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MANITOBA PUBLIC UTILITIES BOARD

RE:

MANITOBA HYDRO
INTERIM RATE
CONSIDERATION HEARING

Before Board Panel:

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

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
January 19th, 2010

Pages 1 to 71

APPEARANCES

1
2 Bob Peters)Board Counsel
3
4 Patti Ramage)Manitoba Hydro
5 Marla Murphy)
6
7 Myfanwy Bowman)CAC/MSOS
8 Heather Unger)
9
10 Mona Pollitt-Smith)MIPUG
11
12 Louis Harper (np))MKO
13
14 William Gange)RCM/TREE
15
16 Denise Pambrun)City of Winnipeg
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1 --- Upon commencing at 10:02 a.m.

2

3 THE CHAIRPERSON: Okay, good morning,
4 everyone. Thank you for attending this morning. To
5 start with, I'm not trying to go Hollywood by the way;
6 I've got an eye infection so it's just -- the bright
7 lights seem to make the situation worse so.

8 As you know, the Board held a -- pre-
9 hearing conferences on September 10th, 2009, and also on
10 December the 22nd of last year, related to Manitoba
11 Hydro's General Rate Applications for their fiscal year
12 2010/'11, and also for their fiscal year 2011/'12.

13 At those pre-hearing conferences, the
14 Board heard submissions as to procedures for the conduct
15 of the Board's review of the issues raised in the General
16 Rate Applications. It became clear that, for various
17 reasons, a consensus timetable for the consideration of
18 Manitoba Hydro's rate requests, would not be achieved to
19 permit any rate adjustments that may be ordered to be in
20 effect for April 1st, May 1st, or even June 1st of this
21 year. That said, the Board notified Manitoba Hydro and
22 the Intervenors that the Board would hold a hearing today
23 to consider your submissions, as to whether any interim
24 rate relief for Manitoba Hydro should be considered.

25 For the record, my name is Graham Lane.

1 I'm the Chairman of the Public Utilities Board and I'm
2 joined this morning by Bob Mayer, Q.C., the Vice Chair of
3 the Board, also Board Member Dr. Kathy Avery Kinew, to my
4 right. The Board is also assisted by Acting Board
5 Secretary and Executive Director, Hollis Singh, and Board
6 counsel Mr. Bob Peters.

7 For his recommendations as to the
8 procedure for today's Hearing, I'll now call on Mr.
9 Peters. Mr. Peters...?

10 MR. BOB PETERS: Thank you and good
11 morning, Mr. Chairman, Vice Chairman Mayer, Board Member
12 Kinew, ladies and gentlemen.

13 For the record, I am Bob Peters and act
14 for the Board, together being assisted this morning by
15 its engineering and accounting advisors, Mr. Larry Buhr
16 of LAB Consulting, and Mr. Roger Cathcart of Cathcart
17 Advisors. We are here to provide assistance with respect
18 to Manitoba Hydro's General Rate Applications that are
19 now before the Board.

20 As you noted, Mr. Chairman, there are
21 still are matters outstanding, with respect to Manitoba
22 Hydro's General Rate Applications. One (1) of those
23 matters was the filing of Tab 4 Information on Manitoba
24 Hydro's financial position and information, including
25 operating and maintenance expenses. That information was

1 filed last Friday.

2 The information as to such things as
3 diesel rates, energy intensive industrial rates, lower
4 income energy efficiency programs, is still to be filed
5 and is expected to have an updated position following the
6 Manitoba Hydro Electric Board's meeting later this week.

7 For purposes of today, and to keep the
8 record orderly, I suggest that there be nine (9) exhibits
9 noted at this time, recognizing that parties may have
10 other documents to submit today. I took the liberty, Mr.
11 Chairman, of circulating those documents electronically
12 yesterday, but I've also provided paper copies for some
13 and I think I have an extra copy if anybody needs one.

14 Exhibit 1, Mr. Chairman, would be the PUB
15 letter of January 11th --

16 THE CHAIRPERSON: Mr. Peters, just a
17 second. Does anyone need a copy of those exhibits, or do
18 you all have them? It seems okay.

19 MR. BOB PETERS: All right. Thank you.
20 The -- the first exhibit would be the PUB's letter of
21 January 11th that was sent to Manitoba Hydro and to the
22 Intervenors, in essence inviting them to today's interim
23 rate consideration hearing. In that letter the Board
24 asked for additional information from Manitoba Hydro
25 related to Manitoba Hydro's financial position.

1 --- EXHIBIT NO. PUB-1: PUB's letter of January 11th
2 that was sent to Manitoba
3 Hydro and to the Intervenors
4

5 MR. BOB PETERS: Exhibit 2 would be a
6 letter from Manitoba Hydro, dated January the 7th, 2010;
7 it was sent to the PUB. This letter appears to relate to
8 the pre-hearing conferences that you mentioned, Mr.
9 Chairman, and Ms. Ramage can address it in her
10 submission. The Board also circulated this January 7th
11 letter from Manitoba Hydro to Intervenors inviting their
12 comments, either in writing or in submissions today.
13

14 --- EXHIBIT NO. PUB-2: A letter from Manitoba Hydro
15 to the PUB, dated January the
16 7th, 2010
17

18 MR. BOB PETERS: Exhibit 3, Mr. Chairman,
19 would be Manitoba Hydro's letter of January 13th to the
20 Board, copied to Intervenors, and it contained some of
21 the financial information that the Board had requested in
22 its January 11th letter.
23

24 --- EXHIBIT NO. PUB-3: Manitoba Hydro's letter of
25 January 13th to the Board,

1 copied to Intervenors,
2 containing some of the
3 financial information that
4 the Board had requested in
5 its January 11th letter
6

7 MR. BOB PETERS: Exhibit 4, I propose,
8 would be MIPUG's letter to the Board, on January the 14th
9 of 2010, relating to the subject matter of today's
10 hearing. And Ms. Pollitt-Smith is in attendance today
11 and she may wish to expand on this letter, and also refer
12 to some other documents that I believe she's prepared.

13

14 --- EXHIBIT NO. PUB-4: MIPUG's letter to the Board,
15 on January the 14th of 2010

16

17 MR. BOB PETERS: Exhibit 5 would be the
18 CAC/MSOS letter of January 14th to the PUB, and also
19 copied to Intervenors, it also related to the subject
20 matter of today's Hearing and it contained a series of
21 recommendations from CAC/MSOS, that their counsel, Ms.
22 Unger, may wish to further address or at least bring to
23 the Board's attention.

24

25 --- EXHIBIT NO. PUB-5: CAC/MSOS letter of January

1 14th to the PUB, copied to
2 Intervenors
3

4 MR. BOB PETERS: Exhibit 6, I propose,
5 would be a January 18th letter from the City of Winnipeg
6 to the Public Utilities Board, copied to Intervenors.
7 This document, I should note, contained 32 pages of
8 attachments that Ms. Pambrun may speak to this morning.
9

10 --- EXHIBIT NO. PUB-6: January 18th letter from the
11 City of Winnipeg to the
12 Public Utilities Board,
13 copied to Intervenors,
14 containing 32 pages of
15 attachments
16

17 MR. BOB PETERS: Exhibit 7 would be a
18 January 18th, 2010 letter from RCM/TREE counsel to the
19 Board and Intervenors. Mr. Gange is here and can perhaps
20 speak to that as well.
21

22 --- EXHIBIT NO. PUB-7: January 18th, 2010 letter
23 from RCM/TREE counsel to the
24 Board and Intervenors
25

1 MR. BOB PETERS: Exhibit 8 is a letter
2 from CAC/MSOS counsel to the Board, dated January 18th of
3 2010.

4
5 --- EXHIBIT NO. PUB-8: A letter from CAC/MSOS
6 counsel to the Board, dated
7 January 18th of 2010

8
9 MR. BOB PETERS: And the ninth Exhibit
10 would be a January 18th, 2010 letter, from the City of
11 Winnipeg to the Public Utilities Board and Intervenors.
12 And that letter attaches a list of -- I'll call them
13 outstanding issues that the City's counsel may speak to
14 this morning.

15
16 --- EXHIBIT NO. PUB-9: A January 18th, 2010 letter,
17 from the City of Winnipeg to
18 the Public Utilities Board
19 and Intervenors

20
21 MR. BOB PETERS: In turning to the
22 procedures for today -- today's Hearing, and following
23 the order that was suggest -- suggested in the Board's
24 January 11th, 2010 letter to the parties, I would suggest
25 the Board call on Manitoba Hydro's counsel, Ms. Ramage

1 and Ms. Murphy, to provide the Utility's submission as to
2 possible interim rate considerations, as well as the
3 correspondence that's been filed and marked as exhibits.

4 After hearing from Manitoba Hydro, I
5 suggest the Board call on the Intervenors for their
6 submissions and any information they man -- may wish to
7 have for the Board this morning. And as I've noted,
8 CAC/MSOS is represented today by Ms. Unger. Ms. Bowman
9 may be joining, depending on a previous commitment that
10 Ms. Bowman is attending to.

11 MIPUG is represented by Ms. Pollitt-Smith.
12 And I've indicated, in addition to the correspondence
13 that's been filed, there is additional references that
14 Ms. Pollitt-Smith will speak to the Board about.

