients
8 did, in terms of his recommendations regarding arrears
9 management. And we want to acknowledge that that was
10 closely tied to low-income rate assistance. But,
11 conceptually, our clients have some sympathy for the idea
12 of spreading those payments over a longer period of time.
13 And so, certainly, to Manitoba Hydro, our clients would -
14 - would welcome a step in that direction.

15 Mr. Chairman, I won't make my application
16 for costs at this point in time. Our clients si --
17 sincerely appreciate the Board's patience in listening to
18 very lengthy submissions and the tremendous courtesy of
19 the Board in listening to our clients' submissions in
20 this hearing.

21 Some of them we -- we know have gone
22 against the -- the grain in terms of where the Board may
23 be thinking, but we appreciate the Board's courtesy in
24 listening to them. We certainly appreciate the
25 assistance of the court reporter, Board counsel, and

1 advisors who've been fabulous in this hearing in our
2 perspective, Hydro, and our fellow Intervenors.

3 And there is one (1) person in Hydro who's
4 been providing me with Tic-Tacs from time to time, who I
5 shall not name, but who we've been very appreciative of
6 as well.

7 And we thank our clients for their time
8 and close our submissions subject to any questions.

9 THE CHAIRPERSON: Well, thank you, Mr.
10 Williams. Although your closing statement was quite
11 lengthy the hearing was lengthy in itself and covers a
12 very wide range of very significant matters, so we
13 appreciate your participation and that of your client.
14 Thank you very much.

15 We're going to take a break now and when
16 we come back Mr. Singh will distribute apparently this
17 new information that we have from KM. Thank you.

18

19 --- Upon recessing at 10:54 a.m.

20 --- Upon resuming at 11:00 a.m.

21

22 THE CHAIRPERSON: Okay. First of all,
23 Ms. Southall, do we have a number for this KM?

24 MS. ANITA SOUTHALL: Yes, Mr. Chairman.
25 The KM responses to PUB pre-ask questions which were

1 circulated by email on the afternoon of July 4, 2011
2 should be marked as KM Exhibit 15, please.

3 THE CHAIRPERSON: Thank you.

4 MS. ANITA SOUTHALL: Thank you.

5

6 --- EXHIBIT NO. KM-15: Responses to PUB Pre-ask
7 questions

8

9 MS. PATTI RAMAGE: Mr. Chairman, if we
10 could comment on this exhibit? Manitoba Hydro has some
11 concerns with the introduction of new evidence at this
12 late stage, in particular the fact that there's no
13 opportunity to cross-examine it and test this evidence.
14 So we just want to bring this to your attention.

15 This document -- and -- and it's been a
16 very, very quick review of it at the -- at the break, but
17 it appears that Dr. Kubursi and Magee have answered
18 questions that can only be answered by Manitoba Hydro,
19 and here I'm referring to, as an example, Question 9(b).
20 The document also has statements, for example, the doc --
21 that the doctors have no hydrological experience, they
22 say that, but then go on to express opinions that require
23 hydrological experience and it's a hydraulic issue.

24 And, finally, we've noted on our quick
25 review that Dr. Kubursi and Magee have stated that they

1 have not reviewed the drought of 2003/'04 and the data
2 associated with that yet they go on to comment in this
3 document on the drought of 2003/'04.

4 So I wanted to bring this to the Board's
5 attention. We have some very serious concerns with this
6 evidence, it's -- I don't want to delay the process right
7 now but we -- we certainly have serious concerns with the
8 inability to test this evidence because it does make
9 conclusions regarding the cost of drought, that cost of a
10 five (5) and seven (7) year drought that arise from,
11 presumably, the analysis in here, which there seems to be
12 some serious -- we have serious concerns with the ability
13 of the doctors to conduct that, whether they did conduct
14 it and their ability to conduct it.

15 THE CHAIRPERSON: Well, it certainly
16 would have been a lot better if we'd received it before
17 when they were being examined as witnesses. We -- we
18 have your comments and we'll take them into account when
19 we're providing any weight to this material.

20 MS. ROBERT MAYER: And I'm assuming, Ms.
21 Ramage, that since you have a day at least to read this
22 stuff, we haven't seen it either, I suspect you might be
23 a little bit more specific on where the other objections
24 might lie when it comes to your final argument.

25 MS. PATTI RAMAGE: We'll make our best

1 efforts, but we also have a few other topics we have to
2 cover.

3 THE CHAIRPERSON: Well, on that note Mr.
4 Hacault has been very patient and it's time for MIPUG's
5 final closing statement. Mr. Hacault...?

6

7 FINAL SUBMISSIONS BY MIPUG:

8 MR. ANTOINE HACAULT: Thank you, Mr.
9 Chairperson.

10 On the issue of this last filing, I just
11 repeat that we had sent in a wri -- written submission
12 some time ago on the issue of filing additional evidence
13 after they had finished testifying and we just rely on
14 that.

15 I'd like to thank everybody involved in
16 the hearing, the Chairperson, Vice-Chair, Board counsel
17 and advisors, Board secretary Hollis, who's been sitting
18 out there, court reporter, Manitoba Hydro counsel, their
19 witnesses and experts, counsel for the various
20 Intervenors and their witnesses. It's my first time in
21 such a major hearing, in a utility rate hearing. I
22 really appreciate everybody's understanding and guidance.

23 I propose to briefly outline the content
24 of this written submission that's been distributed, and
25 then to cover some of the main issues dealt with in that

1 submission, as well as some issues dealt with in the
2 submission by Mr. Williams.

3 My first comment is with respect to the
4 witnesses the Chair had asked and questions with respect
5 to did we take issues with respect to credibility or
6 independence of witnesses. No, we don't. We do have
7 some criticisms of -- of some of the conclusions that
8 have been rendered, but don't question the credibility or
9 independence of those people.

10 I do note that Messrs. Bowman and McLaren
11 have a wide breadth of cross-Canada experience in utility
12 reg -- regulation. I submit that their evidence was
13 balanced and credible, and this, I submit, is as a result
14 of their experience. They sometimes act for utilities
15 and sometimes act for ratepayers, and they present a very
16 balanced view.

17 With respect to the hearing itself and
18 what we're trying to do, I'd just refer the Board -- and
19 it's not in our written submission, but we had provided
20 this fairly big outline, kind of a roadmap, because
21 there's so much evidence, to me, I needed some kind of
22 assistance. Okay, what are we really trying to achieve?
23 How do we mix all this information into rate setting?
24 Because we know from the case law and from the statutes
25 that the main purpose of this Board is to protect the

1 public from monopolos -- monopolistic behaviour and the
2 consequent inelasticity of demand, while continuing
3 ensured quality of an essential service.

4 And the economic regulation by a Board
5 such as this is directed primarily at avoiding the
6 potential problem of excessive prices, but, at the same
7 time, we have to ensure we've got a stable and
8 financially sound company.

9 The biggest issue that I think I've had to
10 grapple with, and I don't know if it's the same for the
11 Board, is to what extent do we let the future
12 considerations influence the quantum of the rate increase
13 in these two (2) test years. I'm not in the submission
14 itself right now. We've got, as noted by Board counsel,
15 very favourable financial results for the two (2) test
16 years. If we'd stop there, the answer would be pretty
17 simple. We really don't need a rate increase, they've
18 done better than they projected. But we all know that
19 that's not the right answer.

20 And another graph that I've been looking
21 at from time to time is this Tab 75, page 313. I've put
22 a big, black line, and -- and to me, it was: Well, isn't
23 rate setting all about we've got to get the highs and the
24 lows, and as long as we're on the right track with
25 respect to everything that we're doing, that's what we

1 should be trying to achieve for rate stability.

2 With respect to the information we have,
3 the latest information we have is the IFF produced by
4 Hydro in June 2010. It included the new cost of Bipole
5 3. And there are some comments by the Board that it may
6 try to recreate another IFF with certain variables that
7 Hydro didn't include in this one.

8 I would perhaps exhort some caution when
9 we do that. We've had some criticism by Mr. Williams and
10 -- and his client about the IFF being too generous in
11 interest rates and things like this, and then we've got
12 some thoughts, well, it may not be conservative enough
13 with respect to other items. Is our cup half empty or
14 half full? And what do we do with -- with our concerns
15 about this?

16 And my suggestion and submission is that
17 the primary focus and driver must be the test years.
18 Secondary condition -- con -- considerations surely have
19 to be the ten (10) and twenty (20) year projections, and
20 we have to have a general idea whether the ship's going
21 in the right way. But we can't leave all of those
22 concerns, whether they be positive or negative because
23 we've heard the economists say, Well listen, you may be
24 losing money if you don't build quicker. We don't know
25 for sure what's going to happen in twenty (20) years from

1 now. And then who's going to be criticizing us for have
2 lost -- having lost money.

3 So one (1) thing we know for certain, and
4 the forecasters always admit this, is no forecasts are
5 accurate. We know for certain they're not going to be.

6 So another danger that I saw in this
7 hearing which had a lot to do with risk is that we spent
8 a lot of time talking about how the cup was half empty.
9 What are the bad risks? What are the -- we never talked
10 about the positive side, about the lost opportunities,
11 about what happens if the economy has to grow, if we're
12 going to be --have to have a lot of flexibility for new
13 industrial cus -- customers, et cetera. We're concerned
14 that we're building too quick. These are matters of
15 predictability, and very hard to deal with.

16 So in the risk analysis, we saw that
17 Manitoba Hydro did a lot of improvements to its risk
18 management and, specifically, to the middle office
19 function. I submit that we had a validation of the
20 Manitoba Hydro approach to risk, and the evaluation of
21 quantum. And on that, I note -- that's at page 4 of the
22 new evidence, but Kubursi-Magee have come down to numbers
23 that are lower for five (5) year and seven (7) year
24 droughts than what Hydro had.

25 They're now at, I think one point six

1 (1.6) something, and one point nine (1.9) something
2 respectively for five (5) year and seven (7) year
3 droughts. Unfortunately that hasn't been tested, but it
4 seems that the changed numbers are more in line with what
5 Manitoba Hydro was projecting.

6 I think it can be safe to say that we've
7 fully dealt with the allegations of the New York
8 consultant. They've been fully and comprehensively dealt
9 with, and that the Board can be satisfied that Manitoba
10 Hydro is -- is not going to go into financial ruin and
11 bankruptcy.

12 The issues now, which I'll deal with, and
13 I am now getting into the written presentation. In the
14 preface, firstly, and I'll be jumping from -- fairly
15 quickly. I don't intend to read it, but I'd like to at
16 least point out certain things.

17 The way this brief is structured is we've
18 tried to put it in issues, so that if the Board is
19 looking to deal with a certain issue hopefully it can go
20 to the index, go to the appropriate tab, and I'm not
21 saying that we've managed to do a complete reference of
22 evidence on both sides on a particular issue, but we've
23 tried to at least be of assistance to the Board, and
24 bring it to its attention key elements of the evidence
25 that's come out of the hearing on these various issues.

1 So generally they're organized according
2 to the topics that we've outlined in this big 11x17
3 paper, which is Exhibit 14, into revenue -- revenue
4 requirements, and rates reserves, and debt, the equity
5 ratios, the risk, and the power resource plan, so.

6

7 (BRIEF PAUSE)

8

9 MR. ANTOINE HACAULT: There are ongoing
10 issues, and here I'm at Tab 1. The biggest ongoing
11 issues which MIPUG has identified is to ensure cost
12 control mech -- mechanisms are in place for Hydro's O&M.
13 That's roman numeral III in the first part.

14 We'd also like to -- and this has been a
15 repetition here, but I believe Mr. Warden, and I'll refer
16 to that later, said, The time has come to deal with
17 sinking funds. So I think it's appropriate now the Board
18 can feel comfortable in recommending that the province
19 remove that sinking fund obligation.

20 And the last thing that we'd encourage,
21 and I'll have further comments this, is that the Board
22 set out a plan to ensure that rates are based on the cost
23 of service. If I looked back on the Court of Appeal
24 Leave Application back in 2004, the comments of the Board
25 at that time were: Well, we really haven't done

1 comprehensive studies. We aren't at a point yet where we
2 can start to plan to make some adjustments between the
3 different classes. Well, we're now seven (7) years
4 later, and it appears we're still in the planning mode,
5 and we still aren't making any movement except for
6 roadway and lighting.

7 So going to the first tab, our position is
8 simple. The Board should finalize the two point nine
9 (2.9) interim rate increase approved in Board Order
10 18/10. The only thing we do note, and I guess it's maybe
11 a planning thing, it would be undesirable to get into a
12 situation where we approve interim rates at a -- as a
13 matter of course. There has to be some kind of planning
14 process so we can make sure that we can deal with the
15 rate applications in a timely way.

16 I know this is a special circumstance.
17 But we also repeat our submission that interim rates
18 should really be a special circumstance and should be
19 based on an application by Manitoba Hydro so we know what
20 we're dealing with.

21 The second topic, Tab 2, it's the final
22 rates for 2011/2012. We submit there's no opposition to
23 the 2 percent increase except that on a go-forward basis,
24 and this is at the bottom paragraph, we short or --
25 suggest that Manitoba Hydro should be ordered to

1 undertake a small re-balancing of the rates between
2 domestic classes and recognition of the differences in
3 the revenue to cost coverage ratios. I'll deal more with
4 -- more fully with that. So those would just be on a go-
5 forward basis. They would not be retroactive.

6 The -- there are a lot of items that go
7 into coming to those recommendations. I've dealt with
8 some of them, but I'd go to -- in the dis -- discussion
9 and support. In the middle of the page there's three (3)
10 points which we think are key. Our witnesses have
11 indicated that we should be celebrating. We've exceeded
12 the debt-equity ratio, so there's no pressure there.
13 There's low assumptions for inflationary pressures.
14 Hydro has been successful in constraining some of the
15 OM&A spending in 2010/2011.

16 And here we repeat what Mr. Williams
17 indicated. We're not out of the economic downturn yet by
18 any means. That's pretty obvious. I think we can take
19 judicial -- judicial notice of that. The States is still
20 going through major challenges, and it's our major
21 trading partner.

22 Now, with respect to the cost coverage
23 ratios, the table which is on page 2 of 3 was confirmed
24 to be correct. And we can see that roadway lighting,
25 practically at the end, is at about 103 percent. They're

1 benefiting from a freeze over the la -- over these two
2 (2) test periods.

3 People that are higher than that are not
4 benefiting from the freeze. I raise the issue of
5 differential treatment between classes if we're going to
6 go on the basis that roadway lighting has been outside
7 the zone of reasonableness and could benefit from freezes
8 in its -- in the rate increases. Is there a valid reason
9 not to treat people who are also outside the zone of
10 reasonableness in the same way?

11 Now it's our submission therefore that
12 with respect to the GSL greater than 100 kV, going
13 forward there should be a recognition that they have been
14 out of the zone of reasonableness and that continues to
15 be the case.

16 With respect to the two (2) classes that
17 are below, that's GSL zero to thirty (30) and the
18 residential, we're mindful of the comments that Mr.
19 Williams has made. But at one (1) point in time we have
20 to decide, and as I said, we've had these studies and
21 spent a lot of money on them. Are we directionally going
22 to follow that or are we going to study the thing to
23 death? Politicians always when they don't want to
24 implement something say, Well we've got to have a new
25 study. We'll study it again. And then nothing ever gets

1 done. At one (1) point in time we have to do something
2 and then decide if there's new information that does come
3 out that gives us a different direction it might cause us
4 to rethink our initial thinking.

5 With respect to the next issue at Tab 3 --
6 I'm moving along relatively quickly because I -- I'm
7 hoping to -- to get through all of these issues. I --
8 hopefully that the posit -- the way it's structured, our
9 position and the discussion and support will lend itself
10 to the Board's analysis in the final writing of its
11 Order.

12 THE CHAIRPERSON: You can be assured
13 we'll read it all carefully.

14 MR. ANTOINE HACAULT: Thank you. With
15 respect to the 2012/2013 rate adjustment, and this is not
16 -- this part that I'm going to be talking about is not in
17 the submission. I draw the Board's attention to a couple
18 of sections of the legislation. Under the Crown
19 Corporations Public Review and Accountability Act,
20 Section 26(3), that's where it indicates the Public
21 Utilities Board Act applies with an -- any necessary
22 changes to a review of rates for services.

23 And it's in the Public Utilities Board Act
24 that we find out how Manitoba Hydro or how rates get
25 changed. In my respectful submission is that two (2) of

1 those sections or that 59(1) talks about how an
2 application for a rate increase or a rate adjustment is
3 made:

4 "A person applying to the Board under
5 this Act shall apply in writing."

6 So the section in the discussion talks
7 about fairness issue and I think this section of the
8 Public Utilities Board Act is instructive that the
9 legislature has thought that it's important enough of an
10 issue that the application should be put forward in
11 writing so that people know what it's about, what they're
12 looking at, and what's happening.

13 And this is further supported under the
14 Manitoba Hydro Act, Section 39(10) and 39(11). 39(10)
15 starts:

16 "Where an application is made to the
17 Public Utilities Board under this Act."

18 And that would, in my respectful
19 submission, refer to this application in writing. And
20 39(11) says:

21 "After hearing the evidence and
22 submissions in respect of any
23 application made to it under this Act
24 the Public Utilities Board shall make a
25 report to the Minister which shall

1 include..."

2 And it continues.

3 Again, it's our respectful submission that
4 if there is going to be any rate set for 2012 and 2013,
5 it should not be made unless it's on application in
6 writing from Manitoba Hydro with due notice to other
7 parties.

