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MANITOBA PUBLIC UTILITIES BOARD

RE:

2007/08 GENERAL RATE APPLICATION
MANITOBA HYDRO

MIPUG MOTION ON NEW INDUSTRIAL RATES

Before Board Panel:

- Graham Lane - Board Chairman
- Bob Mayer - Board Member
- Susan Proven - Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
January 28th, 2008
Pages 1 to 120

APPEARANCES

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Bob Peters) Board Counsel
Tamara McCaffrey) MIPUG
Patti Ramage) Manitoba Hydro
Byron Williams) Coalition
Tamara Trull) TransCanada Keystone
Pipeline GP Ltd.
William Gange,) RCM/TREE
Michael Anderson) MKO

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3	1	Manitoba Industrial Power Users	
4		Group's (MIPUG) - Motion - letter	
5		of December 21, 2007	
6	2	Manitoba Hydro's response - letter	
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16		Winnipeg Harvest's response - email	
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18	6	City of Winnipeg's response - email of	
19		January 15, 2008	
20	7	MIPUG's reply and response - letter	
21		of January 11, 2008	
22	8	Manitoba Hydro - GRA - Volume I - Tab	
23		10 - pages 10-15	
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	LIST OF EXHIBITS - CONTINUED		
2	EXHIBIT NO.	DESCRIPTION	PAGE NO.
3	9	Manitoba Hydro's December 17, 2007	
4		letter, with attached proposed exemption	
5		criteria	
6	10	MIPUG's - Book of reference	
7	11	Affidavit of Robin Wiens, Manitoba	
8		Hydro - January 25, 2008	
9	12	MIPUG's Summary of recommended Minimum	
10		filing requirements	
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1 --- Upon commencing at 9:07 a.m.

2

3 THE CHAIRPERSON: Okay, good morning
4 everyone. Thank you for your attention. I call this
5 proceeding to order.

6 For those of you who do not know and for
7 the record, I'm Graham Lane, Chairman of the Public
8 Utilities Board. I'm joined in the panel by Vice
9 Chairman Bob Mayer and also Board Member Susan Proven.

10 We have assembled today to hear oral
11 arguments with respect to a motion that the Manitoba
12 Industrial Power Users' Group is making.

13 Back in the hearing that examined Manitoba
14 Hydro's cost of service study, an issue was raised with
15 respect to the possible impacts of an energy-intensive
16 industry locating or expanding in Manitoba.

17 There was discussion then about a market-
18 based electricity rate for such new electrical load, as
19 well as the need for broad consultation by Manitoba Hydro
20 before advancing a proposal. I'm referencing Order
21 117/06.

22 In that order, the Board directed Manitoba
23 Hydro to provide a report and recommendations with
24 respect to a new energy-intensive industry class,
25 including criteria developed after broad consultation

1 with industry and government and rate design criteria.

2 The Board notes, in Manitoba Hydro's GRA
3 filing, a request for approval of a new general service
4 large rate for new or expanding loads. In respect of
5 Manitoba Hydro's request, and in Section 10.3 of Volume
6 I, Manitoba Hydro provides its evidence related to this
7 request.

8 Also in support of its request for a new
9 industrial rate, Manitoba Hydro provided the Board with a
10 letter dated December the 12th of 2007, which attached a
11 schedule for the exemption criteria proposed by Manitoba
12 Hydro in relation to the requested new industrial rate.

13 I mention the foregoing documents to let
14 the parties know what the Board has reviewed. The Board
15 expects all parties to have the same information, but if
16 anyone is in need of copies, they should speak to Board
17 counsel at the morning breaking.

18 Now, turning to the Motion by MIPUG, I
19 should also let the parties know that the Board has
20 reviewed December 21st, 2007, letter by MIPUG counsel
21 containing the motion, a response letter from Manitoba
22 Hydro dated January the 7th of this year, January 7th
23 response letter from the newest Intervenor in the General
24 Rate Application, Trans-Canada Keystone Pipeline, which I
25 will refer to as Keystone. And again on January 27th,

1 2008, a response from RCM/TREE's counsel, Mr. Gange.

2 On January 8, 2008, we got an email from
3 the apparently tardy or perhaps vacationing counsel for
4 the Coalition, and on January the 11th, the letter from
5 MIPUG Counsel replying to the positions put forward by
6 the parties.

7 I hope that it is helpful for the parties
8 to be made aware of the information that the Board has
9 reviewed for this motion. However, please take the time
10 you think is needed to satisfy yourself that the Board
11 has all of your arguments and submissions. The Board
12 will let you know if it needs clarification on any of
13 your submissions.

14 With that somewhat more detailed
15 commentary than usual, I ask Board counsel to provide his
16 opening comments including the proposed procedure to be
17 followed for the Board's hearing of MIPUG's Motion.

18 Mr. Peters...?

19 MR. BOB PETERS: Thank you and good
20 morning, Mr. Chairman, Mr. Vice Chairman Mayer, Board
21 Member Proven, ladies and gentlemen. For the record, my
22 name is Bob Peters and I act as counsel to the Board in
23 this matter.

24 As the Chairman has just indicated, today
25 has been set aside to hear the oral submissions on a

1 motion by MIPUG. The Chairman has also indicated the
2 information on the record from Manitoba Hydro concerning
3 its request for a new general service large rate for new
4 or expanding loads in Manitoba; that information also
5 includes the exemption criteria.

6 The Chairman has also set out the
7 correspondence that has been filed, as well as the
8 letters from other parties, that an opportunity for oral
9 submissions has been requested.

10 To facilitate the orderly hearing of oral
11 submissions, I took the liberty of suggesting a process
12 to be followed in an email that I sent all parties on
13 January 15th, 2008. Having heard no objections, I
14 propose, Mr. Chairman and Board members and ladies and
15 gentlemen, that we follow that format, and that would be,
16 after my opening comments, Mr. Chairman, I would suggest
17 you call on MIPUG's counsel, Ms. McCaffrey, to hear her
18 on the motion.

19 After hearing from Ms. McCaffrey on behalf
20 of MIPUG, I would suggest turning to Ms. Ramage and Ms.
21 Fernandes with Manitoba Hydro, who I see are assisted
22 today by Mr. Wiens and Mr. Dudar. And, after hearing
23 from Manitoba Hydro, turn to the other Intervenors in the
24 process, starting with the hard-working Coalition
25 counsel, Mr. Williams, followed by Keystone's counsel,

1 Tamara Trull, who is with us today, and along with a
2 consultant, Dan Levson and also assisted by Michael Cote.

3 Following hearing from Keystone, I would
4 suggest turning to RCM/TREE and Mr. Gange, who is at
5 counsel table with Dr. Miller -- and I see Mr. Remple
6 also present today -- for their comments, if any.

7 Once, Mr. Chairman, you have heard from
8 Manitoba Hydro and the other Intervenors who wish to
9 speak to this matter, I suggest it would be appropriate
10 to turn to MIPUG Counsel for any reply comments that Ms.
11 McCaffrey may have before the Board considering all the
12 materials.

13 Mr. Chairman, three (3) brief matters, if
14 I may, before I turn over the microphone. I will
15 indicate to all parties and the Board that the City of
16 Winnipeg's counsel has circulated an email indicating
17 that the City takes no position on the motion. If that's
18 not with the Board, I'll make sure that the Board has a
19 copy of that.

20 Secondly, Mr. Chairman, I would be remiss
21 if I didn't introduce and welcome counsel for Keystone,
22 Tamara Trull to Winnipeg and to her appearance before
23 this Board, and also welcome Dan Levson and Michael Cote,
24 who join us today.

25 On a third matter, Mr. Chairman, the Board

1 has provided -- the Board has provided its availability
2 and hearing dates for the General Rate Application, and I
3 have those with me.

4 I've taken the liberty of sketching out a
5 timetable, and I will grant parties that that timetable
6 is dependent on aspects of this motion, but it may be
7 helpful since everyone is here -- for those who are here
8 anyway -- that we would meet in the back boardroom in
9 Boardroom 1 following the conclusion of today's motion.

10 So, thank you, Mr. Chairman. Subject to
11 any questions you have of me at this time or during the
12 currency of the submissions, those conclude my comments
13 and I'll suggest you turn to MIPUG's counsel to introduce
14 this matter and speak to the motion, and thereafter the
15 other parties will want an opportunity to respond, as
16 well as MIPUG having an opportunity to reply.

17 Before I do turn off the microphone, Mr.
18 Anderson had been one (1) second later, I may have missed
19 him, but since he's in the hearing room, we'll also
20 perhaps include him on our list. Perhaps after Keystone
21 and before RCM/TREE, if Mr. Anderson has any comments on
22 the motion, it may be appropriate to -- to ask him as
23 well.

24 So thank you, Mr. Chairman, those are my
25 comments.

1 THE CHAIRPERSON: Thank you, Mr. Peters.
2 So we will follow Mr. Peters' suggestions.

3 MS. PATTIE RAMAGE: Mr. Chairman, if I
4 could just interject. Unfortunately, Mr. Peters, your
5 January 15th email didn't come to my attention, and I'm
6 wondering if we could -- I would have a preference, in
7 terms of the order, and that would be for Manitoba Hydro
8 to speak after the other Intervenors.

9 Given that its Manitoba Hydro's
10 application that MIPUG is -- the MIPUG motion deals with,
11 I think it would be beneficial if we could hear
12 everyone's comments and respond to them as opposed to
13 going first and not having an opportunity to deal with
14 those comments.

15 THE CHAIRPERSON: That's fine with us.
16 Okay, we will start again.

17 Ms. McCaffrey...?
18

19 MIPUG'S MOTION:

20 MS. TAMARA MCCAFFREY: Good morning, Mr.
21 Chair, Members of the Board. As you know, I represent
22 Manitoba Industrial Power Users' Group -- MIPUG -- with
23 respect to the -- the intervention in this General Rate
24 Application and also the motion that's before you.

25 I'm assisted by Mr. Patrick Bowman of

1 Intergroup and also Ms. Mona Pollitt-Smith and they
2 provided a lot of useful advice and assistance with
3 respect to our intervention and this motion as well.

4 Now, as you know, MIPUG has brought a
5 motion to sever the portion of the industrial rate that
6 deals with new or expanded loads from the March General
7 Rate Application.

8 It makes sense to do so from a purely
9 practical point of view given the magnitude of the types
10 of -- and -- and the scope -- the magnitude of the scope
11 of the new issues this proposal raises.

12 These are things that have never been
13 argued before this Board before. They're without
14 precedent in a regulated jurisdiction that we know of.
15 And, in order to preserve the credibility of this very
16 important public review process, there needs to be an
17 adequate foundation upon which this Board, most
18 importantly, and the Intervenors, the other parties
19 involved, can make sense of this proposal and adequately
20 assess it, test it. The foundation just isn't there.

21 I'm going to be talking about credibility
22 a lot in this motion, because it's in everybody's
23 interest including Manitoba Hydro's, and particularly
24 that of this Board, that this process be preserved.

25 Manitoba Hydro is wanting to go in a new

1 direction with respect to industrial rates. This has
2 very significant long-term impacts for industry in
3 Manitoba.

4 And the magnitude of the scope of the
5 issues that this proposal raises is very weighty. But
6 yet the material filed in support of this proposal is
7 extremely light.

8 Manitoba Hydro is good at filing a lot of
9 paper, and I note the affidavit that was -- that was
10 filed on Friday. But this is not the kind of weight that
11 this Board needs.

12 There has to be a proper assessment
13 studies review, some political direction, some policy
14 direction, for this Board to be able to properly consider
15 to do this -- to do this review and analysis.

16 MR. BOB MAYER: Excuse me. Did somebody
17 say an affidavit filed on Friday?

18 MS. TAMARA MCCAFFREY: I'm referring to
19 an affidavit of -- of Mr. Wiens that was filed on Friday.
20 Ms. Ramage can -- can speak to that issue if you have
21 some concerns, Mr. Vice Chair.

22 MR. BOB MAYER: I think we're about to --

23

24

(BRIEF PAUSE)

25

1 MS. TAMARA MCCAFFREY: But this is not
2 the kind of weight that's useful or helpful to the Board.
3 There needs to be a -- a proper process involved in -- in
4 looking at a new rate that's going to have a significant
5 precedential value from this point going forward.

6 In Order 117/06, this Board ordered that
7 Hydro do certain things prior to bringing that proposal
8 back to the Board, consult broadly with industry and
9 government, file a report and recommendations flowing
10 from that process.

11 I think that his Board ordered that this
12 occur prior to a Rate Application, because it recognized
13 the importance -- and in fact, stated so at page 3 of
14 that order -- of the broad social and government and
15 industrial input.

16 We need -- this Board wants to hear from
17 our policymakers, from our elected officials, who are
18 accountable to the public for developing policy. This
19 Board, I think wants to hear what society has to say
20 about the development of a new industrial rate.

21 And this Board wants to have industrial
22 input in the development of that rate. Why? Because I
23 think this Board is alive to the importance of the
24 credibility of its process, and -- and the necessity of
25 having these kind of things in order to do a proper

1 review.

2 I think that the Board was concerned that
3 it act within its jurisdiction when it made this order.
4 The Board should not be put in a position where it's
5 asked to approve a rate in a policy vacuum. To do so
6 would impact negatively on the credibility of the Board's
7 regulatory process and its role.

8 Hydro has not done what we believe is
9 necessary in order to review a rate in any credible way
10 that represents a fundamental shift in rate policy in
11 ways that have never been reviewed by this Board.

12 This rate proposes a fundamental change to
13 policy for rate setting in Manitoba. Its impacts are
14 material from a policy standpoint as well as from a
15 financial one.

16 The exemption clause alone suggests an
17 economic impact or economic benefit to Manitoba criteria.
18 This has never been previously argued before the Board,
19 and I think it goes beyond the ordinary jurisdiction of
20 the Board in reviewing Hydro's rates. And I think that
21 the Board was alive to that issue, judging from the
22 comments that it made in Order 117/06. But I'm going to
23 speak a little bit more on that issue a little further
24 on.

25 Right now, I want to talk about the

1 magnitude of this rate proposal for new or expanded
2 industrial loads. And then I'm going to talk about why
3 the -- the information that filed just isn't adequate.
4 It's not -- there's -- there's not a sufficient
5 foundation there to do a proper review. And in the
6 context of that, I will talk about how this process would
7 be prejudiced in its ability to review and test this
8 proposal in the context of a General Rate Application.

9 The rate proposal for a newer expanded
10 industrial load should not be part of a GRA in March. It
11 should be the subject of a special hearing to review and
12 -- and test this. MIPUG's motion's not aimed at
13 suppressing any kind of debate or discussion on this.

14 It's that quite, quite the opposite is
15 true. In order to give this kind of issue the proper
16 testing and review -- this is un -- unprecedented rate.
17 It's not another rate in another General Rate
18 Application.

19 This issue can easily derail the three (3)
20 weeks set aside for the -- or at the moment, it's planned
21 that the rate hearing's going to take place in the month
22 of March. This issue could take right over.

23 And that's not in anybody's interest,
24 including Hydro's or any of the parties. It's -- it's
25 expensive; it's not -- it's not practical from a

1 financial or a time or efficiency point of view at all.

