Final Argument of Green Action Centre

2017-18/2018-19 Manitoba Hydro GRA

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Gange Collins Holloway

760-444 St. Mary Avenue

Winnipeg MB R3C 3T1

William S. Gange/David M. Cordingley

Green Action Centre's vision is *All Manitobans Living Green, Living Well*. Long-run sustainability and the fundamental justice of meeting human needs now and in the future guide our policy perspectives. Green Action Centre recognizes our hydro system as a hugely valuable resource of relatively cheap, reliable, renewable power that energizes our lives and economy and enables Manitobans to lower their climate impacts. Our views reflect the Principles and Guidelines of Manitoba's Sustainable Development Act and recent climate policy.

Manitoba Hydro's projected run of steep rate increases on top of past increases will exacerbate the growth of energy poverty in Manitoba. We need to identify and implement solutions consistent with long-run sustainability and the health of Manitoba Hydro. We have a considerable body of evidence to guide us, but it needs sorting out.

Our message, in brief, is that Manitoba Hydro will not solve all of the problems of poverty, nor is there an expectation that they should do so, but they do have a mandate and tools to supply power to meet the needs of lower-income Manitobans.

In response to Manitoba Hydro's argument, we begin with a review of the PUB's jurisdiction to consider a rate that takes into account affordability.

Jurisdiction of the Public Utilities Board to create a bill affordability program

It is the position of Green Action Centre that the issue of the jurisdiction of the Board to create a bill affordability program has long been decided. Green Action Centre proposed a bill affordability program at the 2008 Manitoba Hydro General Rate Application. We argued that the Board has the jurisdiction to approve such a program pursuant to the governing legislation. Manitoba Hydro argued that the Board did not have the jurisdiction to order a bill affordability program and that the Board's jurisdiction was confined to setting rates. In its ruling 116/08 the Board found that it did have the jurisdiction to order such a program.

> The Board believes that in light of the recent Ontario court ruling, it (the Board) would be acting within its mandate and in the public interest if it were to direct MH to implement a bill assistance program.

Of note, Manitoba Hydro did not appeal the decision of the Board in 116/08. None of the interveners appealed the decision. It is of interest to review the comments made by the Board in 2008:

> Energy affordability for low-income families is very much an issue that requires more or less immediate attention in Manitoba….. And, therefore, the Board will direct MH to propose for Board consideration (as soon as possible for the coming heating season, but no later than September 30, 2008) a low-income bill assistance program, where such a program would occur in conjunction to and compliment an expanded low-income DSM program.

Board Order 116/08 was rendered July 29th 2008. No steps were taken by Manitoba Hydro to comply with the directions provided in Board Order 116/08.

Green Action Centre advanced a bill affordability plan at the 2010/11 and 2011/2012 General Rate Application and provided testimony from Roger Colton in support. The Board in Order 5/12 held that it required further information before it was prepared to require a bill assistance plan. At page 166 the Board held:

> Before the Board is prepared to require MH to develop a definitive bill assistance program along the lines of the program proposed by RCM/TREE, the Board needs further information as to existing funding made available by government and the programs available to directly or indirectly alleviate energy poverty.

It is clear from the Board's ruling that it had no doubt about its jurisdiction to make a ruling on a bill assistance program.

The Board revisited the issue of bill affordability in the 2014/15 and 2015/16 General Rate Application. Green Action Centre again brought evidence from Roger Colton regarding bill affordability. That evidence urged the Board to order the establishment of a working group that would develop a made-in-Manitoba solution to the issue of bill affordability.

Manitoba Hydro objected to the proposal made by Mr Colton on the basis that the jurisdiction of the Board is confined to setting rates. Green Action Centre argued that the Board has the jurisdiction to approve a program that affords bill affordability. The Board agreed that it had the jurisdiction to order a bill affordability program. At page 28, the Board found:

> The Board has been asked to consider establishing a bill assistance program before, notably in Order 116/08, in which the Board required Manitoba Hydro to propose such a program for approval. In Order 116/08, the Board concluded that it has jurisdiction to order the implementation of a bill affordability program. This remains the Board's view.

Further the Board at pages 29 and 30 held:

> The Board notes that while Manitoba Hydro is regulated on a cost of service basis, section 26(4) of *The Crown Corporations Public Review and Accountability Act* specifically authorizes the Board to consider "any compelling policy considerations that the Board considers relevant to the matter." In that respect, the Board's jurisdiction is similarly broad as that of the Ontario Energy Board pursuant to *The Ontario Energy Board Act, 1998.* Subsection 26(3) of *The Crown Corporations Public Review and Accountability Act* further stipulates that *The Public Utilities Board Act* applies with any necessary changes to the Board's rate-setting mandate. As such, rates are not only required to meet the requirements of subsection 39(1) of *The Manitoba Hydro Act* but must also be "just and reasonable." In the Board's view, affordability is a factor to consider when setting just and reasonable rates.
>
> As such, it is the Board's intention to evaluate any future proposals for bill assistance programs from a comprehensive policy perspective rather than through the lens of jurisdictional constraints, provided that such proposals fall within the legislative framework set by *The Manitoba Hydro Act, The Crown Corporations Public Review and Accountability Act,* and *The Public Utilities Board Act.*

It is the position of Green Action Centre that the statement of the Board in Board Order 73/15 is the guiding principle that informs this discussion. “Affordability is a factor to consider when setting just and reasonable rates.” There are compelling reasons why the Board in this hearing ought not consider departing from the pathway established by previous Board decisions in 116/08 and 73/15. One of the most important principles of regulatory supervision of utilities is the certainty and predictability of rate making decisions. This is especially so given the evidence on the record. Green Action Centre has presented to the Board a history of decisions and directions made by the Board that have not been followed by Manitoba Hydro. In GAC 15 pages 12 -31, Green Action Centre compiled a list of directives that have never been followed. We missed including the Board directives regarding an affordability plan that was supposed to have been submitted by September 30, 2008 in our list.

The Board has the jurisdiction to consider its home statute and the legislation that gives it authority to regulate Manitoba Hydro. The Board has previously made findings regarding its jurisdiction. No party has appealed the findings of the Board. All parties at this hearing ought to be bound by the decision of the Board regarding its jurisdiction.

