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MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA HYDRO  
2010/11 & 2011/12 GENERAL RATE APPLICATION  
PRE-HEARING CONFERENCE

Before Board Panel:

Graham Lane	- Board Chairman
Robert Mayer, Q.C.	- Board Member
Len Evans (np)	- Board Member

HELD AT:

Public Utilities Board  
400, 330 Portage Avenue  
Winnipeg, Manitoba  
March 12, 2010

Pages 1 to 239

APPEARANCES

1  
2 Bob Peters ) Board Counsel  
3  
4 Patti Ramage ) Manitoba Hydro  
5 Marla Murphy )  
6  
7 Byron Williams ) CAC/MSOS  
8 Myfanwy Bowman )  
9  
10 Antoine Hacault ) MIPUG  
11 Mona Pollitt-Smith )  
12 Patrick Bowman )  
13  
14 Michael Anderson (np) ) MKO  
15  
16 William Gange ) RCM/TREE  
17  
18 Denise Pambrun ) City of Winnipeg  
19  
20 Gavin Wood ) Independent Experts  
21 Pamela Reilly )  
22  
23 Jeff Rath (via telephone) ) SCO  
24  
25 New York Consultant (via telephone) (SELF)

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1 --- Upon commencing at 9:06 a.m.

2

3 THE CHAIRPERSON: Okay, folks. Good  
4 morning, ladies and gentlemen. Welcome to a pre-hearing  
5 conference with respect to Manitoba Hydro's General Rate  
6 Application for raised rates, effective April 1, 2011.

7 The Board has already heard two (2) prior  
8 pre-hearing conferences with respect to this Manitoba  
9 Hydro's General Rate Application. Those previous pre-  
10 hearing conferences led to the Board Order 17 of 2010,  
11 which is available on the Board's website.

12 My name is Graham Lane and I'm Chairman of  
13 the Public Utilities Board. I am joined today by our  
14 Vice Chair, Bob Mayer, Q.C.; while Dr. Evans will be  
15 sitting on the hearing panel, he is not in Winnipeg  
16 today.

17 In the pre-hearing conferences that  
18 resulted in order 17-10, the Board heard requests from --  
19 for Intervenor status from Consumers' Association of  
20 Canada, Manitoba, the Manitoba Society of Seniors, MKO,  
21 Manitoba Industrial Power Users Group, the City of  
22 Winnipeg, Resource Conservation Manitoba, and Time to  
23 Respect Earth's Ecosystems. After hearing the requests  
24 for Intervenor status and the comments of the other  
25 parties, the Board granted Intervenor status to all these

1 parties.

2                   Also, in Order 17/10, the Board determined  
3 that the scope of Manitoba Hydro's General Rate  
4 Application would include a review of its risk and risk  
5 management, as part of the Board's rate approval mandate.  
6 Furthermore, the Board needs to understand the potential  
7 rate implications of future risk and impact such risk  
8 would have on Manitoba ratepayers if such future risk are  
9 actualized.

10                   In addition to the intervention requests  
11 and the scoping issues, the Board also published in Order  
12 17/10 a timetable for the orderly exchange of information  
13 prior to an oral public hearing. Since Order 17/10 was  
14 issued there have been two (2) more requests for  
15 Intervenor status, and Manitoba Hydro has asked the Board  
16 to vary -- to review and vary the timetable as Manitoba  
17 Hydro has been unable to physically respond to all of the  
18 First Round Information Requests that have already been  
19 asked my the Intervenors and the Board's technical  
20 advisors.

21                   That background brings us to today's pre-  
22 hearing conference, where the Board is available to hear  
23 from all the parties on the various process and  
24 procedural issues that have arisen since Order 17/10 was  
25 issued.

1                   In today's pre-hearing conference --  
2 today's pre-hearing conference will be conducted in an  
3 orderly manner, and I will ask Board counsel, Mr. Peters,  
4 to introduce the topics and the suggested procedures that  
5 all participants are to follow.

6                   Following today's pre-hearing conference,  
7 the Board will adjourn the Proceedings and will begin its  
8 deliberations on the issues that arise. Following the  
9 Board's deliberation, the Board expects to release a  
10 further order and all parties will be notified when that  
11 order is released.

12                   Mr. Peters, please provide us with your  
13 comments at this time.

14                   MR. BOB PETERS: Thank you, and good  
15 morning, Mr. Chairman, Mr. Vice Chair. In terms of  
16 appearances, and for the record and the benefit of those  
17 joining by teleconference, my name is Bob Peters and I  
18 act as counsel to the Board in today's pre-hearing  
19 conference. The Board is also assisted this morning by  
20 my colleague, Ms. Southall, who is with me at counsel  
21 table.

22                   Mr. Chairman and Vice Chair, we have three  
23 (3) parties joining the Proceedings today via  
24 teleconference and we welcome them here. Because those  
25 three (3) parties are not in the room, I will just





1 you very much for the introduction. Actually I'm in  
2 Vancouver, British Columbia this morning and Natalie  
3 White (phonetic) of our office and Amanda Miller  
4 (phonetic) of our office are joining us from Priddis, so  
5 thank you very much, sir.

6 MR. BOB PETERS: And thank you for  
7 joining us. We know where Vancouver is. I just don't  
8 know where Priddis is, but we'll talk about that some  
9 other time.

10 MR. JEFF RATH: It's southwest of  
11 Calgary. Thank you, sir.

12 MR. BOB PETERS: All right. Next, Mr.  
13 Chairman and Vice Chair, also joining us from out of town  
14 is a representative of a party that for today's  
15 proceedings, we should refer to as "New York Consultant."  
16 I've given the acronym NYC to this participant and I  
17 trust that will be acceptable.

18 Are you also on the phone line, New York  
19 Consultant?

20 NEW YORK CONSULTANT: I am. And thank  
21 you, Mr. Peters. I can hear you loud and clear.

22 MR. BOB PETERS: Thank you. I will be  
23 calling on the New York Consultant a little later when I  
24 introduce the request for Intervenor status by the New  
25 York Consultant.

1                   Likewise, Mr. Chairman, I will call on  
2 each of our telephone participants for any comments that  
3 they would have on the other topics that will be  
4 discussed today.

5                   Before turning to the list of topics, let  
6 me also acknowledge the attendance of counsel appearing  
7 this morning for other parties and who will be called  
8 upon as the topics arise.

9                   On behalf of Manitoba Hydro, the Applicant  
10 in the Utilities General Rate Application, Ms. Ramage  
11 appears this morning.

12                   On behalf of the Consumers' Association of  
13 Canada Manitoba Inc., as well as the Manitoba Society of  
14 Seniors, Mr. Williams appears this morning.

15                   Mr. Chairman and Mr. Vice Chair, I do not  
16 see Mr. Anderson or Mr. Harper in the hearing room on  
17 behalf of MKO and if I'm mistaken in that, I apologize.  
18 But I don't believe he's here. If he does attend of  
19 course I will bring it to the Board's attention and we  
20 will include any opportunity for Mr. Anderson to provide  
21 comments. I was aware Mr. Anderson I believe was also  
22 travelling out of town.

23                   The next participant, the Manitoba  
24 Industrial Power Users Group, is represented today by  
25 counsel, Mr. Hacault. Mr. Hacault is across the room at

1 the counsel table.

2 The City of Winnipeg, who was granted  
3 Intervenor status, is represented today by Ms. Pambrun.

4 And the Resource Conservation Manitoba and  
5 Time to Respect Earth's Eco Systems is represented by Mr.  
6 Gange, who is here today.

7 Mr. Chairman, in addition to those people  
8 I've mentioned, in terms of Manitoba Hydro I should also  
9 indicate that Ms. Murphy is at counsel table and I'm just  
10 not sure of who will be on the microphone for Manitoba  
11 Hydro, so I should -- I apologize for overlooking her and  
12 not mentioning her name earlier.

13 So with those people present in the  
14 Hearing room, with Mr. Gavin Wood who is expected to join  
15 us soon, and with Southern Chiefs Organization counsel,  
16 Mr. Rath and representatives of his office on the line,  
17 and also the New York Consultant on the line, those will  
18 be the participants this morning.

19 Now, Mr. Chairman, those familiar with  
20 appearances before the Board are aware that a transcript  
21 is prepared and posted the next day on the Board's  
22 website. And just as we have representatives of various  
23 parties who are not in this room but are participating  
24 via teleconference, parties should know that the court  
25 reporters are also working offsite with the assistance of

1 modern technology. All parties can assist in the  
2 accuracy of the transcript by identifying themselves  
3 prior to speaking.

4                   Turning to the topics for today, Mr.  
5 Chairman and Mr. Vice Chair, I propose to list them and  
6 briefly explain the nine (9) of them that I have, and  
7 then I will propose an order for discussion. So if you  
8 can please bear with me as I go through the list of nine  
9 (9) issues.

10                   The first issue that I will bring before  
11 the Board is the Application to intervene by a New York  
12 Consultant. When this matter comes up in a few minutes,  
13 I will ask the New York Consultant to speak to the  
14 Application and then I will call on the other Intervenors  
15 for any comments, as is customary, before turning and  
16 asking for comments from Manitoba Hydro. I will then ask  
17 the New York Consultant for any final reply comments  
18 before moving to the next agenda item.

19                   The second item is an Application to  
20 Intervene by Southern Chiefs Organization Inc., and in  
21 this regard I will ask Mr. Rath, and he may designate  
22 others, but to begin speaking on this Application in a  
23 few minutes. And then again I will ask the other  
24 Intervenors present for any comments before asking for  
25 comments from Manitoba Hydro, and then I will ask Mr.

1 Rath for any final reply comments, if he has any.

2                   The third issue that I will turn to is the  
3 scope of the review for the risk and risk management  
4 aspects of the Hearing. On this issue, I will start by  
5 asking counsel for Hydro and MIPUG to perhaps speak first  
6 to the matter, before I work down the list of  
7 participants and ask each other participant today for  
8 their comments.

9                   Issues 4 and 5 are the next two (2) issues  
10 and they deal with scheduling matters and specifically  
11 the timetable for the Board to conduct the GRA.

12                   I took the liberty, Mr. Chairman and Mr.  
13 Vice Chair, of circulating draft timetables for the  
14 orderly exchange of information. I used a familiar  
15 regulatory approach in making up the timetable, but  
16 frankly there will be many parties today that will take  
17 issue with the timetables I have circulated, and those  
18 parties will have valuable alternatives to suggest and  
19 recommend to the Board. Unfortunately, consensus may not  
20 be achieved through the submissions and the Board will  
21 have to provide its direction.

22                   In Order 17/10, Mr. Chairman and Vice  
23 Chair, the Board indicated a clear preference for the  
24 review of risk and risk management issues to occur at the  
25 beginning of the oral public hearing process. Subject to

1 what others will say when it is their turn, that goal is  
2 not seen by me as being achievable if the Board still  
3 wants the oral public hearing to begin in the month of  
4 June of this year. With that being my view, I drafted a  
5 timetable that would have the GRA oral hearing start in  
6 June, but only on the usual revenue requirement issues  
7 and excluding the risk and risk management issues.

8 I've also drafted another timetable and  
9 that had the review of risk and risk management issues  
10 preceding separately and being ready for an oral hearing  
11 by September 1 of this year. The Board can expect  
12 additional comments from most every other party when this  
13 topic comes up.

14 I will be suggesting that the parties  
15 speak to these two (2) topics, that is the usual GRA  
16 schedule, and also the schedule for risk and risk  
17 management review. Perhaps these topics can be combined  
18 and the schedules can be combined; perhaps not.

19 Turning to the sixth issue on the topic's  
20 list that I have, are the terms of reference for the  
21 independent experts. Counsel for the independent experts  
22 has reviewed the draft terms of reference and a copy has  
23 been circulated to the parties participating in today's  
24 pre-hearing conference. Before I provide the terms of  
25 reference for the Board's review I thought the Board may

1 benefit from any comments that the parties may have.

2                   The seventh item on the topic list is the  
3 April 1st, 2010 interim rates. And by way of letter  
4 dated March the 3rd, Manitoba Hydro filed revised rate  
5 schedules to comply with Order 18/10, and Manitoba Hydro  
6 asks for those rate schedules to be approved in time to  
7 implement new rates on April 1st of 2010.

8                   Now in Order 18 of 10, the Board ordered  
9 that for residential customers no change be made to the  
10 Basic monthly charge and that the interim rate adjustment  
11 be on the energy charge portion of the rates to increase  
12 the inversion. It appears Manitoba Hydro has applied all  
13 of the interim increase to the second block of energy  
14 which begins at 900 kilowatt hours of monthly  
15 consumption. If any party has any comments on Manitoba  
16 Hydro's proposed rate schedules for residential customers  
17 or any other class of customer, they will be provided an  
18 opportunity to make those comments to the Board.

19                   The eighth item on the list is the energy  
20 Intensive Industrial Rate Application, or EIIR as we've  
21 come to know it. Manitoba Hydro has made an EIIR  
22 application to the Board on about February 16th, but has  
23 also requested time to consult with other parties on the  
24 Application and perhaps revise the Application. At the  
25 appropriate time, I will ask Manitoba Hydro to update the

1 Board and the parties with Manitoba Hydro's intentions  
2 and timelines, as well as procedural recommendations.

3 And finally, the last issue on my list is  
4 the Diesel Zone Rate Application. And Manitoba Hydro has  
5 notified the Board and some Intervenors of its intention  
6 to file an application seeking revised rates for the  
7 diesel zone but no application has been filed to date.  
8 And again, at the appropriate time, I will ask Manitoba  
9 Hydro to update the Board and participants on this topic.

10 Well as that exhausts my list of topics, I  
11 will remind the parties that their coop -- or that with  
12 their cooperation, I will now introduce the topics for  
13 discussion and I will call sequentially on the parties to  
14 provide any comments they have on that topic to the  
15 Board.

16 Both the participants in the hearing room  
17 as well as those on the teleconference phone will be  
18 asked for comments on all the topics. If participants  
19 have no comments, they can certainly so advise the Board  
20 when it comes their turn.

21 And while it may go without saying, I will  
22 remind the parties that the Board may pose questions at  
23 any time and parties can -- parties can also expect that  
24 there would be an opportunity for morning recesses.

25 Mr. Chairman, just before I turn over the



1 microphone, I believe that perhaps Mr. Gavin Wood has  
2 joined us from Thompson, Manitoba.

3 Mr. Wood, are you on the line?

4 MR. GAVIN WOOD: Yes, I am, Mr. Peters.

5 MR. BOB PETERS: And -- all right, Mr.  
6 Wood, if I can just ad-lib a little bit, I had mentioned  
7 earlier to the parties present that you represent the  
8 independent experts that the Board indicated would be  
9 engaged in the Board's Order 17/10. And I've also  
10 indicated, Mr. Wood, to the parties, that on each of the  
11 nine (9) issues that I have raised, we will call on both  
12 the parties present in the hearing room, as well as those  
13 on the teleconference, to join us.

14 Just so that you're aware, in the hearing  
15 room Manitoba Hydro's counsel is here, as is CAC/MSOS,  
16 MKO is not yet present, MIPUG, the City of Winnipeg,  
17 RCM/TREE are represented in the Hearing room. And Mr.  
18 Wood, joining you on the teleconference is Mr. Rath, who  
19 is counsel for Southern Chiefs Organization, and also  
20 joining you on the conference call is the New York  
21 Consultant.

22 So, Mr. Wood, I'm going to move on, unless  
23 you have any points that you'd like to make at this time.

24 MR. GAVIN WOOD: I am starting a hearing  
25 in a short while and as a result of that, Mr. Peters, and

1 for the Chair, Ms. Pam Reilly, from my office, is in  
2 attendance and she will actually be partici --  
3 participating, Mr. Peters.

4 MR. BOB PETERS: All right. Thank you,  
5 Mr. Wood. You'll stay with us as long as you can I  
6 expect.

7 MR. GAVIN WOOD: Yes. Thank you.

8 MR. BOB PETERS: All right. So, Mr.  
9 Chairman and Mr. Vice Chair, if you have any questions of  
10 me on the process that I've outlined at this time, I'd be  
11 pleased to try to respond to those. And if there are  
12 none, or after I answer them, I'll start with the first  
13 topic.

14 THE CHAIRPERSON: Thank you, Mr. Peters.  
15 Please proceed.

16 MR. BOB PETERS: All right. Thank you  
17 for that.

18 The first topic I would like to introduce  
19 is the Application for Intervenor Status. It was filed  
20 by New York Consultant and the Board has a copy of the  
21 Appendix 1 from its rules, the Intervenor request form,  
22 and the Board also has the estimated costs for Phase 1.

23 Mr. Chairman, I'd like to turn to the New  
24 York Consultant and ask that the New York Consultant  
25 perhaps start with Box Number 8 if possible; that is just

1 to generally explain the reasons for the proposed  
2 intervention. And the New York Consultant can then go on  
3 to review other aspects of the -- of the intervention  
4 request, including the request for costs.

5 So New York Consultant, I will turn the  
6 microphone over to you, figuratively, at this time.

7

8 RE: APPLICATION TO INTERVENE BY NEW YORK CONSULTANT:  
9 SUBMISSIONS BY NEW YORK CONSULTANT:

10 NEW YORK CONSULTANT: Okay. Well, thank  
11 you, Mr. Peters and thank you for having me on this call.  
12 I just want to start out by saying this is obviously new  
13 to me, so I hope that I present this in the correct form  
14 and please feel free to correct me or ask me to change  
15 how I'm moving forward here.

16 Just before I get started into Box 8, I'd  
17 like to give a -- a short little bit of background, as to  
18 how I ended up with this Application for Intervenor  
19 Status.

20 As many of you probably know by now, back  
21 in December 2008 disclosure was made to the Manitoba  
22 Ombudsman under the Public Interest Disclosure Act,  
23 regarding various findings in the area of risks which  
24 would have direct consequence to the ratepayer. At that  
25 time, while I had been made aware tangentially of the

1 existence of the Public Utilities Board, it -- it had not  
2 been my intention in any way or form to bring me into  
3 this process. It was recommended or advised that the  
4 disclosure was best handled under that piece of  
5 legislation that is supposed to -- you know, to set out  
6 to investigate these types of -- of disclosures.

7                   During the period from December 2008 until  
8 February/March 2009 the office of the Ombudsman tried to  
9 summarize and comprehend the magnitude of the disclosure;  
10 some several hundred pages was provided to her office.  
11 I'm not sure that they were able to grasp some of the  
12 technical aspects. Several hours of time was put into  
13 working with her staff on a pro bono basis to assist in  
14 getting the disclosure moved along. And during the  
15 process of that, one (1) of her staff members suggested  
16 and men -- and it was mentioned that the Public Utilities  
17 Board has had a similar interest in these matters.

18                   Alongside that, they all have been  
19 employees at Manitoba Hydro who have been in contact with  
20 me during this process, who also, because of the trouble  
21 and the potential scope of this disclosure falling  
22 outside of the that of the Ombudsman, those employees  
23 also suggested that a more suitable place for this type  
24 of disclosure to be looked at is the Public Utilities  
25 Board.

1                   To that end, after months of -- of  
2 potentially no action on investigating it, around  
3 approximately a year ago, I believe it was early March,  
4 at the direction of those other people, a phone call was  
5 placed to the Public Utilities Board to notify them that  
6 this disclosure had been made under the Public Interest  
7 Disclosure Act and to allow them, or to ask them if there  
8 was such a process, or if they had a procedure to allow  
9 for that to be transferred over and be investigated on  
10 the Public Utilities Board. At -- at that time, I had no  
11 idea of what their rules were, or if their confidential  
12 disclosures could be looked into there.

13                   Around that time and shortly thereafter,  
14 the office of the Ombudsman decided that the disclosure  
15 was not suited for her office and also transferred it  
16 over to the Auditor General.

17                   I must -- I would like to stress and add  
18 at this time, that I was taking a short leave of absence  
19 from work, of a maternity leave. I had offered the  
20 Ombudsman and the Auditor General pretty much as much  
21 time as they needed to review the facts that were raised,  
22 to spend time with me, to investigate allegations.

23                   They also -- once the Public Utilities  
24 Board had become aware of it, some time around March or  
25 April, I cannot remember the exact date, they had started

1 to set in process to try and request copies of all  
2 internal and externally pre -- prepared reports. I also  
3 req -- remember asking them, at the time, to do this  
4 quickly. I knew I had a tonne of work. I was -- I would  
5 be able to help them. I had also volunteered pro bono  
6 time to help investigate this disclosure in a timely and  
7 expeditious manner.

8           For reasons that are still unknown to me,  
9 not -- nothing was really done in any hurry. Months went  
10 past; there was really no investigation. By August, the  
11 reports had not been still handed over to the Public  
12 Utilities Board. I -- from what I understand, they had  
13 set a September 29th deadline. I also realized at that  
14 time, there had been no action taken either by the  
15 Auditor General. And I would like to stress that during  
16 all those several months of time, no action was taken by  
17 any regulator to begin investigating this disclosure.

18           Subsequent to that, around October 21st, a  
19 special audit was ordered into the various findings in  
20 the risk management disclosure. Once again, nothing was  
21 done.

22           Around November 23rd, the disclosure got  
23 transferred back to the Ombudsman. Again, no action was  
24 taken; no questions were asked. And the next step  
25 happened was, around December 22nd I was served with

1 court papers for I suppo -- I assume KPMG to start doing  
2 some review.

3 But that all said, finally around March of  
4 February, I was told by the Ombudsman that she had now in  
5 fact transferred the disclosure over to the Public  
6 Utilities Board and that the correct place for this  
7 investigation would become under the Public Utilities  
8 Board Act which, in fact, contradicted the information I  
9 was provided about a year ago.

10 To that end, it was recommended that the  
11 correct process for me to follow would be to, therefore,  
12 apply for Intervenor status in this GRA Hearing and the  
13 GRA Hearing would include an investigation into the risk  
14 management processes and risks of Manitoba Hydro.

15 That is the reason why this Intervenor  
16 request form has been submitted and at bullet points AA8  
17 Section 8.1 through 7, I think I highlighted, as briefly  
18 as possible, some of the reasons why I felt the  
19 disclosure had an application to the GRA process. In  
20 point 1, I summarized that the conclusions out of the  
21 Risk Report submitted during 2006 to 2008 demonstrated  
22 that the GRA application based on inaccurate forecast and  
23 flood -- and the flood assessment went to the Manitoba  
24 ratepayers.

25 I was advised that under the Rules of

1 Practice and Procedure of the Public Utilities Board that  
2 Intervenor status can be granted under Section 43.A to a  
3 party that may have -- has made a significant  
4 contribution that is relevant to the Proceeding and  
5 contributed to a better understanding by all parties of  
6 the issues before the Board.

7                   Bullet 0.3 will be for an intervention  
8 where because the understanding of risks to the Utility  
9 an impact to be integrated to financial forecasts is  
10 contemplated additionally under Board Order 17/10.

11                   That the magnitude in Bullet 0.4, the  
12 magnitude of risks is a direct consequence to the  
13 financial forecast to the ratepayer and is in the order  
14 of magnitude that could exceed the retained earnings and  
15 a sizeable impact to the debt equity ratio.

16                   There are also issues that I believe the  
17 Board have been concerned about and is looking at and is,  
18 therefore, directly relevant and related to the Board  
19 mandate that is part of those conclusions (INDISCERNIBLE)  
20 exceeding a billion -- 1.1 billion were incurred by the  
21 Province that have attributed to incorrect ratepayer  
22 increases and need to be understood.

23                   And that the approach of the Public  
24 Utilities Board is to understand comprehensively the  
25 correct risk capital and intolerances of the Utility as



1 it expands its presence in market to regulation  
2 (INDISCERNIBLE) with new generation as it's proposed of  
3 \$12 billion, as well as current decisions being made on  
4 long-term contracts which have been executed until the  
5 fiscal year 2032.

6           The New York Consultant also notes that  
7 there was a special hearing and in December 2008 was  
8 specifically related to these long-term contracts risks  
9 and while not mentioned in the Application for the sake  
10 of -- of brevity, one of the specific reports included  
11 and directly related to these long-term contract risks --  
12 long-term contracts risk exposure out to fiscal year  
13 2032.

14           The New York Consultant's work,  
15 specifically, addressed many of the concerns raised by  
16 the Board in those matters and impacts ratepayers.

17           And finally Bullet 0.7, risks to liability  
18 and safety have also been identified which has sizeable  
19 impact on the operation of reservoirs and again for  
20 revenue requirements related to ratepayers. That's  
21 summarized by position on reasons for the intervention.

22           Mr. Peters had also been -- suggested I  
23 jump in and quickly itemize and talk over some of the  
24 costs and some of what else is included in the  
25 Application.

1                   The reason I pulled it out of the time  
2 line before I started this brief presentation was to make  
3 very clear that there have been an inordinate delay  
4 between the day this disclosure was made and some of the  
5 findings raised to any action being taken by any agency,  
6 through no fault of my own, to getting this investigation  
7 started.

8                   I would like to also make very clear to  
9 the Board that I have offered and volunteered several  
10 hundreds of hours of my time to both the offices of the  
11 Ombudsman and the Auditor General and the Public  
12 Utilities Board during the several months I was  
13 coincidentally taking time off work. I had no intention of  
14 charging money. I thought that the right thing to do  
15 would be to file a disclosure, where somebody would come  
16 in and the rights of the Public Interest Disclosure Act  
17 or the Whistleblower Protection Act was that an  
18 investigation would be conducted as time -- as  
19 efficiently or as expeditiously and informal as possible.

20                   I -- I don't have the exact wording but I  
21 do believe the word 'expeditiously' is in there; that has  
22 not happened. The time that I would have been most glad  
23 to assist if this conversation was happening one (1) year  
24 back, if we could rewind the clock back, I believe the  
25 costs that I would be asking for would be practically

1 nominal. I would've been willing to -- since I was  
2 taking time off work, I would have gladly volunteered the  
3 time to put in the time to investigate or get a -- you  
4 know, get some reasonable investigation into what's been  
5 raised.

6                   However, that has not been the case and  
7 now we're a year later, I am now back at work, I have  
8 other clients, other business and, unfortunately, this is  
9 coming at an interference to my business opportunities  
10 and other contracts and other work that are in place.

11                   To that end, I'm not able to, for  
12 commercial reasons and commercial fairness, just to stop  
13 whatever I'm doing and donate free pro bono time to the -  
14 - to the Utility or to this investigation. I hope that  
15 meets with your understanding.

16                   And secondly, because of the huge delay in  
17 starting this investigation, over fifteen (15) months,  
18 the matters at hand are -- are not fami -- not as easily  
19 remembered and they're not on the top of my head at this  
20 moment. Some of the work goes back until 2006, which is  
21 over four (4) years ago.

22                   To that end, perhaps the most important  
23 part of my breakdown and itemization in cost sections, to  
24 me, the most important part, is that the technical order  
25 -- preparation time. I -- I realize that there is a --

1 you know, I would like about 11 or 12 percent time to --  
2 to get back up to speed to the intensive work that was  
3 done for the utility during 2006 to 2008.

4 I would like to point out to the Public  
5 Utilities Board and to the people who are attending that  
6 while I was being paid as a contractor, the amount of  
7 work I was doing I was really on -- on -- not staff, but  
8 I was being paid on a full-time forty (40) hours of work  
9 a week basis.

10 During 2006 it was a full-time employee  
11 type contract job where, again, I -- I was a contractor,  
12 but I was working an excessive amount of hours, certainly  
13 equivalent or more to the -- to any other employee at  
14 Hydro.

15 In 2007 for the latter part of the year, I  
16 was again working full-time com -- completely dedicated  
17 to the Utility's risk exposure and, again, for the  
18 majority of 2008 right up until September 29, I was again  
19 working forty (40) a week on a full-time basis.

20 So to that end, I don't necessarily  
21 consider the work having been done to be parallel to just  
22 some consultant that came for two (2) months and did a  
23 brief project and -- and left. And to that extent, there  
24 was an excessive volume of materials in order for this  
25 technical order to be -- to be done properly, and I

1 believe that if it's going to be done at all it needs to  
2 be done once and it needs properly.

3 I will need to make myself completely  
4 refreshed in everything. I want to go back through work  
5 that was done four (4) -- I believe four (4) or five (5)  
6 years ago, even the work -- in terms of work that was  
7 done two (2) years ago.

8 Because if I'm going to be in front of a  
9 firing squad and facing some very harsh questions, I want  
10 to -- I want to be completely back up to speed. And I  
11 think that I'd also like to point out that if this audit  
12 had happened a year ago in a timely fashion, I would not  
13 be requiring this preparation time, and I think it is a -  
14 - solely to do with the time delays and the stalling that  
15 has happened, I -- I cannot accept responsibility for  
16 that.

17 I'm willing to work around it, given  
18 that's where we are, but I just want to make sure that  
19 it's clear that the reason for that cost -- this cost is  
20 to do with the time delay between when this disclosure  
21 was made and the fact that we're more than a -- coming to  
22 a year and a half before anything gets started.

23 The other reasons why I need this  
24 preparation time is that specifically when a technical  
25 risk audit is done, I've been subject to a few, not --

1 some not as fresh and some fairly generic, and I've  
2 actually been in the position before where I've actually  
3 conducted a risk audit or -- or the most -- in  
4 differences of opinion between a risk management area  
5 training audit -- training floor, at a parallel situation  
6 where there was serious technical risk audit. We were  
7 given a couple of months to prepare. I had a team of  
8 analysts and people working with me. It's taken fairly  
9 serious. Does -- and -- and I would suggest that it's  
10 fairly customary for a risk area or someone being subject  
11 to that to have sufficient preparation time.

12                   During this preparation time I would also  
13 like to point out to the Board that I would not be  
14 working alone.

15 I have a team of -- there will be at least a couple of  
16 computer programmers and one (1) PhD analyst working with  
17 me on an administrative support so that we would be -- I  
18 would be sharing some of the workload just to be brought  
19 up to speed. There are our computer data involved and I  
20 certainly don't do all -- every single aspect of that  
21 computer-related work.

22                   In addition, what I wanted to point out  
23 regarding this preparation time and one of the reasons  
24 that

25 -- that it could be sped up is that up until November of

1 2009 -- that's getting - which year we're in now -- but I  
2 have, as you know, been working closely with at least one  
3 (1) of the employees at Manitoba Hydro. We're also good  
4 friends, I'd like to think so, and we have shared and  
5 worked together on many of the issues that have been  
6 raised.

7                   After that -- at that point there has been  
8 some direction for Manitoba Hydro staff to not permit me  
9 and this individual to communicate which I believe would  
10 -- will also slow down this refreshing time in  
11 preparation for a technical audit. I'll give you an  
12 example. There were several spreadsheets that were filed  
13 that were shared between me and this individual all in  
14 conjunction with the work that was done between 2006 and  
15 2008.

16                   I haven't looked at the material in a long  
17 time, I've been busy doing something else. As I  
18 mentioned I'm under contract somewhere else and haven't  
19 really paid much attention to it.

20                   But recently flipping through some of them  
21 and I think I have a reasonably good memory. I -- I  
22 would like to be able to -- it would be much quicker if  
23 the -- for the Board -- if the Board would please  
24 consider this if I'm able to have a few refreshing phone  
25 calls with this certain employee to bring myself back up

1 to speed what could be accomplished in two (2) hours by  
2 being on the phone with this employee.

3           While it would be much quicker than if --  
4 and if that's not possible, I'm certainly not fully  
5 positive that I would be able to figure it out on my own  
6 but it could take two (2) weeks and that is another  
7 reason why the preparation time is set like it is. So --  
8 but it is a factor to consider.

9           And a rather important point that I wanted  
10 to point out is technically, you know, as the person  
11 representing these findings, I am committed to doing --  
12 like I stand 100 percent behind the analysis. I realize  
13 this is going to be a challenging and somewhat fractious,  
14 potentially fractious hearing if it goes that way, and I  
15 would really want to be technically prepared.

16           I -- I don't think -- I think it would be  
17 prejudicial. I'm sorry if the Board would not allow me  
18 the time to feel that I'm back up to speed. I certainly  
19 do not want to fall on my face. I cannot appear in front  
20 of twenty (20) employees and potentially large rather  
21 consulting companies, appear in cold, without any  
22 preparation time. I believe the amount of time I've  
23 asked for is reasonable. I'm willing to work with the  
24 Board on a relative cap, obviously it can't go on and on  
25 forever.