2 It's taking us into unknown territory
3 without a road map. There's really -- there has been no
4 -- not really -- there has been no public debate on these
5 issues, there is no energy policy with which to direct
6 and inform this Board and assist the Board in -- in
7 fulfilling their mandate.

8 There's no analysis of the hazards,
9 potential pitfalls in terms of the impact on industry and
10 development in Manitoba. We're looking here at adopting
11 a market base rate for only one (1) subclass of
12 customers, while all others continue to get cost base
13 rates.

14 A same type of customer would be required
15 to pay a different rate under this proposal, and I don't
16 want to talk about the merits of the proposal at all on
17 this motion. That's not the purpose of this motion.

18 That is to be debated another time, but we
19 shouldn't try to squeeze it into a General Rate
20 Application which looks at a whole host of other issues.
21 It's not doing justice to the issue, it's not doing
22 justice to the parties, and it's certainly not doing
23 justice to this Board.

24 There's no marginal cost studies, the
25 material only Hydro can -- can produce. And we have some

1 suggestions, which I'll review at the end of this motion,
2 for the types of things that MIPUG might suggest would be
3 useful to everybody here and to try to come to terms with
4 this rate proposal.

5 We're also looking at new baseline energy
6 or quota restrictions on existing customers, which, as an
7 aside, got more punitive. The baseline got lower as the
8 -- the so-called consultations with Manitoba Hydro went
9 on.

10 But again, I'm not getting into -- I don't
11 want to get into or debate the merits of the baseline
12 proposals at this juncture.

13 This rate will generate revenues. This
14 rate -- this portion of the rate -- of the industrial
15 rate -- will generate revenues larger than those
16 requested in the typical GRA from all classes.

17 Hydro's forecasted \$31 million in revenues
18 from this punitive rate within the next two (2) years.
19 Hydro's forecasted greater than \$60 million in revenues
20 from this rate within the next ten (10) years.
21 Cumulative \$460 million over the period of the IFF-07-1.
22 I do have references available if you want to check it.

23 IR/PUB Manitoba Hydro-2-96, 1 -- Tab 1 --
24 at Tab 1. Thank you, Mr. Bowman.

25 IR/MIPUG Manitoba Hydro-II-2-A-1 compared

1 to the IFF-07-1. We put that in Tab 1 and Tab 2 of our
2 book of references that we've submitted.

3 Oh, I wonder if the Board secretary has
4 the opportunity to distribute those to the Board? That
5 would probably be useful to do at this juncture. And my
6 apologies.

7

8 (BRIEF PAUSE)

9

10 MS. TAMARA MCCAFFREY: I didn't realize
11 you didn't have it, sorry. What we've done in this book
12 of references, this isn't -- this isn't really evidence,
13 per se; it's taken from the evidence that's been filed in
14 this application.

15 With -- there is addition of some
16 materials you'll note on Quebec and British Columbia, and
17 that goes to the credibility of the process. And I will
18 get to that shortly to give you an idea of where MIPUG is
19 coming from with respect to this motion.

20 Based on Hydro's materials, this new rate
21 is projected to discourage between one (1) to two (2)
22 terawatt hours of load growth. And the reference for
23 that is the power resource plan filed at Appendix 45.
24 We've included that at Tab 3 of our book of references.

25 Now, for those of you who are like myself

1 and think, Well what's a terawatt hour anyway? That
2 means, in plain English, the amount of load growth
3 discouraged by the rate would equate to roughly two (2)
4 Manitoba-based operations the size of INCO that will have
5 been lost to the Province in favour of exports.

6 This is the potential impact that we're
7 talking about here. Is this even a benefit for Manitoba?
8 Shouldn't Manitoba weigh in here? And is it appropriate
9 to weigh in in the context of a General Rate Application?
10 It -- it's not, it's just -- it's not the right process.

11 Yet I have seen nothing, including in Mr.
12 Wiens' weighty affidavit, indicating that Hydro has made
13 any real efforts to bring the government to the party. I
14 know that the Public Utility Board can't order the
15 government what to do, but they can certainly send a
16 strong message to the Utility who does, after all, answer
17 to Minister Salinger and has, you would think, the ear of
18 the government to -- to a certain extent; that if this is
19 an important policy goal for Hydro, then they need to
20 bring the Government on-side.

21 MIPUG wrote a -- a letter or two (2), and
22 I believe it's in the materials even prepared by -- by
23 Ms. Ramage. It didn't get anywhere.

24 Hydro has got to work a little harder if
25 they want this Board to review this rate to bring our

1 elected officials who are charged with the responsibility
2 of developing economic policy in this province and
3 accountable to Manitobans to the table.

4 The report that was filed was six (6)
5 pages long. The exemption criteria, one (1) page. It's
6 a very, very thin foundation with which to review an
7 unprecedented and extremely material, industrial rate
8 proposal. That is not doing justice, again, to the
9 credibility of the process.

10 This Board has seen reports filed by Hydro
11 on other matters -- there's been the Centra -- the Centra
12 integration issue where we looked at \$12 million of
13 synergies. The reports filed there were hundreds of
14 pages long, I think. We're -- we're talking -- this --
15 this is so light that -- that the consultants who
16 actually review this material and have to make sense of
17 it didn't recognize that this was a report.

18 To put my concerns about the credibility
19 of the process into perspective, I want to talk a little
20 bit about Quebec and British Columbia. I'm not trying to
21 suggest that their rates are precedential for -- for
22 Manitoba; that's not the purpose of this at all. I just
23 want to give you an idea of where we're coming from here.

24 In Quebec, the government asked the REGIE
25 for input and advice regarding a new industrial energy

1 rate and policy. Now, these materials -- they're
2 publicly available on the Web -- we've put some summaries
3 in, just for ease of your own research, at Tab 8.

4 In Quebec, there was roughly a year-long
5 process of consultation involving input from a
6 parliamentary standing committee, a variety of experts
7 and a series of consultations. There was six (6) experts
8 invited by the Minister of Natural Resources, Wildlife,
9 and Parks, and each was to present an opinion on one (1)
10 or two (2) pre-determined questions.

11 The purpose of this was to lay down a
12 well- documented foundation for the debate on the future
13 energy strategy. Then there was a second stage of
14 consultation between January 25th to April 7th in 2005,
15 where the National Assembly's Committee on Labour and
16 Economy invited individuals, groups, companies to express
17 their concerns and their vision of energy security and
18 the future of energy in Quebec.

19 Quebec also, of course, exports an
20 extraordinary amount of power to the United States.

21 The committee receive one hundred and
22 sixty-nine (169) briefs. During these sessions, one
23 hundred and thirty-eight (138) persons, companies,
24 organizations expressed their views on these issues.
25 And, following that, there was a third round of

1 consultations when the government published a document
2 setting out the goals and orientations of the future
3 energy strategy.

4 From there, the government invited all
5 interested parties to react to the document by submitting
6 their views over the Internet. Information was posted on
7 a government web site, there was approximately ten
8 thousand (10,000) interested persons logging on with
9 comments and feedback from over seventeen hundred (1,700)
10 individuals and a hundred and forty-eight (148)
11 organizations.

12 From all of that, the REGIE was able to
13 submit its recommendations to the government and a new
14 energy policy was developed. The -- the policy, itself,
15 doesn't have to be discussed in this motion.

16 From all of -- in BC, again, the
17 government provided terms of reference to the Utility
18 Commission -- wouldn't that be nice -- listing a number
19 of issues that it wished the Commission to consider in
20 terms of an industrial energy policy.

21 Another process, about a year long,
22 involving extensive consultation, public workshops, in
23 and out of -- of industry, university pepper --
24 professors from the academic sector, members of the
25 Utility Commission, all got together during this time,

1 and it was aimed at developing the energy policy.

2 Hydro's done this backwards. They brought
3 you a rate for approval here and -- without any of this
4 process going on, and it -- it's just not right. It's
5 not fair. And no argument with respect to any urgency,
6 in my view, is tenable in light of what they're proposing
7 here.

8 In any -- in any event, I've provided some
9 materials for you to look at on your own -- it's Tab 8
10 and 9 in our -- in our book if you want to have a look at
11 it. But the materials also are available on the Web.
12 It's to give you an idea -- this is the kind of thing --
13 this is the kind of process where there's energy policy
14 developed before there's actually a new rate on the table
15 asking the regulator to -- to approve.

16 We've got a partially developed rate --
17 and I'm including the exception clause here -- brought to
18 the Board for approval prior to the credible development
19 of policy. It's not another rate in the context of
20 another General Rate Application. It's premature. It
21 puts the rate ahead of the credibility of this Board's
22 regulatory process. And MIPUG is very concerned with
23 that, and does not want to see that happen.

24 There's been no outside experts report, no
25 studies regarding pricing, marginal pricing, whether --

1 and now studies looking at whether pricing of power is
2 even an effective tool for dealing with growth of
3 industry load. No comparative studies from other
4 jurisdiction, nothing from the economic front, and, of
5 course, the Board's being asked again to review and
6 approve this rate in a GRA and a policy vacuum.

7 The credibility of the Public Utility
8 Board with Manitobans is essential. And this is an
9 esteemed tribunal; it's been in place for over a hundred
10 (100) years. Well, at least since the 19 -- if I
11 remember correctly -- 1913, I think, is when the first
12 one was created. It -- it's been around for a long time.
13 It fulfills a very serious public function, especially in
14 context of dealing with a Crown corporation with a
15 monopoly on electrical power in this Province.

16 The consultation process -- we don't agree
17 with Manitoba that this -- that this amounts to the type
18 of consultation that the Board had in mind when they
19 issued the order in 117-06. In our view, it's been
20 essentially one-sided presentations by the Utility over a
21 half-day sessions, which informed select groups of what
22 they wanted -- what Manitoba Hydro wanted to do for a new
23 industrial rate.

24 I could get into the details of those
25 consultations -- I think I've laid them out in the

1 material. I note that the letters from MIPUG already
2 that were actually filed as part of Mr. Wiens' affidavit,
3 but they're -- they were contained in Appendix 46, I
4 believe, to set up MIPUG's concerns regarding the
5 consultation. So I don't need to go over that territory
6 here.

7 How can Hydro expect this proposal to have
8 any credibility with a six (6) page and one (1) page
9 foundation without all this other material?

10 With respect to that exemption clause, it
11 hinges on a measure of economic benefit to the Province
12 of Manitoba. Again, this is -- this is new territory
13 before this Board. We would recommend that the Board
14 consider bringing an application under Section 58.4 of
15 the Manitoba -- of the Public Utilities Board Act,
16 seeking a reference from the Court of Appeal with respect
17 to that issue.

18 It's a nice -- it's a nice, clean issue.
19 It's -- I think it would be in everybody's interest to
20 sort out the jurisdiction issue before we're actually
21 wading into a hearing on this. And that would give Hydro
22 some guidance, I think, as well, in terms of their
23 proposal.

24 We could just sit back and argue this
25 later, and maybe it would work to MIPUG's advantage to do

1 so, but I don't think it would work to the advance of the
2 process to do so, and -- and again, that's why we make
3 this suggestion. And certainly MIPUG would be happy to
4 have some input on that.

5 With respect to other jurisdictional
6 issues, you know, discriminatory -- unduly discriminatory
7 rates; those things can be debated, I think, in the
8 context of a special hearing on the rate -- on this rate
9 proposal itself, and can be sorted out at that time.

10 However, with respect to just the upfront,
11 the econo -- the exemption clause itself -- this economic
12 benefit to Manitobans criteria -- I think this is outside
13 the -- the purview of what the Public Utility Board's
14 role is, with respect to reviewing Hydro's rates.

15 And -- and I would urge -- I think it
16 would help the process if that issue was determined prior
17 to a hearing on this matter.

18 I think, again, that the Board is
19 certainly alive to the issues of its own jurisdiction.
20 And -- and I can -- I note the comments made in Order
21 117/06, at Page 55, where, in fact, the order, and this
22 Board expressed as much concern; that some of these
23 issues may be outside the scope.

24 This is particularly troubling, I think,
25 and puts the Board in a particularly difficult position

1 given the lack of a policy directive from our elected
2 officials. And -- and I might add that the terms of
3 reference that were given to the British Columbia Utility
4 Commission, by the way, came to them through a Lieu -- an
5 order from Lieutenant Governor and Council.

6 So, I mean, the government was -- was a
7 very important piece of that whole process and
8 development. And that is only the appropriate role, in
9 my view, to assist the Board in fulfilling its role.

10 Of course, the Board can consider policy.
11 My -- My Friend, Ms. Ramage has pointed that out. Of
12 course, the Board can consider and has to consider
13 policy. But developing policy for the province is -- is
14 quite another matter.

15 I've included the Nova Scotia Power case.
16 It's Dalhousie Legal Aid Service versus Nova Scotia
17 Power. It's at Tab 10 in our materials. You know I've
18 included that simply on the jurisdiction issue. The
19 rate, itself, I don't think can be approved without talk
20 and -- and dealing with the exemption clause, because
21 then you're dealing with half a rate.

22 Of course, the regulators don't take a
23 blind stab at gross revenue -- to use the words of
24 Justice Fichaud (phonetic) -- in that decision. But
25 rather they have to take into account actual projected

1 expenses, net income, and the amount of reserves needed.

2 You -- you can't look at net income
3 without taking into account the exemption clause and who
4 it's going to apply to. It's just an artificial
5 exercise.

6 In the -- in the Nova Scotia Power case,
7 the regulator was asked to approve a Rate Assistance
8 Program for low-income consumers. Now the cour -- their
9 regulator declined to do so on the basis that it's
10 constituting legislation required that rates be charged
11 equally for persons in substantially similar
12 circumstances and conditions in respective of service.

13 It's a little bit of a different issue and
14 different legislation that what we have in -- in
15 Manitoba. But the relevant point from the decision is at
16 -- can be found at Page 5 of the decision, where the
17 Court quotes the Regulator, at paragraph 8:

18 "The Board's duty is to follow public
19 policy decisions made my legislature
20 and expressed in statutes. The Board
21 does not have jurisdiction to establish
22 public policy. That is the role of
23 elected officials who are accountable
24 to the public for this function."

25 So when Section 26(4) of our Act -- Crown

1 Corporations Public Review and Accountability Act --
2 gives the Board the discretion to consider any compelling
3 policy considerations that the Board considers relevant
4 to the matter, there should, in fact, be some policy
5 considerations for the Board to take into account here.

6 So MIPUG would urge the Board to confirm
7 the jurisdiction issues raised by this proposal, the
8 economic benefit to Manitoba criteria, prior to a hearing
9 on the substance of the proposal itself.

10 To sum up, this Board, Intervenors and
11 even Hydro have been prejudiced due to the inadequacy of
12 the filing. The filing is inadequate given the magnitude
13 of issues at stake.

14 Hydro has not done what they were ordered
15 to do in Board Order 117/06. There is prejudice due to
16 Hydro's conduct, the timing of the filing, the lack of
17 materials that have been filed. The parties have been
18 prejudiced by -- by this with regards to the materials
19 that have been provided and -- and not provided, as well
20 as Hydro's lack of responsiveness to the issues and
21 concerns raised.

22 I'm not going to go through, again, the
23 consultation process. I think it's set out in the
24 materials. I think that the point is made that the
25 prejudice arises here due to the fact that Hydro has not

1 Board by evidence, but not available until July due to a
2 conflict with his other roles.

3 We've also been in touch with a former
4 member of the REGIE in Quebec, as well, and, again, I
5 think -- we don't have a confirmed -- we don't have
6 confirmed retainer there, but that's -- these are the
7 types of -- of things that we're looking at.

