

PUBLIC UTILITIES BOARD

Efficiency Manitoba 3-Year Energy Efficiency Plan Submission (2020-2023)

Final Written Submissions of the Assembly of Manitoba Chiefs

COUNSEL FOR THE ASSEMBLY OF MANITOBA CHIEFS

Carly Fox and Emily Guglielmin

Fox Fraser LLP

#1620, 1800 4 Street SW

Calgary, AB T2S 2S5

Table of Contents

Introduction3

The Assembly of Manitoba Chiefs.....3

Procedural History of the Efficiency Manitoba Plan5

Issues for Intervention5

Summary of Submissions6

Analysis.....8

1. Equity should be built in by design, not as an afterthought9

 Disparities between the First Nation and non-Indigenous population of Manitoba 9

 Energy justice should be at the forefront of Efficiency Manitoba’s Programming..... 10

 A more significant and stable funding package would help address underrepresentation of First Nations customers 13

 Off-reserve First Nations customers are inadequately considered in the Plan 20

 Room for growth in high performing technologies 21

 Underrepresentation of First Nations customers in the Plan may further exacerbate already large inequalities 22

2. Impacts from rate increases associated with energy efficiency programming will have a disproportionate impact on First Nations customers.22

3. Efficiency Manitoba has not adequately engaged with First Nations or First Nations citizens .24

4. Non-Energy benefits should be considered at the outset and not as an afterthought31

 Targets for Economic Participation 32

5. Data collection for First Nations Customers33

Conclusion35

ALL OF WHICH IS RESPECTFULLY SUBMITTED36

Introduction

The Assembly of Manitoba Chiefs (the “AMC”) provides these written submissions in accordance with Public Utilities Board Order 191/19. As an overarching consideration of these submissions, the AMC wishes to reiterate that a special relationship exists between First Nations in Manitoba and the Crown which has been affirmed in Canadian law:

...It is also well established that there exists a special relationship between the Crown and Aboriginal peoples of Canada, qualified as a *sui generis* relationship. This special relationship stems from the fact that Aboriginal peoples were already here when the Europeans arrived in North America. [citations omitted]¹

As an agent of the Crown, Efficiency Manitoba should be cognizant of this special relationship in its dealings with First Nations, and in the development and implementation of First Nations programming.

The Assembly of Manitoba Chiefs

The AMC is a political organization which functions to build consensus on issues and priorities for First Nations in Manitoba. Externally, the AMC aims to present a common front to pursue issues relevant and important to Manitoba First Nations in a myriad of ways.² The AMC’s stated mandate is, through the Chiefs-in-Assembly, to devise collective and common political strategies and mechanism for coordination of action by First Nations and their organizations to:

Promote, preserve, and protect Aboriginal and Treaty rights for First Nation people in Manitoba;

Preserve and enhance the rights and freedoms of First Nations in Manitoba as distinct peoples;

Strengthen and restore the foundations of First Nation cultures, traditions, languages, economies, and societies;

Affirm First Nation rights as peoples to exercise and practice self-determination and self-government;

Protect the integrity and authority of each First Nation’s customs, laws, and practices; and

¹ *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para 89, referring to *R v Van der Peet*, 1996 CanLII 216 (SCC), [1996] 2 SCR 507, at para 30.

² Assembly of Manitoba Chiefs, "History & Mandate", online: *Assembly of Manitoba Chiefs* <<https://manitobachiefs.com/about/history/>>.

Preserve and enhance the role of equal participation of First Nation women within political, economic, and social spheres of First Nation governments and organizations.³

The AMC Chiefs-in-Assembly is the governing body of the AMC. The AMC Secretariat is the administrative and technical arm of the AMC. The core functions of the AMC Secretariat are as follows:

Political infrastructure: Grand Chief; Annual, Special, and General Assemblies; Executive Council of Chiefs; Personnel and Finance Chiefs Committee; various Chiefs Committees; First Nation Women’s Council, and Council of Elders.

Administration: Executive Director, finance, human resources, information management, information technology, media relations, and communications.

Strategic policy coordination and analysis: Interdepartmental policy and coordination capacity including conducting the necessary research and First Nation engagement in developing AMC policy positions/ documentation; providing briefings to leadership; and meetings on policy engagement with federal, and where required, provincial departments. Under the direction of the Grand Chief and the Acting Executive Director, senior staff implements decisions made by the AMC Chiefs-in-Assembly resolutions and Executive Council of Chiefs motions.

AMC senior staff meet on operational matters, along with and under the direction of the Chiefs Committee on Personnel and Finance.⁴

Most of the AMC’s funding is proposal based and dedicated to specific activities outlined in each successful proposal.

The AMC provides a mechanism that balances respect for local and regional First Nations’ autonomy with the need for collective positions and decisions. The AMC at all times recognizes the diverse background and interests of First Nations in Manitoba and respects the sovereignty of each of the 63 First Nations in the Province of Manitoba.

While the AMC is an organization that aims to promote initiatives that are of interest to its member First Nations, engagement with the AMC should not and cannot be conflated with engagement with individual First Nations.

³ Assembly of Manitoba Chiefs, "History & Mandate", online: *Assembly of Manitoba Chiefs* <<https://manitobachiefs.com/about/history/>>.

⁴ Assembly of Manitoba Chiefs, "Annual General Report 2019 AMC AGA Unity Through Innovation", online: *Assembly of Manitoba Chiefs* <https://manitobachiefs.com/wp-content/uploads/AMC_AnnualReport-2019-July-26-FINAL.pdf> at p. 20.

Procedural History of the Efficiency Manitoba Plan

Efficiency Manitoba filed its 2020/2023 Efficiency Plan Submission on October 25, 2019 (the “**Plan**”). Following a written prehearing conference, on November 5, 2019, by Order No. 162/19, the Public Utilities Board (the “**PUB**”) approved Intervener status for the AMC, among others.

Efficiency Manitoba responded to one round of written Information Requests posed on behalf of the PUB, Interveners, and the independent expert consultant Daymark Energy Advisors. No second round of written information requests was provided for during the hearing process.

The AMC filed a revised expert report by Dr. Timothy Clark of Willow Springs Strategic Solutions on December 20, 2019 (the “**AMC Report**”).⁵ The AMC Report focused on the impact of Efficiency Manitoba’s Plan on First Nations ratepayers in Manitoba.

Efficiency Manitoba filed rebuttal evidence with the PUB on January 2, 2020. No rebuttal evidence was filed in relation to the expert evidence of Dr. Clark. The oral hearing took place from January 6 to January 28, 2020.

Prior to Plan filing and the PUB regulatory process, the Energy Efficiency Advisory Group (the “**EEAG**”) met six times during the summer of 2019. According to the Terms of Reference for the EEAG, the intent of those meetings was:

to work with Efficiency Manitoba in advance of a Fall hearing to ensure that the inaugural Plan that is brought before the Public Utilities Board represents the optimal compilation of actions and strategies while also meeting the mandated savings targets in a cost-effective manner.⁶

The Terms of Reference note “that with respect to participation by individuals and/or organizations, governments and nations representing Indigenous peoples, the Advisory Group process does not constitute consultation as defined under Section 35 of the *Constitution Act*.”⁷ Representatives of the AMC attended one session of the EEAG where Indigenous programming was on the agenda.

Issues for Intervention

Pursuant to Order 162/19 of the PUB, the AMC is intervening on the following issues:

1. Whether Efficiency Manitoba is reasonably achieving the aim of providing initiatives that are accessible to all Manitobans;

⁵ AMC-3, Dr. Timothy Clark, Assembly of Manitoba Chiefs Review of Efficiency Manitoba’s 2020-2023 Plan, December 20, 2019 [**AMC Report**].

⁶ EM-1, Efficiency Manitoba 2020/23 Efficiency Plan Submission at p. 449 [**Plan**].

⁷ Plan at p. 449.

2. The appropriateness of methodologies used by Efficiency Manitoba to select or reject demand-side initiatives;
3. The benefits and cost-effectiveness of the initiatives proposed in the Plan;
4. Whether the Plan adequately considers the interests of residential, commercial and industrial customers;
5. The impact of the Plan on rates and average customer bill amounts;
6. Whether, if it is practicable to do so, at least 5% of Efficiency Manitoba's budget for demand side management initiatives is allocated to initiatives targeting low-income or hard-to-reach customers; and
7. The consideration of non-energy benefits of electric and natural gas DSM portfolios, including environmental, economic development (including use of private sector and non-government organizations to deliver DSM initiatives).⁸

In particular, in relation to each of the above issues, the AMC was approved to intervene on the impact that the Plan will have on First Nations customers, as distinct from the term "Indigenous" which includes First Nations and the Metis populations.

The AMC will also comment on the issue of whether Efficiency Manitoba has complied with directions from the government through mandate and framework letters.

Summary of Submissions

The PUB's review of this first three-year Plan will impact Efficiency Manitoba's decision-making and programming for at least the next fifteen years. The priorities that are given value now will impact all Manitobans going forward, including First Nations citizens. Giving the importance and precedential value of this first Plan, the AMC submits that the PUB should recommend the Plan be revised on the basis of the following:

- The electric energy savings targets for First Nations programs in the Plan should be increased and comprehensive approaches that improve energy efficiency for First Nations on-reserve homes and buildings should be expanded.
- A more significant and stable funding package should be provided for First Nations on-reserve customers to meet the additional proposed savings targets.

⁸ Order 162/19 at p. 7-8.

- Efficiency Manitoba should be directed to collect data in relation to off-reserve First Nations programs and to consider the creation of an off-reserve First Nation Income Qualified program.
- Efficiency Manitoba should be directed to create an engagement strategy that better serves First Nations and includes meetings with Chiefs and Councils, and public discussions with First Nations citizens, as well as possible retention of community liaisons.
- In future plans, Efficiency Manitoba should be directed to report on the extent to which First Nations programming has met measures of equity, and how proposed plans measure up against different levels of equity moving forward, these metrics include:
 - A comparison of energy savings achieved and that will be achieved by Efficiency Manitoba's programming versus energy consumption of the First Nations ratepayers (robust scale);
 - A comparison of program participation compared with share of customers, adjusted for household size (minimum scale); and
 - The percentage of bill savings compared with share of energy bills.
- Add clear programming targets for the participation of First Nations on-reserve customers in the First Nations specific and general programming. Efficiency Manitoba's success in meeting these targets should also be reported on at the next application.
- The First Nations energy advisor position should be increased from one to at least two positions that are regionally based to assist First Nations with implementing energy efficiency programming.
- Efficiency Manitoba should be directed to create a project management plan for First Nations customers, which will set out how Efficiency Manitoba will address increased demand for programming by this customer segment.
- Enabling strategies like the Community Energy Program should be expanded and allocated stable funding.
- Efficiency Manitoba should be directed to conduct additional research and analysis to consider the potential benefits or disadvantages to moving to a dedicated funding model for each First Nation from a global funding amount. They should also be directed to track the issue to allow for consideration at the next plan application hearing.
- Efficiency Manitoba should be directed to research the gaps between bill savings for the First Nations Insulation and Direct Install programs and the income qualified programs and report on ways to diminish this gap until the geothermal program can be more widely implemented. Efficiency Manitoba should also be directed to engage with First Nations directly on this issue.

