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MANITOBA PUBLIC UTILITIES BOARD

RE:

MANITOBA HYDRO  
INTERIM RATE  
CONSIDERATION HEARING

Before Board Panel:

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

HELD AT:

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

Pages 1 to 71

APPEARANCES

1  
2 Bob Peters )Board Counsel  
3  
4 Patti Ramage )Manitoba Hydro  
5 Marla Murphy )  
6  
7 Myfanwy Bowman )CAC/MSOS  
8 Heather Unger )  
9  
10 Mona Pollitt-Smith )MIPUG  
11  
12 Louis Harper (np) )MKO  
13  
14 William Gange )RCM/TREE  
15  
16 Denise Pambrun )City of Winnipeg  
17  
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19  
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1 --- Upon commencing at 10:02 a.m.

2

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

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

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

25 For the record, my name is Graham Lane.

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

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

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

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

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

1 filed last Friday.

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

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

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

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

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



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

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

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

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

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

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

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

13

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

16

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20

21 SUBMISSIONS BY MANITOBA HYDRO:

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

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

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

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

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

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

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

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

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

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

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

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



1 it's 47(2). Reads:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

3                   End quote.

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

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

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

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

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

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

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

9

10 SUBMISSIONS BY CAC/MSOS:

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

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

25 THE CHAIRPERSON: Thank you. So we'll

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

2

3 SUBMISSIONS BY MIPUG:

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

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

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

1 this filing.

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

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

17                   MR. ROBERT MAYER:    Tab 4 --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 provide information.

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

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

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

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

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

1 submission.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

13

14                   (BRIEF PAUSE)

15

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10

11 SUBMISSIONS BY RCM/TREE:

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

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

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

1 owner of a public utility, that is not what is happening  
2 here, or any person without due notice. There's no  
3 outlay that is at issue here, there is no loss, and there  
4 is no deprivation. This is an interim order.

5           And as we've stated in the letter of  
6 January 18th, the -- the final rate that will be -- that  
7 will be made and set by your Board, ultimately, at the  
8 Hearing of this GRA, would take into consideration any  
9 interim award that was made. And it may be that the  
10 evidence that is presented to you on behalf of all of the  
11 Intervenors...

12

13   (BRIEF PAUSE)

14

15           MR. BILL GANGE:    The -- the final Order  
16 that you make will take into account all of the evidence  
17 that you hear, and it may well be that the Intervenors  
18 will bring evidence that will challenge the prima facie  
19 case that is being made by Manitoba Hydro in this Rate  
20 Application.

21           And at the conclusion of the GRA, your  
22 Board may say that the evidence that was produced by the  
23 Intervenors is such that a general rate increase is not  
24 justified at all. And if that is the case, this Board  
25 has not been shy, in the past, with respect to other rate



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and in this one.

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

7 Thank you, that's my submission.

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

10

11 SUBMISSIONS BY CITY OF WINNIPEG:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

1

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

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

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

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

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

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

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

24           MS. DENISE PAMBRUN:    Yes?

25           MR. ROBERT MAYER:    The one thing you

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

5 Am I correct?

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

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

18

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

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

21

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

24

25 REPLY BY MANITOBA HYDRO:

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

9 THE CHAIRPERSON: Ms. Murphy...?

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

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

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

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

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

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

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

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

1                                   urgency."

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And finally, comments were made with

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

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

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

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

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

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

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

1 today that Manitoba Hydro wished to address and reply.

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

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

13 Thank you. We stand adjourned.

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

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18 Certified correct,

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Cheryl Lavigne, Ms.

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