8 There -- if Hydro had been concerned that
9 there would be a need for 2012 and 2013 rate increase --
10 I'm talking from a practical level -- and that there
11 might be an overlap with NFAAT proceedings so that their
12 resources might be stretched, they could have easily
13 amended the application. We've had updated IFFs
14 throughout this proceeding, the most recent about a month
15 ago. So that it's our respectful submission that -- that
16 no order should be made with respect to rates for 2012
17 and 2013 unless there's an application made.

18 Turning to Tab 4 now, pretty big issue
19 here, and it's been a subject of a lot of discussion, is
20 the planning costs and intergenerational equity. And
21 that, I suggest, arises to a large extent because of the
22 uncertainty. Are we going to have the decade of returns
23 which is advocated by Manitoba Hydro? Are -- are there
24 going to be some challenges which might defer those
25 returns for some time?

1 If we were sure there was going to be a
2 full decade of returns and -- and there was going to be a
3 lot of money coming, well, why would we, today, knowing
4 that people ten (10) years down the road are going to be
5 making oodles of money with the generation stations, in a
6 sense, pre-fund them? It makes no sense for us to pay
7 for benefits that people will clearly get in the future.
8 But my sense is that we aren't so sure about that.
9 There's some issues there.

10 So what do we do with it? We view that --
11 when I say "we," I mean MIPUG -- that Hydro's approach to
12 capitalization of all pre in-service planning costs
13 follows normal Canadian regulatory practice and is
14 appropriate, so that all the cost to investigate, plan,
15 design, and build specific new projects, including
16 engineering, licensing, regulatory, et cetera, is
17 properly tracked and a word -- work in process account,
18 and not included in the assets and service or amortized
19 to income revenue requirement until the plant is serving
20 its intended purpose. That evidence we have in -- in the
21 discussion and support is evidence of regulatory practice
22 based on expert advice.

23 I do note, although it's not specifically
24 applicable to this proceeding, that Section 61 of the
25 Public Utilities Board Act does reference, in rate

1 setting, the principle of used and useful and prudently
2 acquired. So at least in -- in your legislation, by
3 which you get the authority to sit, there is the
4 reference to used and useful and prudently acquired as a
5 fundamental principle.

6 So the broader question of
7 intergenerational equity, however, is burdening those fu
8 -- future customers with possible risks. MIPUG, however,
9 doesn't support any increased recognition of Hydro's
10 future plans and spending in current rates. Current
11 rates, in the IFF projections, already permit sustained
12 progress towards Hydro's long-term financial targets.
13 This progress can only be achieved as a result of
14 material forecast equity contributions towards new
15 developments.

16 These financial targets are more than
17 adequately being addressed in the current IFFs, which is
18 evidence in itself of material contributions being made
19 by present taxpayers, or ratepayers rather, towards the
20 capital required for the new developments. And we've
21 seen that in the evidence with respect to Wuskwatim. So
22 -- and there's more of it being capitalized on -- sorry,
23 being paid now than before. We've taken out an extract,
24 and that's in the discussion in support, Mr. Warden's
25 evidence.

1 (BRIEF PAUSE)

2

3 MR. ANTOINE HACAULT: That's on page 4-2.

4 Mr. Warden indicated that there was approximately \$30
5 million of costs that were previously capitalized, and
6 now being expensed annually. So, if anything, the new
7 accounting standards are shifting, and causing
8 intergenerational issues by requiring current ratepayers
9 to pay more than they used to under the old accounting
10 procedures.

11 The other extracts are from the MIPUG
12 witnesses and from Mr. Matwichuk. I -- these are experts
13 with rate-making experience, not only in this
14 jurisdiction but other jurisdictions. And I draw your
15 attention to Matwichuk's evidence, or the extract of it,
16 and I'll read it in for the record:

17 "Intergenerational equity has, and
18 continues to be, a fundamental
19 principle of rate regulation.
20 Ratepayers are given a per -- in a
21 given period should pay only the cost
22 necessary to provide them with the
23 service in that period. Combined with
24 the cost of service standard, this
25 principle requires that rates in each

1 period should recover the cost of
2 providing service in that period. It
3 generally adheres to the notion that
4 cost should be borne by those who
5 receive the service generating that
6 cost."

7 Now, Mr. Peters had cross-examined Mr.
8 Warden on that issue of intergenerational equity, and who
9 is pre-funding. And in the next quote that follows, and
10 that's on page 4-4. Mr. Peters is saying:

11 "So you would acknowledge that in the
12 test years presently before this Board,
13 certainly a portion then of rate
14 increases would be to pre-fund future
15 plants."

16 And Mr. Warden explains:

17 "Well, it's important to maintain the
18 financial ratios, and at -- any time we
19 generate cash internally then we are
20 funding projects, capital projects, for
21 which debt will not be required, which
22 is a good thing."

23 And he goes on to talk about the capital
24 funding target of one point two zero (1.20), and then
25 agrees with Mr. Peters that it follows that they are pre-

1 funding, to some extent, the new capital projects because
2 if you weren't building them you wouldn't need the new
3 debt.

4 So what then with respect to this form of
5 pre-funding? Raising rates to -- to pre-fund is -- is
6 one (1) issue. What about when it's kind of embedded
7 because we're trying to meet the financial ratios?

8 Well, we refer back to the Limestone in
9 this discussion and say, Let's not be too concerned about
10 all the debt-equity noise that we're hearing about 75:25,
11 and perhaps even hitting some negative income because we
12 have one (1) very concrete example of where people were
13 really concerned about that. I had participated in the
14 very first hearings, where there was neg -- negative net
15 income forecast initially, and a debt-equity ratio of
16 95:5. And despite this, the Board in its wisdom at that
17 point in time only maintained orderly rate increases,
18 some less -- and not more severe increases.

19 So I guess the message here is that we've
20 got a hundred year plus life expense -- expectancy of
21 generating stations. There's not any forecast of losses
22 in the first ten (10) years of in-service as far as net
23 income. There's nothing to really be concerned about, in
24 my respectful submission, which would cause this Board to
25 say, Well, listen, we've got these major capital

1 projects, we have to strengthen the health of this
2 Corporation and we have to start to pre-fund those
3 projects today.

4 OM&A, Tab 5. Now, oddly enough, this was
5 one (1) of the only areas in which the evidence of
6 InterGroup was challenged because they were suggesting
7 that there wasn't sufficient cost control. I won't get
8 into it, but Mr. Williams brought you through the memos
9 that came from Mr. Brennan.

10 I had asked those questions, as you may
11 recall because I was trying to explore -- a lot of
12 organizations start bottom up. They'll say, We've got a
13 focus here, a zero percent increase or CPI increase.
14 They start from the bottom, the truck drivers, everybody
15 at the bottom, and they say, Please tell us how we could
16 implement that without compromising safety and security
17 of the system. That's not happening in Hydro.

18 What did happen nearly two (2) years after
19 the recession is we got a series of memos from Mr.
20 Brennan, the first one suggesting there should be some
21 cost control, gradually increasing the tone to the point
22 in the last memo, they're suggesting, Well, if you guys
23 at the top don't do something you may see that your wages
24 will be frozen. And that seemed to get a little bit more
25 attention.

1 But I know I'm new to this proceeding and
2 you're kind of always rocking the boat when you're the
3 new one around the block, but it seemed to me that I
4 didn't see any good reason why Hydro wasn't going through
5 this exercise of deciding: can I do it with a zero
6 percent increase, can I reorganize the way I send out my
7 trucks?

8 Those are not things we have to analyze in
9 a hearing, but it's good for an organization to go
10 through that exercise and ask its employees to go through
11 that exercise. The danger in having a direction from the
12 top is that you're not dealing with systemic issues and
13 issues where you could get sustained savings. You're
14 dealing with very specific items which kind of pop out on
15 anybody's reading of a financial statement.

16 So we -- I mean, MIPUG continued to
17 encourage the Board to put some directions in its reasons
18 for decision that there be continued restraint and tight
19 controls on OM&A spending. Mr. Williams talked about,
20 Well, how do you really do that. That's pretty tough
21 because if the costs go up and you say, Well, it didn't
22 all go to retained earnings. We're trying to get
23 retained earnings up. We've got to put the -- the rates
24 up. When you do that, then it says, Well, why do I need
25 to save because they give me money as soon as -- even

1 though I've projected them to be lower and I spend more,
2 if I spend more, they give me more.

3 So that's why we've put in that particular
4 tab at the bottom of page 5-1 leading onto 5-2 that they
5 continue to provide detailed reports to the Board and
6 Intervenors on corporate-wide efforts to restrain OM&A.
7 There was one (1) report on that. They continue to
8 document and report to the Board and Intervenors on
9 quantitative improvements in efficiency.

10 But this is a new one for the Board's
11 consideration, is to provide budget scenarios and options
12 considered for maintaining OM&A spending at inflation or
13 at zero levels. So that way we see that there's a very
14 serious effort from the bottom up to see what can be done
15 within the Corporation. We don't have that as far as a
16 record before this Board. And I say that fits in well
17 with a section that Mr. Williams also quoted. It's
18 Section 39(1) which I've previously quoted:

19 "Prices payable for power supplied by
20 the Corporation shall be such as to
21 return to it in full the cost to the
22 Corporation of supplying power."

23 But it qualifies what they get to be
24 reimbursed for, "(a) the necessary operating expenses."

25 And we've been talking about the poor and

1 about necessities and stuff like this. It struck me when
2 I looked at Brennan's memos that contrary to corporations
3 who had to do cost-cutting measures immediately with the
4 recession, there was nearly a two (2) year lag before the
5 Corporation undertook the same exercise.

6 MR. ROBERT MAYER: Are you convinced,
7 sir, that Hydro in fact did implement such an exercise?
8 We know that some of the suggestions about wage freezes
9 never appear to have occurred.

10

11 CONTINUED BY MR. ANTOINE HACAULT:

12 MR. ANTOINE HACAULT: Well, that's a good
13 question, Mr. Vice-Chair, and that's why we made the
14 recommendations so there's some kind of a transparent
15 process. And I'm not here to give evidence, but I've sat
16 on university boards and they're -- the go through that
17 process and -- and -- and they have to demonstrate -- it
18 doesn't mean that they don't get their increase but at
19 least then we know what the choices are.

20 We know if we don't -- if we do a cost of
21 living, a CPI, this is what can or should be done to
22 achieve that. I mean, it -- and it's surprising, and
23 sometimes major corporations forget how many good ideas
24 come out of employees at the very bottom. We don't have
25 any sense of whether or not there's a suggestion box for

1 -- for the employees on efficiencies, if they're
2 encouraged by some kind of a small financial reward to
3 make those recommendations.

4 And the biggest concern as we say in the
5 discussion is that we've had fairly significant increases
6 in a lot of areas, including personnel, and I know we've
7 had some explanation with respect to that. But when
8 you're adding like over six hundred (600) employees in or
9 about recessionary times, it's -- it's kind of amazing, a
10 lot of companies wouldn't be doing that.

11 I think those are all the comments I'll
12 make on OM&A, there's a more full discussion in the
13 paper. I'm moving along fairly well, I don't know what
14 the Board's wish is.

15 THE CHAIRPERSON: We'll go to 12:15.

16
17 CONTINUED BY MR. ANTOINE HACAULT:

18 MR. ANTOINE HACAULT: Okay. One (1) item
19 that isn't in OM&A but I think merits some discussion,
20 this arises out of Mr. Williams' discussion, is the
21 capital just -- program justification sheets that we saw.

22 I thought that that was a very, very
23 informative piece of information. It gave some insight
24 as to whether or not the estimates had to be updated.
25 The one (1) thing that struck me with respect to that

1 whole exercise was that there did not appear to be a
2 structured and mandatory review of estimates.

3 So you may recall with respect to Bipole
4 3, some of them were like seven (7) or eight (8) years
5 old and they were noted each time. We haven't updated,
6 we haven't updated, we haven't updated. All the IFFs
7 with -- with the numbers you'd think that that was the
8 best estimate but there didn't appear, at least from that
9 example, to be a review of some key issues, and the only
10 way we got to know that was by seeing that document.

11 So if we're gaining some lessons perhaps
12 from that is the type of information that's in this CPJ
13 would be useful information for the hearing, I think, so
14 we know whether or not we have to -- we can test whether
15 or not the reasonableness of the estimates are for the
16 major capital projects.

17 And for the major capital projects, I
18 think it would be useful that they be updated. I don't
19 know that there's any magic, but every two (2), three
20 (3), four (4) years there should be current information
21 about the project if we're going to be basing our rates
22 on that, at least in -- in an indirect way as a secondary
23 consideration.

24 Moving to Tab 6, which is the sinking
25 funds. The only item that I deal with there specifically

1 is Mr. Warden's indication. It's on page 6-2, in the
2 middle of the page. At the very bottom of the quote, it
3 says: "So the opportune time has arrived." And that was
4 in the context of eliminating the sinking fund.

5 Now, Mr. Vice-Chair asked some very
6 probing questions. Well, why are we still seeing all
7 these big numbers in the IFFs, \$8 million a year, if
8 we're just putting the money in and taking it out and
9 it's not going to be used? I guess that's a small tweak
10 that should be done to the IFF because it appears that,
11 although we're -- Manitoba Hydro is not really using that
12 mechanism very much, it's still forecasting interest
13 expense, approximately \$8 million per year.

14 And that's -- when I talk about millions,
15 I apologize. Throughout the hearing sometimes, I was
16 making mistakes. I'm not used to dealing with millions
17 and billions of dollars, usually it's in the hundreds of
18 thousands. But in the context of these hearings, it
19 appears \$8 million is not even a big number.

20 Tab 7, low-income affordability
21 programming. I think Mr. Williams dealt with that to a
22 large extent. MIPUG has no objection to Manitoba Hydro
23 administering or facilitating bill as -- bill assistance
24 programs for low-income customers that are funded on a
25 voluntary basis by contributions from Manitoba Hydro.

1 We'd suggest that there should be a
2 business case with respect to any programs, and that
3 serious consideration has to be given, and this is a
4 rate-making principle, and it's reflected in the
5 legislation, too, that there not be discrimination.

6 And you say, Oh, well, Mr. Hacault, you're
7 talking about the big companies. What do you care? But
8 we've, I think, fairly -- MIPUG presented on all issues
9 on a principled basis.

10 And in regulatory texts, although I
11 haven't cited them here, one (1) of the biggest concerns
12 raised by the authors is the very example that Mr.
13 Williams cited, saying that if you don't get 100 percent
14 participation, then what happens is you have to raise
15 rates, and the low-income people who don't participate
16 indirectly get penalized because of the program.

17 So, for that reason also, we submit that
18 because there are numbers, and we do quote the numbers
19 here, it does appear that there will be a net cost of at
20 least -- it looks in the four (4) -- 40 million, so
21 that's like four (4) -- four (4) points on everybody's
22 rates, including the low-income people. And that's an
23 annual cost, it's not a one (1) time cost.

24 We do quote the evidence of Dr. Carter
25 later on in this discussion, indicating that the best way

1 to deliver programs to the poor and needy, and a lot of
2 us have those backgrounds. I know we -- we heard some of
3 the Hydro witnesses. I was born and raised on a farm
4 where we really didn't have much, so just because we wear
5 suits and ties now doesn't mean that we don't emp --
6 empathize with the poor and the need to help them. But
7 when we look at program design and delivery, we point out
8 to Dr. Carter's evidence that -- and this was at the top
9 of page 7-5 in our material. In an IR response, Dr.
10 Carter responded to the proper role of Manitoba Hydro
11 with respect to low-income programming, and I quote:

12 "What is the best role for an
13 organization like Manitoba Hydro in
14 this context? Certainly to be a player
15 in an integrated strategy, but not a
16 funder of programs to alleviate proper
17 -- poverty. Manitoba Hydro must play a
18 role in program design, energy audits,
19 education, promotion, monitoring,
20 perhaps even in delivery in conjunction
21 with community-based organizations.
22 However, funding should rest mainly
23 with governments."

24 And that evidence was substantially
25 repeated in his direct -- or in the testimony, and we've

1 taken a quote out, and that's the -- the bottom of the
2 quote of page 7-5:

3 "So I guess all things being equal, I
4 would suggest that Manitoba Hydro is
5 not as well placed as some of the other
6 departments in government to deliver
7 energy affordability alleviation
8 programs, or poverty alleviation
9 programs in general."

10 So unless -- to sum up, unless there's a
11 business case for such a program, and unless the program
12 can be demonstrated not to harm other poor people, MIPUG
13 would not be in favour of it.

14 Cost of service, Tab 8. The question was
15 asked by the Chairman:

16 "Was there any -- were there any
17 changes required to the cost of service
18 or rate design?"

19 And it's MIPUG's submission that the
20 evidence in this proceeding is that the PCOSS 10 and 11
21 are substantially consistent with the Board's previous
22 directives, and with the core principle of cost
23 causation.

24 And where Manitoba Hydro has implemented
25 modifications from the Board's directives, the evidence

1 was that they were either reasonable based on cost
2 causation principles, or of little consequence to the
3 results of the study, or both. That evidence, which was
4 provided by Messrs. Bowman and McLaren, was not
5 challenged.

6 Mr. Peters did a substantial cross-
7 examination of Hydro on what it did and didn't do. There
8 was no major challenge in this proceeding to that
9 evidence, and we note -- noted in the evidence that there
10 was a full review in 2006 with eleven (11) days and over
11 \$1.25 million in costs.

12 If what we're saying is that we've got to
13 do another \$1.2 million of expense, and another fourteen
14 (14) days of hearing, I guess it'll make some lawyers
15 happy, and some consultants happy, but at one point in
16 time we have to make use of what we do have unless
17 there's some major flaws with it.

