



“When You Talk - We Listen!”



MANITOBA PUBLIC UTILITIES BOARD

re:

MANITOBA HYDRO

2019/20

ELECTRIC RATE APPLICATION

Before Board Panel:

Robert Gabor	- Board Chairperson
Marilyn Kapitany	- Board Vice Chair
Larry Ring, QC	- Board Member
Shawn McCutcheon	- Board Member
Hugh Grant	- Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba

May 2, 2019

Pages 1112 to 1233

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1 --- Upon commencing at 8:59 a.m.

2

3 THE CHAIRPERSON: Good morning,
4 everyone. Mr. Hacault, you're -- you're up.

5 MR. ANTOINE HACAULT: Yes, and for
6 somebody who said we didn't need a -- an oral hearing,
7 and that I could summarize things in a couple
8 sentences, my couple sentences are pretty long in --
9 in front of you.

10 That written summary, hopefully, is
11 going to be of assistance to the PUB, and I understand
12 it's going to be marked as that MIPUG Exhibit number
13 8.

14

15 --- EXHIBIT NO. MIPUG-8: MIPUG written summary

16

17 FINAL SUBMISSIONS BY MIPUG:

18 MR. ANTOINE HACAULT: I, too, would
19 like to thank the Board, its counsel, and advisors.
20 I'd like to thank Manitoba Hydro, its counsel, and
21 representatives, and all the other Intervenors.

22 We often forget, but this is a very
23 collegial hearing compared to some other
24 jurisdictions. We were chatting about that. And
25 counsel, and parties are very cooperative, and -- and

1 certainly assist me in trying to be assistance to the
2 Board.

3 I also -- well -- but maybe -- Mr.
4 Simonsen was going to hide from me, because I'm a
5 pretty emotional guy, but I also wish to take this
6 opportunity on behalf of MIPUG Intergroup and myself
7 to express my deep gratitude for Mr. Simonsen's
8 assistance over the years. His knowledge, insight and
9 passion in his role have benefitted not only us, but
10 Manitobans generally. For this, we thank him and wish
11 him and his family, health, happiness in his
12 retirement.

13 Now, I won't be going through
14 everything in the argument. If there are questions,
15 I'm open to answering them at any point, whether it's
16 at the end or during the -- the submission. And if
17 there's clarification, please feel free to -- to
18 request it at any point.

19 In the submission, you'll see it starts
20 out with what we provide as a recommendation, which is
21 a net rate increase no higher than 1.5 percent to be
22 granted across the board for the June 1, 2019 date.
23 And the purpose, to smooth the transition to higher
24 rates to address Keeyask's in-service and eventual end
25 of Bipole III deferral amortization.

1 We leave the whole deferral account
2 mechanism to the Board's discretion. We do -- I note
3 one (1) of the Board members appears to be missing
4 something? I'm not going to...

5

6 (BRIEF PAUSE)

7

8 MR. ANTOINE HACAULT: No, no. No. I
9 was just -- they were just searching for papers, so I
10 thought there was a copy that wasn't provided to one
11 (1) of the Board members.

12 THE CHAIRPERSON: We're -- we're
13 missing a copy, I believe. I'd ask the secretary, do
14 we have another copy?

15

16 (BRIEF PAUSE)

17

18 THE CHAIRPERSON: That's okay. We...

19 MR. ANTOINE HACAULT: Sorry about
20 that. I thought we had distributed sufficient copies
21 and they had been distributed to all Board members.

22 We also note in the recommendation --
23 under the recommendation heading that MIPUG repeats
24 its support for a technical conference as previously
25 contemplated in Board Order 59/'18. It also supports

1 a recommendation of further development of Hydro's
2 uncertainty analysis to deter -- determine appropriate
3 reserve levels. So that's the nut and -- nuts and
4 bolts of what this document gets to.

5 Now I maybe erroneously tried to
6 simplify the messaging that's going to come out in --
7 in the in the following pages. I kind of sat back,
8 and I said, Well, you know, we're -- we've been
9 looking since NFAT on a rate path, and it's like, how
10 are we going to swallow these big facilities, and how
11 are we going to do this?

12 So I said, Okay, we're -- we're at
13 three point five (3.5). That's what's being requested
14 by Hydro. Now where are we starting? Well, IFFs and
15 the \$64 million number in -- in the budget, that's
16 with a zero percent increase. It already has 4
17 percent built in it, right, because if you didn't --
18 if you're just hitting zero, that would be your
19 starting point, but we've got \$64 million from get-go
20 on average conditions. That's what Hydro's telling
21 us.

22 We've already got four and a half (4
23 1/2) built-in, or four (4), a little bit more than
24 four (4). It's about 15 million per each percent.
25 And that's higher than MH93 was with a twelve (12)

1 year WATM. That's the savings Hydro thought it could
2 get shorter terming for its debt. That number had
3 come out at sixty-one (61), and we heard in the
4 previous hearing that Hydro had chosen during that
5 hearing to revert back to a twenty (20) year WATM
6 because of the lower spreads or smaller spreads
7 between the short-term and long-term interest.

8 So we heard in this hearing that if we
9 take that into account, MH-93 expected we'd be at 28
10 million for this year. And so by both metrics, we're
11 doing better than what MH-93 thought we were going to
12 do.

13 I say, Well, then, what about the facts
14 we do know, because we've been talking about a lot of
15 different things. And we heard one (1) good news
16 piece, and that was Bipole III. Two (2) aspects to
17 that project, firstly it came in for sure at \$270
18 million less, and we heard evidence as -- and this is
19 my point too, in the five (5) points that I list, that
20 that makes a \$17 million recurring annual benefit.
21 The first year, it's 30 million, and then it reduces
22 to seventeen (17).

23 Well, \$15 million is 1 percent.
24 Mathematically, a simple guy like me says, Okay. I
25 start at three point five (3.5). That's what Hydro's

1 requested. We know we've got a good news story that
2 gives us a one (1) time -- one (1) time reduction of 1
3 percent. So I'm now at 2 1/2 percent. Still on that
4 rate path, and that rate path already has 4 plus
5 percent built into it.

6 Now what about all the good news. And
7 that's my next point, that we really couldn't
8 quantify, because Hydro staff that was here was put in
9 a very difficult position. There's Boards that have
10 been changing. There's no strategic plan done
11 corporately. We don't have that nice picture of all
12 the good news that has been communicated. And we have
13 suggested that if we're going to go over inflation, we
14 need to have good evidence as to why we should do
15 that.

16 And there's a lot of good news stories
17 that were identified in Hydro's criticism of Mr.
18 Rainkie, when he was trying to explain some of them.
19 So it's a lot of speculation. We don't have those
20 documents. Unfortunately, we don't.

21 But it isn't Mr. Rainkie's onus to give
22 us that information, or say it doesn't exist, and --
23 and nobody in this hearing I ever heard says there's a
24 bad -- bunch of bad news. Our big projects are no
25 longer tracking on budget, interest rates are a lot

1 higher than ever we thought they were going to be.

2 You know, all these kind of big things
3 that might move the needle, nobody's saying that today
4 we are experiencing a bad situation. So I say that
5 pretty much sums it. That brings us down to 1 1/2
6 percent.

7 You know, I mean, there's a lot of
8 things that help build to that point. I had put a
9 fifth point there, and I'll admit, I wasn't too sure I
10 was following the math, because Mr. Rainkie had
11 pointed out that there was over half a billion dollars
12 of reduced debt, and I had looked at the submission of
13 Manitoba Hydro on page 6, where they said that the
14 \$567 million overstatement of a debt wouldn't
15 necessarily offset the 900 million that Hydro was
16 talking about. They did some math at page 6, from
17 lines 5 to 14.

18 And what confuses me in that math is
19 that they say, Well, after you take out what's
20 required for Bipole III, so this is my Point number 5,
21 to finish Bipole III, you're left with a difference of
22 debt of about some \$326 million, and that corresponds
23 to a \$13 million annual interest savings.

24 It's a bit confusing, and I don't think
25 we need to go there and make much of it, because Hydro

1 has responded that Bipole III is a \$17 million annual
2 savings, and that's out of 270 million. And they've
3 thrown this other argument. It was really part of a
4 fulsome discussion in cross-examination or direct of
5 326 million, resulting in lower annual interest costs
6 of 13 million on an annual basis. I guess it just
7 emphasizes the point that I made while ago.

8 Unfortunately, we don't have very good
9 information on how all these savings in interest are
10 going to pan out and how a good news story it will be.
11 We don't know how many of the previous debt issues at
12 7 or 8 percent are being refinanced at 3 or 4 percent.
13 We don't know if it's lower rate ones that are being
14 refinanced over the next years. We don't have that
15 picture. We know it's good news, but we don't know
16 the extent of the good news.

17 So I'll move on now to some of the
18 underlying things that I feel I need to remind myself
19 of how lucky we are to be in a jurisdiction where we
20 have a Crown Utility that's a pure cost recovery
21 Utility. As Manitobans, this allows for long-term
22 projects such as major generation projects to be an
23 undertaking -- undertaken with a long-term view. It
24 allows Manitobans to reap long-term benefits of
25 inflation protected generation investments with

1 expected lives over a hundred years.

2 As I am a lawyer, I had helped senior
3 counsel, Mr. Ross Nugent, and we were acting for Hydro
4 at that time, with one (1) of the major facilities in
5 limestone. And I recall those hearings were -- people
6 were saying, it doesn't make sense, you're building a
7 facility that's going to cost 'X' cents per kilowatt
8 and we're paying a lot less now, we're never going to
9 be -- and I think the numbers were something like
10 about three point two (3.2) cents, was what limestone
11 was at. But the beauty of these long-term generation
12 assets is that they're inflation protected.

13 When I spent money to build limestone
14 several decade -- decades ago, it cost me 'X' dollars.
15 I don't have to spend on that major capital
16 infrastructure. There's minings (sic) and stuff and
17 the generators, that some of those things need to be
18 dealt with, but by and large those facilities are
19 expected to last over a hundred years. They're going
20 to benefit not only my grandchildren but their
21 grandchildren.

22 And that raises what I put in the next
23 paragraph, is how do we deal with that
24 intergenerational equity. Which ratepayers get to
25 reap the windfalls. Remember I quoted to Mr. Rainkie,

1 a decade of investment followed by windfalls. And how
2 hard do we hit the existing generation to pay some up-
3 front costs for the windfalls that will be benefitted
4 for by generations to come?

5 And I'd like to remind myself that,
6 hey, I done a pretty good job of sharing that already.
7 I helped put Bipole III and absorb all the impacts of
8 that, a non-generation asset of nearly \$5 billion, and
9 I'd like to remind myself that over the last five (5)
10 years, there were specific awards, and this goes into
11 the next page on the table, page 4, which this Board
12 in its wisdom said, well, Mr. Hacault, you and all the
13 ratepayers in Manitoba for 2013/'14 are going to set
14 aside 1 1/2 percent. The next year you're going to
15 set aside .75 percent.

16 In 2015, big portion of the 3.95
17 percent, so you're going to pay for Bipole III,
18 absorbing it, another 2.15. And, sir, for 2016/'17
19 and for the next fiscal year of 2017/'18, the entire
20 3.36 percent in each of those two (2) years, you're
21 going to help absorb Bipole III.

22 So we've done a pretty good job as
23 Manitobans, contributing our fair share in the last
24 five (5) years over 2 percent per year to a specific
25 pot to help absorb Bipole III.

1 Part of the benefits of having a Crown
2 utility, in my view, is that we can take a patient
3 capital approach.

4 As the decision was made to build
5 Keeyask in advance of domestic need, that's an
6 important factor too, I submit that it is not strictly
7 used and useful for Manitoba consumers.

8 What we say is we do not need to be on
9 an expedited path to absorb rate impact on this
10 inflation protected asset built in advance of domestic
11 need.

12 Then in the evidence, and this is dealt
13 with in my next paragraph, there was cross-examination
14 on this point, while we're going to have to absorb 9
15 percent of an expected rate increase impact of
16 Keeyask, well, we're recommending one point five
17 (1.5). How does that work and how -- you know, is it
18 going to be reasonable to do that? And there's a lot
19 of different ways to look at it, but I started by
20 saying, well, we've really got 4 percent built into
21 our rates, because we know we've got 64 million based
22 on average conditions.

23 If I look -- okay, I've got another 5
24 percent to make up. Just takes a little bit more than
25 three (3) years to do that.

1 So in that context, I say it's -- that
2 we already ready built up these rates because of
3 Bipole III, et cetera, 1.5 percent is reasonable. I
4 acknowledge it's a one (1) time issue. The next
5 hearing, we're going to have to look at where we're
6 at, whether we can do this again.

7 But we also note that we don't know
8 whether that 9 percent expected rate increase is
9 actually going to go down. Hopefully there's some
10 good news story out of Keeyask. Say we're on track.
11 That was the same thing we said for Bipole III.

12 I hope we continue getting good news
13 story, and if so at the next hearing we may be able to
14 take and have good news stories on Keeyask. That's
15 why we have recurring hearings, to kind of look at
16 where we're at every couple of years.

17 Now, I did take out, because I took due
18 note of the panel's questions yesterday, well, what
19 about the rate path and what you said Mr. -- at the
20 last hearing. And I can say, with confidence, that
21 the consultants that assist MIPUG, so Intergroup,
22 always do, in my respectful view, a good balanced
23 analysis of the evidence. There's bad news, they look
24 at it and they provide an unbiased, independent
25 opinion, but each time we need to look at what's the

1 evidence, and we say we're doing that in this hearing
2 in arriving at our recommendation.

3 Now, the next heading I have is
4 Good News Hearing. I wasn't sure really five (5) or
5 six (6) years ago I would have that kind of a heading,
6 but I think it's worth celebrating.

7 You know, in past hearings it was,
8 well, we're off on our capital estimates. It's going
9 to be higher, oh my God. We're off on export
10 revenues. We banked on these really high export
11 revenues; oh my God.

12 Now we come to a hearing, well -- oh,
13 Mr. Cormie actually did put a term sheet in place for
14 Saskatchewan. Good news. For the first time we're
15 being told we don't need to adjust Keeyask up. Good
16 news. We're being told that's early. We're being
17 told Bipole III.

18 And this is not overly critical of
19 Manitoba Hydro. They need to come in and justify a
20 3.5 percent rate increase. But look at the slides
21 that they presented and how many of them tell
22 Manitobans about the good news stories that they have,
23 as a team, managed to generate for this province and
24 Manitobans?

25 They've done an outstanding job on

1 their Treasury and they should be able to blow their
2 horns on that. They've done an outstanding job
3 managing Bipole III. They should be able to blow
4 their horns about that. And if it takes Intervenors
5 to message that story, well, so be it.

6 We took time in -- in my cross-
7 examination to reflect on what happened in MH14 after
8 the NFAT, and there was a 2.75 percent rate increase
9 that was granted, even in the context of that very,
10 very poor IFF. Things were pretty bleak then.

11 We had -- I'm still on the bottom of
12 page 5 -- we were telling Manitobans, and Mr. Rainkie
13 testified to this, in NFAT, we can handle and we will
14 handle negative net income, and the financial world
15 and bond rating agencies know that it's coming. They
16 won't get unduly excited when it happens.

17 I know there's puts and takes and
18 timing on everything. So you can't say, well, you
19 know, it's -- it compare -- it's comparing apples to
20 apples when you look at IFF and where we are today.
21 But generally where are we headed and how -- how
22 things have developed -- we didn't think when we did
23 the IFF14 that we would be having positive net income,
24 and we're being told today that we're on track for \$95
25 million for the year ending March 31, 2019. That's

1 good news. How can it not be?