- Efficiency Manitoba should consult with members of the EEAG about possible resourcing or funding options and come to an agreement about the same.
- A mandate for the EEAG should be created and agreed to by its members.
- Efficiency Manitoba should be directed to provide evaluation for electric programming using the Total Resource Cost Test at the next application hearing, and to include metrics for average customer bill reduction and quantifiable economic benefits for the current Plan and for the next proposed plan.
- Efficiency Manitoba should be directed to include measures of robustness in its evaluation of First Nations programming moving forward.
- Efficiency Manitoba should be directed to set clear plans and targets for economic participation for First Nations and First Nations citizens and be directed to report on the same at the next application.
- Efficiency Manitoba should be directed to “unbundle” First Nations and Metis customer programs into separate programs.

Analysis

The following analysis provides comment on the Plan and corresponding hearing and expert evidence through the lens of the needs of First Nations governments and First Nations customers. The analysis is divided into five key concepts, covering considerations such as equity, the effect of rate increases on First Nations on-reserve customers and the Plan’s consideration of non-energy benefits. Within these key concepts, the AMC’s view on issues such as energy poverty, energy justice, as well as reconciliation and its mandated space within Manitoba law, are examined to assist the PUB in its assessment of Efficiency Manitoba’s Plan and its specific effect on First Nations and their citizens.

To that end, this analysis also points out several deficiencies contained within Efficiency Manitoba’s Plan as it is currently drafted and reiterates the evidence provided by Dr. Clark and other experts that is relevant to First Nations. As engagement with First Nations and First Nations customers is a key part of ensuring the success of the First Nations customer programming, the analysis considers some issues with the proposed engagement process and past engagement process.

The analysis also provides recommendations throughout that the AMC believes will significantly better the Plan, increase First Nations participation, and help to remedy the existing energy poverty disparity between First Nations and other customers in the province.

Another crucial consideration in this hearing that the AMC wishes to reiterate is the significantly condensed timeline for the hearing of this application. Despite the delayed filing of the Plan, the start date for Plan implementation is still set as April 1, 2020 in accordance with the Efficiency

Manitoba Regulation.⁹ This puts the parties, interveners and the PUB in a difficult position as there is very little time for Efficiency Manitoba to deal with any recommendations made by the PUB, or to revise and refile the Plan if the PUB recommends that it be rejected.

Moreover, the Plan as submitted does not contain the detail generally expected of a regulatory filing. To this end, the AMC agrees with the MKO's submission that this Plan is in essence a "plan to plan."¹⁰ For First Nations programming in particular, Efficiency Manitoba is using the first three-year Plan to determine programming needs for First Nations customers rather than providing a comprehensive plan that addresses the energy efficiency needs of First Nations customers. The AMC submits that this is a serious deficiency with the Plan that will negatively affect First Nations customers, who already face disproportionately high energy bills and energy poverty.

1. Equity should be built in by design, not as an afterthought

Principles of reconciliation and accessibility support the integration of measures of equity into not only the methodology for acceptance or rejection of demand-side management initiatives, but the level of access that First Nations citizens in Manitoba will have to those programs. Energy efficiency programs should strive to benefit First Nations so as to contribute to the reduction in the inequitable distribution of energy burdens and in the recognition of the Treaty rights of First Nations and First Nations' contribution to the development of the energy system in the Province of Manitoba.

The AMC recommends that Efficiency Manitoba increase the energy savings opportunities made available to First Nations. More specifically, comprehensive approaches that improve energy efficiency for First Nations on-reserve homes and buildings should be expanded in order to have the most impact in mitigating the rate increases associated with DSM programming costs.

With respect to First Nations customers who live off-reserve, no data or programming has been provided in the Plan. Off-reserve First Nations customers were not identified or considered in the Plan. In addition to increasing the savings opportunities for on-reserve residents, the AMC submits that an income qualified program for off-reserve First Nations customers should be made available.

Disparities between the First Nation and non-Indigenous population of Manitoba

In the AMC Report, Dr. Clark wrote in great detail about the disparities between the First Nations population and the non-Indigenous population in Manitoba. His findings include:

- The First Nations population in Manitoba has significantly lower levels of economic participation and incomes than other populations in Manitoba;

⁹ *Efficiency Manitoba Regulation*, Man Reg 119/2019 at ss.15(2).

¹⁰ Opening Comments of Jared Wheeler, Transcript, Jan 6 at p. 148-149.

- The First Nations population is more likely to be in the lowest income decile and qualify as low-income than other populations in Manitoba; and
- First Nations citizens are more likely to experience energy poverty and have significantly lower housing stock and higher levels of overcrowding in homes than other populations.¹¹

Energy poverty is distinct from general poverty because it is based on the energy efficiency of one's home as well as the number of people residing in a house. Major causes of energy poverty are low income, high energy prices, and poor-quality housing stock. Energy poverty can lead to poor health, reduced consumption of basic necessities, an inability to meet basic needs, and constrained economic development in energy poor areas, among other negative impacts.¹²

First Nations on-reserve customers consume much more energy than the average residential customer. First Nations on-reserve customers consume energy at about a 1:1 ratio, whereas residential customers make up about 85% of the population but only consume about 32% of electric energy.¹³ In addition, First Nations on-reserve customers have the highest annual energy bills according to the 2017 Residential Energy Use Survey.¹⁴

Studies have demonstrated that energy efficiency programs can contribute to reductions in energy poverty, as well as reduce the secondary effects of energy poverty, including mortality, physical and mental health, nutrition, well-being and quality of life.¹⁵

Compared with the non-First Nations population, energy poverty is an issue that disproportionately affects First Nations citizens in Manitoba.¹⁶ The above illustrates that there is well-documented evidence that First Nations residents in Manitoba face energy poverty. While the Plan has some programs targeted at First Nations, significantly more could be done to target energy efficiency programs at First Nations that also help to alleviate some of this burden.

Energy justice should be at the forefront of Efficiency Manitoba's Programming

Energy justice focuses on the net distribution of benefits and costs within an existing energy system and how energy inequalities are constructed and embedded within a broader system of political, economic and social-cultural inequalities.¹⁷ A focus on energy justice supports the use of metrics of horizontal and vertical equity to evaluate the accessibility and success of energy efficiency programming.

There are two dominant views on energy conservation: the "efficiency school" and the "equity school". In the efficiency school, the objective is to maximize the aggregate conservation gains

¹¹ AMC Report at p. 10.

¹² AMC Report at p. 10-12.

¹³ Cross Examination of Dr. Clark, Transcript, Jan 10 at p.1205; Coalition/EM I-18a

¹⁴ AMC Report at p. 12.

¹⁵ AMC Report at p. 15.

¹⁶ Cross-Examination of Ms. Tuck, Transcript, Jan 8, p. 821.

¹⁷ AMC Report at p. 15.

per dollar spent. The equity school posits that one must not consider only the magnitude of conservation but its distribution as well.¹⁸ The AMC submits that the energy efficiency legislation in Manitoba, the *Efficiency Manitoba Act*, permits a balanced approach to energy efficiency programs that can consider overall cost-effectiveness in tandem with principles of equity.

The *Path to Reconciliation Act* and the directives given to Efficiency Manitoba also support the proposition that Efficiency Manitoba should be seeking a balance between the efficiency and equity schools of energy conservation.

The letter from the Premier of Manitoba to the Minister of Crown Services dated October 18, 2018 states that as part of the Cabinet team, the Minister of Crown Services must assist cabinet colleagues by, among other items, “[a]dvancing reconciliation with Indigenous Manitobans, led by the Minister of Indigenous and Northern Relations.”¹⁹ Similarly, the letter from the Minister of Crown Services to the Chair of Efficiency Manitoba dated April 24, 2019 states that:

Government is committed to advancing reconciliation with Indigenous Manitobans through the renewal of its consultation framework to ensure respectful and productive consultations. All government organizations are expected to contribute to reconciliation in their interactions with Indigenous communities and individuals.²⁰

Efficiency Manitoba, as an agent of the Crown, is mandated to advance reconciliation with First Nations in Manitoba.²¹ A definition of reconciliation can be found in *The Path to Reconciliation Act*:

1(1) “**Reconciliation**” refers to the ongoing process of establishing and maintaining mutually respectful relationships between Indigenous and non-Indigenous peoples in order to build trust, affirm historical agreements, address healing and create a more equitable and inclusive society.²²

In addition, *The Path to Reconciliation Act* also sets out four principles that the government must have regard for to advance reconciliation: Respect, Engagement, Understanding, and Action. As a Crown agent, Efficiency Manitoba must also have regard for these principles. Of particular relevance is the principle of action, which states that “Reconciliation is furthered by concrete and constructive action that improves the present and future relationship between Indigenous and non-Indigenous peoples.”²³ This bolsters AMC’s contention that Efficiency Manitoba should be striving to seek the appropriate balance between cost-effectiveness and equity in its Plan.

Notably, the creation of an equitable and inclusive society is in the very definition of reconciliation that is legislated in Manitoba. Efficiency Manitoba has stated that equity is aligned with the

¹⁸ AMC Report at p. 15.

¹⁹ AMC-4, AMC Book of Documents, January 8, 2020 at p. 2 [AMC-4]; Cross-Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 789.

²⁰ AMC-4 at p. 5; Cross-Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 790-791.

²¹ *Efficiency Manitoba Act*, CCSM c E15 at ss. 3(3).

²² AMC-4 at p. 10; Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 791.

²³ AMC-4 at p. 11; Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p.792-793.

principle of access. Ms. Tuck also stated that “we wanted to make sure that our Indigenous customers had equitable access to programming”.²⁴

Despite Efficiency Manitoba’s mandate to advance reconciliation, the term “reconciliation” did not appear once in the Plan.²⁵ In future Plans, Efficiency Manitoba should be directed to report on the substantive actions that have taken place and will be taking place to advance reconciliation. One example of this could be to set targets for reducing energy poverty gaps between First Nations on-reserve customers and other customer segments in Manitoba, with a corresponding obligation to report on the achievement of these targets. Setting clear targets that advance reconciliation and a transparent obligation to report on the achievement of these targets will ensure that reconciliation is not a mere aspirational concept and is instead placed at the forefront of planning for First Nations programming.