18 So the only evidence that we noted where
19 there were issues with Hydro's cost of service
20 methodology was Mr. Chernick, and we note those comments
21 on the following page. It's page 6-2. Now, we note that
22 those comments addressed only the distribution and sub-
23 transmission functions. Even if there were changes in
24 those areas, it would not affect or address the issues or
25 concerns with respect to the GSL over 100 kV. That class

1 makes little or no use of those functions. And in this
2 section we have reproduced a fuller table with all of the
3 different classes, that's at page 8-3. And note that with
4 respect to the GSL over a hundred kV, you're close to 109
5 percent.

6 And we note the references in the
7 transcript where the data in Table 5.1 was confirmed as
8 correct by Manitoba Hydro. Now, we've put this also in a
9 visual form on page 8-4 showing the revenues generated
10 and the total cost, and also how those costs are used or
11 allocated by the various classes that are out there. So
12 it gives you a visual representation of the bulk power
13 costs, the sub-transmission costs, the distribution and
14 customer service costs, and then the -- finally, the
15 policy adjustments on export credits. And so visually we
16 can see that for the bulk power costs where people stand
17 as far as the -- the amounts that they're paying, and the
18 sub-transmission costs, what they're paying.

19 I think, Mr. Chairman, with that, on the
20 costs of service, our recommendation is basically a
21 repetition of the initial one, is that we suggest that
22 the Board set out a plan as to how it's going to deal
23 with these RCC issues. It is already and has dealt with
24 roadway and lighting. And we say it's time to deal with
25 it also with respect to the GSL over a hundred.

1 And, at one point in time, and we're
2 talking about the decades of return, residential
3 customers right now are benefiting from all those export
4 revenues, and that's clear from this depiction on the
5 graph on the policy adjustments. At one point in time,
6 there's going to have to be an adjustment so that the
7 residential customers, if we're implementing these new
8 generation stations, the decade of returns from Limestone
9 is going to start to be exhausted. It is only going to
10 come back later on. And if we don't deal with the issues
11 of residential classes and the GSL less than thirty (30)
12 paying their way, they're going to be forced to deal with
13 that once there's no excess decade of returns from
14 Limestone.

15 So we'd really encourage some thought into
16 what's the plan going forward on how we're going to deal
17 with these issues. Thank you.

18 THE CHAIRPERSON: Thank you, Mr. Hacault.
19 So we'll come back at 1:15 if that's all right with you.

20 MR. ANTOINE HACAULT: Yes, it is.
21 Thanks.

22 THE CHAIRPERSON: Okay.

23

24 --- Upon recessing at 12:15 p.m.

25 --- Upon resuming at 1:18 p.m.

1 THE CHAIRPERSON: Okay. Welcome back.
2 Mr. Hacault...?

3

4 CONTINUED BY MR. ANTOINE HACAULT:

5 MR. ANTHONY HACAULT: I'm going to start
6 by quoting Vice-Chair Mayer. So putting it as another
7 fine gentleman once said, in the vernacular, corporate
8 welfare is okay, and within your jurisdiction, but
9 individual welfare for the poor is not. And that leads
10 me to my next subject, and I want to deal with that head
11 on, Mr. Vice-Chair.

12 Demand billing. As we know, this program
13 addressed and -- and this is where I want to make a
14 distinction. It's a rate issue, and I think we have to
15 have the focus on rate design and rate setting, which is
16 the Board's function.

17 This rate caused unintended consequences
18 because of the rate design for general service large and
19 general service medium customers. And it's also a rate
20 issue because it helped stabilize Manitoba Hydro's
21 revenues during the period when short-term export market
22 prices were low as a result of the economic downturn.
23 And I'll deal with both of those issues in sequence.

24 So the program didn't change the energy
25 charge, right, and if -- if we had this kind of

1 consequences on residential cus -- customers, I would
2 dare say they'd go up in arms. If they had their rates
3 triple and quadruple, which we saw in some of those
4 charts, residential cus -- customers would say, Well
5 there's something wrong with this rate design. Why, when
6 there's a recession, do I have to pay four (4) times --
7 my -- my bill go up four (4) times? Why does my bill go
8 up three (3) times? There's something wrong with the way
9 you've designed this rate. Why should it go -- go up in
10 a recession?

11 It's no less true for an industrial
12 customer whose major production costs is Hydro. Why
13 should its bill triple when there's a recession. There's
14 something wrong with the way the rate was designed. It
15 wasn't designed to deal with a recession, which is an
16 extraordinary circumstance, and a special circumstance.

17 So what did they do? They didn't say,
18 Well we're going to give you a break. They still said,
19 We're going to charge you more than what you paid. So
20 it'd be like going to residential customers and saying,
21 Well your bill is a hundred dollars (\$100). Because it's
22 in a recession we'll limit -- we won't triple your bill,
23 we'll just increase it by 10 percent, and we'll cap it at
24 that. So it wasn't giving them something, it was
25 limiting the adverse consequence of the rate design in a

1 very unusual circumstance.

2 The second point that I'd made is -- and
3 this came out in the evidence. They say, Well it's
4 costing Manitoba Hydro something. Well I beg to differ.
5 It didn't cost Manitoba Hydro anything because we heard
6 evidence from at least two (2) industrial customers, and
7 also from Mr. Wiens, that people -- the industrial
8 customers came and said, Well listen, we can't continue
9 production with these rates, these increased costs.

10 So what would those customers have done?
11 They've already backed off three (3) shifts to one (1)
12 shift. If you're going to triple the production costs,
13 you just can't -- it doesn't make sense to produce the
14 product, so they would have eliminated, I suggest it's
15 reasonable to infer, would have eliminated that last
16 shift.

17 So where would have Hydro sold the power
18 if it hadn't been able to sell it to these industrial
19 customers? The export market. SEP rates were two (2)
20 cents and less. They're getting far more than that from
21 the industrial customers.

22 So it -- this program benefited Manitoba
23 ratepayers, in my respectful submission, because if they
24 didn't have the program they wouldn't be getting the
25 rates plus 10 percent, which is what they got, they'd be

1 getting something less than that.

2 MR. ROBERT MAYER: Mr. Hacault, that --
3 the rate plus 10 percent, Sir, Hydro was getting less
4 money out of the industrial customers. Their complaint
5 was they were paying more per kilowatt hour when you --
6 when you put in the demand charge, correct?

7 MR. ANTOINE HACAULT: The unit charge
8 went up to like fifteen (15) cents, which was even double
9 what residentials were paying.

10 MR. ROBERT MAYER: I put it to you, sir,
11 that they were -- that Hydro was getting less money net
12 from the industrial customers with the demand concession,
13 less money, yes --

14 MR. ANTOINE HACAULT: Over -- overall,
15 the redu -- there was a reduction because of -- there
16 were, say, for in my example, not three (3) -- not
17 twenty-four (24) hour production happening so not twenty-
18 four (24) usage.

19 MR. ROBERT MAYER: But Mystery Mountain
20 continued to pay its demand charges. That's a non-profit
21 organization but is also on demand. It continues to pay
22 its demand charges.

23 These -- if you'll recall, sir, when we
24 somewhat reluctantly went along with the propo -- Hydro's
25 proposal we said we're prepared to consider at the end of

1 the scheme if somebody can show real financial hardship.
2 We've sought -- we've seen none of that.

3 We asked for it. We've mentioned it.
4 We've discussed it previously. We have no evidence that
5 the -- that any -- we have two (2) -- we have letter -- a
6 couple of letters basically saying what a wonderful idea
7 this was to give us this demand concession, but now
8 you've got to make sure we don't have to pay it back.
9 And no suggestion that we have any real evidence of --
10 that these corporations were significantly hurting. If
11 we have that evidence, maybe you could pull that up on
12 your computer like you pulled up my comments.

13

14 CONTINUED BY MR. ANTOINE HACAULT:

15 MR. ANTOINE HACAULT: Thank you for your
16 comments, Mr. Vice-Chair. The -- Mr. Wiens did address
17 that just before you had spoken by explaining that large
18 industrial customers had been forced to operate outside
19 the parameters of what they considered the rate to be
20 designed for. And, in fact, what they were doing is they
21 were trying to save jobs by not cutting all of the three
22 (3) shifts, only cutting two (2) of the three (3) shifts
23 and maintaining one (1).

24 Now, that meant you still had your demand,
25 correct? So I -- I believe that there's sufficient

1 evidence here. First, I don't think anybody's denying
2 there was a recession. We saw a lot of people drop. We
3 saw Pine Falls is no longer around. And that may be for
4 a number of reasons, but, you know, there's -- there was
5 -- there is a recession happening, it's -- it's clear,
6 and Hydro tried to deal with that.

7 And a rate, in my respectful submission,
8 is not just and reasonable if it has that much of a
9 variation in an economic circumstance, such as a
10 recession. There's something -- people, when they
11 designed that rate, didn't anticipate there would be this
12 issue that would crop up.

13 So, in my respectful submission, when
14 we're -- the -- the Board looks at whether or not rates
15 are just and reasonable or discriminatory or unfair, and
16 Hydro can't charge an unfair rate. That's in, I believe,
17 Section 77 of the legislation.

18 And it's my respectful submission that the
19 rate -- the question of -- that you've raised, well,
20 somebody had financial hardship -- well, I was born and
21 raised on a farm. The year I got married and my brother
22 got married there was a drought. We didn't even harvest
23 any crops. So are we gonna start -- the reason I raise
24 that example, is it reasonable and are we going to start
25 to look at, well, was there a bad year and negative

1 income for farmers, for businesses, in deciding what the
2 hydro rates are going to be?

3 No, either the rate is fair or it isn't
4 and in this case it ended up being unfair. And that's
5 what we have to look at is whether rates are just and
6 reasonable. We can't start setting rates on whether
7 Antoine Hacault all of a sudden doesn't make any money
8 and loses money. If he pays a just and reasonable rate
9 either he -- he's subject to an unfair rate or he isn't.

10 MR. ROBERT MAYER: But, Mr. Hacault,
11 that's exactly what Hydro did. They went to and each
12 every individual customer and said we got a deal for you.
13 You're paying basically more per kilowatt hour now
14 because you're cutting back on your production -- you're
15 cutting back on your production and we'll reward you for
16 that, and we'll cut your rates back -- we'll cut your
17 demand charges back.

18 Surely -- you mention now that you've got
19 a rate design problem. It's a rate design problem I'm
20 assuming then it is that the -- the whole demand charge
21 issue is -- is a rate design problem. If that's a rate
22 design problem then maybe we should be looking at a rate
23 design problem as opposed to giving certain customers a -
24 - a break on their -- on their electricity bills. You
25 wouldn't give -- we didn't give the farmers any breaks on

1 their -- on their bills when -- when they got -- through
2 no fault of their own, got either rained out, hailed out,
3 or droughted out. What's the difference?

4

5 CONTINUED BY MR. ANTOINE HACAULT:

6 MR. ANTOINE HACAULT: Well, the focus --
7 it depends which focus you take, Mr. Vice-Chair. If you
8 take the focus that we're going to charge electricity
9 rates based on -- on revenue, we're getting into kind of
10 a taxation, you know, it's you make more revenue, you pay
11 more taxes. So the company makes more money, pays higher
12 hydro bills. The legislation provides that hydro is to
13 be provided at cost, and if a company is paying fifteen
14 (15) cents a kilowatt that's way over any definition of
15 cost. It's over what anybody in this province is paying.
16 There's a problem with the rate design.

17 It's -- it's not anywhere close to the
18 cost of service. There's no sub-transmission, no
19 distribution to -- to -- to the GSL over a hundred. They
20 would be paying triple what it costs to serve them. So,
21 yes, I believe that -- and I submit that it's a rate
22 design issue. And we're providing only a temporary
23 correction to that rate design issue over a couple of
24 months.

25 It means that they have had to overpay the

1 costs of service for several months before and after,
2 you've seen that in the evidence. Not only are they
3 above the costs of service for GSL large, and that's just
4 the one (1) category, they're at a hundred and ten (110),
5 they're already subsidizing other people.

6 By going to the fifteen (15) cent level
7 they're tripling that subsidization, which is not
8 anywhere near what the basic regulatory principles which
9 require paying for your electricity based on cost of
10 providing that service. That fundamental principle is
11 not being respected and I -- I submit that that's the
12 difference whether the Board agrees with me or not.

13 And that's why I had said, well,
14 residential customers, if you tell them all of a sudden
15 in a recession your rates are going to double from seven
16 (7) cents to fourteen (14) cents, they'll say but why
17 should my rates double, it's not costing you that much to
18 provide me the service. It's a rate structure issue.

19

20 (BRIEF PAUSE)

21

22 MR. ANTOINE HACAULT: So I dealt with,
23 briefly, Section 77 of the Public Utilities Board Act,
24 which gives the Board jurisdiction to fix just and
25 reasonable rates whenever it believes, and it's fixing on

1 the rate again, that any existing individual rate or
2 special rate is unjust, unreasonable, or unjustly
3 discriminatory. And it's my respectful submission that
4 the evidence that you have before you shows that, given
5 those numbers that I mentioned and that are on the
6 evidence, that we're not anywhere near the cost of
7 serving these customers, that the rate is unjust, not
8 unjust in the sense of just being outside the zone of
9 reasonableness, but 2 and 300 percent over what that zone
10 of reasonableness would be.

11 We have, in our -- in the issue brief,
12 dealt with all the questions that the Chairperson asked,
13 and those start at 9.4, or 9-4. I think I've dealt with
14 some of them, but I'd like to point out, and we've given
15 evidentiary references, the -- on the issue for the
16 requirement to file financial information, you've noted
17 that the Board doesn't feel that it's had as much
18 information as it should have, but we do note the two (2)
19 pieces of information which were provided.

20 Gerdau provided information that the
21 average costs of electricity at its mill increased by
22 over 40 percent and became a major issue for continued
23 operation. And we've given you the transcript reference
24 for that. And, again, that the program allowed
25 qualifying customers to continue operating, and to keep

1 people employed, and ensure that Manitoba Hydro's revenue
2 stream was secured. And that's the second point that I
3 had made, which is a general rate-making principle. This
4 program, I respectfully submit, based on the evidence,
5 increased the revenue to Manitoba ratepayers generally.

6 Without this program, Manitoba Hydro would
7 have had to sell to -- in the export market. This was
8 the evidence of Mr. Bowman. And if they had been forced
9 to sell on the export market, it would have actually cost
10 the other customers of Manitoba Hydro because Hydro's
11 general revenue would have been further reduced.

12 Mr. Vice-Chair, you said: Well, it was
13 already reduced. You're correct, but if the program
14 hadn't existed, it would have been further reduced, is
15 our respectful submission, based on the evidence. So
16 we're saying that there's no adverse effect as a result
17 of this temporary concession, that it was actually
18 beneficial for Manitoba ratepayers.

19 Other questions that were asked was
20 whether or not, and I would -- it's logical to ask, if
21 there was financial assistance from the province, so --
22 to deal with this issue. That's at 9-5, and the evidence
23 is, that Hydro provided, that it was not aware of any
24 assistance. And the presentation with respect to Gerda
25 and Amsted Rail, who participated in the program, they

1 indicated that they wouldn't have qualified for the
2 financial assistance strategies implemented for resource-
3 based companies in North America.

4 Now, the next one was a consideration, and
5 this was all in the -- in the reasons of decision for the
6 -- of this Board on an interim basis. A consideration or
7 existence of other -- or nonexistence of similar
8 concessions being granted by other Canadian electric
9 utilities.

10 So there is evidence that the other
11 jurisdictions, North American and Quebec and in Ontario,
12 there is not this rate issue, or its been dealt with,
13 where your demand charges has the effect of tripling the
14 manner in which you're paying for your cost of
15 electricity.

16 So we've set out the evidence with respect
17 to the program that the Quebec governments -- government
18 had, where the power demand exceeded 50 megawatts during
19 a particular period, and there was a load retention rate
20 for large customers.

21 And during the presentation on behalf of
22 Gerdau, and Mr. Forsyth noted that all of Gerdau's North
23 American facilities had the opportunity to control costs
24 when situations such as the economic downturn arose.

25 And Ontario allowed a compo -- major

1 component of the demand charge to be avoided by shifting
2 production to off-peak periods, so that's consistent with
3 system planning. If you -- if you're not using power
4 during peak, it makes sense to have your rates structured
5 that way.

6 And he also explained that in New Jersey,
7 Gerdau could avoid the highest demand periods, and
8 benefit by reducing costs to a fraction of the total of
9 the bill. And in other facilities Gerdau participates in
10 interruptible rate contracts.

11 The other points -- was the retroactive
12 nature of the deferrals. I deal with all of them, but I
13 think I'll try to deal with the major points. There's --
14 the program wasn't extended as was explained, and there
15 was a diff -- there wasn't -- the program wasn't as
16 extensive as it was initially anticipated, and the
17 monetary amount involved wasn't as extensive as initially
18 anticipated.

19 So the final point I have on -- in that
20 Section 9 is that the Board did receive the submissions
21 from Amsted Rail and Gerdau, and these submissions noted
22 significant operating challenges due -- during the
23 economic downturn. And they also noted the extensive
24 actions taken by the companies to continue operations and
25 maintain employment in Manitoba.

1 So unless there's further questions with
2 respect to that subject matter, I would turn to the
3 energy intensive industrial rate, Tab 10.

4

5 (BRIEF PAUSE)

6

7 MR. ANTOINE HACAULT: Two (2) points.
8 There's no EIIR proposal before the Board, and I think
9 you've heard testimony by Manitoba Hydro that they are
10 consulting, they're continuing to consult. From MIPUG's
11 perspective, the process to date has been more positive
12 and more likely to result in a proposal acceptable to all
13 par -- parties than the previous industrial rate
14 proposals.

15 So I think we're on track there. We've
16 chewed on a lot of subjects during this hearing, and we
17 can deal with that in the next hearing.

18 Tab 11, the rate design. We've set out
19 our position that the ex parte orders on surplus energy
20 program and the curtailable rate program be approved.