8 We've been trying to pursue expertise in
9 the economic industry development sector, and that's
10 proving to be quite difficult to find someone who doesn't
11 already have other conflicts and has the kind of
12 expertise to speak to the issue.

13 Now, again, determining the jurisdiction
14 on this exemption clause actually might assist in that
15 regard and -- and give us an indication of whether or not
16 we need this extra evidence. But, in the event that we
17 did, it's -- it's not proving very easy.

18 We need other studies, we need more
19 material from Hydro and, again, MIPUG has prepared a -- a
20 brief summary of the types of things we would like to
21 see. We think that would be helpful to the Board and
22 everybody to try and understand this issue in the context
23 of a special hearing devoted to it.

24 I mean, Manitoba Hydro is looking to
25 develop a whole new rate here and go in a whole new

1 direction involving market costs in a regulated
2 jurisdiction within one particular class of customers.

3 It should be given its proper -- proper
4 due -- study and recourse. From a purely evidentiary
5 standpoint, a fall hearing date, I think, is workable
6 from MIPUG's perspective, and I say that to address the
7 concerns raised by TREE and Manitoba Hydro with respect
8 to the timing and having this matter go on too long.

9 I -- the purpose of the motion is -- is
10 just not a delay tactic at all, but what kind of time do
11 we need to get the proper material together. Hydro
12 didn't get that proper material together.

13 So, if they're having a problem now with
14 it not going ahead in March, you know, that's
15 unfortunate, but I don't think that anyone should feel
16 like they have to take that responsibility on in terms of
17 making an order.

18 I think that the jurisdiction issue could
19 be dealt with prior to a fall hearing as well. Again,
20 it's -- if you can find the issue to a straight legal
21 issue and, of course, Mr. Peters, you'd have some
22 discussions with him as to whether the Board decides to
23 do that and how they would do that.

24 But MIPUG would be happy to provide any
25 assistance in that regard. One (1) other comment, I know

1 I'll have an opportunity to reply, but just right at the
2 outset, there is no imminent load to which this rate
3 would apply.

4 Hydro's not citing that there's a shovel
5 ready to go in the ground -- that we're going to have
6 some new customer in here in 2008. So this urgency
7 argument, I think, is somewhat illusory. It -- it's not
8 a real sense of urgency.

9 I know Hydro would like this rate sooner
10 than later but, really, I would think that this Crown
11 Corporation would also want this rate to have some
12 credibility with Manitobans and industry as well.

13 There's no evidence that new major
14 industrial assets are being built in Manitoba in this
15 time-frame. Revenues would only arrive from this new
16 rate proposal if Hydro plans to charge existing customers
17 extra for the use of their existing assets, which I think
18 doesn't fit with the Board's Order.

19 In any event, at page 55, when they said
20 that Manitoba Hydro should develop its proposal taking
21 into account that existing industry came, remained, and
22 expanded in Manitoba with certain assumptions as to
23 energy pricing and supply.

24 If a fall date is workable, it would only
25 be a six (6) month delay in any event, not even a full

1 year of impact on these reserves. If it takes longer
2 than that and goes later, so be it. Better to do it
3 properly and do it right, right at the front, than try
4 and, you know, get this thing dealt with and -- and
5 feeling sort of some -- again, I think illusory pressure
6 to approve something quickly but not -- and not do it
7 right. I -- that's not in anybody's interest, including
8 Hydro's, particularly not in the Boards or any parties to
9 this process.

10 Now, with respect to an alterative
11 process, we recommend and ask that this Board remove the
12 portion of the problematic rate from this GRA -- that's
13 the portion of the industrial rate dealing with newer
14 expanded loads -- take it out of the GRA. Then the Board
15 and everybody else can deal with the General Rates
16 Application in the context of reviewing the rates, not
17 developing a whole new rate proposal that's got to be
18 informed by some policy which is not yet developed.

19 After March, Hydro would have time to
20 complete any additional and stronger, perhaps, directives
21 from the Board. The Board may want to consider a process
22 similar to that which the Public Utility Board employed
23 in the context of the Centra Acquisition Review. The
24 Board Order -- you -- you could look at is -- 90/99.

25 And, at that time, the Board invited

1 comments from all interested parties as to the types of
2 information which would be helpful to the Board in
3 conducting its review. There's some different things
4 that the Board did in that procedural order that were
5 quite useful, I think, in terms of that acquisition
6 hearing in that process.

7 We would like Hydro to have meaningful and
8 appropriate consultation, given the magnitude of this
9 issue, with stakeholders with the province. If anyone
10 can bring the province to the table, I would think it
11 would be Hydro knowing that Hydro can't make the province
12 do anything. But if this is important to Hydro, and if
13 it's important to the provincial government, then people
14 have to take on their responsibilities here in terms of
15 policy development. It's not fair to put it on to the
16 Board in a policy vacuum.

17 Hydro should consider other issues raised
18 by the rate and including NAFTA or other trade issues to
19 ensure there are no other issues or adverse impacts for
20 customers that may be triggered by this new rate
21 proposal.

22 And I don't know the answer to that, but
23 this is, again, a Crown corporation with a monopoly here
24 in this province. They have an obligation -- they're not
25 -- we're not -- it's not just a free market here -- they

1 have an obligation to their customers to look at these
2 issues and an obligation to this Board to provide some
3 information on this.

4 And that's something that the Board may
5 want to take into account when they're reviewing a rate
6 proposal such as this. The Public Utility Board should
7 provide a strong direction to Hydro to consult with the
8 province government.

9 Given Manitoba Hydro's position as
10 indicated by Ms. Ramage that further consultation's
11 unlikely to change anything in terms of Hydro's
12 industrial rate proposal, you can -- you can lead a horse
13 to water, but you can't make them drink. So be it.

14 MIPUG will provide our input at a hearing
15 -- we would like to provide our input at a hearing aimed
16 at reviewing these issues. For that input to be as well
17 considered as possible, and in order to be of assistance
18 to the Board, this matter must be adjourned.

19 Not saying that MIPUG wouldn't like to
20 have consultation input in terms of a rate development
21 policy, but that process just hasn't occurred here. We
22 would like to see it occur, but there's got to be some
23 direction from other quarters.

24 MIPUG asks that the Public Utility Board
25 use the period of adjournment, take the opportunity to

1 seek a reference to the Court of Appeal with respect to
2 the jurisdictional issues that I have raised pursuant to
3 Section 58.4 of the Public Utility Board Act.

4 We would like to target a hearing date for
5 fall. MIPUG believes that from the point of view of
6 obtaining additional information needing from Hydro,
7 preparing the nec -- necessary evidence on this rate
8 proposal, a fall hearing, as I indicated, is potentially
9 workable.

10 However, the preliminary issue as to
11 whether the Board has the jurisdiction to review or
12 approve an economic benefit to Manitoba test, absent some
13 legislative or policy guidelines from elected officials,
14 should be determined prior to the hearing because -- the
15 Hearing -- because the exemption clause is a key
16 component of the Hearing.

17 You can't really review half a rate. You
18 need to have the whole picture, and it should be properly
19 developed before going in. I don't think there is a rush
20 in terms of rushing through this process, and I don't
21 think anyone -- it's in anyone's best interest, including
22 Hydro's, to do so.

23 Thank you very much. Subject to any
24 questions you have, that completes my comments and, of
25 course, I -- I will have a right of reply if there's

1 anything new that I haven't covered. Thank you.

2 THE CHAIRPERSON: Thank you. Yes...?

3 MR. BOB MAYER: Ms. McCaffrey, assuming
4 the Board was to buy into your argument that we don't
5 have enough detail and that there hasn't been enough
6 consultation - I'm not sure we're prepared to go there at
7 this point - but at least enough detail on the exemption
8 to the application of the -- of the new rate, and if we
9 were to adjourn this matter, what kind of scope do you
10 think the adjourned hearing should take?

11 And -- and let me clarify that a little
12 more. I think the Board was fairly clear that we agreed
13 with Manitoba Hydro on the -- on the fact that an energy-
14 intensive rate that deals with -- with market costs was a
15 good idea. I thought we made that decision in Board
16 Order 117.

17 So it seems to me, unless you want to
18 revisit that issue, and I recall your comment about going
19 to the wall for your -- for your clients on -- on that
20 very issue, do you see yourself trying to revisit that
21 piece of -- of Order 117, or could we deal with it and
22 confine it to the issue of to whom this rate would apply
23 and under what circumstances and under what exceptions?

24 MS. TAMARA MCCAFFREY: I think the best
25 way for me to give you a thoughtful response is for me to

1 speak to my -- the consultants who assist me in terms of
2 analysing the information and understanding, helping make
3 sense of the information itself. They would be
4 ultimately the ones involved in that exercise with
5 respect to the Hearing, so I need to speak to the
6 experts.

7 And to give you a better picture, I can
8 tell you right off the front that the merits of the --
9 the proposal need to be reviewed. We're looking at
10 baselines, how those baselines are calculated; there's a
11 whole slew of issues. We're looking at market prices,
12 but we don't have the benefit of studies. We're looking
13 at -- there is a lot of issues here.

14 I am not going to say that I wouldn't
15 advise that we come back, perhaps, and look at the issue
16 of an undue discrimination or not. No conclusion, no
17 instructions at this point.

18 I would want to reserve my -- my right,
19 preserve my ability to do that in the context of a debate
20 reviewing the rate itself, but I think if I -- if you'll
21 give me a moment to confer with Mr. Bowman, I can
22 probably give you some clear direction on MIPUG's --
23 types of things MIPUG would be looking at there.

24 THE CHAIRPERSON: Why don't we come back
25 to you after the break? We will just --

1 MS. TAMARA MCCAFFREY: Thank you.

2 THE CHAIRPERSON: -- move on. I will
3 give you a chance. Okay, Mr. Williams.

4

5 COMMENTS BY COALITION:

6 MR. BYRON WILLIAMS: I'm not sure if it's
7 the tardy, vacationing, or hardworking Mr. Williams who
8 will be offering his comments, but I -- I think my
9 comments will be unusually succinct for myself; I hope so
10 anyways. I hope Mr. Mayer does not have a clock on me.

11 MR. BOB MAYER: I was going to say does
12 that mean "short"?

13 MR. BYRON WILLIAMS: We'll see. As I
14 understand it, the -- the motion presented ably by My
15 Learned Friend, Ms. McCaffrey, essentially is to -- the -
16 - the core of it is to sever this issue from the General
17 Rate Application, and I can indicate my clients are in
18 support of that.

19 She also has some advice to the Board that
20 it -- it may wish to seek some advice from the Court of
21 Appeal in terms of the -- its jurisdiction with regard to
22 the exemption clause and the economic benefits to
23 Manitoba criteria.

24 And, again, that's something that
25 certainly my clients haven't given a lot of thought to,

1 but, at first glance, they -- they think that that may be
2 good advice for the Board to -- to look at seriously.

3 Just by -- perhaps that's the end of my
4 comments, but I -- I will elaborate on them just a little
5 bit -- just teasing.

6 I just want to let the -- the Board know,
7 and the Board will be familiar with, to a certain degree,
8 the -- the interaction that our office has with our
9 clients.

10 In preparing for any hearing, we tend to
11 develop a preliminary issues list, and about a month
12 before the hearing we sit down with our clients, often in
13 a full, frank, and feisty debate. We don't get their
14 final instructions, but we get -- we get a lot insight
15 into where the clients would like to go, and that
16 certainly guides legal counsels participation in any
17 hearing. And, certainly, we give our advice to them at
18 that point in the hearing based upon our informed
19 opinion.

20 And I can advise the Board that in terms
21 of this General Rate Application, it's a lengthy key
22 issues list. We have twelve (12) of them, and on eleven
23 (11) of those twelve (12) issues, speaking for legal
24 counsel, we feel that we can give informed advice to our
25 clients.

1 The one (1) issue that legal counsel and
2 certainly the -- the Coalition's expert team doesn't feel
3 it can give in -- informed advice to our clients upon, is
4 the issue that's before you today; the -- the special
5 rate for new and expanded load.

6 And we have two (2) -- two (2) kind of
7 fundamental problems with the record as it currently
8 stands. One (1) problem focussing on the record and that
9 is the evidentiary or factual foundation that's before
10 the Board. And I won't dwell on what Ms. McCaffrey can
11 say, but just from -- certainly from the prospective of
12 my clients, the evidence that's before the Board -- the
13 expert evidence that they would have liked to have seen,
14 is just not there.

15 And at this late state when Hydro, in my
16 clients' views, hasn't put enough on the record in terms
17 of the -- the expert information that they might be
18 looking for, and Ms. McCaffrey adverted to a -- a great
19 deal of it, my clients are of the view that it -- that
20 other witnesses are not in a position to redeem an
21 evidentiary record that in their view is -- is flawed.

22 So that's the first major hurdle. And,
23 it's -- it's the -- it's really why my clients are
24 recommending that we severe this from the General Rate
25 Application and look at a hearing focussed on this

1 specific issue, which is really a nov -- novel area --
2 issue for the Public Utilities Board.

3 And bringing into the equation questions
4 which -- which we do not have a lot of experience with in
5 -- in terms of appearing before the Board -- which is
6 kind of my less than elegant segue to my second point --
7 which is my clients certainly do have some issues -- or
8 some questions about the Board's jurisdiction.

9 Ms. McCaffrey has referenced them, and I
10 won't dwell on them, but certainly my clients think it
11 might be helpful for this -- this Board to seek advice
12 from the Court of Appeal with regards to the exemption
13 clause, and the -- specifically, in terms of the economic
14 to benefits -- economic benefits to Manitoba criteria.

15 So that's where my clients are coming
16 from. I think I promised to be succinct and -- and I
17 think I have been. Certainly in terms of removing it
18 from the GRA, they believe that the record is not there
19 to -- to support a full and informed debate on an
20 important issue which we certainly applaud Hy -- Hydro
21 for bringing forward.

22 And we think that our efforts in a -- in a
23 severed proceeding would be more efficient if we had
24 guidance from the Court of Appeal on the -- on the
25 Board's jurisdiction. So, subject to any questions,

1 those are my comments.

2 MR. BOB MAYER: Mr. Williams, the issue
3 of jurisdiction -- as I understand it, we have
4 jurisdiction to set Hydro's rates. Hydro makes an
5 application and tells us they've come before the Board,
6 having taken into account all the -- all the issues
7 respecting the exemption -- and I recognize the issue is
8 the exemption here and public policy -- and have received
9 approval of government to make that application, and they
10 ask us to set a rate.

11 Where's our jurisdictional problem?

12 MR. BYRON WILLIAMS: I think it goes back
13 to the -- the same issue that Ms. McCaffrey raised.
14 Like, later on in the Hearing, certainly, my clients may
15 have comments about whether any rate that could flow from
16 this is a just and reasonable rate or whether it's unduly
17 discriminatory, but that's the second part of it.

18 But on -- on the first part, whether the
19 exemption criteria, and that second part of the test
20 which is a crucial determinant, whether a Board which has
21 clearly got jurisdiction over cost based rates is able to
22 go into these broader issues of -- of economic policy and
23 criteria like that, I think is an open question.