1                   I think I've -- I've looked at what needs  
2 to get done considering that in a prior experience where  
3 I had an audit -- it was for a public disclosure of a  
4 financial record that was coming out of the risk  
5 management system and team; that was a two (2) month  
6 preparation time. The audit took about a month and that  
7 was for a much, much smaller and very specific aspect of  
8 a utility's book and so I believe in the context of this,  
9 I'm -- I don't believe what I'm asking for is  
10 unreasonable.

11                   I should move on. Mr. Peters, are there  
12 any comments? Am I heading in the right direction here?

13                   MR. BOB PETERS: Well, let me interrupt  
14 and thank you for what you've mentioned so far. For  
15 those of us trying to take notes, you certainly are  
16 welcome to slow down a little bit but I could appreciate  
17 you're getting lots of information for us.

18                   Can -- would the Board be correct, New  
19 York Consultant, in understanding your last information  
20 to them by turning to the cost page that was submitted  
21 for Phase 1 costs and the Board has a redacted version.

22                   But your Phase 1 costs are broken down to  
23 first redact certain reports and there's a cost for that  
24 for your time and then the second aspect on that page  
25 would be the time that you want to technically prepare on

1 the --

2 NEW YORK CONSULTANT: (INDISCERNIBLE) and  
3 thank you for clarifying, Mr. Peters. I -- I was talking  
4 and I realize I've jumped a little out of the phase here  
5 or out of order, I think you'd believed I just delved  
6 into what I considered the highest priority was in -- on  
7 page 4 of 6 -- of page 4 of 6 in the GRA Phase 2, I  
8 haven't -- because -- because much of this Hearing  
9 process is undecided, I have not yet submitted budgets or  
10 anything regarding this because I believe there's some  
11 other hurdles and obstacles that have to be able to come  
12 first.

13 But I was talking about the preparation  
14 time in Phase 2 and put some scheduling down that that  
15 being, really, the amount of -- the -- the time it would  
16 take.

17 There is no budget provided at this time.  
18 I believe that they may have -- many Intervenors have  
19 been submitting their application with unknown budgets,  
20 so, I think it's premature because I believe there's some  
21 other obstacles that have to be accomplished first and I  
22 wouldn't want to mis -- misspeak in that -- in that  
23 regard.

24 I was more wanting to make the point that,  
25 given the fifteen (15) month delay and the opportunity

1 costs, and we stress that if this audit was happening one  
2 (1) year ago, I would not be requiring this separation  
3 time, but given where we are today, I -- I am going to  
4 need this time to get ready, which would mean that, you  
5 know, if someone was -- wanted to show up tomorrow to  
6 start asking technical questions, I -- I'm not in a  
7 position to do that because I have a few other things I'm  
8 doing right now, and to be willing and ready to appear in  
9 front of a lot of back-and-forth questions, I want to be  
10 absolutely 100 percent on top of my game.

11 MR. BOB PETERS: Okay, well, thank you  
12 for clarifying that. It's Bob Peters again speaking.  
13 And, New York Consultant, when we come to the time table  
14 for the Proceedings, I certainly will ask for the New  
15 York Consultant's comments in terms of time lines, and  
16 that can be provided.

17 New York Consultant, I'm going to turn the  
18 mic back to you to provide any other comments you have  
19 relative to your Intervenor request form.

20 NEW YORK CONSULTANT: Yes --

21 MR. BOB PETERS: And -- and --

22 NEW YORK CONSULTANT: -- thank you, Mr.  
23 Peters and I'll try to be as brief as I can here while  
24 addressing the main points.

25 The second most important thing that has -

1 - and has and potentially interfered with potentially  
2 this risk management audit and the ability to -- to  
3 conduct an investigation is the recent filing at the  
4 Court of Queen's Bench by Manitoba Hydro regarding a  
5 lease and disclosure by KPMG.

6 I'm sure many of you are aware of this.  
7 It has, unfortunately, for me, created quite a setback,  
8 firstly, because I wasn't really -- I'm not a big fan of  
9 lawyers as you probably realize, the fact that I'm the  
10 phone myself.

11 Secondly, I -- I strongly believe that  
12 when a person, or a company, or someone files a  
13 disclosure under the Public Interest Disclosure Act or  
14 the Whistleblower Protection Act, there's a process and a  
15 regime that should be followed. That person's entitled  
16 to a fair and mutual investigation by the appropriate  
17 regulatory body and that person should not be subject to  
18 unnecessary legal wrangling and being dragged into court  
19 or the party that's being -- the alleged party being able  
20 to, in some way, interfere or cause financial  
21 interference with the necessary public interest of having  
22 this audit done.

23 To that end, because -- because that  
24 action has been taken, it has, unfortunately, left me in  
25 a position where I believe this application has clearly

1 violated certain contracts that I have in place with  
2 Manitoba Hydro. They've gone ahead and unilaterally  
3 posted confidential materials on the website, which they  
4 have absolutely no right or reason to do.

5           They have also -- I'm -- I'm against the  
6 KPMG application for -- for many reasons. I -- I don't  
7 really want to take up time here discussing contract  
8 disputes, but I will -- what I will say, as pertains to  
9 the Public Utilities Board, I believe in public interest  
10 a risk audit needs to be conducted by a mutual and  
11 independent agency that have no financial -- is not being  
12 financially paid for by either one of the parties.

13           I mean, I'm sure that if I was to pay for  
14 my own risk audit, you'll get a very nice report that I'm  
15 right. But to that extent, also, if one wants to look at  
16 how risk audits are customarily done in other utilities,  
17 one (1) of the most important factors that I would like  
18 the Board to know is a thing called air time.

19           Air time is how much time you get on the  
20 radio where -- if you look at, I mean, a comparative  
21 example of when there's politicians running for election  
22 here in the US, the media stations have to give each  
23 party equal air time in order to do a balanced and  
24 unbiased -- they allow the candidates to have, you know,  
25 equal amount of air time for their presentation made

1 forward.

2                   Why this KPMG report, in my opinion, is --  
3 is not appropriate and shou -- and is procedurally unfair  
4 and unjust for the Public Utilities Board is because,  
5 very clearly, it's been conducted with 0 percent air time  
6 to the person, the author of the report, and, therefore,  
7 can in no way get to the bottom of what was really  
8 raised.

9                   And to that end, I -- I believe it will  
10 serve no -- no real value. I mean it would, at best, to  
11 be inconclusive. It's clear that a hundred percent of  
12 the review was done with air time from people that are  
13 opposed to giving merits to the findings that were  
14 raised.

15                   I believe that it's been very publically  
16 demonstrated by certain people in Manitoba Hydro that  
17 they are, quote, clearly have a vested interest in saying  
18 that everything in incorrect. And I believe that --  
19 because of that approach that there's no reason to give  
20 anyone on their table credence to the work and -- by  
21 clearly the fact of airtime -- and airtime is a very  
22 important factor that I believe the Board should look at  
23 in any technical risk audit. In fact, as we -- how we  
24 move forward, I believe airtime will be an important  
25 measure that I would be asking for in procedural fairness

1 in -- of how they proceed in the technical audit.

2 Did -- how much airtime did the model  
3 owners of Splash (phonetic) get with the auditor? How  
4 much airtime did XYZ get with the auditor? And that's  
5 generally a way that people look at whenever the audit  
6 was done to (INDISCERNIBLE) fairly imbalanced. And if a  
7 KPMG report is being put forward with zero percent  
8 airtime, I -- I believe it's not only of limited value,  
9 it's -- it's causing a great deal of interference and  
10 interruption, and it's also led to violations of the  
11 contract. I also would like the Public Utilities Board  
12 to remind themselves that there are Rules of Practice and  
13 Procedure under Section 13.2, which states that material  
14 cannot be placed on the public record that -- that  
15 materials will -- can be placed on the public record in  
16 confidence if they cause commercial harm to a party in  
17 the Proceedings, or that they result in undue financial  
18 loss or gain to a person directly or indirectly affected  
19 by that proceeding.

20 The Rules of Practice and Procedure under  
21 Section 13.3 also state that materials can be placed in  
22 confidence in the Board if they contain personal --  
23 financial, commercial, scientific, or technical  
24 information (INDISCERNIBLE) and all the information has  
25 been consistently treated as confidential by a person

1 directly affected by the Proceedings.

2 And to that end, another reason of angst  
3 with this entire KPMG is because of a willful  
4 (INDISCERNIBLE) to violate contracts, which --

5 MR. BOB PETERS: Excuse me, New York  
6 Consultant, I --

7 NEW YORK CONSULTANT: -- (INDISCERNIBLE)  
8 --

9 MR. BOB PETERS: Excuse me.

10 NEW YORK CONSULTANT: -- refuse to  
11 communicate or to communicate through courts and lawyers  
12 and that's --

13 MR. BOB PETERS: Excuse me --

14 NEW YORK CONSULTANT: -- (INDISCERNIBLE)  
15 --

16 MR. BOB PETERS: Excuse me, New York  
17 Consultant --

18 NEW YORK CONSULTANT: -- and that will  
19 become a very cost prohibitive process for me, one that  
20 is --

21 MR. BOB PETERS: We've lost some  
22 technology expertise here.

23 NEW YORK CONSULTANT: -- (INDISCERNIBLE)  
24 with tens of thousands of dollars of legal bills to  
25 fight. And if that process is to continue, why I have



1 made this Application for Intervenor Status, I simply,  
2 for reasons of time constraints and financial obstacles  
3 of legal bills, am not in a position to handle both  
4 situations at once.

5 MR. BOB PETERS: Excuse me -- excuse me --  
6 -

7 NEW YORK CONSULTANT: And therefore I  
8 would make to clear --

9 MR. BOB PETERS: -- New York Consultant.

10 NEW YORK CONSULTANT: -- and one (1) of  
11 the reasons (INDISCERNIBLE).

12 MR. BOB PETERS: Excuse me. New York  
13 Consultant, I -- excuse me, New York Consultant, for my  
14 interruption. We're having a slight technical  
15 difficulty. I would like to just verify that Mr. Wood  
16 and Mr. Rath are still on the line.

17 MR. RATH: Yes, we are. Or, yes, I am,  
18 in any event. This is Jeffrey Rath speaking.

19 MR. BOB PETERS: And New York Consultant,  
20 are you still on the line? I might take that as a no.  
21 We will --

22 THE CHAIRPERSON: We'll take a short --

23 MR. BOB PETERS: -- wait --

24 THE CHAIRPERSON: -- short --

25 MR. BOB PETERS: Yes. Thank you, Mr.

1 Chairman.

2 THE CHAIRPERSON: -- take a short break  
3 and sort this out.

4 MR. BOB PETERS: Thank you.

5 MR. BYRON WILLIAMS: Mr. Chairman, before  
6 you take the break, we missed probably the last five (5)  
7 minutes of the -- from -- from this side, in terms of  
8 following the conversation, so when we do come back on  
9 with the New York Consultant, some of her comments  
10 regarding KPMG and the -- her concerns about the dual  
11 processes, it would -- I apologize for this -- but  
12 helpful for her to repeat them.

13 MR. ROBERT MAYER: And don't forget the  
14 airtime issue.

15 THE CHAIRPERSON: Okay. Very good. Mr.  
16 Peters, on -- during the break, perhaps you and Mr.  
17 Gaudreau can figure out what the technical glitch is.

18

19 --- upon recessing at 9:55 a.m.

20 --- upon resuming at 10:14 a.m.

21

22 THE CHAIRPERSON: Okay, folks, if we  
23 could return to the Hearing it would be good.

24 I understand the line is still open, Mr.  
25 Peters?



1 York Consultant and ask the New York Consultant to  
2 continue. Thank you.

3 NEW YORK CONSULTANT: Okay. Thank you.  
4 This really, I hope -- I'll try to speak slower. It's  
5 very un-New York City for me to speak slowly, but I will  
6 try.

7 I -- I was talking specifically about the  
8 Application to the Court of Queen's Bench by Manitoba  
9 Hydro to disclose the KPMG report to various  
10 (INDISCERNIBLE) agencies and any and all court process.  
11 As you're aware that there are confidentiality contracts  
12 in place between myself and Manitoba Hydro. There are  
13 provisions in those contracts for an independent audit to  
14 be carried out. Those provisions require a certain  
15 criteria.

16 Again, while I do not take up too much  
17 time bringing up those legal issues, I -- I do want to  
18 point out that those provisions have not been followed,  
19 to no -- to no fault of mine, in the sense that I needed  
20 a -- I simply filed disclosure under the Whistleblower  
21 Act as someone neutral to come in and conduct an audit.

22 It was never the intention, I think, of  
23 filing disclosures of the (INDISCERNIBLE) to then be  
24 subject to a sizable amount of legal rambling in the  
25 Court of Queen's Bench. I -- I also -- certain attorneys

1 representing (INDISCERNIBLE) believe that the entire  
2 filing or the contravention of the regulatory process,  
3 we've been trying to move to strike that application.

4           The Ombudsmen has been attempting to fund  
5 some legal resources. However, the amount of legal  
6 resources for that are exceeding a very nominal budget  
7 she provided, therefore, several tens of thousands of  
8 dollars of legal bills are flooding my way at -- to a  
9 point where I -- will I then be forced to walk away and  
10 just say, Well, I just -- this is clearly not something  
11 that's worth my time anymore, or I'll be seeking the  
12 costs for those legal processes to be recovered, should I  
13 have to participate in any legitimate investigation into  
14 these risk issues.

15           I -- I believe it would procedurally  
16 unfair and unjust for a party to have to be -- be part of  
17 this audit that comes at financial harm to that party for  
18 no -- for no reason; especially when the processes have  
19 not yet been defined by the Public Utilities Board under  
20 Section 1302 point -- 13.2 on the Public Utilities  
21 Board's rules of practice.

22           And when I had contacted the PUB, when  
23 they had asked me for copies of the report -- this is  
24 back in August or September, I -- I can't remember  
25 exactly when -- it was made very clear to me that they

1 understood; the PUB understands and respects that the  
2 work materials brought forward by the respective  
3 companies contained what different companies considered  
4 to be confidential and business competitive materials  
5 from each party, that they would keep them in confidence  
6 and that each party would be offered or afforded the  
7 opportunity to redact that information at their sole  
8 discretion, prior to placing on the public record.

9           To that end, it was my understanding that  
10 materials then would be sent to me in confidence. And I  
11 just point out the reason that this KPMG situation is not  
12 something that is in any way condoned from a business  
13 perspective from my side, once the li -- right legal  
14 resources are in place, it is our intention to fight that  
15 application. We see it as unnecessary, as a direct  
16 interference to any judicial and fair process, not just  
17 by the contracts, but also in the public interest, to  
18 have a fair and neutral audit.

19           And to fight the Application at the Court  
20 of Queen's Bench could take six (6) months. It could  
21 take a year. It could result in other legal actions  
22 being taken, given that Manitoba Hydro has, in our  
23 opinion, at the advice of counsel, egregiously breached  
24 even more of the contract by placing materials on their  
25 internet website. And it appears to me that the actions

1 therefore are directly intended to cause commercial harm  
2 to me, to cause financial harm, and to cause inadvertent  
3 legal costs, which will in effect have the result of  
4 forcing me not to be able to participate.

5           With that, I'm asking the Public Utilities  
6 Board to please -- to strike this application at the  
7 Court of Queen's Bench so that we don't have these  
8 unnecessary legal wranglings; to please abide by the  
9 Rules of Practice and Procedure under 13.2, which means  
10 that no materials can be placed on the public record  
11 without the ability of the party involved to be able to  
12 redact its confidential and trade secret materials.  
13 That's specifically provided for in both 13.2.a.2,  
14 13.2.a.1, as well as Section 13.2.b.1 and 2.

15           And I was -- specifically related to that  
16 point, I understand that filed an exhibit and a summary  
17 report prepared by SCO that also contains references to  
18 journals that have been not properly placed on the record  
19 from my -- from my company to the Board at this time.  
20 And until such time as this process is sorted out, and  
21 hopefully (INDISCERNIBLE) those reports get placed on the  
22 record in a -- in an appropriate manner that's fair to  
23 all parties, that no summaries and no other materials are  
24 -- are distributed and circulated because that violates  
25 Section 13.2 of the Public Utilities Board Rules of

1 Practice and Procedure.

2                   Having said that, it is my position, or  
3 our position, we're willing to work on a satisfactory  
4 solution to that -- but at the same time we are  
5 significantly restrained by the violations of contract by  
6 Manitoba Hydro, and until this legal wrangling is  
7 remedied, we're not certain that I'm going to be in a  
8 position to continue in any -- in any intervention or in  
9 any audit because of the legal costs which are becoming  
10 prohibitive now to fight something like this.

11                   Very clearly, there's an inequity in size  
12 by the -- by the Corporation, that I think, in general,  
13 acts like the Whistleblower Protection Act are supposed  
14 to take into consideration inequity in size. And,  
15 therefore, the definition in our interpretation of  
16 protecting -- protecting that legislation is to make sure  
17 that a fair and neutral audit takes place, and one that  
18 doesn't encumber one (1) party in any prejudicial way. I  
19 believe the Public Utilities Board Rules of Practice --  
20 again, in 13.2.a.1 -- say that they will not endorse the  
21 procedures that in any way would cause undue financial  
22 cost or harm to a party in the Proceedings.

23                   And to that end again, I'm asking that no  
24 confidential and trade secret materials are placed on the  
25 record until such time as we've set up a proper process



1 for redactions, in respect of the materials to be taken  
2 into consideration.

3           Regarding the KPMG and Queen's Bench  
4 situation as pertains to this intervention, the reasons  
5 we raised as the -- the second big issue, is that as a  
6 result of the mounting legal fees to fight that and --  
7 it's a matter of practicality that until this legal  
8 wrangling is resolved, from even a time perspective and a  
9 legal recourse perspective, I believe it will  
10 significantly interfere with a fair and procedural, you  
11 know -- an audit to be conducted by the Public Utilities  
12 Board.

13           Again, as a much smaller entity, I simply  
14 do not have the time to be spending say forty (40) hours  
15 trying to fight legal battles, as well as put in time to  
16 do other matters that I'm engaged with, as well as try  
17 and be involved in a PUB hearing. Therefore, I -- I  
18 would suggest -- and again, I wanted to make sure this is  
19 clear, that the scheduling and regarding progress here  
20 would very much depend on how this legal situation is  
21 resolved and I urge the Public Utilities Board to find  
22 some way to put an end to this legal nonsense, because I  
23 see it solely as an interference, and one that will only  
24 benefit the Applicants of the GRA and in many ways would  
25 cause a lot of harm to be -- to me certainly. And in the

1 end, if it results in a -- in an incomplete audit, I  
2 believe it would be not of public interest for this legal  
3 situation to continue.

4                   It is for that reason that legal costs are  
5 being sought, so that if the Public Utilities Board are  
6 to continue with this audit, I -- I'm going to be  
7 requesting that it comes (INDISCERNIBLE) all legal costs  
8 and expense to me, that any and all costs associated with  
9 any of these matters are -- are covered.

10                   And that leads me to the point of  
11 (INDISCERNIBLE) cost. Just -- just one (1) small point  
12 before I -- I address that and the approach of  
13 confidentiality.

14                   I understand that the breaches of  
15 confidentiality I -- I'm sure and I'd like to -- I -- I  
16 stand hundred percent behind my work. I'm sure that that  
17 there's many (INDISCERNIBLE) have said that I believe  
18 would be of significant value to the parties in this  
19 proceeding and to the people that may have already seen  
20 some of it.

21                   But I believe the Public Utilities Board  
22 needs to follow a process of respect, an orderly process  
23 of how that material is received and reviewed by the  
24 Board, and one that treats commercial and confidential  
25 sensitivities of all parties fairly, and will therefore

1 repeat that until such time that this legal situation is  
2 resolved.

3 I would like to restate that Manitoba  
4 Hydro has no broadcast rights, no rights to put materials  
5 on the website. They have willfully and egregiously  
6 violated confidentiality. There has been a commercial  
7 harm to me as a result and there is a legal situation  
8 which has not been resolved regarding that, which could  
9 interfere with and sidestep this process. It's leading  
10 to unnecessary costs for the ratepayer, unnecessary costs  
11 in time and delay to what I believe is in the public  
12 interest to resolve and get to the bottom of this  
13 (INDISCERNIBLE).

14 And once again, I'm going to urge the  
15 Public Utilities Board to please step in, and in the  
16 interest of public interest, put an end somehow to this  
17 legal wrangling so that a natural and established audit  
18 can continue.

19 Going now onto the legal cost section that  
20 I had identified in the Intervenor Application. With  
21 that backdrop I would -- I would like to summarize them  
22 in sort of three (3) -- three (3) sections.

23 Again, I would like to stress that if this  
24 investigation or audit had been conducted in a timely  
25 manner or by the Manitoba Ombudsman as expected when the

1 disclosure was filed in December 2008, I could assure you  
2 that legal costs was the last thing on my mind and was  
3 probably the last thing that I ever thought one would  
4 need.

5 I anticipate and that from what I heard  
6 just from -- just general information, is that when an  
7 investment or disclosure is made in similar agencies in  
8 the United States of America, there are time limits posed  
9 on such an investigation. I believe in (INDISCERNIBLE),  
10 for example, there's a twenty-one (21) time -- twenty-one  
11 (21) day time limit from the date the disclosure is made  
12 to when the regulatory agency has to summarize and -- and  
13 commence the investigation.

14 In the absence of that, because of the  
15 actions that have happened to date, now that  
16 (INDISCERNIBLE) it has become clear to me that  
17 participating in this audit could result in significant  
18 legal risk. I have now been able -- I have put forward  
19 to the Public Utilities Board that I would not -- not  
20 wish to incur any legal risk generally helping the Public  
21 Utilities Board in understanding the issues that have  
22 been identified in the Risk Report.

23 And to that end, in the first category of  
24 legal trust is to do with indemnification. I would like  
25 to make clear to the Board that I in no way seek to

1 benefit from these legal costs. I would be clear that my  
2 -- even my company would not receive one (1) dime of it.  
3 In fact if there was a way that these costs were not  
4 needed, it would be even better for me.

5                   However, I'm aware now that given Hydro's  
6 demonstrated tendency to run to court and hire multiple  
7 lawyers this process cannot come at any financial or  
8 legal risks to me for participating.

9                   As an example of why an indemnification  
10 might be needed -- and I've spoken briefly about this to  
11 Board counsel in our conversations -- as you're aware,  
12 the -- some of the issues re -- resul -- result -- sorry,  
13 some of the issues are around findings of significant  
14 financial magnitude in the risk calculations.

15                   For example, let's say this audit results  
16 in the -- that three (3) computer systems, for example,  
17 and the result from one (1) computer system shows that  
18 the financial forecast loss was 'X' -- 'X' million  
19 dollars, or \$1 billion, and the other computer system  
20 shows that it's \$2 billion; I'm giving a hypothetical  
21 example here. And the auditor comes along and says,  
22 Well, I've looked at both of these and we now decide that  
23 the New York Consultant number of \$2 billion as opposed  
24 to the -- Manitoba Hydro's number of \$1 billion is in  
25 fact correct, and we like the New York Consultant number.

1                   I'm giving this as an example. There's no  
2 relevance to any of the matters raised.

3                   Let's assume Manitoba Hydro would like to  
4 get involved, and then starts another Queen's Bench  
5 application and repeals the decision to the Public  
6 Utilities Board, files a lawsuit against the auditor,  
7 files some other kind of civil action against me, before  
8 I know it, I'm dragged into another sequence of legal  
9 hearings and from -- these -- I'm using the numbers  
10 provided to me by Board counsel.

11                   The matter gets appealed all the way up to  
12 the Supreme Court. I could be facing legal costs, no  
13 fault of my own, up to seven hundred and fifty thousand  
14 (\$750,000) dollars. And, quite frankly, that is not a  
15 cost or a risk that I'm willing -- or take to simply be a  
16 part of this Hearing, to uphold my end of what I think  
17 that would be fair to see that this risk audit gets  
18 investigated properly.

19                   I don't think it would be the right thing  
20 to do to walk out. However, if I'm forced out by  
21 mounting legal bills, I want it to be clear that it was  
22 not my choice, but it was just the way that Manitoba  
23 Hydro's been able to proceed.

24                   On the first section of legal costs is to  
25 deal with indemnification. I would be seeking that the

1 Public Utilities Board provide complete 100 percent  
2 indemnification on any and all potential suits that I  
3 ever brought regarding this GRA hearing, in perpetuity.  
4 I don't know what your statute of limitations is, and I  
5 cannot envisage how many -- what -- where this could go.

6 I -- I stand by 100 percent the numbers  
7 and the accuracy of all information I've brought forward.  
8 I've brought it forward in good faith because I believe  
9 that there's some serious risk management issues that  
10 need to get looked at, and I -- I do not bring it forward  
11 with the idea that I would some day be faced with legal  
12 turmoil.

13 Next going to the other legal costs in the  
14 second section in the technical access part of the  
15 process. The only part of the legal cost that I consider  
16 that would be something that the company would require,  
17 it would be specifically related to the computer audit  
18 part of this technical hearings, which I believe the  
19 processes have not been formally set up yet. I would  
20 like to state that, as you're aware, there's a computer  
21 system, I'll call it Computer System 3, and we'll call  
22 the two (2) computer systems at Manitoba Hydro, Computer  
23 Systems 1 and Computer Systems 2.

24 I'd like to stay generic just so that the  
25 conflict is neutral. Computer System 3 does have other

1 parties or people involved, but I don't want to go into  
2 too many details in order to -- who are willing to -- we  
3 understand that there's been obviously some  
4 (INDISCERNIBLE) result.

5                   And you probably understand that a fair  
6 review of this risk audit will require computer -- that  
7 the computer systems which may all -- and probably should  
8 include Computer System 3. To do that, I would be  
9 requiring legal counsel here in New York who are  
10 (INDISCERNIBLE) that would be overseeing or providing  
11 legal guidance on how that computer audit gets done, to  
12 make sure it's done in a fair and customary manner.

13                   I don't want to speak too far ahead at  
14 this time. I just would be saying that that is the one  
15 (1) part of the budget that I do believe to be necessary.  
16 I understand that the Public Utilities Board generally  
17 approves counsel for their hearing as Manitoba tariff  
18 rates and for Manitoba counsel.

19                   To that point, I'd like to state that for  
20 this technical part of the audit that's specifically  
21 related to the computer model audit, for that part it is  
22 my position that the legal costs will have to be American  
23 legal counsel, represented solely that computer's data  
24 system that will require specifically for that portion of  
25 the technical audit.



1                   In order to work with the Board in how  
2 those costs are allocated, if -- one (1) possibility is  
3 if it's just charged as a cost for the computer company  
4 and we absorb the legal costs at whatever rate our  
5 counsel come in but I -- I would like to point out that  
6 is -- that is the one (1) legal cost that nobody required  
7 to make sure that a fair computer audit is conducted.

8                   You might note that I have not required or  
9 recommended I needed Manitoba counsel at this time on the  
10 issues that this process first needs to conduct -- be  
11 conducted with some sort of technical audit first.

12                   And the -- the third section of legal  
13 costs which you -- you mentioned before is to do with  
14 this legal wrangling currently continuing at the Queen's  
15 Bench. Unfortunately, and I've explained before, and it's  
16 not my doing, I have no interest in (INDISCERNIBLE) of  
17 the many lawyers on the phone. I mean that in the sense  
18 that I believe that there's been an honest mismanagement  
19 disclosure that requires a fair expeditious technical  
20 risk audit.

21                   I see no purpose or benefit to the public  
22 in everyone being involved in a legal wrangling for  
23 another two years. However, if that is the path that  
24 must continue, I will be seeking a -- a full -- you know,  
25 remuneration for the legal costs I would have to incur

1 and if that's not possible, unfortunately, I would have  
2 to do my own cost benefit analysis to -- to what's the  
3 right way to proceed.

4 I simply cannot, for example, incur a  
5 hundred thousand dollars (\$100,000) of legal costs to  
6 fight what's naturally right to my -- to my entity and  
7 only recover forty thousand dollars (\$40,00) of phase 1  
8 costs and somehow -- also turn down the opportunity costs  
9 of other projects I have working.

10 It'd be unfortunate but I -- I would also  
11 like to state that, you know, vehemently against what  
12 Manitoba Hydro has done in posting the materials on the  
13 website, and there is a legal situation, but until that  
14 is resolved, I'm not even sure if we'd be able to proceed  
15 with Phase 1, and I do want to re-stress that to the  
16 Public Utilities Board. It is, again, of no opt --  
17 choice of mine.

18 It's much preferred that this is being  
19 handled in a more well-mannered fashion and that the  
20 Board was instigating a process that could expeditiously  
21 get done with this, but until this (INDISCERNIBLE)  
22 situation and the Queen's Bench matter is resolved, I --  
23 I'm not sure how we're -- how quickly or efficiently  
24 we're going to be able to proceed.

25 So that -- that's -- pretty much

1 summarizes the -- the main body of the costs. There are  
2 a few points I'd like to jump to, Mr. Peters, regarding  
3 phases and the process, if that's okay with you?

4 MR. BOB PETERS: Yes. It --

5 NEW YORK CONSULTANT: I'm still on the  
6 line here. I don't know if I'm talking into --

7 MR. BOB PETERS: No, no. We're still  
8 listening, and you can -- sure, if you -- if you can be  
9 brief on the phases, and then when you're finished, I'll  
10 turn it over for comments by other Intervenors, and you  
11 will eventually get -- get back a chance to provide final  
12 reply comments after all other parties have been given an  
13 opportunity.

14 NEW YORK CONSULTANT: Sure. I appreciate  
15 that. In the phases, given -- and this is with the  
16 anticipation that we're able to reach a resolution to  
17 this legal situation and I'm -- I'm hopeful we can, I'm  
18 willing to work with the Board to try and arrive at that,  
19 but in the absence of that -- you know, move forward.

20 Now, assuming that that's resolved, what I  
21 suggested as the first phase was to various conclusions  
22 and summaries of the reports onto the public record that  
23 would allow for redactions to take place. I would -- but  
24 in accordance with your rules of practice, you would --  
25 you would allow Manitoba Hydro opportunity to provide

1 their redactions before they put that material on the  
2 public domain. And that would be the first phase so that  
3 any version of redacted materials has been available for  
4 your -- with risk review process.

5                 Secondly, I think that in -- in my letter  
6 of March 8th to the Public Utilities Board, that some of  
7 the technical aspects of this audit, I have made several  
8 suggestions to the Public Utilities Board that to conduct  
9 this technical audit may well not fall under your  
10 standard GRA rate application process.

11                 I -- but for many reasons in that March  
12 8th thirty-six (36) page letter, that I don't necessarily  
13 need to repeat now on this telephone conference call, but  
14 in summary that I -- I would suggest that a special  
15 process be put in place for a technical audit to -- to  
16 take place.

17                 I believe that technical audit needs to be  
18 done in confidence and that the audit needs to be very  
19 clearly defined. And I -- I really do think that this  
20 technical audit does not belong in a public hearing  
21 process. I believe this hear -- this needs to be done in  
22 two (2) phases.

23                 One, the technical audit needs to get  
24 completed, which has a very specific set of results and  
25 conclusions for that. As an example, and these are just

1 my suggestions to process. I -- I totally realize that  
2 this is a long -- an unknown path at this point, but  
3 would be to itemize a certain number of questions, maybe  
4 it's four (4), maybe it's ten (10), maybe it's just two  
5 (2), and an auditor.

6 I use the word "auditor" as opposed to  
7 "consultant" because I believe an -- a technical audit is  
8 a different process from having a consultant in a GRA  
9 review.

10 And the -- the auditor would validate each of those  
11 technical issues as either being right or wrong, and for  
12 a very focussed scope of work that's -- that's  
13 (INDISCERNIBLE), it's done in confidence.

14 I believe that this is an important next  
15 step that people should -- people have questions, they  
16 need to understand the work of -- of the risk management  
17 consultant giving the all correct and give some merit and  
18 is accurate. I would like to get past this technical  
19 audit first. And once that's completed, then move to  
20 what I think as a second phase of more of a hearing. I  
21 realize that's different to what the Board has put  
22 forward at this time.