In cross-examination (transcript pp. 522-523), Mr. Kelvin Shepherd accepted this Board's prior rulings on jurisdiction to implement affordability rates:

> *MR. KELVIN SHEPHERD: I think the Board has rate-setting authority, and part of that ultimately goes to a question of how rates are designed, for sure.*
>
> *MR. WILLIAM GANGE: Right. So that if we go to the next page, page 6 of -- of our Exhibit number 15. Again, this is from page 29 of 108 from the last GRA ruling, where Green Action Centre and -- and your counsel have had a fairly long-running dispute over legislative authority. And in this decision, the Board found that it said:*
>
> *"The Board does not read the legislative requirement for post -- stamp rates to prohibit the creation of a lower income customer class, provided that no geographic limitations are imposed on such a class. Similarly, while (43)(3) prevents the co-mingling of government funds with Manitoba Hydro funds, it does not prohibit the creation of a rate class that pays less than the average cost to serve such customers."*
>
> *So the Board specifically advised you that from its perspective, it has the ability legislatively to provide a mandate to you to create those kinds of -- of rate classes, did it not, sir?*
>
> *MR. KELVIN SHEPHERD: As I read this particular highlighted text, that's -- that's what it's saying, and I think what I said is that I would agree, you know, that providing you don't have geographic limits, you could establish a different class. I don't believe we have good tools to administer a class based on income, but -- but that's a -- a question of implementation.*

In its written argument, Manitoba Hydro argues that the Public Utilities Board is not bound by *stare decisis. Stare decisis* is a legal doctrine that holds that courts are bound to follow the decisions of superior courts on the same issue. What is before the Board is not a question of *stare decisis*. The Board decided in 2008 and confirmed in 2015 that the Board has the jurisdiction to order the implementation of a bill affordability program. All parties to this General Rate Application know that the policy of the Board since 2008 has been that the jurisdiction of the Board extends to the implementation of bill affordability programs.

If a party wishes to challenge the policy established by a Board Order, that party has the option of applying to the court for that purpose. No party has done so. It is disingenuous for Manitoba Hydro to argue that no court has ruled in Manitoba on the question of jurisdiction claimed by the Board. The reason that no court has ruled on this issue is that Manitoba Hydro has twice accepted decisions of the Board claiming this jurisdiction.

Alternatively, a party unhappy with a Board policy established by a Board decision, could make application to the Board to vary a decision or order pursuant to Section 44 of *The Public Utilities Board Act.* From a review of Section 44, however, it would appear that a party would need to make an application to the Board for the Board to make a variation of a decision made by it previously. Again, it is fair to note that Manitoba Hydro has not made an application to review, rescind, change, alter or vary the decisions of the Board claiming the jurisdiction on bill affordability.

It is therefore the position of Green Action Centre that the argument of Manitoba Hydro regarding the limitations in the jurisdiction of the Board ought to be summarily dismissed.

If, however, the Board wishes to consider the argument of Manitoba Hydro regarding jurisdiction, it is the position of Green Action Centre that the decisions made by the Board claiming jurisdiction have been correct.

The jurisdiction of the Board regarding Manitoba Hydro is established by three legislative acts. *The Crown Corporations Public Review and Governance Act* gives the Public Utilities Board the jurisdiction to take into consideration any compelling policy considerations that the Board considers relevant to the matter and any other factors that the Board considers relevant to the matter (Section 26(4)(a)(viii) and (ix)). It is difficult to conceive of legislation that could give to a regulator any wider latitude in exercising its discretion in setting rates. Secondly, *The Manitoba Hydro Act* specifically adopts Part IV of *The Crown Corporations Public Review and Governance Act* as the regulating provisions of Manitoba Hydro in setting rates. *The Manitoba Hydro Act* includes the following section:

> Equalization of rates
>
> 39(2.1) The rates charged for power supplied to a class of grid customers within the province shall be the same throughout the province.

Finally, *the Public Utilities Board Act*, under Section 27(1), provides to the Board the jurisdiction to inquire into, hear and determine any matter or thing within its jurisdiction.

The policy of the Board is set out at page 29 of Order No. 73/15:

> The Board does not read the legislation requirement for "postage stamp" rates to prohibit the creation of a lower income customer class, provided that no geographic limitations are imposed on such a class. Similarly, while subsection 43(3) prevents the co-mingling of government funds with Manitoba Hydro funds, it does not prohibit the creation of a rate class that pays less than the average cost to serve such customers.

The Board has the jurisdiction to establish a class of grid customers according to whatever compelling policy considerations or other factors that the Board considers relevant.

It is important to keep the Board's jurisdiction on this point clearly in mind when reviewing decisions from other provinces. For instance, Manitoba Hydro has referred to the Nova Scotia experience in *Dalhousie Legal Aid Service v. Nova Scotia Power Inc*., [2006] NSCA 74. The two governing statutes, however, are significantly different. The Nova Scotia legislation constrains the Board by Section 67(1) of *The Public Utilities Act* RSNS 1989 c380:

> Equal Rates and Charges for Similar Services
>
> 67(1) All tolls, rates and charges shall always, under substantially similar circumstances and conditions in respect of service of the same description, be charged equally to all persons and at the same rate, and the Board may by regulation declare what shall constitute substantially similar circumstances and conditions.
>
> (2) The taking of tolls, rates and charges contrary to the provisions of this Section and the regulations made pursuant thereto is prohibited and declared unlawful.

There is no similar provision in Manitoba. Our learned friends at Manitoba Hydro cite Section 39(2.1) of *The Manitoba Hydro Act*. Whereas the Nova Scotia legislation says all rates shall always be charged equally to all persons, *The Manitoba Hydro Act* states that the rates charged to a class of grid customers shall be the same throughout the province.

In considering this section, the Board in Order 73/15 held that the provision does not prohibit the creation of a lower income customer class.

The reasoning of the Board in determining its jurisdiction effectively distinguishes the legislative provisions in Nova Scotia from its own much broader jurisdiction.

The same is true when considering the British Columbia legislation considered in *British Columbia Old Age Pensioners Organizations v. B.C. Utilities Commission* 2017 B.C.C.A. 400. In the British Columbia legislation, public utilities are expressly denied the ability to charge an "unduly preferential rate" or extend a privilege to a person unless the privilege is uniformly extended to all persons under substantially similar circumstances for service of the same description. The British Columbia Utilities Commission held that a low income rate would be in violation of *The Utilities Commission Act*, which prohibits rates that are unjust, unreasonable or unduly discriminatory.

The findings of the BCUC and the confirmation of those findings by the British Columbia Court of Appeal were based on specific provisions of the British Columbia legislation. These provisions are not found in the Manitoba legislation. The case is of no assistance to the Board in this review.

The Advocacy Centre for Tenants – Ontario v. Ontario Energy Board 2008 O.J. No. 1970 (Div.Ct.) is a decision of the Divisional Court. It is based on the Ontario legislation, *The Ontario Energy Board Act* 1998. The relevant sections establishing the jurisdiction of the Board are set out at paragraph 15 of the decision. In particular, the Ontario legislation states at Section 36(3) "in approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate".

