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MANITOBA PUBLIC UTILITIES BOARD

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

Before Board Panel:

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

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
March 9, 2011
Pages 4171 to 4324

1 APPEARANCES

2 Bob Peters) Board Counsel

3 Anita Southall (np))

4

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8 Byron Williams) CAC/MSOS

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

2

3 THE CHAIRPERSON: Good morning, everyone.
4 Well, I won't take back the "good morning." So the --
5 we're gathered today as you know, this comes out of the
6 session of January the 31st, the transcript, page 2477
7 on, at which point the Board asked for submissions with
8 respect to the prospects of another interim rate change.

9 The order today, we will start with
10 Manitoba Hydro and then we'll work through the
11 Intervenors and then we'll come back to Manitoba Hydro.

12 Ms. Ramage...?

13 MS. PATTI RAMAGE: Yes, thank you, Mr.
14 Chairman. This morning's request from the Board and --
15 and the questions posed by the Board represent a very
16 unique circumstance for the hearing process. And because
17 of that -- in part because of that unique circumstance,
18 Mr. Warden has asked that he be able to -- that he
19 address the Board in terms of responding to those
20 specific questions that were posed by -- by you. So I'm
21 going to turn the mic over to Mr. Warden.

22 I expect, however, should any legal issues
23 arise -- we're going to address the questions and should
24 any legal issues arise we can respond to those in -- in
25 our reply, but Mr. Warden will -- will deal with the

1 questions which the Board had posed.

2 THE CHAIRPERSON: Thank you.

3 Mr. Warden...?

4

5 MANITOBA HYDRO PANEL:

6 VINCE WARDEN, Resumed

7 DAVID CORMIE, Resumed

8 HAROLD SURMINSKI, Resumed

9

10 SHOULD MANITOBA HYDRO BE GRANTED AN INTERIM RATE INCREASE
11 ON APRIL 1, 2011:

12

13 PRESENTATION/COMMENTS BY MR. VINCE WARDEN:

14 MR. VINCE WARDEN: Yes. Good morning,
15 Mr. Chairman and Mr. Vice Chairman. And the reason that
16 I did want to deliver this response this morning is that
17 there is some new evidence being presented, and because
18 of that we thought appropriate that -- that I deliver
19 that.

20 So we -- we are pleased actually to have
21 this opportunity to provide our views on those important
22 issues that were raised by the Board on January the 31st.
23 We've identified ten (10) issues that we would like to
24 comment on. The first and the most time-sensitive issue
25 is whether the Board should approve new rates for

1 implementation on April the 1st or whether it should
2 await the conclusion of the oral hearing before making a
3 rate change decision.

4 Manitoba Hydro is strongly of the view
5 that its application for an across the board increase of
6 2.9 percent, with the exception of area and roadway
7 lighting should be approved for implementation on April
8 the 1st of 2011.

9 There is ample evidence on the record that
10 the requested increase is warranted, is fair and
11 reasonable, and is in the best interest of energy
12 consumers of Manitoba. The material filed to date is
13 unprecedented in terms of past GRAs. Manitoba Hydro's
14 filings occupy in excess of thirty-five (35) binders and
15 growing. And we are now at day nineteen (19) of the oral
16 hearing to review this material.

17 To say that there is already an extensive
18 record before the PUB to support Manitoba Hydro's rate
19 proposals is surely an understatement. In terms of the
20 current timetable, hearing dates have been set until the
21 middle of June, and we -- with final argument planned for
22 July.

23 The PUB will then have the task of
24 reviewing and deliberating on this extensive body of
25 evidence and producing an order. Should the PUB choose

1 to wait, it appears unlikely that an order for new rates
2 could be issued before August the 1st, 2011, four (4)
3 months later than the implementation date requested by
4 Manitoba Hydro.

5 The implications of later -- of a later
6 implementation date are either a) that revenue will be
7 foregone by Manitoba Hydro or b) that a higher rate
8 increase will be required in the future.

9 While it is correct that Manitoba Hydro's
10 net income in the two (2) test years, that is '10/'11 --
11 2010/'11 and 2011/'12, it is -- is projected to be higher
12 in IFF-10 than in IFF-09, which was the basis of our
13 filing.

14 We already know that we won't achieve our
15 projected net income this fiscal year. And with a delay
16 in the requested increase, we will almost certainly not
17 achieve projected net income next fiscal year.

18 Furthermore, as you're aware, Manitoba
19 Hydro's financial forecast includes projected annual rate
20 increases of 3.5 percent commencing April the 1st, 2012.
21 It seems reasonable that we should be doing everything
22 possible to moderate or reduce those projected rate
23 increases.

24 And one (1) way to accomplish this is to
25 implement what is a very reasonable increase of 2.9

1 percent on April the 1st, 2011. Any delays in
2 implementation will put more pressure on the magnitude of
3 the rate increases that are to follow.

4 To put Manitoba Hydro's 2.9 percent rate
5 in -- increase application into perspective, you may be
6 aware that on March the 1st, 2011, BC Hydro submitted its
7 revenue required application for it's next three (3)
8 fiscal years to the BC Utilities Commission. BC Hydro is
9 seeking a rate increase of 9.73 percent in each of the
10 next three (3) years.

11 If BC Hydro's three (3) year plan is
12 approved, the cumulative impact of the increase would be
13 32 percent over fiscal years 2012 to 2014. In submitting
14 this application, BC Hydro stated that any delays in
15 proceeding with its planned infrastructure projects
16 would, quote:

17 "Would cost British Columbians more in
18 the future if we neglect these assets
19 now when you consider the risk of power
20 outages and the risk to the public and
21 employee safety, not to mention the
22 cost of the corrective maintenance and
23 emergency repairs." Unquote.

24 It is clear that in comparing Manitoba
25 Hydro's electricity rates to any other jurisdiction in

1 North America, our rate proposal is indeed modest and
2 should be approved for implementation on the date
3 requested by Manitoba Hydro. There is nothing to be
4 gained by delaying the rate increase to a later date.

5 Issue number 2 relates to the Minnesota
6 Power and Wisconsin Public Service term sheet status, and
7 Mr. Cormie did comment on this extensively in his cross-
8 examination by Mr. Peters earlier this week.

9 I'll just summarize briefly that Manitoba
10 Hydro continues to have valid term sheets with Minnesota
11 Power and Wisconsin Public Service, negotiations are
12 continuing, and significant progress is being made. Both
13 customers remain strongly committed to proceeding with
14 the proposed transactions with Manitoba Hydro in order to
15 meet their future supply requirements.

16 The major factor that has delayed
17 completion of the negotiations is defining the required
18 US transmission facilities, and their associated costs,
19 and the specific costs that would be born by Minnesota
20 Power and Wisconsin.

21 To understand these issues, Minnesota
22 Power, Wisconsin Public Service, Manitoba Hydro, and
23 several -- several other companies interested in purchase
24 -- purchasing firm power from Manitoba Hydro over the new
25 interconnection have undertaken transmission studies with

1 MISO.

2 In addition, transmission discussions have
3 been undertaken with the CapX Group of Minnesota
4 transmission-owning utilities. At the request of the
5 CapX utilities, the new Manitoba-US major interconnection
6 was identified in the fall of 2010 for inclusion in the
7 MISO transmission expansion plan as a major regional
8 transmission project with a goal of it becoming an
9 approved project in the 2012 MISO transmission expansion
10 plan.

11 In the same period, MISO prepared and
12 filed in the summer of 2010 with FERC, a modification of
13 the MISO transmission tariff to include multi-valued
14 projects, or MVPs as they're known, to allow for cost
15 social -- socialization or regionalization of major
16 transmission projects -- regional transmission projects.

17 FERC approved the MISO tariff revision in
18 December of 2010, and MISO has since approved several
19 MVPs. Thus, with the inclusion of the proposed new
20 interconnection into the MISO transmission plan, and with
21 the MISO tariff revision, Minnesota Power and Wisconsin
22 Public Service have made significant progress that will
23 allow them to conclude contract negotiation --
24 negotiations with Manitoba Hydro in time to meet the
25 current in-service dates for new generating facilities.

1 Upon completion of negotiations, each
2 contract will require approval of the boards of directors
3 of the respective utilities and companies, and
4 appropriate Canadian and US regulatory and government
5 authorities.

6 To the extent that the contracts require
7 certain new generation and transmission facilities to be
8 constructed, these will be conditions precedent in the
9 contracts.

10 Issue number 3 relates to the impact of
11 load forecast reductions. Mr. Chairman, your remarks on
12 January the 31st, 2011, expressed concern that Hydro's
13 load forecasts have been lowered with industrial demand
14 reduced by the closure and cutbacks of significant users
15 of electricity and indications of further plans for
16 future reductions.

17 While it is correct that there have been
18 reductions in forecast load for industrial customers,
19 these forecast reductions are significantly offset by
20 increases in the remaining domestic load, particularly,
21 increases in forecasts of residential loads.

22 The industrial load reductions will have
23 little impact on forecasted domes -- domestic revenues
24 because of the differences in unit prices within the
25 different customer rate classes.

1 Industrial loads provide in the order of
2 three point seven (3.7) cents per kilowatt hour at
3 current rates, whereas the residential loads provide
4 close to seven (7) cents per kilowatt hour at current
5 rates.

6 Of course, Manitoba Hydro is concerned
7 about the loss of industrial load for reasons other than
8 the impacts on electricity sales. A thriving industrial
9 base contributes substantially to the well-being of the
10 province, and is essential to maintaining a thriving and
11 growing economy.

12 We value our industrial customers and want
13 to support sustainable growth in this sector, which
14 brings us to issue number 4, and that is the status of
15 the Energy Intensive Rate Application.

16 The economic downturn has resulted in
17 Manitoba Hydro deferring the filing of a new application
18 for an energy intensive industrial rate. Reduced
19 expectations for expansion of industrial loads have
20 provided an opportunity to improve and broaden
21 consultation with respect to industrial rate design.

22 Manitoba Hydro, MIPUG, and individual
23 large customers have taken advantage of this opportunity
24 to engage in meaningful and productive discussions on
25 topics related to industrial rates.

1 Numerous meetings were held throughout the
2 spring, summer, and fall of 2010, culminating in a
3 workshop presentation to which all MIPUG members were
4 invited on November the 2nd, 2010. A further workshop is
5 planned for March the 16th to broaden consultation to
6 include remaining customers served at voltages between 30
7 kV and a hundred kV. Once consultation is completed
8 Manitoba Hydro intends to refile an energy intensive
9 industrial rate application with the Public Utilities
10 Board.

11 Issue number 5 relates to operating
12 maintenance and administration cost increases. As noted
13 in Manitoba Hydro's exhibit, Exhibit number 12, the OM&A
14 growth rate experience since 2005 and forecasted to
15 2011/'12 is 3 percent per year after adjusting for
16 accounting changes compared to CPI inflation of 1.7
17 percent per year on average.

18 There are various business and cost
19 drivers that have contributed to ma -- to OM -- OM&A
20 increases above the CPI. These -- these are de --
21 detailed -- in Appendix 4.4 of the application and
22 include increased maintenance costs due to aging
23 infrastructure, higher environmental and the regulatory
24 requirements, costs related to customer additions and new
25 facilities, higher pension costs as a result of

1 investment fund per -- performance, higher material and
2 commodity prices, and higher employee costs due to
3 additional resource requirements and to competitive wage
4 pressures.

5 Other Canadian utilities are also
6 experiencing cost pressures. The utility comparative
7 graphs provided in Appen -- Appendix 4.4 and in Manitoba
8 Hydro's rebuttal evidence show that the cost per customer
9 for both SaskPower and BC Hydro have increased at a much
10 higher rate than at Manitoba Hydro.

11 As well, the graphs show that Manitoba
12 Hydro's OM&A as a percentage of fixed assets is low and
13 remains flat over the period compared to SaskPower and BC
14 Hydro, which report a much higher and increasing ratio.

15 As also referenced in Exhibit 12, employee
16 costs represent about 75 percent of Manitoba Hydro's
17 operating costs, and as a result of an aging workforce,
18 it was necessary to hire an increased number of trainees
19 into our electrical trades programs.

20 Because it takes approximately five (5)
21 years for a trainee to step into a journeyman position,
22 the hiring of trainees at this time is essential for
23 Manitoba Hydro to maintain its operations during the
24 upcoming period of ex -- expected high attrition.

25 Manitoba Hydro is, of course, fully aware

1 of the financial impacts of the economic downturn on our
2 customers, and we have taken steps to further constrain
3 the increase in OM&A costs. Such steps include a hiring
4 freeze on new positions, with the exception of line
5 trades trainees, restrictions on out-of-province travel,
6 rationalization of fleet vehicles, extension of service
7 lives of computers and equipment, and reductions in
8 overtime costs where possible.

9 These steps have been successful to date
10 with the effect of reducing year-over-year changes in
11 OM&A expenses by approximately 5 percent this fiscal year
12 compared to last. This represents a reduction of \$16
13 million for the ten (10) month period compared to January
14 the 1st -- for the ten (10) mo -- month period to January
15 the 1st, 2011 compared to the previous fiscal year.

16 However, some of these measures are short-
17 term and may in fact not be in the best long-term
18 interests of the Corporation. A simple example of this
19 is with the restriction on -- restrictions on out-of-
20 province travel there will be no Manitoba Hydro attendees
21 at CAMPUT again this year. Non-attendance at such
22 conferences may have negative con -- consequences over
23 the longer term.

24 Nevertheless, Manitoba Hydro has
25 determined that, under the circumstances, it is more

1 important to expend scarce OM&A dollars on ensuring
2 public and employee safety and the ongoing reliability of
3 Manitoba Hydro's system. Safety and reliability is our
4 highest priority and will not be comprised in any
5 circumstances.

6 I might just add too that with respect to
7 the current lower than forecast and lower than last year
8 expenditures on OM&A, this is to the end of January, so
9 for the ten (10) month period, this can turn around
10 overnight. It would only take a severe ice storm in
11 southern Manitoba or in -- in any place in Manitoba to --
12 to result in significant increases in OM&A. And, of
13 course, we have to provide that service.

14 The example, too, that Mr. Cormie provided
15 earlier this -- in the hearing process with respect to
16 the towers in northern Manitoba, that was -- such a
17 fortunate event that we -- that was caught before it
18 caused extreme damage. The - the foundations on those
19 towers were actually being separated from -- from their -
20 - from their secured launching, and had those towers gone
21 down the consequences would have been -- would have been
22 disastrous for southern Manitoba.

23 So, once that was discovered crews are
24 immediately dispatched. It was necessary to engage
25 outside assistance with divers going underwater and

1 securing those towers. At a time like that, of course,
2 we don't -- we can't concern ourselves with -- with OM&A,
3 those dollars have to be expended. And I think the point
4 being made here is that Maniit -- that system reliability
5 is paramount and cannot be compromised.

6 Issue number 6 relates to the
7 capitalization --

8 THE CHAIRPERSON: How did you discover
9 that situation?

10 MR. VINCE WARDEN: It was purely by
11 accident. We -- it was a -- a remote tower that was
12 randomly observed by -- by an employee that was in the
13 area by chance. And you know we don't always look at
14 those towers. Now we -- we -- certainly -- now that it
15 has come to our attention, every tower is being inspect -
16 - inspected for that -- for that possible occurrence.
17 But yeah, it was just a lucky circumstance that we were
18 able to catch that -- that -- that situation.

19 MR. ROBERT MAYER: You -- you do fly
20 those --

21 MR. VINCE WARDEN: We do but that --

22 MR. ROBERT MAYER: -- power --

23 MR. VINCE WARDEN: -- that would --

24 MR. ROBERT MAYER: -- transmission lines
25 with some degree of regularity, I believe.

1 MR. VINCE WARDEN: We do, but this would
2 not have been observed from the air.

3 MR. ROBERT MAYER: Where did you go
4 underwater? Where do your lines go underwater?

5 MR. VINCE WARDEN: The lines --

6 MR. ROBERT MAYER: I've got the lines --

7 MR. VINCE WARDEN: So li -- the lines
8 don't go under --

9 MR. ROBERT MAYER: -- the towers -- where
10 are they in the water?

11 MR. DAVID CORMIE: Mr. Mayer, the -- the
12 section of the transmission line is adjacent to a lake
13 called Prud'homme Lake, which is a bay off the Nelson
14 River upstream of Kelsey and water levels were about 10
15 feet higher than they were normally because of the severe
16 ice conditions on the Nelson River causing a backup into
17 that lake. And that's why divers were necessary. It was
18 a very unusual circumstance and unexpected.

19 THE CHAIRPERSON: So what would have
20 happened if they had come down?

21 MR. VINCE WARDEN: The results, as I
22 mentioned, could have been disastrous. It would have cut
23 off supply -- it could have cut off supply -- it could
24 have -- if one (1) tower came down it could have cau --
25 caused a cascading effect on the line and yeah, the

1 consequences could have been -- could have been severe.

2 THE CHAIRPERSON: Could you have imported
3 enough power from the States?

4 MR. DAVID CORMIE: No, Mr. Chairman. The
5 -- the tower that was the critical tower was a corner
6 tower, and had it fallen it would have fallen into the
7 second line. And as Mr. Mayer and I discussed yesterday
8 how close those towers are together, it would have taken
9 both the lines down and we would have lost 3600 megawatts
10 of supply, and we can only import a thousand. The loads
11 at the time were probably in the order of 4,000
12 megawatts, so we would have had to have gone into
13 rotating load shed.

14 And we operated the Brandon and Selkirk
15 generating stations, put them at full load, and cut all
16 our export schedules in order to ensure that we wouldn't
17 have a blackout. We were in -- in a situation where we
18 were in a rotating blackout mode but not a -- not a
19 provincial blackout had it occurred.

20 THE CHAIRPERSON: That's very fortunate.

21 MR. VINCE WARDEN: Very fortunate, and I
22 must say I -- I don't -- we don't have a handle on the
23 costs that were incurred to restore those towers. Tho --
24 that -- those costs are still being tabulated, but that's
25 the nature of -- although that is an unusual

1 circumstance, it does, I think, demonstrate the fact that
2 such things do happen, perhaps on a smaller scale with --
3 with storms that we experience, but when that does occur
4 we have to respond immediately.

5 Issue number 6 relates to the
6 capitalization practices of Manitoba Hydro. And there
7 appears to be some concern that Manitoba Hydro's
8 practices related to the deferral and capitalization of
9 expenses may result in current ratepayers not paying a
10 sufficient amount of currently incurred costs, which
11 could result in future ratepayers being burdened with
12 these costs.

13 Manitoba Hydro's not -- does not share
14 this view. In fact, Manitoba Hydro is fully aware that
15 industry and accounting standards are moving away from
16 full cost accounting and Manitoba Hydro has taken steps
17 to adjust its -- its practices accordingly.

18 As evidenced in this proceeding, Manitoba
19 Hydro had adjusted -- adjusted it -- its accounting such
20 that approximately \$30 million of costs that were
21 previously capitalized are now being expensed annually.
22 These costs relate primarily to administrative functions
23 in the interest costs of tools and facilities that are
24 used both in the operations and construction activities
25 of the Company.

1 Manitoba Hydro will continue to monitor
2 accounting trends and practices and will modify its
3 practices to conform with accepted standards. Manitoba
4 Hydro has always adhered to generally accepted accounting
5 prin -- principles and it will continue to do so.

6 Issue number 7 relates to IFRS. IFRS
7 compliant accounting will be required for Manitoba
8 Hydro's 2012/'13 fiscal year with restated comparative
9 reporting for 2011/'12. In this proceeding Manitoba
10 Hydro has filed an IFRS status updated report dated
11 October 31st, 2010, which provides an overview of IFRS
12 considerations for the Corporation, the progress to date,
13 and an indication of future IFRS changes and next steps
14 in the project.

15 For IFF-10 Manitoba Hydro had projected
16 what it considered the most likely known impacts of the
17 conversion to IFRS into its forecast. These impacts
18 include a reduction to overhead amounts capitalized with
19 a corresponding increase to operating costs, and the
20 writeoff to retained earnings of amounts previously
21 capitalized or deferred, along with corresponding
22 reductions to depreciation and amortization expense.

