

MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA HYDRO

COST OF SERVICE REVIEW

SECOND PRE-HEARING CONFERENCE

Before Board Panel:

Marilyn Kapitany - Board Chairperson

Regis Gosselin - Board Member

Hugh Grant - Board Member

Larry Ring - Board Member

HELD AT:

Public Utilities Board

400, 330 Portage Avenue

Winnipeg, Manitoba

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Pages 1 to 142

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3  
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8 Denise Pambrun ) City of Winnipeg  
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10 Byron Williams ) Consumer Coalition  
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12 William Gange ) GAC  
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14 Antoine Hacault ) MIPUG  
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16 George Orle ) MKO  
17  
18 Christian Monnin ) GSS/GSM Class  
19  
20  
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1 --- Upon commencing at 9:01 a.m.

2

As you're likely aware, the panel also includes Regis Gosselin, the Chairman of the Public Utilities Board Hugh Grant, my fellow Board member, and Larry Ring, who is a very recent appointee to the Board.

15 So I'd like to welcome you, Larry, to  
16 your first hearing of the Public Utilities Board.

17 BOARD MEMBER RING: Thank you.

22 Just before we get started, I'd like to  
23 turn the microphone over to the Chair who has a couple  
24 of remarks he'd like to make.

25 BOARD MEMBER GOSELIN: Thank you,

1 Marilyn. In the beginning of this workshop, I  
2 indicated very succinctly that Rick Bel was gone and  
3 Larry Ring -- Larry Ring is now a member of the Board.  
4 So I -- I felt guilty about that, because I felt that  
5 I should acknowledge the contribution of the members  
6 who have departed from the Board, their contribution  
7 to the proceedings, and the -- the work of the PUB.

8                   And those are Rick Bel, Susan Proven,  
9 and Neil Duboff. I wanted to make sure this is on the  
10 public record so that I can share that with them and  
11 make sure that the -- the record is there for  
12 posterity. So they have served various terms on the  
13 Board.

14                   Susan is the longest serving member of  
15 the Board, Susan Proven. She served in the '80s and  
16 then served subsequently in the '90s. I think she had  
17 the most -- nearly fourteen (14) years, and then  
18 before that had some other years there as well.

19                   So Rick and Neil were more recent  
20 members of the Board. They served on various panels.  
21 And some of you were exposed to them because Rick Bel  
22 sat on the electricity panel, so you would have seen  
23 him in the last couple of years on that -- on that  
24 panel.

25                   Neil Duboff served on the gas and

1 propane panels. He was involved in gas safety and the  
2 gas broker file, which are -- all of which are quite  
3 extensive. And Susan Proven was very involved in MPI  
4 and the water and wastewater panels.

5                   And in addition, she was involved in  
6 payday loans and the cashing of government cheques.  
7 So she was very, very involved in the PB -- the PUB  
8 proceedings. There -- you know, I guess the adage is  
9 that if you want something done you get -- you ask  
10 busy people. And certainly, all three (3) of them  
11 were -- are extremely busy people.

12                  Rick is a co-owner of the Fort Garry  
13 Hotel and Spa. Susan is the owner of a bed and  
14 breakfast, has an extensive farm, and Neil Duboff has  
15 a thriving law practice. He practices law in various  
16 jurisdictions in Canada.

17                  So all of them brought unique skills to  
18 the Board. Rick had a laser-like ability to get to  
19 the heart of an issue, and Susan did an outstanding  
20 job in chairing water and wastewater hearings in -- in  
21 communities across -- across the Provence. Did an  
22 outstanding job at -- at that task. And Neil, of  
23 course, had outstanding attention to detail. They  
24 were extremely good colleagues. Cooperative.  
25 Collaborative. Good spirited. Wonder -- wonderful to

1 work with.

2 So, you know, all of them were  
3 dedicated to serving the public interest, and they did  
4 it for a very modest pay. And I wish Mr. Chernick was  
5 here, I don't know if he's here -- if you see him, but  
6 in -- in the case of those Board members the pay was  
7 notional because -- notional in the sense that often  
8 didn't claim for their pay. It's very modest, as you  
9 know. Often didn't bother to fill out the claim  
10 forms, and really felt that they were -- they are to  
11 serve a public interest.

12 So thanks to all of them, and I am --  
13 on behalf of my fellow Board members, I wish them all  
14 the best in their future endeavours. Thank you.

15

16 OPENING COMMENTS BY THE CHAIRPERSON:

17 THE CHAIRPERSON: Merci, Regis. The  
18 purpose of this second pre-hearing conference is to  
19 receive submissions as to what cost of service issues  
20 will be subject to further evidence at the concurrent  
21 evidence session in September, and which issues will  
22 be subject to written submissions only.

23 The panel will ask the parties making  
24 submissions today to consider what choosing to deal  
25 with an issue by way of a written submission as

1 opposed to oral con -- concurrent evidence that this  
2 does -- doesn't mean that it's not an important issue.  
3 Even for significant issues, as long as the record is  
4 sufficient clear at this time so that further evidence  
5 does not meaningfully contribute to the discussion, it  
6 may make sense to deal with those issues by way of  
7 written submissions only.

8                   So I'll -- I'll now ask Board counsel  
9 to explain the procedure for today. Mr. Hombach...?

10

11 OPENING COMMENTS BY BOARD COUNSEL:

12                   MR. SVEN HOMBACH: Thank you, Madam  
13 Chair, and good morning, members of the panel. This  
14 is the second pre-hearing conference in this matter.  
15 The first pre-hearing conference is the one (1) that  
16 gave rise to Board Order 26/'16, which set out the  
17 process for this hearing.

18                   Now, as everybody in this room is aware  
19 Order 26/'16 established a process that hasn't been  
20 used by the Board before, namely a series of two (2)  
21 facilitated workshops that at least partially replaced  
22 written Information Requests. And both of these  
23 workshops have now concluded, the most recent one  
24 being the Intervenor workshop that finished yesterday.

25                   Board Order 26/16 also made it clear

1 that after the conclusion of those two (2) workshops  
2 there would be another pre-hearing conference to  
3 determine what issues will be explored further in oral  
4 evidence, and what evidence will be limited to written  
5 submissions at this point.

6                         Just so that everyone in the room is  
7 clear on the process, if an issue gets slotted into  
8 the written submission track there will not be any  
9 further evidence on those issues at that point. On  
10 those issues, the evidence will have closed once the  
11 undertakings arising from the Intervenor workshop will  
12 have been answered. And the parties will be limited  
13 to written submissions only.

14                         If an issue is slotted into the oral  
15 concurrent evidence track for September, then the  
16 Board will receive further evidence on this matter and  
17 there will be an opportunity to cross-examine. The  
18 Board currently has set aside three (3) days for  
19 concurrent evidence, those days being September 7, 8,  
20 and 9 of this year, with Saturday the 10th being an  
21 overflow workshop and it'll be up to the parties to  
22 determine whether we actually want to use that  
23 Saturday or whether that won't be necessary.

24                         Concurrent evidence is what utility  
25 lawyers and experts also refer to as hot tubbing,

1 likely only to make our lives seem more interesting  
2 than they actually are, but what that means is that  
3 rather than following the traditional process where  
4 you have one (1) witness followed by sequential cross-  
5 examination by all of the parties, the experts are  
6 sitting together on a panel and the cross-examination  
7 can be issue specific so that more than one (1) person  
8 can comment on it at the same time.

9                   To that extent, if any of the parties  
10 participating in this hearing have any strong views as  
11 to who should be and should not be on the concurrent  
12 evidence panel, they certainly should feel free to  
13 speak to that issue today or, alternatively, they can  
14 raise it with Board counsel before the September  
15 session and the process can be adjusted.

16                   This Board currently does not have any  
17 formal process for concurrent evidence in place, which  
18 means there is some inherent flexibility in the  
19 process. If any parties would like to make some  
20 process submissions as to how the September session  
21 should be handled, again they're certainly encouraged  
22 to do so at the pre-hearing conference today.

23                   I will take this opportunity to remind  
24 parties that, even though the currently operative pre-  
25 hearing conference order is 26 of 16, the time table

1 in that order is no longer accurate. On March 18, a  
2 revised consent time table was circulated by the  
3 parties that sets out the current deadlines for the  
4 rest of this hearing. And if anybody needs a copy of  
5 it, there are some spare copies at the back of the  
6 room.

7                   The way the time table is currently  
8 constructed, written submissions on issues not subject  
9 to concurrent evidence will be due on August 12 of  
10 2016. Reply submissions will be due on August 19.  
11 The concurrent evidence session, as I already  
12 mentioned, will take place on September 7, 8, and 9,  
13 2016, with Saturday the 10th being a potential  
14 overflow day.

15                   Written submissions on concurrent  
16 evidence will be due on September 21. Intervenor  
17 replies to those written submissions will be due on  
18 the 26 of September. And Manitoba Hydro's reply will  
19 be staggered two (2) days later, due on September 28th  
20 of 2016.

21                   Turning then to the pre-hearing  
22 conference today, I've circulated this morning an  
23 outline of procedures that all parties should have  
24 access to. And just for convenience of the record, I  
25 would ask that that be marked as a PUB exhibit. I

1 understand, Ms. Villegas, that'll be PUB Exhibit 14.

2

3 --- EXHIBIT NO. PUB-14: Outline of procedures

4

5 MR. SVEN HOMBACH: Manitoba Hydro will  
6 have an opportunity to make initial process  
7 submissions. And I understand that, even though Ms.  
8 Fernandes is listed on the procedures, it'll be Ms.  
9 Ramage that'll be making the submissions today.

10 The order after that will switch to the  
11 Intervenors. The City of Winnipeg will go first  
12 followed by the Consumer Coalition followed by the  
13 Green Action Centre followed by MICUP -- MIPUG, and  
14 then followed by MKO and the GSS GSM class.

15 The Manitoba Metis Federation has  
16 advised that, because they are participating on a  
17 watching brief, they do not intend to make process  
18 submissions this morning. That's why they're left off  
19 the list.

20 And I fully expect that Mr. Delaronde  
21 walked into the hearing room this morning expecting to  
22 sneak in under the radar and sneak out under the  
23 radar, but I can't actually let that happen since Mr.  
24 Delaronde was called to the bar less than two (2)  
25 weeks ago and is now a fully fledged lawyer. So I

1 thought on the record I would actually extend  
2 congratulations and say welcome to the legal  
3 profession.

4 Following the conclusion of Intervenor  
5 submissions this morning Manitoba Hydro will have a  
6 brief opportunity for reply. And, at that point, the  
7 panel can actually deliberate on process.

8 Madam Chair, with that, I would suggest  
9 that the panel call upon Ms. Ramage to deliver  
10 Manitoba Hydro's submissions.

11 THE CHAIRPERSON: Thank you, Mr.  
12 Hombach. Ms. Ramage, please.

13

14 SUBMISSIONS BY MANITOBA HYDRO:

15 MS. PATTI RAMAGE: Mics, too. Thank  
16 you, Ms. Kapitany, and good morning, Mr. Chair. I was  
17 going to say Master Ring, Board Member Grant.  
18 Appearing in front of -- the last time I appeared in  
19 front of Master Ring I think it was a prejudgment  
20 garnishing order. Probably didn't do so good because  
21 you were the hardest one to get anything out of like  
22 that.

23 And, nevertheless, I -- I welcome you  
24 to the Public Utilities Board and I look forward to  
25 your participation. I think it'll -- it's -- it's

1 quite different yet in many respects, the same as our  
2 old interactions.

3 I haven't been here for -- since the  
4 NFAT, but like a bad penny, keep turning up. For  
5 those who aren't aware, Ms. Fernandes was called out  
6 on a family emergency yesterday afternoon, so I was  
7 called in. You saw me here in the afternoon. I've  
8 been in -- so this hearing for about an hour and a  
9 half, so I would beg your indulgence if I don't cover  
10 all of the topics.

11 And I'm hoping Ms. Fernandes will be in  
12 a position to review the transcripts of this morning.  
13 And if we do miss something, she could perhaps address  
14 it by letter on Monday. I'm hoping she'll be able to  
15 be back in the office.

16 I should also add that Ms. Hammond is  
17 going to be dealing with part of the submission. I  
18 will deal with matters related to the evidentiary  
19 process and concurrent evidence. Ms. Fernandes, who  
20 has had the benefit of sitting through the hearing,  
21 will deal with Manitoba Hydro's views on written  
22 versus oral evidence.

23 With respect to the concurrent  
24 evidentiary process, I did see a letter circulated by  
25 Mr. Hacault regarding some parties' views on whether

1 it was necessary. Manitoba Hydro is somewhat agnostic  
2 on whether the concurrent process itself is necessary.

3                   This process has -- the workshops have  
4 occurred through six (6) days with experts. In  
5 effect, from the pieces that I did here cross-  
6 examining other experts, it's provided ample  
7 opportunity for witnesses to exchange ideas and  
8 comment on each others' positions.

9                   But what has occurred during these  
10 workshops, particularly over the last three (3) days,  
11 and not entirely unexpectedly, is there's been an  
12 introduction of a number of new proposals and evidence  
13 that Manitoba Hydro hasn't had the opportunity to  
14 address.

15                   And when I say we haven't had the  
16 opportunity to address it, I'm not talking about not  
17 having satisfactory time. I'm talking having no time  
18 allotted for that purpose.

19                   In its filing at the outset,  
20 Intervenors were afforded one (1) round of IRs on  
21 Manitoba Hydro's filing, followed by a three (3) day  
22 workshop where Intervenors determined the focus of the  
23 discussions.

24                   At no point has Manitoba Hydro been  
25 afforded the opportunity to put its case forward with

1 a cogent, focused discussion on all the issues,  
2 including how the many moving parts interact and  
3 impact cost of service results.

4 During the Manitoba Hydro three (3) day  
5 workshops, a great deal of focus was on Manitoba  
6 Hydro's model and what data had been included or not  
7 included. There were very few questions in terms of  
8 Hydro's views on the issues and why its views -- why  
9 different views were appropriate or not.

10 In contrast, the -- the questions of  
11 Intervenor consultants at their workshop, I didn't  
12 hear -- the piece I heard, and I was listening from  
13 afar -- I didn't hear anybody asking what number was  
14 populating what cell or any questions of that nature.  
15 And I don't think those questions, while perhaps  
16 useful discovery, assist the Board in its  
17 understanding of the case.

18 Manitoba Hydro received a great deal of  
19 those type of questions during the workshop, so it  
20 wasn't provided an opportunity to expound on the  
21 actual concepts and real issues that are before this  
22 Board.

23 The thirty (30) minutes provided to  
24 Hydro during its -- the first watch workshop to  
25 present its position was not sufficient to put a case

1 forward and would be a poor substitute for that.

2 These are important issues, and the --

3 the fact is these are Manitoba Hydro's customers.

4 It's Manitoba Hydro's cost of service, and Manitoba

5 Hydro staff work with that cost of service every day

6 of the year.

7 These are dedicated staff to that --

8 that document. And the notion that they not be heard

9 on the impacts of the various evidence that's been

10 presented here today does not, in my view, meet

11 procedural fairness.

12 It's fundamental that Hydro be afforded

13 the opportunity to provide its perspective as -- as to

14 why it adopted certain methodologies, and not in a

15 disjoined, segregated-based discussion at the minutiae

16 level about what populated those cells, but rather

17 with a presentation highlighting the issues which are

18 most material to cost of service, and how changes to

19 cost of service impact results. And those result will

20 materially impact the customers.

21 The ability of Hydro to present its

22 case in a coordinated fashion is all the more

23 important given the introduction of a number of new

24 concepts in Intervenor evidence and in the workshops,

25 all of which were introduced after the Manitoba Hydro

1 workshop.

2                   We haven't had an opportunity to speak  
3 to those issues. For example, in the short time I was  
4 here yesterday, I heard a witness speak to a rate  
5 stabilization fund and the impacts of including  
6 directly allocated costs for -- in particular, DSM,  
7 for the purposes of allocating net export revenues.

8                   These -- these topics weren't included  
9 in Manitoba Hydro filing and weren't canvassed at the  
10 previous workshops. But a rate stabilization fund  
11 isn't a new concept to Manitoba Hydro. From my  
12 perspective -- and I might get in trouble -- it's like  
13 a bad penny that keeps turning up.

14                  We've heard it before at previous  
15 hearings before different panels of the PUB, and we  
16 spoke to the issues. And there is no rate  
17 stabilization fund. And I think it -- it's critically  
18 important that Manitoba Hydro be given the opportunity  
19 to speak to those issues.

20                  I heard yesterday another was that we  
21 had a rate stabilization fund at one time. And I  
22 believe that is true, but Manitoba Hydro dismissed  
23 that fund fairly quickly be -- and it had reasons for  
24 doing so. And I think this panel needs to hear that  
25 if -- if that -- that notion is being entertained at

1 all.

2 I think it's also important that, when  
3 we're talking about direct allocated costs to net  
4 export revenues and adding DSM, that this panel know  
5 the impacts of how that -- that will occur. And there  
6 is no evidence on the record, and now that Manitoba  
7 Hydro has heard that I think it's important that it be  
8 given the opportunity to -- to provide that  
9 information to the panel.

10 Another piece I heard very quickly that  
11 peaked my interest personally was an injector about  
12 the 1997 amendments to the Manitoba Hydro Act. And  
13 again I -- I haven't been here the whole time, and I  
14 don't know how much that has impacted the discussion,  
15 if at all. I -- I understand it was the first time  
16 but from my perspective my department drafted those --  
17 those amendments.

18 And the suggestion I heard was it  
19 changed things at Manitoba Hydro, or how we dealt with  
20 exports. I -- I'm not a witness but I can tell the  
21 panel that that was not the purpose of those  
22 amendments. And I think our witnesses should be able  
23 to address those issues going forward. The Board  
24 should not be left with the -- the suggestion that  
25 that somehow changed something.

1                   If you'll indulge me, that -- that was  
2 done to address certain stakeholders or parties who,  
3 since the 1960s, had suggested Manitoba Hydro didn't  
4 have the right to export and they wanted to dispel any  
5 notion that that was not true, and instead of going  
6 from different parts of the Act to have a clear  
7 statement. But Manitoba Hydro would -- would look at  
8 its record and say that nothing has changed, and we  
9 should be able to give evidence to -- to back that up.

10                  At the end of the day, the Board is  
11 making recommendations of Manitoba Hydro's cost of  
12 service, and those will affect the different customer  
13 classes. It's imperative the Board has a full and  
14 complete record before it before considering the  
15 issues and recommendations.