23 I would like to restate that I absolutely  
24 do not think the right way to proceed is to have a public  
25 airing and discussion of all the computer problems. We

1 can elaborate on that at a later date. I -- I believe  
2 it's premature to necessarily be talking specifically on  
3 the correct -- exactly correct process to move forward at  
4 this time. I believe the purpose of this call was simply  
5 to grant Intervenor status.

6 I've got a couple of other points that I  
7 wanted to put forward to the Board regarding this  
8 application. One (1) of the suggestions is that, rather  
9 than try to map out the entire process from start to  
10 finish, this is taken at a phase-by-phase process with a  
11 commitment only made to the next phase because there are  
12 several unknowns.

13 The point I wanted to make is that I much  
14 prefer oral testimony to written testimony. I think it's  
15 a much better use of time. I -- I agree, I -- I don't  
16 really want to have to be writing hundreds of pages of  
17 documents.

18 I -- I know that your general rate application process  
19 seems to involve lots of written Intervenor requests.  
20 I'm not familiar with that process. I'm willing to learn  
21 it, but I think a much more efficient way to handle this  
22 in terms of cost and time management is to set up oral  
23 presentations, such as the one today, where the same  
24 amount of information can be communicated on a telephone  
25 as opposed to writing a thirty-six (36) page document. I

1 would greatly appreciate it if that -- if that could be  
2 considered. That is my preference.

3 I also would like to point out that while  
4 I'm applying for Intervenor status, the -- I -- I  
5 wouldn't necessarily say a favour, but it's more in the  
6 interest as -- of putting closure and getting this risk  
7 management order completed and done.

8 I believe that leaving these matters  
9 floating in the air, that this public interest disclosure  
10 record's been filed, I think it's in everyone's interest  
11 to get this resolved, and it's for that reason that I  
12 have done this.

13 I also would like to say, though, that if  
14 -- if some of the conditions, that it doesn't subject me  
15 to Manitoba jurisdiction, I am a New York entity and will  
16 be requiring access to the computer system 3 here. It  
17 will have to be done here in the New York law and New  
18 York access. We are willing to cooperate with the Public  
19 Utilities Board to make sure that it's done in a fair --  
20 fair way, and I just wanted to make sure that's clear.

21 And in terms of scheduling, also for the  
22 Board, I -- because of the other business matters that I  
23 have going on, I -- I cannot be necessarily subject to a  
24 two (2) day turnaround or subject to a random schedule of  
25 any and all processes. We are willing and I'm willing to

1 work with the Public Utilities Board to get a technical  
2 audit completed satisfactorily, but that shouldn't  
3 subject me to having to respond to an entire amount of  
4 Information Requests. I just wanted to put that out  
5 there.

6                   However, if you feel that that is in the  
7 interest of the Board and that is in the best interest of  
8 this GRA as a whole, that would have to be weighed up in  
9 terms of time, cost, and -- and availability, and what  
10 the -- the correct way to proceed.

11                   About winding up to conclusions here, I do  
12 want to just restate that I -- a 100 percent stand by the  
13 accuracy of the work that was done.

14                   I'm a math person, not an English person.  
15 I -- I said before I don't really like to rely on memory  
16 but really like to focus on making sure the right numbers  
17 have been calculated, that the right risks have been  
18 performed, that the right financial forecasts are done.

19                   I like to make sure that the --  
20 mathematics is really what the focus is in my  
21 participation here and that I'm not going on too much  
22 more -- it's not bureaucracy but the -- the  
23 administrative side of it is time consuming and it  
24 doesn't use -- isn't the best use of my skills.

25                   And I would like to also just point out to



1 the Board while I have this brief opportunity is some  
2 examples of how technical audits have been done in my  
3 experience in risk management and this is how I  
4 envisioned some sort of technical audit being done. And  
5 I realize it's very different or it may be different to  
6 what you're proposing.

7 I would like to state that it -- I believe  
8 and I -- I don't have legal counsel yet on the phone so I  
9 -- I do want to say this without prejudice. And until  
10 such time as legal costs are awarded or hopefully are  
11 awarded, this position may change but from my initial  
12 conversations and from what I've learned of other audits,  
13 I'll give you an example.

14 I was recently in an auction's trader  
15 audit where there was a computer model used by an auction  
16 trader but was in dispute with the bank and without  
17 getting into specifics, they had called an audit between  
18 the auction's trading model and a different model that  
19 was used internally to value the position. The auction  
20 trader claimed that this model had made X number million  
21 dollars, the bank said not. It was a big deal and there  
22 was -- what's called -- that I would consider a technical  
23 audit called.

24 Now, at the same time the auction's trader  
25 model did not want his model broadcast or distributed all



1 the company wanted to make absolutely sure that my -- the  
2 valuation of this -- this specific type of product is \$5  
3 million (sic). The trading pool at that time did not  
4 have a difference but it was being able to be reported  
5 publicly on the public statement.

6                   They sent in a big five (5) audit company  
7 and the nature of that fine technical audit is that the  
8 technical auditor would sit down. We had, as I said  
9 before, two (2) months to prepare, go through the model  
10 line by line. They were not allowed to take from the  
11 audit any description of the model, any methods,  
12 processes, thoughts followed, methodologies and the like  
13 and the only output of the audit was yes, the number's  
14 right or no, the number's not right.

15                   And at the end of the audit they signed  
16 off on the number, the purpose of the audit was to say  
17 yes, the \$35 million number is right and the amount got  
18 put on the annual report.

19                   Well, these technical audits have a very  
20 numerical and specific focus. The only purpose of them  
21 is, is it right or is it wrong and I believe that is the  
22 first and initial way that should be proceeded in risk --  
23 risk management investigation.

24                   I -- I certainly do not concur with the  
25 process that allows for public airing of computer code.

1 I  
2 -- I don't think that's in the best interest of any of  
3 the parties at this time.

4 MR. BOB PETERS: All right, thank you,  
5 New York Consultant. It's Bob Peters again cutting in.  
6 If that concludes your comments, I'll -- I'll turn it  
7 over to others who are entitled to give the Board their  
8 comments on what you've indicated, and you are certainly  
9 welcome to take notes, because you will be given an  
10 opportunity after hearing from the others to provide your  
11 reply comments.

12 Would that be acceptable?

13 NEW YORK CONSULTANT: Acceptable. Thank  
14 you, Mr. Peters.

15 MR. BOB PETERS: Yes, you're welcome.  
16 And yes, Mr. Vice Chair?

17 MR. ROBERT MAYER: Just a couple of  
18 questions. Can you hear me, New York Consultant?

19 NEW YORK CONSULTANT: Yes, I can.

20 MR. ROBERT MAYER: My name is Bob Mayer.  
21 I'm Vice Chair of the Public Utilities Board, and -- and  
22 in light of your earlier comments, I guess it would only  
23 be fair to tell you that I, too, am a lawyer.

24 I suppose I -- I've listened carefully and  
25 I've read the material which you have sent regarding your

1 application. I have some questions as to whether you  
2 really want to be an intervener or whether you just want  
3 your material properly looked at and fairly assessed.

4 Assuming that -- and -- and I think I -- I  
5 should tell you upfront, I have some understanding why  
6 you may not want to disclose a lot of what you have to  
7 KPMG.

8 Are you aware that the Board has retained  
9 two independent experts?

10 NEW YORK CONSULTANT: Yeah. You're  
11 speaking of Dr. Magee and Dr. Kuvursi?

12 MR. ROBERT MAYER: Yes.

13 NEW YORK CONSULTANT: I am aware of that.

14 MR. ROBERT MAYER: The Board retained  
15 those persons on the understanding that they would be  
16 beholding to no one. They are truly independent, and I  
17 don't know whether you have yet received a copy of each  
18 of their respective CVs.

19 NEW YORK CONSULTANT: Yes, I have  
20 received a copy of their respective CVs.

21 MR. ROBERT MAYER: Well, then, I'm  
22 wondering, assuming for a moment we could get proper  
23 confidentiality agreements between yourself and Doctors  
24 Kuvursi and Magee, and assuming for a moment we would be  
25 prepared to make sure they got to New York at your

1 convenience - hopefully as soon as possible - and were  
2 prepared to spend a couple of days with you in order --  
3 they are, as we understand it, risk management experts,  
4 would you be prepared to put aside some time -- I think  
5 we can be in a position to compensate for that time -- to  
6 meet with Dr. Kuvursi and his associate in New York City  
7 for the purpose of reviewing the issues which you have --  
8 which you want to see put before the Board?

9 NEW YORK CONSULTANT: Well, I -- I  
10 appreciate what you're saying. It's Mr. Mayer, right? I  
11 -- I'm not sure I heard your name correctly.

12 I'm willing to -- to work with the Board  
13 in any form of process and procedure. I would like to  
14 state, as I've stated before, that until this legal cost  
15 situation has been resolved, I -- I'm not in a position  
16 to put time into anything, and certainly don't want to  
17 disclose any -- anything to anyone until I'm free from  
18 this legal wrangling.

19 And assuming that we can first take care  
20 of that situation, the second thing that would need to  
21 happen, and again, there's a willingness to work with  
22 experts and consultants and auditors, I would need to  
23 retain my own legal counsel here in New York to make sure  
24 that, you know, such appropriate NDA's in place and what  
25 that entails and exactly what their terms of reference



1 we would like to follow that up with you. This is  
2 probably not the best place to do it in light of the fact  
3 that although Mr. Peters introduced a number of people in  
4 the room, you're certainly getting the airtime you  
5 mentioned.

6                   There is -- there is television camera in  
7 the room and a number of reporters sitting in on these  
8 hearings, so I would hope you would be open to discussing  
9 the proposal I just made to you at a later time.

10                   NEW YORK CONSULTANT: I'm very willing  
11 to, you know, work with the Board. I want the Board to  
12 know that it is my (INDISCERNIBLE) and understanding the  
13 merits -- hello?

14                   MR. BOB PETERS: Yes. We're still here.  
15 It's Bob Peters speaking. Somebody may have just joined  
16 the line.

17                   NEW YORK CONSULTANT: And I -- and I  
18 appreciate you -- your willingness to come to New York.  
19 I'm also willing to travel to achieve that, too. I -- I  
20 still would like to say, and I understand that you're not  
21 in a position to put an end to these legal situation at  
22 the Court of Queen's Bench.

23                   Unfortunately, for me there's a  
24 significant cost on my time and my legal resources to be  
25 involved in both, and one (1) way or another that



1 situation has to be resolved before I can commit any time  
2 to this. And I -- I say it with the upmost respect that  
3 I think we cannot -- I -- I just physically cannot handle  
4 both things at once.

5 (INDISCERNIBLE) tremendous amount of my  
6 time and resource and I'd also be seeking and I believe  
7 what the Board could do is (INDISCERNIBLE) the legal  
8 costs then to -- to fight Queen's Bench application. We  
9 would have to wait till that thing gets resolved. I'm  
10 not sure how long that could take, three (3) months, six  
11 (6) months.

12 I would like the legal resources to put an  
13 end to this legal wranglings, and at that point once I'm  
14 free of that, I would be able to concentrate and deliver  
15 the results needed to get on with this audit. At -- I'm  
16 sorry, that's really not my doing, but this has been  
17 placed as a (INDISCERNIBLE).

18 But it's the reality and one that I cannot  
19 ignore, unfortunately, because there is commercial harm  
20 being done to me right now by the broadcasting of  
21 confidential materials all over the internet.

22 MR. BOB PETERS: All right. Thank you  
23 for that, New York Consultant. I think that concluded  
24 the questions from the Vice Chair.

25 I'm going to now suggest that the

1 microphone be turned over to Mr. Williams on behalf of  
2 the Consumers' Association of Canada and the Manitoba  
3 Society of Seniors for his comments on your Intervenor  
4 request form.

5 I will, just before I close off the mic,  
6 ask those who are listening on the teleconference to  
7 please use that mute button so that we don't get some  
8 feedback at this end. And I'll just alert the parties  
9 that once Mr. Williams is finished, I'll keep calling  
10 down the list to see if there's any other comments.

11 Second last would be Manitoba Hydro and  
12 the last would be a reply opportunity for the New York  
13 Consultant. So with that process in mind, Mr. Williams,  
14 I'll turn the microphone over to you, sir.

15

16 SUBMISSIONS BY CAC/MSOS:

17 MR. BYRON WILLIAMS: Thank you, Mr.  
18 Peters, and good morning, Mr. Chair, and Mr. Mayer. Just  
19 before I proceed with my -- my comments, there were a  
20 couple of introductions I -- that haven't been made yet  
21 that I want to make.

22 They may have just stepped out of the --  
23 the room, but, first of all, appearing with me today is  
24 my -- my colleague Myfwany Bowman, and she wants to  
25 assure Mr. Peters that she is not bitter about his

1 egregious failure to announce her in terms of  
2 appearances.

3                   Also here today, and who -- closely  
4 watching over me for the entire week is Ms. DeSorcy from  
5 the Consumers' Association. I think she's just stepped  
6 out for a second.

7                   To the New York Con -- Consultant, Ms.  
8 DeSorcy has asked me to provide her greetings and also  
9 asked me to advise you that, like you, she has not always  
10 found -- fond of lawyers, present company in this room  
11 largely accepted. I -- I'm hoping that we can -- in --  
12 in terms of my presentation, I'm hoping that I will speak  
13 slowly enough to assist both the New York Consultant and  
14 -- and Mr. Rath.

15                   By just to assist the discussion, given  
16 that there are people not in the room, I've, at least in  
17 my mind, developed a few subheadings that I'll be high --  
18 highlighting as we change from subject to subject.

19                   The first thing I want to emphasize on  
20 behalf of my clients is both the unprecedented nature of  
21 this Hearing and also to highlight the -- what is the  
22 evolving position of my clients as they come to  
23 understand more about the complexities of the issue, the  
24 -- the barriers that the  
25 -- the New York Consultant is -- is facing.

1                   Just in terms of the unprecedented nature  
2 of this Hearing, I should note that a typical pre-hearing  
3 preparation for counsel for CAC/MSOS might involve one  
4 (1) or two (2) hours, perhaps thirty (30) minutes to  
5 sketch out case theory, an hour to create a budget and  
6 ten (10) minutes to craft some no doubt brilliant  
7 comments for the benefit of the Board. Then we all show  
8 up for about forty-five (45) minutes, hug a little bit  
9 and -- and then the really heavy lifting for the  
10 Proceeding begins after that.

11                   On behalf of my clients I want to  
12 emphasize that this is not a typical GRA and this is no  
13 ordinary pre-hearing conference.

14                   I'll admit that my math is sometimes  
15 fragile but, by my account, this is at least the third  
16 Pre-hearing conference associated with this proceeding  
17 and before the Hearing started Mr. Wiens and I were  
18 having a heated debate on whether or not the January 19th  
19 event might be categorized as a fourth Pre-Hearing  
20 conference.

21                   And I want to assure the Board that my  
22 clients and I have spent a lot more than two (2) hours in  
23 discussing the -- the intervention of the New York --  
24 proposed intervention of the New York Consultant. There  
25 have been heated internal discussions and those have been

1 held along with even more heated external discussions.  
2 Late evening phone calls and emails have been exchanged.

3           And the thinking of my clients has evolved  
4 materially, it's different even than it was at six  
5 o'clock last night. So I'll apologize in advance to the  
6 Board for what will be unusually lengthy comments by me  
7 on this -- this subject.

8           I hope they will be accepted understanding  
9 that it's a reflection of the importance that my clients  
10 attribute to ensuring that this -- these important issues  
11 are full and fairly canvassed.

12           Moving to again in my, at least my mental  
13 outline, I want to talk about and make the point that  
14 issues relating to risks and rates have been a long  
15 standing issue for this Board.

16           And just -- my clients -- it may seem  
17 trite but they really want to emphasize that what is at  
18 issue in this Hearing, it's a rate application. It's not  
19 -- although there are certainly relevant issues related  
20 to it, it's not about whether Mr. Cormie was right or  
21 whether the New York Consultant was right or otherwise.

22           There's been an application by Manitoba  
23 Hydro for significant rate increases. At issue is  
24 whether the rates proposed by Manitoba Hydro are just and  
25 reasonable.

1                   There is no doubt, though, that central to  
2 the Board's determinations in that matter are matters  
3 relating to risk. And for the benefit of all in this  
4 room, I think it's important to note that issues relating  
5 to the magnitude and probability of the risks faced by  
6 Manitoba Hydro have been a -- matters of longstanding  
7 concern for this Board dating back at least to the rather  
8 calamitous events of '03/'04.

9                   And, Mr. Chairman, in your opening  
10 statement, you identified as recently as in Order 32/09  
11 you -- Hydro's directed to provide a more detailed and  
12 independent risk analysis.

13                   Another unprecedented element in this  
14 Hearing and it's important for my future recommendations  
15 on behalf of my client was raised by Mr. Mayer and that  
16 relates to the -- the Board's rare but understandable  
17 decision in this proceeding to authorize two (2)  
18 independent experts. Experts in economics with a  
19 particular expertise I would suggest in econometrics.  
20 And authorizing them to examine a wide series of  
21 documents and issues related to the risks of Manitoba  
22 Hydro.

23                   I want to turn to the documents produced  
24 by the New York Consultant and I want to just set out,  
25 again, at a high level, my client's preliminary

1 understanding of -- of the record because, again, it's  
2 important to their ultimate recommendations.

3           It's my clients' understanding that from  
4 time to time, between February 2004 and October 2008, the  
5 New York Consultant entered into a series of consultants  
6 -- series of contracts, excuse me, with Manitoba Hydro,  
7 and, as she has adverted to today, these contracts  
8 included a series of non-disclosure agreements.

9           We're not privy to the reports themselves  
10 at this point in time, but our understanding, certainly  
11 based at least on the affidavit of Mr. Cormie, is that  
12 the New York Consultant was asked to perform a number of  
13 what my clients consider to be important tasks. They  
14 include, again, referring to his affidavit, providing  
15 recommendations of risk measurements and standards, of  
16 risk monitoring, system requirements, and  
17 recommendations.

18           They also include, again, according to the  
19 affidavit of Mr. Cormie, providing a risk map to allow  
20 Hydro to better diagnose and manage its risk profile.

21           It's my client's understanding that the  
22 New York Consultant has produced at least five (5)  
23 documents which are in the possession of Manitoba Hydro.  
24 These documents appear to be related to Hydro risks, long  
25 -- long-term expert contracts, and issues relating to

1 hydraulics.

2                   We also understand that Hydro takes issues  
3 with the conclusions drawn in these reports and may be  
4 contesting the expertise of the consultant to draw these  
5 conclusions. Obviously, they do not form part of Hydro's  
6 evidence.

7                   We also understand that these documents  
8 are also in the possession of the Board, but not -- and,  
9 clearly, they're not yet on the record in this  
10 proceeding. And it's an important point, Mr. Chairman,  
11 and Board Member Mayer, interested parties to date have  
12 not had access to these documents.

13                   In preparing for the Hearing, their  
14 ability to understand the issues that they need to  
15 address has been limited because they have access neither  
16 really to the documents, or at least to a summary of  
17 those documents that allows them to address their minds  
18 to the important conclusions or the significant  
19 conclusions which the -- the consultant may have drawn.  
20 Their effective participation in the Hearing, it is our  
21 submission, has been hindered. And, again, we're not  
22 throwing stones in -- in this proceeding in my comments  
23 there. I hope we're not.

24                   To date, Manitoba Hydro has not produced  
25 those documents for the public record. Our understanding



1 is that it's noted the confidentiality provisions and  
2 that, also, there is ongoing litigation.

3 It's -- it's evident, no one needs to say  
4 it, but I will, that the New York Consultant and Hydro  
5 are engaged in quite acrimonious disputes, whether in the  
6 court or in the media.

7 Turning to the Application of the New York  
8 Consultant to intervene. And I was actually struck by  
9 some comments of the New York consultant near the start  
10 of her thoughtful submission. She noted that it wasn't  
11 her inte -- original intent to proceed down the Public  
12 Utilities Board path. And my notes suggest that she said  
13 that she was seeking originally a reasonable  
14 investigation of the issues that have been raised.

15 Now, a variety of unfortunate events have  
16 led that reasonable investigation to not take place  
17 before the wis -- before the ombudsman or the auditor, so  
18 she's here today and she seeks application to appe --  
19 intervene in this proceeding.

20 Referring specifically to her application  
21 to intervene, I think it's -- it's important to note that  
22 she asserts that the PUB must review evidence on whether  
23 the work of the New York Consultant has unsubstantiated  
24 conclusions or whether it's as duly founded on fact.

25 She's highlighted today -- today, and

1 certainly her documents do as well, the -- the material  
2 and serious allegations that she makes in terms of  
3 Manitoba Hydro.

4 I want to emphasize my clients take no  
5 position on the merits of those al -- allegations.  
6 They've not -- or conclusions. They've not had the  
7 opportunity to review the documents, but it -- it's clear  
8 that serious concerns have been raised.

9 The New York Consultant also proposes an  
10 extensive intervention. It encompasses a number of  
11 phases and involves what appears to be the retention of a  
12 number of expert witnesses, three (3) in addition to  
13 herself, by my count, as well as approximately ten (10)  
14 witnesses employed by Manitoba Hydro.

15 I think it's also important to note and I  
16 -- I thank the New York Consultant for her comments this  
17 morning, she's identified significant legal risks and  
18 stresses that she's experiencing in -- in terms of her  
19 participation in this proceeding. And she's -- obviously  
20 it appears to be an overarching barrier from -- from her  
21 perspective.

22 Finally, she has also presented certainly  
23 what are interesting thoughts regarding a technical  
24 audit. She also has -- has suggested, at least based  
25 upon my notes, an acknowledgement that that type of

1 technical audit may not necessarily fit well within the  
2 established Public Utilities Board process.

3           And taking into account the transparency  
4 that the Public Utilities Board process must -- must have  
5 to satisfy the public and all that its deliberations and  
6 the evidence before it is -- is being decided in an open  
7 and transparent process.

8           Very briefly to the jurisdiction of the  
9 Board. Everyone talks about the Board's Rules of  
10 Procedure and I think that's important and, certainly,  
11 Section 12 of the Rules of Procedure enable the Board to  
12 order the production of documents.

13           Sections 27(43) relate to the granting of  
14 Intervenor status and the granting of costs of  
15 Intervenors. But it's important to note that underneath  
16 the Rules of Procedure there's a statute. Section 24(2)  
17 of the Public Utilities Board grants the Board a broader  
18 jurisdiction, in our view, than -- than the -- than is  
19 apparent in the Rules of Procedure. It has a  
20 jurisdiction to order the production of the documents and  
21 the payments of costs by virtue of Section 24(2).

22           And -- certainly our client's submission  
23 would be that if the Board is of the view that to assist  
24 in the -- a reasonable investigation of the issues  
25 raised, that whether we call the New York Consultant an

1 Intervenor, whether we call her a witness or whether a  
2 CAC/MSOS might prefer to describe her, at this point in  
3 time, as an informant with important information about  
4 the scoping of the independent review, in our client's  
5 submission, the Board has the jurisdiction to order the  
6 payment of reasonable unnecessary costs. Obviously,  
7 those costs would have to be tested and they would have  
8 to be -- opportunity would have to be provided to all  
9 parties including Hydro to comment.

10                   The position of CAC/MSOS is my -- my next  
11 heading. CAC/MSOS are of the view that the New York  
12 Consultant has produced documents that contain  
13 conclusions that are likely to be relevant to the issues  
14 in this proceeding. And again, the issues in this  
15 proceeding are whether the rates are just and reasonable.

16  
17                   I want to emphasize again the point, not  
18 having reviewed the documents or not seriously looked at  
19 the qualifications of the New York Consultant, my clients  
20 offer no opinions on the merits of her conclusions or on  
21 the issue of whether or not her expertise enables her to  
22 draw those specific conclusions. We're not taking issue  
23 with her expertise, we're simply not commenting. We  
24 haven't had the opportunity to review it in the context  
25 of her conclusions.

1                   What my clients do believe is that given  
2 the seriousness of the allegations and given the fact  
3 that Manitoba Hydro saw fit to retain the services of  
4 this consultant on important issues including  
5 recommendations of risk measurements and standards and  
6 the provision of a risk map, in my client's view, it is  
7 important that these conclusions be identified, that a  
8 mechanism be found to put them on the public record in  
9 some form that they may be properly identified and tested  
10 in a public open transparent process.

11                   In coming to this conclusion, my clients'  
12 views are reinforced, in part, from the number of calls  
13 they've received from consumers. And by the possibility  
14 that the very public dispute between the New York  
15 Consultant and Manitoba Hydro may have undermined the  
16 confidence of some consumers, some individuals, in the --  
17 the reliability of the forecasts or the reasonableness  
18 and prudence of the operations that underlie the  
19 determination of rates. I'm not saying that's my  
20 clients' views, but there are issues of confidence that  
21 have been expressed to them, and from them to me.

22                   CAC/MSOS agree that the New York  
23 Consultant should be invited to play a role in this  
24 proceeding. They also agree that, to the extent the New  
25 York Consultant is invited to play a role and plays a

1 role at a level and at a scope determined by the Board,  
2 that the New York Consultant should be entitled to  
3 reasonable costs as may be determined by the Board after  
4 taxation. And certainly at a -- a theoretical level,  
5 those costs could involve legal costs to the extent that  
6 they're related to the Board's investigation of the  
7 issues.

8                   In my clients' view, the most appropriate  
9 role for the New York Consultant, at this point in time,  
10 is that of an informant whose conclusions are of interest  
11 to the scoping both of the review conducted by Dr.  
12 Kuvursi and Dr. Magee, and to the scoping of the  
13 deliberation of issues of risk as they relate to rates  
14 for all parties.

15                   In the respectful view of CAC/MSOS, by  
16 virtue of the authority of Section 24(2), the Board can  
17 invite the New York Consultant to assist in the scoping  
18 exercise by meeting with the independent experts of the  
19 Board, identifying areas of concern, and providing at a  
20 high level the analytical and empirical basis sufficient  
21 to understand those concerns.

22                   In my clients' views that -- such a  
23 process would enable the independent regulatory process,  
24 including the independent witnesses, to draw the  
25 appropriate conclusions after a thorough, far-reaching,

1 strenuous and what we suspect at times will be a vigorous  
2 investigation.

3                   We note -- we -- we note that -- that  
4 certainly, echoing the comments of Mr. Mayer, Board  
5 Member Mayer, it's -- it's not possible to entirely  
6 relieve the New York Consultant of the -- her -- of the  
7 concerns relating to legal risk and indemnification, but  
8 such a process, a more limited process, more restricted  
9 in -- in scope may serve to mitigate some of these  
10 concerns.

11                   My clients want to emphasize that, in  
12 terms of the proposed intervention of the New York  
13 Consultant, they do not agree that the New York  
14 Consultant should be granted status as an intervener or  
15 interested party.

16                   In the event the PUB were to grant the New  
17 York Consultant status as an inter -- interested party or  
18 Intervener, my clients are of the view that the scope of  
19 that intervention should be restricted -- excuse me,  
20 strike that word -- should be narrowed in the interests  
21 of minimizing duplication and in the interests of  
22 maximizing efficiency.

23                   Again, while my clients are intrigued by  
24 some concepts of the technical audit, they do not support  
25 the process as currently sketched out by the New York

1 Consultant. They think parts of the process do not fit  
2 well with the objective of a public, open, transparent  
3 process.

4                   Just to elaborate a little bit, Mr.  
5 Chairman and -- and Board Member Mayer, in terms of why  
6 my clients, while welcoming the participation of the New  
7 York Consultant in this proceeding, are uncomfortable  
8 with the identification of her as an Intervener, my  
9 clients have a -- a few points.

10                   One of the points goes back to -- one of  
11 the points is that, as a resident of what -- our  
12 understanding is New York, who -- who, to our  
13 understanding, does not pay utility rates in Manitoba,  
14 the New York Consultant, in my clients' view, does not  
15 have a direct interest in the outcome of this proceeding  
16 as one would normally expect in terms of an interested  
17 party; nor does the New York Consultant purport to  
18 directly represent a group of Manitoba Hydro ratepayers  
19 or Manitobans affected directly by the activities; not in  
20 any formal structure, such as CAC or MSOS might.

21                   The -- the clients do accept, certainly,  
22 the -- what appears to be a desire by the New York  
23 Consultant to assist the public process, and there's a  
24 public interest element of that. But they also note, and  
25 this is quite legitimate, and -- and they do not condemn



1 her for this, that she also has a particular interest in  
2 addressing allegations made against her professional  
3 reputation, and in establishing that her conclusions are  
4 duly founded on fact and not unsubstantiated.

5           That's perfectly understandable, but that,  
6 in my client's understanding of what interesting parties  
7 mean, is not the type of interest that is -- is  
8 necessarily meant by that. One can legitimacy ask --  
9 legitimately ask whether the clearing of one's  
10 professional name is sufficient to establish an  
11 individual as an interested parties (sic).

12           CAC are of the view that the NY -- New  
13 York Consultant is not an interested party and that her  
14 objectives in -- in terms of ach -- achieving a  
15 reasonable investigation of the issues raised can be  
16 achieved in a more efficient process which brings less  
17 risk to her in the -- in the type of key informant  
18 process that we've suggested on behalf of our clients.

19           The other point that my clients wish to  
20 make, hopefully with some subtlety, is, again, going to  
21 the -- the nature of the proposed intervention. And --  
22 and not to be too hyperbolic, but in my client's view,  
23 there's a bit of a cloud hanging over this proceeding.

24           The New York Consultant, and -- and we're  
25 not again not questioning her -- her motives, has called

1 into question, frankly, the reliability, professionalism,  
2 and competence of certain elements of Manitoba Hydro  
3 management. On the other hand, Manitoba Hydro has raised  
4 concerns as well and called into question her  
5 professionalism, and it's terminated their busine -- her  
6 -- their business relationship.

7                   Litigation is ongoing, and certainly from  
8 my client's detached observations, that litigation  
9 involves an inordinment -- inordinate amount of  
10 discussion about ducks, and wolves, and -- and other  
11 matters. Issues related to the dispute and the  
12 whistleblower complaint have aroused conti --  
13 considerable controversy, whether at the law courts, in  
14 the -- in the media, or in the halls of the Legislature,  
15 or in the elevator on the way up to work. Emotions are  
16 high. Personal, professional, and corporate reputations  
17 are at risk.

18                   And this Hearing faces a real risk that  
19 the longstanding and critical issues of risk, dating at  
20 least back to '03/'04, may become a bit of a sideshow to  
21 what may be the far more apa -- emotive, far more  
22 entertaining battle, goodness knows, to either redeem or  
23 undermine the reputations, whether it's of the New York  
24 Consultant or -- or of officials in Manitoba Hydro. And  
25 my clients are concerned that the Board's very real

1 concerns in terms of risk, that their very real concerns  
2 in terms of risk, and what they accept to be the very  
3 real concerns of the New York Consultant may be lost in a  
4 far more personal, far more acrimonious battle.

5           In terms of matters going to the scope of  
6 the intervention, my clients are concerned -- and, again,  
7 they do not attribute blame to the New York Consultant.  
8 Naturally, she wants to fully participate in this -- this  
9 proceeding. But they're concerned that the full scope of  
10 the intervention may duplicate other activities already  
11 being undertaken, either by the Board or by interested  
12 parties, and that -- that may dissipate scarce resources.

13

14           And my clients have these same  
15 considerations. They note that the Board has re -- given  
16 the independent experts a wide mandate to examine issues  
17 related to -- to risks. And other parties, such as  
18 TREE/RCM and CAC/MSOS, have either engaged individuals  
19 with expertise in risk analysis, or econometrics, or are  
20 in the process of engaging that expertise. These parties  
21 may bring additional evidence to the Proceeding in the  
22 event that they're not satisfied totally with the results  
23 of the independent investigation, so there's a risk that  
24 -- that there will be an undue duplication of resources.

25

          The clients certainly understand why the

1 New York Consultant would wish to -- to have a -- a  
2 heavily involved voice in this. They -- they sus -- sus  
3 -- they would suggest that the best way to do that is  
4 through interacting with the expert witnesses;  
5 independent witnesses retained by the Board.

6 Just a couple of brief matters going to  
7 the scope and schedule proposed by the NYC. CAC/MSOS are  
8 concerned that the scope and schedule proposed are not  
9 particularly well defined and may lead to excessive  
10 delays and material exacerbation of costs. In terms of  
11 the technical audit it -- again, it's an intriguing idea,  
12 one that may be perhaps the Board, if its not satisfied  
13 at the end of this Hearing, may look at in the future,  
14 but they see it as being somewhat inconsistent with the  
15 public open process of the Board.