In the AMC Report, Dr. Clark found that while Efficiency Manitoba attempted to consider both the equity and cost-effectiveness perspectives, there is a notable predominance of global savings targets and cost-effectiveness within the Plan. This has potentially skewed the distribution of costs and benefits too strongly away from the more costly and time-consuming, but potentially advantageous, initiatives aimed at First Nations.²⁶

Dr. Clark recommends a more clearly defined and robust place for equity in the design and evaluation of the Plan moving forward. In Dr. Clark’s opinion, horizontal equity is a minimum threshold. Horizontal equity exists on a scale, where the lower end of this scale would ensure program participation be equal to share of customers and the higher end ensure that the targeted energy savings from energy efficiency programs match the energy consumption of the targeted population.²⁷ Another potential metric of horizontal equity that can be measured and reported on are percentage of estimated bill savings compared with share of energy bills.²⁸

Regarding First Nation specific programming, Dr. Clark indicates that on-reserve First Nations customers are under-represented in the Plan both in terms of participation and in terms of electricity savings. Moreover, Dr. Clark’s assessment of the under-representation of First Nations on-reserve customers is based on conservative estimates which indicates that the level of under-representation may be even greater. In his calculations, Dr. Clark assumed that all participants in the Indigenous Small Business Program would be First Nations customers, when in reality the program can be accessed by either First Nations or Metis customers.²⁹

First Nations on-reserve customers consume approximately 4% of the annual electric energy consumption in the Province. Efficiency Manitoba’s Plan projects that 0.5% of electrical energy savings will be targeted by the Indigenous customer segment and the budget for Indigenous

²⁴ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 797-798; AMC/EM I-2a

²⁵ Cross Examination of Ms. Kuruluk and Ms. Tuck, Transcript, Jan 8 at p. 793.

²⁶ AMC Report at p. 23.

²⁷ Direct Examination of Dr. Clark, Transcript, Jan 10 at p. 1170.

²⁸ Cross Examination of Dr. Clark, Transcript, Jan 10 at p. 1205.

²⁹ Direct Examination of Dr. Clark, Transcript, Jan 10 at p. 1163-1164.

electrical programming is 3% of Efficiency Manitoba's overall spend.³⁰ Notably, the Indigenous customer segment also includes Metis customers, for which an estimate of electric energy consumption has not been provided.³¹ This means that in fact less than 0.5% of electric energy savings and less than 3% of Efficiency Manitoba's electric program budgeting is projected for First Nations on-reserve customers.

When population percentages are adjusted for household size, Dr. Clark established that First Nation on-reserve homes make up about 5% of the residential electric rate customers. First Nations residential programs make up only 1.1% of the participants in residential programs under the Plan and only 3.2% of the costs. Dr. Clark has indicated this is also a conservative figure.³²

Notably, Mr. Grevatt, expert for the Consumers Coalition, also compares energy consumption to share of energy savings in the Plan for residential customers before concluding that programming for residential ratepayers can and should be increased.³³ Mr. Grevatt also agrees that Efficiency Manitoba should increase its proposed Indigenous program budgets, participations and savings to better meet the needs of Manitoba's households.³⁴

Vertical equity is the second kind of equity referred to by Dr. Clark. Vertical equity tries to address some of the socioeconomic and energy inequalities embedded in society. In this case, vertical equity would function so that the benefit of energy efficiency programming would disproportionately favour First Nations customers as a means to address historical inequities.³⁵

As noted, First Nations on-reserve customers consume much more energy than the average residential customer. Moving toward a future where energy efficiency programs are developed based on share of electric energy consumption would help alleviate some of this extra burden on First Nations on-reserve customers.

As Dr. Clark stated, "equity should be built in by design, not as an afterthought." This requires that equity be explicitly identified as a core objective of the Plan, and that dedicated and stable funding be allocated to ensure that equity objectives are met. To support objectives of equity, program evaluation should include metrics to evaluate levels of participation by First Nations based on varying metrics or indicators of equity.³⁶

A more significant and stable funding package would help address underrepresentation of First Nations customers

Dr. Clark also raised issues with the limited scope and funding of Indigenous programs and stated that this brought into question Efficiency Manitoba's commitment to reconciliation and the degree

³⁰ Cross Examination of Mr. Stocki, Transcript, Jan 8 at p. 804-805; referring to Daymark/EM-I-7.

³¹ AMC/EM I-12.

³² AMC Report at p. 41; Cross Examination of Dr. Clark, Transcript, Jan 10 at p. 1206-1207.

³³ Cross Examination of Mr. Grevatt, Transcript, Jan 15 at p. 1893, referring to CC-7, Mr. Grevatt's report at p. 24.

³⁴ Cross Examination of Mr. Grevatt, Transcript, Jan 15 at p. 1921.

³⁵ Direct Examination of Dr. Clark, Transcript, Jan 10 at p. 1171-1172.

³⁶ AMC Report at p. 16.

to which energy efficiency programs are accessible to First Nations customers in an equitable fashion.³⁷ One of the principal concerns raised by Dr. Clark was that the elevation of quantified measures of cost-effectiveness over reconciliation, equitable access, distributional equity, and other non-energy benefits has and will continue to bias the allocation of resources away from the more resource-intensive First Nations programs, particularly if the energy savings in the first three years are lower than anticipated.³⁸

Lower income households can be disproportionately and positively affected by energy efficiency programs because energy costs represent a larger proportion of these household's income.³⁹ A very important aspect of demand side management programming in Manitoba is the ability for customers to access programming, which in turn allows customers to mitigate increasing rates. For customer groups that face high levels of energy poverty, this is very important. Efficiency Manitoba agrees that demand side management programming can help address the burden of energy poverty for ratepayers. However, as noted, the ability to address the burden of energy poverty is linked to customers' ability to access energy efficiency programs.⁴⁰

In response to these concerns of equity and access, Efficiency Manitoba has raised a number of counterpoints. First, Efficiency Manitoba has stated that First Nations customers will have access to general residential programming. Second, Efficiency Manitoba has stated its engagement strategy will increase access to energy efficiency programming for First Nations customers. Third, Efficiency Manitoba will not put a cap on First Nations on-reserve residential programming. Each of these counterpoints will be addressed in turn.

a. First Nations face barriers to accessing general residential programming

Both in answers to information requests and during the hearing, Efficiency Manitoba has stated that regardless of the targeted funding for First Nations on-reserve customers, First Nations customers will be able to access other residential programs. This does not ensure or help create equitable access to programming as First Nations customers face unique barriers to participation that are not addressed in these other programs.⁴¹

First Nations ratepayers will generally have difficulty accessing general residential programming. As stated by Ms. Kuruluk, the First Nations on-reserve programming ensures that First Nations customers have full access to programs by not requiring an economic contribution to many of the programs that Efficiency Manitoba intends to offer.⁴² By removing the effect of economic disparity between a high or middle income customer, who is more likely to be better able to afford energy efficiency programming, and a First Nations on-reserve customer, Efficiency Manitoba has

³⁷ AMC Report at p. 18.

³⁸ AMC Report at p. 19.

³⁹ Cross Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 678-679.

⁴⁰ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 820-822.

⁴¹ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 824.

⁴² Cross-Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 823-824.

demonstrated that economic considerations are one barrier addressed in First Nations programming.⁴³

One barrier related to access for First Nations on-reserve customers to residential income-qualified programming is lack of home ownership on reserve. As discussed further below, this may impede access for First Nations on-reserve customers to the residential income-qualified programs.⁴⁴

Answering issues of low participation targets for First Nations specific programming by stating that First Nations on-reserve customers can access general programming does not necessarily improve access to programming for First Nations on-reserve customers. This is because general residential programming does not address the unique barriers to participation faced by the average First Nations-on reserve customer. Two examples are specified above, but there are likely others that applied.

Clear programming targets for First Nations on-reserve customers, including in programs that are not specific to First Nations, would ensure that equitable access to programming is at the forefront of Efficiency Manitoba's planning.

b. Efficiency Manitoba's Engagement Strategy contains unmitigated risks

Part of Efficiency Manitoba's engagement strategy involves direct communication with each of the 63 First Nations in Manitoba.⁴⁵ While this strategy may positively impact participation of First Nations on-reserve customers in the First Nations specific and general electric energy programming, the Plan currently indicates that Efficiency Manitoba will only have one dedicated First Nation energy advisor. This is a technical position and the person fulfilling the role will work with First Nations communities to identify energy efficiency opportunities.⁴⁶

Having only one energy advisor position working with First Nations raises several concerns for the AMC. As a starting point, First Nations on-reserve customers will only have access to First Nations specific programming where a First Nation government partners with Efficiency Manitoba.⁴⁷ Should a First Nation not wish to partner with Efficiency Manitoba or not be reached by the First Nations energy advisor, First Nations on-reserve customers in those affected First Nations will have little ability to access the Plan's programming. It is a serious and realistic concern that this one individual, the First Nations energy advisor, will not be able to effectively communicate and potentially partner with 63 First Nations, which are spread throughout Manitoba with many located in remote areas. This will drastically reduce the accessibility of the Plan for the province's First Nation population.

⁴³ Cross-Examination of Ms. Tuck, Transcript, Jan 8, p. 822-823; Cross-Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 825-826.

⁴⁴ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 871-872.

⁴⁵ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 867.

⁴⁶ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 868-869.

⁴⁷ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 870-875; AMC Report at p. 30.

Moreover, due to the unique and *sui generis* nature of reserve land, most First Nations customers do not own their own home, and this means that those customers will not have access to the full suite of other residential energy efficiency programming.⁴⁸ Efficiency Manitoba currently intends to spend none of its budget dollars on advertising for First Nations on-reserve customers. This suggests that even if a First Nations on-reserve customer could access general programming, they may not be aware of this ability.⁴⁹

Pairing this with the undeniable fact that many First Nations face competing priorities, limited budgets and thus overburdened Chiefs and Councils and staff,⁵⁰ the ability of First Nations to effectively partner with Efficiency Manitoba may be a serious barrier to participation.