2 We didn't think right after NFAT that
3 we'd be on track for having positive net income in
4 2019/2020. And the good news we're hearing is even
5 without the 1.5 percent increase that we're
6 recommending, we would be hitting in average
7 conditions, which is what people say is going to
8 happen over time, we'd be hitting 64 million plus
9 another twenty (20) some million dollars that's going
10 to be generated by this 1 1/2 percent increase.

11 So instead of losses, we're talking
12 about some net positive income in the order of \$80
13 million. Finally got used to saying millions. When I
14 started this, it was just like thousands and just like
15 people had trouble wrapping their minds around it.
16 You know, talk about 10 million, it doesn't move the
17 needle in this hearing. That's a lot of money for
18 Manitobans and a lot of money out of the economy.
19 It's going into Manitoba Hydro's coffers. It's not
20 staying in the economy.

21 So we're not doing too -- too bad, I
22 say, based on the story that has unfolded in this
23 hearing.

24 The next page, I talk a little bit
25 about some of the stuff I already have, Bipole III.

1 That's good news. And the following paragraph, I talk
2 about the good news about Keeyask apparently coming in
3 service about eleven (11) months earlier. I talk
4 about the good news of managing long-term interest
5 rates.

6 Remember a couple of hearings ago, I
7 was coming up here saying we've got this big bump of
8 borrowing and capital expenditures we've got to
9 swallow, and everybody was worried, what's going to
10 happen with interest rates. Are they going to stay
11 low? We were really, really worried about that.

12 The good news is that we've locked in
13 with averages of around twenty (20) years. Not only
14 do we have a long-term inflation protected asset,
15 we've got a lot of risk that has been taken away by
16 this prudent and well-thought-out financing over the
17 long term that Hydro Treasury has done.

18 We're told all other major projects
19 appear to be tracking on budget. That's good news.
20 Another good news story is that although there's
21 always going to be risk related to water flow, as
22 noted in Board Order 59/18, our reserves are more than
23 double, more than double what we needed and targeted
24 for, which is a five (5) year drought, and that was
25 important for Manitobans. It was important when we

1 did a risk hearing several years ago that this major
2 risk had a sufficient -- I know it's not cash, but a
3 sufficient amount of retained earnings in place to be
4 able to handle that bump should ever it come.

5 And it seems that without corporate
6 strategic direction the only option that current staff
7 who needed to make presentations to you could do was
8 to focus on short-term risks and events.

9 And I don't mean to belabour the point,
10 but there is an absence in this hearing of that
11 general outlook and that big picture that is so
12 helpful in help -- helping us understand where the
13 rate trajectory needs to go for this Crown-owned
14 utility.

15 And I say that Mr. Bowman and Mr.
16 Rainkie tried to bring that perspective, even though
17 we didn't have the full evidence, to that hearing.

18 Because really, and I said this is why
19 we don't need a hearing, well, it's like we're doing
20 well. Our test year is going to be this and we're not
21 going to look at the IFF, which is the direction of
22 the Board. Well, let's not talk about it, let's not
23 talk about that 3.5 percent rate path. But that would
24 be putting blinders on.

25 So we say that Hydro's short-term

1 vision should be contractors -- contrasted with the
2 big picture and long-term vision of Mr. Bowman and Mr.
3 Rainkie.

4 This is more a technical approach, I'll
5 admit the onus in a hearing, this Board has to make a
6 ruling in the public interest of a Corporation and all
7 of Manitobans, which we say are aligned, we need a
8 financially healthy corporation.

9 But we submit it's appropriate for the
10 PUB in the context of the lack of evidence with
11 respect to the long-term planning to be cautious in
12 assuming a 3.5 percent rate increase is needed or
13 justified when the forecast on which such an increase
14 might be grounded is missing. We say there's no
15 compelling evidence, that was adduced by Manitoba
16 Hydro, as I said. We didn't hear time and time again
17 well this is bad news on exports, this is bad news on
18 interest, this is bad news on our capital projects and
19 the estimates.

20 None of that, Mr. Bowman couldn't
21 identify any of them. All those key metrics, none of
22 them have been identified as negative.

23 And variability, what about
24 variability. We heard a lot about that. Well, that's
25 been part of every rate hearing I've seen we know it.

1 There's going to be variable results, water flow,
2 temperatures, but those revert back to average. We
3 get good years, we get bad years, we shouldn't get
4 unnecessarily excited if we get one bad year or if we
5 get one good year.

6 I now move to the top of page 8, and
7 conclusions for the variations in net income. We say
8 that they are not a reason for a rate request to
9 achieve a higher income.

10 Mr. Bowman explained his view, an
11 opinion as to why that's so. And know, for example,
12 that rate -- ratepayers -- there's a typo there -- has
13 set aside a substantial retained earnings to assist in
14 managing variations caused by prolonged drought.

15 So -- and we've had a big discussion at
16 the last hearing about, you know, if interest rates
17 move and we need to adjust to that, well we can, but
18 we don't have that information in front of us.

19 Balancing. I don't envy your jobs, but
20 every time we take a dollar out and we're kind of
21 getting practically oblivious or conditioned to talk
22 well, it's just \$10 million. But when you talk about
23 corporations and you talk about adding another 50 or
24 \$60 million in rates and the residential sector, we've
25 been told in evidence about 40 percent of that and the

1 other sectors is about 60 percent.

2 So 36 million is round numbers, if you
3 add 60 million, 60 percent times 60 million, \$36
4 million out of the economy that industries, commerce
5 won't have being put to avoid 2.19 percent. I don't
6 know how people invested for that. They're 2.91 over
7 forty-nine (49) years. All these Manitoba consu --
8 consumers, whether they're residential, industrial,
9 commercial, taking it out of their pockets can affect
10 some people, as Mr. Williams said, they have to make
11 hard decisions about what's -- former chair Jerry
12 Forrest said, the little lady on Agnes Street. Let's
13 not forget her.

14 So we say that above inflation
15 increases should not be given lightly and without
16 persuasive evidence from Manitoba Hydro.

17 The rest I'll be going through
18 relatively quickly. We hope -- it's under headings,
19 we hope it deals with other, I'm going to say
20 background issues. I'll be highlighting some of them.

21 I'm at the bottom of page 8. Just a
22 reminder that the financial position improved
23 substantially between the budget.

24 When we're here in December, it was
25 December 19th, I believe, at the pre-hearing, I

1 believe, if we check the transcript the record will
2 show it, I said well we're not so sure that, you know,
3 the story is that bad because we've had a lot of
4 water, and we're being asked to forego an IFF on the
5 basis that we need this truncated hearing and we need
6 to address bad water.

7 But we soon found out, like in February
8 when the update was filed about two months later, it
9 wasn't that bad. It was actually -- it reverted back
10 to average. But we were on the nineteenth (19th) on a
11 path of, well, it's bad water and we need to address
12 that by a truncated hearing.

13 And that was a swing -- a fairly big
14 swing in -- in revenue. And I went through that in
15 evidence, it was about 34 million difference when we
16 went from the bad water to going back to average
17 again.

18 So what has Hydro said in this case?
19 Well, uncertainty in net income, you're always going
20 to have that, it can't be a reason to increase stuff.

21 Impacts of Keeyask in-service. Well,
22 we knew we were going to have to absorb it. And last
23 rate hearing we rejected an aggressive approach to
24 absorbing that facility. And I'll take time to read
25 the quote that I've put in the mid -- middle of the

1 page, which I think is useful evidence that was
2 provided relating to where we're at today.

3 Mr. Bowman was testifying that in his
4 view, when we're talking about the IFF-14, which led
5 to the 2.7 percent increase, we were trying to get
6 over five (5) major hills, major achievements, and
7 we've done that and all with -- I raise it again in
8 this hearing -- which is unusual, no government
9 assistance.

10 The untold story here is this \$14
11 billion of capital build, if you take the 1 percent
12 guarantee fee and the .5 percent capital tax, it's a
13 very good revenue-generating proposition for the
14 province. It's been taking out of Hydro ratepayers
15 which are not the same as taxpayers. But that's a
16 huge amount that's being taken out of ratepayers
17 pockets.

18 So, we've been able to do all of that,
19 finance all of Hydro's ongoing operations from
20 operating cash flow, plus all sustaining capital and
21 where are we now? We're debating of whether we need
22 to try and achieve everything in one year instead of a
23 10-year horizon.

24 And over to the top of page 10,
25 continuing the quote, and it was done keeping retained

1 earnings near or above any estimate at the time of a
2 five-year drought.

3 We've now got retained earning levels
4 way beyond a five (5) year drought level. The
5 context, when I say we're doing very well as this NFAT
6 plan unfolds, is unfolding and in the context of the
7 history, I'm saying that in light of the fact that
8 even in IFF-14 when all these conditions were there,
9 we were already doing quite well for absorbing a very,
10 very challenging environment.

11 And the next paragraph is a little bit
12 out of context, but it does deal with this environment
13 -- challenging environment, and it relates to our
14 recommendation. And I've taken out Mr. Rainkie's
15 evidence to enhance the uncertainty analysis for the
16 next year rates, so we can have further analysis and
17 further guidance as to how to assess risk and assess
18 the financial reserve that we need to deal with that,
19 and also to consider a rule-based regulatory
20 framework.

21 I'm going to flip to page 11 and the
22 heading -- and, as I said, I'm not intending to read
23 everything. It's -- it's there for the Board's review
24 at a later date. I do want to kind of summarize and -
25 - and put a little bit more detail on some of the

1 statements I made with respect to a couple key points,
2 Bipole III in service.

3 When I cross-examined -- and this is
4 the second -- or third line under number 1, as of
5 December 31, 2018, 4.467 billion had been spent. Now,
6 remember Bipole III's been in service since July 4 of
7 2016, so we have nearly six (6) months of
8 decommissioning by that point and six (6) months of in
9 service and there's a remaining \$300 million budget.

10 It says it's allocated to final cleanup
11 costs and stuff. But when I cross-examined, yes, they
12 admitted that there possibility for that number to
13 come in and would -- lower and we don't need the full
14 three hundred thou -- 300 million.

15 Hopefully, there's some more good news
16 story, that 300 million would translate into about a
17 further \$13 million reduction to ratepayers. Again,
18 we don't know that, and it'll develop in the months
19 and maybe year to come.

20 Keeyask in service early. I have
21 trouble grappling with, and Mr. Bowman had trouble
22 reconciling, why we should be worried about that and -
23 - and why starting to generate revenue quicker is a
24 bad thing and why avoiding a million dollars of
25 expense and camp expenses is bad news and why avoiding

1 some significant amounts with respect to carrying that
2 debt is bad news.

3 And the one (1) thing in the note that
4 I put, which is at the bottom of the screen, it says,
5 "No PUB Round 19 updated," it does show the cost of
6 Keeyask escalating to 500 million.

7 But remember, if you look at the
8 exhibits and recall cross-examination, we've already
9 put into rates capital tax. That's not being
10 capitalized. We've already absorbed that. When you
11 look at the numbers we have today, we've already
12 absorbed part of that.

13 So I don't know if my numbers are
14 accurate, but there's also in the evidence, and it's
15 in the PUB book of documents, too, there's just a
16 range of incremental additional revenues. We've been
17 talking about 360 million. But depending on the page
18 you look at in PUB book 14, we have numbers ranging
19 from 250 million to 400 million in incremental
20 additional revenue through export sales.

21 There's no IFF on that. There's no
22 solid information. But even taking the \$360 million
23 calculation, which is what Mr. Bowman ha -- has done,
24 we get to covering costs of Keeyask roughly in the 9
25 percent range if you use \$15 million for each percent.

1 We do note the evidence of Mr. Rainkie,
2 that, in his view, the 18 percent rate impact
3 calculation that Hydro produced was nonsensical.

4

5 (BRIEF PAUSE)

6

7 MR. ANTOINE HACAULT: I've also taken
8 quotes from Mr. Bowman's evidence where he talks about
9 -- at the very bottom of the screen you'll see about
10 the numbers on what we're saving a month in interest
11 expense by an early in-service date because,
12 otherwise, it gets capitalized.

13 I have trouble getting my mind around
14 all these accounting things. But every time we have
15 to capitalize another \$25 million, that number goes
16 up. If it's eleven (11) months of \$25 million up we
17 don't need to capitalize, how can that not be good
18 news?

19 On the next page, remember also that
20 one (1) of the big stories that we were tracking was
21 geotechnical issues. Nobody knew what they were going
22 to be and the surprises we were going to have, and
23 that caused a lot of concern that we weren't going to
24 be able to keep the 8.7 billion budget on track.

25 Staff at Manitoba Hydro gave us good

1 news. A lot of that geotechnical work has been done
2 and that risk is gone. That was a huge risk. So the
3 risks both in financing these big projects have
4 largely been put away, and interest risk. The risks
5 of major material, problems with the budgets in
6 Keeyask have been reduced. There's always risk. We
7 acknowledge that.

8 And, as Mr. Bowman highlights, in the
9 last hearing, we had assumed we weren't going to be
10 able to do a contract. Well, now we know. And we
11 heard Mr. Cormie say, well, the SaskPower 2000 -- 250
12 megawatt deal with highlighted and there's potential
13 renewals of various agreements.

14 And remember that new Manitoba-
15 Minnesota line is going to give us access to another
16 area of export that we didn't have access to before,
17 and that's coming down the pipe, too.

18 Mr. Rainkie, in his evidence, and --
19 and here I'm -- it's in the middle of your screen.
20 It's the second paragraph in the quote on page 14 of
21 Mr. Rainkie's evidence:

22 "Myself and many other Manitoba
23 Hydro witnesses, a number of which
24 are in the current panel, testified
25 that the Corporation could manage

1 the risks, including multiple years
2 of net -- of negative net income and
3 the credit rating implications. And
4 the Corporation would take all
5 necessary actions to manage its
6 costs to mitigate the impact of
7 capital development on domestic
8 customers to the extent possible."

9 And then on top of page 15, continuing
10 in the quote, and this is from somebody who was the
11 lead in previous risk hearings, as Mr. Ghikas remind
12 us -- reminded us of several times in the cross-
13 examination, he's talking about updates concerning the
14 \$14 billion of investment have to be without a doubt
15 the biggest good news story for Manitoba Hydro, its
16 stakeholders, its bondholders in the history of the
17 Corporation and from all perspectives, business,
18 reputational, financial, and operational.

19 And his view was that the advance of
20 Keeyask is not a negative change in circumstances that
21 requires emergency regulatory action. It is the very
22 deliver of the plan that was put forward by Manitoba
23 Hydro at NFAT.

24 Next, interest rates. They've remained
25 low. Who would have thought, but they did. And we

1 heard that we can get forty-nine (49) year money at
2 2.9 percent. I don't know who in the world thinks
3 it's a good thing to do forty-nine (49) years at 2.9
4 percent.

5 We heard that some of the recent
6 issuances were at 1.7 percent, shorter term, and the
7 major one -- billion dollar one in US dollars was
8 locked in for five (5) years at 2.19 percent.

9 Now, if -- on the next page we've
10 reproduced the graph again, and you see the
11 volatility. So, yes, we need to kind of keep an eye
12 on this. We don't know what's going to happen, but it
13 is a good news story.

14 That darker jagged line has always
15 trended under the forecast line. And it made sense to
16 do the twenty (20) year WATM because of that tracking
17 and the narrowing between the margins of short-term
18 and long-term.

19 But even as of the end of March of
20 2019, fortunately for us, and Manitoba Hydro did a lot
21 of pre-funding, 1.1 billion, which is higher than what
22 they usually do, we had the benefit of lower rates.