16 In terms of my client's recommendations  
17 related to the granting of Intervenor status, it's my  
18 clients' recommendations that the N -- New York  
19 Consultant not be granted Intervenor status. And in the  
20 event that that is granted, that that -- the scope of  
21 intervention should be narrowed.

22 Again, just to reiterate, it's their view  
23 that the New York Consultant should be invited to assist  
24 the scoping of the process by meeting with the  
25 independent experts, identifying areas of concern, and

1 providing at a high level an analytical and empirical  
2 basis sufficient to understand these concerns. Those  
3 concerns could be then investigated by the independent  
4 experts and the process.

5           And my clients have asked me to emphasize  
6 this: At a later date if the Board is not satisfied with  
7 the state of the record, it is always open to it to  
8 invite the New York Consultant to appear in another role,  
9 subject to considerations of fairness and cost.

10           The last point I wish to make on behalf of  
11 my clients relates to the documents produced by the New  
12 York Consultant, and which we understand to be in the  
13 possession of Manitoba Hydro. Whatever we do with --  
14 with the -- the New York Consultant's application, that  
15 is still an unanswered question.

16           The understanding of CAC/MSOS is that the  
17 documents themselves are work product belonging to  
18 Manitoba Hydro, but that they are subject to certain  
19 confidentiality provisions. The New York Consultant, as  
20 we understand it, is concerned that commercially  
21 sensitive information may be released if the documents  
22 are produced on the record in their current form.

23           As we understand it, the New York  
24 Consultant has expressed a willingness to redact these  
25 documents, in terms of commercially sensitive

1 information, in order to assist in providing them for the  
2 benefit of the Board and interested parties. To date,  
3 these documents have not been produced.

4 CAC/MSOS are of the view that ample ground  
5 exists for this Board to determine that the conclusions  
6 of the New York Consultant, as presented in those five  
7 (5) documents, are likely to be relevant to the  
8 Proceeding in that they relate to matters in issue.

9 CAC/MSOS would recommend that Mani -- that  
10 the Public Utilities Board offer Manitoba Hydro a time  
11 limited opportunity, after consultation with the New York  
12 Consultant which may need to be facilitated by Board  
13 counsel -- I'm not sure they're talking -- to place a  
14 version of these documents on the record, redacted, if  
15 necessary, in accordance with Rule 13. In the  
16 alternative, Manitoba Hydro should be asked to offer  
17 reasons why these documents should not be placed on the  
18 public record.

19 In the oppor -- in the event that Manitoba  
20 Hydro chooses not to produce these documents, or feels  
21 its unable to, the Board can invite comments on a time  
22 limited basis and make a determination on its own  
23 initiative, or certainly you can take this as the motion  
24 from my clients, if you wish, that these documents should  
25 be -- should be placed in a redacted form on the public

1 record.

2                   In the event that Hydro either volunteers  
3 to produce these documents or the Board determines that  
4 these documents should be placed on the public record,  
5 it's my clients' view that the New York Consultant should  
6 again be provided a time limited opportunity to propose  
7 redactions to the documents consistent with Section 13 of  
8 the rules.

9                   Obviously, from my clients' perspective,  
10 reasonable costs, pursuant to Section 24(2) of the Act,  
11 should be provided to the New York Consultant pursuant to  
12 the Board's jurisdiction.

13                   Ideally, from my client's perspective,  
14 these documents should be placed on the record by no  
15 later than April 1st, 2010, with suitable redactions.

16                   Subject to any questions of the Board,  
17 those are my client's submissions. I again, apologize  
18 for the length, but we're hopeful they are of assistance.

19                   THE CHAIRPERSON: Thank you, Mr.  
20 Williams. We've heard a lot of information in a fairly  
21 lengthy period of time, so we're just going to take about  
22 a seven (7) minute break and then we'll come back and --  
23 and proceed with Mr. Peters calling on the various  
24 intervenors.

25

1 --- Upon recessing at 11:30 a.m.

2 --- Upon resuming at 11:42 a.m.

3

4 THE CHAIRPERSON: Okay, welcome back  
5 everyone. Mr. Peters, I believe Mr. Williams has  
6 something to add.

7 MR. BYRON WILLIAMS: Twelve (12) minutes,  
8 Mr. Chair. No, I'm just teasing.

9 I -- I misspoke and -- and thanks to my  
10 Learned Friend, Ms. McGregor. I was mis-citing the --  
11 the Act. It's Section 24(4) that I should have been  
12 referring to, rather than 24(2).

13 Murphy, I'm misspeaking again. It's time  
14 for me to stop.

15 THE CHAIRPERSON: It's getting late in  
16 the morning.

17 Mr. Peters...?

18 MR. BOB PETERS: All right with those  
19 comments, Mr. Chairman, I recommend we turn it over to  
20 counsel for MIPUG, as I still do not see counsel for MKO  
21 in the hearing room.

22 That being the case, Mr. Hacault is  
23 counsel for MIPUG and it would be his opportunity to  
24 provide comments, with respect to the Intervenor request  
25 form by New York Counsel (sic).



1 THE CHAIRPERSON: Sir?

2

3 SUBMISSIONS BY MIPUG:

4 MR. ANTOINE HACAULT: Good morning, Mr.  
5 Chairman, Mr. Vice Chair. I have here with me today  
6 Patrick Bowman and Mona Pollitt-Smith. And as Mr. Peters  
7 confirmed, we appear on behalf of MIPUG.

8 I address two (2) issues. Firstly our  
9 position on the Intervenor request and secondly, the  
10 grounds with respect to that position, and finally as an  
11 additional point offer perhaps some solutions that we see  
12 to that issue which is put before the Board.

13 So first, on the issue of granting  
14 Intervenor status, we oppose granting Intervenor status.

15 Getting to the second point, we are  
16 certainly in support of having relevant reports,  
17 including, if applicable, the New York Consultant report,  
18 considered and analysed, but to the extent that it is  
19 relevant to the scope of the risk review.

20 It appears there may be relevant risk  
21 issues in these reports and that it is suggested that  
22 Hydro could change some of its systems to avoid losses to  
23 the benefit of ratepayers.

24 It may also assist in defining the scope  
25 for this Board. And I will have more later on to say

1 about my concern that we have not yet defined the scope  
2 of risk issues to be dealt with in this Hearing.

3 Let me now then turn to why MIPUG opposes  
4 the request for Intervenor status.

5 Firstly, I submit, it is a dangerous  
6 precedent to give a non-interested person Intervenor  
7 status. We note that, as the consumers' group did, it --  
8 it's not somebody who is representing a section of the  
9 Manitoba population. We have a good representation of  
10 that already granted to various Intervenors.

11 What appears also, is that this person may  
12 not be considered an independent expert to the extent  
13 that there is a personal interest to defend the  
14 credibility of conclusions that are made. It is not to  
15 say that her opinions should not be considered.

16 I turn again to -- the focus should be  
17 first to identify the risk issues and then determine the  
18 extent, if any, that the New York Consultant report is  
19 information which needs to be considered. I am concerned  
20 that the tail is wagging the dog.

21 This is not a forum to discuss whether the  
22 New York Consultant report is right or wrong; the issue  
23 is whether rates are just and reasonable. At this point,  
24 we can't even comment on whether and to what extent there  
25 is relevant information in that report to assist us in

1 making an informed decision on relevant risk issues;  
2 issues that are important and not necessarily collateral.

3           We note also that the Board has hired  
4 independent experts, available to all Intervenors. We  
5 note that each Intervenor does, as MIPUG will, assess  
6 whether they require experts to present reports to this  
7 Board to assist the Board in making its decision and  
8 orders.

9           The Board has already granted, as  
10 indicated by it, Intervenor status to a number of  
11 interested groups. These groups represent Manitobans and  
12 their respective interests, as to what constitutes fair  
13 and reasonable rates.

14           So for these reasons, we submit that it  
15 would not be appropriate to grant an Intervenor status to  
16 the New York Consultant. This having been said, I  
17 indicated I would then next address options, which we  
18 view are available to this Board, to consider information  
19 which it believes is relevant to the scope of risk issues  
20 determined by it.

21           First, as I see it, the Board now has  
22 reports filed with it, albeit it not on the record. But  
23 those reports were produced under compulsion by the PUB,  
24 and Manitoba Hydro has complied with a valid directive  
25 issued by this Board, a directive which was not

1 challenged and which required the production. It is our  
2 view, therefore, that if the Board wants to release the  
3 documents, it can do so quite independent of what is  
4 happening in other proceedings.

5           Parties are at liberty, under your rules,  
6 to file a motion to compel production of the document.  
7 Parties are at liberty, under your rules, to issue a  
8 subpoena to compel production of documents; that's a  
9 different route.

10           The important (sic), from our perspective,  
11 is that parties have the ability to consider whether the  
12 content is relevant. They have the ability to deal with  
13 the issues. It may be that this results in supporting  
14 the report and conclusions or challenging it, but always  
15 on a principled basis.

16           We are concerned with respect to the  
17 redaction issue. Not knowing what will be reacted --  
18 redacted, makes it very difficult to know whether the  
19 remaining document will be of any use to the parties. If  
20 there will be a redaction process, the redaction must not  
21 leave the report to be so useless that we cannot do  
22 anything with it, either the Board or the parties.

23           We note also, that, under rule 45(1)(a),  
24 there would be no basis to pay an Intervenor, per se, as  
25 opposed to consultants hired by an Intervenor, costs.

1 That is specifically provided under your rules.

2 For these reasons, we believe that the  
3 Application should be rejected, and that, as suggested,  
4 we believe that there are alternatives to receiving  
5 information which is relevant to the scope to be defined  
6 by this Board. And the last point being, that if there  
7 is the production of the report, it should not be in a  
8 way that it is so redacted as to make it not useful for  
9 the parties or this Board. Thank you.

10 THE CHAIRPERSON: Thank you, Mr. Hacault.  
11 Mr. Peters...?

12 MR. BOB PETERS: Yes, Mr. Chairman. I  
13 would next suggest the Board call on Mr. Gange,  
14 representing Resource Conservation Manitoba and Time to  
15 Respect Earth's Ecosystems for his comments relative to  
16 this Intervenor request by New York Consultant.

17 THE CHAIRPERSON: Mr. Gange...?  
18

19 SUBMISSIONS BY RCM/TREE:

20 MR. BILL GANGE: Thank you, Mr. Chair and  
21 Mr. Vice Chair. On behalf of Resource Conservation  
22 Manitoba and Time to Respect Earth's Ecosystem, I'm going  
23 to be very brief.

24 Basically, we posi -- we support the  
25 position and the -- and the comments made by Mr. Williams

1 and Mr. Hacault, with respect to the proper role and the  
2 -- with respect to Intervenor status.

3                   Secondly, we agree with the idea -- the --  
4 the idea suggested by the Vice Chair, as to pro -- a  
5 proposal as to how the -- the New York Consultant could -  
6 - that -- that the information in -- in the reports  
7 prepared by her firm, could be put before the Board and  
8 could be tested.

9                   We also agree with the proposal made by  
10 Mr. Williams, in terms of -- of how that process could --  
11 could unfold; that -- that the -- it strikes us that the  
12 best way is that the independent experts meet with the  
13 New York City Consultant and get the concerns that are  
14 raised in those reports, review them, and then report  
15 back to this Board and to all the Intervenors. The  
16 Intervenors will then have an opportunity to raise issues  
17 with the independent consultants. And the -- the  
18 concerns that are properly -- that have to be explored  
19 and have to be addressed could be investigated in that  
20 fashion.

21                   Basically, for -- on this point, Mr.  
22 Chair, those are the -- my comments.

23                   THE CHAIRPERSON: Thank you, Mr. Gange.

24 Mr.

25 Peters...?

1                   MR. BOB PETERS:    Yes, moving along, for  
2 the City of Winnipeg, if Mr. Pambrun has comments  
3 relative to the intervention by the New York Consultant,  
4 I would suggest she be asked to provide them at this  
5 time.

6

7 SUBMISSIONS BY CITY OF WINNIPEG:

8                   MS. DENISE PAMBRUN:    The only comment to  
9 be made by the City of Winnipeg, is that I share the New  
10 York consultant's views of lawyers, which is most  
11 unfortunate and awkward being one. I'm married to one.  
12 My two (2) best friends are lawyers. It's very awkward.  
13 But other than that, the City of Winnipeg takes no  
14 position on the Intervenor status.

15                   MR. ROBERT MAYER:    I -- I'm assuming  
16 that's a personal opinion and not the opinion of the City  
17 of Winnipeg.

18                   MS. DENISE PAMBRUN:    I think it's fair to  
19 say most of the lawyers in the City of Winnipeg are the  
20 reason that I feel that way about lawyers.

21                   THE CHAIRPERSON:    I'm leaving this right  
22 alone.

23                   Mr. Peters...?

24                   MR. BOB PETERS:    Yes, I'm going to leave  
25 this alone too. I'm going to suggest, Mr. Chairman, that

1 we turn to Southern Chiefs Organization Inc.'s counsel,  
2 Mr. Rath, or those from his Priddis office, to advise the  
3 Board as to whether they have any comments, relative to  
4 the intervention request by New York counsel.

5 Mr. Rath, are you there, sir?

6 MR. JEFF RATH: I am.

7

8 (BRIEF PAUSE)

9

10 MR. JEFF RATH: This is Jeff Rath  
11 speaking. Can you hear me?

12 MR. BOB PETERS: Yes, sir. Please  
13 proceed.

14

15 SUBMISSIONS BY SCO:

16 MR. JEFF RATH: Thank you. Well, first  
17 of all, I would like to thank the Chairman, and Board  
18 member, and Mr. Gaud -- Gaudreau for assistance today, in  
19 having our office be involved and attend by  
20 teleconference today. That's an accommodation that we  
21 very much appreciate, given the fact that we were just  
22 retained last week and we've been juggling other hearings  
23 and -- and matters that were previously scheduled. So  
24 thank you, everyone, for the courtesy of allowing us to  
25 attend by teleconference. It's greatly appreciated.



1                   We find ourselves, on behalf of the  
2 Southern Chiefs Organization, in a very interesting  
3 position, insofar as our application for intervention has  
4 yet to be heard or decided by the Board, commenting on  
5 the Application for intervention by another third party.  
6 So in this regard, I think with regard to the actual  
7 application for intervention being made by the New York  
8 Consultant, we would reserve comment at this time, and on  
9 behalf of our clients, take no position with regard to  
10 her Application to intervene, per se. However, we do  
11 have some submissions that we would like to make, with  
12 regard to what we consider to be some very unique  
13 submissions made by the New York Consultant with regard  
14 to what evidence can and can't be tendered by parties  
15 applying for intervention in this proceedings.

16                   Specifically, the New York Consultant has  
17 taken exception, we understand, by e-mail, to the  
18 Southern Chiefs Organization, filing both a copy of  
19 Exhibit 48 that it appear -- that it obtained from a  
20 posting on the World Wide Web by Manitoba Hydro, and a  
21 summary of that posting from the World Wide Web that was  
22 obtained from Manitoba Hydro's website, with regard to  
23 these proceedings.

24                   We're extremely concerned by any position  
25 that this information, as tendered to the world at large

1 and as -- in our submissions is now part of the public  
2 doma -- domain, not be considered as part of these  
3 proceedings.

4                   We would call to the Board's attention,  
5 and we've forwarded this by e-mail this morning to Mr.  
6 Gaudreau, copies of Hansard from the Legislative Assembly  
7 of Manitoba Standing Committee on Crown Corporations,  
8 dated Monday, March 8th, 2010, which makes it clear, from  
9 page 36 onward, that Exhibit 48 and the affidavit of Mr.  
10 Crombie, are very much part of the public record and are  
11 being discussed by the Legislative Assembly of Manitoba  
12 Standing Committee on Crown Corporations, as we -- as --  
13 as we've previously discussed.

14                   It would be the submission of the Manito -  
15 - or the -- the Southern Chiefs Organization, that if the  
16 Southern Chiefs Organization were granted Intervenor  
17 status that one (1) of the focuses of their intervention,  
18 if not the predominant focus of their intervention, would  
19 be issues pertaining to risk management and risk  
20 assessment.

21                   And, obviously, we see all of the  
22 information at -- that was paid for by Manitoba Hydro on  
23 behalf of the ratepayers coming from the New York  
24 Consultant as being germane and relevant to those  
25 discussions. As in previous hearings and previous

1 submissions, Manitoba Hydro, from our client's  
2 perspective, has always denied any linkage between  
3 exports of hydro power and any risk to the ecosystem or  
4 to the waterways that our clients rely on, with regard to  
5 their constitutional protected mode and ways of -- of  
6 life.

7                   So obviously, from our perspective, all of  
8 these things are properly to be considered by the Board  
9 in the context of these Hearings. We can't comment,  
10 obviously, on some of the other submissions made by the  
11 New York City Consultant, other than to note as we noted  
12 in our e-mail to Mr. Gaudreau, that if she's seeking to  
13 rely on Section 13 of the -- Section 13 of the Rules of  
14 Practice and Procedure of the Board, that in that regard  
15 -- and we would submit that it's somewhat unusual that  
16 she would be attempting to impose obligations of  
17 confidentiality or confidence on material filed by a  
18 putative Intervenor that formed part of the public  
19 record.

20                   But to the extent to which she's making  
21 all of these extraordinary claims, with regard to, you  
22 know, contractual confidentiality provisions, or other  
23 reasons that this material should not have been attached  
24 or disclosed publically, by virtue of the CSO's  
25 applications for intervention; in that regard, we would

1 point out that these are matters that would properly be  
2 raised under Rule 22 by way of formal motion, which would  
3 be in writing, which would follow the provisions of Rule  
4 22, which would allow the SCO to properly respond, and  
5 all the other parties to properly respond, with regard to  
6 all of the various allegations that are being made, with  
7 regard to the extent to which this information cannot be  
8 referred to.

9           This information having already become  
10 part of the -- the public record -- obviously, to the  
11 extent that the New York City Consultant raises issues or  
12 makes allegations or assertions as broad sweeping as she  
13 has, obviously in the form of any written motion,  
14 contracts redacted or otherwise, containing the  
15 information that she's alleging should be properly before  
16 all parties and Intervenors, so that an assessment could  
17 be made of the veracity of the assertions being made, by  
18 either the New York City Consultant or Manitoba Hydro  
19 with regard to these matters.

20           As the Board is well aware, people have  
21 been advised that there is a court order in existence  
22 dealing with confidentiality pertaining to the identity  
23 of the risk consultant. We have even been unable to  
24 properly test that assertion, as we have yet to be  
25 provided or served the filed copy of any order with

1 regard to that.

2                   Obviously, as officers of the court and  
3 the Board as a statutory tribunal, none of us want to --  
4 or Board counsel or any of the parties, none of us want  
5 to inadvertently or otherwise breach any outstanding  
6 court orders. We would simply note that the only order  
7 that we have been able to obtain to date, is an order  
8 that has been provided to our office in draft form as a  
9 courtesy by Mr. Gaudreau, secretary to the Board, which  
10 only states that the quote:

11                   "The Court order that until after  
12 Friday, January 29th, 2010, no person  
13 shall publish in any newspaper, radio,  
14 television, magazine, internet or other  
15 medium of mass communication, any  
16 information from any document filed, or  
17 evidence taken in this proceeding, that  
18 discloses the identity of the  
19 Respondent or of any principle of the  
20 Respondent."

21                   Now, the draft order that we've been  
22 provided says only until Friday, January 29th. We are  
23 operating under the assumption that this order has been  
24 extended. We have yet to obtain a copy of that order, in  
25 order to be able to review that and discuss that with

1 other counsel, including counsel for Manitoba Hydro, in  
2 order to assess their position in this regard, or to  
3 discuss this matter with counsel for the New York City  
4 Consultant, to assess her position in that regard. But  
5 we would note that the only copy of the order that -- or  
6 draft order that we have been able to ascertain, only  
7 speaks to disclosures of the identity of the New York  
8 City Consultant.

9           And in that regard, obviously again, as  
10 officers of the court and as a statutory tribunal, and as  
11 other lawyers are involved in these proceedings, all of  
12 us, obviously and certainly, want to make sure that all  
13 court orders that have been issued in other proceedings  
14 are strictly observed, that none of us run the risk of  
15 inadvertently falling afoul of any existing court orders,  
16 by relying on Manitoba Hydro, either inadvertently or  
17 otherwise, posting materials on the World Wide Web that  
18 would lead one to believe that these documents would not  
19 be subject to any confidentiality provisions or  
20 otherwise.

21           So these are all issues that, you know,  
22 obviously would need to be resolved; that may well be  
23 that at some point in the future, all of us may need to  
24 apply -- apply to the Court of Queen's Bench in the  
25 ongoing action, as between Manitoba Hydro and the New

1 York City Consultant, for advice and direction of the  
2 court, so that none of us inadvertently fall afoul in any  
3 orders in that proceeding.

4           In this regard, we would trust that these  
5 legal counsel for Manitoba Hydro, or legal counsel for  
6 the New York City Consultant, you know, as a courtesy and  
7 out of concern of all of us believe -- make sure that  
8 none of us inadvertently fall afoul of -- of valid orders  
9 of the Manitoba Court of Queen's Bench; keep us all  
10 advised and apprised on an ongoing basis, as to the state  
11 of any orders had or received within that proceeding that  
12 may affect these proceedings, or it may affect parties to  
13 these proceedings, or putative Intervenors to these  
14 proceedings, so that none of us are again found in the  
15 same situation that we have all found ourselves in this  
16 week, as a result of any misunderstanding that Manitoba  
17 Hydro may have had in posting documents publicly to the  
18 World Wide Web and having other parties rely on, you  
19 know, on these documents for the purposes of this  
20 submission to this panel.

21           So, in essence, what we would be  
22 submitting, on behalf of the SCO, is that obviously we'll  
23 be speaking to some of these issues in more detail in the  
24 context of our intervention application. We would  
25 simply, again, reiterate, that with regard to the

1 intervention application of the New York Consultant, we  
2 take no position, other than to note that with regard to  
3 her ex -- what we would con -- characterize as her  
4 extraordinary claims, are to the confidentiality of  
5 Exhibit 48 through contractual means, or any summary of  
6 that document, which does not contain information that  
7 identifies her by virtue of contractual means, as opposed  
8 to any court order, that she properly file a motion under  
9 Rule 22, in order that all of the parties would have the  
10 opportunity to properly and adequately respond to what we  
11 would characterize as her very extraordinary -- very  
12 extraordinary allegations in this regard.

13                   And thank you, Mr. Chairman and the Board  
14 member, for your patience. And those are our  
15 submissions, in this regard.

16                   THE CHAIRPERSON: Thank you, Mr. Rath.  
17                   Mr. Peters...?

18                   MR. BOB PETERS: Yes, Mr. Chairman, on my  
19 list, counsel for the independent experts, Mr. Wood, was  
20 on the line briefly with us this morning, and he  
21 indicated the had a hearing in another jurisdiction. His  
22 colleague, Ms. Reilly, is present with us today.

23                   And, as I indicated, and as -- as even  
24 noted by Mr. Rath, while perhaps not with Intervenor  
25 status, this is an opportunity for parties to provide



1 their comments to the Board. And if counsel for the  
2 independent experts have any comments relative to the  
3 intervention by the New York Consultant, this would be an  
4 opportunity for Ms. Reilly to provide them if she's able  
5 to.

6 MS. PAMELA REILLY: Thank you, Mr.  
7 Peters. The -- as counsel for the independent  
8 consultants, they take no position with respect to either  
9 of the Applications for Intervenor status.

10 THE CHAIRPERSON: Thank you.

11 MR. BOB PETERS: Yes. And, Mr. Chairman,  
12 with that information, it would be appropriate to turn to  
13 Manitoba Hydro, but before doing, let me preempt the  
14 discussion, and just questioning the timing because of  
15 the hour, and if Manitoba Hydro has a time estimate for  
16 its submission on this point --

17 THE CHAIRPERSON: That would be helpful.

18 MR. BOB PETERS: -- perhaps that could  
19 assist the Board in scheduling.

20 MS. PATTI RAMAGE: I would guess it will  
21 take us approximately half an hour.

22 MR. BOB PETERS: And, Mr. Chairman, with  
23 that in mind, and if the New York Consultant could, if  
24 able, indicate the approximate length of the reply  
25 comments that may follow, that would allow the Board an

1 opportunity to, again, understand the scheduling better.

2 NEW YORK CONSULTANT: My estimate, I --  
3 I've not heard Ms. Ramage's comments, but probably could  
4 take another half an hour.

5 THE CHAIRPERSON: Okay, well, we might as  
6 well take a relatively short lunch break. I don't know  
7 what's feasible for all the parties in the room. An  
8 hour, how does that sound?

9 Okay, one (1) hour it is. Let's even  
10 shorten that back a bit, given we've got this open mic  
11 that's carrying on, so we'll come back and start exactly  
12 at one o'clock, which is fifty-three (53) minutes from  
13 now. Thank you.

14

15 --- Upon recessing at 12:08 p.m.

16 --- Upon resuming at 1:03 PM

17

18 THE CHAIRPERSON: Okay. Welcome back,  
19 everyone. Or almost everybody back. I'm sure Mr.  
20 Williams will be here shortly.

21 I believe we were about to go to Ms.  
22 Ramage.

23 MR. BOB PETERS: Yes, sir. That was --  
24 that was the order that we have put forward. And after  
25 we hear from Manitoba Hydro, it's customary to provide

1 the Applicant for the Intervenor status to have an  
2 opportunity to reply to the new points -- excuse me, to  
3 the new points and issues that haven't been already  
4 addressed by the New York Consultant.

5 So we'll -- we'll follow on that path, I  
6 suggest, and it would be appropriate to call on Ms.  
7 Ramage at this time.

8

9 SUBMISSIONS BY MANITOBA HYDRO:

10 MS. PATTI RAMAGE: Yes, thank you, and  
11 good afternoon, Mr. Chair, Vice Chairman Lane. For the  
12 record, my name is Patti Ramage. I will be handling this  
13 portion of today's proceedings. Ms. Murphy -- or I think  
14 her name was Ms. McGregor (phonetic) or something earlier  
15 today -- will be addressing some of the other points as  
16 we proceed this afternoon, but this one I will take care  
17 of.

18 The Board has asked the parties for its  
19 comments on the Application for Intervenor Status filed  
20 by the New York Consultant. Manitoba Hydro appears today  
21 to oppose the granting of Intervenor status to the New  
22 York Consultant. Manitoba Hydro also opposes the  
23 suggestion that the New York Consultant be granted the  
24 costs and indemnities sought in the Application for  
25 Intervenor Status.

1                   Manitoba Hydro understands that the PUB  
2 has an interest in hearing from the New York Consultant  
3 and has a proposal to make regarding the assessment of  
4 the New York Consultant's reports which have been filed  
5 in confidence with the PUB, both by Manitoba Hydro in  
6 response to, I think it's Directive 5 from Order 32/09,  
7 and by the New York Consultant. Manitoba Hydro will also  
8 comment on the proposals it has heard from other  
9 Intervenors regarding what role the New York Consultant  
10 should have in these proceedings.

11                   The Board's Rules of Practice and  
12 Procedure directs that when considering an Application  
13 for Intervenor Status, the Board is to determine, among  
14 other things, a clear understanding of the issues to be  
15 addressed and purpose for the requested intervention.  
16 Manitoba Hydro opposes this application as the New York  
17 Consultant has no interest in the outcome of the  
18 Proceedings. The New York Consultant is not affected by  
19 the rates charged by Manitoba Hydro for electricity sales  
20 in Manitoba, which is the subject matter of the  
21 Proceeding at hand.

22                   The role of the PUB is not to adjudicate  
23 disputes between parties. In this case, the New York  
24 Consultant was retained by Manitoba Hydro, and Manitoba  
25 Hydro subsequently terminated the contract -- or perhaps,

1 more correctly, chose not to extend the contract. While  
2 the New York Consultant may feel it has a complaint that  
3 Manitoba Hydro has not paid sufficient heed to the  
4 conclusions in its reports, the consultant is not a  
5 resident of Manitoba, it does not pay rates for  
6 electricity to Manitoba Hydro and does not have an  
7 interest in the outcome of the Proceeding.

8           It appears the New York Consultant is  
9 attempting to divert the appropriate inquiries of the PUB  
10 to turn this Hearing into a means to provide the validity  
11 of its reports. The New York Consultant appears intent  
12 on calling three (3) experts to support its position and  
13 nine (9) employees of Manitoba Hydro. While we assume  
14 its experts will appear voluntarily, this is certainly  
15 not clear with respect to the Hydro employees. This  
16 sounds more like a trial than a regulatory hearing.

17           The PUB wants to understand risks. This  
18 New York Consultant can submit its reports for review.  
19 There are ways to accomplish that, provided the process  
20 meets procedural fairness requirements. It does not need  
21 to intervene to accomplish that purpose.

22           Further, the consultant seeks to have the  
23 PUB intervene to end the matter currently before the  
24 Queen's Bench, and to be assured that all costs which may  
25 be incurred as a result of litigation matters and the

1 consideration of its reports be paid by the ratepayers of  
2 Manitoba.

3                   The New York Consultant submits, on page 5  
4 of its application, that the dismissal of the Queen's  
5 Bench application by intervention by the PUB, would  
6 greatly facilitate a more timely and efficient and less  
7 injurious resolution to the risk management  
8 investigation. There are also several suggestions that  
9 any matters before the Queen's Bench may delay the New  
10 York Consultant's timely participation in the GRA.

11                   It is important to recall that the  
12 Application before the Court of Queen's Bench is to  
13 permit Hydro to file with the PUB, and interested  
14 parties, the findings of KPMG as it relates to the  
15 allegations and reports prepared by the New York  
16 Consultant.

17                   The suggestion that this legal wrangling  
18 somehow prevents a proper review of Manitoba Hydro risks  
19 by the PUB seems perverse. In fact, Manitoba Hydro has  
20 taken steps, the steps it has taken with the courts, to  
21 ensure that the complete KPMG report can be shared with  
22 the parties to this proceeding in order to have -- in  
23 order to address the allegations of the former New York  
24 Consultant.

25                   Having said this, if the PUB issues a

1 subpoena for the KPMG report, which will be placed on the  
2 public record for all -- for use by all parties, Manitoba  
3 Hydro may well be in a position to discontinue -- sorry,  
4 discontinue that action.

5                   And on this point, I -- I would want to  
6 clarify, Manitoba Hydro has heard a number of statements  
7 regarding the number of reports. We would want to  
8 clarify, the reports -- we have always referred to four  
9 (4) reports, today is five (5), but that's -- that's a  
10 matter that can be dealt with.

11                   MR. ROBERT MAYER: Did -- did I just hear  
12 you say, if we give you undertaking, that we'll issue a  
13 subpoena for that report, we can -- we can solve this  
14 Queen's Bench problem, because -- because two (2) of us  
15 up here can make that decision real quick?

16                   MS. PATTI RAMAGE: I think you can solve  
17 it with respect to the PUB. I'm not sure that it solves  
18 it in its entirety. I'd have to consult with our -- our  
19 counsel on that, but certainly it would go --

20                   MR. ROBERT MAYER: I heard the word  
21 "discontinue."

22                   MS. PATTI RAMAGE: Yeah. I think we  
23 would well be in a position -- I'd have to know if we  
24 needed anything further to be able to release that report  
25 to government and other interested parties, but I think

1 it would go a very, very long way, would be my first  
2 reaction.

3 I -- I think it's also important to note,  
4 Vice Chairman Mayer, that in terms of Manitoba Hydro's  
5 ability, my understanding is Manitoba Hydro isn't a po --  
6 is -- has never been really opposed to releasing it --  
7 releasing those reports. It's -- it's -- it hasn't  
8 released them to date based on the New York Consultant's  
9 positions with respect to confidentiality. That hasn't  
10 been Manitoba Hydro's view. And those Court of Queen's  
11 Bench actions are related to the KPMG report.

12 There's a -- there's a very important  
13 distinction to make. That -- that action's with Manitoba  
14 Hydro's ability to defend itself once those reports do  
15 make the public record.