23 Further work continues with our -- our
24 auditors to assess and confirm any and all detailed
25 changes that will be necessary to comply with IFRS. This

1 work will continue throughout the next several months and
2 will consider any new IFRS changes that may take place.
3 In terms of the implications of the conversion to IFRS on
4 the rate setting process, Manitoba Hydro is of the view
5 that any changes to accounting practices can be readily
6 accommodated within that rate setting framework.

7 Because IFRS will result in changes to the
8 timing when certain costs will be recognized in Manitoba
9 Hydro's current operating accounts, some mechanism may be
10 required to defer these costs for rate purposes.
11 However, Manitoba Hydro does not see this as burdensome
12 and will provide the PUB with alternatives to consider at
13 the appropriate time.

14 Issue number 8 relates to the debt to
15 equity ratio calculations. There were a number of
16 questions posed by the Chairman as to the appropriateness
17 of Manitoba Hydro's current debt to equ -- equity target
18 and the components of the debt to equity ratio
19 calculation with respect to rate setting.

20 Two (2) conceptual questions raised were
21 the extent to which the debt the debt to equity ratio
22 should be used in setting rates and whether or not the 25
23 percent equity ratio target is appropriate if the size of
24 the Corporation's assets and debts are projected to
25 double over the next decade.

1 On the first point, Manitoba Hydro
2 believes that the debt to equity ratio continues to be an
3 important financial metric to be used in the -- in
4 considering rate proposals. The debt to equity ratio
5 measures the portion of Manitoba Hydro's capital
6 structure that is financed internally and not through
7 debt financing, and is universally accepted by the
8 financial and investment community as a primary source of
9 the financial strength of an organization.

10 In its recently-issued credit opinion on
11 the Manitoba Hydro-Electric Board, and that credit
12 opinion was just issued on February the 7th of 2011,
13 Moody's Investors Service stated that:

14 "Manitoba Hydro's financial ratios are
15 an indication of the extent to which it
16 is capable of supporting its debt
17 independently, which is a consideration
18 in the rating of the province."

19 And I thought this statement was actually
20 quite significant because a rating agent -- agency
21 doesn't necessarily draw that comparison to the rating of
22 the province, so it is clear -- clearly being recognized
23 with a growing proportion of the province's debt as being
24 very important to the province's credit rating. The
25 credit rating clear -- it is clear that the credit rating

1 agencies considered debt-equity and other financial
2 targets to be important measures which are closely
3 monitored.

4 Manitoba Hydro also believes that the 25
5 percent equity ratio remains an appropriate financial
6 target when considering the projections of the size of
7 its operations after a decade of investment.

8 Manitoba Hydro considers that a -- an
9 adequate level of retained earnings is that which is
10 sufficient to withstand the financial impacts of the
11 risks faced by the Corporation.

12 The absolute magnitude of these risks can
13 grow over time, depending on the duration or severity of
14 the risk events, and can change relative to the size of
15 the corporation. In fact, it is reasonable to assume
16 that there is a linkage between the growth in the
17 corporation's assets and the risk that it faces.

18 In -- in IFF-10, Manitoba Hydro is
19 projecting an equity ratio of 19 percent, and retained
20 earnings of 4.3 billion by the end of 2000 -- 2020.
21 Manitoba Hydro notes that its current retained earn --
22 earnings level of 2.2 billion is roughly equivalent to
23 the financial consequences of a repeat of a five (5) year
24 drought and that IFF-10 risk analysis shows that an
25 occurrence of that drought commencing in 2012/'13 would

1 reduce the equity ratio to 8 percent, and retained
2 earnings to 1.8 billion by 2020.

3 There are a number of other significant
4 risks that Manitoba Hydro is exposed to, including
5 infrastructure risk, export market risk, export price
6 risk, interest and exchange risk, capital and escalation
7 risk, and load growth that could have a significant
8 financial impact on the Corporation's retained earnings.
9 Manitoba Hydro's retained earnings need to be sufficient
10 to withstand these risks.

11 There were also questions posed by the
12 Chairman on the components of Manitoba Hydro's debt to
13 equity -- equity ratio calculation in terms of the
14 appropriateness of including AOCI, that is other --
15 accumulated other comprehensive income, and contributions
16 in aid of the construction in the equity calculation.

17 Manitoba Hydro believes that in as much as
18 AOCI is a component of equity, it is appropriate to
19 include this amount as part of the debt-equity
20 calculation, and because AOC -- AOCI is -- primarily
21 reflects unrealized gains or losses associated with the
22 translation of Manitoba Hydro's US debt, a strong
23 Canadian dollar will increase AOCI, whereas a weakening
24 Canadian dollar will have the opposite effect and reduce
25 AOCI, and therefore Manitoba Hydro's debt-equity ratio

1 calculation. That is relevant. The -- the amount of the
2 -- the translation of -- of the debt, US debt at balance
3 sheet date is important. That is the best indication of
4 -- of what that debt represents at that point in time.

5 So there is, I think, strong support for
6 including that translation, albeit unrealized, in the
7 debt-equity calculation at balance sheet date.

8 Two (2) of the credit rating agencies,
9 Standard & Poor's and Moody's, accept the inclusion of
10 AOCI in the equity calculation, and DBRS looks at this
11 issue on a case-by-case basis. Both BC Hydro and Hydro
12 Quebec include AO -- AOCI and their equity calculations.

13 Contributions in aid of construction
14 represent non-refundable contributions provided by
15 customers towards service extension costs. These
16 contributions are not part of the interest-bearing debt
17 of the Corporation, and given that they are non-
18 refundable they do represent -- they do not represent
19 liabilities of the Corporation.

20 If we consider that the equity ratio
21 measures the portion of the Corporation's assets that are
22 not funded by debt, then the inclusion of these
23 contributions in equity conforms with the purpose of the
24 ratio calculation.

25 As a matter of interest, the current debt-

1 equity ratio up to January 31st, 2011 is 74/26, so we're
2 slightly better than our target of 75/25. If we exclude
3 AOCI from that calculation as at January 2011 it does
4 move the ratio two (2) -- two (2) points, so it would go
5 from 74/26 to 76/24.

6 And likewise, if we exclude contributions
7 in aid of the construction from the calculation, it also
8 moves the -- the ratio by two (2) percentage points to
9 76/24. The amount of the contributions in aid of
10 construction and AOCI coincidentally are -- are very
11 close in quantum, and therefore the ratio moves by the
12 identical two (2) -- two (2) points.

13 The -- the calculation, I -- I believe, is
14 supportable. It's probably more important though that a
15 consistent calculation be used and that it be
16 consistently applied so that it can be -- the changes
17 from period to period can be measured.

18 Issue number 9 re -- speaks to the impact
19 on the -- of the pension deficit on our financial
20 position. Concern was expressed over the difference
21 between the fair value of pension assets and obligations,
22 and the impact on the financial strength of Manitoba
23 Hydro.

24 Manitoba Hydro's pension fund investments
25 are showing positive recovery since the economic downturn

1 of 2008/'09. The impacts of the negative returns on
2 pension investments in that year have been partially
3 offset by positive returns in 2009/'10 and further
4 positive returns for the nine (9) months and at December
5 31st, 2010. As a result of current investment
6 performance, the combined deficit of \$89 million at March
7 31st, 2010 is likely to be further reduced. The deficit,
8 that is, will be reduced for fiscal 2010/'11.

9 Increases to employer and employee pension
10 contributions have been considered by the Civil Service
11 Superannuation Board, but no changes have yet been en --
12 enacted by government in that regard. Irrespective of
13 the status of contribution requirements, the current
14 deficit in Manitoba Hydro's pension fund is manageable,
15 and its level is within the range of expected variations
16 of pension fund investment performance.

17 The accounting treatment for pension plans
18 will change under IFRS, but this will have no impact on
19 the deficit level or the funding requirements.
20 Currently, IFRS does allow a market -- does not allow a
21 market-based approach to evaluating pension funds, with
22 the consequence that recognition of gains or losses into
23 income or equity will be accelerated.

24 The International Accounting Standards
25 Board has also issued an exposure draft which, if

1 approved, will require all pensions gains or losses to be
2 recorded directly into other comprehensive income. As a
3 result of the current level of deferred actuarial losses
4 on the pension plan, the application of IFRS to pension
5 accounting will have a small negative impact on the debt-
6 equity ratio in the short-term, but those effects will be
7 fully offset in future periods due to the reduction or
8 elimination of future amortization of those losses.

9 The final issue, issue number 10, or --
10 refers to the downside risk versus the upside risks of
11 Manitoba Hydro's operations.

12 At pages 2,486 and 2,487 of the
13 transcript, the Chairman posed a number of questions as
14 to the -- whether there is appropriate sharing of risks
15 between this generation and future generations of
16 electricity ratepayers. Is Manitoba Hydro speculating on
17 behalf of current and future ratepayers? How symmetrical
18 is the downside risk to the upside risk? Is it possible
19 that rate increases -- higher rate increases may be
20 required than forecasted in the future?

21 The answers to these questions are complex
22 as we sit here today. The future is far from certain.
23 What we do know with 100 percent certainty, however, is
24 that do nothing is not an option. The nature of Manitoba
25 Hydro's business is that decisions must be made far in

1 advance of new supply requirements coming on-stream.
2 This is not speculation. This is fulfilling the
3 fundamental mandate of Manitoba Hydro, which is to
4 provide for the continuance of the supply of energy to
5 meet the needs of the province.

6 As has been noted earlier in these
7 proceedings, Manitoba Hydro has been informed by the
8 Minister responsible for Manitoba Hydro that it is the
9 provincial government's intention to assign
10 responsibility to an independent body to carry out a
11 needs for and alternatives to assessment of Manitoba
12 Hydro's proposed major new generation projects. We are
13 confident that this review process will address any and
14 all questions related to the upside and downside risks of
15 these projects.

16 Mr. Chairman, you also requested that
17 Manitoba Hydro file by this date its twenty (20) year
18 financial outlook and the four (4) IFF scenarios that
19 were requested in PUB Manitoba Hydro Pre-Ask 4.
20 Unfortunately, the twenty (20) year financial outlook
21 will not be available until after the meeting of the
22 audit committee of the Manitoba Hydro Board on March the
23 14th. It is Manitoba Hydro's intention to file the
24 twenty (20) year outlook immediately following the audit
25 committee meeting.

1 Subject to any questions the PUB may have,
2 we'd like to thank you for this opportunity --
3 opportunity to provide our submission on these important
4 issues. Thank you.

5 THE CHAIRPERSON: Thank you, Mr. Warden.
6 I think we'll take a short break before we come back and
7 call on CAC/MSOS.

8 MR. BYRON WILLIAMS: Mr. Chairman, before
9 you do, it would be helpful for my clients, Mr. Warden
10 used the word "submission." I'm assuming that Manitoba
11 Hydro is -- would characterize what -- what he said this
12 morning as -- as evidence and -- and in -- indeed to some
13 degree new evidence. And it would be helpful to clarify
14 from Manitoba Hydro's perspective what exactly are the
15 nature of his comments this morning, if that's
16 appropriate.

17 THE CHAIRPERSON: Do you have any
18 comments, Ms. Ramage? Like Mr. Warden is sworn in as a
19 witness.

20 MS. PATTI RAMAGE: Yeah, Mr. Warden is a
21 sworn witness and -- and he made -- I'm going to not use
22 the word "submission," has made his comments this morning
23 on the basis that he is a sworn witness and he intended
24 that to be evidence before this Board.

25 THE CHAIRPERSON: Yeah, so he could be

1 crossed on the -- on the matters. But thank you very
2 much, Mr. Warden. We'll take a short break now.

3

4 --- Upon recessing at 10:16 a.m.

5 --- Upon resuming at 10:35 a.m.

6

7 THE CHAIRPERSON: Okay. Welcome back.

8 Thanks again to Mr. Warden. So we'll now move to

9 CAC/MSOS and Mr. Williams.

10 MR. BYRON WILLIAMS: Yes, thank you, and
11 good morning Mr. Chairman and Mr. Vice Chair.

12 I do want to note that Ms. DeSorcy is here
13 today and has -- as note as well that she's been working
14 extensively with me on the development of this outline.

15 I'm going to turn to the outline in just
16 one (1) second, but on behalf of my clients I do want to
17 offer some advice to Manitoba Hydro. This morning
18 Manitoba Hydro presented new evidence for -- in the
19 course of the hearing. Now, from a tactical perspective,
20 on behalf of my client I certainly would have been more
21 upset if it -- if it reflected the submissions or if it
22 impacted the submissions I'm going to make for the rest
23 of this morning.

24 And I -- I have to say that it has not
25 prejudiced my clients in the sense that they deem it of

1 marginal relevance to the submissions they intend to make
2 today. But from a procedural process and pract -- from a
3 procedural perspective my clients do want to offer this
4 comment and this advice, our client's prepared for this
5 submission based on the record as it closed yesterday aft
6 -- yesterday afternoon.

7 They did not anticipate that Hydro would
8 be essentially introducing new direct evidence in the
9 course of the hearing. And my client's advice to
10 Manitoba Hydro would be that better regulatory practice
11 would have been to seek leave of the -- this Board to --
12 to re-open your direct evidence.

13 And certainly I can -- I've conferred with
14 my clients. My clients would certainly have acceded to
15 that request, they would have supported it, because they
16 certainly would want the Board to have any information
17 that -- that -- that it -- that -- that it deemed imp --
18 important and that Hydro deemed important as well.

19 So given that these submissions -- or the
20 evidence of Hydro are not prejudicial to my client's
21 position this morning, they will not be objecting to it.
22 Their advice to Manitoba Hydro is that better regulatory
23 practice, and perhaps courtesy, would be -- there are
24 better alternative than -- than what they chose today.

25 MR. ROBERT MAYER: Perhaps, Mr. Williams,

1 that advice might have been given to us. I guess the
2 ultimate responsibility for whether or not Mr. Warden got
3 to give evidence today was ours. We -- I think we take
4 your advice. Thank you.

5 MS. PATTI RAMAGE: If I could just
6 comment on that, Mr. Chairman. We are in the middle of a
7 process and the Public Utilities Board has always
8 indicated it -- it desires to have the best and most
9 recent information. And -- and that is what motivated
10 the decision for Mr. Warden to -- to make that submission
11 because there was going to be new evidence submitted, and
12 that evidence then would be available for cross-
13 examination. We are -- we know we are not finished this
14 process and -- and we have some time to go, and that's
15 what motivated this decision.

16 And with respect to the comment of leave,
17 I would suggest that Mr. Warden did not come on the mic
18 this morning, counsel did. And we introduced the concept
19 and that would have been the appropriate time to raise
20 that. I would also indicate that at the end of yesterday
21 I -- I was able to advise Mr. Hacault and -- and Mr.
22 Peters of what Manitoba Hydro was doing. Unfortunately,
23 Mr. Williams wasn't here and -- and to that end I didn't
24 -- wasn't able to advise him.

25 But there was nothing particularly

1 strategic intended by not speaking to Mr. Williams. And
2 my one (1) comment, and it's perhaps premature, but in
3 terms of evidence I note in Mr. William's submission
4 there -- there is also evidence that hasn't been before
5 this Board, and we can deal with it at that time when we
6 hear it, but that's something that has happened in front
7 of this Board, and -- and that's this Board's, at least
8 in terms of how I understand it, the Board's desire is to
9 get the best information as soon as it can.

10 THE CHAIRPERSON: I -- I'm confident that
11 no party believes there was any mal intent sought. It's
12 clear that this hearing does have elements of the
13 unprecedented involved in it and it's also true that
14 we're not a court. We've got more flexibility, my legal
15 counsel has assured me, from time to time.

16 But we're -- we look forward to
17 everybody's perspectives, and Mr. Williams has a
18 perspective on this particular presentation evidence
19 provided by Mr. Warden and -- and we've heard it.

20 So, Mr. Williams, if you want to begin
21 with your submissions.

22

23 SUBMISSIONS BY MR. BYRON WILLIAMS:

24 MR. BYRON WILLIAMS: Absolutely, Mr.
25 Chairman. And I'm not sure I have a perspective, but my

1 clients do, and I seek to express it with whatever
2 limited skills I have. We have provided to all parties
3 in the room and outline of the oral submission.

4 And I know that some members of the Board
5 read ahead and read very studiously and they probably
6 already identified a couple of errors. I'll -- I'll
7 identify a couple when I get there. So I'll -- I'll urge
8 the Board not to -- to stay with me because I will be
9 moving off the -- the outline text extensively and -- and
10 I certainly look forward to Mr. Vice Chair outlining
11 where I've, for example, put the wrong date for the
12 comments of the panel being of -- of January 31st.

13 Just by way of -- be -- before moving
14 directly to the outline, before turning to -- turning to
15 the first page, I think it's important to keep in mind
16 that -- what's at issue here, the magnitude of it, and
17 there's different evidence on -- on the hearing.

18 We're talking about a 2.9 percent interim
19 rate increase, and if we look at IFF-09, and I'm
20 referring to Appendix 10.2, page 1, you don't need to
21 turn there, we talk about around \$35 million. If we took
22 -- look to IFF-10, we're looking at about \$42 million.
23 The source for that is Appendix 76, page 33. And those
24 numbers are numbers that I certainly, on behalf of my
25 clients, will be coming back to from time to time.

1 advancement of a plant half a generation. Certainly if
2 one looks to the alternative scenarios contemplated by
3 Manitoba Hydro, and our clients don't see Keeyask on the
4 agenda in the -- in the 2010s or the 2020s. And indeed
5 Keeyask, a less efficient plant than Conawapa, is being
6 jumped over Conawapa.

7 So those are just background, and -- and
8 certainly in the panel's comments of late January, we --
9 we sense the uncertainty around the prospects of Manitoba
10 Hydro, not in a pejorative sense, and we -- we feel it's
11 incumbent upon our clients to note that these are indeed
12 un -- unprecedented circumstances, and that Keeyask, in
13 our clients' submission, is that elephant in the room
14 that is --that is causing difficult -- difficulty to all
15 of us as we consider issues of intergenerational equity
16 risk forecasting speculation.

17 So that's the big picture. I'm hopefully
18 going to narrow in, starting at page 1 of my outline, to
19 the smaller picture. Page 2. We have made progress.

20 And I do want to talk for a couple of
21 moments about, this is page 2 of the outline, about our
22 clients' preparation for this hearing.

23 And the Board is well aware that CAC/MSOS
24 seek to represent the interests of residential customers,
25 and that they don't ex -- expect -- accept the premise

1 that you can paint these customers with one (1) brush,
2 nor do they accept the pre -- the premise that Hydro
3 advances that the interests of Hydro and residential
4 customers, at least, are synonymous. Our clients do not
5 accept that premise.

6 What our clients have done in preparing
7 for this hearing, their usual activities certainly
8 involve consulting with members and executives, and --
9 and monitoring the thousands of consumer contacts that
10 they have each year, but our clients in this proceeding,
11 and over the last six (6) weeks, have gone to some
12 extraordinary efforts, and -- in terms of holding focus
13 groups, in terms of ongoing and -- consultations with
14 people who serve low-income persons, people who seek to
15 represent low-income persons, both nationally and
16 locally, as well as persons who serve urban Aboriginal
17 people.

18 And towards the end of our presentation
19 for a few mo -- moments I'm going to talk about the
20 vulnerability of Manitoba consumers today. I will be
21 conveying my clients' perspectives, but I will seek to be
22 using some of the words -- some of the language that
23 others have shared with us.

24 And on behalf of our clients, we want to
25 thank those other organizations and those other

1 individual consumers. We -- we won't tell you who they
2 are, but we want to thank them.

3 Turning to page 3 of the outline, just a
4 caveat reca -- regarding -- caveat -- caveat regarding
5 the record. My friend, Mr. Hacault, will speak to this
6 more eloquently than I can, I'm sure. The record is far
7 from complete. On two (2) occasions in our evidence --
8 in our submissions not evidence, I -- I do make reference
9 to matters or conclusions we expect to be able to
10 establish. I preface those words with we expect the
11 record to demonstrate. I don't want the Board to think
12 that that is evidence. I want the Board to understand
13 that when we're talking about that, we hope to prove it
14 through cross-examination or otherwise but we have not
15 yet done so.