15 In terms of MKO, I'm not aware if Mr.
16 Harper, Louis Harper, who was assisting Mr. Anderson, has
17 provided anything in writing at this point in time; I
18 haven't seen it, and I don't believe the Board's
19 secretary has seen it either. We'll try to follow that
20 up and see if there's anything further coming.

21 In terms of RCM/TREE's representation, Mr.
22 Gange is here. And this Hearing fell right in the middle
23 of a -- a prior commitment for Mr. Gange, and I know that
24 he's asked to be excused at approximately eleven o'clock
25 just to attend to a conference call in a -- in an

1 adjacent Board room. But he will be close at hand and
2 will come back to speak to the Board if he has to absent
3 himself for that prior commitment.

4 And the City of Winnipeg, through Ms.
5 Pambrun, is here. And as I've said, there's materials
6 filed, including thirty-two (32) pages of documents, as
7 well as a list of outstanding issues that she may wish to
8 speak to.

9 And finally, Mr. Chairman and Board
10 members, following the submissions from Intervenors, the
11 Board should ask Manitoba Hydro for any reply submissions
12 related only to new matters raised by the Intervenors.

13 Subject to any questions the Board may
14 have of me, those conclude my opening comments, Mr.
15 Chairman, and I suggest you call on Ms. Ramage for her
16 submissions, on behalf of Manitoba Hydro. Thank you,
17 sir.

18 THE CHAIRPERSON: Thank you, Mr. Peters.
19 Ms. Ramage...?

20

21 SUBMISSIONS BY MANITOBA HYDRO:

22 MS. PATTI RAMAGE: Yes, good morning, Mr.
23 Chair, Vice Chairman Mayer, and Dr. Avery-Kinew. I have
24 with me -- or my name is Patti Ramage, for the record; I
25 will be representing Manitoba Hydro. I have with me, to

1 -- to my left today, my co-counsel, Ms. Marla Murphy, and
2 to my right, Mr. Vince Warden, who is Vice President of
3 Finance and Chief Financial Officer Manitoba Hydro, along
4 with Mr. Robin Wiens, who is the Division Manager of
5 Rates and Regulatory Affairs.

6 On December 1st, 2009, Manitoba Hydro
7 filed its General Rate Application, dated November 30th,
8 2009, and it was seeking, amongst other things, a 2.9
9 percent rate increase, effective April 1st, 2010, along
10 with a further 2.9 percent increase, effective April 1st,
11 2011. During the two pre-hearing conferences dealing
12 with Manitoba Hydro's GRA, it became readily apparent
13 that the process would not accommodate an April 1st
14 implementation date.

15 RCM/TREE suggested the Board consider an
16 interim rate increase. Manitoba Hydro indicated it was
17 open -- open to dealing with the matter in this manner.
18 And on January 11th, the PUB invited all parties to
19 provide submissions on an interim rate in this matter.

20 Manitoba Hydro has identified four (4)
21 issues that the PUB ought to address, when it -- when
22 determining if this is an appropriate case for an interim
23 rate adjustment.

24 First, does the Board have jurisdiction to
25 approve an interim rate adjustment?

1 Second, do the materials before the Board
2 provide a prima facie justification for a rate increase?

3 Third, does the likely scheduling of the
4 hearing and decision permit the implementation of the
5 rate adjustment on a timely basis?

6 And, fourth, is it in the best interests
7 of ratepayers to order a rate increase on an interim
8 basis?

9 Dealing with the first issue of
10 jurisdiction: The Public Utilities Board Act expressly
11 authorizes the PUB to issue interim ex parte orders and
12 interim orders; that the legislation contains distinct
13 provisions dealing with interim orders, as opposed to
14 interim ex parte orders, indicates different
15 considerations apply, depending on which type of order is
16 being sought. Section 45 of the Act indicates the Board
17 may issue interim ex parte orders if, and I quote:

18 "The special circumstances of any case
19 so require." End quote.

20 In contrast, Section 47(2) empowers the
21 Board to issue interim orders, and here we're talking
22 about orders with notice, and those orders can be made
23 without reference to the need to establish any particular
24 requirements or conditions that must be met in order to
25 exercise this power. And I'll -- I'll quote the section;

1 it's 47(2). Reads:

2 "The Board may, instead of making an
3 order final in the first instance, make
4 an interim order and reserve further
5 directions, either for an adjourned
6 hearing of the matter or for further
7 application."

8 The legislature clearly intended to
9 provide the PUB with broad discretion to control its own
10 process and determine when interim orders, with notice,
11 are appropriate. Interestingly, both of those provision
12 are reproduced verbatim in the PUB's own rules of
13 practise and procedure; Rule 41 deals with interim ex
14 parte orders and Rule 42, interim orders.

15 And MIPUG has stated, in its January 14th
16 submission, that there is an overriding regulatory
17 principle for interim rights, and that is one of urgency.
18 And CAC/MSOS seem to agree with that statement. Very
19 little has been provided to support this assertion, the
20 only thing being a footnote citing Section 48 of PUB Act.
21 And I see, this morning, a -- a binder of mat -- it's not
22 a binder, a package of materials was circulated with
23 respect to that matter, but we haven't heard it.

24 So at this point, in terms of our
25 submission, we can say we disagree with the position.

1 Section 48 does not serve to fetter the Board's
2 discretion as to when interim rate orders in -- are
3 appropriate. And there exists plenty of examples of the
4 Board issuing interim rate orders in circumstances which
5 cannot be described as urgent; SEP and curtailable rate
6 orders immediately jump to mind. But rather than
7 guessing at why MIPUG believes there is an urgency
8 requirement, we'll wait to hear from them and provide our
9 comments in reply.

10 What we can say at this point, however, is
11 definitively Manitoba Hydro believes that the overriding
12 principle governing any rate case, whether interim or
13 final, is the public interest. And that has been clearly
14 defined by the Manitoba Court of Appeal as a balancing of
15 the needs of ratepayers with those of the Utilities -- of
16 the Utility, I should say.

17 With jurisdiction established, the second
18 question must be addressed: Do the materials establish a
19 prima facie justification for a rate increase? The
20 justification for the rate increase will be debated at
21 lengths during the full hearing of the GRA and we can't
22 possibly get into that level of detail today.

23 The question for today is simple: Do the
24 materials set out a prima facie case? Manitoba Hydro's
25 Application discloses that in fiscal 2008/2009, the

1 Corporation achieved, for the first time ever, its debt
2 equity target of 75:25.

3 Manitoba Hydro's 2009 annual report,
4 Appendix 4. -- which is found in Appendix 4.1, sets out
5 that in 2008 Manitoba Hydro had its second best year
6 ever, with a net income of \$337 million from electricity
7 operations. 2009 was another good year, with a net
8 income of \$288 million.

9 IFF-09, however, projects a 2009/'10 net
10 income of \$121 million from electricity operations, a
11 drop of \$167 million from the previous year. Manitoba
12 Hydro confirmed, in its January 13th correspondence, that
13 it is currently on target with the IFF-09 forecast. For
14 the two (2) test years covered by this Application, IFF-
15 09 is forecasting net revenues that are \$144 million less
16 than last year's forecast.

17 These decreases in net income are
18 primarily due to decreases in revenue, both domestic and
19 export. As Tab 2 in the current Application
20 demonstrates, the total projected expenses for 2010 to
21 2012 are relatively stable between IFF-08 and IFF-09.
22 General consumer's revenue is lower due to lower
23 projected load growth. Although lower domestic load
24 growth increases the amount available for export, the
25 increase in volume is significantly more than offset, by

1 lower than -- lower export prices in the short term.

2 Decreased demand as a result of economic
3 conditions and a reduction of the price of electricity in
4 the export market, are both factors that Manitoba Hydro
5 cannot control, but we can and we have planned for such
6 events by employing a sound financial management
7 strategy. One (1) component of the strategy is the
8 implementation of regular modest rate increases, closely
9 aligned with projected rates of inflation over the long
10 term, to ensure that the Corporation maintains an
11 adequate level of retained earnings.

12 As this Board and all parties are well
13 aware, the Corporation is preparing to embark on the
14 largest capital expenditure program in its history. We
15 want to be in a position to leverage our strong financial
16 position for the benefit of our ratepayers and minimize
17 the cost of debt. An adequate level of retained earnings
18 will provide funding for capital investments, which
19 reduces the need for borrowing and in turn reduces
20 financing costs that ultimately must be borne by
21 ratepayers.

22 We're not talking about having today's
23 consumers pay for capital expenditures that will benefit
24 tomorrow's ratepayers. We're talking about implementing
25 regular and gradual increases, so as to ensure the

1 Corporation maintains an adequate level of retained
2 earnings, and with the view to avoid any need for larger
3 increases sought or approved in other jurisdictions, such
4 as British Columbia where BC Hydro sought and had
5 approved a 9.7 percent increase, effective April 1st,
6 2009; or Nova Scotia Power's increase is 9.3 percent,
7 effective January 1st, 2009. SaskPower for example, had
8 an 8.5 percent increase on June 1st, 2009, and we have
9 Newfoundland Power seeking 7.2 percent, effective January
10 2010.