While Efficiency Manitoba's efforts to reduce the administrative burden of First Nations interested in opportunities under the Plan is an important step for accessibility,⁵¹ the AMC is concerned that this does not adequately address capacity issues facing First Nations. Increasing the role of the First Nation energy advisor position to include a number of regional advisors that can focus on assisting First Nations in a given geographical area would help Efficiency Manitoba more adequately partner with First Nations in Manitoba. Creating additional energy advisor positions would also help ensure Efficiency Manitoba could identify where capacity restrictions are interfering with program uptake.

c. It is unclear whether Efficiency Manitoba has the flexibility to increase First Nations programming without amendment to the Plan

Throughout the hearing process, the PUB heard that although targeted participation for First Nations customers is relatively low, Efficiency Manitoba will not put a cap on programming for First Nations residential customers. Ms. Tuck stated that if opportunities are found in a First Nation, Efficiency Manitoba will pursue those opportunities.⁵² The AMC is concerned that this may not be a realistic possibility. Section 12(5) of *The Efficiency Manitoba Act* allows Efficiency Manitoba to modify its plan as necessary during the three-year period so long as the changes maximize the cost-effectiveness or amount of net savings.⁵³ First Nations on-reserve programs, although cost-effective, are not as cost-effective as most other electric programs, and, in particular, the electric savings attributable to the First Nation insulation and direct install programs are less than the savings attributable to many other programs.⁵⁴ It is unclear where the funding will come from if participation for First Nations on-reserve programs is higher than anticipated.

⁴⁸ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 871-872.

⁴⁹ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 873-874.

⁵⁰ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 872-873.

⁵¹ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 873.

⁵² Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 820.

⁵³ *Efficiency Manitoba Act*, CCSM c E15 at ss. 12(5); Cross Examination of Ms. Kramps, Transcript, Jan 8 at p. 644.

⁵⁴ Plan at p. 513 and p.516.

As stipulated by the *Efficiency Manitoba Act*, the budget for the Plan over the three years is not to exceed the amount that is approved by the PUB.⁵⁵ This means that while the budget can be shifted between years one, two and three, the budget is capped at the three-year amount total until the next hearing.

One positive aspect of budgeting that has arisen from this hearing, is that while Efficiency Manitoba may shift program budgeting from underperforming measures to a higher performing measure,⁵⁶ this will not occur for programs targeted to First Nations. Efficiency Manitoba has indicated that the budget from First Nations specific programming will not be funneled out of those programs into other programs.⁵⁷ The AMC agrees with this strategy as there is opportunity to reach out to First Nations on-reserve customers to address any shortfall in participation. If a measure is underperforming in a First Nations program bundle, the focus should be on understanding why it is underperforming and making adjustments to ensure that First Nations on-reserve customers are participating in the Plan, at a minimum, at levels targeted by Efficiency Manitoba.

On January 22, 2019, Efficiency Manitoba also provided more detail on how budget variances in the Plan will be addressed on a step-by-step basis. While Efficiency Manitoba further confirmed that it will not shift budgets away from the Indigenous customer segment, it also provided a list of prioritized considerations that may lead to budget changes generally. Its second prioritized consideration states that Efficiency Manitoba will look to spend budgets from the next Plan year within the same customer segment to achieve projected or additional savings.⁵⁸ While it is encouraging that Efficiency Manitoba has indicated it will consider spending more budget dollars on a customer segment in any given year, taking money from one year and funneling into another does not address the root of the budget issue. It also means that the same amount of funding is being allocated to First Nations overall unless Efficiency Manitoba shifts budgets between customer segments, which it has indicated will only happen if all other options have been exhausted.

As Mr. Grevatt stated, Efficiency Manitoba's claim that it will not cap participation levels in certain programming leads to the concern about whether there is really sufficient budget to allow Efficiency Manitoba to do so. If there is not a cap in place, Mr. Grevatt expresses concerns with how Efficiency Manitoba will manage to meet the response to the demand for particular programming.⁵⁹ To be clear, the AMC agrees with Efficiency Manitoba that if more First Nations customers would like to participate in energy efficiency programming this should be accommodated; however, the AMC submits that this may not be a realistic possibility given the legislation and budget restrictions.

The AMC agrees with Mr. Grevatt that a project management plan should be created, and in particular for First Nations customers. The project management plan should set out how Efficiency

⁵⁵ Cross Examination of Mr. Stocki, Transcript, Jan 7 at p. 598.

⁵⁶ Cross Examination of Mr. Stocki, Transcript, Jan 6 at p. 216-217.

⁵⁷ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 848.

⁵⁸ Efficiency Manitoba Undertaking #7 at p. 4.

⁵⁹ Cross Examination of Mr. Grevatt, Transcript, Jan 15 at p.1891.

Manitoba will address increased demand from their original participation estimates. The AMC submits that any project management plan should specifically address First Nations programming as distinct from Metis customer programming.⁶⁰

As agreed by Mr. Grevatt, a better method for program development would be to include higher participation targets from the outset if it is thought that interest in programs might be higher than projected.⁶¹

AMC's concerns that the Efficiency Manitoba Plan may not be flexible enough to meet First Nations' needs also extends to the Community Energy Plans and the associated Community Energy Advisor positions.⁶² The purpose of the Community Energy Plans is for Efficiency Manitoba to work with a community energy advocate to assist First Nations communities to identify energy efficiency opportunities in their community and to help First Nations establish energy efficiency priorities.⁶³

Dr. Clark raised the concern that the scope and funding for this project is insufficient. As was noted by Dr. Clark in his Direct Examination, while this program recognizes the value of working collaboratively with First Nations in the implementation of programs, consistent with best practices in other jurisdictions, the level of funding for the Community Energy Plans is more akin to a pilot project than a comprehensive enabling and engagement strategy.⁶⁴

In the current Plan, Efficiency Manitoba is only targeting two to three First Nations communities to participate in the Community Energy Plans. If there is more interest, Mr. Stocki testified that there may be the ability to add additional communities, potentially in the third year of the Plan.⁶⁵ It is unclear at this time if Efficiency Manitoba will advertise the Community Energy Plan strategy to all 63 First Nations customers, as it anticipates taking advisement from the EEAG.⁶⁶

Dr. Clark's concern with the minimal funding for Community Energy Plans is two-fold: first, pilot projects can be subject to local constraints and conditions and can also be easily "scrapped." This means that the success of a pilot program can be influenced by the specific condition under which it is taken. For example, if the first Community Energy Plan encounters challenging circumstances and is difficult to develop, it may result in the conclusion that the program has failed: "when you only have one (1) or two (2) experiences, it's hard to draw meaningful conclusions from those."⁶⁷

⁶⁰ Cross Examination of Mr. Grevatt, Transcript, Jan 15 at p. 1891-1892.

⁶¹ Cross Examination of Mr. Grevatt, Transcript, Jan 15 at p.1893.

⁶² Note that it is unclear from the Plan whether these are Community Energy Plans or Community Energy Efficiency Plans. See the Cross-Examination of Dr. Clark, Transcript, Jan 10 at p. 1215-1216 and 1225-1227 for more information on the distinction. For ease of reference the AMC will refer to these as Community Energy Plans.

⁶³ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 836-837.

⁶⁴ Direct Examination of Dr. Clark, Transcript, Jan 10, page 1165-1166.

⁶⁵ Cross Examination of Mr. Stocki, Transcript, Jan 8 at p. 829-830.

⁶⁶ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 835-836.

⁶⁷ Direct Examination of Dr. Clark, Transcript, Jan 10 at p.1165-1166.

Dr. Clark's second concern with the minimal funding for Community Energy Plans relates to the adequate capacity of First Nations governments. Dr. Clark notes that First Nations governments often face quite significant governance and capacity constraints, which means that implementation of a Community Energy Plan can fall on already overburdened staff members. If the funding for the Community Energy Plan is inadequate it can undermine program participation.⁶⁸ This is consistent with the information provided by Daymark in its Undertaking #13, which states that:

Community resources may also be an issue. With respect to programs for indigenous and Métis customers, the IESO report identified lack of community funding for energy staff to manage local programs and lack of information about funding sources as potential obstacles.⁶⁹

Dr. Clark noted that lessons can be learned from other jurisdictions, such as British Columbia and Ontario, where meaningful investment in enabling strategies like relationship building and capacity building can aid in program success. Dr. Clark suggests that if the Community Energy Plans move forward as pilot programs, a larger number of pilots be funded. He also suggests that a stronger commitment should be made to scaling this program up in the future.⁷⁰

The Community Energy Plans are considered enabling strategies under the Plan. As enabling strategies are highly important for First Nations programming, it would be a questionable approach to shift funding from enabling strategies to First Nations programming as anticipated by Efficiency Manitoba's Undertaking #7.⁷¹ It is the enabling strategies that are meant to encourage higher participation levels in programming by First Nations customers.

In relation to First Nations programming generally, Dr. Clark recommends that instead of having a global budget for First Nations programming, Efficiency Manitoba should consider having a dedicated funding amount for each First Nations community.⁷² In stating this, Dr. Clark makes reference to "Indigenous Conservation Programming: A New Approach", a 2018 report by IESO also referred to in Daymark's Response to Undertaking #13. In that report, engagement participants noted that "a dedicated amount of funding would also be preferable to have communities "compete" against each other for a finite amount of program funding."⁷³ Daymark notes that "Additional research and analysis would be necessary to fully consider the potential

⁶⁸ Direct Examination of Dr. Clark, Transcript, Jan 10 at p.1166-1167.

⁶⁹ Daymark Undertaking #13 at p.12.

⁷⁰ Direct Examination of Dr. Clark, Transcript, Jan 10 at p. 1167-1168.

⁷¹ Efficiency Manitoba Undertaking #7 at p. 4.

⁷² AMC Report at p. 29

⁷³ Independent Electricity System Operator, "Indigenous Conservation Programming: A New Approach Report on energy Conservation for First Nations and Métis in Ontario" (March 2018) at 9, online (pdf): *Independent Electricity System Operator* <<http://www.ieso.ca/-/media/Files/IESO/Document-Library/indigenous-relations/Indigenous-Conservation-Programming-A-New-Approach-March2018.pdf?la=en>>.

benefits or disadvantages of such an arrangement.” Daymark suggests that this recommendation be tracked for consideration, if possible, in the first program evaluation.⁷⁴

Regardless of whether a budget is global or per First Nation, the AMC submits that First Nations participation targets should be increased, and programs expanded for First Nations on-reserve customers. In addition, enabling strategies such as the Community Energy Plan process should be expanded and reflect the reality that there are 63 First Nations in Manitoba that should all have equitable access to energy efficiency programming.