16 Mr. Warden and Manitoba Hydro didn't
17 speak, turning to page 4 of our outline, didn't speak to
18 the -- the test that should guide the Board in its
19 deliberations in setting an interim rate if it -- or
20 different from the current rate if it so chooses. It
21 won't surprise the Chair. He's been hearing me -- as we
22 look at page 4, it won't surprise the Chair. He's been
23 hearing me on this point for a long time.

24 Obviously, the starting premise as ever is
25 the Board's jurisdiction and obligation under Section 7

1 of the Act, Public Utilities Board Act, to set and fix
2 just and reasonable rates. That obviously has to be read
3 with -- with the context as well of Section 47(2), which
4 grants the Board its authority to make an interim order
5 and reserve further directions.

6 But, of course, when we read those
7 sections together, an interim rate must be a just and
8 reasonable rate. But how can the Public Utilities Board
9 in reasonably exercising its discretion to fix an interim
10 rate -- a just and reasonable inter -- interim rate, what
11 guidance is there?

12 That language doesn't provide a lot of
13 guidance, so my clients have instructed me and we've
14 taken the liberty of looking to what guidance can we
15 gather from the Canadian case law, from the PUB's
16 regulatory pra -- practice. We've put in what the CRTC
17 has done in the past. And we've also looked to American
18 guidance as well, and that's on page 5 of the outline of
19 my clients.

20 So certainly I'll note that in footnote 3
21 we out -- outline a couple of interesting Alberta cases.
22 But from my clients' perspective, the leading case giving
23 guidance to this Board in setting interim rates for -- in
24 a public utility-like setting is the CRTC versus Bell
25 Canada.

1 And we've pulled out two (2) paragraphs
2 from that. I believe my -- my friend, Mr. Hacault, has
3 actually provided the whole decision to you. Paragraph
4 47 just reinforces that what we're dealing here with is
5 an interlocutory manner -- matter, and it's commonly
6 relieved for the purpose of relieving applicants from the
7 deleterious effects caused by the length of proceedings.
8 So that's paragraph 47.

9 Paragraph 57, we think is very instructive
10 and valuable to this Board. And we've taken the liberty
11 of highlighting the Supreme Court's language. Starting
12 on line 2:

13 "The very purpose of interim rates is
14 to allay the prospect of financial
15 instability which can be caused by the
16 duration of proceedings before a
17 regulatory tribunal, financial --
18 financial instability related to the
19 length of the proceeding."

20 We've gone down to -- just a couple lines
21 because they're talking about the decision the CRTC made,
22 which was, in my understanding, upheld. It granted
23 interim rate increases on the basis of a -- of serious
24 apprehended financial difficulties. And it talks to the
25 underlying purpose of interim rates, always in the

1 context of just and reasonable, is to foster financial
2 stability throughout the regulatory process, and to
3 protect against serious apprehended financial
4 difficulties flowing from the duration of the regulatory
5 process.

6 I cite as well on the -- on behalf of our
7 clients on page 5, my take on PUB Order 18/10 per the
8 majority, and this is -- the Board will -- will tell us
9 ultimately what was the ratio or the heart of its
10 decision, but this is what our clients' take as advice
11 from the Board.

12 In our view, the Board's decision was in
13 circumstances where the Corporation forecast, and we've
14 underlined these words, a dramatic reduction in forecast
15 2000/'10 net income as compared to the previous year, and
16 in circumstances where the Corporation has presented a
17 prima facie justification for a 2.9 percent rate
18 increase, and where the regulator anticipates a final
19 posi -- decision to be more than six (6) months from the
20 starting point of the proposed rate adjustment, an
21 interim rate increase might be appropriate to protect the
22 short-term financial status of Hydro, in terms of
23 adequate retained earnings.

24 Certainly the Board, as I've said, will --
25 will tell us ultimately what it -- what it meant, but

1 certainly that's wha -- what we took from this decision.
2 Looking at a dramatic change in -- in circumstances and
3 an undue with no -- undue regulatory delay to the extent
4 that it would be prejudicial to the Corporation,

5 Goodman --

6 MR. ROBERT MAYER: Mr. Williams, before
7 you go any further. I noticed the six (6) month number
8 in there; when do you think we might end these hearings--

9 MR. BYRON WILLIAMS: I'm going to --

10 MR. ROBERT MAYER: -- and when do you
11 think we might see an order, a final order?

12

13 CONTINUED BY MR. BYRON WILLIAMS:

14 MR. BYRON WILLIAMS: Mr. Chairman, as you
15 know, in terms of timing I've been the pessimist amongst
16 the crew. Certainly I'm feeling a little more optimistic
17 my -- myself that I fully expect the hearings to complete
18 sometime in June. And like Mr. Warden, our clients
19 anticipate an order being available perhaps in -- for
20 August 1st. That -- that will be the Board's judgment as
21 -- as matters go on, but that's certainly the -- that's
22 our client's best judgment to date.

23 Mr. Vice Chair, just before we leave this
24 page, I do want to point you to -- at the bottom of that
25 page, an important American authority. I didn't have my

1 Bonbright around so I apologize to Mr. Wiens but I did
2 look to my -- my second favourite text which is Goodman
3 on the process of ratemaking. he's a lawyer so I -- I
4 weight his views a little less highly than Mr. Bonbright.
5 But Goodman says in the American context:

6 "At the very least an agency will
7 require a clear showing that the
8 temporary rate increase prior to full
9 hearing [or in the midst of full
10 hearing we would submit] is required to
11 meet an unusual financial need that
12 demands immediate correction."

13 For what it's worth, the American
14 sentiment.

15 Turning to page 6 of the outline -- and I
16 want to emphasize to the Board I'm not going to the text
17 quite yet -- that's powerful language that one sees in
18 the CRTC decision, in the PUB decision 18/'10, and in
19 Goodman: allaying financial instability; serious
20 apprehended financial difficulties; a dramatic reduction
21 in forecast net income; unusual financial need;
22 relatively significant extreme financial circumstances
23 related to regulatory delay -- material delay, whether
24 it's six (6) months, four (4) months, we're not going to
25 get caught up on that six (6) month figure.

1 And it's in my clients' submissions, it's
2 not surprising that the -- the CRT -- the -- the Supreme
3 Court, the regulatory process and academic language all
4 suggest that interim rates are not to be granted lightly.
5 And we -- we speak to this on page -- on page 6.

6 There's a number of policy reasons --
7 there are a number of policy reasons why interim rates
8 are not to be granted lightly. And, generally speaking,
9 it is rarely desirable to rush to judgment or to
10 preliminary judgment before the record is complete. And
11 I'm sure my friend, Mr. Hacault, will speak more fully to
12 this.

13 There's also a concern that from the
14 perspective of some consumers, the regulator is
15 prejudging an application before the record is complete.
16 And, you know, I've made it clear to our clients that
17 that's not the case.

18 But I -- I think it's important for the
19 Board to understand, and certainly for me to express on
20 behalf of my clients, that intellectually,
21 philosophically, they're -- they're strongly opposed to
22 interim rates unless there is a serious apprehended
23 financial difficulty. They believe that type of remedy
24 should be granted rarely.

25 So from my client's perspective, and

1 turning you to the first bullet -- second bullet on page
2 6 of the outline, certainly they acknowledge that a
3 regulatory discretion exists. They suggest that that
4 regulatory discretion can only reasonably exercised in
5 circumstances where the Board determines that the current
6 rate is not just and reasonable, but it is not yet
7 possible to make a final order that sets a just and
8 reasonable rate.

9 On the third bullet on page 6 we offer
10 what we think, based upon the case law and the Board's
11 prior decision in 18/'10, are some appropriate
12 considerations for the Board to look at. First of all,
13 has the tribunal -- has this Board concluded that a
14 lengthy delay in the regulatory proceeding is likely to
15 take place.

16 Secondly, has the tribunal reached the
17 conclusion that there is a unusual financial need such
18 that a rate is necessary either to allay the prospect of
19 financial instability or serious apprehended financial
20 difficulties, which can be caused by the duration of the
21 proceeding.

22 Third, has the Corporation established,
23 and the tribunal concluded on a prima facie basis that
24 the proposed interim rate is just and reasonable. There
25 might be other considerations, but we think that this is

1 not a bad working approach to that test.

2 Put more succinctly, I've restated Mr.
3 Goodman's test. And our clients want to make it clear
4 that they didn't agree with the Board's decision of the
5 majority in 18/'10, but they concede, and I'm still
6 focussing you on the lo -- bottom of page 6.

7 They concede that that decision fits
8 within the criteria they've outlined above. And they --
9 they -- they suggest that if you look at Bell Canada you
10 can see that the Board was of the view that this dramatic
11 reduction in forecast net income and the potential for a
12 significant procedural delay suggested that the existing
13 rate was not just and reasonable, and I've put the rest
14 of our analysis there.

15 So I've mislabeled the Chairman's
16 comments. I've suggested they were January 26th. I
17 apologize for that. I just wanted to get to it before
18 Mr. Vice-Chair. But I -- I want to -- with -- with those
19 thoughts in mind, our clients did turn our attention to
20 the Chairman's lengthy comments of late January 2011,
21 eleven (11) pages worth of -- worth of -- worth of them.
22 And when we look -- before we get into the minutiae of
23 those comments, we want to look at the comments at a very
24 high level, and this is our interpretation of them. The
25 Board may disagree with it, but this is how we

1 interpreted them.

2 And we cite directly the Chairman's
3 comments at the top of page 7. The Chairman was
4 approaching this both from a glass half-full and glass
5 half-empty analysis saying:

6 "On the one (1) hand, look at Hydro's
7 application and projections for the two
8 (2) test years. There's some evidence
9 to suggest there's a possible case for
10 not proceeding on April 1st. On the
11 other hand, though, looking deeper."

12 The Chairman -- I -- says:

13 "Look at the possibilities for future
14 years."

15 And asks:

16 "Are there contrary inter --
17 indications suggestive of a need for
18 another rate increase, one (1) to take
19 place after April 1st, 2011?"

20 And certainly in my clients -- and those
21 are direct quotes subject to my mistypes, from -- from
22 the Chairman's comments.

23 Later on page 7 we presid -- provide our
24 client's interpretation of these two (2) competing
25 scenarios. One (1) is, assuming Hydro's vision of the

1 future is likely to unfold, and give its -- given its
2 improved prospects since IFF-09, is there really any need
3 for a rate increase. That's one (1) of the big themes we
4 see enunciated in the Chairman's comments.

5 And certainly, versus a different one (1)
6 -- and we're not -- these are not the Chairman's words.
7 I want to -- to -- this is my characterization or
8 paraphrase of them. On the other hand, given the
9 uncertainty associated with the era of expenditure, or
10 Mr. Warden's decade of investment, is not a rate increase
11 dictated in order to protect Hydro and its ratepayers
12 from itself? That's how, certainly, our clients looked
13 at those two (2) themes.

14 Turning you to page 8 of the outline, and
15 you'll see some errors here. I think I've miscounted the
16 hearing days, and -- but you'll -- we'll accept, and
17 certainly my clients will submit to you, it's been a
18 lengthy hearing. I think we can agree on that, whether
19 I've got the numbers right or not.

20 But what's unique about this hearing, at
21 least from my clients' perspective, is usually eighteen
22 (18), nineteen (19), twenty (20) days into a hearing, we
23 all pretty much know where it's going to go. Maybe
24 that's not always the case. I certainly felt that way in
25 the Payday Lending proceeding, Mr. Hacault, maybe you

1 identified the things that make the future of Manitoba
2 Hydro look relatively bright. Those comments of the
3 Chairman, whether it's their strongest fiscal position in
4 its history, or the positive forecasts and -- and good
5 water flow conditions. And our clients would note, in
6 terms of this column, these are absolutely the concepts
7 that you would expect to see both in a final
8 determination of a general rate application and in the
9 context of an interim rate application.

10 In the second column, they've identified
11 what I've called the elephant in the room, or the -- the
12 backdrop to the -- to the -- the hearing. Those
13 fundamental questions about the preferred development
14 proposal of Manitoba Hydro. Will it proceed, and if so,
15 will it proceed within the time frame contemplated by
16 Hydro.

17 And we've subgrouped that into two (2)
18 themes that emerged, we thought, from the Chairman's
19 questions, the first being that the business case for
20 Minnesota Power and Wisconsin -- I've got it -- Public
21 Service sales appears to have deteriorated. Secondly,
22 will the contracts be signed, and if so when? And also,
23 what if any impacts will the decrease in load forecast
24 have?

25 Now, ordinarily, one would expect this

1 type of discussion to be ultimately addressed in a need
2 for an alternative justification hearing, but certainly
3 Hydro has made the decade of investment versus the decade
4 of returns a central part of its desire to increase rates
5 materially above inflation. And -- and so certainly our
6 clients agree that to the extent that Hydro has brought
7 it in and said, Look at the long picture, look at the
8 next decade, it's absolutely before the Board in the
9 context of the GRA.

10 My clients also note that these questions
11 -- and there's a -- a lot of profound questions here,
12 most of which can't be addressed prior to the interim
13 rate application, and many of which are unlikely to be
14 addressed prior to the close of this record. So -- so
15 that's the -- the second column.

16 The third column, and, sadly, it's longer
17 than the first column, but some of the considerations
18 that might be grouped as -- as negative indications in
19 terms -- or uncertainties related to the IFF. And I --
20 I've set them out there. The -- the Board has well
21 expressed them. And certainly these are germane to the
22 rate application. But I think it's important to ask when
23 one looks at that column, and when one looks at the
24 language of the CRTC or the Supreme Court in the CRTC
25 decision, are these the foundations on an interim basis

1 for a serious apprehended financial difficulties flowing
2 from the timing of a rate order. And certainly our
3 clients would say, No.

4 And, finally, there's the fourth column,
5 which are also some -- some very thoughtful questions
6 which Mr. Warden, to his credit, has tried to address in
7 the context of an interim rate application. Our clients
8 are not prepared to do so at this point in time. They
9 don't think the record's complete and -- and time does
10 not permit.

11 But our clients would respectfully suggest
12 that while these are central considerations both to the
13 ultimate rate application and to any need for an
14 alternative justification discussion and to future rate
15 in -- hearings, they're not central to the interim rate
16 application and the question of whether there's a ba --
17 basis for a serious apprehended financial harm flowing
18 from a delay in issuing an order.

19 So that's our big picture. We hope the
20 table is of some value to the -- to the tribunal. I can
21 assure you that our clients will be referring to it
22 regularly during the hearing, and in our closing
23 submissions we'll try and address many of those issues.

24 At page 10 our clients ask, as we've tried
25 to ask in the preceding page:

1 "Are all the questions raised by the
2 panel appropriately dealt with in the
3 context of an interim rate
4 application?"

5 And focussing your attention on the middle
6 of the page, our submission on behalf of our clients is -
7 - is that a lot of them are not, and they really require
8 enriched deliberations, not that we haven't had a lot of
9 deliberations already but there's more to be said on many
10 of these issues.

11 We haven't heard from Kubursi and Magee.
12 We haven't heard from Wallach. We haven't heard from
13 Chernick. We haven't heard from Matwichuk and Simpson.
14 We haven't heard from the esteemed Mr. Colton or Mr. --
15 Professor Carter. There's a lot that hasn't been
16 established.

17 And -- and we would also note that some of
18 the questions may not even be satisfactorily ra --
19 addressed in the course of this hearing. Over the last
20 three (3) days now Hydro's talked about the opportunities
21 for enhanced transmission in Minnesota. And -- and I may
22 have misheard Hydro, but my suggestion in terms of the --
23 what I'm going to call the MVP because I can't remember
24 the -- the term Mr. Cormie used, the earliest we're going
25 to get word on that is the summer of 2011.

1 We don't know what's really going to
2 happen to Bipole 3. We won't know even what route it
3 will take until after October 4th, 2011. We're
4 nonpartisan. We're not going to get into that debate,
5 but that issue is up in the air and won't be determined
6 by then. And we're unlikely to know whether or not these
7 contracts will be signed within the time frame of this
8 hearing.

9 And when we turn to page 11 of the client
10 -- of the clients' submission, going back to the thrust
11 of what our -- our clients thought of the Chairman's
12 submission, Chairman's advice or comments on -- in late
13 January, those two (2) competing themes, do we think
14 rates are not going up or do we think they're going up as
15 much as or more than -- than are desired.

16 We think it would be imprudent to make a
17 directional judgment of that sort on an -- in the context
18 of an interim hearing, and that it may be prudent to wait
19 for additional information. I guess the warning I have
20 though, and I -- you can see the lengthy list of issues
21 we've outlined, is we're not going to know all this even
22 by June.

23 And -- and in fairness to the -- to the
24 Board, a lot of it we won't, but most of it we should
25 know in the next year. And the caution our clients would

1 urge on this Board is let's not move to significant
2 directional decisions till we know a bit more. We don't
3 know in the context of an interim rate application, and
4 some of these questions we won't even know by late June.

5 And our clients' advice to the Board is
6 really set out at page 12, and it's focussed on the
7 interim argument for now. And the advice is, Let's take
8 the opportunity of the Board's -- of Manitoba Hydro's
9 materially improved financial forecasts. Let's recognize
10 that we have an incomplete evidentiary record, which is
11 not perfect and is unlikely to be perfected, and let's
12 recognize that there's a breathing space afforded by the
13 improved financial results, especially in the context of
14 an interim rate application where only a more limited
15 series of questions needs to be addressed.

16 At page 13 I set out what -- what you're
17 going to see again at the conclusion, but essentially our
18 clients' position. We've identified what we think
19 are four (4) critical considerations for the interim rate
20 determination flowing from Bell Canada and from PUB Order
21 18/'10, the majority, four (4) questions:

22 Is a lengthy delay likely to take place?

23 As a consequence of the delay, is the
24 existing rate unjust and unreasonable -- and I'm going to
25 add some words to that -- given the risk of serious

1 apprehended financial difficulties related to the delay?

2 Third, does the proposed interim rate, is
3 it necessary and does it allay the prospect for serious
4 apprehended financial difficulties?

5 And fourthly, has the Corporation
6 established on a prima facie basis that the proposed
7 interim rates are just and reasonable?

8 Our recommended findings to the Board, and
9 hopefully, Mr. Mayer, this address -- Mr. Vice-Chair,
10 this addresses some of your questions. We think it's
11 reasonable to expect that the hearing will conclude in
12 June leaving open the possibility that a final rate can
13 be issued effective August 1st. And I think Manitoba
14 Hydro shares our views on that point.

15 We think that the Corporation, and would
16 submit that the Corporation has failed to discharge its
17 onus that the existing rates are just -- unjust and
18 unreasonable in that delaying the hearing would result in
19 a serious apprehended financial difficulty. Or delaying
20 the order.

21 And from our client's perspective the
22 materially improved financial results do not support the
23 conclusions of financial instability or serious
24 apprehended financial difficulties are likely to flow
25 from a delay of a rate determination from April 1st to

1 August 1st.

2 The rest of our submissions are set out
3 there and we certainly recommend that the interim rate
4 hearing -- the interim rate -- and I called it a
5 decrease, which I don't think my clients would be
6 opposing, the interim proposed 2.9 percent interim rate
7 increase should be denied in -- in its entirety or -- or
8 largely.

9 MR. ROBERT MAYER: Mr. Williams, it seems
10 that everybody in this room, if you're correct, is of the
11 view we'll be done in June, and therefore I have no idea
12 why I was requested to provide more dates to the -- for
13 the panel. So that is of some concern to me since I
14 appear to be the last person in the room to know what
15 exactly is going to happen, but all right. Neither --
16 that's neither here nor there.

17 The question I have -- and let's assume
18 that my intuition is correct and that we're not going to
19 be done and we're not going to have an order for August
20 1st, and I think that that's -- because if we don't have
21 an or -- order for August 1st, the earliest possible next
22 date is September, and if we're doing hearings, judging
23 from past practice, if the hearings extend even further,
24 the bottom line is is we're probably not going to get any
25 hearings in in August or any dates in August.