11 Maintenance of a strong financial position
12 is critical to being able to address future events which
13 are outside Manitoba Hydro's control. One (1) of the
14 largest risks, water conditions, can have a dramatic
15 impact on net income, as was evidenced during our
16 2003/2004 fiscal year. While we've entered the winter of
17 2009 with excellent reservoir levels, precipitation over
18 the last three (3) months has been well below normal, and
19 this is a cause of some concern.

20 We fully expect that Intervenors will
21 outline their concerns with Manitoba Hydro's Application
22 as part of their submissions. Resolution of those
23 concerns is not the purpose of today's process, however.
24 We will try to address them as best we can today, and
25 certainly during the full hearing of the matter.

1 The rate issue that must be addressed
2 today is: Has a prima facie case been made for a rate
3 increase? Manitoba Hydro submits it has; not because
4 we're in dire need, but rather because it supports a
5 sound financial management strategy.

6 Manitoba Hydro believes that the forgoing
7 provides a prima facie support for a rate increase. The
8 next question is: Can that increase be implemented after
9 a full hearing in a timely way? On the basis of the
10 record to date, that would appear not to be the case and
11 that strengthens the argument for an interim increase,
12 effective April 1st, 2010.

13 Manitoba Hydro recognises it's not the
14 usual practice of this Board to approve rates on an
15 interim basis. The fact that Board has convened this one
16 (1) day hearing suggests the Board believes there may be
17 justification for doing so in the present circumstance;
18 these circumstances being concerns with the timetable and
19 the ability to implement an April 1 increase.

20 This isn't the first April 1 has not been
21 achievable. In the past the Board has approved greater
22 than applied for increases, effective July 1st, and that
23 was in the 2008 GRA, and August 1, and that was the 2004
24 GRA. However, contrary to MIPUG's representations in its
25 correspondence, other than these two (2) GRA's, all year

1 one, General Rate Application increases were implemented
2 in April 1 of the GRA year, since this Board started
3 approving rates.

4 But, regardless, the fact that we have had
5 increases effective July and August, and the Board has
6 suggested considering an interim rate increase, leaves
7 Manitoba Hydro to speculate that the Board is not
8 envisioning a process -- or, that the process will go a
9 month or two (2) past April, as it did in 2004 and 2008,
10 but, rather, considerably further out.

11 If this is in fact the case, it is not
12 unreasonable for the Board to conclude that it is
13 appropriate to approve a relatively modest increase
14 consistent with the consumptions contained in the
15 corporation's financial forecasts, as opposed to, for
16 example, a relatively large increase in the late fall to
17 make up for lost time, followed shortly thereafter by an
18 increase in April 2011.

19 The fourth and final question to be
20 addressed is: Is it the best interest of ratepayers to
21 order a rate increase on an interim basis? Given the
22 potential ramifications of a delayed implementation date
23 for the rate increase, ratepayers may well be better off,
24 or at worse, be indifferent to two (2) relatively modest
25 increases a year apart, rather than one (1) in the late

1 fall, possibly greater than 2.9 percent, followed quickly
2 by another 2.9 percent.

3 In the event that the Board should
4 subsequently determine that the interim increase was
5 higher than justified, the fact that this is a two (2)
6 year application limits the potential impact to the
7 ratepayer, Manitoba Hydro has sought a second rate
8 increase effect April 1st, 2011. If the Board determines
9 2.9 percent is not required, or is not enough for the
10 2010/11 test year, it can make an adjustment to April 1st
11 2011 rates.

12 While Manitoba Hydro did not seek an order
13 that its General Rate Application be implemented on an
14 interim based -- basis, it certainly understands and
15 supports the Board's reasons for considering such action.
16 The materials filed by Intervenors suggest there is a
17 flaw in this process, because no application has been
18 filed by Manitoba Hydro. This is both factually and
19 legally incorrect.

20 Manitoba Hydro has filed a General Rate
21 Applicaiton, and that's those five (5) binders of
22 materials you all treasure, and pursuant to section 44(1)
23 of the PUB Act, the Board may make an order, and I quote:
24 "...granting the whole or part of the
25 application, or may grant such further

1 or other relief, in addition to, or in
2 substitution for that applied for."

3 End quote.

4 The Board is clearly acting within its
5 jurisdiction when it initiated this process.

6 So, in conclusion, it is within the
7 Board's jurisdiction to make an interim order. The
8 materials disclose a prima facie case for a rate
9 increase, and the practical implications of scheduling
10 the Hearing of this matter, suggest it is in Manitoba
11 Hydro's and the ratepayer's interest to implement these
12 changes sooner rather than later.

13 Now, if I could just comment -- Mr. Peters
14 also suggested that I address Manitoba Hydro's letter of
15 January 7th during my submission. From my perspective,
16 that letter speaks for itself. Manitoba Hydro simply
17 wished to draw to the Board and Intervenors' attention
18 poten -- potential procedural issues that the parties may
19 not have been aware of, or may not have contemplated when
20 making their submissions.

21 Manitoba Hydro's position is fairly
22 straightforward. Any process contemplated by the PUB
23 must afford all parties - that includes the Intervenors,
24 Manitoba Hydro, and the Board itself - with procedural
25 fairness, and it must meet the principles of natural

1 justice. Manitoba Hydro simply was seeking to raise a
2 number of issues so that the parties would have an
3 opportunity to comment on them because we felt they may
4 not be cognizant of those issues.

5 And with that I would be interested in
6 hearing the Intervenor's comments.

7 THE CHAIRPERSON: As are we. Thank you,
8 Ms. Ramage. For CAC/MSOS, Ms. Unger...?

9

10 SUBMISSIONS BY CAC/MSOS:

11 MS. HEATHER UNGER: My name is Heather
12 Unger. I'm an articling student at the Public Interest
13 Law Centre. I'm here on a watching brief, representing,
14 or on behalf of CAC/MSOS. As Mr. Peters has said,
15 Myfanwy Bowman will hopefully be joining me later this
16 morning, and Mr. Byron will not be joining me or
17 attending today.

18 Since I am here on a watching brief, I
19 will simply note again, as Mr. Peters has said, that Mr.
20 Williams and Ms. Bowman have filed two (2) letters on
21 behalf of CAC/MSOS, outlining the position of CAC/MSOS,
22 with regard to this interim rate Hearing and with regard
23 to an interim rate increase. Thank you, that's all I
24 have.

25 THE CHAIRPERSON: Thank you. So we'll

1 turn now to MIPUG's Ms. Pollitt-Smith.

2

3 SUBMISSIONS BY MIPUG:

4 MS. MONA POLLITT-SMITH: Good morning,
5 Mr. Chair and members of the Board. As has been noted,
6 I'm Mona Pollitt-Smith. I'm here -- I've -- from
7 InterGroup Consultants and here representing MIPUG on
8 this matter. My usual companions here, Mr. Bowman and
9 Mr. McLaren, could not be available today so I'm flying
10 solo. So we'll see how it goes. I'll provide a couple
11 preliminary -- responses to a couple preliminary issues
12 up front, and then get into the meat of the argument.

13 First, I'd like to note that MIPUG will be
14 providing a written response to the risk issue that
15 hopefully will fol -- follow in the next day so this
16 week.

17 Second, we have provided and distributed
18 to people a -- a book of documents. I won't be referring
19 to it very much today, aside from maybe Tab 1. But most
20 of the materials included in the book are sort of backup
21 materials to support the position we set out in our
22 letter of January 14th. So I would note that Tabs 2
23 through Tab 7 basically support our point in that letter
24 about Hydro's delay, and basically portraying that they
25 haven't acted like they're in any rush to proceed with

1 this filing.

2 And Tabs 8 and Tabs 9 deal with materials
3 that, show for the last GRAs at least, Hydro's routinely
4 applied for April 1 rates, but has -- the -- the way the
5 application's gone they've never had rates in place by
6 April 1. In the 2008 GRA they rates in place July 1st,
7 and for the 2004 GRA they had rates in place for August
8 1st, more than a few months after April 1.

9 So that's the book of documents. Oh, I'd
10 also want to note so people aren't confused, in Tab 4, I
11 included two (2) copies of the letter from Ms. Ramage,
12 dated September 23rd. One (1) letter had the incorrect
13 date on it, so I know she sent a second one, but that one
14 was unsigned. So I thought that the two (2) of them
15 together make a complete letter. So that's at Tab 4, I
16 believe.

17 MR. ROBERT MAYER: Tab 4 --

18 MS. MONA POLLITT-SMITH: Or Tab 3, sorry.
19 Tab 3.

20 So to get into the meat of the argument --
21 and throughout I'll try to respond to issues raised by
22 Ms. Ramage this morning, and issues raised by other
23 Intervenors in their submissions over the past week --
24 I'll just start out by saying that MIPUG outlined its
25 views on this matter in a letter to the Board dated

1 January 14th. This is provided, I believe, as Tab 4 of
2 Mr. Peter's book of documents. Right now I -- I propose
3 to provide a brief outline of the position we set out in
4 that letter, and then I'll -- I'll move on to some other
5 issues that have arisen since that letter was provided.

6 For -- at the outset, MIPUG still submits
7 that there's been no application or other material filed
8 that would provide Intervenors with an outline of the
9 case being advanced for interim relief. CAC/MSOS and
10 RCM/TREE, in their submissions, have also basically
11 agreed that no application's been provided.