21 And unless there's any questions the -- on
22 that subject matter, I would move on to the basic monthly
23 charge, which is at Tab 12. I'm starting to sound a
24 little bit like a broken record on regulatory principles,
25 but our -- the position of MIPUG with respect to the

1 basic monthly charge, is that the Board should ens --
2 ensure that the approved rates for each class fairly
3 cover the cost of serving that class, as measured by
4 Hydro's embedded cost of service study. And MIPUG
5 doesn't take any position with respect to the appropriate
6 portion of residential class revenue requirement, as to
7 whether it should be recovered from the customer charge
8 or energy charges, as long as if the basic monthly
9 charges reduce the energy charge needs to be raised in
10 order to ensure that the residential class revenue to
11 cost coverage ratio doesn't further erode.

12 A subject that garnered more discussion in
13 this hearing was at Tab 13, the drought risk reserves and
14 financial targets. We say again that Hydro is today in
15 the best financial position that it's had in its history,
16 exceeded the 75:25 debt-equity ratio, very close to the
17 \$2.5 billion in retained earnings. And based on the last
18 IFF scenario, if we've got it right, they all have
19 increased those retained earnings to \$4.3 billion, which
20 is pretty substantial.

21 Now, what's the best evidence available
22 with respect to the major drought risk? We say that it's
23 the scenario presented by Manitoba Hydro. I won't go
24 through all of Mr. Williams' points with respect to the
25 estimates of KM. Suffice it to say, that in their

1 testimony summary document that was put in as KM-4, at
2 page 13, their initial analysis was that a five (5) year
3 drought would be in the order of \$3.342 million -- I
4 guess it would be billion dollars -- and a seven (7) year
5 drought would be \$4.548 billion.

6 The last information untested, and we've
7 put our objection with respect to not being able to test
8 it, but brings it down to one point six (1.6) something
9 on page 4. We can refer to that document that we
10 received today.

11

12 (BRIEF PAUSE)

13

14 MR. ANTOINE HACAULT: Yes, I don't -- I
15 didn't have my -- or a copy here with me, but I believe
16 it's on page 4, when I had looked at -- at this quickly,
17 and it starts on page 3. And the drought with a 1937/'41
18 flows is at 1.572 billion, which is lower than what I had
19 said, and the seven (7) year drought they peg at 1.998
20 billion.

21 Now, it's a fairly substantial change in
22 their calculations. We've had some concerns, not with
23 the methodology so much as the input. If you look at --
24 using Statistics Canada was kind of the basis in a seven
25 (7) year timeframe instead of the longer frame. And I

1 think, in fairness to Drs. Kubursi and Magee, that I've
2 had a lot of learning to do to wrap up for this hearing
3 and during the hearing, and I -- I'm sure that with their
4 capabilities they could further refine those numbers.

5 But right now, even the -- the June filing
6 that they had done showed a one (1) year drought at --
7 and that's KM-14, I think now. There was a table at the
8 end of that, Table 10. And they showed a one (1) year
9 net impact on revenue for 1940 flows -- that's at Table
10 10, KM-14 -- at \$235.8 million. Now, that's our worst
11 drought on record, if I recall correctly. And the net
12 impact was minus one nine seven point nine (197.9).

13 Now, it's unfortunate we aren't able to
14 have a further discussion, because I'm not too sure how
15 the math works and what -- how the probabilities -- Mr.
16 Williams had a discussion about the stress tests and what
17 probabilities are. If I multiple this worst drought in
18 1940 at a negative one ninety seven point nine (197.9)
19 times five (5) for a five (5) year drought, I'm less than
20 a million dollars -- a billion dollars, sorry. I'm not
21 used to stating big numbers.

22 So I'm not too sure where -- where they
23 get their numbers and how they're calculated, and that's
24 unfortunate because these kind of recalculations have
25 only developed after our opportunity to -- to canvass

1 those numbers with them had expired.

2 And then even if you go to the more severe
3 than 1940 drought, which they say is 2.5 percent quantile
4 -- that's again Ta -- Table 10 -- they're at minus three
5 three seven point three (337.3). So times five (5),
6 we're at 1.5 billion to \$1.6 billion. And that's
7 assuming that we'd have five (5) of those in a row. I
8 don't know what the probability of that would be, but,
9 surely, it's got to be low. It's got to be close to what
10 we were talking about, the White Swan events -- Black
11 Swans.

12 The -- so there's a lot of good things
13 that the professors have done, but with respect to the
14 actual numbers for the five (5) year drought and the
15 seven (7) year drought, I respectfully submit that we
16 can't rely on those numbers, unfortunately, at this time.
17 I think there would have to be further analysis and
18 detail to be able to put any weight on the numbers that
19 have been given.

20 The risk issue here then is: Can Hydro
21 face that kind of an event? And with the 2.5 billion
22 level of retained earnings, we've seen that even though
23 that event would occur -- and that was Appendix 15, page
24 14-9 -- at the end of the drought you'd be at \$.6 billion
25 and the \$2.5 billion level of retained earnings would be

1 re-achieved within nine (9) years. And that's why I've
2 continued to kind of harp on this Tab 75, page 313.

3 We have to expect that, even in the
4 drought years, you see you -- and we had gone that
5 through in cross-examination -- you've got some income,
6 positive income happening in some of these circled areas.
7 It's all -- they're not losses in each occasion, but
8 because you've got that major spike down in those bad
9 years, you have to have all of that -- those numbers at
10 the top and all those green items.

11 And we've heard evidence from Manitoba
12 Hydro that that's how they operate their system. They
13 operate it conservatively. They operate it so that, over
14 the long run, they can handle these negative spikes. And
15 we see that they can handle it without any major rate
16 shocks.

17 With respect to the power resource plan
18 scenarios -- and I'm still in the MIPUG position portion
19 of this, it's on page 13-2 -- the only evidence available
20 to the Board about the risks of drought and the various
21 options is provided by KPMG in Appendix 'J'. In short,
22 as summarized by KPMG, this:

23 "Evidence indicates that entering into
24 these sales contracts and advancing the
25 plans actually mitigates financial

1 impacts for drought."

2 And I'm cognizant of the Chairperson's
3 comments, Well, we didn't have the new capital costs for
4 the -- or revised capital costs. But one thing we have
5 to be mindful of is also the evidence of Manitoba Hydro
6 on the added benefits of having these plants introduced
7 with the interconnections that it's going to give in the
8 States. And with Bipole 3 giving us our additional
9 capacity, this gives us further flexibility and further
10 comfort with respect to ensuring safe and reliable power
11 to Manitobans.

12 And MIPUG's position is that the plans
13 that have been proposed are credible enough that we
14 should protect them. It doesn't mean that they have to
15 be the ones that we're going to proceed with.

16 The other thing that we note: As the
17 degree of capital investment increases in future years,
18 the relevance of the debt-equity target will diminish.
19 We've had evidence, and I'll deal with it further in the
20 discussion and support, that with the provincial
21 guarantee the debt ratios are perhaps not as important
22 for this public utility as they would be for private
23 utilities. And we've seen that, even with the Limestone
24 era at 95:5 and some negative revenues, that we didn't
25 have to get into major increases, even though some people

1 were not very optimistic at that time it would be a good
2 decision to move ahead with that project.

3 So is the approach appropriate? This is
4 in the discussion at 13-3. Sorry, I'm spending a little
5 bit of time on this, because I think it's a very
6 important issue. The one (1) thing that I had trouble
7 grappling with, and I think we've all understood by now,
8 is that when we talk about the cost of a drought it's the
9 reduction in revenue. So when we talk about a two (2)
10 point something billion dollar number, we've got to be
11 careful what we're talking about. It doesn't mean that
12 in each year we're going to be incurring losses, and
13 that's why I always keep on coming to that graph. We'll
14 have reduced revenue, but it doesn't mean that in each
15 year of the drought that reduced revenue means that there
16 is a net loss on your financial statements.

17 So as long as you maintain a prudent,
18 stable approach to your rate setting, you can deal with
19 the droughts. And there's an extract there where, when I
20 was showing that table to Mr. Surminski, he confirmed
21 that, if you were on the line of a 2 -- 200 million net
22 profit as an average, you wouldn't have to think about
23 saving for a drought during a drought. That's exactly
24 why you build up during the good years and the years that
25 are perhaps not so good.

1 So the five (5) year drought modelled in
2 Exhibit Manitoba Hydro-154 is less than 1 billion,
3 including the effects of compounding interest. That's --
4 we've referenced that in the retained -- footnote 81.
5 Sorry, footnote 12 in this one. I had a different copy.

6 Now on 13-5, we continue the discussion.
7 Is the five (5) year drought on record sufficiently
8 severe as a stress test?

9 So we say it is because ICF noted and the
10 evidence was that this was in the order of a 2 percent
11 threshold, and that's footnote 13, the transcript
12 reference.

13 So the review by ICF and KPMG didn't
14 discredit Manitoba Hydro's stress test, and even KM, Drs.
15 Kubursi and Magee, are quoted at the bottom, and I think
16 it's worthwhile reciting the quote:

17 "Suppose we go another ninety-four (94)
18 years, what is the worst drought likely
19 to look at -- look like compared to
20 what we saw in the historical record,
21 what both methods said, Well it could
22 be worse. It could be better than the
23 actual worst drought that we saw in the
24 last ninety-four (94) years, which I
25 guess is not surprising. But on

1 average, the worst drought over the
2 next -- what you would expect over the
3 next ninety-four (94) years will be on
4 average about the same as the worst
5 drought that we saw in the last ninety-
6 four years."

7 The reason I take -- took that quote out
8 is, you recall I had tried to find out -- and this
9 relates all to the probabilities and what the mixture was
10 with -- when Drs. Kubursi and Magee were making their
11 assessment of the impact of the drought. I wanted to
12 know, well, what does this assume when you're talking
13 these big numbers, what mixture of things? Because their
14 model, in part, assumed for example that you could have
15 high water charges in a drought.

16 Well, we know that can't be; those are
17 opposites. Water charges -- the water rental rates go
18 with the flow of water. So that's why it was important
19 to know the probability, and -- and how those things tied
20 in together.

21 The other thing that the Chairperson
22 asked, he says, Well, what about if we -- and this was
23 during the course of the hearing -- what about if we look
24 at the fourteen (14) year scenario, right, because we had
25 the five (5) plus the seven (7)?

1 So we added all those numbers, and that
2 was part of Mr. Bowman's evidence, is actually we're
3 better off because you've got some of the good years in
4 that total of the fourteen (14) year. So the net impact,
5 or net loss, to Hydro was only 700 million during that --
6 during that time period. So we can be comfortable that
7 whether or not we look for the five (5) year range or the
8 longer term that we've had for fourteen (14) years, we're
9 reasonably protected.

10 The next item, which I've already dealt
11 with, was the -- does the pursuit of the recommended plan
12 make Hydro's drought risks worse?

13 We say that the evidence is that it does
14 not make it worse. In fact, as I said, with
15 interconnections and the new transmissions that -- that
16 is planned in the States, it should improve Hydro's
17 ability to deal with risk issues.

18 I'm going to skip over the next couple
19 pages, because largely they've been dealt with by Mr.
20 Williams. He dealt with some of the input measures.

21 I'll also bring you to then page 13-10.
22 The only additional comment I have with respect to
23 Doctors Kubursi's updated estimates in June was that when
24 I gave you the number of the drought that was worse than
25 the 1940 drought, for some reason, the doctors -- well,

1 they explained why. As they say, it was -- there was
2 confidential information in there. They removed the
3 benefits of the negotiated provisions in the contracts
4 that Hydro has to curtail and not supply if it's worse
5 than the worst drought on record.

6 So the number that's provided, in my
7 respectful submission, does not accord with reality. In
8 their revised numbers at minus 197 million, that's the
9 worst drought. In the previous numbers, when they --
10 that's Table 10 -- when they had considered the
11 curtailment provisions the losses were actually less
12 because of that. Now if they had done that same exercise
13 in these updated numbers, presumably directionally the
14 same thing would have happened. So we just say be
15 careful with respect to the number that they've put with
16 respect to what's the effect of the -- a drought that's
17 worse than the 1940 drought, which is the worst drought
18 on record.

19 With respect to the 75:25, I know this
20 caused some amazement that says Hacaault really doesn't
21 know what he's talking about in rate regulation, but out
22 of the evidence I submit was confirmed that Hydro's
23 assets, the true value of those assets is significantly
24 higher than the book value. Why should the -- that
25 provide comfort to the Board? Because if you're looking

1 at a 75:25 debt equity ratio and you're not looking at
2 true value, if you actually looked at true value you'd
3 have more comfort.

4 It's like going to a bank, all right. You
5 say, Well, I only paid fifty thousand dollars (\$50,000)
6 for the house. How much do you want to loan? Well, I
7 want a loan two hundred thousand dollars (\$200,000).
8 Well, if you just look at the book value, you say, No, no
9 way I'm going to lend you two hundred thousand dollars
10 (\$200,000). But if you do a current market value
11 appraisal of that property and it's worth half a million,
12 then you've got no problems.

13 So 75:25 is important but it's got to be
14 taken in the context that really it's an artificial
15 number and doesn't show the true strength and value of
16 Manitoba Hydro and its assets.

17 And we say this also in the light as we're
18 aware that retained earnings and equity are -- are not in
19 the form of cash and to a large degree might be
20 intangible, and that might mean that you might have to
21 borrow. But there's nothing in the evidence, I submit,
22 that indicates that Manitoba cannot handle the drought
23 and cannot survive it and that it won't have the cashflow
24 to do it.

25 In cross-examination and in direct

1 evidence we saw that, and it's confirmed, Hydro has one
2 of the lowest rates, so we've got a lot of room to move
3 if we need to move. There's not a revenue problem here.
4 And all the forecasts show that we'll recover from a net
5 loss without imposing rate shocks.

6 Now this brings me to some of the
7 mechanisms that were recommended in order to deal with
8 rate stability, and the first one was water in storage.

9 Now there's two (2) references. This is
10 not in the material I've provided, so if you want to make
11 a note. In the cross-examination of Mr. Cormie, that's
12 at -- on April 14, at pages 5,614 to 5,615 of the
13 transcript, Mr. Cormie explains hi -- how the hydrology
14 works with respect to lake levels. And the thing I
15 hadn't initially appreciated was that if, as part of your
16 permanent planning, you decide to keep lake levels 1 foot
17 higher, if you look at experience you'll see that you're
18 going to spill more often.

19 Why does that make a difference? Because
20 when you spill you've wasted that money; you can't get it
21 back.

22 So the suggestion, without proper
23 analysis, of increasing lake levels by 1 foot or a couple
24 of feet, might seem like a good idea, but if you're gonna
25 lose money each year because you do that you're spilling

1 it instead of selling it to the export market, in the
2 long run it might be costing you more. And in any event,
3 as I think the evidence was, 1 foot is not a huge number
4 in the big picture of things.

5 If you have at fifty dollars (\$50) a
6 megawatt, you might be looking at a hundred million
7 dollars in reservoir storage. That -- if it's causing
8 you to lose money on a regular basis by keeping that
9 money in the bank, so to speak, and spilling it, I
10 respectfully submit it's not a good strategy. And that
11 same evidence appears again in the evidence of Mr. Bowman
12 at pages 7,336 to 7,338 of the transcript.

13

14 (BRIEF PAUSE)

15

16 MR. ANTOINE HACAULT: This brings me to
17 Tab 14, which is the risk management practices. And in
18 my cross-examination and -- and direct evidence I tried
19 to give some focus to this. There's a number of
20 recommendations that were made by KPMG, ICF, and Drs.
21 Kubursi and Magee, and generally, it's our submission,
22 that the evidence confirms that Hydro has the
23 capabilities, internal organization, and qualified staff,
24 policies and procedures; some of them have to be put down
25 and consolidated, that's been acknowledged. The middle

1 office has been enhanced and a lot of the suggestions and
2 recommendations have been reviewed.

3 And the one (1) thing that I liked to hear
4 from the witnesses, because you don't always hear it,
5 when you levelled criticisms and recommendations against
6 Manitoba Hydro, were they willing to listen and implement
7 where appropriate? And the answer was "yes". Are they
8 willing to seek outside advice and expertise when
9 required, or are they full of themselves? And the
10 outside assessment was that they were willing to seek
11 outside expertise.

12 So those spoke well in my view of Hydro's
13 attitude, its ability to develop and maintain prudent
14 risk management systems, which are accountable to its
15 board in relation to the impact of potential risks and
16 risk management on rates.

17 Now, the only comment we have with respect
18 to -- in its -- its operations, was with respect to
19 merchant arbitrage transactions. The evidence was pretty
20 inconclusive as to the benefits and risks of this
21 activity. Over the long term, it appeared to be a
22 positive, but there maybe should be added clear,
23 qualitative benefits to this activity to suggest that it
24 can appropriately be included in Hydro export market
25 activities.

1 Now, this having been said, Hydro did
2 explain that its participation in this area enhances its
3 ability to deal with other issues, like the negotiation,
4 I believe, of its export contracts. If it understands
5 the export market better and deals with it on a regular
6 basis, it's got a better ability to provide services in
7 the other areas of its performed activities.

8 Now, are Hydro's make -- decision-making
9 criteria appropriate for a Crown-owned regulated utility,
10 and properly aligned with ratepayer risk tolerances? We
11 do say "yes". They're -- they seem to take an -- an
12 appropriate approach to the water management, to the
13 projects that they're looking at, to see whether there's
14 sufficient rewards to warrant continuing with those
15 plans, and terminating the investigations with respect to
16 those potential development plans, in our respectful
17 view, would change, but not necessarily reduce, Hydro's
18 risk profile.