16                  We -- the suggestion in -- in the  
17 letter that Mr. Hacault presented was that a  
18 concurrent panel was not required, and it -- my read  
19 was that we would go directly to argument at this  
20 juncture. I'd point out a couple of procedural  
21 fairness issues.

22                  We have a new Board member. He wasn't  
23 present even to hear Manitoba Hydro's witnesses speak.  
24 He didn't get to assess their demeanour, their  
25 knowledge of -- of cost of service issues, and I think

1 it -- it's fundamentally a fairness issue that those  
2 witnesses get to present to Mr. Ring.

3                         Manitoba Hydro witnesses were sworn. I  
4 understand some of the Intervenor witnesses were  
5 sworn. I -- I'm not clear whether all were sworn.  
6 That's something to check in the record, but that  
7 piece I'm not sure has -- has been fully canvassed,  
8 whether the witnesses were all sworn. CVs have not --

9                         THE CHAIRPERSON: All of the witnesses  
10 were sworn, Ms. Ramage.

11                         MS. PATTI RAMAGE: Okay. CVs I don't  
12 believe have been provided, nor have -- have the  
13 witnesses been tested as to their expertise in the  
14 matters, which would be a normal process when we're  
15 dealing with expert evidence.

16                         As I noted before, Manitoba Hydro  
17 evidence was subject to IRs. There's no IRs of  
18 Intervenor evidence. So I think it's important that  
19 some type of process be in place, and -- and I was  
20 pleased to hear Mr. Hombach mention this morning that  
21 there is an expectation for cross-examination because  
22 certainly the procedural order that all the parties  
23 relied on and -- created that expectation that there  
24 would be cross-examination, and from Manitoba Hydro's  
25 perspective it created the expectation that we would

1 be getting back on the mic at some point with our  
2 evidence.

3 So I would -- oh, the one (1) other  
4 point I would make in terms of evidence is in -- we're  
5 still waiting to see Intervenor evidence undertakings,  
6 and that will also be something we will need to know  
7 in terms of commenting on -- on the record.

8 So as a matter of fairness, Manitoba  
9 Hydro would urge the Board to allow it to have the  
10 opportunity to provide its evidence with respect to  
11 this matter. And -- and when I say "evidence" to give  
12 us ample time to present the cost of service results,  
13 and why we have accepted some recommendations,  
14 rejected others, because as I say these are the people  
15 who work with us every day and they will continue to  
16 work with it.

17 And it's in -- I -- I always have heard  
18 at cost of service hearings that Manitoba Hydro  
19 doesn't have a stake in the game because it's the  
20 revenue requirement that matters and that's not  
21 correct, because these people have to work with this.  
22 They have to work with our customers. And a good cost  
23 of service will make their jobs easier.

24 So we're agnostic on whether it's  
25 concurrent. What we're looking for is an opportunity

1 for direct and be subject to cross-examination and the  
2 ability to cross-examine the Intervenors. And I think  
3 that's -- I would turn it over to Ms. Hammond now to  
4 speak to what would go in -- in the written and oral  
5 portions.

6 MS. JANELLE HAMMOND: Thank you. Good  
7 morning. In order to assist the panel Manitoba Hydro  
8 has provided a table which outlines for the Board  
9 Manitoba Hydro's position, I think it's being pulled  
10 up here, on what issues Manitoba Hydro feels should be  
11 brought forward to the oral hearing in September and  
12 what issues can be addressed in written submissions to  
13 be filed with the Board in mid-August, and as a  
14 result, not part of the oral hearing.

15 Manitoba Hydro has reviewed the issues  
16 list submitted by Mr. Williams and Ms. Pambrun  
17 yesterday morning and notes that there are a number of  
18 issues which Manitoba Hydro issues lists for oral  
19 versus written is in agreement with theirs, but there  
20 are some issues in which our positions differ.

21 So looking briefly at the issues  
22 identified under the written column, Manitoba Hydro  
23 has included issues such as sub-transmission,  
24 specifically the role of sub-transmission and NCP  
25 versus 2CP, distribution matters raised in evidence

1 such as NCP versus CP and customer versus demand, as  
2 well as a -- a number of other issues which are listed  
3 specifically on the table.

4                   With respect to these issues, Manitoba  
5 Hydro has reviewed the submissions of Intervenor  
6 consultants and is considering their positions. Due  
7 to the immateriality of these issues in terms of  
8 dollars and its minimal effect on the Cost of Service  
9 Study and the RCC impact, Manitoba Hydro submits that  
10 there is no need to debate these issues at the oral  
11 hearing, but rather that these can be addressed  
12 sufficiently by way of written submission.

13                  Turning to the issues identified under  
14 the hearing column, Manitoba Hydro has included the  
15 following issues, treatment of export costs,  
16 specifically the assignment of costs and the cost  
17 assignment to dependable versus opportunity, net  
18 export revenue, specifically G,T&D total costs  
19 including direct, the exclusion of NER from the cost  
20 of service and reserve fund, generation and  
21 transmission including classification and allocation  
22 of generation including Bipole I and III, Dorsey/Riel  
23 Convertor Stations, Bipole III, US interconnections,  
24 as well as three (3) other issues noted there, and  
25 finally, DSM, specifically the direct assignment to

1 participate in classes and G,T&D.

2                   In Order 26/16 the PUB indicated that  
3 it intended to examine rate design matters such as the  
4 components of basic monthly charge and the splits  
5 between energy charges and demand charges as they  
6 relate to the Cost of Service Study issues.

7                   Manitoba Hydro notes that no party to  
8 these proceedings has filed any evidence on these  
9 matters and these issues were proved to be in scope  
10 after Manitoba Hydro had already filed its initial  
11 submission with the PUB. And considering the time  
12 constraints with the workshops, Manitoba Hydro has not  
13 provided their position on these issues.

14                  Manitoba Hydro notes that they were not  
15 asked to put forth their thoughts or position on these  
16 matters during the workshop. And although Intervenors  
17 were asked about their positions on these issues, no  
18 Intervenor had any comment to offer.

19                  For example, Hydro notes that Mr.  
20 Harper acknowledged at transcript page 583 that it  
21 wasn't part of his overall mandate. And Mr. Chernick  
22 indicated at transcript page 706 that rate designs  
23 should not -- not be following the Cost of Service  
24 Study.

25                  Similarly, net metering should also be

1 excluded from this process, in Manitoba Hydro's  
2 position, as parties have not had an opportunity to  
3 properly adduce or test evidence in that regard.

4                   Manitoba Hydro submits that for the  
5 purposes of this Cost of Service Study review it would  
6 be premature and inappropriate for the PUB to make any  
7 determination on these -- on these issues at this time  
8 without having evidence filed on the record of these  
9 proceedings. Instead of using the time during the  
10 oral hearing portion of this process to deal with  
11 these issues, Manitoba Hydro would propose that these  
12 issues are more appropriately addressed and dealt with  
13 during the -- in the context of a GRA hearing.

14                   And with that, I believe that concludes  
15 our submission. Thank you.

16                   MR. DARREN CHRISTLE: Madam Chair,  
17 it's the secretary. For the purposes of the record,  
18 this -- this has been received and registered as  
19 Manitoba Hydro Exhibit number 63.

20

21 --- EXHIBIT NO. MH-63:       Manitoba Hydro submissions

22

23                   BOARD MEMBER GOSSELIN: A couple of  
24 questions. I -- the wind and coal listed as items for  
25 consideration --

1                   MS. DENISE PAMBRUN: I'm sorry, Mr.  
2 Gosselin, I can't hear you. That -- that was me  
3 speaking. I just can't hear you.

4                   BOARD MEMBER GOSSELIN: Oh, I'm sorry.

5                   MS. DENISE PAMBRUN: Sorry.

6                   BOARD MEMBER GOSSELIN: Okay, with  
7 respect to the -- the wind and coal, I -- that --  
8 those two (2) items hardly rippled the surface of the  
9 last three (3) days. And I'm wondering why those in  
10 particular are a item for a hearing.

11

12                   (BRIEF PAUSE)

13

14                   MS. KELLY DERKSEN: Good morning, Mr.  
15 Chair. With respect to -- to wind and coal, I agree  
16 they haven't -- and we haven't spent much, if -- if  
17 any, time debating the appropriate treatment of those.  
18 The reason we included them in -- in our list for --  
19 to be contemplated as part of the oral hearing process  
20 is because they're part and parcel of a couple of  
21 conversations or discussions that still need to be  
22 had, and that is with respect to the allocation of  
23 cost against the export class.

24                   And, also, the -- the treatment of wind  
25 has implications to how we treat generation cost

1 generally. And so it seemed a little bit awkward to  
2 pull those two (2) out into an or -- into written  
3 only. You know, they sort of just stuck out  
4 awkwardly. And there are implications dependant on --  
5 on issues that arise during oral portion of this  
6 process.

7                   BOARD MEMBER GOSSELIN: You know, the  
8 overall tenor of your comments this morning suggest to  
9 me that you're looking for a more traditional approach  
10 to the neck pro -- the next process in September. And  
11 I'm -- I guess the question I'm asking myself is:  
12 What -- you know, are you objecting to the notion of  
13 concurrent evidence and -- or are you looking for a  
14 more traditional hearing process with the vagaries  
15 that go with that?

16                  MS. PATTI RAMAGE: Well, it's  
17 interesting because I can say we don't have a lot of  
18 experience with concurrent evidence and we don't have  
19 a lot of experience with this workshop, so going into  
20 it we were open. Having come through it thus far,  
21 Manitoba Hydro feels -- and I hate to give credit to  
22 Mr. Williams, but it may be him that set this off in  
23 my mind that the applicant needs to give direct  
24 evidence.

25                  And whether the concurrent panel is

1 made up of all the Intervenors, it may be that we  
2 aren't on a concurrent panel that we give direct. But  
3 what came out glaring to us is that Hydro needs the  
4 more traditional approach, as the applicant, to get  
5 its -- to get all its information out because that's  
6 the bulk of where we started, with, I think, three (3)  
7 binders of minimum filing requirements that hasn't  
8 been touched on.

9                   And there's so many moving parts that  
10 someone has to speak to all of them. And other  
11 parties have interests in pockets, but there's no one  
12 who's putting it all together quite the same. And --  
13 and that's why we've come to the conclusion now, as  
14 the applicant, that, yes, the applicant needs a  
15 traditional process.

16                   THE CHAIRPERSON: Thank you, Ms.  
17 Ramage. And that was my question, too, whether these  
18 hearing items are for concurrent evidence or for  
19 presentation by Hydro, and you're saying potentially  
20 both.

21                   The items that are in the written  
22 column, those are strictly to be treated by written by  
23 Hydro?

24                   MS. JANELLE HAMMOND: Yes, that's  
25 correct.

1                   MS . PATTI RAMAGE: And those are the  
2 items that we don't believe we need to comment on any  
3 further, so they could be dealt with by written.

4                   THE CHAIRPERSON: Right. Thank you.

5 The panel will take that into consideration.

6                   MS . PATTI RAMAGE: And if I could add,  
7 just from my take on wind and coal, when -- when we  
8 say it hasn't been discussed, I think that points  
9 directly to the issue, or potentially to the issue,  
10 where it may not have been discussed because Hydro  
11 didn't control the discussion. We were asked  
12 questions about it, about -- in our evidence.

13                  And it may be a very minute piece of  
14 what ultimately becomes our direct evidence, but when  
15 it comes to the interactions, it's part of generation  
16 and transmission. So it would be included in -- in  
17 what is discussed. And I have to remind myself that  
18 hand signals do not go on the record.

19                  THE CHAIRPERSON: All right. Thank  
20 you.

21                  So Ms . Pambrun...?

22

23 SUBMISSIONS BY THE CITY OF WINNIPEG:

24                  MS . DENISE PAMBRUN: Thank you,  
25 members of the panel.

1                   There are really two (2) aspects of  
2 what I'm going to say this morning. One (1) has to do  
3 with my client's direct interests, and one (1) has to  
4 do with aspects of this process that don't directly  
5 have to do with my client's narrow -- rather narrow  
6 interests in this proceeding, but I am going to allow  
7 myself to make anyway, because Mr. Hombach advised me  
8 that at -- perhaps at some point, and it didn't have  
9 to be today, the PUB would be interested in hearing  
10 the comments from all the parties as to this process.

11                  And it may be that it's inevitable that  
12 some of that discussion happen this morning, and I  
13 think some of it already has. I'm not going to make  
14 those comments specifically today. I'll save that for  
15 another time, but it's, I think, inevitable that some  
16 of the parties' views about this process is going to  
17 come out in their submissions this morning. And --  
18 and that's going to happen with me, too.

19                  From the point of view, strictly  
20 speaking, of my client and its interests, the City  
21 takes the position that it does not require concurrent  
22 evidence to deal with the evidence that it intends to  
23 put forward so that the panel can deal with the issues  
24 that are, strictly speaking, relevant to its position.

25                  But that doesn't mean that the panel

1 may not want to atten -- pay attention to a whole host  
2 of issues that can be dealt with in a useful way in a  
3 concurrent evidence session.

4                   And so I am not opposing a concurring  
5 evidence session because, despite the fact that I'm  
6 really here to represent my client's interests, I  
7 actually am very interested in having this be a  
8 meaningful exercise for the panel.

9                   Despite what occurred yesterday  
10 afternoon, Mr. Todd feels the same. He wanted to  
11 provide some helpful comments, and although that  
12 didn't happen at the end of the day, there were a few  
13 questions that were, strictly speaking, outside the  
14 scope of what the City was speaking of. And -- and  
15 I'm kind of glad that he got an opportunity to give  
16 you some comments based on his expertise.

17                  So the City, for what it's worth,  
18 thinks that a concurrent -- or thinks that a -- an  
19 oral evidence portion of the hearing may yet be of use  
20 to the panel, although the City doesn't require that  
21 for the purposes of its own evidence that it requires  
22 to make the arguments it needs to make to have the  
23 panel understand its position at the end of the day.

24                  Having said that -- now I revert to  
25 being selfish -- the City doesn't really want to bring

1 Mr. Todd back to a concurrent panel or any other kind  
2 of session just to be altruistic and give the panel  
3 the opportunity to hear anything useful Mr. Todd might  
4 have to say, because that's at a significant cost to  
5 the City.

6 It comes down to the goal of the  
7 concurrent evidence portion of this hearing. And I  
8 think the panel -- I'm not sure you want any of my  
9 thoughts, but I'm going to give them anyway. I think  
10 the panel is going to want to be extremely clear on  
11 what its goal is at the concurrent evidence session.  
12 It became clear to me over the last three (3) days  
13 that maybe all the parties on the panel were not  
14 entirely ad idem as to what its goal was over the last  
15 three (3) days.

16 Certainly when I -- before the last  
17 three (3) days commenced, I thought the goal of this  
18 workshop was discovery. Now, my bias is that I'm a  
19 civil litigator. I work mostly in the courtroom. Of  
20 course, I keep thinking inside that paradigm, and  
21 discovery is for parties to understand the positions  
22 of other parties.

23 And the court is not usually part of a  
24 traditional discovery process in -- in a court  
25 process. The court stays out of that. The parties

1 conduct discovery. They -- they completely learn  
2 their own case and the other side's case so that it  
3 narrows the issues, and it permits a trial to be  
4 conducted more efficiently.

5                   In this case, the Board was part of the  
6 discovery process. That had its good points. I think  
7 it probably enabled this panel to understand the  
8 evidence better, which is useful, because this is very  
9 complex stuff. I didn't understand a whole lot of  
10 what was said here, although I'm learning. But it has  
11 its bad points, too, which is that I think it  
12 constrained counsel and the experts from asking some  
13 questions that they would have asked if you hadn't  
14 been in the room.

15                  So there were advantages and  
16 disadvantages to this process over the last three (3)  
17 days, and it's up to you to decide whether you will do  
18 this again in exactly the same format the next time.  
19 So I want you to think very carefully about what your  
20 goal is for the concurrent evidence, because I came  
21 into the last few days thinking the goal was to help  
22 the parties, and it became evidence over the last  
23 three (3) days that the panel thought the last three  
24 (3) days were to help the panel.

25                  Those are both good things. Sometimes

1 they're the same thing and sometime they're not the  
2 same thing, and sometimes they even clash. So where  
3 they might clash is who do you want at the concurrent  
4 evidence panel, and who -- who are you there to  
5 assist. If you're there to assist the parties, the  
6 parties should decide what happens and who is there.

7 And if you're there to assist  
8 yourselves, and I think you rightly are there at the  
9 concurrent evidence session to assist yourselves, you  
10 will decide who you want there and for what purpose.  
11 And you'll make that very clear to the parties so the  
12 parties know what to expect. So you will decide if  
13 Mr. Todd, as an example, is there only to speak to, in  
14 this case, the City of Winnipeg's interests or to  
15 really help educate you and give you some  
16 perspectives.

17

18 (BRIEF PAUSE)

19

20 MS. DENISE PAMBRUN: So at the end of  
21 the day, it is actually of -- it is immaterial to the  
22 City whether there is a -- a further oral evidence  
23 session. The City does not need to participate. If  
24 there is one, the City will be here, but we're not  
25 planning to have Mr. Todd here.

1                   If you decide you want Mr. Todd here  
2 because you think somehow he can be of assistance to  
3 you, of course we will comply. I actually think he  
4 might be of some assistance to you, but the other  
5 parties are probably going to have a problem with  
6 that.

7                   So you're going to have to decide what  
8 it is you want, and what it is you need, and you're  
9 going to have to decide how to be fair to all the  
10 parties and to let them know in advance exactly --  
11 clearly in advance exactly what you want from all of  
12 us so that people cannot argue at the end of the day  
13 obviously that there wasn't fairness.

14                  So I understand both sides of what  
15 you're going to hear today. Some parties are going to  
16 say, I want the opportunity to cross-examine. Other  
17 people are going to say, I don't need it. And  
18 sometimes when they say "I don't need it" what they're  
19 really meaning is, I don't want my expert to be cross-  
20 examined. And so you have to think carefully about  
21 what you're really hearing.

22                  So with those thoughts, I will leave  
23 you to your listening to other parties this morning,  
24 and to your own deliberations. Thank you.

25                  THE CHAIRPERSON:    Thank you, Ms.

1 Pambrun.

2 MS. DENISE PAMBRUN: Oh, and I should  
3 say in conclusion that it will be important to the  
4 City -- although it's not really the subject of  
5 today's argument, that it will be important to the  
6 City to have oral argument at the end of the -- this  
7 process. Thank you for your time.