23 And pre-funding \$1.1 billion may seem
24 insignificant, but it is significant. It's an
25 important good news story. And if I go to B(I) and

1 (ii), based on the evidence, we've been able to lock
2 in debts at below forecasted rates.

3 So in 2018/19, we locked in \$3.5
4 billion of borrowings at lower rates. And we're
5 forecasting for 2019 and we've locked in some pre-
6 funding, that we're going to be able to that again.

7 The next page, 'C', page 17, I just
8 note again the new export contract's locked in. 'D',
9 the heading:

10 "O&M sustaining capital ex --
11 expenditures on track."

12 And going to page 18, I'll -- higher
13 before what I called the noise heading. It's more at
14 the top of page 18. I take a quote from Mr. Bowman
15 regarding capital expenditures. And I raise this
16 because we've set MH-93 as kind of a -- some kind of a
17 measure. All long-term debt is lower by .58 billion.
18 And that was repeated by Mr. Rainkie, also.

19 And the biggest contributor of that is
20 capital investment. Cost control shows improvement,
21 to plant in-service is down by .543 billion, which is
22 -- which are both positive developments whereas
23 capital carries with it depreciation expense.

24 And we saw that for Bipole III, a lower
25 interest and lower depreciation expense on 270

1 million. And I understand that's not that -- the
2 entire 540. But the 270 on Bipole gave us 17 million.
3 And that's why I said I was a little bit confused with
4 Hydro and it's analysis because if 270 million on
5 Bipole gives us \$17 million of recurring service, I'm
6 not fully understanding it.

7 We don't have all the information,
8 unfortunately, why double that amount wouldn't give us
9 double the savings. We've got lower capital, lower
10 depreciation, lower borrowing, lower interest.

11 Next I have for the balance of this
12 presentation what I call noise. I don't think it
13 should be determinative in any way of what we're going
14 to do in rate regulation, capitalized interest and
15 cashflow.

16 Well, how do we show capitalized
17 interest? How do we portray it? That's just, in my
18 respectful submission, noise. It's important to
19 present it for messaging in a correct way though, and
20 Mr. Bowman made that point. And we say it's not
21 presented the right way.

22 We say that this can be informative,
23 but there needs to be trends, whether positive or
24 negative, that we need to pay attention to, a snapshot
25 from one year -- which is a heavy investment year. It

1 does not give that snapshot. Interest coverage ratios
2 that include capitalized interest are going to skew
3 the picture, so we don't have the corresponding income
4 to offset that.

5 We go to the bottom of page 19, and I
6 won't go through all the quotes that are there for
7 support on the statements that I make. We submit that
8 cash flow is not generally a primary topic that one
9 applies for considering sufficiency of rates,
10 especially given Hydro's hydraulic variability, and
11 the income statement has been -- that's typically been
12 the main financial statement for review.

13 And this is where I take quotes on the
14 presentation issue and the whole capitalized interest
15 portrayal, and I've also taken an extract from my
16 cross-examination of Mr. Rainkie on that issue.

17 Now, on page 21 -- and Mr. Williams
18 stole a bit of my thunder on this -- this cash flow is
19 not necessarily -- I think it is good news again. It
20 was -- Mr. Bowman was trying to assist
21 Mr. (sic) Fernandes when she was asking various
22 questions. They did the calculations, and I've
23 referenced the pages from 649 to 652, and they came to
24 a \$30 million deficit that you calculated as a
25 3 1/2 percent increase embedded into it.

1 And Mr. Bowman responds, and this is
2 what confuses -- yes. But program members for
3 four (4) years in the future. So you do 3 1/2 percent
4 plus 30 million, which is another 2 percent, at some
5 point during the next four (4) years, to be fully cash
6 positive in the first full year of Keeyask operation.
7 It shouldn't be in metric, but that's -- that's
8 excellent news to know that we're in that favourable
9 of a position to absorb such a big, big facility
10 through all the sustaining capital and everything else
11 with very little increase.

12 I'm going to skip to page 23, credit
13 rating agencies. I say that's noise again. The proof
14 is in the pudding. Forty-nine (49) year ultra-long
15 instruments at 2.91 percent. If those people with
16 that money didn't see long-term stability in this
17 Crown corporation, you think for a moment they'd put
18 forty-nine (49) of your money in this corporation? Of
19 course not.

20 That's a huge vote in confidence in the
21 plan; it's a huge vote in confidence in knowing that
22 even though we're going to have negative net income
23 for five (5) or more years, that we're on the right
24 track. We've got an inflation-protected facility.
25 And people aren't concerned about forty-nine (49)

1 years out because they've got that certainty that
2 we've got a well-run corporation with good assets that
3 are revenue generating.

4 And it's not a surprise. Part of my
5 cross-examination, I've put more than just the first
6 couple sentences and questions for completeness of the
7 record, as I brought back my Manitoba Hydro witnesses
8 to MH-14 and reminded everybody that all the bonding
9 agencies saw the IFF. Everybody knew what Hydro was
10 saying what was going to happen when it was seeking
11 rates back in 2015. Remember, that was nearly
12 a billion dollars of negative net income over
13 eight (8) years. And we approved a 2.75 percent as
14 one of the rate increases, not three point five (3.5),
15 and then three point nine (3.95), if my recollection
16 is correct -- be able to check the record.

17 And did people in the lending areas and
18 bond rating agencies get excited because it was a
19 2.75 percent increase? Of course not. Look at all
20 the good money that we got, and we continue to get.

21 Page 24, negative net income. I say
22 that's noise, too. We know there's -- we're planning
23 for it. The question is whether or not, from a
24 regulatory perspective and as Manitobans, we're
25 willing to say we planned for it. We're not going to

1 get excited when Hydro comes in and says we're losing
2 a hundred million dollars this year, now that Keeyask
3 is in place in a couple rate hearings from now.

4 Are we going to be disciplined enough
5 to say this is the rate path we were on? We know it's
6 a long-term asset. Let's not get excited. Let's tell
7 everybody, including the financial markets and the
8 bond rating agencies, the plan is unfolding as we
9 thought it would.

10 And just bottom of page 26 -- and I'm
11 getting close to my presentation, members of the
12 Board -- and this is extracting evidence from
13 Mr. Bowman. His evidence -- and I start with the
14 third last paragraph on that page:

15 "Would a lender at a credit rating
16 agency prefer that Manitoba Hydro
17 never draws down its reserves? It
18 surely would, but that's not the
19 framework we put into place for
20 rates. We put in place a framework
21 for rates that -- that we intend to
22 draw on those reserves at a time
23 when we need to. If that offends
24 somebody -- someone at a credit
25 rating agency, well I think that's

1 better than offending the purpose
2 for which we set up Manitoba Hydro
3 the way we have."

4 On the comment about we are running out
5 of time, which was made in the transcript on April 24:

6 "I want to be clear that we're only
7 running out of time if the intent is
8 that the rate increases now will
9 save Hydro from all net losses from
10 Keeyask and Bipole coming into --
11 into service in each year, and
12 that's not a reasonable standard."

13 And then further down, quoting
14 Mr. Rainkie on the same issue just before the heading
15 "water flows" on cross-examination by Mr. Peters.
16 Mr. Rainkie is going back to Manitoba -- what we've
17 referred to as MH-93. And he's saying:

18 "I mean, it's a planned thing, sir.
19 When you have a generating station,
20 you're going to have some losses.
21 It was understood by the company and
22 stakeholders, the capital markets,
23 as I said for about the last
24 five (5) years or more."

25 The last heading "water flows," again,

1 I say that's noise. We can look at graphs as to how
2 we get better years, worse years, the evidence as we
3 plan for the average. That's how the IFFs did
4 forecast work.

5 So we shouldn't get excited if water
6 flows are higher one year, because we know over time,
7 they're going to bare out the hundred and five (105)
8 year average, which is, I think, the time frames that
9 we're using.

10 We don't need to be reactive on that.
11 And if we are getting into a five (5) year drought --
12 and there are special circumstances that are telling
13 us we need to be reactive as the Board, I think, said
14 in 59/18 -- it's prepared to do that, and it will do
15 it.

16 But if we've been telling Manitobans
17 set aside reserves for risk drought because we've got
18 to have at least enough to do five (5) years and we've
19 got double that set aside by them right now, why set
20 it aside if we aren't going to use it? I know it's
21 not cash, but it has been set aside. It's out of
22 Manitoban's pockets.

23 And Ms. Bauerlein, when being asked
24 questions about water conditions, confirms after the
25 first question that's shown by Mr. Peters there, she

1 responds:

2 "Correct. Again, both have the
3 assumptions of the water -- the
4 water flow conditions being average
5 for the remainder."

6 So that's where the budget is for
7 2019/20, and we say there's no reason to get excited
8 and assume that everything is going to be negative for
9 net variations up or down. Why assume, without any
10 proof at all, that they're going to be negative? It's
11 just nonsensical to run a corporation based on a
12 permanent pessimistic view. We have to be ready for
13 risks. We are.

14 Thank you very much. That covers, you
15 know, in a fairly lengthy way. It's something I said
16 should be able to dealt -- be dealt with in a couple
17 sentences. And I apologize for the length, but I hope
18 the material is useful for consideration of this Board
19 in its deliberations. And I'd be happy to answer any
20 questions.

21 THE CHAIRPERSON: Thank you,
22 Mr. Hacault. Does the panel have any questions?

23 DR. HUGH GRANT: This is just one (1)
24 small point because the discussion about
25 intergenerational equity came up at the NFAT quite a

1 bit. But when you talk about that in the context of
2 the Bipole deferral account, it's not as though that
3 deferral account was a one (1) time lump sum tax on a
4 specific generation to pay for an asset, but it was
5 built into rates.

6 And so in a sense, future generations
7 are paying for that asset, maybe not as much as the
8 current one. But -- so it's not as though it's a
9 direct transfer from one generation to another. It's
10 an ongoing cost that next generations will be paying
11 for it.

12 And at the same time, you and I are
13 getting an immediate benefit, presumably from Bipole,
14 in terms of the reliability increase and things of
15 that nature. So I'm not quite sure that it has quite
16 the same intergenerational impacts as you might have
17 implied.

18 MR. ANTOINE HACAULT: It's always a
19 question of balancing what level of contribution each
20 generation makes, and Bipole doesn't have quite the
21 length of life of Keeyask. I'll acknowledge that.

22 But it did impose a fairly significant
23 immediate interest cost on the current generation.
24 All generations will be absorbing the capital cost
25 through the depreciation item in the financial

1 statement.

2 With that capital cost, assuming that
3 you're paying down your debt over time to some extent
4 or at least absorbing it through depreciation, it gets
5 reduced over time -- right -- as it -- you know, as
6 assets get depreciated or more fully depreciated.

7 So I take your point. It's not a
8 clear-cut picture as to which generation is bearing
9 more or less, but it is an immediate hit that the
10 current generation is absorbing in its fullest extent
11 at the beginning of the asset and which likely won't
12 continue for the entire length of that asset.

13 THE CHAIRPERSON: Thank you, Mr.
14 Hacault. Thank you.

15 Mr. Shefman, do you have any idea
16 approximately how long your submission will be?

17 MR. COREY SHEFMAN: Forty-five (45)
18 minutes, no more than an hour, to be sure, but --

19 THE CHAIRPERSON: Okay.

20 MR. COREY SHEFMAN: Closer to forty-
21 five (45) minutes, I guess.

22 THE CHAIRPERSON: I think we'll take
23 the morning break now then and we'll break for fifteen
24 (15) minutes now. Thank you.

25

1 --- Upon recessing at 10:11 a.m.

2 --- Upon resuming at 10:31 a.m.

3

4 THE CHAIRPERSON: Mr. Shefman, it's
5 nice to see you in person.

6 MR. COREY SHEFMAN: Thank you, Mr.
7 Chair. It's nice to be here in person. And I -- I'm
8 sorry I didn't bring my usual treats with me this
9 time. Next time, I promise.

10 Before I begin, I want to just note
11 that the Board should have copies and electronic
12 copies have been provided for counsel of our final
13 written submissions, which are Exhibit AMC-4-1; the
14 appendix to those submissions, which are last year's
15 written submissions, and that's 4-2; and our book of
16 authorities was provided electronically only. It is
17 4-3. One (1) hard copy will be provided to the Board,
18 unless Board members want additional hard copies as
19 well, of course, in which case, just let me know.

20

21 --- EXHIBIT NO. AMC-4-1: AMC's final written
22 submissions

23

24 --- EXHIBIT NO. AMC-4-2: AMC's previous year's
25 written submissions

1 --- EXHIBIT NO. AMC-4-3: AMC's book of authorities

2

3 FINAL SUBMISSIONS BY ASSEMBLY OF MANITOBA CHIEFS:

4 MR. COREY SHEFMAN: Boozhoo, I'd

5 like to begin by recognizing that this hearing is

6 taking place on Treaty 1 territory, and that Manitoba

7 Hydro's operations throughout Manitoba are located on

8 the original lands and waters of the Anishinaabe,

9 Cree, Oji-Cree, Dakota, and Dene peoples who have

10 lived on and governed these territories since lands --

11 since time immemorial.

12 The relationship between Manitoba Hydro

13 and First Nations in Manitoba has not always been

14 positive. First Nations across Manitoba continue to

15 pay some of the highest residential energy bills in

16 the Province despite on average facing significantly

17 more serious poverty and energy poverty in particular.

18 Sorry, Ms. Schubert, I -- I -- we don't

19 need to have the writ -- the written submissions up on

20 the screen. Thank you. In the written submissions, I

21 should note for the Board, are not the same as the

22 oral submissions. They're supplementary. They

23 provide a more granular detail.

24 Although Manitoba Hydro has taken some

25 steps towards beginning to address the serious issues

1 of poverty and disproportional impact facing First
2 Nations on reserve, those steps, in our respectful
3 submission, have been too little, too late, and First
4 Nations across Manitoba face energy burdens that are
5 completely divorced from those faced by the rest of
6 the Province.

7 Twelve (12) percent of First Nations on
8 reserve in Manitoba have had to choose four (4) times
9 in the previous two (2) years weather to pay their
10 Hydro bills or to put food on the table, compared to
11 only 5 percent in the rest of the Province.

12 Thankfully, at the last General Rate Application, this
13 Board took the courageous step toward substantive
14 equality, fairness, and balance through the creation
15 of the First Nations On-Reserve Residential class, and
16 freezing the rates for that class. AMC, on behalf of
17 its member First Nations, thanks the Board for that
18 decision.

19 In this proceeding, the onus is on
20 Manitoba Hydro to make the case that a 3.5 percent
21 increase on the First Nations on reserve class is
22 justified in these circumstances, and that it balances
23 the interests of the Utility with those of its
24 customers. That's its onus, and it's failed to meet
25 its onus.

1 The evidence in the record shows that
2 the differences in energy consumption characteristics
3 of the First Nations on reserve class that motivated
4 this Board's decision in 59/'18 remain true today, and
5 nothing that's on the record of this truncated
6 proceeding shows that the infrastructure and poverty
7 conditions that justify the implementation of the new
8 class have improved.

9 Manitoba Hydro has provided no evidence
10 to call those facts into question, or even to question
11 their relevance. Instead, Hydro has simply repeated
12 its mantra that the blanket 3.5 percent increase
13 applies to all classes, or rather, should apply to all
14 classes.

15 Hydro has not met its onus to justify
16 the 3.5 percent increase on the First Nations on
17 reserve class. It is therefore the position of AMC
18 that the First Nations on reserve class should again
19 be subject to a zero percent increase, regardless of
20 whether or not an increase is ordered for other
21 classes.