19 I do have a couple other evidentiary
20 references with respect to risk management. The first
21 ones would be statements of Drs. Kubursi and Magee at
22 transcript pages 673 to 6 -- or 6,773, so six thousand
23 seven hundred and seventy-three (6773), to six thousand
24 six hundred and seventy-four (6674) (sic). And this is
25 where Ms. Ramage was asking questions with respect to

1 middle office, and put to Mr. -- Dr. Kubursi, with
2 respect to the middle office, that it was evolving and
3 converging towards be -- best pa -- practice at other
4 utilities, and consistent with recommendations of the
5 committee of chief risk officers, and he agreed with
6 that, and that major progress has been made in the middle
7 office.

8 Next, there was a transcript reference a
9 bit further, in page 6,774, with respect to risk
10 management taking prominence, and that it's evolving
11 appropriately, and Dr. Kubursi agreed. And then Ms.
12 Ramage put to Dr. Kubursi some statements he had made
13 with respect to the models; because, as you know, he had
14 made a lot of recommendations as to maybe making some
15 improvements or exploring improvements with respect to
16 their modelling.

17 And this is at pages 6,781 to 6,782, where
18 he confirmed that HERMES was an impressive system, that
19 SPLASH was a critical component of the model family, and
20 that the doctors were happy with the simulation structure
21 of the system and the insights that it could add to the
22 utility; and that the models are serving their purposes
23 and can be relied upon for operational planning and long-
24 term planning; and that, basically, the recommendations
25 made by the doctors were to experiment with those a bit

1 further.

2 The next transcript reference was at page
3 6,753. And, again, Dr. Kubursi was commenting with
4 respect to the models, and I'm quoting:

5 "We certainly feel comfortable and feel
6 enabled, you know, by looking at these
7 models and seeing the runs. We
8 certainly would have been in a more
9 difficult position, particularly in
10 regards to forecasting, to the
11 simulation, to the antecedent forecast,
12 to the long term plans, the models and
13 the way they run, and the unfettered
14 access we had to the people that ran
15 them. And we still came up with the
16 recommendations that we'd like to see
17 more fa -- formal documentation with
18 the system."

19 But the more important comment is:

20 "But we felt quite comfortable with
21 what we saw."

22 Further on in this material we do quote
23 the comments of ICF with respect to the contracts,
24 because I also asked: Well, what about the contracts?
25 Are they doing a good job about that?

1 So I've cover -- I cover all these points
2 in -- in that issue -- area, but I believe that there's
3 more than ample evidence on the record to give this Board
4 comfort, and Manitobans comfort, that this Utility is
5 well run and that it has very competent people which know
6 what they're doing.

7 The issue in this area which I also need
8 to deal with is Matwichuk's rate stabilization mechanism.
9 In a nutshell, I don't -- I submit that that isn't
10 required. It acts (sic) complexity.

11 The Board's already doing rate
12 stabilization. If it only looked at the two (2) test
13 years, it might say, Well, zero percent increase. It's
14 already performing -- each time it reviews a rate
15 stabilization, it looks into the future to see
16 directionally where we're going and what's happening.
17 And it ensures that even though, as we show on this graph
18 that I always refer to, that there's positive revenues.
19 It knows that we need to have a line, which is a black
20 line; we can't, every year we make profits, say we won't
21 have an increase.

22 And the -- I asked quite a few questions
23 on how it would work. And there was, in my view, a host
24 of uncertainties as to how that might effectively benefit
25 ratepayers in this province over and above what this

1 Board is already doing.

2 The approach to rate setting by Manitoba
3 Hydro, which is long and sta -- stable rates, and this
4 Board's approach to it, already gives us rate stability
5 and predictability. And that was one of the key items,
6 as you recall, that MIPUG raised in its opening
7 statement, raised in its big plan, that we'll -- we're
8 looking for rate stability.

9 But we think the Board's doing a great job
10 of it, and we don't need to have all these fancy tables
11 that I don't know what they mean. Byron introduced one
12 (1). We might have to have like a couple days of
13 discussion to see how it would work, and how it affects
14 classes, and what happens if people leave, and et cetera.

15 So these stabilization methods, including
16 the export rate stabilization method, a mechanism in --
17 in my respectful submission, doesn't enhance the
18 transparency. There's no vested interest in any Manitoba
19 Hydro employees trying to hide things, and we've got this
20 excellent process where they're put to the test, and have
21 to explain things and be transparent about what they do.

22 If anything, if we'd implement an export
23 rate stabilization me -- mechanism, it might do exactly
24 what the consultants say shouldn't be done; it might
25 influence -- well, Hydro saying, Okay, well we've got

1 this rate stabilization thing, and okay, well, how do we
2 have to estimate our revenue so it won't do this, or it
3 won't do that. No, there's no need to add that
4 additional complexity.

5 Now, this brings me to the last two (2)
6 tabs, which are fairly short, the Power Resource Plan,
7 Tab 15. The -- the question, and it's a fairly small
8 point, whether or not thermal wind and firm imports
9 should be included as dependable energy, we've got the
10 discussion and support there, the view is that Manitoba
11 Hydro's Power Resource Plan appropriately models thermal
12 generation, wind generation, and firm imports. And the
13 evidence in support of that is set out in the pages that
14 follow. There's ample energy storage capability to firm
15 up the wind, so -- and there's also a discussion and
16 extracts there as to the difference between -- and it
17 maybe have been a confusion between what's considered
18 dependable and what's a capa -- capacity resource, as Mr.
19 Surminski confirmed, that they include zero megawatts on
20 the capacity side.

21 Now, development scenarios, which is the
22 last item. The position essentially is that the
23 recommended plan is sufficiently positive to support
24 continued investigation and protection of the option to
25 proceed with the plan. And we note and there's be --

1 been no reference, to my amazement, but recent
2 announcements in the papers, but notwithstanding that,
3 there's no guarantees that the required pieces of a plan
4 will come together and no final decisions can yet be
5 made.

6 And I think we don't have to go very far
7 in history. When I was reviewing all the DBRS and
8 Moody's reports going back to when Conawapa was going to
9 be built -- I'm sure if you looked at all the papers at
10 that time they would say, Conawapa's going to be built,
11 we've got a signed agreement with Ontario. And we're
12 still talking today about when Conawapa's going to be
13 built.

14 So announcements do have to be made and do
15 get made, but I don't take those announcements to be
16 permanent. And if we -- if I take you through some of
17 the discussion with respect to the capital cost, I have
18 to constantly remind myself the al -- we do need
19 generation eventually by those dates, in the 2020s. The
20 only difference between the recommended and alternative,
21 as I understand it, is that we don't have Keeyask. We
22 still need a Conawapa. We still need Bipole 3 for
23 reliability. Getting that far into the future, because
24 of the big blocks we have to build, we have to prepare
25 and keep Conawapa on track for domestic needs.

1 So that what you're really talking about
2 is, is a Keeyask being built or not on the alternative
3 plan, as opposed to the recommended plan. And we go
4 through the evidence of the drought scenarios, sale/no
5 sale, and the analysis of the experts who have testified
6 on this is that Hydro is better off with a sale scenario.

7 And I know I'm repeating myself here, but
8 we can't only take into account the financial numbers and
9 projections that we've seen. We need to take into
10 account the fact that we're going to get the extra
11 transmission in the States that protects us if we need to
12 import for some major catastrophe. It gives us more
13 flexibility. That's not something that it's easy to put
14 a dollar amount on, but it does mitigate the risk.

15 And, also, if we turn on to page 16-4, we
16 need to maintain flexibility in our system. We've gone,
17 with respect to Wuskwatim, from needing it to not needing
18 it. What happens if we get some major industrial players
19 in? What happens if we get an increase in electric heat
20 load? And that was referred to and I've got a quote
21 there from Mr. Bowman.

22 We have to have a plan that has sufficient
23 flexibility. And maybe we have the lowest rates now, and
24 maybe that will continue, but we have to make sure that
25 our plan allows us for the flexibility to deal with these

1 issues. We can't just build tomorrow. These plants are
2 fifteen (15) year projects to get it producing energy.

3 So the big difficulty we have is
4 determining whether there's lost opportunity. And
5 Professor Magee very aptly described that perhaps there
6 wasn't very much focus on that issue, and we've got the
7 table there: Do not expand. Lost opportunities and
8 possible failure to meet load.

9 So in 2020 when we need this plant and all
10 of a sudden you say, Well, no, we don't think it's a good
11 idea, we're not too sure because the export revenue isn't
12 exactly where we want it, all of a sudden you're caught
13 with lack of flexibility and perhaps a lost opportunity.
14 What happens if what we think today doesn't materialize
15 with respect to shale gas? What happens if carbon tax
16 all of a sudden gets renewed attention in twen -- you
17 know, in fifteen (15) years from now? We don't know
18 that. We know what we know today, but we don't know
19 what's going to be tomorrow.

20 And the problem is we, in my respectful
21 submission, sometimes we're dealing too much with the
22 negative aspects -- but what about major losses, what
23 about this -- all the unfavourable things, but we haven't
24 dealt with the favourable points to the same extent. So
25 the evidence in this proceeding, and that's on page 16-7,

1 that was Mr. Warden, we don't spend anymore -- any money
2 before we have to.

3 Now, if we accept that statement and we
4 accept that Hydro is looking after the best interests of
5 Manitoba ratepayers and is prudent in its expenditures
6 with respect to these projects, even though they are \$25
7 million a month, we have to have some comfort that the
8 development scenarios are being looked at in a very
9 serious and sober manner. And the views of all the
10 experts, as quoted in this material, is that there's
11 tremendous opportunity; the planning is appropriate, it's
12 supported by external customers through long-term
13 contracts; and the consultants, including Mr. Lipson, who
14 is quoted in this additional material under the heading
15 "KPMG" -- that's page -- at the top of 16-9:

16 "I think our view is quite favourable.
17 I think again there is a tremendous
18 opportunity here to develop new
19 capacity, have it largely -- well,
20 significantly supported by external
21 customers through the long-term
22 contracts, and to take advantage of the
23 resource that, you know, residents of
24 Manitoba have been blessed with.
25 So overall as a basic concept I think

1 you're in a very good position.
2 There's lots of jurisdictions that
3 would very enviable of the position
4 you're in."

5 And I think we don't talk enough about, in
6 this Hearing, about the positive aspects and the envy
7 that other jurisdictions would have of ours.

8 "The key, obviously, you know, is to
9 pro -- proceed ahead as we discussed
10 earlier, you make sure you know the
11 costs don't go way out of whack, make
12 sure the benefits do eventually flow
13 back through to, you know, (a) good
14 prices and contracts, (b), you know,
15 for example, not sharing the benefits
16 too widely with other parties of other
17 things, of the sort that, you know,
18 we've been discussing over the last
19 three (3) days. But overall, as a
20 basic strategy, I would say KPMG's very
21 supportive of what we see happening
22 here at Manitoba Hydro."

23 And KM also, when it talks about the
24 export contracts -- that's at the bottom of page 6-19 --
25 is very complimentary of Manitoba Hydro and the contracts

1 it's negotiated. And we've also included a discussion
2 and the evidence of Mr. Bowman, and the exchange between
3 Mr. Bowman and his expert testimony and the Chairman in
4 the last pages.

5 Now, Mr. Chairperson, could I perhaps just
6 stand down for five (5) minutes, and then that would
7 close my submission?

8 THE CHAIRPERSON: Very good. Well, why
9 don't we take the break and then, after you close, we'll
10 go straight to Mr. Gange. Is that okay, Mr. Gange?

11 MR. WILLIAM GANGE: As long as everyone
12 promises to have a Red Bull during the break, it sounds
13 like a good idea.

14 THE CHAIRPERSON: Well, we'll do jumping
15 jacks or something.

16

17 --- Upon recessing at 2:33 p.m.

18 --- Upon resuming at 2:51 p.m.

19

20 THE CHAIRPERSON: Mr. Hacault...?

21 MR. ANTOINE HACAULT: Yes, thank you.
22 It's been pointed out that I neglected to ask that our
23 final written argument be marked as an exhibit, so
24 perhaps we can have it marked as Exhibit 15, I believe.
25 I see Mr. Singh nodding.

1 --- EXHIBIT NO. MIPUG-15: Final written argument

2

3 MR. ANTOINE HACAULT: Two (2) other small
4 points. I'd just like to make reference to a couple of
5 other evidentiary issues on the demand billing issue. I
6 note that on RCM/TREE Exhibit number 6, I believe, Mr.
7 Chernick deals with demand billing charges, and in
8 particular at page 37, explains that demand charges can
9 be burdensome and inequitable. And then in the following
10 answer explains some of the situations, and I say those
11 situations are the same as what was faced by the persons
12 who applied for the billing concession.

13 I also note that in the application by
14 Hydro, Volume 1, Tab 10, there's a description of the
15 limited use of billing demand rate option -- that's L-U-
16 B-D -- and that rate program was designed, as I
17 understand it and read it, to deal with demand charges
18 issues. The Board will also recall that the winter
19 ratchets were eliminated. That was also a demand issue.
20 And some of the smaller users, like farmers, I believe,
21 don't get charged for the first 50 kV. I may be wrong.
22 I believe that's also in the material.

23 So I guess the only point is that there is
24 evidence and -- and agreement by the -- the witnesses
25 that demand charges can be problematic and inequitable,

1 and the legislation authorizes this Board to deal with
2 inequitable and unfair rates.

3 The last point, Mr. Chairman and Mr. Vice-
4 Chair, is that, on the issue of costs, in previous
5 hearings MIPUG has never submitted a claim for costs,
6 except for in special circumstances. And it will not be
7 claiming costs with respect to the GRA portion of the
8 hearing. However, keeping in mind that its members have
9 gone through a recession and that the members believe
10 that they have made a material contribution to the
11 extensive evidence on risk, it will, for reasons more
12 fully detailed in its request for costs, be submitting a
13 claim for costs with respect to the risk portion of the
14 rate application.

15 And with that, I thank everybody once
16 again, as I did in my introductory comments, for their
17 patience and understanding in this new role that I found
18 myself in this hearing. Thank you.

19 THE CHAIRPERSON: Thank you, too, Mr.
20 Hacault. It's been a long -- long journey.

21 Mr. Gange...?
22

23 FINAL SUBMISSIONS BY RCM/TREE:

24 MR. WILLIAM GANGE: Thank you very much,
25 Mr. Chair, Mr. Vice-Chair. I have submitted written

1 argument, which was sent out last -- two (2) weeks ago,
2 and I believe that was marked as Exhibit 16 to this
3 hearing. We have also, as a result of the -- reviewing
4 some of the material that was submitted by other
5 intervenors, submitted an update to the written argument,
6 which I provided to Mr. Singh, and I believe is marked as
7 Exhibit 17 to the -- to RCM/TREE-17.

8 I trust that you have that, thank you.

9 THE CHAIRPERSON: We do.

10

11 CONTINUED BY MR. WILLIAM GANGE:

12 MR. WILLIAM GANGE: I am at -- at
13 somewhat of a disadvantage here, starting at 3:00 at the
14 end of very lengthy argument. I -- I hope that I'm going
15 to be able to keep you awake, and keep myself awake,
16 during this time period.

17 I -- I've also recommended to Dr. Miller
18 that next year -- or next time that this comes about that
19 when the name change of RCM goes into effect to Green
20 Action Centre, that we use the acronym Action Centre Vert
21 so that we go first in making these submissions.

22 The -- with me today as -- as -- I --
23 well, first of all, let me say this. I would like to
24 thank Dr. Peter Miller for the -- the really quite
25 remarkable involvement that Dr. Miller brings to this

1 hearing. It -- it probably shines through. He's been
2 here almost every day of this hearing, and the extent of
3 the involvement with the expert witnesses, and in
4 preparation of this argument, is -- is really quite
5 extraordinary. With us, as well, is Josh Brandon, Action
6 Centre Verte staff member, and Carolyn Garlich, policy
7 committee member of the Green Action Centre.

8 This hearing, Mr. Chair and Mr. Vice-
9 Chair, is nominally about a rate increase. And so the
10 Readers Digest version of our position is this: RCM/TREE
11 agrees -- or -- or would suggest that the proposed rates
12 that have been put forward are appropriate. We would ask
13 that you approve the 2010 interim rate. We would ask
14 that you approve the 2011 interim rate to the date of
15 your eventual order. And we would ask that you approve
16 the rate increase of 2.9 percent for the balance of the
17 year to 2012.

18 Those -- those approvals would result in a
19 larger than forecast revenue for -- for Manitoba Hydro.
20 We recognize that. We recognize that that is mainly
21 because of the significantly higher water levels than
22 were -- that -- that this rate application was based
23 upon. So there is, in some ways, a windfall to Manitoba
24 Hydro. That windfall, however, suits Manitoba Hydro well
25 in terms of the debt-equity rat -- ratio, and in terms of

1 the coming process in terms of the decade of investment.
2 So that from our perspective, we do not see these rates
3 as excessive. We see them as appropriate. That's the
4 Readers Digest version.

5 The second point that we would say is
6 this. Given the length of time that this process has
7 taken, we are almost at the end of the rate period. Mr.
8 Chair, you asked the question, and nobody else has
9 addressed it, as far as I know, so far, and -- and I was
10 trying to listen carefully, that what do we do about
11 going forward.

12 We made the suggestion earlier, and we
13 make the suggestion now. Give this process a break.
14 Give this process a rest. We would ask that you give due
15 consideration to approving a rate increase to April 1st,
16 2012, without going through this whole process. The
17 amount of time, the amount of energy, the amount of
18 resources that this hearing has taken has been, from our
19 perspective, overwhelming. I don't know how you and the
20 Vice-Chair have coped with it and I don't know, quite
21 frankly, how Manitoba Hydro has coped with it.