12 This is -- it is MIPUG's position that
13 interim rates may, at best, be justified, in this
14 process, at this time, on the basis of urgency. Absent
15 urgency no -- there's no jurisdiction for the Board to
16 address this matter at this time. To summarize from our
17 letter, all indications currently point to there being no
18 urgency and no need to deal with this matter on this
19 expedited basis.

20 First, Hydro's GRA Application, the only
21 material -- material evidence on the record so far, does
22 not support any case for urgency. It supports for a case
23 to have rates in place after a full public review of
24 them. But I also note that, as Ms. Ramage noted in her
25 comments, Tab 2, page 2, notes that:

1 "For the first time Hydro's been able
2 to achieve its long term targets, three
3 (3) years ahead of its target date."

4 This does not suggest the Corporation has
5 a sense of urgency that it needs rates in place right
6 now.

7 Second, no case for urgency's been
8 provided by Hydro and Hydro has in no way conducted
9 itself in a manner that would suggest it urgently needs
10 rates in place April 1st, or as soon as possible
11 thereafter. This was set in our letter, and the
12 supporting documents are provided in Tabs 2 through to
13 Tab 7 of my book of references.

14 Third, and I won't belabour this point
15 because it's been raised by Mr. Williams at least once or
16 twice in his submissions, it's January; April 1st, the
17 proposed date for interim rates is 2 1/2 months away.
18 There's time to address this issue with more information
19 and greater deliberation before April 1st, or even before
20 June 1st, as Mr. Gange proposed might be the date that
21 you would need to have rates in place, absent an interim
22 rate order.

23 There's simply no justification or
24 jurisdiction for the Board to do what some parties are
25 requesting that the Board do today. Now, that simply

1 states what we had in our letter. I'd like to raise a
2 few additional points that have come to light for us,
3 reading the submissions and listening to Ms. Ramage's
4 submissions this morning.

5 Beyond the basic requirements set out in
6 our letter, should the Board determine that it's within
7 its jurisdiction to order interim rates at this time,
8 we're very concerned about the injurious and unprincipled
9 precedent that might be established. To order interim
10 rates before Hydro's had its GRA material fully tested
11 would be breaking from a lot of regulatory precedent in
12 this jurisdiction. This will be the first time, that
13 MIPUG is aware, that the Board would be approving Hydro
14 rates, interim or otherwise, without any substantive
15 review of the evidence filed and without any opportunity
16 for Intervenors to full interrogate this information and
17 file evidence of their own.

18 The PUB may be setting a dangerous
19 precedent to grant interim relief here, absent an
20 application for interim rates by Manitoba Hydro, and
21 absent a structured process to deal with the interim rate
22 application and allow Intervenor evidence, both for and
23 against any such remedy.

24 This would also, in effect, set a
25 precedent that Hydro can file its material late, trickle

1 in with information, and essentially hold up the review
2 process, but still have interim rates approved without
3 Intervenor having any opportunity to fully review that
4 information and provide evidence. This type of situation
5 just should not happen, absent urgent circumstances, and
6 no one is arguing that there are urgent circumstances
7 here. This is simply a bad precedent.

8 Hydro should be required to file its GRA
9 material in a timely manner, if it wishes to have a Board
10 ordered rate increase by April 1st. Allowing an interim
11 rate increase when Hydro did not file all of its material
12 in a timely way, will only encourage Hydro to repeat this
13 conduct in the future. If Hydro delays in filing
14 material which is critical to a proper review of rates,
15 it should expect a delay in the final order by the Board.

16 The Board should, at this time, set a
17 precedent that would encourage Hydro in the future to
18 file its -- file its information on time and when the
19 Board requests it, such that after a fair and full review
20 process, Hydro may have an -- an opportunity to have
21 rates in place as applied for.

22 Now, moving on to the issue of
23 jurisdiction that was raised in the letter provided by
24 Mr. Gange yesterday and it's also been raised by Ms.
25 Ramage. I have a few comments to provide.

1 Now, both RCMP and Ms. Ra -- or RCM/TREE -
2 - RCM/TREE and Ms. Ramage have argued that the Act
3 provides the Board with the power to approve interim
4 rates and that the Board has the jurisdiction to act to
5 approve a rate increase at this time.

6 Specifically the submission provided by
7 RCM/TREE notes that Section 47(2) of the Act states that
8 the Board may make an interim order and reserve further
9 directions and Section 44(1) gives the Board the power to
10 grant relief in substitution of that applied for.

11 RCM/TREE notes that in the absence of an
12 application -- the absence of an application would not
13 appear to be an obstacle to the -- to the power of the
14 Board on its own initiative -- initiative to make an interim
15 order.

16 In our view, the submission by RCM/TREE
17 and the submission made by Ms. Ramage this morning,
18 entirely fails to consider the effect of Section 48 of
19 the Board's Act. And I've provided Section 48 as Tab 1
20 to the materials. It's at the bottom of the page under
21 Orders Involving an Expense to Parties. Now Section 48
22 of the Act reads:

23 "The Board shall not make an order
24 involving any outlay, loss or
25 deprivation to any owner of a public

1 utility or any person, without due
2 notice and a full opportunity to all
3 parties concerned, to produce evidence
4 and be heard at a public hearing of the
5 Board except in case of urgency."

6 This provision -- I mean, the Act -- the
7 Public Utilities Act seems fairly clear here. The Board
8 must ensure that prior to issuing any order, including an
9 interim order, that results in an outlay, a loss, or a
10 deprivation, that there must be: (1) due notice provided;
11 and (2), a full opportunity for parties concerned to
12 produce evidence and be -- and be heard.

13 This seems to enshrine basic procedural
14 fairness protections in the Act and in the Board's
15 processes and procedures so that people affected by a
16 decision can know the case being made so that they can
17 prepare their response and so that people affected by a
18 decision have an opportunity to be heard.

19 Now, in looking at this section, we would
20 submit that approving an interim rate for 2.9 percent, or
21 any rate increase, would certainly qualify as an outlay
22 for those ratepayers required to pay higher rates, and
23 this would affect every customer of Manitoba Hydro and in
24 terms of this process that we are currently engaged in to
25 review this interim rate.

1 Intervenors have so far been materially
2 prejudiced and have not had a full opportunity to either
3 produce evidence or be heard.

4 Intervenors have had only one (1) week's
5 notice of this Hearing process.

6 There's been no application filed by
7 Hydro, and while Mr. Gange and Ms. Ramage have both
8 argued that it -- the Board is within its powers to set
9 interim rates in the absence of an application, in order
10 to prepare a case you really have to know what the case
11 being put forward is. You have to know what you're
12 arguing against or what people are advancing and for what
13 reasons they're advancing that.

14 Absent a clear application, Intervenors
15 have no outline of the case in support of interim rate
16 that's being made and that they have to come prepared to
17 refute. This is an unfortunate and an unfair and an in -
18 - inappropriate use of resources for an oblique task.

19 Now Section 48 outlines a core principle,
20 which I would suggest is at the core of the Board's
21 mandate. The Board must provide for a full and fair
22 public review process before a Utility is allowed to
23 raise rates. In light of this, the threshold to be met
24 before the Board can make an outlay, without a full and
25 fair process, must be understood to be high, and

1 deviating from this threshold -- and the threshold for
2 deviating from this basic procedural fairness in this
3 case has not been met. Until this basic threshold is
4 achieved, the Board cannot order interim rates under the
5 Act.

6 And I would submit that this threshold
7 would be achieved by an application setting out a clear
8 case of urgency and a process for Intervenors to explore
9 that application and provide evidence and submissions.

10 Now, just to deal with the specific issue
11 raised by Mr. Gange and Ms. Ramage related to Section
12 47(2) and Section 44(1) of the Act, I would suggest that
13 both sections must be read in -- in light of Section 48.

14 Both Section 47(2) and 44(1) are
15 permissive. They permit the Board to do certain things
16 or to make certain orders such as ordering interim rates.

17 However, Section 48 is absolute. Before
18 it issues an order that involves any outlay, the Board is
19 required to provide due notice and a fair process must be
20 provided.

21 Now Ms. Ramage raised the issue basically
22 that the Board approves interim rates and ex parte rates
23 all the time. This is perfectly within the Board's power
24 to do. And we shouldn't confuse the Board's power to
25 confu -- to set interim rates with the Board's power --

1 with -- with the restrictions under Section 47 -- or 48
2 that say the Board can't set any rate until there's been
3 due notice and a fair process.

4 With regard to SEP rates and curtailable
5 rates, the SE -- my understanding is, looking briefly at
6 the documents over the weekend, the SEP program and the
7 calculation and how -- how it's supposed to be achieved
8 was reviewed in detail at a Hearing in 2000.

9 There was a process for Intervenors to
10 provide evidence; there was a process for a public
11 review; there were IR's provided. People had a chance to
12 explore the SEP rate and to provide their views on it and
13 the Board had information before it to make a decision.

14 With the program in place, in -- in
15 essence, the rate approved was a contingent rate. The
16 program was approved and each week material is filed with
17 the Board set -- setting out that these -- these
18 calculations have occurred according to the process and
19 procedures approved in that 2000 order.