22 The last time Manitoba Hydro came
23 before this Board to apply for an increase in rates,
24 the Assembly of Manitoba Chiefs talked to you about
25 what makes First Nations in Manitoba, particularly

1 First Nations people living on reserve, different from
2 other ratepayers. We talked about how Hydro's
3 infrastructure sits on Indigenous lands and waters,
4 but the benefits of that infrastructure predominantly
5 flow to non-Indigenous communities.

6 First Nations in Manitoba
7 disproportionately face poverty with housing, which is
8 comparatively less fit and more difficult to heat.
9 All of the evidence supporting these facts was before
10 the Board when it made its decision in Order 59/'18,
11 and the decision to freeze the rates along with the
12 creation of the new class.

13 The Board was clear in his reasons for
14 that decision that the disproportionate impact of the
15 rate increase on First Nations living on reserve was
16 one (1) of the reasons for so ordering. In 59/'18,
17 the Board left the question of what was to happen to
18 the First Nations on reserve rate at -- at future
19 proceedings to future proceedings.

20 The proper differential between the
21 First Nation on reserve rate and the general
22 residential rate is an important question, and
23 deciding on the appropriate treatment of the First
24 Nations on reserve class when it comes to regular rate
25 increases is a significant issue, one which AMC agrees

1 needs to be addressed carefully and with a full and
2 proper evidentiary record.

3 But this isn't a regular rate
4 application hearing, and you don't have a regular
5 record before you. As you've heard extensively during
6 cross examinations, the breadth and depth of evidence
7 that the Board would normally rely on to make this
8 sort of decision, the tools, as counsel for Manitoba
9 Hydro called them yesterday, are not available before
10 you today, and in particular the record for the Board
11 in this proceeding does not include any evidence
12 whatsoever which speaks to the appropriate
13 differential between the two (2) residential classes.

14 Manitoba Hydro has simply assumed,
15 without evidence, without consideration, without even
16 turning its mind to the issue, that the First Nations
17 on reserve class should be subject to the same
18 increase. They made this assumption despite having
19 better information that was available to them and to
20 the Board at the last GRA, information which confirmed
21 that the challenges facing First Nations on reserve
22 are at least as acute, if not more so than they were
23 known to be at the last -- the last hearing.

24 AMC takes two (2) positions at this
25 hearing. First, that Manitoba Hydro has not

1 demonstrated a need for the requested 3.5 percent rate
2 increase at all, and the burden that increase would
3 place on ratepayers. This issue has been canvassed
4 extensively by other Intervenor, and I don't propose
5 to go into any more detail on it. Second, which I do
6 plan to talk about, is that if any rate increase is
7 ordered in general, the First Nations on reserve class
8 should be excluded from that increase.

9 Alongside that recommendation, AMC also
10 recommends that the Board should consider ordering
11 that the upcoming full GRA should include a
12 comprehensive consideration with appropriate evidence
13 from Hydro and expert evidence from Intervenor
14 addressing what's that appropriate differential
15 between the residential classes should be, or what the
16 methodology -- methodology should be for determining
17 the differential on an ongoing or a rolling basis.

18 Hydro is not provided that type of
19 evidence in this application, and in our view, it
20 wasn't in scope. But until our work on the
21 appropriate spread is done, and until the Board has an
22 evidentiary basis for making that determination, the
23 First Nations on reserve class rate should not
24 increase.

25 Given the vulnerability of the

1 population in the First Nations on reserve class, the
2 safer course of action is to avoid imposing further
3 burdens on that class. Denying the 3.5 percent rate
4 increase on that class strikes the right balance
5 between the Utility's interests and customer's
6 interests.

7 In our submission, there should be no
8 increase on the First Nations on reserve class for
9 three (3) reasons. First, the evidence which led the
10 Board to create the class and order the initial freeze
11 of the rate has not changed, and in some cases, is
12 even more striking today than it was in Order 59/'18.
13 Second, Manitoba Hydro has not -- has not do --
14 introduced any evidence to justify a rate increase for
15 the First Nations on reserve class, and simply relies
16 on its assertions. And third, in making its decision,
17 the Board must consider the Charter values
18 underpinning the right to equality to ensure that:

19 "Charter protections are upheld to
20 the fullest extent possible, given
21 the statutory objectives --"

22 -- of the Board. And that's a quote
23 from Trinity Western v. Law Society of British
24 Columbia, at paragraph 57.

25 All of our references to cases are in

1 the book of authorities, which is provided to you
2 electronically, and are fully cited in our written
3 submissions.

4 So I'm going to talk about the first
5 reason why the rate freeze on the First Nations on
6 reserve class should be continued. As I've said, last
7 year, the Board made its decision to create the class
8 and issue the freeze based on the facts before it.
9 The evidence on the record today is that those
10 circumstances which set First Nations on reserve apart
11 from other residential ratepayers continue to be
12 relevant and have materially improved.

13 All the evidence that was before the
14 Board last year when it created the First Nations on
15 reserve class and applied a rate freeze to it has also
16 been confirmed by the evidence put before the Board
17 this year. It hasn't just been confirmed. The more
18 up-to-date and thorough information contained in the
19 2017 residential energy use study tells us that what
20 can -- sorry, that -- the 2017 Residential Energy Use
21 Survey confirms for us what the evidence in the last
22 GRA merely suggested, that energy poverty is
23 substantially higher on First Nations reserves than
24 among the general population.

25 So what is this evidence? It's

1 evidence that First Nations on reserve generally don't
2 have the option of heating their homes with natural
3 gas, and are instead forced to use electricity, which
4 is much more expensive. That's at the report of Mr.
5 Raphals, page 6.

6 Evidence that on reserve homes will be
7 on -- will, on average, consume about 40 percent more
8 electricity per square foot than similar off reserve
9 homes, and that's at Raphals, page 7 and page 8.

10 Evidence that poverty is significantly
11 more prevalent on reserve with more than half of
12 households reporting incomes under twenty-five
13 thousand dollars (\$25,000) per year, which is also
14 Raphals, page 8.

15 That evidence includes evidence that 72
16 percent of on reserve First Nation consumers --
17 customers spend 6 percent or more of their total
18 income on energy compared to 16 percent of off -- of
19 off reserve customers. Yes, sorry, and nearly half of
20 on reserve First Nation customers, 48 percent, spend
21 10 percent or more of their total income on energy
22 compared to a mere 5.8 percent of off reserve
23 customers. And that's at AMC-MH-1-10A.

24 First Nations on reserve are three (3)
25 times more likely to have had to reduce spending on

1 food in order to pay their energy bills, which is at
2 Raphals, page 11, and First Nations on reserve face
3 bills that are 82 percent higher, 82 percent higher
4 than the average bill for City of Winnipeg households.
5 That's at Raphals, page 12.

6 All of these facts are on the record,
7 and I think very significantly are uncontroverted by
8 the evidence. There is no question about these facts
9 before you. Manitoba Hydro didn't challenge them and
10 declined to cross-examine Mr. Raphals on them. This
11 Board is entitled to rely on his report, and should,
12 in fact, do so.

13 And as I've said, all those facts are
14 at least as bad, as if not more serious than, the
15 evidence that was before the Board when its made its -
16 - when it made its decision in 57/'18. The Board's
17 reasoning that:

18 "Rate increases should not widen the
19 existing gap between First Nations
20 living on reserve and other
21 Manitobans."

22 Is an argument in favour of extending
23 the freeze for another year. Otherwise, all the
24 evidence available to the Board today points to the
25 proposed increase increasing or widening exactly that

1 gap that was talked about in the last rate up -- rate
2 decision.

3 Which leads us to reason number 2 why
4 the freeze should be extension -- extended, Manitoba
5 Hydro has not met its burden. You've heard over the
6 course of this hearing that Manitoba Hydro's request
7 is for a -- a blanket increase of 3.5 percent, but
8 Manitoba Hydro has provided no evidence whatsoever to
9 support their request to have the 3.5 percent increase
10 apply to the First Nations on reserve class in
11 particular. They have simply included that class in
12 their blanket rate increase request.

13 At times, it has seemed as if Manitoba
14 Hydro has gone out of its way to avoid recognizing
15 that the First Nation -- that First Nations people on
16 reserve are uniquely situated, as the Board found in
17 57/'18. Manitoba Hydro has admitted that it did not
18 engage in any consultations with First Nations
19 regarding the 3.5 percent requested rate increase, or
20 about the impact of that rate increase on First
21 Nations or First Nations ratepayers.

22 We know that the rate in -- the rate
23 freeze for the First Nations on reserve class doesn't
24 actually impact Manitoba Hydro's bottom line. It
25 doesn't affect their revenue requirement, because that

1 revenue is made up by additional small increases to
2 the other classes. Manitoba Hydro has acknowledged,
3 transcript of April 25th, page 530, lines 3 to 18,
4 that its net income would be the same whether or not
5 the First Nations on reserve class was frozen.

6 And when it came down to the key issue
7 of differentiation, areas where the First Nations on
8 reserve class is uniquely, is differently situated
9 from the residential class, areas where they are not
10 alike, and so should not be treated alike, Manitoba
11 Hydro admitted that they simply did not give those
12 issues any consideration. They had put on their
13 blinders, charged full steam ahead through this
14 process. In Ms. Carriere's own words:

15 "The application was made on the
16 basis of an across-the-board rate
17 increase, so we didn't look at any
18 differentiation between any of the
19 customer classes."

20 And that's at page 536 of the
21 transcript, lines 21 to 23.

22 The Manitoba Hydro Electric Board did
23 not turn its mind to differences between the different
24 residential classes, and didn't account for those
25 differences in its application. It closed its mind to

1 relevant factors. Their process was deficient, and so
2 unsurprisingly, their result was deficient.

3 Manitoba Hydro's single-mindedness in
4 this is really quite striking. They didn't consider
5 the fact that on reserve homes consume an average of
6 40 percent more electricity on a per square foot
7 basis. They didn't consider consumption patterns in
8 all. They didn't consider bill impacts as well, that
9 72 percent of on reserve First Nation customers spend
10 6 percent of their -- or more of their total income on
11 electricity bills. The fact that they didn't consider
12 these factors is at page 537 of the transcript, lines
13 22 -- sorry, page 537 of the transcript.

14 These are factors which go to the very
15 heart of the existence of the First Nations on reserve
16 class, and the reasons for the rate freeze, and yet
17 Manitoba Hydro simply ignored them. One (1) of the
18 factors that the Public Utilities Board will have to
19 consider when determining whether to approve the
20 requested rate increase is whether Manitoba Hydro's
21 request is reasonable.

22 What does 'reasonable' mean in this
23 circumstance? In order from Manitoba Hydro's request
24 for a 3.5 percent increase on the First Nations on
25 reserve class to be reasonable, it must be justified,

1 transparent, and intelligible. The Supreme Court
2 tells us that's that what 'reasonable' means at
3 paragraph 47 of Dunsmuir.

4 Yet Manitoba Hydro's request is none of
5 those things. Manitoba Hydro has admitted that it
6 didn't turn its mind to key factors that make the
7 First Nations on reserve class distinct from other
8 factors -- other classes, and Manitoba Hydro has
9 admitted that they proceeded with their application
10 for an across-the-board rate increase without giving
11 consideration to the different impacts of that
12 increase.

13 How can a decision be justified,
14 transparent, or intelligible if the decision-maker --
15 the requester, in this case -- simply didn't consider
16 those factors? Every piece of data noted by Mr.
17 Raphals, and every piece of data we are citing with
18 respect to the differences between the First Nations
19 on reserve class and other residential class comes
20 from Manitoba Hydro itself. It's their data. It's
21 frankly inexplicable that they failed to consider any
22 of it before coming to this Board to ask for
23 permission to impose additional burdens on this
24 already vulnerable population.

25 A decision can't be -- also can't be

1 justified, transparent, or intelligible, and so can't
2 be reasonable, if that decision was arbitrary, and
3 that's exactly what Manitoba Hydro is telling us, that
4 their decision was arbitrary.

5 Manitoba Hydro failed to take into
6 account relevant considerations, and made its decision
7 to apply for a 3.5 percent rate increase across-the-
8 board, including on the First Nations on reserve
9 class, on the basis not of the evidence, but on the
10 basis of its own preference.

11 It may be the case, although it doesn't
12 appear to us that it is, that the \$59 million by which
13 Hydro seeks to increase its net revenue is legitimate
14 and necessary, but even if that is the case, it does
15 not automatically follow, and this is where Manitoba
16 Hydro's logic falls, it does not automatically follow
17 that the additional revenue needs to come in equal
18 proportions from each class or that it should come at
19 all from the First Nations On-Reserve Class.

20 It is not enough for Manitoba Hydro to
21 simply assume that the increase should apply across
22 the board, which is what they've done, particularly
23 since the only evidence available to this Board speaks
24 to the contrary, speaks to the need to treat the First
25 Nations On-Reserve Class differently.

1 Put simply, what Manitoba Hydro has
2 done here is to break one of the cardinal rules of
3 rate-making. They've treated dissimilar groups
4 similarly. The requirement that likes be treated
5 alike includes the opposite, that differently situated
6 classes must be treated differently.

7 Now, the third reason why this Board
8 should continue the rate freeze on the First Nation
9 On-Reserve Class, is that when you're making your
10 decision, you must -- you're obligated according to
11 the Supreme Court, to turn your minds to the impact of
12 the decision on Charter values which are impugned
13 year.

14 The decisions of all administrative
15 decision-makers, including the Public Utilities Board,
16 must be consistent with the values that underpin the
17 Charter of Rights and Freedoms. This isn't new law
18 and it's not controversial law. The Supreme Court has
19 talked about it repeatedly, from Dore v. Barreau du
20 Quebec to Baker v. Canada, Loyola High School v.
21 Quebec, and most recently Trinity Western University
22 versus British Columbia -- versus the Law Society of
23 British Columbia.

24 From a practical perspective, the
25 Supreme Court has explained that administrative

1 decision-makers are required to ensure that their
2 decisions reflect a proportionate balance between the
3 decision-makers, your statutory objectives, and the
4 Charter values engaged by their decision, by your
5 decision.

6 A proportional balancing is one where
7 the Charter values at stake are protected as fully as
8 possible, that's the Supreme Court's words, in light
9 of the statutory objectives.

10 In Trinity Western, the Supreme Court
11 explained what the Dore and Loyola test looks like.
12 It has two steps.

13 First, the administrative decision-
14 maker asks whether the decision -- the administrative
15 decision engages the Charter by limiting Charter
16 protections, both rights and values.

17 If so, the second question is whether
18 in assessing the impact of the relevant Charter
19 protection, and given the nature of the decision and
20 the statutory and factual contexts, the decision
21 reflects a proportionate balancing of the Charter
22 protections at play.

23 And it's important that the Court talks
24 about Charter protections, not just Charter rights.
25 Administrative tribunals like the Public Utilities

1 Board are not simply looking at whether, for example
2 in this case, Section 15 of the Charter was violated
3 but whether the values underpinning Section -- Section
4 15, and we submit the relevant value here is the -- is
5 the value of substantive equality, whether those
6 values are impacted by the decision. We say they are.
7 Now, what are of the Public Utilities Board statutory
8 objectives, because you have to engage in that
9 proportional balancing.

10 Those statutory objectives, as was
11 canvassed at the last hearing, can be found in a few
12 different places. One of them is Section 25(4) of the
13 Crown Corporation's Governance and Accountability Act.
14 We go into greater detail about what those statutory
15 objectives are in our written submissions.

