



THOMPSON DOREFMAN SWEATMAN LLP

Writer's Name	Antoine F. Hacault
Writer's Direct Telephone	(204) 934-2513
Internet E-mail Address	afh@tdslaw.com
Writer's Direct Fax	(204) 934-0530

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DELIVERED BY HAND

Public Utilities Board  
400 - 330 Portage Avenue  
Winnipeg, MB R3C 0C4

Attention: Mr. Hollis Singh

Dear Sir:

Re: Manitoba Hydro GRA for 2010/11 and 2011/12 -  
Written questions to Independent Witnesses  
Our Matter No. 0096902

The PUB, through its Counsel, has sent to Drs. Kubursi and Magee Pre-ask questions and on May 17, 2011, a series of questions identified as Undertaking Questions 1-25.

We are writing on behalf of the intervenor, MIPUG.

We agree with many of the objections raised by Manitoba Hydro in its letter to the Board dated May 20, 2011.

**Procedural Order No. 30/10**

By second procedural order No. 30/10, the PUB set forth the procedures to be followed in this hearing. Order No. 30/10 was not appealed, nor was it varied.

**May 6, 2011**

On May 6, 2011, the hearing was adjourned with a request that Drs. Kubursi and Magee consider 26 Pre-ask questions submitted to them. A portion of the exchanges are recorded as follows in the transcript:

(Page 6404)

THE CHAIRPERSON: We'll -- we're -- we're  
6 not aware of all of these questions, so we'll have to  
7 have a look at them and -- but it's not going to happen



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8 today, I wouldn't think.

9 MS. ANITA SOUTHALL: No, Mr. Chairman.

10 In fact, I -- I intended to enter them on the record as  
11 my last step today. They were circulated on April 25th  
12 to all counsel.

13 Our position would be that we would be  
14 asking Doctors Kubursi and Magee to answer the questions  
15 to the best of their ability. If they don't believe they  
16 -- they can answer certain of them, either it's beyond  
17 what they believe to be -- be beyond their scope or  
18 beyond their expertise, they're certainly able to answer  
19 it that way.

(page 6406)

MR. ROBERT MAYER: Can I -- can I suggest  
24 a possibility here. Don't bother reading all the  
25 questions into the record. Everybody has a copy of them  
Page 6407

1 I'm told. Assign some numbers to them. We -- we haven't  
2 seen them. It's four o'clock Friday afternoon. If  
3 there's going to be some issues, I think we want counsel  
4 to sort those issues out.

(Page 6408)

7 THE CHAIRPERSON: We also prefer some  
8 degree of transparency here, so Mr. Mayer's proposed an  
9 approach. Ms. Southall, does it sound okay to you?  
10 MS. ANITA SOUTHALL: Yes.

Counsel for the PUB had kindly confirmed that I would be contacted with respect to any such discussions between Counsel. No consultation with Counsel has taken place.

In addition, there were three technical questions which PUB counsel wished to pose in writing:

(Page 6412)

MS. ANITA SOUTHALL: And finally, as my  
8 last wrap-up matter in my cross-examination, panel, we  
9 have three (3) technical undertakings that we'd like to  
10 pose to Doctors Kubursi and Magee. I can prepare those  
11 in writing though and enter them as a PUB exhibit  
12 immediately at the commencement of the next day of  
13 hearing. And that way I don't have to take the time



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14 today to read them into the record.  
15 THE CHAIRPERSON: And you can --  
16 MS. ANITA SOUTHALL: If that's  
17 acceptable.  
18 THE CHAIRPERSON: -- you can provide them  
19 with them during the interim?  
20 MS. ANITA SOUTHALL: Absolutely. They  
21 would be circulated in the interim.  
22 THE CHAIRPERSON: And in the -- in the  
23 same attempt at hearing efficiency, if we pick up a few  
24 extra questions from our reflections, we may add them to  
25 the list.

In the end, PUB Counsel circulated a further 11 pages of questions which we understand to all have been approved by the PUB.

### **Legislative framework**

Section 48 of *The Public Utilities Board Act* provides guidance with respect to the adversarial nature of PUB hearings.

#### **Orders involving expense to parties to be after notice and hearing**

48 The board shall not make an order involving any outlay, loss, or deprivation to any owner of a public utility, or any person without due notice and full opportunity to all parties concerned, to produce evidence and be heard at a public hearing of the board, except in case of urgency; and in that case, as soon as practicable thereafter, the board shall, on the application of any party affected by the order, re-hear and reconsider the matter and make such order as to the board seems just. (emphasis added)

The PUB has interviewed, selected and fixed the scope of the retainer of Drs. Kubursi and Magee. It is paying their consulting costs.

### **Objections and requests**

Many of the questions in the Pre-asks and recent “undertaking” questions could have been put to the PUB’s independent experts by way of interrogatories. According to the Board Ordered time table, as revised by Order No. 30/10, following this procedure, would have allowed MIPUG to know the case being presented by the independent experts prior to filing its risk evidence.

MIPUG was not consulted with respect to “sorting out” the issues as was agreed to on May 6, 2011. Some of the questions are outside the scope of the legislative jurisdiction of the PUB in reviewing rates, some of the questions are outside the scope of expertise of the PUB’s independent experts, some questions are premised on assumptions not in evidence and some questions ask for speculation as to the “rationale” of third parties in paying for certain things. For the record, MIPUG objects to these questions and any answers given to these questions.



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MIPUG also requests a reasonable opportunity to consider the answers provided, prior to conducting its cross-examination on any answers provided and prior to its direct testimony.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per: **ORIGINAL SIGNED BY  
ANTOINE F. HACAULT**

Antoine F. Hacault\*

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\*Services provided through Antoine F. Hacault Law Corporation