Off-reserve First Nations customers are inadequately considered in the Plan

The underrepresentation of First Nations customers in the Plan is even greater when off-reserve First Nations customers are considered.⁷⁵ Although it is challenging to find information on the energy profile of off-reserve First Nations ratepayers, the available evidence indicates that off-reserve First Nations ratepayers suffer from disproportionately high levels of energy poverty, like their on-reserve counterparts.⁷⁶

Efficiency Manitoba initially appeared open to the creation of a First Nations off-reserve income qualified program.⁷⁷ Later, Mr. Stocki clarified that Efficiency Manitoba was not going to create a separate program as the First Nations off-reserve income qualified population is included in the general residential income qualified program.⁷⁸ In response, the AMC submits that this reasoning is equally applicable to Metis Income Qualified programs, and yet a separate program was created for this customer segment without any apparent additional justification, aside from the fact that they are likely an underserved population (the same being true of off-reserve First Nations customers).

Moreover, similar to the situation of off-reserve First Nations customers, energy usage data and data relating to access to energy efficiency programming has not been previously tracked for Metis Income Qualified customers.⁷⁹ Efficiency Manitoba plans to simultaneously provide programming while also learning what barriers exist for Metis people within Manitoba and how to appropriately and cost-effectively address them. A similar opportunity exists for off-reserve First Nations ratepayers.

Efficiency Manitoba has stated that it is open to allocating additional marketing or working with the AMC to identify off-reserve First Nations customers.⁸⁰ The AMC may be able to act as an intermediary between interested First Nations and Efficiency Manitoba to identify off-reserve First

⁷⁴ Daymark Undertaking #13.

⁷⁵ Direct Examination of Dr. Clark, Transcript, Jan 10 at p. 1163.

⁷⁶ AMC Report at p. 14.

⁷⁷ Cross Examination of Ms. Tuck, Transcript, Jan 7 at p. 446; Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 861-862.

⁷⁸ Cross-Examination of Mr. Stocki, Transcript, Jan 8 at p. 985.

⁷⁹ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 863.

⁸⁰ Cross Examination of Mr. Stocki, Transcript, Jan 9 at p. 987.

Nations customers. However, it should be noted that First Nations are best situated to help identify their off-reserve First Nations citizens.

Room for growth in high performing technologies

Efficiency Manitoba has provided some evidence that the on-reserve market is largely saturated for its insulation program. Nonetheless, Ms. Tuck has indicated that are some instances where homes are not eligible either because the insulation is already of a certain high quality or because the homes have fundamental issues that are incompatible with the insulation upgrade.⁸¹ It should also be noted that a number of First Nations have previously not participated in Manitoba Hydro's energy efficiency programming, and this could potentially increase the number of participants in the First Nations insulation and direct install program.⁸²

While Ms. Tuck noted that there are only some instances where homes may have fundamental issues incompatible with insulation upgrades, this statement is inconsistent with evidence provided by Manitoba Hydro in the 2017 & 2018-19 General Rate Application. In its written submissions for the General Rate Application, the AMC noted that installing insulation was the centrepiece of Hydro's Power Smart Program aimed at First Nations on-reserve customers, yet only 3,778 of 16,344 on-reserve homes were eligible for the programming.⁸³ This left 77% of on-reserve homes ineligible due to Manitoba Hydro's assessment that these homes had sufficient insulation.⁸⁴ This begs the question whether there are still over 10,000 on-reserve homes that are not eligible for insulation programming, and whether there is other programming that could help reduce energy consumption on-reserve that is worthwhile for the homes that are ineligible for insulation upgrades. Providing the data and information upon which these decisions are made will help the efficacy of the First Nations programming.

To that end, the AMC submits that there is likely availability for other energy efficiency programming given the high rates of electric energy consumption for First Nations on-reserve customers compared with other populations in Manitoba.⁸⁵ It is likely that new measures and programs may be discovered through the Community Energy Plan process, which highlights the importance of this enabling strategy.

In addition, there is room for high performing technologies that have reached saturation in other markets to be more substantially promoted towards First Nations on-reserve customers. A gap exists between First Nations and other hard to reach customer segments and general residential customer segments in Manitoba in terms of programming for high performing technologies, such

⁸¹ Cross Examination of Ms. Tuck, Transcript, Jan 7 at p. 431-433.

⁸² See for example MKO/EM I-13 Attachment 1 at p. 4-5. This chart illustrates that 8 First Nations in Manitoba had no participating customers in Manitoba Hydro's Energy Efficiency Program to June 30, 2019. Customers in these First Nations also did not have retrofits with Insulation or retrofits with Direct Install up to January 31, 2019.

⁸³ AMC, 2017-2018 & 2018-19 General Rate Application Written Submission at p. 14 citing footnote 46. The AMC has included these submissions in its Book of Authorities for the Board's convenient reference.

⁸⁴ AMC, 2017-2018 & 2018-19 General Rate Application Written Submission at p. 14, citing footnote 47.

⁸⁵ PUB/AMC I-6; see Coalition/EM I-18a for an illustration of the high electrical energy consumption of on-reserve First Nations customers.

as LED lighting and high-efficiency heating. To date, Efficiency Manitoba has not done any analysis on that gap nor what would be required to remedy this disparity.⁸⁶ Increasing targeted participation for these high performing measures for on-reserve customers would help to close the gap that exists.

Underrepresentation of First Nations customers in the Plan may further exacerbate already large inequalities

It appears from the Plan and testimony of Efficiency Manitoba that the consideration of accessibility was focused on existence of programs for First Nations customers, and less so on levels or reach of programming.

The lack of evaluation of First Nations programming for level or reach of programming is apparent from the Dunksy scorecard. The Dunksy scorecard sets out a metric aimed to capture whether a program administrator has demonstrated long-term commitment to ensuring everyone has equal access to DSM programs and services, demonstrates leadership and a balanced portfolio. To score program equity for low-income programs, Dunksy evaluated based on the degree of savings programs achieved and how much was spent on the program's implementation. In contrast, Dunksy essentially scored First Nations programs as other residential hard-to-reach sectors (remote, Indigenous) based on whether the program simply existed.⁸⁷

A greater emphasis needs to be placed on First Nations programming in the Plan. As Dr. Clark stated in his testimony, "when you start to measure these things and include them, they become sort of more tangible and more real. Because when you're not measuring something, it tends not to be a priority."⁸⁸ By failing to measure or evaluate First Nations programs on the basis of equity, the Plan runs the risk of further exacerbating inequalities such the fact that other customer segments generally have a greater capacity to participate in energy efficiency programming.⁸⁹ As more energy efficiency programs and thus more bill savings are available to the general population, while First Nations ratepayers remained underserved, the gap and inequalities between First Nations ratepayers and other populations in Manitoba will likely widen.

Based on the above analysis, the AMC submits that Efficiency Manitoba has not met its mandate for advancing reconciliation and has not established that the Plan is accessible for First Nations ratepayers.

2. Impacts from rate increases associated with energy efficiency programming will have a disproportionate impact on First Nations customers.

The Plan is clear that its implementation will require additional revenue from Manitoba Hydro. This seems most likely to occur by means of a rate increase, although the level of increase for each

⁸⁶ AMC/EM I-28; Cross Examination of Ms. Tuck, Jan 8 at p. 852-855.

⁸⁷ Daymark/EM I-2a Attachment 1 at p.18.

⁸⁸ Cross-Examination of Dr. Clark, Transcript, Jan 10 at p.1219-1220.

⁸⁹ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 823; AMC Report at p. 15.

customer class is unknown. AMC submits that any rate increase will have a disproportionate or higher impact on First Nations on-reserve customers.⁹⁰

While customers who participate in energy efficiency programming will receive the benefit of energy savings and related bill reductions, non-participating customers will not see those benefits and will still face rate impacts associated with costs of programming.⁹¹

The average annual electric bill savings for Indigenous customers is \$470 per house in the Indigenous program bundle.⁹² In response to Undertaking #6, Efficiency Manitoba filed Exhibit #27, revised on January 21, 2020, which sets out the individual program bill savings. This enables a review of the bill savings for First Nations specific programming:

Program	Annual Average Electric Bill Savings	Total Annual Electric Bill Savings
Insulation and Direct Install (First Nations program)	\$140/retrofit	\$20,000
Community Geothermal (First Nations program)	\$1100/system	\$84,000
Metis Income Qualified	\$470/home	\$14,000

As can be seen from the table, the highest bill savings will come from the geothermal program. The second highest bill savings are found in the Metis Income Qualified program. Given that on-reserve customers face disproportionately higher level of energy consumption, it is unclear why these customers do not have access to the same level of bill savings as a Metis Income Qualified or Income Qualified Residential customer. Unfortunately, because this disaggregated information was not provided in the original Plan, it has not been subject to cross-examination.

If First Nations on-reserve customers are not able to access programs at equitable levels it is likely to result in rate increases that will disproportionately impact First Nations customers with little corresponding benefit. Furthermore, if efficiency programming continues to inadequately reach First Nations on-reserve customers, gaps in energy poverty levels are likely to grow. For this reason, the AMC suggests that balance between equity and cost-effectiveness has not been achieved in the Plan in relation to First Nations programming.

⁹⁰ Direct-Examination of Dr. Clark, Transcript, Jan 10 at p.1174.

⁹¹ Cross Examination of Mr. Stocki, Transcript, Jan 7 at p. 386.

⁹² Cross-Examination of Ms. Tuck, Transcript, Jan 7 at p. 803-804.

3. Efficiency Manitoba has not adequately engaged with First Nations or First Nations citizens

Engagement with the EEAG is distinct from engagement with the public. In addition, First Nations have a special relationship with the Crown, including Crown corporations like Efficiency Manitoba, that requires the Crown and its agents to directly engage with First Nations. This is bolstered by the fact that the Manitoba Court of Queen's Bench has found that Crown Corporations are bound by *Path to Reconciliation Act*.⁹³ As such, reconciliation, and the means by which reconciliation can be promoted by Efficiency Manitoba should be a consideration in the Plan.

Although the EEAG can have an important advisory role, and an Indigenous EEAG sub-group is a welcome suggestion from the AMC's perspective, these groups do not replace public consultation or direct engagement with First Nations governments.