8

9 (BRIEF PAUSE)

10

11 THE CHAIRPERSON: Thank you. Mr.  
12 Williams, please.

13

14 SUBMISSIONS BY THE CONSUMER COALITION:

15 MR. BYRON WILLIAMS: I'm just waiting  
16 to power up. Perhaps while we're waiting, I'll say  
17 good morning and thank you. I do have a -- a couple  
18 of goodbyes, a welcome, and a thank you that I'd --  
19 and my colleague Mr. Nisbet has already expressed our  
20 appreciation for Board member -- Board member Bel, who  
21 we -- we appreciated very much so.

22 The -- the humour, the insight, and the  
23 intensity that he -- and creativity that he brought to  
24 these projects. And his facial expressions as well  
25 were always very entertaining. You could never tell

1 what he was thinking, but you knew he was thinking  
2 something.

3 Another thank you I do wish to extend  
4 and I've probably been to Mr. Grant the most annoying  
5 participant in this hearing. If so, I apologize, sir.

6 I've been in fairly regular correspondence with him.

7 It's a hard job, especially when we're experimenting  
8 as we collectively learn how to improve our processes,  
9 which I think are already good, but to make them

10 better.

11 And I think the humour and his fidelity  
12 to the clock were -- were very much appreciated over  
13 the last -- well, not always appreciated, but with --  
14 with hindsight, they're appreciated, in any event.

15 And Ms. Steinfeld, who I think is a  
16 tremendous addition to the PUB advisory team. I've  
17 watched her career with admiration for a few years. I  
18 wish she was moving to the Public Interest Law Centre,  
19 that's our loss, but I -- I think she'll be a great  
20 addition to this Board.

21 I do want to say thank -- thank you and  
22 -- and goodbye to my colleague Mr. Nisbet who is  
23 moving on to a great firm, Myers Weinberg LLP. He'll  
24 be missed. And Mr. Hombach, be -- behind that stoic  
25 exterior, there is the most fabulous sense of humour,

1 a really vigorous mind, and a lot of passion, and he  
2 will be missed.

3 Manitoba Justice's gain will be  
4 certainly the PUB's loss, and -- or I guess it's not  
5 Manitoba Justice, but wherever you're going, Leg.  
6 counsel's gain -- gain.

7 With that, perhaps if we could turn to  
8 page 2. And just by way of outline, I -- I do want to  
9 just go back to what was originally the purpose of the  
10 pre-hearing conference. I'll note that you've already  
11 heard from Manitoba Hydro and the City of Winnipeg  
12 that there are a couple of other issues that have  
13 popped on the table, so we'll address that.

14 I'll outline at the start what I think  
15 are kind of three (3) key positions for the Coalition,  
16 and then as -- in support of that position, I want to  
17 highlight some relevant contextual factors, including  
18 the significance of these issues, what we think was  
19 the intent of Board Order 26/16, the procedural order,  
20 how our client has relied on that order, and where we  
21 are in the process.

22 And there's been some reflecting  
23 already. I'm not offering these reflections to just  
24 muse about improving the process for the future. I'm  
25 offering those reflections because I believe they're

1 directly relevant to what that fall process looks  
2 like.

3 Finally, the Board, on page 16 of its  
4 order -- procedural Order 26/16, talked about key  
5 issues. And by that, I understood what was to go into  
6 the written process and what was to go to the oral  
7 process. We'll offer our definition of what we think  
8 are key issues and then try to apply them.

9 And I should just note that the Board  
10 should have before it two (2) exhibits from the  
11 Coalition. One (1) is this PowerPoint which should be  
12 in pretty blue colours, Coalition Exhibit 18.

13 And also before it, hopefully it has  
14 Coalition Exhibit 19, which is a procedural order from  
15 the Ontario Energy Board. And I'll just note, I don't  
16 intend to spend a lot of time on that document, but if  
17 the Board does to decide to continue with concurrent  
18 panels, there is a lot of good advice from the Ontario  
19 Energy Board in terms of how that process might look.

20 I'm certainly happy to talk about it if  
21 the Board wishes some comments, but it's something  
22 that as we've refined our thinking and as we've  
23 reviewed the very extensive literature, this is one  
24 (1) piece of information that I thought got to a -- a  
25 lot of key points. So I hope the Board will find it

1 helpful.

2                   The Board's familiar with its order, so  
3 I'll just remind ourselves that -- that this second  
4 pre-hearing conference came out of Order 26/16. I do  
5 want to highlight the language at the bottom of this  
6 page, being PowerPoint slide 3, the excerpt from Board  
7 order -- the Board orders highlighting the fact that  
8 the -- the Board saw it important that cross-  
9 examination be permitted on key issues.

10                  And so that is important to our client  
11 for two (2) issues. One (1) is recognition of the  
12 need for cross-examination beyond the workshop  
13 process, and secondly, key issues. What does that  
14 mean. And so certainly we'll deliberate on that as we  
15 -- as we go forward.

16                  From our client's perspective, and I  
17 will run through this in hopefully not agonizing  
18 detail, but in some detail, cross-examination on key  
19 issues was promised. Our clients relied upon that  
20 promise and is necessary.

21                  Our client certainly believes that  
22 there should be an evidentiary process flowing out of  
23 this. Our client, as the Board will be aware, have  
24 participated in concurrent evidence panels in the  
25 past. Personally, I'm -- I'm quite fond of them in

1 some ways. And you'll hearing from me next week in  
2 terms of Manitoba Public Insurance. I'll be  
3 recommending concurrent panels on a couple of issues.

4                         For the purposes of this proceeding,  
5 like Manitoba Hydro, whether we choose to proceed with  
6 concurrent panels or just make selected witnesses  
7 available, both independent and corporate witnesses,  
8 our client will follow the path that the Board chooses  
9 and don't -- will offer some advice, but don't have a  
10 strong position.

11                         If the panel does con -- decide to  
12 continue with concurrent panels, our client thinks  
13 that there are some complex issues that do arise.  
14 Concurrent panels, as we understand the literature,  
15 were developed really to deal with independent  
16 experts. That doesn't mean that there's not a role  
17 for corporate experts. But what is the role for  
18 corporate experts? How should that -- should they be  
19 on the same panel or separately? And that is an  
20 important issue.

21                         And the OEB order, you'll see some  
22 discussion on that. And certainly at some point in  
23 time -- I -- I'm not sure our thinking is mature on  
24 that, but that's an important issue.

25                         Another issue you'll see the OEB

1 grappling with is in the concurrent evidence process,  
2 should experts be allowed to ask questions of each  
3 other? That's what we did with Manitoba Public  
4 Insurance last fall. And it was entertaining, I've  
5 got to say. But getting to actuaries all worked up on  
6 issues at -- at certain points in times and -- and  
7 cross-examining each other, I'm not sure was the --  
8 the most productive use of their expertise.

9 So that's some -- an -- an important  
10 issue for the Board to consider. And the OEB, in the  
11 order that I've shared with you, chose not to let them  
12 ask each other questions.

13 And then there are some just common  
14 sense process rules that I -- I think we would need to  
15 think about if we walk down the concurrent evidence  
16 panel process. And again, I really recommend to you  
17 the OEB order. Just -- I'm not saying that's what we  
18 should follow, but I think that's the type of issues  
19 that we need to -- to address.

20 Our client --

21 BOARD MEMBER GOSSELIN: Mr. Williams,  
22 can I -- can I interrupt you for a second?

23 MR. BYRON WILLIAMS: I -- I was hoping  
24 to get through that section. But, no, of course, Mr.  
25 Chair.

1                           BOARD MEMBER GOSSELIN: No, no. What  
2 I -- I'm intrigued about the comment and I -- I think  
3 we need to talk about it quickly, company employees  
4 and expert witnesses on the same panel. What -- what  
5 are your views about that?

6

7                           (BRIEF PAUSE)

8

9                           MR. BYRON WILLIAMS: Well, I'll start  
10 with this. I think it's important to hear from  
11 company witnesses. So I'll -- I'll start with that  
12 premise. I think we should hear from independent  
13 witnesses and company witnesses. At least as I  
14 understand the purpose of concurrent evidence, I think  
15 there were two (2) or three (3) objectives. One (1)  
16 was to allow for a better exchange in the Board's  
17 presence at a -- in a -- in a -- on a temporal basis  
18 at the same time. Another was to help the experts  
19 keep each other accountable.

20                          But I think the whole pro -- idea has  
21 developed around independent witnesses. Company  
22 witnesses are in a very difficult position in that  
23 they're -- they're clearly professionals. We've heard  
24 from Ms. Derksen. There's no doubting her experience,  
25 but she does at a certain point in time have a company

1 position to defend. At least that's our understanding  
2 of the process. And we don't criticize her for that.  
3 That's -- that's her job. And that analytically may  
4 raise some -- some issues.

5                   So that's -- am I -- if I had a  
6 preference, our clients probably would prefer the  
7 company witnesses separate and the independent  
8 witnesses. But whether that's fair to the Corporation  
9 or not, I'm not sure.

10                  So my bias is to keep the two (2)  
11 separate, but we're all learning about this, and --  
12 and I -- I wouldn't be too positional on that.

13                  BOARD MEMBER GOSSELIN: I don't want  
14 to belabour this, but say, for example, we're talking  
15 about depreciation. You'll recall we had a long,  
16 extended conversation around depreciation in this  
17 hearing room.

18                  So they had an independent witness --  
19 pardon me, an independent expert working for Hydro and  
20 an independent expert working for another party.

21                  And -- and so in that context, you --  
22 you are of the view that that conversation could go on  
23 at the concurrent panel, but -- but it's when you have  
24 an employee of Hydro or some other applicant and an  
25 expert witness from outside, that is taboo in terms of

1 getting them together on a panel.

2 MR. BYRON WILLIAMS: I'm not going to  
3 go -- I'm not going to go so far as to say it's taboo.  
4 I think everyone struggles with it. You asked me my  
5 thoughts. I would say my bias is to separate them,  
6 but, you know, there -- I think you should almost be  
7 making that on a case-by-case basis.

8 But I think we need to understand why  
9 these -- why the concept of concurrent panels  
10 developed. And as I understand, if you look at the  
11 federal court rules, it's really focussed on  
12 independent -- independent witnesses.

13 Just -- this -- this will come as no  
14 surprise to -- to the Board. We haven't had a -- a  
15 full dialogue on cost of service for a long time.  
16 That's why our client really believes it's important  
17 to have a -- a significant regulatory process in the -  
18 - in -- in the fall to -- to close the loop  
19 analytically on what our client believes are a lot of  
20 -- of important issues.

21 And it's not just important because  
22 there's a lot of unfinished business. These are -- as  
23 we'll see in just a second, these are decisions that  
24 can have a material effect -- effect on different  
25 classes. And there are some big issues on the horizon

1 which we'll talk about in a second that also, in our  
2 client's view, makes this hearing particularly  
3 important: Bipole III coming online, Keeyask coming  
4 online.

5                   And a subject -- big ones on the issue  
6 that we really need, in our client's view, to get our  
7 head around and one that's barely been talked about in  
8 the course of this hearing is that Manitoba-Minnesota  
9 transmission line. And I think Mr. Harper advises me,  
10 and we've put it in our submissions, that that is a  
11 very significant impact coming online in 2022.

12                  So these are the big issues coming up  
13 that we really think we also need to keep our eye on.

14                  And we're going to come back to this  
15 two (2) page table in just a second. On this two (2)  
16 page table, I -- I only would like to focus your  
17 attention on the column called "Materiality," just to  
18 highlight the materiality of some of these issues that  
19 are before you.

20                  This, by the way, is also our list of  
21 issues we think should go to oral hearing, but we'll  
22 come back to that.

23                  But if you look at the issues related  
24 to generation, which Manitoba Hydro, in Exhibit 63,  
25 has also highlighted, that's -- the classification

1 allocation of generation is \$840 million, a big-ticket  
2 item.

3                   In terms of issues related to the two  
4 (2) export classes, from the perspectives of -- of  
5 MIPUG, going to one (1) makes a big difference, 2.1  
6 percent for GSL Large. For residential, it's also a  
7 significant difference, a negative impact of zero --  
8 of about negative .7 percent.

9                   The treatment of net export revenues is  
10 also very material, and I -- I won't belabour it. But  
11 on transmission, you can just see the significance and  
12 materiality of these issues related to general --  
13 generation-related transmission assets, as we would  
14 argue. Our friends from InterGroup and MIPUG might  
15 disagree.

16                   The Dorsey converter, perhaps 60  
17 million at stake. Bipole III, well in excess of 350  
18 million.

19                   And again, interconnections, today, not  
20 that big of a big-ticket item. But for 2022, we see  
21 when that great big pipe between Minnesota and -- and  
22 Manitoba is put in, that is very significant impacts.

23                   Before we leave this page, I'll just  
24 note the non-tariff transmission. That is really not  
25 material from our client's perspective, but it is an

1 analogous concept, so that's one of the ones we're not  
2 as wed to.

3                           And finally, DSM, as you heard from Mr.  
4 Harper's evidence, is very material, how we treat  
5 that. And his evidence actually has a negative impact  
6 on my clients. We bring independent experts. We  
7 don't always like their conclusions, but that's a big  
8 ticket item, minus 1.3 percent. And just because we  
9 don't like their conclusions doesn't mean we won't  
10 support them. We'll get to that at closing argument.

11                          THE CHAIRPERSON: So, Mr. Williams,  
12 just to be clear, the items on these two (2) tables  
13 are the items that you feel should be dealt within  
14 oral as opposed to written?

15                          MR. BYRON WILLIAMS: Yes. And I'm  
16 going to come back to that, Madam Chair. I'll -- I'll  
17 just say that the one (1) issue that -- that you could  
18 strike off that list without bringing any tears would  
19 be non-tariff transmission. We included it because we  
20 think analytically, it -- it belongs, and -- and there  
21 are related issues.

22                          So if you're going to do GRTA and  
23 interconnection, you might as well throw it in. It's  
24 probably a -- a brief conversation. But at the end of  
25 the day, our client is -- is not adamant on non-tariff

1 transmission.

2

3 (BRIEF PAUSE)

4

5 MR. BYRON WILLIAMS: I do want to  
6 reflect a little bit, as you've heard both from  
7 Manitoba Hydro and from the City of Winnipeg, on this  
8 really innovative process we've undertaking in this  
9 hearing. And again, it's not just to -- to applaud or  
10 vent. It -- it directly relates to our  
11 recommendations and our pos -- position.

12 I do think we should think of that  
13 order, procedural Order 26/16, as really being about  
14 regulatory renewal. Our Public Utilities Board has a  
15 good reputation. We do know in the broader national  
16 scheme that there's -- there's challenges for  
17 regulatory decision makers. We all pity the poor  
18 National Energy Board which is facing a real  
19 legitimacy cri -- crisis.

20 So we see that Order 26/16 as an effort  
21 to preserve what is great about our process, and move  
22 things forward. And we see some real successes from  
23 that, and also some mixed results, which I'm going to  
24 talk about in -- in just a second.

25

1 (BRIEF PAUSE)

2

3 MR. BYRON WILLIAMS: I think as we  
4 deliberate on what the fall should look like, I think  
5 it is important to go to Order 2016 -- 16 -- 26/16,  
6 and think of what are the principles that came out of  
7 that order. One (1) was to include a wide variety of  
8 perspectives. We -- we're blessed with the presence  
9 of Mr. Monnin's clients. There's financial support  
10 available for our friends from MIPUG to some degree,  
11 and -- and perhaps from the City of Winnipeg, I'm not  
12 sure.

13                                 This is an unusual process, because the  
14     Board really wanted to -- on cost of service to make  
15     sure everyone felt that they could invest in this  
16     process. The intent of the procedural order also was  
17     to improve historic approaches in terms of disclosure,  
18     data, and methodology, and we think there's some real  
19     successes there that I'll talk about in a minute.

20 We think another intent was to improve  
21 the testing of evidence through concurrent evidence  
22 panels, and we've offered some thoughts on that  
23 already. It clearly was to preserve the right of  
24 cross-examination on those key issues in which  
25 presumably there was contention. There was a real

1 effort to be innovative on the discovery process, both  
2 with -- including the mini -- minimum filing  
3 requirements as well as the workshops. And I think  
4 clearly, the Board was also attempting to expedite the  
5 oral hearal -- hearing process.

6                   And so tho -- those are what our client  
7 sees as the intent of that order, and I'm just going  
8 to offer a coup -- a -- a bit of a comment on the next  
9 slide in terms of where we think we really did well.

10                  From our client's perspective, the  
11 minimum filing requirements were highly successful.  
12 You heard Mr. Bowman and Mr. Harper refer to that  
13 evidence. It facilitated that first round of IRs, so  
14 our clients think that was very effective.

15                  And thanks to the efforts of the City  
16 and the Green Action Centre, access to Manitoba  
17 Hydro's models, in our client's view, has made a real  
18 contribution to this process, particularly in  
19 understanding actually how the cost of service model  
20 worked, giving opportunities to improve the models,  
21 and also really interesting discussion on how do we  
22 explore unexpected results.

23                  And the implications for consumers of  
24 that DSM approach of Mr. Harper, you've heard over the  
25 last two (2) or three (3) days some really interesting

1 discussion of, how the heck did that happen, and it  
2 gives you some insight into the puts and takes in  
3 these cost of service models. And I -- and we think  
4 on behalf our clients, insight into Mr. Harper's  
5 analogy of that string on the sweater, and when you  
6 start pulling it, a lot of different things can  
7 happen. And we'll come back to that. So that, our  
8 clients feel, was very successful.

9                   We've heard mixed reviews of the Hydro  
10 workshop. From our client's perspective our  
11 expectations were not high going in. We -- and we  
12 probably felt that it worked better than other Hydro  
13 workshops.

14                   We got some disclosure. But I'll  
15 highlight the fact that there are, in our client's  
16 views, real problems with the transcript that emerged  
17 from that hearing. And problems in the transcript  
18 which I'll detail more in a couple seconds, but in the  
19 sense that there are very lengthy preambles.

20                   Often by the time you get to the answer  
21 it's two (2) or three (3) pages after the question and  
22 it's very difficult to relate the answer to the  
23 question. And for us doing closing argument, for us  
24 actually understanding what was happening, while  
25 orally we could follow it, as we try and assemble

1 arguments for closing, we're having some real  
2 challenges.

3 And I think there was a feeling that --  
4 and Ms. Ramage averted to it that perhaps the educated  
5 value of that workshop was not as -- quite as high,  
6 because we were focussed on disclosure. Mr. Chernick  
7 has some very colourful comments in his evidence and  
8 I'd certainly recommend -- he's -- he's gotten more  
9 flamboyant things to say about that first process than  
10 -- than I do.

11 Our client strongly felt that  
12 Intervenor workshops was worthwhile. And -- and that  
13 is one (1) of -- and we have some criticisms of it,  
14 but our understanding of the positions of experts like  
15 Mr. Bowman was much enhanced. We felt it was much  
16 better educationally for the Board, that's ult --  
17 ultimately up to you to determine, and also in  
18 identifying important areas for further research.