16 But for now I think talking just about
17 the Supreme Court's explanation in ATCO Gas and
18 Pipelines Limited v. Alberta provides a clear and
19 succinct description of what rate regulator -- what
20 regular -- energy regulator statutory objectives tend
21 to be, and obviously it's a different statute, but the
22 principles are the same, and as you'll see, what the
23 Supreme Court says in ATCO applies here as well.

24 At paragraph 7, they explain the -- the
25 objective of the Board is:

1 "To set just and reasonable rates."

2 Frankly I don't think that there's
3 going to be any disagreement that that's an objective
4 of this Board.

5 When you read that together with
6 Section 25(1) of the Crown Corporation's Governance
7 and Accountability Act, which specifically assigns the
8 Public Utilities Board the responsibility to regulate
9 Hydro's rates for services, it's clear that the
10 statutory objective, the relevant statutory objective
11 in this case, of the Public Utilities Board is to
12 balance the interests of ratepayers with the needs of
13 the Corporation in order to set a just and reasonable
14 rate for electricity.

15 Now, in order to comply with the
16 Supreme Court's decision in Dore, the PUB must
17 consider that objective in light of the Charter values
18 at issue here, such that the Charter values are
19 protected as fully as possible. That's what the
20 Supreme Court says.

21 In this hearing, as was the case in the
22 last GRA, the Charter value we say engaged by the
23 Board's decision is substantive equality, which arises
24 out of the right to equality found at Section 15(1).
25 And to be clear, they're different.

1 We're not suggesting that Manitoba
2 Hydro is violating the right in the Charter but they -
3 - but the proposed -- the decision before you, the
4 proposed rate increase, would negatively impact the
5 Charter value underpinning that right, substantive
6 equality.

7 Substantive equality of course is the
8 idea that treating everyone the same is not equality,
9 that sometimes you need to treat historically
10 disadvantaged classes of people differently in order
11 to put them in an equal footing.

12 So as I mentioned a moment ago, the
13 first task of the Board to comply with Dore is to
14 determine whether the decision you're being asked to
15 make has the potential to limit Charter protections,
16 that First Nations people living on reserve in
17 Manitoba are protected by Section 15 of the Charter
18 is, I hope, not a matter for debate.

19 First Nations people living on reserve
20 are -- are a historically disadvantaged group as set
21 out in the evidence before you, and particularly so
22 when it comes to electricity services.

23 As we explained in our submissions in
24 the last GRA, the root of equality values under the
25 Charter is our shared:

1 "-- awareness that certain groups in
2 society have been historically
3 discriminated against and that the
4 perpetuation of such discrimination
5 should be curtailed."

6 It's from Quebec v. A (phonetic), a
7 decision out of the Supreme Court.

8 Policies and -- policies, practices,
9 and procedures will run afoul of Charter protection if
10 they serve to freeze a discriminator -- discriminatory
11 status quo, or, and this speaks directly to your
12 decision at the last GRA, if they serve to widen the
13 gap between a historically disadvantaged group and the
14 rest of society. That's also from Québec v. A
15 (phonetic).

16 The language of course echoes your
17 decision in 57/18 that the First Nations On-Reserve
18 rate was created and the rate freeze implemented to
19 prevent the gap between First Nations On-Reserve and
20 other Manitobans from widening.

21 We think that this is the right
22 conclusion to be drawn from Charter values,
23 recognizing that First Nations on reserve are
24 protected by Section 15, and in light of the evidence
25 before you on the disproportionate impact on them of

1 the rating of the proposed rate increase. Protecting
2 the Charter value of substantive equality as fully as
3 possible means the Board has to consider how the
4 proposed increase will widen that gap, because we know
5 that First Nations on reserve have an infrastructure
6 deficit, and therefore use significantly more energy
7 than other residential ratepayers and face
8 significantly higher rates of poverty and energy
9 poverty.

10 Because we know those things, it
11 follows that ordering a 3.5 percent increase to the
12 rates faced by that class will do exactly what the
13 proportionate balancing is meant to avoid. It will
14 widen the gap.

15 That the Dore-Loyola approach in this
16 case requires the Board, in our submission, to keep
17 the First Nations On-Reserve rate frozen becomes even
18 clearer when you consider the other side of the scale,
19 the statutory objective side of the scale.

20 As I noted earlier, whether Manitoba
21 Hydro actually needs the -- the \$59 million it has
22 requested remains an open question, but assuming for a
23 moment that it does, the Board's objective that Hydro
24 inj -- that Hydro remains on sound financial footing
25 can be fully met while also providing full protection

1 to the equality values I've just been talking about.
2 This may be one of the rare cases where the scale can
3 be perfectly balanced.

4 As the Board did in -- in the last GRA,
5 by offsetting the impact of the First Nations On-
6 Reserve rate for use with adaptive increases for other
7 classes, Manitoba Hydro gets its revenue, the Board
8 has fully met its objectives while still remaining
9 consistent with the Charter value of substantive
10 equality.

11 And as for the impact on the other
12 ratepayers who will absorb the cost of the rate
13 freeze, according to Manitoba Hydro, it's 22 cents per
14 month on a 1,000 kilowatt -- per kilowatt hour bill.

15 In this case, the cost of advancing
16 equality for First Nations living on reserve is
17 twenty-two (22) cents per month.

18 And if the Board decides, as some
19 intervenors have suggested, to order a lower rate
20 increase on the other classes than 3.5 percent, then
21 the cost to those classes of making up the difference
22 is even less than twenty-two (22) cents per month.

23 The Board's role in weighing and
24 protecting Charter values is particularly important in
25 this case because of the decision -- because the

1 decision of the Manitoba Hydro Electric Board to apply
2 for this 3.5 percent blanket increase, so thoroughly
3 ignores the disproportionate impact of that increase
4 on First Nation -- First Nations on reserve, and the
5 Charter values that that impact implicates.

6 The evidence before this Board is that
7 the Manitoba Hydro Electric Board did not consider the
8 Charter value of equality when it decided to apply for
9 a 3.5 percent rate increase on the First Nations On-
10 Reserve Class.

11 Now, to be clear, the Public Utilities
12 Board would still have needed to engage in that -- in
13 this disproportional balancing, would still need to
14 discharge its responsibility under the Dore-Loyola
15 framework, had the Manitoba Hydro Electric Board done
16 so as well, but had they done so and had they provided
17 their reasoning, their rationale, for applying for
18 this increase anyways in light of the Charter values,
19 that may have been a factor for this Board to
20 consider; but they didn't.

21 As it stands, Manitoba Hydro's
22 application is entirely indifferent to the Charter and
23 to Charter values, despite Manitoba Hydro being fully
24 aware of the disproportionate impact of rate increases
25 on First Nations on reserve and being aware of the

1 Board's view expressed in the last General Rate
2 Application decision of that impact.

3 Board members, when you make your
4 decision on this application, the Supreme Court is
5 clear that it's your legal obligation to engage in the
6 proportional balancing that I've just described. We
7 submit that you must ask yourself whether the decision
8 that you arrive -- at which you arrive, protects the
9 Charter value of substantive equality to a sufficient
10 extent, in light of what you know about the historical
11 disadvantage faced by First Nations on reserve and the
12 disproportionate impact of this rate increase on the
13 First Nations On-Reserve Class on the one side of the
14 scale and the non-existent impact of a rate freeze on
15 Manitoba Hydro, along with a de minimis impact on
16 other ratepayers who will make up the revenue
17 differential on the Hydro -- the other side of the
18 scale, the revenue side of the scale.

19 Taking all of those considerations into
20 account, we submit that the only reasonable decision
21 is one which includes no rate increase for the First
22 Nations On-Reserve Class.

23 In AMC's view, this application is all
24 about balance. It's about balancing the lack of
25 actual useful evidence tendered by Manitoba Hydro with

1 Manitoba Hydro's assertions. It's about balancing the
2 impact of any increase on the First Nations on reserve
3 against the effects to other residential consumers of
4 having to make up the twenty-two (22) cents per month
5 difference if a rate freeze is ordered, and it's about
6 balancing the Board's statutory objectives with its
7 obligation to ensure that Charter values are protected
8 to the greatest possible extent.

9 In simply including the First Nations
10 On-Reserve Class in the blanket increase to be applied
11 to all customer classes, Manitoba Hydro is essentially
12 asking the Board to forget that it created the First
13 Nations On-Reserve Class at all. It's trying to do an
14 end run around the Board and skip the Court of Appeal
15 process which it initiated.

16 And we should be clear, Manitoba Hydro
17 chose not to seek an interim stay on the First Nations
18 On-Reserve rate in its application to the Court of
19 Appeal, and the request for such a stay in the
20 reconsideration decision of this Board was refused.

21 If Manitoba Hydro had been granted a
22 stay at the reconsideration stage, or if it had even
23 asked for a stay at the Court of Appeal, then its
24 argument that the Board ought not differentiate the
25 rates further until the Court of Appeal proceedings

1 are completed might have some merit, but Manitoba
2 Hydro had that opportunity and they didn't take it.
3 They didn't ask the Court of Appeal for an interim
4 stay.

5 For Manitoba Hydro to now come to the
6 Board and ask the Board to treat the First Nations On-
7 Reserve Class as if it did ask for and receive a stay
8 is inconsistent with the Board's decision in Order
9 90/18.

10 In our respectful submission, it would
11 be an error for the Board to accept Manitoba Hydro's
12 submission that the Board's hands are tied by the
13 Court of Appeal proceedings.

14 The First Nations On-Reserve Class was
15 created according to the Public Utilities Board in
16 response to the degree of poverty on reserves. The
17 freeze order in the last rate application hearing was
18 an extension of that logic. The Board adopted AMC's
19 argument that rate increases should not widen the
20 existing gap between First Nations living on reserve
21 and other Manitobans.

22 The Board will consider the impact on
23 other ratepayers of maintaining the rate freeze for
24 the First Nations On-Reserve Class in light of the
25 pressing and substantial objectives, which are the

1 basis of that rate. According to Manitoba Hydro
2 itself, the impact on other residential ratepayers of
3 maintaining the freeze would be an additional 0.1
4 percent arising out of the current application, 0.23
5 percent cumulatively.

6 Manitoba Hydro has produced no evidence
7 whatsoever to suggest that the 0.23 percent or twenty-
8 two (22) cents per month that reflects on a 1,000
9 kilowatt hour bill would be an unreasonable burden or
10 any burden whatsoever to the residential ratepayers to
11 whom that additional 0.23 percent would apply.

12 In the absence of such evidence, it's
13 reasonable for the Public Utilities Board to consider
14 that 22 cents per month exactly what it appears to be,
15 de minimis, and certainly not a factor which would tip
16 the scale against the goal of preventing the widening
17 of the gap between First Nations on reserve and other
18 Manitobans.

19 Finally, we submit that Manitoba Hydro
20 should not be permitted to come to this Board and
21 expect to be granted a rate increase for a particular
22 class when it has provided no evidence to justify an
23 increase to that particular class.

24 The Public Utilities Board created the
25 First Nations On-Reserve Class specifically to prevent

1 the gulf between First Nations on reserve and other
2 Manitobans from widening. That goal remains laudable
3 and remains correct on the evidence. We submit that
4 maintaining the rate freeze in the present
5 circumstances is a reasonable way of making progress
6 towards achieving that goal.

7 Subject to any questions, those are the
8 submissions of the Assembly of Manitoba Chiefs.

9 THE CHAIRPERSON: Thank you, Mr.
10 Shefman. I'll ask the panel if they have any
11 questions. Any questions?

12 I've got a question, Mr. Shefman. I
13 note the criticism of Manitoba Hydro for not providing
14 evidence on a differentiated rate. I guess the
15 question I have for you is, given the fact that
16 Manitoba Hydro has challenged the jurisdiction of this
17 Board to actually create a separate class, wouldn't it
18 be hypocritical or -- or affect their case to come
19 before us and say here's why you shouldn't do it when
20 in fact they're in the Court of Appeal saying you
21 don't have the jurisdiction to do -- to actually
22 create the class.

23 MR. COREY SHEFMAN: Thank you, Mr.
24 Chair. I -- at the risk of giving counsel for
25 Manitoba Hydro ideas, although I'm sure they're

1 perfectly capable of coming up with them themselves,
2 I think there are a number of ways they could have
3 dealt with this concern. The obvious one that springs
4 to my mind would be to provide the evidence to the
5 Board, making it clear that they're doing so under
6 objection; that they don't think the Board has this
7 jurisdiction, but recognizing that the law of the
8 land, as it were currently, the -- the enforced
9 decision that binds Manitoba Hydro is the Public
10 Utilities Board -- Utilities Board's decision that you
11 do have that jurisdiction.

12 They've -- certainly they've applied
13 for leave to appeal but the Court of Appeal hasn't
14 ruled and they had -- like I said, they had the
15 opportunity to seek a stay and they didn't.

16 Were they not concerned about the go-
17 forward impacts and -- and the pace at which justice
18 sometimes rolls slowly then they could -- they could
19 have and arguably should have sought a stay so that
20 they could then come to the Board, as they've done
21 now, and say you don't have this jurisdiction, or at
22 least temporarily, you don't have this jurisdiction
23 and so we're going to keep talking about the rates on
24 a blanket basis as we've done.

25 But as far as we're concerned, the --

1 the law that binds them right now is the decision of
2 this Board which says that you do have the
3 jurisdiction. And I mean, frankly, this Board has
4 made that clear repeatedly, not just in the last
5 General Rate Application decision but in 90/'18 and in
6 all of the previous decisions where you've addressed
7 this, as you say -- as was cited in those decisions.

8 So frankly, I don't think it's enough
9 for Manitoba to stick its -- Manitoba Hydro rather to
10 stick its head in the sand and say, we don't agree
11 with you. We're just going to keep pretending that
12 we're right and you're wrong.

13 You made a decision. The Board made a
14 decision and it's Manitoba Hydro's obligation to -- to
15 move forward in compliance with that decision until
16 the Court of Appeal says otherwise.

17 MR. CHAIRPERSON: Thank you. Any --
18 thank you, Mr. Shefman.

19 MR. COREY SHEFMAN: Thank you.

20 MR. CHAIRPERSON: Mr. Wheeler, would
21 you like to sit here or would you like to move.
22 Either one is fine with us.

23

24 FINAL SUBMISSIONS BY MKO:

25 MR. JARED WHEELER: I think I'd like

1 to move over there.

2 MR. CHAIRPERSON: Okay, good.

3 MR. JARED WHEELER: And I think that
4 I'd probably need about five (5) minutes to hand out
5 our paper copies of our PowerPoint and shift over
6 there.

7 THE CHAIRPERSON: That's fine. We'll
8 -- we'll stay in the room while you do so.

9

10 (BRIEF PAUSE)

11

12 THE CHAIRPERSON: Good morning, Mr.
13 Wheeler. Please proceed.

14 MR. JARED WHEELER: And good morning
15 to you, Mr. Chair and Board members, and everyone else
16 in the room with us this morning.

17 We'd also like to thank and acknowledge
18 anyone who may be joining us this morning by
19 monitoring this hearing online. I understand my wife
20 might be watching. It depends on if she is busy in
21 the office right now or not

22 THE CHAIRPERSON: Mr. Wheeler, mine
23 lasted two (2) minutes so.

24 MR. JARED WHEELER: I don't expect
25 mine would last much longer.

1 THE CHAIRPERSON: Hopefully she's
2 looking on right now. Your wife will be watching now.

3 MR. JARED WHEELER: And once again,
4 my name is Jared Wheeler. I did say in my notes that
5 my colleague, Mr. Buchart might be beside be although
6 he's over there. We are counsel to Manitoba
7 Keewatinowi Okimakanak Inc, or MKO, at at this
8 important hearing in to Manitoba Hydro's 2019/'20
9 Electric Rate Application.