It is clear that Efficiency Manitoba considers engagement with the EEAG to meet its engagement criteria prior to the development of the Plan and may also view the EEAG as meeting this need moving forward. With respect to First Nations engagement, Efficiency Manitoba has stated that the EEAG and its large representation from the Indigenous customer segment is one action that is being taken to address reconciliation in the Plan. In addition, Efficiency Manitoba intends to create an Indigenous Energy Efficiency Advisory Group to have respectful dialogue and a place where it can engage with Indigenous customers.⁹⁴ Beyond First Nations engagement, Ms. Kuruluk has also stated that the general public would be envisioned as being represented by membership in the Energy Efficiency Advisory Group.⁹⁵

While the AMC recognizes that centralized engagement may be the least expensive tactic Efficiency Manitoba can take in relation to First Nations programming, it is the AMC's position that centralized engagement is not by any means the most effective. First Nations governments in Manitoba are extremely diverse and the conditions and historical context present on each First Nation's land and territory are often as different as they are similar. Bypassing direct engagement with First Nations governments by delegating engagement to the AMC offends the individual and distinct sovereignty of each First Nation. Effective implementation of the Plan will need to include individual engagement with each First Nation at more than a preliminary or cursory level. This is aligned with the principle of "engagement" set out in *The Path to Reconciliation Act* which states: "**Engagement:** Reconciliation is founded on engagement with Indigenous nations and Indigenous peoples."⁹⁶

Furthermore, engagement with First Nations citizens and governments is consistent with the proper interpretation of *The Efficiency Manitoba Act*, which requires Efficiency Manitoba to provide a description of the input it has received from stakeholders, including the stakeholder committee, and the public.⁹⁷ The AMC agrees with Dr. Fitzpatrick that this provision indicates that Efficiency

⁹³ *Troller v Manitoba Public Insurance Corporation*, 2019 MBQB 157, 2019 CarswellMan 885 at para 46.

⁹⁴ Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p.794-795.

⁹⁵ Cross-Examination of Ms. Kuruluk, Transcript, Jan 8 at p.769-770.

⁹⁶ AMC-4 at p.10; Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p. 792.

⁹⁷ *Efficiency Manitoba Act*, CCSM c E15 at ss. 9(h).

Manitoba should have solicited information from both stakeholders, for example through the EEAG, and from the public (as distinct from the term stakeholders).⁹⁸ The following definitions were formulated by Dr. Fitzpatrick to assist with the understanding of the differences in terminology:

...the first definition is the public, and the public, I would determine or define as the collective citizens and residents of a state who may or may not be interested in or who may be affected by a particular issue. So members of the public are Manitobans, residents of Manitoba, in this case. It's a pretty broad definition.

A stakeholder is individuals or organizations with an interest in an issue and therefore something at stake in the dis -- deliberation and decision. This does not include government authorities. So a stakeholder generally has some informed perspective, and by informed perspective, that could be lived experience, that could be a research background, something that is seen as important to understanding the issue.

A customer is someone who uses the goods or services provided by a company, a Crown corporation, or what have you. In the diagram, you will see that someone could simultaneously be a member of the public, a stakeholder, and a customer, but that is not necessarily the case.

So it's important, from my perspective, to be clear about how to define who we are talking about, particularly in light of the legislative component that I just reviewed. We need to involve the public; we need to involve the stakeholders, including the Stakeholder Advisory Committee...⁹⁹

As confirmed by Dr. Fitzpatrick, in terms of the above definitions, First Nations citizens can be part of the public but can also be considered stakeholders and customers. First and foremost, First Nations and First Nations citizens "have inherent rights which transcend all three of those categories".¹⁰⁰

In addition, the role of the EEAG appears to be expanding at a rapid pace. During the hearing process, Efficiency Manitoba stated that the EEAG has or will:

- Provide diverse perspectives on an ongoing basis regarding the design and implementation of EM's activities - this will be achieved through the formalization of the EEAG's operations¹⁰¹

⁹⁸ Presentation of Dr. Fitzpatrick, Transcript, Jan 14 at p.1690.

⁹⁹ Presentation of Dr. Fitzpatrick, Transcript, Jan 14 at p.1691-1692.

¹⁰⁰ Presentation of Dr. Fitzpatrick, Transcript, Jan 15 at p.1877.

¹⁰¹ Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 170.

- Assist in hiring the third-party assessor (discussions on that will start in April or May)¹⁰²
- Provide input on the use of the \$7 million contingency fund¹⁰³
- Help identify new customer segments and ensure the Plan is inclusive of all customer segments¹⁰⁴
- Establish relationships with organizations like the MIPUG, MKO, etc.¹⁰⁵
- Assist in determining some of the barriers that are facing heat pump technology¹⁰⁶
- Act as a representative to both stakeholders and the public¹⁰⁷
- Represent the perspectives of the MKO's member First Nations¹⁰⁸
- Assist in determining the structure of the innovation fund¹⁰⁹
- Assist in identifying under what circumstances Efficiency Manitoba will fund research under the innovation fund¹¹⁰
- Act as the starting point on where to begin and how to roll out communication with the 63 First Nations in Manitoba, including how to advise them of the ability to participate in the Community Energy Plan¹¹¹
- Communicate to Efficiency Manitoba some of the benefits of cost ineffective measures¹¹²
- Refine who the Indigenous Energy Efficiency Advisory Group will be¹¹³
- In a response to an IR, EM stated that they would prefer not to establish a quantitative metric to evaluate if the Plan has met a satisfactory degree of customer segment diversity (ie: 5% to the hard-to-reach segment). Mr. Stocki says he agrees with that assessment

¹⁰² Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 186; reiterated at Cross-Examination of Ms. Kuruluk, Transcript, Jan 7 at p. 557.

¹⁰³ Cross-Examination of Mr. Stocki, Transcript, Jan 6 at p. 315-316.

¹⁰⁴ Cross-Examination of Mr. Stocki, Transcript, Jan 6 at p. 330.

¹⁰⁵ Cross-Examination of Ms. Sterdan, Transcript, Jan 7 at p. 379-380.

¹⁰⁶ Cross-Examination of Mr. Stocki, Transcript, Jan 7 at p. 407.

¹⁰⁷ Cross-Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 778.

¹⁰⁸ Cross-Examination of Ms. Tuck, Transcript, Jan 9 at p. 1058. At this point in the transcript, Ms. Tuck says MKO was represented by the EEAG which is why engagement with individual First Nations didn't occur.

¹⁰⁹ Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 175.

¹¹⁰ Cross Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 305.

¹¹¹ Cross Examination of Ms. Tuck and Ms. Kuruluk, Transcript Jan 8 at p. 835-836.

¹¹² Cross Examination of Mr. Stocki, Transcript, Jan 6 at p. 348.

¹¹³ Cross Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 886-867.

and says “I think it’s important again to listen and work with our EEAG” - there’s “a really good collaboration right now with the EEAG”¹¹⁴

Regarding the Indigenous Energy Efficiency Advisory Group specifically, Efficiency Manitoba has stated the Group will provide open dialogue and real-time feedback that helps the design and implementation of Indigenous programs¹¹⁵, and discuss whether off-reserve businesses owned by First Nation citizens should be included in the Plan.¹¹⁶

While the above illustrates that the role of the EEAG may be currently undefined and rapidly expanding, this does not mean that the EEAG, or an Indigenous variation of the EEAG, would not be useful as an advisory committee. However, First Nations organizations face capacity issues that will affect their ability to participate in EEAG activities. This has not been seriously addressed thus far by Efficiency Manitoba. Unfortunately, many First Nations organizations, including the AMC, face competing priorities, issues of inadequate funding and therefore issues of adequate staffing levels.¹¹⁷ The AMC has a full workload with many initiatives and projects. While energy efficiency is an important subject, the AMC may not have the available resources to participate in the significant and varied role that Efficiency Manitoba envisions for the EEAG.

In addition, it is unclear whether the members of the EEAG understood that they were meant to be engaging directly with their constituencies on the Plan development. As noted by Dr. Fitzpatrick, there is no evidence of a request for EEAG members to undertake engagement specifically, although there were some requests for facilitation of introductions. Further, Dr. Fitzpatrick noted that “on many occasions members of the EEAG seeking that additional engagement would be done with their constituencies.”¹¹⁸ The Terms of Reference for the EEAG refer only to asking the advisory group to “help facilitate communication and engagement” with their communities and networks.¹¹⁹

The meeting notes from all six of the EEAG meeting sessions indicate that the issue of direct engagement between Efficiency Manitoba and First Nations governments arose many times. The issue of direct engagement with First Nations was raised by a representative of the MKO at the “kick-off” meeting of the EEAG. The meeting notes state that the MKO was interested in seeing “how First Nations get engaged in a meaningful, not token way.”¹²⁰ In addition, the meeting notes from that same meeting show that a key topic of discussion was the importance of engaging “with First Nations about unique challenges on- and off-reserve including quality of on-reserve housing and applying efficiency standards.”¹²¹ Again, the “Need to consider how to engage rural, northern

¹¹⁴ Cross Examination of Mr. Stocki, Transcript, Jan 7 at p. 418-419.

¹¹⁵ Cross Examination of Ms. Tuck, Transcript, Jan 7 at p. 447-448.

¹¹⁶ Cross Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 886-887.

¹¹⁷ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 889.

¹¹⁸ Presentation of Dr. Fitzpatrick, Transcript, Jan 15 at p.1179.

¹¹⁹ Plan at p. 450.

¹²⁰ Plan at p. 455.

¹²¹ Plan at p. 456.

and Indigenous communities and provide opportunities to provide input in process” was listed as a key discussion point.¹²²

The Meeting 2 Agenda of the EEAG, a meeting that specifically considered Indigenous communities, notes that:

[a] recommendation was made that EM coordinate an approach to leadership of Indigenous Nations (elected officials not communities) and that process will follow. There is a lot to be gained and that this is a significant opportunity for a new Crown corporation.¹²³

At the third meeting, the meeting notes show:

Suggested that EM to do workshops with tribal councils etc. and develop a process to promote eco-fit programs available and increase uptake with First Nations. MH has had great results partnership and EM would like to do more with First Nations.¹²⁴

At the fourth meeting, the “MKO raised the question of community engagement, specifically on reservations across Manitoba.” The MKO also stated that relationship building must be a key consideration when engaging First Nations. EM is reported as stating that it “is encouraged to invest in engaging with these communities”.¹²⁵

At the fifth meeting, the MKO is noted as stating that “historical exclusion is always an issue. Meaningful consultation is important.” The meeting minutes also report that at a joint meeting held with MKO and SCO (the SCO is the Southern Chiefs Organization which represents 34 First Nations communities located in the south of Manitoba) on August 19, 2019, Community gatherings were suggested.¹²⁶ At the sixth meeting, the meeting notes show that as part of the feedback on the EEAG process and results to-date, the SCO noted that “[t]here will continue to be questions about consultation and roles coming from First Nations’ rights holders.”¹²⁷

As this clearly illustrates, members of the EEAG made it well known that they expected Efficiency Manitoba to directly engage with First Nations governments. Although the EEAG’s calls for direct engagement cannot come to fruition now that the Plan has been developed, direct engagement should be made a priority moving forward and in the development of future plans and programming adjustments.