16 In any event, the PUB ought not permit its  
17 process to be diverted into a substitute for the courts.  
18 It is not the Board's role to determine who is right and  
19 who is wrong between Hydro and a former consultant. The  
20 Board's mandate is to determine rates which are in the  
21 public interest and to balance the need for a financially  
22 stable utility with the needs of the ratepayers.

23 Certainly, a consideration of the risks  
24 faced by the Corporation will be part of that assessment,  
25 including consideration of the issues raised by the New



1 York Consultant that are material to rates. It need not  
2 and should not be a technical hearing on the allegations  
3 of the New York Consultant as proposed in its application  
4 to intervene.

5 Manitoba Hydro also notes that in past  
6 processes the PUB has required that proposed Manta --  
7 Manitoba Intervenors demonstrate not only that they  
8 maintain a substantial interest in the outcome of the  
9 Proceeding, but also that they represent the interests of  
10 a substantial number of ratepayers. Mere assertions to  
11 this effect have been rejected.

12 For example, in the 2002 Status Update  
13 Hearing, the PUB requested two (2) Intervenors new to the  
14 process, TREE and CCEB -- CCEP, to provide membership  
15 lists prior to granting these parties Intervenor status.  
16 And there I refer to Order 9 of '02 at page 8.

17 In reviewing CCEP's request for Intervenor  
18 status in the 2004 GRA, the PUB noted concern that the  
19 organization's membership list comprised less than sixty  
20 (60) members. And that can be found at Order 43 of '04  
21 at page 10.

22 On more the one (1) occasion the Board has  
23 rejected applications for Intervenor status from an  
24 individual Manitoba resident who intended to take issue  
25 with Manitoba Hydro's export strategy. This person was

1 not the member of any special interest group, but did  
2 hold the genuine belief that he represented a segment of  
3 the population that shared his concerns. The Board  
4 concluded in Order 136 of '07:

5 "Approving Intervenor status for an  
6 individual representing only his/her  
7 own interest risk extraordinary  
8 regulatory costs and time commitments  
9 for the Board, Manitoba Hydro, and  
10 other parties, for this and future  
11 hearings, not considered to be in the  
12 public interest."

13 And there I refer -- refer to page 10 of  
14 that order. That was the correct approach with dealing  
15 with a genuinely concerned Manitoba consumer in this  
16 forum. There is no reason to apply a different standard  
17 to a consultant from New York.

18 Manitoba Hydro also objects to the New  
19 York consultant being granted Intervenor status as the  
20 Application is insufficient in a number of respects. In  
21 particular, the Application fails to meet the basic  
22 requirements of disclosing the party seeking Intervenor  
23 status, including contact information. Rule 27 of the  
24 Rules of Practice and Procedure specifies that the  
25 written request to intervene must set out the name,

1 mailing address, e-mail address, and address for personal  
2 service and telephone number of the Intervenor or agent  
3 authorized to receive documents on that person's behalf.

4           The current Application does not disclose  
5 the identity of the Intervenor and the New York  
6 Consultant has requested that that -- that its identity  
7 remain confidential. This raises a number of concerns,  
8 both from procedural and legal perspective.

9           In particular, the procedural -- the  
10 principles of natural justice require that Manitoba Hydro  
11 be able to determine the identity of the Intervenor, that  
12 it does in fact exist, that it is a real person, and to  
13 assess the merits of this request. Section 15(3) of the  
14 PUB Act specifies that all sittings of the Board, hearing  
15 applications and taking evidence, shall be open to the  
16 public.

17           The Manitoba Court of Appeal has  
18 considered a similar issue, wherein an unnamed member of  
19 the Law Society of Manitoba attempted to challenge a law  
20 -- a decision of the Law Society. The Court of Appeal  
21 refused to hear the appeal, saying:

22                   "We are of the opinion that the  
23                   Proceedings in this Court ought to be  
24                   open, and we cannot hear an appeal from  
25                   an anonymous appellant."

1                   Manitoba Hydro submits the PUB can and is,  
2 in fact, required by the terms of its constating  
3 legislation, to respond to this request in the same  
4 fashion. The New York Consultant has not established any  
5 grounds which would necessary -- necessitate its identity  
6 being kept secret in this Public Utilities Board forum.  
7 There is no provision in the enabling legislation of the  
8 PUB to receive anonymous evidence or to require and  
9 applicant to respond to allegations from an unnamed  
10 source.

11                   As noted, Section 15(3) confirms that the  
12 taking of evidence shall be open to the public. The  
13 potential for mischief if these requirements are not met  
14 is significant.

15                   The application also fails to establish  
16 the costs of the proposed intervention as required by  
17 Rule 27(1) (b). The consultant indicates it cannot assess  
18 the complete budgets until more details are known on the  
19 process. However, the consultant proposes a three (3)  
20 phase intervention at significant cost.

21                   The -- the initial and immediate legal  
22 costs have been specified. First there was litigation  
23 indemnification of legal Queen's Bench costs of a hundred  
24 and twenty-five thousand (125,000). Now, this indicated  
25 it was comprised of twenty-five thousand (25,000)

1 Canadian and a hundred and fifty thousand (150,000) US  
2 dollars.

3                   So I thought there was -- it's a  
4 typographical error, I suspect. So I think we were  
5 talking about a hundred and seventy-five thousand  
6 (175,000) at that point.

7                   These costs appear to relate to the notice  
8 of application filed by Manitoba Hydro in the Court of  
9 Queen's Bench, in which it seeks the ability to defend  
10 itself through the use of the KPMG reports in the  
11 Proceeding. The Court has jurisdiction to decide on the  
12 awarding of costs in its proceedings and this is not a  
13 matter within the purview of the Public Utilities Board.  
14 Any costs with the consultant may incur in opposing the  
15 disclosure of the KPMG report on contractual grounds, are  
16 for the consultant to bear and not properly part of the  
17 administrative proceedings before the Board.

18                   Manitoba Hydro also notes there are a  
19 number of line items referencing US dollars or US counsel  
20 in the Application to intervene. It's not entirely clear  
21 why such funding is required. To be clear, Manitoba  
22 Hydro has not taken legal action of any kind against the  
23 New York Consultant in the United States. However, legal  
24 action in the United States has been threatened against  
25 Manitoba Hydro and its advisors. Funding for US counsel

1 is not relevant to this proceeding and the potential for  
2 abuse is evident.

3 Another point in the Consultant's  
4 application is required advice on technical audit and  
5 redaction of fifty thousand dollars (\$50,000). It  
6 appears from the Application, the consultant is seeking  
7 costs in the order of fifty thousand dollars (\$50,000) in  
8 order to redact reports already prepared and provided to  
9 the PUB and to prepare its pre-evidence.

10 The application suggests that it will  
11 respond to the materials Manitoba Hydro has submitted in  
12 order that the PUB can decide the technical hearing  
13 process going forward. It contemplates documents and  
14 sixty (60) to a hundred (100) pages of material. We note  
15 that the appendix for the Application, referencing costs  
16 of the interfac -- intervention, contemplates four (4)  
17 affidavits, one (1) for each of the years 2005 through  
18 2008, and that -- those as evidence for the pre-hearing  
19 for technical audit.

20 It appears the New York Consultant seeks  
21 to justify and rationalize the activities taken between  
22 2005 and 2008 in preparing reports for Manitoba Hydro.  
23 This is not a discovery about who said what to whom.  
24 It's simply not relevant. The tasks for the PUB are to  
25 ind -- identify the issues that could have a material

1 impact on rates and ensure that its decisions on these  
2 issues are based on rigourously tested evidence.

3           The consultant's approach will not lead to  
4 a testing of Manitoba Hydro's Application, nor will it  
5 lend itself to a robust discussion of Manitoba Hydro's  
6 risk management activities and plans. This will only  
7 lead to a debate as to whether the former consultant is  
8 right or wrong, and I think that's what we heard this  
9 morning from the former consultant. This debate is not  
10 germane to this Application and will not advance the  
11 public interest in determining whether Manitoba Hydro's  
12 rates are fair and reasonable.

13           The Applicant's interest appears to be to  
14 vindicate itself as a result of Manitoba Hydro not  
15 extending the consulting agreement, not to test the rate  
16 increases by  
17 -- proposed by Manitoba Hydro.

18           The Application also seeks three hundred  
19 thousand (300,000) in litigation insurance and  
20 indemnification costs of seventy-five thousand dollar  
21 (\$75,000) indemnification deposit retainer, as well an  
22 estimated fifty thousand dollars (\$50,000) in Canadian  
23 legal costs. Certainly the concepts of payment for  
24 litigation insurance and indemnification of cost to an  
25 Intervenor are unheard of in -- in this regulatory regime

1 and are not permitted under the PUB legislation or the  
2 rules as it relates to costs.

3                   Manitoba Hydro also submits that the  
4 proposed intervention is not reasonable and will not  
5 permit a timely hearing of the matters at issue. The  
6 proposed scheduled events by the former consultants  
7 suggests that it will take some two (2) months to provide  
8 redacted reports and an evidence letter. It is not clear  
9 to Manitoba Hydro whether the indication that we will be  
10 providing the PUB a complete itemization of estimated  
11 costs referenced in this submission, is the forty-eight  
12 thousand dollar (\$48,000) redacted Phase 1 cost or  
13 whether there are additional Phase 1 costs to be detailed  
14 at some future date.

15                   The Application for Intervention contains  
16 two (2) additional phases, with the issues proposed to be  
17 identified by the New York Consultant not being  
18 identified until September of this year. The budget with  
19 respect to this phase and the larger third phase are not  
20 provided.

21                   The Application for Intervention proposes,  
22 on page 4, that it will be necessary for the New York  
23 Consultant to be allowed sufficient time to refresh  
24 itself on all technical materials that were prepared for  
25 Hydro between 2005 and 2008. The Consultant alleges it



1 works for some three thousand, nine hundred and sixty-  
2 four (3,964) hours for Hydro. The total number of hours  
3 is not relevant and we're not going to deal with that.

4           It's only important for these purposes  
5 that the New York Consultant suggests she be compensated  
6 approximately 11 or 12 percent of that time to refresh  
7 its memory as to the work performed. By the Consultant's  
8 calculations, that means four hundred and sixty (460) to  
9 four hundred and seventy-five (475) hours of time to  
10 remind itself of the work already done. That represents  
11 three (3) months of full time work. And although the  
12 rate is redacted, one can expect a cost order in the  
13 magnitude of a hundred thousand dollars (\$100,000) for  
14 ratepayers. That is just for the Consultant to re-  
15 educate.

16           The Intervenor Application fails to  
17 recognize that the PUB rules do not allow for the  
18 recovery of costs associated with an Intervenor's own  
19 time. Rule 45(1)(a) states:

20                   "Costs awarded under this Section may  
21                   include the fees of the consultant,  
22                   expert witnesses, and counsel  
23                   associated with the intervention, but  
24                   shall not include indirect expenses  
25                   related to an Intervenor's own time,

1           such as wages lost by attendance at the  
2           Hearing. This provision is mandatory,  
3           not permissive and has been  
4           consistently applied in this  
5           jurisdiction with respect to requests  
6           for reimbursement for time devoted to  
7           Hearings by Manitoba Intervenors and  
8           persons in the employ of Manitoba  
9           Intervenors."

10                 While the New York Consultant's  
11           application has been redacted such that it's unknown  
12           whether it is a consulting firm or an individual  
13           consultant applying, for these purposes it doesn't  
14           matter; the same principle applies.

15                 Rule 43(1) provides that:

16                         "The Board may award costs -- may award  
17                         costs to be paid to any Intervenor who  
18                         (a) has made a significant contribution  
19                         that is relevant."

20                 Well this can't be known until the end of  
21           the Hearing. (b) of that provision:

22                         "Has participated in the Hearing in a  
23                         responsible manner."

24                 Again, this can't be known until the end  
25           of the Hearing.

1                   "(c) Has insufficient financial  
2                   resources to present the case  
3                   adequately without an award of costs."

4                   Again, the parties don't know who or what  
5                   this entity is, let alone understand its financial  
6                   resources.

7                   Finally:

8                   "(d) Has a substantial interest in the  
9                   outcome of the Proceeding and  
10                  represents the interest of a  
11                  substantial number of ratepayers."

12                  We've already dealt with this point and  
13                  the condition has not been met.

14                  The New York Consultant demands in its  
15                  Application that all costs for legal counsel will be  
16                  required as retainer in advance. Costs for consulting  
17                  will be required 50 percent in advance and 50 percent  
18                  upon completion of each phase. Clearly, such demand is  
19                  contrary to Rules 43(1)(a) and (b). If there is any  
20                  doubt on this point, I direct the Board's attention to  
21                  the Manitoba Court of Appeal's ruling in the case of  
22                  Manitoba Society of Seniors versus Greater Winnipeg Gas.

23                  I should add at this moment, these  
24                  reference I'm making I've handed out in Manitoba Hydro's  
25                  book of references, if an -- anyone wishes to go read

1 them in more detail.

2                   And in the Manitoba Society of Senior's  
3 case, the seniors requested the PUB make a preliminary  
4 award of costs in favour, so as to enable it to retain  
5 the services of experts, which it argued would allow it  
6 to participate more effectively, and without which, the  
7 Society contended, it was handicapped to the point where  
8 it was unable to participate and be heard in a fair,  
9 effective, and meaningful fashion.

10                   The court reviewed Section 56 of the PUB  
11 Act with authorizes the Board to make cost awards and  
12 concluded that, and I'm quoting here:

13                   "I am the view -- of the view that  
14 section 56 relates to an award of costs  
15 after a hearing. It is my view that  
16 the preliminary demand for costs could  
17 not be met by the Board under existing  
18 legislation. One can understand why  
19 the legislation does not provide for  
20 the Board to make preliminary award in  
21 costs.

22                   The Board's function is not simply to  
23 provide a forum for a hearing, but  
24 rather to play an active part in any  
25 such hearing to protect the public

1 interest."

2 And there I'm quoting from page 3 of that  
3 decision.

4 It is simply not within the Board's  
5 jurisdiction to grant a preliminary award of costs.  
6 There is good reason for that. It is in the public  
7 interest to assess the Rule 43(1) factors: the  
8 contribution made, the reasonableness of the infer -- of  
9 the intervention, the financial need, and the purpose of  
10 the intervention, prior to contributing to -- to that  
11 intervention.

12 While there appears to be general  
13 agreement amongst current Intervenors, that granting the  
14 New York Consultant status is not appropriate in the  
15 circumstance, there does appear to be an interest in  
16 exploring the issues the consultant has raised. Manitoba  
17 Hydro fully supports the review of all issues that are  
18 material to rates. By the same token, it is essential  
19 that Manitoba Hydro and Intervenors are afforded  
20 procedural fairness by the process.

21 The procedural matters discussed in  
22 Manitoba Hydro's letter of January 7th cannot be ignored.  
23 A number of options though have raised, and Manitoba  
24 Hydro has its own suggestion to add to the mix.

25 Manitoba Hydro believes a well-defined

1 scoping order would help parties understand the case that  
2 has to be made and focus both IR -- IRs and evidence.  
3 Manitoba Hydro believes that -- that we can deal with  
4 MIPUG's -- MIPUG issued a document outlining scoping, you  
5 know, earlier in February, in the month, and we think  
6 that's a good starting point to -- to move from and  
7 that's something we'll be commenting on, but we think,  
8 even from that point, there's going to be an ability once  
9 we leave this room to refine the scope even further.

10           We think the Board might consider  
11 adderring -- adding to a framework, a list of specific  
12 question -- questions which it identifies as significant.  
13 This would facilitate a balanced hearing where all  
14 party's issues are reasonably addressed. The Board would  
15 ultimately be responsible for designing those questions,  
16 but it would not be unreasonable to seek input from  
17 Intervenors, their expert -- their experts, Manitoba  
18 Hydro, its experts, and the New York Consultant. By  
19 doing this, a process can be designed that includes a  
20 review of issues identified by the New York Consultant  
21 which are deemed important by the Board.

22           This process would permit the New York  
23 Consultant to achieve its stated goal of informing  
24 Manitobans of the issues it alleges are lurking out  
25 there, but can leave it to Manitoba Intervenors and their

1 experts to carefully examine Manitoba Hydro with respect  
2 to those issues. Through such process, there's no need  
3 to disclose the identity of the New York Consultant and  
4 it doesn't need to disclose its alleged confidential  
5 information. From the Board's perspective, the important  
6 thing to be satisfied, is that the material issues are  
7 being looked at.

8                   Manitoba Hydro shares the Intervenor's  
9 conc -- concerns -- or their views, that it is both  
10 important for the rate proceeding and for public  
11 confidence in this process, that there be a transparent  
12 and effective way to examine the issues the New York  
13 Consultant raises.

14                   CAC has suggested that the PUB should  
15 allow the New York Consultant's Phase 1 proposal to  
16 proceed in order to get the reports on the record. To be  
17 clear, this represents only -- only part of the Phase 1  
18 proposal, and Manitoba Hydro's comments only apply to  
19 that part of the proposal.

20                   Manitoba Hydro would not object to placing  
21 these reports on the record -- on -- or on the public  
22 record. But on this point, Manito -- Manitoba Hydro can  
23 advise that with the exception of a small amount of  
24 Manitoba Hydro's customer information and the New York  
25 City -- New York Consultant's identity, it is not aware

1 of any need for further redactions.

2                   There is one (1) proviso, however, and  
3 this is an important proviso; that concurrently steps  
4 must be taken to ensure there are no impediments to  
5 prevent Manitoba Hydro from producing its own reports,  
6 including the KPMG report, and concurrently placing it on  
7 the public record.

8                   Manitoba -- the -- I'm sorry, the Board  
9 must also be mindful that if these reports are placed on  
10 the record and the reports are unsworn, they should be  
11 treated with caution by the Board, if they're not  
12 ultimately supported by sworn -- the sworn evidence of  
13 the author. The same consideration would be afforded any  
14 other party wishing to produce an expert report.

15                   Procedural fairness must be afforded all  
16 parties. There are no private meetings. It's all done  
17 in an open and transparent process, with all witnesses  
18 subject to cross-examination, and experts subject to  
19 qualification. This is the Public Utilities Board; it  
20 conducts public processes.

21                   CAC goes on to suggest that the  
22 independent expert meet with the New York Consultants --  
23 I'm sorry, the independent experts meet with the New York  
24 Consultant, in an effort to understand the analytical and  
25 empirical basis for its concerns, and then produce a



1 report of their findings, which -- which report would be  
2 subject to cross-examination. At least that's my  
3 understanding of what I heard this morning.

4 Manitoba Hydro appreciates that this  
5 approach is attempting to respect the Consultant's  
6 concerns about intellectual property and confidentiality.  
7 However, any process that is conducted behind closed  
8 doors, by definition cannot be scrutinized by all of the  
9 other parties and their experts -- experts, and therefore  
10 lacks all of the procedural protections, checks and  
11 balances that would normally apply.

12 For example, a request for the independent  
13 consultants to verify the mathematical validity of a  
14 model, might return entirely misleading results if the  
15 math is fine but there exist incorrect underlying  
16 assumptions about how Manitoba Hydro operates its system  
17 or conducts business under its legislation. Manitoba  
18 Hydro would expect the independent experts to test and  
19 report on inputs used, the rationale used for using such  
20 inputs, techniques employed, and assumptions applied.

21 If the Board adopts this approach, it  
22 should carefully supervise this process; ensure that all  
23 of the important parameters of this test program are  
24 developed and verified in open proceedings. Only at this  
25 point might the Board consider the closed-door portion of

1 this testing program be implemented by the independent  
2 experts, and even at that, the closed-door portion should  
3 be scoped as narrowly as possible.

4           On this point, I heard this morning also  
5 that the New York Consultant prefers things to be done  
6 orally as opposed to in writing. And if we are looking  
7 at this kind of proposal, it's Manitoba Hydro's view that  
8 everything must be documented so that all parties can see  
9 what happened.

10           In any event, I will be commenting  
11 further, with respect to this point, when I -- when we  
12 canvass the parties on scoping, because, from Manitoba  
13 Hydro's perspective, and -- and this is a very important  
14 point from Manitoba Hydro's perspective, it's not just  
15 about the math and I think the scope has to recognize  
16 that.

17           We heard MIPUG this morning also indicate  
18 that -- the possibility of an order compelling production  
19 of the consultant's reports, the subpoena comment that  
20 I've already dealt with earlier. And again, Manitoba  
21 Hydro would not object to such orders, provided steps are  
22 taken to ensure a similar order issues with respect to --  
23 to ensure the KPMG report, or any other expert reports by  
24 Manitoba Hydro or any other party, is placed on the  
25 public record.



1 parties have provided their comments, it customary for  
2 the Applicant for Intervenor status to have an  
3 opportunity to reply to any specific new items that  
4 haven't mentioned by the New York Consultant previously,  
5 and that have been raised by the other parties who have  
6 commented.

7                   So with that, Mr. Chairman, we'll ask the  
8 New York Consultant for any reply comments. And just to  
9 facilitate our technology, I would ask that, if possible,  
10 the New York Consultant use the handset as opposed to a  
11 speaker phone and speak clearly and slowly into the phone  
12 so that our transcription can -- can be accurate.

13                   So with that, I'll turn it over to the New  
14 York Consultant again. Thank you.

15

16 REPLY BY NEW YORK CONSULTANT:

17                   NEW YORK CONSULTANT: All right. Thank  
18 you, Mr. Peters. I'm using the same phone, so I hope  
19 that you can hear me just as corr -- you can still hear  
20 me correctly, is that right?

21                   MR. BOB PETERS: Yes. We're -- we're  
22 listening now.

23                   NEW YORK CONSULTANT: Okay. Thank you.  
24 Well, thank you. I've had an opportunity to listen to  
25 the many different comments. I -- I do want to respond

1 briefly to the first few people. Unfortunately, I don't  
2 remember everybody's name; I believe, MIPUG and MK-KOS  
3 (phonetic), Mr. Byron Williams' group.

4                   My initial comment, I guess, in summary to  
5 both of them, is that I believe the Public Utilities  
6 Board should make a decision on whether the reports are  
7 relevant, not to the GRA ratepayer application, but to  
8 the special risk and risk management review, which I  
9 believe is now being set forth as a separate process and  
10 conceivably being conducted by the Public Utilities  
11 Board.

12                   I would concur that if my Intervenor  
13 status was solely for the traditional GRA process, that  
14 that in that regard it may or may not be relevant.  
15 However, in light of the risk and the risk management  
16 issues that have been raised and that the Public  
17 Utilities Board appears to have, at least under my  
18 reading of Order 17/10, and also under its proposed  
19 schedule that has been recently released, to be holding a  
20 separate GRA with regards to the risk and risk management  
21 issue.

22                   To that end, I believe that the work done,  
23 during the period of time 2006 to 2008, is directly  
24 relevant to this particular portion of the GRA regarding  
25 risk and risk management issues.

1                   To that end, I believe that the work done  
2 -- obviously this contribution that is relevant to that  
3 specific proceeding, not the Proceeding proposed in June,  
4 and will contribute to a better understanding by all  
5 parties of the issues before the Board.

6                   To that end also, in response to the  
7 comments made by both the (INDISCERNIBLE) Intervenors, if  
8 the materials are determined to be relevant to this  
9 second -- I call it the GRA Risk Hearing, it would be a  
10 matter of natural justice and procedural fairness that  
11 the author of the report is equally granted suitable  
12 status that they can defend and respond to reports that  
13 are placed on the record.

14                   It would simply will not be procedurally  
15 fair for the reports to be left on the record without my  
16 ability to be able to respond to them, talk to them, and  
17 simply not have a voice and that voice be behind, for  
18 example, that of solely the proposed independent experts  
19 being retained by the Public Utilities Board.

20                   One (1) of the reasons that I state this  
21 point and one (1) of the reasons that I believe strongly  
22 that it has reached this level of a lack of resolution,  
23 is because my experience has been that since issues of  
24 this magnitude have started being raised at the Utility,  
25 there has been a consistent dependency to silence the

1 voice of the person or the author of the report.

2 I believe that has led to much  
3 miscommunication. I believe it has also led to an unfair  
4 and inappropriate resolution of matters. And to continue  
5 that trend of not allowing the author of the reports to  
6 defend their position, to speak to the reports, would be  
7 contravening the process of natural justice and  
8 procedural fairness.

9 So the -- the Board then should make a  
10 decision that if the reports are relevant to this GRA  
11 Risk Hearing and it is their desire to place them on the  
12 record, then the party or the author who will be  
13 contributing will need a voice in that Hearing to be able  
14 to speak directly to those reports and not hide or be in  
15 the shadow, speaking only through independent experts. I  
16 would very much like to state that point in response to  
17 the comment made by the two (2) earlier Intervenors.

18 I appreciate the comment made by Mr. Byron  
19 Williams that he does see it's necessary and relevant.  
20 For a cost awarding, I would like to state that, as a  
21 consultant, my opportunity costs, my interests are  
22 different, understandably so.

23 I simply could not put -- would not put  
24 myself at a business risk standing where I would simply  
25 do three (3) to six (6) months worth of pro bono work

1 without any -- and turn down other positions and  
2 consulting projects I have currently on the go.

3 I think Mr. Williams also mentioned a  
4 schedule for phase 1, which is provided as an estimate.  
5 One (1) of the reasons for such a schedule of -- of that  
6 amount of time is because of other commitments and  
7 engagements that are currently underway.

8 I -- I think the Public Utilities Board  
9 should know I will do and is prepared to do whatever I  
10 can to accommodate the schedule, but in procedural  
11 fairness, it cannot be expected that a party should  
12 suddenly drop their current engagements without any  
13 understanding what costs were going to be awarded. That  
14 would simply not be procedurally fair.

15 In response to Ms. Ramage's many  
16 statements about how the Public Utilities Board has  
17 previously conducted its hearings, I respect and I -- I  
18 appreciate those comments. At the same point, I believe  
19 Mr. Byron Williams is correct in saying that this is an  
20 unprecedented hearing.

21 I believe that the Public Utilities Board  
22 is setting forward new processes related specifically to  
23 risk and risk management. I do not believe that this is  
24 something the PUB has undertaken before.

25 I believe that this might be, in fact, the





1                   govern the conduct of that proceeding  
2                   and will prevail over any provision of  
3                   these rules that is inconsistent with  
4                   those directions."

5                   Once again, the Board has the ability to  
6                   supplement any procedures that it feels are appropriate  
7                   for the effective dispatch and resolution of these  
8                   issues. Therefore, what -- my position is that I believe  
9                   the Public Utilities Board needs to set forward new and  
10                  alternative processes to respond and deal with these risk  
11                  management issues.

12                  If the -- if the materials are to be  
13                  placed on the public record in conjunction with the GRA,  
14                  it would be my position that the New York Consultant  
15                  should be granted status in the Hearing to respond to it.

16                  If the materials are not to be placed on  
17                  the public record and not part of the GRA, then it would  
18                  be acceptable to conduct a sort of confidential technical  
19                  investigation or however an alternative process is  
20                  defined.

21                  As mentioned by Ms. Ramage on subpoena and  
22                  discontinuing the Queen's Bench, I wanted to comment on  
23                  that. At this time, again, I would like to restate that  
24                  the -- we are willing to work with the Public Utilities  
25                  Board in its entirety to make sure the Public Utilities

1 Board has full understanding of the allegations, if you  
2 could call them allegations, I would say, more  
3 importantly, the risk management findings, explain any  
4 such methods, processes and techniques to help the PUB  
5 have a level of confidence that the work is valid and  
6 technically correct.

7                   And we also do ask that the Public  
8 Utilities Board once again respect Section 13.2 of its  
9 Rules and Practice and Procedure which allow any and all  
10 parties to be able to protect whatever their confidential  
11 information is, technical, scientific and personal  
12 information, and that my cooperation with the PUB came  
13 from a transfer under the Public Interest Disclosure Act.  
14 And, therefore, my participation in this process will so  
15 abi -- abide with this transfer over to the protection  
16 of confidentiality of my personal information which is,  
17 in any process, conducted under the GRA. That would be  
18 an important requirement that I would consider be part of  
19 this hearing.

20                   I'm not sure if I cut out because --  
21 hello?

22                   MR. BOB PETERS: No, you're still -- we're  
23 still listening. Thank you.

24                   NEW YORK CONSULTANT: Okay. Well, just I  
25 heard there was complete silence on the other end so I

1 wasn't sure if this call got dropped.

2 I do -- I do remain committed to seeing a  
3 resolution to the matters that have been raised. I  
4 continue to suggest that a different process is put in  
5 place to resolve the risk issues. And I do continue to  
6 say that I think that collaboration between myself and  
7 various employees that worked with me on these findings  
8 would be a far more expeditious and helpful way for the  
9 PUB, and potentially its experts, to get a better  
10 understanding of the issues that have been raised.

11 Having an unnecessary firewall between  
12 myself and people that could significantly speed up the  
13 process is not in the public interest and -- and is  
14 leading to much of (INDISCERNIBLE) process than it needs  
15 to be. And that's -- that would pretty much sum up my  
16 last comments regarding this.

17 MR. BOB PETERS: All right. Thank you,  
18 New York Consultant, for those reply comments.

19 At this point in time the Board will turn  
20 to the next topic that is before it, and that will  
21 involve Counsel for Southern Chiefs Organization Inc.,  
22 Mr. Rath, and his colleagues. We'll turn to the  
23 Intervenor request that has been made by SCO.

24 And, Mr. Rath, I'll invite you to, I  
25 suppose, highlight your Application and to provide any

1 comments that you would at this point in time.

2 MR. JEFF RATH: Certainly. Thank you  
3 very much, Mr. Chairman. This is Jeffrey Rath speaking  
4 on behalf of the Southern Chiefs Organization.

5 Perhaps we could speed things along with  
6 regard to my application by asking of Manitoba Hydro and  
7 any of the other Intervenors as to whether or not any of  
8 them object to our application to intervene in its  
9 present form. I won't ask their position with regard to  
10 that intervention but can we just simply have a quick  
11 poll as to whether there are any objections from the  
12 parties or the Intervenors in order that I can assess as  
13 to what degree of detail I need to go into with regard to  
14 our application itself as opposed to any other portion of  
15 it?

16 MR. BOB PETERS: Well, I think the Board  
17 will perhaps take you up on that offer, Mr. Rath. It's  
18 Bob Peters speaking. Maybe what we will do is we'll go  
19 to Manitoba Hydro and then to CAC and the other  
20 Intervenors and just find out whether they have  
21 objections, and if they do, to state them in twenty-five  
22 (25) words or less, and if they don't, to say that, as  
23 well, just so you will have an idea and understanding as  
24 to what the position is of the parties gathered.

25 MR. JEFF RATH: Cert -- certainly, and

1 thank you, Mr. Peters. This has been a longer day than I  
2 think a lot of us have anticipated and we'll do anything  
3 that we can to help speed things along.

4 MR. BOB PETERS: All right. With that in  
5 mind, does Manitoba Hydro have any stated objections to  
6 the intervention by Southern Chiefs Organization Inc.?

7 MS. MARLA MURPHY: Yes, good afternoon,  
8 Marla Murphy from Manitoba Hydro. We do object to the  
9 intervention of SCO. We do so, if -- if I can do it in  
10 twenty-five (25) words or less, we do it on the basis  
11 that their interests are adequately represented by other  
12 parties already intervening and that there is no new  
13 information offered through this organization.

14 MR. BOB PETERS: We'll keep going down  
15 the list, Mr. Rath.

16 MR. JEFF RATH: Thank you.

17 MR. BOB PETERS: Mr. Williams, on behalf  
18 of CAC/MSOS, can you indicate whether there's any stated  
19 objections to the intervention by SCO?

20 MR. BYRON WILLIAMS: On behalf of  
21 CAC/MSOS, I can indicate that there are no objections to  
22 the int -- intervention.

23 My client -- my clients may have some  
24 comments in terms of costs at a high level and issues of  
25 managing duplication, but they always welcome the voices

1 of First Nations' people. They consider it an important  
2 element of the Board's deliberations and they welcome  
3 that perspective.

4 MR. BOB PETERS: And turning to Mr.  
5 Hacaault on behalf of the Manitoba Industrial Power Users  
6 Group, sir, can you indicate to Mr. Rath and the Board  
7 whether there are any objections by your client to the  
8 SCO intervention?