24 THE CHAIRPERSON: Yes, thank you, Mr.
25 Williams. So welcome, Ms. Trull.

1

2 COMMENTS BY TRANSCANADA KEYSTONE PIPELINE GP LTD.:

3 MS. TAMARA TRULL: Good morning, Chairman
4 Lane, Board Member Proven and Vice Chair Mayer. For the
5 record, my name is Tamara Trull, as you've mentioned.
6 I'll be appearing on behalf of Keystone Pipelines for
7 this motion.

8 Jennifer Scott will remain counsel for all
9 of their matters. I'm new to this area and, in
10 particular, to this motion, so I'm grateful in advance
11 for your patience.

12 Also here on behalf of Keystone are
13 Michael Cote and Dan Levson. Our submissions will be
14 very brief. Before proceeding with them, though, I would
15 like to discuss the affidavit that was filed.

16 I received this affidavit on Saturday.
17 I've been unable to review it in its entirety and I've
18 been unable to discuss it with co-counsel Jenny Russell
19 (phonetic) or Jenny Scott. What I would like to do is
20 just reserve the right to comment on it further in this
21 motion after reviewing it with -- with Jenny, if that's
22 all right with the Board.

23 THE CHAIRPERSON: Well, the Vice Chair is
24 pointing out we just got it too. When do you intend to
25 do this review with your colleague?

1 MS. TAMARA TRULL: I put a call into her
2 this morning with Mr. Levson and Mr. Cote. We were
3 unable to reach her. So I'm hoping to discuss this with
4 her when I get back to Calgary, hopefully tomorrow
5 morning, depending on her schedule. Of course, I don't
6 have access to that right now either.

7

8 (BRIEF PAUSE)

9

10 THE CHAIRPERSON: We are fine with that.

11 MS. TAMARA TRULL: Okay. You may be
12 aware, the portion of the Keystone Pipeline project
13 located in the Province of Manitoba extends three hundred
14 and fifty-two (352) kilometres from the
15 Saskatchewan/Manitoba border to the US/Manitoba border.

16 The Keystone project involves conversion
17 of an existing natural gas pipeline to crude oil --
18 transmis -- transmission service, together with the
19 construction of new oil pipeline and new pump stations.

20 The Keystone project is proceeding in two
21 (2) stages with the initial stage in 2009 and the
22 expansion stage in 2010. Keystone is an Intervenor in
23 the Manitoba Hydro's 2008 General Rate Application.

24 Keystone's review of Manitoba Hydro's
25 discussion paper of November 27th, 2007, and of the

1 subsequent December filing of the exemption criteria
2 caused us to conclude our interests may be materially
3 affected by the final determination of the proposed
4 exemptions in addition to the impact of the proposed rate
5 itself.

6 Keystone, therefore, sought late
7 Intervenor status on January 3rd, 2008. Keystone
8 supports MIPUG's motion for severance. If the rate is
9 not severed, Keystone, in the alternative, requests a
10 delay to the hearing to September of this year. I will
11 note that our written submissions said we would be
12 proposing a date of May.

13 But subsequent consultations have caused
14 us to come to the conclusion that we will not have
15 adequate evidence for May dates. One of the difficulties
16 with earlier dates arises from Keystone's concern
17 surrounding the lack of government involvement in what it
18 considers to be public policy.

19 Keystone would suggest June dates could be
20 achieved. Again, they may be detrimental to all parties
21 because such dates may come at the cost of adequate
22 government involvement or consultation.

23 Although Keystone supports the MIPUG
24 motion, Keystone has its own unique position. Keystone
25 has no existing power consumption in the province. We'll

1 be a customer with entirely new load.

2 And if the proposed rate is passed,
3 Keystone will pace -- face paying higher rates for all
4 consumption. Keystone's electrical costs will
5 essentially double. The estimated costs are \$10 million
6 a year under the current tariff, and \$20 million a year
7 under the proposed rate.

8 Given the magnitude and broad significance
9 of these issues, the current time lines do not allow
10 Keystone to adequately address the issues, and Keystone
11 may be materially prejudiced if today's motion is not
12 granted.

13 Given that the proposed rate and the
14 exemption criteria are unprecedented, Keystone does not
15 have the expertise to comment, and it needs the
16 assistance of an expert on the validity of the exemption
17 criteria, a rate design and/or cost-of-service expert to
18 determine whether or not the rate is unduly
19 discriminatory.

20 Legal expertise on the jurisdictional
21 issues and, most importantly, a witness to propose an
22 alternative rate design that better addresses the
23 underlying -- underlining concerns.

24 We somewhat understand what Manitoba
25 Hydro's attempting to achieve with the proposed rate. We

1 simply request adequate time to understand the impact and
2 explore rate designs that aren't so overwhelming to new
3 customers such as Keystone.

4 Mr. Levson, working in cooperation with
5 MIPUG, has been diligently trying to find these experts
6 on behalf of Keystone. He has made inquiries with
7 approximately ten (10) individuals in the past few weeks.
8 Expertise is available, just not under such short time
9 frames.

10 He has also sought the assistance of our
11 research department to examine several issues arising
12 from the proposed rate and exemption criteria including
13 whether or not the rate is discriminatory based on an
14 examination of other jurisdictions.

15 Due to the filing dates of the exemption
16 criteria and the resulting time constraints, Keystone has
17 not been able to make a decision as to whether or not it
18 will file evidence. In any event, if severance or delay
19 is not granted, Keystone will not be in a position to
20 file adequate evidence on or before the current deadline
21 of February 1st.

22 In closing Keystone, as an Intervenor,
23 wants additional time to understand issues in enough
24 detail to offer informed assistance to the Board.

25 Back to your comment, Vice Chairman Mayer;

1 when you said the Board was in support of such a proposed
2 rate, perhaps the intent of Manitoba Hydro, we are
3 sympathetic to that intent. We simply want the time to
4 suggest alternatives to do that -- to that, that aren't
5 so discriminatory to a new customer such as ourselves.
6 And under the current time constraints, we don't have the
7 option of doing that.

8 MR. ROBERT MAYER: I certainly understand
9 your -- your concern respecting time. I must admit to
10 some degree of surprise, although we were unanimous in
11 granting you Lead Intervenor status, that in light of the
12 fact that this -- it became fairly obvious that this rate
13 was probably going to happen by our Board Order back in
14 2006, we are little surprised that you didn't catch that
15 piece when the Order came out.

16 MS. TAMARA TRULL: Perhaps in answer to
17 that; it's the exemption criteria that Keystone has --
18 that we're not comfortable with our level of
19 understanding with at this point and it's the expertise
20 that will give us some guidance on how that exemption
21 criteria may or may not apply to Keystone.

22 And the exemption criteria materials
23 wasn't filed until December, although there -- there was
24 a discussion paper in late November, Keystone -- I don't
25 know exactly when the dates that we became aware of the

1 discussion paper. I think Jenny, received --

2 MR. ROBERT MAYER: I accept that. We
3 didn't see a lot of exemption stuff either until later on
4 in the process.

5

6 (BRIEF PAUSE)

7

8 THE CHAIRPERSON: Are you done, Ms.
9 Trull?

10 MS. TAMARA TRULL: Yes, thank you.

11 THE CHAIRPERSON: Okay. So you are going
12 to consult with your colleague and get back to us at some
13 point tomorrow then, correct?

14 MS. TAMARA TRULL: Yes.

15 THE CHAIRPERSON: Great. Thank you.

16 Mr. Anderson, for MKO...?

17

18 (BRIEF PAUSE)

19

20 THE CHAIRPERSON: Mr. Williams is going
21 to give you a spot up here if you like.

22 MR. MICHAEL ANDERSON: I have a mic that
23 works, Mr. Chair. Good morning.

24

25 COMMENTS BY MKO:

1 MR. MICHAEL ANDERSON: Thank you very
2 much, Mr. Chair, Commissioner Mayer, Ms. Proven, Board
3 counsel, Ms. Ramage, Ms. McCaffrey, for bringing the
4 motion and the persons that have discussed the matte
5 earlier today.

6 The matter that's being proposed in terms
7 of a market-based rate for new -- for new industrial
8 loads, or for increases in loads at existing industrial
9 facilities, is a considerable interest to MKO.

10 The -- the issue really speaks to matters
11 that we raised in our closing arguments in the Cost of
12 Service proceeding, and that is the origins of the
13 rationale for constructing the existing system in
14 Manitoba and the justification for the construction of
15 those facilities.

16 We made the point that the facilities were
17 built for domestic loads to serve the needs of the
18 Province of Manitoba and, therefore, first and foremost,
19 that the waters of Manitoba reserved and to the Crown,
20 under the Water Power Act, is reserved for the purposes
21 of provincial development; towns, cities, hospitals,
22 agriculture and industry, I think were the phrases that I
23 used in the earlier proceeding.

24 In terms of the over arching policy
25 considerations that might be made, the Board will recall

1 that I also explicitly referred to Article 18.2 of the
2 Northern Flood Agreement. In the section under Article
3 18, Miscellaneous Policy, it says:

4 "Canada and Manitoba recognize that the
5 project is intended to benefit all the
6 citizens of Canada and most
7 particularly of Manitoba, on the one
8 hand, and that it is the resource users
9 who have been and may continue to be
10 adversely affected on the other hand,
11 and that is in the public interest to
12 ensure that any damage to the interest
13 opportunities, lifestyles and assets of
14 those adversely affected be compensated
15 appropriately and justly."

16 Without getting into reference to the
17 specifics, it is well understood by, certainly, the Crown
18 and I -- I would appreciate by the Board, that the
19 Crown's relations at First Nations have also evolved such
20 that any act -- action or decision made by the Crown must
21 first be subject to a process of consultation,
22 justification and accommodation of the rights and
23 interests of First Nation citizens that may be affected
24 by those acts or decisions.

25 I make the point that the Supreme Court of

1 Canada and others have examined the concept of
2 accommodation and recognized that employment and impacts
3 and other arrangements in industrial developments are
4 mechanisms, validly recognized as serving the purpose of
5 accommodation. And, therefore, the manner in which First
6 Nation citizens may receive economic benefits, including
7 employment and industrial and other developments in the
8 Province of Manitoba are actually a significant and
9 direct consideration by the Crown in its authorization of
10 any of these activities.

11 And we would submit also in the
12 authorization of any rate that this Board may consider,
13 and for that I simply cite article -- Section 8 of the
14 Interpretation Act of Manitoba.

15 "No act or regulation is to be
16 interpreted so as to abrogate or
17 derogate from the Aboriginal and Treaty
18 rights of the Aboriginal peoples of
19 Canada, that are recognized and
20 affirmed by Section 35 of the
21 Constitution Act of 1982."

22 So we would argue that any jurisdictional
23 consideration by the Board or by the Court of Appeal must
24 read in Section 8 of the Interpretation Act and the
25 potential impacts on First Nation citizens of a rate

1 which may have an effect on the scale or additions of
2 industrial facilities in the province of Manitoba, where
3 these may otherwise provide a mechanism for accommodation
4 of adverse effects and impacts on the rights of our --
5 First Nation citizens.

6 The equation of considering the most
7 beneficial method of developing the water powers of
8 Manitoba has become constitutionally complex and must,
9 therefore, engage consultation and consideration of the
10 rights and interests of First Nation citizens, as well.

11 MKO has regularly made the point that we
12 have a uniquely, perhaps, intimate relationship with
13 Manitoba Hydro, and that our communities are located on
14 the waterways that have been developed by Manitoba Hydro
15 to provide the power resources of the province.

16 Along the Saskatchewan River, Church --
17 along the Churchill River, now diverted, Burntwood River,
18 and Nelson River and so forth. In the materials that are
19 before us today, I note that this Ms. Ramage, in her
20 letter of January 7th, had succinctly, I suppose, placed
21 the issue.

22 Energy-intensive industry is being
23 attracted to Manitoba on a scale large enough to threaten
24 the corporation's revenue position. That's a very
25 interesting perspective on the -- the use of

1 provincially-developed power for resources being used
2 within the Province for economic growth.

3 Long-term firm sales of energy to these
4 customers typically earn the corporation approximately
5 three point two (3.2) cents per kilowatt hour. The
6 energy for these loads must be diverted from profitable
7 export markets, which provide revenues in the order of
8 five point five (5.5) cents per kilowatt hour for firm
9 sales.

10 Clearly, there is a substantial provincial
11 policy consideration being made that export sales now
12 take priority and precedence over sales to resources and
13 -- and industrial customers within the Province of
14 Manitoba.

15 Placing a priority on the export of power
16 from facilities that were originally designed to serve
17 domestic loads also can -- raises interesting
18 considerations regarding the justification of the
19 projects themselves, vis-a-vis the adverse -- the
20 irreversible adverse environmental and social effects of
21 the projects if a mechanism for achieving accommodation
22 is removed due to a preference for -- toward the economic
23 cash value of export sales. And that's a substantive
24 policy consideration.

25 I, for one, had hoped that I would have

1 heard a bit from Ms. Ramage this morning, and perhaps
2 from Mr. Wiens, regarding the affidavit, recognizing that
3 we agreed to the sequence that we're following, but I
4 think the fact that the material is appearing in the way
5 that it is, with a large affidavit of one hundred and
6 ninety (190) pages filed on Friday, the exemption
7 description filed on December 17th and so forth, suggests
8 that, at a minimum, given these considerations, that we
9 approach it in a separate proceeding.

10 MKO supports the motion of MIPUG as
11 supported by the Coalition to sever the matter of the
12 industrial rate; that is the market based rate for
13 expanded new loads from the current proceeding. The
14 evidentiary reasons for that have been spoken to by other
15 parties, and MKO supports them.

16 I raise the issue that, as far as I know,
17 the affidavit of Mr. Wiens hasn't been entered even as an
18 exhibit in this proceeding yet. It has been circulated
19 to us though. Was it exhib -- no I -- because, and
20 that's partly because of the order of parties this
21 morning. I'm sure that if Ms. Ramage had gone first,
22 that it would have been duly filed and entered with an
23 exhibit number.

24 So, we're -- we're proceeding on the basis
25 of attempting to accommodate information. There's a

1 substantial amount of information in Mr. Wiens'
2 affidavit, and I attempted to do my best, over the
3 weekend, to digest the material in it and found, for
4 example, the discussion of consultations or exchanges of
5 information and ideas with industrial customers to be of
6 interest.

7 But I also note with great interest that
8 the industrial customers here responded by letter, have
9 all uniformly expressed a concern regarding the potential
10 impact of the rate.

11 What's completely absent, however, from
12 the materials that had been filed both in the application
13 and the subsequent materials, is the policy direction of
14 the Crown. It's the Crown that would determine -- if we
15 look at the exemption, for example at the -- the document
16 that was filed on December 17th, which is also included
17 at page 190 of Mr. Wiens' affidavit. It says:

18 "Manitoba Hydro proposes to offer a
19 choice among criteria discussed below
20 to evaluate whether new general service
21 large loads or load expansions provides
22 sufficient provincial economic benefit
23 to merit exemption from application and
24 marginal cost based rates to loads
25 above baselines in the event that this

1 rate structure is proved by the Public
2 Utilities Board."