20 These orders are approved on an ex parte
21 basis but they're not materially changing anything that
22 came out of that 2000 order. So in this sense, to
23 approve these rates there has been a fair process. There
24 has been a fair review. There has been an ability for
25 the public to prov -- to interrogate this rate and

1 provide information.

2 I would suggest the same goes for
3 curtailable rates. The matter has been reviewed and the
4 interim ex parte orders that come subsequent to it, are
5 based on that core matter that has been reviewed. There
6 has been a fair process according to Section 48.

7 With regard to the interests of the public
8 interest that Ms. Ramage raised and with -- I would note
9 that a core facet of the public interest is enshrined in
10 Section 48. There needs to be a fair process. The Board
11 needs to make decisions with all of the information
12 before it.

13 Now, the final issue that we wanted to
14 address that was raised in Mr. Gange's letter yesterday
15 and it's also in a way have been touched upon by Ms.
16 Ramage's comments this morning, is the issue of
17 regulatory expediency.

18 MIPUG recognizes and sympathizes with the
19 Board's dilemma with regard to setting down a schedule
20 for this Hearing and ensuring Hydro's GRA and any related
21 risk review are addressed in an orderly manner that does
22 not prejudice any party to this process.

23 Now RCM/TREE has advanced a case that the
24 interim rate should be approved now for reasons of
25 regulatory efficiency. This is noted at page 2 of their

1 submission.

2 Noting there are many important --
3 RCM/TREE has noted that there are many important issues
4 before the Board in this GRA such as capital requirement,
5 revenue requirement, cost of service, rate structure, DSM
6 plans and low income plans.

7 And RCM/TREE notes that they all deserve
8 full exploration at a public hearing, in addition to the
9 risk assessment which RCM/TREE also asserts may be a
10 time- consuming process in its own right.

11 These are all important issues to be
12 addressed by the Board. The question is the best process
13 to address these issues fully, efficiently, and fairly.

14 RCM/TREE seems to be in favour of granting
15 today an interim increase for April 1, and deferring any
16 other activity until all information is filed in a
17 proceeding for a full review of all issues, including the
18 risk issue. This is proposed to be an efficient use of
19 time and resources. However, this suggested process
20 would seem to lead to a long, protracted, and confused -
21 for lack of a better word - mega hearing involving a
22 multiplicity of issues, all important, but allowing no
23 ability to focus the proceedings in any orderly manner.

24 MIPUG has advanced an option that would
25 allow for the Board to focus on the normal GRA issues,

1 including new rates to be approved for the 2010 test
2 year, whether they're interim or otherwise, in the short
3 term this spring in order to get interim rates in place
4 by summer. And then allow parties to regroup and
5 specifically deal with the risk review later, once all
6 issues with this review, such as terms of reference,
7 confidentiality concerns, and filing of information have
8 been addressed.

9 This would seem to be the most efficient
10 use of time and resources as it would allow parties to
11 focus, first, on the one (1) major item for which most
12 information is filed and complete, the GRA. And then
13 separately deal with the as yet defined risk review.
14 MIPUG's proposed approach specifically provides for the
15 Board to defer finalizing rates to the second GRA year,
16 in 2011/12 until after the conclusion of the risk review.

17 Just to remind the Board briefly of
18 MIPUG's proposal, at the December 10th and 11 -- and
19 December 22nd pre-hearing conference, MIPUG set out one
20 option for addressing the GRA and risk hearing matters
21 that would allow for an orderly process going forward and
22 that would minimize the prejudice to any party. At that
23 time we noted that the Board should proceed with the
24 normal GRA proceeding this spring towards approving rates
25 for the 2010/11 test year.

1 Now, if the Board is concerned about
2 approving final rates absent the completion of the full
3 risk review, or with some materials outstanding, the
4 Board could then consider the advisability of approving
5 these 2010/11 test year rates on an interim basis.

6 In this context they would be approving
7 interim rates with due notice, and after a full review
8 and after parties have had a chance to provide evidence
9 on the matter. The Board could then proceed with a
10 review of risk and a review of any other issues related
11 to the outstanding information later in the summer or in
12 the fall to approve final rates for the 2010/2011 test
13 year and the 2011/2012 test year.

14 In -- the rates for 2011 -- 2010/2011
15 could be in place as soon as possible this spring or in
16 the early summer, and certainly no later than in the past
17 two (2) GRA's. As we've noted in the last GRA in 2008
18 rates were in place July 1st; in the 2004 GRA, when Hydro
19 was in the midst of one of the worst droughts and a \$400
20 million loss in revenues, rates were in place by August
21 1st; and even at that time Hydro didn't raise any issues
22 with regard to requiring interim rates.

23 This approach would also allow for an
24 efficient, full, and fair review of the material prior to
25 approving rates, interim or otherwise.

1 This two (2) part process was suggested to
2 allow parties to proceed in an orderly and an efficient
3 manner. After considering the PUB Act and espec --
4 especially Section 48, this may also be a way that the
5 Board can proceed within its jurisdiction. This provides
6 for a fair review without materially prejudicing any
7 party. This may also be a means of controlling the
8 Hearing process so that it can proceed as outlined in any
9 schedule set by the Board.

10 Now before concluding, I just wanted to
11 make sure I touched upon a couple more remarks made by
12 Ms. Ramage this morning. Now Ms. Ramage and Mr. Gange
13 have both raised the issue of the delay in implementing
14 rates and any adverse effects that may be felt from
15 Manitoba Hydro and consumers.

16 The one thing we have to keep in mind is
17 that Manitoba Hydro is managed using long-term financial
18 targets. Even if the process is delayed until August or,
19 you know, at latest September, the urgency of the net
20 income revenue impact has to be viewed in light of the
21 Utility's ability to meet its long-term financial
22 targets.

23 Where we stand right now, the Utility's
24 three (3) years ahead of schedule. I think a delay in
25 getting rates by a few months that would allow us all to

1 -- to really understand the information, interrogate the
2 information, and it would allow the Board to have the
3 best information available before making any rate
4 determinations would be in the public interest.

5 And I think, as I've noted before, Hydro's
6 come here today making a case, supporting its case based
7 on its GRA application. Section 48 requires the
8 applicant, or whoever wants to support a case for interim
9 rates, not to come with their GRA application, but to
10 come with information related to the urgency of the
11 matter, and why these rates need to be in place on an
12 urgent basis.

13

14 (BRIEF PAUSE)

15

16 MS. MONA POLLITT-SMITH: In closing, if
17 interim rates are to be approved by this Board, Section
18 48 of the Act requires that the Board first make a
19 finding of urgency. We would suggest this were to
20 require that Hydro advance an application premised on
21 urgency, so that the Intervenors can at least understand
22 the case being made.

23 If Hydro is to advance an application
24 based on urgency, Intervenors still need a fair
25 opportunity to test that case. Should the Board -- Board

1 determine there's a prima facie case of urgency at this
2 time, and seek to proceed with a review of this matter on
3 the merits, a process to receive and review Hydro's case
4 regarding urgency and Intervener evidence on a fair basis
5 must be established. At this time, as we've noted, there
6 is no application supporting urgency before the Board,
7 and more than enough information to dismiss this matter
8 right now.

9 If the Board does want to pursue this, it
10 will effectively need to adjourn this matter in order to
11 receive proper information on the different effect -- on
12 the differing effect from having rates in place later
13 that is driving this urgency. Those would be my
14 comments, thanks.

15 MR. ROBERT MAYER: Mr. Chair -- Ms.
16 Pollitt-Smith, would your position be different if you
17 thought the public was much more interested and more
18 concerned about the risk review than about the 2.9
19 percent?

20 MS. MONA POLLITT-SMITH: Would our
21 position related to urgency be different?

22 MR. ROBERT MAYER: To the -- to the
23 dealing with the -- with the first year rate application,
24 on an interim basis, in order to get to the other
25 material as quickly and as efficiently as possible.

1 MS. MONA POLLITT-SMITH: Well, you're
2 basically asking whether the public's more interested in
3 understanding Hydro's risks than in exploring the GRA
4 application.

5 MR. ROBERT MAYER: I would suggest to you
6 that the fact that the cameras appeared now after the
7 application in the other place has probably been
8 adjourned, that it would indicate, and that it may be
9 that the public is significantly more interested in the
10 concerns raised over Hydro's risk.

11 MS. MONA POLLITT-SMITH: To respond to
12 that, I think the public's interested in a full,
13 efficient, and fair process, to explore rate issues
14 related to Manitoba Hydro that affect the public and that
15 affect the public interest.

16 Now, with regard to the 2.9 percent, I
17 think anyone, including my little old lady pensioner
18 mother is interested in a 2.9 percent rate increase as it
19 affects her. With regard to the risk issue, of course
20 that's sort of a controversial issue that's in the
21 newspapers right now that is garnering a lot of
22 attention. With regard to the Board's own processes,
23 however, I think the public and everyone is interested in
24 dealing with these matter -- dealing with these important
25 matters in a full, fair, and efficient manner.

1 Now, as I've stated, the mat -- most of
2 the material for the GRA has been filed by this point,
3 with Tab 4 and Tab 4 supporting materials filed on
4 Friday, and is available and Intervenors can probably
5 proceed with IRs, as expected, on February 3rd, as the
6 Board proposed in its letter set out on -- letter send
7 out January 11th.