19 With hindsight, that workshop would  
20 have been great back in 2014. Some of the really  
21 creative ideas that came up, in our view over the last  
22 couple of days, would have been nice to take away and  
23 explore more carefully.

24 But we do agree with Mr. -- Mr. Todd as  
25 he testified yesterday that on some important issues

1 there's a lot of noise. Some of the issues rather  
2 than being clarified the waters were muddied. And in  
3 terms of net export revenue, I think that's an  
4 excellent example.

5                   As Ms. Ramage adverted to this morning,  
6 some new issues have arose that we're not aware of  
7 Hydro's positions on. Mr. Chernick's really  
8 interesting evidence on primary and secondary  
9 distribution, as well as the philosophical question --  
10 the great philosophical question, Is sub-transmission  
11 really transmission?

12                  Those were important issues. We may  
13 not agree with Mr. Chernick, we might, but that we  
14 haven't heard from Hydro on. And some key issues just  
15 were not explored just given the time limitations.

16                  And the interconnection with the US is  
17 -- is a -- a really excellent example of that. A big  
18 ticket item that I'm -- I struggle to remember a  
19 single question about that in the last few days.

20                  Another significant concern for our  
21 client, and that is why I think Boards are sometimes  
22 moving away -- at least in front of the Boards of  
23 having witnesses examine each other is, especially  
24 yesterday, but we've seen some tensions in the room.

25                  I think yesterday was a challenging day

1 -- day for all of us. And is this process of experts  
2 questioning experts in front of the Board, is that  
3 starting to blur the lines between independent expert  
4 and advocate? That's an important issue. We don't  
5 have to decide it today, but I think that's important.

6                         And again, lengthy preambles. I  
7 flagged one (1) page in particular. There's a -- a  
8 two (2) page preamble. And so we have a record where  
9 one (1) of the persons mak -- is making a statement,  
10 not sworn, an -- an assertion of fact, and that's on  
11 the record. In my view, it's not evidence, but it  
12 sure looks like evidence.

13                         It's very challenging to -- to work our  
14 way through that and -- and that is a problem to us.  
15 And so not to say our client -- if our friends from  
16 Hydro come up with a workshop suggestion in the -- in  
17 the future, I think we'll be more supportive of it  
18 with the lessons learned from here, but we have to  
19 realize that it has been imperfect. A really good  
20 effort, but imperfect.

21                         Slide 15 is intended to highlight our  
22 client's underlying concern that there was significant  
23 testing of this application, these issues that is  
24 still to come. As we understand the purpose of the  
25 workshops they were to provide discovery as Ms.

1 Pambrun has outlined and also to educate.

2                   They were time limited. And we were  
3 expressly told that it was not to be cross-  
4 examination. And certainly that is how the Coalition  
5 conducted itself in this process.

6                   Mr. Harper directed his -- developed  
7 his questions for the purposes of discovery. I assure  
8 you I have lengthy cross-examinations already sketched  
9 out, but those weren't shared with Mr. Harper because  
10 our -- our clients saw this as a discovery process.  
11 So our client certainly was relying on the Board's  
12 promise that there would be cross-examination in the  
13 fall and governed itself accordingly.

14                  I -- we -- the other important point we  
15 do want to make is Ms. Ramage has already talked about  
16 the challenges for Hydro, that new issues have arisen  
17 that they have not had an opportunity to provide oral  
18 or written comment on. Whether or not it's reply --  
19 it's not even reply because it's really hearing about  
20 some of these issues for the first time.

21                  Our experts are in the same position in  
22 the sense that Mr. Harper was exploring in the morning  
23 with Mr. Bowman some comments trying to discover his  
24 position a bit more, and then being asked for his  
25 opinions in the afternoon, and that's okay. That's a

1 good part of the process. But our -- our witnesses  
2 have not had the opportunity to fully contemplate the  
3 evidence of the others.

4                   In a more traditional process, you have  
5 your discovery. At the oral portion of the hearing  
6 you have an opportunity to respond to the case as --  
7 as it has developed. And you heard from Mr. Harper on  
8 a few occasions where he said, Here's what I think  
9 now, but I'd like a bit more time to think about it.

10                  So again, that's not a criticism of the  
11 process. I'm -- I'm much more enthusiastic about the  
12 process we undertook than I was before we started. I  
13 was one (1) of the big doubters. But I think there's  
14 still some real challenges for our client in knowing  
15 the case we have to meet and in making meaningful  
16 representations.

17                  Hydro has already commented about this.  
18 And welcome again to Board Member Ring. But he wasn't  
19 here for that first workshop. So he's had the  
20 opportunity to examine the demeanour, to -- to make  
21 observations of the credibility of other experts. He  
22 hasn't had that opportunity with Manitoba Hydro  
23 witnesses. And I guarantee you that going through  
24 that transcript is not going to be that helpful in  
25 terms of demeanour judgments or credibility judgments.

1                   And again, it was a useful transcript,  
2 but it -- it is one (1) of the messier transcripts  
3 you're going to find in a PUB process.

4                   Some might argue that all the questions  
5 have been asked. All the great issues have been  
6 canvassed. We've had vigorous exploratory  
7 discussions; that's enough. With respect, our clients  
8 disagree.

9                   And what we've tried to do on the next  
10 couple of pages is highlight from our perspective some  
11 of the key issues that our clients don't believe have  
12 been canvassed or where the record is just not clear.

13                  Equivalent peaker methodologies. I'm  
14 pretty excited about equivalent peaker methodologies.  
15 Our client is not endorsing that. I can tell you that  
16 right now. But that's been a really innovative  
17 proposal presented by our friends from InterGroup on  
18 behalf of the Manitoba Industrial Power Users Group.

19                  But how -- and they -- if you heard the  
20 conversation between Mr. Harper and -- and Mr. Bowman,  
21 there was a discussion, should we be using the 23 to  
22 77 percent ratio that occurred in some evidence a  
23 couple years ago or the 15 percent 85 percent demand  
24 energy split that shows up in Hydro's IR responses  
25 this year.

1                   And our client's reaction is we don't  
2 know because we don't know how Manitoba Hydro did  
3 those calculations and we don't know Manitoba Hydro  
4 did those calculations, not because -- because it  
5 wasn't -- it didn't come as a big issue until Mr.  
6 Bowman's evidence. So our client's not in a position  
7 to comment on the -- the robustness of those  
8 calculations.

9                   And again, the merits of the equivalent  
10 peaker concept, our clients do not prefer it, but we  
11 don't believe on behalf of our clients that there was  
12 a meeting -- that that concept was meaningfully  
13 explored in this hearing.

14                  An excellent example of the unfinished  
15 business of this hearing relates to surplus energy  
16 prices. And Mr. Harper and Mr. Bowman had a really  
17 interesting discussion, an unfinished discussion about  
18 what is keeping those peak prices relatively higher as  
19 compared to off-peak prices.

20                  It doesn't look like it's the recession  
21 because you -- is it some capacity still in those  
22 prices or not? That's an unfinished piece of business  
23 that our client believes hasn't been tested.

24                  In terms of the export class, our  
25 client -- we've heard what we would call the impatient

1 cost of service approach. That's how we would  
2 characterize Manitoba Industrial Power Users Group's  
3 approach. We certainly would like to test that in  
4 terms of the evidence they provided in the NFAT,  
5 whether it's consistent or not.

6 There is some really interesting  
7 regulatory precedent and literature out there from  
8 Americans in terms of revenue crediting versus cost  
9 allocation. It didn't really come up in this hearing  
10 except for in a casual conversation between Mr. Athas  
11 and Mr. Chernick.

12 That conversation started our excellent  
13 research team trying to explore it. There's a whole  
14 regulatory issue there that hasn't even been brought  
15 into the discussion where we think we may be able to  
16 learn something from our friends.

17 Mr. Bowman, he didn't mean this as a  
18 position, I'm quite confident of that, but he had a  
19 very interesting thought piece conversation with Mr.  
20 Harper on whether all the costs associated with --  
21 with Keeyask should be allocated to the export class  
22 during the advanced period.

23 First time we heard about it was a  
24 couple of days ago. Well, that's an issue that is  
25 really interesting to our client and that they would

1 like to explore in -- in the hearing to come.

2                   In terms of net export revenue, I'm not  
3 going to go through all of these because I think  
4 you're getting the sense that we think that there's  
5 some real issues uncanvassed. But the first that I do  
6 want to address is Mr. Todd, I think quite properly,  
7 talked about muddying the waters.

8                   There's been a lot of stuff come on the  
9 record on those issues from a variety of different  
10 perspectives. There's some important work to be done  
11 there, and you heard from Manitoba Hydro this morning  
12 on that point.

13                  And an issue that came up in the Chair  
14 -- Chairperson Gosselin's questions, which again our  
15 client doesn't believe has been very well canvassed,  
16 relates to Conceptually, have we even started to  
17 address our mind to what -- what we do if we're  
18 experiencing negative net export revenues? -- which,  
19 if you look out to the Keeyask time period, is a very  
20 real concern.

21                  Have we had a robust discussion on  
22 that? Our clients would respectfully submit no.

23                  Our client's concern with going with --  
24 dispensing with further oral evidence is best  
25 illustrated by this dialogue between Mr. Athas and Mr.

1 Bowman. The print is fall -- small, and so I  
2 apologize for that. But there you see a two (2) or  
3 three (3) page discussion about a really interesting  
4 issue about How do we treat Bipole I, Bipole II,  
5 Bipole III?

6 Mr. Bowman quite properly is saying, I  
7 need some time to think about it. Mr. Athas is  
8 saying, Hey, it's just a working session. It's not  
9 your final testimony. And Mr. Bowman quite properly  
10 is saying, That's why I think I need some more time to  
11 think about it. An important issue, dialogue  
12 unfinished.

13 There are a lot of issues we have with  
14 transmission that we would like to explore. I'm not -  
15 - I'm happy to go back to them, but noting the time,  
16 I'll just highlight that they are there.

17 And similarly in terms of DSM, one (1)  
18 critical unexplored issue is regulatory precedent, and  
19 is there precedent for the approach being recommended  
20 by Hydro and the -- the Manitoba Industrial Power  
21 Users Group.

22 I've talked about this already. Our  
23 client is interesting (sic) in disentangling, as Mr.  
24 Ramage spoke of this morning, that there are many  
25 moving parts. We did not explore with any of these

1   witnesses, with one (1) exception, what happens when  
2   you pull on that string. That is an important issue  
3   that, from our client's perspective, has not been  
4   addressed.

5                         Page -- slide 22 is simply a summary of  
6   what I've just said, some of the issues that we would  
7   -- we feel have -- are still yet to be done, and I  
8   won't dwell on it.

9                         I'm turning now for the Board to the  
10   issue of what our clients think should be at issue in  
11   the oral hearing in the fall. We, trying to get  
12   insight into the Board's thinking, turn to the Board  
13   order and the reference to key issues.

14                         From our client's point of view, key  
15   issues are ones that are material in that they can  
16   move the -- the needle either in terms of today's Cost  
17   of Service Study or big issues coming down the line,  
18   and that they're contested. If the -- if we're (sic)  
19   not contested, clearly we should be -- we should be  
20   moving on.

21                         And again, in terms of generation, like  
22   Manitoba Hydro, we see big issues with classification  
23   allocation. And if you go to the extreme right-hand  
24   column, you will see three (3) significant approaches,  
25   three (3) different approaches; weighted energy and --

1 and adder which is the Hydro approach as we understand  
2 it, weighted energy and no adder which is Mr. Harper's  
3 recommendation, and the equivalent peaker of Mr.  
4 Bowman.

5 Two (2) export classes. Again you're  
6 heard three (3) different approaches. The two (2)  
7 classes, the one (1) classes, and the -- and the  
8 London Economics's approach. Treatment of net export  
9 revenue, from our client's perspective, there's  
10 probably more than three (3) contested positions on  
11 the record right now but those are at least three (3)  
12 that -- that we've identified.

13 On transmission, we see a really heated  
14 debate in terms of generation-related transmission  
15 assets, should Bipole III be in or out, Dorsey in or  
16 out, and even pretty significant disagreement on the  
17 tests that should be employed. Used in -- useful,  
18 essential, the but-for test, and a philosophical -- a  
19 profound philosophical difference between Mr. Bowman  
20 who is arguing with his usual eloquence, even if we  
21 disagree, on -- on that, that amount should be  
22 relatively small versus Mr. Harper with his usual  
23 eloquence and high principle taking a different  
24 position. And Mr. Bowman, of course, is highly  
25 principled as well.

1                           Interconnections. That is an issue  
2 again our client believes has -- has got next to no  
3 attention, and is a big ticket item coming up. You  
4 see the two (2) different perspectives there.

5                           As I said before, non-tariff  
6 transmission. Intellectually we believe it belongs in  
7 that transmission family. In terms of its  
8 materiality, we would admit that you could stroke it  
9 off if the Board feels it -- it would be not a prudent  
10 use of resources.

11                          DSM. Our client believes there are  
12 very profound issues there, and we've identified what  
13 we think are five (5) different approaches on DSM. So  
14 there's some thinking to be done in that area, in our  
15 client's submission.

16                          Our client has heard from some  
17 Intervenors that are issues that are important to them  
18 that just got no intention in the workshops, and one  
19 (1) really good example from our client's perspective  
20 is the curtailable rate program, which is probably a  
21 \$2 1/2 million difference for the Manitoba Industrial  
22 Power Users Group, and just giving time stresses I  
23 don't think there was a single question asked about  
24 that. Analytically, our client thinks that's an  
25 important issue.

1                   What do we do though when we have, in  
2 our client's view, some core issues -- what do we do  
3 with the other important issues that weren't tested?  
4 Our client has canvassed three (3) options. One (1),  
5 that affected parties may feel that the record is good  
6 enough. Maybe MIPUG -- we don't -- we're not speaking  
7 for them, may feel that it's sufficient on curtailable  
8 rate programs. Another option might be to put --  
9 Hydro to put evidence on the record on some of these  
10 new issues and offering opportunity for reply.

11                  And a third which I don't think will be  
12 met with much pleasure by the Board is expanding the  
13 purpose of the fall hearing. On this slide, I'm  
14 talking about issues which are important to individual  
15 parties but at least for -- our clients don't meet  
16 that key issue definition. They may be a key issue to  
17 the City of Winnipeg, or others. We're not sure what  
18 to do with them. We're just flagging the concern.

19                  One (1) of the questions, and I think  
20 Manitoba Hydro spoke to this, is have we already had  
21 concurrent panels, or at least the objective of  
22 concurrent panels in the sense of the exchange over  
23 the last couple of days? One (1) of our problems with  
24 that suggestion is that that evidence was unsworn, at  
25 least in one (1) half -- for those asking the

1   questions but that's an issue that I think some might  
2   ask.

3                         The other issue that we would ask is,  
4   Has the actual process of posing those questions in  
5   front of the panel in that kind of -- as temperatures  
6   rose, has that actually tainted the objectivity of  
7   certain witnesses, or the prospects that we can put  
8   them all together on a concurrent -- productive  
9   concurrent panel? Our client is still pondering that.

10                  Our client believes very strongly that  
11  oral evidence should be heard in the fall. Our client  
12  also believes very strongly that concurrent evidence  
13  panels are a good innovation of the Board. As I said,  
14  we'll be recommending a couple for MPI next week.  
15  Whether we've achieved that objective already through  
16  the workshops, we leave to the Board's judgment.

17                  Our client chose not to cross-examine  
18  the witnesses of -- of Hydro or the Intervenors. Mr.  
19  Harper conducted his own gentle discovery and -- and  
20  we appreciated his efforts. That was not our cross-  
21  examination.

22                  Our client relied on the promise on the  
23  Board, found in the Board Order, that we would have a  
24  robust opportunity on key issues in the fall. And we  
25  certainly would hate to see an outcome where our party

1 was -- was prejudiced for relying in good faith on the  
2 Board's orders.

3                         The final issue I'd raise, and I think  
4 my friends from MIPUG will speak to this much more  
5 effectively than I could. Because we're experimenting  
6 with this process, I believe in the long run these  
7 innovations will save costs. I'm not sure they're  
8 going to save costs in this specific hearing.

9                         I don't think we should judge the  
10 results poorly because of that. But I'll say that  
11 just for our client we've already expressed some  
12 budget pressures. What we chose to do was reallocate  
13 our time, the legal time, and fro -- back load more.  
14 So we've had to change our budget as we looked at some  
15 of the pressures that we've been experiencing. So we  
16 haven't increased our budget, we've -- we've had to do  
17 some strenuous re-allocations already. And others may  
18 be experiencing the same problem or worse. So I'll --  
19 I'll simply identify cost as an issue.

20                         I've taken a long time. I really  
21 appreciate the Board's patience with me and -- and the  
22 opportunity to make some submissions on -- on behalf  
23 of our clients.

24

25                         (BRIEF PAUSE)

1                           BOARD MEMBER GOSSELIN: Mr. Williams,  
2 I -- I really appreciate your comments regarding  
3 process, and -- and I'm particularly intrigued by the  
4 reference to the fact that the MFRs, the minimum  
5 filing requirements really reduced a number of IRs.

6                           Is -- is -- did I hear you correctly,  
7 or --

8                           MR. BYRON WILLIAMS: Yes, and I'll  
9 just be clear, we didn't do a count, but we do know  
10 that issues -- what -- what I think the MFRs did, the  
11 Minimum Filing Requirements were -- in -- in the  
12 questions that we -- that would have gone into the  
13 First Round IRs, but which are kind of standard  
14 questions got put into the filing.

15                         And I think they framed the discussion  
16 better for the interrogatory process, plus normally we  
17 would have had to ask a Second Round of IRs. So from  
18 our client's perspective we're very appreciative.

19                         And -- and frankly, some of -- we asked  
20 some good MFRs, but our friends from the Man -- from  
21 MIPUG asked a lot more and a lot better ones and we're  
22 very appreciative of that, and the Board.

23                         BOARD MEMBER GOSSELIN: I mean, this  
24 is not a question, particularly. I just want to  
25 communicate my -- my desire as the Board Chair to find

1 ways in which to reduce the number of IRs, make them  
2 more meaningful. In part, because of the cost, but  
3 also in part because it -- it would allow, I think,  
4 the parties to focus on the material substantive issue  
5 as opposed to spending a lot of time in minutia that  
6 may not yield, you know, yield the kind of evidence  
7 that we need to make -- to -- to make decisions.