1 We then get to September, and if we're
2 still having evidence or even final argument in
3 September, now October/November is the realistic date for
4 an order, or at least for an order to take effect. What
5 would your position be if that were in fact to turn out
6 to be the case, because I think you are aware that this
7 panel is not excited about doing retroactive orders.

8 Hydro has suggested that if we don't do an
9 interim order it will require a higher rate increase if
10 we go farther down the road because two point nine (2.9)
11 over a year is a different number than two point nine
12 (2.9) starting in October or whatever.

13 What would your client's position be if
14 that turned out to be the fact or -- and I guess we
15 better have that fairly well clarified before we --
16 before we leave these proceedings, maybe not today but
17 two (2) weeks from now, but it would be interesting to
18 know what your client's position would be in that regard?
19

20 CONTINUED BY MR. BYRON WILLIAMS:

21 MR. BYRON WILLIAMS: There may be some
22 whispering from one (1) party to another, but let me make
23 sure I have your question clear first of all, Mr. Mayer.
24 You're -- the -- the premise you're putting to me is that
25 in the event that the -- the delay is not four (4) months

1 as -- as we've suggested and Hydro has suggested, but if
2 it is, let's say, seven (7) months, how, if at all, would
3 our client's position change.

4 Is that fair?

5

6 (BRIEF PAUSE)

7

8 MR. BYRON WILLIAMS: Thank you. And
9 thanks to Ms. DeSorcy, as well.

10 In answer to your question, first of all
11 our clients would go -- and -- and urge on the Board, go
12 back to the test. Are there going to be -- is there a --
13 a basis for serious apprehended financial difficulty.

14 And -- and my clients don't accept your --
15 your -- your premise, and they certainly think that the
16 materially-improved circumstances suggest that there
17 isn't going to be that apprehended -- serious apprehended
18 financial difficulty.

19 But I'll -- I'll -- I'll go further, Mr.
20 Mayer, just to -- to give -- I've put the -- not the
21 billion dollar question, but the -- the question to my
22 clients. I've gone one (1) step further and asked if the
23 Board, in its wisdom, felt -- if it -- if it buys Hydro's
24 case, are you prepared to accept a rate increase higher
25 than 2.9 percent.

1 And my clients will speak about financial
2 vulnerability and all those issues. And unless Ms.
3 DeSorcy kicks me though, I'm going to say that my clients
4 have fundamental issues about this rate application.
5 They don't think they've been properly tested and that if
6 push came to shove, they think that a better result would
7 be a later order based on all the record with -- with
8 somewhat higher -- higher rates.

9 And, Mr. Mayer, just to -- to -- or, Mr.
10 Vice-Chair, just to go to your -- to your point, that
11 would not be unlike what happened after the drought of '0
12 -- '03/'04. There was a rate increase that took place in
13 -- in August which was significantly higher, and I can't
14 say my clients were -- were happy about it but you've put
15 them on the spot. And -- and they're -- and they will
16 speak profoundly, I think later, such as I'm capable of,
17 in terms of client vulnerability, but they believe that
18 there's a fundamental issue of fairness here. Moreover,
19 they believe that serious apprehended financial
20 difficulties have not been established by the
21 Corporation.

22 Do -- does that assist, Mr. Mayer?

23 MR. ROBERT MAYER: Yes, thank you.

24 MR. BYRON WILLIAMS: Mr. Chairman, and,
25 Mr. Mayer, I think I'm turning you to page 14 of the

1 outline. And I -- I can -- can give the Board some
2 assurance that I expect things will move -- I'm not quite
3 sure I will be done by -- by -- by twelve o'clock, but I
4 -- I would expect maybe twenty (20) minutes to half an
5 hour after that, so I'll take the Board's guidance --

6 THE CHAIRPERSON: Don't be -- don't be
7 overly concerned. What is, is.

8

9 CONTINUED BY MR. BYRON WILLIAMS:

10 MR. BYRON WILLIAMS: Okay. On page 14,
11 my client's have identified -- Ms. DeSorcy, of course, is
12 a big Dave Letterman fan, and she is -- has -- she's
13 identified -- maybe it's me -- the top five (5) re --
14 five (5) reasons why the Interim Rate Application should
15 be denied. Just -- if you'll excuse me one (1) second,
16 Mr. Chair.

17 First of all, and we'll elaborate on
18 these, the short-term future is much improved from prior
19 forecasts, and we'll spend a bit of time on that.

20 Secondly, we think that there's a -- a
21 challenge, and it would be premature to take actions to
22 partially pre-fund the preferred development plan until
23 there is greater certainty it will proceed.

24 Third, in our clients' submission, Hydro
25 has failed to comply with a critical regulatory

1 obligation, and by that we mean Directive 4 from Board
2 Order 32/'09, asking for a overall analysis of all risk
3 to -- in our clients' judgment, that has not been
4 complied with.

5 Fourth, in my clients' view, there is a
6 material risk that Hydro and the province would draw the
7 wrong inference from interim approval, and I'll speak to
8 that.

9 And fifth, Manitoba consumers are
10 vulnerable, and -- and we'll speak to that, as well.

11 And, for the Board, I am turning to page
12 15 in terms of the financial future, and -- the short
13 term financial future and recent results, and I -- I do
14 want to just go back and remind the Board as I did at the
15 start, that in -- in the context of a 2.9 percent rate
16 increase, depends which IFF you employ, but if you use
17 '09 we're talking about 35 million, if you use IFF-10
18 we're talking 42 million. So those are the figures that
19 I -- that I -- I expect to refer back to from time to
20 time.

21 And it's important to understand that the
22 original GRA Application was based on IFF-09-1, and it
23 essentially stated that Hydro would need about 33 million
24 in 2010/'11, and about 69 million cumulatively by 2012.

25 Since then, there's additional, more

1 recent information that has become available to the
2 Board. Three (3) important pieces of information, in our
3 clients' submission. One (1), are the actual results
4 from '09/'10. Secondly, are the updated forecasts for
5 '10/'11 and '11/'12 through the IFF. And, finally, are
6 the re -- very recently issued third-quarter results.

7 And in our clients' submission, all these
8 pieces of information suggest that in terms of overall
9 retained earnings and debt ratio, 2011/'12 will be better
10 than initially forecast and that somewhat bleak IFF-09-1.

11 And I am on --we -- we note that the
12 current outlooks, especially for 2010/'11, I want to
13 emphasize that, is in ter -- from IFF-10 in terms of net
14 income, year end retained earnings, and debt ratio, are
15 better than foreseen in IFF-09.

16 And that also the actual results appear --
17 appear to suggest, at least from our clients'
18 perspective, that for the first three (3) quarters of
19 2010/'11, suggest that we're looking at a pretty good
20 year.

21 So my clients' view, even without a rate
22 increase in 2011/'12, and the Board in its wisdom may --
23 may go higher, lower, or right on two point nine (2.9),
24 but even without a rate increase it's our clients'
25 submission that elec -- electric operations retained

1 earnings at the end of 2011/'12 should be higher than
2 forecast in IFF-09, and that the debt level el -- for
3 electric operations at the end of 2011/'12 should be
4 lower, and the net effect is that the debt ratio would be
5 lower.

6 Now, you will no bo -- no doubt be with
7 horror looking at the tables presented on pages 16
8 through 19, and I -- I want to just spend a few moments
9 identifying what these tables are and -- and providing
10 our clients' analysis on them. Table 1 is -- from our
11 clients' perspective, is representative of the -- of the
12 record. The sources for it are IFF-09-01, and then three
13 (3) information requests, so they're -- this is derived
14 from the record before the Board.

15 And I guess where I should turn your
16 attention is -- first of all, to remind you, this is the
17 IFF-09 on which the interim rate increase was granted.
18 Turn your attention on page 16 to the net income line,
19 and for the years '09/'10, '10/'11, and '11/'12. This is
20 what the Board was essentially looking at when it granted
21 the interim rate increase.

22 And -- and you see certainly on the net
23 income line the dramatic reduction in net income that the
24 Board was talking about in its order going from two
25 eighty-eight (288) to one twenty-one (121) as forecast.

1 You see even really relatively dismal results for
2 2010/'11, and not that great of results for 2011/'12
3 identified by Hydro.

4 Going down to the retained earnings
5 electric line, that's where the numbers are set out. And
6 the overall debt ratio is set on the li -- the bottom
7 line of page 16. On a consolidated basis, '09/'10, 74
8 percent; '10/'11, 75 percent; 76 for '11/'12. So,
9 obviously, this is, in our client's submission, a
10 representation of what the Board was looking at in -- at
11 the time of the granting of the interim rate increase.

12 When you turn to page 17, what we've
13 attempted to do here based on IFF-09-1, PUB Pre-ask 9,
14 and Hydro's annual report, is provide a comparison
15 between the forecast and actuals for 2009/'10, so, again,
16 drawn from the record of this proceeding.

17 Let's go to the bottom line. Let's go to
18 the net income for '09/'10, forecast to be 121 million,
19 actuals 160 million, about a \$39 million rate improvement
20 -- excuse me, income improvement. When we go down to
21 "retained earnings," again, the last two (2) columns are
22 comparing forecasts for '09/'10 and actuals. You see
23 that there's been about -- that some of this net income
24 has translated into retained earnings, about \$23 million
25 worth, so a \$23 million improvement. And you also see

1 again on a consolidated basis the debt ratio of the
2 Corporation. Again, about a 1 percent improvement
3 forecast to actuals.

4 And I guess our clients have been looking
5 -- have looked at this in -- in a couple of ways. If you
6 think of what Hydro is essentially seeking for 2011/'12,
7 35 to 40 million, they've recovered almost that much in
8 the net income line in -- from the variance between the
9 forecasts and actual results. Even if you recognize that
10 not all of this money has translated to retained
11 earnings, only 23 million has, that should provide some
12 comfort to the Board that if it is looking at a rate
13 increase it may not need to be of the magnitude forecast
14 by Hydro.

15 Twenty-three million goes a long way
16 towards 35 million or 42 million. So that's the improved
17 results from '09/'10. On page 18 you see the -- a
18 comparison of the two (2) IF -- IFFs. And, again, this
19 is drawn from the record. It's based upon the two (2)
20 IFs -- IFFs and two (2) pre-asks.

21 And just because it is a bit hard to read,
22 the forecasts for 2010/'11 are about the fourth column
23 in, and the -- the revised forecast from IFF-10 is about
24 six (6) col -- seven (7) columns in, and those are where
25 I want to draw your attention first of all.

1 So we're comparing the '10/'11 years, as
2 forecast in IFF-09, versus as forecast in IFF-10. And
3 you see there in terms of those two (2) years, that
4 there's -- there is a material difference in the -- the
5 net income projected in IFF-10. Now, I note, Mr. Warden,
6 I'll try to be fair to him, I think he suggested that the
7 results might be coming in a bit lower. I think I've
8 heard the figure on the record 840 million, roundabouts -
9 - I'm not -- I've heard that way back in Mr. Peters'
10 examination in -- in January. Where it is exactly we
11 don't know, but we do know that Hydro's forecasts for
12 these -- for the 2010/'11 year is presented in IFF-10 as
13 materially better.

14 And we can also see that when we look to
15 retained earnings between those two (2) years. Retained
16 earnings for 2010/'11 is -- in IFF-09 were about --
17 projected to be 2260 million -- billion -- 2 billion 261
18 million. They're about 93 million more if you look at
19 the retained earnings forecast in IFF-10.

20 So, again, a material increase. And one
21 (1) way to look at that -- I say ninety-three (93) to --
22 what's \$3 million between friends, you might round it off
23 to ninety (90). One (1) way to look at that 90 million
24 is that it's more than double the \$42 million that might
25 be garnered from an interim rate increase of the

1 magnitude of 2.9 percent.

2 And one (1) other comment about the -- the
3 results for 2010/'11, and -- and I have to admit, with
4 all apologies to the accountants in the room, that when I
5 hear the words "IFRS" my eyes do start to roll to the
6 back of my head and -- and my body starts to twitch
7 uncontrollably. But I -- I think it's important when we
8 look at the results for 2010/'11 to recognize that --
9 that a sig -- they -- that's the one (1) kind of
10 backsliding in terms of the forecast for IFF-10 versus
11 IFF-09, in that OM&A expenditures have risen materially.
12 A lot of that we understand based upon the Board's pre-
13 asks and also the transcript at page 936, is related to
14 Hy -- Hydro putting in IFRS earlier than -- than may be
15 required by F -- IFRS.

16 And so certainly the timing of the
17 adoption of IFRS is a key issue for the Board to
18 determine the course of the proceeding but an issue that
19 is perhaps not -- not yet fully con -- considered or
20 concluded.

21 Just staying on this page for one (1) more
22 moment. I don't have a lot to say about the 2011/'12
23 results except for to note -- go down to the retained
24 earnings, both for IFF-09 and IFF-10. And if you look at
25 the retained earning lines for the '11/'12 year you can

1 see a -- a significant improvement between the two (2)
2 being about \$148 million: two four seven nine (2479)
3 versus two three three one (2331).

4 Now, we have to acknowledge in fairness to
5 the Corporation, built into that is a 2.9 percent rate
6 increase, about \$42 million. But when you look -- when
7 you look at that magnitude of difference you can see that
8 the increase of \$148 million is roughly three and a half
9 (3 1/2) times the additional net income that would be
10 generated by a 2.9 percent increase.

11 So there -- there is -- our client's
12 submission is that even if the 2.9 percent increase were
13 foregone such that retained in -- earnings decreased by
14 42 million and debt increased by the same amount, and
15 there would also be some financing costs, Hydro would be
16 materially better off at the end of 2011/'12 than
17 originally forecast.

18 The last item on -- on this -- on the two
19 (2) IFFs is to look as well to the -- draw to the Board's
20 attention long-term debt, electric, for both the forecast
21 in '09, which was about nine (9) -- just a bit over \$9
22 billion versus '11/'12 which is just a bit under \$9
23 billion. Again, a significant difference that would
24 continue to exist, although less, if the rate increase
25 was foregone or -- or reduced.

1 You'll be relieved to know that I have
2 much less to say about the third quarter results. Two
3 (2) simple points. That on a year over year basis,
4 electric operations out to December 31st, and the
5 2010/'11 year as compared to the 2009/'10 year, appear to
6 be doing somewhat better.

7 And we also note that in the -- Hydro is
8 suggesting that net income for the year on a consolidated
9 basis to be approximately \$140 million, so a bit more
10 than the IFF-10 forecast of 134 million for consolidated.

11 So regardless of what one does with these
12 improved results, it's certainly my clients' submission
13 that when we look at the material change in
14 circumstances, the material improvement, it would be
15 difficult to identify a serious apprehended financial
16 difficulties that would be -- that would flow from
17 delaying whatever rate order the Board decides.

18 And Mr. Mayer, or Mr. Vice-Chair, I'm
19 pretty confident that we can get this hearing done by
20 June but my clients certainly will be subject to your
21 judgment on that point.

22 And Hydro hasn't done so in its evidence
23 this morning. We've not heard an allegation by Hydro, to
24 my understanding, that fits within the test set out by
25 the CRT -- by the Supreme Court. Unless we missed it

1 this morning, we've not heard an allegation or a claim by
2 Manitoba Hydro that serious apprehended financial
3 difficulties would flow from deferring or -- or reducing
4 an interim rate increase, and we think that's important.

5 A couple of short snappers on pages 20 and
6 21. Others may interpret the record differently, but
7 when our clients look at Hydro's relatively improved
8 performance as compared to forecast, there's little in --
9 in our clients' submission on the record to -- to suggest
10 that that's because of more efes -- effective cost
11 management.

12 In our clients' view, it's flowing largely
13 from rate increases from domestic customers, as well as
14 positive variances from forecast for Hydro, what our --
15 what our experts like to call "sub-par forecasting."

16 So -- and just in terms of forecasting,
17 which our clients address ver -- very quickly on page 21,
18 I'm -- I'm not going to -- to go through it, ra -- other
19 than to say -- other than to say that there is a
20 substantial body of evidence on the record sug --
21 suggesting that Hydro is ex -- continues to experience
22 some challenges in terms of some of its forecasts.

23 Certainly Mr. McCormick suggested that
24 with regard to IFF-09 in terms of finance costs. Mr. Mat
25 -- Matwichuk has suggested that there's an -- asymmetric

1 challenges in terms of forecasting expert -- export
2 revenues.

3 We certainly note that there's already
4 been some evidence on the -- the hearing on the record in
5 terms of variances from forecasts in terms of Wuskwatim
6 capital costs. That's PUB Manitoba Hydro 1-56. We hope
7 to demonstrate, but we have not yet, that there have been
8 challenges in terms of hy -- Wuskwatim export price
9 forecasts, as well.

10 The big issue that Mr. Warden addressed
11 this morning, but we -- our clients certainly do think
12 it's appropriate to -- to identify as an uncertainty is -
13 - is at the next page, which just shows a -- a material
14 difference in the load forecast relating to those top
15 twenty-five (25) consumers of Manitoba Hydro. The red
16 line at the top suggests the -- the IF -- the -- it's not
17 the IFF, but the load forecast in '08, and you can see
18 that it's significantly higher than the green line, being
19 the load forecast in '09, and the blue line, being the
20 load forecast in 2010.

21 And that's an uncertainty associated with
22 that load forecast that our clients are pondering, and
23 certainly where that forecast goes directionally is -- is
24 of some concern to them. Mr. Chairman, at page 23, and
25 Mr. Vice Chair, I'm not going to belabour this point

1 except for to acknowledge the record to date has
2 suggested a lot of uncertainty with regard to Manitoba
3 Hydro's preferred development plan.

4 And I want to be clear my clients were
5 supportive of Wuskwatim. I think strongly supportive.
6 They have not gone on the record nor would they go on the
7 record in terms of an opinion on Keeyask or others until
8 there's a full hearing, but it would be wrong not to
9 acknowledge the uncertainties associated with the
10 preferred development plan.

11 In fairness to Hydro, we do want to say
12 that -- that the fir -- this is the -- the first bullet
13 on page 23, that in terms of the risk of drought and
14 drought mitigation and factors like that, to some degree
15 our clients have been favourably impressed by the
16 evidence of Mr. Rose on behalf of ICF, and also the
17 evidence of Mr. Cormie.

18 We've heard it off and on during this
19 hearing in terms of the some of the -- whether he calls
20 them lessons learned from '03/'04, but changes in terms
21 of additional protection put into some of the proposed
22 arrangements with -- with other -- with Minnesota Power
23 or Wisconsin Public Services, and -- and so our clients
24 certainly take some encouragement from that, and -- and
25 they think that should be acknowledged.

1 But they also note that there is a lot of
2 uncertainty associated with the decade of investment or
3 the era of expenditure. They've outlined three (3)
4 concerns flowing from the evidence of Mr. Rose. And --
5 and our -- our clients want to be clear about Mr. Rose.
6 They understand that at times his cross-examination was
7 tense and difficult, but they certainly are of the view
8 that ICF brings a lot of credibility to the -- to the
9 table based upon their experience in the United States,
10 and there's a lot that can be said about the value that
11 they contributed to this proceeding.

12 And the -- what does Mr. Rose tell us?
13 Well, first of all, he tells us that forecast natural gas
14 prices are -- are significantly lower than in -- in 2009.
15 He also tells us that forecasts of the value of carbon
16 emission allowances have been significantly downgraded
17 both in terms of their time frame, about three (3) years,
18 and their magnitude, 40 to 60 -- 60 percent. We've put
19 those transcript references in.

20 He also makes an important point, and it's
21 page -- I know the page intimately, page 18 of his
22 February 2011 evidence, and -- and that -- he was candid
23 in noting that that page has to be read with care because
24 some of the more recent estimates, both of ICF and of the
25 Edison Institute, relying on ICF inputs, did not take

1 into account the red -- the reduced projections for
2 carbon emissions.

3 And so some of the numbers you see there
4 in terms of anticipated coal -- coal plant require --
5 retirements, even as a consequence of significant
6 administrative control actions, should be lower, and we
7 put the transcript references in to support that.

8 So that's some additional element of
9 uncertainty brought forward, certainly in our clients'
10 view, by a credible and relatively candid witness
11 produced by Manitoba Hydro.