The Board held that the jurisdiction that confirmed the use of any method or technique provided greater flexibility to the Board to employ other methods of rate-making in approving and fixing just and reasonable rates rather than being restricted to the traditional cost of service formula. In its decision, the Divisional Court noted factual matters that demonstrated that the Board had exercised its jurisdiction in ways that did not confine to the traditional cost-of-service formula. These matters included spreading out a rate increase over a number of years in order to avoid rate shock, approving emergency financial relief to consumers in winter months and providing cross-subsidization within the residential consumer class. The conclusion of the court was that the Ontario Energy Board did have the jurisdiction to consider "ability to pay" in setting rates. Similarly in Manitoba, the jurisdiction provided to the Public Utilities Board by *The Crown Corporations Governance and AccountabilityAct* specifically states that the Board may take into consideration any compelling policy consideration or other factors that the Board considers relevant to the matter.

It is the position of Green Action Centre that the decisions of the Board in 116/08 and 73/15 are correct. The legislation empowers the Board to take into account policy considerations and other factors that the Board considers relevant to the review of rates for services charged by Manitoba Hydro. This includes the consideration of the policy consideration of establishing an affordability program for low income customers of Manitoba Hydro.

<u>Manitoba Hydro's mandate includes the consideration of affordability</u>

Manitoba Hydro takes the position that bill affordability programs are not within its mandate. Green Action Centre disagrees. In the case of Consumers' Association of Canada (Manitoba) Inc v Manitoba Hydro Electric Board 2005 MBCA 141, Justice Monnin on a leave application stated:

> 63 The intent of the legislation is to approve fair rates, taking into account such considerations as cost and policy or otherwise as the PUB deems appropriate. Rate approval involves balancing the interests of multiple consumer groups with those of the utility.
>
> 64 The role of the PUB under the *Accountability Act* is not only to protect consumers from unreasonable charges, but also to ensure the fiscal health of Hydro. It is clear the PUB understood its role in this regard.

> 65 The PUB has two concerns when dealing with a rate application; the interests of the utility's ratepayers, and the financial health of the utility. Together, and in the broadest interpretation, these interests represent the general public interest.

The central issue under consideration is the balancing of the interests of multiple groups of ratepayers and the financial health of the Utility. Green Action Centre suggests that the evidence establishes that the interests of residential consumers are not identical. The evidence suggests that many residential consumers can afford a proposed rate hike. (See pages 288 and 289 of PUB MFR 72). The evidence is however that a significant portion of the residential class lives in energy poverty and cannot afford a rate increase as proposed by Manitoba Hydro or at all. In order to achieve its mandate of supplying economical power to ratepayers at fair rates, Manitoba Hydro must deal with the issue of affordability.

The Board has in past hearings acknowledged the difficulty faced by the Board in setting just and reasonable rates given the disparity in the ability to pay within the residential class. As stated in Board Order 73/15

> In the Board's view, affordability is a factor to consider when setting just and reasonable rates...
>
> As such, it is the Board's intention to evaluate any future proposals for bill assistance programs from a comprehensive policy perspective rather than through the lens of programs from a comprehensive policy perspective rather than through the lens of jurisdictional constraints, provided that such proposals fall within the legislative framework set by The Manitoba Hydro Act, The Crown Corporations Public Review and Accountability Act, and The Public Utilities Board Act.

Further in 116/08

> Energy affordability for low-income families is very much an issue that requires more or less immediate attention in Manitoba. The Board suspects that low income individuals, families and seniors, unable to pay their natural gas or electricity bills due to personal hardship or crisis, could receive support from a rate reduction program without causing a major rate increase for MH's other customers.

Manitoba Hydro argues that bill affordability is a social policy best left for the provincial government. It may be that the ideal solution to the question of energy poverty would be for the provincial government to step in and provide adequate assistance to those individuals that require it. That does not however change the reality that assistance for energy poverty is needed now. Dr. Simpson agreed that there is an urgency to deal with the energy poverty problem.

> MR. WILLIAM GANGE: Sir, these --these rates will go into effect, we're expecting, April 1st. So next year's winter season will be affected by whatever the rates are that are approved by this Board. Would you agree with me that – that this Board -- that there is an urgency for low income customers to have -- to have something done to assist the energy poverty problem that is identified both in the affordability working report and your analysis of it?
>
> DR. WAYNE SIMPSON: Assuming that the 2 rate increases are significantly more than the 2 percent benchmark for inflation, yes.
> (Transcript pages 4748-4749)

Dr. Mason testified that his preferred approach to dealing with the poverty issue generally is a minimum income strategy similar to the provincial Mincom approach that was attempted as a test program in the Province years ago. Dr. Mason agreed however that it is unlikely that such a program is a realistic possibility at the present time.

> MR. WILLIAM GANGE: So that in terms of solving or -- or -- or attempting to move forward with the problem of energy poverty, can I -- can I suggest to you, sir, the Mincome approach is off the table for the foreseeable future?
>
> DR. GREGORY MASON: I would – if you're solving poverty problems in general, I would say it's off the table, yes.
>
> MR. WILLIAM GANGE: And -- and -- and specifically with respect to energy poverty, that's not part of this equation, is it, sir?
>
> DR. GREGORY MASON: Not anytime soon.
>
> (Transcript page 3317-3318)

The reality is that it is unlikely that there will be any provincial program that will address the energy poverty issue in the foreseeable future. Given this reality, what can Manitoba

Hydro do to protect its financial health while also securing rates that are just and reasonable within the residential class? Manitoba Hydro has been given direction from the Board to address this issue. In 2008, the Board directed Manitoba Hydro to develop a rate reduction program prior to the commencement of the next winter heating season. It failed to do so. In addition, the Board ordered Manitoba Hydro to file a plan by January 15, 2009 dealing with a proposed course of action regarding an inverted rate strategy by January 15, 2009. It failed to do so. Both of these initiatives were left in the hands of Manitoba Hydro by the Board because Manitoba Hydro has the expertise to develop a proposal that would satisfy the requirements of the Board to assist the energy poor while at the same time protecting the financial health of the Utility. That strategy has not worked to date as Manitoba Hydro has simply failed to respond to the directions given by the Board.

The Manitoba Hydro Act prescribes a mandate for Manitoba Hydro to provide for the continuance of a supply of power adequate for the needs of the province and to engage in and to promote economy and efficiency in the use of power. Green Action Centre argues that affordability solutions are a component of the production and efficient use of power in this province. It is accepted by Manitoba Hydro that demand side management practices are an essential part of its core mandate. As a result, Manitoba Hydro rightly spends a significant amount of its operating budget on developing and promoting DSM measures. It is also a core principle of its mandate that Manitoba Hydro will charge rates that are just and reasonable. Those rates must take into account the financial health of the Utility. But they must also take into account what is fair to the ratepayers. As Justice Monnin stated, the intention of the legislation regarding the regulation of rates is to ensure fair rates. The core principle of Manitoba Hydro must be to ensure the delivery of fair rates to all of its customers which can only be achieved through the development of an affordability program that protects the vulnerable members of the ratepayer class.