8                   And -- and certainly the applicants  
9 have been complaining to me that, you know, the IR  
10 process represents a great drain on their resources,  
11 causing them to say at times, We can't do all these  
12 IRs. And -- and, you know, not being selective about  
13 -- the system not allowing to be selective about those  
14 IRs that are really material and significant.

15                  MR. BYRON WILLIAMS: And I'll simply  
16 say that our clients are -- our clients believe IRs  
17 are a real -- a really critical part of it. And I --  
18 I won't be sharing a secret here, but for example,  
19 with Manitoba Public Insurance, I think we've had some  
20 really productive discussions. And I would invite the  
21 Board to seek the feedback of MPI about how their  
22 perception of IRs has changed.

23                  Because I -- I think that from our  
24 client's perspective they're essential. We -- we try  
25 to listen too. We may disagree, but I think we are

1 seeing some process -- progress. And -- and I would  
2 say it's probably more pronounced on the MPI side.  
3 We've still got some work to do on the Hydro side,  
4 perhaps.

11 And so with that in mind, I'm -- I --  
12 are you suggesting that we would be better served by  
13 having -- abandon the concurrent evidence notion in  
14 this next round and going directly to -- to a more  
15 forthright exposition of your client's positions,  
16 generally speaking?

17 MR. BYRON WILLIAMS: Well, first,  
18 perhaps, if I could, from our client's perspective,  
19 they hire experts that -- that they trust, who they  
20 think are creative. But -- and I'm speaking for our  
21 clients only. They have a incremental learning  
22 process for the hearings.

23 They start with what their experts have  
24 said. They direct us to make inquiries. They listen  
25 to some of the innovative ideas of others. My -- I --

1 I may go into a hearing knowing -- into the oral  
2 portion of the hearing knowing 80 to 90 percent of my  
3 client's position and not knowing the end of it. And  
4 I may not know the end of it until the day before  
5 closing argument, so.

6                   And that doesn't mean we don't have a  
7 case theory. But our -- I'm speaking only for our  
8 clients. Our client's positions evolve. You saw that  
9 in the NFAT. And -- and while I expect our clients,  
10 for example, to be probably very sympathetic to Mr.  
11 Harper's advice on DSM even though it's against their  
12 financial interests, there may be other parts of this  
13 hearing where they really expect his advice but they  
14 want to hear from others before they -- they reach a  
15 final position.

16                   So, from our perspective, if -- I think  
17 the big issue is I think there are some substantive  
18 details that -- that haven't been flushed out yet.  
19 So, from our -- our perspective, I think the -- we  
20 haven't finished the evidentiary loop.

21                   So I'm not -- but our clients won't be  
22 developing positions out of thin air. Like, to me,  
23 the key issue is, is the Board satisfied with the  
24 evidence because all clients will draw -- all  
25 participants will -- will base their positions on the

1 evidence. I don't think you're going to be surprised.

2 So, from my perspective, I'm not sure  
3 exploring the positions is that important. It's not  
4 an alternative dispute resolution process. It's an  
5 adjudicative process. I think it's weighing the  
6 evidence. And, you know, the Board may disagree, but  
7 I hope I've answered your question perhaps in a long-  
8 winded way.

9 THE CHAIRPERSON: All right, thank  
10 you, Mr. Williams. I suggest we take a fifteen (15)  
11 minute break and come back just after 10:45.

12

13 --- Upon recessing at 10:32 a.m.

14 --- Upon resuming at 10:47 a.m.

15

16 THE CHAIRPERSON: So one (1) of my  
17 panel members pointed out to me that I should not have  
18 said just after 10:45 because I was not precise  
19 enough, that I should have said, please come back by  
20 10:47, so. My watch says it's 10:46. I'd say close  
21 enough.

22 So, Mr. Gange, please. And I will  
23 endeavour to be more precise in future.

24

25 SUBMISSIONS BY GAC:

1                           MR. BILL GANGE: Thank you, Madam  
2 Chair. First of all, on -- on behalf of Green Action  
3 Centre I'd like to thank Bill Grant for -- for the  
4 excellent work that has been done so far in terms of  
5 refereeing this process. Green Action Centre has been  
6 an advocate for many years of attempting to have the  
7 Board consider innovative processes.

8                           I -- I am hopeful that at the end of  
9 this process the Board asks the parties for input in  
10 terms of what they saw as -- as positive aspects of  
11 this and what they as -- as potential improvements.

12                          Mr. Williams, who I think should take  
13 over that Rod Peeler's phrase of he never sleeps, this  
14 -- this submission and the lengthy review of -- of the  
15 process itself is helpful, but I think that it would  
16 be helpful for all of the parties to -- to make  
17 comments on it at the end.

18                          With respect to the question that's --  
19 that faces us today in terms of -- of how to proceed,  
20 I -- I must say that -- that both Professor Miller and  
21 I have listened with interest to -- to the submissions  
22 that have been made so far, and -- and there are a  
23 number of points that My Friend, Ms. Ramage, has made  
24 that are -- are interesting and compelling, and -- and  
25 the same thing with -- with My Friend, Mr. Williams.

1                   We have -- have said to the other  
2 parties that we agree with the -- the suggestion of  
3 MIPUG, My Friend Mr. Hacault, sent out yesterday in  
4 terms of we don't really see the need for further oral  
5 evidence but we understand that there may be. So I  
6 suppose that this submission may to -- in a certain  
7 way sound wishy-washy, and -- and it is, but it is  
8 because there are -- there are compelling arguments on  
9 both sides of this issue.

10                  What we would suggest to the Board is  
11 that we -- we understand the perspective of Manitoba  
12 Hydro that a number of issues have come out in the  
13 last three (3) days that were not necessarily  
14 contemplated by Hydro or by the other parties  
15 themselves, but as the evidence came out and -- and  
16 the questioning of the experts by the experts certain  
17 issues arose.

18                  And so what -- what we would suggest is  
19 that -- is that each party be provided the opportunity  
20 to provide further written evidence which would act in  
21 some ways as a rebuttal for all parties. The -- the  
22 evidence would be similar to the evidence that has  
23 been presented, for instance, by the Intervenors.

24                  So that Mr. Chernick provided his  
25 evidence in his usual style, and Mr. Chernick would be

1 given the opportunity to comment on issues that have  
2 arisen during these three (3) days as he listened to  
3 the other experts, and would provide his commentary on  
4 the issues as -- as he sees them in consultation with  
5 the Green Action Centre.

6 I -- I do want to say that we agree  
7 with Mr. Williams in the approach that Mr. Williams  
8 has advised that he -- that his client takes with Mr.  
9 Harper. And that is, we do not see Mr. Chernick as  
10 being a paid lobbyist for us. He is a person who has  
11 -- if you look at Appendix A to his evidence, the  
12 number of -- of hearings that he has testified at  
13 across North America is quite staggering.

14 And so there are some times where he  
15 comes to conclusions that perhaps Green Action Centre  
16 and -- and Professor Miller don't agree with, but they  
17 are his independent expert opinions. And we don't  
18 expect him to change his opinions because he's  
19 submitting his accounts through us. We don't want him  
20 to do that. We want him to be looked upon as -- as an  
21 independent expert that you, as the Board, can rely  
22 upon.

23 And so -- so -- and -- and we would  
24 hope that -- that all of the experts that are coming  
25 forward are -- are giving evidence today -- in -- in

1 this process that they would give no matter if they  
2 were retained by the Green Action Centre, or MIPUG, or  
3 the Coalition.

4                   And it is then for -- for Green Action  
5 Centre in the written submissions that Mr. Hombach has  
6 reminded us are due on August the 12th -- for us to  
7 set out what our positions will be.

8                   So we think that -- that, with written  
9 evidence from all of the par -- from all of the  
10 experts, and then with the written submissions that  
11 are due in mid-August, that -- that you probably will  
12 have more than enough evidence to review the cost of  
13 service. And -- and that written evidence would also  
14 of course be provided, in our view, by the -- the  
15 experts and the witnesses of Manitoba Hydro.

16                  So that would be our recommendation  
17 with respect to that.

18                  Having said that, we -- we recognize  
19 that Mr. Williams has raised a number of very strong  
20 arguments as to why cross-examination and oral  
21 testimony is still necessary. And -- and I guess, for  
22 me, the most compelling argument on that is because he  
23 thought he was going to get that opportunity. And --  
24 and therefore, from a strategic point of view, certain  
25 steps may not have been taken.

1                   Having said that, not really sure that  
2 -- that the world is going to change in any dramatic  
3 fashion, the way that it's going to change now that  
4 Britain has decided that it's going to leave the  
5 European Union.

6                   But I'm not sure that -- that your  
7 decision is going to be significantly different if you  
8 get the opportunity to hear cross-examination or you  
9 don't. That's something for you to decide. I -- I do  
10 think that the points that Mr. Williams wants to make  
11 can be made in a further round of written evidence.

12                  If, however, there is going to be oral  
13 evidence, we're still of the view that -- that the --  
14 the concept of concurrent evidence may have some --  
15 some value. From my own perspective, I think that the  
16 -- that if that were going to happen, I think that the  
17 questioning on this round would be better handled by  
18 lawyers than by experts asking questions of experts.

19                  That -- we've had that. They've had  
20 the opportunity. You've had the opportunity to hear  
21 the experts challenging each other, and -- and from my  
22 perspective, those challenges have been useful.

23                  And -- but -- but from this point on, I  
24 -- I think that the better way of doing -- doing this,  
25 if there is going to be concurrent evidence, the

1   questions should come from the lawyers towards the  
2   experts for a number of reasons.

3                         Number one (1) -- number one (1),  
4   because lawyers are trained to ask questions in a  
5   particular way and to get to the question quickly.

6                         I -- I -- if I had a criticism of -- of  
7   what I've heard over the last little while, it was  
8   that sometimes the questions were not focused. And  
9   there was too -- sometimes the preambles to the  
10   questions were too long, and by the time that the  
11   question mark came at the end, it was hard for me, and  
12   -- and I think for the person answering -- it was hard  
13   to remember what that question mark related to. So I  
14   think that would be better.

15                       And I also think, as a second --  
16   secondary reason, sometimes when people are saying,  
17   Well, you know, I don't agree with you on this point,  
18   it -- I mean, it -- it's one thing -- if you're being  
19   challenged by a lawyer and -- and you're -- you're --  
20   the -- the expert is sitting beside you, you can --  
21   you can direct -- if you're -- if you're unhappy with  
22   the question you can direct your unhappiness towards  
23   the lawyer and everything goes along smoothly.

24                       When you're unhappy with the question,  
25   because the guy sitting beside you has asked it and

1 you didn't like the tone of the question, it's then, I  
2 think, a -- a more difficult human trait to be able to  
3 respond properly towards that person's evidence. So  
4 that's why I would think that it would be better if it  
5 were done by lawyer -- through the lawyering process.

6                   With respect to the issues still to be  
7 decided, Manitoba Hydro has given a list and -- and  
8 has put into written -- the written category the role  
9 of sub-transmission. From our perspective, Mr.  
10 Chernick raised the role of sub-transmission as one  
11 (1) of the key elements of his testimony.

12                  And -- and if there is going to be a --  
13 a concurrent panel and if there is going to be a role  
14 for oral questioning, we would see the role of sub-  
15 transmission as -- as one (1) of the more important  
16 issues that ought to be in the oral testimony portion.

17                  Our Learned Friends at Manitoba Hydro  
18 has also put into the category of dis -- of the  
19 written category the distribution customer versus  
20 demand. And we would also see that from Mr.  
21 Chernick's evidence that he sees that there's been a  
22 misallocation on this. And we would see that as -- as  
23 one (1) of the issues that ought to go into the oral  
24 hearing as well.

25                  Mr. Chernick has also raised issues

1 with respect to the demand allocator, secondary  
2 subfunctionalization and service drops. And we would  
3 see those things as appropriate for an oral hearing if  
4 one (1) were to take place.

5 I just want to -- so -- so those are  
6 the various issues. I don't know if -- and I'd be  
7 happy, because I'm -- I'm feeling challenged by Mr.  
8 William's inability to sleep and -- and spend all  
9 night typing, if you'd like those -- those com -- the  
10 extra roles in writing, Madam Chair, I could provide  
11 that to you early next week.

12 But tho -- those are the issue that we  
13 see. I just want to raise a -- a couple of other  
14 issues. One (1) is the -- the budgetary issue. When  
15 the budget was submitted, we did not contemplate three  
16 (3) days here, in -- in this -- at this time period.

17 And -- and Mr. Williams indicated that  
18 -- they they're trying to reallocate their budget.  
19 And -- and I suspect that we will also have to do the  
20 same, but I -- I do fear, and -- and I'm -- I'm  
21 actually quite confident in saying that Mr. Chernick  
22 is going to exceed his budget by virtue of the -- of -  
23 - of this extra session that was -- was scheduled  
24 after the budget was -- was formulated.

25 And so at -- at some point I expect --

1 well, actually, sometime probably in July once Mr.  
2 Chernick submits his July -- or June account to me and  
3 then I'll be submitting all that stuff to the Board,  
4 but I think he's going to be -- he's going to be over.

5 I -- I just don't see there's any way  
6 for any of the experts to be coming in at the numbers  
7 that -- that they originally scheduled. So I think  
8 that is something that -- that is going to have to be  
9 addressed.

10 And the last point, I -- I guess I  
11 raised it at the beginning, I -- and I'm just going to  
12 repeat it, I apologize for boring you on this point,  
13 we would really appreciate the -- the ability at the  
14 end of this process to comment on it.

15 I -- I am thankful to the Board for  
16 having been prepared to be as innovative as you have  
17 been and I think that -- that all of us have learned a  
18 -- a great deal and -- but I do think that -- that we  
19 will have a better idea of how to make this process  
20 better when this is all over.

21 Thank you, Madam Chair. I'm not sure  
22 if there's any questions.

23 THE CHAIRPERSON: Thank you, Mr.  
24 Gange. I took note of the request for a review after  
25 the process. And I think, you know, we are always

1 looking for ways to improve, so continuous improvement  
2 is something important to this Board and I think we  
3 would -- we'd value that.

4 In terms of your question about do we  
5 need something in writing, is there anything that  
6 would be beyond what's in the transcript? If not --

7 MR. BILL GANGE: No, there wouldn't  
8 be. I wouldn't -- I just might be standing at -- a  
9 little bit better than -- than I have here. But --  
10 but basically what I've said is -- is what we see as  
11 the additional issues if we were to go to an oral  
12 hearing.

13 THE CHAIRPERSON: Okay, thank you. I  
14 think we can rely on the transcript then.

15 MR. BILL GANGE: Thank you.

16 BOARD MEMBER GOSSELIN: Could you  
17 repeat those five (5) items that you mentioned as  
18 potential subjects for the oral hearing? Just --

19 MR. BILL GANGE: That -- that we see  
20 in addition to what has -- has been put forward. So  
21 My Learned Friends from Manitoba Hydro have said the  
22 role of sub-transmission is something that ought to be  
23 in the written process. And we see sub-transmission  
24 as -- as being one (1) of Mr. Chernick's key points,  
25 that the treatment of sub-transmission he doesn't --

1 he doesn't feel has been properly allocated, so sub-  
2 transmission.

3                         The second one was in -- again in  
4 Manitoba Hydro's list where under distribution they  
5 have customer versus demand. Mr. Chernick's view is  
6 that there's been a misallocation between customer  
7 costs and the demand costs, and so he sees that as --  
8 as a key element.

9                         And then the other issues that -- that  
10 I did raise very briefly, Mr. Gosselin, were the  
11 demand allocator, the secondary subfunctionalization,  
12 and -- and the service drops.

13                         BOARD MEMBER GOSSELIN: By "demand  
14 allocator," you meant the capacity adder?

15                         MR. BILL GANGE: Yes, that's correct.

16                         BOARD MEMBER GOSSELIN: Okay.

17                         MR. SVEN HOMBACH: Mr. Gange, just for  
18 clarity, is GAC taking any position on the other  
19 issues that Manitoba Hydro would like to see in oral  
20 evidence?

21                         MR. BILL GANGE: No, we're not. Mr. -  
22 - Mr. Williams sent out a number of -- or -- and --  
23 and set forth in his -- in his presentation a number  
24 of issues that he thought were appropriate for a oral  
25 hearing. We're in agreement with that. And we're not

1 -- in -- in terms of the other issues that Manitoba  
2 Hydro has -- has indicated from their perspective  
3 would be better in writing, we're not taking issue  
4 with those -- with those matters other than what we've  
5 raised.

6 THE CHAIRPERSON: Okay, thank you.

7 MR. BILL GANGE: Thank you.

8 THE CHAIRPERSON: Maitre Hacault, s'il  
9 vous plait.

10

11 SUBMISSIONS BY MIPUG:

12 MR. ANTOINE HACAULT: Good morning,  
13 all. I'd also like to acknowledge and thank Mr.  
14 Hombach for his contribution throughout the years,  
15 he'll be missed, Mr. Grant for doing an excellent job  
16 in facilitating and controlling the crowd and cattle.

17 Also Board Member Bell, who we've -- I  
18 had the pleasure of having as a board member for a  
19 number of years, always very attentive to counsel and  
20 thoughtful, who's now been replaced by Mr. Ring.

21 I'd also like to thank all counsel for  
22 their cooperation, and the parties for cooperation.

23 It maybe seem like normal things to be done when we're  
24 in the PUB, but, you know, switching to accommodate  
25 people's personal preferences and -- and issues, those

1 are things that counsel really appreciate.

2                   And I'd like to once again express how  
3 I find that counsel are really accommodating in this  
4 process. And although we do the work that we have to  
5 do, everybody does it in a very collegial and great  
6 way.

7                   The summary of our position is as  
8 follows. Firstly, MIPUG is of the view that the  
9 evidentiary record is sufficient, and all issues can  
10 be dealt with through written or oral argument. In  
11 the alternative, if there are issues to be dealt  
12 within a subsequent hearing which allows for cross-  
13 examination by parties, it should be on issues they  
14 are adverse in interest to.

15                  So if, for example, MIPUG agrees with  
16 Manitoba Hydro on how it has allocated DSM we don't  
17 think it would be productive use of time for Manitoba  
18 Hydro to be subject to cross-examination by MIPUG,  
19 even though it's an issue for other parties -- other  
20 parties. So the cross-examination would be limited to  
21 people who, on their evidence, are adverse in interest  
22 and don't agree with the position of the initial  
23 filing.

24                  And then another initial point and it  
25 was made by Manitoba Hydro and, Diana, could you bring

1 up the -- Manitoba Hydro-4 which is the February 5  
2 letter of Manitoba Hydro which led us down this path  
3 at page 2, please?