12 Turning to page 24. My clients have to --
13 to -- to -- to outline that despite the price tag
14 associated with the KPMG report, whether it's 2.6
15 million/2.8, KPMG has done less in our clients'
16 respectful view to allay this uncertainty than we might
17 have expected.

18 While it might have been successful in
19 addressing many of the eye-popping allegations of the New
20 York consultant, there are limitations to that report.
21 So -- and -- and it certainly hasn't alleviated our
22 clients' uncertainty as much as we would have expected,
23 given the price tag.

24 So from my clients' perspective, the
25 record of this proceeding on the record to date, it is

1 still unclear whether the term sheets will be translated
2 into confra -- on -- contracts. It's unclear whether an
3 updated analysis of the preferred scenario, including
4 Keeyask, will be -- continue to be materially more
5 favourable to ratepayers. And Board counsel had a
6 interesting cross on that just on Monday, March 7th.

7 And our clients, in terms of addressing
8 the two (2) scenarios are still truggling -- struggling
9 with the load forecasts and the very -- the differences
10 in the load forecasts and trying to determine what, if
11 any, impact that might have on the timing of the
12 alternative case. So those are important considerations.

13 Is -- the point I made before, Mr.
14 Chairman, though, and Mr. Vice-Chair, is that uncertainty
15 we think is unlikely to be resolved in the next three (3)
16 weeks or the next three (3) months.

17 And certainly from our clients' aspective
18 -- perspective, it might be an oportune time to take the
19 breathing space afforded by the improved financial
20 results before jumping directionally one (1) way or the
21 other.

22 And we say that, and we note this on page
23 25 as well, there was a -- a bit of a chill came into the
24 room on Monday, March 7th, certainly we thought we
25 noticed it, but -- by the recognition that in the event

1 Keeyask does not pro -- proceed, that Hydro may have
2 stranded as much as \$400 million in development costs
3 that will have to be recovered.

4 But certainly our clients -- we heard Mr.
5 Warden testify about that today. We've heard Mr. Cormie
6 as well. It's certainly, from our clients' perspective,
7 unlikely to assume that Keeyask is -- is unlikely to
8 proceed, and we note some of the evidence from Manitoba
9 Hydro suggesting that things are going okay.

10 And again, this goes to our point that
11 there's a lot of uncertainty. And frankly, we're not
12 sure which way that uncertainty will go, but with the
13 improved financial results there's breathing space to --
14 to -- to make it -- to - to figure out which way to go.

15 MR. ROBERT MAYER: Mr. Williams, that --
16 that creates -- that argument creates an even bigger
17 problem, doesn't it? Because this panel, and maybe not
18 even this Board, will make the decision as to whether or
19 not Keeyask or Conawapa or one (1) or both, will proceed.

20 So we've been told that there's going to
21 be a needs and justification hearing. We have no idea
22 who's going to do it. We have no idea when it's going to
23 be done. We heard in the New Year. But about this time
24 last year we heard in the New Year and we'd already been
25 into it if that had have been -- if that have happened.

1 So surely you're not suggesting that the
2 Board make no decision with respect to rates until we
3 know the -- whether the preferred alternative is going to
4 proceed or not, I trust.

5 MR. BYRON WILLIAMS: I'm certainly not
6 suggesting that, Mr. -- Mr. Mayer. What I am suggesting
7 is that in the context of an im -- interim rate
8 application the issue is a serious apprehended financial
9 -- and -- and -- and I do want to elaborate just
10 slightly.

11 Underlying -- our clients detected in the
12 panel's comments of late January was this -- this sense
13 that there's these directional pulls. In our clients'
14 view those directional poles are not the appropriate time
15 to -- point to be addressed in the interim rate
16 calculation. You -- you may, out of an abundance of
17 caution, want to do something in June or July, one (1)
18 way or the other, but even then our clients are urging:
19 Look at the longer picture. Let's -- let's not jump the
20 gun either way.

21 Mr. Chairman, I -- I think that I probably
22 have twenty (20) minutes to twenty-five (25), although it
23 -- it looks long, it -- it's -- the part that follows is
24 -- is less intensive. I wouldn't mind the opportunity to
25 -- to take a -- whether it's a five (5) minute break or a

1 ten (10) minute break, and I can either finish right
2 away, or I can finish if you wish to resume in the
3 afternoon at 12:30 or one o'clock. I -- I'm at the
4 Board's discretion.

5 THE CHAIRPERSON: Okay. We'll take the
6 lunch break now, so we'll come back at one o'clock.
7 Thank you.

8

9 --- Upon recessing at 11:52 a.m.

10 --- Upon resuming at 1:11 p.m.

11

12 THE CHAIRPERSON: Okay. Welcome back,
13 again.

14 Mr. Williams...?

15

16 CONTINUED BY MR. BYRON WILLIAMS:

17 MR. BYRON WILLIAMS: Yes, two (2) matters
18 of cleanup from this morning. Just one (1) -- the -- the
19 Vice-Chair, as is often his practice, asked the multi-
20 million dollar question, which I consulted with my client
21 on. And it related to the -- the length of the -- the
22 deferral of -- of an order, and just one (1) additional
23 point I wish to make on behalf of our clients.

24 If you look at the big picture, what Hydro
25 was seeking via IFF-09, roughly 35, \$36 million,

1 mathematically you can -- if you assumed that the revenue
2 from consumer rates was equal in each month, that would
3 be about \$3 million a month.

4 Our clients feel it's important to point
5 out that not all months are created equal in terms
6 of Manitoba Hydro's domestic revenues, and that to
7 the extent that a number of months are being foregone,
8 let's hope it's only three (3) or four (4), those are --
9 are in the late spring and summer where Manitoba Hydro's
10 domestic revenues would tend to be less per month.

11 And -- and so the -- the simple point my
12 clients just wanted to elaborate on is that the high
13 yielding months in terms of average domestic -- average
14 impact from a rate revenue requirement, if it is
15 required, would still be in -- in play, and -- and that
16 might -- I'm not sure if that's going to give the Board
17 any comfort, but I think it's a significant
18 consideration.

19 MR. ROBERT MAYER: I -- I understand, Mr.
20 Williams, that you guys who live in Winnipeg don't use
21 heat in October. Some of us really do have to turn our
22 furnaces on in September, but I have your point.

23

24 CONTINUED BY MR. BYRON WILLIAMS:

25 MR. BYRON WILLIAMS: The -- and

1 Perimeteritis creeps in once again. The -- the other
2 issue I do want to -- to point out, my client is -- has
3 told me that my comments in terms of IFRS were absolutely
4 opaque. So I won't -- I -- I just have a couple moments
5 of clarification on that, and -- and I won't draw you
6 back to the -- the tables.

7 But from my clients' perspective, one (1)
8 of the factors restraining the currently forecast level
9 of net income for 2010/'11 is the higher OM&A now
10 forecast for 2010/'11, which is \$398 million versus the
11 forecast in IFF-09 for the same year which is about 380
12 million.

13 PUB Manitoba Hydro Pre-ask 14 provides
14 some important insight in terms of what's driving part of
15 that increase, and it shows that this increase is due in
16 part -- significant part to Manitoba Hydro assuming that
17 the IFRS accounting changes will be implemented in
18 2011/'12.

19 During the current proceeding -- and this
20 is at transcript page 936. Manitoba Hydro acknowledged
21 that the IFRS requirements were being adopted earlier
22 than required. Certainly in my clients' submission, this
23 adoption is an important issue for the PUB to determine
24 in this proceeding.

25 If it is not adopted -- if IFRS is not

1 adopted for regulatory purposes, for example, until 2012
2 or '13, then the results for 2011/'12 will be even more
3 favourable. We're not taking a position on that, but we
4 think it's important information to employ when reading
5 the document.

6 In terms of the outline, I'm turning the
7 Board's attention, if it will follow me, to page 26. And
8 this is a typographical error at the top of the page. We
9 speak of Hydro missing the opportunity to comply with its
10 regulatory obligations in plural, and clearly we're not
11 suggest -- we're only focussing on one (1). We're not
12 suggesting a all -- all-out failure to comply.

13 The directive of -- of which we speak is
14 flowing from Board Order 32/09. I've included it there
15 for your information. And our clients describe the KPMG
16 report as a \$2.7 million missed opportunity. Because the
17 record's quite clear, and I've put the transcript
18 references before the Board, despite being originally
19 part of the approximately -- of the KPMG terms of
20 retainer, the in-depth study -- the reque -- the -- the
21 in-depth study of all the operational and business risks
22 faced by the Corporation was subsequently excluded from
23 the KPMG terms of re -- ter -- retainer.

24 And, as we -- we've heard over the last
25 few days of the hearing, as a consequence, that -- that

1 opportunity was -- was missed with the resulting ana --
2 analysis focussing primarily on the allegations of the
3 New York consultant.

4 And I had a bit of a conversation with Mr.
5 Lipson at transcript page 3,525, and he confirms at lines
6 -- it looks to me like 18 through 20 that he -- the KPMG
7 assignment in no way should be interpreted as having
8 assessed all business risks of Manitoba Hydro.

9 And my clients' simple point flowing from
10 this is that Hydro commissioned a very expensive report.
11 It had the opportunity to provide the Board with a lot of
12 insight, material insight in -- and perhaps to give the
13 Board some comfort in terms of the risks facing the
14 Corporation. This opportunity has been missed, at least
15 on the part of Manitoba Hydro. And certainly from my
16 clients' perspective it would be inequitable if Manitoba
17 Hydro in this climate of uncertainty benefited from --
18 from failing to clarify these issues. And so that's the
19 clients' point on that matter.

20 Turning to page 27 of the outline, and
21 this is our fourth major reason, our clients are not
22 immune to the practice of all regulators, and we would
23 submit that this is one (1) of them, in -- in trying to
24 send a number of messages in terms of their decisions.
25 Some messages are sent through the rates. Other messages

1 are sent through discussion. Other messages are sent
2 through Board recommendations or orders.

3 We have no idea what the Board plans. But
4 one (1) message the Board might be conceivably be
5 considering sending is that we are providing you with a
6 very significant rate increase to protect ratepayers from
7 the very real risk that you are both underestimating the
8 risks associated with your proposed era of expenditures
9 and overstating the likely returns of your -- of your
10 decade of returns.

11 And the concern my clients hi -- highlight
12 at the bottom of this page is that there's another risk,
13 that the granting of an interim rate increase might be
14 misinterpreted as an endorsement of Hydro scenarios, as
15 laid out in the IFFs, and of their business case.

16 And, again, we have no idea what the Board
17 intends. But to the extent that the Board might be
18 tempted to provide an interim rate increase coupled with
19 an admonition of emerging risks, our warning to the Board
20 is, and this is not meant in a derogative way to Manitoba
21 Hydro, but there is a very real prospect that Manitoba
22 Hydro will take your money or take ratepayers' monies but
23 not the Board's advice.

24 The fifth and final issue that -- that my
25 clients wish to address is -- begins on page 28. And the

1 heading in my top five (5) reasons are "Manitoba
2 consumers are vulnerable." And you'll see I've labelled
3 this page, "Manitoba Hydro is vulnerable," because it's
4 not often that -- that our clients get a chance to agree
5 with Mr. Warden. And they know that he is a ver -- that
6 -- that he has a very difficult job, and certainly he
7 advances the Corporation's position ably.

8 But here's an occasion when my clients are
9 on -- you know, in largely in agreement with -- with Mr.
10 Warden. And he said something in his feisty opening
11 evidence, at transcript page 399, which our clients
12 thought was quite insightful.

13 And he talked about a realization by Hydro
14 that we are vulnerable; our image, our reputation is
15 vulnerable to any whistleblower that might come forward.
16 And he talks about a need to do a better job of
17 communicating on what their position is and where -- how
18 they're going forward on so many important issues that
19 affect ratepayers; and acknowledges that they probably --
20 probably haven't done as good a job as they might have,
21 in terms of communication.

22 And certain the -- the very -- the very
23 significant campaign related to Bipole 3 that Mr. Warden
24 spoke of in the last couple of days might be a reflection
25 of some of that sense of vulnerability and an effort to

1 clear the public record and -- and communicate more
2 clearly.

3 What I note on page 25 -- 29, excuse me,
4 is that our clients agree with Mr. Warden that Manitoba
5 Hydro is vulnerable. But that vulnerability, in our
6 clients' position, is more than just a failure to
7 communicate. Part of that vulnerability flows from the
8 vulnerability that Manitoba consumers are experiencing.
9 It's a reflection of the incremental impact of a series
10 of rate increases since the '03/'04 drought -- drought. And
11 one (1) product of that as well, in our clients'
12 submission, is the decreased confidence of certain, not
13 all, consumers in the motivation and capacity of
14 traditional institutions, such as Hydro, to deliver.

15 At page 30 underscoring the vulnerability
16 that our conceive perceive that Manitoba consumers are
17 facing, we make the point on behalf of our clients that
18 since the '03/'04 drought there has been a relatively
19 high flow of rate increases, as compared to inflation.
20 And the evidence we set out in this table, I think it
21 appears in the Board's book of documents as well, but you
22 can see the 5 percent, the two point two (2.2), the two
23 point two (2.2), the five (5), the two point nine (2.9),
24 the two point eight (2.8); there is a zero in there as
25 well.

1 You can't -- it -- there are timing
2 differences between these rate increases, so our -- our
3 caution is, though, while this might look like 47 percent
4 we think that it's lower than that, and certainly we
5 expect the record will show, although we have not
6 demonstrated, that it's more in the 40 to 45 percent
7 range. But significant gap between rate increases and
8 inflation since the drought.

9 Turning to page 31, where this comes into
10 consumers' vulnerability, as well as Hydro's
11 vulnerability, is the recognition of the very real
12 struggles that Manitoba ratepayers and consumers are
13 facing. There's economic uncertainty, including
14 employment uncertainty. There are wage settlements that
15 are not keep pla -- pace with inflation. And Hydro,
16 along with other cost pressures, is putting increasing
17 pressures on budgets that are already stretched thin.

18 And we've cited a lot from the majority
19 decision from 18/10, Board Order 18/10. We think that
20 some comments of Professor Avery-Kinew are also worthy of
21 note. And at page 12 she said:

22 "The economic conditions of the past
23 year and now have resulted in trying
24 time and challenges for consumers."

25 And certainly this trier of fact, this

1 tribunal, can take judicial notice of whether it's labour
2 disputes at -- with the MGU, with CUPE in Winnipeg
3 universities, or the very real hardship threatened by
4 institutional shutdowns, whether in Thompson or other --
5 other areas; or large corporate shutdowns or reductions
6 in -- in service.

7 So our clients are of -- of the view, and
8 it is their perception, that many Manitoba consumers are
9 noting, taking note of the facts that Madam Just -- or
10 excuse me, Professor Avery-Kinew identified. Their wages
11 are either not going up or not matching inflation, and
12 that, at page 32, we make this point: These incremental
13 rate increases over the past six (6) years, the five (5),
14 and the five point two five (5.25), and the two point two
15 five (2.52), and the five (5), and the two point nine
16 (2.9), and the two point eight (2.8) -- I guess that's
17 seven (7) years, a coup -- have added up, and to a larger
18 monthly jolt, especially during winter.

19 And it is our clients' perception that it
20 is the perception of some, indeed many Manitoba
21 consumers, that even when they do everything right, when
22 they shut off their lights, when they unplug the things
23 that need to be unplugged, they're still -- bills are
24 still going up, and going up faster than inpla --
25 inflation.

1 For the young social worker trying to just
2 pay off those student loans, for the senior citizen
3 trying to live on a fixed income, these incremental rate
4 increases, whether or not they were reasonable at the
5 time, are starting to add up. And certainly, we note on
6 page 33, this is one (1) of Ms. -- Ms. DeSorcy's key
7 points, that they add up doubling. There's a double-
8 whammy. It's not just the hydro rate that they pay in
9 their homes, but it's in the -- the impact that hydro
10 rates are having on other goods and services.

11 And that's why, given the improved
12 financial performance of the Corporation and what our
13 clients begin -- or what our -- our clients' perceive is
14 an increased vulnerability of Manitoba consumers, at this
15 point in time it would be prudent to slow the flow of
16 rate increases. At least on an interim basis. They
17 believe it will benefit consumers, and though Mr. Warden
18 may disagree, in my clients' view it also may benefit
19 Manitoba Hydro itself.

20 And, Mr. Chairman and Mr. Vice Chair, I've
21 tried to restrict my comments largely to the subject
22 matter of the Interim Rate Application. The next couple
23 of pages I'm going to do so, but also recognizing that my
24 comments speak a little more broadly, and I'm -- I'm
25 going to ask for that liberty, because I think the Board

1 certainly invited it in their com -- in their request for
2 information in late January.

3 And I guess the point is, our clients
4 recognize that we're just focussing on an interim
5 application, not a GRA, not a need for an alternative,
6 but they want to take a moment to reflect on how the
7 current consumer vulnerability -- I'm on page 34,
8 although you can't tell it, Mr. Chairman or Mr. Vice
9 Chair, so I'm -- I'm going off -- off script a little bit
10 here -- the concurrent consumer vulnerability, coupled
11 with the longer term impacts of predicted rate increases
12 well above inflation, how these dual effects, our clients
13 would submit, should be of concern to those who
14 legitimately dream of a decade of investment, followed by
15 a decade of returns. Mr. Warden's vision.

16 And the point I'm trying to inelegantly
17 get across is that this is not the Limestone generation
18 of consumers; this is the Wuskwatim generation of
19 consumers. And there's certainly a perspective among
20 some consumers that Wuskwatim has not delivered as
21 promised. In our clients' perspective, these consumers
22 are, to a certain degree, may see the 1990s; the
23 Limestone era is fairly far removed from their current
24 reality.

25 They are a body of consumers that over the

1 last six (6) or seven (7) years have had a series of rate
2 increases significantly above inflation, and a -- and a
3 body of consumers who -- and turning to page 35 -- as
4 they look forward to the future, see that Manitoba Hydro
5 is indeed trying to grow the flow of rate increases. And
6 you just have to look at -- if you accept my clients'
7 premise that consumers are feeling vulnerable, you just
8 have to look at recognizing Hydro's not seeking these
9 rates but the comparison between inflation and the annual
10 increases in the range of 3.5 percent pre -- 3.5 percent
11 predicted by Manitoba Hydro in its IFFs.

12 And certainly, turning to page 36 of the
13 outline, our clients expect that the record will show,
14 although they have not demonstrated this, I think we've
15 been through an outwards like 75 percent; that's probably
16 a bit high, but it will be significantly above inflation
17 if the Hydro vision comes true, in effect, imposing, in
18 our clients' view, a significant development surcharge on
19 already struggling consumers.

20 And our clients wish to, looking at the
21 big picture, make the point that to the extent that Hydro
22 is already vulnerable today, that vulnerability will only
23 increase in light of a growing disconnect between rate
24 growth as compared to the expected growth of inflation.

25 At page 37, I -- the clients reiterate the

1 point that they see this as a serious challenge for the
2 Corporation in selling its decade of investment, its
3 decade of returns; that disconnect between clients --
4 consumers' living experience, in terms of rate increases,
5 well above inflation.

6 Just turning to page 38, which summarizes
7 our clients' con -- conclusions, our clients recognize
8 that the Board is faced with a not-overwhelming but near-
9 overwhelming list of questions -- we've set out those
10 around page 10 of our brief -- and these are questions
11 that often point in countervailing or different
12 directions. And in the context of the interim rate
13 increase, our clients are going to suggest that the Board
14 take this opportunity for a sober reflection which is
15 offered by that breathing space related to the material
16 improvement in Hydro's recent circumstances.

17 Certainly our clients would recommend that
18 the Board reject the interim application, and recommend
19 that the Board expressly find the following four (4)
20 things. And I recognize I'm going to have a hard sell on
21 the first bullet.

22 It is reasonable to expect that a hearing
23 will conclude in June, leaving open the possibility of a
24 final rate decision, effective April 1st.

25 Secondly, that the Corporation has failed

1 to discharge its onus to demonstrate that existing rates
2 are unjust and unreasonable, given the improved and
3 better forecast recent results.