At this hearing the evidence of the experts that addressed the issue of affordability has been close to unanimous that Manitoba Hydro faces a significant problem regarding affordability in light of rate increases that exceed the rate of inflation. Of course, for those ratepayers that for whatever reason are not employed, even the reference to inflation is somewhat meaningless. There are differing opinions on who should deal with the problem, who should pay for the solutions, who should be the target audience and other issues. Arguing over a perfect plan or delaying taking any steps until all matters have been addressed is however the perfect path to complete failure to address the issue. Moving forward is an essential step for this Board to take in these proceedings.

The record on residential bill affordability and rate design

The PUB has before it a considerable, but not entirely consistent, record on bill affordability and rate design.

By direction from the PUB in Order 73/15, Manitoba Hydro convened a Bill Affordability Working Group supported by First Person Strategies to facilitate and PRA to provide research support. The Working Group met on a very compressed and intense schedule[1] over 8 ½ months (April 1 to December 15, 2016) to organize, design, execute and record its research, deliberations and decisions. Their final report is contained MH Appendix 10.5. Appendices 10.6 and 10.7 and GAC-3 (attachment) provide responses to the report.

Subsequently, on July 13, 2017, Manitoba Hydro convened an alternative rate design workshop for the residential class and accepted further submissions until July 31. Background information, various parties' concerns, and rate options for discussion from Manitoba Hydro and Paul Chernick are reported in Appendix 9.14 of the filing.

In addition, Paul Chernick produced evidence on behalf of Green Action Centre on marginal costs and rate designs to promote conservation and affordability (GAC-11 and GAC -17).

[1] The Working Group met 14 times, an Engagement Subcommittee met 9 times and a Research Subcommittee met 11 times (Appendix 10.5, 189-191/242).

The record also contains further direct evidence on affordability issues and proposals from Manitoba Hydro (MH-88), Wayne Simpson (CC-21 and CC-44), William Harper (CC-21 and CC-46), Philip Raphals (AMC-7.1 and AMC-14) and Adonis Yatchew (AY-1 and AY-2).

An important addition to the expert testimony received is the Consumer Ratepayer Panel organized by the Consumer Coalition (Jan. 5, 2018 transcript 3362-3462, 3485-3509).

Green Action Centre submits that the Bill Affordability Working Group report, the alternative rate design workshop report, and further evidence from this hearing provide information sufficient to initiate bill assistance to supplement Manitoba Hydro's existing Affordable Energy and Bill Management Programs.

Manitoba Hydro's opening presentation by Kelvin Shepherd and Jamie McCallum acknowledged that, although low income affordability is an important issue, MH lacks the tools and mandate to address the problem (Exhibit MH-64, slide 75). MH's final argument also quotes Mr. Shepherd on these points on pp. 168-169. The above record shows, on the contrary, that there is an abundance of tools available to the utility to address low-income affordability, just as numerous other utilities have done for decades[2], and ample reasons why it is within Manitoba Hydro's mandate to do so, as we will discuss.

Subsequently, under cross-examination, after reviewing excerpts on the PUB's jurisdiction to set bill assistance rates for low-income customers, Mr. Shepherd acknowledged that that Hydro was prepared to explore rate design and committed to exercise his leadership at Manitoba Hydro to find solutions to the impacts on energy poor customers caused by escalating rates, particularly customers on First Nations. The solutions might involve rate design, but also collaboration with other stakeholders (Dec. 5, 2017 transcript, 522-524 and 586-587).

We note that in Order 73/15, in directing the creation of an affordability working group, the PUB said:

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[2] See, for example, PRA's **Table 22: Overview of rate design options** (MH Appendix 10.5, 109-112/242) and the bill affordability report Appendix F (MH Appendix 10.5, 224-242/242). Note that 16 different North American jurisdictions (and more utilities) appear on the table, five of which PRA followed up with in-depth reviews.

> *Upon completion of the collaborative process the Board will evaluate the options presented and decide on their implementation* (p. 28 of 108).

The time for decision is now. To assist the PUB to thread through the evidence and make its determinations, Green Action Centre will summarize our own findings and recommendations.

Energy poverty in Manitoba

A major accomplishment of the Bill Affordability Working Group was to provide concepts and methods for understanding energy poverty in Manitoba. That group arrived at the following qualitative definition.

> *Energy poverty refers to circumstances in which a household is, or would be, required to make sacrifices or trade-offs that would be considered unacceptable by most Manitobans in order to procure sufficient energy from Manitoba Hydro* (MH Appendix 10.5, 15/242).

The Bill Affordability Working Group also adopted a widely-used energy burden metric, the ratio of household energy expenses to household income expressed as a percentage. An energy poor household can then be defined as a lower-income household with a high energy burden. To measure the extent and depth of energy poverty we adopted two energy burden thresholds found in the literature – 6% and 10% - to demarcate different depths of energy poverty. According to a 2014 Manitoba Hydro Residential Energy Use Survey (REUS), 14.3% of Manitoba households are energy poor over the 6% threshold and 4.2% over the 10% threshold (MH-88, slide 47).

Note that the energy burden approach makes more general thresholds of poverty like LICO or market basket measures largely redundant, since virtually all the energy poor fall within low-income levels by whatever measure is used. For example, the working group found that *"High energy burdens are much more prevalent among LICO-125 households; for example, whereas only 0.2% of non-LICO-125 households allocated 10% or more of their income to energy in 2014, this was true of 13.5% of their energy-poor counterparts"* (Appendix 10.5, 16/242).

The distribution of energy burdens in relation to income is graphically displayed below.