8 We can proceed with this mat -- with the
9 GR -- GRA matter now and deal with this matter in a
10 focussed and fair fashion. There's still material and
11 issues with the risk review that need to be sorted out
12 before anyone can deal with it. There's still a scope
13 for the Hearing that Manitoba Hydro and MIPUG and others
14 have recommended be established. There's confidentiality
15 issues attached to materials that need to be sorted out,
16 and there's reports and other materials that haven't been
17 filed yet.

18 If we're all interested in efficiency in
19 dealing with matters in an expedient and orderly way,
20 let's deal with the material that we have and deal with
21 this two point nine (2.9) rate increase for 2010. And
22 then once we have the scope of the risk issue set out, we
23 have the material filed, or we've figured out how we're
24 going to deal with that material, we can have a process
25 that's focussed on the risk issue so that that risk issue

1 that the public is interested in, can be dealt with in a
2 comprehensive way and it's not lost in a Hearing, whereas
3 Mr. Gange has stated, there's nine hundred (900) other
4 issues that are all equally important that all need to be
5 dealt with.

6 MR. ROBERT MAYER: Thank you, I have your
7 position.

8 THE CHAIRPERSON: Thank you, Ms. Pollitt-
9 Smith. We'll move to RCM/TREE and Mr. Gange.

10

11 SUBMISSIONS BY RCM/TREE:

12 MR. BILL GANGE: Thank you, Mr. Chair,
13 Members of the Board. RCM/TREE was the one that -- was
14 the party that made this initial suggestion, and our
15 position is that it is an appropriate situation to have
16 an interim rate hearing and consideration.

17 With respect to the jurisdiction, MIPUG
18 has stated that Section 48 of the Public Utilities Board
19 Act requires urgency. And, in fact, Section 48 of the
20 Public Utilities Board Act does say that -- that a
21 consideration must require a case of urgency. Section
22 48, however, does not apply in any way to the Hearing
23 before you today.

24 Section 48 only applies in a situation
25 where there is an outlay, loss, or deprivation to an

1 applications, to rollback rates that have been requested,
2 to reduce rates, to -- and -- and -- and it -- this Board
3 has also not been shy, as was seen in the last GRA, to
4 say that the Application that Hydro had made was not
5 sufficient, and the order that you made was in excess of
6 the order that had been requested.

7 So you have a significant amount of -- of
8 power, and you will, at the conclusion of all of the
9 evidence, make a ruling as to what the proper revenue
10 stream of Manitoba Hydro for the next two (2) years ought
11 to be, so that nobody is going to be prejudiced in any
12 way by an interim rate increase or an interim rate order.

13 Now, we've said in -- in our proposal,
14 that -- that we're prepared to say that the interim -- or
15 that the -- that the rate application that has been made
16 of 2.9 percent, is the rate application that you ought to
17 consider, with respect to the -- an interim rate. We're
18 not married to that. If you think that -- that -- that
19 it would be fairer to make an award of 1.5 percent, or 2
20 per -- percent, that's fine.

21 But the -- the point that -- that RCM/TREE
22 is trying to make, is that in a situation like this,
23 where the -- the evidence before you, at this point,
24 would suggest that this is going to be a lengthy and
25 complicated hearing, all of those issues ought to be

1 explored fully; that includes the risk assessment. And
2 we understand we -- we're still all somewhat in the dark
3 of what is exactly at issue with the risk assessment.
4 And it may well be that -- that the Court application of
5 this morning is going to help resolve that issue, but not
6 likely today. It's highl -- that's highly unlikely.

7 But eventually we're hoping that -- that -
8 - that the order that you make, in terms of scheduling
9 and in terms of the scope of this hearing, is going to
10 include an order that -- that a risk ass -- that the risk
11 assessment of the whistle-blower complaint ought to be
12 considered by this Board, because this Board is the Board
13 that has the expertise to look at that. And it -- and it
14 may well be that your Board will agree with the position
15 of Manitoba Hydro, that the whistle-blower complaint has
16 no substance, or it may be that your Board is going to
17 say, there is substantial substance to the whistle-blower
18 complaint. All of those things have to be considered
19 fully.

20 And the reason that RCM/TREE made the
21 suggestion that you ought to consider an interim rate
22 increase, was that we were afraid that in order to get to
23 a -- a rate increase, the -- the rate increase issue, by
24 April 1st or shortly thereafter April 1st, the Board
25 would be put into a position where it would say, We

1 cannot delve into this -- the -- these other substantive
2 issues fully. We don't want that to happen.

3 So the Board, under Section 44 and Section
4 47, clearly has the jurisdiction to make the order for an
5 interim rate increase. Section 48 has absolutely no
6 application to this situation. And so far Section 48 is
7 the only justification that has been presented to you,
8 that I've heard, that you ought not to at least consider
9 the rate increase. So you, in -- in our submission,
10 clearly you have the jurisdiction.

11 My learned friend, Ms. Pollitt-Smith, says
12 that this would be a dangerous precedent and would be
13 injurious to -- to the regulatory process. I don't see
14 that, because you are not giving anything up. You are
15 still saying that at the actual hearing you'll be
16 considering all of the issues fully and fairly, upon the
17 proper presentation of evidence. We noted that -- that
18 CAC/MSOS has said that there's -- there's no rush here
19 and we've got until April 1st. So, why don't you allow
20 the first round of Information Requests to be completed,
21 and then have expert evidence and -- and written
22 submissions.

23 From -- from our perspective, again,
24 that's missing the point here; that -- that all of that
25 evidence ought to be focussed at the main Hearing. And

1 to waste time and but -- and to waste the -- the
2 resources of having our individual experts make a case
3 without a full disclosure simply increases the cost of
4 this Hearing for no long-term benefit. All of that
5 material, all of the challenges that are going to be
6 provided to Manitoba Hydro's evidence is going to come
7 out in the General Rate Application and that's where it
8 ought to be heard.

9 It is our view that regulatory efficiency
10 would be well served by facing the reality that this
11 Hearing and a rate increase for the -- for the two (2)
12 test years, it's not going to be completed on a timely
13 basis; timely in -- in -- when the date is April 1st.
14 And so, let's get on with it. Let's get on with
15 focussing our Information Requests, let's get on for
16 getting ready for the General Rate Application and
17 focussing our energy and our resources and the costs for
18 the real process.

19 I -- I think that the other points that
20 RCM and TREE wish to make have been set out fully in the
21 letter that -- that I provided to the Board yesterday.
22 And the only other thing, although it is dealt with in
23 the letter, is the risk assessment question. Ms. Ramage
24 has set out for the Board a number of very important
25 issues that this Board is going to have to consider in

1 terms of issues of natural justice, and in terms of a
2 fair Hearing.

3 We agree, this is a difficult process. It
4 -- it's made more difficult because, as I understand it,
5 the whistleblower is not in Manitoba, so is beyond the
6 scope of -- of a subpoena that might otherwise be served.
7 So, there -- there are all kinds of issues as to how that
8 whistleblower complaint is going to be brought before
9 this Board; that's for the Board to work out. I
10 personally - Dr. Miller, I think I can speak for him -
11 have confidence in the expertise of the Board and its
12 advisors that you will devise a process within the
13 parameters of your rules that will allow for a full, fair
14 Hearing.

15 We recognise that it is critical that
16 these issues be discussed fully and openly because the --
17 the issue here is -- is this -- is the safety from a
18 financial perspective, the financial health of Manitoba
19 Hydro. Are the rates that are being charged sufficient
20 to guarantee the long-term financial health of Manitoba
21 Hydro? It seems to me that's the issue that has to be at
22 the core of that risk assessment. We want the
23 opportunity to take a look at that. We want the
24 opportunity to challenge all of the -- the assumptions
25 that have been made by Hydro over the past number of GRAs

1 and in this one.

2 That process is best done here. So to --
3 to summarize, the position of RCM and TREE would be that
4 it is appropriate for an interim rate increase. You do
5 have the jurisdiction and any balancing that must be done
6 after the full review will be made in your final order.

7 Thank you, that's my submission.

8 THE CHAIRPERSON: Thank you, Mr. Gange.
9 City of Winnipeg's counsel, Ms. Pambrun?

10

11 SUBMISSIONS BY CITY OF WINNIPEG:

12 MS. DENISE PAMBRUN: Good morning. Most
13 of the people in the room who have spoken this morning
14 have been through a number of these GRAs. I'm the new
15 kid on the block. And I'm sure the minute I open my
16 mouth and say "area and roadway lighting," you're all
17 going to go, oh, here goes the City of Winnipeg with its
18 street lighting obsession.

19 But I think it's fair to say that the
20 comments I'm going to make this morning probably
21 represent microcosm of everything that my colleagues have
22 said this morning.

23 I filed some material with the Board, I
24 hope you didn't read it. It's exceedingly dull. But I
25 am going to --

1 MR. ROBERT MAYER: Don't assume we won't
2 read it.

3 MS. DENISE PAMBRUN: Oh you lucky, lucky
4 man. I won't assume that. I hope none of the other
5 intervenors read it because it's exceedingly dull.