3 I wish to key to the Board's attention the
4 phrase "provide sufficient provincial economic benefit."
5 That is a cat -- that is a policy determination best left
6 in the hands of the Crown and, in fact, of the
7 requirement and obligation of the Crown to consult with
8 First Nations in a constitutional sense prior to any act
9 or decision. That absent guidance from the Crown as to
10 what determines a provincial economic benefit, MKO is
11 somewhat -- is discomfited at the thought of proceeding
12 in this -- in this current General Rate Application to
13 further review this matter.

14 Clearly, some evidence of the Crown's
15 determination on how you would determine a provincial
16 economic benefit when you're discussing the application
17 of the -- of the government's the province's power
18 resources is -- is crucial.

19 One very obvious matter that, to MKO,
20 leaps from the one (1) page exemption document, and that
21 is when they talk about incremental direct payroll and so
22 on, there's no mention of employment preferences,
23 particularly for how any -- any credit or other
24 consideration would be given to northern employment, in
25 general, to the employment of aboriginal persons affected

1 by the Manitoba Hydro system, specifically, and for
2 northern economic development such as new mines
3 developments; for example, the Victory Nickel prop --
4 property at Managua River, how employment in those
5 facilities would be credited in any way toward
6 consideration of the exemption.

7 And, again, clearly, although the
8 corporation may develop an internal policy and, in fact
9 it has given evidence before that it does have a policy,
10 and some questions have been asked in this proceeding
11 about that, and that the industrial operators may also
12 have their own policies for Northern preferences and
13 Aboriginal preferences for employment, the current
14 evidence is completely absent of any reference to it in
15 respect of how an employment -- preferential employment
16 for Aboriginal and Northern persons might apply to the
17 exemption in terms of assessing the benefits to Manitoba.

18 It would appear that whether it's
19 Science, Technology, Energy, and Mines, the Department
20 of; for the Province in Manitoba, Minister Rondeau; or
21 whether it's the Department of Finance, or other -- any
22 other provincial department, that clearly some guidance
23 to the Board in respect of how to determine adequately a
24 sufficient economic -- provincial economic benefit is
25 necessary to proceed in this -- in this matter.

1 There has been a suggestion that a
2 reference to the Court of Appeal be considered in respect
3 to the Board's jurisdiction. And if I can summarize,
4 Commissioner Mayer briefly. It was essentially that
5 there seems to be general consciences that a market based
6 rate is inevitable in some fashion, and it's really to
7 whom and to how such a rate would apply that is a
8 consideration.

9 The -- the issue of jurisdiction, I
10 submit, or -- or authority for the Board's consideration
11 is sufficient provincial economic benefit. That's a
12 matter of the general policy considerations, that the
13 statute provide the Board -- provides the Board; whether
14 that would clearly be within the Board's jurisdiction.

15 And I note in the Board's own order, that
16 it made a reference that it is beyond its ordinary
17 jurisdiction to consider such a matter. And we would
18 agree and suggest that perhaps in addition to
19 consideration of a reference to the Court of Appeal, that
20 the Board may wish to enquire internally to give effect
21 to Section 27(1) of the Public Utilities Board Act, which
22 provides that the Board may have its own motion and
23 shall, upon the request of the Legislature or the
24 Lieutenant Governor and counsel inquire into, hear and
25 determine any matter or thing within its jurisdiction.

1 Ms. McCaffrey brought to your attention
2 that the Provinces of Quebec and British Columbia chose
3 to provide executive direction by the Governments in
4 terms of examining this factor. Where you have a utility
5 offering below market cost power for a considerable
6 period of time, addressing the financial impact of that
7 through export sales, through the cost of service
8 arrangements that we have for the application of net
9 export revenues in Manitoba, and the consideration of how
10 that might affect decisions that are being made for --
11 for addition of new facilities, new capital projects,
12 generation capacity and so on.

13 That there's a discontinuity with
14 continuing that on a long-term basis, and that's viewed
15 by most jurisdictions in Canada, and we've considered
16 that and agreed, in principle, that it should be
17 considered here as a mechanism.

18 Inevitably, however, we don't have the
19 policy direction from the Crown. we have no discussion
20 on the mechanism for incorporating the rights -- the
21 constitutional rights and interests of First Nation
22 peoples, particularly, for example, on how the exception
23 might credit or apply to preferential employment. And,
24 where absent, the types of information in a timely manner
25 that would otherwise give us the ability to proceed.

1 So, with all of those comments, Mr. Chair,
2 members of the Board, MKO supports the motion of MIPUG as
3 also supported by the Coalition, to sever the matter from
4 the current proceeding, and to obtain whatever policy
5 direction from Government is necessary to ensure the
6 proceeding can continue, to ensure that the evidence is
7 properly before the parties to the proceeding.

8 And, if it is set apart as a proceeding
9 under the direction of the Lieutenant Governor and
10 counsel, MKO will participate in such a proceeding and
11 looks forward to having the opportunity to discuss how we
12 may best ensure that the electricity produced by Manitoba
13 Hydro with the birthright of the citizens of all the
14 province, and particularly those of First Nation
15 citizens, is most purposefully directed to achieve
16 maximum benefit for the citizens of the Province of
17 Manitoba.

18 And with those, those are my comments, Mr.
19 Chair, subject to any questions that you may have.

20 THE CHAIRPERSON: Thank you, Mr.
21 Anderson. Mr. Gange for RCM/TREE...?

22

23 COMMENTS BY RCM/TREE

24 MR. WILLIAM GANGE: Thank you, Mr. Chair.
25 You have mentioned that you have before you our letter of

1 January 7th, 2008. And in that letter, I set forth
2 RCM/TREE's position indicating that it has serious -- it
3 has concerns about the delay because there are a number
4 of issues that arise. And also mentioning that if the
5 Board is going to consider severing the MIPUG -- or,
6 pardon me -- the -- the new Rate Application, that --
7 that the Board provide a framework for that to take
8 place.

9 I've had further discussions on this issue
10 with Ms. McCaffrey and I think it's fair to say that
11 RCM/TREE have softened their position somewhat. But we
12 raise these concerns.

13 In preparing for the hearing -- the
14 General Rate Application -- the -- the evidence for all
15 of us is due on Friday. Our evidence with respect to our
16 expert testimony is -- is in -- in the final revision
17 stage, and our expert, Paul Cherneck (phonetic) dedicates
18 approximately 20 percent of his evidence to this issue.

19 So there has been some considerable
20 thought, at least on our end, that has -- has gone into
21 this. The -- this motion is taking place only -- only
22 days before that deadline. It makes it difficult for all
23 of us to -- to have a -- a considered position.

24 We -- we do have a concern, as has been
25 noted by Manitoba Hydro, and in our original comments in

1 our letter, that delay could mean an untenable prolo --
2 prolongation of harm to the existing customer base and
3 the province if newer expanded large loads were to enter
4 the -- the system prior to a final decision on this
5 matter being made -- being made by your Board.

6 We would suggest that -- that
7 consideration on that point should take into account that
8 whatever process is followed, the new Rate Application,
9 consideration should be given to having it backdated so
10 that it -- it -- if it is heard in September, it strikes
11 us that it would have to be backdated to -- to come into
12 effect at the same time as -- as the rest of the Rate
13 Application.

14 One of the concerns that we have is -- is
15 that our -- the -- the testimony of Mr. Cherneck, and we
16 would expect that all of the experts on -- on the entire
17 Rate Application; it -- it's -- they're integrated. All
18 of these issues become integrated in terms of attempting
19 to analyze the proper process for the Rate Application.

20 An example of that has -- has been
21 provided just in the comments by Ms. Trull this morning
22 where -- where she made the comment that -- that
23 Keystones cost is \$10 million and would be increased to
24 \$20 million. We understand the problem here. Where's
25 that -- where's that \$10 million going to go, in -- in

1 terms of the entire Rate Application?

2 Some -- somewhere in this process,
3 somebody has to pay that \$10 million. Is that paid by
4 the -- the overall class or is it paid by the new class?
5 We understand there are difficult issues that -- that you
6 have to wrestle with here.

7 If this Board is prepared to -- to delay
8 and to sever the -- the new Rate Application, we have
9 some -- we have sympathy with that position as well.
10 Because it is our view -- the view of RCM/TREE -- that
11 there has not been adequate consultation.

12 And although your Order, it would appear,
13 was limited to industrial and government players, we
14 believe that -- that citizen groups, and concerned
15 citizens themselves, should be part of that consultation
16 process.

17 As you know from the involvement of
18 Professor Miller and RCM and TREE in -- in previous
19 hearings, these organizations have a very significant
20 interest in analyzing and the -- the Rate Applications
21 that are made by Hydro, by Centra and -- and attempting
22 to provide to this Board, some reasoned consideration,
23 perhaps from a different perspective.

24 And one of the things that we see with
25 respect to the new Rate Application is that, for

1 instance, RCM/TREE were not involved in that process in
2 any way. And -- and so that our thoughts are that --
3 that if the process is to be delayed, that there ought to
4 be an initial report on -- on what this -- the rate
5 process would include.

6 That -- that this Board ought to direct
7 Hydro, with respect to obtaining as wide a consultation
8 process as is reasonably accomod -- can be accommodated.
9 And -- and in that regard, RCM and TREE would be more
10 than willing and more than happy to be involved in that
11 consultation process.

12 We believe that -- that PUB ought to make
13 an order with respect to how that process would take
14 place. We would suggest -- and -- and this is -- is
15 perhaps somewhat of a new idea, although in -- in a
16 Centra hearing, our witness, Mr. Weiss, commented on this
17 kind of a process in his evidence at -- at that time.

18 But we think that -- that PUB ought to
19 take charge of the consultation process, and that PUB
20 ought to con -- give consideration to hiring an expert
21 facilitator who would run workshop negotiations that
22 would involve, of course, Hydro, MIPUG, and other
23 concerned citizen groups.

24 That that facilitator would then make a
25 report back to PUB talking about the convergences and the

1 -- the divergences of the various parties, with the hope
2 that -- that the convergences may be significantly
3 greater than the divergences, and which then -- would
4 then make the -- the hearing process shorter, more
5 succinct and -- and more productive.

6 After the facilitator gave his report, we
7 would suggest that -- that there be time for comments by
8 the parties. And then -- and then whatever matters have
9 not been resolved, should go to a hearing. Such a
10 process has been -- has been used in other jurisdictions.

11 Professor Miller provided to me a process
12 that -- that had been followed in California, and I can
13 give you by way of -- of email as a followup later on
14 today or tomorrow, a website where -- where this was
15 done.

16 It was significantly longer in that
17 process -- it -- it probably was about a sixteen (16)
18 process. We recognize that's too long, but we would hope
19 that that kind of a process could be used and -- and
20 could be dealt with to allow for a September hearing as
21 is being suggested by MIPUG and -- and supported by
22 various other parties.

23

24

(BRIEF PAUSE)

25

1 MR. WILLIAM GANGE: The -- the last
2 part and -- and just one final comment -- our -- our
3 evidence that we will file on behalf or through on -- on
4 behalf of RCM/Tree, through Mr. Cherneck, will,
5 regardless of the decision made here, deal with Mr.
6 Cherneck's analysis of this new rate class, and -- and we
7 hope may provide some benefit and -- and some guidance to
8 your Board in terms of -- of dealing with this issue.

9 THE CHAIRPERSON: Thank you, Mr. Gange.
10 We're going to take a short break now which give Ms.
11 McCaffrey a chance to consult a bit more. And when we
12 come back, if I could call on you, and then we will go to
13 Ms. Ramage.

14 Is that all right?

15 MS. TAMARA MCCAFFREY: That would be
16 fine, and I -- I'll indicate now that I will provide to
17 the Board secretary, Mr. Gaudreau, our minimum filing
18 recommendations, the kind of things that MIPUG thinks
19 might be useful. I'll provide copies for the Board and -
20 - and for the other parties as well at -- at this point.

21 THE CHAIRPERSON: Thank you, that will be
22 helpful. We will be back in fifteen (15) minutes.

23

24 --- Upon recessing at 10:36 a.m.

25 --- Upon resuming at 10:55 a.m.

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THE CHAIRPERSON: First of all, Mr. Peters, perhaps you could make a note of the various papers and documents that are being filed and provide us and the Court reporter with an exhibit list at the conclusion.

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11

MR. BOB PETERS: Thank you, Mr. Chairman, I will prepare an exhibit list and I will circulate it, certainly, to the reporter and also to all parties and the Board; that way, there will be a record of all the documents that have been before the Board.

12

13

14

15

16

I haven't had a chance to check and see if some of the letters that parties have written are included in the -- in the affidavit of Mr. Wiens. I don't think they are but I will complete the list and I will get it to all the parties and the Board. Thank you.

17

18

19

20

THE CHAIRPERSON: Thank you. And I think we indicated before the break what we do now, if it was possible, if Ms. McCaffrey were able to respond to Vice Chair's question of her earlier.

21

22

23

24

25

MS. TAMARA MCCAFFREY: I want to -- to go back to the Board's Order in 117/06. The way I read that Order is that there was not actually consensus that market was necessarily the way to go. It was being touted as an option, certainly, that there would have to

1 be more review and study and analysis.

2 And so, what I'd like to do is remind the
3 Board --

4 MR. ROBERT MAYER: Ms. McCaffrey.

5 MS. TAMARA MCCAFFREY: Yeah.

6 MR. ROBERT MAYER: Ms. McCaffrey, I don't
7 -- I don't think we needed to hear your whole argument
8 again. If -- if what I hear, you want to go right back
9 to square one.

10 Am I correct in that?

11 MS. TAMARA MCCAFFREY: No, we are not
12 trying to go back to -- to square one, but we're not --
13 we're not agreeing that necessarily market -- market
14 price is the way go either.

15 Without getting into the merits of this
16 thing, and the merits will be debated, but the -- the
17 point of this motion is that you -- this cannot be dealt
18 with in the context of a General Rate Application dealing
19 with all rates. There just hasn't been -- the things
20 that this Board contemplated and ordered just haven't
21 been done. We're not there yet. It's a backwards
22 process to bring a rate for approval after the fact.

23 MR. ROBERT MAYER: Ms. McCaffrey, my
24 question was very specific. In assuming we grant your
25 request, what is the scope that you're looking at to have

1 us do in September? And are you -- do you want us to go
2 back and, with all due respect, ask us to reverse what --
3 the decision I think we made in agreeing with Hydro that
4 market-based rates for new industrial industry is a good
5 idea?

6 MS. TAMARA MCCAFFREY: Mr. Mayer, market-
7 based rates might be a good idea, but this Board directed
8 that they provide options -- provide proposals for
9 different rate options available. That has not occurred.
10 That has not taken place.

11 So we cannot agree with one thing or the
12 other until options are looked at and evaluated in a --
13 in a cogent matter, and that is -- that's where MIPUG is
14 coming from here. We are not -- at page 3 the Board
15 indicated that establishing a new industry class to
16 potentially receive market-based pricing is a significant
17 public policy issue.

18 Okay? It's a potential. That's one way
19 of doing it. It directed at page 54 that providing
20 different rates, even within one (1) particular class of
21 industry, may be construed as discriminatory, at the
22 bottom of page 54, but such discrimination may be
23 acceptable in a broader public interest context.

24 We recognize that. MIPUG recognizes that.
25 That it may be appropriate, but in order to make that

1 determination you need the proper foundation with which
2 to assess it and review it and it can't be done in the
3 context of a General Rate Application.