9 MR. ANTOINE HACAULT: I'm embarrassed to  
10 admit I agree with Mr. Byron Williams on this. I have no  
11 further comments.

12 MR. BOB PETERS: And still no one  
13 attending on behalf of MKO, so we'll turn to Mr. Gange on  
14 behalf of RCM/TREE as to whether or not his clients have  
15 any objections to the intervention of Southern Chief's  
16 Organization.

17 MR. BILL GANGE: We're in a similar  
18 position to Mr. Williams.

19 MR. BOB PETERS: And then turning to the  
20 City of Winnipeg to Ms. Pambrun, whether there are any  
21 objections on behalf of the City.

22 MS. DENISE PAMBRUN: No objections from  
23 the City but, Mr. Rath, you might take my good advice and  
24 eat chocolate. It's been helping me considerably this  
25 afternoon.

1 MR. JEFFREY RATH: I'm sorry. I missed  
2 that.

3 MS. DENISE PAMBRUN: Don't worry about  
4 it.

5 MR. BOB PETERS: It -- it was an attempt  
6 at a dietary recommendation that was made to keep people  
7 awake.

8 Having said that, I'll turn also into the  
9 hearing room to Ms. Reilly appearing on behalf of the  
10 independent experts as to whether there is any objection  
11 to the SCO intervention.

12 MR. ROBERT MAYER: She previously  
13 indicated there wasn't going to be any.

14 MR. BOB PETERS: You are correct, and I  
15 had forgotten that. Thank you, Mr. Vice Chair. There  
16 was no objection from SCO for the benefit of Mr. Rath.

17 THE CHAIRPERSON: Well, we'll let Ms.  
18 Reilly confirm that.

19 MS. PAMELA REILLY: That's correct. On  
20 behalf of the Independent Consultants, they're taking no  
21 position.

22 MR. BOB PETERS: All right. And then the  
23 -- the question that also becomes to the New York  
24 Consultant to provide an opportunity to indicate, at this  
25 point in time, whether there are any objections by the



1 New York Consultant for Southern Chief's Organization  
2 Inc. to intervene in this Manitoba Hydro GRA?

3 NEW YORK CONSULTANT: I don't have an  
4 objection, however, I do want to say that in procedural  
5 fairness the Public Utilities Board cannot be accepting  
6 materials related directly to the work provided and  
7 contained by the New York Consultant until such time in  
8 procedural fairness that the New York Consultant's own  
9 status has been achieved.

10 And that should be respected by the Public  
11 Utilities Board that if the materials that have been done  
12 by the New York Consultant, I believe, are of substantial  
13 value to the Public Utilities Board in this Hearing, I  
14 duly accept that the Board at that time, in their  
15 appropriate form, such other responding materials could  
16 be placed, but I would -- it would be the position of the  
17 New York Consultant that it is unfair and a contraven --  
18 contravenes the rules of practice for any materials  
19 relating to New York that is not currently placed on the  
20 record including the summary that -- that which may, in  
21 fact, be favourable to my work be -- be removed at this  
22 time until such time as the New York Consultant's proper  
23 status is achieved and the work is appropriately placed  
24 before the Board.

25 It would be unfair for the New York

1 Consultant to have a summary of the work in the event  
2 that it would not be fairly able to respond to it in a  
3 Hearing, and the Board must consider processes that are  
4 fair to all parties.

5                   In -- in a -- in addition to that, just on  
6 the same note, you have to forgive me I don't fully  
7 understand the -- all the technicalities in the Public  
8 Utilities Board process and I don't fully understand the  
9 differences between status and Intervenors and witnesses  
10 and experts, but to the degree that the work and any of  
11 the materials that are going to be placed in front of the  
12 Public Utilities Board, even if it becomes part of other  
13 Intervenors such as the SCO, the New York Consultant  
14 would feel that it would need the same amount of  
15 procedural fairness as granted to any of the others --  
16 people granted standing, such as the ability to call his  
17 own experts and the ability to call its own witness.

18                   And the New York Consultant would be  
19 reluctant to participate in a manner that in any way  
20 diminishes its ability to participate in that light  
21 because the need for witnesses and the need to be able to  
22 call experts would be also very important for the New  
23 York Consultant in this process should its material be  
24 placed on the public record. The New York Consultant  
25 must also be offered the chance to defend itself in that

1 light.

2 MR. BOB PETERS: All right.

3 NEW YORK CONSULTANT: And that  
4 (INDISCERNIBLE) Application because it has -- it intends  
5 to refer to work which I believe is valuable to the  
6 Public Utilities Board but it needs to be formed as part  
7 of the public record in an approved and fair process to  
8 all parties.

9 MR. BOB PETERS: All right. Thank you  
10 for that. It's Bob Peters again on the microphone.

11 Mr. Rath, with the indication you've heard  
12 from the hearing room and the teleconference, Manitoba  
13 Hydro is the one who stated an objection, and the New  
14 York Consultant also indicated some concerns with how any  
15 materials that would be utilized by your organization  
16 would be treated by the Board.

17 But, with that in mind, sir, perhaps you  
18 can turn to your intervener request form and provide the  
19 Board with your comments, recognizing the -- the  
20 objections that you've heard, in brief.

21

22 RE: APPLICATION TO INTERVENE BY SCO:

23

24 SUBMISSIONS BY SCO:

25 MR. JEFF RATH: Thank -- thank you, Mr.

1 Peters, Mr. Chairman, Vice Chairman, with regard to this.

2           As you can tell from the approach that we  
3 are taking on behalf of our clients and the approach of  
4 the SCO with regard to this matter, it's certainly not  
5 our intention to drag matters out, duplicate efforts that  
6 are undertaken by anyone else, or to in any way waste  
7 anybody's time with regard to these proceedings.

8           However, and we have to state this quite  
9 strongly in the context of Manitoba Hydro's I think  
10 somewhat remarkable suggestion that the interests of  
11 thirty-six (36) Southern Manitoba First Nations are  
12 adequately represented by the MKO who, as we see, isn't  
13 even here today, or anyone else in these proceedings;  
14 that our clients, the Southern Chiefs Organizations,  
15 bring a very unique perspective on behalf of thirty-six  
16 (36) member First Nations from Southern Manitoba to these  
17 proceedings which have not in any way been adequately  
18 addressed at all to date in any of the interventions by  
19 anyone, and certainly have not been addressed to date by  
20 Manitoba Hydro, and, as such, both as ratepayers and as  
21 parties who have riparian interests and lands that will  
22 be impacted by how it is that Manitoba Hydro manages risk  
23 or manages water releases up and down these systems, this  
24 is a unique voice and a unique perspective that, with the  
25 greatest of respect to my friend from Manitoba Hydro,

1 needs to be considered by the Board in these proceedings.

2                   Again, in the context of our application,  
3 we had indicated to the Board that the reason for the  
4 late intervention, or the reason that -- that the SCO had  
5 not applied to date, was that up until now, there had  
6 always been denial by Manitoba Hydro that -- that there  
7 was any linkage or connection between exports of power  
8 and risk. And until such time as Manitoba Hydro itself  
9 posted Exhibit 48, Mr. Crombie's (sic) affidavit, on the  
10 worldwide web, it was very unclear both to the -- the SCO  
11 chiefs and their expert that we would be tendering as a  
12 witness with regard to these proceedings that these  
13 linkages, in fact, existed.

14                   Now, in that regard, again, with regard to  
15 any submissions that would be made by the SCO, we would  
16 be working with other parties to make sure that we were  
17 working in the proper spirit of interveners and in the  
18 proper spirit of an intervention. We would not be simply  
19 presenting evidence or putting forward people to talk to  
20 the -- to speak to these issues simply for the sake of  
21 hearing ourselves speak or putting forward issues or  
22 putting forward information that had been adequately  
23 dealt with and addressed by other parties and, of course,  
24 in the context of our intervention, would work co-  
25 operatively with other interveners to make sure that --

1 that there was no overlap or duplication of effort on a  
2 going-forward basis but, at the same time, preserving the  
3 ability of the SCO on behalf of the thirty-six (36) First  
4 Nations of Southern Manitoba to present their unique  
5 voice and a unique perspective to the Board, both as  
6 ratepayers and as people with constitutionally protected  
7 Treaty and Aboriginal rights, with regard to the  
8 waterways at issue to the MPUB in the context of risk and  
9 the risk analysis considerations by the Board, so that  
10 the Board could fully understand the perspective of these  
11 First Nations and potential future liabilities for  
12 Manitoba Hydro in the context of -- in the context of the  
13 way Manitoba Hydro has either been managing or not  
14 managing risk adequately with regard to a broad range of  
15 issues that the Southern Chiefs Organization would be  
16 bringing to the table through its expert witness, Mr.  
17 Robert McCullough, whose report or summary of Exhibit 48  
18 was attached to our application.

19 Now, again, with regard to the submissions  
20 of the New York Consultant, again, we've -- this has been  
21 the subject of some correspondence with the Board's  
22 secretary and with the Board. We emailed to the Board  
23 this morning a -- or a copy of Hansard, and,  
24 specifically, the Proceedings of the legislative assembly  
25 of Manitoba standing committee on Crown Corporation,

1 which speaks directly to Exhibit 38 and the materials  
2 attached to the affidavit of Mr. Crombie (sic).

3                   Clearly, these are matters that are --  
4 form part of the public record of the province of  
5 Manitoba, are properly matters that the SCO, on behalf of  
6 its members First Nations, should be able to speak to,  
7 from its own and their own unique perspective, given the  
8 importance of these issues to all Manitobans, including  
9 First Nations governments, who are also ratepayers, in  
10 the province of Manitoba and that these issues should all  
11 be very carefully considered in the context of these --  
12 these matters going forward on behalf of the Southern  
13 Chief's Organization as set out in the intervention of  
14 the Southern Chief's Organization.

15                   So, again, with regard to the submissions  
16 of the New York Consultant, we would again submit that  
17 they're not particularly helpful in advancing or  
18 resolving the issues. We're not quite sure, when we  
19 heard from Manitoba Hydro this morning, that they have  
20 action -- their application in the Court of Queen's Bench  
21 is to release this information to the public so that we  
22 can have an open and transparent process.

23                   And when we hear from the New York  
24 Consultant that she, herself, would like to participate  
25 in this process, what the difficulty is in our clients

1 referring to Exhibit 48 as forming part of the public  
2 record as considered by the legislative assembly of  
3 Manitoba standing committee on Crown Corporations, or at  
4 all in the context of these hearings, and to the extent  
5 that SCO is taking the lead in discussing these issues  
6 and trying to bring these issues to the floor so that  
7 they can be discussed, fairly demonstrates to the Board  
8 the very unique perspective that the SCO is wishing to  
9 bring to these proceedings, which, contrary to the  
10 submissions of my friend from Manitoba Hydro, have  
11 apparently not been adequately addressed or addressed at  
12 all in the context of these proceedings by any of the  
13 other Intervenors.

14                 So, in that regard, again, keeping with  
15 our comments that it's not the intention of the SCO to  
16 waste a lot of time of people involved in these matters  
17 in allowing the SCO to be involved at this late stage, we  
18 would say that those would be our submissions in that  
19 regard in response to the issues that were raised in  
20 advance by Manitoba Hydro and the -- and the New York  
21 expert.

22                 We would add, however, that with regard to  
23 the matter of our -- our cost submissions, obviously we  
24 have -- that has been the subject of some correspondence  
25 with the Board's secretary. We had not, in preparing



1 those submissions, been provided with the tariff with  
2 regard to this hearing. We discussed this matter with  
3 our client and are prepared to proceed in these  
4 proceedings on the basis of the -- the tariff established  
5 and would re-submit out costs' application to reflect  
6 that if that makes the Board's decision in this matter  
7 any easier and, again, in that regard, would submit to  
8 the Board that we would be working with the other  
9 Intervenors to make sure that there is no duplication of  
10 effort.

11 Our only comment would be that hearing the  
12 Proceedings this morning and looking at how all the  
13 various directions that these hearings could, in fact,  
14 spin off into, depending on how the Board deals with  
15 scheduling and procedural issues, as discussed, including  
16 now the potential for September hearings as opposed to  
17 simply just June hearings.

18 So we're looking now at, you know, June --  
19 you know, June, and potentially September hearings with  
20 perhaps a greatly increased number of Information  
21 Requests and an expanded process with regard to risk  
22 analysis depending on what process the Board develops in  
23 limiting ourselves to the tariff established by the Board  
24 with regard to this hearing, we would simply state that -  
25 - in accordance with the rules of the Board, that the

1 hours of counsel and the hours required by the experts  
2 not be limited to the estimates contained within the --  
3 the forms submitted and that the -- you know, the hours  
4 required be the hours required, subject to review and/or  
5 taxation at the end of the process by -- by this learned  
6 Board within it's already established practices.

7                   So, in that regard, those are our  
8 submissions, and I guess we look forward to hearing to --  
9 hearing from Manitoba Hydro and, again, likely from the  
10 New York Consultant, subject to her rights of reply, so  
11 thank you very much.

12                   MR. BOB PETERS: All right, thank you,  
13 Mr. Rath. It's Bob Peters again. Recognizing, Mr.  
14 Chairman and Vice Chair, the -- the survey of the room,  
15 my suggestion would be to ask Manitoba Hydro for their  
16 comments before we turn it over.

17                   Mr. Williams did have some -- some high  
18 level comments he wanted to make but I think if we turn  
19 to Manitoba Hydro, that will provide the -- the major  
20 opposition from what we can tell at this point.

21                   So with that, I'll turn to Ms. Murphy for  
22 her comments.

23

24 SUBMISSIONS BY MANITOBA HYDRO:

25                   MS. MARLA MURPHY: Thank you, good

1 afternoon, Mr. Chair, Mr. Vice Chair. I -- in departing  
2 from our process and giving a twenty-five (25) word  
3 summary of our position may have done a disservice to our  
4 position because I think Mr. Rath was somewhat misled.

5           When I suggested that we objected to the  
6 intervention on the basis that their interests were the  
7 same as another party, I wasn't referring to MKO. I was  
8 actually referring to the Consumer's Association of  
9 Canada.

10           In particular, this is a rate matter and  
11 their concern with the rate matters -- the impacts of  
12 rates upon consumers and -- and we view that the interest  
13 raised by SCO are the same, that they are concerned with  
14 the same kind of rate issues which impact their members  
15 as well.

16           The matters to be addressed in considering  
17 the reasonableness of the rates are matters that have  
18 traditionally be canvassed by CAC/MSOS and I expect that  
19 they'll canvass them in this Hearing and, certainly, we  
20 would encourage a co-operative relationship with SCO and  
21 others to ensure that their interests are advocated by  
22 the Consumers group but we do feel that the Consumers  
23 group does a more than adequate job of -- of advancing  
24 those.

25           With respect to the submission by SCO and

1 the reference to the hydraulics report and the summary  
2 that it offers in its Application for Intervention, we  
3 note that that - and it's already been made quite clear  
4 this morning - that material is a summary of information  
5 that's already been provided by the New York Consultant  
6 and that -- that matter is already before the Board and  
7 Ms. Ramage has addressed it this morning.

8                   Although Mr. McCullough who prepared the  
9 summary isn't identified as a witness or an advisor, it  
10 does appear he'd have a role in advising the SCO in -- in  
11 this context. And we note that that summary isn't  
12 putting new information before the Board. It's merely  
13 offering his interpretation of material that if it's  
14 going to be looked at by this Board, it should be looked  
15 at from the source directly.

16                   We've noted in our review of that that Mr.  
17 McCullough's conclusions aren't based on any analysis of  
18 the facts or of the assumptions that might be  
19 incorporated by the New York Consultant but are simply a  
20 translation of her findings and that, of course,  
21 represents a danger in terms of getting the best  
22 information before the Board.

23                   I think it's also worth noting at this  
24 point a bit of an internal inconsistency in the -- in the  
25 position of -- taken in the Application for Intervenor

1 Status there by SCO. The suggestion is that in light of  
2 the hydraulics report, the proposed rate increase may not  
3 be fair or appropriate.

4 The suggestions that are pointed to in  
5 that summary are that the five (5) year drought criteria  
6 used in Manitoba Hydro's annual reports and the PUB  
7 filings is not nearly conservative enough.

8 That modelling problems have understated  
9 the downside risk during the drought periods and that the  
10 2009/'10 forecasted reservoir operations are not  
11 conservative enough.

12 Now while Manitoba Hydro is not suggesting  
13 that it agrees with those conclusions, even if they were  
14 correct, this would lead one to conclude that Manitoba  
15 Hydro, in fact, requires larger rate increases rather  
16 than smaller ones and that the rate increase would  
17 certainly not be unfair or inappropriate for SCO.

18 MR. ROBERT MAYER: I, of course was going  
19 to ask Mr. Rath that question. Was he coming before the  
20 Board in light of the conclusions or at least apparent  
21 conclusions raised by the New York Consultant's report as  
22 interpreted by Mr. McCullough?

23 Are we actually -- are you actually here  
24 to support higher rates, Mr. Rath?

25 MR. JEFF RATH: It's our view that the

1 Board in considering all of these issues needs to --  
2 needs to be looking at all of these issues right across  
3 the board.

4 And as far as the -- the SCO is concerned,  
5 it may well be that when all of these things are taken in  
6 account, this may be in fact what is required.

7 But as far as that goes, the SCO wants to  
8 be a full participant in these Hearings as an Intervenor  
9 in order to assess all of these issues so that we can  
10 know, ultimately, what makes the most sense with regard  
11 to the management.

12 And more particularly from the SCO  
13 perspective, the management of the waterways themselves  
14 so that everybody knows what -- what we're dealing with  
15 from an environmental perspective going down the line.  
16 So, their intervention isn't simply limited to rate and  
17 cannot be fairly said to be fully met by the ratepayer's  
18 application.

19 It's the SCO's concern that the proper  
20 types of management and the proper type of risk analysis  
21 is undertaken in order that there's adequate management  
22 of all of the waterways that we're, in fact, talking  
23 about which is why, in a broader sense, the SCO has been  
24 demanding of the Province of Manitoba and the Auditor  
25 General and anybody else that will listen a full

1 environmental audit to be undertaken with regards to  
2 Manitoba Hydro's operations in order that these matters  
3 can be fully and properly addressed. And in that regard  
4 --

5 MR. ROBERT MAYER: Excuse me, sir. I --

6 MR. JEFF RATH: -- this is, of course,  
7 why it is that the intervention of the SCO would focus  
8 more predominantly on the risk analysis aspects of it  
9 than on the rate application.

10 MR. ROBERT MAYER: I -- I didn't mean to  
11 interrupt Ms. Murphy to that extent. I thought that if  
12 you were seeking higher rates, you might have seen Hydro  
13 have a change of attitude, but, okay. My apologies.

14 MS. MARLA MURPHY: I guess I can hold out  
15 hope yet, but . . . All right, just to -- to conclude, I  
16 think one (1) of the issues that Manitoba Hydro would  
17 view differently than what Mr. Rath has put on the record  
18 today is that one (1) of the matters to be considered in  
19 this application is the water levels.

20 And, in fact, when we talk about risk and  
21 hydraulics and those kind of issues, we're talking about  
22 them from a financial perspective in this -- in this  
23 setting. We're not looking at the physical level of  
24 water, and as such, those are not matters that will  
25 impact upon the riparian rights and other rights that Mr.

1 Rath has referred to in his submission today.

2                   The risk in that perspective is a  
3 financial one. The -- the rate -- the -- the impact  
4 flows to the rates, and that impact is the same for SCO  
5 members as it is for all members of the public. The  
6 CAC/MSOS all represent the same interest.

7                   MR. JEFF RATH: No, we would respectfully  
8 disagree, Mr. Chairman, with that position, because  
9 obviously on -- on -- from the viewpoint of the SCO First  
10 Nations, that from a financial perspective, obviously,  
11 they would be impacted differently because there may be,  
12 in fact, liability accruing to Manitoba Hydro with regard  
13 to these riparian issues and environmental issues that  
14 aren't properly taken into account.

15                   So, as an example to the extent that SCO  
16 First Nations, in fact, are suffering erosion or  
17 destruction of the reserve lands as a result of flooding,  
18 or for that matter -- or suffering damage to the reserve  
19 lands as a result of lack of water, as a result Hydro  
20 regulation of -- of water levels, these are all things  
21 that need to be properly, adequately, and transparently  
22 considered in the context of these applications from the  
23 very unique perspective of the SCO.

24                   So, again, to use my friend's term from  
25 Manitoba Hydro, to simply glibly dismiss whatever



1 concerns that the First Nations of Southern Manitoba  
2 would have as being adequately represented by the  
3 Ratepayer's Association whose interests are solely in  
4 getting the lowest rate possible, is, with the greatest  
5 of respect, extremely glib and not -- not in any way  
6 seriously taking into account the unique constitutional  
7 interests of the SCO First Nations.

8 THE CHAIRPERSON: Ms. Murphy...?

9 MS. MARLA MURPHY: I certainly in -- in  
10 no way intended to be glib. I will consider that, Mr.  
11 Rath's reply to my comments, and not engage in any  
12 further debate on the topic.

13 It concludes our comments, other than the  
14 fact that I had intended to comment on costs, but I think  
15 that Mr. Rath has clarified the position to address our  
16 concerns today, so, that concludes our submission.

17 THE CHAIRPERSON: Mr. Williams...?

18

19 SUBMISSIONS BY CAC/MSOS:

20 MR. BYRON WILLIAMS: Very brief comments.  
21 Certainly, the comments of my learned friend, Mr. Rath,  
22 address any concerns CAC/MSOS might have had in terms of  
23 costs, and certainly they'll hold -- hold out in the in --  
24 the invitation in the event -- event that leave to intervene  
25 is granted to work with the Southern Chiefs in minimizing

1 duplication.

2                   The only other comment my clients raise is  
3 that it appears that some interesting points may be regar  
4 -- raised regarding the rate-setting process and the  
5 degree to which it potentially impacts the exercise of  
6 treaty and aboriginal rights is recognized and affirmed  
7 under section 35 of the Constitution Act, and we'll be  
8 feverishly reading BC case law with that regard in the  
9 event that leave is granted.

10                   THE CHAIRPERSON: Thank you, Mr.  
11 Williams. Mr. Peters...?

12                   MR. JEFF RATH: I'm sorry, this is Mr.  
13 Rath speaking. Whoever was speaking has just cut out at  
14 the end and I can't hear anyone right now.

15                   MR. BOB PETERS: Yes, Mr. Williams  
16 concluded his comments. He's not -- he has no further  
17 comments to make. I was going to -- it's Bob Peters  
18 speaking. I'm going to just go down the list.

19                   And I don't believe -- I'm seeing that  
20 MIPUG has no further comments. RCM/TREE has no further  
21 comments. The city of Winnipeg has no further comments.  
22 And, interestingly enough, the counsel for independent  
23 experts just made a cameo appearance, and I'm sure will  
24 be back directly, but no comments were -- or no  
25 objections and no other comments were needed.

1                   So the last -- the last call, Mr. Rath, is  
2 to -- to hear from New York Consultant if there are any  
3 further new matters to raise or whether the New York  
4 Consultant's matters have been -- have been raised by the  
5 New York Consultant.

6                   NEW YORK CONSULTANT:    Are we still -- are  
7 we on bullet number 2? Can you please -- now, I think I  
8 cut out there for a second.

9                   MR. BOB PETERS:     Yes.

10                  NEW YORK CONSULTANT:    Are we on the SCO  
11 application?

12                  MR. BOB PETERS:     Yes, New York  
13 Consultant, we are just finishing up on -- on that point.  
14 And you did provide some information earlier that Mr.  
15 Rath has responded to, and I'm just making sure that the  
16 New York Consultant has no further points to raise for  
17 Mr. Rath's reply.

18                  NEW YORK CONSULTANT:    Not at this time.  
19 Thank you.

20                  MR. BOB PETERS:     All right. Thank you  
21 for that. And, Mr. Rath, can the Board take that you've  
22 now also given your -- your submission as well as all  
23 your reply comments, sir?

24                  MR. JEFF RATH:     In keeping with our  
25 promise and undertaking to the Board that we'll waste as

1 little of your time as possible, yes, you can.

2 MR. BOB PETERS: All right. Thank you,  
3 sir.

4 Mr. Chairman, I'm prepared to press on  
5 with the third of the nine (9) points that I raised this  
6 morning. I do believe it's going to get a little  
7 quicker, although there might be some heavy sledding on  
8 the -- on the next couple of issues.

9 I'd like to introduce the scope -- I'd  
10 like to introduce the issue of scope for risk and risk  
11 management review. This is a matter that parties have  
12 indicated some interest to present to the Board. You've  
13 heard a little bit about it already, and if the Board is  
14 inclined to proceed at this time, Mr. Hacault would be  
15 called upon to start, and he would be followed by  
16 Manitoba Hydro before going down the list that I've  
17 developed.

18 THE CHAIRMAN: I think we'll take ten  
19 (10) minutes. I, for one, need a cup of coffee. Thank  
20 you.

21 MR. BOB PETERS: All right. We'll take a  
22 ten (10) minute break. Thank you.

23

24 --- Upon recessing at 2:14 p.m.

25 --- Upon resuming at 2:29 p.m.

1 THE CHAIRMAN: Mr. Peters...?

2 MR. BOB PETERS: Yes, sir.

3 THE CHAIRMAN: If we could keep moving  
4 along.

5 MR. BOB PETERS: Yes. Thank you.

6 Before the afternoon recess, I'd  
7 introduced the scope of risk and risk management review,  
8 and it's a matter that I would suggest Mr. Hacault be  
9 invited to speak to initially, and then probably over to  
10 Manitoba Hydro.

11 So with that, I'll turn it over to Mr.  
12 Hacault.

13

14 RE: SCOPE OF REVIEW OF RISK AND RISK MANAGEMENT:

15

16 SUBMISSIONS BY MIPUG:

17 MR. ANTOINE HACAULT: Good afternoon,  
18 all. I continue to speak with some trepidation because  
19 something that I anticipated was only going to last 'til  
20 noon is lasting a lot longer. But I would ask the  
21 indulgence of all, please, on this issue, because I view  
22 it as very fundamental as to the efficiency in which  
23 we're going to be able to conduct this hearing.

24 My concern is if we don't spend a little  
25 bit of time up front, and adequate time up front, that we

1 may be caught with a tiger by the tail and a very lengthy  
2 hearing on issues which may not be that significant or  
3 that important.

4                   With those introductory remarks, MIPUG  
5 urges the Board to refine the scope of risk review. It  
6 also urges the Board to provide a list of specific risk  
7 issues which are to be dealt with.

8                   To that end, MIPUG prepared and  
9 distributed to counsel who met on February 19 of this  
10 year a three (3) page document which was redistributed to  
11 all today.

12                   MIPUG, I might add, has not yet made a  
13 decision on whether it will participate in the risk  
14 review. The reason is that it requires a defined scope  
15 in order to assess whether it can effectively assist the  
16 Board in this review and provide meaningful information.  
17 It also requires a defined scope in order to assess the  
18 potential cost of participating in such a review.

19                   MIPUG expresses a concern that much time,  
20 resources and expenses might be wasted if the risk review  
21 is not focussed. MIPUG's view is that it is better to  
22 focus on what are identified as the most important risk  
23 issues. Any risk issues which are not dealt with as part  
24 of this review can be put on a list of risk issues to be  
25 dealt with in future rate hearings.

1                   For the record, I go back to some of the  
2 background in Board Order number 17 of this year, 17/10.  
3 The Board indicated -- and I'm quoting, hopefully  
4 accurately:        "There are a multitude of risks faced  
5                    by Manitoba Hydro as part of its  
6                    business activities and plans...those  
7                    risks include: drought, export markets,  
8                    interest and exchange rates, labor  
9                    issues, catastrophic loss of system  
10                   supply and changes in accounting  
11                   standards."

12                   Next, quote:

13                   "The Board must satisfy itself that  
14                   these and other risks to Manitoba Hydro  
15                   are being appropriately managed by the  
16                   Utility, as part of the Board's rate  
17                   approval mandate.

18                   The Board also needs to be assured that  
19                   there are no unreasonable risks lurking  
20                   in the future that, if actualized, are  
21                   likely to result in undue rate  
22                   implications for the Utility's Manitoba  
23                   consumers."

24                   I jump now to what was circulated and this  
25 is the second page of that circulation under the heading

1 'Scope of Risk Issues'.

2 A reminder, these are not fixed issues,  
3 these are suggestions, these are concepts which were  
4 circulated to counsel in February for comment and review  
5 and again, MIPUG is trying to provide some discussion and  
6 some focus on the discussion and present this to,  
7 hopefully, assist the Board and the parties in that  
8 thought process.

9 So under the heading 'Scope of Risk  
10 Reviews' it is suggested that the risk analysis be  
11 generally framed as follows:

12 Firstly, does Hydro have the required  
13 capabilities, internal organization, qualified staff,  
14 policies and procedures and oversight and governance  
15 structures needed to appropriately manage the noted  
16 risks;  
17 can they be improved, modified or adapted to reduce the  
18 risk exposure imposed on ratepayers;

19 Secondly, is Hydro's approach to risk  
20 management appropriate for a Crown-owned regulated public  
21 utility;

22 Thirdly, do Hydro's decision-making  
23 criteria reflect a risk/reward tolerance criteria that is  
24 acceptable to Hydro's ratepayers and the Board;

25 Fourth, where risk exposure cannot be



1 modified or addressed through other appropriate risk  
2 management practices, what are the financial reserves  
3 required to be targeted to address the residual risk  
4 items.

5                   Then we have identified some sub-issues  
6 under this generally framed scope. We say it's useful to  
7 consider focusing at least on risk issues --

8                   THE CHAIRPERSON: Mr. Hacault, I could  
9 say, to save you some time, that we have this and we  
10 could put it straight onto the record.

11                   MR. ANTOINE HACAULT: Okay, we can --

12                   THE CHAIRPERSON: And then you could only  
13 talk about it in summary, it might even be more efficient  
14 because we have looked at it.

15                   MR. ANTOINE HACAULT: Okay. Thank you  
16 for that direction. If -- if it is put on the record,  
17 that will be useful. I will go through the headings then  
18 only so that the sub-issues we see, the Normal Power  
19 Utility Operation Risks.

20                   Next, the Hydro Utility Operation Risks.

21                   Another sub-category, the System Operation  
22 Decision Risks and a separate category System Planning  
23 Approach Risks.

24                   The last item Major New Plan Commitment  
25 Decision Risks, we are recommending not be within the

1 scope of the current Rate Application.

2 MR. ROBERT MAYER: I'm assuming, sir,  
3 you're suggesting that would come up when we look at the  
4 needs and justification for future hydro development.

5 MR. ANTOINE HACAULT: That may be an  
6 appropriate time, Mr. Vice Chair, to look at that, that's  
7 correct. The concern that I expressed when starting this  
8 presentation and which I reiterate is that if we take a  
9 huge mouthful, we may not do justice on this.

10 Let's try and focus is my suggestion, on  
11 what we think are the most important issues. Do a good  
12 job at that and come up with good recommendations on  
13 those issues and good decisions on those issues.

14 If we look at everything under the sun, we  
15 will be here for weeks and weeks and weeks without any  
16 focus and without material recommendations perhaps which  
17 are materially relevant to important risks faced by the  
18 Utility.

19 So as part of its due diligence on this  
20 topic, MIPUG had a conversation with an eminent expert in  
21 this field, perhaps unit -- uniquely qualified in Canada  
22 on the subject, who is available to be retained.

23 Obviously, if the group is still not sure if it would  
24 intervene, they haven't retained them yet.

25 The main concern that -- that he has

1 pointed, and this is the expert, is: What is the  
2 question you're asking me to help answer? And we cannot  
3 really provide him with a specific response to that. We  
4 are challenged even to know how to respond.

5           To the extent that we have reviewed the  
6 terms of reference for the independent consultants that  
7 the PUB has retained, it is not clear how they might also  
8 deal with this challenge. If we look at items 1 to 7,  
9 they contain several lifetime worth of analy -- analytic  
10 work, 'cause it asked them to look at potentially  
11 everything under the sun, and to complete tasks noted in  
12 that type of detail would appear to be what is  
13 recommended be delved into. We think that this would be  
14 counterproductive and would not be an efficient use of  
15 our time in a hearing.