22 But it does seem to me that the
23 appropriate thing to do, and -- and from -- from Dr.
24 Miller's perspective as -- as well, is to say you have
25 conducted such an intensive review of this Company's

1 process and this Company's needs that extending that for
2 one (1) year is not an unreasonable suggestion.

3 MR. ROBERT MAYER: Mr. Gange, you're --
4 you're suggesting that we attempt to deal with 2012/2013?

5 MR. WILLIAM GANGE: No, we're saying
6 2011/2012. This rate goes -- oh, pardon me, 20 --

7 MR. ROBERT MAYER: Yeah.

8 MR. WILLIAM GANGE: Yeah, you're right,
9 Mr. Mayer. I'm sorry. I'm sorry, 2012/2013. I -- I
10 still think it's the '90s myself, so.

11 MR. ROBERT MAYER: Mr. Gange, you
12 obviously missed Mr. Hacault's argument in that regard
13 who very clearly opposed to doing -- to giving any kind
14 of a rate increase until somebody makes an application.
15 If we -- and I'm assuming you're not suggesting that we --
16 -- that we deal with 2012/2013 by saying, No more?

17

18 CONTINUED BY MR. WILLIAM GANGE:

19 MR. WILLIAM GANGE: No. No, we certainly
20 would not. We -- you have heard throughout this process
21 from all of the -- the financial forecasts that Manitoba
22 Hydro has re -- has -- has based their -- their financial
23 forecasts on, and I believe that their suggestion is the
24 3.5 percent rate increase, and -- and we would say, yes.

25 And -- and you're right. I -- I slipped

1 away while Mr. Hacault was -- was giving his
2 presentation. I apologized to him in advance, but I -- I
3 wanted to be able to -- to try to streamline this
4 argument as much as possible given the -- the time of day
5 that I knew I was going to start. So -- so that it would
6 -- and our position is that it would be an interim rate
7 increase that would be subject eventually to -- to review
8 and -- and testing under this process.

9 With that the -- the other issues then
10 arise. And for RCM/TREE the -- there are a number of
11 issues that all revolve around the concept of social
12 justice and are intertwined between each other and all --
13 with that concept of what is just, what is reasonable.

14 Those three (3) -- there -- there are
15 three (3) main issues that -- that RCM/TREE has focussed
16 on in this hearing. One (1) of those is the rate
17 structure. As you know, the evidence of Mr. Chernick has
18 been that -- that inverted rates for the residential
19 class is the appropriate way to go. That is something
20 that was dealt with on an interim basis in -- in your
21 Ruling 40/11 with the comment that -- I believe that --
22 that -- Mr. Chair, what you said was, in the remainder of
23 the GRA hearing and in its deliberations following
24 closing argument the Board will reassess its view on
25 inverted rates for residential properties, particularly

1 for those where gas heat is not an option. So I'm going
2 to address that issue.

3 The second issue that -- and -- and these
4 are not in order of importance but just as -- as they
5 came to me, the demand -- or the energy affordability
6 program that was put forward by Mr. Colton. And the
7 third major issue is the demand-side management review by
8 Mr. Chernick.

9 The question for consideration with
10 respect to all of these is what is just, what is
11 reasonable. The most controversial of the issues brought
12 forward by RCM/TREE has undoubtedly been the low-income
13 energy affordability program. And I want to start with
14 that process first. And the first question in -- with
15 respect to the low energy affordability program is the
16 question of jurisdiction and it -- at Exhibit 17 the
17 argument that was advanced previously that -- that you've
18 reviewed in our Exhibit 16, is the question of
19 jurisdiction. The legal jurisdiction.

20 You conduct this review pursuant to the
21 Crown Corporations Public Review and Accountability Act.
22 And pursuant to that legislation you are given the
23 legislative responsibility under section 26(4):

24 "Factors to be considered at hearings.

25 In reaching a decision pursuant to this

1 part the Public Utilities Board may..."

2 And roman numeral VIII:

3 "Take into -- take into consideration
4 any compelling pol -- policy
5 considerations that the Board considers
6 relevant to the matter."

7 And then roman numeral IX:

8 "Any other factors that the Board
9 considers relevant to the matter."

10 It is difficult for me to imagine a
11 legislative mandate that provides a greater discretion to
12 a regulator than the discretion that is provided to you
13 pursuant to the Crown Corporations Public Review and
14 Accountability Act.

15 In all of the other cases that Mr.
16 Williams cited to you this morning, in all of the other
17 cases that -- that he referred to and all the other cases
18 that I've read, whenever there is a reference to
19 legislative authority none of them come close to the
20 discretionary power that your Board has.

21 So when Mr. Williams says, as he did this
22 morning, that you have to be careful in reviewing other
23 cases because they are based on other legislation, that
24 is true, but it is true in this fashion. The limitations
25 that are put on other boards do not apply to you.

1 MR. ROBERT MAYER: Mr. Gange, at least
2 one (1) member of this panel was a little surprised at
3 Mr. Williams wanting to restrict the powers of the Board
4 in light of his pa -- in light of the Public Interest Law
5 Centre's past arguments in other cases. With respect to
6 my personal opinion, we will of course seek our counsel,
7 but I think our legislation is fairly broad.

8 MR. WILLIAM GANGE: Yes, there -- there's
9 -- it's just difficult to imagine how -- how much more
10 discretion you could have been given by the legislature
11 of Manitoba.

12 In the -- the previous GRA hearing the
13 decision of Advocacy Centre for Tenants-Ontario v.
14 Ontario, that decision had just come out at the time that
15 we were making arguments. RCM/TREE relied upon that
16 decision at that point to say to you that you had the
17 jurisdiction to -- to be making orders with respect to
18 low income and you accepted that jurisdiction. So from
19 my perspective my sense is I'm preaching to the choir
20 here. But -- but I -- I --

21 MR. ROBERT MAYER: With respect to the
22 jurisdiction I think you are. The issue of the proposal
23 and some problems with the evidence is maybe a different
24 matter.

25

1 CONTINUED BY MR. WILLIAM GANGE:

2 MR. WILLIAM GANGE: And -- and I will get
3 to that. I will get to that. Allow me then, Mr. Mayer,
4 I will be very brief with respect to the question of
5 jurisdiction. But in this case, the Advocacy Centre
6 case, when one looks at it the Advocacy Centre --
7 Advocacy Centre for Tenants-Ontario had brought forward a
8 proposal that a low-income energy affordability plan be
9 considered by the Ontario Energy Board. The Ontario
10 Energy Board in its decision said, We don't have the
11 jurisdiction to do so.

12 And the advocacy -- Advocacy Centre
13 appealed that decision. And at paragraph 7, page 7 of
14 the decision, the court noted that the position of the --
15 the par -- the party comparable to Manitoba Hydro, the
16 party comparable to the Public Utilities Board, and the
17 Intervenor, the Consumers Council of Canada, was that --
18 that the jurisdiction was such that -- that it was an
19 issue of -- of -- that this was an issue of public policy
20 to be dealt with by the legislature, and that it fell
21 outside the jurisdiction of the Board.

22 I noted in the argument that, when the
23 chamber came and made its presentation to you, and urged
24 you to do away with this argument, that at least they
25 conceded that you may have the jurisdiction. I'm saying

1 to you with. We are asking you to consider this issue in
2 terms of rate setting.

3 And then the -- the issues with respect to
4 social policy, yes, of course, that -- that is something
5 that, from a -- a broad overview, there is something to
6 that, but it's not what we're asking you to do. We're
7 asking you to look at this from the context of rate
8 setting.

9

10 (BRIEF PAUSE)

11

12 MR. WILLIAM GANGE: In his arguments
13 today, Mr. Williams argued that the better view is that
14 the Board does not have this jurisdiction. With respect
15 to My Learned Friend Mr. Williams, it is our position
16 that the better view is that the Board unquestionably has
17 this jurisdiction.

18 RCM/TREE also would go further than this
19 to say not only do you have the jurisdiction to take a
20 look at this situation, but in fact you -- you have
21 received compelling evidence that there are many in our
22 society who fall below the energy poverty level. You
23 have heard compelling evidence of the social consequences
24 that arise because of -- of the energy burden. And that
25 in such a case, the Board not only has jurisdiction, but

1 I would suggest to you the Board has an obligation to
2 take steps to address the problem of energy poverty.

3 In response, Manitoba Hydro has said,
4 Well, there are two (2) major problems with this. One
5 (1) is that the Act says that the full cost of
6 electricity must be taken into account. However, the
7 proposal that is being put forward is no different than
8 rate structures currently in place in terms of -- of
9 theory. And what -- what I mean by that is that
10 currently the residential rate class, and -- and for the
11 past significant period of time, all rate classes, have
12 been paying less than the full cost of producing energy.

13 And that all rate classes until quite
14 recently, Mr. Peters pointed this out to me, that -- that
15 in -- in supplemental information provided by Manitoba
16 Hydro it would appear that there may be -- that -- that
17 the -- the consumers -- pardon me, the industrial large
18 now plays -- pays more than that prior to the rates -- or
19 the export subsidy being applied.

20 But the reality is that all of us, from a
21 residential point of view, and all of us up until quite
22 recently from whatever perspective, have been -- have
23 been subsidized by the export prices. And the proposal
24 that is put before you is that -- that more would be
25 taken out of the export subsidy, and applied to the low-

1 income program. That doesn't mean that anybody else is
2 paying for it. It may mean that they're receiving less
3 of a subsidy. But they're all -- we are all paying less
4 than the full cost of electricity.

5 The second criticism that Manitoba Hydro
6 makes is that the Act specifically prevents Manitoba
7 Hydro's income being used for the purposes of government.
8 And so the question then arises, Well, this is being used
9 in -- in place -- it in effect is a welfare substitute.

10 And our position is, no, and -- and I'm
11 going to get to details of the plan in a couple of
12 minutes. But the -- the -- the position that we're
13 advancing is that -- and -- and I'll get into this in --
14 in more detail, that given the -- the difficulties that
15 have been raised with respect to Mr. Colton's original
16 proposal, that what we're saying is well you would not --
17 or peop -- people that are on welfare whose -- whose
18 energy costs are being paid by the government would not
19 be eligible for this plan. That then eliminates the
20 concept that this would be used to subsidize government.
21 It does away with it. And it would deal strictly with
22 the issue of those people for whom energy -- the energy
23 burden is at an intolerable level.

24 We've set out at -- at pages 10, 11, and
25 12 of Exhibit 17, a further analysis of the cost recovery

1 from customers. I'm not going to go into that in detail
2 right now, but -- but it's there.

3 The affordable energy plan that we're
4 coming to you with is set out at page 25 of Exhibit 17.
5 And what we would say is that Mr. Colton's plan that he
6 provided in his exhibit provides a template that would be
7 useful for consideration. And what I'm going to do --
8 I'll -- I'll go right to the punch line, and then I'm
9 going to step back and explain the process.

10 But the punch line is this, Mr. Chair and
11 Mr. Vice-Chair, that what we're suggestio -- suggesting
12 is we recognize that this is a new concept. It's a new
13 idea. It is something that Manitoba Hydro is -- is not
14 prepared for. We -- we asked a number of questions
15 during -- during cross-examination with respect to this.
16 And, basically, the -- the responses that we were
17 provided with was, That's outside our mis -- our -- our
18 mandate, so, no, we haven't considered those kinds of
19 issues. We recognize that.

20 And we recognize that currently Manitoba
21 Hydro may not have the expertise to develop and to
22 implement a plan such as Mr. Colton's. So what we're
23 suggesting is that the Board in its -- it its order makes
24 a provision that the -- that Board employees will take
25 responsibility for developing a low-income energy

1 affordability plan and that it would be a pilot program.

2 Hold on, Mr. Mayer.

3 It would -- it would be a pilot program to
4 be developed with the assistance of Manitoba Hydro and
5 with the assistance of those people that -- that the
6 Board employees see as having expertise in the area,
7 whether those people be Mr. Carter or Mr. Colton or
8 others.

9 And we say that -- and -- and I know, Mr.
10 Vice-Chair, that -- that from -- from your reaction,
11 you're having a tough time with that concept.

12 MR. ROBERT MAYER: I'm counting more
13 Hydro employees in the room than this Board has, period.
14 I mean, you can look around the office. We -- that's
15 going to be a tough one to sell.

16

17 CONTINUED BY MR. WILLIAM GANGE:

18 MR. WILLIAM GANGE: It -- it may be.
19 However, the Board -- the Board has the authority to
20 engage experts, and -- and this may be something where
21 the -- where the Board has to do that be -- and -- and
22 the reason that we're putting it this way, because the --
23 the option as we see it is that you say to Manitoba
24 Hydro, We want you to come back and report back to us on
25 a low-income energy affordability program. You could

1 make that order.

2 You made an order. You've already made
3 that order, or -- or a similar type of order, that --
4 that -- and -- and there isn't a whole lot that's come
5 back to you, or you've made an order about Directive 17,
6 the fuel switching report.

7 And -- and let me make it very clear.
8 Professor Miller and I have the highest regard for the
9 people at Manitoba Hydro. We think that it's an
10 exceptionally well run organization. But having said
11 that, we also recognize that when Manitoba Hydro doesn't
12 want to do something, it doesn't want to do something.
13 And it doesn't get done.

14 And the fuel switching report is the
15 perfect example, where you've made that order. You've
16 made follow-up orders. You've made recommendations to
17 them. And still here it is, July the 5th, and we don't
18 have a fuel switching report that was supposed to be part
19 of -- of our review here. And so unless -- unless the
20 Board takes charge of this it's not going to happen. And
21 that's why we make that recommendation.

22 Having said that, we recognize that --
23 that, as I said a couple of minutes ago, those on welfare
24 have their bills paid by the government. Social
25 assistance as -- from the evidence that we've heard,

1 takes care of that payment. In order to comply with the
2 Manitoba Hydro Act, those people would not be eligible
3 for such a plan. This would reduce, according to the
4 evidence that you heard from -- from Professor Carter and
5 -- and repeated this morning from Mr. Williams, this
6 would reduce substantially the potential cost of such a
7 program.

8 MR. ROBERT MAYER: If --

9 MR. WILLIAM GANGE: Yes?

10 MR. ROBERT MAYER: If we're to take Mr.
11 Williams' argument at face value it would also
12 significantly re -- reduce its value and significantly
13 reduce the number of people who would actually take
14 either us or Hydro up on that program.

15

16 CONTINUED BY MR. WILLIAM GANGE:

17 MR. WILLIAM GANGE: And -- and, you know,
18 Mr. Mayer, I listened to My Learned Friend speaking on
19 this and without -- and -- and maybe it is disrespectful
20 but I don't mean it to be disrespectful, but it seemed to
21 me that Mr. Williams was speaking out of both sides of
22 his mouth in making those comments.

23 To be saying, well, Mr. Colton was wrong
24 because people who are on social assistance don't
25 qualify, so -- so -- because -- because their -- because

1 their bills are paid, and then to be saying well -- and -
2 - and so he was saying, well, then it's not going to have
3 any impact upon them. It doesn't have to have an impact
4 because social assistance is already protecting those
5 people.

6 What this plan is meant to do is to
7 protect those who are not protected. And so to be
8 saying, well, those people aren't going to gain any
9 benefit, no, they're already protected. And then to be
10 saying well, but -- but if -- if you -- if you implement
11 it and -- and you take into account all of those people
12 on welfare, the cost is going to be extraordinary.
13 That's the both sides of the mouth. Because, no, the
14 fact that they are already protected by social assistance
15 means that the cost is manageable.

16 So -- so to -- to take Mr. Williams at --
17 at -- at face value, there were contrary messages that
18 were going out with respect to -- to -- on this issue.
19 And what we are saying here is that, yes, this program
20 can be manageable. And it is especially manageable in --
21 in light of the Manitoba situation, which is admittedly
22 different than situations in the United States where
23 these bills may not be paid by social assistance. So
24 from -- from my perspective that's a plus in terms of why
25 this program could work, not a minus.

1 MR. ROBERT MAYER: Mr. Gange, I think
2 both of us up here, we're of the view that the program as
3 presented by Mr. Colton made sense with respect to
4 assisting the working poor who, in my opinion, would be -
5 - in my opinion, would be the people most vulnerable to
6 energy poverty.

7 MR. WILLIAM GANGE: Absolutely.

8 MR. ROBERT MAYER: And I didn't quite
9 understand -- Mr. Williams says that will make be
10 ineffective because it would be a smaller group. And
11 these people that aren't on social assistance, they're
12 not the poorest of the poor, and they have a tendency to
13 get off welfare with some degree of regularity, which I
14 sort of thought was a good thing. I wasn't quite sure
15 why that would be something that would prevent or want to
16 stop somebody from introducing a program, a program that
17 could be, admittedly, effective in getting the working
18 poor out of poverty. However, that was the argument.
19 The issue still I think going to be with us in terms of
20 Mr Colton's proposal is what happened to the numbers.

21

22 CONTINUED BY MR. WILLIAM GANGE:

23 MR. WILLIAM GANGE: Yes. And -- and --
24 and he made a mistake. There's no question that -- that
25 Ms. Boyd was correct. And -- and I -- I -- I know --

1 I'll tell you this. Mr. Colton, when he responded to us,
2 when he got back home and went over those numbers, was
3 mortified to find out that he had made a mathematical
4 calculation error. And -- and so that -- that the
5 numbers that he's presented were wrong.

6 And -- and -- and so that's one (1) of the
7 reasons why, Mr. Mayer, our -- our idea is that -- that
8 this ought to be a pilot program that is designed here
9 with the assistance of Manitoba Hydro and with the
10 assistance of perhaps Mr. Colton or -- and -- and it
11 doesn't have to be Mr. Colton, but somebody that has
12 knowledge of how these kinds of programs work. And --
13 and -- and -- if -- if it's implemented we can find out
14 the advantages of it.