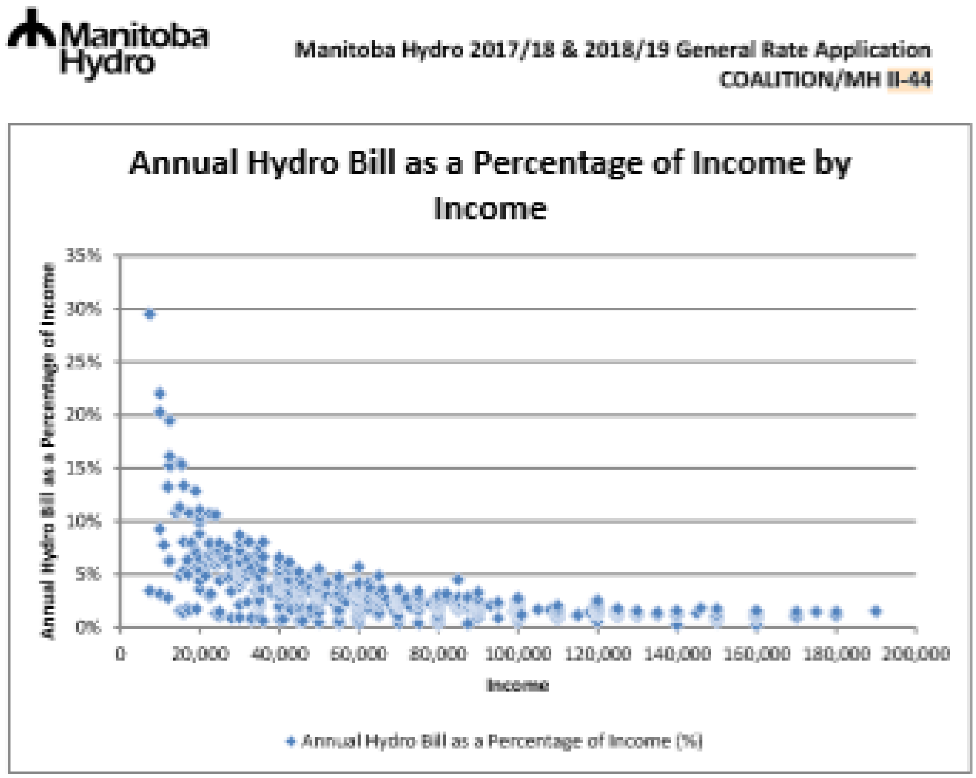

Figure 1: Annual Hydro Bill as a Percentage of Income by Income
Source: Survey of Manitoba Hydro customers (N = 587)

The above analysis can be extended by noting that household energy costs are a function of both price and quantity of energy consumed, i.e. the higher the rates charged for a quantum of household energy and/or the more units of energy consumed by a household, the higher the cost of a household's energy (other things being equal). Combining these two factors with household income we see that household energy burden has three numerical determinants – the rates charged and quantity of energy consumed determine the numerator and household income constitutes the denominator of the energy burden ratio. As Dr. Mason rightly points out in discussing this relationship with Mr. Gange, there are many further factors affecting the levels of consumption and of income (transcript 3289-3291). And, of course, Hydro bills may be increased or decreased by other components, such as arrears, fees, loan payments or credits.

Taking these three determinants of energy poverty one at a time, we can say:

1. Energy poverty is a consequence of insufficient income [to afford, without sacrifice, energy bills at current rates and levels of consumption], or
2. Energy poverty is a consequence of over-consumption of energy [beyond what is affordable with a given income at current rates], or
3. Energy poverty is a consequence of unaffordable rates [given the household income and levels of consumption of many customers].

The first of these, income inadequacy, is Manitoba Hydro's preferred characterization of the problem (at least when considering rates), because then it can be classified as an issue of public social policy, which is the responsibility of the provincial government, not Hydro (MH Final Argument, 168-169/221).

On the other hand, Hydro's Affordable Energy Program does address the second problem of over-consumption by offering lower-income efficiency programs.

Finally, though, although Manitoba Hydro acknowledges that its requested rate increase is not without consequence for low-income electric heat customers (tr. 135), it disowns responsibility for addressing that consequence through differentiated affordable rates for its most vulnerable customers (MH Final Argument, 168-169/221).

The dramatic increase in energy poverty from escalating rates is portrayed in PRA's graphed simulations based on survey and administrative data, such as Figure 7 below.

Manitoba Hydro

Manitoba Hydro 2017/18 & 2018/19 General Rate Application
AMC/MH II-23a-c

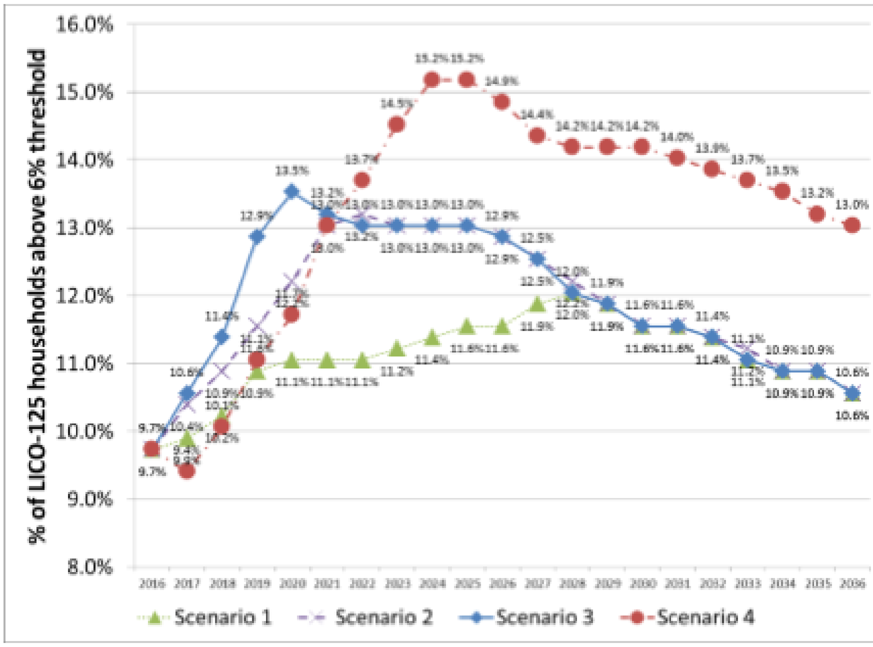

Figure 7: Impact of Manitoba Hydro rate increases on proportion of LICO-125 households above 6% energy poverty threshold, 2016–36, inclusive

Source: PRA calculations based on survey of Manitoba Hydro customers

Note: *Scenario 1*—3.95% nominal electricity rate increases for 12 years; *Scenario 2*—5.95% nominal electricity rate increases for 6 years; *Scenario 3*—7.95% nominal electricity rate increases for 4 years; *Scenario 4*—3.36% nominal electricity rate increase in 2017, followed by 7.9% rate increases for 6 years and a 4.54% rate increase for 1 year (assumed to come into effect on August 1st of each calendar year)

Dr. Simpson summarizes his observations on that scenario as follows (Ex. CC-44, slide 8):

- **Current scenario: Dramatically higher impact of current rate proposals on energy poverty incidence**
  - rises from 9.7% in 2016 to 13.0% in 2021 (34% increase) and continues to rise to 15.2% by 2024 (57% increase) (AMC/MH II-23, Figure 7)
  - remains well above the original scenarios at 14.2% in 2029 (46% increase over 2016) and is still 13.0% (34% increase) by 2036!
  - energy poverty not only grows for a longer period but assumes a permanently higher level than the current experience

Responding to energy poverty

Green Action Centre accepts Dr. Simpson's conclusion from his review that:

> *Proposed rate increases represent a **long-term problem for energy poverty** that only direct rate assistance and energy efficiency plans can mitigate*
>
> (Ex. CC-44, slide 17).