4

5 (BRIEF PAUSE)

6

7 MR. ANTOINE HACAULT: Hydro said with  
8 quite a bit of emphasis that they're not the applicant  
9 in this. Really, when you think of it, they do have  
10 interest because you're always interested in making  
11 sure your work is acceptable and it doesn't create  
12 waves, and you always try to do the best work you can.  
13 But fundamentally it's not like a Rate Application.  
14 Hydro doesn't stand to gain 3.9 percent less or more  
15 in the rate increases. It's a reallocation.

16 And the real issue, as I had said in  
17 the first hearing, is between the classes. Classes  
18 have different perspectives with respect to whether  
19 they're being fairly allocated the costs, and what  
20 they have to pay to Manitoba Hydro. In that sense,  
21 Hydro is revenue neutral. The waterbed may change,  
22 and that'll be a decision of this Board, but this is  
23 not somewhere where Hydro has to advocate for a rate  
24 increase. They're revenue neutral.

25 And so the real issues have arisen, I

1 believe, and you could see even in the -- Master Ring,  
2 you weren't involved in the first part but the second  
3 part that's where we really saw when there was  
4 questioning that you could help define the issues, and  
5 that -- the reason for that is because the real issue  
6 is between the different Intervenors. I think we have  
7 to keep that in mind.

8                         The last introductory point that I want  
9 to make before I list the reasons for all these  
10 introductory points is that although the cost -- full  
11 cost of service review was in 2006, we did have  
12 refinements and subsequent reviews of that. We don't  
13 have to solve everything today. It doesn't have to be  
14 final in any way today. You -- you may decide as part  
15 of your Board decision to send things back to Manitoba  
16 Hydro for further analysis and further review, and  
17 bring it up again, you know, in -- at the -- at or  
18 concurrent with the next Rate Application. We don't  
19 have to solve everything today.

20

21                         (BRIEF PAUSE)

22

23                         MR. ANTOINE HACAUFT: Now, I'd like to  
24 kind of step back when we think about, well, what  
25 evidence do we need? Well, what is the real focus of

1 this hearing? Cost of service. We're focused on what  
2 is causing the cost. And it's broken down into energy  
3 component and demand component, as we seen.

4 So it may be a totally inappropriate  
5 analogy but two (2) people driving on the road. One's  
6 going to turn left. Puts his left turn signal on.  
7 One's passing the vehicle. They collide. What caused  
8 the accident? Was it the fact the guy driving and put  
9 his signal should have looked in the rear-view mirror,  
10 or not? What is it -- was it a combination of the  
11 actions of both people?

12 It becomes difficult, and people  
13 present different ways in how they're going to look at  
14 the cost causation, and that's what the experts were  
15 doing. They look at different ways. Some of them are  
16 really clear.

17 Distribution is not caused by  
18 industrial power users because they're not part of  
19 that system at all. So it becomes fairly clear that  
20 industrial users shouldn't be allocated the  
21 distribution line costs. They are not causing it at  
22 all, they're not tied into it at all. Other issues  
23 are more delicate and require more thought.

24 But I'd like to have that backdrop  
25 before we consider whether we need more evidence. So

1 my view is that a hearing has two (2) purposes: to  
2 properly inform the Board of the facts, but also to be  
3 fair to parties. And I'm not suggesting that we want  
4 to be unfair to anybody.

5                   I had expressed concerns about this  
6 process. I, as well as everybody else, want to see  
7 new and innovative ways to do things. And we had  
8 expressed concerns about the cost and -- and how --  
9 whether this would actually result in less cost or  
10 more cost.

11                  And we've always raised, as MIPUG, that  
12 concern. Usually we don't get funded, but we raise it  
13 again. And it doesn't matter whether we're funded or  
14 not. It's public funds, public process. I think we  
15 owe it to our citizens and to our ratepayers to have  
16 the most efficient and cost-effective process.

17                  Now, you'll see -- you'll have noted  
18 that MIPUG, where appropriate, didn't ask questions.  
19 We were very cost -- we tried to be cost conscious and  
20 focused in our interventions.

21                  We unfortunately believe that when we  
22 start tallying things up, though, the initial budget  
23 we've provided and was approved was for one (1)  
24 workshop day for Manitoba Hydro evidence and one (1)  
25 workshop day for Intervenor evidence.

1                   Turns out we needed three (3). Well,  
2 that requires time and preparation for each of those  
3 days in addition to the actual hearing time for Mr.  
4 Bowman and the consultants. So although I don't have  
5 the final numbers, all I'm trying to communicate is  
6 the budget that was approved was approved based on  
7 something that was different than what actually  
8 occurred.

9                   Now, that having been said, I as well  
10 as other parties have said, I think it was a useful  
11 process. I mean, there was a lot of good things that  
12 came out of the last three (3) days. I think there  
13 was useful exchanges at a high level between experts  
14 which helped understand different approaches,  
15 different theories, and different rationale for those  
16 theories.

17                  Simple IRs wouldn't have resulted in  
18 that kind of exchange between the experts. And the  
19 process went, in that sense, further than just  
20 replacing a set of IRs, which was the original intent  
21 of this and actually stated to be the original intent  
22 of this second workshop was to replace IRs of  
23 Intervenor evidence.

24                  Now, MIPUG has an acute concern that  
25 concurrent expert evidence with more than six (6)

1 experts is unmanageable and cost prohibitive when  
2 considering what additional evidence might be gleaned.

3                   We had a bit of a taste as to what  
4 happens with two (2) experts. There's five (5)  
5 parties, Intervenor parties, and assuming that Hydro  
6 wants to have Christensen there, there'll be six (6).  
7 Somehow we're going to have to manage that.

8                   And I thank Mr. Williams for having  
9 given the Ontario Energy Board decision. I'd like to  
10 draw the Board's attention to a couple of extracts of  
11 that decision because it helps understand the context  
12 of when other boards use this process.

13                  And firstly, at the top of page 2 of  
14 that decision, second line in -- top of page 2, second  
15 line in:

16                  "Parties achieve settlement on all  
17                   but one (1) issue."

18                  Just one (1) issue. We've got a host  
19 of issues that parties have identified so far that  
20 they want to have at this hearing.

21                  And going down a bit further, the  
22 paragraph that starts, "in procedural Order number 8"  
23 again:

24                  "The Board established a process to  
25 address the remaining unsettled

1 issue of export transmission rates."

2 So it was one (1) distinct issue that  
3 was being addressed in this concurrent expert evidence  
4 process. The next part I'd like to draw this Board's  
5 attention to is page 4 under the heading, "Board  
6 findings."

14 But also, the purpose is for  
15 independent opinion, so you've heard stress of Mr.  
16 Gange, he actually got the retainer letter from me,  
17 when we retain our experts we say, Your obligation  
18 when you're getting on the stand is to the Board and  
19 to be helpful to the Board. That's your obligation.

20                           This concurrent evidence was never  
21 intended to deal with having Manitoba Hydro, who's  
22 advocating for and wants to present a whole bunch of  
23 evidence again, a position. It was meant for  
24 independent experts.

25 So when this process, and I'll go back

1 to the suggestions by Manitoba Hydro in its February 5  
2 letter, was presented, it was expected that there  
3 would be workshops, there would be a narrowing of  
4 issues, and all unresolved issues, so all contentious  
5 ones, where there wasn't agreement between the  
6 parties, would form the basis of a concurrent expert  
7 evidence process.

8                   That's where we started. Now, so as  
9 indicated by the second sentence, the purpose is not  
10 to advocate on behalf of any part -- party's position.  
11 So this process of concurrent evidence would be, in  
12 our respectful submission, ill-suited for parties such  
13 as Manitoba Hydro advocating their cost of service,  
14 further explaining their cost of service, et cetera.  
15 That's not the intention of this process and to have  
16 them as part of a panel.

17                   The other piece of advice that this  
18 Board gave, and that's at page 5, in the process, and  
19 this is concurrent with what Mr. Gange indicated, it's  
20 in the middle paragraph:

21                   "The Board will adopt most of the  
22                   process used in the recent Enbridge  
23                   proceedings."

24                   It decided not in that concurrent  
25 evidence process to let experts undertake questioning

1 of each other.

2                   The other issue I'd like to bring the  
3 Board's attention to is in paragraph 5, that the Board  
4 indicated that where parties have sponsored one (1) or  
5 more experts, they would only be expected to one (1)  
6 opposing expert to questions. It says:

7                   "Address their questions only to the  
8 opposing experts and the panel will  
9 not interject to provide the  
10 opportunity, that is, of the person  
11 that's not being questioned to  
12 respond to a particular line of  
13 question."

14                  And it continues. If it wants another  
15 person's view at the very end it says:

16                  "If the Board determines there's a  
17 logical break in questioning or when  
18 the Board is interested in hearing  
19 another expert's view then they'll  
20 ask for it."

21                  I got into this because of how we went  
22 down this road and what we were trying to achieve. I  
23 also reiterate the distinction that Mr. Williams made  
24 between testimony and questioning.

25                  There's a lot of things in the workshop

1 where people were asking questions or sta -- making  
2 big statements, but they weren't providing evidence,  
3 it was just a question. And unless the witness said,  
4 yes, I agree with that statement, it doesn't become  
5 evidence.

6                   As I understood Manitoba Hydro's  
7 submission, it now wants to depart from the process it  
8 suggested in February. It wants to reopen the process  
9 and introduce new filings of evidence and go back to a  
10 traditional hearing process.

11                  Its position leading to what we have  
12 done was set out in its February 5 letter, and if you  
13 can bring it up again, Diana, please, at page 4. So  
14 it proposed a couple of workshops. And at the very  
15 top of what's on the screen, the first workshop would  
16 have Manitoba Hydro present its costs of service. It  
17 did that three (3) days in a row, present -- had its  
18 little presentations in the morning. And all parties  
19 in attendance would have the opportunity to ask  
20 questions within the agreed upon spo -- scope of the  
21 review process, so the scope was set out by this  
22 Board.

23                  During that workshop, there may be  
24 questions posed or modelling scenarios requested by  
25 participants and the PUB appointed faci -- facilitator

1 would assist in defining undertakings request of  
2 Manitoba Hydro. And they'd have a predetermined time  
3 after the conclusion of the technical workshop to  
4 prepare responses and distribute them to all parties.  
5 That essentially occurred. The Board reiterated that  
6 in its order.

7                   And the second thing Manitoba Hydro  
8 suggested, once Manitoba provided its completed  
9 undertakings Intervenors would be required to file  
10 their evidence with all parties, which occurred. And  
11 that was part of the Board order.

12                  A second technical workshop would be  
13 scheduled to facilitate the examination of  
14 Intervenors' evidence and cost of service proposals.  
15 Again, the PUB appointed facilitator would assist in  
16 defining undertakings to be requested of Intervenors.  
17 They'd have a predetermined time after the conclusion  
18 to prepare responses and distribute them to all  
19 parties.

20                  Now, Diana, if you could just scroll  
21 back a bit higher on this to page 3. A bit higher.  
22 Now, why was Hydro proposing this? And this gets back  
23 to whether more evidence is required and whether Hydro  
24 has to present again. It was proposing it because it  
25 was a review of highly technical complex interrelated

1 assumptions within the study.

2                   Given the nature, such a review does  
3 not lend itself well to traditional discovery  
4 processes of filing and responding to written requests  
5 or sequential examination or cross-examination of  
6 witnesses. That was Hydro's view.

7                   Manitoba Hydro welcomed the suggestion  
8 to make an alternative process. And the hope was, I  
9 guess, that with the workshops we'd be able to find  
10 out more about whether we could get agreements and  
11 define things. But the last part of the process,  
12 knowing full well my objections and concerns at the  
13 hearing because I expressed concerns at the first pre-  
14 hearing, Hydro still maintained that it didn't need to  
15 have an opportunity to represent its case. It has no  
16 real interest in doing that financially.

17                  It's said we're going to identify  
18 issues. Everybody is going to make written  
19 submissions.

20                  So we go back to page 4. The one (1)  
21 thing the Board decided not to do but was suggested  
22 was there were going to be a third technical workshop  
23 where we were going to try and identify issues. I  
24 guess to a certain extent that's what's happening  
25 today.

1                   Then Hydro was suggesting a process  
2 which would provide Intervenors the opportunity to  
3 file -- provide final written submissions to the PUB  
4 on the subject matter, enable them to advocate for  
5 their positions on topic areas that remain in dispute.  
6 And Hydro would also file its written submission.

7

8                   (BRIEF PAUSE)

9

10                  MR. ANTOINE HACAULT: I have taken the  
11 time to bring us back to where we were, and what was -  
12 - we were hoping to achieve to emphasize that even  
13 Hydro, when it started, didn't think this was really a  
14 matter of a lot of evidence. The evidence is there.  
15 We have extensive submissions by Hydro. Two (2)  
16 reports by Christensen. Two (2) responses by Hydro to  
17 Christensen. A whole series of minimum filing  
18 requests. First set of interrogatories. The workshop  
19 for further information.

20                  Now that all this is understood, people  
21 file their evidence so all the Intervenors, five (5)  
22 different experts, file their evidence. Then there's  
23 three (3) days of questioning with respect to that  
24 evidence to get the facts. That's what discovery is.  
25 To get the facts.

1 (BRIEF PAUSE)

2

3 MR. ANTOINE HACAULT: So the key  
4 question, and Mr. Williams did address it in his view,  
5 is that he believes that there's additional evidence  
6 that he wants to put in front of this Board. The  
7 question is, How significant is that evidence going to  
8 be and how helpful will it be after all of this  
9 evidence to help you make your decision?

I think you've heard during the days, a  
lot of it is different approaches to existing facts.  
The pole is a pole. The -- the level of usage and  
peaks are what they are. Those are facts. The Board  
has a difficult task of deciding between different  
recommendations of different experts how to approach  
those facts. That's a Board decision. It's not an  
expert decision. They'll help you make that decision,  
but it's a Board decision.

19 So the question is then on what topics  
20 does the Board feel there's insufficient evidence?  
21 Apart from wanting to cross-examine, we all want to do  
22 that, we want to show how good we are as lawyers, what  
23 are we really missing as far as evidence?

24                           In our respectful submission, there's a  
25 lot of process that go through written submissions.

1 There's a lot that can be gleaned from the written  
2 submissions that will be made. You don't have them  
3 yet. We will be able to address why certain  
4 approaches you should follow or -- or not, and our  
5 recommendations and our submissions but there is in  
6 our view a very thorough opportunity, and we would  
7 suggest both written and oral, to try and help the  
8 Board now that it has heard the facts what approaches  
9 should be given to those facts.

10                   Going back to my car accident, the  
11 facts are pretty clear. The road is being travelled  
12 down. There's a signal. There's a mirror. Somebody  
13 go -- goes to pass. Those are the facts. We have the  
14 decision, What caused the accident? So we believe  
15 that the written representations will provide a good  
16 opportunity for parties to prepare a complete,  
17 thoughtful argument based on the record that there is.

18                   Quite frankly, if there was a party  
19 that this process disadvantaged, it may have been  
20 MIPUG. We were always the first, except for when we  
21 switched, to ask questions, so we didn't have the  
22 benefit of listening to the other questions and  
23 deciding whether or not we wanted to ask further  
24 questions.

25                   We were equally disadvantaged in the

1 sense that all Intervenors filed their evidence at the  
2 same time, so we didn't know what other people were  
3 going to say. And we can live with the process. It's  
4 not perfect. We can live with this process as long as  
5 it's a process that's followed by everyone.

6 Now, if the Board decides to go to a  
7 more traditional hearing as Manitoba Hydro's  
8 requesting: file rebuttal evidence and other parties  
9 presumably have the ability to file rebuttal evidence.  
10 But we're not so clear that -- on how to divide the  
11 issues.

12 Quite frankly, if -- that's why I  
13 brought you back to the initial process. The thought  
14 was, if we were going to find out through all the  
15 workshops what we could narrow as far as issues, then  
16 everything that was an issue went to oral hearing.  
17 That was the thought process and the suggestion that  
18 led to this.

19 Because it's a smaller dollar amount in  
20 the big picture of things for the City of Winnipeg,  
21 does that mean it doesn't go to oral evidence?  
22 Uniform rates is a large adjustment, lose millions of  
23 dollars to all parties. It's received little  
24 attention in the workshops. It's hard to see what  
25 else we can debate as far as facts.

1                   Are we going to go on the size of the  
2 adjustment, or is the criteria for a key issue the  
3 importance to a party?

4                   So we have issues like the curtailable  
5 credit. We're adverse to Hydro on that item, so we've  
6 had written evidence from Mr. Bowman and the IRs from  
7 Hydro, but there's been little attention -- we're  
8 going to deal with it in written argument. We think  
9 we can deal with it there. But is that not a key  
10 issue all of a sudden because it's specific to -- to  
11 MIPUG? We would suggest no.

12                  If there's an issue that hasn't been  
13 resolved, if we're going to get into this, into a  
14 traditional hearing again, as long as we limit the  
15 cross-examination to issues which are adverse and to  
16 parties to that are adverse, we think we can get  
17 through the traditional hearing in a fairly cost-  
18 efficient and effective way if that's the Board's  
19 desire because it feels it needs more evidence.

20                  Is a key issue only the contentious  
21 ones? I don't know. What about, for example, cost of  
22 service principles?

23                  You've heard during the last workshops  
24 that some parties are of the view that there would be  
25 a narrower role and purer role for a cost of service

1 study, whereas -- and that was basically Intergroup,  
2 London Economics, and I believe Mr. Chernick versus  
3 the other view where we should embed rate-making  
4 principles into the cost of service analysis.

5                   Do we need more evidence on that? Do  
6 we need more debate? We don't think so, but that's a  
7 pretty important issue, and it's going to have a  
8 pretty significant effect. So if we're getting into  
9 key issues, that's a very key issue. It's a  
10 fundamental approach.

11                  For those reasons, we don't think you  
12 should start picking and choosing and telling the  
13 parties what's a key issue and what isn't. I mean, if  
14 it's contentious and they're paying attention to it,  
15 your ultimate hammer is, If you waste my time, I'm not  
16 going to give you costs.

17                  I don't think anybody here is wasting  
18 time, and we've all tried to cooperate and make this  
19 process as efficient as possible.

20                  With respect to the need for parties to  
21 present their case again, there as been the view,  
22 Well, listen, we only had half hour slots, this is  
23 Manitoba Hydro, to present our case. I've given my  
24 view as to why should they even be advocating. It's a  
25 waterbed. They still get 100 percent.

1                   Let the parties that are really adverse  
2 and interest debate and present their case. Do we  
3 need to allow parties to present their case again?  
4 They had half and hour of opportunity. You have all  
5 the written material. You're going to have written  
6 submissions and oral submissions if you agree with my  
7 suggestion.