6 But what is important, I think, is that
7 the Board issued an Order in 2006 on a General Rate
8 Application. And the first letter that is in my package
9 is dated March 16th, 2007. And if you read the first
10 paragraph of that letter, it says it's from Mr. Buhr, my
11 revered predecessor on this file and it says:

12 "As you are aware under the above-noted
13 PUB Order 117 of '06, Manitoba Hydro
14 and the City of Winnipeg were directed
15 to consult and attempt to achieve a
16 consensus on the issue of street
17 lighting."

18 And the following three (3) or four (4)
19 documents were letters that went back and forth between
20 Hydro and the City. And the dates of those letters, so
21 that you don't have to flip through them are, that
22 initial letter March 16th, 2007, Hydro's response of June
23 28th, 2007, the City's followup questions December 11th,
24 2007, Hydro's response March 11th, 2009 and the City's
25 further follow-up questions July 10th, 2009.

1 The City has not yet received Hydro's
2 response to the third set of questions although Ms.
3 Ramage phoned me about a week and a half ago and told me
4 they would be coming shortly.

5 I should note that somewhere in the middle
6 of all that, there was another General Rate Application,
7 of course. And of course, I can understand that in the
8 midst of preparing for all these General Rate
9 Applications, not to mention dealing with curtailable
10 rate programs and all kinds of other reports and
11 directives made by this Board, Hydro has had a lot of
12 more interesting things to deal with than the bloody City
13 of Winnipeg and its bloody street lighting issues.

14 However, these issues remain unresolved
15 and the City still does not have answers to some
16 questions that it has with respect to this one (1)
17 category of costs.

18 I've told you before that the City spends
19 over \$10 billion a year in this one (1) category. So it
20 is not an insignificant amount of money for the City and,
21 ultimately, its taxpayers.

22 I have listened with great interest to the
23 comments put forward on the issue of the Board's
24 jurisdiction with respect to an interim order. The
25 lawyer and me which, unfortunately, is a big part of why

1 I'm here, quarrels a little bit with Mr. Gange's
2 interpretation of Section 48. He doesn't talk about just
3 loss or deprivation to any owner of the public Utility,
4 it also talks about outlay to any person.

5 City of Winnipeg is many things, not all
6 of them words that I could repeat in this place,
7 according to some of its citizens, but it is a person and
8 it is investing some outlay to have me here. Without due
9 notice and full opportunity to all parties, and an
10 Intervenor here is a party, to produce evidence and be
11 heard at a public Hearing, Mr. Chairman, I think there's
12 a difference between an interim order and an interim
13 Hearing.

14 And I think, and I'd submit, without being
15 an expert on this matter, certainly I'm not, that the
16 Board might give consideration to whether it can not hold
17 a Hearing and hear evidence, and hear submissions, and
18 issue an interim Order or whether it has to have a
19 Hearing and then issue an interim Order.

20 Having said that, we mustn't fool
21 ourselves that the public has an enormous interest in not
22 only the rates it pays for Hydro, but also in all the
23 issues that have occupied a great deal of the media's
24 interest and which the public, presumably, is reading and
25 listening to on a daily basis.

1

2 I suspect that the public might well be
3 prepared to wait to find out what the rate increase might
4 be for its Hydro rates in the interest of having a full
5 Hearing on all the issues that affect Hydro today. I
6 could be wrong, of course. But given that my own
7 experience, and that of my predecessor with Hydro,
8 demonstrates that Hydro has not been particularly keen to
9 have all the material that this Board or this Intervenor
10 has required to have this Hearing proceed in a timely
11 fashion available to people who are entitled to it or to
12 the Board that has the statutory right to require it.

13 I suggest that until that material is
14 available, as required by this Board or as required by
15 the Intervenor, the status quo should remain. And until
16 Hydro can demonstrate that it -- pardon me for using such
17 a moralistic kind of word, but until Hydro can
18 demonstrate it deserves to have this Hearing proceed,
19 that it should not be entitled to an interim increase in
20 rates.

21 And if ratepayers -- and if you're
22 concerned that ratepayers might feel unhappy about that,
23 might feel that they're getting a raw deal, I suggest
24 that they might actually prefer to have all their
25 questions about Hydro answered more than they care about

1 the actual numbers in the rate increases, that it is more
2 important of them to have their questions answered fully
3 and completely.

4 It's interesting that today we've spent
5 all our time talking about whether or not we should have
6 a rate increase ordered right away. We haven't talked at
7 all about whether 2.9 percent or 1 percent or 1.5 percent
8 is the right number. I'm sorry for that. It seems to me
9 that should've been the focus of this Hearing today. I
10 guess it goes to show you how far away from, perhaps, the
11 original intent of a GRA we've been forced to stray.

12 And I think that further supports the
13 City's position that this Board is not in a position at
14 this time, given the material before it, given the
15 positions of the parties before it, this Board is not in
16 a position at this time to make a decision that an
17 interim rate increase is appropriate, but that it should
18 proceed, require Hydro to prov -- provide the material it
19 needs to provide to this Board, to the Intervenors, and
20 to the people who pay its rates every day, before it is
21 entitled to come here and ask for a rate increase,
22 interim or otherwise. I have nothing else. Thank you.

23 MR. ROBERT MAYER: Ms. Pambrun...?

24 MS. DENISE PAMBRUN: Yes?

25 MR. ROBERT MAYER: The one thing you

1 didn't say that I sort of expected to hear from you is if
2 the Board decides otherwise and wants to make a rate
3 increase, I suspect the City probably wants the same kind
4 of exemption it had in the last couple of orders.

5 Am I correct?

6 MS. DENISE PAMBRUN: The City believes
7 that there is no rate increase that is appropriate for
8 the City, but I'm trying to speak today about an interim
9 rate increase, rather than a permanent one. That is
10 correct. Thank you.

11 THE CHAIRPERSON: Thank you, Ms. Pambrun.
12 I think what we'll do right now is we'll take a ten (10)
13 minute break and we'll allow Ms. Ramage a moment to
14 collect her thoughts, and then we will conclude with
15 Manitoba Hydro's reply to the comments that have been
16 made heretofore. So we'll stand down for ten (10)
17 minutes.

18

19 --- Upon recessing at 11:22 a.m.

20 --- Upon resuming at 11:41 a.m.

21

22 THE CHAIRPERSON: Okay. Welcome back.
23 For Manitoba Hydro, Ms. Ramage?

24

25 REPLY BY MANITOBA HYDRO:

1 MS. PATTI RAMAGE: Yes, thank you. I
2 will begin by turning the mic over to my learned friend
3 to my left, so that she can deal with this urgency issue.
4 As -- as this Board and others may be aware, Ms. Murphy
5 has dealt with this issue in the Court of Queen's Bench
6 in the past, alongside of Mr. Peters, and I thought I --
7 I would let her comment on that issue, because it's one
8 she's certainly more familiar with than myself.

9 THE CHAIRPERSON: Ms. Murphy...?

10 MS. MARLA MURPHY: Thank you. Good
11 morning, Mr. Chair, Vice Chair, Dr. Avery Kinew. The
12 fundamental premise of MIPUG's submission this morning,
13 and it was echoed to a certain extent by some of the
14 Interveners as well, is that the overriding regulatory
15 principle for interim rates is urgency. And they have
16 cited Section 48 of the PUB Act to support that premise.

17 We disagree with their very premise. The
18 overriding regulatory principle for any rates, including
19 interim rates, is the public interest, whether those
20 rates are just and reasonable and the balance in the --
21 of the interest of the utilities and the ratepayers.
22 This case is not one in which urgency is alleged, nor is
23 it required to be demonstrated.

24 The requirements of Section 48 are for
25 notice and an opportunity for a hearing, except in the

1 case of urgency. Clearly this matter is being considered
2 with notice and the Hearing today. There is no need to
3 look for the exception that's cited in the legislation.

4 Section 15.2 of the Public Utilities Board
5 Act makes clear that the Board has the power to conduct
6 its proceedings in such a manner as it determines most
7 convenient for the speedy and effectual dispatch of
8 business. In this case the Board established a process
9 in its -- its January 11th, 2010 letter, which is Exhibit
10 1 to this Proceeding.

11 This is not an ex parte process or
12 application. The requirements of Section 47 for notice
13 and a hearing have been met. There is no need to
14 consider the question of urgency.

15 Further, to suggest that Section 48
16 applies to rate changes, in our view goes beyond what was
17 intended. The Section states:

18 "The Board shall not make an order
19 involving any outlay, loss, or
20 deprivation to any owner of a public
21 utility or any person, without due
22 notice and a full opportunity to all
23 parties concerned to produce evidence
24 and to be heard at a public hearing of
25 the Board except in the case of

1 urgency."

2 And the section carries on and provides a
3 remedy, which is a full hearing, or a rehearing.

4 Now while a rate case may involve an
5 outlay or a loss, we submit that this section is not
6 intended to cover that type of matter. If the section
7 were -- were to be read that broadly, as MIPUG and the
8 city of Winnipeg have suggested this morning, that would
9 render other sections of the legislation inoperative, and
10 that cannot have been the legislative intent.