4 In -- at page 55, this Board did direct
5 that Manitoba Hydro would be in a position to determine
6 what additional price options are available if they were
7 to follow the things that the Board directed that they
8 do.

9 And in our -- it's our position that that
10 hasn't occurred.

11 MR. BOB MAYER: Thank you.

12 THE CHAIRPERSON: Thank you. Okay, Ms.
13 Ramage, we're over to you for Manitoba Hydro.

14

15 COMMENTS BY MANITOBA HYDRO:

16 MS. PATTI RAMAGE: Thank you and good
17 morning, Chairman Lane, Board Member Proven and Vice
18 Chairman Mayer.

19 Before beginning my submission I'd first
20 like to file the affidavit of Robin Wiens that was -- or
21 formerly entered as an exhibit, the affidavit of Robin
22 Wiens that was filed with this Board on Friday and
23 perhaps give a little bit of background.

24 In reviewing the materials in preparing
25 for this hearing, I began last week, having been

1 otherwise detained by some second round IR responses the
2 previous week, and it came to my attention when I was
3 attempting to put together a response that there was, in
4 fact, no evidence on the record for this motion.

5 The filing, itself, of Manitoba Hydro
6 doesn't represent evidence until someone from Manitoba
7 Hydro adopts it as evidence. We normally do that at the
8 outside of a GRA.

9 It also was quite clear I -- I felt for
10 all parties to -- to go through the -- I believe it's
11 fifteen (15) binders now of materials and pull out the
12 key documents it would be helpful to have --

13 MR. BOB MAYER: Two (2) I don't know
14 about?

15 MS. PATTI RAMAGE: Oh, then it's thirteen
16 (13), I'm sorry. Thirteen (13) -- yeah, lucky thirteen
17 (13), thirteen (13) volumes -- materials are scattered
18 throughout.

19 So there was two (2) reasons for putting
20 that affidavit together, and it was filed Friday simply
21 because that's as soon as I could get that together. So
22 I apologize on one (1) hand for the -- the late timing of
23 that. At the same time I -- I believe it's -- it's going
24 to be helpful for all parties to be able to flip through.
25 Manitoba Hydro attempted to put everything that was in

1 the filing into this affidavit.

2 It's essentially a chronological order of
3 what was already in the filing for the most part. So,
4 Board Member Mayer, I can assure you, if you were reading
5 the materials, I don't think you're going to find much
6 new in this affidavit.

7

8 (BRIEF PAUSE)

9

10 MS. PATTI RAMAGE: Speaking to the motion
11 itself, counsel for MIPUG has suggested that Manitoba
12 Hydro has not complied with Order 117-06 in two (2)
13 regards.

14 First, we've heard a lot about a lack of
15 consultation. We've heard that there was no meaningful
16 consultation, and that the meetings between Manitoba
17 Hydro and Manitoba Hydro representatives in industry were
18 nothing more than unilateral presentations by the Utility
19 that were informing Utility industry representatives of
20 what Manitoba Hydro intends to do regarding industrial
21 rates.

22 The evidence before this Board
23 demonstrates this was not the case. Four (4)
24 consultation sessions took place. And if I can walk
25 through the -- Mr. Wiens' affidavit, we'll see Exhibit C

1 was the first of these presentations made August 28th of
2 2006.

3 That presentation was made to MIPUG
4 members and others. I believe twenty-eight (28) others
5 is what -- twenty-eight (28) different industry
6 representatives were at that meeting.

7 It was followed by presentations to the
8 Winnipeg Chamber of Commerce, the Manitoba Chamber of
9 Commerce, the Brandon Chamber of Commerce and the
10 manufacturers and exporters.

11

12 (BRIEF PAUSE)

13

14 MS. PATTI RAMAGE: Mr. Dudar also advises
15 me Business Council of Manitoba was also. Unfortunately,
16 Mr. Dudar was on vacation last week when I was preparing
17 this affidavit so wasn't able to tell me that. That's
18 the first presentation. So it went to a -- a fairly wide
19 audience of industry as directed by this Board.

20 Parties were asked to come prepared to ask
21 questions. Manitoba Hydro's record demonstrates that
22 questions and comments were asked at the meeting, and
23 there they can be found at Exhibit D in terms of the
24 questions -- some of the questions that were posed at the
25 April 28th meeting which included MIPUG members.

1 Exhibits E set out the Brandon Chamber of
2 Commerce meeting -- the details of that meeting.

3 F is the Manitoba Chamber of Commerce, oh,
4 Manitoba Business Council and Energy Intensi -- the --
5 the Winnipeg Chamber of Commerce, sorry, I'm reading who
6 was there. It's Manitoba Chamber of Commerce, Winnipeg
7 Chamber of Commerce, and Manitoba Business Council also
8 received this presentation, and comments were elicited,
9 and the Canadian Manufacturers and Exporters provided
10 their comments and they've all been documented by
11 Manitoba Hydro.

12 The next -- the -- one (1) of the largest
13 pieces of commentary came from MIPUG, and that can be
14 found on -- at Exhibit H. They submitted a written
15 proposal following that -- or written commentary
16 following that first meeting.

17 Also at exhibit H, you can see the
18 comments of -- of Trans Canada following that first
19 meeting were submitted to Manitoba Hydro. Manitoba Hydro
20 has indicated in Mr. Wiens' affidavit and took those
21 comments back to -- back to the shop to study them and
22 then worked on some type of a draft proposal.

23 In the meantime, Mani -- when it became
24 apparent that they would not meet the April 30th filing
25 date on March 1st, Manitoba Hydro wrote this Board,

1 advised them of that, and also advised this Board that it
2 intended to file its proposal on August 1st. And this
3 Board was aware of that and concurred with Manitoba
4 Hydro's timing proposal.

5 This wasn't something that was done --
6 that Manitoba Hydro just deferred and delayed without
7 keeping parties advised. The Board's letter of -- at
8 exhibit J was copied to all the Intervenors. So all
9 parties were well aware of the progress of this matter.

10 The second draft rate con -- the -- the
11 second meeting came in April of 2007. We have at exhibit
12 K, a letter from Manitoba Hydro of April 10th, wherein
13 they were provided a draft concept so that they'd be in a
14 position to speak to it and discuss it at the proposed
15 meeting dates.

16 And, again, we had the same parties who
17 were at the earlier session invited to discuss this
18 proposal, and again, questions and comments were made
19 during the meetings. Those questions and comments were
20 documented, and can be found at exhibit M.

21 And there were num -- numerous submissions
22 that followed from various industry representatives and
23 those all can be found at exhibit N. And when I say "all
24 can be found," we've placed, I believe, six (6) of them
25 and one (1) through and six (6) in that exhibit. There

1 were other parties, but we did not have their consent to
2 publish their comments.

3 The next session of consultation occurred
4 in July, and at this time, we -- Manitoba Hydro forwarded
5 the exemption criteria to parties ahead of that's
6 consultation so that they'd be in a position to -- it
7 wasn't the exact exemption criteria -- I shouldn't say
8 that. It was ideas regarding the exemption criteria with
9 a request to come to the table with your ideas.

10 MR. BOB MAYER: Where's that document?

11 MS. PATTI RAMAGE: That -- if you look
12 at, I believe -- exhibit O is a -- an email from Bob
13 Brennan of Manitoba Hydro.

14

15 (BRIEF PAUSE)

16

17 MR. BOB MAYER: We found it.

18 MS. PATTI RAMAGE: Mr. Brennan indicates
19 in his letter that the primary purpose of this meeting is
20 to discuss your ideas regarding the exemption criteria
21 that will be included as part of our rate application to
22 the Public Utilities Board, and used by Manitoba Hydro to
23 determine which companies would be eligible for an
24 exemption from the application of higher rates.

25 The following Exhibit P sets out the --

1 prop -- the agenda for that meeting and the materials
2 that were submitted to the parties prior to, for
3 discussion purposes.

4 MR. BOB MAYER: Okay, and -- and at the
5 back end of Exhibit P, as I see it, there's something
6 call -- called "Possible Criteria for Review and
7 Adjustment of Base Line."

8 MS. PATTI RAMAGE: That's correct.

9 MR. BOB MAYER: That's a pretty short
10 document.

11 MS. PATTI RAMAGE: Yes, it is, because at
12 this point, and following on Ms. McCaffrey's shoes, we
13 were there to listen to parties, to hear what they were
14 doing. We were giving them our thoughts.

15 Mr. Dudar made a presentation, I believe,
16 at that -- at that hearing, and we were there to hear
17 what other parties thought of the direction we were
18 going.

19 The suggestion has been made that our mind
20 was made up when we went to these meetings. And -- and
21 what I'm trying to suggest is tho -- is walk through how
22 this process went.

23

24

(BRIEF PAUSE)

25

1 MS. PATTI RAMAGE: Exhibit -- Exhibit Q
2 sets out some of the - the notes from the July 10th
3 meeting. And I'm gonna skip over Exhibit R for a moment,
4 'cause that's a bit of a different issue. That was a --
5 a filing of responses to questions submitted by MIPUG at
6 an earlier session, but the dates -- this was intended to
7 go in chronological order.

8 Exhibit S is -- it represents Manitoba
9 Hydro's or Mani -- Manitoba Industrial Power Users Group,
10 very lengthy response following the July 10th meeting.

11

12 (BRIEF PAUSE)

13

14 At Exhibit T, you'll find the sixteen (16)
15 page document regarding the exemption proposal that was
16 discussed at the December 13th meeting. This document,
17 the affidavit will show, was forwarded to parties on
18 November 27th, along with an invitation to review it and
19 come prepared to discuss it at that December 13th
20 meeting.

21 In fact, as illustrated at Exhibit U,
22 MIPUG took advantage of that opportunity and posed
23 questions prior to that meeting, regarding that sixteen
24 (16) page document to Mr. Dudar and there was an email
25 exchange to assist in clarifying what Manitoba Hydro was

1 proposing.

2 Exhibit V, you'll see the various parties
3 who attended that December 13th meeting. So that's
4 essentially the record in terms of -- of what this
5 consultation was -- how it took place. And I thought it
6 was useful to put it into a) an affidavit so that there
7 was evidence before this Board, and b) so that it could
8 be followed chronologically.

9 Now, while the first session -- that April
10 28th session I spoke about -- was more general in nature,
11 once rate design concepts were developed, they were sent
12 out ahead of time, with a request to look at them and
13 come back with questions.

14 The meeting notes demonstrate Manitoba
15 Hydro invited questions and comments, and parties in
16 attendance responded. The record also demonstrates that
17 participants took advantage of Manitoba Hydro's offer to
18 provide further comment or submit additional questions.

19 And following each que -- each session,
20 changes were made to what Manitoba Hydro was proposing.
21 Paragraphs 15, 21, and 25 of that affidavit document the
22 changes that went following the sessions.

23 Were the comments heard? Absolutely. Was
24 every suggestion adopted? No. And they weren't. But
25 that's not what consultation is about. MIPUG's complaint

1 appears to be focussed on the fact that they were not
2 intimately involved in the design process, and that they
3 didn't have enough background information or a foundation
4 to go forward.

5 Well, first of all, if I could address --
6 Manitoba Hydro has experts in rate design; in fact, we
7 have a department devoted to this function. The goal of
8 this consultation was not to have customers step into our
9 rate designer shoes; rather it was allow -- to allow a
10 particular customer segment, that was identified by this
11 Board, to voice their opinions regarding a particular
12 issue, in order that Manitoba Hydro might take these --
13 those concerns under advisement and prior to making a
14 determination as to the rate proposal that the
15 Corporation intended to submit to the Public Utility
16 Board for review by all interested parties.

17 MIPUG has suggested that there's some sort
18 of industry standard for consultation, pointing to Quebec
19 Consultation -- Quebec Consultation process and a BC
20 consultation process.

21 Manitoba Hydro first strongly disagrees
22 with the suggestion that the industry has adopted any
23 sort of standards. Generally speaking, consultation
24 processes are initiated to elicit ideas and comments
25 regarding an issue that requires forward momentum.

1 Depending on the issue, there are
2 different parties, different interests and different
3 objectives. To suggest there's any sort of industry
4 standard, is simply not reasonable.

5 But Manitoba -- MIPUG has brought two (2)
6 examples to this -- this hearing room today, and I would
7 suggest two (2) examples do not a standard make. I'd be
8 very wary of accepting a particular process as being the
9 ideal process or a precedent. To the best of my
10 knowledge, Ms. McCaffrey wasn't at any of these sessions
11 she spoke about at detail -- in detail.

12 We have no evidence of what happened; we
13 don't know the -- the innermost workings of what was
14 going on, and there's no evidence properly before this
15 Board regarding -- regarding these processes.
16 Consultative processes are designed to fit the
17 circumstance; there's no one-size-fit-all -- fits all,
18 and Manitoba Hydro believes that the consultation process
19 that it initiated was more than satisfactory.

20 MIPUG has also asserted that Manitoba
21 Hydro failed to comply with Order 117-06 in that it
22 didn't file a report on the energy intensive issue and
23 should be barred from proceeding until that report is
24 filed.

25 This Board directed Manitoba Hydro to, and

1 I'm quoting:

2 "File a report of recommendations with
3 respect to establishing a new energy-
4 intensive class."

5 Manitoba Hydro's done just that. The
6 report and recommendations can be found at Tab 10 of the
7 GRA.

8 These materials provide background
9 information; they provide a report on what has transpired
10 since the issuance of Order 117-06 and they contain
11 Manitoba Hydro's rate application dealing with the energy
12 intensive issue.

13 The real question is whether the filing
14 provides sufficient disclosure to allow other parties to
15 meaningfully participate in the process. The rate
16 proposal is set out quite clearly. We have heritage
17 rates for consumption below baseline. We have provision
18 for our growth allowance. We have marginal costs rates
19 above that point, and we have the availability of an
20 exemption criteria for the marginal cost rate component
21 where that criteria -- where that criteria is met.

22 Now MIPUG is entitled to test Manitoba
23 Hydro's proposal; it's already done so through two (2)
24 rounds of IRs, as well as provision to some answers to
25 some fairly detailed inquiries during the consultative

1 process. And there, I refer you to examples such as
2 Exhibit Really.

3 As this proceeding progresses, MIPUG will
4 continue to have opportunities to test Manitoba Hydro's
5 proposal through cross-examination and by submitting
6 their own expert evidence regarding the proposal. They
7 can challenge the baseline level, they can question the
8 growth line -- growth allowance, they can examine the
9 proposal for calculating marginal costs and they can
10 object to the exemption criteria they like.

11 The fact is, they know what we're looking
12 at, and at the end of it all, they can call their own
13 evidence and make their own proposals.

14 Counsel for MIPUG has argued that Manitoba
15 Hydro's application is deficient and there simply isn't
16 enough information. Well, in accordance with principles
17 of natural justice, the Board has an obligation to ensure
18 interested parties has a reasonable opportunity to know
19 the subject matter of the hearing.

20 The decisions I've looked at over the
21 years indicate that in order to meet this requirement,
22 the applicant must disclose the fundamental basic facts.
23 Now these cases, typically -- I -- I haven't been able to
24 find one where they dealt with kicking an application
25 when it was first filed. It's generally appeals of

1 orders once the Board has made the order and parties have
2 gone back and said there wasn't a factual basis.