8                   There'll be adequate opportunity to set  
9 out the positions. And some of those positions, quite  
10 frankly, according to Mr. Gange and -- and Mr.  
11 Williams, they won't know until they've heard all the  
12 evidence and seen all the evidence.

13                  So if the Board concludes that further  
14 evidence is required, and we're going to fundamentally  
15 change the way the process was designed initially,  
16 it's our respectful submission that it should be only  
17 in the form of rebuttal evidence, that's on new  
18 issues, not anticipated.

19                  That Hydro should file its rebuttal  
20 evidence first and that Intervenor parties would then  
21 be able to file their rebuttal evidence. Again, the  
22 real issue is between the Intervenor parties.

23                  It's true, Manitoba Hydro will have to  
24 apply what the Board decides. As long as they  
25 understand what they have to do, in my submission,

1 that is the most important issue.

2                   The other point -- so -- that I'd like  
3 to make, and this is maybe the litigator in me, it's  
4 always useful and it's termed usually as a rule of  
5 fundamental justice that the parties let the others  
6 know what their position is.

7                   I appreciate instructions can be  
8 difficult at times to get, but we don't want any  
9 surprises in written submissions of positions which  
10 weren't dealt with, if we're going to go down this  
11 road of having more evidence. It would be really a  
12 good thing, in my view, that the parties let known  
13 their position.

14                  If it varies from the evidence it would  
15 be really useful to know that before we're going to  
16 get into any new oral evidence or other type of  
17 evidence. Otherwise, how can we know that we need to  
18 address it.

19                  The last comment that I have, if the  
20 Board decides to go to a traditional oral hearing  
21 portion, we don't think that six (6) member concurrent  
22 expert panels would be efficient, I may be wrong, or a  
23 productive use of time.

24                  We believe that following an orally  
25 order, so if Hydro wants to put Christensen up,

1 Christensen would go up. The parties would have a  
2 chance to cross-examine. The next expert goes up,  
3 opportunity to cross-examine, et cetera, down the line  
4 until we finish the six -- six (6) sets of experts.

5 We're going to be dealing with it in  
6 three (3) -- three (3) or four (4) days in any event,  
7 so we won't have that big time lag that we've had in  
8 other hearings where sometimes we start one (1) week  
9 and then we have one (1) or two (2) weeks break and  
10 then we hear other witnesses.

11 And I repeat, however, for the purposes  
12 of efficiency and cost concern, that cross-examination  
13 should be limited to areas where parties are adverse  
14 in positions. In our view, the purpose of cross-  
15 examination is to challenge a position and has no role  
16 to play for parties with the same position on a  
17 particular issue.

18 With that, I thank you for your  
19 attention and I'd be pleased to answer any questions  
20 that the Board may have.

21 THE CHAIRPERSON: Could you just  
22 clarify, Mr. Hacault, you'd said parties should share  
23 positions in advance. There is the August 12th filing  
24 of written positions, I believe.

25 Are you speaking of something in

1 addition to that, or before that?

2 MR. ANTOINE HACAULT: Yes. But the way  
3 the process was initially designed by the Board Order  
4 26 was that, if there were issues that leant itself to  
5 written arguments, that we would provide our positions  
6 on those issues. That's what I understood.

7 So it would leave unanswered positions  
8 with respect to further evidence. We'd have no in  
9 those submissions -- in my understanding, the way the  
10 role was -- you know, the procedure was supposed to  
11 roll out because then there would be submissions  
12 following that evidence, that oral evidence. And the  
13 positions on the oral evidence in the form of wri --  
14 written submissions would only follow that section of  
15 oral evidence.

16 So I don't know that we, quite frankly,  
17 can even provide written submissions if we are going  
18 to go down the road of a traditional hearing with  
19 evidence. I can't say, well, I think my witness is  
20 going to say this, I think they're going to say that  
21 in cross-examination and, therefore, I submit this.

22 No, we can't guess at what's going to  
23 be done. But we can at least indicate, you know, our  
24 expert has done this, are we going to take a different  
25 position, our expert has provided this recommendation,

1 are we going to take a different position.

2 I think that it would be useful for the  
3 parties to have that defined before we get into cross-  
4 examinations for the very reason also that I'm  
5 suggesting that we limit cross-examinations to  
6 positions that are adverse in interest.

7 THE CHAIRPERSON: Okay, thank you.

8

9 (BRIEF PAUSE)

10

11 THE CHAIRPERSON: Okay, thank you.

12 Mr. Orle, please.

13

14 SUBMISSIONS BY MKO:

15 MR. GEORGE ORLE: Thank you, Madam  
16 Chair. Good morning, panel. I'd like to begin also  
17 with a welcome to Mr. Ring on behalf of MKO. I  
18 haven't had the experience with the members of the  
19 panel that have left other than Mr. Bell (phonetic).

20 But on behalf of MKO, I want to  
21 reiterate that their presence and their attendance at  
22 the -- the meetings, according to MKO and according to  
23 my own knowledge, has been very useful and they've  
24 done a service to the Province and to -- to Hydro and  
25 the Public Utilities Board.

1                   I'd also like to thank our facilitator,  
2 Mr. Grant. Although I didn't have an opportunity to  
3 say anything, I admired the way that the workshops  
4 were facilitated.

5                   That having been said, I -- I had the  
6 opportunity to discuss yesterday with Mr. Williams and  
7 to see part of his draft proposal. I've also had the  
8 opportunity to read the Ontario Energy Board order.  
9 And I might say that I agree with much of what Mr.  
10 Williams has put forward.

11                  And again, more importantly, I wished  
12 that we had had the Ontario Energy Board order prior  
13 to embarking on this process. Having read it, I see  
14 that there's a number of issues that we have fallen  
15 into without having adequate warning as to what the --  
16 the result may be. And we have been forewarned if we  
17 had this order ahead of time.

18                  This, I want to remind everybody, was  
19 an experiment. It's been a first-time try for the  
20 Public Utilities Board and for us, Intervenors, to  
21 proceed down this path. As with any experiment, if  
22 you already determine what the outcome is going to be,  
23 then you're not doing an experiment.

24                  Similarly, if you're proceeding through  
25 the experiment and you disregard the lessons that are

1 coming to you in the course of that experiment and  
2 continue on, then, again, you're not doing anything  
3 valuable for the process.

4 I think there's going to be an  
5 opportunity for us to review what happened previously,  
6 but I don't think this is the place to do it. And I  
7 think that the -- what we need to do today is see  
8 where we're going to go to and what's the -- the most  
9 convenient and expeditious way of being able to arrive  
10 at that result.

11 The result has always been a review of  
12 cost of service and to determine whether or not the  
13 study put forward and the principles put forward are  
14 appropriate for Manitoba. If we haven't been able to  
15 get to that through the workshop process, then we have  
16 to take a look at how will we get to that end result  
17 by continuing on what we've already started.

18 I'm appreciative of the fact that there  
19 has been a lot of work already done, but I don't think  
20 the fact that we've already done that work should stop  
21 us from doing whatever is necessary to come to the  
22 end. And I want to remind the -- the Board of what  
23 its order said in regards to these workshops. And  
24 it's in number 3 of the procedure, and it talks about:

25 "Manitoba Hydro is to hold a

1                   facilitated workshop at which  
2                   parties will be able to ask any  
3                   clarifying questions related to  
4                   answers to Information Requests, or  
5                   Manitoba Hydro filing."

6                   The purpose wasn't to have a hearing or  
7   to contest those reports. It was an opportunity for  
8   the experts, or Intervenors, to be able to clarify  
9   positions. That's what its purpose was, so that those  
10   that may not understand what was going through a  
11   report would have a chance to ask, What do you mean by  
12   this?

13                  It was not meant to be an opportunity  
14   to test those reports. A workshop is not a place to  
15   test or to get into a confrontational situation. It's  
16   an opportunity -- in this case I think it was proper  
17   that the experts asked one another questions. I don't  
18   think it's proper that -- that some of the expert  
19   witnesses took it as an occasion to cross-examine.  
20   That was not the purpose of it.

21                  That having been said, I'll talk about  
22   my -- my client's position on this. MKO is dealing  
23   with residential firstly because most of our members  
24   are residential customers. We also have general  
25   service entities in the various reserves and First

1 Nations. We're also very interested in matters  
2 relating to diesel. That's where we're coming from.

3                           We're also cognizant of the fact that  
4 the Board expects that we will not be bringing in  
5 experts just for the sake of bringing in experts. MKO  
6 has relied for the most part on independent experts,  
7 primarily those brought forward by Mr. Williams, and  
8 we have faith in them, and we have worked with Mr.  
9 Williams and his expert throughout this process.

10 We have had meetings with them. We  
11 have reviewed reports. We have taken advice from  
12 them. And that report was put forward and to a large  
13 extent, MKO accepts that. MKO also accepts the expert  
14 that has been brought forward on behalf of the general  
15 services groups as being proper experts, and ones that  
16 could put forward the position that MKO may want to  
17 have put forward on that.

Having decided to go along with experts  
and to use those experts' reports, I think that it  
would be unfair that MKO relying upon the direction of  
the Board that these were to be clarifying workshops,  
is now held to the position that we cannot cross-  
examine to be able to see the weight that ought to be  
put on each one (1) of the expert's reports.

25 I -- I have no concerns that these

1 people are not experts. I don't know whether or not  
2 their expert in the areas -- all the areas they put  
3 forward. That can only be done through cross-  
4 examination which is a normal course of conduct in a  
5 hearing in dealing with experts. Neither do I have  
6 any way of being able to ask experts specific  
7 questions relating to why there's a difference in  
8 their opinion to another experts. That's also  
9 something that comes through cross-examination.

10                   So I -- I would be loath at this point  
11 to say that there ought to be no further hearing, or  
12 no cross-examination because we have not done what is  
13 the responsibility of the counsel for the Intervenors,  
14 and that is to explore and to have the experts defend  
15 the position that they have put forward.

16

17                   (BRIEF PAUSE)

18

19                   MR. GEORGE ORLE: There is -- at the  
20 risk of being Captain Obvious here, this is a pre-  
21 hearing meeting. What does 'pre-hearing' mean? Does  
22 that mean that -- that we finished the hearing? That  
23 we finished the -- it seems to me that calling this a  
24 pre-hearing is that we are in one (1) step towards the  
25 goal of having a hearing that all can rely upon and

1 deal with.

2 So that saying that a workshop to  
3 clarify is analogous to having the evidence that you  
4 rely upon is -- is quite different. We had originally  
5 been told that Board members all apportion -- or maybe  
6 some would attend some, maybe not all, or may attend  
7 all of the hearing.

8 It was not intended that the members of  
9 the Board would be there to make up their mind about  
10 what the evidence was going to be. I think it's  
11 analogous to maybe sausage makers. We all like the  
12 end product, but did we really need you there to watch  
13 what we had to do to come out with the end product?

14 It may be -- as some have said, it may  
15 have been more confusing for Board members to sit and  
16 listen and not really be sure what is evidence, what  
17 is not evidence. If you have a hearing where there's  
18 cross-examination by the lawyers for the Intervenors,  
19 you will know what is evidence, what is not evidence.  
20 So there's merit to having this go forward.

21 In terms of -- of the costs, I have  
22 indicated that we have shared experts. We had a  
23 budget, not a significant one, for -- for experts. I  
24 can indicate on behalf of MKO we will not be calling  
25 additional experts, that that budget is still

1 available, and I would welcome that, if it's necessary  
2 for the others to be able to have the type of hearing  
3 that they need, that that would be available to the  
4 Board.

5 I -- I don't like to disagree with My  
6 Friend, Mr. Hacault. He's been very helpful to me in  
7 organizing myself as to how to appear and proceed  
8 before the Board. But I also have what I would say is  
9 significant experience in dealing with -- with boards,  
10 administrative boards.

11 And although the discretion is yours as  
12 to what you will proceed on a hearing with, you have  
13 to be careful that when you have the two (2) major  
14 parties involved in your hearing, being the  
15 Corporation, Hydro itself, and Mr. Williams's clients  
16 that have taken the initiative in beginning  
17 questioning in almost every hearing that I've been  
18 involved in, if you have both of those parties saying  
19 that they are not satisfied that they have had a fair  
20 hearing, that has to be a cause of concern to the  
21 whole Board.

22 This isn't one (1) Intervenor being  
23 dissatisfied with the process. This is major  
24 components of this hearing who are involved in the  
25 cost of services that are saying, We need to have

1 something more. That -- that's got to be a  
2 consideration for -- for the Board.

3 So to -- to that end, I don't think I  
4 have anything else. Oh, I'm sorry. I missed the most  
5 important part. MKO's emphasis is on dealing with  
6 questions relating to DSM, the allocation of net  
7 export, and the two (2) export classes.

8 And to the extent that any of the  
9 evidence either relates to that or is connected to it,  
10 we would want to have the opportunity to be able to  
11 explore that and to ask questions.

12 I do agree with Mr. Hacault that  
13 experts should not be asking questions at the cross-  
14 examination. I share his concern that large  
15 concurrent panels are unwieldy. I also share his  
16 concern that there not be cross-examination of parties  
17 that are not adverse to one (1) another.

18 That only leads to being able to feed  
19 your expert with questions and answers that you want  
20 to go before the Board. The proper reason for cross-  
21 examination is to test that evidence. You have no  
22 reason to test your own expert's evidence, so do it to  
23 the experts.

24 The only way that I can see a  
25 concurrent panel of experts being put forward is if

1 there are strict limits on if -- using myself as an  
2 example, if I am asking one (1) particular expert on  
3 the panel a question, and it's a question that's  
4 important to me, that is the person that answers the  
5 question.

6                   This is not a free-for-all for anyone  
7 who sits on the panel to be able to put their oar in.  
8 I have a question, I want this person to answer it,  
9 that person answers it.

10                  You'll see in the Ontario Energy Board  
11 Order, they have had something like that put in, but  
12 to protect the fact that it's the Public Utilities  
13 Board or the Energy Board in that case that is --  
14 that's wanting these answers, if the Board felt that  
15 another expert ought to also answer that question,  
16 they could intervene, but it would not be on a regular  
17 basis. It would be on the basis that if they thought  
18 that there was some reason to have this continue on  
19 they could ask it.

20                  If you put in that type of procedure it  
21 would not be unwieldy and you could also put time  
22 limits on it. We've got basically six (6) people, or  
23 seven (7) parties. One (1) of them is going to have -  
24 - put the witness forward. They were not going to be  
25 cross-examining, so effectively, six (6) potential

1 parties cross-examining.

2                    You should not need longer than twenty  
3 (20) minutes to do a cross-examination after you've  
4 had this type of disclosure and this type of  
5 discussion. You limit it to that and those that don't  
6 have the amount can pass it on, or -- or the Board can  
7 decide where not to go, but you've got your twenty  
8 (20) minutes to make your point.

9                    With the experts that we have on a  
10 concurrent panel, this would take a day to be able to  
11 deal with it. There may be questions on cross-  
12 examination that I won't have of particular witnesses.  
13 That cuts it down also. I may be wanting to talk to  
14 one (1) witness and cross-examine that witness.

15                  That cuts down the amount of time. But  
16 I think that there's merit in being able to proceed  
17 with this. I think that what we've learned from the -  
18 - the initial part of -- of this hearing is going to  
19 be useful and that if we continue with this and see  
20 what we've accomplished in the second part that we  
21 weren't able to accomplish in the first, or what we've  
22 accomplished in the first that we did not have to do  
23 in the second, then we have all benefited from this.

24                  But we have to be careful, a Cost of  
25 Service Study is not a immaterial type of hearing.

1 And if we're going to try things then let's not put  
2 limitations on it. Let's get all of them into the  
3 process so that we can then weed out what we don't  
4 need at a later date.

5                   But this is too important of a hearing  
6 to be able to say, Well, we're trying this and we  
7 don't want you to go onto this other area. Thank you.  
8 Those are -- are my comments unless you have any  
9 questions.

10

11                   (BRIEF PAUSE)

12

13                   THE CHAIRPERSON: Thank you, Mr. Orle.  
14 Me. Monnin s'il vous plait.

15

16 SUBMISSIONS BY GSS/GSM CLASS:

17                   MR. CHRISTIAN MONNIN: Qui, merci.  
18 I'd like to start off firstly by echoing the comments  
19 with respect to the past Board members and the  
20 facilitator. And with respect to our colleague Mr.  
21 Hombach, what -- what more is there to say. You're  
22 tall. You're German. Yet to me you still sound like  
23 Liam Neeson.

24                   That being said, both the PUB and the  
25 public -- and the private bar are losing a -- a very

1 exceptional counsel. It's -- it's our loss, but good  
2 luck with -- with your future endeavours.

3                           And, Ms. Steinfeld, you've probably  
4 heard us ad nauseam the last few days, you have very  
5 big shoes to fill. But I'm more than certain that you  
6 will rise to the occasion.

7                           On behalf of the GSS/GSM customer  
8 class, we echo the same position, or similar position  
9 as MIPUG and GAC, and that is that we don't see the --  
10 a further need for evidence. And that's anchored in -  
11 - in two (2) main points.

12                         The first that on behalf of the  
13 client's position we feel that there's sufficient  
14 evidence on the record to put forward what we want to  
15 put forward. And secondly, we're very mindful of the  
16 costs and budgets of -- of this process moving  
17 forward. And -- and I'll get to that a little bit  
18 further in my submissions.

19                         Now, taking off my hat of -- of counsel  
20 for GSS and GSM and -- and viewing the process with a  
21 very jaundice eye of a -- of a civil litigator, I  
22 would say that some very valid points have been raised  
23 by Ms. Ramage, by Mr. Williams, and by Mr. Orle with  
24 respect to the legitimacy, that's my term, of -- of --  
25 yes, sir?

1 (BRIEF PAUSE)

2

3 MR. SVEN HOMBACH: We need a short  
4 break. There's a computer issue with the  
5 transcription software.

6 THE CHAIRPERSON: I suggest for  
7 clarity that we stay in the room so that as soon as  
8 the issue is resolved we can recommence, oh, unless  
9 there's an urgency that requires someone to leave  
10 momentarily.

11

12 --- Upon recessing at 12:03 p.m.

13 --- Upon resuming at 12:10 p.m.

14

15 THE CHAIRPERSON: So we can  
16 recommence. Thank you. Me. Monnin...?

17 MR. CHRISTIAN MONNIN: Thank you. The  
18 point I was attempting to make was that some valid --  
19 extremely valid points have been raised by Manitoba  
20 Hydro, by Mr. Williams and Mr. Orle with respect to  
21 expectations of a proper hearing.