4 Third, that the Corporation's material
5 improved financial results do not support the conclusion
6 that financial instability or serious apprehended
7 financial difficulties, excuse me, are likely to flow
8 from a rate determination made effective August 1st, as
9 compared to April 1st. And my clients would go farther,
10 recognizing that the later months, starting apparently in
11 September and certainly by October and November, are
12 higher yielding months, that -- that there is room in
13 terms of the revenue foregone would be in the lower
14 yielding domestic revenue mar -- marks -- months.

15 Fourth, that the Corporation has failed to
16 discharge its onus to demonstrate a 2.9 percent interim
17 rate increase is just and reasonable.

18 THE CHAIRPERSON: Mr. Williams, before
19 you go on you might want to restate your first point,
20 because I think you said a date you didn't mean. I
21 believe in your first point you said April --

22

23 CONTINUED BY MR. BYRON WILLIAMS:

24 MR. BYRON WILLIAMS: Oh, I meant to say
25 August 1st. I'm sorry, Mr. Chairman. I'm -- I'm -- my

1 client advises me that I said April 1st. I misspoke, and
2 I meant to say August 1st.

3 Just by -- by summary, Mr. Chairman, in
4 rejecting if it chooses to do so or moderating an interim
5 rate increase, in my clients' view, the Board would be
6 providing welcome relief to vulnerable consumers. It
7 will be providing an opportunity for more sober
8 consideration of the -- of the Hearing, and it will be
9 sending a powerful message to Manitoba Hydro as well that
10 it's perhaps not enough to rely on subpar forecasts and
11 domestic rate increases to meet its future financial
12 obligations.

13 Thank you for your consideration. Subject
14 to any questions, those are my clients' submission.

15 MR. ROBERT MAYER: Mr. Williams, you talk
16 about a moderate -- some more moderate rate increase.
17 Your inflation rates tell me that 2010 and in 2011 is
18 going to be 1.6 percent.

19 Am I correct in reading that?

20 MR. BYRON WILLIAMS: Yes. And, Mr.
21 Chairman, I'll -- I'll ans -- or Mr. Vice Chair, excuse
22 me -- I'll answer it. I would -- I would want to say
23 that certainly the clients' position is that no interim
24 rate increase is justified.

25 At page 35 of my outline we've drawn

1 inflation -- Manitoba inflation numbers from Appendix 51
2 of the record. I think for the year that -- for 2010/'11
3 it is 1.6 percent. For the year that we're moving into
4 it would be 1.9 percent. And certainly that's our
5 interpretation of the information that Manitoba Hydro has
6 -- has provided.

7 THE CHAIRPERSON: Thank you, Mr.
8 Williams.

9 Mr. Hacaault, are you ready to begin for
10 MIPUG?

11 MR. ANTOINE HACAULT: Yes, I am, Mr.
12 Chairman.

13 THE CHAIRPERSON: Please proceed.

14

15 SUBMISSIONS BY MR. ANTOINE HACAULT:

16 MR. ANTOINE HACAULT: I start as an
17 outsider to this process, and one (1) thing that occurs
18 to me is how did we get into this position. It seems
19 that it -- it's occurred more than once. I know there
20 had been some discussion about splitting the GRA and the
21 risk. Nonetheless, we are now in this position of
22 considering a second interim rate increase.

23 In a nutshell, if you look just at the
24 financial numbers Mr. Williams has correctly stated them,
25 I believe, to state that the Corporation has actually

1 done \$39 million better than it thought and by doing that
2 it's already had its 2.9 percent increase. There's no
3 special need for an increase. We aren't today faced with
4 an -- a drought or drought conditions, or any special or
5 unusual circumstances. In fact, we're looking, according
6 to the evidence on record, to higher water flows, that's
7 the best we have right now, and full reservoirs.

8 I'll pause just a moment just on the
9 preliminary matter. Ms. Ramage had indicated that she
10 informed me that Mr. Warden would be speaking: that's
11 correct. But I certainly didn't have the impression and
12 wasn't aware that there was going to be new information
13 provided.

14 And I did pass out to all parties as an
15 addition to this submission just a one (1) page press
16 release from Hydro-Quebec. I guess it goes through the
17 rest of the theme of my presentation that we've only
18 heard one (1) side of the story: Hydro's witnesses;
19 Hydro's experts.

20 And Mr. Warden could have easily have said
21 there's a range of increases across this country. Hydro-
22 Quebec is going for zero and BC is going for their
23 number. But we don't have that balanced view before you
24 yet; we have Hydro's view and Hydro's evidence, tested
25 somewhat so far, but not by the Intervenors; and none of

1 the Intervenor have had the opportunity of putting their
2 evidence in.

3 And there are a number of areas which will
4 be tested: OM&E, capital cost, excluding major and new
5 generation, the elimination of sinking fund, the costs of
6 service and whether there's a need to do adjustments
7 between classes. And I'll come back to that later in the
8 light of the Vice Chair's comments. Because if we're
9 reluctant to do any retroactive changes, and there should
10 have been if we had a full hearing and done in time, a
11 decision on an adjustment between classes, and that
12 remains to be seen, if we lock ourselves into interim
13 rate incre -- increases on an average basis without any
14 class adjustment and there should have been class
15 adjustment, then we're creating two (2) years of inequity
16 for the other classes.

17 And that's why, and the theme will be,
18 that there is a special test that needs to be applied for
19 interim rates. There are also other reasons. And I'm
20 not going to read the entire presentation; it's not my
21 intention to do so. I'll try to highlight some of the --
22 the matters.

23 If I go to page 1 under the heading 1.2,
24 the 2011 and 2012 interim rates, I note again the
25 information is not complete in that the information which

1 the Chair had hoped to have and we had hoped to have on
2 the IFF scenarios is only -- only going to be produced
3 not now before this submission, but after this
4 submission.

5 The context of the proposed rate increase.
6 I'm at page 2. We make the same point with respect to
7 rate increases being above CPI. Moving on to -- I'm not
8 going to dwell on those issues very much because Byron
9 has -- Mr. Williams has done a fairly good -- extensive
10 job of that.

11 I do want to go in a little bit more
12 detail about what MIPUG views to be the appropriate test
13 and why that makes sense, given the position that we --
14 we're now faced. And I've given extracts of this Bell
15 Canada case at the end of the submission, but also quoted
16 fairly extensively because there's quite a bit of
17 parallel between one (1) piece of legislation being
18 considered by the Supreme Court of Canada, being the
19 National Transportation Act and the legislation in
20 Manitoba.

21 So the legislation, and I'm quoting from
22 the paper, sec -- subsection 60(2), in parentheses:

23 "The Commission may, instead of making
24 an order final in the first instance,
25 make an interim order and reserve

1 further directions either for an
2 adjourned hearing of the matter or for
3 further application."

4 There's no special tests set in that
5 legislation. It doesn't say it can only be given on
6 special circumstances, et cetera. But the court
7 describes in its decision, the difference between a final
8 order which has bene -- benefited from all of the
9 information and the testing of all the information and
10 when it would be appropriate to do an interim order. And
11 I'm quoting from the bold and underlined purpose:

12 "The fact that an order does not make
13 any decision on the merits of an issue
14 to be settled in a final decision and
15 the fact that its purpose is to provide
16 temporary relief against the del --
17 deleterious affects of the duration of
18 the proceedings are essential character
19 -- characteristics of an interim rate
20 order."

21 And we can see that the Commission in that
22 case had set a policy that there had to be serious
23 deterioration in the financial condition, absent a
24 general interim increase. But the court comments when
25 it's talking about this policy, and I'm flipping on to

1 page 5:

2 "Decision 84-28 was truly an interim
3 decision since it -- since it did not
4 seek to decide in a preliminary matter
5 an issue which would be dealt with in
6 the final decision. Instead, the
7 appellant granted the interim rate
8 increase on the basis that such an
9 increase was necessary in order to
10 prevent the respondent from having
11 serious financial difficulties."

12 Now, it appears I erroneously assumed that
13 we were still on track for finishing these hearings in
14 June, based on the comments that are being exchanged, but
15 it still doesn't change our position. There's no
16 financial need just on a purely -- if you look at the
17 financials. Hydro got \$39 million extra, the rate
18 increase it would have got this year would have given it
19 35 to 42 million. There's absolutely no deleterious
20 financial effect.

21 Now, what about the Manitoba legislation,
22 and why do I say the same type of tests should apply. I
23 take out Sections 44(1), which gives this Board the power
24 to order partial or other relief. That's a very wide
25 section. There's a very similar subsection, which is

1 entitled, Interim Order. That's Section 47(2). There
2 isn't much difference if you look at that one (1) and the
3 one (1) in the Supreme Court of Canada. 47(2) indicates:

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

10 Now, I do say that there is some further
11 indication in our legislation and strength in saying that
12 there has to be either a sense of urgency or special
13 circumstances.

14 Why do I say that? I look at Section 48.
15 It indicates:

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

25 In my respectful submission, when we are

1 changing rates that is the nature of the order
2 contemplated by Section 48.

3 The Board makes a number of different
4 types of orders, like producing documents, like
5 directions to Manitoba Hydro to produce risk reports.
6 Those are not of the nature that require outlay by our
7 ratepayers, but an interim rate order is that type of
8 order.

9 Now, I go on to note that the Board does
10 ha -- have the ability to refund or compensate under the
11 Crown Corporation's Public Review and Accountability Act,
12 Section 28 in particular. So one might argue, Well, you
13 know, we can just refund stuff. What's the problem? You
14 know.

15 The -- but -- but that brings the whole
16 issue of a retroactive order, and uncertainty both in the
17 Corporation's perspective, because if it has, for
18 illustration purposes, a 2.9 percent increase, and it
19 plans and its got its revenue for that, and then all of a
20 sudden the Board says, Well, Mr. Hacault, you did a not
21 bad job, and -- and other people, you did a not bad job,
22 and we're convinced that at this time we shouldn't give
23 any increase at all for this.

24 The second year. Zero is enough. They've
25 got their 39 million. They didn't need the extra amount.

1 And they've adequately assessed risk. We don't need to -
2 - to deal with all those issues.

3 We've got, I think, about five hundred
4 thousand (500,000) ratepayers. A refund decision, in --
5 in my simple calculation, if it takes about two (2) bucks
6 to process that with envelopes, stamps, and staff time,
7 is a million dollar issue.

8 That points, again, to, we've got to be
9 careful when we give interim rate increases because of
10 all the effects of that, and the tendency perceived by
11 some people that once the number is fixed on an interim
12 basis, the Board's -- how likely is it that the Board is
13 going to give a retroactive change to that, whether that
14 perception is right or wrong.

15 Now, these refund issues also create a
16 whole bunch of other issues, in my respectful submission.
17 We've got ratepayers who may leave the province. Are
18 they going to get the refund? How's that going to be
19 dealt with? We don't know -- and how is the Board going
20 to deal with adjustments and costs of service issues once
21 its done an average rate increase, creating that inequity
22 for a couple of years.

23 Now, I go further, and I looked at the
24 legislation. I've looked at the direction from the
25 Supreme Court of Canada that I think is instructive. And

1 I look at the rules of the Board, albeit with respect to
2 ex parte matters, and what has the Board put as a policy
3 with respect to ex parte matters. It's dealt with all
4 these kind of issues that the Supreme Court has dealt
5 with. Are there emergency circumstances? That's Section
6 24(2). Is there special circumstances identified by the
7 Board? And that's quite apart from whether it needs to
8 proceed ex parte or not. And there is in the attachment
9 the Alberta Energy Utilities Board decision which also
10 deals with an interim rate increase and how they've dealt
11 with that.

12 And with the Board's indulgence, I will go
13 through in a little bit more detail some relevant ex --
14 just identifying where the relevant extracts are in the
15 Supreme Court of Canada's decision and the ATCO decision.
16 So if the Board could turn to Attachment number 1,
17 there's -- I've just taken fifteen (15) pages of the
18 decision.

19 My understanding is that the electronic
20 version will post the full decision. What I've tried to
21 do is take a little bit before and after the relevant
22 parts to provide context. And I've also given the entire
23 what we call headnote from the case, so it's the summary
24 of the case.

25 The relevant portions -- if you could flip

1 to page 7 of 15, that's the bottom right-hand corner. If
2 the parties wish to make a line across the paragraph in
3 the middle of the page, it starts, "In the Telecom
4 Decision CRTC," and there's a quote. That sets out the
5 commission's policy on interim rate increases.

6 And we say it's -- it's a good policy. In
7 fact, the reasonableness of the policy wasn't challenged
8 in this Supreme Court of Canada case. Next, the part
9 which was quoted fairly extensively in the brief are the
10 relevant sections, and that's page 10 of 15. Those --
11 that part's important because the Board will be able to
12 see that the sections considered by the Supreme Court are
13 very, very similar to the Manitoba sections.

14 Next, I move to page 12 of 15. And midway
15 through the first full paragraph there's -- there are the
16 words, "Decision 84-28," so if you could put a line going
17 down from that point right to the bottom of the page. I
18 believe that discussion is useful. The discussion
19 indicates that on an interim rate increase it shouldn't
20 be awarded on the basis of the same criteria as those
21 applied in the final decision. That's very tempting to
22 do and that's part of what's occurred today.

23 We're saying, you know, it's reasonable
24 for the two point nine (2.9), there's a prima facie case,
25 we get into all the different areas, but that's not what

1 an interim rate decision should be about.

2 We are to look at, you know, have we met
3 all the tests so far to -- to prima facie give us two
4 point nine (2.9)? If we're doing that we're kind of
5 prejudging the case, which the Supreme Court of Canada
6 says should not happen, and that's why they go into a
7 special test. And Manitoba Hydro has not addressed that
8 test at all, which is a special need.

9 Continuing on page 13, if you could put a
10 line in the -- of -- along the quote in the first full
11 paragraph, under that quote. And then I go to the bottom
12 of page 13. I'll quote it, but it's the last two (2)
13 sentences:

14 "Furthermore, the interim rate increase
15 was granted on the basis that the
16 length of proceedings could cause a
17 serious deterioration of financial
18 condition of the respondent."

19 That's not the case here. There's been no
20 evidence of that:

21 "Only once such an emergency
22 situation..."

23 So we see the same words being used in --
24 in our legislation:

25 "...was found to exist, the -- the

1 make interim orders is meant to foster
2 financial stability throughout the
3 regulatory process."

4 So I say to this Board that it would be a
5 significantly different story if we saw that there were
6 going to be losses. Those are not projected. It would
7 be a significantly different scenario if there was a
8 drought that was coming up. Do we know whether it's
9 going to come, obviously there's no guarantee, but we're
10 not starting that way.

11 There's no serious or special
12 circumstances that require this Board to exercise that
13 flexibility which is given to it and the discretion which
14 is given to it. And this submission and approach is not
15 something that's out of line with what other
16 jurisdictions are doing and that's why we provided the
17 Board with a copy of the Alberta Energy and Utilities
18 Board decision, which is the next attachment.

19 That board had to deal with an interim
20 rate increase application. And the relevant portions of
21 that decision, if you go to the bottom right-hand corner
22 again, would be pages 9 of 13 and 10 of 13, going to page
23 11 of 13. That's where the views of the board with
24 respect to what interim rate applications are all about
25 and what criteria has been established by that board.

1 And we've quoted in our material the
2 discussion which follows the excerpts given by the board,
3 and that's on page 10 of 13 in the middle of the page.
4 So if we can go to page 10 of 13 in the middle of the
5 page. It starts:

6 "The foregoing excerpts reference a
7 number of factors that the board has
8 employed in evaluating an application
9 for an interim rate increase. These
10 factors can be grouped into two (2)
11 categories, those that relate to the
12 quantum of and need for the rate
13 increase, and those that are related to
14 more general public interest
15 considerations."

16 And on the quantum issue the questions
17 that are being asked by the board are very similar and in
18 line with the Supreme Court of Canada criteria. The
19 first one (1) is:

20 "Identify the revenue deficiency, it
21 should be probable and material."

22 We're not going into negative numbers
23 here. This ATCO decision, there was actually a
24 substantial loss that would be incurred by the
25 corporation. There was no net profit or net income.

1 And then they'd look -- or all or some of
2 any contentious items to be excluded. Again, the
3 financial hardship, that's the third issue, to the
4 applicant. Finally, can the applicant continue safe
5 utility operations without the interim adjustment. I
6 don't think there is any suggestion in any of the
7 evidence that with the \$39 million of additional revenue
8 which they got over the projected, that this puts them in
9 a si -- situation where they can't continue safe utility
10 operations.

11 MR. ROBERT MAYER: Well, they got to
12 build some foundations under Bipole 1 and 2.

13

14 CONTINUED BY MR. ANTOINE HACAULT:

15 MR. ANTOINE HACAULT: Fair enough, Vice
16 Chair, but there's also -- and -- and that will be a
17 subject of testing. There's like about 400 million now,
18 I think, capital expenditures that are not the new
19 planned construction of the facilities up at Keeyask and
20 Conawapa and Bipole.

21 The Corporation has already incorporated
22 into its budget a substantial amount to upgrade and
23 upkeep all of its existing facilities and transmissions,
24 and that's a prudent thing, but that's all included. And
25 having done that they're still showing a \$39 million of

1 additional profit in this current year.

2 MR. ROBERT MAYER: I'm not sure you
3 caught the discussion this morning about the serious
4 issue with -- on the towers at Bipole 1 and 2 and what
5 that may result in or how much cost. You heard Mr.
6 Warden say, No matter what it costs we have to do it.
7 Does that become an issue? Obviously you haven't
8 considered that, because it was relatively new, in your
9 summation to us today.

10 But I'm not sure that what we heard today
11 might not change other people's views on what happened.
12 We don't have any magnitude of the costs, any idea of the
13 magnitude of the costs. We do know that the incident
14 arose in a relatively inaccessible area, that the repairs
15 had to be done at the po -- or there was a possibility of
16 losing both Bipole lines.

17 So -- and we know that a good piece of it
18 had to be done by helicopter, and I at least have some
19 idea what it costs to rent a helicopter. So I don't know
20 whether we've heard all that. I expect that as part of -
21 - because Mr. Warden, in fact, gave evidence and because
22 there might be more cross-examination in the issue of
23 what's -- what's going to happen on the rate increase. I
24 think -- I'm not sure that that's not still an open
25 question, sir.

1 CONTINUED BY MR. ANTOINE HACAULT:

2 MR. ANTOINE HACAULT: The Vice Chair's
3 comments are very appropriate in the sense that there's a
4 lot of things that haven't been tested, but some -- the
5 one (1) thing we know is that there hasn't been a loss of
6 power as a result of that incident. There is -- it would
7 be different if we would be -- face a natural loss.

8 There might be a serious or a special
9 circumstance that might require this Board to give an
10 interim rate. But this risk has been dealt with. We
11 didn't have the serious financial consequences that might
12 have occurred. There are no special circumstances which
13 have arisen which changes, materially, the outlook, not
14 on -- not on the record.

15 And I mean, when we're going to test the
16 evidence. I mean, how many corporations, public and
17 private, have been asked to come back, and I can think of
18 universities, I sit on a university board, come back with
19 a zero budget, not even a CPI, and say, Listen, go back
20 down to -- right to the bottom, ask your employees to
21 come up with recommendations to their managers and the
22 managers to the vice-chairs, et cetera, as to where we're
23 going to cut costs. And you look at the Quebec
24 application for 0 percent increase they said they went
25 through an extensive process which allowed them to save

1 costs.

2 Are we sure that this Corporation has done
3 that? I know there's a lot of comments in the previous
4 orders by this Board that the Corporation should
5 seriously look at and deal with its expenses.

6 Do we have evidence that this Corporation
7 has done that kind of a serious undertaking? We have
8 some smaller initiatives that they've talked about, but
9 do they have actually a corporate plan which they've
10 implemented, and actually done it in a very serious way,
11 such as all private corporations have done, and had to do
12 in the recession. Do we know that?

13 So these criteria set out by the Alberta
14 Energy Board, I say, don't have to be followed word for -
15 - but they are instructive. They're how another board
16 dealt with it. They're consistent with the wording in
17 the legislation that there has to be sec -- special
18 circumstances, and they're consistent with the way the
19 Supreme Court approaches the problem.