3 But even in that circumstance, it's
4 whether the -- the courts have ruled, Are the fundamental
5 basic facts known. Manitoba Hydro's application has done
6 this and more. If a party wishes to argue there's not
7 enough information on the record to justify the issuance
8 of an order, the appropriate time to do so is at final
9 argument when all the evidence is actually in.

10 It's not appropriate at the outset of the
11 Hearing, before we've even gathered to start hearing the
12 evidence or to hear cross-examination, provided the
13 parties know the subject matter of the Hearing. It is
14 for the applicant to decide how to put its case in; that
15 is, the applicant decides what information it intends to
16 rely on in order to advance its case and prove that case.

17 Now, some additional information can be
18 elicited through the evidentiary process, but when -- and
19 when the Hearing is over, I believe you'll -- you'll
20 conclude Hydro has advanced a strong case. But I can't
21 make that conclusion at this juncture, because we haven't
22 even begun the hearing.

23 I also note that I haven't had an
24 opportunity to review the recommended minimum filing
25 requirements from MIPUG. But I -- and I would like the

1 regarding the exemption criteria could only be posed in
2 Round 2 and, by our count, that's -- there was fifty (50)
3 questions asked in Round 2.

4 And while we know that Round 2 was the
5 first time to ans -- answer questions or ask and answer
6 questions in this forum regarding that exemption
7 criteria, it's important to recognize that the Manitoba
8 Hydro executive met with industry to discuss the
9 exemption criteria in July of 2007.

10 Manitoba Hydro is taking this issue very
11 seriously. Mr. Brennan, Mr. Warden and Mr. Rose, along
12 with other members of Manitoba Hydro, met with industry
13 to discuss how we were going to go forward with the
14 exemption criteria.

15 Manitoba Hydro provided parties with a
16 sixteen (16) page discussion paper in late November. I
17 believe the exact date was November 27th.

18 MIPUG's consultant engaged Manitoba Hydro
19 in a series of questions regarding the criteria in early
20 December -- that's at Exhibit U -- and the parties
21 attended a meeting on December 13th to further discuss
22 the exemption criteria.

23 These parties -- and both MIPUG -- MIPUG
24 was represented, as was Keystone, at these meetings --
25 they were much further along than normally would be the

1 case prior to the first set of IRs, and I would expect
2 garnered at least as much information as they would have
3 from an earlier round of IR's.

4 And I think it's important to understand
5 why the exemption criteria was not filed earlier; because
6 we were working through a consultative -- consultative
7 process at the same time as we were attempting to move
8 forward with this issue.

9 There are problems associated with that.
10 There's no doubt. We did the best we could. We have
11 answered in IR's -- I believe an IR was submitted by
12 MIPUG at one point saying why did you file on January
13 18th, you had told us you wouldn't file. On December
14 18th, I'm sorry. Why did you file that exemption
15 criteria?

16 Well as indicated in Mr. Wiens' affidavit,
17 it is accurate that at the December 13th meeting Manitoba
18 Hydro did undertake to wait for MIPUG to provide further
19 comments on the exemption criteria before it filed.

20 But Manitoba Hydro made that undertaking
21 at a time when it was not aware that this motion was
22 going to be filed. We were told the very next day about
23 this motion, and that this motion was gonna be, in part,
24 based on lack of information on the record; in
25 particular, the exemption criteria.

1 I'd submit we can't have it both ways. We
2 would like to work with MIPUG. We're hearing MIPUG would
3 like to work with us. But the best way to do that is get
4 the information in front of this Board; to try to do the
5 two (2) process in tandem was not going to work.

6 We've heard from MIPUG today that they
7 don't believe the foundation or the need for the rate has
8 been established by Manitoba Hydro and, as such, we
9 should bring the process to a halt.

10 First and foremost, the need for this rate
11 is well established. At the 2006 Cost of Service
12 Hearing, Manitoba Hydro raised this issue. After hearing
13 evidence and argument from, not just Manitoba Hydro, but
14 all the parties, the Board concluded that it supports
15 Manitoba Hydro's concerns, and directed the
16 establishment of a new energy intensive class.

17 MIPUG is trying to argue that same point
18 again today. While they might not agree with the
19 concerns that were shared by Manitoba Hydro and the PUB,
20 there's no basis to say that the concerns are without
21 foundation.

22 While the solution may not be simple, the
23 premise is relatively straight forward. When there are
24 export opportunities of prices in excess of rates charged
25 to Manitoba consumers, Manitoba Hydro can increase its

1 overall revenue and net income by selling to its export
2 customers rather than the domestic market.

3 When it does not; that is, Manitoba Hydro
4 sells the energy to a domestic customer, which is always
5 its first priority, overall, Manitoba Hydro's revenue and
6 net income are lower than would otherwise be the case.
7 Linkages between export potential, Manitoba consumption,
8 and average industrial rates below average export prices
9 prompted Manitoba Hydro to express concern related to
10 large industry intensive firms, particularly those using
11 energy in feed stock for industrial purposes.

12 This is an excellent summary of the
13 problem, however, Manitoba Hydro can't take credit for
14 it. It comes directly from Board Order 117 of 2006 at
15 page 3 of that order - that can be found at Exhibit B of
16 Mr. Wiens' affidavit.

17 I fully expect that some parties will
18 continue to challenge those conclusions. It's in their
19 interest to do so, but -- and I'm sure the Board will
20 give them an opportunity to present their evidence and
21 opinions. The point here is that we have a basis for
22 going forward, and we should not entertain any proposal
23 that would prevent us from doing so.

24 MIPUG has stated that we need to examine
25 what's going in other jurisdictions prior to developing

1 our own proposal, and that the PUB should send us back to
2 do that. Well, Manitoba Hydro monitors what's going in
3 other provinces. We are interested in developing a made-
4 in- Manitoba solutions to the problems we identify.

5 We don't deny that others may have tackled
6 similar problems differently, but those others are
7 working with different facts, different circumstances,
8 different legislation. When putting a rate proposal
9 together, the Corporation makes its determination as --
10 as to what is the best option for its ratepayers taking
11 into consideration not one (1) class, but all classes.

12 The Corporations certainly takes under
13 advisement what is going on elsewhere and the comments of
14 others, but when Manitoba Hydro presents an application
15 to the Public Utilities Board, that application
16 represents the Corporation's best judgment as to what is
17 best when balancing the needs of all of its ratepayers
18 and stakeholders.

19 Manitoba Hydro's conclusion is not the
20 final determination as far as rate by -- ratepayers are
21 concerned in any event. It's simply the Corporation --
22 the proposal the Corporation intends to advance.

23 If Mani -- if MIPUG does not believe
24 Manitoba Hydro's given adequate weight to par --
25 particular considerations, MIPUG is free to argue the

1 point using all means available to it. Requiring
2 Manitoba Hydro to go back and revisit its proposal at
3 this juncture is not one of those means, nor would it be
4 efficient or effective.

5 MIPUG's position in this case isn't
6 dissimilar from the position it took back following the
7 2004 electric GRA. In that case, MIPUG argued there was
8 no evidence upon which the PUB could justify rate
9 increases it ordered.

10 The court concluded in that case that,
11 after sifting through all the material, it became clear
12 that there was -- it was not a matter of law that -- in
13 that there was no evidence, rather MIPUG simply disputed
14 the opinion at which this Board arrived at.

15 Manitoba Hydro submits the same is true in
16 the current case coming out of this consultation. The
17 real disagreement is with Manitoba Hydro's opinion, but
18 it's time to put our proposals to this Board and let the
19 Board weigh on the issue.

20 MIPUG's also argued that to attempt to
21 review this proposal at this juncture would be
22 prejudicial to any meaningful consultations with
23 government. They've suggested Manitoba Hydro failed to
24 comply with Order 117/06 because government was not at
25 the table.

1 I've only a few small and careful points
2 to make on this topic. First, Manitoba Hydro does not
3 purport to speak for government, nor do we purport to
4 direct government. However, I think -- I would like to
5 think, at least -- everyone in this room is well aware
6 that government monitors Manitoba Hydro's activities.

7 And while I can't speak for government,
8 I'm confident that government's absence from the
9 consultations was not because they didn't know what
10 Manitoba Hydro was doing or that they didn't know about
11 this Rate Application.

12 In reviewing MIPUG's submissions that are
13 found in this -- in the affidavit, I -- I noted that --
14 and Ms. McCaffrey referred to this actually this morning
15 -- that MIPUG has disclosed it has sent letters to the
16 Manitoba Government to invite government participation in
17 the process.

18 I don't have those letters. We haven't
19 gone that far in this proceeding, so I -- I don't have --
20 I don't know what the reply was exactly, except that they
21 have indicated the government said it wasn't going to
22 participate. That's -- that's what I know in terms of
23 what MIPUG's discussions are.

24 I would like to move forward and perhaps
25 hear from -- and -- and have the opportunity to hear

1 MIPUG's side of that exchange.

2 There's not -- not much else I can really
3 say on this point except for it appears government -- I -
4 - I would submit government is aware of what's going on,
5 and they've -- they've come to their own conclusions. I
6 can't speak to those conclusions.

7 I -- I would like to address one of the
8 points Mr. Anderson made. And he discussed the need for
9 government to be involved because of -- I think I heard
10 that he -- he felt exports could be taking priority as a
11 result of this proposal.

12 In my opinion, that's not a policy change.
13 That would actually be a legislative change, if exports
14 took priority, and I wanted to clarify that that's not
15 the case with this proposal. It's not -- Manitoba Hydro
16 has a duty to serve, and Manitoba Hydro has to meet that
17 duty to serve. It's not about denying service in favour
18 of export customers. It's about how to price that power
19 that's going to these customers.

20 MIPUG, in its motion, asked the Board to
21 send the parties back to a consultative -- further
22 consultation process. I've heard TREE discuss that
23 process. MIPUG's also asked for a standalone hearing
24 today, as has TransCanada Pipeline and others have
25 supported it. Manitoba Hydro opposes this measure.

1 We've -- Manitoba Hydro consulted
2 industry. We listened and we took their comments under
3 advisement and, ultimately, the Corporation made its
4 decision about what they thought was the best means of
5 dealing with the issue and put the issue before the
6 Board.

7 Consultation, at the end of the day, is in
8 the eye of the beholder. I think there's a tendency that
9 some parties feel they haven't been consulted with, or
10 that they haven't been listened to if their ideas are not
11 accepted. But that's not consultation. That process
12 might better be termed a "negotiation." Manitoba Hydro
13 wasn't ordered to negotiate with Intervenors on what
14 would go in its application, nor would it have been
15 appropriate to do so.

16 Counsel for MIPUG has said they weren't
17 looking for consensus or agreement. I think if we look
18 through some of the submissions they've made, they --
19 they might not support that sentiment. If we look at the
20 comments made following some of the consultation meetings
21 -- for example, the August 28th meeting -- we see that
22 MIPUG -- MIPUG makes the comment, and this is Exhibit H.

23 THE CHAIRPERSON: Tab H?

24 MS. PATTI RAMAGE: Yes. They make the
25 comment -- or first, if I back up, I think it's

1 instructive to look at MIPUG's comments.

2 The Board issued Order 117/06 on August
3 2nd of 2006. Some twenty-six (26) days later, on August
4 28th, 2006, Manitoba Hydro held its first meeting with
5 industrials in accordance with the direction received in
6 the order. That same day, MIPUG provided Manitoba Hydro
7 with its written comments.

8 And here at Page 2, we see:

9 "Hydro schedule appears to indicate
10 three (3) steps contemplated here:
11 Meet with industrials, identify
12 alternatives, then go to PUB.
13 Industrials have not had meaningful
14 consultation in this matter to date,
15 even though outstanding for long time
16 now, more than one year. August 28th
17 session as proposed does not yet start
18 the process. Need to establish how to
19 get meaningful working group or
20 interaction to gain some agreement on
21 scope and scale of problem. Consider
22 options, assessment of related
23 impacts."

24 So we're barely out of the gate here and
25 we've heard that we're not doing enough, and more

1 importantly, MIPUG is looking for agreement on moving
2 forward.

3 Those similar sentiments can be found in
4 other submissions. And I think they're indicative of the
5 approach to consultation. And in an ideal world,
6 Manitoba Hydro would love to have consensus on this
7 issue. It would be wonderful. It would avoid a lot of
8 problems.

9 MIPUG members are Manitoba Hydro's
10 customers. Manitoba Hydro prides itself in customer
11 service, and it's extremely awkward to be in this process
12 with its own customers. It would be much preferable,
13 from our view, to be working with the Utility -- and to -
14 - or with the -- our customers, and to reach consensus.

15 However, at some times our interests are
16 not -- are going to be at cross purposes, and that's not
17 going to be possible.

18 RCM/TREE has indicated support to put this
19 issue before the PUB, also -- but also comments that the
20 consultation process could have been much broader.

21 I think this comment points out in part,
22 the difficulty associated with a consultation in these
23 circumstances. The addition of more players may well
24 bring additional perspectives; however, to what ultimate
25 purpose?

1 Manitoba Hydro began purposefully wide.
2 We invited Chambers of Commerce, other industry groups.
3 As the process went on, we narrowed the focus in order to
4 be able to move forward with -- with ideas.

5 If we're going to move forward at this
6 point, the best means to do so is present evidence and
7 opinions to an objective third party and obtain a ruling.
8 And that's what -- exactly what this regulatory process
9 is intended to achieve. And it's time to move forward.

10 In terms of a separate hearing process
11 outside the confines of the GRA, Manitoba Hydro again
12 does not support this proposal. The new or expanded load
13 rate is an integral component of the GRA. One cannot be
14 heard without the other.

15 I think Mr. Gange has already referred to
16 this. I believe even Ms. McCaffrey referred to the
17 significance of this proposal, in terms of finances and -
18 - and the corporation's finances.

19 Ms. McCaffrey referred to, I think, PUB
20 Manitoba Hydro's Second Round 96I, I -- I'm looking at, I
21 think, the same information in 96D, which I had copies to
22 distribute, but I think we'll get the same information
23 from the materials circulated by Ms. McCaffrey.

24 And that indicates that in 2000 -- '08 and
25 '09 the revenue impact from domestic customers -- the --

1 the estimate of the load forecast results in a \$15.1
2 million impact coming out of this rate proposal.

3 The IFF indicates that Manitoba Hydro will
4 require \$1.608 billion in order to meet the Corporation's
5 revenue requirement.

6 In order to meet that revenue requirement,
7 we're looking for a 2.9 percent increase. But it should
8 be understood that that \$15 million in revenue for that
9 one (1) year isn't part of the 2.9 percent increase. It
10 would be captured in general consumers revenue.

11 Removal of this component of the GRA puts
12 the entire foundation of Manitoba Hydro's application in
13 question.

14 Any adjustment to the new or expanded load
15 rate requires an adjustment elsewhere. As a result, in
16 Manitoba Hydro's view, it would be inappropriate to
17 consider the issues in isolation from the other -- one
18 from the other.

19 MIPUG has also argued that consideration
20 of this issue is -- is -- it's just too much to be heard
21 in one (1) process. In my time before this Board, every
22 GRA has had major areas of focus, and we've always
23 managed to accommodate those focuses without having to
24 resort to standalone hearings.

25 And in that regard I'm talking about rate

1 hearings. When we're in a GRA we haven't had to ever
2 peel off a piece before.