10 And as you know, as one (1) of the
11 approved Intervenors, MKO's role is to assist the
12 Board in its understanding of the issues before you in
13 this hearing.

14 Throughout our closing submission this
15 morning, you will hear words like "relationships" and
16 "in perpetuity." You'll hear numbers like \$20
17 billion, as well as six dollars and thirty cents
18 (\$6.30). You'll hear what \$1.42 million means to a
19 customer class experiencing significant energy poverty
20 and what \$1.42 million means to a monopoly Crown
21 corporation experiencing a significant improvement to
22 its financial forecasts.

23 I see I shamed Mr. Buchart into joining
24 me unintentionally somewhat. MKO's understanding is
25 that there is one (1) core issue before this Board:

1 Has Manitoba Hydro discharged its onus in establishing
2 that a 3.5 percent across-the-board rate increase is
3 just and reasonable.

4 And by balancing the financial health
5 of the Corporation in the interests of ratepayers, is
6 the requested rate increase in the public interest?

7 At the outset, MKO recommends that the
8 Board find that Manitoba Hydro has not discharged its
9 onus in establishing that a 3.5 percent across-the-
10 board rate increase is either just and reasonable, or
11 in the public interest and, therefore, the Board
12 should deny the rate increase as requested.

13 However, from MKO's perspective to
14 arrive at a determination on Manitoba Hydro's
15 requested rate increase, the Board must consider a
16 number of subsequent and discrete sub-issues. Is any
17 rate increase just and reasonable?

18 In the event the Board should find that
19 a rate increase is justified, multiple issues must be
20 considered. Is 3.5 percent, as requested, the most
21 appropriate rate increase? And also to which customer
22 classes should a rate increase apply; specifically,
23 should a rate increase be applied to the First Nations
24 On-Reserve Residential customer class and also should
25 a rate increase be applied to customers in the diesel

1 zone?

2 MKO submits that a rate freeze should
3 continue on a public and social policy basis with
4 respect to all aspects of the First Nations On-Reserve
5 Residential rates, such that the rates for this class
6 should be maintained at the August 1, 2017 approved
7 residential rate.

8 In addition, as rate freeze should
9 continue with respect to all aspects of the diesel
10 residential rates such that the rates for this class
11 should also be maintained at the August 1, 2017
12 approved residential rate.

13 In addition, Manitoba Hydro has not
14 applied to increase the non-grid portion of the diesel
15 general service rate nor requested an increase to the
16 government and First Nation Education rate in this
17 application. And this came out through the IR process
18 when the Consumers Coalition asked -- posed some
19 questions on this.

20 Therefore, it is MKO's pos -- position
21 that given that Manitoba Hydro has not applied to
22 increase those portions of those rates, there should
23 not be any change to those rates.

24 Furthermore, MKO's blanket position is
25 also that all aspects of all rates for all other

1 classes in the diesel zone should be maintained at
2 their current rates with no rate increase being
3 applied before a cost of service study specific to the
4 diesel zone is completed.

5 Regarding a rate increase that may be
6 granted with respect to the remaining customer classes
7 and what rate increase might be appropriate, MKO takes
8 no position.

9 MKO is a nonprofit advocacy
10 organization that has been in existence for more than
11 thirty-five (35) years and provides a collective voice
12 for more than sixty-five thousand (65,000) Treaty
13 First Nation citizens in the northern part of the
14 Province now called Manitoba. All citizens of the MKO
15 First Nations, the MKO First Nation government
16 facilities, and all entities operated by MKO First
17 Nations receive electrical service solely from
18 Manitoba Hydro.

19 If approved, the proposed rate increase
20 will directly and disproportionately affect the MKO
21 member First Nations and their constituents. The
22 majority of MKO citizens are in the low income
23 category, and the general service customers
24 represented by MKO have limited, if any, ability to
25 absorb any additional costs. The First Nation

1 governments are general service ratepayers, the four
2 (4) diesel First Nations, the electricity bills for
3 the schools and are also First Nation education rate
4 customers.

5 MKO is governed by the elected Chiefs
6 of twenty-six (26) sovereign First Nations,
7 signatories to Treaties 4, 5, 6, and 10, and receives
8 its mandate by resolution of the MKO Chiefs and
9 General Assembly.

10 And before we go further, we would like
11 to acknowledge that we are on Treaty 1 territory, the
12 traditional territory of the Anishinaabe, Cree, and
13 Dakota peoples, and the homeland of the Metis Nation,
14 and this is very important to always acknowledge the
15 traditional territories and Treaty lands on which we
16 sit, as a number of treaties set out a recognition of
17 some of the reciprocal responsibilities involved in
18 ongoing relationships between multiple nations and
19 peoples.

20 We heard at the outset of this hearing
21 the Board's acknowledgment that this hearing was being
22 held on Treaty 1 territory, and an acknowledgment of
23 the Treaty 2, 3, 4 and 5 lands included in Manitoba
24 Hydro's service territories, which are the traditional
25 territories of the -- the Anishinaabe, the Cree, Oji-

1 Cree, Dakota, and Dene peoples, as well as the
2 homeland of the Metis Nation. MKO is always very glad
3 to hear this Board express that acknowledgment, as it
4 is very important that those things are acknowledged,
5 recognized, respected and understood.

6 There is an articulation of rights,
7 responsibilities, and relationships entrenched in
8 Treaties between the Crown and First Nations peoples.
9 Those Treaty rights have been recognized and affirmed
10 by section 35 of the Canadian Constitution, the
11 Supreme Law of Canada.

12 MKO submits that potential impacts to
13 Aboriginal and Treaty rights should always be in
14 scope, and must always be considered in every hearing
15 in Canada, as the Treaties are the fundamental basis
16 upon which the Crown/First Nation relationship is
17 formalized. And while on their faces, Treaties are
18 between First Nations and the Crown as represented by
19 both the federal and provincial governments, Manitoba
20 Hydro, as a Crown corporation and an agent of the
21 Crown, has responsibilities embedded in that
22 relationship as well.

23 Those treaties have not always been
24 upheld, those rights not always recognized, and those
25 relationships not always easy. The relationships

1 between Manitoba Hydro and First Nations in Manitoba
2 have been and often still are particularly
3 contentious.

4 From MKO's perspective, the question
5 before this Board of whether it is in the public
6 interest to grant a proposed 3.5 percent across-the-
7 board rate increase must be considered within the
8 context of the ongoing relationship between Manitoba
9 Hydro and Northern First Nations. This application
10 does not exist in a vacuum.

11 In cases considering regulatory action,
12 the Supreme Court of Canada has set out that
13 Indigenous interests should be recognized as forming a
14 significant and fundamental part of the public
15 interest. Manitoba Hydro has testified that there are
16 ongoing impacts to First Nations from both the
17 construction and operation of the Corporation's
18 hydroelectric facilities. This at pages 494 to 496 of
19 the transcript.

20 Manitoba Hydro testified that the vast
21 majority of the electrical energy produced by the
22 Corporation's integrated system is generated in
23 northern Manitoba, as the Corporation's largest
24 generating stations are in Treaty 5 territory in
25 northern Manitoba. This is pages 493 to 494 of the

1 transcript.

2 Impact from ongoing operations means
3 that citizens of MKO First Nations in Northern
4 Manitoba bear the brunt of the impacts of Hydro
5 development on their constitutionally-protected
6 Aboriginal and Treaty rights, while at the same time,
7 those same people suffer disp -- disproportionately
8 from energy poverty, are often in arrears with respect
9 to their Hydro bills, and receive disconnection
10 notices for being unable to pay their Hydro bills.
11 MKO submits that these ongoing impacts exacerbate
12 distrust and frustration prevalent in the already
13 fractured relationship between Manitoba Hydro and
14 Northern First Nations.

15 But MKO note -- notes that the Path to
16 Reconciliation Act provides some guidance to Manitoba
17 Hydro as an agent of the Crown, as well as to the
18 Board, about the ways in which relationships can be
19 recognized in coming to the decision before this Board
20 today. That legislation states that the Government of
21 Manitoba is committed to reconciliation.

22 Also in Section -- Section 1(1),
23 reconciliation is defined and refers to the ongoing
24 process of establishing and maintaining mutually
25 respectful relationships between Indigenous and non-

1 Indigenous peoples in order to build trust, affirm
2 historical agreements, address healing, and create a
3 more equitable and inclusive society.

4 MKO submits that maintaining mutually
5 respectful relationships and seeking to build trust
6 requires constant and ongoing dialogue and information
7 sharing in the interest of seeking to understand each
8 other's positions, interests, issues, and concerns.

9 MKO submits that if Manitoba Hydro were
10 to better consider the interests of MKO member First
11 Nations by engaging with citizens and leadership
12 themselves, in the spirit of reconciliation, this can
13 mutually benefit Manitoba Hydro and ratepayers.

14 The evidence in this hearing shows that
15 Manitoba Hydro has not undertaken any formal
16 consultation with consumers prior to filing the rate
17 application, and specifically, Manitoba Hydro did not
18 undertake a formal engagement process with First
19 Nation leadership or with residential customers living
20 on First Nation reserve land regarding either the
21 implementation of the First Nations On-Reserve
22 Residential customer class following Order 59/18, or
23 the proposed rate increase before the Board today.

24 Though, to its credit, Manitoba Hydro
25 explained that the Corporation has ongoing

1 relationships with First Nations across the Province,
2 and is in communication with First Nation leaders on a
3 range of topics. We hope that that can continue. We
4 hope that it can be expanded. MKO recommends that the
5 Board find that Manitoba Hydro has not adequately
6 engaged with First Nations about implementation of the
7 First Nations On-Reserve Residential customer class or
8 engaged properly with respect to the proposed 3.5
9 percent rate increase.

10 Manitoba Hydro testified that one (1)
11 component of the corporate strategy -- strategic planning
12 that the Corporation has just begun to undertake is to
13 create a list of stakeholders with whom Manitoba Hydro
14 will be consulting with, and in what ways. This is at
15 page 171 of the transcript. MKO sees this as a unique
16 opportunity to begin to address some of the issues
17 with respect to what MKO views as poor communication
18 from the Corporation. This can be improved.

19 MKO recommends that the Board should
20 order Manitoba Hydro to include MKO member First
21 Nations in the list of stakeholders with whom Manitoba
22 Hydro will consult in the interests of implementing
23 the First Nations On-Reserve Residential customer
24 class, as well as other issues. MKO also recommends
25 that the Board should order that Manitoba Hydro engage

1 with MKO member First Nations prior to filing future
2 rate applications in order to provide notice of
3 proposed rate increases, to maintain mutually
4 respectful relationships, and to gain an understanding
5 of positions, interests, issues and concerns.

6 Manitoba Hydro had indicated in an IR
7 response that there would be broad communication to
8 consumers about the proposed rate increase through
9 various, largely web-based, methods. The Corporation
10 agreed that consumers may need access to the Internet
11 to receive this information. This was at pages 515 to
12 518 of the transcript. Had Manitoba Hydro engaged
13 with MKO member First Nations in a more robust manner,
14 Manitoba Hydro may have heard about Internet
15 connectivity issues in Northern Manitoba, or other
16 issues specifically affecting MKO member First
17 Nations.

18 The proposed rate increase, if
19 approved, will also directly and disproportionately
20 affect MKO member First Nations in that many of the
21 benefits to be generated by the increase will flow to
22 the Provincial Government in the form of water rental
23 fees and other payments to be used for general
24 purposes. The water rental fee in the test year has
25 been estimated as being \$107 million. that was from

1 the updated response to PUB IR-32. Manitoba Hydro
2 also testified that this number will likely increase
3 due to improved water flow conditions.

4 MKO member First Nations receive little
5 or no direct benefit from Provincial disbursements.
6 As such, MKO proposes that the Board recommend to the
7 Provincial Government that a portion of water rental
8 fees be diverted to implement, support, and maintain a
9 comprehensive government bill affordability program
10 targeting the First Nations On-Reserve Residential
11 customer class, as well as customers in the diesel
12 zone.

13 The intent of this is to try to spur
14 the Province to help people with their Hydro bills,
15 because people are impacted by the decisions of
16 Manitoba Hydro and decisions about Manitoba Hydro.
17 Decisions made in the public interest are decisions
18 that interest and impact the public. The costs of
19 those decisions are borne by the ratepayers, and
20 ratepayers in Northern First Nations
21 disproportionately bear those costs.

22 People have different lived realities
23 based on many factors. We know this. Families and
24 businesses operating on First Nations in Northern
25 Manitoba face extreme weather conditions, and are

1 faced with higher prices. It costs more to live in
2 the North. Difficult spending decisions are both
3 necessary and constant.

4 People in the diesel zone faced a host
5 of -- face a host of issues, many of which have not
6 been addressed in this hearing. But it is MKO's
7 understanding that issues specific to the diesel zone
8 will be addressed in a subsequent hearing, focussing
9 specifically on the diesel zone.

10 MKO recommends that the Board order
11 that Manitoba Hydro file a diesel-specific rate
12 application within a reasonable time frame. And MKO
13 looks forward to participating in the future hearing.

14 Following Order 59/18 with respect to
15 rates in the diesel zone, the policy set by the Board
16 was that rates for all residential consumption and
17 general service usage up to 200 kilowatt hours per
18 month are to be priced at equivalent to the grid rate
19 for the First Nations On-Reserve Residential customer
20 class.

21 Manitoba Hydro testified in this
22 hearing their concurrence with MKO's understanding of
23 the Board's policy on this matter. Excuse me. This -
24 - this Board has long been concerned about bill
25 affordability and sought a way to address energy

1 poverty.

2 As such, in boarder -- Board Ord 59/18
3 this Board already took that monumental step of
4 creating the First Nations On-Reserve Residential
5 customer class and ordered rate freeze.

6 Manitoba Hydro has sought leave from
7 the Manitoba Court of Appeal to appeal the decision of
8 the Board to create this new customer class. We know
9 this. This is -- this is not a secret. That leave
10 decision is still pending.

11 And, of course, that is not before the
12 PUB in this hearing and to Manitoba Hydro's electric
13 rate application. However, this hearing is taking
14 place within the specter of that hearing.

15 The decisions made by the Board in this
16 hearing my ultimately interact in some way with the
17 decision of the Court of Appeal; however, it is not
18 yet certain how that interaction may occur.

19 What is certain is that today the First
20 Nations On-Reserve Residential customer class, this
21 exists already. We've already created that. This is
22 not in dispute. What is certain is that the
23 compelling policy reasons to create that customer
24 class remain the same.

25 Energy poverty and bill affordability

1 remain issues disproportionately affecting First
2 Nations On-Reserve Residential customers. The
3 evidence of -- of Mr. Raphals supports that and,
4 again, was undisputed evidence.

5 We won't spend a lot of time on this,
6 but Manitoba Hydro proposed in closing argument that
7 the 3.5 percent rate increase should be applied to the
8 First Nations On-Reserve Residential customer class
9 pending the leave decision of the Court of Appeal,
10 stating that any further rate differentiation which
11 the PUB determines is appropriate can be addressed in
12 a subsequent rate review.

13 With all due respect, MKO takes a very
14 different view of Manitoba Hydro's what we'll call
15 optimistic time frame within which an appeal might be
16 heard and decided by the Court of Appeal. In the
17 event leave is granted to Manitoba Hydro to appeal the
18 Board's decision, our very quick estimate is that the
19 appeal process would likely not be concluded before
20 the conclusion of the test year following this
21 hearing.

22 Within that year, MKO citizens would
23 feel the impact of a rate increase that, in MKO's
24 view, has not been justified in this hearing. Today,
25 this Board has the opportunity to continue the rate

1 freeze, and, in our respectful submission, it should
2 seize that opportunity.