16           So we continue to recommend to the Board  
17 to set out a scope of what it is clearly interested in  
18 investigating, the items and questions it is interested  
19 in answering, and the types of orders it anticipates may  
20 flow from the Proceeding.

21           It's not uncommon to have types of issue  
22 lists that are developed by public utilities boards that  
23 are developed, as we say in many cases, in other  
24 jurisdictions based on Intervenor input. It is possible  
25 that cou -- this could be developed in a draft format for

1 review and comment by the participants in this  
2 proceeding.

3                   So, these are our recommendations on the  
4 scoping issue. We thank the Board very much for having  
5 considered these comments and recommendations. We feel  
6 that also once the scoping issues are determined, there  
7 are a lot of useful things that can be done, for example,  
8 one (1) thing that we were going to suggest as part of  
9 the whole timetable process was a workshop put on by  
10 Manitoba Hydro.

11                   While it would be useful if the parties  
12 know what would be discussed in this workshop, how Hydro  
13 deals with certain matters and they could inform us on  
14 this and provide us a workshop. It would help all the  
15 parties to be kind of on a even -- even level of  
16 understanding with respect to the scoped issues which  
17 have been decided are material and relevant by this  
18 Board.

19                   So that is a further illustration, in my  
20 respectful submission, of the usefulness of having a very  
21 defined scope. Thank you for your patience and your  
22 understanding.

23

24                   (MIPUG INSERT INCLUDED BELOW)

25

1 SCOPING OF BOARD GRA REVIEW RE: MANITOBA HYDRO RISKS

2

3 ISSUE:

4

5 To define as clearly as possible, prior to  
6 parties preparing further evidence and/or a second round  
7 of interrogatories, the scope for the Manitoba Public  
8 Utilities Board (Board) comprehensive review of risk and  
9 risk management issues as part of the Board's current  
10 review of the Manitoba Hydro (Hydro) 2010/11 and 2011/12  
11 General Rate Application (GRA).

12

13 BACKGROUND:

14

15 Board Order 17/10 confirms that the  
16 Board's review of Hydro's 2010/11 and 2011/12 GRA "will  
17 include an in depth review of risk and risk management  
18 issues as a third discrete component of the GRA process,  
19 supplementing the revenue requirement and cost of service  
20 components reviewed in a General Rate Application."

21

22 As set out in Appendix 12.1 to Hydro's  
23 GRA, (the Corporate Risk Management Report) the scope and  
24 range of risks faced by Hydro, similar to any large  
25 enterprise, are vast and span such diverse items as Dam  
Safety, Employee Accidents and Succession Planning.

1 Board Order 17/10 confirms as follows the  
2 very broad initial scope of the Board's potential  
3 interests on this matter:

4 "There are a multitude of risks faced  
5 by MH as part of its business activities  
6 and plans.....those risks include drought,  
7 export markets, interest and exchange  
8 rates, labour issues, catastrophic loss of  
9 system supply, and changes in accounting  
10 standards (IFRS - International Financial  
11 Reporting Standards).

12 "The Board must satisfy itself that  
13 these and other risks to MH are being  
14 appropriately managed by the Utility, as  
15 part of the Board's rate approval mandate.  
16 The Board also needs to be assured that  
17 there are no unreasonable risks 'lurking'  
18 in the future that, if actualized, are  
19 likely to result in undue rate  
20 implications for the Utility's Manitoba  
21 consumers."

22 In summary, as currently set out, the  
23 potential scope remains very broad for the Board's "in  
24 depth" review of risk and risk management issues as part  
25 of the MH 2010/11 and 2011/12 GRA review. Further,

1 Hydro's current GRA was not prepared to facilitate this  
2 review and indeed much of Hydro's evidence on these  
3 matters as provided to date to the Board remains  
4 confidential. In this context, it is currently very  
5 difficult and problematic for parties to direct effective  
6 and efficient investigation, testing and preparation of  
7 evidence on the risk review matters.

8                   In order to address these difficulties,  
9 and to focus efforts for the second round of  
10 interrogatories and/or further evidence, it is  
11 recommended that the scope for the Board's in depth  
12 review be appropriately further clarified at this time.

13

#### 14 FRAMEWORK TO REFINE SCOPING OF RISK ISSUES

15

16                   As the Board has directed, its current  
17 review of risk issues must be related to the Board's rate  
18 approval mandate regarding Hydro's 2010/11 and 2011/12  
19 GRA. This focus remains very broad, as the Board in this  
20 context continues to have the mandate to examine whether  
21 Hydro's management of all relevant risks, including  
22 potential unreasonable future risks, is such as to result  
23 in undue rate implications for the Utility's Manitoba  
24 customers.

25

1 Scope of risk issues

2

3 It is suggested that the risk analysis be  
4 generally framed as follows:

5 Does Hydro have the required  
6 capabilities, internal organization,  
7 qualified staff, policies and procedures,  
8 and oversight and governance structures  
9 needed to appropriately manage the noted  
10 risks; can they be improved, modified, or  
11 adapted to reduce the risk exposure  
12 imposed on ratepayers.

13 Is Hydro's approach to risk management  
14 appropriate for a Crown-owned regulated  
15 public utility;

16 Do Hydro's decision-making criteria  
17 reflect a risk/reward tolerance criteria  
18 than is acceptable to Hydro's ratepayers  
19 and the Board;

20 Where risk exposure cannot be modified  
21 or addressed through other appropriate  
22 risk management practices, what are the  
23 financial reserves required to be targeted  
24 to address the residual risk items.

25 (Financial reserves do not serve to reduce



1           the probability of a risk event arising,  
2           or the first-order impact (loss) arising  
3           from that risk event. Financial reserves  
4           only serve to mitigate potential adverse  
5           consequential effects on Hydro's financial  
6           position, and more notably in respect of  
7           rates, smooth the financial effect on  
8           ratepayers over time. In short, financial  
9           reserves cannot be a substitute for high  
10          quality and prudent risk management.

11

12   Sub-issues under the generally framed scope

13

14           It is useful to consider focussing at  
15          least on risk issues relating to current Hydro practices  
16          and risks that could potentially have a material impact  
17          on current or future Hydro rates to its Manitoba  
18          customers.

19           In this context, issues and options can be  
20          assessed within a framework that examines unique and  
21          specific interrelated risks arising for Hydro, as a  
22          regulated utility with a legislated "obligation to serve"  
23          specified loads and markets on a non-discriminatory  
24          basis, linked to one or more of the following:

25

Normal power utility operation risks -

1 Issues related to the electrical power  
2 industry revolving around system  
3 operation, market participation and  
4 planning activities to meet supply  
5 commitments.

6 Hydro utility operations risks - Issues  
7 unique to hydro-electric based operations  
8 faced with variable and difficult to  
9 forecast generation availability over the  
10 short- to medium-term tied to hydrologic  
11 conditions.

12 Risks arising within the above framework  
13 can potentially be related to the following three Hydro  
14 activity components:

15 System Operation Decision Risks: Over  
16 the short-term (i.e., given a largely  
17 fixed set of investment in plant), risks  
18 regarding the decisions made by Hydro  
19 relating to the operation of the power  
20 supply system, and marketing, and the  
21 effect of these decisions on rates  
22 (including the various inputs to the  
23 decision-making process). These risks  
24 include the forecasts and planning  
25 activities that are part of such a short-

1 term system operation decisions.

2 System Planning Approach Risks: Over  
3 the long-term (i.e., assuming ability to  
4 invest in new bulk power supply  
5 facilities), risks regarding the decisions  
6 adopted by Hydro relating to the capital  
7 planning process for its bulk power  
8 system, and the effect of these decisions  
9 on rates. These risks include decisions  
10 on the relevant range of future conditions  
11 and forecasts to be considered at any  
12 given point in time, as well as the  
13 ongoing tools and approaches used by Hydro  
14 to protect its ability to ensure that  
15 adequate generation and transmission  
16 resources are able to be made available in  
17 a timely and cost effective manner so as  
18 to meet core regulated supply obligations  
19 to serve domestic customers, as well as to  
20 capture appropriate economic opportunities  
21 for the benefits of ratepayers.

22 Major New Plant Commitment Decision  
23 Risks: As an output of the system  
24 planning approach, risks regarding the  
25 processes and approaches used by Hydro to

1 progress towards, and ultimately to commit  
2 major financial and corporate resources,  
3 to the construction of acquisition of  
4 specific major new generation and  
5 transmission resources.

6 In the context of the current review of  
7 rates, System Operation Decision Risks and System  
8 Planning Approach Risks are appropriately addressed at  
9 this time. In contrast, it is recommended that Major Rew  
10 Plant Commitment Decision Risks are not within the scope  
11 of the current GRA review other than for specific major  
12 new plant included as committed resources in the current  
13 GRA.

14 In summary, it is recommended that the  
15 risk review to be undertaken as part of the 2010/11 and  
16 2011/12 GRA identify the material rate-related risks and  
17 risk management issues associated with Hydro's System  
18 Operations Decisions and System Planning Approaches, and  
19 assess the adequacy of Hydro's risk management  
20 capabilities in the context of potential Manitoba  
21 customer rate impacts in 2010/11 and 2011/12 and beyond  
22 (as rates for the next two years will be set in part to  
23 take into account currently expected future rate  
24 requirements).

25

1 RECOMMENDED NEXT STEPS

2

3 It is recommended that the Board confirm and define as  
4 clearly as possible, prior to parties preparing further  
5 evidence and/or a second round of interrogatories, the  
6 scope for the Board's comprehensive review of risk and  
7 risk management issues as part of the Board's current  
8 review of the Hydro 2010/11 and 2011/12 GRA.

9

10 (MIPUG INSERT COMPLETED)

11

12 THE CHAIRPERSON: Mr. Peters...?

13 MR. BOB PETERS: Yes. I -- I think  
14 Manitoba Hydro wanted to follow those comments on scope,  
15 and maybe we'll turn it over to Ms. Ramage to provide  
16 those comments before I turn to other Intervenors.

17 MR. ROBERT MAYER: The only thing I -- I  
18 just ask the Chair, the letter -- or MIPUG's memo of  
19 February 18th, 2010 should go into the record.

20 MR. BOB PETERS: Yes, Mr. Vice Chair.  
21 It's been provided to transcription to be included in the  
22 record.

23

24 SUBMISSIONS BY MANITOBA HYDRO:

25 MR. PATTI RAMAGE: Thank you. It's

1 Manitoba Hydro's view and it shares MIPUG's view that the  
2 Board must establish a considered and efficient framework  
3 for a review aimed at promoting the interests of the  
4 Manitoba ratepayer, failing which, all parties could be  
5 drawn into a protracted unpro -- unproductive and  
6 unrestrained process that provides minimal, if any,  
7 benefit to Manitobans.

8                   In any GRA filing, there are minimum  
9 filing requirements that the utility must address. In  
10 Manitoba Hydro's case, these minimum filing require --  
11 requirements were established back in the 1990s, and  
12 while they've evolved over time, it's clear to both  
13 Manitoba Hydro and the parties that participate in its  
14 hearings, what case must be made in order to receive  
15 approval of an application.

16                   In the present case, subsequent to filing  
17 its General Rate Application and in the context of  
18 issuing the Board's notice of public hearing, the Board  
19 advised of its intent to conduct an in-depth review of  
20 Manitoba Hydro's risk exposures as an integral part of  
21 determining fair and reasonable rates.

22                   A spec -- a special pre-hearing conference  
23 was convened for the purpose of receiving comments on the  
24 process for conduct of the in-depth review. The Board,  
25 ultimately, concluded in order 17/10 that, quote:

1                    "A detailed risk and risk management  
2                    review will proceed as part of the  
3                    GRA."

4                    The Board went on to note that there are a  
5                    multitude of risks faced by Manitoba Hydro as part of its  
6                    business activities and plans. I believe Mr. Hacault  
7                    referenced some of those, that the Board had noted,  
8                    including drought, export markets, interest and exchange  
9                    rates, labour issues, catastrophic loss of supply, and  
10                    changes in accounting standards.

11                    Manitoba Hydro agrees with MIPUG's  
12                    assessment that is currently set out - the scope remains  
13                    extremely broad. Manitoba Hydro's application, however,  
14                    was prepared in the context of a standard GRA. It was  
15                    not prepared with a view to facilitating an in-depth risk  
16                    review, nor is it clear what the scope of that review  
17                    would be.

18                    Tab 12 of Manitoba Hydro's filing was  
19                    provided in response to interest expressed in the topic  
20                    of risk in orders leading up to the filing. It contains  
21                    eleven (11) categories of risk and forty-nine (49)  
22                    subcategories of risk.

23                    It also contains the ICF report. And  
24                    Manitoba Hydro also undertook in its December 1st filing  
25                    to file the report of KPMG, which report is intended also

1 to respond, in part, to directive 4 from Order 32/09.

2 I should note in that regard, I -- I  
3 hadn't mentioned it earlier this morning, that subsequent  
4 to that undertaking given in that filing, KPMG and  
5 Manitoba Hydro were served with a cease and deci -- a  
6 cease and desist letter from the New York Consultant, and  
7 that is what led to seek a court order to permit the  
8 filing of -- of that report.

9 But in any event, it would be extremely  
10 helpful, in fact, it's essential that the Board focus the  
11 parties and identify what are the areas of concern that  
12 caused it to call for this special in-depth review.

13 This will allow Manitoba Hydro to know the  
14 case it has to meet and file materials necessary to  
15 address those specific issues. We're confident the Board  
16 does not want to hear about all eleven (11) categories  
17 and all forty-nine (49) subcategories that are outlined  
18 in general terms in the current filing.

19 But by doing that, by focussing, it's  
20 going to allow Intervenors to focus their inquiries and  
21 evidence on those areas of concern, not just Manitoba  
22 Hydro.

23 In Manitoba Hydro's view, in order to  
24 understand the risks that the Corporation face you have  
25 to understand the business the Corporation is in.



1                   Manitoba Hydro is concerned that a  
2 fundamental misunderstanding regarding its business  
3 activities may be at the root of the risk concerns that  
4 have been raised as of late.

5                   For this reason, Manitoba Hydro sees a  
6 great deal of merit in conducting a workshop for the  
7 purpose of explaining the Corporation's approach to  
8 system operations, system planning, and its long-term  
9 export strategy because it's only when you understand  
10 what Manitoba Hydro does and what it doesn't do at an  
11 operational and planning level, and understand that  
12 export strategy, as well as the environment it operates  
13 in, that you can properly appreciate the risks associated  
14 with those activities.

15                   Manitoba Hydro operates in a complex  
16 business environment. We employ professionals from a bo  
17 -- broad spectrum of disciplines, engineers, economists,  
18 accountants, and other financial specialists and, yes,  
19 even lawyers, and all of these professionals draw on  
20 years of experience to create their areas of specialty  
21 and they all have in -- input into Manitoba Hydro's  
22 business.

23                   And to expect parties from the outside to  
24 understand that and how that would impact Manitoba  
25 Hydro's business decisions, I don't think is fair. So

1 Manitoba Hydro is seeking -- is -- is suggesting or  
2 agreeing with MIPUG's assessment, that -- that some type  
3 of workshop to give -- to make sure everybody's operating  
4 in an equal playing field coming into it would be helpful  
5 to all parties, the Board, the Intervenors, even the  
6 independent experts. And Manitoba Hydro suggests that  
7 such workshops should take place as early in this risk  
8 process as possible.

9           As I indicated earlier, it's entirely  
10 possible that you can get the -- the numbers correct but  
11 the wrong result from a mathematical model if the  
12 assumptions that you apply aren't correct.

13           You need to understand our business to be  
14 in a position to assess the value of any model. For  
15 example, I would expect that a model that assumes profit  
16 maximization at virtually any cost, profit maximization  
17 in the export market or any market for that matter, would  
18 produce a different result than a market -- than a model  
19 that assumes a domestic load that has to be taken care of  
20 first.

21           So that's a -- it's a very high level and  
22 perhaps easy assumption but that would give an example of  
23 if you don't know those type of factors and apply them  
24 correctly, you won't -- you won't get the right answer.

25           So we think that's very important to

1 understand that sort of environment that Manitoba Hydro  
2 works in prior to setting course onto this risk review.

3           Assuming that the specific areas of risk  
4 have been identified as being the focus of the review, in  
5 general terms, Manitoba Hydro believes an appropriate  
6 framework for a risk review would include identification  
7 and review of the policies and procedures, an oversight  
8 in governance structures in place to manage identified  
9 risks. Are they reasonable in the context of the  
10 associated risk? And here we're building on MIPUG's  
11 comments.

12           Second, is Manitoba Hydro's approach to  
13 risk management appropriate in the context of the objects  
14 and purposes of the Manitoba Hydro Act?

15           Third, does Manitoba Hydro's decision  
16 making criteria reflect a reasonable risk/reward  
17 tolerance taking into account the consideration of the  
18 interests of its stakeholders?

19           The three (3) questions posed by Manitoba  
20 Hydro could then be applied to the system opera -- system  
21 operation decision risks and system planning approach  
22 risk which are of interest to the Board.

23           Manitoba Hydro agrees with MIPUG that it's  
24 premature to conduct such review with respect to risks  
25 associated with the commitment to new plant. The

1 Corporation expects there will be a review of any new  
2 major generation.  
3 However, it must be dealt with at the appropriate time  
4 and venue.

5 THE CHAIRPERSON: Ms. Ramage, our  
6 understanding is that Manitoba Hydro annually spends  
7 several hundred millions dollars towards the eventual  
8 construction of new or replacement assets and is also  
9 considering the ongoing discussion with respect to export  
10 contracts.

11 That's true, is it not?

12 MR. PATTI RAMAGE: Yes, that's true.

13 THE CHAIRPERSON: And in fact, every year  
14 a substantial amount of operating costs is deferred for  
15 future amortization -- or future capitalization and later  
16 amortization; that's correct as well, is it not?

17 If I recall it was something like \$200  
18 million a year.

19

20 (BRIEF PAUSE)

21

22 THE CHAIRPERSON: Like the concept of a  
23 workshop, I don't think -- it can't be anything other  
24 than helpful. I mean, just on the surface of looking at  
25 it but ignoring the long-term implications of major

1 capital expenditures with respect to rates, is that what  
2 we're gathering that MIPUG is proposing that you're  
3 agreeing with?

4

5 (BRIEF PAUSE)

6

7 MS. PATTI RAMAGE: I think what we're  
8 talking about is set -- setting aside the -- the -- what  
9 would be typically a capital plans review.

10 There's nothing wrong -- we're -- we're  
11 not expecting that we wouldn't talk about the items  
12 you've just raised. It's getting -- going down the path  
13 of starting to, in a sense, in essence, start to discuss  
14 is this a good idea to go to build this new generation  
15 because we're not quite there yet. We haven't made that  
16 final commitment decision. We think that should be done  
17 at a different time but at -- at the appropriate time  
18 once those decisions have been made.

19 But in terms of the numbers, what you're  
20 talking about today in deferrals, you know, anything from  
21 DSM and planning the treatment of those deferrals, there  
22 would be no issue there with discussing those.

23 THE CHAIRPERSON: We'll just continue,  
24 Mr. Peters, with the drawing out of comments.

25 MR. ROBERT MAYER: Just before we get

1 there, this workshop, I'm assuming that you would expect  
2 not just Board staff but the panel itself to be part of  
3 this process, am I correct?

4 MS. PATTI RAMAGE: I think you'd  
5 certainly be invited to come and it's ultimately your  
6 decision. But I -- I -- we would welcome you there and I  
7 think we'd hope you'd come.

8 MR. ROBERT MAYER: And I'm assuming from  
9 part of what you said in addition to dealing with how  
10 Hydro does business and I -- I -- I'm not sure that I  
11 understand that or Manitoba Hydro's operation.

12 We have different skills on -- on the  
13 Board. I'm a lawyer but I also know that when you draw  
14 Lake Winnipeg down to seven hundred and eleven (711)  
15 feet, you got a lot of difficulty getting water to the  
16 lower Nelson, because I happen to know the area.

17 The Chair, of course, is an accountant,  
18 and I still haven't quite -- I can't even remember what  
19 IRFS, or whatever it is, stands for and I wouldn't be  
20 very helpful in that regard, but --

21 THE CHAIRPERSON: He really does  
22 understand.

23 MR. ROBERT MAYER: In any event, so, the  
24 workshop will go through -- will -- you -- that you are  
25 proposing would go through that -- your operational

1 logistics, your financial logistics; is that what you're  
2 suggesting?

3 MS. PATTI RAMAGE: Well, it's not going  
4 to include IFRS, if that's a disappointment, I'm sorry.  
5 But, yeah, it's the -- it's the -- it's a workshop to  
6 attempt to just bring to the parties' attention the --  
7 the operational decisions that are made through the  
8 entire process of Manitoba Hydro's decision-making so  
9 that parties can see what kind of considerations have to  
10 -- are made by Manitoba Hydro in making its decisions.

11 For example, Manitoba Hydro, while you  
12 might not see it on -- in the Act or anywhere else, even  
13 as a lawyer, Manitoba Hydro views one of its  
14 responsibilities is to be a good neighbour. So, in a  
15 model it might tell you if it's pure math, run the water  
16 through, this is a good time; whereas Manitoba Hydro  
17 would say, no, it's not a good time. We know who's on  
18 the other side of -- of the generating station, we know  
19 how it impacts them and we have to live in this  
20 environment.

21 And so, decisions will be made, the  
22 model is a tool, it's not a decision-maker. The -- the  
23 human is the decision-maker. And so we want to bring  
24 everybody -- everyone's attention to those kind of  
25 considerations that are made.

1 THE CHAIRPERSON: So your proposal,  
2 basically, is is to put this workshop into the schedule?

3 MS. PATTI RAMAGE: That's correct.

4

5 THE CHAIRPERSON: And if the panel  
6 attended the panel would -- would attend but remain mute  
7 through the -- through the process, but it would be an  
8 educational process nonetheless?

9 MR. ROBERT MAYER: Oh, I see now.

10 MS. PATTI RAMAGE: I'm not sure.

11 MR. ROBERT MAYER: I think that I'm --

12 MS. PATTI RAMAGE: I'm looking to --

13 MR. ROBERT MAYER: -- I'm not going to

14 say --

15 MS. PATTI RAMAGE: -- the right --

16 MR. ROBERT MAYER: -- anything.

17 MS. PATTI RAMAGE: -- there.

18 THE CHAIRPERSON: Mr. Hacault...?

19 MR. ANTOINE HACAULT: Two points,  
20 listening to the discussion, and sorry for the  
21 interruption, but I -- I see there's some interest in the  
22 workshop idea. If there is, there's nothing that  
23 prevents counsel and -- and the parties having some  
24 discussion and refining what might happen, and it might  
25 be useful to do that outside the context of this hearing;



1 that was my first point.

2                   The second point was with respect to the  
3 major new plant commitment. I wanted to clarify that  
4 when we, as MIPUG said, defer the discussion, it was only  
5 the discussion on the actual decision: Are we going to  
6 build plant A or plant B, not the whole planning process  
7 to protect the options to proceed.

8                   So, I just wanted to make that  
9 clarification. And it -- I -- hopefully, it's adequately  
10 described in what's going to be read on the record, but I  
11 didn't have the opportunity to read all of that. But I  
12 had wanted to clarify that for the record.

13                   MS. PATTI RAMAGE: I think, Mr. Hacault  
14 articulated that far better than I, but that's what was  
15 intended.

16                   THE CHAIRPERSON: Okay, thanks there  
17 both, and I think Mr. Hacault's first suggestion about  
18 discussions involving counsel and their various parties  
19 would be useful.

20                   Mr. Peters...?

21                   MR. BOB PETERS: All right. I take it  
22 Manitoba Hydro has concluded their comments on scoping  
23 issues and I would turn over to Mr. Williams on behalf of  
24 CAC/MSOS for any comments he would have on -- on -- on  
25 this topic.

1 SUBMISSIONS BY CAC/MSOS:

2 MR. BYRON WILLIAMS: Just for the  
3 information of the Board, in the handout that CAC/MSOS  
4 provided earlier today, the front page was just an  
5 outline of discussion regarding the New York Consultant.  
6 Pages 2 -- it's a two (2) sided copy for Dr. Miller's  
7 benefit, 2, 3, 4, -- 2, 3, 4, 5 and 6 relate to -- to  
8 scoping and, certainly, I -- I do wish to highlight  
9 portions of this but, certainly, I'm -- I'm happy to take  
10 the Board's guidance and -- and -- and suggest that the  
11 document be read into the record by the -- the court  
12 reporter, and then I'll elaborate on some -- some key  
13 points with with the Board's --

14 THE CHAIRPERSON: In the interests of --  
15 of efficiency, let's do that, Mr. Williams. So, if we  
16 wouldn't mind, we'll put this particular document from  
17 CAC/MSOS directly into records, as well. Thank you.

18 MR. BYRON WILLIAMS: I do -- the -- the  
19 page that I do wish to concentrate on on behalf of my  
20 clients, I want to make the -- their point, they've never  
21 been as anxious about the scoping issue as Hydro or  
22 Manitoba Industrial Power Users Group. My clients'  
23 opinion has always been -- one only would need to look to  
24 pages 21 to 32 of the Board Order 32/09 to get a lot of  
25 guidance about what -- what the -- the major concerns are

1 of the Board. But we're having this debate, so my  
2 clients thought they would put in their -- I hope it's  
3 more than two (2) cent's worth.

4                   And I do want to focus, as I said, on the  
5 overview. In looking at risk iss -- issues, my clients  
6 have a preamble before we get to the three (3) specific  
7 purposes. We have to remember the context in which one  
8 is embarking upon this exercise. We're looking at  
9 setting just and reasonable rates for a pretty unique  
10 entity, a Crown corporation with a specific mandate under  
11 Section 2 of the Hydro Act, to ensure domestic supply,  
12 also with opportunities to export into the -- to the US  
13 market. So that's the context in we -- in which we look  
14 at it.

15                   From my clients' perspective, goal 1 of  
16 the risk analysis would be to identify material,  
17 financial, and operational risks, and opportunities. And  
18 they've -- we put in brackets it's important we should be  
19 looking both at the upside and the downside.

20                   Also, to identify their actual magnitude  
21 and their relative magnitude, as compared to others; what  
22 are the big ones that we need to look at? By analogy,  
23 with Manitoba Public Insurance, we really only look at  
24 four (4) or five (5) -- five (5) risks with the big two  
25 (2) being loss costs and investments in recent years.

1 And again, we should be identifying their actual and  
2 relative probability. If it's a one (1) in one thousand  
3 (1,000) eventuality, the Board may have a higher  
4 tolerance for that -- that risk and may choose different  
5 mechanisms to address it.

6 So that's kind of the -- the numbers, the  
7 magnitude, the probability, that the Board needs to look  
8 at.

9 Part 2. Consider, not from the  
10 perspective of a perfect world, but from the perspective  
11 of the statutory test, prudence and reasonableness, the  
12 current risk management tools of Manitoba Hydro, as they  
13 affect rates and its obligations under Section 2. And  
14 that sounds similar, I -- I believe, to some of the  
15 submissions of MIPUG.

16 Secondly, industry best practises. Were -  
17 - we're encouraged that the Board's retained experts are  
18 walking down that path. And a point that's been made  
19 both by Our Friends from Manitoba Hydro and MIPUG,  
20 appropriate risk tolerances, both for the setting of  
21 retained earnings and also for rates. And it's important  
22 again, drawn on the MPI experience, often they protect  
23 against that one (1) in twenty (20) -- you want to have  
24 that 95 percent confidence level that your reserves are  
25 enough. That may not be the choice the Board makes in

1 this case, but that kind of discussion of risk tolerance  
2 in my clients' view is important.

3 THE CHAIRPERSON: And the black swans.

4 MR. BYRON WILLIAMS: Black swans, my  
5 clients are less concerned with, but maybe after  
6 investments maybe I'll take that back, Mr. Chairman.

7 MR. ROBERT MAYER: So -- so for the  
8 record we now have tigers, swans, and wolves, right?

9 MR. BYRON WILLIAMS: I believe there were  
10 ducks on the record, as well.

11 MR. ROBERT MAYER: Ducks, as well. All  
12 right.

13 MR. BYRON WILLIAMS: Yes. And -- and  
14 there's chocolate to feed them all. Finally, to -- and  
15 how do we incorpor the -- incorporate that in the rate  
16 setting process?

17 So that's the overview. In terms of --  
18 other parties have suggested some specific questions.  
19 What we've done in the next few pages is -- there's a lot  
20 of intellectual plagiarism, if not actual plagiarism.  
21 Largely we're borrowing from the Board's comments at  
22 pages 21 through 32 of Order 32/09. We've broken it down  
23 analytically, a little bit differently from Our Friends  
24 from MIPUG: waterflow risks and opportunities, forecast  
25 export prices, risks associated with capital and

1 financing costs, and then (e) taking it down to rates;  
2 those revenue and financial considerations.

3 Out of candour, I -- I should admit that  
4 while most of these are flowing from the Board's  
5 discussions, I've slipped in a few of CAC/MSOS -- some of  
6 their interests, as well, which are maybe not expressed  
7 in the -- in the Board's deliberations.

8 In (f) I've set out what my client  
9 considers to be overarching questions, those are there  
10 for the Board's information.

11 So that's, essentially, the exercise my  
12 clients undertook based upon either what the Board has  
13 said in the past or there's a couple, as I said, slipped  
14 in in terms of concerns my clients have expressed that  
15 have maybe not been articulated in Board Orders.

16 Out of an abundance of caution, my clients  
17 have also said there's been a number of new reports filed  
18 by Manitoba Hydro, we've not read them, our experts have  
19 not read them as of yet. There may be new issues arising  
20 from -- from there that we're not aware of.

21 The final element, and my clients  
22 identified, are issues appearing to arise from the  
23 research of the New York Consultant. And they've  
24 outlined -- those, again, we don't have the reports but  
25 on the -- the back -- back section of this document, one

1 that's clearly at play - whether it's right or wrong -  
2 are issues relating to the computer software systems.

3           And -- and it may, indeed, be the case  
4 that some of the assumptions the New York Consultant has  
5 may -- my or may not be correct. But, there also may be  
6 questions in terms of whether or not the modelling  
7 exercise undertaken by Manitoba Hydro is consistent with  
8 current modern industry practice.

9           And then we've outlined three (3) other  
10 concerns which we believe flow -- flow from the New York  
11 Consultant's reports, as we understand them, based on her  
12 application to Intervene and Mr. Cormie's affidavit.

13           Those last three (3), to a large degree,  
14 my clients believe echo many of the con -- many of the  
15 questions the Board has asked in the past as well.

16           Subject to any questions, I can certainly  
17 indicate from my client's perspective, they would welcome  
18 a  
19 -- some sort of workshop certainly for the clients, for -  
20 - for some of their experts and legal counsel.

21           We'll have to canvass, in our own minds,  
22 the issue of whether the Board should be there or not.  
23 We'll provide our advice to the Board at a later date if  
24 My Learned Friend Ms. Bowman reminds me. She'll probably  
25 do it herself. Subject to any -- any questions, those

1 are our comments.

2

3

(INSERT BY CAC/MSOS BELOW)

4

5 SCOPE - OVERVIEW

6

7 In the context of setting a just and  
8 reasonable rate for a crown corporation charged with the  
9 mandate set out in s. 2 of The Manitoba Hydro Act, the  
10 purpose of the risk analysis proceeding is:

11 to identify:

- 12 - the material financial and operational
- 13 risks and opportunities of the corporation
- 14 (both the downside and the upside);
- 15 - their actual and relative magnitude both
- 16 financially and operationally; as well as
- 17 - their actual and relative probability;
- 18 and,

19 to consider (from the perspective of  
20 prudence and reasonableness):

- 21 - the current risk management tools and
- 22 structure in place at Manitoba Hydro as
- 23 they affect rates and Hydro's mandate
- 24 under s. 2 of The Manitoba Hydro Act
- 25 - industry best practice in risk



1 management tools and structures as they  
2 may affect rates and Hydro's mandate under  
3 s. 2 of The Manitoba Hydro Act  
4 - appropriate risk tolerances for the  
5 purposes of setting both regulatory  
6 financial targets (including reserves) and  
7 rates; and,  
8 to incorporate:  
9 - these considerations when setting a just  
10 and reasonable rate.