11 Section 47(2), which is also included at
12 Tab 1 of MIPUG's book of documents, plainly authorizes
13 the Public Utilities Board to make interim orders. And
14 Section 44(1), as you've heard this morning, empowers the
15 Board to order partial relief, or to substitute different
16 relief from that requested, regardless of whether that
17 particular relief has been requested by Manitoba Hydro or
18 not.

19 I'm just going to refer to the Bell Canada
20 case, which I believe the Board counsel and certainly
21 others are perhaps familiar with. It's a 1989 decision
22 of the Supreme Court of Canada and I apologise, I didn't
23 intend to -- to quote from it, but it became very
24 germane this morning as I listened to the submissions
25 being made.

1 And at paragraph 47 of that decision, the
2 Supreme Court of Canada says, and I quote:

3 "Traditionally such interim rate orders
4 dealing in an interlocutory manner with
5 issues which remain to be decided in a
6 final decision are granted for the
7 purpose of relieving the applicant from
8 the deleterious effects caused by the
9 length of the proceedings. Such
10 decision are made in an expeditious
11 manner on the basis of evidence which
12 would often be insufficient for the
13 purposes of a final decision. The fact
14 that an order does not make any
15 decision on the merits of an issue to
16 be settled in a final decision, and the
17 fact that its purpose is to provide
18 temporary relief against the
19 deleterious effects of the duration of
20 the proceedings, are essential
21 characteristics of an interim rate
22 order."

23 And I would submit to you that that's
24 precisely what we have today, that it's been recognized
25 that this process is such that it's appropriate to

1 consider this at that point. And we believe that the --
2 the requirements of the legislation have been met.

3 I'll turn the matter back to Ms. Ramage to
4 carry on with final comments. Thank you.

5 MS. PATTI RAMAGE: Thank you, Ms. Murphy.
6 A number of comments were made this morning that Manitoba
7 Hydro feels must be addressed, and they won't necessarily
8 be addressed in any particular order, but certainly we
9 don't want the record to stand without having the chance
10 to comment.

11 The first one is comments made about -- by
12 MIPUG regarding Manitoba Hydro filing it in a timely
13 manner and suggesting that Manitoba Hydro has not filed
14 in a timely manner. Also comments were made about April
15 1st rate increases, Manitoba Hydro never having achieved
16 an April 1st rate increase.

17 I have before me a list prepared by MIPUG
18 of rate increases. This was filed back in February of
19 2009, and -- and they're the rate increases that have
20 been in place since this Board started regulating
21 Manitoba Hydro. And just to be clear, Board Order 43/90,
22 that was in response to the 1990 GRA. The -- the filing
23 was November of 1989, with an Order issued April 1st,
24 1990. 1991 filing November of 1990, with an Order
25 issued, Order 29/91, rates effective April 1st, 1991.

1 1992, filing fall again, November of 1991, rates issued
2 pursuant to Order 25/92, April of '92. 1994. This is
3 when I came on the scene. We had a filing in the fall of
4 1993; we had a Rate Order issued April of 1994. 1996,
5 same thing, fall, November filing, with a Rate Order
6 effective April 1st, 1996.

7 So, it -- it's been the last two (2) that
8 have -- have resulted in later than -- than April 1st
9 filing dates. But, interestingly in the 19 -- or in the
10 2008 GRA, Manitoba Hydro filed in August of that year.
11 It -- it wasn't the November filing, we had a filing in
12 August but the parties were looking for the IFF.

13 The IFF is produced in the fall. The IFF
14 is a culmination of a number of documents that relate to
15 corporate finance, the resource planning, all of a number
16 -- not one (1) or two (2) documents, but a building block
17 series of documents that culminate in the IFF, and that
18 is produced in the fall. When we did attempt to go
19 earlier the attempt effectively failed because the
20 parties wanted to see that document.

21 So I don't think it's fair to point
22 fingers at Manitoba Hydro and suggest that when we filed
23 in late November, as per our historical record, that we
24 aren't filing in a timely manner. I think what it does
25 suggest is the process is expanding. All of those

1 processes that I quoted had two (2) round of IRs just
2 like we have today. We have an expanded process, but
3 pointing fingers and suggesting that its someone's fault
4 that -- it's not fair.

5 Another comment has been made by parties
6 that we should delay the interim process that we have
7 today and consider in a month or two (2); I believe that
8 was CAC/MSOS in their letter had suggested that. From
9 Manitoba Hydro's view, we agree with Mr. Gange that's a
10 total inefficient process to go through one (1) round of
11 IRs: stop, bring in experts and start up a new little
12 process inside a process is a -- is a needless waste of
13 resources. And from Manitoba Hydro's perspective, when
14 we are in the IR process it is an extremely time
15 consuming and resource consuming process. And to think
16 that we could run a parallel process would not be a
17 reasonable expectation.

18 The City commented that Manitoba Hydro is
19 not keen on seeing that all information is available and
20 went through a series of letters suggesting that Manitoba
21 Hydro has delayed in filing that information.

22 Ms. -- Ms. Pambrun was not a party to the
23 exchange of those letters and -- and perhaps was not
24 aware of the background. However, you may recall that
25 Mr. Buhr, at his last appearance before the Board, we

1 were in the middle of that exchange of information and
2 Mr. Buhr made the comment to this Board specifically,
3 that when he -- when he was referring to those documents
4 and the time between them, made the express suggestion
5 that he did not want the Board to -- to think that the
6 City was in any way criticizing Manitoba Hydro, or
7 subject the City for criticism with respect to the time
8 between those exchanges; there was reasons for that.

9 I'm not going to go into all of that but
10 Mr. Buhr, himself, had said that at the time.

11 Fast forward to our most recent exchange,
12 I can say that following Mr. Buhr's retirement, I
13 personally phoned over to the City to find out who would
14 be responsible for dealing with those questions.

15 I spoke with a different lawyer at the
16 time, Mr. Hewett and -- and that was around the GRA
17 process. And I was told not to worry, there hadn't been
18 anyone assigned, we haven't come up to speed on that so
19 that should not be our priority.

20 Now that was something Ms. Pambrun may not
21 be aware of but in terms of delays in filing it's not
22 fair to suggest that Manitoba Hydro did not provide that
23 information on a timely basis.

24 There had been communications and with Mr.
25 Buhr leaving, there was -- there was delays and, as Ms.

1 Pambrun said last week, we phoned to say, "Would you like
2 that information ahead or would you like it as part of
3 the process?" They have said they would like it ahead
4 and we will be getting it to them. But -- but that is
5 where that comes from.

6 Another matter that we had expected to be
7 addressed in -- in the comments a little more thoroughly
8 was CAC's comments with respect to OM&A. And -- and they
9 referenced an \$81 million jump in OM&A between -- over
10 the three (3) year period.

11 And I'm just going to have to break for a
12 moment and find that. Here's my notes. CAC referenced
13 an \$81 million increase in OM&A costs over the four (4)
14 year period which included 2008/'09, commenced at those
15 actual numbers, as -- as between the two (2) IFFs.

16 And I would just point out, in terms of
17 looking at that \$81 million figure, if you look at page 3
18 of Appendix 4.4 that was filed with the PUB on Friday,
19 you will see that the vast majority of OM&A increases
20 related to accounting changes and reclassifications which
21 have been fully explained in that filing. So the \$81
22 million figure should not stand without that -- those
23 explanations that you will find on page 3 of Appendix
24 4.4. So I draw your attention to that.

25 And finally, comments were made with

1 respect to the risk review. And there's a number of
2 differing expectations expressed regarding the timing of
3 that risk review.

4 Manitoba Hydro would simply say, when that
5 risk review takes place will be a question of -- in large
6 part, that will -- it will depend on process issues.

7 They're complex issues as Mr. Gange eluded
8 to and we want -- Manitoba Hydro wants to once again draw
9 the Board's attention to the fact that Manitoba Hydro has
10 retained KPMG to conduct an independent risk review.

11 And that Manitoba Hydro intends to make
12 use of that report in the context of a risk review. And
13 Manitoba Hydro as everyone in the room is aware, is
14 before the courts. The court's decision may impact what
15 use can be made of the KPMG review.

16 But, ultimately, it's our view that we
17 will be using that and that review will not be ready
18 prior to March. So any decision related to risk review
19 should take into account that our -- our best case is to
20 have that report for -- ready for the Board and these
21 parties in March of this year.

22 MR. ROBERT MAYER: That's the end of
23 March, as I understand it?

24 MS. PATTI RAMAGE: Yes, that's correct.
25 And I believe that covers all of the matters we heard

1 today that Manitoba Hydro wished to address and reply.

2 THE CHAIRPERSON: Thank you. Thank you,
3 Ms. Murphy, Ms. Ramage.

4 The Board would like to thank the parties
5 for their submissions, both written and oral, that was
6 given today, and the Board will consider the matters
7 further. Should any party have further comments or
8 submissions after reflecting on the proceedings today,
9 and in that I am referring also to MKO who was unable to
10 attend today, please provide them in writing to the
11 Board, copying all other parties, as soon as possible and
12 no later than February 1, 2010.

13 Thank you. We stand adjourned.

14

15 --- Upon adjourning at 11:55 a.m.

16

17

18 Certified correct,

19

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21

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23 _____
Cheryl Lavigne, Ms.

24

25