3 In the event the Court of Appeal grants
4 Manitoba Hydro's leave to appeal, Manitoba Hydro's
5 next general rate application, which we understand is
6 estimated may be filed in the fall, will take place
7 within the specter of the pending appeal, not the
8 pending leave application.

9 This Board will have a better
10 indication at that time of the status of the Appellate
11 Court's process. Any further discussions on
12 appropriate rate class differentials or other issues
13 that may arise with respect to the First Nations class
14 should take place in the hearing into the 2020/2021
15 GRA.

16 As the Board is aware, there were a few
17 steps in the application before -- before you today.
18 In the November 30th, 2018, original rate application
19 filing Manitoba Hydro had sought a 3.5 percent rate
20 increase in order to generate additional revenues of
21 \$59 million and modest contribution to financial
22 reserves of \$31 million in the text year.

23 In the February 14th supplement to the
24 application Manitoba Hydro stated that it was
25 projecting net income of \$95 million, and if a 3.5

1 percent rate increase were granted, a modest
2 contribution to financial reserves of \$115 million for
3 the test year.

4 This position was also provided in --
5 in testimony, as the transcript shows from April 23rd
6 at page 68. It is not clear to MKO the extent to
7 which a contribution to the financial reserves that
8 Manitoba Hydro would have to increase before it is no
9 longer described as being modest.

10 In addition, in the February 14th
11 supplement to the application the Corporation
12 explained of the November 30th application, that the
13 Corporation had back in November determined that it
14 would accept the lower projected level of net income
15 in its application in favour of balancing the
16 interests of ratepayers and their bill impacts. This
17 is at page 3 of the February 14th supplement.

18 They were referring to the November
19 original application, saying, back then, we had
20 determined that we could accept that in the interest
21 of balancing the interest of ratepayers and their bill
22 impacts.

23 It appears to MKO that the Corporation
24 is no longer willing to accept a lower project level
25 of net -- net income in favour of balancing the

1 interests of ratepayers and their bill impacts.
2 However, the Board is tasked with balancing those
3 interests of the Corporation's financial health with
4 consumer interest.

5 And perhaps the Board should consider a
6 lower net income in favour of balancing the interests
7 of ratepayers, specifically those on reserve. I'll
8 come to that in a moment.

9 But while Manitoba Hydro uses various
10 numbers of millions of dollars to describe a modest
11 contribution to financial reserves, people living on
12 reserve consider the daily and ongoing impacts of far
13 different numbers.

14 We use as an example from transcript to
15 highlight the difference between Manitoba Hydro's
16 focus and what our client sees as the focus of the
17 Board.

18 In direct testimony, Manitoba Hydro
19 stated that, if approved, the June 1st, 2019, rate
20 increase will result in approximately a three dollar
21 (\$3) increase for residential customers without
22 electric space heat and approximately six dollars (\$6)
23 for residential customers with space heat. This was
24 at page 68 of the -- of the transcript.

25 The Board chair asked to clarify those

1 numbers and said:

2 "For the record, are we talking
3 three dollars and thirty cents
4 (\$3.30) and six dollars and thirty
5 cents (\$6.30)."

6 Manitoba Hydro responded:

7 "You're correct, I was just rounding
8 when I spoke."

9 That was from page 94 of the
10 transcript. That rounding exercise and the Board's
11 interest in clarifying those numbers highlights to MKO
12 that the focus of Manitoba Hydro is on the big
13 picture, the aggregate numbers over the specific
14 details.

15 We understand that it is not always
16 necessary to specifically state exact numbers on every
17 single issue. We understand that many assumptions
18 exist in financial forecasts.

19 However, it is MKO's positions that
20 when the discussion is centred on impacts to
21 ratepayers, especially ratepayers already struggling
22 with energy poverty, it is the details that impact
23 people and, therefore, those details that matter.

24 By asking for clarification on the
25 specific values of the potential rate increase to

1 residential customers, the Board has provided MKO with
2 some hope that the potential impact to people remains
3 at the forefront of the Board's considerations.

4 While Manitoba Hydro deals in values
5 such as \$20 billion, people living in MKO member First
6 Nations deal with the impacts of values such as six
7 dollars and thirty cents (\$6.30). To each party,
8 these values matter.

9 Manitoba Hydro deals with system-wide
10 grand totals, but when broken down to the household
11 level, a very different pictures emerges. An increase
12 of six dollars and thirty cents (\$6.30) per month
13 equates to an increase of seventy-five dollars and
14 sixty cents (\$75.60) for residential ratepayers and
15 MKO mem -- of First Nations per year.

16 We remind that Board that between 31
17 and 82 percent of residential customer accounts in
18 each MKO member First Nation is already in arrears.
19 This is from the response to MKO IR number 8.

20 From Manitoba Hydro's own 2017
21 residential energy use survey, we've seen already that
22 a disproportionate number of First Nations residential
23 ratepayers have had to take from their food budget to
24 pay their hydro bills.

25 People keep hammering on that because

1 that's the real picture of what people are facing.
2 They have to take from their food budget to pay their
3 hydro bills because they can't make their hydro bills
4 already. Yet even after taking drastic steps, people
5 continue to suffer from energy poverty and are unable
6 to pay those bills.

7 MKO points out that the Limitations of
8 Actions Act imposes a six (6) year deadline within
9 which actions for the recovery of money may be
10 commenced.

11 We understand that Manitoba Hydro is
12 taking some steps in helping -- trying to help folks
13 deal with their accounts in arrears. We would suggest
14 that, given the disproportionate number of residential
15 accounts in arrears in MKO member First Nations and
16 given the Limitations of Actions Act, MKO recommends
17 that the Board should order that any residential
18 account in arrears for longer than six (6) years in an
19 MKO member First Nation should be written off by the
20 Corporation.

21 Manitoba Hydro testified in this
22 hearing that it would be improper for a household to
23 budget to break even. This is on the screen in front
24 of you. This is from page 158 of the transcript.

25 What's not clear to MKO is to which

1 households this statement refers because MKO suggests
2 that, for people living in MKO's member First Nations,
3 breaking even would be a vast improvement to their
4 current state.

5 MKO submits that statements like this,
6 they underscore the disconnect at Manitoba Hydro, the
7 disconnect from -- from households and a possible
8 unwillingness to consider impacts to ratepayers.

9 Per the updated Appendix 10 of the
10 application, Manitoba Hydro put forth the calculations
11 that for the 2019/20 fiscal year, a 3.5 percent rate
12 increase with a June 1, 2019, implementation date is
13 expected to provide Manitoba Hydro with approximate
14 revenues of \$1.4 million from the First Nations On-
15 Reserve Residential customer class and twenty-one
16 thousand dollars (\$21,000) from the diesel residential
17 customer class. Again, this is for a 3.5 percent rate
18 increase if that is what is the conclusion of this
19 hearing.

20 A potential \$1.42 million to pro -- to
21 be provided from the First Nations on reserve and
22 diesel residential customer classes to Manitoba
23 Hydro's financial reserves delineates very significant
24 values to the First Nation residential ratepayers.

25 An increase of seventy-five dollars and

1 sixty cents (\$75.60) per year to the household budget
2 of a First Nations on reserve ratepayer and an MKO
3 member First Nation is not manageable, nor is it the
4 extent of the proposed rate increase.

5 Manitoba Hydro has testified that there
6 is a long-term compounding benefit to the Corporation
7 from a rate increase this year which would provide
8 additional revenue to the Corporation on an annualized
9 basis in perpetuity.

10 Manitoba Hydro also agreed that there
11 is a long-term cost to consumers from that rate
12 increase being imbedded in Manitoba Hydro's rate
13 structure. This was at page 170 of the transcript.

14 MKO describes this as -- as setting a
15 new base level, we're -- we're starting from here from
16 now on. And MKO points out that in Board Order
17 59/'18, this Board described the First Nations on
18 reserve customer class already as a population of
19 Manitobans that is disproportionately vulnerable to
20 rate increases. That's at page 232 of -- of 59/18.

21 MKO submits that it would be neither
22 just, nor reasonable, to increase the levels of
23 Manitoba Hydro's financial reserves by
24 disproportionately impacting people living on reserve.

25 MKO was and remains aware that the

1 creation of the First Nations On-Reserve Residential
2 customer class in 59/18 and the application of a zero
3 rate increase was not intended to address all of the
4 many issues faced by people living on reserve.

5 The First Nations On-Reserve
6 Residential customer class was intended to be a first
7 step in addressing energy poverty and bill
8 affordability on reserve.

9 Manitoba Hydro has testified in this
10 hearing that work is still needed to address the issue
11 of affordability on reserve. But since 59/18,
12 Manitoba Hydro has not specifically implemented a
13 program for First Nation customers. That was
14 indicated in the transcript at page 525.

15 Our client's understanding is that,
16 since the Board issued Order 59/18, the Provincial
17 Government has also still failed to implement a
18 comprehensive bill affordability program on reserve.

19 In their expert evidence, Mr. Rainkie,
20 Ms. Derksen, and Mr. Harper recommended a 1.5 percent
21 rate increase applied across the Board with the
22 exception of the general service small non-demand
23 class.

24 Rainkie, Derksen, and Harper concluded
25 at pages 10 and 11 of -- of their expert report that

1 their recommended 1.5 percent across-the-board rate
2 increase would result in a balance between the
3 financial health of Manitoba Hydro with customer
4 interests and avoid an erosion of Manitoba Hydro's
5 capital structure in 2019/20.

6 In response to IR 1 from MKO, Mr.
7 Rainkie, Ms. Derksen, and Mr. Harper concluded that an
8 exclusion of the First Nations on reserve and diesel
9 residential customer classes, from their recommended
10 1.5 percent rate increase, would result in
11 approximately six hundred thousand dollars (\$600,000)
12 less revenue to Manitoba Hydro in the fiscal year.

13 Again, if it was a 1.5 percent rate
14 increase for everybody, this would amount to six
15 hundred thousand dollars (\$600,000) from the First
16 Nations on reserve customer class.

17 Mr. Rainkie, Ms. Derksen, and Mr.
18 Harper also confirmed that of all of their conclusions
19 that they reached by their recommended 1.5 percent
20 rate increase, indicating that the -- the financial
21 health of Manitoba Hydro is properly balanced with
22 customer intre -- interests, all of their conclusions
23 would still be reached even if the First Nations On-
24 Reserve Residential and diesel residential customer
25 classes were exempted from a rate increase.

1 While MKO takes no position on what
2 might be an appropriate rate increase, we do not
3 suggest that Mr. Rainkie, Mr. Derksen, and Mr. Harper
4 are correct in their 1.5 percent or that Mr. Bowman
5 was correct in his 1.5 percent.

6 We don't suggest what might be an
7 appropriate rate increase that might be applied to
8 other customer classes. MKO's position is that a
9 balance is reached between the financial health of
10 Manitoba Hydro with customer interests and avoidance
11 of an erosion of Manitoba Hydro's capital structure in
12 2019/20 even if no rate increase is applied to the
13 First Nations on reserve and diesel residential
14 customer classes, which, of course, then raises the
15 question, if no rate increase is applied to First
16 Nations or diesel customers, what should be done with
17 the revenue to Manitoba Hydro that would be foregone.

18 MKO proposes that there are a few
19 options in the event a rate increase is granted by the
20 Board and in the event that the Board exempts the
21 First Nations and diesel cust -- residential customer
22 classes from the rate increase.

23 The revenue that would be foregone, in
24 MKO's view, should not be recovered from the other
25 customer classes. MKO can't sit here and say that

1 thirty (30) cents matters, and then say that twenty-
2 two (22) cents does not matter. We feel that that
3 would be an inconsistency.

4 In 59/18, the Board set out that the
5 First Nations customer class is a limited measure.
6 The Board envisioned that with the introduction of a
7 comprehensive government bill affordability program,
8 the new First Nations On-Reserve Residential customer
9 class and lower rate built into the 2018/19 test year
10 may no longer be required.

11 There's been no evidence in this
12 hearing that the Provincial Government has introduced
13 a comprehensive bill affordability program.
14 Therefore, MKO proposes that the Board recommend to
15 the Provincial Government that the foregone revenues
16 from a rate freeze applied to the First Nations On-
17 Reserve Residential and diesel residential customer
18 classes should be born by the Provincial Government
19 and perhaps diverted from water rental fees as, number
20 1, recognition that the Province should have a larger
21 role in addressing energy poverty and bill
22 affordability issues on reserve as well as Number 2,
23 acknowledgment of ongoing impacts to First Nations from
24 hydroelectric facilities.

25 In the alternative, MKO proposes that

1 the shortfall for the First Nations on reserve and
2 diesel customer classes not be explicitly allocated to
3 other customer classes and, instead, any foregone or
4 incremental revenues from the First Nations on reserve
5 and diesel customer classes should instead affect
6 Manitoba Hydro's net income and retained earnings,
7 although MKO recognizes that this may have an impact
8 on future rate increases sought.

9 Or if the Board does not agree with
10 either of those potential options, MKO submits that
11 Manitoba Hydro should then factor the cost of a zero
12 percent rate increase for the First Nations On-Reserve
13 Residential and diesel customer classes into the
14 levels of the average general rate increase granted
15 for the test year to all other customer classes.

16 Again, MKO would suggest that this
17 should be the last option, again, because we couldn't
18 sit here today and say that thirty (30) cents matters
19 to some folks, twenty-two (22) cents doesn't matter to
20 other folks.

21 Our client recognizes that the cost of
22 doing business is not static. Our client recognizes
23 that the cost of living is not static. And our client
24 recognizes that rates paid for hydroelectricity cannot
25 remain forever static.

1 But our client also recognizes that the
2 onus is on Manitoba Hydro to demonstrate that a rate
3 increase to the First Nations On-Reserve Residential
4 and diesel customer classes would be just and
5 reasonable. MKO submits that Manitoba Hydro has not
6 discharged that on us.

7 Our client has not heard any evidence
8 in this hearing to justify an increase to the First
9 Nations residential class or any customer classes in
10 the diesel zone.

11 The only "rationale" we have heard is
12 that the application is for a 3.5 percent rate
13 increase to all aspects of all customer classes. We
14 heard that, as well, from our -- from our friend, Mr.
15 Shefman, this morning.

16 The question of why it should be a
17 blanket rate increase has never been answered. We
18 submit that Manitoba Hydro has not demonstrated that
19 any rate increase should be applied to the First
20 Nation on reserve or diesel customer classes.

21 Our client characterizes Manitoba
22 Hydro's application and testimony as indicative of a
23 corporation blindly adhering to a predetermined rate
24 increase without considering impacts to First Nations
25 On-Reserve Residential customers without consider

1 impacts to diesel customers, without considering
2 differing consumption patterns or expert evidence
3 about energy poverty on reserve or residential energy
4 use reports and data commissioned by Manitoba Hydro
5 themselves.

6 We -- we agree with AMC that Charter
7 values have clearly not been considered. That's been
8 very clear in the testimony. We also -- MKO would
9 also suggest that Manitoba Hydro has not considered
10 reconciliation in this rate application or the
11 perspective of Manitoba Hydro's own employees working
12 with Indigenous peoples. That also came out in the --
13 in the testimony.

14 MKO submits that at this time, cost of
15 service with respect to the First Nations On-Reserve
16 Residential customer class is irrelevant. The same
17 policy reasons for creating and granting a zero rate
18 increase to the First Nations On-Reserve Residential
19 customer class remains to address disproportionate
20 levels of energy poverty and bill affordability issues
21 and that this supports a continuation of the rate
22 freeze.