15 It is designed, Mr. Mayer, for the working
16 poor. It is designed for those who are not receiving
17 assistance. And -- and for the life of me, I do not
18 understand how anybody can say that's not a good thing.
19 I do not understand how somebody can say, Well, this
20 isn't going to help everybody. No, of course it's not
21 going to help everybody, but those people that it does
22 help are going to be -- benefit substantially. And to
23 say, Well, but not everybody -- there isn't going to be a
24 hundred percent participation, no kidding. There's never
25 going to be a hundred percent participation.

1 was this comment, and I don't know that I have it word
2 for word, but I think it jumped out at me, and I wrote it
3 down as best I could. Our clients, Mr. Williams said,
4 are concerned that the in -- existence of a low-income
5 program may allow the Board to use the existence of the
6 low-income program as a basis for increasing rates.

7

8

(BRIEF PAUSE)

9

10 MR. WILLIAM GANGE: Now, I'm going to say
11 that again: may allow the Board to use this as a basis
12 for increasing rates. So, therefore, let's not help
13 those people that would be protected by a low-income
14 plan. Let's use the poor as a human shield to protect --
15 to protect others who do not need that assistance from
16 increasing rates.

17

18

19

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23

24

(BRIEF PAUSE)

25

1 MR. WILLIAM GANGE: Mr. Williams also
2 said that there's a -- that there's a problem on a
3 philosophical basis, after he reviewed Mr. Colton's
4 analysis, where Mr. Colton had said, Okay, you know, I
5 made a mistake with respect to the -- to the
6 calculations, but that can be adjusted by either changing
7 the LICO limit or by capping benefits. And -- and Mr.
8 Williams said, Well, on a philosophical basis, you're
9 either into poverty alleviation or you are not.

10 Well, that then takes me to Professor
11 Carter, and -- and let me say this: Professor Carter is
12 obviously a brilliant man. And he's obviously a man
13 who's dedicated his life, his working life, to dealing
14 with very important social issues. But he -- I -- I
15 don't know why he was here. In his testimony, he
16 acknowledged that he knows -- that he has no experience
17 before a regulatory body. Para -- or page 7,969, he said
18 that. Page 7,970:

19 "He's never conducted a review of low-
20 income affordability assistance
21 implemented by a utility."

22 7,971:

23 "He's never evaluated a program to see
24 how well it benefits the Company."

25 Par -- paragraph -- or page 7,973, I asked

1 him:

2 "You're giving testimony on behalf of
3 CAS -- CAC/MSOS in terms of the broad
4 picture of poverty alleviation in
5 society in general.

6 That is correct, yes."

7 And I said:

8 "And you understand, sir, that in this
9 hearing we don't have the power to talk
10 about, or to alleviate power of --
11 poverty situation in general. You
12 understand that, sir?"

13 Mr. -- Dr. Carter said:

14 "I wasn't aware of this, but if you say
15 that's the case then I'll agree with
16 it, yes."

17 Well, we weren't here -- we are not here
18 to solve the problem of poverty in this world or in this
19 province. I wish that we could all make poverty go away
20 but we know that we can't.

21 Professor Carter went on to say that --
22 that he's been working in this field for forty (40) years
23 in trying to alleviate poverty, and at page 7,991, very
24 little success, I might add. Well, of course, he's had
25 very little success given the difficult nature of the

1 concept of pos -- of poverty.

2 But that is not a reason to say that --
3 that a -- a very well thought out idea by Mr. Colton, who
4 has spent his working life on the issue of poverty
5 alleviation within the regulatory process, and has
6 testified in numerous Canadian provinces, has testified
7 all over the United States, and his testimony was that
8 his program is designed to deal with regulatory
9 principles in how a program can be designed to deal with
10 the question of -- of energy poverty.

11 And with the greatest of respect to Mr.
12 Carter, he was in the wrong place at the wrong time, and
13 -- and any criticism that he made of this -- of this
14 concept, I'm sorry, but it's ill-placed.

15 So with respect to -- to the issue of --
16 of the -- of -- of the program, Mr. Mayer, I -- I cannot
17 go through the -- the two (2) exhibits that we gave --
18 that -- that Mr. Colton gave in response to Ms. Boyd's
19 question. To say, okay, I -- I -- we want to explain it
20 step by step. I think that would be counterproductive.

21 MR. ROBERT MAYER: We'd be here forever
22 and at least one of us would not understand after you'd
23 finished.

24

25 CONTINUED BY MR. WILLIAM GANGE:

1 MR. WILLIAM GANGE: It -- it -- the --
2 the summary of -- of our conclusions with respect to the
3 program costs, by the way, is set out at pages 31 and 32,
4 and going onto -- to page 33 of -- of Exhibit 17.

5 And I -- I'm going to borrow a phrase from
6 Mr. Colton, and a phrase from Ms. Boyd, where Ms. --
7 where Mr. Colton said in -- in making this consideration
8 in his APPRISE presentation, New Jersey is not
9 California. And Ms. Boyd said, Perhaps even more than
10 New Jersey, Manitoba is not California. We agree. We
11 agree that -- that this has to be a made in Manitoba
12 solution, but it has to come from you.

13

14 (BRIEF PAUSE)

15

16 MR. WILLIAM GANGE: And -- and in terms
17 of -- of your power seven (7) -- under section 76(a) of
18 the Public Utilities Board to investigate and recommend
19 the design of a pilot energy affordability program, that
20 -- that's the recommendation that we're making to you on
21 this point.

22 The second issue -- and -- and I'm going
23 to move on, Mr. Chair and Mr. Vice-Chair, unless you have
24 further questions with respect to that issue, but I think
25 that I've hopefully made -- made the position of RCM/TREE

1 as clear as -- as I can at this point.

2 The second issue that I'm going to comment
3 on is Power Smart efficiency. And at page 12 of Ex --
4 Exhibit 17, which also I think is pretty much consistent
5 with the -- the written submission, Exhibit 16, we refer
6 to Mr. Chernick's testimony with respect to DSM savings.

7 And we've reproduced Figure 1 from Mr.
8 Chernick's testimony which shows what Mr. Chernick said
9 is a precipitous decline in DSM efforts and annual
10 incremental savings. And -- and if you look at Figure 1
11 you'll see that there is -- well, that chart says it all.
12 There's a pretty steep decline of money that Manitoba
13 Hydro in its -- in its in -- evidence has stated is
14 intended to be spent on DSM savings.

15 Mr. Chernick then went on to compare
16 Manitoba Hydro to other leading programs in North America
17 at Table 4, and you see that on page 14. And Mr. -- Mr.
18 Chernick noted that several jurisdictions -- that most
19 jurisdictions have targeted savings in excess of 1
20 percent and that several jurisdictions have targets over
21 2 percent. And Mr. Chernick notes that Manitoba Hydro's
22 forecasts begin at point -- 0.6 percent, and then decline
23 to 0.2 percent -- zero point two (0.2). Well, actually,
24 it goes down in 2015 -- 2014/2015 to 0.0 percent.

25 Mr. Chernick also produced Table 5, which

1 was a comparison of the 2009 electric DSM spending rates
2 per megawatt hour and shows that Manitoba Hydro lags
3 behind quite -- quite significantly, certain other
4 jurisdictions.

5 All of which is to say, from Mr.
6 Chernick's perspective, that -- that although Manitoba
7 Hydro has been a leader in DSM programs, its future does
8 not appear to be as solid on that point.

9 Professor Miller gave to you in a Centra
10 hearing, two (2) hearings ago, information from Philippe
11 Dunsky. And we commend Manitoba Hydro. And -- and
12 something rang true with me when I was listening to Mr.
13 Hacault when Mr. Hacault said that -- that he commended
14 Manitoba Hydro for having the courage to take advice from
15 others, listening to it, and -- and hearing what others
16 had to say in terms of their programs.

17 And we were very excited when we found out
18 that Manitoba Hydro had retained Mr. Dunsky. And we were
19 very excited to review the Dunsky report, not quite as
20 excited to review the response to the Dunsky report
21 because it did appear to us -- and -- and we asked a
22 number of questions in cross-examination. It did appear
23 to us that there were numerous issues that Mr. Dunsky had
24 brought forward that were not being followed up on, or
25 there were numerous issues that Mr. Dunsky had brought

1 forward that were, according to the evidence that was --
2 that was given during our cross, under consideration or
3 under review or under study. Put them into effect. Get
4 moving on that. That's what we say.

5 And -- and we do recognize it's not your
6 job to micro-manage Manitoba Hydro, we -- we recognize
7 that. We're not -- not living in -- in an unrealistic
8 world here, but we say that -- and it's set out at -- at
9 page 16 of Exhibit 17, that the Board direct Manitoba
10 Hydro to benchmark its DSM programs to the programs of
11 the three (3) leading providers as identified by Mr.
12 Dunsky: Pacific Gas and Electric, Efficiency Vermont,
13 and Xcel Energy Minnesota.

14 Now I know that -- that during the -- the
15 rebuttal, Manitoba Hydro had said well we've compared a
16 number of our programs to Xcel Energy Minnesota and in --
17 in several instances the -- the Manitoba efforts did seem
18 to be more significant than -- than Xcel Energy. But
19 what we're saying is benchmark it. Make that test, come
20 forward, tell us what you're doing so that this Board and
21 those people scrutinizing this process as intervenors
22 have the comfort level to say, yes, the DSM program is
23 operating properly. And if Manitoba Hydro is going to
24 continue to be a leader in DSM programming that kind of a
25 comparison is only going to suit it well.

1 We also say that the Manitoba -- that --
2 pardon me, that the Public Utilities Board require
3 Manitoba Hydro to increase its ene -- efficiency
4 investments and achievements to reach the 90th percentile
5 on North American jurisdictions, and that the Board
6 direct Manitoba Hydro to abandon the use of the RIM test
7 in program design or screaming -- screening.

8 That's -- the RIM test is something that
9 you've heard about in previous hearings. you know that -
10 - that those people that have come forward, Mr. Dunsky,
11 Mr. Chernick, and I believe others, have said the RIM
12 test is not an -- a proper tool to use. Direct them to
13 get rid of it.

14 MR. ROBERT MAYER: That might have the
15 same effect as ordering the power switch or power
16 switching --

17
18 CONTINUED BY MR. WILLIAM GANGE:

19 MR. WILLIAM GANGE: It might. It might
20 but we can only do what we can do.

21 With respect to inverted rates, pages 16,
22 17, 18 and 19, I want -- actually, it would be easier if
23 I just said page 16 to page 25, deal with the question of
24 inverted rates.

25 It is true that in your Order of 40/11 on

1 an interim basis the Board, in essence, took away the
2 inverted rate option. I'm going to quibble with My
3 Learned Friend, Mr. Williams, with respect to one (1)
4 point that he raised where in his argument he said that
5 that was -- that there were two (2) reasons that the
6 Board set out in that one (1) of them I think is -- was
7 correctly stated and I think one (1) of them was
8 inversely stated.

9 The one that was correct was that -- that
10 the problem with home heating loads for -- for those
11 people that use electric heat. The second point, though,
12 was that Mr. Williams -- well, the -- the comment that
13 you made was natural gas prices were very high, so the --
14 so high that there was a risk that property owners would
15 consider switching their heating source from natural gas
16 to electricity.

17 And -- and in his argument yesterday, Mr.
18 Williams turned that around to say that one (1) of the
19 concerns that you had was that -- that you wanted to make
20 sure that people didn't switch from electricity to
21 natural gas. That -- that wasn't the concern that you
22 raised, but -- but, be that as it may, the -- the point
23 is that -- that you said that -- that, at the time that
24 you -- that you made the inverted rate, the circumstances
25 were different than what they are now.

1 And in -- in terms of this, Mr. Chernick
2 has suggested that -- that the design problem with
3 respect to those customers that heat their homes
4 electrically can be resolved by virtue of a special rate,
5 a winter rate, for heating. And that's set out at -- at
6 page 24, where -- where Mr. Chernick reiterated his
7 earlier proposal to mitigate the heating burden of
8 existing electric heat customers by offering them a
9 larger first block of lower cost energy in the winter
10 months.

11 And -- and he said that the size of the
12 first block should be set with the objective that the
13 average heating and non-heating customers would end up
14 paying the same blended energy rate over the two (2)
15 blocks or, equiva -- equivalently, having the same
16 proportion of their bills in the first block, so that the
17 concern that -- that has been expressed about how the
18 inverted rate affects the all-electric customer can be
19 dealt with and ought to be dealt with.

20 The position with respect to inverted
21 rates first came to you from RCM/TREE, and it has been a
22 -- a feature of -- of the presentation that RCM/TREE has
23 provided to you at the last several rate hearings
24 because, from our perspective, it makes sense. It is
25 what we refer to as a Power Smart rate.

1 MR. ROBERT MAYER: To be quite frank with
2 you, Mr. Gange, I bought into the original argument when
3 it was originally made. And then I started looking at
4 it. And I'm not convinced that po -- that these so-
5 called price signals can or will be picked up by
6 residential consumers because there's some things you
7 can't do. You can't, in the wintertime, turn down the
8 heat without creating some significant problems. You
9 kind of like to have the lights on at night, and maybe
10 you don't have to have all of them on.

11 In the one (1) area where consumers would
12 be able to make a real choice is if there were time-of-
13 use rates with respect to residential customers, and then
14 people who would want to use their dishwasher, rather
15 than using it right after supper, would put it well into
16 the off-peak hours, and a number of other optional
17 things: washing -- washing clothes, drying, et cetera,
18 et cetera. But I'm not entirely convinced that unless
19 and until we get to that, that charging more money is
20 going to cut the co -- is going to actually cut the --
21 cut the energy use.

22

23 (BRIEF PAUSE)

24

25 CONTINUED BY MR. WILLIAM GANGE:

1 MR. WILLIAM GANGE: Mr. Chernick dealt
2 with a number of those issues in -- in his prefiled
3 testimony, and -- and -- well and -- and in fact Mr.
4 Chernick dealt with that back in the 2008 hearing. And
5 we've set that out at page 22, where he said -- he dealt
6 with a number of the issues.

7

8 (BRIEF PAUSE)

9

10 MR. WILLIAM GANGE: In terms of -- of --
11 at that point he was dealing with the -- the fact that
12 Manitoba Hydro had proposed a 900-kilowatt block as the
13 first one (1) -- as the first block, and was suggesting
14 that the first block ought to be 600 kilowatts.

15 Because then as soon as you -- you did
16 that, you -- you would be sending a price signal with
17 respect to eff -- efficient lighting, and -- and the fact
18 that -- that you would be paying more when the lights
19 were left on unnecessarily, the efficiency of computers,
20 all of those things that are listed there.

21 Mr. -- Mr. Mayer, I -- I hear your point,
22 I understand that, but somehow that -- that energy
23 efficiency signal has to be sent to consumers. And --
24 and it's not sent at all when -- when there's simply a
25 flat rate, but it can be sent when -- when there is a --

1 a lower first rate block. And -- and yes, it is a matter
2 of education, and -- and it is a matter of changing
3 expectations, and changing habits, but how do you do that
4 un -- unless you get that -- that energy signal across.
5 That's the point.

6 And -- and -- but -- but one (1) of the
7 other significant issues, you -- you're in a different
8 situation because you are in a -- in an all-electric
9 house. And -- and under the current plan, the all-
10 electric house, it -- it operates as -- or this program
11 operates as a disservice.

12 MR. ROBERT MAYER: I -- I thought I made
13 that point fairly clear a couple times during the course
14 of this hearing.

15 MR. WILLIAM GANGE: I -- I bought into
16 it. I -- I -- Mr. Mayer, but -- and -- and that's why
17 looking at it, Mr. Chernick says, Yeah, no, no, there --
18 there's a problem there, if you're an all-electric user.
19 But that can be -- that can be solved by the greater --
20 the greater block.

21 MR. ROBERT MAYER: Mr. Gange, in the
22 first presentation we heard that, that there had to be a
23 separate -- separate levels. The -- what is a little bit
24 new is separate levels over the winter heating period --

25 MR. WILLIAM GANGE: Yes.

1 MR. ROBERT MAYER: -- which is
2 interesting be -- depending on what anyone wishes to
3 define as the heating period. But that's fine. All that
4 having been said, I -- I still have serous doubts about
5 the, what did we used to call it in economics -- I'll
6 think of it before I finish -- that's the one.
7 Elasticity. I'm just not sure that -- that people who
8 are -- come to use electricity, I think they can be
9 educated into not wasting it, but I don't think it's the
10 price signal that does it.

11

12 (BRIEF PAUSE)

13

14 MR. WILLIAM GANGE: And -- and I guess,
15 Mr. Mayer, the -- that maybe your gut reaction. We're
16 suggesting that -- that the research that's been done on
17 this point would suggest that -- that in fact -- it may
18 be sending up an important price signal.

19 THE CHAIRPERSON: Part of the problem
20 might be is the fact that the elec -- electricity rates
21 are so low.

22 MR. WILLIAM GANGE: Yes.

23 THE CHAIRPERSON: So the difference
24 between the first block and the second block, when we did
25 have it, was very small.

1 CONTINUED BY MR. WILLIAM GANGE:

2 MR. WILLIAM GANGE: And -- and we agreed
3 with that and -- but -- which was one (1) of the reasons
4 why in -- in the 2008 hearing Mr. Chernick was saying
5 nine hundred (900) is -- is too high, that the -- the
6 difference between those two (2) blocks is too small.

7 However, when you did implement it, the
8 position of RCM/TREE was it's a good first step. Right
9 now, though, it's been one (1) step forward and -- and
10 one (1) step back. And -- and that's what we see as --
11 as the problem. So the -- our position is that -- that
12 you should re-institute it and -- and...