11

12 ISSUES IDENTIFIED TO DATE

13

14 Issues Flowing from Past Proceedings and Board Orders

15 a) Matters of Longstanding Interest

16 Issues relating to the magnitude and  
17 probability of the risks faced by Manitoba Hydro as they  
18 affect forecasts, financial targets and rates have been  
19 matters of long standing concern.

20 These issues are well chronicled in Board  
21 Orders 143/04, 20/07, 90/08, 116/08 and 32/09. (For  
22 example, in Order 116/08, Manitoba Hydro was asked to  
23 provide: a thorough and quantified risk Analysis,  
24 including probabilities of all identified operational and  
25 business risks. This Order was subsequently varied in

1 Order 150/08. Similarly, in Order 32/09, Hydro was  
2 directed to provide a more detailed and independent risk  
3 analysis to assess the need and magnitude for, and of,  
4 future rate increases which would consider the  
5 implications of planned capital spending, taking into  
6 account export revenue growth, variable interest rates,  
7 drought, inflation experience and risk and currency  
8 fluctuation. (Order No. 32/09, pp. 30-31))

9                   within the context of capital expenditure  
10 plans that may total \$18 billion or more over the next 15  
11 years, matters of interest either expressly or implicitly  
12 identified include questions such as:

13                   b) Water Flow Risks and Opportunities

14                   What are the potential and probable  
15 consequences to the Corporation's bottom line of the full  
16 range of flow scenarios? (Order No. 32/09, p. 23)

17                   What is the likelihood of a prolonged  
18 period of drought? What are the likely financial  
19 consequences of an extended period of drought? (Issues  
20 relating to 2003/24 and 2006/07)? (Order No. 32/09, p.  
21 23 and pages 25-27)

22                   Do the Corporation's current practices  
23 appropriately mitigate drought risk? Are there lessons  
24 that can be learned from the Corporation's response to  
25 the 2003/04 drought? Have these lessons been learned?

1 (post-mortem on energy supply and demand scenarios  
2 leading to reported \$436 M net loss as well as post  
3 mortem of experience relating to 2006/07 drought) (Order  
4 No. 32/09, p. 23 and page 25-27)

5 Has the Corporation reasonably optimized  
6 its management of its hydraulic resources taking into  
7 account both risks and opportunities (ie hydraulic  
8 generation overselling combined with imports)? (Order  
9 No. 32/09, pages 25-27)

10 What is the magnitude and probability of  
11 the risk or opportunity associated with the  
12 categorization of dependable generation in the range of  
13 21,000 Gwh as opposed to numbers which might better  
14 reflect dependable hydraulic generation? (Order No.  
15 32/09, p. 27)

16 c) Forecast Export Price

17 Are the export price forecasts of the  
18 corporation reasonable and prudent or overly optimistic?  
19 (Order No. 32/09, pp. 21 and 28-30)

20 Can we reasonably rely on the  
21 corporation's forecast of an US/CDN exchange rate of  
22 \$1.16?

23 Can we reasonably rely on the  
24 corporation's forecast of the estimate timing of in-place  
25 carbon dioxide emissions legislation in the United

1 States? (Order No. 32/09, p. 22 and 28)

2                   What if anything does recent average  
3 export price history and the slowing of the North  
4 American economy tell us about the reasonableness of the  
5 Hydro forecasts (Order No. 32/09, p. 22);

6                   What will be the impact over the medium  
7 term of the economic downturn both in terms of the demand  
8 and in terms of GHG premiums? (Order No. 32/09, p. 22  
9 and 28)

10                   Can we reasonably rely upon the  
11 corporation's forecasts regarding the price of coal over  
12 the short, medium and long terms? (Order No. 32/09, p. 22  
13 and 28)

14                   d) Risks Associated with Capital and  
15 Financing Costs

16                   What is the magnitude and likelihood of  
17 risks related to high construction costs, ongoing  
18 inflation and the reasonable prospect that interest rates  
19 will rise for government backed debt? (Order No. 32/09,  
20 p. 22)

21                   e) Revenue and Finance Considerations

22                   Given high construction costs, ongoing  
23 inflation and the reasonable prospect that interest rates  
24 will rise for government backed debt, what is the  
25 likelihood that the export revenue stream from new

1 generation and transmission projects will be sufficient  
2 to cover the financial obligations related to these  
3 projects? (Order No. 32/09, p. 22)

4 In the event that there is a material  
5 shortfall from required export pricing and supply/demand,  
6 what will be the impact on domestic rates?

7 Taking into account the statistical  
8 probabilities both of more positive and more negative  
9 scenarios and considering the potential magnitude of the  
10 material risks, what are reasonable and sustainable  
11 financial targets for the corporation?

12 Given the magnitude of the current  
13 projected debt assumed by Manitoba Hydro does the  
14 management of fixed and floating debt achieve maximum  
15 results for the commensurate acceptable level of risk?

16 f) Overarching Questions

17 Are Hydro's risk management tools  
18 consistent with industry best practice recognizing the  
19 challenges faced by a hydro-electric producer with a  
20 domestic monopoly but making significant export sales  
21 into a rapidly evolving marketplace?

22 What are the consequences to the overall  
23 risk profile of the corporation of major expansion,  
24 significantly increased debt levels and significant long  
25 term export commitments? (Order No. 32/09, p. 21)

1 Do Manitoba Hydro Ratepayers bear an  
2 asymmetric burden associated with below forecast  
3 performances of the Corporation as compared to the  
4 benefit that inures to them of above forecast  
5 performances?

6 g) Issues Arising from Risk Related  
7 Reports

8 What if any, any additional significant  
9 financial or operational risks flowing from a review of  
10 the risk reports in the possession of Manitoba Hydro and  
11 filed in this proceeding (documents referenced in the  
12 November 6, 2009 letter of Hydro and the pending risk  
13 report from KPMG).

14  
15 Issues appearing to arise from the research of the New  
16 York Consultant (NYC)

17 The NYC suggests that: a proper  
18 understanding of the risks and tolerances of the  
19 corporation is essential at a time where the Corporation  
20 is seeking to expand in the MISO marketplace, make major  
21 new investments and execute significant long term  
22 contracts.

23 Issues which appear to flow from her work  
24 include:

25 - matters related to the application of

1 corporate software systems used to model  
2 and assist with water and energy  
3 management (HERMES and SPLASH) as they may  
4 impact risk management, financial  
5 forecasting, revenues, financial targets  
6 and the Corporation's obligation under s.  
7 2 of The Manitoba Hydro Act. (While these  
8 references are not necessarily readily  
9 apparent from a review of the Application  
10 for Intervenor Status, references appear  
11 in the preliminary report of Mr.  
12 McCullough and in the affidavit of Mr.  
13 Cormie at paras 19 h), 38-40 and 94.)  
14 - are Hydro's short, medium and long term  
15 forecasts reasonably reliable or are they  
16 undermined by a flawed assessment of risk  
17 which could exceed the retained earnings  
18 of the corporation?  
19 - Are the Corporation's operations  
20 reasonably and prudently managed or have  
21 sizable and avoidable losses been  
22 unnecessarily incurred over recent years?  
23 - is Hydro reasonably and prudently  
24 fulfilling its mandate under s. 2 of The  
25 Manitoba Hydro Act or have risks to

1 reliability and safety been identified  
2 which may have sizable impacts on the  
3 operations of the reservoir and the  
4 revenue requirement?

5

6 (INSERT COMPLETED)

7

8 THE CHAIRPERSON: Thank you, Mr. Williams  
9 and also Mr. Hacault for your thoughtful thoughts,  
10 they're quite helpful.

11 Mr. Peters...?

12 MR. BOB PETERS: Yes, just going down the  
13 list, I wonder if Mr. Gange has anything further he would  
14 like to add on behalf of his clients for the scoping of  
15 the risk and risk management.

16

17 SUBMISSIONS BY RCM/TREE:

18 MR. BILL GANGE: Thank you, Mr. Peters.  
19 RCM/TREE has long wanted the Board to adopt the concept  
20 of the workshop idea. We'd be more than happy to take  
21 part in that with the idea that -- that out of such a  
22 workshop, the possibility is that many of the issues may  
23 well disappear.

24 And so we're hopeful that the Board will  
25 adopt that and we're supportive of MIPUG's position that



1 -- and Hydro's position that the scope of this Hearing  
2 ought to be defined and ought to be focussed so that we  
3 aren't here forever. That's my comments.

4 THE CHAIRPERSON: You don't want to be  
5 here forever, Mr. Gange?

6 MR. BILL GANGE: I -- I don't.

7 THE CHAIRPERSON: Mr. Peters...?

8 MR. BOB PETERS: And turning to the City  
9 of Winnipeg, if Ms. Pambrun has any comments in addition  
10 to those provided, this would be a good opportunity for  
11 those to come.

12 MS. DENISE PAMBRUN: No comment.

13 MR. BOB PETERS: Then turning -- I was  
14 going to say turning to the teleconference to talk to  
15 counsel for the independent experts but technology has --  
16 has brought Mr. Wood back to the Hearing room and also  
17 his colleague Ms. Reilly.

18 Mr. Chairman, when we talk about scope and  
19 risk, risk management issues, there is a direct  
20 relationship in terms of what the Board had indicated in  
21 Order 17/10 for an independent expert.

22 This might be a matter that counsel for  
23 the independent experts may need to consider or may have  
24 some initial comments but this would be a time to hear  
25 from them.

1

2 SUBMISSIONS BY INDEPENDENT EXPERTS:

3 MS. PAMELA REILLY: Thank you, Mr.  
4 Peters. Again, for the record, Pamela Reilly speaking on  
5 behalf of the independent consultants.

6 I think it's safe to say that certainly  
7 defining the scope for -- on behalf of the consultants  
8 would be something that they would welcome.

9 There were some comments made earlier  
10 about meetings between the independent consultants and  
11 other experts. The -- part of Agenda Number 6 was terms  
12 of reference that was submitted. The independent  
13 consultants, of course, understand the importance of  
14 maintaining that independence and that they must have the  
15 ability to act as independent experts.

16 So in terms of the suggestions that were  
17 made about meetings, I think it's important to stress  
18 that from the independent consultants' point of view, any  
19 meetings or discussions that take place with them, it  
20 should be made clear that those are for information  
21 purposes or data exchange purposes, specifically, as  
22 opposed to providing opinions and arguments in support of  
23 that data, again, to maintain the independence of the  
24 experts and -- and their results.

25 THE CHAIRPERSON: Thank you, Ms. Reilly.

1 MS. PAMELA REILLY: And -- and those are  
2 my comments. Thank you.

3 THE CHAIRPERSON: Thank you. Very  
4 helpful. Mr. Peters...?

5 MR. BOB PETERS: Yes, and if all the open  
6 mics can be closed, I'm going to turn to our  
7 teleconference line. And if I had understood correctly,  
8 and I may not have, New York Consultant had wanted to  
9 speak to, I think, issue 6, which is the terms of  
10 reference for independent experts.

11 But just to be clear, New York Consultant,  
12 have you any comments relative to the scope of risk and  
13 risk management review?

14

15 SUBMISSIONS BY NEW YORK CONSULTANT:

16 NEW YORK CONSULTANT: Just a brief  
17 comment. I think that a lot of that is still to be  
18 formulated. I -- I guess it hasn't been officially  
19 decided how and in -- in what form as relates to my  
20 contribution, or the New York Consultant's contribution  
21 as to whether the reports and how (INDISCERNIBLE) are  
22 going to be placed on the record, I believe, at that  
23 point.

24 It's become more material for the Board to  
25 be able to more fully define such a more specific risk

1 and risk management review, therefore, in advance of  
2 that, I do not wish to prematurely comment.

3                   However, I do want to make a couple of  
4 points. I also believe I suggested in my March 8th  
5 letter to the Board also suggestions of process -- of  
6 technical workshops and -- and the like be made by  
7 someone for the New York Consultant, and, also, the  
8 experts it wishes to bring onboard.

9                   We'd also considered such presentations  
10 and the idea of having specific select meetings with your  
11 experts or also presentations to the Board on risk-  
12 related matters relative to other best practices risk  
13 management situations done in comparable utilities.

14                   I believe that should New York Consultant  
15 be granted Intervenor status, it would be our interest to  
16 also be able to make suggestions, to put forward such --  
17 additionally such pe -- presentations and workshops and  
18 make sure that our balanced perspective is taken into  
19 consideration.

20                   I would note that Ms. Ramage, again,  
21 stated relative to this, it's so important to be able to  
22 -- I'll use her word, defend herself -- defend themselves  
23 in this hearing related to risk. At the same point, the  
24 New York Consultant must state that should and hopefully  
25 if (INDISCERNIBLE) which we do believe have substantial

1 values to Manitobans and the Manitoba ratepayer are, in  
2 fact, placed on the record; likewise, New York consultant  
3 should also be also be able to, quote, "defend itself."

4 To that end, once again, for the scope of  
5 the risk and risk management review to be fair, we would,  
6 again, be looking for access to various employees,  
7 specifically one that's mentioned multiple times on the  
8 March 8th letter, and procedural fairness (INDISCERNIBLE)  
9 consider fair allowing Manitoba Hydro to, quote, "defend  
10 itself" if certain other reports, like KPMG, New York  
11 Consultant should also be granted to be able to, quote,  
12 "defend itself also" with access to employees, unfettered  
13 -- unfettered communications throughout this risk  
14 management review and scope, that in the interest -- the  
15 public interest in resolving these matters.

16 MR. BOB PETERS: All right, thank you.  
17 I'll -- I'll turn to the telephone line, again, to see if  
18 Mr. Rath has any comments on the scope of risk and risk  
19 management review.

20

21 SUBMISSIONS BY SCO:

22 MR. JEFF RATH: Thank you very much, Mr.  
23 Peters, Mr. Chairman, and Board member.

24 With regard to that, it would the in -- in  
25 the interest of the SCO to simply ensure that -- that the

1 scope of the risk management review is not narrowed to  
2 the point where the issues outlined briefly in oral  
3 argument today by the SCO and its written submissions  
4 would be incapable of being addressed and dealt with by  
5 the Board.

6                   Obviously, com -- the SCO has read the  
7 Board's comments with regard to risk management and the  
8 purpose of risk management and just want to make sure  
9 that the scoping of the -- the scoping of the Hearing on  
10 risk management allows an assessment of liability and  
11 risk to take place to the broadest degree possible in the  
12 context of what is a very remarkable circumstance where,  
13 in essence, we have the MPUB having hired independent  
14 experts to resolve a dispute that's arisen between an  
15 expert formerly employed by Manitoba Hydro for some six  
16 (6) years and new experts retained by Manitoba Hydro to  
17 repudiate Manitoba Hydro's own previous risk analysis  
18 work in the context of its operations and hearings.

19                   So, obviously, we want to make sure that  
20 those issues both in the context of Manitoba Hydro's past  
21 management practises and past risk analysis work to the  
22 extent that Manitoba Hydro now repudiates all of that  
23 work or maybe seeking to repudiate all of that work, you  
24 know, are dealt with as broadly as possible.

25                   And again, that the ability of the SCO

1 First Nations to insist that an environmental audit be  
2 conducted and that the issues arising from such an  
3 environment audit be considered as broadly as possible  
4 within the risk analysis given the fact that this may, in  
5 fact, demonstrate liabilities or liability for Manitoba  
6 Hydro that hasn't been taken into account either in its  
7 present financial risk management work or its concept of  
8 risk management at large.

9           Obviously, from an SCO perspective, to the  
10 extent that Manitoba Hydro has damaged or continues to  
11 damage or continues to impact on SCO First Nation lands  
12 and to the extent that Manitoba Hydro as, in effect, an  
13 agent of the Crown of Manitoba continues to impact on the  
14 interests of SCO First Nations in an environment where  
15 inadequate consultation or no consultation has taken  
16 place by the Government of Manitoba with regard to much  
17 of Manitoba Hydro's current system or with regard to any  
18 of their future planned operations, all of the -- these  
19 things need to be taken into account from a liability  
20 perspective and need -- perhaps some assessment needs to  
21 be taken or considered with regard to the need for monies  
22 to be set aside by Manitoba Hydro going into the future  
23 to offset these liabilities arising to Manitoba First  
24 Nations as a result of all of the impacts that have  
25 arisen.

1                   So I don't want to get into this in a lot  
2 more -- more detail than we've already raised today as we  
3 -- we've yet to be granted Intervenor status, but,  
4 obviously, in the context of any scoping with regard to  
5 risk analysis that the scoping of the Board of these  
6 Hearings need to be broad enough to encapsulate what the  
7 SCO First Nations understand what the Board's own  
8 understanding is of the purpose of these risk management  
9 Hearings, which is to assess going into the future the,  
10 you know, potential risks or unseen or unf -- unplanned  
11 for, unmanaged risks and liabilities that have yet to be  
12 properly taken into account with regard to Manitoba  
13 Hydro's operations.

14                   And again, obviously in this regard, while  
15 this somewhat echoes the position that we understand  
16 that's put forward by the MKO First Nations, when we look  
17 at the need for the envi -- for an environmental audit  
18 and we look at the need for broader consideration of  
19 these issues, given that the impacts on each individual  
20 SCO First Nation are unique and are unique to any of the  
21 impacts or risks experienced by the MCO (sic) First  
22 Nations or First Nations represented by MKO, obviously,  
23 all of this will have to be considered, you know, in the  
24 context of the unique circumstance of each individual SCO  
25 First Nation.





1 come back on and notify our colleagues on teleconference  
2 that we just want to start up.

3 On the issue of scoping I was trying to  
4 close it off and Mr. Hacault had one, I think, additional  
5 thought that he did want to -- and I -- and I do want to  
6 give him the opportunity to provide it and I didn't mean  
7 to make light of it. But, I'll provide him that  
8 opportunity if that suits the Board.

9 MR. ANTOINE HACAULT: Thank you, Board  
10 counsel for your kindness and consideration. The -- I  
11 just wanted to point out, in contrast, the position by  
12 the Consumers group and what we are recommending by one  
13 (1) short example.

14 For example, the Consumers group under  
15 Forecast Export Price asked the question as -- as one of  
16 the list: Can we reasonably rely on the Corporation's  
17 forecast of a US/Canadian exchange rate of one dollar and  
18 sixteen cents (\$1.16)?

19 We don't think that that would be a useful  
20 high risk -- high level analysis and scope issue.  
21 Rather, we're framing it on the basis: Does Hydro have  
22 the required capabilities, internal organization,  
23 qualified staff, policies and procedures with respect to  
24 that kind of analysis or issue?

25 We think that that would be a more useful

1 exercise for this Board to undertake.

2 MR. ROBERT MAYER: I think we can  
3 determine  
4 -- since both your papers have been filed, we will  
5 undoubtedly determine the difference between your two (2)  
6 positions.

7 THE CHAIRPERSON: But thank you anyway,  
8 Mr. Hacault, thank you. Mr. Peters...?

9

10 DISCUSSION RE TIMETABLE ISSUES:

11 MR. BOB PETERS: Yes, Mr. Chairman, the  
12 timetable issues that I've mentioned and I have  
13 circulated copies were -- they were meant to provide a  
14 stimulus for some discussion.

15 The Board has already heard some  
16 discussion what the parties on teleconference probably  
17 have not received from Manitoba Hydro today is a -- is  
18 another draft timetable that has a Hearing preparing on  
19 the regular GRA issues, as well as the risk issues in mid  
20 September.

21 Rather than debate and argue about a -- a  
22 timetable on the record, I'll ask counsel in this room to  
23 stand -- stand back and provide a few minutes afterwards  
24 for counsel to discuss it and we will -- we will try our  
25 best to achieve a consensus and I will then also share

1 that with New York Consultant and Southern Chiefs  
2 Organization counsel and independent expert counsel just  
3 so that I can present it to the Board hopefully by early  
4 to mid next week.

5 I would then, jumping over those  
6 timetables, indicate that the -- the terms of reference  
7 for the independent experts, this was a document that was  
8 shared and provided for information for other parties.  
9 And the Board needs to consider the matter and finalize  
10 the matter so that if there were any specific comments,  
11 they could be provided very timely in writing for the  
12 Board's consideration, otherwise the Board will move to  
13 finalize that.

14 I would then like to turn to the interim  
15 rates aspect, that is, the April 1st, 2010 interim rates.  
16 That item is arising as a result of a request by Manitoba  
17 Hydro for Board approval of rate schedules that were  
18 generated as a result of Order 18/10.

19 Order 18/10 provided the Utility with --  
20 with an interim rate award and there were also directions  
21 on how the Utility should implement it respecting the  
22 residential class.

23 If there were any comments on that before  
24 the Board deliberates on the Application by the Utility,  
25 those comments should be provided in the next few

1 minutes. And I'll maybe start with Mr. Williams to see  
2 if he has any comments for the Board relative to -- to  
3 the interim rate schedules proposed by Manitoba Hydro for  
4 April 1st, 2010.

5

6 RE: GRA & RISK AND MANAGEMENT REVIEW SCHEDULES:

7

8 SUBMISSIONS CAC/MSOS:

9 MR. BYRON WILLIAMS: Certainly on behalf  
10 of my clients, in their view, the revised rate schedule  
11 disproportionately loads the rate increase on the second  
12 block, and in -- in my client's view, there are many  
13 inequities that result from this.

14 All electric cu -- customers who do not  
15 have access to -- equitable access to DSM programming are  
16 -- one (1) example that comes to mind, and that includes  
17 a number -- many First Nations people living in remote  
18 communities. That's of concern to my clients.

19 Tenants who must often employ space  
20 heaters to -- to -- whether they're supposed to or not,  
21 to heat their -- their apartments in the winter, and  
22 really have very little on the current Hydro men -- men -  
23 - menu in terms of equitable access to DSM programming.

24 And, it's important to point out as well  
25 that poverty and low usage do not invariably go hand in

1 hand, and some low income people are relatively high  
2 volume users. And certainly, from my client's  
3 perspective, this is a -- "harsh" may be too strong of a  
4 word, but perhaps not, an inequitable impact, especially  
5 when there's -- there's still significant barriers to  
6 them accessing DSM programming.

7 And certainly, from my client's  
8 perspective, they haven't had a lot of opportunity to  
9 look at this. I'm not sure Mr. Harper -- I drew it to  
10 his attention at about ten o'clock last night.

11 It would be preferable to more equitably  
12 distribute that rate increase over -- over the blocks.  
13 With the Board's indulgence, if Mr. Harper has any  
14 comments, I would be happy to provide them in writing by  
15 Monday morning.

16 THE CHAIRPERSON: That would be fine.

17 MR. BYRON WILLIAMS: Thank you for that  
18 opportunity.

19 MR. BOB PETERS: Turning down the list,  
20 I'll go to Mr. Hacault if MIPUG has any comments relative  
21 to the rate schedules.

22 MR. ANTOINE HACAULT: No comments.

23 MR. BOB PETERS: Turning to Mr. Gange for  
24 RCM/TREE.

25

1 SUBMISSIONS BY RCM/TREE:

2 MR. BILL GANGE: The rate schedule is  
3 what RCM/TREE proposed in -- in the interim rate order  
4 application, so we -- quite frankly, we're quite pleased  
5 with the way that it was done.

6 MR. BOB PETERS: All right, City of  
7 Winnipeg, any comments on the rate schedule?

8 MS. DENISE PAMBRUN: I thought it was a  
9 thing of beauty and a joy forever.

10 MR. BOB PETERS: I guess parties will  
11 know that the City of Winnipeg, the largest customer in  
12 area and roadway lighting got no rate increase, so, they  
13 will understand your comments.

14 MS. DENISE PAMBRUN: I noted that. Thank  
15 you, Mr. Peters.

16 MR. BOB PETERS: If -- if there were any  
17 comments from those on the teleconference, from Southern  
18 Chief's Organization, Mr. Rath, any comments on the rate  
19 schedule?

20 Hearing none, I'll turn to the New York  
21 Consultant to find out whether any comments relative to  
22 the rate schedule.

23 NEW YORK CONSULTANT: Mr. Peters, I'm  
24 just curious what happened to number 6. Did you miss  
25 that (INDISCERNIBLE) terms of reference for the

1 independent expert?

2 MR. BOB PETERS: Yeah, let me repeat, New  
3 York Consultant. After a brief recess, it was determined  
4 that the terms of reference for the independent expert,  
5 the Board would receive any written comments if there --  
6 if there were any, by early this week, as the Board needs  
7 to review that matter further, but if you have written  
8 comments, they -- the Board would welcome them this  
9 upcoming week.

10 NEW YORK CONSULTANT: Okay, if -- if  
11 (INDISCERNIBLE) to be able to do that, would I be able to  
12 provide that on -- on a telephone ca -- call?

13 MR. BOB PETERS: Perhaps I can arrange a  
14 transcription if that -- it that suits the Board. I  
15 believe it would, and that it's something we could -- we  
16 -- we could ru -- could arrange, yes.

17 NEW YORK CONSULTANT: Thank you.

18 MR. BOB PETERS: All right. I take then  
19 --

20 MR. ROBERT MAYER: Oh, not so fast, Mr.  
21 Peters. I do notice that there was some mention of  
22 loading the back end rate. I'm a northerner. I heat by  
23 electricity. I can only heat by electricity.  
24 Financially it is not -- you -- Sticktow (phonetic),  
25 quite frankly, is not a viable alternative, nor do I



1 consider wood burning stoves a viable alternative in the  
2 City of Thompson or in any other city.

3                   It looks to me like the rate schedule will  
4 load, in my opinion -- maybe in my opinion, but it will  
5 certainly load the -- the people who are required to use  
6 electricity for space heating.

7                   I'm not sure how I feel about that. I  
8 think I can probably afford it because our rates are not  
9 all that out of line. But I do expect that we might hear  
10 something relatively significant when we start kicking in  
11 with the significantly higher rates over nine hundred  
12 (900) kilowatt hours a month.

13                   MR. BOB PETERS: Perhaps that's a good  
14 segue, Mr. Vice Chair, for me to turn it over to  
15 Manitoba Hydro, who -- they propose the rates and maybe  
16 provide them with the last opportunity for comment before  
17 the matter is left in the deliberation of the Board on  
18 that interim rate schedule.

19                   I'll give Manitoba Hydro a minute or two  
20 (2) to assemble their thoughts and they'll come on-line  
21 in a -- in a minute.

22

23 SUBMISSIONS BY MANITOBA HYDRO:

24                   MS. PATTI RAMAGE: When Manitoba Hydro  
25 filed those rate schedules, they -- the impression at

1 Manitoba Hydro was they were following the direction of  
2 the Board. Manitoba Hydro would be flexible to any  
3 further directions. We thought we were doing what the  
4 Board wanted. If it's not what the Board wanted, we need  
5 to know that.

6 THE CHAIRPERSON: There's clear arguments  
7 for the way that Manitoba Hydro advanced it, and also  
8 there's arguments that would be supportive of the  
9 comments that were made by Mr. Williams. So we'll  
10 deliberate on it. We know your time constraints.

11 MR. ROBERT MAYER: An -- an -- and I  
12 don't want my comments to be -- to be construed as being  
13 opposed to inverse rates. I -- I -- when it first  
14 started coming up and when RCM/TREE first started raising  
15 those issues, it seemed like a good idea at the time and  
16 I think the -- our panel has been relatively consistent.  
17 The fact that you loaded it all into that particular spot  
18 is something, I think, we're going to have to look at.

19

20 DISCUSSION RE INDUSTRIAL RATE APPLICATION:

21

22 MR. BOB PETERS: Mr. Chairman, I'll move  
23 to the -- the last two categories, and these ones aren't  
24 going to be matters that need to be discussed around the  
25 room, in my view, these are matters where Manitoba Hydro

1 could report to the Board while the Board is, so to  
2 speak, captive.

3 Manitoba Hydro filed an energy-intensive  
4 Industrial Rate Application, it could be three (3) weeks  
5 ago, by memory, and that application was -- the Board  
6 was, essentially, asked to just put it on hold, in my  
7 words, as Manitoba Hydro had wanted an opportunity to  
8 have further consultations, and I think even Manitoba  
9 Hydro indicated there may be revisions to what was filed.

10 That may be the last communication the  
11 Board is aware of, and perhaps Manitoba Hydro can update  
12 the party and the Board at this time on where the energy-  
13 intensive Industrial Rate Application sits.

14

15 SUBMISSIONS BY MANITOBA HYDRO:

16 MS. PATTI RAMAGE: Yes. Thanks, Mr.  
17 Peters.

18 It's my understanding that Manitoba Hydro  
19 is continuing to consult with customers impacted by this  
20 proposal. Manitoba Hydro has also agreed to meet with  
21 MIPUG to discuss MIPUG's concerns, and this process is  
22 taking longer than perhaps we anticipated during our last  
23 report.

24 But, I can advise Manitoba Hydro will  
25 inform the Board, in due course, of any modifications

1 that are required to the Application as a result of these  
2 meetings, and we will do that prior to requesting that  
3 the process be commenced. So, maybe, Mr. Peters, on hold  
4 is -- is a good description for now.

5 MR. BOB PETERS: Thank you, Ms. Ramage.

6 Mr. Chairman, I don't believe that it's  
7 necessary to turn that over to the room for comments.  
8 We've heard from Manitoba Hydro as to their intention  
9 and, essentially, I'm hearing them say to the Board,  
10 please stay tuned, they'll have more information in due  
11 course.

12

13 DISCUSSION RE DIESEL ZONE RATE APPLICATION:

14

15 MR. BOB PETERS: The last item on my  
16 agenda, number 9, is the diesel zone rate application.  
17 There was communication to the Board at the time of the  
18 filing of the interim rate schedules to indicate that  
19 Manitoba Hydro was -- has prepared, I believe, and is  
20 prepared to file a diesel zone rate application affecting  
21 the four (4) communities in northern Manitoba that source  
22 their electricity through diesel generation.

23 There was no actual filing yet made and no  
24 time line indicated but, perhaps, if Manitoba Hydro was  
25 able, this would be an opportune time to just update the

1 Board on that matter. I'll turn it over to Ms. Ramage  
2 again.

3

4 SUBMISSIONS BY MANITOBA HYDRO:

5 MS. PATTI RAMAGE: Thank you again. Once  
6 again, Mr. Peters has correctly described what's happened  
7 to date. I can advise that since our filing of the  
8 interim rates and our advice regarding the diesel  
9 application, Manitoba Hydro has been engaging in  
10 discussions with INAC and the diesel First Nations, the  
11 subject matter of which could impact our proposed  
12 application.

13 As such, we haven't filed that application  
14 yet, but we expect it will be filed one way or another  
15 very soon.

16 MR. BOB PETERS: Mr. Chairman, that  
17 exhausts the list of topics that I introduced earlier and  
18 it also may exhaust many of those of us in the hearing  
19 room.

20 I will, as I -- as I close off on the  
21 microphone, Mr. Chairman, thank yourself and the Vice  
22 Chairman for your attention to the matters today, and  
23 also thank you for the leniency afforded to me in  
24 conducting the process.

25 And while you may now regret it because

1 this is probably the longest pre-hearing conference on  
2 record, the parties in this room and on the  
3 teleconference, I do believe, recognize that the  
4 difficult task that lies ahead is now for the Board, and  
5 now that you've heard from the parties, deliberations and  
6 decisions will need to be taken, and that falls in your  
7 purview and for that we thank you for your attention.  
8 And those are my comments.

9 THE CHAIRPERSON: Thank you, Mr. Peters,  
10 and we greatly appreciate your efforts today and we  
11 appreciate the efforts of all parties providing comments  
12 and information today.

13 It's clear to the Board that all parties  
14 came well prepared to discuss their perspectives and  
15 offer comments and we find the participation of all  
16 parties to have been helpful.

17 We'll now stand adjourned and you can  
18 expect an Order in due course. We'll await Mr. Peters'  
19 consultations with the various parties, with respect to  
20 the timetable.

21 We're also aware of Manitoba Hydro's  
22 billing schedule and their requirement for April the 1st  
23 too with respect to the interim rate item.

24 So unless I've forgotten something -- Mr.  
25 Peters, have I?

1 MR. BOB PETERS: No --

2 THE CHAIRPERSON: We'll thank Mr.  
3 Gaudreau and Mr. Singh again, and we stand adjourned.  
4 Thank you.

5  
6 --- Upon adjourning at 3:34 p.m.

7

8

9 Certified Correct,

10

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16 \_\_\_\_\_  
Cheryl Lavigne, Ms.

17

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