The meeting minutes also establish that the mandate of the EEAG from Efficiency Manitoba’s perspective clearly differed from the mandate from the perspective of the First Nations

¹²² Plan at p. 458.

¹²³ Plan at p. 467.

¹²⁴ Plan at p. 474.

¹²⁵ Plan at p. 481.

¹²⁶ Plan at p. 493.

¹²⁷ Plan at p. 502.

organizations that participated in the EEAG. The AMC agrees with the evidence of Dr. Fitzpatrick that an independent advisory committee can be valuable, but that

...it needs to be clear to the people who become part of your committee what they're required to do, how much time they're going to spend doing it, how their ideas will be listened to and responded to by the Crown corporation, and any other number of factors in setting up the terms of reference.¹²⁸

Budgeting and remuneration are other important issues that are linked to fulsome and direct engagement with First Nations. Members of the EEAG were provided with no funding or budget for members of the group and no funds have been brought forward as a budget item for other activities that would increase First Nations engagement.¹²⁹ The AMC also agrees that given the large role that Efficiency Manitoba expects the EEAG to play, the EEAG should be resourced: EEAG should have funding associated with it, and this funding must be commensurate with the group's mandate.¹³⁰ In addition, Efficiency Manitoba may want to seriously consider engaging community liaisons to assist with the engagement of First Nations on-reserve customers.¹³¹ It would be much the same role that Daymark understood was covered by the First Nations Community Energy Advocates, but is so far at best covered by the one First Nations Energy Advisor provided for under the Plan.¹³²

Dr. Fitzpatrick's evidence provides some common ways that Efficiency Manitoba could fund the EEAG. As Dr. Fitzpatrick noted:

...what they usually offer me or my university is certainly per diems for meetings, expenses to attend meetings, usually they feed us, and either an annual retainer or a per diem to allow people to prepare in advance of the meetings. So that would be something that I'm seeing is becoming increasingly applied for advisory boards, particularly for organizations that are not for profit.¹³³

As agreed by Dr. Fitzpatrick, if an EEAG member is spending time on EEAG activities, this is time not spent on other activities that the organization is involved with. If the EEAG is asked to assist with providing remedies to potential deficiencies in the proposed Plan as a result of this hearing, it would be an additional significant responsibility to what was contemplated in the terms of reference for the EEAG.¹³⁴ Given the capacity issues listed above, this would be an additional burden for organizations like the AMC who are already face budget and staffing restrictions.

Lessons can be learned by the "Indigenous Conservation Programming: A New Approach" IESO report, which in preparing information on access to energy efficiency programs for Ontario First

¹²⁸ Presentation of Dr. Fitzpatrick, Transcript, Jan 14 at p.1695.

¹²⁹ Cross Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 890-891.

¹³⁰ Presentation of Dr. Fitzpatrick, Transcript, Jan 14 at p. 1697.

¹³¹ Presentation of Dr. Fitzpatrick, Transcript, Jan 14 at p. 1703-1704.

¹³² Cross-examination of Daymark Panel, Transcript, Jan 13 at p. 1495-1500.

¹³³ Cross examination of Dr. Fitzpatrick, Transcript, Jan 15 at p.1902-1903.

¹³⁴ Cross Examination of Dr. Fitzpatrick, Transcript, Jan 15 at p.1881.

Nations and Métis, undertook the following engagement activities, which were identified as “an invaluable part of research” for the report:

- Feedback from First Nations and Metis gathered during engagements, as well as community meetings;
- Third party evaluation report from a specific on-reserve First Nations electricity efficiency program;
- Online survey;
- Various in-person engagements to receive input:
 - Four regional meetings;
 - Indigenous Community Energy Symposium;
 - Nishnawbe Aski Nation Climate Change Coordinators meeting;
 - Métis Nation of Ontario (MNO) and MNO Councils meeting;
 - IESO’s Aboriginal Energy Working Group;
 - Community visits to two First Nations;
 - Province-side webinar with 80 attendees; and
- Interviews with community representatives and other industry representatives who provided energy conservation-related services to Indigenous customers.¹³⁵

The AMC submits that Efficiency Manitoba should be directed to create an engagement strategy for First Nations. It would be appropriate to work with the Indigenous Engagement Advisory Group or the EEAG to create this strategy. The engagement strategy should include meetings with Chiefs and Councils and also include public discussions in regional areas of Manitoba.¹³⁶

To the extent that the AMC can be a valuable intermediary for the purposes of engagement, or to help effect marketing of engagement materials it will do so, to the extent that it has available resources to assist Efficiency Manitoba with its efforts and to the extent that Efficiency Manitoba provides sufficiency capacity assistance funding to enable the AMC’s participation.¹³⁷ It will not be effective nor reasonable for Efficiency Manitoba to pass on its own duties and responsibilities to the AMC on a voluntary basis.

Finally, the AMC agrees with the evidence of Dr. Fitzpatrick that the mandate of the EEAG will need to be changed should EEAG members engage with their constituencies.¹³⁸ In addition, adequate funding will need to be provided to allow for this to occur, and EEAG members will need

¹³⁵ Independent Electricity System Operator, “Indigenous Conservation Programming: A New Approach Report on energy Conservation for First Nations and Métis in Ontario” (March 2018) at 2, online (pdf): *Independent Electricity System Operator* <<http://www.ieso.ca/-/media/Files/IESO/Document-Library/indigenous-relations/Indigenous-Conservation-Programming-A-New-Approach-March2018.pdf?la=en>>.

¹³⁶ Cross Examination of Dr. Fitzpatrick, Transcript, Jan 15 at p.1887.

¹³⁷ To that end, the AMC reiterates its position in its written submissions for the Manitoba Hydro 2017-2018 & 2018-19 General Rate Application at p. 44 wherein the AMC expressed its willingness to assist Manitoba Hydro to work with First Nations communities regarding data collection, but noted that, due to limited financial capacity, capacity assistance funding would be a prerequisite for its effective participation in such a process.

¹³⁸ Cross Examination of Dr. Fitzpatrick, Transcript, Jan 15 at p.1964.

to consent to this additional role. While the AMC is interested in participating in the EEAG, the AMC can only consent to any mandate if a resolution is passed by the Chiefs-in-Assembly. This requires sufficient notice to the AMC given that the Chiefs-in-Assembly only meet every two months.

As a side note, in terms of the stakeholder survey as a method of public engagement, the AMC takes issue with Efficiency Manitoba's characterization of the stakeholder survey. The survey referenced was a survey of third-party contractors and service providers rather than a stakeholder survey. With that said, the AMC understands Efficiency Manitoba's perspective that third-party contractors are the "eyes and ears" of its programs.¹³⁹ Unfortunately, the stakeholder survey did not have any method for collecting information for contractors or service providers providing services to First Nations customers,¹⁴⁰ and is therefore of limited value from the perspective of the AMC.

4. Non-Energy benefits should be considered at the outset and not as an afterthought

The portfolio design process involves three stages: the pre-screening process, a preliminary portfolio review, and the final portfolio design.¹⁴¹ Efficiency Manitoba confirmed that it used only the Program Administrator Cost Test, or PACT, in the portfolio design process, which does not include quantifiable non-energy benefits.¹⁴² The PACT, as described by Ms. Kuruluk, measures the marginal benefits to Manitoba Hydro that are derived from the achieved energy savings, against the cost that Efficiency Manitoba expends to get those savings.¹⁴³

Although the *Efficiency Manitoba Act* provides for a specific method of evaluating cost-effectiveness (which is essentially the PACT), it does not preclude or exclude the consideration of non-energy benefits. Non-energy benefits were considered after the portfolio was designed, but only to the extent that Efficiency Manitoba determined them quantifiable, which included only water and greenhouse gas savings.¹⁴⁴ The Total Resource Cost test or TRC, on the other hand, can include additional benefits.¹⁴⁵

The TRC can consider factors like the estimated customer bill reduction, reduction in energy poverty levels, or calculation of economic benefits alongside metrics like cost-effectiveness to determine whether the programs are driven by reasons other than cost-effectiveness.¹⁴⁶ The AMC supports the use of the TRC test alongside the PACT test to measure these other quantifiable benefits.

¹³⁹ Cross Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 289-290.

¹⁴⁰ Cross Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 887-888.

¹⁴¹ Cross-Examination of Mr. Stocki, Transcript, Jan 6 at p. 324-325.

¹⁴² Cross Examination of Mr. Stocki, Transcript, Jan 6 at p. 352.

¹⁴³ Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 178.

¹⁴⁴ Cross Examination of Mr. Stocki, Transcript, Jan 8 at p. 807-808.

¹⁴⁵ Cross Examination of Mr. Stocki, Transcript, Jan 6 at p. 359.

¹⁴⁶ Cross Examination of Daymark Panel, Transcript, Jan 13 at p. 1492-1495.

The next submission of Efficiency Manitoba's Plan will include the comprehensive retrospective performance evaluation of the current Plan under consideration.¹⁴⁷ When asked whether Efficiency Manitoba has a particular metric or test for evaluating the achievement of accessibility, Mr. Stocki referred to the Efficiency Manitoba's enabling legislation, which states that Efficiency Manitoba should try to achieve a budget spend of 5% for hard-to-reach customer segments. Otherwise, Efficiency Manitoba does not prefer to establish a satisfactory degree of customer segment diversity in a quantitative metric.¹⁴⁸

The AMC submits that the issue of accessible programming is distinct from the issue of whether 5% of programming is aimed at hard to reach customers. The concern from a First Nations perspective is that First Nations on-reserve customers make up a very minimal component of the 5% calculation used by Efficiency Manitoba.¹⁴⁹

Of the 32% of the natural gas programming targeted for hard to reach customers, none will be available to First Nations on-reserve customers, as they do not use nor have access to natural gas for heating purposes. In terms of the electric budget, 3% is targeted for Indigenous programming, but those programs are targeted at both First Nations and Metis customers. This means that the exact amount aimed at First Nations programs is less than 3%.¹⁵⁰

As noted previously, the Dunsky scorecard provides measurements for evaluating Efficiency Manitoba's program. The only aspect of the scorecard that measures equity of programming for Indigenous customers is the maximum of one point that is allotted if Efficiency Manitoba has developed programs for hard to reach customers. That one point is essentially allotted if a program exists for hard to reach customers but does not measure robustness of programming. There is an additional metric for low income programming, which does measure robustness. Ms. Kuruluk has stated that it is Efficiency Manitoba's intent to measure Indigenous programs by robustness as well.¹⁵¹ The AMC agrees with this approach moving forward.