13 Professor Miller points out that -- that
14 we -- we -- in the written argument at page 17 we
15 provided a concrete example through the evidence that Mr.
16 Kuczek had given in the 2008 hearing, when Mr. Kuczek was
17 talking about the fact that the -- that the Saskatchewan
18 power usage was decreasing at a rate of 2.9 percent per
19 year, whereas at that time Manitoba's electrical
20 consumption was increasing at an average rate of 7
21 percent per year. And the different directions of
22 electrical consumption in the two (2) provinces was
23 attributed in part to fuel switching from gas to electric
24 water heating in Manitoba but not in Saskatchewan.

25 And -- and our view was that that evidence

1 suggested that the price elasticity of demand and
2 differential price incentives for conservation would
3 contribute to the combined 10 percent difference in
4 electricity consumption trends between Manitoba and
5 Saskatchewan and their different fuel choices for water
6 heating as an example.

7 So, Mr. Mayer, that -- that's one (1)
8 example of -- of a situation where we think that -- that
9 the -- that the empirical evidence does support the price
10 elasticity argument.

11

12 (BRIEF PAUSE)

13

14 THE CHAIRPERSON: Another problem, of
15 course, is people don't like to change. I mean, if you
16 were in New York and California with the significant
17 differences depending on when you're using the
18 electricity, they've sort of become, if you like,
19 climatized to the whole process.

20

21 (BRIEF PAUSE)

22

23 MR. WILLIAM GANGE: Just one (1) second.
24 Thanks, Mr. Chair and Mr. Vice-Chair.

25

1 (BRIEF PAUSE)

2

3 THE CHAIRPERSON: Mr. Gange, I hope
4 you're getting the right message. Our minds are not
5 closed, they're open. We're just grappling with this.

6

7 CONTINUED BY MR. WILLIAM GANGE:

8 MR. WILLIAM GANGE: Oh -- oh, yes. I
9 mean, I thought in 40/11 you had made it very clear that
10 you were grappling with the issue, so that it kind of
11 surprised me when I heard My Learned Friend, Mr.
12 Williams, thank you for eliminating the -- the inverted
13 rate because I didn't think that -- that that was where
14 we were at.

15 You've got our presentation on the
16 inverted rate. I -- I'm not going to go further than
17 that. I -- it's -- it's there in the written
18 presentation, and -- and I'm going to move on to the risk
19 issue.

20 I -- I would only say that -- that, from
21 our perspective, we do think that -- that the Board made
22 an important step in the 2008 hearing and -- and the --
23 the -- we do not think that the -- that the concept of
24 inverted rates and the -- and the -- the price signals
25 that they -- that -- that we believe that they send, we

1 don't think you should abandon that at this point.

2 With respect to risk, at -- at Exhibit 17
3 at pages 34 and following, we've commented briefly on the
4 issue of risk. We would say -- well, we -- we would
5 start from the position from the definition that Mr.
6 Wallach gave of risk as being a measure of adverse
7 outcomes due to uncertainty in the key risk factors that
8 give rise to the outcomes.

9 And -- and un -- unfortunately, there was
10 a degree of frustration at our end with respect to risk
11 in terms of the very significant redactions in the
12 relevant documents and the lack of disclosure in IR
13 responses.

14 Mr. Wallach did what he felt was the best
15 that he could do, but it was unfortunate, and -- and --
16 and I recognize that some of those problems were beyond
17 the control of -- of the Board, and -- and beyond the
18 control of Manitoba Hydro.

19 I recognize that -- that being threatened
20 with a lawsuit is -- is something that must be taken
21 seriously, and -- but it sure made this process more
22 difficult.

23 We -- we do say -- I'm sorry, Mr. Mayer.

24 MR. ROBERT MAYER: We recognize it
25 certainly did for you, less for us because we did have

1 the unredacted documents. So at least we -- our
2 advisors knew what we were actually dealing with, and I -
3 - we -- I think we all went through a lot of that
4 gnashing of teeth as we -- as we read some of the initial
5 redactions on some of the documents where someone was
6 claiming a proprietary interest in the water -- history
7 of the water levels on Manitoba rivers, and it wasn't
8 Manitoba Hydro. So, I mean, some of the redaction -- but
9 we recognize your concerns.

10 We have been very careful in how much we
11 were prepared to accept on a confidential basis, but we
12 did recognize that some of it had to happen.

13 MR. WILLIAM GANGE: And -- and I guess,
14 Mr. Mayer, we -- we have to, as -- as the -- as the
15 Intervenors, have to place our trust in -- in the Board
16 and the Board advisors who seem to have done a very good
17 job at preparing everybody on this -- on this process.

18 We wish it could have been a more thorough
19 review because it does seem to me that -- that sometimes
20 the review from the Intervenors provides perspectives
21 that aren't necessarily the same perspective that -- that
22 Board advisors bring to the table.

23 One (1) of the -- one (1) of the points
24 that was raised, the question was asked, upon the
25 reliability -- to comment upon the reliability of current

1 construction costs forecasts, projected revenues and
2 projected domestic rate increases.

3 And RCM/TREE distinguishes two (2)
4 perspectives on carbon prices, what should they be and
5 what will they be. And -- and we note that carbon prices
6 are only one (1) of the variable factors affecting
7 opportunistic energy prices and, consequently, forecast
8 revenues.

9 RCM/TREE also notes that any selected
10 precise number for any of the forecast variables is
11 probably going to be wrong simply because they're
12 forecasts.

13 We -- we agree that -- that forecasts are
14 best represented by a range of values for the various
15 inputs, and -- and, from our perspective, we appreciated
16 that Manitoba Hydro has traditionally used expected
17 values bracketed by higher and lower alternatives to
18 produce sensitivities around the expected values.

19 Quite frankly, we don't feel competent to
20 make a pronouncement on whether -- on where the factors
21 affecting costs and revenues will fall out under a proper
22 forecast risk review using credible sensitivities or
23 probabilities. It is our view, however, that these
24 questions would be a proper task for review in a future
25 hearing into the need for and alternatives to a project

1 or portfolio of projects. And -- and, quite frankly,
2 RCM/TREE feels that the deficiencies in the evidence as a
3 result of the claims of confidentiality prevent a proper
4 analysis on that.

5 But one (1) think that -- that, from our
6 perspective, we -- we would urge is that -- that there be
7 a broader review of the -- for further consideration of
8 wind and DSM resources, as was done in the Wuskwatim
9 hearing. We note that, in 2005, the province committed
10 to the development of 1,000 megawatts of wind generation
11 by 2015, and the Manitoba Resource Plan throughout the
12 planning period contains nothing following the St. Joseph
13 wind farm, which brings wind capacity up only to 238
14 megawatts, so that there does -- there -- there's a
15 shortfall with respect to that of almost three quarters
16 (3/4s).

17 We note that wind may add nothing to our
18 electrical capacity, but that it does add to the
19 province's dependable energy supply in a way that reduces
20 Manitoba Hydro's drought risk. And -- and Mr. Wallach,
21 in his testimony, had suggested that wind resource offers
22 annual output that is stable and predictable, fairly
23 stable and fairly predictable, from year to year, so that
24 -- so that the addition of wind resource is a hedge
25 against the risk of drought.

1 not there. We -- I -- I would, though, comment upon -- I
2 -- I have mentioned number 9 in terms of -- of -- that --
3 that alternative development approaches be required of
4 Manitoba Hydro, and -- and number 10, that the evidence
5 of Mr. Wallach was that the risk associated with drought
6 is -- is actually increased by virtue of the proposed new
7 development.

8 It may be perhaps counterintuitive, that
9 comment, but Mr. Wallach did go on to explain in his
10 testimony why that is the case, and Mr. Wallach was of
11 the view again that one (1) method of protecting Manitoba
12 Hydro from the risks associated with drought would be to
13 diversify the source of generation.

14

15 (BRIEF PAUSE)

16

17 MR. WILLIAM GANGE: And -- and Professor
18 Miller just reminded me that -- that the transmission to
19 the United States, in -- in terms of the deve -- the
20 future development, the -- the increased capacity
21 obviously does decrease the -- the potential risk from
22 drought.

23 We commented that we're -- the -- at -- at
24 number 11, that RCM/TREE would have been more comfortable
25 with the projected level of returning -- retained

1 earnings if Manitoba Hydro had exceeded the 75:25 ratio
2 by a greater margin before the debt load began to rise
3 again due to new construction. And -- and that ties into
4 the opening comments about how, from our perspective, the
5 -- we -- we would suggest that the -- that the rates
6 applied for should be approved.

7 And the fact that Manitoba Hydro has
8 earned more profits than it had originally anticipated
9 when it filed this Application is not a concern to us,
10 and is, in fact, comfort to us with respect to the -- the
11 future during the decade of -- of development.

12 There are a number of other issues that --
13 and -- and I'm just going to a couple of points. Number
14 17, needs and justification hearing, we would say that --
15 that a needs and justification hearing is required. In
16 the current GRA, Manitoba Hydro has considered one (1)
17 preferred scenario. There's been no consideration of
18 environmental issues, and it is our view that Manitoba
19 Hydro needs to present alternative scenarios for
20 analysis.

21 And then I'm just going to end, perhaps
22 carping to a certain extent, but -- but it will be
23 carping on -- on a familiar theme.

24 And that is that -- that I -- I know that
25 this is perhaps a sore spot for my friends at Manitoba

1 Hydro, but our experts were extremely frustrated by the
2 confidentiality process, and -- and in reviewing material
3 that they say -- that they felt did not need to be
4 classified as confidential.

5 One (1) of those issues was -- Mr.
6 Chernick gave an example of that, where he commented on -
7 - on, they -- they wanted to test one (1) of the charts
8 that Manitoba Hydro had -- had in its possession and it
9 dealt with off-peak and shoulder periods. And -- and
10 from Mr. Chernick's perspective that could have been done
11 so simply if that -- if that material had been provided
12 in electronic format.

13 I -- I didn't show you the material that
14 he provided to me that duplicated what he had done, but
15 it was about a hundred and twenty-five (125) pages of --
16 of printout that all had to be manually entered.

17 And, in fact, when Ms. Geller, Mr. -- Mr.
18 Chernick's assistant, or -- or one (1) of the members of
19 -- of the Resource Insight team, when she -- when she ran
20 her test once she had created the chart, in fact, she
21 found the error. And Manitoba Hydro, to its credit, when
22 we pointed that out, said, You know what, we did -- we
23 were not calculating this properly. Had that been
24 provided in -- in an electric format, that -- that error
25 would have been found in -- in a matter of a couple of

1 hours. As -- as it was, it was an enormous amount of
2 work.

3 So I -- I'm not certain, Mr. Chair and Mr.
4 Vice-Chair, what you can do on that point, but it -- it
5 would make this hearing less costly and less frustrating
6 if Manitoba Hydro were to provide its material in an
7 electronic format.

8 In con -- let -- just a couple comments to
9 --

10 THE CHAIRPERSON: Just --

11 MR. WILLIAM GANGE: -- to Mr. Miller.

12 THE CHAIRPERSON: Just before you consult
13 with Professor Miller, you filed RCM/TREE-16 and RCM/TREE
14 Exhibit 17.

15 MR. WILLIAM GANGE: Yes.

16 THE CHAIRPERSON: There are segments in
17 16 that don't appear to be in 17. Has 17 superceded it,
18 or should we pay attention to both documents?

19 MR. WILLIAM GANGE: Professor Miller says
20 that -- that number 17 supercedes number 16.

21 THE CHAIRPERSON: Thank you, sir.

22 MR. WILLIAM GANGE: And -- and I would --
23 there is one (1) point, thank you for mentioning that,
24 because we did have a paragraph on page 19 in the old one
25 where we had made a comment about -- about -- and this is

1 one (1) paragraph that was -- that was deleted from --
2 from the change from 16 to 17, where we had suggested
3 that perhaps what the Board ought to be doing in terms of
4 -- of enforcing its directives is to make a
5 recommendation with respect -- with respect to executive
6 compensation.

7 Upon thinking that one through, we're
8 satisfied that perhaps -- perhaps Mr. Warden and -- and
9 Mr. Brennan ought not to be penalised in -- in the fashion
10 that Mr. Chernick had -- had suggested, so we deleted
11 that.

12 THE CHAIRPERSON: Is that a similar
13 reason for the dropping of number 18 from Exhibit 16?

14 MR. WILLIAM GANGE: And what page is
15 that?

16 THE CHAIRPERSON: The last page, page 27,
17 just so that we're sure.

18 MR. WILLIAM GANGE: Let me just find
19 that.

20

21 (BRIEF PAUSE)

22

23 THE CHAIRPERSON: We're just not sure
24 because of the -- most of the information is just
25 transferred from one, but the second one, of course, is

1 specifically longer.

2 MR. WILLIAM GANGE: No, par -- paragraph
3 18 on page 27 does appear, it's -- it's just -- it's just
4 in a different place.

5 THE CHAIRPERSON: I see.

6 MR. WILLIAM GANGE: It is --

7 THE CHAIRPERSON: It's fine. We'll find
8 it. Fear not.

9 MR. WILLIAM GANGE: -- page 35.

10 THE CHAIRPERSON: Thank you.

11 MR. WILLIAM GANGE: Page 35. If I can
12 just have a minute to consult with Professor Miller?

13 THE CHAIRPERSON: Please.

14

15 (BRIEF PAUSE)

16

17 MR. WILLIAM GANGE: Just one (1) further
18 comment, and it's not written into Exhibit 17, but that
19 is, I -- I'm not certain what the history of -- of
20 Manitoba Hydro's process in terms of applying for rate
21 increases is but it would appear that -- that what has
22 happened is that, for instance, in this hearing I think
23 that the -- the initial application was filed in December
24 of -- of whatever year it was, a long time ago, perhaps
25 in the '90s, but -- and -- and to -- to come into effect

1 April 1st.

2 It may have been that at the time that
3 that tradition began that was a realistic and an
4 achievable goal. It's not, at this point. It's just not
5 a realistic goal. So that these hearings are then put
6 into the -- the difficult position of -- of looking at
7 having to approve interim rates.

8 And it may be that -- that one (1) of the
9 recommendations -- well, the recommendation that we would
10 make is that that time schedule has to be rearranged.
11 And either -- if there's going to be a filing in
12 December, it ought to be for a rate increase July 1st, or
13 if it's going to be an April 1st rate increase, the
14 filing ought to be in September of August because I think
15 it's become clear these are -- these are complicated
16 hearings.

17 And -- and probably, you know, I -- my --
18 My Friends at Manitoba Hydro have -- have had to carry an
19 enormous burden in terms of the -- of the interrogatories
20 that were filed, and -- and it may be because you have
21 Intervenors that ask a lot of questions, but it's -- it's
22 just not an achievable goal any more.

23 MR. ROBERT MAYER: Mr. Gange, this
24 Hearing, as you are undoubtedly aware, had at least some
25 of its length generated as a result of third party

1 factors that turned out to -- I don't want to say not all
2 that relevant, but at a certain point turned out, at
3 least according to just about everybody we've heard, to
4 have been not as serious as it was alleged. But this
5 Board felt that it was important to the confidence of
6 Manitoba ratepayers that they understood -- that those
7 issues were dealt with in a public manner, because we
8 were walking around using acr -- acronyms to describe
9 people and whatever, and the re -- risk reports had been
10 requested from Manitoba Hydro for some time in the past.

11 This brought it -- we don't expect to be
12 doing this aw -- awful long time, let me tell you, or
13 holding hearings like these. I'm advised by the Chair
14 that this is the longest hearing in our history --

15 MR. WILLIAM GANGE: And, Mr. Mayer, I --
16 I would say -- I would echo your comments, because I
17 recall at the first hearing I was saying, on behalf of
18 RCM/TREE, that -- that -- that this Board was the one
19 that was uniquely suited to consider the -- the
20 complaints that were being brought forward, and that --
21 that if anybody was going to review complaints of -- of
22 mismanagement and -- and the peril of bankruptcy, this
23 Board had to do it. So -- so I'm with you on that. I --
24 what -- how -- how would we know unless we went through
25 this process?

1 And -- and -- and I'm not -- but -- and I
2 don't expect, I would hope, quite frankly, that this
3 Board never has to go through another hearing like this
4 for Manitoba Hydro. But even with that, looking back at
5 the 2008/2008 Hearing, we didn't get -- we had to have an
6 interim rate for that Hearing as well.

7 And -- and so, even taking into account
8 that, and -- and -- and God help us if we ever have to go
9 through something like this again, but even -- even
10 taking that into account, the time period is not long
11 enough. Be -- and I think that's partly because of the
12 increasing sophistication of -- of the Intervenors; that
13 -- that they're asking more questions because the experts
14 that they've retained have -- have greater concerns.
15 That -- that's all that I'm saying. Thank you.

16 In conclusion, I'd -- I'd just like to
17 echo comments made earlier by -- by other counsel to the
18 Board, to Board staff, to Board counsel, to Manitoba
19 Hydro, and to -- to the other Intervenors for what I
20 think has been a very professional hearing. And -- and
21 I'll just final -- finally say thanks to Dr. Miller.

22 THE CHAIRPERSON: Well, thank you to you,
23 too, Mr. Gange. You've represented your clients well,
24 for their clients clearly have principled and researched
25 positions and the views that they hold very strongly, and

1 we'll carefully take them under consideration. Have no
2 fear. Thanks again.

3 So we come back again tomorrow -- tomorrow
4 -- not tomorrow. We come back at Thursday at 9:30, so
5 we'll see you then.

6

7 --- Upon adjourning at 4:29 p.m.

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9

10 Certified correct,

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14 _____
Cheryl Lavigne, Ms.

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