We also accept his additional recommendations:

> Additional Recommendations
>
> - If we are to take energy poverty remediation seriously:
>
> (1) Hydro and stakeholders should **continue research** into energy poverty and its characteristics using Manitoba evidence
>
> (2) Hydro should **develop an efficient rate assistance program** that provides assistance to low-income energy poor households but that is not directly tied to the level of energy consumption along the lines of the fixed credit programs in Colorado and Ontario
>
> (3) Hydro should **enhance its Affordable Energy Program** to assist lower-income households to implement energy efficient upgrades
>
> (4) Hydro should **develop a plan to coordinate** rate assistance, energy efficiency and billing management programs for low-income households to increase participation in all aspects of affordable energy programming.

(Ex. CC-44, slide 18)

Note that, in making these recommendations, Dr. Simpson emphatically stated that he did not prioritize more research over initiating action on the other measures (transcript, pg. 4729 and 4738).

Green Action Centre is pleased to note that since March 2017, Manitoba Hydro has introduced "a mandatory joint application form for both the Affordable Energy Program and Neighbours Helping Neighbours" and doubled the percentage of customers taking advantage of both programs (MH Final Argument, 185-186). This is an important component of Simpson's fourth recommendation.

We also note the growing initiatives and networks of partners to enhance the Affordable Energy Program (MH-88, slide 30) and the indication that an enhanced arrears management program may include a bill assistance component in the form of partial arrears forgiveness (transcript pg. 3297-3298).

Geothermal solutions

The most efficient use of electricity for heating is in geothermal systems. Once capital costs are recovered, they can compete with natural gas (Ex. GAC-16). All that stands between MKO's stated objective of "equivalent-to-gas" rates for electric heat in the north is the capital investment required to replace direct electric heat with a geothermal system.

Manitoba Hydro has partnered with Aki Energy to lower costs through bulk purchases, subsidy and Pay-As-You-Save (PAYS) financing for First Nations (MH Final Argument 188-189). Over time, this or similar programs can help alleviate energy poverty for low-income households wherever gas is unavailable. In the meantime, though, additional bill assistance is required for households having the highest energy burdens.

Other electric space heat customers may also benefit from geothermal conversions in scenarios of steeply rising rates, under which the geothermal heating advantage relative to direct electric heat will grow. Electric space heat customers can receive on-bill financing from Hydro and a Green Equipment Tax Credit from the Province (GAC-MH II-29 a-d, page 4 of 5).

Green Action Centre recommends that it should be a strategic priority for Manitoba Hydro and Efficiency Manitoba to address the stiff rise in bills for electric space heat customers by initiatives that reduce atnd affordably finance the capital costs of geothermal systems. Increased targeting of DSM and switching these customers to geothermal heating would reduce the need for rate discounts for electrically heated homes.

<u>Green Action Centre's Recommended Bill Assistance Solutions: Options with Targeted Beneficiaries</u>

Green Action Centre's overall approach to affordability, and the one recommended by our experts Paul Chernick and, before him, Roger Colton is (a) to recognize and analyze the problem and (b) bring to bear all the tools at Manitoba Hydro's disposal to address the problem in the most effective and cost-effective ways. Income support is not a tool in Manitoba Hydro's control, but bill assistance and efficiency measures are.

In addition, we are guided by the criteria developed by the Bill Affordability Working Group, and, in particular, Accuracy (targeting benefits) and Equity ("programs must treat equals equally and "unequals" proportionately (program recipients with higher need should receive proportionately more benefit; defining equality usually rests on an income test)." (App. 10.5, 133 of 242)

In Manitoba, efficiency measures and income support to date have been insufficient to eliminate energy poverty. Until and unless efficiency and income measures suffice, there will be a need for bill assistance. Many models exist, but Green Action Centre recommends two in particular: one from Mr. Chernick and one from the Bill Affordability report.

Green Action Centre asked Mr. Chernick to demonstrate rate design options that combine a conservation incentive with affordability. He developed the four alternatives in the table below. Green Action recommends that the protocol labelled LICO-125 ESH be selected for piloting in 2018-2019. However, to contain the costs and better target the greatest need, we recommend that this protocol be applied in the first instance to LICO-125 customers whose energy burden exceeds 6%.

		MH Interim	LICO-125 All	Non-LICO ESH	LICO-125 ESH	Non-LICO IBR
Basic Charge		$8.44	$0	$8.08	$0	$7.82
First Block	¢/kWh	8.556	4.556	4.556	4.556	7.930
Remainder	¢/kWh	8.556	8.556	8.556	8.556	8.925
First Block kWh						
Summer		—	500	—	500	500
Spring		—	500	150	650	500
Fall		—	500	250	750	500
Winter		—	500	500	1,000	500
Recovery rate from:						
Non-LICO residential (NLR)			$0.00966			
All non-LICO, non-SEP			$0.00246			
Non-discounted NLR kWh				$0.00407		
Non-discounted non-LICO				$0.00096		

The second example recommended for consideration is a fixed credit variant of the percentage of income payment plan (PIPP). An example of this is the PSCO program in Colorado reported by Dr. Simpson (slide 13 of Ex. CC-44).

Public Service Company (PSCO) of **Colorado**

- Most U.S. rate assistance programs are directly related to current usage, which provides direct assistance to those with energy poverty but limits the incentive to conserve energy and be energy efficient
- PSCO provides a fixed credit to low-income households to bring past total energy expenditure to the 6% threshold
- Fixed credit is based on past, not current, expenditure to target the energy poor directly (unlike Ontario) and encourage energy conservation (somewhat)
- PSCO combines its rate assistance with arrearage forgiveness and weatherization aids and requires recipients to enroll in the Low Income Home Energy Assistance Program and the budget billing program
- Idea of identifying the energy poor from rate assistance applications and coordinating programs for low income households seems valuable

Percentage of income payment plan (PIPP): Further considerations

Noting that a PIPP could effectively eliminate energy poverty by design, the Working Group identified the PIPP as the rate option that best addresses both the accuracy and equity principles of energy affordability. However, in light of administrative costs related to implementation of an income-qualified program, and uncertainty about the sufficiency of potential offsets and overall costs of the PIPP at full subscription, the Working Group did not recommend this option, but instead agreed it may warrant further study by Manitoba Hydro. Further study may include consideration of the following measures to potentially reduce program costs:

- *Target only the poorest of the energy-poor by using a higher income threshold (10%).*
- *Introduce a pilot program prior to full implementation, possibly in a remote northern Indigenous community, and utilize the pilot to enhance understanding of likely administration costs, rates of participation and program efficacy.*
- *Offer PIPP for electric customers only, as existing measures are in place for gas customers, and electric heat costs are greater than gas costs and are rising.*
- *Set aside a dedicated pool of program funding and administer it to individuals on an application basis, prioritizing those most in need.*

Note that the Bill Affordability Report paid special attention to the PIPP design because it eliminated energy poverty, as it was designed to do (Appendix 10.5, 28 of 242). The PSCO fixed credit approach adds a conservation incentive, in that the customer faces increased benefits from reducing consumption and increased costs from increasing consumption.