3 And this Board ultimately controls its own
4 process. The paramount consideration must always be that
5 the Board has all the relevant information before it when
6 making its decision. And I would submit it will not if
7 it attempts to isolate the newer expanded load rate from
8 the remainder of the GRA.

9 We've also heard this morning that parties
10 need time to retain experts. This application was filed
11 August 1st of 2007. Parties have known that Manitoba --
12 certainly some of the parties have known the direction
13 Manitoba Hydro was proceeding since April of 2007. Even
14 with respect to the exemption criteria we were looking as
15 early as July of 2007, in terms of direction.

16 We've all had notice of the schedule for
17 the hearing since the pre-hearing conference in October.
18 Not only has there been ample time to prepare for and
19 find experts, I think the parties have had ample time to
20 review the materials.

21 I've heard TCPL discuss a short timeframe.
22 Well, TCPL was in those meetings back last summer. April
23 -- the August 1st filing has been before parties for a
24 long time now. They were aware of that filing even
25 before it went in what was going to go in.

1 I have serious concerns with hearing now
2 that we're having trouble finding experts to discuss the
3 issue.

4 I would also comment that in granting TCPL
5 Intervenor status it was certainly Manitoba Hydro's -- it
6 was, I felt implicit in that order, that it was not being
7 granted to allow for further delays, it was to
8 participate in the process as scheduled.

9 We have also heard about a suggestion to
10 take this matter to the Court of Appeal prior to hearing
11 this Rate Application.

12 Section 26(4) of Crown Corporation's
13 Public Review and Accountability Act specifically sets
14 out a list of factors which the PUB may take into
15 consideration. Number 8 on that list is:

16 "Any compelling policy consideration
17 that the board considers relevant..."

18 And if that wasn't broad enough, the
19 legislature added Number 9:

20 "Any other factors that the board
21 considers relevant to the matter."

22 It is not my intention to argue
23 jurisdiction at this hearing but the fact is the
24 legislature has given the Board very broad jurisdiction
25 with respect to policy and other issues. Until we see

1 what the PUB orders, no one is in a position to
2 sufficiently define a question which it could take to the
3 Court of Appeal to ask the Court of Appeal to determine
4 if X is what the legislature meant when they said policy
5 or other considerations. Those are pretty broad words
6 and to try to -- to define it without a particular order,
7 I think, would be extremely difficult.

8 Equally important, why would we go to the
9 time and expense of a trip to the Court of Appeal until
10 the Board has had the opportunity to determine where it
11 wants to go with this issue?

12 MIPUG has referred to the REGIE decision
13 in -- in its submissions. And I think this was actually
14 in its written submission; I didn't hear Ms. McCaffrey
15 discuss this directly. I had a real challenge with
16 trying to figure out what happened in the REGIE because
17 everywhere I went it was in French.

18 But I was able to find an English
19 translation, a summary, and I can provide this to the
20 Board, and in that summary it says:

21 "Given the applicable legal and
22 regulatory framework energy policy and
23 economic development must be taken into
24 account when considering service to
25 major industrial customers. The REGIE

1 therefore recommends that the
2 government provide, in the Act,
3 respecting the REGIE de l'energie --
4 [I'm sorry] -- specific regulatory
5 powers related to rate-fixing
6 principles or other factors that it
7 wants the REGIE to consider in
8 connection with service to major
9 industrial consumers above certain
10 power."

11 Well, I would submit the Manitoba
12 legislature already provided the Board with that
13 authority in -- when it told it it could take into
14 account whatever policy considerations it deemed
15 relevant. The PUB has the statutory authority that was -
16 - that has been sought by the REGIE.

17 And it is of note that the REGIE is
18 seeking that statutory authority. They're not -- they
19 were not saying we are not interested, they're saying we
20 need the authority to be able to do this.

21 MIPUG has characterized Manitoba Hydro's
22 comments regarding the need to review this rate proposal
23 as part of the GRA as being on the ground of urgency.
24 While I'm not sure I would use that word, I think it's
25 fair to say that Manitoba Hydro believes that further

1 delay is not in the best interests of Manitoba Hydro or
2 the major -- majority of interests -- of industry in the
3 province, or industry looking to locate in the province.

4 I think it's well known that in order for
5 industry to locate or expand in the province they need to
6 know the cost of doing business here.

7 That Manitoba Hydro rates are uncertain in
8 terms of the industrial sector is fairly well known. The
9 degree of the potential impact of possible rate changes
10 will inevitably create some unease -- uneasiness in
11 investors looking at this province.

12 Regardless of how likely it is that their
13 load would be captured by the proposed rate, rate
14 certainty is needed. The is -- the issue has been up in
15 the air for three (3) years now, it's time to move on.

16 I'd also like to comment under this the --
17 the question of -- of parties coming. We heard Ms.
18 McCaffrey give some evidence that there's no one coming.
19 We heard counsel for Keystone, that they have -- they
20 have load coming on. And I think that illustrates the
21 danger of counsel giving evidence, because I'm hearing
22 two (2) different stories from the two (2).

23 But more importantly there's certainty
24 required for people coming to the province, and it's not
25 just the parties we have in the room. Manitoba Hydro

1 wants industry to grow in this province and as long as
2 there's uncertainty, I think there's going to be some
3 uneasiness of looking at us.

4 Whether you're a smaller industrial load
5 or large, until you know what that rate proposal says I'm
6 not confident that you are going to make that commitment
7 to this province.

8 In conclusion I'd -- in MIPUG's May 2007
9 submission, and that's exhibit N, MIPUG stated that, and
10 I quote:

11 "Objective determination still needs to
12 be made regarding whether there is a
13 problem, the scope of the problem, and
14 whether curbing industrial growth is
15 the best solution to the problem."

16 While Manitoba Hydro doesn't necessarily
17 agree with MIPUG's statement of the issues, it does agree
18 that there's -- it's time for an objective determination.

19
20 Again, in that same submission, MIPUG
21 states that:

22 "A rate solution has been proposed and
23 examined before the nature and the
24 extent of the problem had been
25 rationally and objectively tested."

1 the Court of Appeal, I would like the opportunity to
2 consult my client and determine if it has any suggestions
3 as to the scope of such a reference and whether it's
4 limited to this rate.

5 Other matters have been raised in this
6 hearing regarding scope, but at the end of the day
7 Manitoba Hydro does not promote going to the Court of
8 Appeal. We don't think it's in the best interest of the
9 process. We want to have a discussion with the parties
10 who are here in this room in front of this Board and get
11 a determination on the issue.

12

13 (BRIEF PAUSE)

14

15 MS. PATTI RAMAGE: So for these reasons
16 Manitoba Hydro respectfully requests that the motion of
17 Mipug be denied and that the schedule set out for the
18 hearing of the GRA including the new -- new or expanded
19 load rate as set out in Order 136 of '07 be followed.
20 Thank you.

21 THE CHAIRPERSON: Thank you, Ms. Ramage.
22 Ms. McCaffrey...?

23 MR. BOB MAYER: I have a couple of
24 questions. The -- I think I heard Hydro admit that the
25 issue of the criteria and the exemptions for the new

1 industrial rate were filed somewhat late for everyone to
2 have had real consideration of it.

3 I think I also heard that there's still
4 some things to talk about in that area. Quite frankly,
5 Ms. Ramage, I think the Board is feeling somewhat
6 overwhelmed by what's now coming out in terms of
7 reaction.

8 I can't say that I'm surprised. I
9 expected reaction. I think I expected it a little
10 earlier than we got it. I'm not entirely sure where the
11 responsibility for that goes but insofar as the Board's
12 concerned, I don't think that matters at this point.

13 Do you honestly believe that with what we
14 now hear is coming down on this issue, not just from
15 MIPUG and not just from Keystone, but from the Coalition,
16 from -- from MKO and to some extent TREE/RCM has always
17 indicated their interest in this; in fact, advocated it
18 if I recall correctly.

19 Do you really believe that, within the
20 schedule we have set which is relatively limited because
21 of our time constraints, that we could, in fact, give you
22 due consideration to not only the General Rate
23 Application exclus -- or inclusive of the -- exclusive of
24 the -- the new -- the new rate proposed?

25 Do you really think that we have the time

1 Ms. McCaffrey, do you have anything to say
2 on anything new that's come up with Ms. Ramage's
3 comments?

4 MS. TAMARA MCCAFFREY: There are a few
5 points that I would like to make. First of all, with
6 respect to the paragraph which Ms. Ramage read from the
7 summary of the REGIE process, where the REGIE made some
8 suggestions and recommendations for the government in
9 terms of legislation. In fact, we put that before you at
10 Tab 8, it's around page 6 in that tab.

11 So that material is in your book from
12 MIPUG as well and it was also something that I was going
13 to take you to in my -- in my reply regarding this. I
14 thank My Friend for that.

15 Bring it on, I said, in 2006. Yes, but
16 not in the context of a General Rate Application. This
17 is a new proposal that needs again, the proper debate
18 study and review to protect the integrity of this
19 process.

20 And a special hearing with respect to this
21 matter given the magnitude of implications both economic
22 and policy-wise and precedent-wise from a rate review
23 perspective need to be properly considered; that is what
24 this motion is about.

25 We do think it needs to be brought to the

1 Board in a public forum and -- and -- but not in this
2 review; not in a General Rate Application. That was
3 never what was contemplated.

4 We want to call evidence with respect to
5 proper policy development process. These are not your
6 usual experts that we come to a rate hearing with.

7 This is not your usual rate. This is
8 something that's never been before this Board before, and
9 it needs, again, the proper review. It needs different
10 expertise that we usually have.

11 And we need time to do that. Efforts to
12 do that have been ongoing since this application has been
13 filed. I've already indicated Peter Ostergard's --
14 former Commission Chair of British Columbia --
15 willingness to participate. However, he does have
16 another conflict until July.

17 Other parties -- no one else is
18 disagreeing, other than Hydro that -- that they need more
19 time to properly get the right evidence before the Board.

20 Ms. Ramage also made the comment she --
21 that we've never carved off a piece of the application
22 before. When special issues do come up that are new and
23 unprecedented, that is exactly what this Public Utilities
24 Board has, in fact, done.

25 We have had special hearings with respect

1 to issues in terms of when Manitoba Hydro wanted to
2 acquire Centra. Before that was done, there was a
3 hearing process after -- after the acquisition.

4 In terms of the integration, there was a
5 special hearing with respect to that. There's no
6 question that that can be done and that -- this is a
7 perfect example of where it should be done. We want to
8 move forward --

9 MR. BOB MAYER: We also -- we also had a
10 special hearing on cost of service study.

11 MS. TAMARA MCCAFFREY: That's right.

12 MR. BOB MAYER: We carved that out
13 specifically.

14 MS. TAMARA MCCAFFREY: That's right. And
15 -- and from there the Board made certain conclusions that
16 it wanted to look at other options beyond -- purely a
17 cost based review.

18 So be it and other options will be looked
19 at. But -- but where are they here? We've got one (1)
20 proposal, we've got a six (6) page report.

21 MS. TAMARA MCCAFFREY: With respect to
22 Ms. Ramage's comments that the Board cannot direct Hydro
23 how to make its own case. Well, I think technically you
24 know that that's true.

25 But it's in Hydro's best interest that

1 this rate -- again, if they want to go in this direction
2 and have precedential value in going forward -- that this
3 rate be credible with this Board, with the other parties,
4 and with Manitobans and their customers, given their
5 concern with customer service.

6 So, no, the Board, I suppose, can't make
7 them do certain things to make their own case, but the
8 Board can certainly send a very strong message as to the
9 type of things that it would like to see and that it
10 would need.

11 And again, we encourage and recommend that
12 the Board open it up to other parties to also provide
13 input with respect to that piece in order to do a proper
14 review of this and fulfill its mandate.

15 MR. BOB MAYER: Ms. McCaffrey, I -- I
16 don't think you have to pursue that particular issue too
17 far. As a lawyer with a significant amount of experience
18 in this business, if a judge suggested to me very
19 strongly that if I wanted such and such a decision, I
20 better provide such and such of an information.

21 It would ill behoove me to -- to -- to
22 ignore that and probably would make me liable and
23 negligent if I chose to ignore it.

24 MS. TAMARA MCCAFFREY: Thank you, Mr.
25 Mayer. This is an inquisitive process. You know, this

1 motion comes across as adversarial but really -- this is
2 a really significant issue for all of us and it needs the
3 proper consideration.

4 And we're trying to be helpful to the
5 Board and we think Manitoba Hydro should do more to help
6 this Board also.

7 That completes my -- my comments. Thank
8 you very much for your time and attention today.

9 THE CHAIRPERSON: Thank you. So, Ms.
10 Trull, for Keystone, if you would not mind trying to get
11 something back to us tomorrow after you consult with your
12 colleague.

13 Also, Ms. Ramage, you indicated you might
14 have some comments with respect to MIPUG's minimum filing
15 requirements, if you could do the same?

16 MS. PATTI RAMAGE: Yes.

17 THE CHAIRPERSON: Thank you for your
18 attendance -- sorry --

19 MR. BOB MAYER: With respect to Keystone,
20 if the -- if this motion were granted in some form or
21 other, what is the likelihood of Keystone being involved
22 in the part of the General Rate Application that would
23 still be remain -- still remain to commence in March?

24 MS. TAMARA TRULL: One moment please.

25

1 (BRIEF PAUSE)

2

3 MS. TAMARA TRULL: There may be some
4 involvement, but not that much. We want to avoid the
5 overlapping.

6 THE CHAIRPERSON: Thank you. Mr.
7 Peters...?

8 MR. BOB PETERS: Mr. Chairman, let me
9 first of all give due credit where it's due, and it's to
10 Mr. Gaudreau and his efficient services, and his
11 assistance from staff.

12 An exhibit list has now been prepared.
13 That can be circulated before parties leave the -- leave
14 the Hearing Room. It does contain, Mr. Chairman, as
15 exhibits, the documents that you indicated in your
16 opening comments the Board has -- has reviewed.

17 It also does include the book of
18 references from MIPUG. It includes the affidavit of Mr.
19 Wiens, and it also includes, as the last exhibit, MIPUG's
20 summary of recommended minimum filing requirements.

21 So with that document, I believe the
22 parties will know the materials that the Board is
23 deliberating on. Mr. Chairman, parties won't be sure how
24 -- how the Board will proceed on this matter. There may
25 be some discussions amongst counsel, and if, as a result

1 of any of those discussions amongst counsel, there is any
2 new information, I'll seek permission to bring it to the
3 Board on notice to all the parties, what those
4 discussions have turned out.

5 So with that comment, Mr. Chairman, those
6 are my comments.

7 THE CHAIRPERSON: Very good. Then thanks
8 again for your attendance, your active participation. We
9 have heard a lot of different, spirited positions and
10 various extent support for the various positions taken.

11 Our decision will follow in due course.
12 It is a complex matter. We will have to give it due
13 consideration, and we will want to get the last bits of
14 information in before we begin deliberating. So thanks.
15 We stand adjourned. Mr. Peters, by the way, is going to
16 meet with various counsels afterwards on the schedule and
17 things of that matter.

18

19 --- Upon adjourning at 12:00 p.m.

20

21 Certified Correct,

22

23

24

25 _____
Sean Coleman