22 And in that regard, the experts ought  
23 to be qualified. I'm -- I'm more than certain all  
24 these experts are qualified for what they provided  
25 opinions on, but that hasn't been done. The evidence

1 ought to be tested and that works both ways, for the  
2 Intervenors and -- and for Hydro. And findings ought  
3 to be made, and the case -- and the case needs to be  
4 put in. Those are all legitimate points.

5 And -- and so where does that leave the  
6 panel and the PUB? Well, I don't envy your position  
7 because you have to make a determination on the way  
8 forward. And -- and if -- if -- Diana, if you could  
9 put back the Ont -- the Ontario Energy Board decision  
10 that Mr. Hacault was referring to, page 4...

11

12 (BRIEF PAUSE)

13

14 MR. CHRISTIAN MONNIN: Mr. Hacault  
15 stole a little bit of my thunder referring to one (1)  
16 -- one (1) passage but I -- I think that passage  
17 provides side -- sound -- sound guidance on where the  
18 Board can move forward on this matter, and that's the  
19 same paragraph but viewed from a different angle.

25 And I'm going to stop there. And --

1 and that's -- the Board needs to determine what it  
2 requires -- what assistance it needs to understand and  
3 decide the issues that are in dispute in this  
4 particular hearing. And the Board needs to determine,  
5 using that I would suggest, as -- as the key in  
6 driving consideration. It needs to determine is that  
7 best achieved by concurrent evidence? Is that best  
8 achieved in a -- in a more traditional cross-examine -  
9 - a cross-examination? Or -- or does it need it at  
10 all, frankly? We -- we've made our client's position  
11 -- we've put that one the record.

12                   And -- and then the -- the Board needs  
13 to determine who will be called as evidence. What  
14 will be the issues, and on -- on the subject of the  
15 issues, I've -- I've reviewed what Manitoba Hydro has  
16 put forward today for -- on the hearing side and the  
17 written side, and we're perfectly comfortable if  
18 that's the decision of the Board.

19                   Whether our experts are called to  
20 participate, we'll be there. If they're not called to  
21 participate and the evidence of others are to be  
22 tested, we'll make that determination but likely we  
23 will participate.

24                   On -- on the point of just some -- some  
25 practical comments, I -- I don't agree -- or I agree

1 rather with -- with the suggestion that experts  
2 shouldn't be cross-examining one another. Not just  
3 because lawyers want to remain relevant, but we --  
4 there is a way to ask a question -- to ask on a cross-  
5 examination. There is a way to build a proper record  
6 which is useful to the PUB moving forward.

7                   One (1) of the first things you -- you  
8 appreciate when -- when you start the practice of law,  
9 and you look at your first transcript in examination  
10 or cross-examination, the first thing you ask is do I  
11 really speak like that and regretfully you do. But  
12 you -- you learn how to build the record, and how to  
13 make that document useful going forward.

14                  And the workshop was very useful in  
15 real time, but it makes for one heck of a transcript  
16 that's hard to plow through. And I would suggest that  
17 it -- it -- on -- on the record side it might not be  
18 the best tool for the Board when it comes to its  
19 deliberations.

20                  And so, again, not because lawyers want  
21 to make themselves relevant, but on cross-examination  
22 there is a manner to proceed and there's a reason why  
23 we proceed in that manner.

24                  I indicated earlier the position of  
25 GSS/GSM. It was twofold because we felt there was

1 sufficient evidence on the record to put forward what  
2 we need to put forward, but that's no really the  
3 issue. The issue is what the Board thi -- feels it  
4 needs, but the second fold was -- was costs.

5                   And I don't mean to make light of this,  
6 but this comes in the category of I told you so or  
7 foreshadowing. If you look at Board Order 26/16. I'm  
8 not going to drive you there. But under the heading  
9 of, "General service small and general service medium  
10 class," the -- the Board identifies that we expressed  
11 hesitation about the workshops.

12                  And again, I'm not going to drive you  
13 there be -- because it's on the record. And if -- if  
14 the Board needs, I can -- I can show -- I can  
15 highlight it further downstream. But on March 7th of  
16 this year we wrote -- we're dealing with the issue of  
17 costs.

18                  At the tail end of that letter we  
19 identified that the workshop processes is new and  
20 that, while on the one end it might take away the --  
21 the burden of hydro on -- on the -- the IRs, it's  
22 going to spread out the res -- the use of resources to  
23 the other parties. The workshops have been very  
24 helpful, but I don't think anyone will dispute that  
25 they're -- they're resource heavy for -- for the

1 parties coming in.

16 And I think the driving concern ought  
17 to be anchored in -- in that passage from the Energy  
18 Board, is -- is this Board -- this Board, the PUB,  
19 needs to determine what it needs to understand and  
20 what it needs to decide the issues and come to a  
21 landing on -- on the cost of service. Thank you.

22

23 (BRIEF PAUSE)

24

25 THE CHAIRPERSON: Okay, thank you.

1 And, Hydro, back to you. Ms. Ramage, I assume.

2

3 REPLY SUBMISSIONS BY MANITOBA HYDRO:

4 MS. PATTI RAMAGE: There's been a lot  
5 to digest this morning, and mu -- much -- I'd like to  
6 say most of which I follow, some I don't. And I think  
7 it would be wise that I not wade into everything.

8 This is Mrs. -- Ms. Fernandes's hearing and I think  
9 she needs to meet with her client with a view to  
10 assessing where we're at and where we go for (sic)  
11 here. And I expect that you will receive a letter  
12 from her early next week.

13 Having said that, I do intend to make a  
14 few comments to try to minimize what Ms. Fernandes  
15 might deem necessary to address. A couple of major  
16 themes have -- have emerged; not surprisingly, one (1)  
17 of which is the sufficiency of the record.

18 And dealing there -- and -- and I  
19 apologize if I'm somewhat disjointed, but Mr. Hacault  
20 brought up Manitoba Hydro's letter of February 5th,  
21 and I don't have it with me. I do recall reading it  
22 in the past. And what was omitted from the discussion  
23 was that Manitoba Hydro in its proposed process back  
24 in February, not in June, with the benefit of -- that  
25 we now have of seeing how it's gone, made it clear --

1 and I won't squirrel through it. It is there. But it  
2 made it clear that Manitoba Hydro exce -- expected to  
3 make a presentation, that its workshop was going to be  
4 its presentation.

5                   That is not what the Board ultimately  
6 determined, and that's for the Board to determine.  
7 But to attempt to characterize now what Manitoba Hydro  
8 proposed back in February as being what actually took  
9 place and implicit acceptance that there's no ability  
10 to respond and adjust to this process is unfair.

11                  I have to agree with Mr. Orle. When we  
12 try something new, we have to be flexible. And the  
13 idea that we are going to put our heads down and just  
14 keep going forward is not in the interests of the  
15 public. And it's the public interest that we're all  
16 looking for here.

17                  And if I -- if I can speak to that --  
18 and I don't know the exhibit number. It's a MIPUG  
19 exhibit, but it's an email from Mr. Hacault to all  
20 parties, and it's dated June 10th, not February but  
21 June, just before this -- this process started.

22                  And here, I see Mr. Hacault has said:

23                  "We never understood the purpose of  
24 the workshop was to present our case  
25 and comment on the cases being

1 advanced by others. In addition,  
2 there is not enough time allotted to  
3 Intervenors in this second workshop  
4 to have Intervenors outline their  
5 position and comment on the  
6 positions of others. We are only --"

7 It goes on:

8 "We are only at the discovery stage  
9 of the process. In our respectful  
10 view, the discovery process does not  
11 eliminate the need of a subsequent  
12 opportunity allowing for an -- an  
13 opportunity for a party to properly  
14 and adequately inform the PUB and  
15 parties of their positions on  
16 various issues, the ability of a  
17 party to present evidence in  
18 reaction to the evidence filed by --  
19 by others, and then third, the  
20 ability for parties to fully test  
21 the evidence and positions taken by  
22 parties."

23 This email was written less than two  
24 (2) weeks ago, and it's -- it's Manitoba Hydro's  
25 position today. I can't claim to understand what has

1 happened over this workshop that has -- has allowed  
2 MIPUG to decide that the evidentiary record is now  
3 sufficient. But -- but it certainly was not its  
4 position a couple of weeks ago.

5                   And I would harken back to Ms.  
6 Pambrun's comment: When someone doesn't want to be  
7 cross-examined any further, you have to ask why. And  
8 to -- to give up that opportunity or to change course  
9 for other parties at this stage would not be, in -- in  
10 our respectful view, reasonable in the circumstance.

11                  Another point Mr. Hacault raised was --  
12 I'm just looking at the -- well, another theme was the  
13 composition of the concurrent panel for all parties.  
14 I'm not sure if a concurrent panel is where this Board  
15 is ultimately going to go. I don't know, and that's  
16 one that I would like Ms. Fernandes to be able to  
17 comment.

18                  But in terms of -- when we speak about  
19 Manitoba Hydro's role, and Mr. Hacault raised the  
20 February 5th letter regarding Manitoba Hydro is not  
21 the applicant, I think that missed the point.

22                  It was not Manitoba Hydro saying that  
23 we don't have an interest in this hearing. It was  
24 quite frankly Manitoba Hydro saying that in 2005,  
25 Manitoba Hydro went to the Court of Appeal. MIPUG was

1 the applicant at the Court of Appeal, as was CAC.

2                   The application was that this Board had  
3 an obligation to approve Manitoba Hydro's Cost of  
4 Service Study. And the court said no. The Board's  
5 role is to approve rates. A Cost of Service --  
6 Service Study is something it may or may not use in  
7 approving rates.

8                   Manitoba Hydro therefore, when it  
9 applies to the Public Utilities Board, it applies for  
10 changes in rates. The Board ordered a review of  
11 Manitoba Hydro's Cost of Service Study, and Manitoba  
12 Hy -- and this review is now taking place.

13                  But Manitoba Hydro does not apply for  
14 approval of its Cost of Service Study. It applies for  
15 approval of rates. The Cost of Service Study is a  
16 tool that the Board can use or may not use.

17                  And Manitoba Hydro's point back then,  
18 which is not particularly relevant today, was that  
19 we're not the applicant. We're conducting a review.

20                  And that point at the time was made to  
21 ensure that we didn't go off that path and have people  
22 arguing that this Board can not approve rates unless  
23 there's a Cost of Service Study in place, and that the  
24 rates approved by this Board follow the results of the  
25 Cost of Service Study.

1                   And that was the point there. It was  
2 not to suggest that Manitoba Hydro did not have an  
3 interest in these proceedings. It was trying to stick  
4 with the -- or try to make sure that the record was  
5 clear in terms of -- of what has hap -- has transpired  
6 over the years in terms of jurisdictional issues and  
7 to -- to keep things clean.

8                   In terms of the independence of  
9 witnesses, I think Manitoba Hydro fully agrees -- I  
10 don't think there's a party who disputes that the  
11 witnesses before this Board should be independent.  
12 They should be coming with their own opinions. They  
13 should not be tailor made or designed to accommodate  
14 what the witness -- or what the Intervenor wants.

15                  I think where the difference is, is  
16 that for example, Manitoba Hydro retained Christensen  
17 and Associates. It provided its independent report  
18 and thereafter in Manitoba Hydro's filing, in Appendix  
19 1 of the filing is devoted to that, Manitoba Hydro  
20 asked the party to the proceedings said, This is where  
21 we agree and this is where we disagree.

22                  And where we disagreed we set out the  
23 reasons why we disagreed. And I think that's what  
24 parties want to hear going forward is not waiting  
25 until the end of the proceeding to find out where

1 someone disagrees.

2                   It takes a little bit of work ahead of  
3 time to go through those reports and say, I'm not sure  
4 -- this isn't, you know, where we're going. But I  
5 think Manitoba Hydro provided cogent reasons why --  
6 where it departed from Christensen and Associates, why  
7 it did that. And that's what Manitoba Hydro had  
8 certainly hoped when the Board had asked parties or  
9 when the expectation was put out there, that parties  
10 put their positions out sooner than later, because it  
11 assists as we go along in dropping things off the  
12 table.

13                  And in this case it was the experts who  
14 are representing the Intervenors. So it was our view  
15 that parties could and should do that along the way.  
16 Are they 100 percent held, no. If -- if they hear  
17 evidence that causes them to change their minds, I --  
18 I don't see that as fatal.

19                  However, there is nothing inappropriate  
20 about asking a party to put their stake in the sand  
21 and -- or in the ground, not the sand, and that's  
22 where Manitoba Hydro comes. In terms of independence  
23 on a concurrent panel, I think experience in this room  
24 would suggest to me that the Board would benefit from  
25 having a Manitoba Hydro representative on a concurrent

1 panel.

2                   Not, I -- I think they would benefit  
3 absolutely from direct evidence, but not to take over  
4 the panel or -- but we heard so many times throughout  
5 the process statements being made by witnesses who  
6 come into this jurisdiction once every few years,  
7 review the materials, and go. And they make -- they  
8 make statements on beliefs and -- and -- honest  
9 beliefs of fact, but they're not quite true.

10                  And I think having someone there just  
11 to interject would assist the Board. So from my  
12 perspective, allowing this conversation to take place  
13 without the Utility would not -- would not be in the  
14 best interest of -- of the panel gaining an  
15 understanding of -- of the issues.

16                  And on that note, right at the  
17 beginning where we heard Ms. Pambrun ask the question,  
18 or state that she had thought that the purpose of this  
19 was to -- for the parties to develop the issues. She  
20 was now coming to the conclusion that -- or at least  
21 that she felt the panel felt the purpose was for the  
22 panel to gain an understanding of the issues.

23                  In Manitoba Hydro's perspective, it is  
24 and always has been the latter. That Intervenors are  
25 here in order to provide perspectives to the panel.

1 It's not in and of itself a forum for parties to  
2 advocate their own positions for -- for the sake of  
3 their own positions. It's to provide perspectives.  
4 We've seen that in past Intervenor applications where  
5 parties who do not provide a broad perspective or a  
6 large customer group have not been allowed to come  
7 before this panel.

8                   They certainly had very strong beliefs  
9 about what was going forward, Manitoba Hydro's rate  
10 case, or in the case of the NFAT, its development  
11 plan, but they were not to come to this Board, because  
12 that individual was not going to provide that kind of  
13 broad perspective to the Board. So tho -- that is the  
14 purpose of this hearing, for this panel to understand  
15 the issues, not for individuals to advocate for their  
16 own position.

17                  I think that's also confirmed in the --  
18 in the PUB's own rules because when we look at costs,  
19 the -- they have to make a significant contribu --  
20 contribution relevant to the proceeding, and con --  
21 contributed to a better understanding of the issues  
22 before the Board. It's not about success in  
23 advocating your position. It's about -- it's about  
24 advancing the understanding.

25                  And if I could have just one (1) moment

1 to check if there's anything else the -- the -- our  
2 client here would like us to -- oh, I see one (1)  
3 other. The attendance of Mr. Todd. Manitoba Hydro's  
4 view of a witness is going to -- his evidence is going  
5 to be atop -- adopted, he ought to be here to testify  
6 to that evidence and be cross-examined. If they're  
7 not going to be here, the evidence to date should be  
8 struck.

9                   And that's -- it's not a suggestion --  
10 Manitoba Hydro is not advocating, to be clear, that  
11 Mr. Todd's evidence be struck. It's just that if you  
12 start the game, you finish the game, to use Mr. Todd's  
13 own analogy.

14

15                   (BRIEF PAUSE)

16

17                   MS. PATTI RAMAGE: No, I was just  
18 going to say that subject to Ms. Fernandes reviewing  
19 the record, and we do undertake that that will be very  
20 quickly, that those are my comments.

21                   I would also like to echo the comments  
22 of others earlier to the departing Board members whom  
23 we've appreciated, and in particular for me Mr. Bell's  
24 contribution during the NFAT. My favourite part was  
25 he would keep me awake because I could see him going

1 to the edge of his chair when things were getting  
2 interesting, so you knew to pay attention.

3                         And also Mr. Hombach. He -- he like my  
4 husband is tall and German, but -- but is always  
5 cordial. So -- no, that -- I probably shouldn't have  
6 taken that shot but --

7                         MR. SVEN HOMBACH: I'm pretty sure  
8 that when you're saying "cordial" to a litigator  
9 that's an insult, but I'll choose to take it as a  
10 compliment nonetheless.

11                        MS. PATTI RAMAGE: No, we've enjoyed  
12 working with Mr. Hombach. We wish him well in his  
13 future endeavours. We -- I -- being at Manitoba Hydro  
14 I don't think this will be our -- end of our  
15 relationship with Mr. Hombach because we do deal with  
16 his new office from time to time. So I'm sure I get  
17 to -- I will get to deal with him in the future, but  
18 we will miss him in this process.

19                       BOARD MEMBER GOSSELIN: I want to take  
20 this opportunity to -- on the public record to -- to  
21 thank Sven. I did thank him privately. He knows how  
22 I feel about his departure. I've expressed that to  
23 him very clearly. I'm very disappointed that he's  
24 leaving the PUB but I -- I appreciate that he's moving  
25 onto another phase of his career.

1                   So I -- I want to express on the public  
2 record my thanks on behalf of myself and the Board for  
3 the advice you've given us, for the -- the work you've  
4 performed, the many hours you have devoted to the work  
5 of the PUB and, you know, the -- the legal opinions  
6 that you have written on behalf of the Board.

7                   We appreciate the wise counsel you've  
8 given us and your sense of collegiality,  
9 cooperativeness, collaboration and so on, so all the  
10 best to you, Sven, and your family. And I'm not sure  
11 if our paths will cross again. I'm not -- but, in any  
12 case, I hope -- I hope they will, even if it's just on  
13 the Provencher Bridge. But I hope that you have a  
14 wonderful time at the -- on the legal drafting.

15                  MR. SVEN HOMBACH: Thank you, Mr.  
16 Chairman. I appreciate it.

17                  THE CHAIRPERSON: Then just in  
18 closing, thanks to everyone for taking part in this  
19 new process on behalf of the panel; we've all learned  
20 from it. And as we've said, we will do a review after  
21 and use it to try and continue to improve our  
22 processes.

23                  Thanks to Mr. Grant for being the wagon  
24 master. And we will be issuing this order in a timely  
25 way. The panel is going to go and meet right now to

1 start discussing. But in deference to Ms. Fernandes  
2 and her family situation, we will wait for the -- the  
3 letter that she will be sending early next week before  
4 we complete our order.

5 So I think that is all the business  
6 before us today. Thank you, everybody, and have a  
7 lovely weekend.

8

9 --- Upon adjourning at 12:36 p.m.

10

11

12 Certified Correct,

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17 Sean Coleman, Mr.

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