We further recommend that both the Chernick and PSCO models include matching bill forgiveness for timely arrears payments and coordination with efficiency programs through common application.

Addressing concerns about cross-subsidization

A bill affordability program based on income will necessarily involve cross-subsidization by other customer classes. As Philip Raphals notes, "Cross-subsidization of one type or another through regulated utility rates is in fact quite common" (Exhibit AMC-7-1, pg. 30). For Hydro to suggest that the risk of cross subsidization prevents them from implementing a bill affordability program ignores the fact that there are already elements of cross-subsidization within the current rate design, since not all customers pay a rate equivalent with the costs to serve them. Mr. Kelvin Shepherd has acknowledged this (transcript pp. 519-520)

This Board should note that the evidence before it, from the Consumer Coalition's Rate Payer Panel, is that residential rate-payers supported a program that assisted low-income Manitobans in paying their electricity bills. Further, most would support an increase in their monthly costs of energy in order to assist energy poor Manitobans (Transcript pp. 3384, 3399, 3415, 3443-4). This was even the case where the rate payer would likely qualify as energy poor themselves.

In this case, two options have been presented in the evidence at this hearing: the costs and recovery of the revenue requirement can be borne by the non-LICO residential class or be spread out more broadly to all other customer classes. Green Action Centre's position is that it would be most appropriate for all other customer classes to pay for the costs of the affordability program. In this regard, Green Action Centre adopts the evidence of Paul Chernick who recommends spreading out the costs (including recovery of the revenue requirement) over all non-LICO customers since it is a social program, similar to low income assistance supported by tax revenues (Exhibit GAC-17, pp. 32-33).

Such an approach was also endorsed by William Harper (Exhibit CC-20, pg. 103) and Philip Raphals (Exhibit AMC-7-1s, pg. 29-33).

From a cost of service perspective, the costs of bill affordability measures is best viewed as an expense of the major capital projects which are necessitating rate increases and aggravating the affordability problem (Keeyask & Bi-Pole III). Bill affordability ought to be conceptualized as compensation for those individuals who are financially affected by the building of these two projects in a similar manner to how individuals who are physically affected are compensated (ex. compensation to trappers whose trap lines are flooded). One suggestion endorsed by the Green Action Centre, is that the costs of a bill affordability program be attached to generation for the purposes of the COSS, not unlike Mr. Raphal's suggestion. Since this revenue would otherwise benefit all rate payers, all rate payers ought to be responsible for subsidizing the costs of a Bill affordability program.

Addressing concerns about administrative issues

The administration of an income-based bill affordability program has been put at issue in this rate hearing. In particular, the concern has been raised that Manitoba Hydro lacks the critical information to make such a program viable from an administrative perspective.

The Green Action Centre's position is that informational deficits are not as great as suggested by Manitoba Hydro and their presenters. Manitoba Hydro already administers their affordable energy program based on a LICO-125 criteria (MB Hydro Application, Appendix 10.5, pg. 22). To administer these programs, Manitoba Hydro collects information on household income from the customers who apply. Manitoba Hydro also has available to it information on household electricity costs. Since energy poverty is a function of energy costs and household income, it follows that Hydro already has available to it the information that is key to determine eligibility for an income based bill affordability program. This provides an available database of customer information to begin targeting a bill affordability program, and demonstrates that Hydro has the capability to collect the information required to determine eligibility.

A secondary administrative concern is with respect to a lack of infrastructure to administer the program. Additional administrative processes will have to be developed in order to administer a bill affordability program, however, these need not be so onerous or overwhelming so as preclude setting up the program. Manitoba Hydro already has experience collecting application information for DSM programs. Administration of the bill affordability program cold be based upon this experience.

Furthermore, the issue of energy poverty engages the mandates of a large subset of other stakeholders (i.e. Winnipeg Harvest) who could assist with the administration of the program. Rebecca Trudeau, an employee within the Community Engagement Department at Winnipeg Harvest confirmed that there is a network of four hundred different food distribution agencies within Winnipeg Harvest that already disseminates information on community resources (transcript pg. 3446-8). Ms. Trudeau also felt that non-profits such as Winnipeg Harvest were "extremely flexible" and could assist low-income rate payers in applying for a bill affordability program (transcript pg. 3449). With the appropriate training and policy manual, representatives from community organizations could assist Hydro with the intake of applications for an affordable energy program. In order to ensure that a program is effective, with significant uptake, partnerships with community organizations (i.e. Winnipeg Harvest) who already have developed infrastructure to administer programming to low income Manitobans, could be vital in administering an bill affordability program.

With respect to the costs of administering the program, there will inevitably be a level of uncertainty until such time as a program is created. Green Action Centre's hope is that such a program could take advantage of internal resources that Hydro already has in place (through coordination with DSM administration) as well as partnering with outside volunteer agencies. In this regard, Green Action Centre recommends that a program of bill discounts be amalgamated into a single application with other Hydro assistance programs, including energy retrofits, and arrears management (if in arrears). This would reduce administrative expenses and ensure that a multifaceted approach is taken to ensuring that efficient assistance is provided.

Hydro has provided evidence as to the costs of administering the Neighbours Helping Neighbours program in partnership with the Salvation Army. We know that between 2004 and 2017 the administrative costs of the program were $1,064,692 (MH-88, pg. 26-27). On an annual basis this translates to administrative costs of $76,049.43. For these costs, the program has assisted more than 8000 households with emergency grants, and has provided other valuable programming including “counselling, budget skills, job training and food assistance” (MH Final Written argument pg. 182).

Green Action Centre’s position is that the costs to administer a bill affordability program need not be as high, proportionally, as the costs of the neighbour helping neighbours program, depending on the available hydro resources and community group involvement, however, even based on the costs of the Neighbours Helping Neighbours Program, the administrative costs ought not to impede the Board from directing Hydro to implement a bill affordability program given the rates of energy poverty in Manitoba.

Finally, any administrative challenges are a low risk for Manitoba Hydro. Admittedly, until such a program is attempted (either in full or through a pilot), there will be a number of unknown administrative issues. Any unexpected challenges, however, could be reviewed at the next general rate application, thus limiting any risk with the administration of such a program.