23 MKO submits, again, that in the spirit
24 of relationships and reconciliation, Manitoba Hydro
25 must include northern First Nations and its list of

1 stakeholders with whom it will engage on a number of
2 important -- of important issues.

3 Once again, it is MKO's position that
4 Manitoba Hydro has not discharged its onus in this
5 application and has not established that a rate
6 increase to either the First Nations residential or
7 diesel customer classes would be just and reasonable.

8 MKO maintains that it would be neither
9 just nor reasonable to increase the levels of Manitoba
10 Hydro's financial reserves by disproportionately
11 impacting people living on reserve.

12 Thank you. And subject to any
13 questions, those are the submissions of MKO.

14 THE CHAIRPERSON: Thank you, Mr.
15 Wheeler.

16 Mr. Buchart, I'll ask the panel if they
17 have any questions? Dr. Grant?

18 DR. HUGH GRANT: I just have one
19 question about -- you said on page 29, you depict the
20 creation of the First Nations reserve -- On-Reserve
21 Residential customer class as a stopgap or as a first
22 step towards a more comprehensive bill affordability
23 plan.

24 And I think one of the considerations
25 that came up in the discussion is that the

1 administration -- administrative costs of identifying
2 those vulnerable are very high. And so in some sense,
3 there's this rough justice, knowing that poverty rates
4 are so high on a reserve that it was once an effective
5 way of introducing some sort of bill affordability
6 program.

7 The rough justice part, I know one
8 consideration that came up in the discussion was that
9 you could have First Nation people in Metis, other
10 indigenous people living across the Street, and in an
11 adjacent community living in similar circumstances of
12 poverty. And so that, you know, played on people's
13 minds.

14 So I guess that one preamble, I come
15 back to page 15 of your slides. And so you recommend
16 a funding mechanism for a potential bill affordability
17 program. My question is: Why would you limit that
18 recommendation to only the On-Reserve Residential
19 customer class in the diesel zone? What -- if this is
20 a funding mechanism for bill affordability, why would
21 you limit it to those two groups?

22 MR. JARED WHEELER: The only reason
23 that, we suggest, limiting it to the First Nations
24 on-reserve class is only because the First Nations
25 on-reserve class is already in place. And it is --

1 it's because of that -- I forget the words you used --
2 but the -- the rough way of doing it. And so
3 realistically, we do acknowledge that there are energy
4 poverty issues that do -- are not on reserve. We know
5 that.

6 I suppose that it was almost just the
7 way of saying that this is a good way to start. Maybe
8 the next incremental step is for -- for the provincial
9 government to take that step and do that themselves,
10 not to say that this is the right thing, that this is
11 the be all, end all, but almost the incremental
12 step 2. And maybe after that, maybe it expands. And I
13 would think that that should be on the provincial
14 government to be able to figure out how do we expand
15 that.

16 So again, just a stopgap and just a
17 very small step 2.

18 THE CHAIRPERSON: Thank you,
19 gentlemen. Manitoba Hydro, you have a right of reply.
20 Now, the right is restricted to any new issues in the
21 Intervenor submissions or anything that could not
22 contemplated in the submissions.

23 MS. MARLA BOYD: Understood,
24 Mr. Chair.

25 THE CHAIRPERSON: I didn't speak

1 loudly enough, did I? First time ever.

2 So it's reply submissions for anything
3 that was raised for the first time in the Intervenor
4 submissions and not contemplated that were in the
5 submissions.

6

7 REPLY BY MANITOBA HYDRO:

8 MS. MARLA BOYD: Thank you, Mr. Chair.
9 We have just a few comments. And if you'd like, we'll
10 run through them very right now, and we can all enjoy
11 our lunch a little later.

12 The first point that I want to address
13 was point number 5 from MIPUG's written submission
14 this morning. It was MIPUG Exhibit number 8. And Mr.
15 Hacault acknowledged in his oral statements this
16 morning that that point wasn't clear, and I appreciate
17 that very much. But I want to make sure that the
18 Board is clear on what that means.

19 It appears that in our final argument
20 when we addressed Mr. Rainkie's overstatement of the
21 potential benefit of reduced debt for Bipole III that
22 we created some confusion, and I do apologize for
23 that. It would've been cleaner if we had referred to
24 the response to PUB-57, but in burning the midnight
25 oil, we overlooked that.

1 So the crux of the point is that
2 there's \$17 million annual reduction in the Bipole III
3 costs. That's comprised of finance expense
4 depreciation and capital tax savings.

5 The 13 million that we referred to
6 yesterday is one component of that, and it's shown as
7 12 million in PUB-57. Mr. Rainkie inflated it in
8 paragraph 5 of MIPUG's written submission and counts
9 it twice. Mr. Hacault acknowledged that this morning
10 in his discussion. But I just want to make sure the
11 Board is clear that we're dealing with the same number
12 in there twice. One (1) says seventeen (17), and then
13 twelve (12) is a component of the seventeen (17).
14 It's not seventeen (17) plus twelve (12).

15 The other thing that I need to address
16 from Mr. Hacault's submission this morning is that he
17 characterized the forecast of the '19/'20 net income
18 without a rate increase as being equivalent to
19 approximately a 4 percent rate increase. And that's
20 incorrect in a number of respects.

21 First of all, that's a forecast. And
22 we've heard -- and I hope we understand -- that that's
23 a forecast number that we don't know what will
24 materialize by the end of the year. It's not
25 revenue -- sorry, I'll try and sit still. That

1 forecast -- that \$64 million, which he called
2 equivalent to 4 percent, is not revenue that we can
3 count on.

4 That number is also the outcome of
5 revenues and costs, and it includes non-cash items,
6 such as depreciation. It is not a recurring amount.
7 It doesn't occur every year, and its recurrence will
8 depend on the revenue and cost in every subsequent
9 year. So it is not, in any respects, equivalent to a
10 4 percent rate increase.

11 It also assumes that the target for
12 Hydro is a zero percent income -- or sorry -- a
13 zero net income in each year. And we don't agree with
14 that, although we recognize that to be a matter for
15 another day.

16 For this hearing, you've already heard
17 our submission on the legislation and on the
18 requirements for contribution to reserves, as
19 determined by the Manitoba Hydro Electric Board.

20 I do need to correct something that was
21 in Mr. Hacault's written evidence -- or sorry, written
22 argument. At page 23, the MIPUG submission says:

23 "We say the credit rating agency
24 evidence introduced at the last
25 minute through Hydro rebuttal is

1 just noise. The proof is that the
2 capital markets issued a forty-nine
3 (49) year ultra-long issuance at
4 2.91 percent, a billion-dollar US
5 issuance at 2.19 --"

6 Maybe he's got the numbers backwards
7 there:

8 "-- and that the recent issuance was
9 somewhere around 1.7 percent."

10 So I think, Mr. Chair, you understood
11 in your discussion with Ms. Stephen that the
12 \$1 billion was issued to the province of Manitoba, not
13 to Manitoba Hydro. Manitoba Hydro took a portion of
14 that \$350 million.

15 The other reference to the one point
16 seven (1.7) is apparently some confusion. That's what
17 Hydro is investing money at in the short term. It is
18 not an issuance that we've received as borrowings.

19 Turning to the submissions of AMC this
20 morning, although there's references in the -- in the
21 submissions to some more recent case law, we believe
22 that Mr. Shefman's submission will be addressed by the
23 pending decision on the leave to appeal in the Court
24 of Appeal.

25 Ms. Derksen's evidence in this hearing

1 is that on the cost of service basis, there's no basis
2 to freeze the First Nation on reserve rates. The rate
3 differential in this instance is a matter of social
4 policy, she told you, and that policy is currently
5 under review by the Courts.

6 So to suggest that we're trying to
7 affect a stay Order 59/18 is also incorrect. If that
8 were what Manitoba Hydro was seeking, we would have
9 had to seek higher rate increases to be applied to the
10 First Nation class in this hearing to get them to the
11 equivalent of where the other residentials are today.
12 That's not what we're doing. We aren't seeking to --
13 we are seek -- not seeking to equalize the rates in
14 this hearing and whether we pursue that or not in the
15 future will depend on what the Court of Appeal
16 decides.

17 We're also not -- we are not seeking
18 rates that will increase the differential between
19 First Nations and other residential customers, as
20 Mr. Shefman suggested. It's our submission that by
21 applying the 3.5 percent rate increase on an
22 across-the-board basis, the current differential or
23 gap that he referred to will remain the same.

24 I think you need to be careful in the
25 comments Mr. Shefman made this morning regarding the

1 comparison related to the types of housing and the
2 comparison of First Nation rates to the City of
3 Winnipeg rates. I believe that's where he derives the
4 notion that there's a differential in the gap.

5 But you've heard Ms. Morrison's
6 evidence on that. The comparison in the City of
7 Winnipeg relates to a different type of housing. It
8 also relates to customers that have access to gas or
9 non-gas. And, Dr. Grant, you just mentioned now
10 that -- the fact that whether you're on reserve or off
11 reserve, if you're in the rural area, non-gas -- as
12 Ms. Morrison also testified -- the differential is not
13 there. So there isn't an attempt to increase the
14 differential between First Nation customers and other
15 customers.

16 With respect to the comments of
17 Mr. Williams yesterday on behalf of the Coalition, I
18 have to say that I find the inflammatory language that
19 he chooses to use makes it difficult to actually get
20 down to the issues between the parties, and it
21 certainly makes the idea of being ordered into a
22 collaborative process challenging.

23 But there are a couple of things that
24 we want to note. The first is that Mr. Williams took
25 issue with the fact that Hydro suggested that there

1 was no need for an oral hearing in this case. He did
2 that, while almost in the same breath berating Hydro
3 for failing to attempt to control its costs.

4 You know very well, Mr. Chair and
5 members of the Board, that these hearings come at a
6 cost, and while the cost in this hearing are now sunk,
7 so to speak, I'd encourage you to consider whether you
8 truly found it to be benefit -- commensurate with that
9 cost in this hearing. The final costs are not in, but
10 they will certainly impact on Hydro's costs and the
11 impact on our ratepayers because those costs are
12 ultimately borne by all of the ratepayers in Manitoba.
13 Those are the very people that Mr. Williams told you
14 that half a percent was important for.

15 I should also note before I close that
16 Mr. Williams' argument frequently suggested that you
17 should accept what his witnesses said because it
18 wasn't challenged in cross-examination. And if that's
19 the test that's to be applied, I would encourage you
20 to review the transcript of Mr. Williams' cross of the
21 Manitoba Hydro panel. It consisted largely of
22 pointing to IRs that were already on the record and
23 asking the Hydro witnesses to confirm that that's what
24 it said. On this basis, much of Hydro's evidence was
25 also unchallenged by the Coalition.

1 Manitoba Hydro's rebuttal evidence and
2 its oral testimony must also be considered when you
3 assess the position of the Corporation in response to
4 the Coalition witnesses.

5 Thank you, Mr. Chair, members of the
6 Board. That's all we have for reply unless you have
7 any questions for us.

8 THE CHAIRPERSON: Were there any
9 questions?

10

11

(BRIEF PAUSE)

12

13 CLOSING COMMENTS BY THE CHAIRPERSON:

14 THE CHAIRPERSON: Thank you, Ms. Boyd.
15 So final comments, ladies and gentlemen, the
16 evidentiary portion of the Manitoba Hydro 2019/'20 GRA
17 ended Monday, April 29th, 2019, and now the Board has
18 concluded the closing submissions by all parties.

19 Now that the evidence in the closing
20 submissions are in, the Board's work will continue
21 with review of all the evidence and submissions, as
22 well as the liberation on the issues that are within
23 the scope of Manitoba Hydro's 2019/'20 General Rate
24 Application.

25 The Board's work is assisted by the

1 work that the Utility and the Intervenors have done
2 and all of the evidence and submissions provided. For
3 that, we thank all the parties to the hearing.

4 The Board appreciates and understands
5 the content of the application and the process
6 followed were different than what parties have
7 experienced in prior General Rate Applications. That
8 said, the parties have adapted well and have provided
9 the Board with their best evidence, and for that, the
10 Board again thanks the parties.

11 The Board's intention remains to
12 conclude its deliberations and provide an order with
13 its reasons for its decisions in Manitoba Hydro's
14 first fiscal quarter of the current fiscal year.

15 With that, I will close the hearing and
16 wish all parties well until we next gather. Thank
17 you.

18 One more note: Mr. Simonsen's in the
19 room, and I have some comments about Mr. Simonsen.
20 But Mr. Hacault made some comments this morning, and I
21 don't know, Mr. Hacault, if you wanted to repeat those
22 now with Mr. Simonsen here.

23 So, were you here when he made the --
24 oh, you were hiding from me then. Okay. Thank you.
25 Thank you.

1 So here are my comments on behalf of
2 the Board. This is the last hearing for our associate
3 secretary, Kurt Simonsen, and I would like to take a
4 moment to thank him for his dedication and commitment
5 to the Public Utilities Board, the Government of
6 Manitoba, and the people of Manitoba.

7 After a little over fifteen (15) years,
8 Kurt has decided to give up all the glamour and
9 prestige of utility rate regulation and exchange it
10 for family, especially grandchildren, and travel. One
11 wonders how Kurt will survive the future without blue
12 paper.

13 I heard about somebody named
14 Kurt Simonsen years before I joined the PUB. A friend
15 who appears before the Board told me about this guy
16 who he said always responded to phone calls and
17 emails, was courteous and helpful and friendly. And
18 he said, believe it or not, he's a civil servant to
19 boot. I guess Kurt never told my friend to "pound
20 sand" or got involved with him in a bun fight.

21 Kurt is all that and more. He is one
22 of those rare people who knows when to lead and when
23 to follow. He is a terrific team player and a great
24 resource on a multitude of topics. He is not only
25 incredibly knowledgeable in the field of energy but

1 also a great teacher and mentor.

2 Now, Kurt is a great listener. He was
3 the one talking to the regular -- on a regular basis
4 to the senior citizen on Agnes Street. I constantly
5 walk into his office and tell him that it wasn't in
6 his job description to solve their problems. He would
7 say that I was right, and then promptly ignore me, and
8 take the next call. Kurt always went beyond his job
9 description to help people.

10 Kurt, you are the best of the best of
11 the civil service, the best of any team I've worked
12 with in more than forty (40) years. The PUB is a
13 better place because of you.

14 On behalf of your colleagues and
15 friends here and the people you have served, I wish to
16 thank you for your years of service and want to wish
17 you and your family all the health and happiness in
18 the future that life can bring.

19 And please remember one thing: The PUB
20 live streams all over the world. Thank you. Thank
21 you, Kurt.

22 MR. KURT SIMONSEN: So since we're on
23 the record still, thank you very much for those kind
24 words, Mr. Chair, and I certainly appreciate it.

25 And it's been an honour and privilege

1 to work with certainly members of the panel, all our
2 applicants, all our Intervenors, and certainly the
3 public. There's a lot of folks that are interested in
4 what we do here at this Board and the decisions that
5 you folks make impact all of us, as we all know.

6 I'm actually reminded by one of the
7 great Canadian philosophers, if I can use those words,
8 of some of the words that he said that may be very
9 applicable for all of us here today. And those words
10 come from my idol, Mr. Red Green, from The Red Green
11 Show, who always said, I think, at the end of his
12 show: Folks, remember, we're all in this together,
13 and keep your stick on the ice.

14 Thank you very much.

15 MR. CHAIRPERSON: We're adjourned.

16 Thank you

17

18 --- Upon adjourning at 12:08 p.m.

19

20 Certified Correct,

21

22

23 _____

24 Michael McKenzie

25