The AMC supports including evaluation measures for robustness of Indigenous programming, although, as further stated below, the AMC would prefer that First Nations programming be addressed separately from Metis programming.

Targets for Economic Participation

The AMC supports the use of clear plans and targets for economic participation for First Nations and First Nations citizens. Efficiency Manitoba has recognized that there are areas where it can add economic benefit to community members, for example, through providing employment.¹⁵² This is another non-energy benefit that has not been factored into the design or evaluation of Efficiency Manitoba's programming. Efficiency Manitoba also agrees that targets for employment

¹⁴⁷ Cross Examination of Mr. Stocki, Transcript, Jan 6 at p. 257.

¹⁴⁸ Cross Examination of Mr. Stocki, Transcript, Jan 7 at p. 417-418.

¹⁴⁹ Cross Examination of Dr. Clark, Transcript, Jan 10 at p.1201.

¹⁵⁰ Cross Examination of Dr. Clark, Transcript, Jan 10 at p.1202-1203.

¹⁵¹ Cross Examination of Ms. Kuruluk, Transcript, Jan 8 at p. 884-885; AMC-4 at p. 83.

¹⁵² Cross Examination of Mr. Stocki, Transcript, Jan 8 at p. 813-814.

and other economic benefits would assist in providing the greatest possible participation for First Nations in Manitoba.¹⁵³

Unfortunately, the current Plan as drafted does not include these targets. Aside from Aki Energy, Efficiency Manitoba has not identified any First Nations businesses or contractors that will assist with implementation of the Plan. Efficiency Manitoba has stated that it would like to work with the AMC to help identify a strategy to onboard more First Nations contractors.¹⁵⁴ This highlights the fact that despite collecting information for businesses interested in offering energy efficiency programs since the Spring of 2019, Efficiency Manitoba has not been collecting information about whether those businesses are owned by First Nations citizens or First Nations.¹⁵⁵

This is an unfortunate oversight, as Manitoba Hydro had previously reported that through its programming it had created the equivalent of 28 full-time jobs of Indigenous employment leading up to or during the 2018/19 Plan. We currently have no information about whether those jobs have continued or are ongoing, or whether they will continue during the transition to Efficiency Manitoba.¹⁵⁶

This oversight in collection of information should not only be corrected immediately. As stated by Ms. Kuruluk, private contractors provide Efficiency Manitoba with much of their customer information:

...private contractors, whether they're installers, service providers, are often the eyes and ears of our programs. They are in the homes and businesses of our customers. And we gain insight into both the challenges with participating customers as well as the sales that were perhaps lost for various reasons.

Given that an insulation contractor, for example, is performing this service nearly every day, they have incredible insight in po -- into potential issues that are current and relevant to our activities.¹⁵⁷

Therefore, it is not only important to track First Nations economic participation, but also to track the feedback that contractors and third-party service providers that work for First Nations customers provide. This is something that the Customer Relationship Management system that Efficiency Manitoba intends to purchase can accomplish.¹⁵⁸

5. Data collection for First Nations Customers

The AMC is strongly opposed to a pan-Indigenous approach to government or government-agency programming in Manitoba. In order to clearly see the impact of energy efficiency programming, data and programs must be disaggregated or unbundled as between First Nations

¹⁵³ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 876.

¹⁵⁴ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 877.

¹⁵⁵ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 878.

¹⁵⁶ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 880-881.

¹⁵⁷ Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 170-171.

¹⁵⁸ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 878.

and Metis customers. The principles of respect and understanding set out in *The Path to Reconciliation Act* are aligned with AMC's proposal that First Nations customers should be treated as a distinct and separate customer program bundle:

Respect: Reconciliation is founded on respect for Indigenous nations and Indigenous peoples. Respect is based on awareness and acknowledgement of the history of Indigenous peoples and appreciation of their languages, cultures, practices and legal traditions.

...

Understanding: Reconciliation is fostered by striving for a deeper understanding of the historical and current relationships between Indigenous and non-Indigenous peoples and the hopes and aspirations of Indigenous nations and Indigenous peoples.¹⁵⁹

A greater attempt needs to be made to collect data about energy usage and access to energy efficiency programming for both on-reserve and off-reserve First Nations customers. Dr. Clark noted in his direct evidence that it is very difficult to assess programs and design programs when you do not have high quality and reliable information. Lack of quality information can serve as a rationale for inaction.¹⁶⁰ For First Nations customers, lack of information can become a self-fulfilling cycle where the lack of evidence becomes an excuse for inaction, which then becomes an excuse for failing to collect information.¹⁶¹

Prior to the creation of Efficiency Manitoba, First Nations on-reserve customers accessed some non-First Nation specific programming through Manitoba Hydro. Specifically, the AMC is aware that on-reserve customers had access to solar programming and the New Homes Program. However, Efficiency Manitoba currently has no planned targets for First Nations participation in initiatives like the New Homes Program.¹⁶² The ability to better anticipate access to all available programming for First Nations customers is an important planning tool for Efficiency Manitoba, as well as an important means for Efficiency Manitoba to show the full extent of the impact of its programming for First Nations.

As stated by Dr. Clark in cross-examination, no information was provided by Efficiency Manitoba about the degree by which First Nations on-reserve customers access general energy efficiency programming, but this kind of information would be better for Efficiency Manitoba in terms of demonstrating equity criteria.¹⁶³

The AMC asked Efficiency Manitoba to provide the number of participants, total budget and energy savings per participant for Manitoba Hydro programs in the three most recent years. In response, Efficiency Manitoba provided the number of participants targeted by Manitoba Hydro in

¹⁵⁹ AMC-4 at p.10; Cross-Examination of Efficiency Manitoba, Transcript, Jan 8 at p. 792.

¹⁶⁰ Direct Examination of Dr. Clark, Jan 10 at p. 1168.

¹⁶¹ Direct Examination of Dr. Clark, Jan 10 at p.1169.

¹⁶² Cross-Examination of Ms. Tuck, Transcript, Jan 8, at p. 894-895.

¹⁶³ Cross Examination of Dr. Clark, Transcript, Jan 10 at p.1213.

its three most recent years of programming, but no actual participation rate.¹⁶⁴ While the AMC did not receive the information it requested, it is apparent that Manitoba Hydro estimated significantly higher First Nation customer participation than what was targeted by Efficiency Manitoba in its Plan.

Ms. Tuck pointed out that the reason for the decrease in planned participation was that actual participation in the programming was lower than what Manitoba Hydro had planned.¹⁶⁵ What we do not know or have any information on is why the actual program participation was lower than planned.

As noted, First Nations on-reserve customers consume a larger amount of electric energy than other customer groups. Manitoba Hydro planned to reach a higher number of First Nations on reserve customers, but apparently failed to do so. Instead of identifying reasons for this failure and implementing measures that would ensure the projected participation levels set by Manitoba Hydro could be reached, Efficiency Manitoba simply reduced the targeted participation levels for First Nations on-reserve customers.

The purpose of the customer program bundles appears to be, at least in part, to simplify communications with customers and to facilitate cross-promotion of additional measures.¹⁶⁶ Since Metis customers cannot access First Nations on-reserve programs and vice-versa, there is little reason for First Nations and Metis customer programs to be included in the same bundle. In addition, providing this kind of data and reporting should be possible given the Customer Resource Management system that is planned.¹⁶⁷ Efficiency Manitoba has already stated that it has a distinct First Nations strategy and a distinct Metis customer strategy and this too should make it simple to unbundle these two customer programs.¹⁶⁸

The only program with cross marketing to both Metis customers and First Nations on reserve customers is the Indigenous Small Business Program. This is also the only Indigenous program that Efficiency Manitoba is considering placing a cap on.¹⁶⁹ The AMC recommends that this program be divided into First Nations and Metis customers, particularly if a cap is going to be placed on participation as this may cause unnecessary competition between First Nations and Metis businesses for access to the program.

Conclusion

As was stated by Ms. Kuruluk during the Efficiency Manitoba presentation:

¹⁶⁴ AMC/EM I-18a.

¹⁶⁵ Cross Examination of Ms. Tuck, Transcript, Jan 8 at p. 818-819.

¹⁶⁶ Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p.171-172.

¹⁶⁷ Cross Examination of Mr. Stocki, Transcript, Jan 8 at p. 864-865.

¹⁶⁸ Cross examination of Ms. Tuck, Transcript, Jan 8 at p. 865.

¹⁶⁹ Note: it is unclear whether this program will include off-reserve First Nations owned businesses at this time; Cross-Examination of Ms. Tuck, Transcript, Jan 8 at p 865-866.

We have an opportunity here that is actually quite rare. We are able to build a new framework for an energy efficiency in Manitoba under a new organization in a fresh new culture, while at the same time building on an established and robust local energy efficiency legacy based on many years of experience, expertise, and knowledge, and not only in the staff that deliver the programs but also in the local market and industry that supports energy efficiency delivery to homes and businesses.¹⁷⁰

Ms. Kuruluk also identified that while this hearing is specifically considering the first three-year plan, what is done in the upcoming three years will impact opportunities and performance over at least the next fifteen years.¹⁷¹ This underlines the significance of ensuring that the Plan both meets its legislated mandate under the *Efficiency Manitoba Act* but also that it considers the unique needs and viewpoints of Manitobans across customers segments.

While First Nations on-reserve users consume 4% of the energy in the Province the First Nations residential programming makes up only 1.1% of the residential participants under the Plan. This is concerning given both the unique issues facing on-reserve customers but also the special relationship that exists between First Nations, the Crown and Crown agents.

To this end, the AMC has provided numerous suggestions on the ways in which Efficiency Manitoba can amend or improve upon its current Plan and further plans moving forward. As set out by the *Path to Reconciliation Act*, concrete and constructive action can help improve the relationships and disparity between Indigenous and non-Indigenous Manitobans. While the Plan takes steps to recognize that First Nations should have unique, targeted measures to improve energy efficiency, meaningful engagement will improve the Plan and may improve First Nations' participation rates. Complete and well-collected data, with disaggregated information between Metis and First Nations customers, and First Nation customers both on and off reserve, will also help inform the Plan and the unique needs of First Nations moving forward. In recognition of the special relationship between the Crown and First Nations and the information provided above, the AMC hopes that its recommendations are duly considered and reflected in the subsequent plans and actions of Efficiency Manitoba moving forward.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 23, 2020

Carly Fox and Emily Guglielmin

Counsel for the Assembly of Manitoba Chiefs

¹⁷⁰ Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p. 168.

¹⁷¹ Direct-Examination of Ms. Kuruluk, Transcript, Jan 6 at p.168-169.