20 Have I answered your question?

21 MR. ROBERT MAYER: I'm not entirely sure
22 it was a question. I think it was more of a statement,
23 but I have your position.

24

25 CONTINUED BY MR. ANTOINE HACAULT:

1 MR. ANTOINE HACAULT: So that essentially
2 I've gone through the criteria outlined at pages 7 and 8
3 of my presentation.

4 And then I asked the question at page 9:
5 Does Manitoba Hydro meet the test for an interim rate
6 increase? My submission is, No.

7 And part of what I address in this portion
8 of the submission is the lack of information and lack of
9 dealing with certain issues. I'm not even sure that in
10 this hearing we're going to achieve what the Board wanted
11 to achieve when I did the cross-examination on Order
12 32/'09.

13 I appeared to have an understanding by
14 reading that that we wanted to quantify the risk. It
15 seems to me if we're going to deal with, How are we going
16 to deal with the risk in the future, we have to quantify
17 the risk, and know what they all are.

18 Mr. Williams had made that point, that
19 unfortunately we're left in a position where the KPMG
20 report admittedly didn't deal with that, so I don't know
21 whether we'll even be in a position, unfortunately, in
22 this hearing, with the lack of that report being done in
23 accordance with this Board's direction, to properly
24 quantify all the risks.

25 You have to know what the risk is before

1 you're going to find a solution to it. If you just have
2 a portion of the answer as to what the risk is, and the
3 quantum, and the exposure, how can you fashion a
4 solution.

5 And if we're taking interim rates on the
6 basis, Well we're scared about all these things, we're
7 scared about another line hitting another line, and
8 that's going to cost all of this, but we don't have a
9 quantification of this, and we're doing interim rates
10 based on this man that's out there that's going to fire a
11 whole bunch of aerial -- arro -- arrows of risk on us but
12 we don't really know what that means.

13 I agree with the submission of Mr.
14 Williams, that we're putting the boat in a direction that
15 maybe it shouldn't even be going because we don't have a
16 good idea of what the quantum of that risk is, and the --
17 the probability, and -- and we can't discern what it is
18 properly before deciding what a solution will be.

19 And I am critical in this presentation of
20 the failure for Manitoba Hydro to comply with Board
21 directives. Rightfully or wrongfully, we don't have the
22 information we thought we'd have today as far as the IFFs
23 and scenarios. I think those were pretty critical, and I
24 think there was a reason, I would suggest, that the Board
25 wanted to have them before today, but we don't.

1 Now, as far as the quantum and need, the
2 gist of the numbers there are that Hydro is doing better
3 than what it projected, so it's a contraindi --
4 indication. There's no special need. There's actually
5 an absence of need.

6 And we also referenced the public interest
7 factors, the fact that consumers have to be considered in
8 this trying time, residential and other type of consumers
9 too, the ones who I represent.

10 So, finally, coming to the summary and
11 recommendations at page 11.

12 THE CHAIRPERSON: Mr. Hacault, I don't
13 mean to --

14 MR. ANTOINE HACAULT: Yes.

15 THE CHAIRPERSON: -- interrupt, but --

16 MR. ANTOINE HACAULT: Yeah.

17 THE CHAIRPERSON: -- you mentioned the
18 general public interest factors, that's on page 8 of your
19 brief.

20 MR. ANTOINE HACAULT: Yes.

21 THE CHAIRPERSON: Did you --

22 MR. ANTOINE HACAULT: Oh, sorry.

23 THE CHAIRPERSON: Did I miss that, or...?

24 MR. ANTOINE HACAULT: Public interest
25 factor is on page 10. There's a heading, "Public

1 interest factors." Yours says, "Page 8"?

2 THE CHAIRPERSON: It says, "Page 8." It
3 follows quantum and need factors. And then your next
4 section is, "General public interest factors."

5 MR. ANTOINE HACAULT: Okay. Well,
6 there's one (1) heading there, and there's also one (1)
7 on page 10. The public interest factors, those are the
8 factors set out in the ATCO decision, Mr. -- Mr. Chair,
9 so that the public interest factors being once you meet
10 the first test of special circumstances, then we look at
11 the second tense -- test, but only after having hit the
12 first test. If you don't meet the special needs or
13 urgency, you don't go to the second step.

14 THE CHAIRPERSON: You list in the second
15 steps points like interim rates should promote rate
16 stability and ease rate shock. Interim rates should
17 maintain intergenerational equity, et cetera. And your
18 argument is is that these come into play only if the
19 first test is met?

20 MR. ANTOINE HACAULT: That's correct,
21 because then if you're going to -- once you've had the
22 special needs and urgency you have to address, okay,
23 well, if I'm going to give an interim rate, what factors
24 should govern how I'm going to set that rate, but those
25 factors only come into play once the need for a rate --

1 the urgency and the special need for a rate has been
2 demonstrated.

3 And then this gets into the whole area of
4 how do you set a just and reasonable rate on an interim
5 basis. And those would be factors, I would suggest, are
6 -- are normal rate making factors: promote - promoting
7 rate stability, easing rate shock, maintaining
8 intergenerally -- generational equity, and provide
9 appropriate price signals to customers. And using
10 carrying costs may be considered to avoid interim rate in
11 -- increases.

12 So those are factors which we suggest
13 might guide the Board if there had been special
14 circumstances or urgency. Does that clarify my point?

15 THE CHAIRPERSON: Yes. You were speaking
16 before you did that about -- I see your confusion because
17 then you've got a section, "Public interest factors," on
18 page 10, which is part...

19 MR. ANTOINE HACAULT: Yes, be -- so what
20 I had intended on doing was going through the tests and
21 adding on through the tests, then applying the facts to
22 the tests.

23 MR. ROBERT MAYER: I -- I'm looking at
24 what I think is page 8 of your submission, which is
25 headed, "General public interest factors." And for the

1 life of me -- could you explain how one uses interim rate
2 increases to maintain intergenerational equity?
3 Generally, would we be talking about, in an interim rate
4 increase, one that would take effect for a matter of
5 months rather than a matter of generations? So could you
6 explain how we would manage to do that when are dealing
7 with an interim rate?

8

9

(BRIEF PAUSE)

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MR. ANTOINE HACAULT: Well, if I understand this Board's approach to an interim rate, that once it's in, the Board is reluctant to do a retroactive change.

15

16

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MR. ROBERT MAYER: The Board is reluctant and has been reluctant during the term that I have been on the Board to grant retroactive rate increases is what we've been reluctant to do. The Board has not expressed, so far as I can recall, a -- a concern as to whether or not they are prepared to change the final order that -- so as it may differ from the interim order insofar as an amount of a rate increase.

23

24

25

MR. ANTOINE HACAULT: But let's take the example then if we have a two (2) -- two point nine (2.9) rate increase, and the Board agrees with our evidence and

1 submission that -- that there's a cost of service issue,
2 there needs to be at -- a higher rate increase, or if,
3 say, if you say the residential stay at two point nine
4 (2.9) then there has to be a refund to all the other
5 classes.

6 In effect, if -- if the Board is saying
7 that it's reluctant to go into that exercise of changing
8 the rates retroactively to reflect class, then, in
9 effect, those rates become permanent because they create
10 that inequi -- equity going forward.

11 As soon as you set that rate now there's a
12 mulpli -- multiplication effect on anything that gets
13 set.

14 MR. ROBERT MAYER: No, sir. If for --
15 just for -- assume for the moment that we find you're
16 right, that there's been across the board rate increases
17 for a number of years now. Prior to that they were
18 adjusted according to class. If this Board were to
19 determine at the end of this hearing and the rate setting
20 that there was to be an adjustment based on the COSS then
21 we could order that.

22 We wouldn't -- it -- it -- it may well --
23 it may well result in certain changes, but -- and it
24 wouldn't cover the period between the interim order and
25 the final order. It would just change the rates going

1 forward. And let's assume that's a matter of four (4)
2 months we miss. Could you explain how that could
3 possibly effect the intergenerational equity?

4 MR. ANTOINE HACAULT: I think I
5 understand your point. And for the four (4) months I'm -
6 - I -- I would agree with you, it's -- it's -- it's not
7 going to have a huge effect, but we've got two (2) of
8 them right now. And what we're doing is count -- well --
9 two (2) before the Board, yeah, that's right. Only one
10 (1) so far because there hasn't -- but there's two (2)
11 rate applications.

12 And -- and the problem is -- and that's
13 why I started my comments that way --

14 THE CHAIRPERSON: Mr. Hacault, by the
15 way, just by public record, the -- the Board has actually
16 ordered refunds, which, in effect, represent adjustments
17 of prior rates, for example in MPI on several occasions,
18 just looked back to a prior insurance year and applied
19 refunds and made distin -- made distinctions, I think,
20 between classes or -- or the ways it was being done.

21 MR. ANTOINE HACAULT: Thank you for that,
22 Mr. Chairman. My only point is, you know, on those
23 adjustments, once we -- that fortifies my argument, I
24 believe, that special circumstances need to be found for
25 special rate increases, because as soon as you get into

1 that, if I was Manitoba Hydro, I'd say, Well, okay,
2 what's going to happen at the end, what's my financial
3 situation? Do I have financial certainty? And it's the
4 same thing for large customers: What's the financial
5 certainty?

6 You -- you don't want to be put in the
7 position where -- where things are changing a lot, and
8 that's why it would be very important, hopefully, in the
9 future, to be able to avoid these type of hearings. Here
10 we are having practically a full day of submissions when
11 we could be dealing with a GRA, but we're dealing a
12 second time on submissions for an interim rate increase.

13 We've -- in my respectful submission,
14 wasted two (2) days that could have been productive on
15 rate -- a rate application. So I guess I'll move onto --

16 MR. ROBERT MAYER: So far only one (1)
17 day, but -- or at least three quarters (3/4) of a day.
18 When were we going to finish the re -- when are we going
19 to spend the second day doing this?

20 MR. ANTOINE HACAULT: No, by that I meant
21 the first -- the first interim rate application.

22 THE CHAIRPERSON: Well, that's a lot of
23 water over the bridge I think we'd all agree. I think we
24 should let you finish your -- your presentation, Mr.
25 Hacault.

1 CONTINUED BY MR. ANTOINE HACAULT:

2 MR. ANTOINE HACAULT: So I -- I was
3 actually at the summary and recommendations before we
4 entered into this discourse, and, again, what we've tried
5 to do is present a principled basis and a principle way
6 of looking at it, and tried to give to this Board the
7 tools that it could have and ideas from other boards as
8 to how it might approach the problem. That's why we've
9 given a fairly extensive presentation on this.

10 So that the summary and recommendations,
11 the first, and it's just a repetition, but in conclusion
12 there's no basis in the evidence to conclude that
13 Manitoba Hydro has an urgent need for interim rate
14 relief. Or, in the alternative, if you find that it is
15 in that section 48 test that actually uses the word
16 "urgent," that there are special circumstances to make
17 such an award.

18 And secondly, that domestic consumers in
19 Manitoba have been subjected to a series of rate
20 increases and excessive inflation over the past several
21 years. They are also already paying for an existing
22 interim rate increase. Consideration of public interest
23 factors indicates ratepayers should not be burdened with
24 an additional rate increase and there -- therefore we
25 submit that it should not be granted.

1 Thank you very much.

2 THE CHAIRPERSON: Thank you, sir. Quite
3 an interesting discussion and presentation.

4 I'm thinking right now, Mr. -- Professor
5 Miller -- I believe that Mr. Gange -- and we've agreed to
6 receive a written presentation at some point next week, I
7 forget if it was -- the 14th, I think -- but apparently
8 you wish to make some comments at this time?

9

10 (BRIEF PAUSE)

11

12 SUBMISSIONS BY DR. PETER MILLER:

13 DR. PETER MILLER: There. Okay. Yes, we
14 had hoped to get -- he -- he scheduled a trip in the fall
15 before the calendar was set and we had hoped to get
16 together to agree on a written brief prior to his
17 departure. Unfortunately, I wasn't feeling well and
18 wasn't able to get on top of it. I have since gotten on
19 top of it.

20 So I -- I thought because Hydro is going
21 to be making some responses to what's going on here that
22 I should set out some -- some of the considerations
23 anyhow, and if Mr. Gange wants to add anything, then
24 perhaps later.

25 So I have a -- a number of things. We

1 always take a long-term view of the rates and so the fact
2 that there is short-term good news isn't decisive for us.
3 And what we're looking at is -- most of the things that
4 I'll cite here are -- are within the direct evidence at
5 the beginning of this proceeding. Page 14 of the -- Mr.
6 Warden's direct evidence, I think it's Exhibit 12, has
7 this chart of the -- the equity ratio, which you can see.
8 And he -- he said it, verbally, will dip to 20 percent or
9 -- or below in the middle of this curve. This year and
10 the next may be slightly above the normal 25 percent, but
11 the relevant consideration is the arc to the future.

12 And -- and I think this -- this is
13 something that really needs to be taken into account.
14 The old way of doing it was you have a good year, you
15 retract your rate application. You have a bad year, you
16 asked for it to be reinstated. That happened on one (1)
17 occasion. And we don't think that's the -- the way to do
18 it.

19 The Utility is very volatile in its
20 earnings because of water flows and because of prices,
21 and I guess there are other factors. And we don't think
22 it should be a start/stop, start/stop way of -- of
23 proceeding on -- on rates.

24 So that's the -- the general perspective
25 that -- that we bring to this issue. We're looking at a

1 -- a sustainable situation, and not necessarily like the
2 one (1) in BC where you -- you suddenly find you have
3 some costs from new plant, and you have to jack up the
4 rates all of a sudden to -- to deal with it. The whole
5 idea of retained earnings, I think, is to provide some
6 smoothing of that effect.

7

8 (BRIEF PAUSE)

9

10 DR. PETER MILLER: I guess the second
11 point I would make is that the -- the consultants, ICF
12 and -- and KPMG, have basically endorsed the long-range
13 planning of the Corporation, the decade of investment, as
14 sound policy.

15 Now, the observation has been, Well, the
16 other experts haven't been called in on that yet, and
17 there hasn't been a chance to test it, and all that.

18 But it's -- the -- the non-sale and non-
19 corresponding generation to meet the sale option still
20 requires investments in Conawapa, just to meet growing
21 Manitoba growth. And so it's -- I -- I guess I would
22 agree with Mr. Warden's comment, that standing still is
23 not an option for -- for Manitoba Hydro. There are going
24 to be -- there is going to be a future, and the future is
25 going to require money.

1 (BRIEF PAUSE)

2

3 DR. PETER MILLER: The third point, as
4 page -- page 30 of the direct evidence, again taking a
5 longer-term view. This is the one (1) comparing the --
6 the CPI and Hydro rate increases. It's true that it's
7 higher than CPI in -- in recent history and -- and the --
8 the near future, but there were long periods of time when
9 they went without any rate increases, cruising along on
10 the profits derived from Limestone, and I -- I think that
11 over the long run were under the costs of -- of living,
12 and we think that long run perspective is the one (1)
13 that's required.

14

15 (BRIEF PAUSE)

16

17 DR. PETER MILLER: Okay. So -- so
18 basically long -- long-term view, investing in the
19 future, and there isn't a non-investable future, and
20 taking the longer-range view of the -- of the increments
21 and trying to smooth them, I think those are all sound
22 measures, and argue against some kind of an interruption
23 in the increments that -- that are needed.

24 Another consideration is the -- the risks,
25 and I think some of these were mentioned in the

1 Chairman's remarks on January 31st. I guess I'll -- I'll
2 underline one (1).

3 This is from Mr. Rose's testimony, page
4 66. It's the diagram of the revenue related to flows,
5 and the observation that I would make is that the hit
6 from drought is much greater than the high points on the
7 positive side of the line, so we should be in a position
8 to deal with those -- those hits, in addition to the
9 investments. And then there are various accounting
10 things which I'm -- I shouldn't comment on, but I'm sure
11 the Chair was well aware of.

12 Now, does this mean an interim rate
13 increase? Now, I -- I think one (1) distinction that
14 hasn't been drawn so far is two (2) effects of -- of a
15 delayed increase, or I'll -- I'll take the -- the last
16 year's increase. If that increase had not occurred, we
17 would be operating from a baseline 2.9 percent lower, and
18 that would have repercussions out into the future.

19 A delay in the current year and -- but
20 initiating it, say, August 1st, that's the date people
21 are -- are fixing on, and I certainly hope we can achieve
22 that, which means ending in June or during the Folk Fest,
23 at the latest, you would still get your percentage base
24 for the current year upon which to add whatever
25 increments you're doing in the future. So that's a

1 somewhat different situation than the -- than the interim
2 rate we faced last year, although I don't think any of us
3 dreamed it would be going on this long.

4 Mr. Warden indicated two (2) -- two (2)
5 options. If you are not to deprive the Corporation of --
6 of any income from the expected increase, one (1) is to -
7 - to -- or I guess, two (2) options. One (1) is to
8 deprive the Corporation of the three (3) or four (4)
9 months of increase, and the other is to raise the -- the
10 rate more, say to three point five (3.5) instead of two
11 point nine (2.9) this year, which incidentally would give
12 it a higher base for future increases.

13 So wha -- the -- I guess the -- the main
14 concern I would have with an interim increase now, which
15 wasn't corrected, say in August, is -- has to do with the
16 cost of service and rate design. It would be
17 implementing a further year of rate designs which might
18 be suboptimal.

19 We've made recommendations. Our witness
20 hasn't appeared here yet. We would like to see those
21 recommendations incorporated into whatever new rates are
22 set. And so I guess one (1) option is to do some kind of
23 an interim now and adjust the -- the rate design and --
24 and possibly even the cost of ser -- the allocations to
25 different classes in August, or to wait until August and

1 do all those things together.

2 So I'd say our -- our concern -- I -- I
3 have some sympathy to the breathing space concept that
4 higher income has, although we should always remember the
5 -- the high-water years are -- are there to offset the
6 much steeper declines which could begin at any time. I
7 mean, we -- I just leave those for -- for your
8 consideration as to how -- how to weigh those.

9 We -- I -- I'm not sure that cost of
10 service considerations will be resolved. I mean, we do
11 have something that -- that is official in -- in some
12 way, and yet Hydro's unhappy with it and we're not
13 entirely happy with it. I'm not sure if our proposed
14 changes would go in the same direction or -- or not, we
15 just haven't heard the evidence there.

16 I guess I ma -- like to make a couple
17 other points that go a little bit beyond the matters
18 immediately before us. One (1) is Hydro has spoken of
19 the regulatory burden and it's a heavy one (1). And here
20 we are already in the second year for -- of which there -
21 - there -- they -- for which they've applied for rates.
22 And there's a steady increase of 3.5 percent over the
23 years. What about next years? When is that hearing
24 going to occur?

25 I guess my unasked-for advice at this

1 a little confused on what RCM/TREE's position is on the
2 interim rate increase. I think I heard you say that if
3 we're looking at a final order in August, no big problem.
4 What would your position be, because we've lost almost a
5 day now from what I thought our schedule was, and we
6 continue to run into delays -- if you assume that this --
7 and you assume that nobody appears to be wildly excited
8 about working and carrying on these hearings over the
9 summer, we -- we made a run at that last year and nobody
10 took us up on it?

11 So assume that these hearings can't
12 complete until the end of September because many of our
13 schedules now for the month of September only have a few
14 holes in them that hearings could actually be held.

15 What is the position of RCM/TREE with
16 respect to an interim increase if we assume you're not
17 going to see a final order that could be introduced at
18 the very earliest, October 1st?

19 DR. PETER MILLER: If it's within the --
20 the -- the next year, in other words, not a -- a year
21 from now, that preserves the -- the basis for the
22 escalation into the -- the future. And I could see an
23 order that upped the percentage rate, assuming Hydro's
24 case is, on balance, acceptable, a -- a higher increase
25 in the fall that would help to make up both retroactively

1 some at least of the income lost, and furthermore,
2 provide a -- a higher basis for the further escalation.

3 So I don't know if that's an official
4 position of our organization, but that's off the top of
5 my head my thoughts on your question.