Addressing concerns about transparency

During the course of the Rate payer panel, the issue of transparency was raised. In particular, Mr. Dan Mazier raised the issue of transparency as a desired feature of a bill affordability rate design (transcript, pg. 3384). The issue was also raised by Ms. Lyndie Bright (transcript, pg. 3432). Green Action Centre agrees that transparency in the implementation of such a program should be a priority. In this regard, Green Action Centre recommends that the Board direct Hydro to implement a separate account, to be funded in addition to the revenue requirement and at a level sufficient to cover the costs of the recommended affordability programs including:

- The costs of the proposed arrears forgiveness program;
- The costs of the proposed low-income rate program; and
- Funding for non-profit organizations and other third parties to assist with the administration of these programs where efficient.

As for the level of funding, Green Action Centre recommends that the Board direct sufficient funding to meet the revenue reduction attributable to the implementation of bill affordability measures. The Board may consider the revenue reductions calculated by Mr. Paul Chernick (GAC-22) be allocated from the revenue requirement to be set aside in an account to fund these affordability program. Prior to that GRA, if there is a short fall of funding, Hydro could run a deficit in that account and the sufficiency of such funding can be reviewed at the next GRA.

The introduction of a dedicated fund, funded in addition to the revenue requirement, has the advantage of protecting Hydro's revenue for other purposes.

Marginal Costs

Mr. Paul Chernick has provided calculations as to the adjustment of Hydro's marginal cost calculation. According to Mr. Chernick's calculations current rates are below marginal costs, which would further support the implementation of an affordability based rate design. Green Action Centre stands by Mr. Chernick's calculations, and notes that Hydro has not addressed this particular issue in their final argument.

Determining a level of rate increase

Green Action Centre did not provide evidence on Manitoba Hydro's overall revenue requirement and its proposal for recovering it over time. What we offer the PUB is a series of considerations relevant to the final determination of a rate increase for 2018 and an indicated trajectory over time.

1. The basic cost causation principle is that capital costs should be spread over the long future during which the new facilities are "used and useful" rather than paid at the front end by users over the next 6 or 7 years. The latter is regarded as an intergenerational inequity in favor of the future against the present. This would suggest a longer run of rates in the 4 cents range. This is the position that other interveners will be defending.
2. This extended policy for capital recovery entails greater total costs for Manitoba Hydro (and its ratepayers), but that is judged acceptable because of the time value of money, which discounts future expenditures. Rates from Year 10 to 20 and possibly into the future beyond that will be higher than if a steeper rate were adopted at the front end.
3. As outlined by MPA, the extended recovery policy entails a willingness to move up or down every couple of years in response to emerging circumstances and risks. MPA suggested two guidelines. (a) build enough equity to cover a (modest) drought at 85% of median water flows for a few years and (b) cash flow should be at 1.8% of interest or less.
4. Bipole III comes into rates this year (scheduled for completion this spring). The PUB created a deferral fund so that part or all of rate increases over the last couple of

years were a contribution to BP III when it comes online. Should the PUB do the same for Keeyask in preparation for when it comes online in 2021?

5. The revenue requirement needs to include sufficient additional funds in a dedicated account to cover rate discounts for the energy poor and more aggressive DSM (a) to meet the newly legislated targets for Efficiency Manitoba and (b) to afford geothermal subsidies as a mitigation measure for electric space heating customers.
6. Most interveners in this hearing, including Green Action Centre, have produced evidence to protect either a subset of or all current customers. However, as sustainability advocates, we are also advocates for future customers and the long-term public interest. Alongside the principle of spreading out costs over the life of "used and useful" assets, we would place a concept of social investment in future benefits as is characteristic of many areas of life. We invest in our kids, in education and in public assets, like museums, to create future individual and social benefits beyond what we will reap. Call this a social investment principle in contrast with the "used and useful" cost responsibility principle. The qualification should be that this isn't done on the backs of the most vulnerable, which is why we need to create buffers for them.
7. We should also keep in mind that we are creating negative legacies for future generations as well by using up resources and loading the atmosphere with pollutants requiring more carbon-constrained and resource scarce living conditions, so future citizens may not, on balance, be better off.
8. We also view the Compton/Simpson and LEI types of analysis, which argue we are damaging the economy, as one-sided in focusing on what is removed from the economy in the next 10 years by higher rates without balancing it by (a) the stimulus of MH capital investments and (b) the future advantageous competitive position for Manitoba of lower rates.
9. The last point could be critically important for the future of MH and its benefits to Manitobans. Many utilities are talking of a potential death spiral if they are saddled with standing fixed infrastructure costs requiring uncompetitively high rates when customers can put solar on their roof and buy a battery that together supply power at a significantly lower cost. In that case, customers can cut their ties to the grid and

to MH and generate (and store and dispatch as needed) their own power. If many customers do this and their revenues are lost to the system, other customers will have to pay more to cover the fixed costs and the disparity increases, which will drive further grid defection. This prospect was raised by LEI in its final slide. Whether this or other future prospects should carry weight should be a matter for Manitoba Hydro and stakeholders to review in a reconstituted Integrated Resource Planning process, as recommended by the PUB in its NFAT report.

10. To avoid this scenario, MH's future might require a lower future debt load and lower rates.
11. Note that MH's relatively low starting rates provide some ability to absorb such increases, except for the most vulnerable.
12. The scenario of the Province injecting equity as an alternative (or picking up stranded debt down the road) has been rejected by the Province (wisely) because they have their own debt load and deficits to manage. If they forego some of the incremental revenues from new transmission and Keeyask investments coming their way, this would best be invested in the more vulnerable customers.

Implications of climate change for Manitoba Hydro planning.

In the course of this hearing, Manitoba Hydro identified a gas combustion turbine as the next potential generating asset for the purpose of marginal cost estimation. As well, LEI recommended pausing Keeyask and looking at a combustion turbine as a preferred alternative when needed (GSS/GSM-9-2, p. 40). Green Action Centre believes that these suggestions are contrary to the direction of steep reductions in GHG emissions (unless the turbines were to be accompanied by carbon capture and storage). We recommend that Manitoba Hydro examine cleaner alternatives for generation options and avoided cost calculations as BC Hydro does (Ex. CC-49).

Conclusion

Green Action Centre takes the position that the Board must take energy poverty seriously. Ten years of directions from the Board that require Manitoba Hydro to implement an affordability plan have been ignored. The only approach that the Board has not attempted is to order that an affordability plan be introduced at the time of the Board's decision. Mr. Chernick has provided to the Board a pathway forward. It may not be perfect. It is better than doing nothing for another ten years. If the plan is implemented, Manitoba Hydro along with interested interveners and community groups can work on improvements for consideration at the next General Rate Application.