6 THE CHAIRPERSON: Thank you, sir. And
7 thank you again for your comments. The Southern Chiefs
8 Organization, we've received written correspondence from
9 their representative, Mr. Rath. And, Mr. Peters, if we
10 could arrange to put them dir -- put the comments
11 directly on the record. It's actually quite short, I
12 think it wouldn't be out of line if I just read it into
13 the record, would it?

14 MR. BOB PETERS: Well, allow me. I'll --
15 I'll take that task on for you right now then, Mr.
16 Chairman. The --

17 THE CHAIRPERSON: I'm thinking of
18 Manitoba Hydro's response. It would probably --

19 MR. BOB PETERS: Yes.

20 THE CHAIRPERSON: -- be good if it was on
21 the record and it was there.

22 MR. BOB PETERS: All right. You --
23 you're correct, Mr. Chairman, and by way of letter of
24 March the 8th, 2011, Mr. Jeff Rath had submitted a
25 communication to the Board requesting that SCO's written

1 submission be included in the record of the proceedings
2 for today. So as best as I'm able I'll -- I'll read it
3 verbatim, starting with:

4 "As part of the Manitoba Public
5 Utilities Board hearing regarding
6 Manitoba Hydro's application for
7 approval of new electricity rates for
8 2010/'11 and 2011/'12, the Chairman of
9 the Public Utilities Board ("the
10 Board") posed the following question to
11 the parties and Intervenors on January
12 31, 2011: Whether it would be
13 advisable to consider revising rates on
14 an interim basis effective April 1,
15 2011, or await the conclusion of the
16 oral hearing.
17 SCO submits that if the Board revises
18 the rates on an interim basis, any
19 revision of rates should be set aside
20 and earmarked for all Manitoba First
21 Nations, the purpose of which would be
22 to offset any compensation required to
23 be paid as a result of the negligent
24 operations of Manitoba Hydro's projects
25 and facilities. This rate increase, if

1 ordered by the Board, should be set
2 aside until an environmental assessment
3 on Manitoba Hydro is concluded. SCO
4 submits that this represents prudence
5 and just and reasonableness in the
6 current situation."

7 And that's the end of the submission on
8 behalf of Southern Chiefs Organization.

9 THE CHAIRPERSON: Thank you, Mr. Peters.
10 Ms -- Ms. Pambrun from the City of Winnipeg, do you have
11 anything?

12 MS. DENISE PAMBRUN: The City does not at
13 this time.

14 THE CHAIRPERSON: Thank you. Mr. Wood,
15 do you have anything that you wish to say?

16 MR. GAVIN WOOD: I do not, sir.

17 THE CHAIRPERSON: Okay. We're going to
18 take a break and then when we come back we'll provide
19 Manitoba Hydro an opportunity to make the final
20 submission.

21

22 --- Upon recessing at 2:43 p.m.

23 --- Upon resuming at 2:58 p.m.

24

25 THE CHAIRPERSON: Mr. Peters...?

1 MR. BOB PETERS: Yes, thank you. Just
2 before Ms. Ramage begins. CAC/MSOS as well as MIPUG have
3 provided the Board with a written outline and
4 documentation that, rather than try to embed it into the
5 transcript, I think it would be more appropriate to have
6 it as an exhibit.

7 So I'm proposing that CA/MSOS Exhibit 13
8 be this -- the oral outline submission used by Mr.
9 Williams today.

10

11 --- EXHIBIT NO. CAC/MSOS-13:

12 Mr. Williams oral outline submission

13

14 MR. BOB PETERS: I'm also suggesting that
15 MIPUG Exhibit number 11 be the submission on behalf of
16 the Manitoba Industrial Power Users Group, in regards to
17 the interim rate increase that was heard this afternoon
18 through the submission by Mr. Hacault.

19

20 --- EXHIBIT NO. MIPUG-11: Submission on behalf of the
21 Manitoba Industrial Power
22 Users Group, in regards to
23 the interim rate increase
24 that was heard through the
25 submission by Mr. Hacault, as

1 well as the Hydro-Quebec
2 press release

3
4 THE CHAIRPERSON: Very good, sir. And
5 the -- the record, I think, corrects the few typos and
6 things that you had, Mr. Williams, so that should --
7 should be fine the way it is.

8 MR. BYRON WILLIAMS: And it's certainly
9 at the Board -- we hand those out to assist in the
10 discussion. We would -- if the Board wishes to mark it
11 as an exhibit that's fine with us, or alternatively an
12 exhib -- or for identification just -- but I'll leave
13 that to the Board.

14 THE CHAIRPERSON: Well, for example, Mr.
15 Gange isn't here so it helps if it's an exhibit, and he
16 can review it when he comes back.

17 Mr. Hacault...?

18 MR. ANTOINE HACAULT: Just one (1) small
19 point -- a point of clarification. MIPUG-11, will that
20 include or exclude the press release that was
21 distributed?

22 MR. BOB PETERS: That will be a question
23 then for the Chair and for the Board -- Vice Chair, if
24 they want the pres -- you're asking that it be included,
25 Mr. Hacault, is that the request?

1 MR. ANTOINE HACAULT: I referred to it,
2 but was unclear when you indicated the submission that
3 was marked as Exhibit 11 for MIPUG, whether or not it
4 included the Hydro-Quebec press release or not.

5 MR. BOB PETERS: I'll -- I'll include it
6 as part of Exhibit 11.

7 THE CHAIRPERSON: I think that's fair,
8 because it was material to his -- his submission.

9 Ms. Ramage...?

10 MS. PATTI RAMAGE: Thank you, Mr.
11 Chairman, and you'll notice I'm working from some fairly
12 choppy notes, so hopefully it'll --

13 THE CHAIRPERSON: Take your time.
14 There's no rush.

15 MS. PATTI RAMAGE: Oh, there is for me.

16

17 SUBMISSIONS BY MS. PATTI RAMAGE:

18 MS. PATTI RAMAGE: The suggestion that
19 Manitoba Hydro must demonstrate urgency or a serious
20 apprehension of financial difficulties in order for the
21 Board to order an interim rate -- in -- interim rate
22 increase is clearly erroneous. There is nothing in the
23 legislation governing this Board which references this
24 requirement, nor has this Board accepted this premise in
25 its previous orders.

1 Manitoba Hydro thought this Board's view
2 on interim rates was made fairly clearly. Notably, in
3 January of 2010 when the Board considered the need for an
4 April 1st, 2010, interim rate increase, Manitoba Hydro
5 made it clear it was not in dire straights, but rather in
6 the strongest fiscal position in its history.

7 The Board ordered that rate increase then,
8 and this relief is available today. Manitoba Hydro's
9 legal argument was set -- set out then in the January
10 19th transcript at pages 61 through 65, and I -- I won't
11 repeat it now.

12 But what is a relevant consideration from
13 Manitoba Hydro's perspective is the Board's reluctance,
14 as expressed in Order 18/10, and again this morning by
15 Vice Chairman Mayer, to order retroactive rate increases
16 or recover annual revenue requirement with larger
17 increases in a compressed time period. If the Board
18 views compressed or retroactive rates as contrary to the
19 public interest, then an interim rate increase is a
20 reasonable means of meeting the public interest.

21 While Manitoba Hydro doesn't agree with
22 Mr. Williams that serious apprehension of financial
23 difficulty is required for the Board to make its order,
24 one (1) point we can agree on is that there exists
25 absolutely no serious allegation of financial difficulty

1 for this Corporation. It's a well-managed company and
2 it's dealing with complex
3 long-term issues.

4 As part of Manitoba Hydro's overall long-
5 term strategy, Manitoba Hydro has adopted a practice of
6 regular and modest incremental rate increases. The rate
7 increase being considered today is entirely consistent
8 with that goal.

9 Manitoba Hydro's finances, as outlined in
10 IFF-09 and IFF-10, require a 2.9 percent rate -- rate
11 increase effective April 1st, 2011.

12 Manitoba Hydro is mindful of the interest
13 of its ratepayers and for this reason promotes the
14 principles of gradualism in its rate applications. To
15 ignore that context in considering the appropriateness
16 and timing of a rate increase is folly. It must be
17 recognized that the consistent application of gradual and
18 moderate rate increases is in -- in the interest of both
19 ratepayers, and the Utility.

20 A financially stable utility, one (1) able
21 to meet the challenges presented by water conditions,
22 weather conditions, or economic conditions, is a fund --
23 is fundamentally valuable to Manitoba ratepayers. Dr.
24 Miller made an excellent point, that we need ate -- rate
25 increases in good years as well as the bad, failing which

1 the bad years will be that much worse.

2 Parties have suggested today that we don't
3 need an interim -- interim rate increase because we
4 already have the 39 million that such a rate increase
5 would generate; however, this ignores the fact that the
6 improved financial performance in 2010 is as a result of
7 water conditions. As the Board well knows, there is a
8 need to consider the implications of a rate increase
9 beyond the year of implementation.

10 If the Board were to accept the notion
11 that we already have the money in the bank, it would be
12 necessary that the foregone 2.9 percent be included in
13 rates for each of the following fiscal years. It would
14 then have to be added to the rate increase for 2012.

15 Present forecasts assume a potential 3.5
16 percent rate increase for 2012. If we forego the 2.9
17 percent for the better part of 2011, we'd require a more
18 significant increase and it would defeat the
19 Corporation's desire to introduce modest and gradual rate
20 increases.

21 Also of note is the fact that Mr. Warn --
22 Mr. Warden commented, Manitoba Hydro won't be meeting its
23 forecast this year.

24 MR. ROBERT MAYER: Before you -- before
25 you go on a whole lot farther, let me try to understand

1 that. You've got 39 million so you don't need the
2 revenue but you do need the gradual increase so you don't
3 lose the 2.9 percent.

4 If I understood Dr. -- Dr. Miller
5 correctly, if we granted that two point nine (2.9) rate
6 increase as of December 1st, or whatever date your third
7 quarter starts, you're not -- if it -- if it's not the
8 num -- if it's not the 39 million but only the 2.9
9 percent, that still builds you in for that possibility.

10 If it's -- if it takes effect December
11 2011, and you have another rate application which comes
12 up in -- for April 2012, you solve everybody's problem.

13 Am I correct?

14

15 (BRIEF PAUSE)

16

17 MS. PATTI RAMAGE: You'll fore -- forego
18 the revenue in that interim period. Yeah. Okay.

19 MR. ROBERT MAYER: That's what I think I
20 was asking.

21

22 CONTINUED BY MS. PATTI RAMAGE:

23 MS. PATTI RAMAGE: Okay. Yeah, we're on
24 the same page then. Mr. Williams argued that the Board
25 should not move to significant directional decisions

1 based on what we don't know.

2 So I would suggest we need to look at what
3 we do know, and what we know is that Manitoba Hydro has a
4 mandate to provide and -- a supply of power adequate for
5 the needs of the province. That's a fact.

6 We also know Manitoba Hydro -- or
7 Manitoba's demand is going up over the long term. That's
8 undisputed. The nature of Manitoba Hydro's business is
9 decisions must be made in advance of new supply
10 requirements. I think everyone accepts that.

11 Now, much has been made of what is
12 characterized as uncertainties associated with Keeyask
13 and Conawapa, and the term sheets, which would allow
14 those projects to be advanced. From Manitoba Hydro's
15 perspective, this is simply clouding the issue that's
16 before the Board today. Manitoba Hydro's made it clear,
17 it is not yet committed to a particular project or
18 sequence, but the pieces to the puzzle are on the table.
19 We have to make sure they all fit together, and they --
20 we form the appropriate picture, but ulti -- and
21 ultimately Manitoba Hydro will -- it's Board will make
22 that decision, and then it will proceed in due course.

23 But that is not a reason, as was pointed
24 out by Vice-Chairman Mayer, to delay making decisions
25 today, because the Board needs to focus on what is known

1 about future generation, and most importantly, is that
2 there is no do-nothing option.

3 It is obvious that Manitoba Hydro has to
4 do something, and doing anything will -- to ensure that
5 an adequate supply of power is provided to Manitobans,
6 will result in costs being incurred. And it's also
7 obvious that those costs will be significant, no matter
8 what option is ultimately pursued.

9 Manitoba Hydro must be on a solid
10 financial footing going into this era. Two point nine
11 (2.9) percent is not intended to finance the preferred
12 scenario. It is intended to ensure the Corporation is
13 well insur -- is well positioned to fulfill its mandate.

14 And at this point, and while I don't want
15 to jump into the fray, and -- and be drawn into clouding
16 the issue, there was one (1) statement made by Mr.
17 Williams that we don't wish to -- to let go unchallenged,
18 and that was with respect to the status of transmission
19 to be built in the United States. Now, contrary to Mr.
20 Williams' suggestion that this is an uncertainty, Mr.
21 Cormie stated, at page 4,009, line 22 of the transcript,
22 and I'm quoting:

23 "Mr. Peters, there is certainty on
24 transmission. Transmission will be
25 built."

1 Now, the Board cannot defer its rate-
2 making decisions to see what will happen with Manitoba
3 Hydro's long-term plans. We are in a long-term business,
4 and we have to react directionally based on the best
5 information we have available.

6 Manitoba Hydro wishes to comment also on
7 the suggestion that it did not comply with its regulatory
8 obligations. During those comments, Mr. Williams
9 focussed on the KPMG report as Manitoba Hydro's response
10 to Order 32/'09. I'd remind the Board that there were
11 very unique circumstances surrounding the commissioning
12 of the KPMG report, and to suggest that this Board has
13 not been provided with the full picture of the risks
14 faced by the Corporation is simply inaccurate.

15 As part of this process, Manitoba Hydro
16 filed its full corporate risk management report, which
17 identifies all of the major risks faced by the
18 Corporation. Manitoba Hydro filed the ICF report. The
19 Board commissioned the Kubursi/Magee report, the scope of
20 which was also fairly wide, and here I'm looking at Order
21 30 of '10, and even just one (1) of the -- of the
22 requirements of that report were review and evaluate all
23 relevant available reports and supporting data, systems
24 models and analysis which address risk management or
25 contain information affecting risk management for

1 Manitoba Hydro and report on findings arising from this
2 review.

3 So Intervenors and the PUB were invited to
4 pose IRs on all of these materials. I believe the IR
5 process has resulted in an additional thirty (30) binders
6 of materials on top of the five (5) filed with Manitoba
7 Hydro's original application.

8 To suggest we've missed an opportunity to
9 re -- to comply with regulatory obligations just simply
10 ignores everything that's transpired over the last
11 sixteen (16) months.

12 Manitoba Hydro also cannot allow Mr.
13 Williams' unsubstantiated comments regarding Manitoba
14 Hydro's forecast to go unchallenged. Forecasts are just
15 that, forecasts. They represent a view of the future
16 based on known information. Manitoba Hydro cannot
17 control conditions that will actually occur and which
18 cause variations to the forecast. The one (1) thing we
19 know with certainty is that actual results will be
20 different from forecast but we don't know to what extent.

21 We, and by that I mean the bigger we,
22 that's Manitoba Hydro and all business entities, have
23 experienced some seemingly unprecedented changes in terms
24 of the economy, interest rates, commodity prices, energy
25 prices, even the weather. To suggest that Manitoba Hydro

1 has sub-par forecasts is a gross misrepresentation of the
2 information that's been presented on the record to date.

3 Mr. Hacault suggested the Board doesn't
4 have a balanced picture as yet. I'd suggest that there
5 is certainly there -- while there's certainly more
6 testing to be done, the Board does, in fact, have a
7 significant amount of information before it, including
8 the written evidence of the Intervenors.

9 Further, Mr. Hacault distributed evidence
10 this afternoon in the form of a press release. And
11 although he indicated it was just released, my -- I am
12 advised that it's dated August 3rd, 2010.

13 Comments were made regarding Manitoba
14 Hydro's information with respect to the rates of other
15 utilities. And I would note for the record Mr. Warden
16 already put that exact information on the record. You'll
17 find that at page 31 of Manitoba Hydro Exhibit 12, which
18 I believe is Mr. Warden's presentation in direct. It
19 included BC Hydro, Hydro-Quebec, New Brunswick, Nova
20 Scotia, and SaskPower in its rate review. And it
21 demonstrated that since 2006 Manitoba Hydro's cumulative
22 rate increases up to 2010 were lower than any of the
23 other five (5) utilities cited.

24 Referring to some of Dr. Miller's
25 comments, or -- or the comment with respect to the energy

1 intensive rate, I -- I would simply advise that Mr.
2 Warden has instructed me to advise that Manitoba Hydro
3 will ensure that RCM/TREE's input is obtained, and we are
4 at an appropriate stage that he will be invited to future
5 consultations.

6

7

(BRIEF PAUSE)

8

9 MS. PATTI RAMAGE: Mr. Warden has just
10 corrected -- corrected me on my last point with respect
11 to rate increases. So just for the record, his Exhibit
12 12 demonstrates that Hydro-Quebec is lower for
13 accumulative increases at twelve point two (12.2), but in
14 terms of the current rate index Manitoba Hydro is low --
15 is lower, so just to be precise on that point.

16 Finally, I wanted to deal with Mr.
17 Williams' suggestion that the interest of Manitoba Hydro
18 and its ratepayers are not synonymous. This may be Mr.
19 Williams' opinion or -- or maybe some member of his
20 client group, but it is not one that has been accepted by
21 the Manitoba Court of Appeal, and it was not accepted
22 when Mr. Williams argued before them in CAC/MSOS's 2005
23 appeal of Orders 101/04 and 143/04.

24 And in this regard, I would quote from
25 that decision at paragraph 65. And the court stated:

1 "The PUB has two (2) concerns when
2 dealing with a rate application, the
3 interests of the utility's ratepayers
4 and the financial health of the
5 utility. Together and in the broadest
6 interpretation, these interests
7 represent the general public interest."

8 And from Manitoba Hydro's perspective, the
9 public interest is for this rate increase to be approved.
10 And subject to any questions, I think that completes my
11 submission.

12 MR. ROBERT MAYER: You -- you want your
13 2.9 percent, but if I understood your answer to my
14 question, it doesn't have to be right now it just has to
15 be in this test year.

16 MS. PATTI RAMAGE: I think the preference
17 is to get it now in keeping with the regular and
18 consistent gradual rate increases.

19 And Mr. Warden just made another point,
20 good point, is if it comes in October or November, we're
21 looking at then jamming rate increases together. We're
22 not -- it's back to the regular points. We'll be having
23 one (1) in October/November, and as you suggested Mr.
24 Mayer, which I hope we're not back with the new rate
25 increase, but that's not my call, but if we're back

1 immediately with another one (1) that is -- we will be --
2 that will be -- I don't think necessarily in the best
3 interest of ratepayers to -- to have rate increases
4 follow months after rate increases.

5 THE CHAIRPERSON: Thank you, Ms. Ramage.
6 Thank you for -- everyone for participating in this day
7 of submissions with respect to the possibility of another
8 interim rate change.

9 Mr. Peters, do you want to bring us all up
10 to date? This is sort of like a long discussion going on
11 between a group of people where every once in a while you
12 sort of summarize things so you know where you put your
13 foot the next day.

14 MR. BOB PETERS: Mr. Chairman, this
15 hearing will reconvene on Monday, the 21st of March.

16 THE CHAIRPERSON: Of this year?

17 MR. BOB PETERS: Of this year, yes,
18 certainly, sir. Just so Dr. Miller is clear on that, it
19 is this year. And the schedule does afford the -- the
20 microphone that day to be shared as between PUB and
21 CAC/MSOS, so that's a matter we'll work out and try to
22 address the concerns the Vice-Chair has raised in terms
23 of the compression of the schedule and meeting the
24 timelines that we have.

25 MR. ROBERT MAYER: I think it's

1 interesting to note that although we're still in this
2 year that when we come back in April we'll be in Hydro's
3 next fiscal year.

4 MR. BOB PETERS: The second test year as
5 we've been calling it. Yes, thank you.

6 THE CHAIRPERSON: Okay, thanks to all.
7 We stand adjourned.

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9 (PANEL RETIRES)

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11 --- Upon adjourning at 3:16 p.m.

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15 Certified Correct,

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21 Cheryl Lavigne, Ms.

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